FINAL
ENVIRONMENTAL IMPACT REPORT

NEWARK AREAS 3 AND 4 SPECIFIC PLAN PROJECT

SCH No. 2007052065

newark
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APRIL 2010

FINAL EIR

for the

NEWARK AREAS 3 AND 4 SPECIFIC PLAN PROJECT

State Clearinghouse Number: 2007052065

CITY OF NEWARK

APRIL 2010

PREFACE

This document, together with the Draft Environmental Impact Report (Draft EIR), constitutes the Final Environmental Impact Report (Final EIR) for the Newark Areas 3 and 4 Specific Plan Project. The Draft EIR was circulated to affected public agencies and interested parties for a 45-day review period from December 3, 2009 to January 19, 2010. This document consists of comments received by the Lead Agency on the Draft EIR during the public review period, responses to those comments, and revisions to the text of the Draft EIR.

In conformance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the Final EIR provides objective information regarding the environmental consequences of the proposed project. The Final EIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final EIR is used by the City and other Responsible Agencies in making decisions regarding the project. The CEQA Guidelines advise that, while the information in the Final EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the Draft EIR by making written findings for each of those significant effects. According to the State Public Resources Code (Section 21081), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which will mitigate or avoid the significant effect on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

In accordance with CEQA and the CEQA Guidelines, the Final EIR will be made available prior to certification of the Environmental Impact Report. All documents referenced in this Final EIR are available for public review in the office of the City of Newark, Community Development Department located at 37101 Newark Boulevard during normal business hours and the Newark Library, a branch of the Alameda County Library located at 6300 Civic Terrace Avenue.

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1.0 LIST OF AGENCIES, ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS WHO RECEIVED THE DRAFT EIR

Copies of the Draft EIR and/or Notice of Availability for the Draft EIR were sent to the following agencies, organizations, businesses, and individuals:

AGENCIES

Alameda County Department of Environmental Health Services
Alameda County Housing Authority
Alameda County Library District
Alameda County Local Agency Formation Commission
Alameda County Mosquito Abatement District
Alameda County Planning Department
Alameda County Resource Conservation District
Alameda County Superintendent of Schools
Alameda County Water District
Alameda County Flood Control & Water Conservation District
California Air Resources Board
California Department of Fish and Game
California Department of Conservation
California Department of Food and Agriculture
California Department of Health/Drinking Water
California Department of Housing & Community Development
California Department of Parks and Recreation
California Department of Toxic Substances Control
California Department of Transportation
California Department of Water Resources
California Highway Patrol
California Integrated Waste Management Board
California Native American Heritage Association
California Office of Emergency Services
California Regional Water Quality Control Board
California Resources Agency
California State Land Commission
City of Fremont, Community Development Department
Fremont-Newark Community College District
National Marine Fisheries Service
San Francisco Bay Conservation and Development Commission
San Francisco Water Department
Union City Planning Department
U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
Washington Township Hospital District

ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS

Citizens Committee to Complete the Refuge
Grassetti Environmental Consulting
Newark Chamber of Commerce
Tri-City Ecology Center
Margaret Lewis

2.0 LIST OF COMMENT LETTERS RECEIVED ON THE DRAFT EIR

Shown below is a list of comment letters received on the Draft EIR. The list also identities the date of the letter received. Complete copies of all the letters are included in Section 5.0 of this Final EIR.

Federal and State Agencies

A.	United States Fish and Wildlife Service	January 20, 2010
B.	California Department of Toxic Substances Control	December 28, 2009
C.	California Department of Fish and Game	January 14, 2010
D.	California Public Utilities Commission	January 26, 2010

Regional and Local Agencies

E.	Regional Water Quality Control Board	January 12, 2010
F.	Alameda County Water District	January 15, 2010
G.	City of Fremont	January 19, 2010

Organizations, Businesses and Individuals

H.	Tri-City Ecology Center	January 16, 2010
I.	Grassetti Environmental Consulting for Citizens Committee to Complete the Refuge	January 17, 2010
J.	Citizens Committee to Complete the Refuge	January 18, 2010
K.	Wildscape Engineering Services for Citizens to Complete the Refuge	January 19, 2010
L.	Friends of Coyote Hills	January 19, 2010
M.	Sierra Club San Francisco Bay Chapter	January 19, 2010
N.	Pick-N-Pull Auto Dismantlers	January 19, 2010
O.	Jeffu631-harbor@yahoo.com	December 12, 2009
P.	Martin Doyle	January 14, 2010
Q.	Gaby and Dan Ondrasek	January 17, 2010
R.	Margaret Lewis	January 18, 2010
S.	Mari Miller	January 18, 2010
T.	Wayne Miller	January 18, 2010
U.	Greg Scott	January 19, 2010
V.	Nadja Adolf	January 19, 2010

3.0 RESPONSES TO COMMENTS RECEIVED ON THE DRAFT EIR

The following section includes all the comments on the Draft EIR that were received by the City in letters and emails during the 45-day review period. The comments are organized under headings containing the source of the letter and the date submitted. The specific comments from each of the letters or emails are shown as "COMMENT" with each response to that specific comment directly following. Each of the letters and emails submitted to the City of Newark are attached in their entirety (with any enclosed materials) in Section 5.0 of this document.

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. Section 1.0 of this document lists all of the recipients of the Draft EIR.

Seven of the comment letters received are from public agencies, six of whom may be Responsible Agencies under CEQA for the proposed project. The CEQA Guidelines require that:

> A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation. [§15086(c)]

Page 2 of the Draft EIR lists the public agencies that may have permitting or other authority for some aspect of the project, in addition to the City of Newark.

Regarding mitigation measures identified by commenting public agencies, the CEQA Guidelines state that:

> Prior to the close of the public review period, a responsible agency or trustee agency which has identified what the agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state. [§15086(d)]

The CEQA Guidelines state that the lead agency shall evaluate comments on the environmental issues received from persons who reviewed the Draft EIR and shall prepare a written response to those comments. The lead agency is also required to provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report. This Final EIR contains written responses to all comments made on the Draft EIR received during the advertised 45-day review period.

This following section provides a summary of the most commonly-raised comments that were received by the Lead Agency on the Draft EIR, and provides responses to those comments. In the case when several comments (and/or commenters) raise similar or related concerns, a "MASTER RESPONSE" has been prepared to address the related concerns or issues in a single comprehensive manner allowing reviewers of the Final EIR, including decisions-makers, to derive a complete understanding within context. In the responses to individual comments that follows this section, the individual comments pertaining to these issues are referred back to these master comments and responses. By doing this, the Final EIR avoids repeating responses to the same comments over and over, and the most important issues and questions receive thorough responses in one place in this document.

Two master responses were prepared, one to address sea level rise questions and concerns and a second to address on-site and off-site biological habitat mitigation.

MASTER COMMENT 1: Many comments to the Draft EIR involve the question of future sea-level rise from global climate change and the vulnerability of the Specific Plan Area to flood hazards that may result by such rises in mean sea level. Specific questions/comments raised include the following:

1) The assessment of flooding impacts inappropriately relies on 2009 FEMA 100-year flood maps that do not include any sea level rise component
2) Draft EIR fails to add the anticipated two feet of storm surge to the sea-level rise estimates.
3) The Draft EIR's analysis of future sea-level rise is based upon outdated information.
4) The Draft EIR should examine the potential flooding impacts due to sea level rise using a bracketed lower and higher sea level rise estimate in order to demonstrate a conservative scenario and a "worst-case" scenario.
5) Comments related to the range of estimates for sea-level rise.
6) Comments related to the stated 50-year project life and the use of project life in the evaluation of impacts from sea level rise.
7) Indirect effects and impacts related to sea level rise, including
   a) Additional quantities of fill required to protect the project from sea level rise anticipated during the project life span.
   b) Ensure that the raised building pads could be designed to tolerate periodic flooding without undergoing deterioration.
   c) Draft EIR fails to consider impacts to the storm drain outlets proposed to release at 10 feet elevation and the ability of the pump to function properly and adequately drain Area 4 under higher tide levels that would result from predicted sea level rise.
8) The proposed Area 4 development is inconsistent with documents advocating adaptive strategy planning techniques discussed in recent agency documents and journals

MASTER RESPONSE 2: This response also examines recent CEQA guidance on the subject, so the City of Newark may make informed decisions regarding impact analysis and possible mitigation measures.

Draft EIR Analysis of Existing Flooding Impacts and Future Flooding Impacts from Sea Level Rise

The Draft EIR bases its significance criterion for flood hazard assessment on the "Environmental Checklist Form" from Appendix G of the CEQA Guidelines, specifically checklist item IX (g) which asks if the project would "place housing within a 100-year flood hazard area **as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map** or other flood hazard delineation map." [emphasis added].

The Draft EIR's evaluation of project flooding impacts was based upon floodplain maps current when the Notice of Preparation was issued. Additional studies relating to sea level rise were prepared in October 2009. It is also noted, for clarity, that the currently effective federal Flood Insurance Rate Map (FIRM) for Newark is dated August 3, 2009, a map published subsequent to the Notice of Preparation. However, other than a three-foot vertical datum shift, the new FIRM is essentially identical to the FIRM used for the preparation of the Draft EIR. The vertical datum shift does not change the depth of the flooding hazards nor does it change the area of 100 year flood zone, therefore, this would not change any of the impact conclusions. Figures showing the 100-year flood plain under the previous FIRM (shown in the Draft EIR) and the currently effective FIRM are included in Section 4.0, *Revisions to the Text of the DEIR.*

The October 2009 addendum discusses federal, state and local regulations related to sea level rise at that time. (See Appendix G Addendum pp. 8-10), and at the time of this response that discussion remains largely the same. Recently adopted amendments to the CEQA Guidelines which incorporate analyses and mitigation of Greenhouse Gas Emissions (GHG) and include a recommended approach for identifying project GHG emissions, determining significance, and mitigating the impacts through the CEQA process contain the following additional guidance with regard to analyzing potential flooding impacts.

New CEQA Guidelines Regarding Greenhouse Gases

On December 31, 2009, pursuant to the directives of SB97, the Natural Resources Agency formally adopted new proposed CEQA Guidelines concerning the analysis of greenhouse gas emissions. These new CEQA Guidelines were then transmitted by the Office of Administrative Law ("OAL") to the Secretary of State for inclusion in the California Code of Regulations. The new CEQA Guidelines became legally effective thirty (30) days after OAL submited them to the Secretary of State (March 18, 2010).

New CEQA Guideline Section 15126.2 (Consideration and Discussion of Significant Environmental Impacts) provides:

> "(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, ***the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is***

> ***published***,…the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) ***as identified in authoritative hazard maps***, risk assessments or in land use plans addressing such hazards areas." [emphases added]

Other than acknowledging that sea-level rise is one impact of increased global greenhouse gas emissions, the new CEQA Guidelines do not provide specific guidance relevant to the consideration of sea-level rise and its potential impact to the Specific Plan Area. However, since many public comments submitted during the drafting of the new CEQA Guidelines requested that the Guidelines address the issue, the Office of Planning and Research's Final Statement of Reasons and summaries of responses to public comments have been consulted for additional guidance on the topic of sea level rise. The following excerpts from the Final Statement of Reasons are seen as particularly relevant:

> **Specific Purposes of the Amendment**
> Several comments submitted as part of the Natural Resources Agency's SB97 rulemaking process urged it to develop guidance addressing the analysis of the impacts of climate change on a project. These comments similarly suggested that such guidance was appropriate in light of the release of the draft California Climate Adaptation Strategy (Adaptation Strategy), developed pursuant to Executive Order S-13-2008. In considering such comments, it is important to understand several key differences between the Adaptation Strategy and the California Environmental Quality Act. First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the Adaptation Strategy focuses on how the State can plan for the effects of climate change. CEQA's focus, on the other hand, is the analysis of a particular project's greenhouse gas emissions on the environment, and mitigation of those emissions if impacts from those emissions are significant. Given these differences, ***CEQA should not be viewed as the tool to implement the Adaptation Strategy***; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies. [Emphasis added]
>
> There is some overlap between CEQA and the Adaptation Strategy, however. As explained in both the Initial Statement of Reasons and in the Adaptation Strategy, Section 15126.2 may require the analysis of the effects of a changing climate under certain circumstances. (Initial Statement of Reasons, pp. 68-69.) In particular, Section 15126.2 already requires an analysis of placing a project in a potentially hazardous location.
>
> As revised, Section 15126.2 would provide that a lead agency should analyze the effects of bringing development to an area that is susceptible to hazards such as flooding and wildfire, ***both as such hazards currently exist or may occur in the future***. Several limitations apply to the analysis of future hazards, however. For example, such an analysis may not be relevant if the potential hazard would likely occur sometime after the projected life of the project (i.e., if sea-level projections only project changes 50 years in the future, a five-year project may not be affected by such changes). Additionally, the degree of analysis should correspond to the probability of the potential hazard. (State CEQA Guidelines, Section 15143 ("significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence").) Thus, for example, where there is a great degree of

certainty that sea-levels may rise between 3 and 6 feet at a specific location within 30 years, and the project would involve placing a wastewater treatment plant with a 50 year life at 2 feet above current sea level, the potential effects that may result from inundation of that plant should be addressed. On the other extreme, while there may be consensus that temperatures may rise, but the magnitude of the increase is not known with any degree of certainty, effects associated with temperature rise would not need to be examined. (State CEQA Guidelines, Section 15145 ("If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate the discussion of the impact").) Lead agencies are not required to generate their own original research on potential future changes; however, where specific information is currently available, the analysis should address that information. (State CEQA Guidelines, Section 15144 (environmental analysis - necessarily involves some degree of forecasting. While seeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.)

Analysis of Future Sea Level Rise Due to Climate Change

The analysis of future sea level rise from climate change and future flood risk is addressed in the Draft EIR Section 4.0, *Cumulative Impacts,* with further clarification provided below.

The Draft EIR consistently treats storm surge as additive to mean sea level rise when assessing potential future flood hazards. That is, sea level rise is treated as a shift in the future vertical datum and is the same as equivalent land subsidence. After reviewing the literature and, in particular, documents that show maps of areas subject to future base flood inundation after sea level rise, the City's experts have determined that this is the best methodology currently available.

Further, as explained by the Office of Planning and Research in its' Final Statement of Reason, under new CEQA Guideline 15126.2, as the City considers whether to allow development within an area that might be susceptible to additional flood hazards in the future; it must consider the life of the project, the range of potential future flood hazards due to sea-level rise, and the uncertainty of sea-level rise estimates that might affect those estimates of future flood hazards.

Project Life and Uncertainty

The 50-year Bay Conservation and Development Commission (BCDC) planning horizon referenced on p. 299 of the Draft EIR is based on a presentation by a BCDC official in 2007 at a Symposium on Climate Change for the American Society of Civil Engineers, who suggested that the uncertainty associated with the predictive models on which estimates of future sea level rise are made will render longer planning horizons ineffective and problematic. Several comments object to the use of a 50-year planning horizon, considering the life of residential structures that would be placed in close proximity to flood hazards and suggest that a 100-year project life might be more appropriate (i.e. using 2110 as the planning horizon). The Draft EIR's use of the 50-year planning horizon it not based on an determination of the useful life of the Project, but rather an acknowledgement that climate change predictions become more uncertain the farther into the future the projection is made. Accordingly, the Draft EIR analyzes sea level rise impacts based on a "high end" scenario after 50 years and an "intermediate" or "likely" scenario after 100 years. That said, the Draft EIR also provides a full analysis of current low, intermediate, and high-end estimates employing a 100-year planning horizon. (See Draft EIR p. 301.) However, for the purposes of determining whether the

Project may experience significant flooding impacts under CEQA, the City determined, based on guidance from BCDC and from its experts, that the 50-year planning horizon provided the most accurate and effective threshold for evaluating projected sea-level rise.

Range of Estimates of Sea Level Rise

Documents produced on behalf of the State of California consistently rely on the estimates produced by Rahmstorf's method as presented in 2007 (refer to Draft EIR Appendix G, Rahmstorf's methods relate temperature to sea level rise). This methodology results in maximum estimates of sea level rise of nearly 18 inches by 2050 and 55 inches by 2100, as described in the Draft EIR.

The same range of maximum estimates is suggested by the 2009 California Climate Adaptation Strategy and by BCDC. It is generally accepted that rates of sea level rise will increase in the future, but the "the range in estimated rates is wide, mainly due to the uncertainty in the amount of meltwater from landbased ice in Greenland and Antarctica. Recent projections (Rahmstorf 2007) estimate the range of increase of global sea level at 40–140 cm above recent levels. Another recent study (Pfeffer et al. 2008) produced a somewhat higher estimate (80–200 cm), reinforcing the opinion that sea level rise during the next several decades could exceed the estimates provided by the Intergovernmental Panel on Climate Change (IPCC) Third and Fourth Assessments (IPCC 2001, 2007). Concerning the high end of the range, Pfeffer et al. concluded that sea level rise is very unlikely to exceed 200 cm by 2100."[1] This same report states that the 55-inch sea level rise scenario using Rahmstorf's method under the A2 greenhouse gas emissions scenario (a 4.5°C increase in global average surface air temperatures by 2100) produces "is a relatively high (but not the highest) amount of warming among the ensemble of IPCC Fourth Assessment model results (IPCC 2007)." (ibid)

Based on this, the City has determined that it may reasonably consider sea level rise impacts and adaptive mitigation measures that are consistent with scenarios used by state and regional entities, and also may consider the lack of uniform consensus regarding these estimates. Assigning a level of certainty to various estimates is difficult, as addressed by the 2009 California Climate Adaptation Strategy (p. 16):

> "[T]here is considerable uncertainty regarding future levels of GHG emissions due to the difficulty of predicting societal choices. It is compounded by scientific uncertainty over how the climate will respond to a given amount of GHG emissions. Global climate models also differ to some extent in how they treat atmospheric, terrestrial and hydrological processes, resulting in different levels of warming, and sometimes divergent patterns of precipitation. In the absence of better tools or methods to project future climate, the best approach is to use several climate models, driven by the same emissions scenarios, to produce a large set of model simulations. The range of simulations can then be averaged to obtain a general trend, with the spread among simulations giving a sense of the uncertainty associated with a given emissions scenario. In short, the models provide a coarse but plausible set of projections of the future, as opposed to detailed predictions."

[1] Knowles, Noah, "Potential Inundation Due to Rising Sea Levels in the San Francisco Bay Region," USGS/California Climate Change Center, 2009.

The 2007 IPCC synthesis (which some comments have suggested is already outdated) gives the "likely" range of sea level rise by 2100 as 0.6 to 1.9 feet.[2] It is noted that the rise for 2100 predicted by the U.S. Army Corps of Engineers (USACE) for their "intermediate" scenario (1.5 feet) falls within the upper half of this range and also call it "likely".

Under this scenario the one-percent base flood elevation from tidal inundation at the end of the project life in 2110 would be calculated using the USACE formula as documented in the Draft EIR:

$$E(t_2) - E(t_1) = 0.0017(t_2 - t_1) + b(t_2^2 - t_1^2)$$

where:

t_1 = time between construction date and 1986;

t_2 = time between date at which sea level rise projection is desired and 1986;

$E(t)$ = eustatic sea-level, in meters, as a function of (t);

b = Variable; 2.36E-5 for modified NRC Curve I and 1.005E-4 for modified NRC Curve III.

one-percent stillwater surge (1986)	7.5 feet NGVD
date of construction	2010 (t_1 = 2010 – 1986 = 24)
date of predicted sea level rise	2110 (t_2 = 2110 – 1986 = 124)

E(124) – E(24) = 0.0017(100) + 2.36E-5(15,376 – 576) = 0.52m = 1.7 feet

A "likely" base flood elevation in 2110 is therefore 9.2 feet NGVD

Using the USACE formula presented above and the "high" global temperature rise scenario (modified NRC Curve III), mean sea level rise by 2110 is 1.7m or 5.4 feet. Under this "less likely" scenario, the base flood elevation in 2110 would be 12.9 feet NGVD. Commenter Wayne Miller (Comment Letter T) states that recent publications indicate that this "less likely" scenario is becoming "more likely." However, another recent publication categorized this as "potential high-end sea level rise" and stated: "It should be emphasized that this is a scenario, not necessarily a reliable prediction."[3]

Grassetti Environmental Consulting (Comment Letter I) provided a link to a "Science Daily" article which reports a summary of the actual NAS article, Global Sea Level Linked to Global Temperature (Vermeer, Martin and Stefan Rahmstorf, doi: 10.1073/pnas.0907765106). This article shows that the full range of projected sea level rise of 75 to 190 centimeters quoted by "Science Daily" is outside of statistical norms. The NAS authors provide a table summarizing the sea level rise ranges by the year 2100 for different IPCC emission scenarios using their methodology, and the value ranges from 81 centimeters to 179 centimeters, with a maximum model average increase in sea level of 143 centimeters, or 56 inches which compares to the BCDC adopted maximum rise of 55 inches by 2100. The latter estimate is discussed in the Draft EIR as a "high end" estimate of sea level rise.

[2] Field, C.B., L.D. Mortsch,, M. Brklacich, D.L. Forbes, P. Kovacs, J.A. Patz, S.W. Running and M.J. Scott, 2007: North America. *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, M.L. Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden and C.E. Hanson, Eds., Cambridge University Press, Cambridge, UK, 617-652.
[3] Knowles, 2009.

Impact Analysis

Consistent with BCDC guidance, and based on the most currently available methodologies (described above) the Draft EIR evaluates the potential cumulative sea-level rise impacts based on a 50-year planning horizon and finds that the project "would provide sufficient freeboard from 100-year flood events under low, intermediate and high sea level rise projections in this planning horizon, and thus the proposed Specific Plan would not be adversely impacted by predicted global climate change sea level rise." (Draft EIR p. 302.)

Indirect Impacts from Sea Level Rise

Commenters also raise the issue of potential building pad settlement. This is a legitimate concern and is discussed in Section 3.7 of the Draft EIR, with particular attention given in MM GEO-3.1 (pages 185-186). However, the possible failure of existing levees or the performance of the pumping system would have no impact on the base flood elevation, which is already based on the assumption of complete levee failure (in other words, in preparing its flood hazard maps, FEMA assumes that those levees do not exist) and without any pumping. Also, the standard of practice for the design of a grading plan is to account for long-term anticipated differential settlement and to provide safe releases for storm runoff that functions even without a working storm drainage system.

With regards to the storm drain systems and sea level rise, the storm drain system was analyzed using base conditions at the time of the Notice of Preparation. Area 4 would rely on the safe release of storm runoff by gravity without the need for pumping. Storm drain functions may be affected as mean sea level rises, but those systems could be adapted to that rise, particularly since there is only one direct outfall to receiving waters that are under direct tidal influence (Area 3). For instance a relatively small increase in pump horsepower would overcome higher tide levels.

In summary, the Draft EIR evaluates the effects of bringing development to an area susceptible to flooding hazards, both as such hazards exist today and may occur in the future, in accordance with the recently adopted CEQA Guidelines Amendments addressing analysis and mitigation of greenhouse gas emissions pursuant to SB97 (December 2009). The discussion of existing flood hazards is evaluated in Draft EIR Section 3.8, *Hydrology, Flooding, and Water Quality* (Draft EIR p. 191) and the evaluation of possible future flooding hazards is provided in Draft EIR Section 4.0, *Cumulative Impacts* (Draft EIR p. 273). Consistent with the 2009 California Climate Adaptation Strategy, the Draft EIR also evaluates a project alternative that avoids new development in areas that cannot be protected from future flooding due to climate change - the *No Development in Area 4 and Higher Density Area 3 Alternative* (Draft EIR p. 313). This project alternative would also meet the "adaptive strategy" component recommended by the U.S. Army Corps of Engineers and Department of Water Resources, as well as the BCDC preliminary recommendations for the Bay Plan amendments noted in the paragraph above. The comments on the Draft EIR did not provide any new information that resulted in the identification of any new impact from sea level rise, or any impact of substantially greater severity than was already identified in the Draft EIR.

MASTER COMMENT 2: Many comments to the Draft EIR involve questions on the proposed wetland habitat mitigation approach. Specific questions/comments raised include the following:

1) The Draft EIR does not demonstrate that adequate mitigation is available.
2) The Draft EIR should identify an off-site mitigation site(s).
3) The Draft EIR habitat mitigation quantities do not appear sufficient to compensate for impacts associated with the fill of wetlands in Area 4.
4) Comments related to available habitat mitigation banks.
5) Comments related to feasibility of off-site mitigation.

MASTER RESPONSE 2: As described in the Draft EIR, up to 85.6 acres of impacts to wetland and aquatic habitats could occur in Area 4, assuming the full development of Sub-Areas B, C, and D. Assuming full buildout of the proposed Land Use Plan, approximately 35 acres of uplands, located within Sub-Area E, would remain undeveloped.

As described in the Draft EIR (p. 135), compensatory mitigation for impacts to wetland and aquatic habitat in Area 4 shall consist of two parts: (1) creation of high quality wetland and aquatic habitat within upland habitat at an acreage ratio of 1:1 (habitat created:habitat impacted) to prevent any net loss in habitat functions or values; and (2) enhancement of existing seasonal wetland habitat that is currently in agricultural production at an acreage ratio of 0.5:1 (habitat enhanced: habitat impacted). So wetland impacts will be mitigated at a total acreage ratio of 1.5:1 (habitat created and enhanced/habitat impacted).

Assuming full development and 85.6 acres of wetland impacts, the enhancement portion of the wetland mitigation standard would require the enhancement of approximately 43 acres (applying the enhancement ratio of 0.5:1) of currently degraded wetlands. Sub-Area E, which would remain undeveloped, contains at least 50 acres of currently degraded wetlands which could be enhanced for purposes of meeting the enhancement portion of the wetland mitigation requirement.

Assuming full development and 85.6 acres of wetland impacts, the creation portion of the wetland mitigation standard would require the creation of 85.6 acres (applying the creation ratio of 1:1) of wetlands in areas that are currently uplands. Sub-Area E, which would remain undeveloped, contains approximately 35 acres of uplands that could be used for wetland creation. As a result, 50.6 acres of such wetland fill could not be mitigated within Area 4, and would instead have to be mitigated through the alternative mitigation option (MM BIO-1.2B) which allows for the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (habitat preserved: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands within 10 air miles of the Project and located along the eastern shore of south San Francisco Bay within the same geographic watershed.

There are potential mitigation sites within the 10 mile radius the Draft EIR proposed, which extends approximately from Hayward to Milpitas. The commenters are correct in stating that at present no formal mitigation bank is approved to sell wetland credits; however, as an example, there is a proposed bank very near the project site, called the Newark Slough Mitigation Bank, that is currently going through the approval process; that bank advertises 20+ acres of wetlands available for mitigation. Also, for clarification, the mitigation in the Draft EIR states “or other private lands” thus, off-site mitigation is not limited to formal mitigation banks.

Ultimately, if the developer cannot comply with the wetland mitigation proposed in the Draft EIR, then they cannot build their project utilizing the maximum footprint as shown in the Draft EIR. Prior to obtaining City approval for any development that would fill wetlands in Area 4, the applicant will be required to demonstrate precisely how and where the Draft EIR wetland mitigation measures will be satisfied. If the developer is unable to satisfy the wetland mitigation measures in a full development scenario, then the developer will have to reduce the scope of the proposed development and the associated wetland impacts to the degree necessary to be able to satisfy the wetland mitigation measures. Note that wetland creation could occur not just in Sub-Area E, but also elsewhere within Area 4. For example, instead of fully developing all of Sub-Area B, a portion of Sub-Area B could be developed, and the remaining uplands in Sub-Area B could be used to create wetlands in order to satisfy the Draft EIR wetland mitigation requirements. There are approximately 154.6 acres of upland habitat within Sub-Areas B, C, and D that could be used to create wetlands. In this scenario it is likely that all wetland creation mitigation could be completed on-site.

Since the amount of ultimate wetland fill is unknown, the Draft EIR established rigorous mitigation requirements and standards that will be implemented in the future through the City entitlements process as specific development proposals seek approval to construct within Areas 3 and 4. Those specific development proposals must quantify their impacts to wetlands and other biological resources, and then propose in a mitigation plan specifically how and where those impacts will be minimized consistent with the standards established in the EIR. As a result, the specific location of such future mitigation (either on-site, or off-site), and the size and design of future created or enhanced wetlands, are unknowable at this time. As described in MM BIO-1.2A, such future mitigation plan(s) will be prepared, submitted, and approved by the City of Newark prior to initiation of any grading within or fill of wetlands. This approach is consistent with mitigation prescriptions at the Specific Plan level. The City also notes that *California Native Plant Society v. City of Rancho Cordova* (2009)172 Cal.App.4th 603, confirmed an EIR need not identify specific habitat mitigation sites and that the City could rely on the result of a future study to determine replacement habitat location.

The proposed mitigation measures for impacts to wetlands described in the Draft EIR treat wetlands as biological habitats and not State or federal jurisdictional features. The City has determined based on extensive analysis by its biological experts that the mitigation requirements for wetland impacts (both in terms of amount and location of mitigation) described in the Draft EIR are more than adequate to mitigate the described impacts to a less than significant level. The City also recognizes that any fill of wetlands within Areas 3 or 4 will require permits and approvals from several state and federal resource agencies. Those agencies must implement their own legal requirements and policies, and through their respective permitting processes those agencies could require different and/or additional mitigation beyond that required by the Draft EIR. The Draft EIR mitigation measures are based on a consideration of the existing biological functions and values provided by the wetlands to be impacted, and not on the potential requirements which other agencies may or may not impose through their completely separate permit processes.

A. RESPONSE TO COMMENTS FROM THE UNITED STATES FISH AND WILDLIFE SERVICE, JANUARY 20, 2010

COMMENT A-1: The Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) appreciates the opportunity to review the Draft Environmental Impact Report (DEIR) for the Newark Areas 3 and 4 Specific Plan. We reiterate our previous comment that Area 4 should not be developed as it has great potential to provide restored wetland habitat and flood protection from ponds on the border of Area 4. Area 4 was identified by Congress in 1990 as important wildlife habitat that should be included within the Refuge. Furthermore, the ponds adjacent to Area 4 are planned for restoration to tidal influence. Area 4 could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas. We have a substantial number of comments regarding the proposed action and analysis contained in the DEIR.

Comment 1: Regardless of alternative eventually implemented, there will need to be some type of predator management program to protect the remaining and adjacent wildlife habitat from impacts associated with the development (trapping, predator proof fences, garbage containment, pets not fed outdoors, garbage containment measures, minimizing raptor perches, etc.). The DEIR also does not address the inappropriate species that may be drawn to the golf course area (e.g., gulls, geese).

RESPONSE A-1: The City acknowledges that portions of Area 4 are within the Refuge Boundary Expansion area for the Refuge approved in 1990. That Boundary Expansion Area does not impose any restrictions on the use or development of Area 4. Instead, it merely identifies lands which the U.S. Fish and Wildlife Service could acquire and readily incorporate into the existing Refuge if it chose to do so. However, in the 20 years since this expansion area was identified, the USFWS has not pursued any such expansion onto Area 4 lands. It should be noted that the USFWS has begun the process to prepare a Comprehensive Conservation Plan (CCP) for the Don Edwards San Francisco Bay National Wildlife Refuge (NWR), which consists of the entire Refuge including the Boundary Expansion Area. The CCP will provide the vision and guidance for the management of Don Edwards San Francisco Bay NWR natural and cultural resources for the next 15 years. Current schedule for the CCP assumes completion of the public draft CCP in November 2011 and completion of the final CCP in September 2012. The CCP is a planning document and it would not have any restriction on the development in Area 4, as the Refuge does not own or have any regulatory jurisdiction in Area 4.

According to the professional opinion of the City's project biologist, *H.T. Harvey & Associates,* development of the golf course or residential areas on Area 3 will not result in substantial increases in the numbers of potential predators in natural habitats on Area 4, as the golf course will not provide substantially increased or improved resources for such species and Area 3 will be separated from on-site conservation areas by distance and existing and new development. The increase in potential predators as a result of residential development on Area 4 is not expected to be so great as to require trapping, predator-proof fences, or other such intensive measures, primarily due to the relatively limited number of new residences proposed on Area 4. Nevertheless, the Draft EIR acknowledged that an increase in predation by domestic and urban-adapted species may occur and could potentially affect

burrowing owls, salt marsh harvest mice, salt marsh wandering shrews, and other sensitive species. In response to the suggestion that a predator management program be developed, the EIR has been revised to incorporate Mitigation Measure BIO-4.7, which requires the development and implementation of such a management program for new residential development in both Area 3 and Area 4. The program will prohibit, at a minimum, feeding pets outdoors so that pet food does not attract or subsidize the diets of nuisance species and off-leash dogs in conservation areas and no free-roaming outdoor cats, to prevent their entry into sensitive species habitat. Refer to Section 4.0 *Revisions to the Text of the Draft EIR*. This management program is being required as a mitigation measure to reduce impacts to burrowing owls, but it would potentially benefit other sensitive species such as salt marsh harvest mice, salt marsh wandering shrews, waterbirds, and other species as well.

Species such as gulls and geese would be no more likely to be drawn to the golf course than to the existing seasonal and perennial wetlands on the site. Gulls roosting and bathing on the site and geese foraging in the perennial (and occasionally seasonal) wetlands on the site currently comprise the most numerous categories of waterbirds using the site. As a result, the numbers of individuals of these potential nuisance species using the site is not expected to increase as a result of construction of the project.

COMMENT A-2: *Comment 2:* S-8, BIO-1, Mitigation Measure 1.2: Upland habitat areas on-site should not necessarily be destroyed to create/enhance wetland for mitigation of impacts. Adjacent uplands and adequate upland/marsh ecotone should be included in the wetland creation/enhancement design. These higher areas provide critical high tide refugia for marsh species like the salt marsh harvest mouse and California clapper rail. The Refuge is currently experimenting with ecotone and adjacent upland restoration at their Environmental Education Center.

RESPONSE A-2: It is fully acknowledged the importance of the upland/wetland ecotone in and adjacent to marsh habitats even though the future wetland mitigation will not be tidally influenced. The City agrees that the future design related to wetland creation should maintain a mosaic of upland and wetland habitats, particularly in the southern portion of the project site.

COMMENT A-3: *Comment 3:* S-8, BIO-1, Mitigation Measure 1.2: It is unclear where acquisition of off-site wetlands for mitigation would occur. There are few mitigation banks left in the South Bay. Areas should be clearly identified in the DEIR to determine if they sufficiently address impacts of the proposed action. Any mitigation for the proposed action should result in one specific mitigation site with a detailed restoration plan. Individual detailed mitigation plans developed by each future developer as proposed in the DEIR will result in a fragmented patchwork of small parcels of poor quality wetland. Furthermore, any mitigation sites should include an endowment to support long-term management success.

RESPONSE A-3: Specific off-site wetlands for mitigation, if needed, will be identified as part of the future entitlement process and environmental review. The basic criteria for the location of off-site wetlands are described in the Draft EIR as having to occur within 10 air miles of the current project site and are to be

located along the eastern shore of the South San Francisco Bay within the same geographic watershed. The City also notes that *California Native Plant Society v. City of Rancho Cordova* (2009)172 Cal.App.4th 603, confirmed an EIR need not identify specific habitat mitigation sites and that the City could rely on the result of a future study to determine replacement habitat location.

COMMENT A-4: *Comment 4:* S-15, BIO-4, Mitigation Measure 4.5A: Burrowing owl habitat should be developed in remaining upland areas of Area 4.

RESPONSE A-4: MM BIO-4.4 requires at least 26 acres of burrowing owl habitat to be preserved and managed for burrowing owls if all of Area 4 is built out. As indicated in MM BIO-4.6, measures are also included to ensure that burrowing owl habitat is provided on-site even if the 26 acres of mitigation are provided off-site. It is expected that burrowing owls will be able to forage widely throughout the undeveloped portions of the site, including the golf course, wetlands with short-statured vegetation, and levees, and thus some nesting habitat and extensive foraging habitat will be available for this species.

COMMENT A-5: *Comment 5:* S-21, BIO-8, Mitigation Measure 8.2: First sentence is misleading. The mice will not be "moved out of the construction area" per se. Instead their habitat will be removed so that they are not present in the construction area.

RESPONSE A-5: Please refer to Response C-2.

COMMENT A-6: *Comment 6:* S-24, BIO-8, Mitigation Measure 8.4: Any marsh enhancement/restoration plan should incorporate an upland component as well as an adequate marsh/upland ecotone.

RESPONSE A-6: Please refer to Response A-2 in this document.

COMMENT A-7: *Comment 7:* S-25, BIO-9, Mitigation Measure 9.2: Who will enforce "out of bounds" closures to ensure habitat and wildlife are not disturbed?

RESPONSE A-7: The enforcement of areas determined to be "out of bounds" on the active golf course, will be maintained by golf course marshals who are hired by the golf course operator to enforce all rules and regulations associated with the operations and maintenance of the facility.

COMMENT A-8: *Comment 8:* S-26, BIO-11, Mitigation Measure 11.1: Heavy equipment and imported soils used at the development site should be free of invasive weed seeds and plant parts to prevent introduction of invasive weeds.

RESPONSE A-8: Text has been added to the EIR to include this mitigation measure; refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

COMMENT A-9: *Comment 9:* S-27, BIO-11, Mitigation Measure 11.2: Any plants seeded or planted should not be invasive to prevent spread into natural areas. Refer to CAL IPC recommendations and CA Dept. of Agriculture invasive plant lists.

RESPONSE A-9: The plant materials for the new neighborhoods will be selected from a palette approved by the City of Newark that is consistent with adopted City of Newark Bay Friendly Landscape Guidelines, the City's Water Efficient Landscape Ordinance, and any other standards applicable at the time of development. In all cases, continuity, simplicity, and ease of maintenance are to be considered as prime criteria for any detailed planting plans created for the site. The majority of the plant materials to be used are low water use, drought tolerant or natives.

COMMENT A-10: *Comment 10:* S-30, BIO-14: Trees should not be planted immediately adjacent to wetland restoration areas. Trees provide perches and nesting opportunities for raptors, which feed on the endangered clapper rail and harvest mouse. Invasive trees such as eucalyptus, acacia, or similar should not be planted.

RESPONSE A-10: Habitat mitigation and monitoring plans will be prepared that outlines the necessary steps for restoration. It will include a plan view graphic showing the target restoration activities, a seeding plan to re-vegetate, and a monitoring and reporting plan with success criteria. Invasive trees such as eucalyptus and acacia will not be planted, refer to Response A-9.

COMMENT A-11: *Comment 11:* S-53: What cleanup is proposed for the Auto wrecking yards after they close. This area could potentially be cleaned up and developed into upland wildlife habitat??

RESPONSE A-11: The cleanup for the auto wreaking yards is outlined in MM HAZ-4.1. This area will be remediated to meet the requirements for a recreational use.

COMMENT A-12: *Comment 12:* An education program should be implemented to educate residents of the development about the sensitive habitat and species nearby. The program should deter residents from leaving pet food outside and allowing pets to go off-leash near sensitive habitat areas.

RESPONSE A-12: Please refer to Response A-1.

COMMENT A-13: *Comment 13:* Lighting impacts of the development and golf course were not adequately addressed in the DEIR. There were no details to the lighting expected from the proposed action. Ambient lighting can have a negative impact on wildlife species and their habitat such as increased predation.

Thank you for considering our comments. We recommend that you to contact the U.S. Fish and Wildlife Service Endangered Species Division in Sacramento to discuss Section 7 consultation required of any impacts to listed species habitat. Please keep us informed of the EIR process, especially any future opportunities to provide comment.

RESPONSE A-13: The proposed lighting plan and avoidance measures to further reduce any light and glare impacts of the Specific Plan are described on page 241 of the Draft EIR. The lighting plan and measures include compliance with the City's Policy d. Program 10.

B. RESPONSE TO COMMENTS FROM CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL, DECEMBER 28, 2009:

COMMENT B-1: Thank you for the opportunity to comment on the Draft Environmental 'Impact Report (Draft EIR) for Newark Areas 3 and 4 Specific Plan Project (Project) SCH# 2007052065. The Project involves a zoning amendment across 900 acres of land in the City of Newark. The Project involves development of up to 1,260 housing units, an elementary school, golf course, open space areas, and involves rezoning as well as retention of existing light industrial and institutional (Ohlone College, City fire station, park and community activity center) uses.

As you may be aware, the California Department of Toxic Substances Control (DTSC) oversees the cleanup of sites where hazardous substances have been released pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a Responsible Agency, DTSC is submitting comments to ensure that the environmental documentation prepared for this project under the California Environmental Quality Act (CEQA) adequately addresses activities pertaining to releases of hazardous substances.

Appendix H discusses hazards and hazardous materials and includes investigation reports. Although the text section discusses hazardous materials on pages S-42-47, it is too general to adequately address all issues related to the cleanups that might need to be addressed under the California Environmental Quality Act (CEQA).

In the Significant Environmental Impacts section on pages S-42, "Impact HAZ-1" addresses the Area 3 residential component of the development which is described as having a "Significant Impact" due to the presence of pesticides. Mitigation Measure HAZ-1 discusses that a Remediation Plan will be prepared to address concerns related to the contaminants of concern so that the impacts can be mitigated to "Less than Significant Impact with Mitigation" under DTSC oversight.

In the Significant Environmental Impacts section on pages S-42-43, "Impact HAZ-2" addresses the Area 3 school site development which is described as having a "Significant Impact" due to the presence of pesticides. Mitigation Measure HAZ-2 discusses that a Remediation Plan will be prepared to address concerns related the contaminants of concern so that the impacts can be mitigated to "Less than Significant Impact with Mitigation" under DTSC's School Property Evaluation and Cleanup Division oversight.

In the Significant Environmental Impacts section on pages S-43-45, "Impact HAZ-3" addresses the Area 4 residential component of the development which is described as having a "Significant Impact" due to the presence of contaminants related to the former duck club, agricultural operations, undocumented fill materials, and an adjacent landfill. Mitigation Measure HAZ-3.1 discusses that testing and remediation will be conducted to address the various concerns related the contaminants of concern so that the impacts can be mitigated to "Less than Significant Impact with Mitigation" under the oversight of various agencies.

In the Significant Environmental Impacts section on pages S-45-46, "Impact HAZ-4" addresses the Area 4 golf course development which is described as having a "Significant Impact" due to the presence of contaminants related to auto-wrecking facilities, and air quality concerns for methane and asbestos. Mitigation Measure HAZ-4 discusses that soil and groundwater investigations and remediation will be conducted to address the various concerns related the contaminants of concern so

that the impacts can be mitigated to "Less than Significant Impact with Mitigation" under the oversight of various agencies including DTSC.

The various cleanups discussed on pages S-42-47 should not be identified as mitigation measures in situations where DTSC will provide oversight. For DTSC oversight projects that involve preparation of cleanup documents, whether a Remedial Action Plan (RAP, for projects costing more than $2 million) or a Removal Action Workplan (RAW, for projects costing less than $2 million) those are discretionary decision documents which must be accompanied by an evaluation under CEQA.

RESPONSE B-1: The comment refers to the discussion of mitigation measures concerning hazards and hazardous materials contain in the Summary Section of the Draft EIR on pages S-42-47 and expresses concern that this discussion is "too general." However, please note that the Draft EIR contains an entire Section, Section 3.9, concerning Hazards and Hazardous Materials. Pages S-42-47 of the Summary Section are just that, brief summaries of the more detailed discussion of potential impacts related to hazards and hazardous materials in Section 3.9.

This Draft EIR is intended to address a wide range of discretionary actions, including the proposed Specific Plan and related General Plan amendments and rezonings. It is acknowledged in the Draft EIR that Areas 3 and 4 will be developed incrementally and gradually over a long time frame and future environmental review may be required as project-specific approvals are considered.

Section 3.9 of Draft EIR evaluates the hazardous materials impacts that may result from development of the proposed Areas 3 and 4 Specific Plan. At no location within the project site were uses proposed that were determined to be incompatible with the level of contamination present, given the level of effectiveness of remediation options presented for the hazardous materials known to be present on the site. As described in the Draft EIR, at the time a project-specific development is proposed, further technical studies will be completed as needed, specific to the location and proposed use. As part of that work, soil and groundwater testing will be completed and the best remediation approach will be defined and presented to the City and DTSC as part of possible future environmental review documents. DTSC will have the opportunity to review and comment on the proposed remediation method, prior to taking any action in considering the remediation plan.

The City concurs with the Comment that approval of the proposed Specific Plan does not guarantee approval of the future remediation plan, be it a Remedial Action Plan or a Removal Action Workplan, by DTSC. Approval of the Specific Plan is not approval of any future discretionary actions, including, but not limited to, Tentative Maps and approval of any DTSC-oversight remediation plan(s). However, one of the purposes of the Draft EIR is to prepare a document that can serve as the environmental review document for future discretionary action related to the Project, such as DTSC's review of a Remedial Action Plan or Removal Action Workplan.

C. RESPONSE TO COMMENTS FROM THE CALIFORNIA DEPARTMENT OF FISH AND GAME, JANUARY 14, 2010

COMMENT C-1: The Specific Plan does not identify the exact location and configuration of residential lots, golf course, or other recreational uses, as that will be determined through subsequent entitlement processes and analyses. Consequently, the exact amount and location of wetlands which will be avoided/impacted by development, and the configuration of the remaining agricultural areas will be determined at the time of subdivision map approval.

Since the draft EIR provides only general information on impacts, DFG can only provide general comments. The quantity and quality of the wetlands habitat remaining in California have been significantly reduced; thus, maintenance and restoration are essential to meet the needs of the public for fish and wildlife resources and related beneficial uses. In addition, the protection, preservation, restoration, enhancement and expansion of wetlands as migratory bird breeding and wintering habitat are justly recognized as being critical to the long-term survival of such species. Wetland habitat is also recognized as providing habitat for over half of the listed endangered and threatened species in California. DFG strongly discourages the development in wetlands.

Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) is located south and west of Area 4 and consists of over 30,000 acres of open bay, salt pond, salt marsh, mudflat, upland and vernal pool habitats. The Refuge provides critical habitat for endangered species, habitat for shorebirds and waterfowl along the Pacific Flyway, and opportunities for public use of the baylands. The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of Don Edwards San Francisco Bay National Wildlife Refuge, indicating that these lands were potentially to be included in the Refuge.

Mowry Slough, located on Refuge Land, is one of the larger sloughs in south San Francisco Bay (Fancher and Alcorn 1982) and is surrounded by saltmarsh habitat. Mowry Slough is considered the primary pupping site for harbor seals in the South Bay.

As acknowledged in the draft EIR (p. 115), the value of Area 4 in providing upland transition zones adjacent to tidal wetlands has also been identified by the Baylands Ecosystem Habitat Goals Report (1999), a report of habitat recommendations prepared by the San Francisco Bay Area Wetland Ecosystem Goals Project, a consortium of nine State and Federal agencies, including the San Francisco Estuary Institute.

Waterfowl hunting is currently authorized and supported by DFG within the Refuge. Waterfowl hunting season extends from approximately mid-October to mid-January. During the season, hunting is permitted daily from one half-hour before sunrise until sunset. The building of residential housing developments should not preclude the continued recreational hunting that has been in the area historically.

The project proposes to develop land that provides habitat for the western burrowing owl (Athene cunicularia). The Bay Area's population of western burrowing owls is clearly declining due to the intense pressure for urban development within suitable burrowing owl nesting and foraging habitat. Owl survival can be adversely affected by disturbance and foraging habitat loss even when impacts to individual birds and nest/burrows are avoided. The owls observed at Area 4 are likely owls that have been evicted from the adjacent Ohlone College site or other previous development.

Western Burrowing Owl
The draft EIR (Impact BI0-4) proposes to mitigate for burrowing owls found in Area 3 by implementing avoidance measures (MM BI0-4.1 thru MM BI0-4.3) such as performing preconstruction surveys, maintaining a 150- to 250-foot buffer around occupied burrows, and eviction using one-way doors. There is no mitigation proposed for loss of habitat.

The draft EIR proposes to mitigate for owls in Area 4 by avoidance measures MM BIO 4.1 through MM BI0-4.3 in addition to preserving habitat on- and/or off-site and use of artificial burrows.

Initial pre-construction surveys should be conducted outside of the owl breeding season (January 15 to August 31) but as close as possible to the date that ground-disturbing activities will begin, to avoid the problem of waiting until March or April when the project would be delayed if owls are detected. Generally, initial pre-construction surveys should be conducted no more than 30 days prior to ground-disturbing activities (for example, disking, clearing, grubbing, grading). The time lapse between surveys and site disturbance should be as short as possible and will be determined by DFG based on specific project conditions but generally should not exceed seven days. Additional surveys are necessary when the initial disturbance is followed by periods of inactivity or the development is phased spatially and/or temporally over the project area.

The number of pre-construction surveys necessary to accurately detect current owl presence and owl locations will be driven by a number of interacting criteria such as: 1) the time period that has elapsed since the last breeding survey was completed; 2) height and density of vegetation that may obscure owl presence; 3) topographical conditions that may obscure owl presence; 4) time of year (e.g., in the winter, owls are more cryptic and spend more time in their burrows); 5) time of day and weather conditions when surveys are conducted; 6) long-term history of owl use at the site; 7) size of the parcel and degree of coverage by walking or by intensive observations via spotting scope, and 8) tolerance of owls to human presence. Generally, at a minimum, four survey visits on at least four separate days will be necessary, especially given the cryptic nature of this species during the non-breeding season.

Biologists conducting pre-construction surveys should expend enough effort, based on the above criteria, to assure with a high degree of certainty that take of owls will not occur once site modification and grading activities begin. The full extent of pre-construction survey efforts must be described and mapped in detail (e.g., dates, time periods, area(s) covered, and methods employed) – in a biological report. Current vegetation and topographical conditions and their corresponding effect on visibility should also be described. The report should be submitted to DFG for review.

DFG's concurrence with the pre-construction survey results will depend on the level of detail that is provided in the Consultant's biological report that summarizes the methods, results, and level of survey effort. DFG has a responsibility to give input regarding measures that would result in avoiding take and minimizing unavoidable impacts to owls.

For both Areas 3 and 4, DFG advises nest burrows should be protected AND sufficient foraging habitat provided. Lands intended for burrowing owl conservation need to be of sufficient size to ensure ecological sustainability with minimum long-term maintenance needed by humans (e.g., rely on native grazers, compatible livestock grazing practices, burrow excavation by native animals and, where feasible, controlled burns). The conservation land should protect a sufficiently large acreage of suitable vegetation communities (grassland, scrublands, desert, urban, and compatible agricultural

uses) for burrowing owl nesting, foraging, wintering, dispersal, and migration (Le., during breeding and non-breeding seasons).

Lands intended for burrowing owl conservation should be chosen with regard to the problems caused by the urban-wildland interface, for example, burrow disturbance and destruction by unleashed dogs, human foot and vehicle traffic and predation by cats and dogs and urban-adapted wildlife, including raptors attracted to urban landscapes.

Projects impacting owls and owl habitat should mitigate all project-specific and cumulative impacts to nesting, foraging, wintering, dispersal, and migration habitat (Le., breeding and non-breeding season) under the California Environmental Quality Act, to below a level of significance. The standard of 6.5 acres does not adequately compensate for habitat loss. Mitigation should be based on the acreage of any suitable habitat disturbed or destroyed, with consideration of number of owls present and significance of the area for all burrowing owl life history stages.

The use of artificial burrows should be avoided, except to temporarily attract owls, or where burrow installation is necessary as an integral owl population management tool. Artificial burrow installation must be accompanied by a management plan for the site and programs for burrow maintenance and effectiveness monitoring. Performance criteria should include site tenacity by owls, yearly successful reproduction by owls, documented fledging by juvenile owls, and colonization by owls from elsewhere.

RESPONSE C-1: The City acknowledges that portions of Area 4 are within the Refuge Boundary Expansion area for the Refuge approved in 1990. That Boundary Expansion Area does not impose any restrictions on the use or development of Area 4. Instead, it merely identifies lands which the U.S. Fish and Wildlife Service could acquire and readily incorporate into the existing Refuge if it chose to do so. However, in the 20 years since this expansion area was identified, the USFWS has not pursued any such expansion onto Area 4 lands. It should be noted that the USFWS has begun the process to prepare a Comprehensive Conservation Plan (CCP) for the Don Edwards San Francisco Bay National Wildlife Refuge (NWR), which consists of the entire Refuge including the boundary expansion area. The CCP will provide the vision and guidance for the management of Don Edwards San Francisco Bay NWR natural and cultural resources for the next 15 years. Current schedule for the CCP assumes completion of the public draft CCP in November 2011 and completion of the final CCP in September 2012. The CCP is a planning document and it would not have any restriction on the development in Area 4, as the Refuge does not own or have any regulatory jurisdiction in Area 4.

Further, implementation of the Project will not interfere with lawful recreational hunting on the Don Edwards National Wildlife Refuge.

The commenter states that the Draft EIR does not propose any mitigation for the loss of burrowing owl habitat. This is incorrect, as the Draft EIR proposes the preservation of on-site and/or off-site habitat.

The commenter suggested methodologies for pre-construction surveys. The suggestion that surveys be completed no more than 30 days prior to ground-

disturbing activities, followed by the statement that the time lapse between surveys and site disturbance should not exceed seven days, is contradictory. MM BIO-4.1 states that this period shall be no more than 15 days, which is less than the 30 days specified in the California Burrowing Owl Consortium's protocol and thus less likely to allow impacts to individual owls than the Consortium's protocol ("Burrowing Owl Survey Protocol and Mitigation Guidelines," April 1993). Therefore, the time period specified for burrowing owl pre-construction surveys in the Draft EIR is adequate. MM BIO-4.1 has been revised to indicate that the pre-construction survey will generally follow the Consortium's protocol except for the 30 vs. 15 day consideration. As a result, surveys will be in general conformance with the methodology recommended by the commenter.

The commenter suggested that additional surveys be completed if the initial disturbance is followed by periods of inactivity or if the development is phased spatially and/or temporally. In response, MM BIO-4.1 has been revised. Please refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

The commenter stated that the time lapse between surveys and site disturbance will be determined by the CDFG, and that a report describing the results of pre-construction surveys should be submitted to the CDFG for review. For purposes of mitigating impacts to burrowing owls to less than significant levels according to CEQA, it is not necessary for the applicant to consult with the CDFG regarding the time lapse between surveys and site disturbance, and while the report may be submitted to the CDFG for review, such review is not necessary for CEQA compliance.

The commenter made a number of recommendations regarding desired conditions on and locations for burrowing owl habitat that will be provided to mitigate project impacts to owl habitat. As specified in MM BIO-4.5A, a mitigation and monitoring plan for on-site burrowing owl habitat mitigation must be prepared and presented to the City of Newark and the CDFG for review and approval. That plan will incorporate the CDFG's comments regarding appropriate lands. The commenter also recommended that the use of artificial burrows should be avoided, except to temporarily attract owls. The City agrees that the use of artificial burrows should be limited, and that management of suitable burrowing owl nesting and roosting habitat should instead focus on management of suitable conditions for ground squirrels. However, artificial burrows are found to be readily accepted by owls on some sites in the South San Francisco Bay area, and thus the use of such burrows to attract owls to an area that will then be managed for ground squirrels should not be dismissed.

The commenter stated that the provision of 6.5 acres of mitigation habitat per pair of owls impacted will not adequately compensate for habitat loss, stating that mitigation should be based on the acreage of any suitable habitat disturbed or destroyed, with consideration of the number of owls present and the significance of the area to owls. The approach to specifying required mitigation taken by the EIR was conservative in that it required mitigation at

a ratio of 6.5 acres per occupied burrow (consistent with the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines") for the four occupied burrows (either with pairs or single owls) that were known to have occurred on the site as recently as 2006. However, as described on page 142 of the Draft EIR and in the biological resources report provided as Appendix E of the Draft EIR, the number of pairs using the site was considerably lower in 2007 and 2008. In fact, a protocol-level survey completed in July 2007 detected only one burrowing owl on all of Areas 3 and 4, and this individual was located outside the project area on Ohlone College land. As a result, the number of pairs of owls currently using the site is apparently lower than the four pairs/individuals on which mitigation is based. Furthermore, because the majority of the site's impact areas consist of intensively disked and cultivated land, these agricultural lands provide low-quality foraging habitat for burrowing owls and do not provide suitable nesting and roosting habitat for these birds. Rather, suitable nesting and roosting burrows are limited to narrow strips along the edges of fields or on levees. To consider the entire site suitable burrowing owl habitat and require mitigation accordingly would thus grossly overestimate the site's value to this species, especially considering the low numbers of owls known to be present. Therefore, the mitigation identified in the Draft EIR is adequate to mitigate the project's impacts to burrowing owl habitat, both on a project-specific and cumulative basis, to less than significant levels.

COMMENT C-2: Salt Marsh Harvest Mouse

The draft EIR (Impact BI0-8) describes impacts of loss of salt marsh harvest mouse (SMHM) habitat and proposes (MM BI0-8.2, MMBI0-8.3) to move SMHM out of the construction areas. SMHM is listed under both the California Endangered Species Act and the Federal Endangered Species Act as an endangered species. In addition, SMHM are designated as a fully protected species pursuant to Fish and Game Code Section 4700. Fully protected species may not be taken or possessed at anytime. Therefore, DFG cannot authorize pre-construction trapping surveys for SMHM or relocation out of construction areas. DFG recommends avoidance of SMHM habitat. If habitat cannot be avoided, then DFG recommends hand removal of suitable habitat to avoid take of SMHM. Use of handoperated mechanical trimming devices, as proposed in the draft EIR, is not recommended since it may result in take of an individual SMHM. Exclusion fencing, approved by DFG, shall be placed around areas cleared of vegetation to preclude mice from moving back into the active construction zone.

Areas 3 and 4 are the largest remaining tracts of relatively undeveloped land in Newark. Due to the location near the Refuge, South Bay Ponds, and Pacific Commons mitigation area and because these areas, specifically Area 4, supports sensitive biological habitats, DFG recommends Area 4 be left undeveloped.

We are interested in continuing to work with the City of Newark in the resolution of the issues regarding endangered species and wildlife.

RESPONSE C-2: As suggested by the commenter, removing SMHM habitat in areas where habitat cannot be avoided is through hand removal. Physical relocation of SMHM out of a construction area would only occur by a qualified biologist if

such biologist were specifically authorized by USFWS and CDFG to do so. The City understands from the comment that obtaining such approval from CDFG is unlikely at the present time.

Per the commenter's suggestion that mechanical trimming devices not be used to remove salt marsh harvest mouse habitat, MM BIO-8.2 has been revised. Please refer to Section 4.0 *Revisions to the Text of the Draft EIR.* The commenter's general concerns regarding Area 4 are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

D. RESPONSE TO COMMENTS FROM THE CALIFORNIA PUBLIC UTILITIES COMMISSION, JANUARY 26, 2010

COMMENT D-1: As the state agency responsible for rail safety within California, the California Public Utilities Commission (CPUC or Commission) recommends that development projects proposed near rail corridors be planned with the safety of these corridors in mind. New developments and improvements to existing facilities may increase vehicular traffic volumes, not only on streets and at intersections, but also at highway-rail grade crossings. In addition, projects may increase pedestrian traffic at crossings, and elsewhere along rail corridor rights-of-way. Working with CPUC staff early in project planning will help project proponents, agency staff, and other reviewers to identify potential project impacts and appropriate mitigation measures, and thereby improve the safety of motorists, pedestrians, railroad personnel, and railroad passengers.

According to the DEIR project description, the proposed project includes 1,260 residential units, a 600 student elementary school, golf course and open space areas, as well as retention of existing light industrial and institutional (College, fire station, park, and community activity center) uses. We offer the following review comments:

The existing crossings include 1 public crossing at Mowry Avenue, and 3 private crossings in the project area. The private crossings need to be eliminated or otherwise effectively closed to public access (this may require an extensive locked barrier).

Mowry Avenue at-grade railroad crossing (CPUC # 001L-32.20):

This crossing must be eliminated or otherwise improved. Modification of an existing at-grade public crossing also requires CPUC authorization. Trespassing onto the tracks has been an issue in the area (recent incidents along right-of-way). This incident history at Mowry in particular is of concern because the proposal is to have it remain at-grade. There are several needed safety improvements at the Mowry Avenue crossing if it must remain at-grade. These include illumination, roadway widening, sidewalks, bike lanes, and medians. CPUC staff recommends that Mowry Avenue at-grade crossing be closed except for emergency vehicle access. A pedestrian/bicycle overpass may be appropriate.

Provide better separation between the public and the railroad by construction of a sound-wall all along the railroad right-of-way, and/or vandal-resistant fencing (tight weave, very strong, difficult to climb) as typical 6-foot chain link fence is not sufficient.

Access control around the flood control channel must be carefully reviewed. A locked gate is generally not sufficient to discourage non-motorized traffic from using the shortcut. In other locations such flood control channels have become illegal route access points.

Allow for a shared-use path alignment further from the railroad track. There is a general incompatibility between public use and active railroad operations. This is a particular problem at Mowry where the proposed access point would open onto the crossing.

RESPONSE D-1: As stated in the Specific Plan and Draft EIR, the Mowry Avenue at grade railroad crossing on the proposed project site is proposed to be locked and gated to allow only emergency vehicles. A combined emergency vehicle access (EVA) and pedestrian/bicycle trail is proposed across Area 4, with northerly EVA access to the site planned at Mowry Avenue just west of the railroad tracks. The gate will allow passage of pedestrians and bicycles.

The EVA roadway/multi-use trail will be 20 feet wide. Sound walls are proposed along Sub-Areas B and C between the railroad right-of-way and the proposed development. In response to the commenter's concerns, a vandal-resistant fencing is now proposed in Sub-Area D. This will replace the chain-link fence initially proposed in the Draft EIR; refer to Section 4.0 *Revisions to the Text of the Draft EIR*. The fencing will separate the trail from the railroad right-of way, and along the west side of the trail, a post and rail fence is proposed to separate the trail from the golf course. This trail will connect to the trail proposed south of the ACFC&WCD channel on the proposed Area 3 residential property. At the time Sub-Area C is developed, the fencing in the vicinity of the flood control channel will be reviewed, to ensure public and railroad safety.

The proposed EVA/trail in Sub-Area D is located proximate to the railroad tracks, in order to provide the maximum development area of the proposed golf course. In the event an alternative recreation use is pursued on Sub-Area D, the location of the trail will be reconsidered.

COMMENT D-2: Stevenson Boulevard Private Crossing (CPUC # 001L-33.30-X):
CPUC staff strongly recommends that a grade separation over the railroad track be pursued as has been proposed in the DEIR. A formal application to the CPUC will be required to establish a new public grade-separated crossing at Stevenson Boulevard. CPUC staff would oppose the establishment of a public at-grade crossing at this location.

There was an incident at this crossing on 9/13/2009 where a UPRR train struck a vehicle abandoned on the track just south of the crossing. A disoriented motorist became stuck on the track 67 feet south of the roadway. The unoccupied car was left on the track in the dark and was later struck by a northbound freight train.

The CPUC recommends the DEIR/FEIR mitigation monitoring section be revised to include the above referenced mitigation measures for each of the at-grade railroad crossings (public and private).

Thank you for your consideration of these comments. We appreciate the time extension given to complete our review and the copy of the DEIR.

RESPONSE D-2: The project proposes a railroad overcrossing for Stevenson Boulevard extension. The bridge will provide a minimum of 24-feet clearance from the top of the rail tracks to the bottom of the bridge girder per Union Pacific guidelines. The City of Newark concurs that a formal CPUC application will be submitted for the Stevenson overpass and it is acknowledged that any changes to the at-grade crossing at Mowry would be subject to CPUC review and approval.

E. RESPONSE TO COMMENTS FROM THE REGIONAL WATER QUALITY CONTROL BOARD, JANUARY 12, 2010

COMMENT E-1: Comment 1 Section 3.5, Biological Resources, 3.5.2.4, Jurisdictional Waters of the U.S./Waters of the State, Page 124

The discussion of jurisdictional waters does not include a discussion of the State's Porter-Cologne Water Quality Act (Water Code Section 13000 et seq.). Water Board staff recommend including the following text as a discussion of Porter-Cologne authority in the revised EIR:

> The Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in combination with permits issued by the Army Corps of Engineers (ACOE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements (WDRs) for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the ACOE (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of ACOE jurisdiction may require the issuance of either individual or general WDRs from the Water Board.
>
> Under the authority of the Porter-Cologne Water Quality Act, the Water Board has developed, and implements, the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), which defines the Beneficial Uses of waters of the State within the San Francisco Bay Region.
>
> Because habitats in Newark Area 4 are hydrologically connected to San Francisco Bay, the following beneficial uses of San Francisco Bay are also likely to apply to waters and wetlands in Area 4: estuarine habitat; preservation of rare and endangered species; contact water recreation; non-contact water recreation; shellfish harvesting; fish spawning; and wildlife habitat. Implementation of the proposed Specific Plan may impact Beneficial Uses of waters of the State in Area 4. In particular, Beneficial Uses related to habitat for rare and endangered species may be impacted by the Specific Plan.

RESPONSE E-1: As requested the above text has been inserted in the Draft EIR discussion. Please refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

COMMENT E-2: Comment 2 Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Page 134

The DEIR states that:

> Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use.

The condition of these wetlands would be easily improved by discontinuing the agricultural disturbances in Area 4. The Basin Plan directs the Water Board to protect both existing and potential Beneficial Uses of waters of the State. In Area 4, the habitat value could be greatly enhanced by simply discontinuing agricultural disturbances. If these wetlands are filled under the proposed Specific Plan, then the potential for enhancing or restoring the wetlands will be lost. Mitigation for such an impact will require addressing the lost potential value of these wetlands.

RESPONSE E-2: In conformance with the CEQA Guidelines [Section 15125(a)] the EIR description of the environmental setting of the project site, including the Area 4 wetland habitat, is based upon the conditions that were existed at the time the EIR Notice of Preparation was published. It is that condition that forms the baseline against which the biological impact discussion is based. As noted in the Draft EIR (p. 117) most of the land within Areas 3 and 4 has been subject to long-term dryland farming for 20 years and in some areas outside of the historic duck club complexes, for as much as 100 years. Potential implications of a project on hypothetical environmental conditions do not constitute an impact to be analyzed in an EIR. The commenter's concerns regarding Area 4 are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT E-3: Comment 3 Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Pages 135 and 136.

Implementation of the Specific Plan would result in the loss of up to 85.6 acres of wetland/march/aquatic habitat, including 7.65 acres of salt marsh harvest mouse/salt marsh wandering shrew habitat. As mitigation for this significant impact the DEIR offers Mitigation Measure BIO-1.2A.

> To offset impacts to the wetland and aquatic habitat on the site, the future project proponent(s) will utilize a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off site. The on-site component of the mitigation shall include creation of wetland and aquatic habitat within upland habitat that is currently disked and graded within Area 4 and will enhance portions of the remaining areas of agricultural field/seasonal wetland habitat within Area 4, as described below.
>
> Compensatory mitigation for impacts to these habitats shall consist of two parts: (1) creation of high quality wetland and aquatic habitat within Area 4 within upland habitat at an acreage ratio of 1:1 (habitat created/enhanced:habitat impacted) to prevent any net loss of habitat functions or values, and (2) enhancement of existing seasonal wetland habitat that is currently within agricultural production (mapped as agricultural field/seasonal wetland habitat) at an acreage ratio of 0.5:1 (such enhancement will include cessation of farming activities, seeding with appropriate seasonal wetland plant seeds, and may include minor earth moving activities). In summary, any

impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at a total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted).

The *San Francisco Bay Area Wetlands Ecosystem Habitat Goals Project* recommended that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4). In addition, the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge, and the Bay Conservation and Development Commission (BCDC) has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands.

The proposed mitigation quantities appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation was demonstrably capable of providing equal habitat benefit for listed species. The proposal to convert some areas of uplands in Area 4 to wetlands is also problematic, since a combination of wetlands and associated uplands are essential to high habitat value.

At present, the DEIR does not demonstrate that adequate mitigation is available. Onsite mitigation will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. The DEIR does not identify any feasible locations for offsite mitigation. There are very few parcels of undeveloped land in private ownership that are available for use as mitigation wetlands, and are in proximity to protected lands that currently provide habitat for listed species.

Proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act. The current DEIR does not demonstrate that it is feasible to mitigate all of the potentially significant biological impacts of the Project to a less than significant level. Although the current CEQA document covers a Specific Plan, it should contain proposed mitigation measures at a sufficient level of detail to allow an assessment of the feasibility of the proposed mitigation. Such proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. Such a demonstration could include the identification of available land for mitigation actions and the measures that would be necessary to establish mitigation wetlands on those properties. We encourage the City of Newark to revise the DEIR to include specific mitigation proposals for major impacts to wetlands and marsh

habitats. In the project-level DEIRs, mitigation proposals should be provided in even greater detail. The revised DEIR should be re-issued for public review. Including specific mitigation measures in a Final EIR is inappropriate, since this information would not have been subject to public review before the Final EIR was adopted.

Since the DEIR does not even include a conceptual mitigation plan, we are not able to assess whether or not it is possible to provide sufficient mitigation to reduce Project impacts to a less than significant level. We encourage the City of Newark to revise the DEIR to include conceptual mitigation plan(s). The conceptual mitigation plan(s) should include factors to account for potential distances between the areas of impact and the mitigation sites, temporal losses of habitat, and the uncertainty of success associated with any mitigation project. When mitigation is constructed, enhanced, or preserved offsite, the amount of mitigation should be increased to account for the distance between the impact site and the mitigation site. We also encourage project proponents to construct mitigation projects before impacting waters of the State. When impacts occur prior to the full functioning of mitigation sites, mitigation is required for the temporal loss of habitat between the time that habitat is impacted and the time that the mitigation site has developed sufficiently to be fully functioning as habitat. The amount of proposed mitigation should also account for the uncertainty associated with the successful creation of any wetland mitigation site.

The conceptual mitigation plan(s) should contain sufficient detail to demonstrate that proposed mitigation project(s) are hydrologically feasible and accessible to impacted wildlife species. Mitigation should also be "in kind" as much as is feasible. When mitigation is not "in-kind", then the amount of mitigation must be increased to compensate for the disparity.

RESPONSE E-3: Please refer to Master Response 2. The wetland mitigation measures described in the Draft EIR include specific, quantified mitigation standards, and provide two means of satisfying those standards - on-site creation and enhancement (MM BIO-1.2A), and off-site acquisition (MM BIO-1.2B).

COMMENT E-4: Comment 4 Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Pages 135 and 136.
As an alternative form of mitigation, the DEIR offers Mitigation Measure BIO-1.2B.

> Alternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. These off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements. The offsite component of the wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed.

Any mitigation plan that relies exclusively, or heavily, on the preservation of wetlands, would not be consistent with the State's "no net loss" policy. No net loss can only be achieved through avoidance of habitats or the successful creation of new habitats. Since preserved habitats are already in existence, the use of preservation results in a net loss of wetland habitat. Therefore, the proposed ratio of 1.5:1 is far too low for a mitigation measure that relies on preservation.

The mitigation measure also requires that, "off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements", and "wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed." The DEIR does not demonstrate that such wetlands, which should be capable of supporting salt marsh harvest mice, actually exist and are available for use by the Specific Plan.

RESPONSE E-4: Please refer to Master Response 2 and Responses A-3 and E-3.

COMMENT E-5: Comment 5 Section 3.5, Biological Resources, Mitigation Measure BIO-8.4, Pages 153.

This mitigation measure for Salt Marsh Harvest Mouse states:

> Salt marsh harvest mouse and salt marsh wandering shrew habitat that is permanently lost due to fill, shading, or isolation due to the golf course access road will be mitigated at a 3:1 ratio by the creation or restoration of pickleweed-dominated salt marsh on Area 4. Habitat for these species that is indirectly impacted due to proximity to residential and golf course development (i.e., habitat that is not directly filled but that is located within 100 feet of direct impact areas) will be mitigated at a 2:1 ratio by on-site habitat restoration. This lower ratio is appropriate because habitat within 100 feet of developed areas will retain some habitat quality for mice and shrews. This habitat restoration can occur in the same locations as habitat creation, restoration, or enhancement performed for impacts to wetlands as long as suitable conditions for these two mammal species are targeted.

The DEIR should be revised to show how salt marsh harvest mouse (SMHM) habitat could be created onsite in quantities sufficient to satisfy the mitigation quantities proposed in Mitigation Measure BIO-8.4. The DEIR should also reference SMHM experts who support the proposed mitigation ratios and who can comment on the impact of development within 100 feet of habitat on SMHM habitat quality.

RESPONSE E-5: The commenter suggested that the Draft EIR be revised to indicate how salt marsh harvest mouse habitat could be created on-site in quantities sufficient to satisfy the mitigation requirements proposed in MM BIO-8.4. As indicated on page 151 of the Draft EIR, approximately 7.65 acres of potential habitat for this species would be directly impacted by the project, resulting in the need for creation or restoration of 22.95 acres of suitable habitat for these direct impacts. Impacts to a lesser acreage of habitat that will be located within 100 feet of developed areas will be mitigated at a 2:1 ratio, as described in MM BIO-8.4. There is ample acreage for creation or restoration of pickleweed-dominated wetland habitat in the cultivated seasonal wetlands or in adjacent upland areas (on which wetlands can be restored) throughout the on-site open space areas on Area 4.

The commenter suggested that the Draft EIR reference salt marsh harvest mouse experts who support the proposed mitigation ratios and who can comment on the impact of development within 100 feet of habitat on quality of habitat for this species. Ron Duke, President of *H. T. Harvey & Associates*, has worked with this species for more than 20 years and was consulted on a number of occasions regarding these potential impacts and

mitigation ratios as *H. T. Harvey* staff compiled the biological resources report.

COMMENT E-6: Comment 6 Alternatives Analysis.
Since wetlands in Area 4 support the Beneficial Uses of wildlife habitat and preservation of rare or endangered species, the Water Board is not likely to approve projects that permanently degrade these Beneficial Uses, since this would be inconsistent with the requirements of the Basin Plan. Before receiving permits from the Army Corps of Engineers (ACOE) and the Water Board, the proposed project must prepare a CWA Section 404(b)(1) alternatives analysis. If this analysis determines that there are viable alternatives that achieve the basic project purpose, but have less significant impacts to waters than the fill of wetlands in Area 4, then the Water Board would not be able to issue a permit that would allow the impacts to wetlands at Area 4. Please note that the Objectives of the Project, presented in Section 5.1.2 (page 310) of the DEIR, are much narrower than the project purpose used in a 404(b)(1) alternatives analysis. For the 404(b)(1) alternatives analysis, the project purpose is likely to be a specific number of housing units and opportunities for outdoor recreation. If this analysis determines that there are less damaging practicable alternatives to the proposed project in the Specific Plan, then the Water Board is unlikely to issue permits for the more damaging alternative. This is true even if the project proponent does not currently own the land that is necessary for the less damaging alternative.

RESPONSE E-6: As described in Master Response 2 and Response E-3, the amount of detail presented in the Draft EIR is consistent with mitigation prescriptions at the Specific Plan level. It is acknowledged that additional analysis, including a CWA Section 404(b)(1) alternatives analysis, will be required prior to U.S. Army Corps of Engineers issuance of any permits for filling of wetlands on the site. The commenter's concerns regarding Area 4 are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT E-7: Summary Comment
In its present form, the DEIR does not demonstrate that impacts associated with the proposed fill of wetlands in Area 4 can be successfully mitigated to a less than significant level. Therefore, the DEIR is not likely to support the issuance of future permits from the Water Board for fill of waters of the State under the Specific Plan.

We encourage the City of Newark to revise the DEIR to include conceptual mitigation plan(s) for each of the proposed onsite and offsite mitigation measures. In addition to allowing the feasibility of mitigation measures to be assessed, conceptual mitigation plan(s) will be of value in evaluating the relative costs of the proposed mitigation measures.

Finally, the DEIR should not assume that the resource agencies will allow the fill of the wetlands at Area 4. Today large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to move up slope in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), BCDC, and the Water Board have all expressed strong reservations about the fill of wetlands in Area 4. We encourage the City of Newark to request an inter-agency meeting with the ACOE, CDFG, USFWS,

and the Water Board as soon as possible, in order to discuss permitting issues related to jurisdictional waters in Area 4.

RESPONSE E-6: For the comments regarding a mitigation plan, please refer to Master Response 2 and Response E-3. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

F. RESPONSE TO COMMENTS FROM THE ALAMEDA COUNTY WATER DISTRICT, JANUARY 15, 2010:

COMMENT F-1: ACWD has reviewed the Draft Environmental Impact Report (DEIR) and would appreciate your consideration of the following comments:

1. Groundwater Well Protection/Destruction: Local and imported water is percolated into the Niles Cone Groundwater Basin through percolation both in Alameda Creek and the adjacent recharge ponds in the Quarry Lakes Regional Park. The water is subsequently recovered through ACWD's groundwater production wells and provided as a potable supply to a population of over 333,000 in the cities of Fremont, Newark, and Union City. Therefore, it is imperative that ACWD protects the water quality and ensures the continued use of the groundwater basin for water supply for ACWD's customers.

In order to protect the groundwater basin, each well located within the Project area must be identified and either protected or properly destroyed prior to or during construction activities. If the wells are to remain, a letter so indicating must be sent to ACWD. If a well is damaged or the surface seal is jeopardized in any way during construction activities, the wells must be destroyed in compliance with the City Well Ordinance.

Historical records indicate the existence of abandoned wells located within the Project area. Any abandoned wells located within the Project area (including areas designated as open space or wetlands) must be properly destroyed prior to grading and/or construction activities. Since most of the wells have not been located, ACWD requests that the EIR include the provision that Project proponents coordinate with ACWD so that: a) ACWD can assist in identifying abandoned wells, and b) any wells identified or discovered during construction are properly destroyed in accordance with ACWD specifications.

2. Drilling Permit Requirement: As the enforcing agency for the City of Newark's Well Ordinance, ACWD requests that the EIR include the requirement of obtaining a drilling permit from ACWD prior to the start of any subsurface drilling activities. Application for a permit may be obtained from ACWD's Engineering Department, at 43885 South Grimmer Boulevard, Fremont or online at http://www.acwd.org/engineering/drillin8-Permit.php5. Before a permit is issued, the applicant is required to deposit with ACWD, cash or check in a sufficient sum to cover the fee for issuance of the permit or charges for field investigation and inspection. All permitted work requires scheduling for inspection; therefore, all drilling activities must be coordinated with ACWD prior to the start of any field work.

3. Access to ACWD Facilities: ACWD currently uses Station Road to access a number of our facilities. An ACWD water well ("Site A") and a number of ACWD's monitoring wells are located within Newark Areas 3 and 4 and along the railroad right-of-way between the two areas. ACWD's

Site A water well is currently used as part of ACWD's Aquifer Reclamation Program to address saltwater intrusion and the information collected from the monitoring wells is used in the management of ACWD's groundwater resources. Therefore, ACWD requests that the EIR address maintaining access to ACWD's facilities.

RESPONSE F-1: The Draft EIR did include measures to properly destroy wells on the site prior to issuance of a grading permit (MM HAZ-3.1). Additional text has since been added to the EIR to clarify the language and respond to ACWD's request for identifying wells on-site and obtaining drilling permits, refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

None of the development activities associated with implementation of the Specific Plan will inhibit access to ACWD's facilities including the Site A water well. Additional text has since been added to the EIR to clarify this, refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

COMMENT F-2: 4. Geology and Soils (Section 3.7)

a) Dewatering: Reference is made to Section 3.7.2, Existing Setting and Section 3.7.3, Geology and Soils Impacts (pages 179 to 190). The DEIR acknowledges that groundwater is very shallow within the Project area; however, the DEIR does not address any temporary or permanent dewatering activities that may be required. In addition, ACWD requests that the following potentially significant impacts related to dewatering activities be addressed by the EIR:

1) The Project area includes areas where known Spills, Leaks, Investigation, and Cleanup sites exist. The EIR should address the potential impacts that dewatering activities and construction may have on the investigation and cleanup of those sites.

2) Since groundwater is an important component of ACWD's water resources, it is critical that the amount of water that may be extracted by dewatering be estimated and documented in the EIR. Alternative designs should be evaluated that would minimize the amount of dewatering required during and subsequent to construction. Groundwater losses due to dewatering should be measured and may be subject to a replenishment assessment fee. Mitigation measures should be proposed to replace all significant losses of ACWD's water supplies.

3) ACWD regulates the installation and destruction of dewatering wells by working with licensed drilling contractors and agencies that require dewatering wells for the installation of their facilities. ACWD permits are required for dewatering well installations and destructions within the City of Newark (City); however, dewatering wells are currently exempt from permit fees.

b) Soil Improvements: Reference is made to MM GEO-1.1 (page 184). The mitigation measure identifies that ground improvement techniques could be used to mitigate liquefaction-induced differential settlement. Since groundwater is shallow within the Project area, ACWD requests that the Project geotechnical engineer coordinate with ACWD prior to beginning any soil improvement measures to ensure impacts on groundwater resources are minimized.

c) Wick Drains: Reference is made to MM GEO-3.1 (page 186). The mitigation measure states that "if surcharging is considered, this would include installing vertical wick drains and surcharging building areas with additional imported fill to allow the settlement to occur at an increased rate." Vertical wick drains pose a significant threat to the groundwater basin because they remain in place

after the surcharging activities are completed and create preferential pathways that allow runoff to rapidly infiltrate the subsurface where the capacity of soils for removing the pollutants and protecting the groundwater supply is significantly reduced. For this reason, alternative methods should be evaluated that would eliminate the need for the use of vertical wick drains. ACWD requests that the EIR address this potentially significant impact.

RESPONSE F-2: The Draft EIR discussion of project construction impacts relatively general in nature, commensurate with the amount of project detail available at the Specific Plan level. For this reason, the Draft EIR (Section 3.7) identifies that further geotechnical study will be required at the time project-specific developments are proposed, to evaluate the location and project-specific geotechnical impacts and appropriate mitigation measures. More soil settlement is anticipated in Area 4 due to raising the site about 5 to 8 feet above current grades to be above the flood elevation and the presence of compressible clay soils encountered within the upper 20 feet of the soil profile. Wick drains were included in the Draft EIR as an option to increase the rate of consolidation as part of a surcharge program. If this option is pursued, the Geotechnical Engineer will work with ACWD regarding concerns of creating preferential pathways for pollutants to enter the ground water table during preparation of the design-level geotechnical report. The text of the Draft EIR has been revised to ensure that if wick drains are implemented they would be designed to reduce the potential for surface water to access the wick drains and not impact the groundwater supplies. Refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

At the time project-specific geotechnical analysis is completed, the geotechnical engineer will coordinate with ACWD regarding any proposed dewatering and soil improvements techniques.

COMMENT F-3: 5. Hazards and Hazardous Materials (Section 3.9)

a) Regulation of Hazardous Materials: Reference is made to Table 3.9-1: Regulation of Hazardous Materials (page 210). The descriptions for the Alameda County Department of Environmental Health (ACDEH) and the City's Fire Department need to be updated and clarified. Effective February 1, 2009, the responsibility for oversight of the Certified Unified Program Agency (CUPA) program was transferred from the City to ACDEH. As a result of this change in the CUPA program, a Cooperative Agreement between ACWD, the City, and ACDEH was executed on October 8, 2009, that requests ACWD to continue its oversight of investigation and remediation at Leaking Underground Fuel Tank (LUFT) and the majority of the Spills, Leaks, Investigation, and Cleanup (SLIC) sites. ACWD has a similar Cooperative Agreement with the California Regional Water Quality Control Board for the LUFT and SLIC sites in the cities of Fremont, Newark, and Union City. ACDEH's Local Oversight Program does not cover sites in the cities of Fremont, Newark, or Union City.

b) Investigation and Remediation of Contaminated Soil and Groundwater: Reference is made to Section 3.9.3, Hazardous Materials Impacts, Impacts HAZ-l, HAZ-2, HAZ-3, and HAZ-4 (pages 218 to 225). The mitigation measures proposed for each of these impacts refers to investigation and remediation activities that will be conducted under the oversight of the City and the Department of Toxic Substances Control (DTSC). However, ACWD is the lead local agency for the LUFT and SUC cases in the Project area and works in cooperation with the California Regional Water Quality

Control Board, San Francisco Bay Region. In addition, for sites where ACWD is not the lead agency, ACWD is still involved in reviewing any proposed investigation or remediation activities. Therefore, ACWD should be included in all of the proposed mitigation measures as one of the agencies involved with reviewing and approving investigation and remediation proposals.

c) Property Owner Location Map: Reference is made to Figure 3.9-1: Property Owner Location Map (page 213). This figure shows the property owners within the Project area. Figure 3.9-1 does not include ACWD's 0.28 acre parcel (APN 901 018501200) located northwest of Station Road. ACWD requests the map in the Final EIR be corrected.

RESPONSE F-3: Table 3.9-1: Regulation of Hazardous Materials, reference to ACWD in mitigation measures and Figure 3.9-1 has been revised; please refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

COMMENT F-4: 6. Water Supply: Reference is made to Section 3.12.3.2 - Water Supply (page 251). In Table 3.12-1, the DEIR provides a water demand estimate for the Project. The unit demands for each of the land use categories are consistent with the unit demands provided by ACWD in the water supply assessment (WSA) for the Project, with the exception of the unit demands for the Single Family Residential land use category. As described in the footnotes to Table 3.12, the Single Family Residential category includes a mix of 2,000-5,000 square foot lots, 6,000-7,000 square foot lots, and townhouses. The WSA for the Project utilized unit demands of 250 gpd/unit, 440 gpd/unit and 150 gpd/unit, respectively, for each of these subcategories. Based on ACWD's calculation, the representative weighted average unit use should be 305 gpd/unit. However, Table 3.12-1 utilizes a value of 380 gpd/unit. The EIR should either: a) utilize unit water use values consistent with that of the WSA, or b) provide a rationale for any alternate unit water use values utilized.

In addition, throughout this section, the DEIR suggests that irrigation needs within Areas 3 and 4 including park areas and the golf course "could be" switched over to reclaimed water service at such time recycled water is available to the site. ACWD's demand projections, which form a basis for the referenced WSA, rely on this Project's use of recycled water to meet irrigation needs. The EIR should firmly commit that the source for such irrigation will be switched to the recycled water system when recycled water becomes available.

RESPONSE F-4: The commenter correctly notes that the Draft EIR actually assumed that the project would demand water at a rate higher than that assumed by the ACWD in the WSA. The Draft EIR text has been revised to be consistent with the values of the WSA. The proposed Specific Plan does include provisions which require the Project to switch over to reclaimed water service as soon as it is available at the site. The Draft EIR text has been revised to clarify that this requirement is part of the project; refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

COMMENT F-5: 7. Public Water System Infrastructure: Reference is made to Section 2.4.10.1 - Water Service (page 23). The DEIR adequately describes the appropriate water system configuration for Area 3 which will include connections to existing water mains in Cherry Street and Stevenson Boulevard, and may also include connections to the existing water main in Mowry Avenue. However, there are no existing water mains fronting any portion of Area 4. Therefore, water service to Area 4 will require extension of public water mains along with the extension of Stevenson Boulevard, as well as a minimum of one additional connection to existing mains in either

Mowry Avenue or Cherry Street (via the new potable water system to be installed in Area 3) to provide for system looping. It is important to note that redundant connections to the new public potable water system will be required in both Areas 3 and 4 such that all areas will be served from multiple existing water mains. In Area 4, this will result in the need for multiple crossings of the existing railroad and/or flood control channel.

Similarly, in order for the recycled water system to serve sub-areas "B," "C," and "D" within Area 4, the water system will be required to cross both the flood control channel and the railroad tracks at least once each.

The construction of such crossings may result in impacts to the environment. The EIR should describe these connections and should discuss any environmental impacts that may arise from their construction. Similar revisions to the water system description should be made to that provided in Section 3.12.3.2, Water Supply. In addition, the EIR should commit to close coordination with ACWD regarding water system planning and design.

RESPONSE F-6: The potential impacts of construction of utilities was addressed in the relevant EIR sections for Areas 3 and 4 and scope of the proposed utilities is detailed in Section 3.12, Water Supply and Utilities and Service Systems. A map showing the Conceptual Utility Plan is also provided at Figure 3.12-1. Any ground disturbance activities, including utility construction associated with the development of the Specific Plan, were evaluated in terms of their impacts to biological resources, cultural resources, and hazardous materials in the appropriate sections of the Draft EIR. Revisions to the Draft EIR text have been made to clarify the proposed utilities and coordination with ACWD for the Specific Plan, (refer to Section 4.0 *Revisions to the Text of the Draft EIR*.)

G. RESPONSE TO COMMENTS FROM THE CITY OF FREMONT, JANUARY 19, 2010:

COMMENT G-1: Transportation

1. On page 39, Section 3.2, last sentence, should be revised to state that acceptable LOS for signalized intersections in Fremont is LOS D or better.

RESPONSE G-1: The text of the EIR has been revised to respond to this comment. Refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

COMMENT G-2: 2. On pages 48 and 49, the two intersections of Thornton Avenue and SR 84 Eastbound Ramps (Newark) and Paseo Padre Parkway and SR 84 Westbound Ramps (Fremont) should be removed from non-signalized intersections list and included in the signalized. Traffic signal construction for these two locations were completed in early part of 2009. Revise all write-ups and analysis about these two intersections to include information that the signalization of the intersections has been completed.

RESPONSE G-2: The traffic study for the project was undertaken in 2006 and 2007. At that time, the funding status and schedule of the traffic signal installations were unknown. Because the installation of a traffic signal would increase an intersection's capacity, to be conservative, the subject intersections were analyzed under worst case conditions, which was unsignalized. At the time

the study was completed, the analysis accurately represented conditions at the two intersections. Due to delays associated with the project, the EIR was not released until late 2009. Subsequently, traffic signals have been installed. The traffic study states that both intersections would operate at LOS C or better under signalized conditions with the addition of project traffic; therefore, there would be no project impacts associated with the subject locations.

COMMENT G-3: 3. Please explain and include the intersection LOS analysis under the cumulative conditions that was discussed in the Transportation Impact Analysis (Appendix B) in the EIR. In the EIR, there is no discussions of the intersection LOS analysis under the cumulative conditions, only the segment LOS analysis for CMA consistency were include in the EIR. The Alternatives discussion (pg. S-55, pg. 313) of the No Project GP Buildout reference LOS F, but no project analysis is expanded upon after the summary of alternative. Fremont practice is to apply LOS standards to cumulative intersection analysis for the year 2030.

RESPONSE G-3: The methodology used to determine cumulative impacts was described in Section 4.4 *Cumulative Impacts, Transportation* on pages 277-281 of the Draft EIR and is also described in Chapter 5 of the project's Traffic Impact Study (see Appendix B). The intersection level of service (LOS) under cumulative conditions, with and without the project, are shown on Draft EIR Table 4.2-1.

COMMENT G-4: 4. A Stevenson Boulevard grade separated bridge over the UPRR right-of-way at the westerly end of Stevenson Boulevard is proposed to access Area 4 of the plan. Any Stevenson Boulevard proposed roadway improvements should be a "complete street" for full access to the area for pedestrians and bicyclists. Complete improvements of Stevenson Boulevard to Cherry Street should occur prior to the completion of the overcrossing. Also, include in the discussions that all costs regarding the construction of the proposed grade separated Stevenson Boulevard extension over the UPRR right-of way shall be the responsibility of the development or the City of Newark. The City of Fremont is not a planned participant in the improvement.

RESPONSE G-4: The extension of Stevenson Boulevard into Area 4 up to its westerly termination is proposed as a "complete" two-lane arterial street. A 14-foot wide landscape median with 12-foot wide travel lanes and 8-foot bike lanes will be provided along with continuation of a sidewalk and landscaping on each side of the street. The sidewalks on the south side will start at the base of the bridge into Area 4. The expanded bike lane width will provide sufficient area for disabled vehicles. Area 3 roadway improvements will be completed prior to construction of the Stevenson overcrossing.

As described in the Draft EIR, the Stevenson Boulevard bridge railroad overcrossing would be constructed as a part of the Specific Plan development; therefore, it is assumed to be funded by the development under direction of the City of Newark. The overcrossing will be a two-lane roadway (12-foot wide lanes), with a six-foot median separating the two lanes of travel, and eight-foot wide bike lanes on both sides of the roadway. A five-foot wide sidewalk will be located on the north side of the bridge along with railing/fencing on both sides.

The City of Newark will determine whether any additional improvements are desirable or economically feasible.

COMMENT G-5: 5. Include in the plan or mitigations for the plan the requirement to provide schematic or plans of any proposed access improvements on Stevenson Boulevard frontage to the City of Fremont for review. Any access improvements on the Newark side of Stevenson Boulevard should not adversely impact access to Stevenson Boulevard for vehicular or pedestrian access on the Fremont side. The development shall provide all needed full street improvements on Stevenson Boulevard to access Area 3 development as a complete street capable of serving the intended uses and modes of transportation.

RESPONSE G-5: The City of Newark will provide detailed plans of the proposed access improvements adjacent to the City of Fremont frontage when they are available. Refer to Response G-4 for details on the street improvements.

COMMENT G-6: 6. For the traffic signal warrant analysis of Encyclopedia Circle/Stevenson Boulevard and Boyce Avenue/Stewart Drive we do not concur that the conclusion should be less than significant based on the EIR analysis. It is likely that under cumulative analysis these intersections operation are further degraded. A plan and costs of the identified signal installation should be estimated for each location in the Final EIR. Fremont recommends that a mitigation be added that includes timing triggers that if the City has included either of the two intersections in its Capital Improvement Program, signal prioritization list, or as part of a traffic impact fee project list prior to the final map for the development of Area 3 or Area 4 that a fair share contribution be provided by the proposed development to the City of Fremont. Alternatively, appropriate mitigation could also include a one time contribution prior to final map of a fixed dollar amount based on current estimated project costs and fair share estimates with the funds deposited with the City of Fremont traffic signal prioritization improvements program.

RESPONSE G-6: The intersections of Encyclopedia Circle/Stevenson Boulevard and Boyce Avenue/Stewart Drive have few left turns during peak hours. There are less than 20 left turns during the peak hour of each intersection. The proposed project would add less than six (6) peak hour left turns at these locations, which is why the traffic study reported that no further improvements were recommended. Frequently, right turn volumes are subtracted from traffic signal warrant calculations because the delay for right turn movements is low. The current left turn volume does not justify (1) stopping through traffic on the major street or (2) the capital and operating expense of a traffic signal. At some point in the future, traffic signals may be needed. The need for a traffic signal at these locations, however, will more likely be driven by intensification of the industrial areas that directly use Stewart Drive and Encyclopedia Circle. It is this type of traffic that would increase the left turn volume from Stewart Drive and Encyclopedia Circle sufficiently to justify the installation of a traffic signal. The City of Newark believes that future uses in those industrial areas should contribute monetarily to a future traffic signal installation, should it be needed, because they would be the primary beneficiaries. For these reasons, no change to the EIR analysis and no additional mitigation measures are warranted.

COMMENT G-7: Hazards and Land Use Compatibility

The setting description of the EIR should more appropriately disclose that the surrounding uses are not just Industrial, but are in fact General Industrial. The types and range of uses allowed in General Industrial should be explained. Of note, General Industrial allows for the most intense users of hazardous materials. In addition, the setting should disclose that the City of Fremont Fire Training Facility will be completed and operational by the end of 2010, located near the intersection of Eureka Drive and Stevenson Boulevard. This facility includes open grounds for training activities and an operational burn tower for training purposes.

The EIR air quality analysis identifies CertainTeed as an air pollution source, but does not identify substantial hazardous materials users in the area and the potential for accidental exposure and off-site consequences. CertainTeed and the abutting Hexion Specialty Chemical to the south of CertainTeed, at 41100 Boye Road, are the most substantial users in the area. Hexion is within 1,000 feet of the Area 3 at its closest point. In addition, all of the area adjacent and south of Area 3 is designated General Industrial and could have potential substantial hazardous material users. The issue of accidental release and potential off-site consequences were not analyzed in the Hazards Section of the EIR. Analysis of potential off-site consequences from hazardous materials users should be included in the EIR and potential mitigation measure for protection of sensitive users. As noted in the NOP comments, consideration of a land use buffer of non-sensitive users nearest to Stevenson Boulevard should be considered in the plan.

RESPONSE G-7: Text has been added to the Draft EIR to identify the Fremont Fire Training Facility; refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

A survey of businesses in the vicinity of the project that use and store hazardous materials was completed; refer to Appendix K in this document. The facilities were further reviewed by an industrial hygienist to identify and model the chemicals with the greatest potential to result in an impact to the proposed Specific Plan project. Based on a review of the industrial facilities and their current hazardous materials use in the vicinity of the project site, none of these facilities would impact the site under the alternative release scenario modeled in accordance the EPA and CalARP guidelines. Under a worst-case release scenario certain chemicals from Hexion Specialty Chemicals and Sysco Food Service would reach the project site. The City of Newark, however, relies on the alternative release scenario as the basis to determine significant impacts to residential development from accidental chemical release in the project area, because this scenario acknowledges the process knowledge, required health and safety systems and practices the specific facilities have incorporated, in response to participating a Risk Management Plan program, and therefore, represents a more credible release scenario. Based upon the alternative release scenario, future residents of the proposed Specific Plan would not be significantly impacted by accidental chemical release at any of the industrial facilities in the vicinity of the project. The impact of locating the proposed residential project near these facilities is, therefore, less than significant. The text of the Draft EIR has been revised to include additional information regarding the hazardous material user survey and modeling; refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

H. RESPONSE TO COMMENTS FROM TRI-CITY ECOLOGY CENTER, JANUARY 16, 2010:

COMMENT H-1: The ecology center has followed the development plans for this area for many years. We toured the site as early as 1989 when it was still known as Whistling Wings & Pin Tail.

Open Space & Conservation, General Plan (Section 3.1): The proposal seems inconsistent with the Newark General Plan Goals (Goal 1, Policy a Program 5 and Policy b Programs 10 and 11 and Goal 2 policy a). The goals of open space preservation and respect for the Don Edward San Francisco National Wildlife Refuge boundaries are given little consideration with this plan.

RESPONSE H-1: The conformance of the proposed Specific Plan with the City General Plan Open Space and Conservation Goals (Goal 1, Policy a Program 5 and Policy b Programs 10 and 11 and Goal 2 policy a) is described on page 35 of the Draft EIR. Please refer to Response L-11 regarding the project's consistency with the Don Edward San Francisco National Wildlife Refuge boundary expansion. The comment does not pertain to the adequacy of the Draft EIR. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT H-2: **Transportation & Air Quality:** There is no doubt that the proposal will be detrimental to regional air quality. Increased vehicle emission would increase the "carbon footprint".

A. The mitigation measure of public transit is not realistic. Recent AC Transit cutbacks in Fremont and Newark have *reduced* existing transit service.

B. Appendix C - Air Quality Analysis (Introduction, page 2,) states, "Fill would be expected to come from BART extension project for subway under Lake Elizabeth." Has this concept been discussed with the City of Fremont? If so, what are the arrangements?

RESPONSE H-2: The Draft EIR's transit service estimate of that four (4) percent of Project residents will use public transit was a conservative estimate, (Draft EIR p. 68.) There are many factors that contribute to transit mode share, including income, land use density, and type/frequency of service. According to the Bay Area Census, the total existing bus transit service mode share is 2.1 percent in Newark. Similarly, data from the Valley Transportation Authority 2030 plan shows an existing transit mode share of approximately 3 percent. The Valley Transportation Authority estimate is comparable, because it relies heavily on bus service, which is the type of transit service available near the project site, and has similar land use densities to those in suburban style cities such as Newark.

AC transit carries 236,000 daily passenger trips, operates 105 bus lines, and provides 6,378 daily hours of service. The project was estimated to generate on the order of 67 transit riders during the highest hour of the day. The relative contribution of the proposed project to system-wide transit ridership is therefore extremely small. It is the goal of AC Transit and every other transit provider to promote and increase transit ridership because of its benefits to roadway congestion and pollution. The transit agency employs

planners with the specific goals of finding economical routes to maximize ridership on a system-wide basis. The City of Newark and AC Transit would regard high transit ridership from this project as a significant benefit to the environment.

As to transit service for the Project, field observations of bus occupancy levels were completed at the time of study in the project vicinity. Based on these observations, the project traffic consultant determined that there was sufficient available capacity to accommodate additional ridership. That said, over time, bus routes change and schedules vary based on land use changes, economic conditions, fuel prices, and success in achieving ridership. Frequencies and routes are not fixed and therefore it is unrealistic to assume that transit service will remain static in perpetuity. Accordingly, in January 2010, the project traffic consultant completed follow-up surveys to determine peak hour bus occupancy for routes in the project vicinity. Based on those surveys, routes 213, 214, and 235 had between zero and 10 riders during the peak commute hours in the project vicinity. Typical transit buses have a seated capacity of around 40 passengers, and a standing capacity around 20 passengers.

It is also noted that the project trip generation estimates did not assume any reductions in trip generation for project trips that employ public transit. Thus, the Draft EIR provides a conservative estimate of roadway impacts for the purposes of calculating level of service.

The Draft EIR (p. 87) acknowledges that while public transit use would reduce emissions, it would not provide a reduction in air pollutant emissions sufficient to reduce the project's significant impact of regional air pollutants; therefore, the Draft EIR concludes that the project's impact would be significant and unavoidable. The Draft EIR discusses that the project would use fill from nearby construction projects (p. 91), the largest of which is noted as the BART tunneling under Lake Elizabeth. BART has not been contacted regarding the fill and it is not certain that this fill would be used; therefore the modeling of truck emissions was based upon an average one-way haul distance of 10 miles, rather than the 4 mile distance between Lake Elizabeth and the project site. Therefore, the truck emissions from more remote fill sources to the site would not be underestimated.

COMMENT H-3: **Noise:** The mitigation of exposure to noise seems to be walls (barriers). While reducing noise, walls are aesthetically unpleasing, and do not allow open space views.

RESPONSE H-3: The Draft EIR describes noise walls as one of several mitigation measures identified to reduce noise impacts to the project. Other noise mitigation measures include building setbacks and building design features (e.g., noise attenuating windows, doors, and walls, building orientation, and mechanical ventilation). The commenter's concerns regarding noise walls are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT H-4: Biological Resources:
A. Area 4 is a biologically sensitive area with wetlands scattered throughout the site. A plan that causes the loss of 85.6 acres is not acceptable. The mitigation measures of off-site relocation and/or 1.5: 1 replacement are unsatisfactory.

B. The impact on the burrowing owl‘s (species of concern, [SOC]) habitat as well as that of the peregrine falcon, tri-colored blackbird (species of concern) , bats (SOC), the salt marsh harvest mouse (endangered), wandering shrew (SOC) is significant and not able to be mitigated satisfactorily. In addition, the area is used by migratory birds. As noted in the document, all of this falls under the Migratory Bird Treaty Act and California Endangered Species Act.

C. Non-native species are a severe threat to native plants. The possibility of invasive plants is great due to the introduction of landscaping (golf course and residential lawns and gardens).

D. The loss of existing trees is not acceptable.

RESPONSE H-4: Please see Section 3.5 of the Draft EIR and, in particular, Mitigation Measures BIO-1.1 to 1.2B, which address loss of wetlands, MM BIO-4.1 to 4.6, which address potential impacts to burrowing owls, MM BIO-6.1 to 6.3, which address potential impacts to tri-colored blackbird, MM BIO-8.1 to 8.4 which address potential impacts to salt-harvest mouse, and salt marsh wandering shrew habitat. Further, please see MM BIO-11.1 to 11.2, which address protection of native plant species. The mitigation measures identified by professional consulting biologist are considered satisfactory to compensate for impacts to wetlands, special-status species including migratory birds, native plants, and trees. The commenter has not raised any specific concerns with the efficacy of the proposed mitigation measures. The commenter’s concerns regarding loss of trees are hereby included in the Final EIR and will be before the City’s decision-makers, the City Council, for their consideration.

COMMENT H-5: Cultural: Area 4, and Area 3 to a lesser degree, may be the site of undiscovered archeological finds. Area 4 has been relatively undisturbed and needs to be carefully monitored.

RESPONSE H-5: The comment is noted. The Draft EIR discloses the likely presence of archeological resources in Areas 3 and 4 and proposes mitigation measures to address potential impacts to those resources. Ultimately, the Draft EIR concludes that, even with mitigation, these impacts are significant and unavoidable. The remainder of the comment state the opinions of the author and does not raise any questions about the adequacy of the Draft EIR. The commenter’s concerns are hereby included in the Final EIR and will be before the City’s decision-makers, the City Council, for their consideration.

COMMENT H-6 Geology and Soils:
A. Both areas are subject to seismic shaking, liquefaction and lateral spreading impacts. The amount of mitigation required overcome these problems is huge.

B. The area has shallow groundwater conditions and could have an impact on grading and corrosive soils considerations. It may also have an impact on plants, trees and grasses (project landscaping).

RESPONSE H-6: The comment is noted. The Draft EIR, in Section 3.7, *Geology and Soils*, includes mitigation measures to address impacts related to seismic shaking, liquefaction, and lateral spreading. Further, the Draft EIR discloses and address potential impacts from shallow groundwater on grading and corrosive soils considerations.

COMMENT H-7: **Hydrology and Water Quality**: Development in Areas 3 and 4 could result in water pollution and thus the degradation of waters flowing into the Bay. Protection of Bay waters is paramount.

RESPONSE H-7: The Draft EIR, in Section 3.8, *Hydrology, Flooding and Water Quality*, evaluates the potential for the Project to impact waters flowing into the San Francisco Bay and imposes mitigation measures to reduce any potential impacts to a less than significant level. The remainder of the comment state the opinions of the author and does not raise any questions about the adequacy of the Draft EIR. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT H-8: **Hazards and Hazardous Materials:** Hazardous materials contamination from previous uses poses problems as well as hazardous materials associated with the potential development.

A. Schools constructed in Area 3 are exposed to previous pesticide use.

B. Houses in Area 4 would be exposed to contamination of various previous uses, including the auto dismantlers (fill areas).

C. Potential use of pesticides and herbicides on the proposed golf course is of concern.

RESPONSE H-8: The Draft EIR, in Section 3.9, *Hazards and Hazardous Materials*, evaluates the potential for the Project to expose students and residences to pesticides and other contaminants. Draft EIR Sections 3.8 and 3.9 address the potential for the use of pesticides and herbicides on the proposed golf course to result in significant water quality and hazardous impacts.

COMMENT H-9: **Aesthetics:** To quote from the document, "The proposed residential and golf course development and Stevenson Blvd. railroad overpass would substantially degrade the visual character of Area 4." There are no mitigation measures applicable.

RESPONSE H-9: The commenter is correct. The Draft EIR discloses that the Project will result in a significant and unavoidable project and cumulative-level visual impact.

COMMENT H-10: **Conclusion and Recommendation**: The DEIR makes it abundantly clear that there are "Significant Unavoidable Impacts" (Page S-530). In addition, there are numerous serious biological impacts involved with the proposed project. We do not believe that they have been

adequately mitigated. Area 4, is a fragile wetland environment, which requires preservation and protection.

The center recommends the *No Project Alternative*.

Because the *No Project Alternative* requires "the identification of an environmentally superior alternative among the other alternatives", we recommend the *No Development in Area 4 and Higher Density in Area 3 Alternative* as the next best plan. However, "Higher Density" is a subjective term. The continued development on Area 3 should be designed in an environmentally-sound manner, using green principles throughout.

We further recommend that Area 4 be donated to the Don Edwards San Francisco Bay National Wildlife Refuge…..a gift for future generations.

RESPONSE H-10: The comment states the opinions of the author and does not raise any questions about the adequacy of the Draft EIR. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

I. RESPONSE TO COMMENTS FROM GRASSETTI ENVIRONMENTAL CONSULTING FOR CITIZENS COMMITTEE TO COMPLETE THE REFUGE, JANUARY 17, 2010:

COMMENT I-1: Grassetti Environmental Consulting (GECo) has been retained by the Citizens' Committee to Complete the Refuge to review the Environmental Impact Report (EIR) on the Newark Areas 3 and 4 Specific Plan and relevant background documentation for technical adequacy and compliance with the California Environmental Quality Act (CEQA) and its implementing Guidelines. This review was conducted by Richard Grassetti, the firm's principal, and is based on my 25 years of experience in CEQA document preparation, review, and training. My comments are summarized below.

Uses of the EIR

The DEIR is vague as to its use with respect to future projects. On the bottom of p.2, it cites instances where additional environmental review may be required. All of the referenced sections apply only to changed circumstances or changes to the project. This "disclosure" fails to address the need for subsequent Project level environmental review for ANY subsequent discretionary action required to implement the project. This DEIR is a programmatic analysis that neither describes nor assesses project-specific impacts of implementing any specific components of the project. Therefore it can not assure, absent subsequent CEQA documentation, that full disclosure, analysis, or mitigation was included for as-yet undersigned specific project components. Please clarify that this is a program-level EIR and that project-level CEQA reviews will be required for any subsequent non-exempt discretionary project approvals.

RESPONSE I-1: There is no requirement in CEQA that the City prepare program-level EIR for the Specific Plan. CEQA Guidelines Article 11 (Section 15160 *et. seq.*) provides "a number of examples of variation in EIRs." (CEQA Guidelines Section 15160) However, no provision of CEQA or the CEQA Guidelines mandates that a lead agency prepare a programmatic EIR in any particular situation. (*See* CEQA Guidelines Section 15168) The EIR for this project

was prepared in compliance with CEQA, as it analyzes the project-level and reasonably foreseeable cumulative impacts of the Specific Plan and other projects proposed in the vicinity of the Project.

The Draft EIR evaluates the environmental impacts of the proposed Specific Plan project, commensurate with the level of detail provided in the project description (Draft EIR pp. 7-26). This includes evaluation of the site-wide drainage, and flooding, and water quality impacts of the project, as well as evaluation of the project's traffic, air quality, noise, water supply, utilities, public services, and land use compatibility impacts. To the extent that specific development plans are not proposed at this time, the analysis of geology, cultural resource and biological impacts in the Draft EIR is based upon a maximum, not-to-exceed, development envelope, with mitigation measures and performance criteria established to reduce and/or avoid, wherever feasible, significant impacts.

This is appropriate under CEQA Guideline section 15146, which provides that the degree of specificity in an EIR must correspond to the degree of specificity in the activity described in the EIR. Here, the activity described in the EIR is a Specific Plan, a General Plan Amendment and a Zoning Amendment, not a single, specific construction project, resulting, therefore, in an EIR which provides a somewhat lesser degree of specificity.

As explained on pages 2 – 3 of the Draft EIR, when future discretionary approvals related to the Project are sought from the City (as well as from any responsible agency) the City will consider whether there is a need for additional environmental review pursuant to CEQA Guidelines Section 15162. Under CEQA Guideline Section 15162, the City may determine that additional environmental review is necessary only if 1) substantial changes are proposed to the project which will require major revisions of the EIR, 2) subsequent changes have occurred with regard to the circumstances under which the project is undertaken which involve significant new effect or a substantial increase in severity of previously identified significant effects or 3) new information of substantial importance becomes available which was not known as could not have been known at the time the EIR was certified.

COMMENT I-2: Project Description
The project description defers the development of a number of plans the contents of which are critical to identifying the magnitude of potential project impacts. These include the Golf Course design, golf course management plans; herbicide, pesticide and fertilizer application plans; water quality management plans; grading plans consistent with proposed new land uses, etc.

RESPONSE I-2: Please refer to Response I-1.

COMMENT I-3: The project description also includes grading to raise the portions of the site proposed for development to a minimum floor elevation of 11.25 feet, but the Sea Level Rise discussion in the EIR notes that this floor level will likely be inadequate to project for sea level rise (and tidal surge) through the latter part of this century. Please add a description of the additional

quantities of fill required to protect the project from sea level rise anticipated during the project live span (100 years?). Please not that the 50-year project life assumed in the Sea Level Rise discussion is illogical in the context of houses, which typically are in use far longer than that (at least 100 years; by the EIR's logic, houses built in 1960 would have no useful life left). For the 2.1 million cubic yards of fill proposed to raise the site to minimal flood protection levels, please describe where the fill is coming from, where/how it will be stockpiled, and by what routes it would be transported.

RESPONSE I-3: Please refer to Master Response 1 regarding sea level rise.

The Draft EIR discusses that the project would use fill from nearby construction projects (p. 91), the largest of which is noted as the BART tunneling under Lake Elizabeth. It is not certain that this fill would be used; therefore the modeling of truck emissions was based upon an average one-way haul distance of 10 miles, rather than the 4 mile distance between Lake Elizabeth and the project site. The anticipated route would utilize major highways (I-880) and major arterial roadways such as Mowry Avenue and Stevenson Boulevard. Fill would be stockpiled in Area 3 and Area 4 in accordance with City grading standards and subject to the mitigation requirements identified in this EIR.

COMMENT I-4: Project Objectives and Alternatives

Under CEQA, Alternatives are required to reduce project impacts while still achieving most of the project's objectives, even if at a higher cost. An EIR is required to assess a reasonable range of potentially feasible alternatives (Guideline Section 15126.6). Ultimate feasibility of alternative may be determined at the CEQA Findings stage, after completion of the final EIR. Project objectives may not be so narrow as to unreasonably restrict the range of alternatives considered in the EIR or preclude other feasible alternatives that may be environmentally superior. This EIR includes Project Objectives that assert needs for which there is no supporting evidence, and which unreasonably restrict the range of alternatives considered in the document. Specifically, the project objectives set forth on p. 26 of the DEIR are little more than a regurgitation of the project description. The only substantive difference is that the Project Objectives include "up to" the number of units specified in the project description. Therefore, it is either literally impossible to find an alternative that would comply with all of the project objectives or, if the "up to" provisions are taken literally, nearly any housing would comply. As discussed below, the EIR uses the former interpretation in its assessment of whether the alternatives meet project objectives.

The DEIR identifies two no-project alternatives and four "build" alternatives. The DEIR concludes that all alternatives other than the No Golf Course Alternative fail to meet the project's objectives (see table 5.5-1). These alternatives fail to consider the "up to" provision in the project objectives, and, instead, assume that the objectives require buildout of the maximum number of units allowed. Further, reasons given in the EIR for the "No development in Alternative 4" alternative not meeting project objectives is that it would not include executive housing in Area 4, yet the project objectives do not specify any such objective. In addition, given the project objectives' "up to" clause for residential uses, this alternative should be redesigned to include housing densities that do not exceed "the community's vision" (see p. S-55, first paragraph).

Similarly, the "Reduced Housing Alternative" is incorrectly judged to not meet the Objective of executive housing in Area 4 that isn't even included in the list of Project Objectives on p. 26 of the

DEIR. Using a varying and overly narrow set of "project objectives" to reject alternatives fails to meet CEQA requirements.

The No Golf Course alternative is not a true alternative, but rather a mitigation measure aimed at reducing impacts to biological resources. In order to form a true alternative, it should be combined with the "Reduced Housing Alternative" to form an alternative that mitigates more of the biological, geologic, air quality, and traffic issues. Please add this alternative to the FEIR.

Overall, the level of analyses of impacts of the alternatives is insufficient to permit decision makers to seriously consider the relative merits of the alternatives. There is less than one paragraph of impact analysis for each of the "Build" alternatives (factoring out the General Plan compliance language). This fails to comply with the *Laurel Heights* dictum regarding alternatives, that the EIR provide "meaningful detail" and "sufficient information to the public to enable it to understand, evaluate, and respond" to the agency's conclusions. (*Laurel Heights Improvement Assn. v. the Regents of the University of California* 1988). Please add a discussion comparing each impact of the alternative with that of the project, or explaining why they would be the same.

RESPONSE I-4: As described in the Draft EIR project description of historic overview and background (Section 2.2), Area 4 has been identified in the City's General Plan for high-quality, low-density residential use (up to 1,260 units), an 18-hole golf course, and open space since 1992. The conversion of 78 acres of Area 3 to residential use is a proposed change to the General Plan land uses, but the total unit count for the Specific Plan area has remained at 1,260 units. The Specific Plan is the first step in implementing the General Plan for Area 4 and, therefore, residential development in Area 4 is a critical project objective. Accordingly, while CEQA does not require that there be "supporting evidence" for project objectives, it is apparent that the project description and the project objectives reflect long-time goals of the City.

The Draft EIR acknowledges that Area 4 contains important wetland and wildlife features and that the Specific Plan would result in impacts to those features. For this reason, the Draft EIR identifies a No Development in Area 4 and Higher Density Area 3 Alternative, which avoids the impacts of developing Area 4, while still achieving to desired housing supply. Given the need for all Bay Area communities to provide housing for future population growth, the alternative recommended in the comment, "No Development in Area 4 and Reduced Housing Alternative" would not meet the City's desired housing development for the area, nor would it meet a key project objective. A comparison of the proposed project and project alternatives' impacts for each of the primary subject categories is included in the Draft EIR in Table 5.5-1 (p. 319) *Matrix Comparison of Project Alternative Impacts*.

CEQA requires that an EIR compare the effects of a "reasonable range of alternatives" to the effects of the project. The alternatives selected for comparison should be those that would attain most of the basic objectives of the project and avoid or substantially lessen one or more significant effects of the project (CEQA Guidelines § 15126.6). CEQA also requires that the alternative be feasible and that their selection be governed by a "rule of reason" which requires the EIR to set forth only those alternatives necessary

to permit an informed and reasoned choice by the decision-making body and informed public participation (CEQA Guidelines § 15126.6(f)). The commenter's primary concern appears to be that the Reduced Housing Alternative was found not to satisfy key Project Objectives. However, even if it had been found to meet all key Project Objective, this Alternative is still not be the Environmentally Superior Alternative (see discussion on page 318) and so would never be considered for adoption if found feasible by the City pursuant to Public Resources Code section 21081.

COMMENT I-5: Technical Issues

It is my understanding that at the Citizens Committee to Complete the Refuge is submitting a detailed list of technical deficiencies under separate cover. Therefore, the technical comments herein focus only on the most egregious deficiencies, in the CEQA context.

Traffic: Please add an analysis of the traffic impacts of hauling fill material from the BART tunneling project to the site. Please provide some evidence that fill would be available from that project for this project, as assumed in the EIR? If the BART project were to proceed prior to this project or after this project, where would the fill for this project come from? What would the traffic impacts be in that case?

RESPONSE I-5: Additional text has been added to the Draft EIR to clarify construction traffic for the project; refer to Section 4.0 *Revisions to the Text of the Draft EIR.* Nearby construction projects are anticipated to be the source of fill materials for the project. As described in the Draft EIR (p. 92) soil exported from Lake Elizabeth to the project site would travel a four-mile one way trip; however, an average 10-mile one-way trip was used in the truck hauling emissions analysis, to be conservative. The Draft EIR does not assert that a decision has been made by BART or the City to obtain fill from Lake Elizabeth, instead it states that the exact sources of fill material for the project have yet to be identified, and it is reasonable to assume that fill will be brought to the site from a wide variety of source locations. For this reason, a 10-mile one-way distance was used, as a conservative estimate of truck trip length. Some truck trips, such as those from Lake Elizabeth, would be shorter, and some may be longer. Additional text has been added to Section 3.2 *Transportation* of the Draft EIR to clarify the scope of the construction traffic. This text describes why, even when several hundred daily heavy vehicle trips are occurring at the project site, the relative impact on roadway operations of truck traffic would still be considerably less than the amount of traffic generated by the project once occupied.

COMMENT I-6: ***Air Quality:*** The DEIR fails to correctly address missions associated with trucks hauling fill. On p.p.9 l-92 the EIR assumes that at 100 truckloads of material would be transported each day. At 10 cubic yards/truck the 2.156 million cubic yards of proposed fill would require over 215,000 trucks, resulting in over 430,000 one-way trips. At 100 trips/day, filling the site would require nearly 12 years to transport the fill, working 365 days/year. Given that the EIR states that "all grading activities were assumed to occur in the first two years", the EIR air quality assessment (and traffic assessment, too) should have assumed over 600 haul-trucks per day (or more, if no weekend work is to occur). Please address impacts on air quality if BART tunneling fill were not available to the project.

RESPONSE I-6: As described in Appendix C, Addendum to the Air Quality Study, "Full build out of the proposed project was assumed to begin in 2011 and last for about 5 to 8 years. Construction would probably last longer, but a more aggressive schedule was assumed for this (impact) analysis (of construction vehicle emissions), to avoid under prediction of emissions. All grading activities were assumed to occur in the first two years." It is acknowledged that actual hauling of soil would likely take longer than two years, but the shorter duration was assumed to provide a conservative estimate of construction vehicle emissions. The text of the Draft EIR has been revised to clarify this assumption. Refer also to Response I-5.

COMMENT I-7: ***Noise:*** The noise analysis states, "close to the noise source, the models are accurate to within about plus or minus 1-2 decibels." For traffic noise, does this take into account the margin of error of the traffic projections? What would the noise margin of error be including the margin of error of the traffic model? The construction noise analysis on p. 109 fails to include any analysis of the 600 or more haul trucks required to transport fill to the project site each day for over two years. What route would those trucks use? Please identify sensitive receptors along that route? What would the noise impacts be? Please address impacts on air quality if BART tunneling fill were not available to the project. Please include an analysis of the effects of repeated single event truck noise as required by the *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* decision (2002). Please also address the impacts of noise on sensitive wildlife, especially breeding birds.

RESPONSE I-7: A traffic noise model was not utilized for this analysis; therefore there is no 1-2 dB margin of error to factor into the noise level calculations.

Trucks transporting fill to Area 4 are anticipated to obtain the fill from nearby construction sites. Soil exported from BART construction under Lake Elizabeth was assumed to be the source of this fill material. The anticipated route would utilize major highways (I-880) and major arterial roadways such as Mowry Avenue and Stevenson Boulevard. No noise impacts would occur as a result of this truck traffic because the truck traffic makes up a small percentage of the total traffic along area roadways.

The Draft EIR analysis assesses the potential for significant noise impacts resulting from the project. The effect of project-generated noise upon nearby residents was assessed with respect to significance criteria based on local policies and standards (i.e., Appendix G of the State CEQA Guidelines, the State of California Building Code, and the City of Newark General Plan).

Construction-associated activities, including noise but also movement of heavy equipment and ground vibrations, are expected to result in some impacts to wildlife use of the site. However, wildlife using the site is already exposed to occasional loud noise such as occurs when trains pass the site, and there are numerous examples of areas around San Francisco Bay where wildlife, particularly waterbirds, have habituated to loud noise and other disturbance. Such examples include:

- Coyote Creek Reach 1A waterbird pond and South Coyote Slough (San Jose): heavily used by waterfowl, shorebirds, and gulls even though it is

adjacent to Newby Island landfill entrance, Interstate 880 traffic noise, and recycling facility that uses noisemakers to attempt to deter nuisance birds

- San Jose-Santa Clara Water Pollution Control Plant (San Jose): supports large numbers of waterfowl, shorebirds, and other birds despite frequent movement of heavy equipment throughout the plant

- Pond A16, New Chicago Marsh (Alviso): supports large numbers of waterfowl and other waterbirds, including nesting terns on islands and nesting snowy plovers in salt pannes, despite its proximity to active railroad tracks and recreational use of surrounding levees

- Shoreline Park (Mountain View): Shoreline Lake, the Coast Casey Forebay, Charleston Slough, and the Palo Alto Flood Control Basin support large numbers of waterbirds and marsh birds despite very heavy use by pedestrians and cyclists

- Palo Alto Baylands (Palo Alto): supports high densities of a variety of waterbirds and marsh species despite heavy recreational use and its proximity to an adjacent landfill, water treatment plant, and airport

- South Bayside System Authority Plant (Redwood City): ponds adjacent to this water treatment plant, and encircled by a road with an adjacent dog park, support very high densities of waterfowl and shorebirds, as well as nesting terns on islands and nesting herons and egrets in ornamental trees around the plant, despite plant noise and frequent movement by trucks.

While there may be some reduction in wildlife use of areas very close to construction zones during construction as a result of noise impacts, wildlife species are expected to resume the use of these areas to the extent described in the Draft EIR following the completion of construction. This temporary, less than significant impact has been added in the text revisions to the Draft EIR, *Section 4.0* of this Final EIR.

COMMENT I-8: ***Biological Resources:*** Eviction of burrowing owls as proposed in mitigation BIO-4.2 does not mitigate for the loss of burrowing owl habitat. In addition, please cite studies indicating that these evicted owls are not depredated at a higher rate than if not evicted, or do not otherwise suffer population losses as a result of this eviction. If no such studies exist, impacts to owls should be considered significant and unavoidable. Purchase of existing habitat elsewhere does not eliminate the loss of habitat at this site. CEQA requires that project impacts be compared with existing conditions, under which the project would result in a net loss of burrowing owl habitat. Please note that, while CDFG might accept eviction and purchase of other existing habitat as mitigation for their permits, it does not constitute mitigation from a CEQA perspective. Similarly, destroying peregrine falcon nesting habitat after the young have left the nests (Mitigation BIO 5-3) assumes that plentiful habitat exists elsewhere for the birds. Please provide supporting evidence for this assumption, including evidence that flacons do not prefer to nest in the same site in subsequent years.

RESPONSE I-8: The commenter stated that eviction of burrowing owls as proposed in MM BIO-4.2 does not mitigate for the loss of burrowing owl habitat. The City concurs that eviction of burrowing owls, which is described in MM BIO-4.3 (not 4.2 as claimed), does not mitigate for habitat loss, which is why MM BIO-4.4 through MM BIO-4.6 were included to describe such habitat mitigation.

The commenter requested that studies providing evidence that evicted owls are not predated at a higher rate than if not evicted be provided. The project biologists are aware of no studies demonstrating any evidence regarding this issue (i.e., there is no evidence that evicted owls are or are not predated at increased rates). Certainly, owls that are not evicted from burrows prior to grading of their burrows have a much higher probability of injury or mortality than owls that are not evicted from their burrows prior to grading. As a result, eviction is a necessity if owl burrows are located in areas subject to grading or other ground disturbance.

The commenter suggested that purchase of existing burrowing owl habitat off-site would not compensate for the loss of burrowing owl habitat, and that eviction of owls from existing burrows and purchase of other existing habitat as mitigation does not constitute mitigation from a CEQA perspective. As described in MM BIO-4.5A and MM BIO-4.5B, mitigation, whether on-site or off-site, does not consist solely of the "purchase" of habitat. Permanent preservation, enhancement, and management of off-site habitat is required. If off-site mitigation is satisfied through the purchase of credits in a mitigation bank, the bank will have already developed (and had approved by the CDFG) a plan for enhancement and management of mitigation lands. If mitigation is satisfied on-site, or off-site through project-specific mitigation, the mitigation lands will need to be preserved, enhanced, and managed in accordance with a mitigation and monitoring plan requiring City of Newark and CDFG approval. Please also refer to Response C-1 and revised MM BIO-4.1 for a discussion of the conservative approach to burrowing owl mitigation that was taken by this project.

The commenter suggested that the Draft EIR allows for the destruction of peregrine falcon nesting habitat after young have left the nests and assumes that plentiful habitat exists elsewhere for these birds. The project does not include any destruction of peregrine falcon nesting habitat; rather, MM BIO-5.3 requires the maintenance of a 300-ft buffer between construction activities and any peregrine falcon nest until the young have fledged. Construction can then occur within the buffer (i.e., closer to the nest). However, as the only potential peregrine falcon nesting habitat is on electrical transmission towers that will not be destroyed by the project, no loss of potential peregrine falcon nesting habitat will occur. Furthermore, because of the abundance of such towers throughout the South Bay, the low number of South Bay towers currently occupied by peregrine falcons, and the fact that peregrine falcons are not even known to have nested on the site, it is true that potential nesting sites similar in quality and type to those present on the project site are plentiful in the South Bay.

The commenter requests evidence that peregrine falcons do not prefer to nest in the same sites in consecutive years. This species often does nest in the same location year after year. However, the project has taken a very conservative approach to dealing with this species given that no nesting by peregrine falcons is known to have occurred on any project-area towers, in anticipation of the possibility that nesting may occur on the site in the future. If peregrine falcons nest on towers on the site, there is no expectation that project development will result in the abandonment of an occupied territory with implementation of MM BIO-5.1 through MM BIO-5.3.

COMMENT I-9: ***Geology:*** Mitigation GEO -1.1 requires further study and then construction of rigid or deep pile foundations. Are these types of foundations feasible for single-family houses? If not, liquefaction impact should be considered significant an unmitigable.

RESPONSE I-9: The Draft EIR discussion of project building design is relatively general in nature, commensurate with the amount of project detail available at the Specific Plan level. For this reason, the Draft EIR (Section 3.7) identifies that further geotechnical study will be required at the time project-specific developments are proposed in order to evaluate the location and project-specific geotechnical impacts and appropriate mitigation measures. The types of engineering design and construction techniques described in MM GEO-1 are widely used for all types of development, including single-family homes, to remedy unstable soil impacts similar to those of the project site. For this reason, the Draft EIR concludes that the impact will be mitigated to a less than significant level. There is no evidence to suggest that a single-family home constructed on the Project site and employing those types of engineering design construction techniques would remain be subject to significant liquefaction impacts.

COMMENT I-10: ***Aesthetics:*** The visual drawings of post-project conditions included in the Aesthetics section do not accurately portray post-project conditions, but are actually an artist's rendition of a buildings obscured by full-grown trees. Please provide actual photo-simulations showing the views in the photos both upon completion of the project and, if desired, after ten years.

RESPONSE I-10: The illustrative drawings included in the Draft EIR provide just one possible development option based upon the land use plan and design guidelines in the Specific Plan. It is noted in the Draft EIR that the illustrative views do not identify the high voltage transmission towers and lines and the proposed tower modifications. The analysis in Section 3.10.3.2 of the Draft EIR was not solely based upon the illustrative drawings, as the drawings were provided to give the reader a rough depiction of how the Specific Plan would appear once fully developed. It should also be noted that the Draft EIR concludes that the Specific Plan would result in a significant, unavoidable, aesthetic impact, due to the visual change resulting from project development. The discussion in Section 3.10.3.2 adequately evaluates the visual impacts from development of the Specific Plan and no photo-simulations are required for inclusion in the EIR.

COMMENT I-11: ***Flooding:*** The assessment of flooding impacts inappropriately relies on 2009 FEMA 100-year flood maps that don't include any sea level rise component and incorrectly concludes that "the proposed Specific Plan development would not subject housing to 100-year flood hazards. CEQA case law cautions against use of significance criteria that are not protective of the environment (see, for example, *Berkeley Keep Jets over the Bay v. Board of Port Commissioners).* Yet the DEIR relies on flood hazard maps that are intended not for impact assessment rather for insurance purposes. Those maps are especially deficient because they ignore perhaps the greatest likely source of flooding in the project area, namely sea level rise.

While the EIR does include a summary of sea level rise in the cumulative impact section, it then fails to require mitigation for impacts assumed (possibly erroneously) after 50 years, and also fails to add the anticipated two feet of storm surge (acknowledged in that section) to the sea-level rise estimates. This results in an inadequate assessment of likely future flood hazards. Further, on December 8, the National Academy of Sciences published a new analysis showing that sea level rise is occurring faster than previously projected and could reach .75 to 1.9 meters by 2100 (http://www.sciencedaily.com/releases/2009/12/091207165252.htm). This is nearly twenty inches higher than the highest estimate uses in this DEIR.

The EIR should assess the potential impacts of sea level rise on flooding, both from the Bay and from stormwater that may back up in local drainage channels during heavy rainfall events and higher bay tides/sea levels. Given that there are a range of sea level rise estimates, the EIR should either bracket its impact assessment with the upper and lower sea level rise estimates, or just use the worst case estimate in its evaluation of this topic. Absent this information, this EIR fails to adequately address an important potentially significant impact.

RESPONSE I-11: The Draft EIR based its significance criterion for flood hazard assessment on the "Environmental Checklist Form" from Appendix G of the *CEQA Guidelines,* specifically checklist item IX (g) which asks if the project would "place housing within a 100-year flood hazard area *as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map* or other flood hazard delineation map." [emphasis added]

As such, using the most current FEMA (federal) Flood Insurance Rate Maps is entirely appropriate. (It is noted for clarity that the currently effective FIRM for Newark is dated August 3, 2009, which was published subsequent to the Notice of Preparation. However other than a three-foot vertical datum shift, new flood hazard mapping is essentially identical to flood hazard mapping used for the preparation of the Draft EIR.)

The following excerpt from the CEQA Guidelines section 15126.5 (Consideration and Discussion of Significant Environmental Impacts), as as adopted by the California Resources Agency on December 30, 2009 is also noted:

> "(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, *the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they*

> *exist at the time the notice of preparation is published*,…the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) *as identified in authoritative hazard maps*, risk assessments or in land use plans addressing such hazards areas." [emphases added]

The effects of global climate change on potential increases in San Francisco Bay levels and the resulting potential future flood risk to the Specific Plan area are described in the Cumulative chapter of the Draft EIR, (Section 4.0 *Cumulative Impacts*.)

Please refer to Master Response 1 regarding sea level rise for a discussion of impact assessment. More specific to this comment, however, the Draft EIR consistently treats storm surge as additive to mean sea level rise when assessing potential future flood hazards. That is, sea level rise is treated as a shift in the future vertical datum and is the same as equivalent land subsidence. Review of the literature and in particular documents that show maps of areas subject to future base flood inundation after sea level rise,[4] the professional hydrologists retained by the City have concluded that this is the best methodology available. Further, the analysis in the Draft EIR includes a range bracket of upper and lower sea level rise estimates.

The reference provided in the comment above links to a "Science Daily" article which reports a summary of the actual NAS article, *Global Sea Level Linked to Global Temperature* (Vermeer, Martin and Stefan Rahmstorf, doi: 10.1073/pnas.0907765106). This article shows that the full range of projected sea level rise of 75 to 190 centimeters quoted by "Science Daily" is outside of the statistical fit of data. The NAS authors provide a table summarizing the sea level rise ranges by the year 2100 for different IPCC emission scenarios using their methodology, and the value ranges from 81 centimeters to 179 centimeters, with a maximum model average increase in sea level of 143 centimeters, or 56 inches which compares to the BCDC adopted maximum rise of 55 inches by 2100. The latter estimate is discussed in the Draft EIR as a "high end" estimate of sea level rise.

COMMENT I-12: ***Public Services***

Water: The water supply assessment uses the wrong baseline in assessing project impacts. That assessment compares the project's water demands to projections of water demand on the City's UWMP. However, CEQA requires that the comparison be made to existing conditions. The EIR has tables showing water demand, but not supply. Please show how the project's impacts would be less than significant in a drought period, where supplies are already considered insufficient.

RESPONSE I-12: The water supply assessment does not use the wrong baseline in assessing project impacts. The Draft EIR estimates the total water demand (from a baseline of zero current usage) for the project and the Alameda County Water District (ACWD), in their Water Supply Assessment (WSA), and has

[4] The Pacific Institute, "California Flood Risk: Sea Level Rise; Milpitas" (Map), Oakland, CA, 2009.

compared that demand to the previous estimates for water demand at the site contained in ACWD's Urban Water Management Plan (UWMP). Both of these future development scenarios have been evaluated in the UWMP in terms of additional water demand over existing conditions. The water demand is then compared to the future projected water supplies, both for normal and drought (critical and multiple-dry year) conditions, in accordance with the requirements of California Water Code Section 10910. Given the uncertainties of future water supply, the ACWD has identified possible mitigation measures that the project may be required to implement that would off-set 100 percent of its water demand (Draft EIR p. 257). The WSA assessment provided in the Draft EIR is adequate and consistent with CEQA. Refer also to Response N-41.

COMMENT I-13: **Schools:** The schools analysis acknowledges that the project's student generation would exceed the capacities of some local schools, based on six-year-old-data. However the DEIR fails to analyze whether additional schools (beyond the one proposed as part of the project) would be necessary to house these students, and, if so, what the impacts to the physical environment might be of constructing those schools. While it is correct that an EIR can not require additional schools fee, this does not relieve the EIR of the requirement to analyze and disclose the project's impacts on schools, including the impacts of new required school facilities, locations of potential schools sites, and other school-related impacts, including increased transportation of students.

RESPONSE I-13: The proposed 600-student elementary school site would provide capacity for all of the Specific Plan residents, as well as the surrounding neighborhood. The Draft EIR discloses that, according to the School District, the middle school that will serve the Project has sufficient capacity, while the high school was over capacity. The Draft EIR indicated that an increase in demand for school facilities would occur. Because the School District did not identify a need for a new school as a result of the Project, the Draft EIR appropriately included the appropriate method of offsetting the project's impact to school facilities under CEQA, namely, the payment of school impact fees.

COMMENT I-14: **Parks:** The EIR states that Newark has a standard of 3.5 acres of park per 1000 residents. This would result in a project demand of about 12 acres of park for the 3427 estimated new residents. The EIR then inexplicably states that the provision of 5.5 acres of parks and trails not meeting the City's minimum park size would meet the project's needs. It also indirectly suggests that use of the school field and golf course, neither of which would be dedicated parks land, would somehow offset this shortage. Please clearly describe how the project would be providing the necessary park acreage in the required size.

RESPONSE I-14: Park uses are proposed within the residential areas Sub-Areas A, B, and C. In Sub-Area A, 12 acres are reserved for the school and park uses. Sub-Areas B and C would each have small nature parks supporting the residential developments in those areas. Sub-Area D will provide up to 100 acres of open space and recreational uses. Together, these park spaces would provide the necessary park acreage for the Specific Plan to comply with the City's park standards.

COMMENT I-15: Conclusion
As described above, this DEIR has a number of substantive flaws that fail to comply with CEQA analysis and disclosure requirements. These flaws must be rectified and the DEIR recirculated.

RESPONSE I-15: Please refer to responses I-1 through I-14. The questions and opinions raised in the comment have not identified any new significant impact, nor do they indicate that the proposed Specific Plan would result in impacts of substantially increased severity than identified in the Draft EIR. Further, the comments have not identified a project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen significant environmental impacts of the project. For these reasons, recirculation of the Draft EIR is not warranted under CEQA Guidelines Section 15088.5.

J. RESPONSE TO COMMENTS FROM CITIZENS COMMITTEE TO COMPLETE THE REFUGE, JANUARY 18, 2010:

COMMENT J-1: Based upon our review of the DEIR we find it contains serious omissions, inaccuracies, and flaws that must be rectified to comply with California Environmental Quality Act (CEQA) requirements. For these reasons, as well as those articulated in the letters submitted by Mr. Grassetti and Ms. Beahan we urge the City to correct the fatal flaws of this DEIR and re-circulate the revised document.

Project Areas: Area 3 is approximately 296 acres and the portion of land bounded by Mowry Avenue, Cherry Street, Stevenson Boulevard, and the Union Pacific Railroad tracks. The current general plan for this portion of the specific plan is Special Business Park, Public Open Space, and Public Institutional. The current Specific Plan proposal only addresses re-designation of 77 or 78 acres (both numbers are used) located in the southeastern-most corner of the site.

Area 4 is approximately 560 acres (552 and 559 acres also used) of land surrounded by Mowry Avenue, the Union Pacific Railroad tracks, Stevenson Boulevard and the border between the City of Newark and the City of Fremont, and Mowry Slough. The general plan states Area 4 is planned for high-quality low-density residential use, and 18-hole golf course, and open space. The General Plan notes "if a golf course is found unfeasible then another recreation use that is acceptable to the City shall be provided as a condition of development."

Introduction: The DEIR concisely and adequately describes the requirement of the California Environmental Quality Act (CEQA) to prepare and EIR and the function of an EIR – that it is an "informational document, which will inform public agency decision makers, and the public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project" §15121(a). Also that certain types of "projects" such as those pertaining to the adoption or amendment of a comprehensive zoning ordinance or local general plan, don't require an EIR be as detailed as an EIR on a specific project that might follow §15146 (b). And that:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enable them to make a decision *which intelligently considers environmental consequences*. An evaluation of the environmental effects of the proposed project need not be exhaustive, but the *sufficiency of an EIR is to be reviewed in light of what is reasonably feasible*.

Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection, but *for adequacy, completeness, and a good-faith effort at full disclosure*. [emphasis added]

The DEIR fails to meet these requirements as we will discuss in sections to follow.

Uses of this EIR: While it appears the intent is that this DEIR serve as a "program" level DEIR, the City has not clearly defined what types of subsequent actions would trigger the requirement of preparing a "project" level EIR.

- Would changing the use of Sub Area D from "golf course" to some other form of recreation e.g. active sports fields trigger the preparation of an EIR? p. 12 of the DEIR states, "A conditional use permit will also be issued to allow the construction of a golf course *or another recreational use in Area C.* Other uses, depending on the type of recreation, could introduce different types and magnitudes of environmental impacts and should require the preparation of a "project" level EIR.
- Would a residential development proposal within the Specific Plan area that would fill 39 acres of wetlands trigger the necessity to prepare an EIR? The responsibility for submitting mitigation and monitoring plans is deferred to future developers – not only does this piece-mealing of the review of impacts versus mitigation, it also prevents meaningful public review and comment unless additional CEQA review is triggered.
- Would alignment of the Bay Trail along the Mowry Slough levee trigger preparation of a supplemental EIR?

Please provide some clarification.

RESPONSE J-1: The EIR for the Specific Plan is a project-level EIR. At the time a detailed golf course design or other form of recreation for the Specific Plan is proposed, the use will be evaluated by the City to determine what, if any, additional environmental review is necessary.

At the time subdivision plans are developed, they shall be reviewed for compliance with the Specific Plan. As described in the Draft EIR Section 1.2, *Uses of the EIR* (p. 2), Tentative maps will be evaluated to determine if the proposed action is consistent with the Specific Plan and if any additional environmental review is necessary under CEQA. Detailed design of the wetland mitigation components on site, and description of specific off-site wetlands for mitigation, if needed, will be required to meet the detailed and quantified mitigation standards contained in the Draft EIR, and will be identified as part of the future entitlement process and environmental review. Wetland fill and mitigation will also require separate discretionary approvals from the various state and federal resource agencies, which through their separate permitting processes could require different and/or additional mitigation beyond that required by the Draft EIR.

The alignment of the Bay Trail is outside the scope of the Specific Plan project. The Bay Trail will be subject to its own separate environmental review.

The commenter asks the City to revise and recirculate the Draft EIR to correct alleged deficiencies under CEQA.

Section 15088.5 of the State CEQA Guidelines requires a lead agency to recirculate an EIR when "significant new information" is added to the EIR after public notice of its availability, but before its certification. "Significant new information" requiring recirculation is generally information showing that a new significant environmental impact or a substantial increase in the severity of an environmental impact would result from the project. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies, or makes insignificant modifications in an adequate EIR. As reflected in the Final EIR's good faith responses to all comments received on the Draft EIR, no significant new information has been added to the EIR, and therefore the City has determined that recirculation is not required.

COMMENT J-2: Also under this section is the statement: "Acceptance and maintenance/access easements along levees and/or permit to move tide gate(s)," by Alameda County Flood Control and Water Conservation District (ACFC&WCD).

- What levees does this statement refer to? All levees both internal to the project site and along Mowry Slough? Please clarify what is meant by this statement. Who would be performing the "maintenance," what tide gates are being referred to, and who would be responsible for moving them? It is our understanding that an agreement was reached between the owners of one of the parcels (Peery and Arrillaga) and the State of California and State Lands Commission in 1994 regarding the ownership of the tidal lands immediately adjacent to their property, whereupon Peery and Arrillaga quit claimed all their right, title, and interest in the waterways and lands lying westerly of the outer toe of the existing levee adjacent to Mowry Slough. In return, the State granted specific easements for drainage (this does not remove the requirement for CWA authorization) in very specific locations. If tide gates are to be moved outside the areas defined in the 1994 agreement, permits may be required from State Lands Commission.

RESPONSE J-2: Currently, some of the levees within the Specific Plan area are privately owned. The privately owned levees would not necessarily be transferred to the ACFC&WCD. They are not certified or utilized for flood control. There is a potential for levees to be transferred to the ACFC&WCD in the future, but this is subject to further discussions and permits from various agencies. Future design may require adjustments to the tide gates and any modifications would require approval and coordination with the ACFC&WCD.

COMMENT J-3: **Project Description:**
2.4.1.2 Area 3 – General Plan Amendment and Rezoning: In response to the Notice of Preparation (NOP) for this EIR, Regis Homes submitted comments dated May 23, 2007. In their comment letter, Regis Homes specifically requested the City consider allowing a Medium Density Residential (MR) General Plan designation for their property that is currently zoned industrial and has been vacant since 2001. The 8.75 acre parcel is situated between the Silliman Center and the Ohlone College campus and across the street from existing residential housing and Newark Memorial High School. Other sites not owned by the New Technology Park Associates are included within the proposed specific plan that would require rezoning.

- Why has this site been left out when the property owners have submitted a specific request to be included? The site could provide additional housing capacity for the City and should be considered for rezoning to residential or residential mixed use.

RESPONSE J-3: The comment does not raise any questions regarding the Draft EIR or the adequacy of the Draft EIR. As noted in the Draft EIR Project Description (Section 2.2, *Historic Overview and Background*) the proposed Specific Plan is a City-initiated project and is a required step in the planning and implementation of Area 4 in conformance with the City of Newark General Plan Update of 1992. Land use designation changes were considered by the City as part of the Specific Plan process and redesignation of the 78-acre of Area 3 was incorporated into the Specific Plan. Several public meetings were held during the Specific Plan process (Draft EIR p. 8) at which the community provided input to the land use concept plan alternatives.

COMMENT J-4: **2.4.2.1 Area 4 – Vehicular and Pedestrian Access:** An Emergency Vehicle Access (EVA) road will be provided to access development in Area 4 via Mowry Avenue through a locked gate.

- We assume all emergency personnel will have access to the key to the gate, but how would residents gain access through the gate in the event of an emergency?

RESPONSE J-4: Emergency personnel will provide vehicle access through the gate to residents, as needed, in the event of an emergency.

COMMENT J-5: **2.4.4.1 Area 3 and 4 Street Standards and Improvements: Stevenson Boulevard:** The information provided in the DEIR is inadequate to assess the potential impacts of this component of the Specific Plan on existing wetlands, aquatic habitat, and listed species.

- Will all construction of the proposed flyover fully avoid any impacts to the Pacific Commons/Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) mitigation area immediately southeast of Stevenson Blvd.? If not impacts to the biotic resources of this area must be clearly stated and mitigation measures proposed.
- The EIR states "No seasonal wetland, aquatic freshwater marsh, brackish marsh, or detention basin habitat occurs within the 78-acre project footprint of Area 3. Therefore, proposed development in Area 3 will have no impacts to these habitat types." Does this include the wetland mitigation area to the northwest of Stevenson Blvd.? If not, what impact will the Stevenson Boulevard flyover have on the existing wetland mitigation site? Impacts and mitigation measures must be provided.
- If no impacts within these existing wetland mitigation areas, the boundaries of the construction area much be clearly delineated to avoid adverse impacts to the mitigation areas on either side of Stevenson Blvd.

RESPONSE J-5: The Stevenson Bridge construction will not impact the Pacific Commons Preserve. As discussion in Section 3.5.3.2 of the Draft EIR, it was assumed that the entire development areas in Area 4 (Sub-Areas B, C, and D) would be developed and impacted. It was also assumed that no grading, fill, vegetation removal, or other such direct impacts will occur outside the potential development envelope shown with one exception: the Stevenson Boulevard flyover will result in impacts to a small area in the southeastern corner of

Area 3, between the stormwater wetlands and the eastern edge of the existing Stevenson Boulevard right-of-way. There will be no direct impacts to the stormwater wetlands. Any potential indirect impacts have been accounted for in the impacts and mitigation section of the Draft EIR.

COMMENT J-6: **2.4.5 PG&E Towers and Lines:** Please note if "crane access" is required for the use of a vertical cage or waist cage to raise the 230 kV tower (Number 0/5) adverse impacts to endangered species habitat may occur and consultation with the U.S. Fish and Wildlife Service must occur in advance of any work in the area. In addition, seasonal prohibition of work may be required to avoid "take" of listed species.

RESPONSE J-6: The environmental analysis associated with the modifications of the towers including construction has been analyzed in the Draft EIR. Consultation with USFWS will be completed if necessary.

COMMENT J-7: **Stockpiling of fill and construction of fill pad:** The EIR does not adequately describe:

- where fill will be stockpiled (a generalized stockpile envelope could suffice),
- whether New Technology Park Associates will begin stockpiling material immediately (grading permit required),
- a more definitive period of time the stockpiled material might be stored than "for longer periods of time",
- whether wetlands fill will be necessary to access the stockpile site(s)
- who will be responsible for regularly inspecting the efficacy of mitigation measures to prevent mobilization of stockpiled soils into adjacent (?) wetlands
- at what point filled to be stockpiled will be tested for "quality" (this information will need to be made available to the USACE and RWQCB prior to placement in wetlands)
- sources of fill other than the Irvington BART station (and e.g. whether soil from the undergrounding of the Hetch Hetchy pipeline would even be suitable)
- What happens with the remaining fill if all the parcels in Area 4 aren't developed? Does it remain on-site in stockpiles forever or would it eventually be sold? Impacts of removing the fill on the newly developed and surrounding neighborhoods would require environmental review and mitigation measures.

RESPONSE J-7: As described in on page 162, stockpiling would only occur in non-jurisdictional non-wetland areas within Area 4; there are no jurisdictional wetlands in Area 3, therefore, stockpiling could occur anywhere throughout Area 3. Stockpiling can occur after issuance of a grading permit and City of Newark necessary approvals including stockpiling mitigation measures listed on pages 162 and 163 of the Draft EIR. There is no determined time frame for stockpiling at this time, as it will depend upon the availability of suitable fill in the area. The grading permit will require inspections of the fill material, prior to determination that it is suitable, and for what area of the site. Required biological mitigation measures for soil stockpiling are included on page 162 of the Draft EIR.

The source of fill is anticipated to be from Bay Area construction sites, not limited to the BART tunneling project. It is unknown at this time where other suitable source sites may be located. This is why a average haul distance of 10 miles was used in the estimate of soil hauling vehicle exhaust.

The fill would be placed in accordance with a permit from the City. If fill is imported to the project area it would not be removed from the project areas without further environmental review.

COMMENT J-8: The DEIR also fails to give any indication of how introduction of fill to the site might occur.

- Will it be all at once over the entirety of Sub Areas B and C in advance of the sale of land to developers of residential housing?
- Will it be in phases and if so, will the fill begin at the Union Pacific Railroad tracks and move out towards Mowry Slough as developers purchase the lands?
- Or will it occur in a more haphazard fashion and is there any possibility the western edges of Sub Area B could be developed prior to Sub Area c?

Answers to questions inform decision makers and the public about how undeveloped lands may be conserved or fragmented, which in turn influences the viability and value of any mitigation.

RESPONSE J-8: Refer to Response J-7. Fill will be imported on to the site as it is available from other construction sites and rough grading would occur. It may occur prior to the sale of the land to residential developers. The exact locations of fill on the upland (non-jurisdictional wetlands) and phasing of the fill are not known at this time. All grading or stockpiling would occur under a permit from the City of Newark with review by relevant agencies.

COMMENT J-9: **3.1.3.1 Newark General Plan** – The General Plan (GP) dates back to 1992. The Land Use Goals and Policies must be updated to reflect current and developing recommendations for mitigating impacts of climate change, e.g. the siting of new development closer to existing transportation hubs to reduce vehicle miles traveled, embracing and incorporating the recommendations of the 2009 California Climate Change Strategy, etc. The GP goals and policies do not reflect new information regarding site geology, hydrology, or extent of wetlands.

Transportation Goals and Policies:

Goal 1: Provide for a quality environment with *smooth, convenient*, and *safe* vehicular travel throughout Newark.

The proposed project is located at the southernmost boundary of the City. The project will introduce 5 million car trips per year. There is no convenient public transportation to Area 4 – Area 4 is at least ½ mile away from an existing bus stop, and close to a mile away from the nearest shops, etc. It is unlikely parents in Area 4 would walk their child to school in Area 3 or to the Silliman Center. There is a public safety issue of children crossing over an at grade railroad crossing at Mowry Avenue to access the playing fields or recreational facilities of the Silliman Center. There is only one access road in to the development with only two lanes of travel.

RESPONSE J-9: The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT J-10: Open Space and Conservation Goals and Policies:

- **Goal 1:** Encourage the conservation and preservation of unique open space and conservation of resources that help to define the quality and character of the City.

Policy b. Program 10: Evaluate every land development proposal for potential contributions to the Newark open space system. Identified unique open space, vegetation, animal habitat, or natural resource areas should be protected where possible and appropriate.

Policy b. Program 11: Avoid *development of any lands identified as having natural hazards* where potential risk cannot be reduced to acceptable levels through mitigation measures (e.g. flood hazards areas, lands with severe potential for earthquake shaking, liquefaction, etc.).

- Goal 2: *Acknowledge the San Francisco Bay National Wildlife Refuge acquisition and its value as a community resource*.
- Policy a: *Support actions to preserve and maintain the lands of the Refuge.*

The Specific Plan is in conflict with the City's Open Space and Conservation Goals and Policies. Development of over half of Area 4 is inconsistent with Goals 1 and 2. DESFBNRW – has identified most of Area 4 as a Priority 1 acquisition area because of the unique ability of the site to provide endangered species habitat, a diversity of habitats including pickleweed wetlands, seasonal wetlands, open water, transition zone to uplands and uplands. Proximity of the site to the Ohlone College campus provides a unique opportunity to incorporate the site into educational programs.

Proposed development would severely impact on site resources (human disturbance, use of chemicals, run-off from streets, nuisance species, light pollution, etc.) and resources on adjacent Refuge lands.

RESPONSE J-10: The conformance of the proposed Specific Plan with the City General Plan Open Space and Conservation Goals (Goal 1, Policy a Program 5 and Policy b Programs 10 and 11 and Goal 2 policy a) is described on page 35 of the Draft EIR. The Refuge and 1990 Refuge Boundary Expansion is also discussed in Draft EIR Section 3.1 *Land Use* (p. 28) and in Section 3.5 *Biological Resources*. Further information regarding the relationship between the Refuge Expansion and the proposed Specific Plan is provided in the Response L-11 and in the text revisions provided in *Section 4.0* of this Final EIR document. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT J-11: Environmental Safety Goals and Policies – Policy a. Program 4. Monitor information about the "greenhouse effect" and the possible resulting rising sea level and, when determined necessary, take or support actions to protect the Newark community from potential adverse impacts of such phenomenon.

This Specific Plan is inconsistent with the 2009 California Climate Adaptation Strategy – it is at best reactive, as opposed to the recommendation:

Consider project alternatives that avoid significant new development in areas that *cannot be adequately protected* (planning, permitting, development, and building) from *flooding*, wildfire and erosion *due to climate change*. The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is *to carefully consider new development within areas vulnerable to inundation* and erosion. *State agencies should generally not plan, develop, or build any* ***new significant structure*** *in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure*. However, vulnerable shoreline areas containing **existing** development that have regionally significant economic, cultural, or social value may have to be protected, and in-fill development in these areas may be accommodated. State agencies should incorporate this policy into their decisions and other levels of government are also encouraged to do so. (CS-2; OCR-1 and 2; W-4 and 9; TEI -2 and 7)."[emphasis added]

RESPONSE J-11: The Draft EIR evaluates the effects of bringing development to an area susceptible to flooding hazards, both as such hazards exist today and may occur in the future, in accordance with the recently adopted CEQA Guidelines Amendments addressing analysis and mitigation of greenhouse gas emissions pursuant to SB97 (December 2009). The discussion of existing flood hazards is evaluated in Draft EIR Section 3.8 *Hydrology, Flooding, and Water Quality* (Draft EIR p. 191) and the evaluation of possible future flooding hazards is provided in Draft EIR Section 4.0 *Cumulative Impacts* (Draft EIR p. 273). Consistent with the 2009 California Climate Adaptation Strategy, the Draft EIR evaluates a project alternative that avoids new development in areas that cannot be protected from future flooding due to climate change. It is the *No Development in Area 4 and Higher Density Area 3 Alternative* (Draft EIR p. 313).

It should be noted that the CEQA process is not considered the mechanism for implementing the 2009 California Climate Adaptation Strategy noted in Master Response 1 and Response J-10. The California Natural Resources Agency, in their Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions pursuant to SB97 (December 2009), described the relationship between the CEQA Guidelines and the California Climate Adaptation Strategy (Adaptation Strategy). They stated how there were key differences between the Adaptation Strategy and CEQA.

> "First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the Adaptation Strategy focuses on how the State can plan for the effects of climate change. CEQA's focus, on the other hand, is the analysis of a particular project's greenhouse gas emissions on the environment and mitigation if impacts from those emissions are significant. Given these differences, CEQA should not be viewed as a tool to implement the Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies."

COMMENT J-12: 3.1.4 Land Use Impacts:
3.1.4.1 Thresholds of Significance:
For the purposes of this EIR, based upon Appendix G of the CEQA Guidelines, a land use impact is considered significant if the project will:

- conflict with any applicable habitat conservation plan or natural community conservation plan; or
- conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect;

The Specific Plan is inconsistent with Public Law 100-56, the recommendations of the Goals Project, and the recommendations of the 2009 California Climate Adaptation Strategy.

Public Law 100-556 the "Land Protection Plan, Potential Additions to San Francisco Bay National Wildlife Refuge, Alameda, San Mateo, and Santa Clara Counties, September 1990." The congressionally approved Refuge Expansion Boundary expressly identified large portions of Area 4 as Priority One for acquisition because of the ability of these lands to provide for the preservation and enhancement of highly significant wildlife habitat and for the protection of waterfowl and sensitive and rare wildlife species, including species known to be threatened with extinction.

The Baylands Ecosystem Habitat Goals Report is described as "The concept to develop regional wetlands goals is recommended by the Governor's "California Wetlands Conservation Policy" and by the Comprehensive Conservation and Management Plan (CCMP) of the U.S. Environmental Protection Agency's San Francisco Estuary Project. It is also supported by most of the agencies and non-governmental groups with major planning, operational, or regulatory interests in Bay Area wetlands."

The Goals Project Report (June 2000) states in the section of "Unique Restoration Opportunities," "…There are opportunities to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper ends of Newark, Plummer, Mowry, and Albrae Sloughs." Under the "Recommendations" section the report states, "…Protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail duck club. The report also recommends that tidal influence be restored on this site and that seasonal wetlands be improved.

The 2009 California Climate Change Strategy states:

p. 51 Wetland habitats from the Sacramento Valley southward to the Salton Sea and the tidal marshes of San Francisco Bay also provide essential wintering habitat for hundreds of thousands of birds as they migrate north and south along the Pacific Flyway.

p. 52 Moreover, *inland migration is frequently hindered by development* such as bulkheads, seawalls, roads, and buildings. Continued growth and development in coastal areas will only *increase the direct pressure on remaining habitats and make inland migration more difficult*. Sea-level rise, especially at the increasing rates projected for the 21st century, may result in the loss of substantial areas of critical habitat for a variety of coastal species.

p. 74 Habitat Protection – The state should identify priority conservation areas and recommend lands that should be considered for acquisition and preservation. The state should *consider prohibiting*

projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones.

The strategy should likewise encourage projects that protect critical habitats, fish, wildlife and other aquatic organisms and connections between coastal habitats. The state should pursue activities that can increase natural resiliency, such as restoring tidal wetlands, living shoreline, and related habitats; managing sediment for marsh accretion and natural flood protection; and maintaining upland buffer areas around tidal wetlands. *For these priory conservation areas, impacts from nearby development should be minimized, such as secondary impacts from impaired water quality or hard protection devices.*

The public law, policy, and strategy listed above emphasize the importance of Area 4 from a regional perspective. The mixture of wetlands, aquatic, and other habitats including uplands are important for sustaining current populations of waterfowl and listed and sensitive plant and wildlife species, as well as providing a hedge for these species and habitats in the face of sea level rise.

The Land Use Impacts proposed in Area 4 by the Specific Area plan are in conflict with regional, in fact State, policies and strategies, and the adverse impacts are significant.

RESPONSE J-12: None of the plans, legislation, or reports identified in the Comment constitute either (a) a habitat conservation plan or natural community conservation plan, or (b) an applicable land use plan, policy, or regulation *of an agency with jurisdiction over the project*. Therefore, Section IX of Appendix G of the CEQA Guidelines is not relevant.

Nevertheless, the Draft EIR Appendix E, Biological Resources Report, includes information regarding the plans noted in the comment. To clarify the land use discussion of the Draft EIR text, some of this information has been added in the text revisions of *Section 4.0* of this document.

As described in the Draft EIR (p. 28) the southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future. The Environmental Assessment prepared for the "Potential Additions to San Francisco Bay National Wildlife Refuge (March 1990)" states the following:

> *Until lands are acquired, they do not become a part of the refuge. Lands identified herein as possible for acquisition may or may not be acquired depending on price, state of development or proposed development, character modifications, opportunities to protect through other mechanisms, and other considerations. This environmental assessment is not intended to be used to influence general plan, zoning, or other land use determinations by State and local government.*

Pre-approval of lands for addition to the Refuge does not grant the Refuge any jurisdictional authority over those lands or signify that the lands become part of the refuge until they are acquired. As noted above, the pre-approval

was not intended to influence local government land use decisions. Much of the land designated for addition to the Refuge is within Specific Plan Sub-Area E, 244 acres proposed for wetland preservation, wetland creation/enhancement, or continued agricultural operations. Proposed Specific Plan Sub-Area E uses are generally consistent with the intent of the Don Edwards San Francisco Bay National Wildlife Refuge.

The Draft EIR Biological Resources Report, Appendix E, includes a discussion of the Baylands Habitat Goals Project (1999). As described in Draft EIR Appendix E, the Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and the area of the (former) Pintail Duck Club." Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands. The Goals Project is a compilation of regional wetland goals and recommendations. The Goals do not require any landowner, public or private, to modify current land uses or practices, or to sell land. They have no regulatory authority, and are designed only to inform public and private efforts aiming to improve the Bay Area's wetland habitats. While the proposed Specific Plan includes development of the upland areas of Area 4, Specific Plan Sub-Area E designates 244 acres proposed for wetland preservation, wetland creation/enhancement, or continued agricultural operations, which is generally compatible with the Baylands Habitat Goals Project.

COMMENT J-13: **San Francisco Bay Trail:** "The future Specific Plan developer(s) of Area 4 will be required to provide an easement for the Bay Trail to run along the top of the levees that form the western edge of the project, if that ultimately is the preferred alignment. The Specific Plan is consistent with the Bay Trail and does not conflict with efforts to complete the Bay Trail."

- We have repeatedly requested this alternative route be abandoned. We have done this in writing during the scoping period for the DEIR; we have made these comments publicly during community meetings. This will have a significant adverse impact on Biological Resources e.g. significant increase in human disturbance, noise, nuisance species on listed species and wetlands. Please refer to the discussion of Biological Resources for additional comments. If this alternative is proposed for implementation a "project" level EIR should be required, any necessary "improvements" to the privately owned levees described, and all environmental impacts identified.

RESPONSE J-13: The Bay Trail project is a separate project from the Specific Plan project and will be subject to environmental review based on the selected alignment. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT J- 14: **3.2 Transportation:** Were vehicle trips associated with the transport of school-aged children to and from school included in the traffic calculations? For all school levels?

Were vehicle trips associated with transporting students to school from Area 4 included in the calculations? Were calculations done to account for parents driving their students from the Specific Plan area to other elementary schools should an elementary school not be constructed in Area 3? This could have a significant impact on congestion on surface streets during the morning commute.

Footnote 24, page 49, "The traffic counts that comprise the basis of the traffic analysis were taken in 2006-2007, when vehicle traffic was heavier than under current 2009 conditions. No major development has occurred in Newark since the traffic counts were taken, so the analysis is still considered valid and a conservative estimate of traffic impacts of the project."

The numbers used as background should reflect current traffic counts – 2009 conditions. Utilizing the 2006-2007 data when traffic was heavier would tend to make the projected impacts of the proposed Specific Plan, almost 5 ½ million car trips per year appear less significant.

RESPONSE J-14: The project traffic generation reported in the EIR includes traffic from the transport of school age children. Trip estimates were provided by the publication *Trip Generation*, 7th Edition, by the Institute of Transportation Engineers. The proposed elementary school in Area 3 is projected to generate over 770 daily trips. In addition, the trip generation from the proposed 1260 single family homes includes traffic for all purposes, including trips to employment, shopping centers, and schools.

The traffic study for the project was undertaken in 2006 and 2007. Since that time, there have been no additional approved or pending projects reported by the City of Fremont or the City of Newark. In addition, according to Caltrans, traffic volumes have generally decreased between 2006 and 2008 (2009 data is not yet available) in the project vicinity. This is probably due to depressed economic conditions. According to Caltrans data, average daily traffic on I-880 at Mowry Road was approximately 191,000 vehicle trips in 2006. In 2008, it dropped to 187,000 vehicle trips. Lower traffic volumes reduce delay and improve level of service (LOS). For this reason, it is likely that the delays at intersections and freeway segments are better today than as described in the project EIR. Because level of service impacts only occur when the LOS standard of each roadway segment or intersection is exceeded, improved baseline levels of service and lower baseline delays would reduce the likelihood of project impacts. Therefore, it is believed that the use of older counts resulted in a slightly more conservative analysis. Having a worse (i.e., more congested) baseline does not minimize the effects of the project traffic; on the contrary, when the baseline traffic condition is closer to an unacceptable level of service (LOS) fewer project trips need to be added to an intersection to cause a significant impact.

COMMENT J-15: **3.3 Air Quality:** The assumptions made when analyzing the impacts of haul trucks bringing fill to the project site are seriously flawed. If it is assumed 2.1 million cubic yards of fill will be delivered to the site with only 100 truck trips per day, then trucks with 20 cy yard capacity, working only 5 days per week would require four years to bring that amount of fill to the site, and that time frame may be conservative if two-feet of freeboard are required to reduce air quality impacts.

RESPONSE J-15: As described in Appendix C, Addendum to the Air Quality Study, "Full build out of the proposed project was assumed to begin in 2011 and last for about 5 to 8 years. Construction would probably last longer, but a more aggressive schedule was assumed for this (impact) analysis (of construction vehicle emissions), to avoid under prediction of emissions. All grading activities were assumed to occur in the first two years." It is acknowledged that actual hauling of soil would likely take longer than two years, but the shorter duration was assumed to provide a conservative estimate of construction vehicle emissions. The text of the Draft EIR has been revised to clarify this assumption.

COMMENT J-16: The EIR fails to address the fundamental flaw of the Specific Plan that is locating a large development at the edges of the city, away from city services and amenities, and away from major public transportation hubs. Rather than attempting to reduce vehicle miles traveled a true indicator of public transit-pedestrian-bicycle friendly development, the DEIR proposes mitigation measures that either still focus on automobile travel as the main mode of transportation (reducing LOS by widening streets, including dedicated turn lanes, etc.) while proposing public transit mitigation measures that are may not result in reduction in Greenhouse Gas Emissions (GGEs) because they do not provide for actual public transportation, rather the facilities associated with public transit (e.g. bus stop shelters, etc.).

The Specific Plan shall incorporate the following measures, which would reduce transportation-related emissions. The measures listed in below are expected to include implementation of appropriate TCMs. Incorporation of these measures would reduce the impact to a less-than-significant level.

- Improve existing or construct new bus pullouts and transit stops at convenient locations along Cherry Street and Stevenson Boulevard. Pullouts shall be designed so that normal traffic flow on arterial roadways would not be impeded when buses are pulled over to serve riders. Bus stops shall include shelters, benches and posting of transit information;
- Appropriate bicycle amenities shall be included. This would include bike lane connections throughout the project site. Off-site bicycle lane improvements shall be considered for roadways that would serve the project;
- The City and project proponents shall *explore* and *implement feasible* means to bring transit or shuttle service to Area 4; [emphasis added]

These mitigation measures, while they may sound good on paper, have little value in reducing the GGEs of the Specific Area plan when it is estimated only 3% of the residents will ride bicycles, and only 12 people from the neighborhoods ride a bus during peak hours, if buses continue to be available. Nor does "exploring" or "implementing *feasible*" transit or shuttle service to Area 4 ensure this will actually occur.

Therefore, implementation of these mitigation measures cannot be assumed to reduce the GGE contributions of the Specific Area plan to a level that is less than significant.

RESPONSE J-16: The City does not consider the proposed Specific Plan development, including Area 4, to be sprawl. On the contrary, the City notes that development of Areas 3 and 4 constitutes infill development that is close to jobs, transportation facilities, and infrastructure. Regionally speaking,

Newark and the project area are within 15 miles of the job centers of Fremont, Milpitas, North San Jose, Hayward, and Palo Alto.

In addition to the mitigation measures that encourage alternative transportation modes, all development allowed by the proposed Specific Plan will meet, at a minimum, the current Title 24.11 California Green Building Standards Code or the Building Standards Code in effect at the time of building design. All development will also meet Title 24 Part 6, the 2008 Building Energy Efficiency Standards, effective January 1, 2010, or the energy efficiency standard in effect at the time of building design. In addition to the energy efficiency provided by Title 24.11, measures are included in the project to minimize water use in plumbing and irrigation (Draft EIR pp. 268-269). The new 2009 codes give California the most advanced building standards in the United States, and require the following:

- Significant improvements in water usage for plumbing fixtures
- Specify household and landscape water conservation reductions of 20 percent for homes
- Set 15 percent stronger requirements for energy savings than currently enforced. These energy savings are found through a combination of more efficient appliances, better insulation, and more efficient windows.
- This code also encourages the use of recycled materials in carpets and building materials, identify a number of improvements to air quality, and suggest various site improvements, including parking for hybrid vehicles and better storm water plans.

The text of the Draft EIR (p. 268) has been revised to clarify this issue, (refer to Section 4.0 *Revisions to the Text of the Draft EIR*). It should be noted that the Draft EIR does not conclude that the mitigation measures would reduce the GCC impact to a less than significant level. The project's contribution to GCC is considered significant and unavoidable (Draft EIR page 297).

COMMENT J-17: **3.4 Noise:** The DEIR fails to identify, analyze, or mitigate the impacts of noise or vibration on wildlife. Construction and post-construction activities may "harass" sensitive wildlife species, as well as migratory, and nesting birds by disrupting normal roosting, feeding, breeding, or nesting behaviors. Studies have revealed noise can impact a species ability to communicate with potential mates or can increase an individual's susceptibility to predation. This analysis should be prepared and the results circulated for public review and comment.

Vibration – The DEIR fails to discuss construction impacts of soil compaction, whether vibration impacts will result from compaction activities, and how adverse impacts of the vibration generated on wildlife will be mitigated.

RESPONSE J-17: Construction-associated activities, including noise but also movement of heavy equipment and ground vibrations, are expected to result in some impacts to wildlife use of the site. However, wildlife using the site is already

exposed to occasional loud noise such as occurs when trains pass the site, and there are numerous examples of areas around San Francisco Bay where wildlife, particularly waterbirds, have habituated to loud noise and other disturbance. Such examples include:

- Coyote Creek Reach 1A waterbird pond and South Coyote Slough (San Jose): heavily used by waterfowl, shorebirds, and gulls even though it is adjacent to Newby Island landfill entrance, Interstate 880 traffic noise, and recycling facility that uses noisemakers to attempt to deter nuisance birds

- San Jose-Santa Clara Water Pollution Control Plant (San Jose): supports large numbers of waterfowl, shorebirds, and other birds despite frequent movement of heavy equipment throughout the plant

- Pond A16, New Chicago Marsh (Alviso): supports large numbers of waterfowl and other waterbirds, including nesting terns on islands and nesting snowy plovers in salt pannes, despite its proximity to active railroad tracks and recreational use of surrounding levees

- Shoreline Park (Mountain View): Shoreline Lake, the Coast Casey Forebay, Charleston Slough, and the Palo Alto Flood Control Basin support large numbers of waterbirds and marsh birds despite very heavy use by pedestrians and cyclists

- Palo Alto Baylands (Palo Alto): supports high densities of a variety of waterbirds and marsh species despite heavy recreational use and its proximity to an adjacent landfill, water treatment plant, and airport

- South Bayside System Authority Plant (Redwood City): ponds adjacent to this water treatment plant, and encircled by a road with an adjacent dog park, support very high densities of waterfowl and shorebirds, as well as nesting terns on islands and nesting herons and egrets in ornamental trees around the plant, despite plant noise and frequent movement by trucks.

While there may be some reduction in wildlife use of areas very close to construction zones during construction as a result of noise impacts, wildlife species are expected to resume the use of these areas to the extent described in the Draft EIR following the completion of construction. This temporary, less than significant impact has been added in the text revisions to the Draft EIR, *Section 4.0* of this Final EIR.

COMMENT J-18: **3.5 Biological Resources:** We would like to commend the level of effort that went into identifying on-site resources.

Land Use Goals and Policies:

GOAL 2, Policy d. Support preservation of the lands of the San Francisco Bay National Wildlife Refuge, and protection of San Francisco Bay and bay lands.

Program 7. Support the activities of Federal, State, and regional agencies to preserve the existing lands of the San Francisco Bay National Wildlife Refuge.

Open Space and Conservation Goals and Priorities

GOAL 2 Acknowledge the San Francisco Bay National Wildlife Refuge acquisition, and its value as a community resource.

Policy a. Support actions to preserve and maintain the lands of the San Francisco Bay National Wildlife Refuge (SFBNWR).

The Specific Plan area is in conflict with the above cited goals and policies. The plan does not support the goals of preserving and maintaining the lands of the Refuge.

The Specific Plan states:

While the City of Newark General Plan has identified development that is projected to occur within Area 4, this area has also been identified for its ecological value by regional planning efforts. The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future. The Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the (former) Pintail Duck Club." Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of the few places in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands. Upland habitats provide a buffer or transition area upslope from wetlands and marshes. Where such upland transition zones are located adjacent to tidal marsh, they provide important refugia for tidal marsh species during high tides that inundate most of the marsh plain. Even in nontidal areas, such upland habitat can provide refugia for wetland species during periods of flooding. (Appendix A, p. 16)

And

...The value of Area 4 in providing upland transition zones adjacent to tidal wetlands has also been identified by the Baylands Ecosystem habitat Goals Report (1999), a report of habitat recommendations prepared by the San Francisco Bay Area Wetland Ecosystem Goals Project, a consortium of nine state and federal agencies, including the San Francisco Estuary Institute.

We concur with this assessment. Lands such as those identified for acquisition were included within the Refuge Expansion Boundary because of the scarcity of this habitat within the acreage of the original Refuge acquisition and its importance in preserving the biodiversity of the bay ecosystem. The Specific Plan proposal would consume most of the uplands habitat present within Area 4. Depending upon what figures one uses, either the information from the body of the text of the DEIR

or the information from the Specific Plan there could be approximately only 53.5 acres of uplands habitat remaining if all of Sub Areas B, C, and D are developed. That is a mere 21% of the total undeveloped uplands in Area 4. Wetland creation is proposed in this upland area to off-set the losses of up to 85.6 acres of wetlands/waters habitat. Lastly, the remaining uplands in Area 4 would be located between the levees along Mowry Slough and the wetlands to be preserved and/or the development envelope leaving this area vulnerable to human disturbance, nuisance species, light and noise pollution, etc. thereby reducing its habitat value for species attempting to move upslope away from rising sea levels.

Thus, the Specific Plan will not support actions to preserve and maintain the lands of the [Don Edwards] San Francisco Bay National Wildlife Refuge and is in conflict with the Land Use Goals and Policies of the General Plan.

p. 117 – We concur that land management practices of frequent and ongoing disturbance has resulted in reduced habitat values. This is an artificial condition and habitat values would improve if agricultural habitats in particular seasonal wetlands were not frequently disced.

We also question whether (p.120) discing within the past three years of areas that have supported pickleweed cover isn't a violation of the Clean Water Act and Endangered Species Act, as areas that support pickleweed clearly are not in agricultural production and therefore should not qualify for agricultural exemptions. We are also extremely concerned that areas that were previously dominated by pickleweed but have been disced have been subsequently invaded by Russian thistle.

RESPONSE J-18: Please refer to Responses J-10 and J-12. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT J-19: 3.5.2.4 Jurisdictional Waters of the U.S./Waters of the State
We concur a Section 404 Clean Water Act permit from the U.S. Army Corps of Engineers (USACE) will be required for the placement of fill in wetlands/other waters of the U.S. In addition, certification or waiver will be required from the San Francisco Bay Regional Water Quality Control Board (RWQCB) under Section 401 of the Clean Water Act.

The proposed project is clearly not "water dependent," therefore, under the 404 (b) (1) Guidelines (40 C.F.R. 230.10) the applicants must rebut the presumption that a practicable alternative exists that is less environmentally damaging. The preamble to the Guidelines states that it is the applicant's responsibility to rebut this presumption. The Memorandum of Agreement between EPA and the Corps concerning mitigation under the CWA 404 (b)(1) Guidelines (Mitigation MOA) states:

1. Section 230.10(a) allows permit issuance for only the least environmentally damaging practicable alternative. The thrust of this section on alternatives is avoidance of impacts. Section 230.10(a)(1) requires that to be permittable, an alternative must be the least environmentally damaging practicable alternative *(LEDPA)*. In addition, Section 230.10(a)(3) sets forth rebuttable presumptions that 1) alternatives for non-water dependent activities that do not involve special aquatic sites are available…

2. Minimization. Section 230.10(d) states that appropriate and practicable steps to minimize the adverse impacts will be required through project modifications and permit conditions.

Sequencing requires the applicant must first *avoid* impacts to wetlands, next *minimize* those impacts, and only after avoidance and minimization of impacts has occurred, compensate for any unavoidable impacts. However, as wetlands are considered "Special aquatic sites" and it is presumed a less damaging practicable upland alternative to placing fill in wetlands exists.

USACE Permit Authorization: p. 73 of Appendix E, Biological Resources Technical Report states, "A permit from the USACE (*either a Nationwide Permit* or an Individual Permit, depending on the impact) will be required from the USACE for any *Project-related impacts* to jurisdictional Waters of the U.S."[emphasis added]

Due to the regional environmental importance of Area 4, the complexity of issues that must be balanced (e.g. wetlands vs. uplands, endangered species and their habitats, etc.) it would be appropriate to submit an application to the USACE for the entirety of Area 4. We recognize that phasing will pose a problem, but clearly all of the development within the boundaries of Area 4 is inter-related. Certainly a precedent exists as both the San Francisco and Sacramento Districts have processed Clean Water Act authorizations for specific area plans.

Piece-mealing of project impacts is prohibited under the Clean Water Act and the National Environmental Policy Act (NEPA). The USACE definition of "Independent utility can be found in the Nationwide Permit definitions, "A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility." All projects within Area 4 will be dependent upon the establishment of a fill pad and utility infrastructure ranging from the establishment of the Stevenson Blvd. flyover to the installation and hook up of the storm drain system, electrical, etc. As such submittal of individual permit applications including nationwide permit authorization requests would be considered piece-mealing and should be prohibited.

Similarly it is not possible to determine if adverse impacts to listed species (USFWS) or wetlands and waters (USACE and Environmental Protection Agency – EPA) are adequately mitigated if the review is piece-mealed.

Furthermore, due to the regional significance of the site, the large amount of wetlands fill proposed, and the complexity of competing resource needs, it would be appropriate for the Corps to prepare an Environmental Impact Statement (EIS) for the Specific Area plan.

RESPONSE J-19: The comment does not raise any questions regarding the Draft EIR or the adequacy of the Draft EIR. The City and the Draft EIR acknowledge that separate NEPA environmental review and further coordination with the appropriate regulatory agencies and compliance with their separate permitting requirements will be necessary for the development of Area 4 if wetland fill is proposed. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT J-20: **Thresholds of significance:** Please refer to the discussion under 3.1.4.1 Thresholds of Significance under Land Use Impacts. As we stated earlier, we believe the Specific Plan

conflicts with established regional planning for maintaining habitat diversity as well as recent State strategies for preserving biodiversity in anticipation of sea level rise impacts. The impacts of the Specific Plan on buffer areas adjacent to tidal wetlands, i.e. seasonal wetlands and uplands transition zones and uplands is significant and unmitigated.

RESPONSE J-20: Please refer to Responses J-10, J-12, L-11, and Master Response 1. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT J-21: The EIR is fatally flawed – Inadequate information provided:
Indirect Impacts:
Impacts of Alteration of Site Hydrology on Avoided Wetlands and Associated Species

The DEIR discusses some impacts to the hydrological regime of the site that might alter the extent and quality of unfilled wetlands. For example, p. 91 of the DEIR states:

The Project is expected to affect hydrology by 1) increasing impervious surfaces and thereby increasing the rate and amount of runoff entering undeveloped areas, 2) decreasing the amount of water entering undeveloped areas with the addition of the golf course features that will most likely retain additional water through the evapotranspiration of large expanses of grass, and 3) adding nuisance flows into undeveloped areas during the dry summer months. These hydrologic alterations could affect the wetland and marsh habitats that will not be directly filled during site development.

However, the DEIR fails to discuss the impacts of groundwater pumping for the golf course on existing wetlands of high value. Page 11 of Appendix G – Hydrology states:

Recharge of the seasonal wetland and marsh habitats near the Pintail Duck Club from groundwater seeps occurs in mid-to late-summer. Evidence of this recharge from groundwater seeps includes bubbling water and the presence of a greater extent of surface water and hydrophytic vegetation in areas near the former Pintail Duck Club during the late summer months as compared to water levels in the early spring or summer, as observed in the summers of 2006, 2007, and 2008.

And page 14, of that appendix states:

Before reclaimed water is available, the golf course will be irrigated using an existing onsite well with an estimated demand of 490 acre-feet per year. This well will draw from ACWD's managed groundwater resources in the Niles Cone without placing a burden on the District's potable water production facilities.1 Therefore, the project will have a ***less-than-significant*** impact on groundwater supplies or areas of groundwater recharge.

But provides no assessment of what if any impacts groundwater pumping will have on Area 4 seasonal wetland and marsh habitats near the Pintail Duck Club.

The DEIR must also give some indication of the areal extent of indirect impacts, the number may be conservative, but based upon a "worst case scenario" what is the areal extent of indirect impacts that would require mitigation?

RESPONSE J-21: The existing on site well draws water from a deep underground aquifer that is located far below the localized groundwater associated with the seeps and

springs on site that support the high value wetlands. The vast majority of wetlands on the property are supported by incidental rainfall captured within slight topographic depression. Regarding the quantification of indirect impacts to wetland habitats resulting from an alteration of the existing surface hydrologic conditions, based upon the conceptual nature of site planning associated with the Specific Plan level, it was not possible to accurately determine the areal extent of indirect impacts. Thus, the approach taken in the prescription of mitigation measures associated with this potential impact was to require incorporation of multiple measures, which, if implemented, would avoid the impact entirely.

COMMENT J-22: **Nuisance species:** The DEIR provides a section that describes some of the potential impacts of invasive plants species and preserved, created, and enhanced wetlands, but provides no such discussion of nuisance species. The DEIR admits nuisance species such as domestic pets and feral cats may pose problems for existing wildlife populations, but fails to identify the suite of likely nuisance species or to suggest mitigation measures to reduce their negative impacts on wildlife species in general and listed and sensitive species in particular. For example, the Specific Plan depicts picnic areas overlooking wetlands habitat, but the DEIR fails to discuss the attractiveness of trash cans to nuisance species like raccoons, gulls, corvids, etc. or what measures will be implemented to prevent access to garbage, etc.

The DEIR mentions a mitigation measure requiring dogs to be on leash along the levees, but does not mention how this issue will be addressed for other areas of the development, nor how it will be enforced.

Page 141 of the DEIR states:

Domestic pets, cats in particular, may stray from the project's residential areas and may depredate these potentially breeding special-status species or their nests. Non-native mammals are likely to increase on the project site following development. These species may compete with or prey on some of these special-status species. As discussed below under *Impacts to Sensitive Habitats and Species from Recreational Disturbance*, golfers and visitors may go beyond established recreational areas and access the ACFC&WCD and Mowry Slough levees which may disturb, crush, or degrade habitat for these species. Planting of trees within the golf course or residential areas will provide additional perches and nesting sites for raptors that may prey on these special-status species.

If on-site mitigation for impacts to wetlands, waterbird foraging habitat, and special-status species habitat is provided per measures to mitigate other project impacts, such mitigation will increase the extent and quality of nesting and/or foraging habitat for these special-status species, restoring the project's adverse effects to some extent.

There is no mention of specific mitigation measures dealing with feral cats, gulls, corvids, Canada geese on the golf course, etc. Rather the DEIR concludes that because additional high quality habitat will be provided through mitigation and enhancement these significant adverse impacts will be less than significant.

See the discussion below regarding compensatory mitigation that explains why such a determination cannot be made.

Please add a section to the DEIR identifying nuisance species that are likely to occur and mitigation measures that are enforceable and effective to ensure nuisance will not have a significant adverse impact on wildlife species in general and listed and sensitive species in particular.

RESPONSE J-22: Potential nuisance species may include non-native species such as black rats (*Rattus rattus*) and Norway rats (*Rattus norvegicus*), urban-adapted natives such as raccoons (*Procyon lotor*), gulls, common ravens (*Corvus corax*), and American crows (*Corvus brachynchos*). Please refer to Response -1 regarding the potential effects of nuisance predators on more sensitive species and regarding the revision of the EIR to incorporate a measure to reduce the potential for nuisance species to prey on sensitive species or to be attracted to or subsidized by development on Areas 3 and 4.

COMMENT J-23: Compensatory mitigation – wetlands, waters, species:
Pursuant to §15121(a) and §15146(b) of CEQA, the DEIR does not provide decision-makers or the public a clear understanding of the location or acreages of habitat in which compensatory mitigation could be implemented for wetlands and species. Thus decision makers and the public are unable to determine if the mitigation measures purported to reduce significant adverse impacts to a level that is less than significant are realistic and capable of being implemented.

The DEIR proposes 1.5:1 replacement of seasonal wetlands that may be created/enhanced on-site, off-site, mitigated through the purchase of mitigation credits, etc. Mitigation ratios cannot be ascertained to be appropriate without understanding the opportunity to evaluate the:

- likelihood of success of implementation (e.g. does sufficient hydrology to maintain the created wetlands without detriment to existing habitats, etc.),
- the landscape context in which the habitat would be created (e.g. for salt marsh harvest mouse habitat is upslope escape habitat available free from human disturbance and nuisance species impacts and in an area that wouldn't make the mouse susceptible to predation?),
- the surrounding land uses (e.g. open space or residential? isolated or corridors available? Etc.)
- nature of habitats that might be converted from one type to another
- proximity of off-site mitigation to project site
- in-kind vs. out-of-kind mitigation
- whether mitigation is being proposed for more than one type of impact in the same area (double-dipping mitigating for more than one impact in the same acreage is not acceptable – e.g. expecting seasonal wetlands to provide 50% burrowing owl foraging habitat)

The DEIR should clearly indicate the area and acreage available in which to create wetland habitat, where wetland enhancement might occur on-site given the current development envelopes, and how indirect impacts would be prevented from degrading the value of the mitigation creation and enhancement activities. Based on calculations from information provided in Appendix H, Part 1 and from the Specific Plan, it appears the amount of uplands available in which wetlands and sensitive species (e.g. burrowing owl) mitigation could occur would be approximately 53.5 to 59 acres.

Clearly this is not enough area in which to create 1.5:1 mitigation for loss of wetlands. The DEIR must provide more definitive and realistic mitigation measures, given the "worst case scenario" of up to 85.6 acres of wetlands fill and a currently unknown figure of indirect impacts:

- how much mitigation can occur on-site,
- where will it be located on-site (Mitigation squeezed between the development envelope and the outboard Mowry Slough levee may not provide adequate escape habitat for the salt marsh harvest mouse, may become inundated over time, may be subject to constant disturbance, etc.)
- how much will need to occur off-site,
- does land that could be acquired to mitigate the impacts of Specific Plan implementation actually exist within 10 miles of the project site along the eastern shoreline? It is our impression that most of the land from San Leandro down to Alviso are in some form of public ownership. Thus is this even a viable mitigation measure?
- Where would mitigation credits be purchased and for what habitat and species?

These are issues that are critical in determining the efficacy, long-term viability, and feasibility of the proposed mitigation measures in actually lowering the significant impacts of the project to levels that are less than significant. Without this information the DEIR cannot assert the adverse biological impacts are less than significant.

RESPONSE J-23: Please refer to Master Response 2 and Response E-3.

COMMENT J-24: Proposed mitigation measures are unenforceable or ineffective:
Page 141 of the DEIR states:

Maintenance activities around the golf course and residential areas, or golfers and residents, who enter natural areas, may unintentionally disturb or destroy nests. Although the project does not include the establishment or improvement of any formal trails along Mowry Slough, the number of people and domestic animals expected to access the levee along Mowry Slough will be greater following project development, subjecting pairs of these species nesting along Mowry Slough to more disturbance.

And

The DEIR mentions that implementation of the Specific Plan may result in more people accessing the levees and walking their dogs in these areas, more specifically that levee users may "bring dogs to these areas that may harass or prey on sensitive bird and mammal species." (p.154)

The DEIR proposes mitigation measures as follows:

Incorporation of the following measures will reduce special status species and sensitive habitat impacts to a less than significant level:

MM BIO-9.1: As the design of the golf course progresses disturbance by golfers of adjacent sensitive habitats and species shall be minimized. For example, high-use areas such as tees and greens shall be set back from the edge of the golf course, and broad rough/out-of-bounds areas shall occur along the interface between the golf course and sensitive habitats.

MM BIO-9.2: On the golf course, areas that are "out of bounds" (which will include the artificial burrowing owl burrow complexes and all natural areas that are not directly filled during golf course construction) shall be clearly marked as such, explaining the importance of preserving the ecological integrity of the adjacent natural areas. Signs will be erected along the ACFC&WCD levees and along Mowry Slough describing the ecological value of adjacent wetland areas and instructing users to stay

on the ACFC&WCD levee tops, stay out of sensitive habitats, and keep dogs on leashes. **(Less Than Significant Impact with Mitigation)**

Human disturbance of nesting birds can result in abandonment of nests and chicks, resulting in decreased reproductive success (Rodgers and Smith 1995, Carney and Sydeman 1999, USFWS 2001, Ruhlen and others 2003, Lafferty and others 2006). Disturbance can also lead to decreased abundance or behavioral alteration of non-breeding birds (Burger and Gochfeld 1991, Schummer and Eddleman 2000, Lafferty 2001, Burger and others 2004).

Signage has been demonstrated to be completely ineffectual in reducing trespass into areas supporting populations of sensitive or listed species. Recent studies by USGS scientist Kevin Lafferty at the Coal Oil Point U.S. Reserve in Santa Barbara (*2005 Final Report on the Western Snowy Plovers; Restoration of breeding by snowy plovers following protection from disturbance, Biodiversity and Conservation 92006) 15:2217-2230)* concerning human impacts to shorebirds on a beach showed that after a year of very adequate signage there was no improvement in the public's adherence to staying out of restricted areas. However, once a steward/docent program was in place on the beach, the public's compliance with restricted zones increased exponentially.
While a docent program may not be possible, monitoring of public compliance with signage and an enforcement program must be implemented.

Refuge staff have extensive experience with the issue of people along levee trails failing to comply with leash requirements. At Bair Island signage was posted regarding leash laws and the consequences should dog walkers fail to comply. A required % of compliance was posted, in addition volunteers provided information, consequences of non-compliance was advertised – no dogs allowed, and non-compliance was monitored. In the end, even with an extension of the monitoring period, the public failed to comply with the leash requirement, and dog walking may be prohibited once trails are reopened to the public (currently shut down for restoration work).

Unless some regular enforcement program is funded and implemented on a regular and frequent basis, access to the Mowry Slough levees should be prohibited.

Similarly, unless an enforcement program is funded and implemented for sensitive habitat areas on the golf course and elsewhere in the development, a determination cannot be made that the impacts of human disturbance have been reduced to less than significant levels cannot be made.

RESPONSE J-24: The commenter suggests that MM BIO-9.1 and MM BIO-9.2 are inadequate to reduce impacts to sensitive habitats and species to less than significant levels and cites studies indicating non-compliance with leash laws and interpretive signage intended to reduce similar impacts in other locations. The commenter suggests that a regular enforcement program be funded or that access to the Mowry Slough levees be prohibited.

It should be noted that the enforcement of areas determined to be "out of bounds" on the active golf course, will be maintained by golf course marshals who are hired by the golf course operator to enforce all rules and regulations associated with the operations and maintenance of the facility.

The City agrees that 100 percent compliance with such signage and regulations is not achievable or enforceable, and the Draft EIR did not

anticipate that MM BIO-9.1 and MM BIO-9.2 would fully mitigate indirect effects of recreational activities on sensitive habitats and species. However, the City disagrees with the implication that in the absence of a rigorous enforcement program, impacts of recreational activities and similar indirect effects on sensitive habitats and species will not be mitigated to less than significant levels, for several reasons:

- Design of the golf course to minimize the potential for entry of golfers into out-of-bounds areas, marking areas on the golf course as being out of bounds, and signage intended to reduce activities on levees (such as off-leash dogs and entry into sensitive habitats) are expected to have some level of effectiveness in reducing recreational impacts.

- Acknowledging that some residual indirect effect to waterbird use of habitat near recreational areas will occur, MM BIO-10.1 requires the creation of 9 acres of waterbird habitat at least 300 feet from development to compensate for the loss of some habitat value as a result of indirect disturbance.

- MM BIO-8.4 acknowledges that salt marsh harvest mouse/wandering shrew habitat in close proximity to developed areas, including the golf course, will receive some indirect disturbance and requires 2:1 habitat mitigation for all suitable habitat for these species located within 100 feet of residential and golf course development.

Collectively, these measures will reduce indirect effects of recreational activities on sensitive habitats and species to less than significant levels. It should also be noted that trails and other recreational areas abut sensitive species habitat in numerous areas throughout the South Bay, and to our knowledge, there is no evidence that human use of such trails has resulted in substantial adverse effects on the populations of sensitive species. Rather, there are a number of examples (including some of those listed in Response L-15) of locations in the South San Francisco Bay area where recreational activities occur immediately adjacent to sensitive habitats that are heavily used by a variety of wildlife species.

COMMENT J-25: 3.5 Biological Resources additional comments:
Mitigation measures for nesting peregrine falcons, raptors, loggerhead shrike, tri-colored blackbirds and bats do not provide for replacement of lost nesting/maternity roost habitat.

Buffer zones around sensitive species should be reviewed and approved by the California Department of Fish and Game (CDFG) and USFWS.

Environmentally Sensitive Area and exclusion fencing for the salt marsh harvest mouse and salt marsh wandering shrew should include installed and inspected daily by a qualified mammalogist. Use of weed whackers should be prohibited in areas where hand removal of vegetation is required … *hand removal…*

Mitigation ratios will be determined during Section 7 consultation (Biological Opinion process) with the USFWS for impacts to habitat of salt marsh harvest mouse and salt marsh wandering shrew. The mitigation and monitoring plan will require the approval of the USFWS, CDFG, USACE, and RWQCB.

If trucks must cross wetland areas, measures must be taken to reduce soil compaction, and before and after topography should be provided to the USACE and RWQCB to ensure flow of water across the landscape is not adversely impacted.

No night lighting should occur during construction.

p. 163 – Who will bear the responsibility of enforcing MM-BIO2.1 AND MM-BIO-2.2 to ensure stockpile soils do not migrate into adjacent wetland areas? Inspections of the stockpile mitigation measures should be conducted on a daily basis and should be monitored during and after rain events to ensure they are effective.

RESPONSE J-25: The commenter noted that replacement of lost nesting/maternity roost habitat is not proposed for peregrine falcons, raptors, loggerhead shrikes, tricolored blackbirds, and bats. Please refer to Response I-8 regarding potential impacts to peregrine falcon nests. No nesting habitat of that species, or of the tricolored blackbird, will be lost as a result of the project, and little nesting habitat for other raptors, loggerhead shrikes, or bats will be lost. The mitigation measures included in the Draft EIR were intended to avoid impacts to individuals of these species, but mitigation for lost habitat was determined to be unnecessary due to the low quality and/or extent of such habitat that would be impacted coupled with the regional abundance of such habitat.

The commenter suggested that buffer zones around sensitive species be reviewed and approved by the CDFG and USFWS. While the applicant will be consulting with these agencies regarding potential project effects on species subject to their regulatory jurisdiction, approval of buffer zones by these agencies is not necessary for CEQA compliance purposes. Similarly, the comment regarding the need for mitigation ratios to be determined during section 7 consultation with the USFWS and the need for approval of mitigation and monitoring plans by various agencies is noted; such approvals will be obtained during the separate regulatory permitting processes administered by those agencies, but these agencies' approvals are not needed for purposes of CEQA compliance.

Please refer to Response C-2 regarding the comment pertaining to the removal of salt marsh harvest mouse/wandering shrew habitat and to MM BIO-8.2 regarding the comment pertaining to the performance of such activities (including exclusion fencing installation) under the supervision of a qualified biologist.

Trucks or other vehicles will not be allowed to drive through any of the perennial wetlands on the project site. During the construction season, vehicles will be allowed to drive in seasonal wetlands that develop each year within the footprint of areas disked and planted to crops. These areas have

undergone vehicle compaction from decades of agricultural activities; this compaction has compressed the soil profile in many areas leading to the development of surface ponding and soil saturation.

Regarding the comment that no night lightings should be provided during construction, some lighting may be necessary for site security. Please refer to page 228, which describes the project's requirement to comply with General Plan Goal 3, Policy d, Program 10 regarding exterior lighting, and to page 241 of the Draft EIR for a discussion of lighting and glare.

With respect to the question regarding who will bear the responsibility of enforcing MM BIO-2.1 and MM BIO-2.2 to ensure that stockpiled soils do not migrate into wetlands, the ultimate responsibility for monitoring and enforcing such potential impacts lies with the City of Newark

RESPONSE J-26: 3.7 Geology and Soils:

3.8 HYDROLOGY, Flooding, and Water Quality: Please refer to the letter submitted on behalf of CCCR by Carol Beahan.

3.8 Hazards and Hazardous Material:

3.10 Aesthetics and Visual Resources: The DEIR fails to address the impacts of light pollution on wildlife species – the only mention of the biotic habitat is "No night lighting would be directed towards the undisturbed wetland areas." This single sentence fails to acknowledge significant levels of light pollution will be introduced by the neighborhoods, development infrastructure, and golf course facilities to an area that currently has low levels of artificial light.

Light pollution is documented to have serious adverse impacts for a wide range of wildlife ranging from invertebrates to mammals. It disrupts migratory patterns, foraging capabilities, predation, nesting, breeding, etc. (Longcore and Rich, "Ecological Light Pollution" Front Ecol Environ 2004, 2(4): 191-198). Longcore and Rich report the findings of Buchanan (1998 "Low-illumination prey detection by squirrel treefrogs," J Herpetology 32: 270-74) in which three different species of amphibians forage at different illumination intensities. As an example the squirrel treefrog (*Hyla* squirrela) forages only between 10^{-5} lux and 10^{-3} lux under natural conditions, while the western toad (*Bufo boreas*) only forages at illuminations between 10^{-1} and 10^{-5} lux.

Evidence suggests light pollution affects the choice of nesting sites in the black-tailed godwit, with choice locations being the farther away from roadway lighting (De Molenaar et al 2000, in Longcore and Rich). Buchanan found frogs he was studying stopped their mating calls when the lights of a nearby stadium were turned on.

Sufficient evidence exists that demonstrates artificial lights have adverse impacts on wildlife. The DEIR must estimate the increase in light levels that could occur as a result of the Specific Area Plan and propose mitigation measures that will reduce adverse impacts to on-site and adjacent wildlife populations.

The assessment of visual and aesthetic resources impacts fails to assess the impacts to the viewshed that will be experienced by pedestrians, bicyclists, and drivers along Cherry Street. While existing

development does partially block some of the views, the installation of sound barriers along Cherry Street will prohibit any remaining views across the bay.

RESPONSE J-26: Lighting of the natural areas within and surrounding the proposed development is expected to increase as a result of the project. However, this increased lighting is not expected to result in a substantial impact to wildlife using the site for several reasons.

First, the project includes measures to minimize spillover of light from developed areas into more natural areas. As discussed on page 241 of the Draft EIR, lighting fixtures would be directed downward, no night lighting would be directed toward undisturbed wetlands, and lighting on the driving range will be limited to ground lighting rather than the more standard (for a driving range) lighting on tall poles. Avoidance Measure VIS-1.1 includes additional measures that will be considered during design review to further minimize lighting impacts. Additionally, page 228 of the Draft EIR describes the project's requirement to comply with General Plan Goal 3, Policy d, Program 10 regarding exterior lighting. Collectively, these design and avoidance measures will limit the potential for and magnitude of light spillover into natural areas.

Second, although the site is largely undeveloped, it is located within an urban context. Wildlife using baylands areas in the South Bay are already subjected to indirect lighting from the urban areas that envelope the South Bay area, and they are thus already habituated to a certain degree of artificial lighting. In more remote areas that are not already subjected to urban lighting, an increase in night lighting could have more substantial effects by disrupting behavior of animals, potentially increasing predation on some nocturnal animals, and resulting in displacement of the most sensitive species from areas with increased lighting. However, increases in night lighting proposed by this project are not of such a magnitude compared with existing conditions, both due to the minimization measures described above and the urban surroundings of the site, that significant impacts to wildlife behavior or use of the project site as a result of increases in night lighting are expected.

High wildlife use of other urban sites in the South Bay, including many of the reference sites listed in Response J-17, indicates that the species that currently use the project site are able to tolerate or habituate to lighting associated with adjacent urban land uses.

For these reasons, increased lighting associated with the project is not expected to result in a significant impact to wildlife use of the site.

The Draft EIR does identify the impacts to the viewshed of Cherry Street. As described in the Draft EIR, views from Cherry Street looking across the site would be of two-story residential and public facility (school) uses, similar in scale and scope as the existing development on the east side of Cherry Street. Intervening development, in addition to the existing landscape berm along Cherry Street, will block any views that currently exist across Area 4 towards

the Bay. The Draft EIR does conclude that the project would result in a significant, unavoidable visual change to Area 4.

COMMENT J-27: **4.0 Cumulative Impacts:** [Please refer to the Climate Change discussion in the letter submitted by Carol Beahan on behalf of CCCR]

Please note a previous request: The EIR should analyze the cumulative impacts of the loss of upper tidal marsh habitat, transition zones, and uplands in proximity to the bay on the federally listed species and special status species that have been identified on the site or immediately adjacent to the site (e.g. salt marsh harvest mouse, burrowing owl). Note this comment from the South Bay Salt Pond Restoration Project FEIS:

> The land within the Authorized Expansion Boundary reflects the diversity of wildlife habitats that could be restored to tidal wetlands, brackish marsh, managed ponds, seasonal wetlands, vernal pools, grasslands, riparian, freshwater marshes and *adjacent uplands*…
> … Some lands outside the SBSP Restoration Project Area are more suitable for certain types of restoration than lands within the Project Area…
> … Some of these privately owned lands also provide opportunities to restore locally rare habitats (*e.g.,* riparian, seasonal wetlands, former duck clubs) that *are limited when considering only the lands within the Project Area*. [emphasis added]

RESPONSE J-27: Areas 3 and 4 are the largest remaining tracts of relatively undeveloped land in Newark. However, other proposed development in Newark includes the Dumbarton Transportation Oriented Development project in Newark Area 2, and additional development in Area 3 as part of the Ohlone College Campus. Additional development planned in the region includes the Patterson Ranch development proposal in northern Fremont, additional development within the Pacific Commons Area in Fremont (including the potential addition of a stadium and 2000 housing units as a part of the Oakland Athletic's proposed move to Fremont), and the conversion of infill sites and redevelopment of areas within the City of Fremont. Each of these projects will impact some of the biological resources that will be impacted by the Newark Areas 3 and 4 Specific Plan. In contrast, the South Bay Salt Ponds Restoration Project will provide habitat for a number of tidal habitat-associated species, including the salt marsh harvest mouse, salt marsh wandering shrew, and will include enhancement of managed ponds specifically for use by waterbirds.

In the absence of Project-specific mitigation, the impacts resulting from the Newark Areas 3 and 4 Specific Plan Project that are considered "less than significant with mitigation" would all contribute to cumulatively significance impacts in the region. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the Newark Areas 3 and 4 Project would be significant without mitigation. However, the mitigation measures prescribed for all of these impacts will adequately mitigate the Project's contribution to these cumulative impacts.

The project's impacts to wildlife movement and California tiger salamanders are negligible. Impacts to upland agricultural, ruderal, developed, and coastal

scrub habitats and associated species, and to habitat for certain breeding and non-breeding special-status species, are likewise minimal, and do not contribute to regional, cumulative impacts. As a result, no cumulatively significant biological impacts will result from this Project.

COMMENT J-28: 5.0 Alternatives Analysis: [Please note CEQA non-compliance issues in the letter submitted by Richard Grassetti on behalf of CCCR.] The DEIR states the "primary objective of the Areas 3 and 4 Specific Plan is to provide low density residential, a golf course, and/or recreational facilities, and land for a school for the current and future residents of Newark." And identifies the following specific project objectives:

- Through a General Plan amendment allow residential uses;
- Provide up to 1,260 units of low density residential uses (4.2 – 8.5 units per acre) in Areas 3 and 4;
- Provide high quality residential uses including a mix of executive housing types;
- Provide up to 189 below market rate housing units that are within the 1,260 total residential units;
- Provide land for an up to 600-student elementary school in Area 3 to serve both the Specific Plan development and neighboring residential;
- Provide vehicle access to Area 4 via a railroad overcrossing at Stevenson Boulevard;
- Provide and contribute toward community recreational facilities;
- Provide land for a golf course available to the public.
- *If a golf course is found unfeasible, then another recreation use that is acceptable to the City shall be provided as a condition of development*. (emphasis added)

The alternatives considered by the City include:

1. a "No Project Alternative" in which current conditions continue,
2. a "No Project Alternative" [perhaps more appropriately titled "Implementation of the Current General Plan"?] in which the existing General Plan would be implemented,
3. a "No Development in Area 4 and Higher Density Area 3 Alternative," in which an elementary school with a 600-student capacity and 1260 homes would be built within the 77-78 acres described in this DEIR,
4. a "Reduced Housing Alternative" in which the development of Area 3 would proceed as proposed in this DEIR, but no housing would be constructed in Area 4 – only a 120-acre golf course would be constructed designed to minimize impacts to wetlands,
5. a "No Golf Course Alternative" in which everything would be developed as proposed in this DEIR except that a passive park would replace the golf course and housing would not be condensed to minimize wetland fill and impacts to wildlife resources, but would remain as depicted,
6. and the "Location (Area 2) Alternative" that would presumably provide 1260 housing units but no golf course?

As was stated earlier, Regis Homes submitted comments dated May 23, 2007, in response to the Notice of Preparation (NOP) for this EIR. In their comment letter, Regis Homes specifically requested the City consider allowing a Medium Density Residential (MR) General Plan designation for their property that is currently zoned industrial and has been vacant since 2001. The 8.75 acre parcel is situated between the Silliman Center and the Ohlone College campus and across the street from existing residential housing and Newark Memorial High School. Other sites not owned by the

New Technology Park Associates are included within the proposed specific plan that would require rezoning. It is inappropriate that this request received no response in the DEIR.

This site could be incorporated with the 77-78 acres already described in this DEIR into an alternative that slightly reduces the number of housing units, still provides for a 600-student capacity elementary school, and has no development of Area 4. Some mixed-use component that would allow for development of a coffee shop/sandwich shop, laundromat, and other small scale amenities that could encourage pedestrian circulation within the neighborhoods, provide amenities for the Ohlone College Campus, while reducing most of the significant adverse impacts of the current Specific Plan. Portions of Area 4 might be suitable as passive recreation and Nature-Research Center that could benefit Ohlone College Campus and the Newark Unified School District. This would increase the recreational acres/resident ratio.

As mentioned in Richard Grassetti's letter the level of analysis provided reviewing the relative merits of the alternatives fails to comply with the Laurel Heights dictum and prevents decision makers and the public from understanding, evaluating, and substantively responding to the City's conclusions. Please provide a comparative discussion of the alternatives and including Alternative 7 "Reduced density in Area 3 – including the Regis Homes site, an elementary school, and some mixed-use amenities that would benefit the local community" as suggested above.

For all the numerous reasons we have cited above and for the reasons identified in the letters of Richard Grassetti and Carol Beahan, the DEIR as written contains numerous omissions, inaccuracies, and flaws and does not comply with the requirements of CEQA. We urge the City to address and correct these issues and to re-circulate the EIR.

RESPONSE J-28: The comment does not raise any questions regarding the Draft EIR or the adequacy of the Draft EIR. As noted in the Draft EIR Project Description (Section 2.2, *Historic Overview and Background*) the proposed Specific Plan is a City-initiated project and is a required step in the planning and implementation of Area 4 in conformance with the City of Newark General Plan Update of 1992. Land use designation changes were considered by the City as part of the Specific Plan process and redesignation of the 78-acre of Area 3 was incorporated into the Specific Plan. Several public meetings were held during the Specific Plan process (Draft EIR p. 8) at which the community provided input to the land use concept plan alternatives.

The inclusion of the 8.75 acre property then owned Saris Regis, would not significantly change the environmental impacts of the project, thus its inclusion as an alternative or provision of further discussion is unnecessary in the EIR. The concept of including this site in the project was discussed at numerous community meetings, ultimately it was deemed better to not include site in the project. Residential uses in this small area surrounded by a Community College and highly utilized sports fields is deemed to be inappropriate and designation of the property as a school site would have created negative financially issues, thus the site was not included in the project. Since the inclusion of this small site would not have reduced environmental impacts of the project it was not included in alternatives or discussed in the EIR

K. RESPONSE TO COMMENTS FROM WILDSCAPE ENGINEERING SERVICES FOR CITIZENS TO COMPLETE THE REFUGE, JANUARY 19, 2010:

COMMENT K-1: Wildscape Engineering Services (WES) was contracted by the Citizen's Committee to Complete the Refuge to review and comment on the adequacy of hydrology and water quality assessments provided in the Draft Environmental Impact Report (DEIR) and related technical reports for the Newark Areas 3 and 4 Specific Plan Project.

The comments are organized under the following five categories, (1) General, (2) Floodplain Modification, (3) Drainage Modification, (4) Wetland Impacts and (5) Climate Change and include the relevant significance criteria.

1. General

There is a general concern regarding the emphasis given to the City of Newark General Plan's (Plan) goals for Area 4 to have a high-quality, low-density use and an 18-hole golf course. The Plan was adopted almost 20 years ago and therefore didn't take into consideration more recent evidence of climate change and sea level rise expectancy and its related impacts to shoreline development and the importance of wetland and salt marsh habitat to water quality and special status species. The 1999 community rejection of the ballot measure to change Area 4's designation to conservation, open space, and agriculture was also many years prior to recently developed information regarding climate change and predicted sea level rise.

Since the City of Newark (City) is willing at this time to consider re-designating Area 3 from R&D High Tech Business Park (i.e. Special Industrial) to residential use for the purposes of the proposed project, we ask that the City also consider re-designating Area 4 from low density residential to either open space, conservation or a combination thereof given the potential for substantial environmental and hazardous impacts resulting from developing in such a hydrologically sensitive and flood prone area.

RESPONSE K-1: These comments are of the opinion of the commenter. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT K-2: **Floodplain Modifications**

Significance Criteria

- *Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map;*
- *Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.*

It is understood the vast majority of Area 4 is located within the FEMA 100-year floodplain with a general base flood elevation of 8 feet NGVD. The existing levees are not certified and would likely not meet certification requirements since much of their length doesn't provide the required freeboard.

For improved representation it is recommended that the FEMA base flood elevation contours be included on the Flood Zone Map (Figure 3.8-2). Also the DEIR references the 2000 FEMA maps, however a new FEMA map for the area became effective in August 2009 and should be incorporated into the analysis and the 100-year flood boundary shown on the figure should be corrected (i.e. some

of the boundary lines on the north and east side of Area 4 are shown as straight when those on the 2009 FEMA maps are curved).

In order to avoid any potential significant flooding impacts, the project proposes to use up to 2.1 million cubic yards of fill in Area 4 to raise the building pad elevations 10 to 14.5 feet in order to reach a minimum elevation of 11.25 feet NGVD to be out of the designated floodplain per City code requirements. This is a substantial alteration of the landscape in order to allow for residential buildings within an existing floodplain. The constructed drainage release points from the built out areas in Area 4 would be at elevations around 10 feet NGVD and there would be a continual reliance upon the pumping mechanism at the Area 4 outlet to Mowry Slough.

It was established in the DEIR that since all housing would be placed on fill above the FEMA base flood elevation that there would be no significant impact due to flooding. However, given the likelihood of the levees to fail in the near future combined with the potential for the raised building pads to settle over time and the reliance on mechanical means to continuously circulate water out of Area 4, a more comprehensive analysis should be undertaken. The supplemental analysis should examine the potential impacts to the integrity of the building pads if inundated and exposed to standing water for periods of time due to overtopped or breached levees, the potential for the proposed storm drain outlets in Area 4 to no longer function as a result of inundation and backwater under flood conditions, and the ability of the pumping mechanism to continuously operate under high water conditions.

RESPONSE K-2: The currently effective FIRM for Newark is dated August 3, 2009, which was published subsequent to the Notice of Preparation. Other than a three-foot vertical datum shift, new flood hazard mapping is essentially identical to flood hazard mapping used for the preparation of the Draft EIR. The vertical datum shift does not change the depth of the flooding hazards nor does it change the area of 100 year flood zone, therefore, this would not change any of the impact conclusions. Figures showing the 100-year flood plain under the previous FIRM (shown in the Draft EIR) and the currently effective FIRM are included in Section 4.0, *Revisions to the Text of the DEIR.*

Potential building pad settlement is a legitimate concern and discussed in *Section 3.7* of the Draft EIR with particular attention given in MM GEO-3.1 (pp. 185-186), but the possible failure of existing levees or the performance of the pumping system would have no impact on the base flood elevation, which is already based on the assumption of complete levee failure (or more to the point, FEMA assumes that those levees do not exist) without any pumping. Also, the standard of practice for the design of a grading plan is to account for long-term anticipated differential settlement and provide safe releases for storm runoff that function even without a working storm drainage system.

COMMENT K-3: **3. Drainage Modifications**

Significance Criteria

- *Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on-or off-site;*

- *Substantially alter the existing drainage pattern of the site or area, including the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site:*
- *Create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff;*

The proposed project plans to use the existing 42-inch diameter storm drain outfall that currently collects runoff from Sub-Area A within Area 3 and releases it to the Alameda Flood Control and Water Conservation District (ACFC/WCD) Line D. It doesn't appear that adequate analysis has been done to confirm that the existing storm drain and outfall has the remaining capacity and necessary outfall protection to accommodate increased runoff due to the roughly 65% increase in impervious area within Sub-Area A. Further analysis is recommended to determine if the existing pipe and infrastructure could accommodate the increased runoff and peak flows from the proposed development within Area 3 under different high tide and rainfall events and predicted sea level rise with or without additional modifications.

Drainage for Area 4, including Sub-Areas B and C assumes that approximately five storm drain outlets will be used to release water to Sub-Area E and ultimately convey to Mowry Slough via the existing ditches on the inboard side of the levee and interior drainage pump on the southwest end. There is no evidence of investigation as to whether the increased runoff from the proposed development can be adequately conveyed into Area E and ultimately pumped into Mowry Slough. Recommend that an analysis be done considering the increased impervious area's impact on peak runoff and runoff volumes under high groundwater conditions and what that may mean to proposed wetland habitat surrounding the developed areas (i.e. potential to create continuous aquatic conditions in more areas than existing) and whether or not a pump system will continue to work adequately under such an increased demand and alternating high tide conditions.

RESPONSE K-3: Hydrologic modeling used to assess impacts from development within Area 3 is described in Appendix G for Impact HYD-4 (pp. 16-17). Storm drainage systems would be designed to convey the estimated peak developed 10-year runoff from Area 3 of 30 cubic feet per second (cfs) to the twin 50-foot long 42-inch diameter reinforced concrete pipe (RCP) outfalls. (During a 100-year runoff event, the site is subject to shallow inundation from Line D overflows as shown in Figure 1-4 of Draft EIR Appendix G, with buildings padded up above the base flood elevation. The outfall would not function during periods when the stage in Line D precludes gravity flow.) The 10-year capacity of the twin RCP outfall is more than adequate as calculated below:

Low-point in adjacent cul-de-sac	10.8 feet NGVD
Coincident 10-year WSEL in Line D	8.0 feet NGVD
Available head	2.8 feet
Discharge velocity (30 cfs)	1.6 fps
Exit loss	0.04 foot
Friction loss	0.01 foot
Entrance loss	0.02 foot
Required head	0.07 foot

The dual 42-inch RCP outfall is generally oversized for the developed needs of Area 3 and it is noted that this outfall was originally sized for full site

development with an assumed runoff coefficient of 0.8.[5] A relatively low discharge velocity suggests that special outfall protection is not required. (Even discharging the estimated developed 100-year flow of 51 cfs, should Line D water surfaces be sufficiently low, results in a peak discharge velocity of only 2.7 feet per second.)

The City of Newark will be responsible for reviewing the designs of storm drainage conveyance systems that convey runoff from Sub-Areas B and C into Sub-Area E during the design-development phase. Slated for wetland preservation/enhancement or continued agricultural operations, Sub-Area E will act as a large flood storage area where flow conveyance is not a significant issue. Please review Draft EIR Appendix G (pp. 19-22) for a full analysis of the increase in storm runoff volume into Sub-Area E that would result from the proposed development within Area 4. Since the capacity of the existing pump is unknown and calculating that capacity through field testing is not feasible, the Draft EIR has evaluated the requisite change in pumping capacity needed to maintain existing levels of 100-year inundation within Sub-Area E. The Draft EIR concludes that only modest changes to pumping capacity and/or level settings are required for the pump system to work adequately with the increase in runoff. The Draft EIR further notes that inundation levels within the proposed wetland habitat can be managed. As discussed in the Draft EIR (p. 203) proposed development would not significantly impact groundwater levels.

COMMENT K-4: It is stated in Appendix G the Hydrology and Water Quality Report that development in Area 4 would have a less than significant impact to on-site flooding since increased flows from increased impervious areas are released directly to the Bay and won't affect Bay tides, which are the source of the 100-year flood elevation. But, has consideration or analysis been done over whether increased runoff from the impervious areas in Sub-Areas C and B could overrun the pumping system, particularly during extreme high tide or flood events and potentially back up into the wetland areas and even into the storm drain outfalls to Sub-Area B and C, in turn resulting in detrimental flooding of the mitigated wetlands and residential areas?

RESPONSE K-4: The impact of increased runoff from newly impervious areas in Sub-Areas B and C has been considered. Development within Sub-Areas B and C would be placed on fill at a minimum elevation of 11.25 feet NGVD in conformance with Newark ordinance. The levee between Sub-Area E and Mowry Slough, while not certified to NFIP standards, is protective to an elevation of about 9.5 feet NGVD. If this levee holds and the pumping system fails, Sub-Area E could eventually be inundated to an elevation of 9.5 feet NGVD before water would overtop the levee and pour into Mowry Slough. In this case, while the mitigated wetlands would be inundated, the residential areas would remain 18 inches above the maximum potential level of inundation. If this levee fails, pumping becomes irrelevant and the level of inundation within Sub-Area E will match the level of water in Mowry Slough, which is equal to the San Francisco Bay tide. The regulatory tidal base flood elevation is 8 feet NGVD and residential development would be more than 3 feet above the level of

[5] John Noori, Kier & Wright, personal communication.

inundation. It is also noted that periodic inundation of wetlands from extreme runoff is a natural condition in areas where there are no levees.

COMMENT K-5: Appendix G also states that an adequate system will be designed to utilize the existing pump outfall in Area 4 with possibly a different size and type of pump and therefore there will be a less-than-significant impact downstream of the outfalls. Increased pump capacity was also analyzed to determine feasibility to retain existing water levels in the ditches. What is not clear is if those analyses were also done in the context of extreme tidal events and whether there may be a significant impact to the areas upstream of the outfall in Area 4 if the pump is tasked with removing runoff during high groundwater and extreme tidal events.

RESPONSE K-5: Appendix G provides a pump sizing analysis that maintains existing inundation levels in the mitigated wetlands, assuming that is the "no impact" condition, and notes that those levels can be controlled to any desired design elevation through pump capacity and/or level settings. The design pumping capacity would be determined during the design of the mitigated wetlands. Groundwater that seeps into Sub-Area E would be pumped along with surface water runoff. Given the volume of available storage in the proposed wetland areas, groundwater discharge would not be problematic. Otherwise, the pump could be upsized. As stated on Page 8 of Appendix G, the current pump discharges water over the top of the Mowry Slough levee at an elevation that is higher than the highest tide. Therefore its operation is independent of tide conditions. It is true that newly created wetlands could be subject to tidal inundation if the outboard levees fail, or freshwater inundation should the pumping system fail as discussed previously. However this does not represent a change from existing conditions.

COMMENT K-6: **4. Wetland Impacts**

Significance Criteria

- *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;*
- *Have a substantial adverse impact on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to: marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrologic interruption, or other means.*

It is understood that an array of wetland types and shallow groundwater conditions occur in Area 3 and predominantly Area 4 due to the low elevations and proximity to the Bay and aquifers.

These existing freshwater and brackish wetlands and adjacent upland transitional zones are important habitat and are currently supported by sheet flow and groundwater seeps. The proposed exorbitant amount of fill, particularly in Sub-Areas B and C in Area 4, redirection of drainage patterns and pumping of groundwater in Sub-Area D in order to facilitate site development and support the golf course is expected to significantly alter the location, type, extent and duration of wetland areas that now exist and support several plant and animal species. Concern is therefore over the ability to "design" adequate mitigation wetland to replace what is lost given the significant number of variables that will be changed and could affect the type and size of wetland lost or modified. For example, given the large increase in impervious surface areas in Sub-Areas B and C there could be substantially more runoff volume that collects within Sub-Area E that does not infiltrate through the

low permeability soils and high water table and results in more aquatic habitat or larger areas with standing water for longer periods of time and possibly less salt marsh habitat important to the salt marsh harvest mouse than may be desired. Additionally, there may be a reduced opportunity for water quality BMPs given the inability to rely on infiltration within Sub-Area E and minimal available footprint within the created building pads.

The statement under MMBIO – 1.1, *"Temporary disturbance to and permanent loss of all wetland and aquatic habitat in Area 4 will be avoided to the maximum extent feasible"* is subjective and vague in regards to how temporary disturbance and permanent loss will be avoided and in what relative proportion to the existing wetland and aquatic habitat.

Mitigation measure MMBIO – 1.2A proposes creating wetlands and aquatic habitat within upland habitat that is currently disked and graded within Area 4 in order to mitigate for existing wetlands and aquatic habitat that are eliminated. It has not been demonstrated that adequate analysis has been done to show that the upland areas have the necessary soil composition, groundwater depths and hydrologic regime to make the pledge that this tactic will provide sustainable high quality wetland and aquatic habitat as required in order to provide adequate mitigation at a ratio of 1:1 and prevent any net loss of habitat functions or values. Additionally mitigation measure MMBIO-1.2 proposes enhancement of existing seasonal wetland habitat that is currently within agricultural production at a ratio of 0.5:1 by terminating farming activities, seeding and possibly grading. The question is will this area be able to truly be restored if pumping operations are continued in a similar fashion as present in order to provide vector and/or flood control?

There are two concerns regarding MM BIO-1.2A, *"A detailed mitigation plan shall be developed by a qualified biologist under contract to each future developer for individual development projects within the Specific Plan areas which result in direct impacts to wetland habitats. This plan will be submitted to and approved by the City of Newark prior to the initiation of grading within wetlands"*. (1) The first concern is in regards to the timing of the mitigation plan, given the significance of potential wetland loss and degradation and indirect impacts to the special status species that depend upon them. Approval of the Specific Plan insinuates that adequate wetland replacement and enhancement can be provided on site, however investigation and proof of that doesn't occur until after the plan is approved and just before grading is to begin. This is too late in the process and a more developed analysis and mitigation plan should be enacted before the Specific Plan is approved. (2) The second concern is regarding the designation of a qualified biologist, given the critical and underlying factors to support high quality wetland and aquatic habitat and intricate balance in terms of freshwater and brackish water inputs, it is crucial that a qualified hydrologist is also involved in the analysis and development of a mitigation plan and that the plan also include a hydrologic analysis in order to determine that site selection, wetland basin size and depth will result in adequate and sustainable support for the 1:1 replacement qualification and/or targeted plant and animal species required.

In regards to mitigation measure BIO-2.4, how will the measures described to minimize perennial ponding within the existing seasonal wetlands be enforced? For example the measure states that nuisance runoff will be minimized and controlled, proper irrigation using only the amount of water that can be taken up by the plants shall be implemented and water shall be applied at dawn to limit evaporation. How will these mandates, particularly for the private residential housing be enforced to ensure compliance?

Under MM BIO-2.5 the golf course will be designed to drain internally in order to confine nuisance flows to the salt marsh habitat during the dry season. This will also disrupt overland flows from reaching these areas during the wet season and is a change from existing conditions, therefore has analysis been done to determine that cutting off wet season surface flows to these areas won't damage them over time?

Given the golf course will be irrigated via an existing onsite well has analysis been done as to whether groundwater pumping during the dry season may have a negative effect on the adjacent wetlands and marsh habitats in Area 4?

There appears to be disagreement between what is proposed under mitigation measure MM BIO-2.1 and what is shown in the drainage plan and conceptual grading plan, Figure 2.4-5. Mitigation measure MM BIO 2.1 states that storm water runoff for the proposed residential development and golf course within Area 4 will drain from multiple discharge points to simulate a more natural flow via a more dispersed discharge of collected runoff so that the existing hydrologic condition is not substantially altered. However the drainage plan shows only three storm water outlets for Sub-Area B and two for Sub-Areas C and D. Please provide more explanation and representation on a figure for how flow dispersal will be achieved.

RESPONSE K-6: Please refer to Master Response 2 and Responses E-3 and J-21 in this document. Additionally, MM BIO-1.2A describes measures requiring review and approval of a mitigation plan prior to initiation of grading within wetlands, and measures requiring actual construction of replacement wetlands in the same construction season as grading within the impact wetlands. All created/enhanced wetlands will be protected in perpetuity through a conservation easement, deed restriction, and conveyance to a qualified land trust or the Refuge.

COMMENT K-7: **5. Climate Change**

Significance Criteria

- *Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.*

Future sea level rise is considered under the cumulative impacts section of the DEIR and the resultant flooding significance due to climate change is determined by whether the project would be adversely impacted by sea level rise of two to three feet. The DEIR acknowledges that future sea level rise would considerably increase flooding along areas of the proposed development currently shown to be in the 100-year floodplain which equates to most of Area 4. Analysis was then conducted, however a less than significant cumulative impact was assigned given there would be sufficient freeboard along the building pads for up to the 100-year event under a 50-year planning horizon. The caveat is also provided that if the "high" sea level rise scenario proves to be true (i.e. would inundate the minimum building pad elevation of 11.25 feet NGVD by 10.2 inches) adaptive strategies to improve flood protection (i.e. levees or floodwalls) may prove necessary in the future. These conclusions are viewed as inadequate for the following reasons:

a) Given the permanency of residential homes and associated buildings placed on an elevated pad and the high level of risk to life and property the overall approach and 50-year window are inadequate. More analysis is warranted in terms of outlier effects such as drainage impacts, and it would be more appropriate to consider a 100-year planning horizon.

b) Additional geotechnical analysis may be warranted to determine that the raised building pads could be designed to tolerate periodic flooding without undergoing deterioration.
c) Given the compressible soils and unknown nature of imported fill, it is not clear whether the proposed 10 to 14 feet of fill compensates for the predicted amount of settlement over time (i.e. 12 inches over the 50 year post construction period). In other words, is enough fill being placed so that the minimum 11.25 feet elevation will remain once settlement has ceased?
d) The proposed plan is dependent upon raised building pad elevations, however fails to consider impacts to the storm drain outlets proposed to release at 10 feet elevation and the ability of the pump to function properly and adequately drain Area 4 under higher tide levels that would result from predicted sea level rise.
e) Given the permanency of the building pads, the "adaptive strategy" component (as recommended by the Army Corps of Engineers and Department of Water Resources) relies heavily on the uncertain option to build taller levees or floodwalls as sea level rise becomes more evident. This puts a significant amount of merit on the ability to construct an adequate levee or floodwall without investigating whether the right structural conditions are there or can be attained. It is recommended that preliminary analysis be done to demonstrate that there is adequate foundation stability, settlement avoidance and interior drainage for a "future" flood levee or wall, so that reliance upon it can be trusted. The analysis should also examine whether such a structure would have direct impacts on the preserved or created wetlands within Area 4 and the fringe wetlands on the outboard side of the existing levee.
f) The approach doesn't necessarily follow the San Francisco Bay Conservation and Development District's (BCDC) preliminary recommendations for the Bay Plan amendments mentioned in the DEIR that include; discourage new projects that will require new structural shoreline protection during the expected life of the project; determine whether alternative measures that would involve less fill or impacts to the Bay are feasible; require that where shoreline protection is necessary, ecosystem impacts are minimized.
g) Given the potential risk to life and property in the long term and the range of sea level rise estimates by several reliable sources, recommend that the DEIR examine the potential flooding impacts due to sea level rise using a bracketed lower and higher sea level rise estimate in order to demonstrate a conservative scenario and a "worst-case" scenario.
h) Given the recent education that the state and nation have undergone in regards to flood hazard and catastrophe to developments constructed behind levees and the recent state legislation that is now trying to correct those issues for the Sacramento and San Joaquin River watersheds in California, has it been seriously considered if development within an existing floodplain, particularly Area 4 is appropriate? Currently the state of California is requiring any new development in nearby San Joaquin County to provide a 200-year level of flood protection. Has the proponent analyzed whether more is needed or higher building pad elevations would be required to provide the proposed development with a 200-year level of protection if mandated in the near future?

With the considerable amount of potentially significant hydrologic, wetland and flooding impacts in Area 4 that require multiple intensive and thoughtful mitigation actions to alleviate, we ask that you seriously reconsider the two alternatives, "No Development in Area 4 and Higher Density in Area 3" and "Reduced Housing Alternative" that would remove the residential building footprints and excessive fill required within Area 4.

RESPONSE K-7: Please refer to Master Response 1 for a complete response to the commenter's questions (a-c, e-g) regarding sea level rise.

The storm drain system has been analyzed using base conditions at the time of the Notice of Preparation. Area 4 would rely on the safe release of storm runoff by gravity without the need for pumping. Storm drain functions may be affected as mean sea level rises, but those systems could be adapted to that rise, particularly since there is only one direct outfall to receiving waters that are under direct tidal influence (Area 3). For instance a relatively small increase in pump horsepower would overcome higher tide levels.

Impacts from flood hazards with a 200-year return period are not the threshold of significance used by the CEQA Guidelines (Appendix G); nor are they used by the City of Newark, the lead agency for the project. Analysis of the 200-year flood hazard, therefore, is not warranted for the proposed project. The analysis of a 100-year flood hazard is the acceptable threshold of exposure to flooding risks.

L. RESPONSE TO COMMENTS FROM FRIENDS OF COYOTE HILLS, JANUARY 19, 2010:

COMMENT L-1: The Friends of Coyote Hills is a grassroots organization dedicated to the conservation and preservation of open space and the plant and wildlife habitats it supports, and to engaging public involvement with local and regional environmental issues through community outreach, education, collaborative efforts, and advocacy. Our members hail from Newark, Fremont and Union City. This letter is in response to the Draft Environmental Impact Report (DEIR) for the Newark Areas 3 and 4 Specific Plan. We appreciate the opportunity to comment on a project that will impact our community and the quality of life in the Tri-Cities area.

The DEIR fails to provide a complete project description and sufficient degree of analysis to provide decision makers with information which enable them to make a decision which intelligently considers environmental consequences. We find that the document contains serious omissions, inaccuracies, and flaws that must be rectified to comply with California Environmental Quality Act (CEQA) requirements.

RESPONSE L-1: It is not clear what omissions, etc., are referred to in this comment. Responses to specific comments are provided below.

COMMENT L-2: **Project Location**

Areas 3 and 4 comprise approximately 850 acres and are generally bounded by Mowry Avenue to the north, Cherry Street to the east, Stevenson Boulevard to the south and Mowry Slough to the west. The DEIR indicates that the specific plan will retain the existing light industrial, institutional and City fire station, park and community center uses. Thus, the project actually appears to be the development of the 560 acres in Area 4 bounded by Mowry Avenue and Stevenson Boulevard to the north and south respectively and the Union Pacific Railroad and Mowry Slough along San Francisco Bay to the east and west respectively and the 78 acres of remaining undeveloped land in Area 3.

RESPONSE L-2: As described in Section 1.0, the project proposes adoption of the Areas 3 and 4 Specific Plan, which identifies retention of certain land uses present on the site (light industrial, institutional, park and community center) and redevelopment of other uses. The Draft EIR focuses on environmental

impacts that would result from the change in land use proposed by the Specific Plan.

COMMENT L-3: Defining a "Specific Plan"
Other property owners within Area 3 (Regis Homes) who requested land use designation changes were summarily ignored throughout this specific plan process (see NOP scoping comments and community workshop notes). Community members who suggested alternative recreational amenities to the golf course, a City Council condition for granting a General Plan redesignation the 78-acre site in Area 3, were also summarily ignored (see community workshop notes). Failure to address these other opportunities within the scope of a "specific plan" forces property owners and Newark taxpayers to bear additional expenses to develop in the future. For example, Regis Homes would be required to undertake a full planning process and environmental review to redevelop their property in Area 3. Should the golf course be deemed infeasible, for any number of plausible reasons raised during the planning process, then the City of Newark would need to shoulder the full costs of a new environmental review for any other type of recreational development including sport fields, trails, open-air community theatre by the Bay, etc. that might have served as an alternative recreational amenity for the community.

It is disappointing that the broader and more collaborative planning that was requested and for which additional cost sharing could have been negotiated was not championed by City leaders. Thus, this specific plan results in a rigid range of opportunities for the community and property owners further reducing Newark's potential for economic recovery and eroding the quality of life for residents.

RESPONSE L-3: The comment does not raise any questions regarding the Draft EIR or the adequacy of the Draft EIR. As noted in the Draft EIR Project Description (Section 2.2, *Historic Overview and Background*) the proposed Specific Plan is a City-initiated project and is a required step in the planning and implementation of Area 4 in conformance with the City of Newark General Plan Update of 1992. Land use designation changes were considered by the City as part of the Specific Plan process and redesignation of the 78-acre of Area 3 was incorporated into the Specific Plan. Several public meetings were held during the Specific Plan process (Draft EIR p. 8) at which the community provided input to the land use concept plan alternatives.

It is true that separate planning and environmental review would be required for the redevelopment of any property contrary to either the existing and/or proposed Specific Plan uses, including the Regis Homes property. In the event a golf course were deemed infeasible, the City would review the alternate recreation development to determine whether any additional environmental review were required (Draft EIR p. 2).

COMMENT L-4: As for the DEIR, it is unclear whether this document serves as a "specific plan" encompassing the entire 850 acres or as a truncated project level review of property proposed for development by New Technology Park Associates (NTPA), primary owners of the undeveloped land in Areas 3 and 4.

RESPONSE L-4: The Draft EIR evaluates the environmental impacts of the proposed Areas 3 and 4 Specific Plan, focusing on the changes in land use and associated environmental impacts of proposed development in Areas 3 and 4. For those

portions of Areas 3 and 4 that are unchanged by the Plan, the adoption of the Plan would not result in any changes to the existing conditions, and there is no new environmental impact.

COMMENT L-5: Project Description

The DEIR states that the project would include development of up to 1,260 housing units of various densities, an up to 600-student elementary school, a golf course and open space areas. The project also requires a structural overpass at Stevenson Boulevard crossing above the UPRR rail line and below the PG&E high voltage tension lines to access Area 4, an emergency vehicle access (EVA) paralleling the UPRR right-of-way connecting the development to Mowry Avenue that would dually serve as a pedestrian and bike trail for residents and cart path for golfers and a bridge for the EVA spanning ACFC&WCD D-Line creek that drains to Mowry Slough. The development would require:

- Relocation and raising the height of the PG&E towers to accommodate the Stevenson overpass.
- An at-grade crossing of the UPRR active rail line that supports freight and the Capital Corridor and ACE commuter lines.
- Up to 2,156,000 cubic yards of fill to raise the buildings pads (at existing elevations ranging from 0 to 16 feet NGVD) 10 to 14.5 feet in order to attain a minimum building pad elevation of 11.25 feet NGVD.
- Potable water to serve 1,260 new housing units and street landscaping.
- Potable water and ground water pumping to irrigate an 18-hole golf course to be constructed on former tidal flats high in salinity.
- A new signal on Cherry Street to accommodate the approximately 14,000 new car trips per day or nearly 5 million car trips per year.

RESPONSE L-5: The project description noted in the comment is generally accurate. It should be noted that the project does not propose a new at-grade crossing of the UPRR tracks. The project proposes EVA-only vehicle access in the vicinity of the existing Mowry Avenue crossing of the UPRR tracks. The proposed EVA would also be used as a pedestrian/bicycle trail, which would exit to Mowry Avenue just west of the railroad tracks.

COMMENT L-6: An Incomplete Project Description

The DEIR description of "existing operations/conditions" provides an overview of land uses but lacks a basic discussion about the physical and biological properties of the lands proposed for development. Thus, a reader does not immediately have a sense that the project is primarily located in the existing 100- year floodplain, includes 277 acres of wetlands, that Area 4 was historically tidal wetlands, experiences 20 commuter train trips plus freight traffic per day and is in the small aircraft flight path between the Palo Alto and San Carlos airports and the Sunol grade. It indicates that the zoning in Area 4 is primarily Agriculture. It does not mention that the site is routinely disked and actively pumped to drain into Mowry Slough. These actions have changed the character of plant and animal communities and distribution across the site. These actions are not intended to result in a meaningful food crop, but simply to continuously disturb the site to prevent the land from returning to its former mosaic of wetlands and transitional upland habitats. The project description does not set the existing conditions context of the site for the reader.

RESPONSE L-6: In addition to the section noted by the commenter, *Description of Existing Operations/Conditions* each subject area of the Draft EIR Section 3.0 *Environmental Setting, Impacts, and Mitigation*, contains a detailed

description of the physical environmental conditions (specific to that subject area) at the time the notice of preparation was published. This description is provided in conformance with CEQA Section 15125, Environmental Setting, and was typically the baseline against which project impacts were evaluated.[6] Draft EIR Section 3.8 *Hydrology, Flooding, and Water Quality*, describes the extent of the 100-year floodplain on the site, both in text and graphically (Draft EIR p. 193). Draft EIR Section 3.5 *Biological Resources*, describes the biological habitats of the site and that the majority of areas in southern Area 4 were historically tidal wetlands (Draft EIR p. 117). Draft EIR Section 3.4 *Noise*, describes that, "A review of noise data gathered… indicates that approximately 30 trains passed the site in a 24-hour period." (Draft EIR p. 100). The Draft EIR does state that the agricultural areas are disced and ripped annually for planting (Draft EIR p. 117). The intent of the agricultural operations of the property owner is not relevant to the Draft EIR. As described above, the project description appropriately describes the existing conditions context of the site for the reader in Section 3.0 of the Draft EIR, *Existing Setting, Impacts, and Mitigation*.

COMMENT L-7: The DEIR provides a meager two-page description of the 18-hole golf course and amenities upon which the DEIR authors are to base the environmental impact analysis. It provides no conceptual layout for the course. It suggests that a portion of the acreage designated for the course, Subarea C, could actually become low-density housing precluding the opportunity to build an 18-hole golf course. It appears as though the focus of the DEIR is on the residential component of the project and that all other potential uses have been minimized to such an extent that a reasonable analysis of the golf course impacts is unachievable.

RESPONSE L-7: The Draft EIR provides sufficient information about the golf course to base an analysis of potential impacts. The Draft EIR describes the location and maximum footprint (size) of the golf course, the associated facilities of the course, and the proposed golf course operations. Through this description, the Draft EIR analyzes the impacts of golf course development and operations on transportation, air quality, biological resources, hydrology, flooding, and water quality, hazardous materials, water supply, utilities and energy. At the time a detailed golf course design is proposed, the design will be evaluated to determine what, if any, additional environmental review is necessary.

COMMENT L-8: The DEIR lacks a discussion on project sequencing. It fails to provide even a broad overview of which initial actions would be required to support development, when mitigation might occur, how the various subareas would develop, etc. This failing makes it difficult to evaluate impacts to the resources.

RESPONSE L-8: There is no requirement for an EIR to describe detailed project sequencing. The Draft EIR does describe the sequence of Specific Plan development.

Development of the Areas 3 and 4 Specific Plan would be phased, with grading and construction of project infrastructure completed first. Residential

[6] As described in Response N-9, in the analysis of project traffic impacts, a baseline that comprised existing traffic plus traffic from approved developments, called "background conditions" was used.

units and the elementary school at Area 3 would then be constructed. Area 3 development would occur prior to Area 4. Development of Area 4 including the Stevenson Boulevard overcrossing and PG&E tower modifications would proceed prior to development of the golf course and residential in Area 4. (Draft EIR p. 109)

Where applicable, a relatively rapid construction schedule has been assumed, in order to provide a conservative estimate of project impacts, particularly construction-related impacts.

COMMENT L-9: The DEIR lacks a consistency of facts and figures among the various chapters and subsections. For example, assumptions made by the air quality author on truck travel do not jive with the assumptions used in the traffic analysis. Acreage impacts between the biology and hydrology sections are not consistent. This results in varying levels of analysis and internal inconsistencies in the DEIR.

RESPONSE L-9: As described in the Air Quality Analysis, Draft EIR Appendix C, "Construction would probably last longer, but a more aggressive schedule was assumed in this analysis to avoid under prediction of emissions. All grading activities were assumed to occur in the first two years." Additional text has been added to the Transportation section of the Draft EIR (see Final EIR Section 4.0, *Revisions to the Text of the Draft EIR*) to clarify the type of construction traffic associated with the Project. As noted in Section 4.0, even when several hundred daily heavy vehicle construction trips occur at the project site, the relative impact on roadway operations of truck traffic would be considerably less than the amount of traffic that will be generated by the project once occupied.

There is a typo in the Hydrology and Water Quality Report, Draft EIR Appendix G, page 7, where it describes the area of potential impact to wetlands. This typo is corrected in Section 4.0 of this Final EIR. The correct acreage of possible wetland impact, up to 85.6 acres, is evaluated in the biological resources report (Draft EIR Appendix E) and described in the Draft EIR text.

COMMENT L-10: Project Objectives

There are inconsistencies between the project objectives and the project description.

- The project objectives indicate that 189 of the 1,260 residential units be provided as below market rate housing. However, the project description indicates that these units could be constructed off-site at a site yet to be determined.
- The project description briefly describes an 18-hole golf course as project element, but the project objectives indicate the project will "provide land for a golf course." It is not clear whether sufficient land for a golf course is even an objective.
- The project objectives acknowledge that a golf course may be found infeasible and in this case "another recreation use that is acceptable to the City shall be provided as a condition of development" but no other potential recreation uses are described or evaluated in the specific plan.

- The project description indicates the project will provide open space. This is not a project objective nor is the location of the open space and its relationship to the proposed development described.

The incomplete nature of the project description and the inconsistencies between the project objectives and project description leave a reader wondering what is actually proposed where within the City of Newark. The lack of project clarity also muddles the environmental analyses. The analyses are by default incomplete if the project description fails to fully illuminate the scope of the project.

RESPONSE L-10: The above comments do not indicate inconsistencies between the project objectives and the project description. To clarify, the project objectives statement, "Provide up to 189 below market rate (BMR) housing units that are within the 1,260 total residential units" means within the total number (1,260) of units; it does not require that the BMR units be provided physically within the other units on-site. While the intent of the Specific Plan project description (and as analyzed in the Draft EIR) the 189 BMR units would be in Area 3, the Specific Plan acknowledges that the units would be provided elsewhere, if they cannot be located on-site. Regarding the provision of The Specific Plan (Draft EIR Appendix A, p. 1) states, "according to the General Plan text…if the development of a Golf Course …is unfeasible as determined by the City, then residential may proceed with other recreation facilities acceptable to the City when a Specific Plan is adopted by the City…." As described in the Draft EIR Project Description (*Section 2.2.1 Specific Plan Process for Areas 3 and 4*) "The selected alternative for Area 4 allowed for a large contiguous open space area that provides opportunities for restoration and conservation, as well as sited residential away from major roadways and railroads." This excerpt provides the location, scale, and intended use of the open space areas. Park and open space amenities has been added to the project objectives to clarify this concern, refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

COMMENT L-11: Specific Plan Impacts and Mitigations
3.1 Land Use
The land use analysis appears to rely on the outdated City of Newark General Plan (1992) and yet to be completed plan by Fremont and Newark to realign the San Francisco Bay Trail. It seems as though Newark is attempting to cobble together several Specific Plans (Area 2 and Areas 3 and 4) in lieu of updating the 18-year old General Plan. The DEIR does not acknowledge any other regional plans that incorporate the lands contained in the specific plan areas. The DEIR analysis applies CEQA Appendix G thresholds of significance for land use that include, but are not limited to:

- *conflict with any applicable habitat conservation plan or natural community conservation plan;*
- *conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project adopted for purposes of avoiding or mitigating an environmental impact*

The DEIR analysis fails to address our scoping comments of June 11, 2007 which highlight other plans that address the project area. These plans include in 1) the Congressionally approved 1990 Refuge Boundary Expansion for the Don Edwards San Francisco Bay Wildlife Refuge ("Land Protection Plan, Potential Additions to San Francisco Bay National Wildlife Refuge," based upon

Congressional approval of Public Law 100-556, in 1988) and 2) the 2000 Baylands Ecosystem Habitat Goals Project and 3) the Bay Conservation and Development Commission Bay Plan.

RESPONSE L-11: The comments regarding the age or status of the City of Newark General Plan do not raise any specific questions related to the Draft EIR.

None of the plans, legislation, or reports identified in the Comment constitute either (a) a habitat conservation plan or natural community conservation plan, or (b) an applicable land use plan, policy, or regulation *of an agency with jurisdiction over the project*. Therefore, Section IX of Appendix G of the CEQA Guidelines is not relevant.

Nevertheless, the Draft EIR Appendix E, Biological Resources Report, includes information regarding the plans noted in the comment. To clarify the land use discussion of the Draft EIR text, some of this information has been added in the text revisions of Section 4.0 of this document.

As described in the Draft EIR (p. 28) the southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future. The Environmental Assessment prepared for the "Potential Additions to San Francisco Bay National Wildlife Refuge (March 1990)" states the following:

> *Until lands are acquired, they do not become a part of the refuge. Lands identified herein as possible for acquisition may or may not be acquired depending on price, state of development or proposed development, character modifications, opportunities to protect through other mechanisms, and other considerations. This environmental assessment is not intended to be used to influence general plan, zoning, or other land use determinations by State and local government.*

Pre-approval of lands for addition to the Refuge does not grant the Refuge any jurisdictional authority over those lands or signify that the lands become part of the refuge until they are acquired. As noted above, the pre-approval was not intended to influence local government land use decisions. Much of the land designated for addition to the Refuge is within Specific Plan Sub-Area E, 244 acres proposed for wetland preservation, wetland creation/enhancement, or continued agricultural operations. Proposed Specific Plan Sub-Area E uses are generally consistent with the intent of the Don Edwards San Francisco Bay National Wildlife Refuge.

The Draft EIR Biological Resources Report, Appendix E, includes a discussion of the Baylands Habitat Goals Project (1999). As described in Draft EIR Appendix E, the Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and the area of the (former) Pintail Duck Club." Being situated between existing salt production ponds that were

formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands. The Goals Project is a compilation of regional wetland goals and recommendations. The Goals do not require any landowner, public or private, to modify current land uses or practices, or to sell land. They have no regulatory authority, and are designed only to inform public and private efforts aiming to improve the Bay Area's wetland habitats. While the proposed Specific Plan includes development of the upland areas of Area 4, Specific Plan Sub-Area E designates 244 acres proposed for wetland preservation, wetland creation/enhancement, or continued agricultural operations, which is generally compatible with the Baylands Habitat Goals Project.

The San Francisco Bay Conservation and Development Commission (BCDC) has jurisdiction over the open water, marshes, and mudflats of the greater San Francisco Bay including the following: the first 100 feet inland from the shoreline around San Francisco Bay, the portion of the Suisun Marsh below the 10-ft contour line, portions of most creeks, rivers, sloughs, and other tributaries that flow into San Francisco Bay, salt ponds, duck hunting preserves, game refuges, and other managed wetlands that have been diked off of San Francisco Bay. The BCDC may claim jurisdiction over Mowry Slough, the only fully tidal waterway near the Project site. Should Mowry Slough fall under the BCDC Bay jurisdiction, all land within 100 ft of Mowry Slough would constitute part of the BCDC Shoreline Band. Any impacts to Shoreline Band lands will require a permit from the BCDC. The ACFC&WCD channels and all other ditches on the site are not fully tidal, and, as such, do not fall under the jurisdiction of the BCDC. The Specific Plan project (Sub-Area E) proposes no development within 100 feet of Mowry Slough and any disturbance within Specific Plan Sub-Area D would be subject to a BCDC permit, as described in Draft EIR Section 1.2, *Uses of the EIR.*

COMMENT L-12: Recently, the State of California has adopted the 2009 California Climate Adaptation Strategy that outlines planning policies for adapting to impacts associated with climate change. Some of these policies by which the Specific Plan should be evaluated include:

• Consider project alternatives that avoid significant new development in areas that *cannot be adequately protected* (planning, permitting, development, and building) from *flooding*, wildfire and erosion *due to climate change*. The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is *to carefully consider new development within areas vulnerable to inundation* and erosion. *State agencies should generally not plan, develop, or build any* ***new significant structure*** *in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure*. State agencies should incorporate this policy into their decisions and other levels of government are also encouraged to do so.

The land use analysis fails to review the project in light of these adopted conservation and land use plans and policies.

RESPONSE L-12: The Draft EIR evaluates the effects of bringing development to an area susceptible to flooding hazards, both as such hazards exist today and may occur in the future, in accordance with the recently adopted CEQA Guidelines Amendments addressing analysis and mitigation of greenhouse gas emissions pursuant to SB97 (December 2009). The discussion of existing flood hazards is evaluated in Draft EIR Section 3.8 *Hydrology, Flooding, and Water Quality* (Draft EIR p. 191) and the evaluation of possible future flooding hazards is provided in Draft EIR Section 4.0 *Cumulative Impacts* (Draft EIR p. 273). Consistent with the 2009 California Climate Adaptation Strategy, the Draft EIR evaluates a project alternative that avoids new development in areas that cannot be protected from future flooding due to climate change. It is the *No Development in Area 4 and Higher Density Area 3 Alternative* (Draft EIR p. 313).

It should be noted that the CEQA process is not considered the mechanism for implementing the 2009 California Climate Adaptation Strategy noted in the Response L-12. The California National Resources Agency, in their Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions pursuant to SB97 (December 2009), described the relationship between the CEQA Guidelines and the California Climate Adaptation Strategy (Adaptation Strategy). They stated how there were key differences between the Adaptation Strategy and CEQA.

> "First, the Adaptation Strategy is a policy statement that contains recommendations; it is not a binding regulatory document. Second, the Adaptation Strategy focuses on how the State can plan for the effects of climate change. CEQA's focus, on the other hand, is the analysis of a particular project's greenhouse gas emissions on the environment and mitigation if impacts from those emissions are significant. Given these differences, CEQA should not be viewed as a tool to implement the Adaptation Strategy; rather, as indicated in the Strategy's key recommendations, advanced programmatic planning is the primary method to implement the Adaptation Strategies."

COMMENT L-13: 3.2 Transportation

The proposed Stevenson overpass at the UPRR railroad tracks requires that PG&E high voltage towers would be both raised and relocated. Raising one tower by 20 feet and relocating another tower 25 feet northwest of its current location and raising it by 45 feet may be a significant impact to pilots operating under Visual Flight Rules (VFR) while approaching Palo Alto and San Carlos Airports. These towers are in the VFR landing and take-off path for small aircraft originating or traveling to both the Palo Alto and San Carlos Airports through the Sunol Grade. No mention of this air traffic corridor is made in the DEIR nor is the potential impact of modifying the high voltage towers in this VFR Corridor addressed. Would these changes impact air traffic patterns, mapping or communications?

RESPONSE L-13: The project site is not located adjacent to or in the vicinity of any airports, where aircraft would be operating at low altitudes. The closest airports to the site are the Palo Alto Airport and Moffett Field, both of which are over seven miles away from the site. At locations not in the vicinity of airports, such as the project site, the Federal Aviation Administration (FAA) requires that all proposed structures whose height will exceed 200 feet above ground level be evaluated to determine if the structure represents a hazard to aviation. Since the maximum height of the towers is 195-feet above ground level, the project is not subject to this requirement and, therefore, would not constitute a hazard to aviation. In urbanized portions of the Bay Area, including the project site, aircraft are required by the FAA to maintain a minimum altitude of 1,000 feet above ground surface. The fact that an aircraft could use the towers or any other landmark as an aid to navigation under visual flight rules would not change the fact that the aircraft would still need to be 1,000 feet above the ground. The project, therefore, would not result in any impacts to air traffic patters, mapping, or communications. Text has been added to the Draft EIR to further clarify this assumption.

COMMENT L-14: The DEIR does not address the safety and proximity of the Emergency Vehicle Access (EVA)/pedestrian and bicycle trail to the at-grade crossing of the UPRR tracks at Mowry Avenue. If the trail extends to Mowry Avenue pedestrian and bicyclists will naturally want to cross the tracks. Is this a safe crossing? Has access been granted by UPRR?

RESPONSE L-14: The proposed Specific Plan does not propose any new at-grade crossings of the UPRR tracks; therefore, no approval is required from the UPRR. The state agency responsible for rail safety, the California Public Utilities Commission (CPUC) has recommended additional separation between the public access and the railroad by construction of a soundwall and/or vandal-resistant fencing. Additional improvements at recommended for the Mowry Avenue crossing include illumination, roadway widening, sidewalks, bike lanes, and medians, or a pedestrian/bicycle overpass. Access control around the flood control channel is also recommended. These recommendations have been added as additional safety measures in the Draft EIR.

COMMENT L-15: The traffic analysis proposes a number of measures to reduce traffic, but concludes that only 12 riders per day during peak commute hours would use alternative forms of transportation including walking, bicycling and County buses. Thus, it appears as though these measures are feasible but ineffective at getting residents who live far from services out of their cars.

RESPONSE L-15: The Draft EIR's transit service estimate was a conservative estimate. Refer to Response N-2.

COMMENT L-16: The traffic analysis relies on Average Daily Traffic (ADT) and Level of Service (LOS) as a measure of significance, but vehicle miles traveled (VMT) may be more accurate measurement of traffic and the resulting air quality impacts.

RESPONSE L-16: The Draft EIR analyzes the traffic impacts of the project, subject to the City of Newark's General Plan and level of service (LOS) standards. For signalized intersections located in the City of Fremont, the City of Fremont's

LOS standards were utilized. The traffic impact analysis was also prepared in conformance with the Alameda County Congestion Management Agency's methodologies and standards. For project construction and long-term vehicle emissions analyses, vehicle miles traveled (VMT) is utilized in the modeling of air quality impacts using URBEMIS2007, as recommended by the Bay Area Air Quality Management District (BAAQMD).

COMMENT L-17: 3.3 Air Quality
An assessment of construction impacts on air quality is attempted. It assumes that emissions resulting from the hauling and placement of the 2.1 million cubic yards of fill will be conducted over one year period with 100 trucks arriving and departing from the site daily for 365 days. In one year this would be maximally equate to 36,500 truckloads that would need to carry 59 cubic yards of material per truck. No truck carries this much material. The time period of one year is too short or the number of daily truckloads is erroneous, both of which cast doubt on the assumptions used for truck hauling emissions resulting from construction.

RESPONSE L-17: As described in Appendix C, Addendum to the Air Quality Study, "Full build out of the proposed project was assumed to begin in 2011 and last for about 5 to 8 years. Construction would probably last longer, but a more aggressive schedule was assumed for this (impact) analysis (of construction vehicle emissions), to avoid under prediction of emissions. All grading activities were assumed to occur in the first two years." It is acknowledged that actual hauling of soil would likely take longer than two years, but the shorter duration was assumed to provide a conservative estimate of construction vehicle emissions. The text of the Draft EIR has been revised to clarify this assumption.

COMMENT L-18: This analysis assumes trucks would travel between the Lake Elizabeth BART project and the Specific Plan area, a distance of approximately 10 miles. What are the truck hauling emissions if the fill from the Lake Elizabeth BART project is not available or is unsuitable for use?

RESPONSE L-18: Nearby construction projects are anticipated to be the source of fill materials for the project. As described in the Draft EIR (p. 92) soil exported from Lake Elizabeth to the project site would travel a four-mile one way trip; however, an average 10-mile one-way trip was used in the truck hauling emissions analysis, to be conservative. The exact sources of fill material for the project have yet to be identified, and it is reasonable to assume that fill will be brought to the site from a wide variety of source locations. For this reason, a 10-mile one-way distance was used, as a conservative estimate of truck trip length. Some truck trips, such as those from Lake Elizabeth, would be shorter, and some may be longer.

COMMENT L-19: 3.4 Noise
The noise impacts from construction are underestimated. The construction noise analysis does not address the hauling, stockpiling, placement, grading and compaction of 2.1 million cubic yards of fill needed to raise the building pad elevations in Area 4. Truck hauling is proposed on city streets. The Transportation Chapter estimated 100 truck trips per day traveling to and from Area 4. This construction impact must be analyzed.

RESPONSE L-19: Trucks transporting fill to Area 4 are anticipated to obtain the fill from nearby construction sites. The anticipated route would utilize major highways (I-880) and major arterial roadways such as Mowry Avenue and Stevenson Boulevard. No noise impacts would occur as a result of this truck traffic because the truck traffic makes up a small percentage of the total traffic along area roadways.

COMMENT L-20: The Draft EIR did not assess noise and ground vibration associated with the pile driving necessary for the placement of the Stevens Boulevard overpass. These are omissions in the analysis.

RESPONSE L-20: The nearest noise-sensitive receptors from pile driving activities associated with the construction of the Stevenson Boulevard are located approximately 4,000 feet away. Pile driving activities can generate maximum noise levels ranging from 90 to 105 dBA L_{max} at 50 feet from the source. Pile driving noise at the nearest noise-sensitive receptors would range from approximately 52 to 67 dBA L_{max}. Hourly average noise levels along Cherry Street typically range from 63 dBA L_{eq} to 74 dBA L_{eq} during the day and hourly average noise levels along Stevenson Boulevard typically range from 66 dBA L_{eq} to 72 dBA L_{eq} during the day. Hourly average noise levels along Cherry Street and Stevenson Boulevard would continue to be the dominant noise source in the surrounding area. Pile driving for the construction of the Stevenson Boulevard Bridge would not result in a significant noise impact at the nearest noise-sensitive receptors.

COMMENT L-21: 3.5 Biological Resources

The DEIR makes a substantial effort at evaluating the biological impacts associated with the residential development, but provides an incomplete analysis of the proposed golf course. This may have resulted due to a lack of information provided about the golf course.

Numerous weaknesses surround the feasibility of mitigating the biological impacts that were identified in the DEIR. These weaknesses include:

- The project relies on numerous mitigation measures to reduce significant biological impacts to less than significant. However, it is not clear that the site will support the full range of mitigation measures proposed. For example, the project proposed various on-site wetland mitigation strategies to convert uplands to wetland habitat (MM BIO 1.1-1.2). It then overlays another on-site mitigation to provide sufficient grassland habitat to support burrowing owls (MM BIO 4.1-4.6). It also suggests that pickleweed-dominated wetland habitat of the federally and state listed endangered salt marsh harvest mouse and salt marsh wandering shrew will be mitigated through habitat creation or restoration (MM BIO 8-4). The DEIR also proposes the creation or enhancement of waterbird habitat on-site (MM BIO 10-1). It is not clear that the undeveloped lands would support all these mitigation needs even assuming that the regulatory agencies concur with the mitigation ratios proposed in the DEIR. No mapping is provided to indicate where these various mitigation sites would occur. No evidence is provided that the proposed mitigation sites are not already providing the ecological services intended by the mitigation measures and that the project could therefore be attempting to claim existing resources as mitigation. We question the feasibility of these tiered habitat creation, enhancement and restoration mitigation strategies.

RESPONSE L-21: Please refer to Master Response 2.

For the mitigation measures prescribed in the Draft EIR (MM BIO-1.1 to 1.2, MM BIO-8.4 and MM BIO-10-1) which would require the creation of wetland, waterbird and endangered wildlife habitat, to the extent implementation of such measures would occur onsite such implementation would be located within the portions of Area 4 that would not be developed. In some instances, depending upon the particular impact that a future development activity within Area 4 would cause two or more of the mitigation obligations could be satisfied in the same location. For example, if a future development activity in Area 4 would result in the destruction of existing wetlands which also contain pickleweed and thus serve as habitat for the salt marsh harvest mouse, a single wetland creation project in the undeveloped portion of Area 4 could satisfy the EIR obligations to both mitigate for the loss of wetlands and mitigate for the loss of harvest mouse habitat. Relative to existing functions and values, in the proposed mitigation area, the majority of the land within Areas 3 and 4 has been subjected to long-term, dryland farming for at least 50 years, and in some areas outside of the historic duck club complexes south of the agricultural road, for as much as 100 years. This has entailed annual discing and planting; seeding of upland cereal crops such as barley, wheat, and oats; and harvesting for hay production. These agricultural practices have substantially reduced the site's potential to provide "ecological services." Please refer to Volume II, Appendix E, Biological Resources of the Draft EIR for a more complete description of the existing functions and values of the proposed mitigation site.

COMMENT L-22: The DEIR seems to recognize that not all the mitigation might be achievable on-site and therefore suggest off-site mitigation in some instances. The DEIR suggests the possibility of developing off-site wetland mitigation within 10 miles of the project. No sites are provided to support the feasibility of this suggestion.

RESPONSE L-22: Specific off-site wetlands for mitigation, if needed, will be identified as part of the future entitlement process and environmental review. The basic criteria for the location of off-site wetlands are described in the Draft EIR as having to occur within 10 air miles of the current project site and are to be location along the eastern shore of the south San Francisco Bay within the same geographic watershed. Also, refer to Master Response 2.

COMMENT L-23: The DEIR suggests mitigating for the loss of burrowing owls and their habitat at an off-site mitigation bank located outside of the South Bay. It is not clear adequate space is available in one of these mitigation banks. It is not clear these mitigation banks are working to maintain owl populations. It is obvious that use of this off-site mitigation strategy results in the local extirpation of burrowing owls from Newark. This strategy clusters burrowing owl populations making them more prone to population impacts and further reduces the quality of life for residents who enjoy and benefit from a connection to nature. Again, the feasibility and potential ecological success is not demonstrated.

RESPONSE L-23: Please refer to Responses C-1 and I-8 regarding the effectiveness and suitability of the burrowing owl habitat mitigation specified in the Draft EIR. We do not concur that the proposed mitigation measures will result in the extirpation of the burrowing owl from Newark, even if the 26 acres of burrowing owl habitat described in MM BIO-4.4 is satisfied off-site. As described in MM BIO-4.5B, measures will be implemented to maintain burrowing owl use of the site even if all 26 acres of compensatory habitat mitigation is performed off-site. Furthermore, extensive areas providing suitable burrowing owl foraging habitat will remain on-site regardless of where compensatory habitat mitigation is completed.

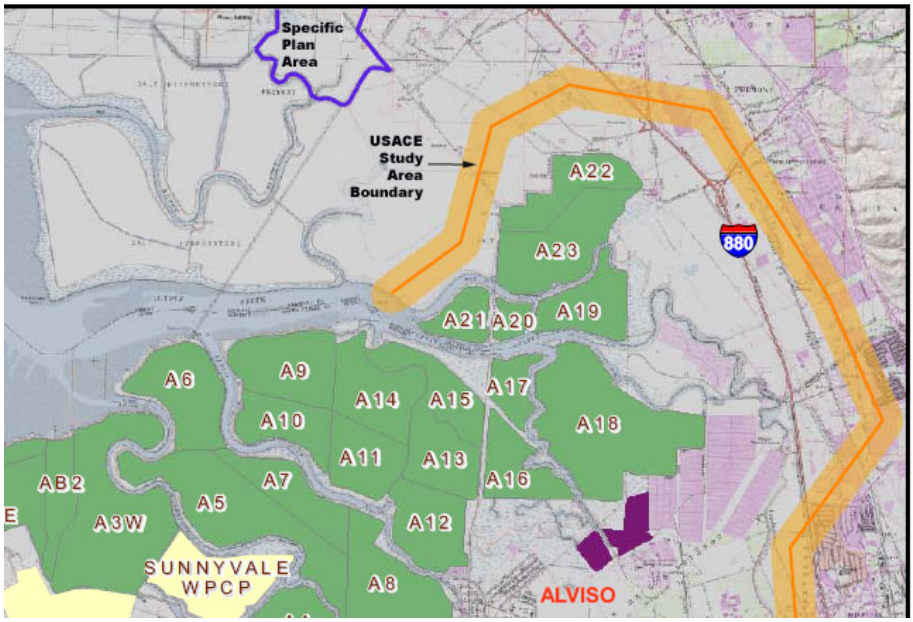
COMMENT L-24: The on-site mitigation is proposed adjacent to the residential development and golf course. No discussion is provided to evaluate how this proximity to the urban environment might diminish the mitigation value.

RESPONSE L-24: For clarification, on-site mitigation areas are not proposed to be located adjacent to the residential housing and golf course development areas. The project description includes several design elements, including incorporation of a buffer area between the proposed development areas and any natural habitats, existing and proposed, fencing, indirect lighting, and out-of-bounds areas, that are intended to minimize indirect effects to any mitigation habitats. Additionally, creation of housing pads for the residential development will involve raising the elevation, through import of earthen fill material, of the existing land to a point 10 to 14.5 feet above mean sea level. In effect, this creates a vertical buffer that helps reduce disturbance to adjacent habitats.

COMMENT L-25: Will any of the Area 4 lands be needed to reduce the threat of flooding to existing Newark businesses and residences? How would a "super levee" fit within the Specific Plan? If lands are needed by the US Army Corps of Engineers to construct a "super levee" how will this impact the feasibility of mitigation proposed on Subarea E. Is this project being coordinated with the South San Francisco Bay Shoreline Study being conducted by the Army Corps of Engineers?

RESPONSE L-25: The USACE Shoreline Study boundary is outside of the Specific Plan area, as shown on the map below. While the Corp's ongoing study may be relevant in a regional sense, the direct need for coordination is not readily apparent.

Alameda County is responsible for protecting existing Newark residents and businesses from the threat of flooding. It is presumed that the County will consider their public responsibilities and need for land adjacent to their levees as they review the Draft EIR. We are not aware of specific plans for a "super levee". The City of Newark has coordinated this Specific Plan with the ACFC&WCD.



COMMENT L-26: The DEIR states, "... future project proponent(s) will utilize a combination of on-site wetland creation and enhancement…." It seems as though the DEIR is relying on a variety of developers/builders to implement these mitigation measures (Page 135 and 151). It is not clear where the responsibility lies for mitigating the impacts to the project. It also seems to suggest that the mitigation could occur in piecemeal fashion.

RESPONSE L-26: As described in MM BIO-1.2A and B for replacement of wetland habitat impacts, the ultimate responsibility for ensuring that the mitigation requirements established in the EIR are implemented lies with the City of Newark. This will occur through the City's future review and approval of specific development projects as they are proposed for Areas 3 and 4. Further, any project proponent(s) proposing improvements for residential or golf course developments that have direct or indirect impacts to sensitive/regulated biological resources will need to seek and acquire discretionary approvals from various state and federal resource agencies with applicable jurisdiction over affected habitat and species.

COMMENT L-27: The DEIR fails to identify the potential sequencing for implementing these mitigation measures. As a result, a reader could conclude that the site will be disturbed and habitat destroyed prior to replacing these resources either on or off-site. Habitat creation and/or enhancement takes time and is not always successful when measured by ecological function. For example, a wetland mitigation site may be secured and constructed (graded and planted), but fail to attract the target species. This recognition also calls into question the feasibility and potential effectiveness of these mitigation measures.

RESPONSE L-27: As described in MM BIO-1.2A, "mitigation work will begin in the same construction season as the initiation of grading within wetlands or aquatic habitats, and mitigation site grading will be completed within one year of initiation."

COMMENT L-28: It is simply not evident in the DEIR and the Appendices that the identified significant impacts to biological resources can all be mitigated to a less than significant impact with mitigation. The DEIR fails to provide sufficient detail to support this claim.

RESPONSE L-28: Please refer to Master Response 2, Responses C-1, E-3, and I-8 regarding the wetland mitigation and the effectiveness of the burrowing owl habitat mitigation specified in the Draft EIR and Responses A-1 and E-5 regarding the effectiveness of salt marsh harvest mice habitat mitigation.

COMMENT L-29: Land Use Goals and Policies regarding Biological Resources
The DEIR indicates that "All future development addressed by this DEIR will be subject to the biological resources policies listed in the City's General Plan." We highlight just of few of the project inconsistencies with these policies.

Open Space and Conservation Goal 1 *"Encourage the preservation of unique open space and conservation resources that help define the quality and character of the City. Policy B – Encourage private property owners to preserve unique open space areas and natural features of their lands."*

The City of Newark under the leadership Mayor Smith is actually encouraging New Technology Park Associates (NTPA), primary owners of the undeveloped land in Areas 3 and 4, to destroy sensitive conservation and cultural resources identified by the regulatory agencies and public in his requirement that the developer build a golf course in exchange for consideration of a General Plan redesignation of the 78-acre site in Area 3 (Page 7).

RESPONSE L-29: The conformance of the proposed Specific Plan with the City General Plan Open Space and Conservation Goal 1 is described on page 35 of the Draft EIR. The comment does not pertain to the adequacy of the Draft EIR. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT L-30: Open Space and Conservation Goal 2 *"Acknowledge the San Francisco Bay National Wildlife Refuge acquisition, and its value as a community resource."*

The Areas 3 and 4 Specific Plan DEIR fails to acknowledge the Congressionally approved 1990 Refuge Boundary Expansion for the Don Edwards San Francisco Bay Wildlife Refuge that includes the vast majority of Area 4. Instead, the City supports burying these former tidal wetlands under 2.1 million cubic yards of fill!

RESPONSE L-30: The Draft EIR does not fail to acknowledge the 1990 Refuge Boundary Expansion. The conformance of the proposed Specific Plan with the City General Plan Open Space and Conservation Goal 2 is described on page 35 of the Draft EIR. The Refuge and 1990 Refuge Boundary Expansion is also discussed in Draft EIR Section 3.1 *Land Use* (p. 28) and in Section 3.5 *Biological Resources*. Further information regarding the relationship between the Refuge Expansion and the proposed Specific Plan is provided in Response L-11 and in the text revisions provided in *Section 4.0* of this Final EIR document. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT L-31: Thresholds of Significance regarding Biological Resources
The DEIR analysis applies CEQA Appendix G thresholds of significance for biological resources. It does an adequate job of identifying the regulatory framework surrounding these resources but fails to acknowledge and apply the regional land use plans based upon scientific principles of conserving habitat that are routinely referenced by the regulatory agencies. These plans include:

- 1990 Refuge Boundary Expansion for the Don Edwards San Francisco Bay Wildlife Refuge
- 2000 Baylands Ecosystem Habitat Goals Project • Bay Conservation and Development Commission Bay Plan
- 2009 California Climate Adaptation Strategy

The goals and polices embodied in these plans should serve as thresholds of significance in evaluating the impacts to biological resources.

RESPONSE L-31: Please refer to Response L-11 regarding use of the above plans as thresholds of significance.

COMMENT L-32: Biological Impacts Missing or Incomplete in the Analysis
<u>Impacts to Upland Agricultural, Ruderal Herbaceous Field, Developed and Coastal Scrub Habitat</u>
The Geology and Soils Chapter of the DEIR states, "Specific Plan Areas 3 and 4 lie just east of the former tidal marshes of the San Francisco Bay. Based on historic topographic maps, the marshes west of the railroad tracks were subject to tidal influences…. Prior to creating the dikes, numerous narrow, shallow, tidally influenced channels meandered through Area 4." The land described above is now identified in the Biological Resources Chapter with the statement, "Implementation of the proposed project would result in impacts to upland agricultural, ruderal herbaceous field, developed and coastal scrub habitat." These same lands are identified within the Wildlife Refuge's acquisition boundary, and the *2000 Baylands Ecosystem Habitat Goals Project.* The Habitat Goals Project identified the Mowry Slough Area as an opportunity "to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper ends of Newark, Plummer, Mowry and Albrae sloughs." The Goals Project states that the Mowry Slough marshes are "centers for populations of California clapper rail and salt marsh harvest mouse." The existing levees and salt pans may be used by nesting snowy plovers. Outer Mowry Slough is one of the largest harbor seal haul-out and pupping locations in the entire San Francisco Bay.

The Biological Resources Chapter fails to illuminate these connections and instead indicates that these "habitats are regionally abundant and the associated plant and wildlife species represent a very small proportion of regional populations. In addition, although the upland habitats provide a buffer or transition area upslope from wetlands and marshes, those on-site do not provide high quality transitional habitat because of regular disturbance by agricultural activities (Pages 133-134). These lands were former tidal wetlands; they retain the appropriate elevations, soil characteristics and high water table to support restoration. The Cultural Resources Chapter indicates that the exploratory trenching in Area 4 that uncovered Native American human remains "were cut to depths of less than four feet due to the presence of a very high water table." This trenching was undertaken in September and October 2008, the driest part of the year. The loss of these uplands should be considered a significant impact when evaluated against the current regional land use plans listed above.

In addition, 2009 California Climate Adaptation Strategy #7 recommends:

"Using existing research the state should identify key California land and aquatic habitats that could change significantly during this century due to climate change. Based on this identification, the state should develop a plan for expanding existing protected areas or altering land and water management practices to minimize adverse effects from climate change induced phenomena. (BH-1; W-5; F-5)."

The report also goes on to indicate that *"Increasing sea levels will submerge many low-lying portions of California's coastal wetlands. Of particular concern are coastal salt marshes, which have already been decreased by 91 percent from historical levels. If vegetation and sediment accretion occurs rapidly, wetlands could maintain their present location and the wetland footprint would not decline. For example, while some very high accretion rates occur in the San Francisco Bay region (i.e., up to 80 mm per year), the average rate is approximately 1-2 mm per year. This rate has kept pace with recent sea level rise, but will likely fall short of the projected future sea-level rise of 2-3 mm (or more) per year. The high degree of development and infrastructure placed in near-shore areas restricts the inland migration of wetlands in many locations, thus more coastal wetlands are likely to be lost."*

The existing research has been under taken through the *1990 Refuge Boundary Expansion for the Don Edwards San Francisco Bay Wildlife Refuge* and the *2000 Baylands Ecosystem Habitat Goals Project* and these upland habitats should be recognized for the importance to preserve regional biodiversity in the face of climate change. The lands in Area 4 will require little human manipulation to begin serving as a refuge for native species against the rising tide.

RESPONSE L-32: The comments are noted and the commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration. Please refer to Response E-2 regarding the CEQA requirements that the EIR evaluate impacts based on existing environmental conditions. The Draft EIR (p. 133) describes the impact of the project to the biological resources on the site, as they exist today. Relative to existing functions and values, the majority of the land within Areas 3 and 4 has been subjected to long-term, dryland farming for at least 50 years, and in some areas outside of the historic duck club complexes south of the agricultural road, for as much as 100 years. This has entailed annual discing and planting; seeding of upland cereal crops such as barley, wheat, and oats; and harvesting for hay production. These agricultural practices have reduced substantially the historical ecological functions and values which may have once existed at the site. The relationship between the 1990 Refuge Boundary Expansion and the Baylands Habitat Goals project is described further in Response L-11.

COMMENT L-33: <u>Nuisance Species and the Golf Course</u>

The DEIR provides some discussion of domestic pet impacts on the adjacent open space habitats but provides no discussion of potential to attract nuisance species, primarily gulls, to the turf of the golf course. Large flocks of gulls are routinely observed on turf areas at golf course, schools and play field. The proximity of the golf course to sensitive species habitat should be addressed in the DEIR. The attraction could lure gulls into these sensitive areas and result in increased predation on nesting birds.

RESPONSE L-33: Species such as gulls and geese would be no more likely to be drawn to the golf course than to the existing seasonal and perennial wetlands on the site. Gulls roosting and bathing on the site and geese foraging in the perennial (and occasionally seasonal) wetlands on the site currently comprise the most numerous categories of waterbirds using the site. As a result, the numbers of individuals of these potential nuisance species using the site is not expected to increase as a result of construction of the project.

Please refer to Response A-1 regarding the potential for the golf course or residential areas to attract predator species and mitigation for such predators.

COMMENT L-34: Construction Noise Impacts on Wildlife

The DEIR does not describe the noise impacts to wildlife that will results from construction of the project which includes accepting, stockpiling, placing and grading 2.1 million cubic yards of fill, rough and finish grading and utility placement, piling driving for the Stevenson overpass, housing and golf course construction. The area will be subject to truck traffic, back-up beepers, pile driving and a full range of construction equipment over a period of many years. How will the noise and general site disturbance impact resident species and migratory waterfowl that use the open water and fields as forage?

RESPONSE L-34: Construction-associated activities, including noise but also movement of heavy equipment and ground vibrations, are expected to result in some impacts to wildlife use of the site. However, wildlife using the site is already exposed to occasional loud noise such as occurs when trains pass the site, and there are numerous examples of areas around San Francisco Bay where wildlife, particularly waterbirds, have habituated to loud noise and other disturbance. Such examples include:

- Coyote Creek Reach 1A waterbird pond and South Coyote Slough (San Jose): heavily used by waterfowl, shorebirds, and gulls even though it is adjacent to Newby Island landfill entrance, Interstate 880 traffic noise, and recycling facility that uses noisemakers to attempt to deter nuisance birds

- San Jose-Santa Clara Water Pollution Control Plant (San Jose): supports large numbers of waterfowl, shorebirds, and other birds despite frequent movement of heavy equipment throughout the plant

- Pond A16, New Chicago Marsh (Alviso): supports large numbers of waterfowl and other waterbirds, including nesting terns on islands and nesting snowy plovers in salt pannes, despite its proximity to active railroad tracks and recreational use of surrounding levees

- Shoreline Park (Mountain View): Shoreline Lake, the Coast Casey Forebay, Charleston Slough, and the Palo Alto Flood Control Basin support large numbers of waterbirds and marsh birds despite very heavy use by pedestrians and cyclists

- Palo Alto Baylands (Palo Alto): supports high densities of a variety of waterbirds and marsh species despite heavy recreational use and its proximity to an adjacent landfill, water treatment plant, and airport
- South Bayside System Authority Plant (Redwood City): ponds adjacent to this water treatment plant, and encircled by a road with an adjacent dog park, support very high densities of waterfowl and shorebirds, as well as nesting terns on islands and nesting herons and egrets in ornamental trees around the plant, despite plant noise and frequent movement by trucks.

While there may be some temporary reduction in wildlife use of areas very close to construction zones during construction as a result of noise impacts, wildlife species are expected to resume the use of these areas to the extent described in the Draft EIR following the completion of construction. This temporary, less than significant impact has been added in the text revisions to the Draft EIR, *Section 4.0* of this Final EIR.

COMMENT L-35: Residential Plant Palette

The planting concept and plant palette provided in the Specific Plan (Pages 10- 13) describes the challenging site conditions of wind, salt and cool Bayside climate but then suggests a plant palette that will struggle to survive in this environment. In addition, the plant palette uses only a handful of California native plants. The landscape is another example of how this project does not respond to the site and the unique conditions of the landscape but instead forces an urban overlay across what could be a carpet of glowing native wildflowers, grasses and perennials. There is no understanding of the interface between the built environment and the natural world is communicated by this planting concept. No recognition of the importance of local plants to support local wildlife populations is attempted. Does the proposed planting concept and palette follow Newark's Bay Friendly Landscape Guide? Nothing about the plant palette appears to be "Bay Friendly."

The biologist evaluating the impacts to the site should undertake a wholesale review of the planting concept and plant palette. This evaluation should consider drought tolerance, ability to produce food for wildlife, potential for invasive, non-native plants to be introduced and spread across the sensitive habitats and the relevance of the plants in the California landscape. This is a unique site on the wildland edge of the city. It deserves so much more than a routine, urban, cookie cutter landscape that is completely out-of touch with the natural environment.

RESPONSE L-35: The description of the plant palette and the list of plants included in Draft EIR Appendix A has been revised. The plant materials for the new neighborhoods shall be selected from a palette approved by the City of Newark that is consistent with adopted City of Newark Bay Friendly Landscape Guidelines, the City's Water Efficient Landscape Ordinance, and any other standards applicable at the time of development. In all cases, continuity, simplicity, and ease of maintenance are to be considered as prime criteria for any detailed planting plans created for the site. The majority of the plant materials to be used are low water use, drought tolerant or natives. Refer also to Response N-14 regarding the proposed Bay-friendly landscape practices.

It is acknowledged that any future landscaping plan associated with the planning and development of the golf course and residential housing

development should take into consideration the site's challenging environmental conditions relative to plant growth and utilize to the extent practicable native species adapted to such environments. Such project-specific planning and environmental analysis is beyond the scope of the current Specific Plan EIR.

COMMENT L-36: Golf Course

The golf course impact analysis suffers from an incomplete project description. Here are just a few of the areas that lack analysis:

• Use, treatment and run-off from fertilizers, herbicides, pesticides and rodenticides used on the course and supporting facilities.

• Light impacts from the facility on the adjacent habitats.

• Plant and turf selection in a highly saline environment. When the operation of Newark's Silver Pine golf course stopped irrigating the golf course was reclaimed by nature.

• Impact of errant golf balls on the adjacent trail, railroad and habitats.

• Increased need for irrigation water in an extremely windy and saline climate.

RESPONSE L-36: The Draft EIR evaluates the impacts of the proposed golf course, to the level of detail provided in the Specific Plan. Water quality impacts from Specific Plan development, including the golf course, are described in the Draft EIR (Section 3.8, *Hydrology, Flooding and Water Quality*) and additional discussion and mitigation measures for golf-course related water quality impacts are provided in Response N-25 and in the Draft EIR text revisions included in *Section 4.0* of this Final EIR. Project specific planning and environmental analysis relative to the golf course development as noted in the comment is beyond the scope of the current Specific Plan EIR.

COMMENT L-37: 3.6 Cultural Resources

The DEIR states that significant unavoidable impacts will occur at Native American archeological sites. "Areas 3 and 4 contain as many as three areas which may contain unique archeological resources, as evidenced by the burials in what appears to be midden matrixes, and two additional cultural features similar to those already excavated nearby the project area." Mechanical trenching in Area 4 yielded "abundant evidence of Native American use of the area including cultural resource deposits and Native American human remains…." The cultural resources "appear to be intact and retain high degree of integrity.

This enhances their eligibility for both the state and National registers." All resources will be affected by the project in some manner.

- The cultural resources work was limited to Subareas A (Area 3 housing), B and C (Area 4 housing). No analysis was conducted for Subarea D (Area 4 golf course) and E (Area 4 existing wetlands). This analysis is incomplete for the proposed development sites included in the Specific Plan. This also means that Newark would shoulder all future expenses to investigate Subarea D should the City proceed with the development of ANY recreational amenity in Subarea D or habitat restoration of Subarea E unless this analysis is undertaken prior to the release of the Final DEIR. This analysis is incomplete.

RESPONSE L-37: Prior to the mechanical testing on-site, historic and archaeological records were reviewed that covered all cultural resources studies completed within

one mile of the approximately 850-acre Specific Plan site. This research included studies of the ACFC&WCD flood control properties, the Ohlone College campus, along the UPRR tracks, near Mowry Landing (southwest of Sub-Area D), in the salt ponds northwest of the site, and in the industrial parks surrounding the site. Through this research, the mechanical presence-absence testing was focused on those areas that are both proposed for building and were noted for containing archaeological materials. Presence/absence testing was not completed in those areas which will remain in open space. Construction of the golf course, another recreational use, and habitat restoration is not expected to require substantial excavation. Nevertheless, Draft EIR mitigation measure MM CUL-2.4 (Draft EIR p. 174) addresses the measures that shall be completed for all development activities, including those in Sub-Areas D and E.

COMMENT L-38: The cultural resources analysis fails to evaluate the potential for stockpiling dirt prior to construction. How would archeological resources be impacted by up to 2.1 million cubic yards of dirt placed in stockpiles on the site?

RESPONSE L-38: The primary archaeological impact addressed in the Draft EIR results from the fill and compaction of soil. This process would include stockpiling of dirt prior to construction. As described in the Draft EIR (pp. 173-175), mitigation measures MM CUL-2.1 to 2.4 would be completed prior to the issuance of a grading permit and prior to <u>any</u> earthmoving activities, including stockpiling of dirt.

COMMENT L-39: None of the mitigation proposed can preserve the "high degree of integrity" of these Native American archeological resources. Development of Areas 3 and 4 results in significant unavoidable impacts to Native American archeological sites. The only way to preserve these resources is through avoidance. The locations are not specified in the DEIR in order to protect the sites from vandalism, but we know resources were uncovered in Area 4. The Project Alternatives section indicates that impacts to cultural resources would still occur under the "No Development in Area 4 Alternative." Thus, there must be resources in both areas. The "No Development in Area 4 Alternative" would preserve in place at least some of the cultural resources detected during the course of this review.

RESPONSE L-39: It is acknowledged that the "*No Development in Area 4 Alternative*" would avoid impacts to cultural resources present in Area 4. As described in the Draft EIR (p. 314), "With no development and no need to import fill, cultural resources impacts would be avoided within Area 4. The Area 3 development would still result in impacts to archaeological resources located within Area 3." The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT L-40: 3.8 Hydrology, Flooding and Water Quality
Why has this project not been coordinated with the South San Francisco Bay Shoreline Study being conducted by the Army Corps of Engineers? Will any of the Area 4 lands be needed to reduce the threat of flooding to existing Newark businesses and residences? How would a "super levee" fit within the Specific Plan? Why is this critical long range planning issue absent from the Specific Plan

and DEIR? If lands are needed how will this impact the feasibility of mitigation proposed on Subarea E.

RESPONSE L-40: Please refer to the Response L-25.

COMMENT L-41: 3.13 Energy
The DEIR fails to adequately address energy usage and thus energy impacts. The DEIR references Title 24 California Energy Efficiency Standards for Residential and Non-residential Buildings as "these standards include *minimum* energy efficiency requirements related to building envelope mechanical systems i.e., heating, ventilation, AC and water heating, etc. that would "not result in the inefficient unnecessary or wasteful consumption of energy". However, the DEIR interprets this standard to mean that the project only needs to implement a few energy conserving appliances and a few *pathways* to *bus stops* to demonstrate that it is not a "wasteful consumption of energy." However, these so-called mitigation measures fall far below what could be done and thus belie the intent and purpose of the Title 24 standard. The energy mitigations should require the implementation of the newly adopted Title 24.11 Green Building standards as a minimum effort to reduce the carbon footprint of the development.

RESPONSE L-41: CEQA requires "[m]itigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy." (Pub. Resources Code, § 21100(b)(3).) As noted by the Court of Appeal in *Tracy First v. City of Tracy* (2009) 177 Cal. App. 4th 912, "the California Building Energy Efficiency Standards are meant to promote energy efficiency, as the 934 name implies." In other words, they "reduce the wasteful, inefficient, and unnecessary consumption of energy."(§ 21100(b)(3).)

Further, all development allowed by the proposed Specific Plan will meet, at a minimum, the current Title 24.11 California Green Building Standards Code, effective August 1, 2009, or the Building Standards Code in effect at the time of building design. All development will also meet Title 24 Part 6, the 2008 Building Energy Efficiency Standards, effective January 1, 2010, or the energy efficiency standard in effect at the time of building design. The California Green Building Standards Code is Part 11 of twelve parts of the official compilation and publication of the adoption, amendment and repeal of building regulations to the California Code of Regulations, Title 24, also referred to as the California Building Standards Code. The new 2009 codes give California the most advanced building standards in the United States, and require the following:

- Significant improvements in water usage for plumbing fixtures
- Specify household and landscape water conservation reductions of 20 percent for homes
- Set 15 percent stronger requirements for energy savings than currently enforced. These energy savings are found through a combination of more efficient appliances, better insulation, and more efficient windows.

- This code also encourages the use of recycled materials in carpets and building materials, identify a number of improvements to air quality, and suggest various site improvements, including parking for hybrid vehicles and better storm water plans.

The text of the Draft EIR (p. 268) has been revised to clarify this issue, (refer to Section 4.0 *Revisions to the Text of the Draft EIR*).

COMMENT L-42: The project does not respond to the site conditions by aligning the residential and school development to take advantage of the solar orientation that would support both passive and active solar use. The development is simply more urban sprawl without any unique elements to minimize its carbon footprint. The mandatory and voluntary element identified in the Green Building standards should be required mitigation measure for this development. The project is not in keeping with the U.S. Mayors Climate Protection Agreement that was signed by Mayor David Smith. The Agreement's goal is to conserve the nation's energy and reduce the greenhouse gas emissions that threaten our planet. Participating mayors make several commitments to greenhouse gas reduction in their own communities. The first of which is to take action implement "anti-sprawl land-use policies." The most important step a community can make to reduce greenhouse gases is the reduction of sprawl and the creation of transit-oriented development. Development of Area 4 is contrary to this Agreement. The DEIR states that the vehicular trips associated with the project "would substantially increase the demand for gasoline", and then states that the implementation of pedestrian sidewalks and paths, bicycle lanes, new bus pull outs on Cherry Street and Stevenson Boulevard, a shuttle service to Area 4 and pedestrian friendly signs will reduce this impact to "less than significant."

The feasibility and effectiveness of these mitigation measures is suspect. Residents are not likely to use sidewalks that require they climb an overpass in an otherwise flat landscape. Alameda County transit is reducing and consolidating bus routes. It is highly unlikely that bus service would be provided to the 560 homes planned in Area 4. These suspect measures will not significantly reduce the energy impact of up to 1260 new houses, as people will continue to drive their petroleum based cars to work and shopping causing a significant increase in vehicular traffic and a significant increase in petroleum consumption (The Argus, Jan. 10, 2010, Crisis, transportation funding losses, so fewer busses to outer areas likely.).

The increase in energy consumption and lack of feasible and effective mitigation measures is in direct opposition to a number of newly adopted pieces of legislation. The project would add to the global warming burden in opposition to AB 32, AB375, Governor's Panel of 23 (Dec. 2009), 2009 Climate Change Adaptation Strategy (CA governor's), etc., which try to also discourage development that is "vulnerable" and is "sprawl and isolated."

The Adaptation Strategy Report also included efficient energy usage when developing that should now be incorporated into the project and Final DEIR. In addition, 2009 California Climate Adaptation Strategy #11 recommends: Climate Adaptation Report Ref. No. 11: "State *agencies should meet...greater energy conservation and an increased use of renewable energy."*

RESPONSE L-42: As described above in the Response L-41, the Specific Plan development will conform to the Green Building Standards of Title 24.11, or Title 24 energy efficiency standards are in effect at the time of building development. All development will also meet Title 24 Part 6, the 2008 Building Energy

Efficiency Standards, effective January 1, 2010, or the energy efficiency standard in effect at the time of building design. In addition to the energy efficiency provided by Title 24.11, measures are included in the project to minimize water use in plumbing and irrigation (Draft EIR pp. 268-269). The City does not consider the proposed Specific Plan development, including Area 4, to be sprawl. On the contrary, the City notes that development of Areas 3 and 4 constitutes infill development that is close to jobs, transportation facilities, and infrastructure. Regionally speaking, Newark and the project area are within 15 miles of the job centers of Fremont, Milpitas, North San Jose, Hayward, and Palo Alto.

COMMENT L-43: Cumulative Impacts
The Tri-City area is under significant development pressure. The cumulative impact analysis highlighted many of the development proposals. It now appears as though the project must consider the A's stadium project as a new proposal is under consideration by the City of Fremont and Major League Baseball.

RESPONSE L-43: As described in the Draft EIR (p. 276), the cumulative analysis of transportation impacts included the previously proposed A's Village project in Fremont. The project included a stadium, residential uses, and retail uses. At the time of the traffic impact analysis, the stadium was to be located west of I-880 south of Auto Mall Parkway. There have been media reports that the stadium could possibly be located east of I-880 in Fremont (the NUMMI site). There is no application on file, however, with the City of Fremont and no details from which to base an analysis. Generally, it is believed that moving the stadium to the east side of I-880 would reduce stadium related traffic in Newark relative to the previously considered location. Impacts to the regional roadway of I-880 would likely be the same at either of the two Fremont locations.

COMMENT L-44: The cumulative impact analysis must incorporate the most current science in evaluating impacts to the project from Global Climate Change. The DEIR relies on adopted standards that are 5 to 7 years out of date with new research. Thus, all of the assumptions the standards were based upon are now outdated and the impacts on public safety, flooding and regional biodiversity must be reevaluated.

RESPONSE L-44: The Draft EIR discussion of Global Climate Change does incorporate the most current federal, state, and local regulations. The commenter does not state what adopted standards that are 5 to 7 years out of date with new research are being referenced in the comment.

The Draft EIR evaluates both the project's generation of Greenhouse Gas Emissions (GHG) emissions contributing to climate change and the impacts *to* the project from climate change, in accordance with the recently adopted CEQA Guidelines Amendments addressing analysis and mitigation of greenhouse gas emissions pursuant to SB97 (December 2009). In the latter discussion, the effects of bringing development to an area susceptible to flooding hazards has been analyzed both as such hazards exist today and may occur in the future, in accordance with the recently adopted CEQA

Guidelines Amendments (December 2009). The Bay Area Air Quality Management District (BAAQMD) proposed thresholds and methodology (October 2009) has been used to evaluate the proposed project's contribution to Greenhouse Gas Emissions (GHG). These thresholds were used in the Draft EIR, because they were expected to be adopted in December 2009; the adoption has since been extended to June 2010. The discussion of existing flood hazards is evaluated in Draft EIR Section 3.8, *Hydrology, Flooding, and Water Quality* (Draft EIR p. 191) and the evaluation of possible future flooding hazards is provided in Draft EIR Section 4.0, *Cumulative Impacts* (Draft EIR p. 273). Consistent with the 2009 California Climate Adaptation Strategy, the Draft EIR evaluates a project alternative that avoids new development in areas that cannot be protected from future flooding due to climate change. It is the *No Development in Area 4 and Higher Density Area 3 Alternative* (Draft EIR p. 313).

The Draft EIR discussion of climate change and sea level rise incorporates the most current federal, state, and local regulations, and is based upon a range of sea level rise estimates suggested by the San Francisco Bay Conservation and Development Commission (BCDC) and the 2009 California Climate Change Adaptation Strategy. The Draft EIR discussion of climate change and sea level rise was based upon a Climate Change Addendum prepared in October 2009 (Draft EIR Appendix G). Scientific opinions published in peer reviewed journals or otherwise, should not be confused with regulatory policies and mandates. The sea level rise discussion includes federal, state and local regulations related to sea level rise as of October 2009 and as of the time of this response to comments document, the regulatory discussion remains largely the same. Recently adopted amendments to the CEQA Guidelines that incorporate analyses and mitigation for GHG and include a recommended approach for identifying project GHG emissions, determining significance, and mitigating the impacts through the CEQA process have been followed in the Draft EIR analysis. The project's lifetime contribution to GHG emissions were quantified, and compared to thresholds of significance proposed by BAAQMD, an agency with particular expertise in the subject matter under consideration. Mitigation measures, including project design features, were identified to reduce those emissions, and alternatives to the project that would avoid or reduce impacts were identified. Please refer to Master Response 1, for additional information regarding the Draft EIR analysis of sea level rise.

COMMENT L-45: Closing Comments

We appreciate the opportunity to provide written comments on the Draft DEIR. While the DEIR suffers from significant omissions, inaccuracies, and flaws that must be rectified to comply with California Environmental Quality Act (CEQA) requirements. We do want to express general support for development of Area 3.

We would like to see a small retail area incorporated into the northeast corner of Area 3 to serve students, employees, and residents. We imagine this retail center to interact with the creek and Cherry Street and provide a place to obtain basic services, to enjoy conversions with neighbors and

colleagues and to study. We see students traveling along the creek footpath to reach this retail service center.

We oppose all development in Area 4. This is the wrong place to expand the urban footprint. These lands have unique Bayside characteristics that should be restored and preserved for future generations. Development of Area 4 is folly that will only put additional burdens on the Newark taxpayers and city services. We had hoped for a more inclusive Specific Plan process. We now renew this hope for wise decision making for the future.

RESPONSE L-45: The commenter's concerns and opinions are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration. The commenter's questions and comments on the Draft EIR have been responded to in the preceding pages. No new information resulting from the comments or the responses would result in a new impact or an impact of substantially greater severity than already identified in the Draft EIR; therefore, the comments, responses, and text revisions do not warrant recirculation of the Draft EIR.

M. RESPONSE TO COMMENTS FROM SIERRA CLUB SAN FRANCISCO BAY CHAPTER, JANUARY 19, 2010:

COMMENT M-1: In a world facing one of the largest mass extinctions of wildlife, this project fails to identify threats to endangered species and poses inadequate or even unspecified mitigations for other impacts to those species thus putting their existence in jeopardy. In a Bay Area facing a sea-level rise of three to six feet (or even more according to some credible scientists) this project proposes to build housing on land that may ultimately be under bay waters. In a Bay Area that recognizes the importance of preserving and restoring wetlands this project proposes to fill 85.6 acres of wetlands as well as 7.65 acres of salt marsh harvest mouse/salt marsh wandering shrew habitat with no plan for mitigation other than to say we will mitigate. In a Bay Area that recognizes the need for the preservation of uplands adjacent to tidal wetlands in order to allow for those wetlands to move uplands as the Bay rises, this project proposes to build housing and a golf course on lands among the most suitable for such tidal marsh movement and that are included within the Don Edwards San Francisco Bay National Wildlife Refuge expansion boundary.

This lack of sound planning policy is matched only by a DEIR that is fatally flawed in its failure to identify impacts to endangered species, failure to fully assess the impacts of building on lands that may be under water in 100 years or less and that fails to define appropriate mitigations for these and other impacts.

These flaws are so significant that they cannot be resolved through a Final EIR but instead require the preparation of a fully revised DEIR.

Specific comments:

The project proposes to use up to 2.1 million cubic yards of fill in Area 4 to raise the building pad elevations. The DEIR does not provide sufficient analysis on the safety of such a massive fill. For example:

- the DEIR fails to adequately address the stability of this fill over many years including the possibility of subsidence as a result of inundation and standing water (if the pumps that are necessary to export stormwater over the levees around the project fail or are inadequate),
- the DEIR fails to adequately address where the project will acquire that immense amount of fill (while the BART expansion project may provide much of the fill, other projects may compete for that fill requiring some or much of the fill to come from other sources- a more global analysis is required),
- will obtaining that amount of fill result in impacts to the environment that would otherwise not take place (e.g., taking fill material from sites that would otherwise be providing wildlife habitat),

The failure to adequately address these issues that could impact both human safety and wildlife habitat requires a depth of analysis that insists on a revised DEIR, not simply responses in a FEIR.

RESPONSE M-1: Potential building pad settlement is a legitimate concern and discussed in *Section 3.7* of the Draft EIR with particular attention given in MM GEO-3.1 (pp. 185-186). The Draft EIR identifies the geotechnical impacts and mitigation measures at a level commensurate with the level of project detail provided. As described in the Draft EIR, at the time project-specific development is proposed, further geotechnical analysis will be completed to determine the settlement potential of the soil and the foundation type and construction methods best suited to the location and development. The methods for compacting and engineering the fill will be subject to review and approval by the Director of Public Works prior to issuance of grading permits. The standard practice for the design of a grading plan is to account for long-term anticipated differential settlement and provide safe releases for storm runoff that function even without a working storm drainage system.

Nearby construction projects are anticipated to be the source of fill materials for the project. As described in the Draft EIR (p. 92) soil exported from Lake Elizabeth BART project to the project site would travel a four-mile one way trip; however, an average 10-mile one-way trip was used in the truck hauling emissions analysis, to be conservative. The exact sources of fill material for the project have yet to be identified, and it is reasonable to assume that fill will be brought to the site from a wide variety of source locations. For this reason, a 10-mile one-way distance was used, as a conservative estimate of truck trip length. Some truck trips, such as those from Lake Elizabeth, would be shorter, and some may be longer. The source of the fill materials would be from sources that already have to export fill, any environmental impacts of this export would have been evaluated for that particular project.

Refer to Response N-1 regarding commenter's opinion that a revised Draft EIR be prepared (and recirculated).

COMMENT M-2: The project fails to address significant endangered species issues, for example:

- the DEIR fails to address the inescapable impacts of pet cats, feral cats and off-leash dogs on the salt marsh harvest mouse (SMHM) and salt marsh wandering shrew. We believe this is an unmitigable impact since these animals are an inevitable component of modern communities and we are not aware of any project that has been able to curtail the movements of these predators,

While the DEIR acknowledges that such predators may have impacts on wildlife species it shockingly fails to identify it as a specific impact to be mitigated not to mention offering no mitigations for such impacts. It is well known that these exotic predators are some of the principle causes of tidal marsh species population declines (see and US Fish and Wildlife Service biological opinion on tidal marsh listed species in the Bay Area) and to fail to identify them as significant impacts is inexcusable.

- the DEIR fails to adequately address the impacts of the introduction or the increased presence of predators such as ravens, crows and raccoons that would result from the implementation of the proposed housing development on the salt marsh harvest mouse and salt marsh wandering shrew. The increase or introduction of these species would result from the increased food resources made available to them from human garbage and other human sources of food.

The failure to address these impacts on two endangered species goes beyond the ability of an FEIR to redress and requires the preparation of a revised DEIR to address these significant and possibly unmitigable impacts.

RESPONSE M-2: Please refer to Response A-1 regarding the potential effects of nuisance predators on more sensitive species and regarding the revision of the EIR to incorporate a measure to reduce the potential for nuisance species to prey on sensitive species or to be attracted to or subsidized by development on Areas 3 and 4.

COMMENT M-3: The project fails to adequately address the impacts to the salt marsh harvest mouse from habitat loss. The significance of the impact of habitat loss to these species is emphasized by the fact that the US Fish and Wildlife Service has estimated that less than 3% of historic salt marsh harvest mouse habitat is still extant. The 1992 Estuary Project *Status and Trends Report on Wildlife of the San Francisco Estuary* states, " …survival of the southern subspecies depends on the protection and management of remaining formerly tidal marshes which have been diked but continue to support harvest mice…(page 165)." This is an accurate description of the current project site

For a species in such dire straits, the project's mitigation proposed for this species is woefully inadequate both in description and in amount. While mitigation for habitat impacts is proposed at a 3:1 or 2:1 ratio we question if there is sufficient acreage on site for that purpose as well as for general wetland mitigation for 85.6 acres of wetlands.

The DEIR is abundantly vague about how much SMHM mitigation will be required. At a 3:1 that would be over 21 acres. That makes up a need for over 100 acres of wetlands mitigation assuming that one doesn't double-dip and count wetland mitigation as SMHM mitigation. The DEIR suggests that mitigation for one should suffice for the other. We disagree. These are separate impacts requiring separate mitigation amounts. Furthermore, the DEIR's proposed 2:1 ratio for SMHM "habitat" loss that will be within 100 feet of the developed areas is inappropriate since there is no reason to believe that such habitat will support the SMHM and in fact the recovery plan for the species asks for a buffer of at least 100 feet from human use.

RESPONSE M-3: Please refer to Master Response 2 and Response E-3. The commenter questioned whether the site provides adequate area in which to mitigate impacts to wetlands and impacts to salt marsh harvest mice/wandering shrew habitat and suggested that mitigation of impacts to both resources should not

occur in the same areas. The site does provide adequate area to mitigate impacts to wetlands and to habitat for these two mammals, and mitigation of both types of impacts in the same areas is appropriate. For example, some of the impact to wetlands may occur in wetlands that provide potential salt marsh harvest mouse/wandering shrew habitat; compensatory habitat mitigation by creation or restoration of pickleweed-dominated wetlands that provide habitat for these mammals is therefore appropriate.

The City's biological expert and the City disagree with the commenter's suggestion that areas within 100 feet of developed areas will not provide habitat for salt marsh harvest mice/wandering shrews even if suitable habitat is present. While there is likely to be a reduction in habitat quality in such areas, thus necessitating mitigation at a 2:1 ratio per MM BIO-8.4, there is no reason to expect that such areas will lose their value to these mammals entirely. Especially adjacent to the golf course, where direct human disturbance would be very limited and the edges of the golf course would provide some transitional habitat, salt marsh harvest mice and wandering shrews are expected to persist.

COMMENT M-4: <u>Mitigation</u>

Mitigation Measure BIO-1.2B is flawed when it states, "[A]lternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. These off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements. The offsite component of the wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed."

We are not aware of any mitigation banks or private lands along the South San Francisco Bay shoreline within 10 miles of the project site that meets this need. Since a large number of mitigation acres are needed we do not believe that this mitigation measure can be met. The DEIR must identify available sites for such mitigation rather than just state that such mitigation opportunities exist. We believe that all of the shoreline land between San Leandro and the project site are publicly owned and thus not available as mitigation banks or mitigation sites. Similar difficulties are met in the other direction.

Furthermore, the idea that the "preservation" of wetlands is adequate mitigation for the loss of wetlands is not tenable. State regulations require a "no net loss" of wetlands, but "preservation" as the only mitigation tool obviously results in a net loss of wetlands. While federal regulations may allow some preservation be used for mitigation it is clearly identified as a rare use only for preserving sites of special importance. We do not believe there are any **available** sites in the south bay that meet that qualification under the Army Corps guidance of being so important that their preservation may be used as mitigation and, in fact, if there were such sites the project Area 4 site would be one of them due to its providing critical habitat for such endangered species as the SMHM.

We also disagree with the 1.5-acre mitigation ratio proposed in the DEIR for the loss of seasonal wetlands. Seasonal wetlands are some of the most difficult to replicate in function. We believe a 3:1

or even higher ratio is appropriate (see *Restoration of Aquatic Ecosystems*, National Research Council, 1992, page 309, "Require 3:1, 5:1, or 10:1 habitat replacement ratios…").

Just as egregious is the DEIR's MMBIO-1.2A, *"A detailed mitigation plan shall be developed by a qualified biologist under contract to each future developer for individual development projects within the Specific Plan areas which result in direct impacts to wetland habitats. This plan will be submitted to and approved by the City of Newark prior to the initiation of grading within wetlands"*. For a site as important as this one providing habitat for two endangered species and adjacent to a marine mammal (harbor seal) breeding and haul out at Mowry Slough and located within the expansion boundary for the Don Edwards San Francisco Bay National Wildlife Refuge, mitigation for any wetland impacts should be described in some detail in order to provide decision-makers with some confidence that such mitigation will be successful or even feasible. Here, such decisions are left up to a "qualified biologist" with evidently no further review by regulatory agencies other than the City of Newark. As mentioned above, seasonal wetland habitat is one of the most difficult to replicate in all its functions. Leaving mitigation planning to future "qualified biologists" with only acreage requirement guidelines is simply not acceptable.

Since we do not believe that there is sufficient acreage available on-site to implement even a 1.5:1 mitigation ratio, and believe that there are no off-site opportunities of significant size for the amount of mitigation required by this project we believe that a full mitigation concept plan must be provided that assures the public and decision-makers that such mitigation as is necessary is possible. A revised DEIR should be prepared that includes a full mitigation concept plan that indicates how mitigation will be achieved in the face of the problems cited above.

Finally, the project proposes to fill wetlands and wetlands are §404(b)(1) special aquatic sites and thus there is a presumption that there are alternate upland sites available for the general purpose of the project that would have less environmentally damaging impacts. The project's general purpose is housing and we believe there are other sites in the Bay Area where housing can be built that would not require the destruction of wetlands and endangered species habitat.

There are many other issues we have not had time to address. The Citizens Committee to Complete the Refuge has addressed many of them and we concur with their findings.

RESPONSE M-4: Please refer to Master Response 2 and Responses A-3 and E-3 in this document.

N. RESPONSE TO COMMENTS FROM PICK-N-PULL AUTO DISMANTLERS, JANUARY 19, 2010:

COMMENT N-1: This firm represents Pick-N-Pull Auto Dismantlers ("Pick-N-Pull"), owner of property within "Area 4" and operator of the auto dismantling and recycling business located at 7400 Mowry Avenue and 7550 Mowry Avenue in the City of Newark, California. The following comments are submitted on our client's behalf in connection with the December 2009 Draft Environmental Impact Report ("DEIR") prepared by the City of Newark ("City") for the proposed Specific Plan Project (the "project") for Newark Areas 3 and 4 (including the proposed Specific Plan, which is Exhibit A to the DEIR).

As a business owner and operator, and as the owner and long-term lessee of substantial acreage within "Area 4," Pick-N-Pull has a very keen interest in the City's plans for its properties and for the

surrounding properties in that area of the City. To that end, Pick-N-Pull has been attempting to work with the City in its efforts to advance acceptable land use development scenarios for that area. Unfortunately, Pick-N-Pull has not been afforded the opportunity to participate in the City's on-going work with other landowner/developers on the development planning or entitlement documents. However, it is clear that the City has deviated from its announced intentions (several years ago) as to the type, timing and form of development for the lands owned or controlled by Pick-N-Pull and those that surround those properties. Due specifically to those significant changes in identified potential development scenarios, and the lack of any single specific development proposal, Pick-N-Pull's interest is particularly keen because its prior expectations are significantly adversely affected by the current DEIR and proposed Specific Plan.

We trust that the City's intention is to provide a thorough, complete and legally adequate Specific Plan and CEQA environmental review document for that plan. On behalf of Pick-N-Pull, we have carefully reviewed the DEIR and proposed Specific Plan in order to assist the City in that effort.

Unfortunately, we have concluded that the current draft documents contain numerous significant deficiencies rendering them legally inadequate under the California Environmental Quality Act ("CEQA") (Public Resources Code Sections 21000 *et seq*.) and the Planning and Zoning Law (Government Code Section 65000 *et seq*.). Accordingly, we respectfully suggest that the City correct these deficiencies by supplementing and recirculating the DEIR for the proposed Specific Plan Project for Newark Areas 3 and 4, and revising the underlying proposed Specific Plan, to address the following items:

RESPONSE N-1: The commenter asks the City to revise and recirculate the Draft EIR to correct alleged deficiencies under CEQA.

Section 15088.5 of the State CEQA Guidelines requires a lead agency to recirculate an EIR when "significant new information" is added to the EIR after public notice of its availability, but before its certification. "Significant new information" requiring recirculation is generally information showing that a new significant environmental impact or a substantial increase in the severity of an environmental impact would result from the project. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies, or makes insignificant modifications in an adequate EIR. As reflected in the Final EIR's good faith responses to all comments received on the Draft EIR, no significant new information has been added to the EIR, and therefore the City has determined that recirculation is not required.

COMMENT N-2: I. Comments Regarding the DEIR for the Proposed Specific Plan

1. Public Transit Impacts Analysis

The DEIR's analysis of impacts on public transit is set forth in Section 3.2.3.5 and Appendix B. Section 3.2.3.5 of the DEIR states:

> Existing AC Transit bus routes travel along Mowry Avenue, Cherry/Boyce Street and Stevenson Boulevard, in the vicinity or adjacent to the project street frontages. It is reasonable to assume that transit trips will comprise no more than four percent of the travel mode share to the site during the peak commute periods. This would equate to approximately 57 new transit riders during the AM peak hour and approximately 67 new transit riders during the PM peak hour.

> Within the vicinity of the project there are three bus lines. Assuming the existing service would remain unchanged, with the three bus lines providing service with 30 to 60- minute headways, the number of transit riders during the peak commute period (PM peak hour) would equate to about 12 riders. These new riders could easily be accommodated by the current available ridership capacity of the existing transit facilities in the project study area. Therefore, the project is not expected to increase transit demand such that improvements to the existing bus service would be necessary … The proposed Specific Plan project would not adversely impact transit service … **(Less than Significant Impact).** (Bold in original.)

Appendix B of the DEIR is titled "Transportation" and indicates that the three AC Transit bus lines in the vicinity of the project are Stevenson Boulevard Route 214, Albrae Street Route 235 and Albrae Street Route 329. According to Appendix B of the DEIR (see page 11), the headways for Stevenson Boulevard Route 214 are every 30 minutes, and the headways for Albrae Street Route 235 and Albrae Street Route 329 are every 60 minutes. Section 3.2.3.5 and Appendix B of the DEIR do not provide any data or support relating to the computation of public transit's travel share mode for the project nor do they provide any data concerning current ridership rates on these bus routes or the ridership capacity of the buses that service these routes.

RESPONSE N-2: The commenter claims Appendix B of the Draft EIR lacks sufficient data relating to the computation of public transit's travel share mode for the project, as well as failing to provide data concerning current ridership rates and capacity.

The Draft EIR's transit service estimate of four (4) percent was a conservative estimate, (Draft EIR p. 68.) There are many factors that contribute to transit mode share, including income, land use density, and type/frequency of service. According to the Bay Area Census, the total existing bus transit service mode share is 2.1 percent in Newark. Similarly, data from the Valley Transportation Authority 2030 plan shows an existing transit mode share of approximately 3 percent. The Valley Transportation Authority estimate is comparable, because it relies heavily on bus service, which is the type of transit service available near the project site, and has similar land use densities to those in suburban style cities such as Newark.

AC transit carries 236,000 daily passenger trips, operates 105 bus lines, and provides 6,378 daily hours of service. The project was estimated to generate on the order of 67 transit riders during the highest hour of the day. The relative contribution of the proposed project to system-wide transit ridership is therefore extremely small. It is the goal of AC Transit and every other transit provider to promote and increase transit ridership because of its benefits to roadway congestion and pollution. The transit agency employs planners with the specific goals of finding economical routes to maximize ridership on a system-wide basis. The City of Newark and AC Transit would regard high transit ridership from this project as a significant benefit to the environment.

As to specific line capacity, field observations of bus occupancy levels were completed at the time of study in the project vicinity. Based on these observations, the project traffic consultant determined that there was

sufficient available capacity to accommodate additional ridership. That said, over time, bus routes change and schedules vary based on land use changes, economic conditions, fuel prices, and success in achieving ridership. Frequencies and routes are not fixed and therefore it is unrealistic to assume that transit service will remain static in perpetuity. Accordingly, in January 2010, the project traffic consultant completed follow-up surveys to determine peak hour bus occupancy for routes in the project vicinity. Based on those surveys, routes 213, 214, and 235 had between zero and 10 riders during the peak commute hours in the project vicinity. Typical transit buses have a seated capacity of around 40 passengers, and a standing capacity around 20 passengers.

It is also noted that the project trip generation estimates did not assume any reductions in trip generation for project trips that employ public transit. Thus, the Draft EIR provides a conservative estimate of roadway impacts for the purposes of calculating level of service.

COMMENT N-3: In light of the above, the following deficiencies in the DEIR transportation/public transit analysis are noted below:

First, given the sparse public transit information provided in Section 3.2.3.5 and Appendix B of the DEIR, the DEIR does not appear to contain substantial evidence to support the DEIR's determination that public transit will account for only four percent of the total travel share mode for new residents for the proposed project. This four percent figure seems particularly low in light of the fact that the project proposes to build 189 below market rate (BMR) multi-family units (see Section 2.4.1 of the DEIR). Presumably the rate of automobile ownership and usage among residents of these proposed 189 BMP residential units is lower than non-BMR residential units (suggesting greater reliance on public transit), yet there is no indication in the DEIR as to whether or how the inclusion of these 189 BMR units was reflected in the determination that public transit will account for only four percent of the total travel share mode for new residents for the proposed project.[7]

RESPONSE N-3: The commenter claims the Draft EIR does not provide substantial evidence to support the Draft EIR's findings regarding the usage of public transit by residents of the project. Specifically, commenter claims the anticipated usage of public transit by the residents of the project's below-market rate units was not accounted for in the Draft EIR's analysis of transit impacts.

As discussed in *Section 3.2* of the Draft EIR, the amount of traffic generated by the project was estimated using standard trip generation rates based on the size of the development, (Draft EIR p. 56.) The City directs the commenter to Appendix B of the Draft EIR, pages *iv* through *v*, for a discussion of how trip generation and distribution was calculated. Further, as discussed in Response N-2, there is more than adequate capacity on AC Transit buses serving the project area to accommodate additional ridership.

COMMENT N-4: Second, the DEIR does not appear to contain substantial evidence to support the DEIR's general claim of "30 to 60 minute headways" for the three AC Transit bus lines providing

[7] We note that these 89 units represent approximately fifteen percent of the total proposed 1,260 units.

service in the vicinity of the project. More specifically, according the Appendix B of the DEIR, although the headways for Stevenson Boulevard Route 214 are every 30 minutes, the headways for Albrae Street Route 235 and Albrae Street Route 329 are every 60 minutes. This suggests that average headways for the bus routes servicing the project are much closer to 60 minutes than 30 minutes.

RESPONSE N-4: The commenter claims the Draft EIR does not provide substantial evidence supporting the claim that the bus lines servicing the Specific Plan area have 30 to 60-minute headways.

Please refer to Draft EIR pages 45 through 47 where the headways for the three bus routes that service the Specific Plan area are provided. The Draft EIR provides an analysis of the estimated headways for weekday and weekend service on these routes. In sum, the three bus routes are the Stevenson Boulevard Route 214, the Albrae Street Route 235 and the Albrae Street Route 329. The Stevenson Boulevard Route 214 has headways every 30 minutes on weekdays and 60 minutes on weekends, the Albrae Street Route 235 has headways every 60 minutes and the Albrae Street Route 329 also has headways every 60 minutes. Therefore, the Draft EIR accurately states that the three bus routes providing service to the area have "30 to 60-minute headways."

COMMENT N-5: Third, in light of the two observations noted above regarding travel mode share and headways, there does not appear to be substantial evidence to support the DEIR's projection of anticipated new public transit riders for the AM peak hour and PM peak hour.

RESPONSE N-5: The commenter claims the Draft EIR does not provide substantial evidence in support of the Draft EIR's projection for new public transit riders for the AM and PM peak hours.

As discussed in Response N-2, the Draft EIR's transit service estimate of four (4) percent was a conservative estimate, (Draft EIR p. 68.) There are many factors that contribute to transit mode share, including income, land use density, and type/frequency of service. According to Bay Area Census, the total existing bus transit service mode share is 2.1 percent in Newark. Similarly, data from the Valley Transportation Authority 2030 plan shows an existing transit mode share of approximately three (3) percent. The Valley Transportation Authority estimate is comparable, because it relies heavily on bus service, which is the type of transit service available near the project site, and has similar land use densities to those in suburban style cities such as Newark.

Based on an anticipated public transit usage of four (4) percent, the project is likely to generate "57 new transit riders during the AM peak hour and approximately 67 new transit riders during the PM peak hour." (Refer to Draft EIR p. 68.) Assuming these riders are distributed equally between the three bus lines traveling in two directions near the site (6 buses total), project ridership equates to up to 12 riders per bus.

For further clarification, the text in Section 3.2.3.5 of the Draft EIR has been revised, refer to Section 4.0 *Revisions to the Text of the Draft EIR* of this document.

COMMENT N-6: Fourth, although Section 3.2.3.5 of the DEIR attempts to analyze the number of additional public transit riders for the AM peak hour, it does not do so for the PM peak hour. No explanation is provided for the omission of this information for the PM peak hour.

RESPONSE N-6: Please refer to Response N-5.

COMMENT N-7: Fifth, because Section 3.2.3.5 and Appendix B of the DEIR does not provide any data concerning current ridership rates on these AC transit bus routes or the ridership capacity of the buses that service these three routes, there does not appear to be substantial evidence to support the DEIR's determination that "new riders could easily be accommodated by the current available ridership capacity of the existing transit facilities in the project study area." For instance, if the current buses that service these routes during peak hours are already near ridership capacity (i.e., under baseline conditions) in terms of available seats, then the addition of 12 passengers from the project (or likely more than 12 passengers for the reasons noted above) might well be a significant public transit impact. Without this basic information, there is no basis for the DEIR to reach the conclusion that the impact of these additional bus passengers will be less than significant.

Sixth, for all of the reasons note above, the DEIR lacks substantial evidence to support the determination that the project will have a "Less than Significant Impact" on public transit services.

RESPONSE N-7: Please refer to Responses N-2 and N-5.

COMMENT N-8: **2. Roadway Network Impact Analysis**
Section 3.2.2.4 of the DEIR sets forth the methodology used in the DEIR to determine the significance of the project's impacts on the roadway network (streets and freeways). Section 3.2.2.4 explains its reliance on "background conditions" as follows: "Background conditions were represented by future background traffic volumes on the near-term future roadway network. Background traffic volumes were estimated by adding to existing peak-hour volumes the projected volumes from *approved* but not yet completed developments." (Italics in original.) Section 3.2.4 then explains: "Future traffic volumes with the project were estimated by adding to <u>background traffic volumes</u> the additional traffic generated by the project. Project conditions were evaluated relative to the <u>background conditions</u> in order to determine potential project impacts." (Underline added.)

As set forth above, the DEIR therefore used its computation of "Background Conditions" (which included projects approved but not yet constructed) as the baseline/environmental setting for evaluating the significance of the project's roadway network impacts.

CEQA Guidelines § 15125 is titled "Environmental Setting" and provides that CEQA environmental impact assessment documents must:

> Include a description of the **physical** environmental conditions in the vicinity of the project, **as they exist at the time** the notice of preparation is published, or if no notice of preparation is published, **at the time** environmental analysis is commenced. This environmental setting will

> normally constitute the **baseline** physical conditions by which a Lead Agency determines whether an impact is significant. (Bold added.)

The leading CEQA case on CEQA Guideline 15125 and "baseline" conditions is Environmental Planning and Information Council (EPIC) v. County of El Dorado (1982) 131 Cal.App.3d 350. In EPIC, a CEQA document was prepared for a General Plan amendment. In assessing the impacts of new projects proposed in the General Plan amendment, the CEQA document compared the new proposed projects not against the baseline of actual existing conditions but rather compared the new proposed projects against what had been previously approved under the old General Plan. In EPIC, the California Court of Appeal rejected the use of this baseline, holding that the CEQA analysis should have compared the project proposed under the General Plan amendment to *current* conditions on the ground. According to the Court in *EPIC,* under CEQA Guideline Section 15125 this current condition was "the **actual** environment upon which the proposal will operate" and the reliance on this improper baseline rendered the CEQA analysis "**misleading**." (Bold added.)

Earlier this year, Contra Costa County Superior Court reached the same conclusion as the Court in EPIC. In Communities for a Better Environment v. City of Richmond (Contra Costa County Superior Court Case No. CIVMSNO8-1429, decision issued June 4, 2009), an EIR was prepared for proposed changes to a Chevron oil refinery. In its CEQA document, Chevron had argued that the "baseline" for analysis of air quality impacts should be the levels of emissions allowed under the refinery's permit rather than the *current/actual* pollution and greenhouse gas emissions being emitted from the refinery (which were below the amount approved). Just as in EPIC, the Court in Communities for a Better Environment rejected this baseline as inconsistent with CEQA Guideline 15125, holding "Environmental setting at time of notice of preparation [of the EIR] was published will normally constitute baseline environmental conditions by which the lead agency determines whether an impact is significant. See 14 CCR Section 15125(a)."

Because the "background conditions" relied upon in Section 3.2.2.4 of the DEIR reflects "approved" projects rather than those projects actually constructed (existing conditions), this baseline is not consistent with CEQA Guidelines § 15125 and the EPIC and Communities for a Better Environment court decisions noted above.

Moreover, the DEIR's conclusion that the impact of the proposed project would have a less than significant impact on the regional roadway network is flawed because it again relies on improper baseline conditions - this time the development on Areas 3 and 4 allowed under "the existing General Plan." Section 3.2.3.3 of the DEIR relating to "CMA Modeling of the Project," states in part:

> The existing General Plan land use designations on the undeveloped portions of Areas 3 and 4 allow for up to 1.175 million square feet of industrial park use, up to 2,700 dwelling units, an 18-hold golf course, and open space. The proposed Specific Plan would allow up to 1,260 dwelling units, a 600 student elementary school, an 18-hole golf course, and open space. **Thus, the proposed Specific Plan project results in less overall development on Areas 3 and 4 than is allowed under the existing General Plan land use designations.**
>
> **Based on the existing General Plan designation** and considering the assumed growth in the CMA's Alameda County travel forecast model, Newark Areas 3 & 4, under no project conditions, were assumed to contain 800 dwelling units and 2,318 jobs under year 2015 conditions, and 1,260 dwelling units and 2,920 jobs under year 2030 conditions. With the proposed Specific Plan, Areas 3 and 4 would contain 1,260 dwelling units and 1,838 jobs under

> year 2015 conditions, and 1,260 dwelling units and 1,940 jobs under year 2030. **Compared to the no project (existing General Plan) conditions,** the proposed project would result in 37 more trips during the AM peak hour and 113 more trips during the PM peak hour under year 2015 conditions. Under year 2030 conditions, the proposed project would result in 327 fewer trips during the AM peak hour and 344 fewer trips during the PM peak hour. Although the proposed project would result in less overall traffic from the site in 2030, the directionality of residential trips is opposite the directionality of employment trips. Outbound residential trips peak in the morning, while employment trips peak in the early evening. Thus, despite the fact that the overall volume of traffic from the project vicinity would be less than under the current General Plan, some street segments will experience increases as a result of the proposed Specific Plan. See, DEIR, pg. 62. (Emphasis added.)

Based of the foregoing analysis, the DEIR then formulated a traffic model, which aimed to project traffic impacts for year 2015 and year 2030. The DEIR then concluded:

> In order to determine the impact of the project for the 2015 and 2030 horizon years, the net project volumes of the residential and employment uses were added to the forecasted 2015 and 2030 peak-hour traffic volumes. The resulting traffic volumes and levels of service of the affected regional roadway segments with and without the proposed project.
>
> . . .
>
> The results of the traffic model show that in 2015 and 2030, the regional roadway segments in the vicinity of the project would operate at congested traffic conditions in the peak-directions. In particular, portions of I-880 are projected to operate at LOS F under years 2015 and 2030 during both peak hours. Although the proposed Specific Plan would add some traffic to these roadways, on no study segment would the proposed Specific Plan add more than 32 peak hour trips (or about one car every 2 minutes). This small addition, when added incrementally to the trips of other projects, is not cumulatively considerable. **In addition, because the proposed Specific Plan would result in less overall land use density in Areas 3 and 4 than allowed under the existing General Plan, several of the roadway segments projected to operate at LOS F under the existing General Plan would experience traffic decreases under the proposed Specific Plan, thereby improving traffic conditions.** For these reasons, it was concluded that the impact of the proposed project would have a less than significant impact on the CMA roadway network. See, DEIR, p. 63. (Bold and underline added.)

RESPONSE N-8: The commenter claims that the Draft EIR considers only "approved" projects as part of the Draft EIR's "background conditions," in conflict with CEQA Guidelines Section 15125. Based on this, the commenter claims that the conclusion that the project would have a less than significant impact on the regional roadway network is in error.

CEQA Guidelines Section 15125 (a) states that the existing environmental setting will normally constitute the baseline physical conditions against which the impacts of a project are to be evaluated. The courts have held that a Lead Agency has the discretion to use an alternate baseline, as long as the exercise of discretion is supported by substantial evidence. For the analysis of traffic impacts, the City of Newark uses an alternate baseline, the rationale for which is described in the following paragraphs. (CEQA Guidelines Section 15125 (a).)

The methodology requires recent intersection counts and identifies a process for updating roadway traffic counts. It also defines and formalizes the inclusion of "background" information in the calculation of traffic impacts. In part because of the rapid growth and constantly changing physical conditions that periodically occur in the Bay Area, it is not unusual for traffic conditions to change substantially between the time a CEQA document is prepared and the point in time when the project is fully implemented. The traffic methodology therefore includes provision for incorporating the traffic from approved projects (projects that have completed their own CEQA review and require no new discretionary action to be implemented or occupied) to be added to existing conditions, creating the baseline against which the impacts of a new project's traffic will be calculated. The methodology also allows traffic from an existing vacant building or complex to be calculated and included in background conditions.

The purpose of identifying a background condition for calculating impacts is to ensure that all possible care is taken to identify the actual capacity of the roadways that will be available to accommodate any newly proposed development project. This methodology also more accurately characterizes the real world conditions under which the newly proposed project would be implemented, should it be approved.

The background conditions should also identify roadway capacity-enhancing mitigation required of previously approved projects, if the traffic from those projects would only be allowed on the roadways if the mitigation is also implemented.

Where a proposed project is compared with an adopted plan, the analysis must examine both the existing physical conditions, as well as the potential future conditions discussed in the plan. (CEQA Guidelines Section 15125 (e).)

In compliance with Section 15125 (e), the Draft EIR analyzes both the impacts of the project to existing physical conditions and to potential future development set forth in existing plans. The City directs commenter to Section 2.3 for a Description of Existing Operations/Conditions. Further, as described in Section 3.2.2.4, the traffic scenarios analyzed in the Draft EIR included the existing conditions, where existing traffic volumes from the existing roadway network were analyzed, as well as a background conditions analysis where background traffic volumes were estimated by adding to existing peak-hour volumes the projected volumes from approved, but not yet completed, developments. (Draft EIR pp. 49-50.) The use of existing-plus-approved conditions as a baseline for determining project impacts results in a more conservative traffic impact analysis. The approved projects increased baseline traffic volumes in the area. If the project's impacts were calculated relative to existing conditions, the average intersection delays system-wide would be reduced from what was reported under project conditions.

Further, the 2015 and 2030 analysis procedures for regional roadway modeling used in the Draft EIR are those outlined by the Alameda County CMA. Those guidelines were developed for all member agencies to follow when analyzing impacts on the regional roadway network. Generally, the traffic volumes in 2015 and 2030 system-wide are higher than those of existing conditions. It was the intent of the CMA to study future horizon years because the resulting analysis is more conservative.

COMMENT N-9: The DEIR's use of existing conditions based on development allowed under the existing General Plan contravenes CEQA Guidelines Section 15125 and the EPIC and Communities for a Better Environment court decisions noted above. Therefore, the DEIR's traffic analysis violates CEQA and must be corrected to utilize existing conditions as those *currently reflected on the ground in Areas 3 and 4*, not the development thereof contemplated by the General Plan.

RESPONSE N-9: The commenter claims the Draft EIR relies on improper baseline conditions by comparing the project to allowed General Plan buildout.

This was not the method of traffic impact analysis used in the Draft EIR. The basis for the Draft EIR's conclusions that the Project would not result in a cumulatively considerable contribution to traffic impacts is described in the Draft EIR as follows: This small addition [32 peak hour trips], when added incrementally to the trips of other projects, is not cumulatively considerable." (Draft EIR p. 63.) It is true that the Draft EIR also observes that the project would result in less than land use density that allowed under the City's existing General Plan, but this point is made "in addition" to the Draft EIR's primary conclusion, which is the number of new peak hour trips from the Project is too small to be considered cumulatively considerable.

COMMENT N-10: Furthermore, the DEIR's conclusion that the Specific Plan's addition of no more than "32 peak hour trips (or about one car every 2 minutes)" is not cumulatively considerable "when added incrementally to the trips of other projects" is not supported by substantial evidence. When determining whether a cumulative impact must be analyzed under CEQA, there are two related determinations to make:

(1) Is the combined impact of the project and other projects significant? and
(2) Is the project's incremental effect cumulatively considerable?

See, Stephen L. Kostka & Michael H. Zischke, Practice Under the California Environmental Quality Act (Continuing Education of the Bar 2009), § 13.39 - Significant Cumulative Impacts Must Be Discussed ("CEQA Practice"), citing 14 Cal. Code Regs. § 15030(a)(2). A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." See, 14 Cal. Code Regs. §15065(a)(3).

The CEQA Guidelines set forth two methods for satisfying the cumulative impacts analysis requirements:

(1) the list-of-projects approach (i.e. a list of past, present, and probable future projects producing related impacts, including those outside the lead agency's control); and
(2) summary-of-projections approach (i.e., summary of projections adopted in a general plan or related planning document).

Under either method, the EIR must summarize the expected environmental effects of the project and related projects, provide a reasonable analysis of cumulative impacts, and examine reasonable options for mitigation or avoiding the project's contribution to any significant cumulative impacts. Id. at §§ 13.40, 13.42-13.43, citing 14 Cal. Code Regs. §§ 15130(b)(1)(A)- (B), 15130(b)(4)-(5).

Here, the DEIR relies upon development contemplated by the existing General Plan and amorphous "other projects" to conclude that there will be no cumulative traffic impacts. As discussed above, this is not a proper cumulative impacts analysis. The DEIR, thus, should be supplemented to include a full discussion of cumulative traffic impacts or, in the alternative, provide substantial evidence to demonstrate that the project will not have cumulatively considerable impacts on traffic.

RESPONSE N-10: The commenter claims the Draft EIR fails to provide substantial evidence in support of the finding that the project's additional traffic impacts would not be cumulatively considerable.

The City directs commenter to Section 4.0 of the Draft EIR for a full discussion of the Project's cumulative impacts. Additional discussion of cumulative traffic impacts can be found in Chapter 5 of Appendix B. The Draft EIR analyzed cumulative conditions as represented by adding to project traffic volumes the additional traffic generated by all other foreseeable projects currently pending in the study area as supplied by the cities of Newark and Fremont. A list of the Cumulative Projects that were factored into the Draft EIR's traffic impacts analysis is provided in Table 4.0-1 of the Draft EIR. (Draft EIR p. 275.) The analysis reveals that the project would add no more than "32 peak hour trips" to the roadways during the peak hours. (Draft EIR pp. 63-67.) This is a comparatively small amount of traffic given the capacity of the roadway. In addition, 32 peak hour trips on the subject study segment is within count error if one were to measure freeway traffic volumes. Typical thresholds for impacts used by other lead agencies on regional roadways are between one (1) percent and three (3) percent of the capacity of the segment. In this case, project traffic would equate to 0.4 percent of capacity or less.

COMMENT N-11: 3. Air Quality Impact Mitigation Analysis
The DEIR concludes that there will be a significant impact on air quality from construction activity producing emissions in excess of the proposed Bay Area Air Quality Management District (BAAQMD) significance thresholds. Specifically the DEIR states:

> Based upon the proposed BAAQMD significance thresholds for construction activity, temporary daily emissions of PM10 and PM2.5 from truck hauling, along with emissions from on-site equipment used to move fill materials would have emissions below the daily BAAQMD daily thresholds. Construction activity ROG emissions would be above significance thresholds for three of the eight-year estimated construction period and emissions of NOx would be significant for seven of the eight year construction period. Because NOx and ROG emissions are above the

> proposed BAAQMD significance threshold of 54 pounds per day, the effect of these emissions to the air basin would be significant**. (Significant Impact)**. See, DEIR, Impact AIR-3, p. 93. (Bold in original.)

The DEIR concludes that there are no mitigation measures to reduce this air quality impact and therefore it constitutes a significant unavoidable impact. Specifically, the DEIR concludes:

> **MM AIR-3.1**: The project proponent and the City cannot control emissions from independent trucks used to haul fill materials. Additionally, due to the large size and extended duration of the construction, there are no mitigation measures to reduce this impact, and it would remain significant and unavoidable.
>
> It should be noted that use of fill from the planned Warm Springs BART extension or other nearby construction projects may reduce emissions associated with these local projects, because the proposed project could provide a more convenient location for transporting fill. This would reduce those planned truck trips. **(Significant Unavoidable Impact)**. See, p. 93. (Bold in original.)

The DEIR also concludes that this air quality impact has significant cumulative impacts and that there are no measures to reduce its impact to a less than significant level. See, Impact C-AIR-3, p. 281.

The DEIR fails to proffer substantial evidence to support its findings that the City cannot control emissions from independent trucks and thus no mitigation measures exist to reduce this impact. CEQA requires that an EIR propose and describe feasible mitigation measures to minimize the significant environmental effects identified in the EIR. See, Pub. Res. Code, §§21002, 21002.1(a), 21081(a), 21100(b)(3); 14 Cal. Code Regs., § 15126.4. Mitigation includes:

- Avoiding an impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of an action.
- Compensating for the impact by replacing or providing substitute resources or environments. 14 Cal. Code Regs., § 15370.

CEQA Guideline Section 15364 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." See also, Pub. Res. Code, § 21061.1. Mitigation measures must either be incorporated into the design of the project or be fully enforceable through conditions, agreements, or other means. See, 14 Cal. Code Regs., §15126.4.

RESPONSE N-11: The commenter claims the Draft EIR does not contain substantial evidence supporting the conclusion in MM AIR-3.1 that the City cannot control emissions from independent trucks during construction of the project.

As described in Section 3.3 of the Draft EIR, "nearby construction projects are anticipated to be the source of fill material for this project." (Draft EIR p. 91.) The Draft EIR further assumes that construction of the BART extension

to Warm Springs will likely be a source of anticipated fill material. (*Id.*) While the exact sources of fill material for the project have yet to be identified, it is reasonable to assume that fill will be brought to the site via a wide variety of independent trucks. In other words, there will not be a single fleet of vehicles bringing fill to the project site. As a result it would likely be infeasible to attempt to subject these individual trucks to standardized air quality mitigation measures, in addition to being very difficult to enforce. CEQA requires that mitigation measures must be both feasible and enforceable. It is for this reason that the Draft EIR determined that emissions from the independent trucks would result in a significant and unavoidable air quality impact.

The Draft EIR's assumption was nonetheless quite conservative, considering that vehicles leaving other area projects loaded with fill and bound for the project site will likely be subject to emissions reduction mitigation measures as part of their operations in relation to those other projects.

COMMENT N-12: Here, as the lead agency, the City may impose conditions or enter into an agreement with the developer of the project to ensure that feasible mitigation measures be put into effect during construction of the project. Examples of such feasible mitigation measures, include, but are not limited to:

- Imposition of emission controls/retrofitting of trucks and on-site equipment,
- Proper maintenance of trucks and on-site equipment,
- Periodic audits or maintenance inspections of controls and facilities installed to mitigate impacts,
- Limitation of vehicle travel on unpaved roads,
- Limitation of idling vehicles,
- Energy conservation measures (use of alternate fuels and energy systems (particularly renewable sources), reduction of peak energy demand, siting of the project to reduce energy consumption (including transportation energy), and
- Application of water or chemical stabilizers (with no secondary environmental effects) to roads to avoid dust generation. See, 14 Cal. Code Regs., §§ 15126.4(a)(1)(C), 15370(b)-(d), and Appendix F; see also, OPR Technical Advisory, CEQA and Climate Change Through California Environmental Quality Act (CEQA) Review, June 19, 2008, Attachment 3, and OPR's Proposed Amendments to 14 Sections of the CEQA Guidelines; see generally, California Air Resources Board and Bay Area Air Quality Control District guidance.

Furthermore, payment of fees and/or the purchase of offsets constitute a feasible mitigation measure when linked to a specific mitigation program. See, Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th 1173.

Another feasible mitigation measure that would both minimize and reduce air quality impacts related to construction activities would be the re-design of the project plan to lessen the amount of fill required. See, generally 14 Cal. Code Regs., § 15370(b) & (d).

Moreover, the DEIR completely failed to consider implementation of off-site mitigation measures that the City could undertake to mitigate air quality impacts of construction-related emissions (e.g., adopting an incentive program for sustainable transportation in the City of Newark or paying for retrofitting or elimination of other emission sources).

Finally, it is unclear why the DEIR summarily concluded that there were no mitigation measures, but chose to include a notation that fill may be used from the planned Warm Springs BART extension or other nearby construction projects to reduce emissions.

In light of the foregoing comments, the City should supplement the EIR to propose and describe feasible mitigation measures that will minimize the significant effects of construction related air emissions.

RESPONSE N-12: The commenter proposes a variety of mitigation measures to control emissions from trucks used during construction of the project such as imposition of emission controls and retrofitting of trucks and on-site equipments and including the purchase of off-sets and the implementation of off-site mitigation.

The City directs the reader to Mitigation Measures AIR-4.1 and AIR-4.2, which contain most of the measures proposed by the commenter ("diesel equipment standing idle for more than five minutes shall be turned off. This would include truck waiting to deliver or receive soil….") (Draft EIR p. 95.) Second, Response N-11 explains why applying the commenter's proposed mitigation measures to the off-site activities of independent trucks bringing fill to the project site is infeasible and highly impractical for the City to enforce.

COMMENT N-13: 4. Climate Change Impact Mitigation Analysis

Expanding upon the comments above, the DEIR fails to provide substantial evidence to support its conclusion that no mitigation measures will reduce the significant unavoidable impacts of the Project on global climate change.

In accordance with the mandates set forth in AB 32 and Senate Bill 97, if an EIR evaluates greenhouse gas emissions, and determines that the project's contribution to climate change impacts is cumulatively considerable, the EIR should evaluate mitigation measures that may reduce this impact. CEQA Practice, § 20.85 −Evaluate Mitigation.

Here, the DEIR concludes that: "The proposed project would result in a cumulatively considerable contribution global climate change impact. (Significant Cumulative Impact)." See, Impact C-GCC-4, p. 297. (Bold in original.) As a result, it proposes two mitigation measures:

> All residential subdivisions and new commercial buildings within the Specific Plan shall incorporate as many green practices as appropriate and feasible in buildings and structures constructed subject to approval of the City of Newark.
>
> All public landscaping areas within the Specific Plan shall follow the City of Newark's Bay Friendly Landscape Guide. Future homeowners associations or similar entity shall be encouraged to incorporate as many bay friendly landscape practices as appropriate and feasible. See, MM C-GCC-4.1 and 4.2, p. 297.

Despite the foregoing mitigation measures, the DEIR concludes, "the overall implementation of the Specific Plan will still make a cumulatively considerable contribution to global climate changes

impacts and, therefore, result in a significant unavoidable impact. **(Significant Unavoidable Impact)**." See, DEIR, p. 297. (Bold in original.)

The DEIR's proposed mitigation measures are inadequate because they improperly defer formulation of specific performance standards to reduce the project's significant impacts on global climate change. See, 14 Cal. Code Regs., §15126.4(a)(1)(B) (see detailed discussion regarding deferral of mitigation, infra). MM C-GCC-4.1 proposes to have all buildings within the Specific Plan incorporate as many "green practices as appropriate and feasible." This mitigation further requires that the City of Newark approve such "green practices" presumably prior to their implementation. The DEIR fails to quantify what "green practices" shall be incorporated or to specify the performance standards that must be met. Moreover, it is wholly unclear from the DEIR how "appropriate and feasible" will be evaluated and what standards the City will use to evaluate whether the "green practices" are "appropriate and feasible."

RESPONSE N-13: The commenter expresses concern that Mitigation Measure C-GCC-4.1 fails to specify which green practices will be implemented as part of the development of residential subdivisions and commercial buildings within the Specific Plan and asks how standards will be used by the City to determine whether a green practice is "appropriate and feasible."

The commenter is directed to pages 295 – 296 of the Draft EIR which list the green practices that will be implemented through the Specific Plan. These measures will all reduce the project's GHG emissions, either directly or indirectly. For instance, the Draft EIR states that all development will be required to "comply with the City of Newark Green Building and Construction and Demolition Recycling Ordinance." (Draft EIR p. 295.) Further, the Specific Plan includes an extensive list of Water Conservation Standards which will require "all residential and non-residential development within Areas 3 and 4" to be "development with the latest technology in water efficient plumbing fixtures and irrigation systems." (*Id.*) The Draft EIR also includes a detailed list of just some these systems, such as "high efficiency (1.3 gallons per flush or less) and dual flush toilets," and "air cooled ice machines." (*Id.*) Additional mitigation measures which will reduce GHG emissions associated with the project are contained in the Draft EIR's Energy Section, specifically Mitigation Measures ENR-1.1 to 1.4.

Further measures aimed at reducing the project's GHG emissions must be implemented within the Specific Plan as appropriate and feasible. Mitigation Measure C-GCC-4.1 will be amended to reflect specific green practices that have been determined appropriate and feasible for implementation as part of the Specific Plan. Refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

COMMENT N-14: For similar reasons, MM C-GCC-4.2 also improperly defers formulation of performance standards because it merely encourages homeowners associations to incorporate "as many bay friendly landscape practices as are appropriate and feasible." Moreover, this mitigation measure fails to quantify and/or specify the criteria for determining what landscape practices are "appropriate and feasible."

RESPONSE N-14: The commenter expresses concern that Mitigation Measure C-GCC-4.2 fails to specify which bay friendly landscape practices will be implemented as part of the development of residential subdivisions and commercial buildings within the Specific Plan and asks how standards will be used by the City to determine whether a bay friendly landscape practice is "appropriate and feasible."

As discussed in Response N-13, the Draft EIR lists the green practices, including landscaping practices, that will be implemented through the Specific Plan. For example, for the proposed Golf Course and landscape development within Areas 3 and 4, the Specific Plan requires that "water efficient irrigation systems include weather-based irrigation-controllers, drip irrigation systems for non-turf areas and the installation of drought tolerant landscaping in-lieu of irrigated turf, wherever possible." (Draft EIR p. 295.)

Mitigation Measures C-GCC-4.2 also requires that all public landscaping areas must follow the City of Newark's December 19, 2007 Bay Friendly Landscape Guide. A copy of the City's *Bay Friendly Landscape Guide* is attached as Appendix L to the Final EIR and includes requirements such as limiting turf area (expressed a percentage of total planted area) to 40-50 percent of the planted areas to reduce water needs and evaporation losses, requiring the use of drought-resistant turf, and minimizing use of water bodies as part of landscaping.

Further, Mitigation Measure C-GCC-4.2 will be amended to reflect specific bay friendly landscape practices that have been determined appropriate and feasible for implementation as part of the Specific Plan for private landscaping areas. Refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

COMMENT N-15: Furthermore, since the DEIR concludes that the Project will have a significant cumulative impact notwithstanding the "green practices" discussed, the City is obligated to identify and impose additional off-site mitigation measures to reduce the Project's greenhouse gas impacts. Numerous examples of potentially feasible mitigation measures are set forth in the previous section and further mitigation measures, including but not limited to carbon offsets, are now available yet not even considered in the DEIR. Some such mitigation measures are set forth in the cited guidance. See, 14 Cal. Code Regs., §§ 15126.4(a)(1)(C), 15370(b)-(d), and Appendix F; see also, OPR Technical Advisory, CEQA and Climate Change Through California Environmental Quality Act (CEQA) Review, June 19, 2008, Attachment 3, and OPR's Proposed Amendments to 14 Sections of the CEQA Guidelines; see generally, California Air Resources Board and Bay Area Air Quality Control District guidance.

RESPONSE N-15: The commenter states that the City is obligated to "identify and impose additional off-site mitigation measures to reduce the project greenhouse gas impacts," including but not limited to the purchase of "carbon offsets."

The City has considered the feasibility of off-site mitigation, namely the purchase of carbon offsets. There are several issues relating to the feasibility and enforceability of offsets at this time. First, the threshold used in this

analysis is focused on the extent to which the project will help or hinder the attainment of state and local greenhouse gas reduction goals, and the offset programs which are available generally do not offset emissions in California or specifically in the City of Newark. There are also a number of uncertainties associated with purchasing offsets, including the permanence of the offsets, price fluctuations, ownership, verification of emissions reductions, and additionality.[8] The Air Resources Board has not adopted an offsets program under AB 32, and has been holding meetings this year to evaluate the role of offsets in a cap-and-trade program.[9] There is not currently an offset program that is designed to meet AB 32 emissions reduction goals. In summary, the City has concluded that purchasing offsets to reduce the project's contribution to greenhouse gas emissions is not feasible or demonstrably effective mitigation at this time.

COMMENT N-16: The DEIR's inclusion of artificially limited, legally insufficient, mitigation measures falls short of CEQA's requirements. Consequently, the City should correct the DEIR to include further mitigation measures that will reduce the project's impacts on global climate change.

RESPONSE N-16: The commenter expresses its opinion that the mitigation measures proposed to address the project's potential cumulative impact on climate change are not sufficient under CEQA and requests that the Draft EIR include further mitigation measures to address the project's impacts on climate change. Please see Responses N-13 to N-15.

COMMENT N-17: **5. Saltwater Wetlands Loss Mitigation Analysis**
Section 3.5 of the DEIR is titled "Biological Resources." Subsection 3.5.3.2, addressing "Impacts and Mitigation Measures for Biological Habitats," discusses, among other things, impacts of the project on seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat. See DEIR, pp. 134-136. The DEIR concludes that the project will have significant adverse environmental impacts on wetlands, by stating:

> The project would result in the loss of up to 85.6 acres of wetland/marsh/aquatic habitat. This would result in a substantial adverse affect on riparian habitat and on federally protected wetlands through the loss of these habitats. **(Significant Impact)**. See, Impact BIO-1, p. 135. (Bold in original.)

The City includes the following (among others) as proposed mitigation measures for Impact BIO-1:

> **MM BIO-1.2A**: To offset impacts to the wetland and aquatic habitat on the site, the future project proponent(s) will utilize a combination of on-site wetland creation and enhancement,

[8] Additionality refers to whether emissions reductions are additional steps beyond business as usual. All of these limitations on offsets as potential mitigation are discussed in detail in a certified EIR prepared for a corporate park project in Southern California. Michael Brandman & Associates, Environmental Impact Report P07-157, Highland Fairview Corporate Park, City of Moreno Valley, California. Some of these issues are also addressed in the August 2008 Report by the U.S. General Accounting Office, *Carbon Offsets: The U.S. Voluntary Market is Growing but Quality Assurance Poses Challenges for Market Participants.*

[9] Information on the ARB's consideration of offsets is available on the ARB website. http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm

> and/or acquisition of existing wetlands located off site. The on-site component of the mitigation shall include creation of wetland and aquatic habitat within upland Area 4 will enhance portions of the remaining areas of agricultural field/seasonal wetland habitat within Area 4, as described below.
>
> Compensatory mitigation for impacts to these habitats shall consist of two parts: (1) creation of high quality wetland and aquatic habitat within Area 4 within upland habitat at an acreage ratio of 1:1 (habitat created/enhanced: habitat impacted) to prevent any net loss of habitat functions or values, and (2) enhancement of existing seasonal wetland habitat that is currently within agricultural production (mapped as agricultural field/seasonal wetland habitat) at an acreage ratio of 0.5:1 . . . In summary, any impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at a total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted).
>
> **A detailed mitigation plan shall be developed by a qualified biologist under contract to each future developer for individual development projects within the Specific Plan areas which results in direct impacts to wetland habitats. This plan will be submitted to and approved by the City of Newark prior to the initiation of grading within wetlands.**
>
> The detailed mitigation plan will outline the necessary steps for mitigation . . . **Potential biological impacts associated with grading activities required for the mitigation of the seasonal wetlands have been considered during this current Specific Plan CEQA impact analysis and no additional significant impacts have been identified** . . . (Bold and underline in text added).
>
> **MM BIO-1.2B**: Alternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and Permanent preservation of existing wetlands at a ratio of 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. These off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements. The off-site component of the wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed. **(Less Than Significant Impact with Mitigation)**. See, pp 135-136, bold in original.

There are a number of deficiencies with respect to the City's proposed mitigation measures relating to the significant impacts of the project on wetlands:

First, as a preliminary matter, the DEIR's proposed mitigation measures fail to reflect the legal preference for using credits from a wetland mitigation bank over other forms of compensatory mitigation measures (i.e. permittee-responsible mitigation and in-lieu fee mitigation). See, 40 CFR Part 230, Subpart J and 33 CFR Part 332; EPA, Wetlands Compensatory Mitigation Guidance, EPA-843-F-08-002, Clean Water Act and Federal regulations; EPA Mitigation Banking Factsheet. The Federal regulations base the preference on the following:

> Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts this rule established a preference

for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation. See, 40 CFR Part 230, Summary.

Instead, of requiring the use of mitigation banks, the above mitigation measures propose permittee-responsible wetland creation/enhancement measures on-site and state the use of "mitigation banks or other private lands" off-site as an alternative "at the discretion of the project developer(s), and as approved by the City of Newark." As described below, the permittee responsible wetland mitigation measures on-site are inadequate for numerous reasons. Accordingly, the above mitigation measures should be revised to require compensatory mitigation by way of approved mitigation banks, rather than propose that banks be used as an alternative in the discretion of the developer and approved by the City.

RESPONSE N-17: The commenter states that the Draft EIR's proposed wetland mitigation measures fail to reflect the legal preference for using credits from a wetland mitigation bank over other forms of compensatory mitigation.

The Draft EIR mitigation measures require that impacts to wetlands be mitigated at a ratio of 1.5:1. The mitigation measures provide two options for satisfying that mitigation standard – onsite creation and enhancement of wetlands, or offsite acquisition and permanent preservation of existing wetlands at an approved mitigation bank or other private lands located within 10 air miles of the project site and along the eastern shore of south San Francisco Bay within the same watershed. In addition to satisfying these mitigation measures, any fill of federal jurisdictional wetlands on the project site will require a permit from the U.S. Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act. Through that separate federal permitting process, the Army Corps may impose different types and/or amounts of mitigation than required by the Draft EIR, consistent with the Corps' and EPA's own regulations and policies, including those cited by the commenter. The Army Corps' and EPA's policy preference for satisfying Clean Water Act mitigation obligations is not a legal requirement, and is not binding on the City's determination under CEQA of the mitigation required to reduce impacts to a less than significant level. Moreover, the Corp's mitigation policy guidance also expressly recognizes that mitigation pursuant to a Corps permit often cannot or should not be accomplished through the purchase of mitigation bank credits. For example, many projects which affect wetlands are not located within the service area of an approved mitigation bank. Indeed, such is the case with this project. Since CEQA requires that EIR mitigation measures be feasible (as the commenter points out in Comment N-18), and requiring the project to mitigate at a mitigation bank would be infeasible (since such a bank does not currently exist), the EIR properly ensures that mitigation for wetland impacts can feasibly be accomplished by providing both onsite and offsite mitigation options (including the option of mitigating through a mitigation bank should one become available).

COMMENT N-18: Second, the DEIR lacks substantial evidence to support MM BIO-1.2A's creation of "high quality wetland and aquatic habitat within Area 4 within upland habitat" and "enhancement of existing seasonal wetland habitat that is currently within agricultural production"

are legally adequate mitigation measures. (Emphasis added.) As previously noted, CEQA requires that an EIR propose and describe feasible mitigation measures to minimize the significant environmental effects identified in the EIR. See, Pub. Res. Code, §§ 21002, 21002.1(a), 21081(a), 21100(b)(3); 14 Cal. Code Regs., § 15126.4. To be legally adequate, mitigation measures must be capable of "avoiding the impact altogether by not taking a certain action or parts of an action"; "minimizing impacts by limiting the degree or magnitude of the action and its implementation"; "rectifying the impact by repairing, rehabilitating, or restoring the impacted environment"; or "reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action." See, 14 Cal. Code Regs., § 15370.

Here, the DEIR fails to elucidate whether creation of wetlands in the upland habitat of Area 4 and enhancement of wetlands currently within agricultural production will minimize the project's significant adverse effects on the wetlands characterized as "tidal marsh/upland transition," which are located along the southern and western edges of Area 4. See, Biological Resources Technical Report, Appendix E, pp. 11-12. Appendix E states in relevant part:

> While the City of Newark General Plan has identified development that is projected to occur within Area 4, this area has also been identified for its ecological value by regional planning efforts. The **southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future**. The Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the [former] Pintail Duck Club." **Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of the few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands**. See, Appendix E, p. 12, emphasis added.

As this passage of Appendix E clearly demonstrates, the "tidal marsh/upland transition wetlands" are unique because of, among other things, their geographic location, ecological value, and salinity levels. The DEIR fails to supply any evidence whatsoever demonstrating that the proposed creation of wetland habitat within the upland portion of Area 4 and in portions of Area 4 currently in agricultural production (which both have divergent characteristics from the tidal marsh transitional portions of Area 4), will minimize the adverse impacts of filling the "tidal/marsh upland transition" wetlands.

RESPONSE N-18: The commenter states that the Draft EIR lacks substantial evidence to support MM BIO-1.2A's creation of high quality wetland and aquatic habitat within Area 4 within upland habitat, and enhancement of existing seasonal wetland habitat that is currently within agricultural production.

As explained in Section 3.5.3.2 of the Draft EIR, Area 4 contains substantial amounts of wetlands and other aquatic features, and uplands. Much of the wetlands within Area 4 are substantially degraded in terms of their wetland functions and values as a result of annual farming operations. Nevertheless, the Draft EIR mitigation measures require that the fill of such degraded wetlands be mitigated, either onsite or offsite, according to specified

mitigation ratio standards. Onsite mitigation would take the form of creating new wetlands within Area 4 uplands at a 1:1 ratio. Such created wetlands would constitute part of the mosaic of marsh, wetlands and uplands that currently exists. Additional onsite mitigation would take the form of enhancement of currently degraded wetlands at a ratio of 0.5:1. Such enhanced wetlands would improve the wetlands functions and values over the current condition. Taken together, onsite mitigation would replace all filled wetland with an equal amount of newly created wetlands within the same landscape mosaic that currently exists, and would increase the functions and values of currently degraded, farmed wetlands. This combination of creation and enhancement will mitigate impacts from the fill of degraded wetlands.

COMMENT N-19: Third, along the same lines, the DEIR fails to specify the on-site location where the wetland mitigation will occur, but instead improperly defers that determination. Deferral of the formulation of mitigation measures is improper under CEQA. See, 14 Cal. Code Regs., §15126.4(a)(1)(B).

Some courts have held that deferral of the formulation of the specifics of a mitigation measure pending further study or regulatory agency approval (where such agency will issue a permit or other approval for a project) was in line with CEQA. See, San Joaquin Raptor Rescue Ctr. v. County of Merced (2007) 149 Cal.App.4th 645, 671; Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 794; Defend the Bay v. City of Irvine (2004) 119 Cal.App.4th 1261, 1275. However, such cases are distinguishable from the situation presented here because the DEIR improperly defers formulation of the specifics regarding wetland mitigation to preparation of a mitigation plan by biologists retained by the future developers.

RESPONSE N-19: The commenter states that the Draft EIR fails to specify the on-site location where the wetland mitigation will occur, but instead improperly defers that determination. Mitigation Measure MM BIO-1.2A clearly states that onsite wetland mitigation shall be accomplished within Area 4. The City also notes that *California Native Plant Society v. City of Rancho Cordova* (2009)172 Cal.App.4th 603, confirmed an EIR need not identify specific habitat mitigation sites and that the City could rely on the result of a future study to determine replacement habitat location.

COMMENT N-20: The DEIR further contemplates that such deferred mitigation plan will be approved by the City of Newark prior to grading of the site. The problem with this deferral is that the DEIR does *not* call for any further environmental review or consultation with regulatory agencies regarding the proposed wetland mitigation. Instead, the DEIR summarily concludes without any support, "[p]otential biological impacts associated with grading activities required for the mitigation of seasonal wetlands have been considered during this current Specific Plan CEQA impact analysis and no additional significant impacts have been identified." See, MM BIO-1.2A, p. 135. Consequently, the DEIR's deferral of the specifics relating to mitigation of wetlands is improper. The DEIR should be revised to either: (1) specify the location of on-site wetland mitigation, or (2) allow for further environmental review (including consultation with regulatory agencies) once the specific locations of on-site mitigation are delineated to ensure that the mitigation measures provide the required mitigation benefits and that such measures themselves have no additional significant impacts.

RESPONSE N-20: The commenter states the Draft EIR should be revised to either (1) specify the location of on-site wetland mitigation, or (2) allow for further environmental review (including consultation with regulatory agencies) once the specific locations of on-site mitigation are delineated.

As noted in the Response N-19, onsite wetland mitigation will be accomplished within Area 4. The acts of creating new wetlands within Area 4 uplands, and enhancing currently degraded wetlands within Area 4, have been considered in the Draft EIR, and thus no additional, subsequent environmental review is required for mitigation measure implementation.

COMMENT N-21: Fourth, the ratio of creation of wetlands to wetlands impacted on-site is not supported by substantial evidence. MM BIO-1.2A calls for "creation of high quality wetland and aquatic habitat within Area 4 within upland habitat at an acreage **ratio of 1:1 (habitat created/enhanced: habitat impacted) to prevent any net loss of habitat functions or values."** (Emphasis added.) Section 3.5.3.2 of the DEIR attempts to justify the DEIR's mitigation ratios by stating:

> The mitigation ratios for impacts to sensitive habitats are based on those required or commonly required under applicable policies, laws, and regulations. Implementation of the following mitigation measures will reduce impacts to the less than significant level. See, DEIR, p. 133.

The DEIR fails, however, to identify the "applicable policies, laws and regulations" relating to the mitigation ratios that it relies upon. Notably, contrary to the DEIR's contention, EPA Guidance specifically requires successful creation/establishment of new wetland habitat result in a "net gain in wetland acres and function." See, EPA Wetlands Compensatory Mitigation. Here, the DEIR deceivingly states:

> In summary, any impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at **a total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted).** (Emphasis added.)

It is disingenuous, however, for the DEIR to aggregate the habitat created and enhanced to give the impression that the mitigation measures result in a net gain of wetland acres. To accomplish a net gain in acreage, the City must require the habitat created to habitat impacted ratio be increased to *at least* 1.5 to 1, but more aptly in the range of 2 or 3 to 1, given the unique features of the "tidal/marsh upland transition" wetlands (discussed above).

RESPONSE N-20: The commenter states that the ratio of creation wetlands to wetlands impacted on-site is not supported by substantial evidence and is not consistent with EPA policy. The commenter also states that it is disingenuous for the Draft EIR to aggregate the wetland habitat created and the wetland habitat enhanced to give the impression that the mitigation measures result in a net gain of wetland acres.

Please refer to Response N-17 regarding Army Corps and EPA mitigation policy preferences. Please refer to Master Response 2 regarding the reasoning underlying the onsite mitigation approach of MM BIO-1.2A which

utilizes a combination of wetland creation and enhancement of currently degraded wetlands.

COMMENT N-21: Fifth, the City fails to specify success monitoring performance standards to monitor the proposed wetland mitigation measures. Federal regulations require that compensatory mitigation programs have "measurable, enforceable ecological performance standards and regular monitoring" and that they include "assurances of long-term protection of compensation sites, financial assurances, and identification of the parties responsible for specific project tasks." See, 40 CFR Part 230, Summary. Here, the City fails to delineate specific ecological performance standards for wetland mitigation. It further fails to require that regular monitoring occur. In addition, the mitigation measures fail to specifically include performance standards for long-term wetland protection or to require additional measures if the functions and values of the mitigation measures do no meet performance standards. Moreover, these mitigation measures further neglect to articulate assurances and identify the parties responsible for specific project tasks with respect to wetland mitigation. Accordingly, the DEIR should be revised to cure the above mentioned defects.

RESPONSE N-21: Please refer to Master Response 2 and Response E-3 in this document. In addition, the additional details are provided relative to monitoring and performance standards to be included in the mitigation and monitoring plan for impacts to wetland habitats. Refer to Section 4.0 *Revisions to the Text of the Draft EIR*.

COMMENT N-22: **6. Analysis of Impacts on Endangered Salt Marsh Harvest Mouse**
Section 3.5 of the DEIR is titled "Biological Resources" and notes that the Salt Marsh Harvest Mouse, which is listed as an endangered species under the federal endangered Species Act ("ESA"), is known to occur in the salt marsh habitat along Area 4. The DEIR (see page 151) then concedes that "Domestic pets, cats in particular, may stray from the residential areas in Area 3 and may depredate salt marsh harvest mice" and acknowledges that "increased predation by domestic species would result in significant impacts to the mouse."

Notwithstanding the DEIR's acknowledgement of significant impacts on the ESA protected Salt Marsh Harvest Mouse from cats that are anticipated to stray from the Area 3 residential areas, the DEIR does not contain any quantitative or qualitative analysis whatsoever of the severity of this predation and its effect on the condition of the species or its habitat. Moreover, the DEIR contains no post-construction mitigation measures to avoid or reduce predation of the Salt Marsh Harvest Mouse from domestic cats associated with the new residences proposed to be constructed in Areas 3 and 4, such as prohibiting cats as domestic pets in such residences or on the use vegetation, fencing or other effective barriers to exclude cats from salt marsh areas where the endangered species of mice are know to occur.

RESPONSE N-22: Please refer to Response A-1 regarding the potential effects of nuisance predators on more sensitive species and regarding the revision of the EIR to incorporate a measure to reduce the potential for nuisance species to prey on sensitive species or to be attracted to or subsidized by development on Areas 3 and 4.

COMMENT N-23: Additionally, given the anticipated predation of the ESA-protected mouse as a result of the project, the DEIR does not evaluate whether such anticipated predation (killing) of the

species by domestic cats would require the issuance of an ESA "incidental take" permit by the United States Fish & Wildlife Service.

Section 21001(c) of the CEQA statute provides that it is the policy of the State of California to: "Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities." CEQA Guideline §15065(a)(1) provides that a lead CEQA agency shall find a project has a significant impact on biological/wildlife resources if the project may "substantially reduce the number or restrict the range of an endangered, rare or threatened species." Moreover, in December 2009, the Los Angeles County Superior Court issued a ruling that specifically addressed the issue of CEQA's applicability to impacts resulting from wildlife predation by cats (*Urban Wildlands Group et al. v. City of Los Angeles Department of Animal Services*, Case No. BS115483). This lawsuit was filed in June 2008 by Urban Wildlands Group and other environmental organizations (collectively "Plaintiffs"), and alleged that the City of Los Angeles had violated CEQA by failing to analyze the wildlife impacts of a its "Trap-Neuter-Return" Program ("TNR Program") to allow feral cats to run free. In a December 2009 decision, Los Angeles County Superior Court Judge Thomas I. McKnew, Jr. granted Plaintiffs' writ of mandate and enjoined the City of Los Angeles from implementing the TNR Program "unless and until an environmental review in compliance with the California Environmental Quality Act is completed." See, December 4, 2009, Decision, p. 1. (See, Decision attached as Exhibit A). Other CEQA cases have recognized the availability of mitigation measures to address predation by domestic animals from proposed development. See, e.g., Mira Mar Mobile Community v. City of Oceanside (2004) 119 Cal.App.4th 477, 494, 495 (requiring barriers and signs as mitigation measures).

Given the applicable CEQA standards, the DEIR's acknowledgment that such predation would result in significant impacts on the endangered mouse, and given the DEIR's absence of analysis of the severity of this predation and its effect on the condition of the species or its habitat, there is absolutely no evidence to support the DEIR's determination that the project will have a "Less Than Significant Impact with Mitigation" on the ESA-protected Salt Marsh Harvest Mouse. Accordingly, the DEIR is defective and requires revision to include analysis of the significant impacts of predation on the Salt Marsh Harvest Mouse as well as mitigation measures to reduce the significant impacts of such predation.

RESPONSE N-24: The commenter states that the Draft EIR does not evaluate whether anticipated predation of the Salt Marsh Harvest Mouse by domestic cats would require the issuance of an incidental take permit by the U.S. Fish and Wildlife Service under the federal Endangered Species Act.

Generally speaking, if the project will result in "take" of a wildlife species listed as threatened or endangered under the Endangered Species Act, then an incidental take permit from the U.S. Fish and Wildlife Service will be required. However, it is inappropriate for the Draft EIR to determine whether in fact such take will actually occur. It is also not possible to make that determination until the detailed design of future residential development is completed, as such design may incorporate measures such as fencing or pet restrictions that would significantly affect such a determination.

COMMENT N-25: 7. Impacts of Golf Course Fertilizer/Herbicide Runoff on Water Quality
Section 2.4.3.1 of the DEIR (titled "Golf Course Operation" in Section 2 on "Description of the Proposed Project") states:

> The golf course will apply fertilizer to the maintained areas including the fairways, greens, and tees. Fertilizer is measured in pounds of nitrogen per 1,000 square feet and soil tests dictate the demand. Fairways typically require about two to three pounds fertilizer (nitrogen) annually. Greens and tees require approximately one pound per month during the growing season, so six to eight pounds annually.

Section 3.9 of the DEIR (titled "Hazards and Hazardous Materials") includes a section on "Golf Course Operations" which states: "The proposed golf course will apply fertilizer to the maintained areas including the fairways, greens and tees, and, less frequently, herbicides and pesticides. The application of agricultural chemicals will be avoided near wetland and other sensitive areas, as described in *Section 2.4.4*." *Section 2.4.4* of the DEIR, however, is titled "Areas 3 and 4 Street Standards and Improvements" and contains no analysis or provisions relating to golf course operations, agricultural chemicals or protection of wetlands and other sensitive areas.

Section 3.8.3.11 of the DEIR determines, without specific reference to golf course runoff, that: "Untreated runoff generated by the proposed project would potentially result in long-term degradation of water quality, which could affect aquatic and wetland habitats. Without mitigation, the effects on surface water quality could be significant."

The DEIR, however, does not include any quantitative analysis of the volume of water that will run off the golf course into Mowry Slough and the surrounding Bay wetlands, any quantitative analysis of the total volume of fertilizer (nitrogen), herbicides and pesticides associated with the golf course that will runoff into Mowry Slough and the surrounding Bay wetlands, or any quantitative or qualitative analysis of the impacts of such runoff on Bay water quality, wetlands or biological resources. In lieu of this impact analysis, Section 2.4.3.1 of the DEIR states generically: "A comprehensive and responsible program to control pests will ensure a healthy environment for both people and wildlife. Managing turf areas with environmental sensitivity requires educating workers and members about plant management, pesticide application and use of fertilizers."

Continuing in this generic vein, DEIR Mitigation Measure MM HYD-1.4 (in the DEIR Section on *Hydrology, Flooding and Water Quality*) states that "all development projects within the Specific Plan shall implement storm water management program measures, such as…outreach regarding appropriate fertilizer and pesticide use practices…" Section 3.8.3.11 of DEIR also notes that a post-construction stormwater pollution prevention plan will later be prepared for the development proposed in the Specific Plan, but includes no information as to the extent to which such a SWPPP would apply to ongoing golf course operations of how such a SWPPP would prevent runoff from the golf course from degrading the Bay.

In short, the DEIR acknowledges substantial ongoing fertilizer, herbicide and pesticide use on the golf course proposed to be located immediately adjacent to the Mowry Slough, wetlands and the Bay, and acknowledges that these are particularly sensitive resources, but then contains no environmental analysis of the impact of this use and no credible or enforceable mitigation to reduce the impact to a level less than significant. In the absence of such analysis and mitigation, there is not substantial evidence to support the DEIR's determination in Section 3.8.3.11 that the drainage runoff from the project will have a "less than significant impact" on water quality.

RESPONSE N-25: The commenter claims the Draft EIR does not provide substantial evidence in support of its finding that the drainage runoff from the project will have a less than significant impact on water quality.

Please review Section 3.8 and Appendix G of the Draft EIR for a discussion regarding the finding that the project's impacts to water quality will be less than significant with mitigation. Section 3.8 *Hydrology, Flooding and Water Quality* analyzes the impacts of the project drainage on water quality and finds that with the implementation of the required mitigation measures that the impact will be less than significant. (Draft EIR pp. 204-208.) Both Section 3.8 and Appendix G, pp. 16-40 provide substantial evidence supporting a finding that the project's drainage runoff will have a less than significant impact on hydrology and water quality.

Nothing in CEQA prohibits the use of a qualitative analysis or requires the use of a quantitative analysis. CEQA Guidelines recognize that thresholds of significance may be expressed as quantitative, qualitative or performance-based standards (Section 15064.7). Moreover, even where quantification is technically or theoretically possible, CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by those commenting on the Draft EIR (§15204(a)). Meeting the performance based water quality standards promulgated by the appropriate regulatory permit agencies is deemed appropriate mitigation to render the project's impact on water quality "less than significant". Enforcement of mitigation is through the permit process.

In the absence of detailed golf course plans, performance based mitigation described by the Draft EIR is by nature generic and the general nature of mitigation for the golf course is not substantially different from water quality mitigation for the entirety of the proposed development (MM HYD-1.2). Based on the project description for golf course management (Draft EIR p. 14), and Provision C.3 of NPDES Permit No. CAS612008, more specific water quality mitigation for the golf course was added to the EIR. Refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

COMMENT N-26: 8. Other Stormwater Runoff Impacts

A. The Stormwater Analysis is Based on an Outdated Municipal Permit

The discussion of National Pollutant Discharge Elimination System requirements in Section 3.8.1.1 (*Clean Water Act Requirements*) references the municipal stormwater NPDES permit issued to the Alameda Countywide Clean Water program. This permit has been subsequently replaced by a new municipal NPDES permit that encompasses not only the cities and water agencies of Alameda County, but all of the cities and water agencies of San Mateo, Santa Clara and Contra Costa Counties as well. The new permit, known as the Municipal Regional Permit ("MRP"), adopted by the RWQCB in October 2009, also includes the cities of Fairfield, Suisun City, Vallejo, and the Vallejo Sanitation and Flood Control District.

The MRP replaces the previous individual municipal NPDES permits for the Bay Area countywide stormwater programs of the above-mentioned counties. In addition to numerous minor language revisions to provide clarification, the MRP makes substantial changes to stormwater requirements,

including specifying different mandatory treatment measures, and including changes to address key issues such as costs of compliance with the new requirements, water quality monitoring, trash load reduction, mercury and PCB controls, and exempted and conditionally exempted (non-stormwater) discharges. One of the most significant of the changes, from a land development perspective, is the series of new provisions related to new and redevelopment treatment measures (Provision C.3), which require the use of Low Impact Development techniques for stormwater treatment.

The DEIR's stormwater impact analysis and conclusions are based upon reference to the old, inoperative permit and, therefore, is flawed.

RESPONSE N-26: This comment is acknowledged, noting that the new Municipal Regional Stormwater NPDES Permit No. CAS612008 (SFRWQCB Order R2-2009-0074) became effective December 1, 2009. The commenter is correct in stating that the Alameda Countywide Clean Water program municipal NPDES permit referenced in the Draft EIR has now been superseded. The Draft EIR will be revised to reflect new permit. Refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

The MRP does not render the Draft EIR's stormwater analysis and conclusions invalid. Rather, the MRP is part of an updated regulatory scheme, as noted in the revised text.

COMMENT N-27: B. DEIR's Analysis Lacks Substantial Evidence to Support Significance Conclusion and Improperly Defers Analysis of Mitigation

The discussion under **Impact HYD-1** implies that potentially significant impacts can be mitigated through the preparation and implementation of an erosion control plan, stormwater pollution prevention plan (SWPPP) and stormwater management plan (SWMP). Mitigation Measure **MM HYD-1.2** further states that the preparation of a SWMP is "required under Section C.3 of the NPDES Municipal Stormwater Permit issued by the RWQCB." As previously mentioned, this permit no longer exists, and Provision C.3 of the new MRP does not include any reference to the preparation of a SWMP. Thus, there is no basis for this mitigation measure and, therefore, no basis for relying up its claimed mitigative results.

Moreover, the DEIR provides virtually no information about the proposed SWMP or the SWPPP. This absence of information means that the conclusion that the project, as mitigated by the undescribed SWMP and SWPPP, would not have significant impacts is not supported. To remedy this flaw, the DEIR should include a description of the requirements of such plans, and any references to compliance with the RWQCB requirements or the NPDES permit (MRP) should include a description of Low Impact Development treatment measures. Moreover, the impact discussion under 3.8.3.9, which refers to and relies upon a SWMP to conclude that water quality standards are not significantly impacted by the proposed project, also must be revised.

RESPONSE N-27: The commenter asks the Draft EIR be revised to include a description of the SWMP and SWPPP, the requirements of these plans and evidence of compliance therewith. Commenter also requests the impact discussion under section 3.8.3.9 be revised.

Issuance of the MRP requires the preparation of a storm water pollution prevention plan (SWPPP) before construction begins, either at the end of the

design phase or at the initiation of the construction phase, but prior to any activity with the potential to cause water pollution. A SWPPP is an operational plan that identifies and describes the best management practices (BMPs) to be implemented by the NPDES permit holder to reduce impacts on water quality and aquatic habitat. Because a development project has not yet been prepared a SWPPP is not required. The stormwater impact analysis in the Draft EIR was based on preliminary planning for stormwater and water quality treatment measures to be required upon approval of specific development proposals within the Specific Plan area. Because the Specific Plan does not approve specific development proposals, final design calculations and specific plans for development requiring an SWPPP was not included beyond that to assess feasibility as part of the project as a whole. Revisions to the Draft EIR text have been completed; refer to *Section 4.0 Revisions to the Text of the Draft EIR.*

COMMENT N-28: A SWPPP is intended to reduce construction phase stormwater impacts, and is a standard requirement for construction activities under the current Statewide Construction General NPDES Permit. Erosion control plans are typically included in SWPPPs. The impact statement and **MM HYD-1.2** should be rewritten to accurately describe these plan requirements.

RESPONSE N-28: Mitigation measure MM HYD-1.2 does not pertain to construction phase stormwater impacts. These are described by the Draft EIR beginning on page 206 as MM HYD-2.2. "The SWPPP shall include an erosion control plan that….." MM HYD-2.3 then describes the typical plan requirements. It is emphasized that a specific and "accurate" SWPPP cannot be prepared with the level of information available in a Specific Plan. It is also noted that a new Statewide Construction General NPDES Permit will become effective sometime in the fall of 2010.

Regardless, water quality impacts during construction will be mitigated in conformance with NPDES C.6 "Construction Site Control," with enforcement by the City of Newark as the Permittee. Each construction site within the Specific Plan Area will be required to implement site specific and seasonally/construction phase-appropriate effective Best Management Practices (BMPs) that provide erosion control, run-on and runoff control, sediment control, active treatment systems as necessary, good site management, and non-stormwater management (e.g. hazardous materials and debris handling).

COMMENT N-29: **MM HYD-2.4** references the 2003 version of the California Stormwater BMP Handbook for Construction. This document has been revised and updated by the California Storm Water Quality Association in 2009. The mitigation measure should not reference an outdated, inapplicable version of this Handbook.

Also importantly, the need for compliance with the requirements under the new MRP will require that the analysis of flooding impacts (discussed separately below) be revisited, because more stormwater will have to be retained longer on the project site.

Overall, since the DEIR does not identify the actual project or the specific mitigation measures that will be applied through the SWMP and SWPPP, there is no way to determine if the specific mitigation may itself have impacts that need to be analyzed. For example, some of the mitigation may require one time or ongoing creation/maintenance of wetlands, or diversion and treatment of stormwater that would require a basin to be constructed (involving grading) or may require other construction activity to implement. Both the construction and operation of such mitigation facilities could themselves result in significant impacts. By failing to describe any details of the ultimate development but purporting to insert mitigation that will reduce the impacts of the ultimate development, the City has seriously undermined a key requirement of CEQA.

RESPONSE N-29: The City and the Draft EIR refer to the correct version of the California Stormwater Quality Association's Stormwater Best Management Practice Handbook. The commenter states that the Handbook was updated in 2009. The online copyright page located at: www.cabmphandbooks.com/construction.asp reflects an update as of March 28, 2009, however, that update maintains the 2003 copyright date.

The City directs the commenter to Section 3.8 for a discussion of the Project's Hydrology, Flooding and Water Quality Impacts and the measures required to mitigate those impacts. (Draft EIR pp. 191-208, Appendix G.) However, the Draft EIR is designed to analyze the impacts of the proposed Areas 3 & 4 Specific Plan. Actual development of the property located within the Specific Plan Area is not currently proposed. Therefore, a SWPPP is not yet required. The Draft EIR provides mitigation measures for potential future hydrology, flooding, and water quality impacts. Most notably the Draft EIR requires compliance with the terms of the MRP by future developers of property located in the Specific Plan area.

COMMENT N-30: 9. Impacts Resulting from Project Infill of Floodplain

The DEIR's conclusions that there will be less than significant impacts with respect to: 1) Off-Site Flooding from the Project; 2) Project Alteration of Drainage Patterns Resulting in Increased Flooding; and 3) Project Alteration of Drainage Patterns Resulting in Increased Erosion are not supported by substantial evidence.

First, in Section 3.8.3.3 of the DEIR, entitled "Off-site Flooding Impacts from Project" the DEIR states that the proposed placement of fill for residential uses in Area 3 would not significantly change active flow conveyance (thereby increasing off-site flood elevations) because the proposed development would not block the active conveyance of flood flows. That is, the DEIR asserts that flood conveyance is blocked by a "large landscaped berm and neighboring development, and downstream by a solid concrete wall," without citation of specific supporting evidence. See, DEIR, p. 198. Accordingly, the DEIR concludes, "the proposed placement of fill for residential uses would not significantly change active flow conveyance through this reach of Line D." Id. The DEIR also summarily states that fill in Area 4 would not impact flooding because "the impedance of tidal conveyance through the area would not influence the water surface elevation in San Francisco Bay." Based on the foregoing contentions, DEIR concludes there will be a less than significant impact. Id. p. 199. The DEIR, however, fails to provide substantial evidence to support its contentions, and is (at best) incomplete.

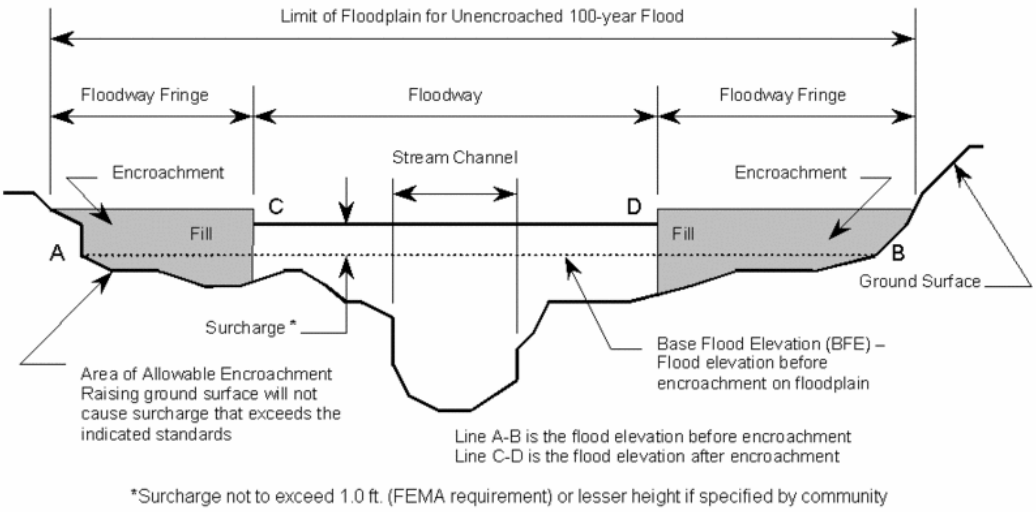
RESPONSE N-30: Please review the following evidence in support of the Draft EIR findings in Section 3.8.3.3 that the proposed placement of fill for residential uses in Area 3 would not significantly change active flow conveyance (thereby increasing off-site flood elevations).

According to the August 3, 2009 FIRM, fill for residential uses in Area 3 would be placed within a Shaded Zone X. This zone is <u>not</u> a special flood hazard area and could represent 100-year flooding with depths less than one foot and/or areas of 500-year flooding. Since CEQA requires an analysis of whether the proposed project would "place within a 100-year flood hazard area structures that would impede or redirect flood flows;" it is necessary to separate 500-year flooding from 100-year flooding within the Shaded Zone X in and adjacent to Area 3.

The FIRM shows shallow flow outside Line D on both overbanks between Balentine Drive and the tidal floodplain adjacent to Mowry Slough. Published floodway data for Line D in this reach are used to deduce that there are no 100-year channel spills between Balentine Drive to just downstream of Cherry Street, which is the upstream boundary of Area 3. Thus if there is a source of 100-year shallow flooding within Area 3, it would have to be from Line D channel spills within this reach or backwater from downstream spills.

A floodway is the channel of a stream and any adjacent floodplain area that must be kept free of encroachment so that the 100-year flood can be carried without a substantial increase in the flood elevation. As a minimum standard, the NFIP limits such increases in flood elevation to one foot, provided hazardous velocities are not produced. While Area 3 fill would not encroach into the regulatory floodway, an examination of the lack of flood surcharge due to such fill supports the assertion above, that the only source of 100-year flood flows within Area 3 are from the adjacent Line D (or downstream), not upstream flow across Cherry Street. The concept of flood surcharge is illustrated on the following page.

For Line D, the regulatory floodway is established at the channel bank along the ACFC&WCD right-of-way. The Alameda County Flood Insurance Study has a table that defines the 100-year surcharge along Line D, which is the rise in flood elevation after full encroachment within the floodway fringe. As indicated by excerpted FIS Table 8 below, the floodway surge is zero above Cherry Street (Cross Sections G-K). A surcharge of zero means that there is no difference between the un-encroached 100-year flood elevation and the fully encroached 100-year flood elevation; which in this case represents full encroachment to the channel banks. Therefore there cannot be 100-year flow within the floodway fringe; otherwise there would be some surcharge, as is the case further downstream.



Floodplain·Encroachment·and·Floodway

FLOODING SOURCE		FLOODWAY			BASE FLOOD WATER-SURFACE ELEVATION (FEET NAVD)			
CROSS SECTION	DISTANCE	WIDTH (FEET)	SECTION AREA (SQUARE FEET)	MEAN VELOCITY (FEET PER SECOND)	REGULATORY	WITHOUT FLOODWAY	WITH FLOODWAY	INCREASE
Line C (Zone 3A)								
A	500[1]	19	62	10.3	55.0	55.0	55.0	0.0
B	728[1]	22	83	7.8	55.7	55.7	55.8	0.1
C	1,516[1]	22	105	6.1	69.1	69.1	69.1	0.0
D	2,396[1]	15	59	10.9	82.1	82.1	82.1	0.0
Line D								
A	1,700[1]	34	344	2.73	12.4	12.4	13.4	1.0
B	2,512[1]	62	324	2.99	12.0	12.6	13.6	1.0
C	2,665[1]	88	418	2.34	14.6	14.6	15.6	1.0
D	3,675[1]	88	418	2.34	14.6	14.6	15.6	1.0
E	4,515[1]	30	120	8.17	17.5	17.5	17.5	0.0
F	5,275[1]	30	117	8.67	19.8	19.8	20.1	0.3
G	5,900[1]	30	119	8.24	22.3	22.3	22.3	0.0
H	6,650[1]	34	137	7.15	24.8	24.8	24.8	0.0
I	7,200[1]	17	111	8.83	27.0	27.0	27.0	0.0
J	7,900[1]	40	205	4.78	28.9	28.9	28.9	0.0
K	8,900[1]	37	169	5.89	29.9	29.9	29.9	0.0
Line D (Zone 6) (Aqua Fria Creek)								
A	4,845[2]	10	75	8.0	43.5	43.5	43.5	0.0
B	5,174[2]	20	155	3.5	50.7	50.7	51.6	0.9

[1]Feet above mouth
[2]Feet above confluence with Line C (Zone 6)

TABLE 8

FEDERAL EMERGENCY MANAGEMENT AGENCY

ALAMEDA COUNTY, CA AND INCORPORATED AREAS

FLOODWAY DATA

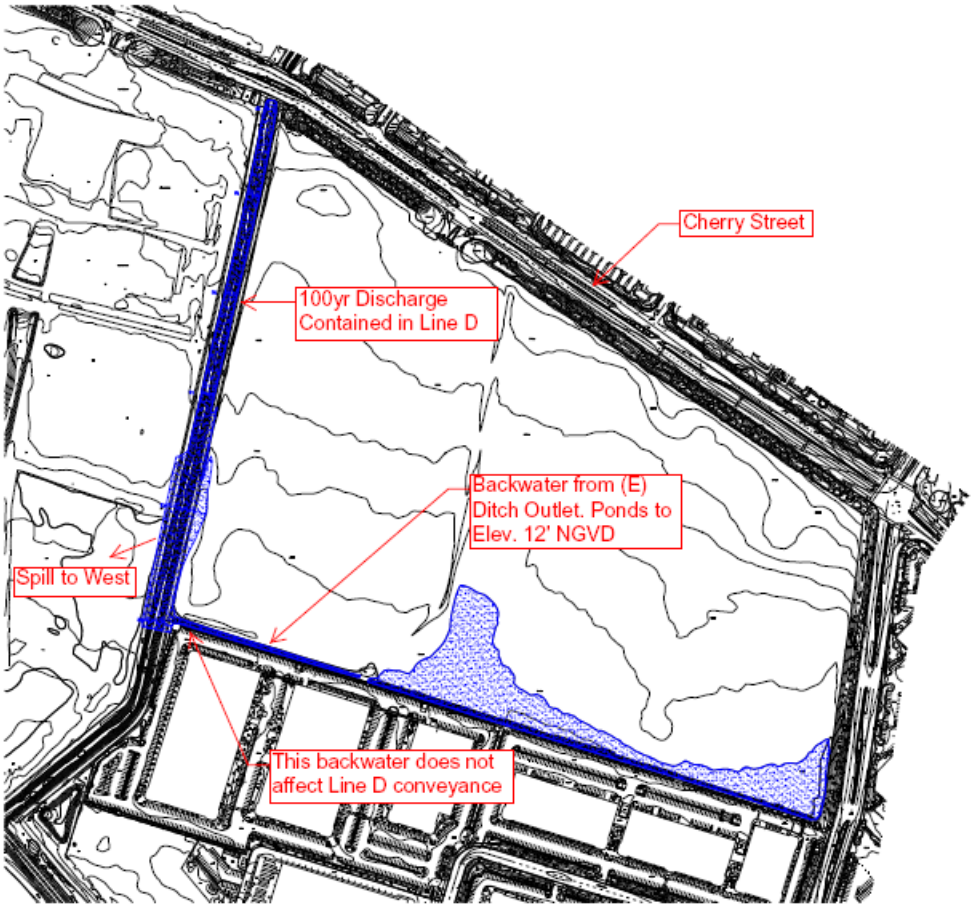
LINE C (ZONE 3A) - LINE D - LINE D (ZONE 6) (AQUA FRIA CREEK)

As shown on the figure below, physical features preclude the flow of any substantial site run-on from the north across Cherry Street due to developed parcels on the opposite side of the street, a raised street median, and a landscape berm that is up to three feet high relative to street grade. A concrete wall that runs from the

ACFC&WCD property at Line D to Stevenson Boulevard prevents run-on from or runoff to the adjacent southern property (Technology Park). Thus the only remaining question is whether any proposed fill within Area 3 would block the flow of water in Line D and adjacent lands.

This question is answered by plotting the effective base flood elevation on top of existing ground elevations in Area 3. A composite map that matches vertical datum is shown below. The base flood is contained below the eastern bank of Line D everywhere adjacent to Area 3 except at the southern property line, where backwater at elevation 12 feet ± NGVD ponds on the site within the existing ditch and adjacent lowlands just north of the concrete wall (in red above). Outside of the ditch, the depth of ponding is less than six inches. The concrete wall and building pads south of that wall prevent this water from flowing south, so it is only a backwater area influenced by the water surface elevation of Line D at the southern property line, and is not an area of active flow conveyance that could influence the water surface elevation in Line D or elsewhere. It is also evident that ground elevations immediately adjacent to Line D on the east side of the channel are uniformly higher than ground elevations immediately adjacent to Line D on the west side of the channel. Thus any channel overflow would spill to the west (blue arrow above) before the east into Area 3. However, as the figure below shows, easterly bank elevations fully contain the 100-year water surface profile between the ditch outlet (which allows the backwater described above) and Cherry Street.

Therefore the placement of fill as proposed would have no impact whatsoever on 100-year flood elevations in Line D and adjacent lands, or the existing channel spills toward the west.



With respect to the blockage of flow due to proposed fill within Area 4, two types of 100-year flooding must be evaluated: tidal flooding and the 100-year overland releases from Line D spill mapped as Shaded Zone X.

Tidal flood elevations are controlled only be the level of San Francisco Bay. There really is no "tidal conveyance" per se, because flood inundation due to the stillwater surge (Zone AE Elevation 11 on the new maps, or elevation 8 on the Specific Plan conceptual grading plan datum) simply takes the shape of its container (i.e. the shoreline). Changing the shape of the shoreline (e.g. by placing fill within the tidal area) does not change the flood level itself. Fill placed for Area 4 development will not alter the base flood elevation or affect tidal flooding within Sub-Area E or on adjacent properties.

As indicated by the floodway data table presented previously, there is a floodway surcharge, and therefore spill in the fully encroached condition, from Line D upstream of Area 4 between the Union Pacific Railroad Tracks and the southern boundary of Area 3. (The UPRR tracks form the northern boundary for development within Sub-Areas B and C.) An inspection of existing topography within Technology Park indicates that overland release for this spill is provided to Stevenson Boulevard, since the existing Union Pacific Railroad tracks block flow into Sub-Area C.

Proposed fill within Sub-Areas B and C, therefore, will have no impact on this release of shallow 100-year flow through Technology Park. Under the residential option, development within Sub-Area D would be placed on fill at a minimum settled elevation of 11.25 feet NGVD. The minimum elevation of the UPRR tracks is 12.1 feet NGVD near Line D, and the track grade is uniformly positive to Mowry Avenue where the road crossing is at elevation 16.4 feet NGVD. As long as fill is not placed to higher elevations than the adjacent railroad tracks, Area 4 development cannot worsen (significantly impact) the blockage of flood flow conveyance for shallow 100-year flows already created by the existing UPRR tracks.

The remaining area of concern with respect to flow blockage is Line D from the UPRR to its outfall at Mowry Slough. As indicated by the floodway data table, fill placed within the floodway fringe in Sub-Areas C and D has the potential to cause a floodway surge of up to one foot in the immediate vicinity of the UPRR. FEMA's calculated potential surge is based on an assumption of *complete* encroachment to the channel banks on both sides of Line D throughout the entire reach. However, the conceptual grading plan shown in Draft EIR Figure 2.4-5 indicates that the minimum top of the west bank levee of Line D (9.5 feet NGVD ±) is much higher than planned elevations within Sub-Areas D and E, thereby preserving the existing channel release elevation and preventing a floodway surge. It may also be noted that the published 500-year water surface elevation for Line D downstream of the UPRR 9.5 feet NGVD) is reflective of this existing spill elevation. Proposed Specific Plan development will therefore not impact 100-year flows inside or outside of Line D.

COMMENT N-31: Second, Section 3.8.3.5 of the DEIR, entitled "Project Alteration of Drainage Patterns Resulting in Increased Flooding" concludes that the area covered by impervious surfaces will increase by 65% in Area 3. See, DEIR, p. 200. The DEIR then compares existing and projected off-site flooding impacts. In so doing, the DEIR states that time of concentration modeling calculations under existing conditions is 0.70 hour (overland sheet flow through short grass and flow through typical cross-section of existing ditch). Post-development conditions (i.e. storm drain plus a roof to gutter time) resulted in total time of concentration of 0.33 hour. Accordingly, the DEIR concluded that 100-year peak storm discharge in flood channel Line D will be the same pre- and post-project 938 cfs. DEIR then concludes, "Area 3 is near the outlet of the watershed, the increased impervious surfaces proposed in Area 3 produce a shorter time of concentration. The site discharge is increased, but the shorter time of concentration allows the peak project flow to be discharged to Line D an hour before the peak of main watershed ... reaches the outfall. Therefore, the alteration of drainage patterns and increased discharge from Area 3 does not affect the 100-year discharge in Line D." Id. Based on the foregoing discussion, the DEIR concludes there is a less than significant impact. Id. As discussed in the preceding section of these Comments, the new MRP will require re-analysis of the flooding impacts in light of the differing requirements for retention and on-site treatment.

RESPONSE N-31: Provision C.3.c.2.b of the MRP requires each regulated project to treat 100% of the amount of runoff identified in Provision C.3.d with LID treatment measures onsite; or with offsite joint treatment facilities, the latter of which is not proposed for Area 3. LID treatment measures include harvesting and re-

use, infiltration, evapotranspiration or biotreatment, the latter treatment being the only feasible means of treatment for Area 3 due to soil and groundwater conditions.

Development within Area 3 would be subject to the numeric sizing criteria of Provision C.3.d and have the choice of volume-based treatment or flow-based treatment. Given the problematic nature of providing volume-based treatment in Area 3 as discussed in the Draft EIR (p. 202) it is presumed that flow-based treatment would be designed in conformance with C.3.d.i.2. Whether volume-based or flow-base treatment is used, however, it is emphasized that the storm water treatment design is for frequently recurring storm events, not the extreme 100-year event calculations to which this comment refers. Flow based treatment systems are sized for 10 percent of the 50-year peak flowrate; a rain event equal to two times the 85th percentile hourly rainfall intensity, or an event equal to 0.2 inches per hour intensity. By comparison, the 100-year rainfall intensity for a 20 minute time of concentration is 1.70 inches per hour (ref. ACFC&WCD, 2003) or nearly nine times the intensity of the regulatory treatment event.

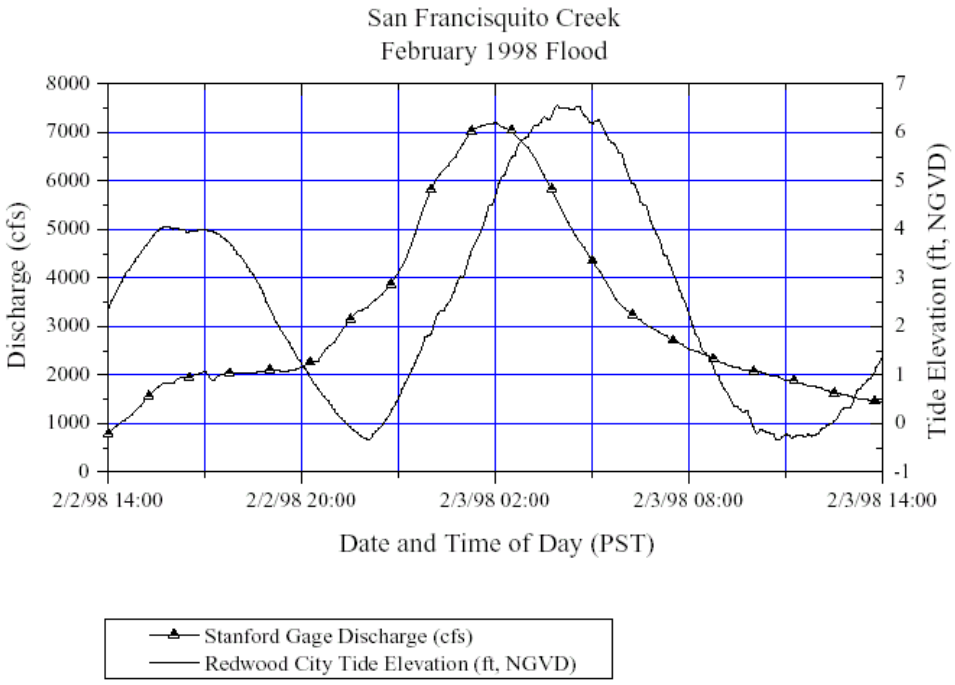
Calculations for existing and post-project times of concentration for the 100-year runoff event presented in the Draft EIR are based on existing flow paths and likely post-project flow paths at the conceptual level of a Specific Plan (which would include the general alignment of bio-treatment swales) based on slopes calculated from the grading plan presented in the Draft EIR. Nothing in the new MRP changes these calculations. It is also noted in passing that previous numeric treatment criteria are not changed in the new MRP.

COMMENT N-32: As to Area 4, the DEIR concludes that "augmented flows from increased impervious areas are released directly to the Bay and cannot affect Bay tides, residential development in Area 4 would not substantially alter the existing drainage pattern . . . that would result in flooding in the area or downstream of the area." Id. at p. 201. The DEIR further concludes (without supplying credible evidence) that the development of a golf course would not affect drainage patterns because "runoff volumes from golf courses are generally the same as for undeveloped land" and therefore there would be a less than significant impact. Id. The DEIR again fails to provide substantial evidence to support its conclusory contentions, and is, therefore, deficient.

RESPONSE N-32: The Draft EIR conclusive shows that only a modest increase in pumping rate (5,000 gpm) is required to maintain existing levels of inundation within the wetlands of Sub-Area E (see Draft EIR pp. 203-204 and detailed documentation in Appendix G). The maximum net effect of augmented flows from increased impervious areas that are released to the Bay through Mowry Slough is therefore 5,000 gpm. As shown by Appendix G Figure 1-4, Mowry Slough is under complete tidal influence in a 100-year event. The water level in and on both sides of the Slough is 8 feet NGVD or 11 feet NAVD on the new FIRM. Furthermore, published flood profiles for ACFC&WCD Lines B and D indicate that "elevations downstream of [the confluence of Line B and

Line D are] controlled by San Francisco Bay."[10] The discharge of an additional 5,000 gallons per minute into an area where the base flood elevation is controlled by San Francisco Bay will not affect 100-year flooding in the area.

In further support of this statement consider the flood of record for San Francisquito Creek (at the border of East Palo Alto and Palo Alto across the Bay from Newark) when extreme runoff (3,231,360 gpm) nearly coincided with extreme Bay tides in the early hours of February 3, 1998. The amount of creek discharge does not impact the tide level. For a measured discharge of 3,000 cfs on the rising limb of the hydrograph the coincident tide is 0.2 foot NGVD; but at the same discharge on the recession limb of the hydrograph, the coincident tide is 4.0 feet NGVD. Note also that the peak tide elevation does not coincide with the peak of the storm runoff even when considering the time attenuation between Stanford and the Bay.



The following calculation demonstrates the estimated change in runoff coefficient for the conversion of 140 acres of open space into a golf course (Draft EIR Table 3.2-3) with up to 20,000 square-foot clubhouse and 200 parking spaces (with assumed permeable pavement per MM HYD-1.2):

Mean annual precipitation = 13.5" (ref. ACFC&WCD 2003 Attachment 6)
24-hour precipitation depth = 3.59" (ibid, Attachment 12)
C (undeveloped land, Type D soil) = 0.30 (ibid, Table 2)
C (golf course, Type D soil) = 0.30 (ibid)
C (clubhouse area - commercial, D soil) = 0.81 (ibid)
C (permeable pavement, Type D soil) = 0.30

[10] Alameda County Flood Insurance Study, 2009.

Clubhouse = 20,000 square feet (Draft EIR p. 13)
Assume clubhouse area = 40,000 square feet or ~1 acre
Parking Lot = 200 spaces (ibid)
Parking Lot = 320 square feet per car (*Weant, R.A. and Levinson, H.S., Parking, Eno Foundation, 1990, page 161.)*
Parking Lot = 64,000 square feet or 1.5 acres
Average slope = 0.005 (topographic map)
Weighted C for golf course:
(137.5 acres)(0.30) + (1 acre)(0.81) + (1.5 acres)(0.30) / 140 acres = 0.304
Cs = 0.027 (ACFCWCD 2003 p. 9)
Ci = 0 (ibid)
C' = C + Cs = 0.331
Adjusted C for open space
Cs = 0.028
C' = 0.30 + 0.028 = 0.328

The 0.9 percent increase in runoff from the change in land use from open space to golf course does not indicate a significant change in drainage pattern.

COMMENT N-33: Section 3.8.3.6 of the DEIR, "Project Alteration of Drainage Patterns Resulting in Increased Erosion," concludes that the increase in impervious surfaces in Area 3 would result in an increased runoff rate, creating potential for hydromodification and impacts to off-site erosion. Id. at pp. 201-202. The DEIR concludes, though, that Line D is sufficient to handle any increased runoff. The DEIR further notes that additional measures are discussed later in the Chapter to reduce on-site erosion. Based on the foregoing, the DEIR concludes that there would be a less than significant impact. Id. at p. 202.

As to Area 4, the DEIR states, "[i]ncreased sedimentation due to Area 4 Specific Plan development is not considered to be a problem . . . runoff from Area 4 is contained on the inboard side of the levees until it reaches the pump and is discharged into Mowry Slough." Id. p. 202. The DEIR further states (without inclusion of supporting evidence) that "Mowry Slough is tidally influenced and is, therefore, exempt from hydromodification requirements." The DEIR concludes that there would be a less than significant impact. Id. Without any evidence supporting this analysis, the DEIR's conclusions regarding alteration of drainage patterns are faulty.

RESPONSE N-33: In an enclosed area like Area 4, the source of additional sedimentation would be from an increase in upstream erosion. However, proposed development within Area 4 will <u>decrease</u> the erosion potential by increasing impermeable surfaces that are resistant to erosion, such as pavement, buildings and sidewalks and potentially erosive velocities at storm drain outfalls can be mitigated with energy dissipation structures. The erosion potential of fill slopes would also be addressed during design and the preparation of post-construction storm water pollution prevention plans. Therefore the potential for sedimentation in Area 4 also decreases. Mowry Slough is tidally influenced, depositional, and exempt from hydromodification requirements according to the HMP susceptibility map referenced by the MRP. http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/muni/mrp/Final%20TO%20HM%20Maps.pdf

COMMENT N-34: 10. Analysis of Impacts of Native American Human Remains/Burial Grounds

Section 3.6 of the DEIR addresses Cultural Resources. Subsection 3.6.2.2 provides an Archaeological Overview that states, "[t]he proposed Areas 3 and 4 Specific Plan is located in an area of high archaeological sensitivity." Notably, the DEIR further states that: "[h]uman remains were encountered on September 25th, 2008 while trenching in Area 4." See, DEIR, p. 169. Subsection 3.6.3.3 entitled "Archaeological Resources Impacts" further states:

Based upon the discovery of human remains and cultural artifacts found through survey work on the Specific Plan site, it appears that there are large intact archaeological deposits containing human burials eligible for the state and national registers which will be impacted by the project.

. . .

In conclusion, the research done to date suggests that Areas 3 and 4 contain as many as three areas which may contain unique archaeological resources . . . See, DEIR, pp. 169-173. (Bold and underline added.)

Based on the foregoing, among other things, the DEIR concludes that the project would create significant impacts on unique archaeological resources. Specifically, the DEIR identifies the following significant impact:

Implementation of the proposed Areas 3 and 4 Specific Plan will impact unique archaeological resources and disturb human remains, including those interred outside of formal cemeteries through compression of soils and excavation of existing soils. **(Significant Impact)**. See, Impact CUL-2, p. 173. (Bold in original.)

In light of the project's significant impacts on archaeological resources, the DEIR proposed a number of mitigation measures, which read in part:

MM CUL-2.1: The following mitigation measures shall be completed prior to issuance of a grading permit and prior to any earth moving activities in those areas of the Specific Plan already identified as potentially containing archaeological resources based upon the research and survey work completed by Holman & Associates.

· A limited program of hand excavation shall be undertaken by a professional archaeologist certified by the Register of Professional Archaeologists (RPA) at the locations of the three burials and two cultural features… (Bold and underline added.)

. . .

MM CUL-2-2: Prior to any future development in areas identified as potentially containing archaeological resources bases upon the research and survey work completed by Holman & Associates or areas for which any additional information has been gathered through hand excavations under **MM CUL-2.1**, plans shall be designed to avoid impacting known cultural resources. (Bold in original.)

…

MM CUL-2-3: All grading and/or construction activities shall, to the extent feasible, avoid all areas identified as potentially containing archaeological resources based upon research and survey work completed by Holman & Associates or areas which any additional information has been gathered through hand excavations under MM CUL-2.l. However, to the extent that these areas cannot be avoid, then mitigation for burial resources shall be achieved through either preservation in place . . . or a program of data recovery. (Bold and underline added.)

MM CUL-2-4: The following measures shall be completed during all development activities that include excavation or disturbance of existing ground surfaces, installation of utility lines, or other subsurface trenching . . . (Bold and underline added.)

. . .

Based upon the current known extent of unique cultural materials on the site, it is unlikely that total avoidance of impacts is possible with implementation of the proposed Specific Plan. While incorporation of the above measures will partially reduce the cultural resources impact, the overall implementation of the Specific Plan will destroy archaeological deposits through placement of fill and soil compression and, therefore, result in a significant unavoidable impact. (Emphasis added.)

The proposed mitigation measures are deficient for numerous reasons.

First, the proposed mitigation measures do not incorporate CEQA's preference for "in situ" preservation of unique archaeological resources. CEQA urges lead agencies to require reasonable mitigation measures to permit some or all of the resources to be preserved in place or left undisturbed. See, Pub. Res. Code, § 21083.2(b). Examples of such mitigation measures are:

· Planning construction to avoid the archaeological sites;

· Deeding the archaeological sites into permanent conservation easements;

· Capping or covering the archaeological sites with a layer of soil before building on the sites; or

· Planning parks, green space, or other open space to incorporate archaeological sites. See, Pub. Res. Code, § 21083.2(b).

While MM CUL-2.2 acknowledges that plans should be designed to avoid impacts to unique archaeological resources, footnote 41 shuns "in situ" mitigation without providing substantial evidence in support thereof, by stating:

It should be noted that 'capping' or covering the known archeological resources would not mitigate the impacts to cultural resources because all grading activities, placement of fill, and compaction of the soil would crush and destroy the known cultural resource deposits. See, DEIR, p. 174.

Later, in MM CUL-2.3, while the DEIR contemplates "in situ" preservation, it neglects to specify how such "in situ" mitigation will be accomplished.

RESPONSE N-34: The commenter expresses concern that the Draft EIR's proposed mitigation measures with regard to unique archeological resources do not "incorporate CEQA preference for 'in situ' preservation and fails to provide substantial evidence to support employing other mitigation measures.

The Draft EIR does call for in-situ preservation of cultural resources. Please see Mitigation Measure CUL-2.3 at Draft EIR page 174, which provides:

All grading and/or construction activities shall, to extent feasible, avoid all areas identified as potentially containing archeological resources based upon the research and survey work completed by Holman & Associates, or areas

for which additional information has been gather through hand excavations under MM CUL-2.1 . . .

Accordingly, MM CUL-2.3 requires avoidance, i.e. in-situ preservation, as the first, and primary, mitigation measure to mitigate potential impacts to cultural resources. Other mitigation measures, as described in detail in MM CUL-2.3 will only be implemented if avoidance cannot be feasibly achieved.

COMMENT N-35: Second, the DEIR fails to delineate the performance standards required for the "limited program of hand excavation" called for in MM CUL-2.1. As noted above with respect to air quality, global climate change, and biological resources impacts, such deferral of mitigation is prohibited by CEQA.

RESPONSE N-35: As described in MM CUL-2.1, the "limited program of hand excavation" must be undertaken by a "professional archeologist certified by the Register of Professional Archeologists." Archeologists certified by the Register of Professional Archeologists must adhere to "Standards of Research Performance[11]" which include "procedures for field survey or excavation." Accordingly, MM CUL-2.1 will be revised as follows to include a reference to the Register of Professional Archeologist standards, refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

COMMENT N-36: Third, the DEIR does not clarify what "feasible" means with respect to MM CUL-2.3, which states "[a]ll grading and/or construction activities shall, to **the extent feasible**, avoid all areas identified as potentially containing archaeological resources..." (Emphasis added.) Without clarification regarding this limitation, the DEIR again improperly defers mitigation in contravention of CEQA.

RESPONSE N-36: As discussed in Response N-34, MM CUL-2.3 requires avoidance, i.e. in-situ preservation, as the first, and primary, mitigation measure to mitigate potential impacts to cultural resources. Other mitigation measures, as described in detail in MM CUL-2.3 will only be implemented if avoidance cannot be feasibly achieved. This process is governed by Public Resources Code section 21083.2, which provides that "to the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision." Here, where it is not feasible, as part of the development of the Project, to pursue to primary mitigation measure of avoidance, CEQA permits the City to impose alternative mitigation measures to mitigate impacts to archeological resources, which, as detailed in CUL-2.3, focus on excavation and data recovery by a professional archeologist with the review and approval of the City. This is the appropriate alternative mitigation measure, as provided for in section 21083.2, which states: "excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project."

[11] http://www.rpanet.org/displaycommon.cfm?an=1&subarticlenbr=4

COMMENT N-37: Moreover, notably, the above mitigation measures call for implementation "prior to issuance of a grading permit" and prior to "grading and/or construction activities." The timing of these mitigation measures is inappropriate. The project approvals covered by the DEIR contemplate a tentative subdivision map as well as the Specific Plan. A tentative subdivision map would include location and massing of buildings. Accordingly, the location of significant Native American remains should occur before rather than after approval of the tentative subdivision map. Otherwise, the later in the planning process the mitigation measures are imposed the more likely that the preferred "in situ" preservation options will become infeasible.

RESPONSE N-37: The commenter expresses its opinion that the proposed timing of the implementation of mitigation measures to address potential impacts to cultural resources - prior to issuance of grading permits and construction activities -is inappropriate, because the location and massing of buildings will already be determined in the tentative subdivision map. The commenter asks that these mitigation measures be required to be implemented prior to the approval of tentative subdivision maps.

The commenter does not propose when the mitigation measures would be implemented – other than "before" approval of tentative subdivision maps for development within the Specific Plan. As a general matter, it would undermine the efficacy of Mitigation Measures CUL-2.1, 2.2, 2.3 and 2.4 to attempt to implement these measures absent approved tentative subdivision maps for the development within the Specific Plan. As reflected in the Project Description, the Specific Plan's Proposed Land Use Plan (Draft EIR Figure 2.4-1) is general in nature and would not provide detailed guidance necessary to plan avoidance of cultural resource as required by MM CUL-2.3. Until a tentative subdivision map is approved the City will not have sufficiently specific information regarding proposed construction in order to implement the mitigation measures, including the avoidance plan.

COMMENT N-38: 11. Scenic and Visual Resource Impacts Analysis
Section 3.10.3 of the DEIR discusses visual and aesthetic resources impacts. Section 3.10.3.2 entitled, "Impacts to General Plan Elements of Visual Significance and Scenic Vistas" states:

Views from the Area 4 residential out toward the slough and greater San Francisco Bay, and beyond to the Santa Cruz Mountains, will not be affected by the proposed Specific Plan development. Implementation of the Specific Plan will not result in an adverse visual impact to this visual feature.

Based on the foregoing, among other things, the DEIR concludes that "the Specific Plan would not adversely impact any locally significant resources (i.e., General Plan elements of visual significance), nor will the project have a substantial effect on a scenic vista. **(Less than Significant Impact)**." See, DEIR, p. 239. (Bold in original.) While the DEIR concludes that there will be no significant impacts on views *from* Area 4 toward the San Francisco Bay, it fails to analyze the project's visual impacts on views of the site from the Bay. Accordingly, the EIR should be supplemented to include analysis of potential adverse impacts on views of the site from the San Francisco Bay.

RESPONSE N-38: There is no provision of CEQA, the CEQA Guidelines or of CEQA case law that requires a lead agency to consider a Project's potential impact to views of those viewing the project from a body of water. The City also notes that

Schneider v. California Coastal Commission (2006) 140 Cal.App.4th 1339, confirmed that the Coastal Commission may not consider an ocean boater's view of the coastline from the ocean when reviewing Coastal Development Permits. There is similarly no requirement that an EIR consider impacts on view from boaters in the San Francisco Bay.

COMMENT N-39: Furthermore, the DEIR fails to identify appropriate mitigation measures in terms of height of buildings and light and glare.

As to height of buildings, the DEIR concludes that the residential development in Area 4 will have a significant impact. The DEIR specifically states:

[W]hile Area 4 is relatively isolated and is not visible from many surrounding vantage points, the proposed Specific Plan will substantially alter its existing visual character. The proposed raising elevation of 10 to 14 feet for the residential development, the addition of residences, streets, landscaping, and golf course on what is now flat, open agricultural land, and the proposed two-lane Stevenson Boulevard railroad overpass will all change the existing visual character of Area 4. It is a subjective decision whether the proposed development would adversely degrade the site; however, the extent of the change is sufficient to consider it a significant visual impact. See, DEIR, Impact VIS-1, pp. 240-241.

The DEIR further concludes that "[t]here are no feasible mitigation measures that would mitigate for the significant change in visual character, which would result from the development of Area 4. **(Significant Unavoidable Impact)**." See, DEIR, p. 241. (Bold in original.)

CEQA requires that feasible mitigation measures be proposed to mitigate significant adverse impacts. Here, the DEIR does not propose mitigation measures limiting the visual impacts resulting from residential development in Area 4, yet there are no credible reasons why such mitigation measures were omitted. As discussed more fully below, there does not appear to be substantial evidence to support the finding that visual impacts pose a significant unavoidable impact in light of the fact that the *No Development in Area 4 and Higher Density Area 3 Alternative* discussed in the DEIR would significantly avoid and lessen the project's environmental impacts, especially with respect to the alteration of the visual character of Area 4.

Furthermore, the DEIR should have proposed a mitigation measure that restricts the location of buildings in Area 4 to mitigate the visual impacts of the project.

RESPONSE N-39: The commenter claims that there are mitigation measures which would lessen the project's significant and unavoidable visual impacts with regard to development of Area 4, such as restrictions on the location of buildings in Area 4.

As the commenter notes, the Draft EIR does consider an alternative that was specifically designed to avoid the significant and unavoidable visual impacts of development on Area 4 of the Project Site: the *No Development in Area 4 and Higher Density in Area 3* Alternative. The inclusion of this Alternative is the appropriate manner in which to address the project's significant visual impacts. Including a proposed mitigation measure that required the

elimination of development from Area 4 would only be a restatement of an already examined project alternative.

Further, while the commenter does not suggest what type of restriction to the location of buildings in Area 4 would substantially lessen the visual impacts of the project, based on the City's review, restrictions on the locations of buildings in Area 4 is not likely to substantially lessen the visual impacts of development in Area 4. This is because the placement of structures in Area 4 is already substantially restricted due to the presence of wetlands and because even the placement of structures where wetlands are currently located would not mitigate the significant and unavoidable visual impact to a less than significant level.

COMMENT N-40: As to light and glare impacts, the DEIR concludes that the proposed "Specific Plan would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area. **(Less than Significant Impact)**." See, DEIR, p. 241. (Bold in original.) The DEIR proceeds, however, to delineate numerous avoidance measures to "further reduce light and glare impacts of the Specific Plan." Id. The DEIR is therefore inconsistent. The DEIR fails to include substantial evidence to support its conclusion that there will be no significant light and glare impacts. More tellingly, the DEIR's inclusion of avoidance measures implies that in fact there is significant light and glare impacts. Therefore, to the extent there are significant light and glare impacts, CEQA requires that the DEIR include feasible mitigation measures; mere avoidance measures will not suffice.

RESPONSE N-40: As discussed on page 241 of the Draft EIR, the City does not propose mitigation measures to address the less than significant impact of the project with respect to light and glare. Rather it proposes "avoidance measures" to address the less than significant light and glare impacts of the project. As the permitting agency for this project, the City may impose conditions on the project to reduce certain impacts of a project, even where it has found those impacts to be below the threshold of significance from a CEQA perspective.

COMMENT N-41: 12. Water Supply Analysis and Water Supply Assessment
Section 3.12 of the DEIR is titled "Water Supply and Utilities and Service Systems" and Appendix I to the DEIR is titled "Water Supply." The water supply analysis presented in Section 3.12 and Appendix I of the DEIR is legally deficient for the following reasons.

First, to comply with CEQA and SB 610's water supply requirements, the City proposes to rely on a November 2008 Water Supply Assessment prepared for the project by the Alameda County Water District ("2008 WSA"). Yet, at set forth in Appendix I of the DEIR, in May 2009 the ACWD provided written notification to the City that the information presented in 2008 WSA was no longer timely or accurate due to the recent decision by Federal District Court Judge Oliver Wagner in litigation regarding the operation of California's State Water Project. After noting that SWP deliveries account for 40% of the ACWD's water supply portfolio, the ACWD May 2009 notification to City then explains:

Under the "Post-Wagner" scenario, ACWD's water supply "buffer" (i.e. supplies in excess of demands) is reduced substantially from 5000 AF to approximately 400 AF under normal year conditions. Given that ACWD is facing additional water supply uncertainties that were not factored

into the November 2008 WSA scenarios (e.g. Delta smelt BO[Biological Opinion], salmonid BO[Biological Opinion], etc.) there is a likelihood that there may be further reductions in ACWD water supplies which, without the implementation of additional water management measures beyond ACWD's existing IRP strategy, could result in a water supply/demand imbalance (demands greater than supply availability).

This May 2009 update from ACWD suggests that there is no longer substantial evidence to support reliance on the previous 2008 WSA for the project and that a new WSA needs to be prepared. This May 2009 update from ACWD also suggests that the DEIR for the project needs to include additional mitigation analysis to deal specifically with these more severe anticipated water supply reductions.

RESPONSE N-41: The commenter expresses concern that the information provided to the City by the Alameda County Water District (ACWD) in May 2009 requires the preparation of a new Water Supply Assessment (WSA) for the Project to include "additional mitigation analysis to deal specifically with these more severe anticipated water supply reductions."

The Draft EIR appropriately discloses that additional mitigation for the water supply impacts associated with Areas 3 & 4 Specific Plan Project may be required. This is not in conflict with the 2008 WSA for the Project. The Draft EIR notes that "consistent with the provisions in the November 2008 WSA, the implementation of additional mitigation measures may be a condition for providing a water supply verification and/or as a condition of providing water service to individual developments within the Newark Areas 3 & 4 Specific Plan Project." (Draft EIR p. 257.) The Draft EIR also details the types of mitigation measures that may be required by ACWD ("ACWD may require future developers of the Specific Plan project to fund conservation measures to reduce off-site water demand throughout the entire ACWD service area. Through this private funding of off-site conservation, the project could off-set 100 percent of its water demand, thereby resulting in a net zero increase in water demand . . . The total dollar amount contributed by the residential developer would remain fixed, and it would be up to ACWD to maximize the water savings through its planned programs.") (Draft EIR at 257-258.) Based on this information, the Draft EIR appropriately concludes that, if needed, the "potential additional mitigation of off-site conservation funding" would reduce the Project's impact to water supplies to a less than significant level.

COMMENT N-42: Second, the 2008 WSA upon which the City relies for its water supply analysis was itself based on the water demand forecast set forth in a 2006 Urban Water Management Plan ("2006 UWMP"). The 2008 WSA explains that, in the 2006 UWMP, the "portion of Area 3 included in the Project had previously been planned as a high-tech park" (see pages 1 and 5 of the 2008 WSA) and that "because of the change in the land use assumptions at the Project site, the Project will result in a slightly **different breakdown in the aggregated demands** for the land use categories reported in the UWMP." (See page 6 of the 2008 WSA, bold added.) The 2008 WSA then determines: "Area 3 was intended for a high-tech industrial park but will now be converted to additional housing. Despite the change in the proposed land use, the projected demands of the Project are consistent with the range of demands that were anticipated during the development of the

UWMP demand forecast." (See page 6 of the 2008 WSA.) To the extent the phrase "different breakdown of aggregate demands" can be understood to mean that the amount of water needed to serve housing in Area 3 will be greater than the amount of water need to service a high-tech park in Area 3, this conclusory analysis is not sufficient. Without a quantitative comparison of the water demands for these different uses, there is not substantial basis to support the City's continued reliance on the 2006 UWMP or to support the DEIR's conclusion that the project s water demand of (and water supplies available for) the proposed Area 3 housing are "consistent" with the high-tech park land use assumption in the 2006 UWMP.

RESPONSE N-42: ACWD's 2006 UWMP does not contain a "water use category" for a "high-tech park," instead the UWMP classified all future water demands as Single-Family Residential, Multi-Family Residential, Commercial, Industrial, Institutional, Landscape or other. As a result, when the 2006 UWMP calculated the future water demands of the City of Newark, including Area 3, it treated the then proposed "high-tech" park as an Industrial water user. Industrial water demands are significantly greater than residential water demands. As a result, the Draft EIR appropriately concluded that the 2006 UWMP included in its analysis of projected water demands for Area 3 greater water demands than those for Area 3 under the proposed Project.

While the commenter requests a quantitative comparison of high-tech park and residential water demands, this level of analysis is not required in order to determine whether the 2006 UWMP assumed a sufficient demand for water in Area 3 to cover the proposed Project's water demands. CEQA does not require a lead agency to complete every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required. (CEQA Guidelines, Section 15204(a).)

COMMENT N-43: Third, in a May 26, 2009, letter to the City regarding the housing element update to the City's General Plan (which was included in Appendix I to the DEIR for the project), the ACWD commented: "The DPEIR [Draft Program Environmental Impact Report] states that, as a mitigation measure, all future housing projects will be required to install low flow plumbing features, install drought tolerant landscaping and install automatic irrigation systems. However, the DPEIR does not provide sufficient information to confirm that this mitigation will reduce water supply impacts to "less than significant" as stated in the DPEIR." Since Section 3.12 of DEIR for the project includes that same type of mitigation measures and also relies upon these mitigation measures to support the CEQA determination of a "less than significant" impact on water supply, the ACWD's comments on the DPEIR for the General Plan housing element update are equally applicable to the DEIR for the project. Namely, there is not substantial evidence to support the DEIR's conclusion that the proposed mitigation measures regarding water conservation will reduce the water supply impacts of the project to a level that is "less than significant."

RESPONSE N-43: First, the water conservation measures that ACWD comments on with respect to the General Plan Draft Programmatic EIR (low flow plumbing fixtures, drought tolerant landscaping and automatic irrigation system) are just a portion of the water conservation measures set forth in the Section 3.12 of the Draft EIR. As well, as discussed on pages 257 and 258 "in addition to the proposed Areas 3 and 4 Specific Plan water conservation measures, the

ACWD may require future developers of the Specific Plan project to fund conservation measures to reduce off-site water demand throughout the entire ACWD service area. Through this private funding of off-site conservation, the project could off-set 100 percent of its water demand, thereby resulting in a net zero increase in water demand." Second, the commenter provides no explanation as to why the water supply demands of the development proposed in the City's proposed General Plan should be assumed to require the same level of mitigation as those of the proposed project. Third, ACWD's comments specifically with regards to the proposed project are found only in Attachment A to ACWD's May 26, 2009 letter. They state, as disclosed in the Draft EIR, that "ACWD may require additional mitigation for the water supply impacts associated with Areas 3 & 4 Specific Plan project. The requirements for additional mitigation, if any, will be dependent on the magnitude of the water supply shortages that ACWD may be facing. Consistent with the provisions in the November 2008 WSA, the implementation of additional mitigation measures may be a condition for providing a water supply verification and/or as a condition of providing water service to individual developments within the Newark Areas 3 & 4 Specific Plan project."

COMMENT N-44: Fourth, in its May 26, 2009, letter to the City regarding the housing element update to the City's General Plan (which was included in Exhibit I to the DEIR for the project), the ACWD commented in a section of the letter titled "Groundwater": "[T]here is documentation of a large historical spring area near that flood control channel that may be currently active in Area 4. Since these facts indicate that groundwater is near the surface and may be impacted by any proposed development, the DPEIR should include a detailed evaluation of the potential impact on groundwater resources." (See page 3 of ACWD's May 26, 2009 letter to the City.) Notwithstanding these comments from ACWD regarding Area 4, Section 3.12 and Appendix I of the DEIR for the project contain no information concerning the historical spring area or groundwater resources located beneath Area 4. Without information about the baseline conditions of the historical spring area and groundwater resources beneath Area 4 and without information about the anticipated impact of the project on this historical spring area and groundwater resources, there is not substantial evidence to support the DEIR's conclusion that the project will have a "less than significant impact" on water supply.

RESPONSE N-44: The commenter requests information regarding a "historical spring area" and "groundwater resources" located beneath Area 4 and expresses concern that without this information the Draft EIR cannot conclude the project impacts to water supply will be less than significant.

Page 197 of the Draft EIR contains a discussion and evaluation of the groundwater on the project site, including the on-site springs and groundwater resources. The Draft EIR discloses that:

> Areas 3 and 4 have <u>relatively low depths to groundwater</u> due to the low elevation and proximity to San Francisco Bay and aquifers. Portions of the southwest area of the Specific Plan site have groundwater surfacing, <u>as indicated by several small ponds near the junction of Alameda Flood Control Lines B and D</u>. . . There are four aquifers underlying the project

> area: Newark, Centerville, Fremont and Deep. The Specific Plan site covers the most downstream portions of the area-wide aquifers where water supply recharge does not take place. The only recharge areas within the Specific Plan site is identified as a shall water bearing zone, which is not used for water supply. [Emphasis added]

Based on the lack of recharge areas within the Specific Plan site, the Draft EIR concludes, on page 203, that "development of the proposed Specific Plan would have little to no effect on the balance of the groundwater basin."

COMMENT N-45: Finally, it should also be noted that while SB 610 requires preparation of a water supply assessment for the City's adoption of project tentative subdivision map, SB 221 will later require that the City subsequently adopt a "Written Verification" of a secure 20-year water supply for the final approval of the project subdivision map. The requirements for establishing a SB 221 Written Verification are even more exacting and rigorous than the requirements for a SB 610 water supply assessment. In light of the serious SWP water supply uncertainties documented in the ACWD's May 2009 update sent to the City, it seems highly questionable whether the City will be able to meet SB 610's requirements (which means it is also highly questionable whether the City will be able to approve the final subdivision map needed for the project described in the DEIR to ultimately proceed).

RESPONSE N-45: The comment does not pertain to the adequacy of the Draft EIR. The commenter's concerns will be included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT N-46: **13. Analysis of Current and Future Uses at 7400 and 7550 Mowry Avenue**

The DEIR highlights the following past, current and future land uses at 7400 and 7550 Mowry Avenue:

· Agricultural production of row crops;
· Able Auto Wreckers and Little Al's Auto Wreckers past auto dismantling operations;
· Pick-N-Pull's current auto dismantling and recycling operations; and
· "According to a conditional use permit with the City Newark, these [auto dismantling] businesses must cease to operate within Area 4 no later than 2014."

See, DEIR, pp. S-53, 7, 27, and 215. In so doing, however, the DEIR excludes critical information and improperly assumes that the auto dismantling and recycling operations will cease and thus neglects to analyze the impacts of replacing the auto dismantling and recycling use with residential and/or recreational uses in contravention of CEQA.

RESPONSE N-46: Under the terms of its conditional use permit, Pick-N-Pull's 7400 Mowry Avenue operations will cease in 2014. The City is not required to speculate that the conditional use permit will be extended. Accordingly, the Draft EIR is not required to assume or analyze the continued use of 7400 Mowry Avenue for auto dismantling purposes after 2014. Further, CEQA does not require the City to speculate as to impacts that are not related, directly or indirectly to the project.

COMMENT N-47: A. The DEIR Fails to Include the Current Uses in Baseline Conditions and to Account for Those Continued Uses within Area 4

The DEIR incorrectly presupposes that the auto dismantling and recycling uses at 7400 and 7550 Mowry Avenue will automatically cease no later than 2014. See, pp. S-53. In so doing, the DEIR omits the pivotal fact that the aforementioned conditional use permit only applies to Pick-N-Pull's operations on 7400 Mowry Avenue, not its operations on 7550 Mowry Avenue, which are governed by a distinct conditional use permit that was granted in 1985 without a term limitation. See, DEIR, pp. S-53, 215; see also, Memo from Clay Colvin, Assistant Planner for the City of Newark to File, regarding Able, Ace, and Little Al's Auto Wreckers, dated February 1, 1993, and City of Newark Resolution No. 885. **Accordingly, the conditional use permit governing Pick-N-Pull's operations on 7550 Mowry Avenue allows auto dismantling and recycling use of that property indefinitely.**

RESPONSE N-47: The clarification is noted. The commenter does not identify impacts of the proposed project would be altered in any manner by the continued presence of an auto-dismantling and recycling operations at 7550 Mowry. The Draft EIR has adequately accounted for the existence of Pick-N-Pull's current operations. The City directs the commenter to the Description of Existing Operations/Conditions in the Draft EIR, which states that "current uses within Areas 3 and 4 include light industrial, auto dismantlers…." The Land Use section, Section 3.1.1.2, also refers to Pick-N-Pull's operations in describing the on-site land uses "current land uses within Area 4 include several auto dismantlers along the west end of Mowry Avenue. . . ." (Draft EIR p. 27.) Accordingly, the commenter's clarification regarding operations at 7550 Mowry does not alter any of the Draft EIR's conclusions regarding the potential impacts of the proposed project, given that auto dismantling operations were already part of the baseline conditions considered in the Draft EIR.

COMMENT N-48: As to Pick-N-Pull's operations at 7400 Mowry Avenue, the DEIR also contains important errors. First, the expiration of the existing conditional use permit does not necessarily mean that the existing use of the site will cease as of that date. To simply assume a cessation of that use for purposes of conducting environmental review is erroneous. For example, the DEIR fails to account for the possibility that the City would approve an extension of Pick-N-Pull's conditional use permit (as it has consistently done since 1985) to continue the use into the future. Second, regardless of what may or may not occur in 2014 – four years into the future, the DEIR completely ignores the existing site use as a Baseline Condition against which impacts in the DEIR must be analyzed. Furthermore, the DEIR further fails to consider that given its agricultural zoning, the property would revert to agricultural production if the auto dismantling use were to cease.[12]

Due to these significant omissions, the DEIR contains a fundamentally flawed analysis with respect to the impacts of replacing the auto dismantling and recycling use with residential and recreational uses, as proposed in the Specific Plan. Therefore, the DEIR should be corrected to properly include such analysis.

[12] Certainly, the City of Newark must acknowledge, and must base its analysis in the DEIR on, the fact that the 7400 and 7550 Mowry Avenue properties are in private ownership, by ownership that has expressed no intention to undertake the type of development contemplated in the Specific Plan. Property owners have the right to use their property subject to valid police power regulation; as such, private property rights and current uses cannot simply be assumed away for expediency in environmental review.

RESPONSE N-48: Any impacts resulting from the cessation or continuation of Pick-N-Pull's operations at 7400 Mowry are not a direct or indirect impact of the project but rather are a result of the expiration of the conditional use permit in 2014. Accordingly, evaluation or speculation as to the impact of the continuation or cessation of these existing operations falls outside the scope of this EIR.

The commenter claims the Draft EIR improperly fails to consider the existing uses of the project area as part of baseline conditions. Please see Response N-47.

COMMENT N-49: B. The DEIR Fails to Evaluate the Impacts of the Proposed Termination of the Auto Dismantling and Recycling Business

Moreover, the DEIR also completely fails to evaluate the significant environmental impacts associated with cessation of Pick-N-Pull's operations, as contemplated by the Specific Plan. During the administrative proceedings related to Pick-N-Pull's most recent extension of its conditional use permit in February 2008, numerous persons testified before the Planning Commission as to the changes that would occur due to the proposed closure of the Pick-N-Pull's facility.[13] These effects include, among other things:

- Abandoned vehicles being left on the streets of the City Newark and surrounding jurisdictions because, absent a nearby facility, tow truck operators would decline to retrieve such vehicles;

- Significantly increased vehicle miles driven (with concomitant air emissions) by customers and suppliers currently using the Pick-N-Pull's facility. (As noted in this testimony, the next nearest comparable facilities are in Hayward and San Jose, respectively 15 and 25 miles away from the Pick-N-Pull Property.)

    - Pick-N-Pull estimates that there are approximately 330 vehicle trips to and from its facility each working day. These air quality and traffic impacts from extra vehicle miles and visual impacts from abandoned vehicles on city streets present a reasonable probability of a significant environmental impact.

Accordingly, the DEIR should be modified to include an evaluation of the significant environmental impacts associated with the proposed termination of Pick-N-Pull's auto dismantling and recycling operations in Area 4, which is a feature of the proposed project.

RESPONSE N-49: The commenter claims the Draft EIR fails to evaluate the significant environmental impacts associated with the cessation of the Pick-N-Pull's operations. Please see Response N-48.

COMMENT N-50: 14. Alternatives Analysis and Project Objectives

Section 5 of the DEIR is titled "Alternatives." Section 5.3 of the DEIR considers the *No Development in Area 4 and Higher Density Area 3 Alternative*, and Section 5.4 of the DEIR considers the *Reduced Housing Alternative*.

[13] Pick-N-Pull hereby incorporates by reference the information concerning the impacts of such cessation of operations submitted by it and others to the City in connection with that prior administrative process.

In terms of the *No Development in Area 4 and Higher Density Area 3 Alternative*, Section 5.3 of the DEIR states:

> Given the biological, hydrologic, and other environmental issues involved with developing Area 4, an alternative to the proposed Specific Plan would be no development in Area 4 and to intensify the housing development on Area 3…Without developing any of Area 4, this alternative would not have sufficient acreage to include the golf course. The No Development in Area 4 and Higher Density Area 3 Alternative consists of the same number of residential units as the proposed Specific Plan project, but all the residential units would be located within Area 3.

Section 5.3.1 then acknowledges that "All wetland, marsh, and aquatic habitat and specific status species impacts would be avoided under this alternative since there is none of this habitat within the planned development portion of Area 3" and that "[t]he imported fill necessary to raise the Area 4 residential area out of the floodplain would also not be required. With no development and no need to import fill, cultural resources impacts would be avoided in Area 4." Section 5.3.3 then notes that "This alternative would result in substantially less biological impacts compared to the proposed project" and that the "significant unavoidable visual impacts associated with development in Area 4 and short-term air quality impacts related to importing fill in Area 4 would not occur under this alternative." However, Section 5.3.3, then concludes that:

> While this alternative is feasible from a land-use and planning standpoint, and would avoid all impacts from development within Area 4, it would not meet the General Plan goals and project objectives of providing high quality housing with a mix of executive house types and a golf course within Area 4. This alternative would also result in densities in Area 3 that are not consistent with the communities vision and which could create greater aesthetic impacts due to building height and massing.

In terms of the *Reduced Housing Alternative*, Section 5.4 of the DEIR states:

> For the Reduced Housing Alternative, the development within Area 3 would be the same as the proposed project. Approximately 400 single-family units and 189 multi-family units were assumed to be constructed in Area 3 under this alternative. There would be a 120-acre golf-course in Area 4 but no residential development within Area 4.

Section 5.4.1 notes that "Impacts to wetland, marsh, and aquatic habitat and specific status species would be reduced under this alternative" and that "[w]ith less ground disturbance and no imported fill in Area 4, it is likely cultural resource impacts could be avoided in Area 4 through design of the golf course." Section 5.4.3 then concludes: "This alternative is feasible from land use and planning standpoint, but would not meet the General Plan objective to provide up to 1,260 high quality, executive (low density) housing and provide housing within Area 4."

Section 5.7 of the DEIR, titled "Environmentally Superior Alternative" then states:

> The No Development in Area 4 and Higher Density Area 3 Alternative and the Reduced Housing Alternative would be the environmentally superior alternatives. The No Development in Area 4 and Higher Density Area 3 Alternative would avoid impacts to wetland, marsh, and aquatic habitat, because no development would occur in Area 4. The Reduced Housing Alternative would result in less impacts to wetland, marsh, and aquatic habitat compared to the proposed project but not to a less than significant level. Both alternatives would avoid land use impacts

and would not result in impact in Area 4 associated with import of soil compared to the proposed project. These Alternatives would not meet all of the project objectives because the No Development in Area 4 and Higher Density Area 3 Alternative will not provide any development in Area 4 which is one of the main objectives of the project. The Reduced Housing Alternative does not include housing in Area 4 which is also one of the main project objectives. (Underline added.)

The alternatives analysis in Section 5 of the DEIR is deficient for the reasons noted below:

First, Section 5.7 rejects the environmentally superior the *No Development in Area 4 and Higher Density Area 3 Alternative* and the *Reduced Housing Alternative* on the basis that these alternatives do not provide for "development" and "housing" in Area 4, which is described in Section 5.7 described as a main "objective" of the project. This description in Section 5.7, however, is not supported by Section 2.5 (titled "Project Objectives") of the DEIR which states: "The primary objective of the Areas 3 and 4 Specific Plan is to provide low density residential, a golf course, and/or recreational facilities, and land for a school for the current and future residents of Newark." As set forth in Section 2.5 of the DEIR, the primary objective of the proposed project is not development of Area 4 (or Area 3 for that matter); rather the proposed development of Area 3 and Area 4 are simply a "means" to pursue certain broader objectives for the residents of Newark that are not dependant on the development of a particular parcel of land. Thus, Section 5.7 is incorrect in its determination that an alternative that forgoes development or housing in Area 4 would be inconsistent with the primary objective of the proposed project. As a leading treatise on CEQA Compliance explains, if alternatives in an EIR are rejected because they do not fulfill basic project objectives, the rationale for this rejection "should be consistent with the statement of objectives in the project description." CEQA Practice, Section 12.13 – Statement of Objectives.

Moreover, to narrowly define the primary "objective" of the proposed project as the development of Area 4 would itself constitute a violation of CEQA since such a restrictive formulation would improperly foreclose consideration of alternatives. See, City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, holding that when project objectives are defined too narrowly an EIR's treatment of analysis may also be inadequate. As another leading treatise on CEQA compliance cautions, "The case law makes clear that…overly narrow objectives may unduly circumscribe the agency's consideration of project alternatives." Remy, Thomas, Moose & Manley, Guide to CEQA (Solano Books, 2007), p. 589.

RESPONSE N-50: The commenter is directed to page 26 of the Draft EIR which lists, as a key project objective of the project "provide up to 1,260 units of low density residential use (4.2 – 8.5 unites per acre) in Areas 3 and 4." Based on this key objective, the Draft EIR appropriately concludes that excluding development from Area 4 would be inconsistent with a primary objective of the project. (Draft EIR p. 318.)

COMMENT N-51: Second, Section 5.7 does not take proper account of the fact that Section 2.5 does not list development of a golf course as a "primary objective" of the Project, but rather lists the objective as "a golf course, and/or recreational facilities." (Underline added.) The inclusion of the word "or" in this provision Section of 2.5 is important, as it provides that that this primary objective could also be met by development of non-golf course recreational facilities, such as hiking, jogging and pedestrian trails. Given that the DEIR project objectives make clear that a golf course is not

necessarily part of the project, the rejection of these project alternatives cannot be based on the absence of a golf course.

RESPONSE N-51: The commenter is directed to Section 5.7 of the Draft EIR which provides the concluding evaluation of the degree to which the project Alternatives meet Project Objectives. The inclusion or exclusion of a golf course in any of the project alternatives is not referenced. Instead, the Draft EIR concludes that the *No Development in Area 4 and Higher Density in Area 3* Alternative, as well as the *Reduced Housing* Alternative fail to meet key project Objectives because they do not provide for *any* development in Area 4, or for the development of housing in Area 4. (Draft EIR p. 314.)

COMMENT N-52: Third, under CEQA, rejection of an environmentally superior alternative is not required simply because "one" of a proposed project's objectives may not be completely fulfilled by this alternative. Rather, CEQA Guidelines Section 15126.6 defines a feasible alternative as one that attains "most of the basic objectives of the project." In terms of the proposed project, the vast majority of the proposed housing is to be located in Area 3 rather than Area 4. As such, the *Reduced Housing Alternative* (which eliminates the housing for Area 4 but retains such housing for Area 3) would nonetheless fulfill "most" of the housing objective set forth in Section 2.5 of the DEIR. Section 5.7 of the DEIR's rejection of the reduced housing alternative as not fulfilling "all" of the project's objectives does not take proper account of CEQA's approach to this question.

RESPONSE N-52: First, the Draft EIR rejects the *Reduced Housing Alternative* on multiple bases, including that this Alternative would not reduce any environmental impacts of the project to a less than significant level. Further, the commenter is directed to page 26 of the Draft EIR which lists, as a key project Objective of the project "provide up to 1,260 units of low density residential use (4.2 – 8.5 unites per acre) in Areas 3 and 4." Based on this key objective, the Draft EIR appropriately concludes that excluding development of Area 4 would also be inconsistent with a key objective of the project. (Draft EIR at 318.)

COMMENT N-53: Finally, the formulation of the *No Development in Area 4 and Higher Density Area 3 Alternative*, rather than a straightforward *No Development in Area 4 Alternative*, introduced an unnecessary environmental "straw man" into the alternatives analysis. That is, the inclusion of the "and Higher Density Area 3" resulted in the need to increase the height of certain structures on Area 3 from two to three stories thereby resulting in increased anticipated "visual/scenic" impacts resulting from this alternative. The resulting "visual/scenic" impacts resulting from their taller structures on Area 3 provided the basis for Section 5.3.3 of the DEIR to conclude that the *No Development in Area 4 and Higher Density Area 3 Alternative* would "result in densities in Area 3 that are not consistent with the communities vision which would create greater aesthetic impacts due to building height and massing." This "height and massing" impact was manufactured by improperly joining the *No Development in Area 4 Alternative* and the *Higher Density Area 3 Alternative* in one hybrid alternative. With a straightforward *No Development in Area 4 Alternative*, the "height and massing" impacts discussed in Section 5.3.3 of the DEIR would not occur. Moreover, the impacts from cessation of the auto dismantling and recycling uses would not occur under any alternative that eliminated new development in Area 4. As such, the impacts from loss of that use, referred to above, would make such an alternative environmentally preferable.

RESPONSE N-53: CEQA requires that an EIR compare the effects of a "reasonable range of alternatives" to the effects of the project. The alternatives selected for comparison should be those that would attain most of the basic objectives of the project and avoid or substantially lessen one or more significant effects of the project. (CEQA Guidelines Section 15126.6). CEQA also requires that the alternative be feasible, taking into account site suitability, availability of infrastructure, property control (ownership), and consistency with applicable plans and regulatory limitations. The range of alternatives to be compared is governed by a "rule of reason" which requires the EIR to set forth only those alternatives necessary to permit an informed and reasoned choice by the decision-making body and informed public participation. (CEQA Guidelines Section 15126.6(f).)

As discussed in the Draft EIR, the *No Development in Area 4 and Higher Density in Area 3* Alternative was developed because it would potentially reduce environmental impacts associated with development in Area 4, while continuing to provide the same number of housing units called for the project Objectives. In this way, the Alternative met the basic requirements of CEQA: it met most of the basic objectives of the project and it had the potential to avoid or substantially lessen one or more significant effects of the project. It was also proposed at a suitable site, with available infrastructure, property control, and consistency with applicable plans and regulatory limitations. The *No Development in Area 4 and Higher Density in Area 3* Alternative is one of a reasonable range of alternatives included in the Draft EIR.

The alternative proposed by the commenter is essentially a variant of the *No Development in Area 4 and Higher Density in Area 3* Alternative. It would not meet the key project objectives of the project – the development of 1,260 housing units or the provision of a gold course and public open space in Area 4. Further, this variant would still result in the same geology, hazardous materials, and water quality impacts identified as impacts of the *No Development in Area 4 and Higher Density in Area 3* Alternative. Accordingly, it is not a feasible alternative requiring further review in the EIR.

COMMENT N-54: 15. Lack of Substantial Evidence that Project's Environmental Impacts are "Unavoidable" or Project Measures to "Substantially Lessen" Such Impacts

The DEIR for the project determines that there will be "significant unavoidable impacts" on cultural resources (due to impacts on Native American human remains/burial grounds), air quality, visual impacts, and climate change. If the City adopts a final EIR for the project that includes these same CEQA significance determinations, CEQA only permits the City to proceed with approval of the underlying project if the City also adopts a *Statement of Overriding Considerations* CEQA Guidelines §15093. Section 15093(a) provides that adoption of a *Statement of Overriding Considerations* is only proper if the adverse environmental effects of the project are "<u>unavoidable</u>," and Section 15093(b) provides:

When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not <u>avoided or substantially lessened</u>, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other

information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record. (Underline added.)

Based on the information presented in the DEIR, it seems unlikely that the City would be in a position to prepare a *Statement of Overriding Consideration* that satisfies the requirements of CEQA Guidelines §15093. For the reasons noted above, there is ample evidence that (through participation in off-site NOx and GHG emission mitigation programs) the anticipated air quality and climate change impacts of the project can be mitigated to a less than significant level. For the reasons noted above, there is also ample evidence that the anticipated impacts on the Salt Marsh Harvest Mouse (biological resources) and cultural resources could be demonstrably reduced through appropriate mitigation. Moreover, the DEIR identified at least two alternatives − the *No Development in Area 4 and Higher Density Area 3 Alternative* and the *Reduced Housing Alternative* − that would have significantly "avoided" and "substantially lessened" the projects environmental impacts while still fulfilling most of the primary objective set forth in Section 2.5 of the DEIR. Finally, and as discussed above, since Section 2.5 of the DEIR provides that the development of a golf course **or** the development of other non-golf recreational facilities would be consistent with the project's main objective, there does not appear to be a basis for the City to contend that the need for a golf-course on Area 4 somehow qualifies as an "overriding consideration."

As such, there does not appear to be substantial evidence to support a finding by the City in a *Statement of Overriding Considerations* that the adverse environmental effects of the project are "unavoidable" or that there are credible reasons why mitigation to "substantially lessen" known adverse environmental impacts were not incorporated into the project.

RESPONSE N-54: The comment is noted. This comment does not address the adequacy of the Draft EIR, but rather expresses concern regarding a document, the Statement of Overriding Considerations, that has not yet been drafted. The commenter's concern will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

COMMENT N-55: 16. DEIR Recirculation

The items noted above request the inclusion of supplemental information in EIR that is new, and of a significant and substantive nature. Generally, an EIR is circulated for one round of review and comment by the public and by public agencies. If significant new information is added to an EIR after notice of public review has been given but before certification of an EIR, however, the lead agency must issue a new notice and recirculate the EIR for comments and consultation. See, CEQA Practice, § 16.15, Information Added to Final EIR, citing Pub. Res. Code, § 21092.1; 14 Cal. Code Regs., § 15088.5.

The critical issue in determining whether recirculation is required is whether any new information added to the EIR is "significant." If information added to the EIR is significant, then recirculation is required. See, CEQA Practice, §16.15. The California Supreme Court in Laurel Heights Improvement Ass'n. v. Regents of Univ. of Cal. (Laurel Heights II)(1993) 6 Cal.4th 1112, 1135, decided before Guidelines Section 15088.5(a) was enacted, gave four examples of situations in which recirculation is required:, CEQA Guidelines §15093. Section 15093(a) provides that adoption of a

1. When new information shows a new, substantial environmental impact resulting either from the project or from a mitigation measure;

2. When the new information shows a substantial increase in the severity of an environmental impact, except that recirculation would not be required if mitigation that reduces the impact to insignificance is adopted;

3. When the new information shows a feasible alternative or mitigation measure, considerably different from those considered in the EIR, that clearly would lessen the environmental impacts of a project and the project proponent declines to adopt it; and

4. When the draft EIR was "so fundamentally and basically inadequate and conclusory in nature" that the public comment on the draft EIR was essentially meaningless. See, 6 Cal.4th 1130.

CEQA Guideline 15088.5(a) then incorporated these examples. Based on the foregoing authority, the inclusion of the supplemental information above constitutes significant new information that would necessitate the preparation and recirculation of a revised DEIR for public and agency comment.

RESPONSE N-55: The commenter expresses its opinion that the information contained in the commenter's letter to the City constitutes "significant new information" requiring recirculation of the EIR. Please see Response N-1.

COMMENT N-56: 17. Potential Use of EIR in Connection with Tentative Subdivision Map Approval or Other Project-Specific Entitlements

Section 2.4.2 of the DEIR, in the section titled "Description of the Proposed Project," explains: "The Specific Plan does not identify the exact location and configuration of residential lots, golf course, or other recreational uses, as that will be determined through subsequent entitlement process and analyses." (Underline added.) Such subsequent entitlement process would include consideration of a Tentative Subdivision Map, as well as the supplemental CEQA environmental analyses that would be required with consideration of a Tentative Subdivision Map. The same is true for other development entitlements that will be required for ultimate development of Areas 3 and 4.

Somewhat confusingly, however, Section 1.2 of the DEIR (titled "Uses of the EIR") states: "The information contained in this EIR will be used by the City of Newark (the CEQA Lead Agency) as it considers whether or not to approve the proposed Specific Plan project. If the project is approved, the EIR would be used by the City and possibly other agencies in conjunction with various approvals and permits. These actions include…Tentative Map." (Underline added.) The suggestion here in Section 1.2 appears to be that, although an application for a Tentative Subdivision Map for Areas 3 or 4 has not yet been prepared or submitted, and although the DEIR's project description does not include approval of a Tentative Subdivision Map and the DEIR itself contains no analysis of the location or configuration of residential lots or other facilities, that the DEIR prepared for the Specific Plan for Areas 3 and 4 will nonetheless be sufficient to satisfy CEQA's environmental impact assessment requirements for the City's approval of a future Tentative Subdivision Map.

If this is in fact the position of the City concerning what CEQA requires, this position is legally incorrect. For the reasons noted in the DEIR, the particular location of the proposed buildings and facilities will result in particular impacts on scenic, cultural and biological resources, and such particularized impacts were not analyzed in the DEIR for the Specific Plan (because the particular location and configuration of such buildings and facilities are set forth in a Tentative Subdivision Map, which had not been prepared or submitted at the time the DEIR for the Specific Plan was prepared). Given the significant scenic, cultural and biological impacts resulting from the location

and configuration of buildings and facilities to be set forth in this Tentative Subdivision Map, CEQA would require preparation of a separate environmental impact report ("EIR") in conjunction with the City's future consideration of approval of a Tentative Subdivision Map.

Succinctly put, since the Proposed Project as described in the DEIR (see Section 2.1) does not include the adoption of a Tentative Subdivision Map (which it could not because no such map has yet been submitted to the City), this DEIR cannot alone satisfy CEQA requirements for approval of such a future project. The same is true for a range of other subsequent approvals that would be required for development in Areas 3 and 4 that are not part of the currently proposed Project.

RESPONSE N-56: As described in Section 1.2, Tentative Maps are future approvals that will use the EIR. In Uses of the EIR, future tentative maps will be evaluated to determine if any additional environmental review is required.

COMMENT N-57: II. Comments Regarding the Specific Plan
1. Inconsistency with the City of Newark General Plan
The Specific Plan's call for development of Area 4 is inconsistent with the overarching goals and policies pertaining to wetlands set forth in the General Plan. See, Gov. Code, §65451(b); Napa Citizens for Honest Gov't v. County of Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 366. The consistency doctrine requires that a specific plan do more than simply recite goals and policies that are consistent with those set forth in the county's general plan, making clear that an outright conflict is not required for a finding of inconsistency. Napa, 91 Cal.App.4th at 366. "A project is consistent with the general plan if, considering all its aspects it will further the objectives and policies of the general plan and not obstruct their attainment." Napa, 91 Cal.App.4th at 378, citing FUTURE v. Board of Supervisors (1998) 62 Cal.App.4th 1332, 1336 and Corona-Norco Unified Sch. Dist. v. City of Corona (1993) 17 Cal.App.4th 985, 994.

Here, the General Plan contains numerous statements regarding the importance of conserving wetlands and wildlife, and identifies the fact that wetlands create development obstacles (specifically with respect to Area 4), namely:

Much of the undeveloped land in Newark is also located at its west and northwest sides. Some of the vacant sites are on land classified as potential wetlands and are therefore environmentally sensitive and subject to close environmental review by regional, state and federal agencies. Additionally some of the lands are subject to flooding. As a result, development of these sites is expensive and problematic. See, General Plan, p. 3-3.
. . .
The goals policies and programs of this element [land use] specifically address the anticipated growth and change over the next 20 years. They reflect the impacts of the strong borders that exist around Newark, including Highway 880, the Route 84 Freeway and the San Francisco Bay National Wildlife Refuge. Id. at p. 3-5.
. . .
Wetlands will impact development potential [in Area 4]. Id. at 3-11.
. . .
Other privately held open lands along the western boundary of the City are proposed for more intensive development as shown on the Plan Diagram and described in the Land Use chapter. **However, it is recognized that development of some of these lands will also be constrained by the presence of wetlands. It is City policy that all identified wetlands be preserved,** however, the City has also determined that the identification of wetlands is primarily a matter between the private

property owner and the federal agencies charged with administration of wetlands regulations and programs. Therefore, this plan contains policy for land development with greater intensities than may ultimately be possible. All private property owners whose lands are potentially constrained by wetlands limitations are encouraged to complete early negotiations with the appropriate federal agencies so that any development projects they may wish to pursue with the City can move ahead in a reasonable time frame and not be limited by wetlands uncertainties. Id. at 6-1. (Emphasis added.)

Moreover, one express policy in the General Plan reads: "**Support preservation of the lands of the San Francisco National Wildlife Refuge**, and protection of San Francisco Bay and bay lands. Id. at p. 3-7, Policy d., emphasis added. Programs 7-9, within Program d. read, respectively:

Support the activities of Federal, State, and regional agencies to **preserve the existing lands of the San Francisco National Wildlife Refuge**.

Encourage potentially affected property owners to enter into early negotiations with appropriate agencies to resolve debates over wetlands areas and claims as to whether or not their lands **should** be included in areas of federal jurisdiction.

Evaluate new development to ensure that it will not adversely affect water quality. (Emphasis added.)

The proposed Specific Plan spends a great deal of time discussing wetlands in the "Existing Natural Resources" and "Environmental Measures" sections, specifically acknowledging

[w]hile the City of Newark General Plan has identified development that is projected to occur within Area 4, this area has also been identified for its ecological value by regional planning efforts. The southern and western portions of **Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future**. The Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the [former] Pintail Duck Club. See, Draft Specific Plan, p. 16. (Emphasis added.)

The proposed Specific Plan further states that:

Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of the few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the sites potential value in providing upland transition zones adjacent to tidal wetlands. Upland habitats provide a buffer or transition area upslope from wetlands and marshes. Where such upland transition zones are located adjacent to tidal marsh, they provide important refugia for tidal marsh species during high tides that inundate most of the marsh plain. Id.

The proposed Specific Plan then seeks to minimize the quality of the wetlands based on H.T. Harvey's ranking system conducted in 2006. See, proposed Specific Plan, pp. 16-17.

As a whole, however, the proposed Specific Plan adopts a development scheme that is directly contrary to the General Plan policies discussed above. First, even though the proposed Specific Plan includes some policies to protect and enhance wetland habitats, the proposed development of wetland

areas within Area 4 is directly inconsistent with the primary policy not only of the General Plan, but also regional planning, to preserve and enhance these wetlands. In addition, the plan includes development plans for areas that are designated within the Refuge. Accordingly, the development of Area 4 is wholly inconsistent with the General Plan's policies regarding preservation of wetlands. Therefore, the proposed Specific Plan should be revised to be consistent with the General Plan policies set forth above.

RESPONSE N-57: As discussed in the Draft EIR, the proposed Specific Plan is consistent with the General Plan's policies regarding preservation of wetlands. Both portions of sub-areas within the development envelope, as well as sub-area E outside of the development envelope, could be utilized for wetland preservation or wetland creation/enhancement. (Draft EIR p. 12.) Section 3.5 Biological Resources evaluates the City's General Plan policies for the purposes of avoiding or mitigating biological resource impacts and finds the project is consistent with those policies. (Draft EIR p. 113, *et. seq*.) As stated in the Draft EIR "the policies in the City of Newark's General Plan have been adopted for the purpose of avoiding or mitigating environmental effects resulting from planned development within the City. Future project-specific development under the proposed Specific Plan shall be subject to these General Plan policies, as well as the following mitigation and avoidance measures to mitigate environmental impacts." (Draft EIR p. 113.) Accordingly, consistent with the General Plan, where the City determines that the proposed project may impacts wetlands, the Draft EIR has identified the impact and provided adequate mitigation measures to reduce those impacts to a less than significant level.

COMMENT N-58: 2. Failure to Formulate an Area Plan

The General Plan calls for an Area Plan to be formulated prior to the development of a Specific Plan. The GP further contemplates that the Area Plan will become part of the General Plan. See, General Plan, p. 3-12. There is no evidence in the record that an Area Plan was prepared by the City of Newark prior to creation of the proposed Specific Plan. Accordingly, the City is required to prepare an Area Plan for both Areas 3 and 4 prior to adoption of any Specific Plan for those areas.

RESPONSE N-58: The City directs the commenter to Draft EIR Chapter 3.1 Land Use. As outlined in the Draft EIR, the City is divided up into various areas, each of which is developed or planned for development with specific uses. Area 3 is currently designated *Special Industrial*, whereas Area 4 is designated *Low Density Residential*. (Draft EIR pp. 11-12.) The City's General Plan requires the preparation of a Specific Plan to guide development in Area 4. The City has complied with the requirements of the General Plan. Further, the proposed Specific Plan can also be considered an "area plan" for purposes of the City's General Plan.

COMMENT N-59: 3. The Specific Plan Fails to Include the Proper Elements

State law (Government Code Section 65451(a)) requires that a specific plan include text and a diagram or diagrams that specify all the following in detail:

- The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential

facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.

The proposed Specific Plan fails to specify the proposed distribution, extent and intensity of public and private transportation as required. See, Gov. Code, § 65451(a). Therefore, the proposed Specific Plan is deficient. Similarly, the proposed Specific Plan fails to specify the proposed distribution, extent and intensity of solid waste disposal. Accordingly, the proposed Specific Plan should be revised to delineate the distribution, location, extent and intensity of public and private transportation and solid waste disposal.

Thank you for your consideration of the comments above. In light of the foregoing comments, we urge the City to correct the numerous defects we have identified by modifying and then recirculating the DEIR for the proposed Specific Plan Project for Newark Areas 3 and 4, and by revising the underlying proposed Specific Plan. We reserve the right to supplement these comments by further written submission and/or at presentation at the public hearings.

RESPONSE N-59: The comment does not pertain to the adequacy of the Draft EIR. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

O. RESPONSE TO COMMENTS FROM JEFFY631-HARBOR@YAHOO.COM, DECEMBER 12, 2009:

COMMENT O-1: There are a glut of homes on the market and many people are going into foreclosure. We have lost a number of Newark & Fremont employers and are likely to lose NUMMI. I fail to see the logic of building expensive homes when people can hardly keep food on their tables now.

The plan, if it does not affect the environment and roads, may not be bad. The timing is ridiculous.

RESPONSE O-1: The above comment expresses the opinion of the commenter and does not raise any environmental issues or questions about the Draft EIR. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

P. RESPONSE TO COMMENTS FROM MARTIN DOYLE, DECEMBER 14, 2010:

COMMENT P-1: The City of Newark is proposing the development of Areas 3 and 4.[14] The development plan calls for housing units (at least 1008 of the homes to be detached houses; 252 could be condo style and dedicated as affordable), parks and open space amenities, school site in addition to school fees, and the potential for a future golf course. The description of the potential golf course and its operation is outlined in Section 2.4.3 and 2.4.3.1 of the EIR.[15]

[14] http://www.ci.newark.ca.us/departments/planning-and-economic-development/planning/on-going-projects/area-3-4-housing-and-golf-course/

[15] http://www.newark.org/images/uploads/comdev/pdfs/Area3_4/DraftEIR/Areas%203%20and%204%20DEIR.pdf

I am writing to comment on the proposal to develop and operate a golf course. While my comments below will reference the EIR, this letter is not one directed at the environmental impacts of the proposed development plan. This letter stands independent of the call for responses to the EIR.

The City of Newark has indicated through the above referenced EIR, other community postings, and informational meetings that a golf course be built as a part of the development of Areas 3 and 4. However, the Planning Department has the city has failed to present an adequately developed, fiscally sound business plan for the endeavor.

In the below series of arguments and fact patterns, I outline why the building and operating a golf course in the City of Newark is poorly planned, is logically unsound, and is fiscally irresponsible.

Lack of Voice of Customer or Resident Surveys
In no section or documentation posted on the website is there any is there any evidence that a survey of the potential customer base has been conducted. Key findings from such an analysis would include data on how many people are likely to use a the described golf course, how often they would use the course and facilities, how much they would be willing to spend at each visitation to the course, how far they would be willing to travel to use the facilities, etc.

Thus there is no evidence that supports the conclusion that there is an adequate potential customer base to fiscally justify the building of a golf operation.

Inadequate Customer Base
There are 26.2 million golfers in the United States. A golfer is defined as anyone ages 18 and above who played at least one regulation round of golf in the past 12 months. And the median cost of a weekend round of golf at an 18-hole municipal golf course in the U.S. is $36 including cart and green fee.[16]

According to the demographic figures listed on the City of Newark website,[17] just over 42,000 people live in Newark. Extrapolating the above figures and percentages, one can roughly estimate that the proposed course would make approximately $420,000/year. (see estimates below).

Age Range	Number
20 to 24 years	2,795
25 to 34 years	7,011
35 to 44 years	7,556
45 to 54 years	5,442
55 to 59 years	1,980
60 to 64 years	1,565
65 to 74 years	2,071
75 to 84 years	1,013
	29,433
% of Golf Enthusiasts (est)	10%

[16] http://www.golfchannelsolutions.com/markets/usa
[17] http://factfinder.census.gov/servlet/QTTable?_bm=y&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U&-_lang=en&-geo_id=16000US0650916

Total Newark Golf Enthusiasts (est)	2,943
Average annual visits to the golf course	4
National Average Green Fee (Public Course)	$ 36.00
Estimated Annual Revenue	$ 423,835

This estimate does not factor in enthusiasts traveling from other cities and thus underestimates the total revenues. However, it does not factor in other compounding demographics such as race, median income, and household status. Given Newark's diverse, low-to-medium income range, this estimated annual revenue is likely over estimated.

It should also be recognized that the "total number of people who play [golf] has declined or remained flat each year since 2000, dropping to about 26 million from 30 million, according to the National Golf Foundation and the Sporting Goods Manufacturers Association."[18] In estimating the total potential market for the Area 3 and 4 golf facility, the city should estimate a declining number of customers.

Expenses Likely to Exceed Revenue
The National Golf Foundation reports that the median annual expense for a daily-fee golf club is $695,000. Private and semi-private clubs usually spend much more than that.[19] The EIR describes a complex golf course, complete with high-tech weather stations, a computerized irrigation system, wireless devices capable of individual head control, proposed lighting for the golf course and driving range lighting, and fleet of golf carts. Other operations are also described.

Without a formal business plan including a forecast Profit and Loss Statement, Balance Sheet, and Cash Flow statement, the financial soundness of the facility cannot be determined. Based on the description, it is difficult to believe that the course will be operated below the national average. And thus would likely be a financial strain on the city of Newark.

Weather Conditions Not Conducive to Golf
Having spoken with avid golfers about their preferred golfing conditions,[20] they enjoy playing in moderate temperatures, still air, and a low-noise environment. Areas 3 and 4 do not in any way offer these conditions. Specifically, strong winds blow from the Bay and hit the Bay-front lands on a regular basis for many of the spring, summer, and fall months. These winds are particularly strong in afternoons and evenings when the working segment of the customer base is likely to be available to play. Moreover, these winds create for a noisy environment, imposing on the peace and tranquility that the golfing community enjoys during their play.

The project proposes a 10,000 to 20,000 square foot golf course clubhouse, which will provide capacity for 150 to 220 people. The clubhouse restaurant and banquet facilities will provide seating for 100 to 144 persons, for golf tournament banquets and other events such as parties and wedding receptions. As with golfers, persons patronizing the club and banquet facilities will desire tranquil

[18] More Americans Are Giving Up Golf, LA Times, February 21, 2008,
[19] http://www.triadgolf.com/sept99/oncourse_golf_courses.htm
[20] Personal communication

conditions, especially wedding parties. The often windy conditions of the site will not be desirable and the banquet site will generate below average revenue.

History of Failed Golf Courses in Newark
Newark has a history of failed golf courses and driving ranges. All have failed and thus are no longer in business. This is clear evidence that the local population, which likely has changed little over the years, cannot sustain a golf course operation.

There is no evidence in the provided materials on the Newark website recognizing the failure of these courses and proof that the course proposed in the Area 3 and 4 materials will not suffer the same fate as Newark's previous courses.

Nationally Golf Courses Are Struggling
According to a recent LA Times article[21], "through September of this year, at least 114 of the nation's 16,000 or so golf courses had closed, according to the National Golf Foundation, a number that was offset only partly by the opening of 44 new courses." Jeff Woolson, a real estate broker who specializes in the sale and purchase of golf courses, says of the state of golfing, "people are cutting golf out of their diets because they've got to cut something." Experts estimate that many golf courses have lost 30 to 50 percent of their worth in the last few years.

There is no evidence in the provided materials on the Newark website recognizing this national trend and proof that the course proposed in the Area 3 and 4 materials will not suffer the same fate as other courses throughout the country.

Local Golf Courses Are Struggling
The greater Bay Area has a prevalence of indebted and struggling golf courses. San Jose's Los Lagos Golf Course does not cover its operating costs and debt load and therefore it remains a financial drag on the city.[22] San Francisco's Harding Park Golf Course is also a money losing operation and whose indebtedness is also a strain on the city.[23] San Francisco's other courses are not fairing well either. "The city's public golf courses, with the exception of Harding, are being used at 40 percent capacity, according to a recent study by the National Golf Foundation."[24]

There is no evidence in the provided materials on the Newark website recognizing these local issues and proof that the course proposed in the Area 3 and 4 materials will not suffer the same fate as other courses throughout the Bay Area.

Failed Golf Courses Negatively Impact Housing Values
According to the above cited LA Times article, failed golf course and operations severely impacts the housing values of nearby homes. "Joseph Leggett owns a home on what used to be the beautiful courses of the Palm Desert Country Club golf course. But the club had to file for Chapter 11 bankruptcy, so the fairway was overgrown, and the view from Leggett's property was spoiled after 30 years of residence… Leggett "estimated that his home of 30 years had lost half its value because of the ruined view."

No Evidence of Support from Newark Residents

[21] http://www.chapter7.com/bankruptcy-filing-par-for-many-california-golf-courses/ (1 of 4)1/7/2010 7:44:56 AM
[22] Initial Review of the Los Lagos Golf Course, September 4, 2007.
[23] Harding Park's finances show S.F.'s struggles C.W. Nevius Thursday, October 8, 2009, SF Gate
[24] http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2007/05/21/EDGQ4PSSLP1.DTL&type=printable

In no section or documentation posted on the Area 3 & 4, Housing and Golf Course website[25] is there any evidence that a city-wide survey has been conducted and that concludes that the residents of Newark support building, owning, and operating a golf course in our community.

In conclusion, the posted documents on the Newark website describe the proposed golf course and associated facilities in Areas 3 and 4, there is no evidence that the city has developed a business plan of any sort for the facility. As a result, the city is entering the residents of Newark into a business proposition without knowledge of the fiscal impact on the city. In light of the City's fiscal situation, Newark cannot afford to enter into a money-losing operation. One only need to read recent articles in the Argus quoting Mayor Smith, the rhetoric of the recent Measure L proponents, or the City's posted financials to conclude that a money-loosing endeavor will only serve to further burden the City.

Based on an estimated small and shrinking customer base, the small estimated revenue, likely high operational costs, and the potential impact on local housing in the event of a failed operation, construction of a golf course by the City's current administration is fiscally irresponsible and will burden the citizens of our city. The city of Newark should not develop this facility.

RESPONSE P-1: The above comment expresses an opinion that a golf course should not be developed as part of the Specific Plan. The comment does not express any questions regarding the adequacy of the Draft EIR. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

Q. RESPONSE TO COMMENTS FROM GABY AND DAN ONDRASEK, JANUARY 17, 2010:

COMMENT Q-1: Newark's Mayor Dave Smith has signed on the U.S. Mayors Climate Protection Agreement. The agreement's goal is to conserve the nation's energy and reduce the greenhouse gas emissions that threaten our planet. Participating mayors make several commitments to greenhouse gas reduction in their own communities. The first of which is to take action in "anti-sprawl land-use policies."

The most important step a community can make to reduce greenhouse gases is the reduction of sprawl and the creation of transit-oriented development.

The proposed development for the Area 3 and 4 does the opposite and is problematic in the area of transportation for Newark and the surrounding areas for several reasons:

Massive Increase in Car Trips:
Alameda County Congestion Management Agency coordinates transportation planning, funding and other activities in a Congestion Management Program (CMP). CMP legislation requires that each CMP contain mandatory elements; one of which is "a transportation demand management and trip reduction element. The Area 3 and 4 developments would bring estimated car trips to 14,970 a day. This equates to 5.464 Million car trips a year.

[25] http://www.newark.org/departments/planning-and-economic-development/planning/on-going-projects/area-3-4-housing-and-golf-course/

The closest freeway to the development is 880 which the EIR states "portions of I-880 are projected to operate at LOS F under the years 2015 and 2030 during both peak hours. The document states that the development's addition to traffic is a "small addition." We do not see 5.5 Million car trips a year as a small addition.

RESPONSE Q-1: The project's impacts were evaluated in accordance with the Alameda County Congestion Management Program (CMP). The methodology that was used for the traffic study was discussed directly with CMP staff at project initiation. Moreover, not all of the project's trips would use I-880. Impacts to I-880 from the project were evaluated relative to the amount of traffic that would be added by the existing buildout of the Newark General Plan. Major roadway facilities such as I-880 are planned regionally based on the long range land use plans of many different municipalities.

COMMENT Q-2: What is the traffic Impact on the intersection of Stevenson and Cherry: Nowhere in the EIR is there analysis of the traffic impact of this huge development on the very important intersection of Stevenson and Cherry. What is the impact of this development to the intersection and will there be a need for costly street realignment/construction to meet the demands of the new residents? This is the intersection most impacted by this development. Residents would have to drive to get everywhere: to the grocery store, to the coffee shop, to Pacific Commons, to high school or intermediate school, to the library. Currently there is just one left turn lane from what is Boyce Road in Fremont to westbound Stevenson. Stevenson from the railroad tracks to Boyce-Cherry is already busy from all the industries on Stevenson.

The EIR discusses intersection improvements at Cherry and Mowry; making an additional left turn lane on Cherry to Mowry. This leads to the Silliman Center and on past to the railroad crossing and the auto dismantlers.

RESPONSE Q-2: The intersection of Cherry Street and Stevenson Boulevard was evaluated for level of service in the EIR under existing, background, project, and cumulative conditions (Draft EIR p. 58, Table 3.2-4 and page 279, Table 4.2-1). The intersection is projected to operate at level of service (LOS) C, which is an acceptable level of service, under background, project, and cumulative conditions. Left turn queuing was also evaluated at Cherry Street and Stevenson Boulevard in the project traffic impact study contained in Appendix B of the Draft EIR. Appendix B also includes the project trip assignment at this intersection.

COMMENT Q-3: Based on PUC and UP letters in the NOP, it does not seem reasonable to focus on this intersection as the railroad does not want the overcrossing to get more traffic than it already has. Union Pacific switches at the Newark yard and frequently blocks the Mowry overcrossing. In addition, the PUC and UP are asking for a grade-separating pedestrian overcrossing at Mowry. Why then is the intersection improvements listed at this location and not at Stevenson and Cherry?

RESPONSE Q-3: The traffic study evaluated all intersections were project impacts are possible. To trigger a level of service impact that requires mitigation, the intersection level of service (LOS) standard must be violated. This was the case at Cherry/Mowry, but was not the case at Stevenson/Cherry.

COMMENT Q-4: Cumulative Impact of the Oakland A's coming to Fremont and other developments planned for the area

On page, 276 of the DEIR (Cumulative Impact), it is stated "…the Ohlone College Newark Campus stadium project and the A's Ballpark Village project in its cumulative analysis; however, both projects are no longer reasonably foreseeable projects and are not included in the cumulative project list.

A 1/9/10 article in the Argus titled "Fremont deals again for the A's" states: Fremont re-entered the bidding Friday to become the new home of the Oakland A's by 2015 with a proposed 36,000-seat ballpark on land owned by the NUMMI auto plant. Major League Baseball asked the city to submit stadium plans while it determines whether a suitable stadium site exists for the A's in the East Bay.

Now that the city of Fremont is again considering the development of a major league ballpark to the NUMMI site, which is even larger than the previous plan by four thousand seats), this will have major implications to the Cherry, Mowry, Stevenson corridor. What will these impacts be? This information must be reanalyzed and reported to the citizens.

In addition, what if Oakland Athletics' management asks for the previously planned 3,150 houses to offset construction costs as they did last time? The previous plan was estimated to add over 40,000 car trips a day not counting traffic created on game days.

Additional potential car trips will be created by the development of over 700 houses on and around the Patterson Ranch in Northern Fremont (including the Tupelo property) and the 2,100 houses being considered for Area 2, the old chemical plant ally off Enterprise Drive. Just these three developments combined with the proposed development of Area 3 and 4 would add over 80,000 car trips a day to our already congested roadways and freeways.

RESPONSE Q-4: The proposed stadium in Fremont was included in the cumulative conditions of the project traffic impact analysis. The project included a stadium, residential uses, and retail uses. At the time of the traffic impact analysis, the stadium was to be located west of I-880 south of Auto Mall Parkway. There have been media reports that the stadium could possibly be located east of I-880 in Fremont. However, there is no application on file with the City of Fremont and no details from which to base an analysis. Generally, it is believed that moving the stadium to the east side of I-880 would reduce stadium related traffic in Newark relative to the previously considered location. The Draft EIR traffic analysis, therefore, provides a conservative evaluation of the cumulative conditions in Newark.

Both the Patterson Ranch project and the Newark Area 2 project were included in the cumulative conditions analysis. The projects are described on Page 46 of the Transportation Impact Analysis.

COMMENT Q-5: **Air Traffic Patterns:**
In our original comments to be considered for the development, The Friends of Coyote Hills asked: "Would the project… result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks. Due to the need for a transit overpass over the railroad tracks, it appears the PG & E tower would have to be both raised and

relocated. Raising one tower by 20 feet and relocating another tower 25 feet northwest of its current location and raising it by 45 feet is very significant. While it is stated that this will not have an impact on car traffic, will this have an impact on air traffic patterns? Could it have an impact on public safety not only in Newark but in the region?

RESPONSE Q-5: Please refer to Response L-13.

COMMENT Q-6: Putting People Next to Transit
California's Governor recently appointed a task committee to evaluate what is needed ….
There recommendations are to "develop guidelines to establish buffer areas and setbacks to avoid risks to structures within projected "high" future sea level rise or flooding inundation zones."
(Quoted from Strategy 7 – TRANSPORTATION: Develop transportation design and engineering standards to minimize climate change risks to vulnerable transportation infrastructure - 2009 California Climate Adaption Strategy – a report to the Governor of California in response to executive order S-13-2008)

Chapter 4.4 "Transportation Goal, Policies and Program" of the City of Newark's own General Plan include the goal to "Promote the development and use of alternative modes of transportation."

Some solutions mentioned in the EIR to help alleviate the transportation problem (mentioned in the Air Quality portion of the report) state:

- Improve existing or construct new bus pullouts and transit stops at convenient locations along Cherry Street and Stevenson Boulevard. Pullouts shall be designed so that normal traffic flow on arterial roadways would not be impeded when buses are pulled over to serve riders.
- Bus stops shall include shelters, benches and posting of transit information;
- Appropriate bicycle amenities shall be included. This would include bike lane connections throughout the project site. Off-site bicycle lane improvements shall be considered for roadways that would serve the project;
- The City and project proponents shall explore and implement feasible means to bring transit or shuttle service to Area 4.
- Provide pedestrian sidewalks or paths throughout the project site with convenient access to bus stops along adjacent arterials

All of these options indicate that the solution to alleviation of the transportation issue that this development creates is to take the bus or a bike.

Upon examination, this option will do little to get residents out of their cars.
The DEIR states that "the number of transit riders during the peak commute period (PM peak hour would equate to 12 riders" as a result of the new development – 12 people. The balance of the thousands that will move out there will be forced into their cars to add our traffic congestion and air quality problems.

In our estimation, the typical resident would have to walk one mile to reach the nearest bus stop (it is .8 mile from the current bus stop located on Cherry to the property fence on Stevenson). This distance makes it increasing difficult for anyone to consider utilizing current transit options in the area and further exemplifies why developments should not be placed on the outer most regions of the city.

The EIR goes on to say that "bicycle trips will comprise no more than three percent of the travel mode…" and is also therefore not a viable option to relieve traffic

In addition, BART would not be a viable option for residents either. This development couldn't be any further away from BART and mass transit unless you put it in the Bay. The Mowry BART station is nearly 4 miles on a very congested Mowry Ave. A peak commute could take as long as 20 minutes one way making this option difficult for residents.

The impact of Sea Level Rise on Site transportation
The State of California Department of Water Resources has been studying the issue of sea level rise and has increased forecasted sea level rise predictions to 55" by the end of the century. The Bay Conservation and Development Commission have produced a new series of maps that show areas vulnerable to 16 inches of sea level rise at mid-century and 55 inches by 2099. This means that a majority of the development planned for this development will be flooded and uninhabitable in only a few decades.

To quote a Sacramento Bee 04/20/08 article: "A panel appointed by Governor Schwarzenegger is urging him to prepare for a sea level rise of 55 inches…likely (to) flood thousands of acres of low-lying urban land."

The DEIR does not discuss what will happen to the ability to home owners and emergency service workers to enter and exit the development in the likely event of flooding or storm surge.

In conclusion, Mayor Smith has pledged to support anti-sprawl land-use policies. This support cannot wait.

To quote Tom Cochran, executive Director of US Conference of Mayors:
"…the emerging threat of global climate change, due largely to widespread fossil fuel use, has made it clear that business as usual, as far as energy use is concerned, is not sustainable."

The Area 3 and 4 developments does not reduce emissions and traffic efficiency – but increases both. This development was conceived 20 years ago when Bay Area cities were sprawling outward with little concern for smart growth. Twenty years ago, we did not have the traffic we had today. Twenty years ago, the term telecommuting did not exist and few of us knew what global warming meant and what we were doing to increase it
Twenty years ago, gasoline cost $1.40 a gallon.

The impacts of this development and developments like it in the furthest most reaches of the city and not by viable transit hubs simply do not work and will lead to very costly problems in our future. This is 1987 planning and we, as citizens of this city and this environment, ask you today to re-think it –
To not back a plan defined for citizens twenty years ago but rather to look twenty years ahead and plan for this.

There is no other choice.

RESPONSE Q-6: Based on the conceptual grading plan, all developed areas and the transportation network serving those areas would be located at least two feet above the base flood elevation, which includes storm surge. However, this

comment is made in the context of sea level rise, and it is true that as mean sea levels and coastal base flood levels rise, more of the transportation network will be subject to greater and more frequent inundation. This includes the transportation network outside of the Specific Plan Area (e.g. Interstate 880), and reinforces the regional nature of this issue. The City does not consider the proposed Specific Plan development, including Area 4, to be sprawl. On the contrary, the City notes that development of Areas 3 and 4 constitutes infill development that is close to jobs, transportation facilities, and infrastructure. Regionally speaking, Newark and the project area are within 15 miles of the job centers of Fremont, Milpitas, North San Jose, Hayward, and Palo Alto. The remainder of the comment is the commenter's opinion and does not raise questions about the adequacy of the Draft EIR. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

R. RESPONSE TO COMMENTS FROM MARGARET LEWIS, JANUARY 18, 2010:

COMMENT R-1: The Draft Environmental Impact Report for Areas 3 and 4 fails to adequately identify, analyze and mitigate the proposed project's impacts. Some sections are vague and misleading. It is clear that the only reason for this DEIR is to construct an 18-hole golf course, 200-space parking lot, clubhouse with a restaurant and banquet facilities for up to 220 people, and a driving range. The proposal for housing is just incidental as the DEIR does not say how many housing units would be proposed for Area 3 and how many for Area 4. They are lumped together with just one number, 1260 units. How many houses or dwelling units are proposed for each area?

RESPONSE R-1: The number of dwelling units has not been designated for each Sub-Area because specific development plans have yet to be developed. At the time subdivision plans are developed, they shall be reviewed for compliance with the Specific Plan. As described in the Draft EIR Section 1.2, *Uses of the EIR* (p. 2), Tentative maps will be evaluated to determine if the proposed action is consistent with the Specific Plan and if any additional environmental review is necessary.

COMMENT R-2: **Historic Overview and Background:** The DEIR is based on an 18 year-old general plan that has not been updated with current rules and regulations on air quality, sea level rise and greenhouse gas emissions among others. At the western end of Mowry Avenue is located a former Peterbilt truck test track and a County Flood Control storage yard and dredge disposal and drying facility. The southern boundary of Area 4 is over-shadowed by the Durham Landfill. The DEIR erroneously states that complex ownership issues have prevented development plans. It is the City of Newark and the Mayor who have prevented housing development from occurring in Area 3. For more than 20 years the City has denied the Area 3 landowner zoning for housing.

Over the past 30 years, development plans have been floated for Area 4. Plans died because of the site's remote location, unstable soils and abundance of wildlife and habitat. Those same issues exist today. Area 4 remains unsuitable for housing and a golf course complex.

Land Use: The proposed development of over half of Area 4 is inconsistent with the Goals of the Open Space and Conservation element of the 1992 General Plan. The Don Edwards San Francisco Bay National Wildlife Refuge has identified most of Area 4 as a Priority 1 acquisition area. Goal 2

of the Open Space and Conservation element states "Acknowledge the San Francisco Bay National Wildlife Refuge acquisition and its value as a community resource."

Adjacent properties such as the former Peterbilt test track, Alameda County Flood Control dredge disposal site and the Durham Landfill are not discussed as impacts to executive housing and a golf course complex on Area 4. The DEIR must disclose possible future uses and what would be allowed for the former test track.

RESPONSE R-2: As described in the Draft EIR (p. 28) the southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future. That Boundary Expansion Area does not impose any restrictions on the use or development of Area 4. Instead, it merely identifies lands which the U.S. Fish and Wildlife Service could acquire and readily incorporate into the existing Refuge if it chose to do so. However, in the 20 years since this expansion area was identified, the USFWS has not pursued any such expansion onto Area 4 lands. It should be noted that the USFWS has begun the process to prepare a Comprehensive Conservation Plan (CCP) for the Don Edwards San Francisco Bay National Wildlife Refuge (NWR), which consists of the entire Refuge including the boundary expansion area. The CCP will provide the vision and guidance for the management of Don Edwards San Francisco Bay NWR natural and cultural resources for the next 15 years. Current schedule for the CCP assumes completion of the public draft CCP in November 2011 and completion of the final CCP in September 2012. The CCP is a planning document and it would not have any restriction on the development in Area 4, as the Refuge does not own or have any regulatory jurisdiction in Area 4.

Further, the Environmental Assessment prepared for the "Potential Additions to San Francisco Bay National Wildlife Refuge (March 1990)" states the following:

> *Until lands are acquired, they do not become a part of the refuge. Lands indentified herein as possible for acquisition may or may not be acquired depending on price, state of development or proposed development, character modifications, opportunities to protect through other mechanisms, and other considerations. This environmental assessment is not intended to be used to influence general plan, zoning, or other land use determinations by State and local government.*

Pre-approval of lands for addition to the Refuge does not grant the Refuge any jurisdictional authority over those lands or signify that the lands become part of the refuge until they are acquired. As noted above, the pre-approval was not intended to influence local government land use decisions. Much of the land designated for addition to the Refuge is within Specific Plan Sub-Area E, 244 acres proposed for wetland preservation, wetland creation/enhancement, or continued agricultural operations. Proposed

Specific Plan Sub-Area E uses are generally consistent with the intent of the Don Edwards San Francisco Bay National Wildlife Refuge.

Tri-Cities Recycling and Disposal Facility (TCRDF) is discussed is the Land Use, Noise and Hazardous Materials sections of the Draft EIR. The former Peterbilt test track and Alameda County Flood Control dredge disposal site have been added to the Surrounding Land Uses discussion in the Draft EIR; refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

Please also note that, under the Specific Plan, all residential uses would be separated by the dredge disposal site by at least 1,000 feet, which would provide a substantial buffer between these uses.

COMMENT R-3: **Transportation:** The DEIR lacks analysis of the intersection of Cherry St. and Stevenson Blvd. This intersection will be the hub of vehicle use for Areas 3 and 4. It is also heavily used by vehicles using the Stevenson Point Tech Park and various industries along the western end of Stevenson Blvd. Where are the traffic numbers for Stevenson Blvd. west of Cherry-Boyce? Cumulative impacts are lacking. Why does the DEIR call for improvements to the intersection of Cherry St. and Mowry Ave.?

RESPONSE R-3: The intersection of Cherry Street and Stevenson Boulevard was evaluated for level of service in the EIR under existing, background, project, and cumulative conditions. Left turn queuing was also evaluated at Cherry Street and Stevenson Boulevard in the project traffic impact study contained in Appendix B.

The traffic impact study evaluated major intersections where there was potential for a level of service impact. There are no study major intersections on Stevenson Boulevard west of Cherry Street where a level of service impact could occur. The traffic volumes on Stevenson Boulevard west of Cherry Street are too low to justify further analysis. Cumulative transportation impacts are included in Section 4.0 *Cumulative Impacts* (pp. 277-281) of the Draft EIR.

There is a level of service impact at Cherry Street and Mowry Avenue according to the City of Newark level of service policy. For this reason, mitigation was identified, namely MM TRAN-1.1 at pages 57-60 of the Draft EIR.

COMMENT R-4: Public transportation for Area 4 is lacking. BART is at least 4 miles away in Fremont. Bus service to the region is being cut back by AC Transit due to budget constraints. It is unreasonable to expect residents of a proposed "executive" housing development to walk or ride bicycles to distant shopping or other service areas. Mitigation in the DEIR is vague and misleading.

The impact of truck traffic carrying fill to Area 4 has been grossly understated and underestimated. The DEIR claims trucks carrying fill materials would only run for one to two years. With the amount of fill needed and the amount trucks can carry in a single trip, the time needed to provide fill to Area 4 runs closer to 10 to 12 years. Please correct the DEIR calculations to reflect the true numbers. Truck traffic will have major severe negative impacts to local roads. City budgets are not able to

handle routine street maintenance much less streets that are destroyed from heavy unrelenting truck traffic. What is the mitigation for these impacts?

Who will pay for maintenance and repair of roads? What routes through Fremont and Newark would be designated for truck traffic of this magnitude? Who would provide and pay for daily sweeping and cleaning of the streets? What would be the impact to nearby residential areas? Please note the DEIR calls for up to 2.1 million cubic yards of fill material. The average dump truck holds 10 to 12 cubic yards of fill depending on weight.

RESPONSE R-4: The Draft EIR's transit service estimate of that four (4) percent of Project residents will use public transit was a conservative estimate, (Draft EIR p. 68.) There are many factors that contribute to transit mode share, including income, land use density, and type/frequency of service. According to the Bay Area Census, the total existing bus transit service mode share is 2.1 percent in Newark. Similarly, data from the Valley Transportation Authority 2030 plan shows an existing transit mode share of approximately 3 percent. The Valley Transportation Authority estimate is comparable, because it relies heavily on bus service, which is the type of transit service available near the project site, and has similar land use densities to those in suburban style cities such as Newark.

AC transit carries 236,000 daily passenger trips, operates 105 bus lines, and provides 6,378 daily hours of service. The project was estimated to generate on the order of 67 transit riders during the highest hour of the day. The relative contribution of the proposed project to system-wide transit ridership is therefore extremely small. It is the goal of AC Transit and every other transit provider to promote and increase transit ridership because of its benefits to roadway congestion and pollution. The transit agency employs planners with the specific goals of finding economical routes to maximize ridership on a system-wide basis. The City of Newark and AC Transit would regard high transit ridership from this project as a significant benefit to the environment.

As to transit service for the Project, field observations of bus occupancy levels were completed at the time of study in the project vicinity. Based on these observations, the project traffic consultant determined that there was sufficient available capacity to accommodate additional ridership. That said, over time, bus routes change and schedules vary based on land use changes, economic conditions, fuel prices, and success in achieving ridership. Frequencies and routes are not fixed and therefore it is unrealistic to assume that transit service will remain static in perpetuity. Accordingly, in January 2010, the project traffic consultant completed follow-up surveys to determine peak hour bus occupancy for routes in the project vicinity. Based on those surveys, routes 213, 214, and 235 had between zero and 10 riders during the peak commute hours in the project vicinity. Typical transit buses have a seated capacity of around 40 passengers, and a standing capacity around 20 passengers.

It is also noted that the project trip generation estimates did not assume any reductions in trip generation for project trips that employ public transit. Thus, the Draft EIR provides a conservative estimate of roadway impacts for the purposes of calculating level of service.

As described in Appendix C, Addendum to the Air Quality Study, "Full build out of the proposed project was assumed to begin in 2011 and last for about 5 to 8 years. Construction would probably last longer, but a more aggressive schedule was assumed for this (impact) analysis (of construction vehicle emissions), to avoid under prediction of emissions. All grading activities were assumed to occur in the first two years." It is acknowledged that actual hauling of soil would likely take longer than two years, but the shorter duration was assumed to provide a conservative estimate of construction vehicle emissions. The text of the Draft EIR has been revised to clarify this assumption.

Nearby construction projects are anticipated to be the source of fill materials for the project. As described in the Draft EIR (p. 92) soil exported from Lake Elizabeth to the project site would travel a four-mile one way trip; however, an average 10-mile one-way trip was used in the truck hauling emissions analysis, to be conservative. The exact sources of fill material for the project have yet to be identified, and it is reasonable to assume that fill will be brought to the site from a wide variety of source locations. For this reason, a 10-mile one-way distance was used, as a conservative estimate of truck trip length. Some truck trips, such as those from Lake Elizabeth, would be shorter, and some may be longer.

Heavy vehicles also can result in more wear and tear to pavement sections. Pavement wear is a function of environmental factors and loading. The loadings for new pavement sections are calculated on the basis of single axle loads over a 20 to 40 year pavement life, which are converted to traffic index (TI) values. Arterial and collector streets are designed with higher traffic index numbers, which accounts for greater usage by heavy vehicles. For the proposed project, nearly all of the traffic to and from the project site would use arterial and collector streets that were specifically constructed to withstand truck traffic. This includes Mowry Avenue, Stevenson Boulevard, and Cherry Street. Therefore, further analyses of pavement sections, traffic index values, and pavement loading, related to heavy vehicle traffic associated with the Project was not warranted.

Section 3.3 of the Draft EIR includes mitigation measures during construction to minimize any dust on and offsite.

COMMENT R-5: The DEIR notes several high voltage towers and lines will need to be raised and relocated to accommodate construction of a vehicle overpass at Stevenson and the UP railroad tracks. This will be a significant impact to small aircraft that use the towers as Visual Flight Rules between Palo Alto and San Carlos airports through Sunol Grade. Has the FAA or other aircraft authority given permission for these changes? Please provide proof.

The City plans only one way to enter or exit Area 4; that being a proposed vehicle overpass at the railroad tracks at the end of Stevenson Blvd. A proposed emergency vehicle access point is indicated at the Mowry at-grade crossing. This crossing point is problematic due to frequent blockage by trains switching the Newark yards. During such long periods of blockage at the crossing, there is no way emergency vehicles can access Area 4. This is unsafe and unacceptable. Please note the letter from the PUC on the Notice of Preparation. The DEIR also states the EVA road will be protected by a locked gate. Who will have the keys in the event of an emergency and what is the alternate route in the event the railroad crossing is blocked by trains switching Newark yard?

RESPONSE R-5: Please refer to Response L-13 regarding air traffic. Please see Response D-1 regarding PUC comments. Emergency personnel will have the ability to unlock the gate and provide access through the gate in the event of an emergency. The Stevenson Boulevard overcrossing will provide another route across the railroad tracks in the event of an emergency.

COMMENT R-6: **Air Quality:** Here again, the public needs to know how many truckloads of fill will be needed for Area 3 and how many for Area 4? The DEIR appears to call for 100 truckloads a day for more than a year. Is this correct? Will this provide enough fill for Area 3 or 4 or both together? Air quality will be adversely impacted by that many trucks over a long period of time. There will also be long-term impacts from trucks providing building and construction material to Areas 3 and 4. What is the mitigation?

Air quality will have significant negative impacts due to proposed future residents of Area 4 needing to drive to get things they need. There is not nearby shopping or transit. Residents will have to take to their cars for everything. This leads to an increase in air pollution. Walking or bicycling over the railroad overcrossing is not mitigation for auto use.

RESPONSE R-6: Please refer to Response R-4. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT R-7: **Noise:** There will be cumulative noise from truck traffic, construction related soil preparation, construction of housing, construction from the golf course and clubhouse and driving range and parking lot. Plus noise from train traffic, noise at the Durham Landfill, noise at the Flood Control dredge drying site and who knows what all. Noise from traffic going to and leaving the golf course and clubhouse after all those parties and banquets and wedding receptions. Noise disrupts wildlife living in the marshes and wetlands of Area 4. How will this significant impact be mitigated?

RESPONSE R-7: Project-level and cumulative noise impacts and mitigation measures are addressed in Sections 3.4 and 4.5 of the Draft EIR. Refer also to Response L-34 regarding noise impacts on wildlife.

COMMENT R-8: **Biological Resources:** Newark puts a bull's eye on biological resources and the environment. Golf courses are cool; wetlands with endangered species or burrowing owl habitat is uncool. Anything that abolishes habitat is just fine with the City. That's why we have this DEIR for a golf course and executive housing in a wildlife habitat/flood zone area. This proposal is inconsistent with the expansion boundary of the federal Wildlife Refuge. Years ago Newark had a golf course that went bankrupt. It had a clubhouse and banquet facilities that could not be supported.

Newark also had a driving range that went bankrupt. Significant biological resources on Area 4 must not be destroyed for yet another failed dream.

The proposed development will cause the loss of seasonal wetland, wetland, marsh and aquatic habitat. It will lead to a loss of up to 85.6 acres of wetland. Wetlands would be filled so a golf course and houses can be built. Mitigation is proposed through on-site wetland creation or acquisition of existing wetlands off-site.

Exactly where on-site will wetlands be created? Will it be in upland areas? Where exactly in upland areas? On the railroad tracks? What is the procedure and success ratio of creating wetlands in upland areas? How will the hydrology match a natural wetland and seasonal wetland? Wetlands must be created and functioning over an extended period of time before wetlands are filled.

RESPONSE R-8: Please refer to Master Response 2 and Responses E-3 and J-21 regarding on site wetland mitigation. The remainder of the comment reflects the opinion and concerns of the commenter. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT R-9: Who will create new habitat for salt marsh harvest mice? Where will it be located? Who will move mice to the new habitat and make sure they stay? Will the new habitat have wetlands as well as uplands? Who will keep the family pets out of wildlife habitat areas?

RESPONSE R-9: Creation of habitat to compensate for impacts to salt marsh harvest mice habitat will be the responsibility of the developer of any project components that impact such habitat. This compensatory mitigation will be located on-site, either by creating/restoring new wetlands providing habitat for this species or by changing the management of existing wetlands that, if managed differently (e.g., not cultivated) would provide salt marsh harvest mouse habitat. Mice would not be moved to the new habitat; rather, they would be expected to colonize the new habitat from populations currently occupying pickleweed-dominated areas on the site. Suitable salt marsh harvest mouse habitat consists of pickleweed-dominated wetlands with some upland refugia, so uplands would be a component of the salt marsh harvest mouse mitigation area. Regarding the comment pertaining to keeping pets out of wildlife habitat areas, please refer to Response A-1.

COMMENT R-10: If habitat will be found offsite where will it be? There is no wetland or seasonal wetland habitat availed in the south bay area to be used for mitigation. And if an off-site area is already wetland, there will be a net loss of wetland resources if Area 4 is developed.

RESPONSE R-10: Please refer to Response A-3.

COMMENT R-11: What is the fate of upland habitat with development in Area 4? Wildlife and endangered species use uplands as refuge from rising water in wetlands. With projected sea level rise in the Bay Area and Area 4 is in the 100 year flood hazard zone, development leaves no refuge from rising water.

RESPONSE R-11: Please refer to Response A-2.

COMMENT R-12: The proposed project will require a fill permit from the Corps of Engineers and Water Quality Certification from the Regional Water Board. Has anyone from the City or developer met with these and other affected agencies such as Fish and Game and Fish and Wildlife Service? What is their opinion of development on Area 4?

RESPONSE R-12: Please refer to Responses A-3 and L-26.

COMMENT R-13: Development in Area 4 will degrade Mowry Slough and waters that flow into San Francisco Bay. This will impact fish populations in the bay as will as the harbor seals that use hauling out locations along Mowry Slough. Numerous studies have shown Newark Slough and its complex of landscapes to be an important habitat type in the Bay Area. How will the significant impacts to this resource be mitigated?

RESPONSE R-13: Impacts to water quality in Mowry Slough are discussed in Impacts BIO-12, BIO-13, HYD-1, and HYD-2, and associated measures to mitigate such impacts to less than significant levels are incorporated as MM BIO-12.1 through 12.4, MM BIO-13.1, MM HYD-1.1 through 1.4, and MM HYD-2.1 through 2.5.

COMMENT R-14: Impacts to burrowing owls is unacceptable. Newark has a long sad history of destroying burrowing owl habitat. Development of Area 4 is just another saga. Where will new habitat be created? On-site or off and where exactly? It is well known that burrowing owls do not easily relocate. Nesting spots along the margins of a golf course are unacceptable. Burrowing owls should be protected and left alone. They should not another victim of a golf course and housing proposal.

RESPONSE R-14: The precise locations at which burrowing owl mitigation will occur are unknown at this time, but MM BIO-4.4, 4.5A, and 4.5B describe the potential compensatory mitigation options and the process by which such mitigation will be provided. The commenter suggested that nesting sites should not be located along the edge of the golf course. Provision of burrows along the edge of the golf course will be implemented only if mitigation is completed entirely off-site; such efforts have been successful in maintaining burrowing owl occurrence on Shoreline Golf Course in Mountain View.

COMMENT R-15: All told, the significant negative impacts to wildlife and habitat in Area 4 makes development unacceptable. Wildlife and habitat should not be destroyed to build a golf course or any other kind of so-called community recreation the City may envision. The only vision for Area 4 should be open space and conservation with no development. That means no more draining and plowing the land for pretend-farming.

RESPONSE R-15: The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT R-16: The DEIR calls for the golf course to have a driving range. Driving ranges have very tall nets to prevent golf balls from going astray and smacking people or property. With wildlife habitat nearby, the tall nets will be a significant negative impact. Birds and mammals will be trapped in the nets. This impact must be disclosed as well as mitigation.

RESPONSE R-16: There is no expectation that nets along the driving range will significantly impact birds and mammals by resulting in these animals' entanglement. Nets used at driving ranges are much more highly visible than mist nets used to capture birds for banding, and do not have the very wispy, easily tangled quality that mist nets possess. Therefore, impacts of any nets that will be placed along the edges of the driving range on birds and mammals will be less than significant and no mitigation will be necessary. Text revisions have been made to the Draft EIR to clarify this issue; refer to Section 4.0 *Revision to the Text of the Draft EIR.*

COMMENT R-17: Allowing public access on Mowry Slough levees creates adverse impact to wildlife that live along the levees and in the nearby marsh. People walking dogs create hazards when dogs go off leash. There should be no public access allowed on the levees. Signs do not work; education does not work. No access should be allowed, period.

RESPONSE R-17: Please refer to Response J-24.

COMMENT R-18: **Cultural Resources:** Native American remains and evidence of middens were discovered in Area 4. What will be the impact to these historic resources if tons of fill are placed on them and compacted? If these sites and remains are eligible for state and national registers they must be preserved and not buried under tons of fill. This significant impact can be avoided by not developing Area 4.

RESPONSE R-18: As described in Section 3.6 of the Draft EIR, the placement of fill and soil compression will destroy archaeological deposits and result in a significant unavoidable impact. Given this disclosure of a significant and unavoidable impact, the Draft EIR includes a Project Alternative that would eliminate development in Area 4: *No Development in Area 4 and Higher Density Area 3 Alternative* (see pp. 313 – 314), although significant and unavoidable cultural resource impacts would still occur under this Alternative as a result of development in Area 3.

The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT R-19: Geology and Soils: Soils in Area 4 are in a state-designated Liquefaction Hazard Zone. There appears to be a variety of soil types leading to a strong possibility of differential settlement when tons of fill are applied to the site. Differential settlement occurs with uneven settlement of fill over different soil types. This would have significant impacts to private property, infrastructure and the public. There is no guarantee the Stevenson overpass at the railroad would maintain its integrity. Even the DEIR questions this.

RESPONSE R-19: The Draft EIR does not question the future integrity of the Stevenson overpass; rather, mitigation measures, commonly used engineering design and construction techniques, are identified to mitigation impacts related to liquefiable soils to a less than significant impact. Section 3.7. *Geology and Soils* identifies mitigation measures to avoid liquefaction impacts associated with settlement. Refer to MM GEO-1.1.

COMMENT R-20: Also putting the public at risk would be a pedestrian overcrossing near the Mowry at-grade railroad crossing. As the PUC stated in its letter to the NOP a pedestrian overcrossing would be necessary to prevent the public from trying to cross the tracks when the crossing is blocked by switching Newark yard. The DEIR mentions nothing about a pedestrian overcrossing. This must be corrected.

RESPONSE R-20: A pedestrian overcrossing is proposed as part of the Stevenson Boulevard Bridge. Refer to Response D-1 regarding the Mowry Avenue at grade crossing.

COMMENT R-21: The true amount of fill needed is unknown due to site settlement over time. Please explain how water, sewer and gas lines will be protected from rupture and what mitigation measures will be required in the event of failure of any or all of these systems. The DEIR mentions severe soil corrosion to underground utilities. How will this be mitigated?

RESPONSE R-21: Settlement estimates indicate that long-term consolidation settlement on the order of one inch will occur for each foot of new fill placed within the development portion of Area 4. This was taken into account when estimating the necessary fill for development. Any underground utility pipes will be designed to accommodate the expected differential settlement between the buildings and the adjacent ground. Mitigation Measure MM GEO-3.1 includes requirements for mitigating settle due to fill and building loads.

COMMENT R-22: Possible ground improvement techniques are mentioned as mitigation for unstable soils. Explain what these techniques are and how they would be applied. Explain where these techniques have been previously used and the success ratio or lack thereof.

RESPONSE R-22: The Draft EIR discussion of project building design is relatively general in nature, commensurate with the amount of project detail available at the Specific Plan level. For this reason, the Draft EIR (Section 3.7) identifies that further geotechnical study will be required at the time project-specific developments are proposed, to evaluate the location and project-specific geotechnical impacts and appropriate mitigation measures. Engineering design and construction techniques are widely used for all types of development, including single-family homes, to remedy unstable soil impacts similar to those of the project site. For this reason, the Draft EIR concludes that the impact will be mitigated to a less than significant level.

COMMENT R-23: What is the technical geologic and hydrologic expertise of the Director of Public Works? The DEIR states this person will be responsible for permitting work on Area 4. To avoid litigation the City should use a certified and qualified geologist and hydrologist. This is no place for shortcuts.

RESPONSE R-23: The City of Newark Director of Public Works will require all geotechnical analysis to be completed by a certified and qualified geologist.

COMMENT R-24: **Hydrology, Flooding and Water Quality:** Area 4 is a complex of soils and hydrology. Data cited in the DEIR is outdated. Sea level rise impacts are all but ignored. The DEIR must contain all up-to-date information including the latest FEMA maps from last year. There

should also be information about the latest regulations on levee protection and building in flood zones. Building houses on top of fill in a flood zone does not put residents out of harm's way. It leaves the City vulnerable to litigation after a disaster.

RESPONSE R-24: Data cited in the Draft EIR was current when the NOP was issued, and the climate change impacts section was amended in October 2009. Please see Draft EIR pp. 299-302 and Appendix G pp. 26-29 and the "Climate Change Addendum" (pp. 1-12) for a discussion of sea level rise impacts. Since the NOP was issued, a new effective Flood Insurance Rate Map for Newark has been published, although the only change from the FIRM used to prepare the Draft EIR is a vertical datum shift. Please see Draft EIR p. 192 (Sections 3.8.1.2 and 3.8.1.3) and Appendix G p. 1 for information about levee regulations and building in flood zones.

COMMENT R-25: Increased run-off from impervious surfaces increases the chances of flooding in Area 4. That combined with sea level rise and storm surges places the proposed pumping system on overload. The DEIR calls for a pump to lift water 10 to 12 feet over the top of the existing levee to discharge into Mowry Slough. How will this water be monitored for pollution from streets, public and private property in Area 4? Who will maintain the pump or pumps and what happens when it or they fail? People and property are at risk.

RESPONSE R-25: Storm water treatment mitigation measures (BMPs) identified in the Draft EIR meet the requirements of the NPDES permit. As a co-permittee the City of Newark is required to monitor developed areas for compliance with the NPDES permit.

The pumps are not needed for flood control. The purpose of the pumps is to keep the agricultural land dry, as such; the property owner is responsible for their maintenance. If the future, pumps are utilized for flood control purposes it would be the owners of the pumps that would maintain them. It is likely that a duplex system of pumps would be employed to provide mechanical redundancy. If a pump were to fail, it would be repaired or replaced. Since proposed development would be located on fill placed more than three feet above the tidal base flood elevation, new development in Area 4 would not depend on the outboard levees or pumping for flood protection, and there is no upstream flooding impact from the failure of either system. The water surface in San Francisco Bay is controlled by the tides and is not affected by runoff from the Specific Plan area, so there is no downstream impact from the failure of either system.

COMMENT R-26: What are the plans for maintenance and improvement of the county flood control channels in Areas 3 and 4? With additional capacity needed, who will be responsible for the costs? Has the City consulted with the county flood control agency? If so, what are their comments?

RESPONSE R-26: The Alameda County Flood Control and Water Conservation Agency is responsible for the maintenance and improvement of their flood control channels, including the costs. As described in the Draft EIR Section 3.8.3.7 (p. 202), the flood control channels have adequate capacity to handle the

future runoff from implementation of the Specific Plan. The City consulted with the ACFC&WCD during the preparation of the Specific Plan.

COMMENT R-27: The impacts of the addition of a clubhouse, driving range, restaurant, and large parking lot associated with the golf course have not been addressed. These facilities will add to the pollution of stormwater as well as pollution from pesticides and herbicides associated with the golf course and driving range. What will mitigate for these impacts? The DEIR goes into great detail regarding the Audubon International Program for golf courses. This organization has been discredited by National Audubon. Audubon International's only business is to assist with golf courses. The amount of detail put into this section of the DEIR is further proof this DEIR is to serve as promoting a golf course in Area 4.

RESPONSE R-27: Please see Draft EIR pages S29-30, S38-40, S46-47, 14-15, and 22 and Appendix G page 11 for discussions of water quality impacts associated with the golf course, driving range and ancillary facilities, and the proposed mitigation measures.

In the absence of detailed golf course plans, performance based mitigation described by the Draft EIR is imposed to provide adequate mitigation for the golf course. In addition, the golf course water quality mitigation is not substantially different from water quality mitigation for the entirety of the proposed development (MM HYD-1.2). Based on the project description for golf course management (Draft EIR p. 14), and Provision C.3 of NPDES Permit No. CAS612008, more specific water quality mitigation for the golf course will generally include:

1. Computerized irrigation system matched to the evapotranspiration (ET) rate at the golf course. This mitigation measure minimizes the application of water in excess of the day to day water demands of golf course turf and other plantings, thereby minimizing drainage runoff from the course. Minimal runoff during periods of fertilizer application means minimal impact to receiving waters.
2. Landscaping practices that minimize the use of pesticides and fertilizers.
3. Appropriate covers, drains, and storage precautions for outdoor material storage areas, repair and maintenance areas, and fueling areas.
4. Covered trash, food waste, and compactor enclosures.
5. Bio-treatment of golf course runoff as required by permitting agencies in conformance with Provision C.3.d of the NPDES Permit.

COMMENT R-28: What will be the impacts of pumping groundwater on Area 4? The DEIR states groundwater will be used to water the golf course. Pumping will increase ground subsidence and the possibility of dewatering ponds and the wetland area on Area 4. What will be the mitigation for these impacts?

RESPONSE R-28: Please see Draft EIR page 203 (Section 3.8.3.8) and Appendix G pages 12-14 (Impact HYDRO-2) for an analysis of the impacts of groundwater pumping in Area 4. See also Response F-2.

COMMENT R-29: **Hazards and Haz Mat:** The DEIR must disclose soil contamination problems encountered with construction at Ohlone College Newark campus. It appears very likely

these same issues will impact the rest of Area 3 where the city is proposing housing and an elementary school? Who will be responsible for cleanup and remediation of Area 3? What are the DTSC restrictions on the Newark Ohlone site?

RESPONSE R-29: The Draft EIR describes the pesticide contamination on the development portion of Area 3, the primary constituent of which is the same chemical (toxaphene) that was present on the Ohlone campus site. Since the Ohlone campus development is a separate project and is mitigating its hazardous materials impacts subject to regulatory oversight, there is no requirement for the subject EIR to discuss it further. Cleanup and remediation for the residential portion of Area 3 will be the responsibility of the each residential project developer under oversight by the City of Newark, Department of Toxic Substances Control, and Alameda County Water District. The potential school site cleanup and remediation will be the responsibility of the Newark Unified School District and will coordinate with DTSC's School Property Evaluation and Cleanup Division, which is responsible for assessing, investigating, and cleaning-up proposed school sites.

COMMENT R-30: It appears the City would be responsible for acquiring land and building a golf course on Area 4. Who would be responsible for soil cleanup and remediation for a golf course or other public amenity? How would the city fund land purchase and building and maintaining the golf course and clubhouse, driving range and other amenities? Have studies been done by the Department of Toxic Substance Control for Areas 3 or 4?

RESPONSE R-30: The golf course or other amenity would be financed by a fee paid by residential units in the project area. This may include the acquisition of additional property.

Soil cleanup and remediation would be the responsibility of the golf course developer under oversight by the City of Newark, Department of Toxic Substances Control, and Alameda County Water District. The Department of Toxic Substances Control typically provides oversight for remediation and cleanup.

COMMENT R-31: Does the city or landowner have approval from the PUC or Union Pacific Railroad to use the unimproved Stevenson at-grade crossing to access Area 4 for placement of fill? Explain how the constant stream of dump trucks would not prove a hazard to fast moving freight and passenger trains. How would this rail crossing be managed until an overpass is in place? Who will be responsible when a train smacks a dump truck?

RESPONSE R-31: The railroad crossing at Stevenson Boulevard is a private crossing; therefore, the landowner would obtain a permit from the PUC when fill is imported to Area 4. There are standard PUC requirements to ensure a safe crossing. This includes use of a flag person regulating the railroad crossing at all times.

COMMENT R-32: **Aesthetics and Visual Resources:** The DEIR does not mention the Durham Landfill which is located at the southern boundary of Area 4. Although it is closed to the public it still accepts construction debris. Even after it closes and is capped it is still an eyesore.

RESPONSE R-32: Tri-Cities Recycling and Disposal Facility (TCRDF) (Durham Landfill) is discussed is the Land Use, Noise and Hazardous Materials sections of the Draft EIR.

Further, while the environmental (and visual) setting of the Project is described in the Draft EIR, the CEQA Guidelines do not require an evaluation of the existing visual environment on a proposed development.

COMMENT R-33: The County Flood Control storage site and dredge drying area to the west of Area 4 are an industrial use that is not compatible with executive housing and a golf course. Since the Flood Control facility has been in use before housing was proposed, that use must continue. Besides, the city does not own the site and cannot force Flood Control to move. What are the visual impacts of this facility on proposed executive housing on Area 4?

RESPONSE R-33: The Alameda County Flood Control dredge disposal site would not be incompatible with the proposed Specific Plan uses. In addition, all residential uses would be separated by the dredge disposal site by at least 1,000 feet which would provide a substantial buffer between these uses. The golf course or recreational use is not a sensitive land use that would be impacted by any dredge drying, because sensitive land uses are defined as facilities that house or attract children, the elderly, people with illnesses for an extended amount of time.

While the environmental (and visual) setting are described in the Draft EIR, the CEQA Guidelines do not require an evaluation of the existing visual environment on a proposed development.

COMMENT R-34: A huge vehicle overcrossing is proposed for the end of Stevenson Blvd. at the railroad tracks. Likewise a pedestrian overcrossing is proposed by the PUC and UP Railroad at Mowry. Both will need to be high enough for railcar clearance. These are visual nightmares that cannot be mitigated.

RESPONSE R-34: The Draft EIR describes the visual change that will result from construction of the Stevenson Boulevard overpass (refer to p. 240). The Stevenson Boulevard Bridge will provide a minimum of 24-feet clearance from the top of the rail tracks to the bottom of the bridge girder per Union Pacific guidelines. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT R-35: The high voltage towers and lines in Area 4 are not aesthetically pleasing. They do not announce that here lies an executive housing development. Proposed sound walls along the railroad tracks give the appearance of cutting off the development from the rest of Newark. Proposed housing and a golf course on Area 4 would truly be cut off from the rest of Newark. Is this what the City envisions as an "upscale" neighborhood? The DEIR states that housing would be constructed a little at a time due to uncertain economic times. This means there would likely be constant construction over the time span of many years. How would this significant negative visual impact be mitigated?

The DEIR discusses viewing access to Mowry Slough. Exactly how will this be accomplished since Mowry Slough will be at the distance equal to two football fields? The DEIR states it will be within 500 to 700 feet.

The Open Space Element of the General Plan states that Newark should " ...enhance and identify Newark as a special place in the region." Newark is not a "special place" if it builds housing and a golf course in a flood zone on tons of fill behind sound walls along a busy railroad track. Yuck, this is not a place people would want to live. The DEIR says Area 4 would be visible to train passengers. What would they want to see, a sound wall or a beautiful marsh and wetland full of shorebirds and waterfowl? I am voting for the marsh.

RESPONSE R-35: With regard to the high voltage towers and line in Area 4, please note that, while the environmental (and visual) setting of the Project are described in the Draft EIR, the CEQA Guidelines do not require an evaluation of the existing visual environment on a proposed development. To the extent that the Project will require the extension of the towers, the Draft EIR discloses that this would result in a visual change but concludes that, because the towers are already on site, the extension would not significantly degrade the existing visual character or impact any scenic resources in Area 4 or surrounding uses. (p. 240.)

The sound walls along the railroad track would not be visible from Cherry Street and Mowry Avenue because the existing buildings including the Silliman Recreation Center, Fire Station, Ohlone College, Industrial Office Park, and future residential in Area 3 would block views of the future sound wall. It is possible that small portions of the sound wall may be visible from Stevenson Boulevard.

With regard to the construction phasing of the Project, it is likely that Area 3 and 4 will be developed in various phases, as discussed in Section 4.0 *Revisions to the Text of the Draft EIR*, the temporary presence of construction vehicles and machinery would is part of the significant visual change that will occur on the site.

With regard to Mowry Slough, the Draft EIR discloses that it is possible that portions of Mowry Slough will be visible from future residential developments in Area 4, even though the distance will be over 500 feet toward the bay.

The remainder of the commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT R-36: **Public Service:** Newark is in the midst of a financial crisis of its own doing. Cuts are being made to all aspects of city services. The City is even outsourcing its Planning Department. The City cannot afford to build and maintain a golf course much less purchase land for such a facility. Explain where the money and staff time are coming from?

Cutbacks are expected in police and public safety. Revenue from housing does not pay for its fair share of police and fire protection. The City will be unable to maintain its city parks to current standards. Development of Area 4 will place further strains on City services. The City cannot afford a golf course or other public recreation on Area 4.

If the City decides to construct a park on Area 4 in lieu of a golf course, access will be a nightmare. The public would have to drive through the executive housing development to reach the park. A pedestrian overcrossing at Mowry would not be convenient for people trying to reach a park. A public park in this location would be difficult for the City to manage due to access restrictions.

In its NOP letter, Union Sanitary District said it is unable to handle additional wastewater from Area 4. USSD said they are not staffed to operate and maintain any additional pump station with the Area 4 service area. How will this impact plans to develop Area 4?

Future residents of Area 4 would be isolated from shopping and other services. They would have to drive at least 4 miles to reach the Fremont BART station, a long distance to reach the Newark library and City Hall, a long way for anything. Development on Area 4 is urban sprawl at its finest. Newark does not need it.

RESPONSE R-36: As described in Section 3.12.3.3 (p. 260), the Union Sanitary District has confirmed that their Treatment facilities have sufficient capacity to serve Areas 3 and 4. Any new pump stations will be operated and maintained by an established maintenance district or homeowners association for any development within Area 4, (p. 260).

The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT R-37: **Energy:** The DEIR recommends energy saving appliances and pathways to bus stops. Explain how this will be accomplished when the buses stop running due to budget cuts. The City expects development to occur over a long period of time. Without enough riders, buses won't come at all. Area 4 will be a huge energy-waster.

There will be increased demand for gasoline because proposed residents will have to drive everywhere. There is no nearby shopping for even simple items. Increased driving means more greenhouse gas emissions. How does Newark propose to reduce GHG emissions as the state is proposing? Newark is not doing its share. How will this be mitigated?

RESPONSE R-37: Please see Response R-4 regarding transit use by residents of the Project and Response L-41 regarding the Project's energy saving features.

Further, recently adopted amendments to the CEQA Guidelines that incorporate analyses and mitigation for Greenhouse Gas Emissions (GHG) and include a recommended approach for identifying project GHG emissions, determining significance, and mitigating the impacts through the CEQA process have been followed in the Draft EIR analysis. The project's lifetime contribution to GHG emissions were quantified, and compared to thresholds of significance proposed by BAAQMD, an agency with particular expertise in the subject matter under consideration. Mitigation measures, including

project design features, were identified to reduce those emissions, and alternatives to the project that would avoid or reduce impacts were identified.

The commenter is directed to pages 295 – 296 of the Draft EIR which list the green practices that will be implemented through the Specific Plan. These measures will all reduce the project's GHG emissions, either directly or indirectly. For instance, the Draft EIR states that all development will be required to "comply with the City of Newark Green Building and Construction and Demolition Recycling Ordinance." (Draft EIR p. 295.) Further, the Specific Plan includes an extensive list of Water Conservation Standards which will require "all residential and non-residential development within Areas 3 and 4" to be "development with the latest technology in water efficient plumbing fixtures and irrigation systems." (*Id.*) The Draft EIR also includes a detailed list of just some these systems, such as "high efficiency (1.3 gallons per flush or less) and dual flush toilets," and "air cooled ice machines." (*Id.*) Additional mitigation measures which will reduce GHG emissions associated with the project are contained in the Draft EIR's Energy Section, specifically Mitigation Measures ENR-1.1 to 1.4. Refer also to Response L-41.

Further measures aimed at reducing the project's GHG emissions must be implemented within the Specific Plan as appropriate and feasible. Mitigation Measure C-GCC-4.1 will be amended to reflect specific green practices that have been determined appropriate and feasible for implementation as part of the Specific Plan. Refer to Section 4.0 *Revisions to the Text of the Draft EIR.*

The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT R-38: The DEIR states that local sites shall be utilized for fill material for Areas 3 and 4. How can the City make this a requirement? Will Areas 3 and 4 be filled at the same time? The DEIR states that designated travel routes from fill sources to the project sites shall be approved by the Community Development Director. Does this mean the Director has the authority to mandate truck routes through Newark? What about Fremont? Does Newark have control over Fremont truck routes? What will be the impacts to Fremont with all this truck traffic over years and years?

The DEIR states that project managers will reduce equipment and vehicle idle times and ensure equipment is properly tuned and maintained. Who is going to monitor and ensure compliance?

RESPONSE R-38: The Draft EIR discusses that the project would use fill from nearby construction projects (p. 91), the largest of which is noted as the BART tunneling under Lake Elizabeth. It is not certain that this fill would be used; therefore the modeling of truck emissions was based upon an average one-way haul distance of 10 miles, rather than the 4 mile distance between Lake Elizabeth and the project site. Therefore, the truck emissions from more remote fill sources to the site would not be underestimated. It is assumed that financial reasons fill would be sourced from the local area, however, the City has not made this a requirement. It is assumed that Area 3 will be filled prior to Area 4.

The Community Development Director and the construction manager will ensure the travel routes for the haul-truck utilize the most fuel-efficient travel path from the source location to the project site regardless of the regional location. These routes will include major arterial and collector streets and due to the project site's location to I-880 will usually involve Stevenson Boulevard, a major arterial street.

The construction superintendent and the City's Department of Public Works construction site inspectors are responsible for the enforcement of the state law idling restrictions.

COMMENT R-39: **Alternatives:** I recommend No Development in Area 4. The high number of significant negative impacts makes any development unfeasible. It is impossible to mitigate for wildlife and habitat loses. It is impossible to mitigate for geology and hydrology hazards. People and property must not be put at risk by development in Area 4. Wetlands must not be filled for non-water dependent projects. Newark cannot afford to build and maintain a golf course. Golf courses around the country are closing and going bankrupt. Even in the Bay Area, golf courses are facing bankruptcy and conversion to other uses.

There could be a slight density increase to Area 3 plus rezoning the former Agilent site for housing. The owners of the former Agilent site, Regis Homes have requested a housing designation for their site. Housing along with small services would be appropriate. A coffee shop or other small businesses to serve the neighborhood and Ohlone campus could be a consideration.

This Specific Plan calls for rezoning Area 3 for housing and a change from the General Plan. That is acceptable. The Specific Plan calls for executive housing and a golf course in Area 4 as per the General Plan. If Area 3 wants a change from the General Plan so too for Area 4. Change Area 4 from housing and a golf course to Open Space and Conservation with no development. Change the Agilent site to housing and/or some retail. The City needs to think creatively and get its collective mind away from a golf course.

RESPONSE R-39: The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

S. RESPONSE TO COMMENTS FROM MARI MILLER, JANUARY 18, 2010:

COMMENT S-1: **ENERGY**

Note: The EIR separates energy impacts into 2 categories: **operational** (after construction, the energy impacts of household energy use and vehicular traffic) and **construction** (building the proposed project).

Regarding the EIR's assessment of operational energy impacts:

1. The EIR fails to adequately address energy usage and thus energy impacts. E.g., it quotes Title 24 California Energy Efficiency Standards for Residential and Non-residential Buildings as "these standards include *minimum* energy efficiency requirements related to building envelope mechanical systems. i.e., heating, ventilation, AC and water heating, etc. that would "not result in the inefficient unnecessary or wasteful consumption of energy". However, the EIR interprets this standard to mean that the project only needs to implement a few energy conserving *appliances* and a

few *pathways to bus stops* to demonstrate that it is not a "wasteful consumption of energy". These proposed mitigation measures fall **far below** what is required by the Title 24 Energy Efficiency Standards law. More importantly, the EIR needs to be revised and updated to include **new** "Title 24-Part 6" energy code building standards which became law effective Jan. 1, 2010.

RESPONSE S-1: Please refer to Response L-41.

COMMENT S-2: **2. The EIR fails to identify what specific energy efficiency standards will be implemented regarding appliances.** The project proposes to build 1260 new housing units of which 189 will be multi-family homes in Area 3 and 500 will be multi family homes in Area 4 equaling approximately 690 multi family units. A conservative estimate for 690 units (which is less than all units proposed to be built) would consume about 4,416,000 kWh and about 469,200 Therms, plus would emit about 8,281,380 lbs of CO2 into the atmosphere. This will result in a significant increase in electricity and natural gas consumption for home heating, cooling, water heating and lighting plus contribute to the global warming crisis which is in direct opposition to the 2009 Climate Change Adaptation Strategy (see items 6 and 7 below). The EIR states "energy conserving appliances will be used" but does not state what kinds or whether they will comply with even the minimum standards for energy conserving appliances, such as the State of California's Energy Star Homes Program. The benefits of an energy efficient Energy Star home include improved comfort, improved indoor air quality, quality construction, strong positioning for high resale value, and easy access to preferred mortgage financing. The EIR needs to be revised and updated to state that at least Energy Star standards will be implemented in this project.

3. Green building is not adequately defined in the EIR and is too open ended. This could result in non-green materials and designs being implemented. The EIR needs to be revised and updated to include specific examples of what kind of green building measures would be taken. E.g., house configuration, cool roofs, building materials, what standard of insulation would be used and where (e.g., attic, windows, slab floor perimeters, etc.), major appliances, heating and cooling system, water heating, lighting, ducts, pipes and thermostats, what type of furnace, etc.

RESPONSE S-2: Please refer to Response L-41 and R-36.

COMMENT S-3: **4. The EIR states that the vehicular trips** associated with the project "would substantially increase the demand for gasoline", and then states that the implementation of pedestrian sidewalks and paths, bicycle lane, new bus pull outs on Cherry Street and Stevenson Boulevard, a shuttle service to Area 4 and pedestrian friendly signs will reduce this impact to "less than significant". However, merely providing pedestrian walkways to bus stops and these other measures will not significantly reduce the energy impact of "up to 1260" new houses, as people will continue to drive their petroleum based cars to work and shopping centers, causing a significant increase in vehicular traffic and a significant increase in petroleum consumption. Furthermore, whether the proposed bus pull outs can be built is very uncertain. (See: Recent ***Argus*** Sunday paper articles, Jan. 10, 2010, on the crisis in transportation funding resulting in fewer buses to outlying areas.)

RESPONSE S-3: Please refer to Response L-41.

COMMENT S-4: **5. The EIR describes a new homes project that does not take into consideration new California State programs and initiatives** (such as The California Solar Initiative, the California Energy Commission's New Solar Homes partnership program, etc.) which

would create substantial energy use savings and reduce the energy impacts significantly. These programs have demonstrated that the use of passive solar designs for houses or other alternative sources (e.g., solar water heating or solar photovoltaics) create more energy-efficient homes and save homeowners money on their electric bills, protect the environment, and reduce the energy impact. They have also demonstrated that recent improvements in solar photovoltaic roof installations do not significantly add to the cost of new homes. Builders in California that integrate solar photovoltaic (PV) electricity systems and high energy-efficiency standards throughout their developments are eligible to participate and receive financial incentives. Homes from builders participating in the New Solar Homes Partnership program are at least 15 percent more efficient than current building standards and other energy efficiency measures can provide an average 30% reduction in energy use. Solar homes also qualify for a federal income tax credit and energy efficiency measures may qualify the home for an additional $2,000 in federal tax credits.

RESPONSE S-4: The Draft EIR does acknowledge that in 2011, State Law requires every new subdivision of 50 house or more to include an upgrade for solar power. Please also refer to Response L-41.

COMMENT S-5: **6. The EIR describes a new homes project that is traditional sprawl**, with large homes spread out and only carbon-based energy sources planned (PGE, electric grid, oil, petroleum and natural gas)—non renewable sources of energy. The significant increase in energy consumption that would result from the proposed project is in direct opposition to a number of bills and recommendations. The project would add to the global warming burden in opposition to AB 32, AB375, Governor's Panel of 23 (Dec. 2009), 2009 Climate Change Adaptation Strategy (CA governor's), etc., which also try to discourage development that is "vulnerable" and is "sprawl and isolated".

RESPONSE S-5: The City does not consider the proposed Specific Plan development, including Area 4, to be sprawl. On the contrary, the City notes that development of Areas 3 and 4 constitutes infill development that is close to jobs, transportation facilities, and infrastructure. Regionally speaking, Newark and the project area are within 15 miles of the job centers of Fremont, Milpitas, North San Jose, Hayward, and Palo Alto. The remainder of the comment is the commenter's opinion and does not raise questions about the adequacy of the Draft EIR. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

COMMENT S-6: **7. The EIR does not include or address the requirements of the 2009 California Climate Adaptation Strategy report** to the Governor of the State of CA, in response to executive order S-13-2008 (also referenced in the EIR Hydrology G Appendix on the last page), specifically sections in No. 3 and 7 which state that building in vulnerable areas (such as wetlands) should be avoided, and to expand land use and water management to minimize adverse effects from climate change.

Climate Adaptation report Ref. No. 11: "State agencies should meet...greater energy conservation and an increased use of renewable energy. Renewal energy supplies should be enhanced through the Desert Renewable Energy Conservation Plan that will protect sensitive habitat that will while helping to reach the state goal of having 33 percent of California's energy supply from renewable sources by 2020. (TEI-2)."

RESPONSE S-6: Please refer to Response J-11.

COMMENT S-7: **Regarding the EIR's assessment of construction impacts:**

1. The EIR grossly underestimates the energy impacts of the construction activity. The EIR's estimates assume the project will take about 1 year to build, but failed to include any reasonable estimates regarding the planned landfill (e.g., 2.1 million cubic yards of dirt to be trucked to Areas 4 to elevate the building pads out of the current 100-year floodplain). Area 3 also requires elevation with 56,000 cubic yards of fill. Availability of suitable soils for this type of vulnerable landfill is also unknown.

2. The EIR needs to adequately assess what the energy impact of 100 dump trucks per day running 353 days per year for 2 years would actually be.

RESPONSE S-7: Please refer to Responses I-5 and I-6.

COMMENT S-8: **3. Regarding other construction energy impacts**: Merely having the construction superintendants informing truck drivers to turn engines off when idling for more than 5 minutes is not adequate to reduce what the EIR has already identified as "significant impact" to less than significant. Such a measure (while laudable) will be difficult to identify, manage and control and will not result in any significant reduction of energy usage.

4. There will still be significant emissions from energy consumption, even if construction vehicles are "properly tuned", (not to mention noise, air pollution, etc.).

RESPONSE S-8: The construction superintendent and the City's Department of Public Works construction site inspectors are responsible for the enforcement of the state law idling restrictions.

COMMENT S-9: **5. EIR states project will utilize local and regional building materials**, but did not identify what kinds of materials, how much and where they would come from. It is not clear that all these materials can be obtained locally, or what kind of oversight would be involved.

RESPONSE S-9: As stated in the Draft EIR, 20 to 50 percent of the building materials will be manufactured within 500 miles of the project site and this shall be enforced by specifying these requirements on construction bid documents. It is not required to identify the specific type of building materials at this time.

COMMENT S-10: **6. The EIR does not appear to require that a signed construction contract is developed** with the contractors to ensure compliance, or that they even follow recommendations of the EIR. Other recommendations or regulations within the EIR may not be followed either if the EIR does not require a signed agreement from the City of Newark.

RESPONSE S-10: As required in the CEQA Guidelines Section 15097, in order to ensure that mitigation measures and project revisions identified in the EIR are implemented, the lead agency shall adopt a program from monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to migrated or avoid significant environmental effects. The lead agency, the City of Newark, is responsible for ensuring that

implementation of the mitigation measures occurs in accordance with the program. The mitigation monitoring and reporting program will be incorporated into all construction bid documents.

COMMENT S-11: **NOISE**
Note: The EIR separates noise impacts into 2 categories: **exterior** (not to exceed 60DBA Ldn according to Newark General Plan) and **interior** (not to exceed 45 dBA Ldn). It also mentions impacts from construction.

Exterior: Regarding the EIR's assessment of exterior noise impacts:

1. The EIR fails to adequately address noise impacts for exterior sources. EIR states that "future residential uses would be exposed to exterior noise levels greater than 60 dBA Ldn, which *exceeds* the noise and land use compatibility standards contains in the City of Newark General Plan". Main sources of noise identified were from railroad trains, Cherry/Stevenson vehicular traffic and some nearby industrial activity (Quickcrete, etc.).

2. Proposed mitigation measures are: 11 foot high sound barriers along Cherry Street and 8 foot high sound barriers for homes adjacent to UPRR. These measures will not adequately reduce these impacts to less than significant because they failed to take into consideration the increased noise levels from the increased vehicular traffic that "up to 1260" new houses would create along the streets. On page 17, App. D Noise: They measured traffic, before construction, and then estimated the 1260 houses and other sources of traffic would "only increase noise by 2dBA Ldn, which would not perceptible and not substantial". Seems highly unlikely, if 1260 houses has an average 11 car trips/day=13,860 trips/day added to existing traffic. Noise levels would vary and be much higher during commute time, which will occur when they drive to and from their houses on the [outer edge] of Newark.

RESPONSE S-11: Off-site project-generated traffic noise levels were calculated for a total of 55 intersections surrounding the project site. Project-generated vehicle trips from the 1,260 potential new homes were factored into the traffic noise increase calculations by comparing existing plus project conditions to existing traffic volumes. The incremental increase in traffic volumes as a result of the project would increase noise levels by 2 dBA L_{dn} or less. A traffic noise increase of less than 3 dBA L_{dn} is not considered a significant noise impact. The Draft EIR evaluation of project noise impacts adequately took into account the increase in vehicular traffic caused by the project and mitigation measures are identified to reduce the noise exposure to meet the City's noise/land use compatibility guidelines, which reduces the impact to a less than significant level.

COMMENT S-12: **3. Railroad crossing and power lines:** Also the 8 foot wall to mitigate RR noise was contingent upon the building of a RR overcross bridge at Stevenson Blvd which would negate the need for the train to blow its whistle. It is not clear that such an overcross could be built due to FAA regulations governing the flight paths to Palo Alto airport and restrictions regarding raising/moving power lines, etc.

RESPONSE S-12: Please refer to Response L-13.

COMMENT S-13: **4. These proposed mitigation measures are not required** but "shall be *considered*" by the City of Newark. If deemed unfeasible, the resulting noise impacts remain "very significant" and greatly exceed General Plan standards.

5. Noise impacts from construction are greatly underestimated. First, it is based on a 1 year building time and does NOT take into consideration the landfill (dump trucks and soil compaction machinery) that would be required to elevate building pads in Area 4. While these impacts are temporary (2 years or more), they are still very significant and greatly exceed minimum standards.

RESPONSE S-13: The anticipated route importing fill would utilize major highways (I-880) and major arterial roadways such as Mowry Avenue and Stevenson Boulevard. No noise impacts would occur as a result of this truck traffic because the truck traffic makes up a small percentage of the total traffic along area roadways. Please also refer to Responses I-5 and I-6.

COMMENT S-14: **6. EIR also did not assess noise impacts of pile drive for construction** which are estimated to be in excess of 100 DBA (and with new data regarding a 2 year build time period) is completely unacceptable.

RESPONSE S-14: The nearest noise-sensitive receptors from pile driving activities associated with the construction of the Stevenson Boulevard are located approximately 4,000 feet away. Pile driving activities can generate maximum noise levels ranging from 90 to 105 dBA L_{max} at 50 feet from the source. Pile driving noise at the nearest noise-sensitive receptors would range from approximately 52 to 67 dBA L_{max}. Hourly average noise levels along Cherry Street typically range from 63 dBA L_{eq} to 74 dBA L_{eq} during the day and hourly average noise levels along Stevenson Boulevard typically range from 66 dBA L_{eq} to 72 dBA L_{eq} during the day. Hourly average noise levels along Cherry Street and Stevenson Boulevard would continue to be the dominant noise source in the surrounding area. Pile driving for the construction of the Stevenson Boulevard Bridge would not result in a significant noise impact at the nearest noise-sensitive receptors.

COMMENT S-15: **Interior: Regarding the EIR's assessment of interior noise impacts:**

1. Proposed mitigation measures include sound insulation, forced-air mechanical ventilation for all new units with direct line of sight to RR noise sources, sound rated windows and doors, sound rated wall constructions, acoustical caulking, but then states these will be implemented on a "unit-by-unit basis". More information is needed as to how these determinations will be made.

RESPONSE S-15: Once final building plans and elevations are made final, a project-specific acoustical analysis of each unit, detailing which sound insulation treatments is required to ensure that interior noise level standard of 45 dBA L_{dn} or lower is met. This information will be provided to the City as part of the design review process, prior to the issuance of a building permit.

COMMENT S-16: **2. Another proposed mitigation is the building of noise barriers at private use areas along Cherry St., Stevenson Blvd. and the railroad tracks.** However, the EIR did not adequately measure the increased noise impacts from the increased vehicular traffic that

would result from the building of up to 1260 new homes, and therefore, the proposed noise barriers will probably not be adequate.

RESPONSE S-16: Please refer to Response S-11.

T. RESPONSE TO COMMENTS FROM WAYNE MILLER, JANUARY 18, 2010:

COMMENT T-1: SUMMARY
These comments primarily discuss hydrology, water and public safety, as they have a large impact on potential development of this project in Area 4

The DEIR concentrates primarily on outdated information, and it barely addresses and even avoids some of the recent updates and changes in policies and mandates that have been published from scientific reports, and from federal and state governments. Examples of recent reports are discussed in this critique, some taken from the California report of the 2009 California Climate Adaptation Strategy (CCAS), including AB32, AB375, Clean Water Act, Title 24 Part 6-Energy Standards, and the "2009 Governor's Panel of 23". If these policies and recommendations were followed, they would essentially dictate "no development in Area 4", under any mitigating circumstances, and to restore wetlands therein for flood protection and to protect and enhance wildlife habitat.

When were different sections of the EIR written and compiled, and to what extent was it modified or edited by the City of Newark? The organized sections reflect the "quality" of the DEIR, confusing and obfuscating, with redundant and biased discussions, likely written by different persons at different times and with limitations on communications between contributors—all of which becomes confusing to readers and generates difficulty in commenting on the issues.

Therefore the DEIR should be rewritten or even discarded, as new requirements and scientific evidence supersedes the outdated policies and directives of the "same old ways", due to the need to immediately implement suitable objectives of more recent climate change reports and California law.

RESPONSE T-1: Please refer to Master Response 1 regarding sea level rise.

In more specific response to this comment, the Draft Hydrology and Water Quality Report and Climate Change Analysis was completed in February 2009, and a "Climate Change Impact Addendum" was prepared in October 2009. Scientific opinions published in peer reviewed journals or otherwise, should not be confused with regulatory "policies" or "mandates". The October 2009 climate change addendum discusses federal, state and local regulations related to sea level rise at that time. (See Appendix G), and at the time of this response this discussion remains largely the same. Recently adopted amendments to the CEQA Guidelines which incorporate analyses and mitigation of Greenhouse Gas Emissions (GHG) and include a recommended approach for identifying project GHG emissions, determining significance, and mitigating the impacts through the CEQA process are discussed in the consolidated response to sea level rise comments. The remainder of the commenter's concerns and opinions are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT T-2: 1. REFERENCES ON CLIMATE CHANGE
Most of the DEIR references are old and are based on outdated information. In Section 3.1.3.1 Newark General Plan, the General Plan even dates back to 1992.

Global climate change, more appropriately described by scientists as "climate disruption", is discussed in the DEIR, which tends to concentrate on the outdated IPCC reports, primarily 2007 projections and earlier. However, an estimated "worst case" scenario that was chosen in the DEIR is discussed: Appendix G, Hydrology, page 4, cites projection of sea level rise of 4.6 feet for 2100. These projections, far into the future, are only calculated with empirical and theoretical formulas, where there is much uncertainty, adding to the unknown effects of storm surge, flooding, possible El Nino, liquefaction from earthquakes, and settling of landfills to lower levels from soil saturation. These and other forces impacting the project are further discussed in this critique.

DEIR Appendix G, Hydrology, page 11: The EIR states…"projected sea level rise would overwhelm the project by 2089 for the 'high' sea level rise scenario". (That is 4.6 feet, but is becoming a low or intermediate estimate in newer reports, as projections for the rise are also accelerating.) The DEIR concludes: "Given the uncertainty in these sea level projection scenarios,…an additional foot of fill needed for theoretical protecting against rising one-percent storm surge for an additional ten years or so…when the **weight of additional fill accelerates settlement**. An adaptive strategy…include an **earthen levee or structural floodwall** along the perimeter of the fill is more appropriate". (But levees are not part of this development, unless they are created by another agency bearing the responsibility).

BCDC, who apparently decides on shoreline developments, has produced outdated and conservative estimates for sea level rise and the overall impact of local and global climate disruption.

There is excessive risk for the near future for Area 4 residents, during and after the calculated life of the project (50 years by BCDC, or longer life by the project projections in the DEIR?). However, the DEIR does not adequately take into account numerous other considerations, whether natural or man-made.

RESPONSE T-2: Please refer to Master Response 1 for a discussion of how CEQA guides risk and uncertainty, as it relates to the Draft EIR analysis of global climate change and sea level rise. The remainder of the comment is the commenter's opinion and does not raise questions about the adequacy of the Draft EIR. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

COMMENT T-3: EXAMPLES OF MORE RECENT SCIENTIFIC QUOTES:
"2007 IPCC is **outdated** by current predictions on sea level rise and climate change." "Evidence accumulated since the 2007 IPCC report suggests that the world is getting hotter than predicted, and that the pace of change is faster than expected". Reports from 2009 UN Environmental Group, with 100's of scientific papers, i.e. "current CO2 and temperatures would drive sea level 25 to 40 meters higher than present…recent climate news **(2009)** all seems ominous…Greenland and Antarctic melting is **accelerating** much faster than previously thought…projections thought to occur in the future are already happening". Science, Sept. 2009. "The pace and scale of climate change may now be outstripping even the most sobering predictions of the last report of the Intergovernmental Panel of Climate Change (IPCC)—2007". (Quantitative projections are presented in many scientific papers.)

These quotes are among the findings of a report released by the United Nations Environment Programme (UNEP) entitled Climate Change Science Compendium **2009.** The Compendium reviews some 400 major scientific contributions to our understanding of Earth Systems and climate change that have been released through peer-reviewed literature, or from research institutions, over the last three years.

Important conclusive statements from scientific reports are as follows:
In analysis of the very latest peer-reviewed science indicates that many predictions at the upper end of the IPCC's **forecasts are becoming ever more likely.**

Meanwhile, the newly emerging science points to some events thought likely to occur in longer-term time horizons, as **already happening** or set to happen far sooner than had previously been thought.

Losses from glaciers, ice-sheets and the Polar Regions appear to be happening faster than anticipated, with the Greenland ice sheet, for example, recently seeing melting some **60 percent higher** than the previous record of 1998.

The loss of ice from West Antarctica is estimated to have increased by 60 per cent in the decade to 2006, and by 140 percent from the Antarctic Peninsula in the same period.

Because the Pine Island Glacier contains enough ice to almost double the [Intergovernmental Panel on Climate Change's] best estimate of 21st century sea level rise, the manner in which the glacier will respond to the accelerated thinning is a matter of great concern, he said in a statement.

Losses of tropical and temperate mountain glaciers affects perhaps 20 percent to 25 percent of the human population in terms of drinking water, irrigation and hydro-power.

Shifts in the hydrological cycle is resulting in the disappearance of regional climates with related losses of ecosystems.

Growth of the global economy in the early 2000s and an increase in its carbon intensity (emissions per unit of growth), combined with a decrease in the capacity of ecosystems on land and the oceans to act as carbon “sinks”, have led to a rapid increase in the concentrations of carbon dioxide in the atmosphere. This has contributed to **sooner-than-expected impacts including faster sea-level rise, ocean acidification, melting Arctic sea ice, warming of polar land masses, freshening of ocean currents and shifts in the circulation patterns of the oceans and atmosphere.**

Recent estimates of the combined impact of melting land-ice and thermal expansion of the oceans suggest a plausible average sea level rise of between 0.8 and 2.0 meters above the 1990 level by 2100. This compares with a projected rise of between 18 and 59 centimetres in the last (outdated) IPCC report, which did **not** include an estimate of large-scale changes in ice-melt rates, due to lack of consensus. (Even more current estimates are projecting greater catastrophic changes, due to unforeseen forces in oceanographic environments that could easily accelerate the process, as many of these forces tend to exponentially influence and enhance one-another. Some of those are discussed herein).

There is also growing concern among some scientists that thresholds or tipping points may now be reached in a matter of years or a few decades. The report also underlines concern by scientists that

the planet is now committed to some damaging and irreversible impacts as a result of the greenhouse gases already in the atmosphere.

Recent science suggests that it may still be possible to avoid the most catastrophic impacts of climate change. However, this will only happen if there is immediate, cohesive and decisive action to both cut emissions and assist vulnerable countries adapt.

The United Nations Secretary-General said, "This Climate Change Science Compendium is a **wake-up call**. The time for hesitation is over. We need the world to realize, once and for all, that the time to act is now and we must work together to address this monumental challenge. This is the moral challenge of our generation." "…scientific knowledge on climate change and forecasting of the likely impacts **has been advancing rapidly since the landmark 2007 IPCC report**," he added.

The research findings and observations in the Compendium are divided into five categories: Earth Systems, Ice, Oceans, Ecosystems and Management.

The Environmental Defense Fund (EDF) report of 1-12-2010:
In the last year alone, new evidence has emerged that the climate crisis is nearer—and scarier—than we had believed.

The stakes are high. We must start cutting our carbon emissions now, or we may soon lose the ability to prevent runaway global warming.

Here are **10 startling facts** we learned in **2009** that underscore the climate threat:

1. A study published in the journal Science reports that the current level of carbon dioxide (CO2) in the atmosphere – about 390 parts per million – is higher today than at any time in measurable history -- at least the last 2.1 million years. Previous peaks of CO2 were never more than 300 ppm over the past 800,000 years, and the concentration is rising by around 2 ppm each year.

2. The World Meterological Organization reported that 2000-2009 was the hottest decade on record with 8 of the hottest 10 years having occurred since 2000.

3. 2009 will end up as one of the 5 hottest years since 1850 and the U.K.'s Met Office predicts that, with a moderate El Nino, 2010 will likely break the record.

4. The National Snow and Ice Data Center reported that while a bit more summer Arctic sea ice appeared in 2009 than the record breaking lows of the last two years, it was still well below normal levels. Given that the Arctic ice cover remains perilously thin, it is vulnerable to further melting, posing an ever increasing threat to Arctic wildlife including polar bears.

5. The Arctic summer could be ice-free by mid-century, not at the end of the century as previously expected, according to a study by the National Oceanic and Atmospheric Administration.

6. Recent observations published in the highly respected Nature Geosciences indicate that the **East Antarctica** ice sheet has been shrinking. This surprised researchers, who expected that only the West Antarctic ice sheet would shrink in the near future because the East Antarctic ice sheet is colder and more stable.

7. The U.S. Global Change Research Program completed an assessment of what is known about climate change impacts in the US and reported that, "Climate changes are already observed in the United States and… are projected to grow." These changes include "increases in heavy downpours, rising temperature and sea level, rapidly retreating glaciers, thawing permafrost, lengthening ice-free seasons in the ocean and on lakes and rivers, earlier snowmelt, and alterations in river flows."

8. According to a report by the US Geological Survey, slight changes in the climate may trigger abrupt threats to ecosystems that are not easily reversible or adaptable, such as insect outbreaks, wildfire, and forest dieback. "More vulnerable ecosystems, such as those that already face stressors other than climate change, will almost certainly reach their threshold for abrupt change sooner." An example of such an abrupt threat is the outbreak of spruce bark beetles throughout the western U.S. caused by increased winter temperatures that allow more beetles to survive.

9. The EPA, USGS and NOAA issued a joint report warning that most mid-Atlantic coastal wetlands from New York to North Carolina will be lost with a sea level rise of 1 meter or more.

10. If we do not reduce greenhouse gas emissions by the end of the century, some of the main fruit and nut tree crops currently grown in California may no longer be economically viable, as there will be a lack of the winter chilling they require. And, according to a study published in the Proceedings of the National Academy of Sciences, U.S. production of corn, soybeans and cotton could decrease as much as 82%.

Sources for EDF climate facts:

- http://www.sciencedaily.com/releases/2009/06/090618143950.htm
- http://www.usgs.gov/newsroom/article.asp?ID=2110&from=rss_home
- http://www.epa.gov/climatechange/effects/coastal/sap4-1.html
- http://www.wmo.int/pages/mediacentre/press_releases/pr_869_en.html
- http://www.metoffice.gov.uk/corporate/pressoffice/2009/pr20091210b.html
- http://nsidc.org/news/press/20091005_minimumpr.html
- http://www.noaanews.noaa.gov/stories2009/20090402_seaice.html
- http://sciencestage.com/resources/climatic-changes-lead-declining-winter-chill-fruit-and-nut-trees-california-during-1950-2099
- http://news.ncsu.edu/releases/crop-yields-could-wilt-heat/
- http://www.globalchange.gov/publications/reports/scientific-assessments/us-impacts
- http://earthobservatory.nasa.gov/Newsroom/view.php?id=41455

Other scientific reports projecting more catastrophic sea level rise and climate change:

a. Land based ice. See Scientific American. Unquiet Ice, Feb. '08, article on Antarctic and Greenland. Antarctic ice will have a much more profound effect on rising sea level, due to **previously ignored** impact of warming climate. Ice shelves break up, speeding the **warming of subglacial water within Antarctic land masses**, thus increasing the flow of vast streams of ice to the sea. Sea level rises as the ice sheet melts and flows into a warmer ocean. **Loss of [land-based ice] of Antarctic and Greenland could add 200 ft of global sea level rise**.

b. Collapse. The National Geographic (www.climate.ngm.com) and the special issue of June 2008, "The Science Is In", states "…ice sheet [collapse] in both Greenland and Antarctica would raise sea level **20 feet, inundating many coastlines**".

Note: The **20-foot rise represents "collapse" and the 200-foot level represent "loss of land-based ice**", or a minor change verses a major melt-down of sub-glacial ice, which from international studies looks ominous. (Area 4, and beyond, could not be protected by creating excessive landfill and levees.)

RESPONSE T-3: The comments do not raise any questions regarding the Draft EIR analysis. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

COMMENT T-4: 2. CLIMATE CHANGE ADAPTATION FOR AREA 4
The DEIR concludes that landfilling and other short-term impacts are deemed to be "insignificant". The project proposes unsuitable, ambiguous and limited mitigations in order to avoid implementing current State mandates and climate change policies.

Recent California report: 2009 California Climate Adaptation Strategy (CCAS), including AB32, AB375, Governor's panel of 23, etc. Recommends moving (or eliminating) new developments from high risk areas vulnerable to flooding and sea level rise.

CCAS quote: "State agencies should generally not plan, develop, or build any new significant structure in a place where the structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure". "Recommends to protect wetlands and habitats as well…manage marshlands for flood protection…State recommends acquisition and preservation of vulnerable areas containing critical habitat".

Some specific quotes and recommendations of the California Climate Adaptation Strategy:

CCAS Report, Page 73: ***Strategy 1: Establish State Policy to Avoid Future Hazards and Protect Critical Habitat.***
Near -Term Actions:

a. Hazard Avoidance Policy – State agencies should consider project alternatives that avoid significant new development in areas that cannot be adequately protected (planning, permitting, development, and building) from flooding or erosion due to climate change.

The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is to carefully consider new development within areas vulnerable to inundation and erosion, and to consider prohibiting development of undeveloped, vulnerable shoreline areas containing critical habitat or opportunities for habitat creation.

State agencies should generally not plan, develop, or build any **new significant** structure in a place where that structure will require significant protection from sea-level rise, storm surges, or coastal erosion during the expected life of the structure. However, vulnerable shoreline areas containing **existing** development or proposed for new development that has or will have regionally significant economic, cultural, or social value may **have to be protected**, and **in-fill** development in these areas should be closely scrutinized. State agencies should incorporate this policy into their decisions, and other levels of government are also encouraged to do so. Some state agencies already base decisions on hazard avoidance, for example **Coastal Act** provisions require that new development in the coastal zone be designed to minimize risks from current and future hazards, which would include

risks from expected **sea-level rise**, the Act restricts new development in hazardous areas, especially if it would require the construction of a **protective device**.

> **Note:** The Newark project in Area 4 would incorporate **excessive landfill and levee protection as "protective devices"**, exacerbated by construction of high-end housing and the associated golf course, NONE of which would likely bring significant **economic value, only increased costs** from State, Federal and the city of Newark.

b. Innovative Designs – If agencies do plan, permit, develop or build any new structures in hazard zones, agencies should employ or encourage innovative engineering and design solutions so that the structures are resilient to potential flood or erosion events or can be **easily relocated or removed to allow for progressive adaptation to sea level rise, flooding, and erosion**.

c. Habitat Protection – The state should identify priority conservation areas and recommend lands that should be considered for **acquisition and preservation**. The **state should consider prohibiting projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones. (Area 4 fits this description).**

The strategy should likewise encourage projects that **protect critical habitats, fish, wildlife and other aquatic organisms and connections between coastal habitats**. The state should pursue activities that can **increase natural resiliency, such as restoring tidal wetlands, living shoreline, and related habitats; managing sediment for marsh accretion and natural flood protection**; and maintaining upland buffer areas around tidal wetlands. For these priory conservation areas, impacts from nearby development should be minimized, such as **secondary impacts from impaired water quality or hard protection devices**. **(Area 4 fits this description, again).**

Long -Term Actions:

d. Coordinate Policy Implementation – State agencies should use outreach and incentive programs to promote hazard avoidance policies and sound management decisions for coastal habitat protection and development to all levels of government.

CCAS Report, Page 77: v. New Development Techniques – Building codes can be amended to require that coastal development incorporate features that are resilient to sea-level rise (e.g., require that development begin on the second floor).

> vi. Relocation Incentives – Federal, state and local funding or tax incentives to relocate out of hazard areas.
> vii. Rolling Easements – Policies and funding to facilitate easements to a) **relocate developments further inland**, b) remove development as hazards encroach into developed areas, or c) **facilitate landward movement of coastal ecosystems subject to dislocation by sea-level rise and other climate change impacts**."

In the DEIR, Appendix G, Hydrology, page 11: The EIR acknowledges the CCAS (2009 California Climate Adaptation Strategy), **<u>but they do not cite or identify the conditions described above</u>**!

The conditions in the above cited CCAS Report should more than qualify area 4 as one that should not be developed, and should be returned to its protective wetland habitat. This development and its severe vulnerability should be reported and properly addressed to these agencies for jurisdiction.

Transportation funding--to this sprawling area--is one condition that is limited in these developments when they are not approved by the agency.

Federal and State Actions Proposed for States with Similar Coastal Issues: cited in a Chesapeake Report at http://www.nwf.org/sealevelrise/pdfs/NWFChesapeakeReportFINAL.pdf:

Federal Actions:

a. Congress should reauthorize the Coastal Zone Management Act:

To require relevant state agencies to consider sea-level rise in coastal management plans to qualify for federal funding; **prohibit federal subsidization** of infrastructure development and **coastal armoring** in ecologically sensitive areas; and encourage public and private land acquisition of coastal habitats and upland buffers.

b. The Federal Emergency Management Agency:

Should remap potential hazard areas in coastal zones to reflect anticipated sea level rise, taking into account potential storm surge impacts, and establish policies to **reduce or eliminate federal flood insurance for new construction and rebuilding in high-risk areas.**

c. Congress should expand the Coastal Barrier Resources system:

To **discourage new development** in areas needed to buffer natural resources and existing development from **sea-level rise**. Such areas should be **denied federal subsidies such as federal flood insurance, disaster relief, and loans for sewer, water, and highway construction**. **(Potential buyers and financial institutions would also need full disclosure of risks, prior to purchase and financing of these high-risk areas).**

State and Local Actions (recommended for Maryland and Virginia, where California and other states need to follow suit):

a. Local governments:

"….requiring local governments to consider sea-level rise when amending their plans for coastal land use, open space, wetland protection policies, and other relevant activities".

b. State governments:

"…should develop state tidal wetlands conservation and restoration plans that promote designation of wetland migration corridors and remove and discourage use of hard shoreline erosion structures in coastal marsh environments…..accommodate impacts of sea-level rise.

c. State Regulations:

States should also expand enforcement of current regulations and prevent any attempts to weaken these provisions in relevant legislation….establish policies such as rolling easements or mandatory setbacks….to discourage new development in vulnerable coastal areas
(**Science News).**

RESPONSE T-4: It should be noted that the Draft EIR (p. 93) acknowledges that the project's temporary daily emissions associated with importing fill would result in a significant and unavoidable regional air quality and energy impact. Please also refer to Responses N-11 and N-13 to N-15. Please also refer to Master Response 1 and Response J-11. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

COMMENT T-5: **3. PUMPING AND GROUND WATER CONTAMINATION**

a. Risks to Area 4

In the DEIR, development establishes housing in a 100-year flood hazard area. Requires infill to excessive heights, creating islands to avoid levee maintenance, with potential flood hazards. Claims insignificant effect on flow of drainage around the development in Area 4, but requires excessive pumping (pump failure during flooding and or storm surge, and sea level rise?). Claims the development has a finite life and meets BCDC 50-year life protections. Claims it has 100-year protection due to raised landfill, but indicates development likely needs levees later on—from the County, State or Federal sources.

DEIR, Appendix G, Hydrology, page 7-8: Claims levees are an impediment to storm water runoff, Area 4 is confined and enclosed, therefore Area 4 needs to be pumped. "Interior drainage is collected in ditches that run along the inboard side of the privately owned levees, terminating at an existing pump that lifts water **10 to 12 feet** over the top of the levee were it discharges into Mowry Slough (Fig. 4)". **What about power/pump failure, even generator backup failure due to inundation from excessive demand from flooding, sea level rise and sudden inward surge of Bay water, all impacted catastrophically by earthquakes and liquefaction?** Pumps and gas generators do fail frequently and need maintenance. (The existing private levees are not maintained nor FEMA certified).

RESPONSE T-5: Please note that prior to the construction of residential structures, fill would be placed and flood hazard mapping would be revised through the Letter of Map Revision process, so housing would not be placed in a 100-year flood hazard area. Please refer to Master Response 1 regarding the Draft EIR analysis of global climate change and sea level rise.

Power or pump failure from any cause would not change the base flood elevation, which in the area nominally "protected" by the pump, is the regulatory tidal elevation from San Francisco Bay. The possible failure of existing levees or the performance of the pumping system would have no impact on the base flood elevation, which is already based on the assumption of complete levee failure (or more to the point, FEMA assumes that those levees do not exist) without any pumping. The Specific Plan Area is not subject to seiche or tsunami hazards (Draft EIR p. 199). The Draft EIR acknowledges that none of the existing private or public levees between the site and San Francisco Bay are FEMA certified. ACFC&WCD maintains its levees. Private levee owners generally have an interest in maintaining their levees, particularly for commercial salt production.

COMMENT T-6: The DEIR states that most drainage would occur around outer areas of the raised landfill development, but there is increased potential erosion around the raised island due to

the impediments of the island itself, including the golf course. They claim the development would be insignificant in affecting drainage due to drainage ditches and required pumping. But this does not adequately account for the unknowns including catastrophes, as described above. The DEIR claims that at some point levees will be required.

RESPONSE T-6: The Draft EIR does not state that there is increased erosion around the "raised island" (note that the conceptual drainage plan does not indicate an island, but rather a peninsula of sorts) due to the impediments of the island itself**.**

COMMENT T-7: In the DEIR, Appendix G, Hydrology, page 20: Hydrology and pump discharge required is calculated with empirical equations and theoretical assumptions that are simple projections. There is insufficient evidence that this calculation will comply with the actual needs of this unknown area, **i.e. complex land structure historically pumped, impermeable soils, flooding, seismically unstable soils, intertwining wetlands, complex shallow drainage ditches to surround a man-made island fill, shallow underground water with saline permeation, deep saline aquifers, adjacent to rising sea level with increasing ocean acidity, and abuts to unprotected (FEMA uncertified) private levees adjacent to Cargill salt ponds. There is the unknown Cargill salt pond history and levee manipulation for salt making, for now and in the future.**

RESPONSE T-7: The referenced calculations are simple volumetric calculations that will necessarily be refined as actual developments are proposed within the Specific Plan area.

COMMENT T-8: **b. Evidence within the DEIR:**
The DEIR for Area 4 consistently does not adequately account for sea level rise and high tides or storm surges that could cause back-flow, as well as salt intrusion and infiltration into Area 4 surfaces and into ground water (no levee maintenance, only vulnerable fill). However it admits that sea salt is already in the shallow aquifers of Newark (hence desalinization is used). They do not address the adjacent Cargill salt ponds (near old levees) that are draining back into the groundwater, exacerbated by sea level rise and ocean acidification. The DEIR contains illustrations (page 13, Appendix G) showing the salt ponds and sampling wells that penetrate deep into different groundwaters, in order to sample and analyze the ground water, thus proving infiltration and high salinity.

"Saltwater intrusion into aquifers is a man-made problem in many places in California, resulting from over-pumping (the DEIR projects the need for Area 4 maintenance), but it will be accelerated and made worse by sea level rise. Area 4 has been pumped to keep dry since the 80's". Earthen levees, not maintained, were also built to prevent Bay water intrusion, but in spite of the corrective actions, much of the land is saturated and historically has existed as wetlands. Rising sea level will requiring **excessive pumping** as corrosive salt intrudes into groundwater and translocates up into landfill.

c. Supporting References on Saltwater Intrusion into Groundwater and Aquifers

"Saltwater intrusion into aquifers is a man-made problem in many places in California, resulting from over-pumping, but it will be accelerated and made worse by sea level rise. It occurs where saline water moves inland into a freshwater aquifer, contaminating it with salts and making it unsuitable for water supply or irrigation. Pumping coastal aquifers in excess of natural recharge rates draws down the surface of the aquifer. When the ocean has a higher "potentiometric surface," or water elevation, it causes the saltwater wedge to intrude further inland (Figure 35). Seawater

intrusion is already problematic in California's coastal aquifers throughout Central and Southern California. (Also a problem cited in the Newark DEIR).

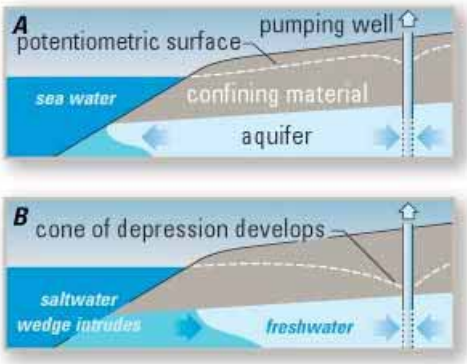


Figure 35. Saltwater intrusion **(**Edwards and Evans 2002)"

Pumping of wells, aquifer collapse and salt intrusion with dwindling California water supplies: http://www.csmonitor.com/Environment/2010/0111/Will-drilling-more-wells-in-California-help-or-hurt:

"Farmers, conservationists and engineers are criticizing the Interior Department's plan to spend taxpayer money on digging more wells, saying the approach risks marring the environment. **Canals buckle, aquifers collapse and drinking water turns saltier due to so much pumping, and studies show that the state's water supplies are dwindling.** Despite recent storms, the pain is not expected to let up anytime soon. Last month, the Department of Water Resources announced it would release a record-low amount of water to farmers and urban dwellers next year, a response to dry weather and environmental protections for a native fish in the Sacramento-San Joaquin Delta."

d. Overview on Effects of Drainage and Bay Water on Area 4

In summary, Bay tidal influence coupled with intrusion of water from the adjacent salt ponds is inducing hydrologic pressure, both above and below ground in those inland areas, thus causing contamination from permeation of surface ground water and lower aquifers. The aqueous upward pressure and translocation by absorption is apparently forcing water to flow into near soil surfaces in Area 4, not adequately addressed in the DEIR. At the same time, forward gravitational pressure from drainage of uplands into lower soils creates sheet-flow within the contaminated region, in spite of drainage ditches surrounding the confined area.

Extremes from storm drainage, Bay storm surge and sea level rise, alone would induce pressure from all sides, thereby imposing hydrologic constraints within the confined (trapped) Area 4 development, as well as on a proposed golf course. In addition, the salt-intolerant vegetative species planned for the "tree city" in Area 4 would be inundated with salt burn and stunting, which would include plantings and any grasses within the golf course. Even worse, internal confluence of flood waters would prove to cause irreparable damage to wetlands and aquatic habitat.

The hazardous conditions in Area 4 would be enhanced by landward pressure of corrosive salt water from adjacent Bay-salt works, as sea level progressively rises--not discussed in the DEIR.

The DEIR claims Area 4 is land-locked and therefore the only alternative measure of "potentially adequate" safety from flood hazard is excessive future pumping requirements, but again it excludes

the impact of rising sea level. The DEIR did not adequately address those issues, except to place the onus of hazard protection for this development on outside agencies—an unknown quantity, when funding is questionable and while those very agencies are professing "no development" in those vulnerable areas, i.e. see 2009 California Climate Change Strategy Report.

Best alternative: If pumping were stopped much or all of the land would be returned to wetlands, its native condition, and provide improved flood protection for neighboring long-time residents. Restoration of aquatic habitat, including desirable salt-tolerant foliage, would conveniently become a valuable asset of this action—which would comply with current state policies and recommendations. Calculations have demonstrated that development of Area 3 would provide more than enough financial benefits, even without the proposed development in Area 4.

RESPONSE T-7: As stated previously, the Draft EIR does not claim that the only alternative measure of safety from flood hazards is pumping. Pumping is necessary to maintained desired levels of inundation within the new wetlands. Protection from flood hazards is provided by the placement of compacted fill. Please also see Master Response 1.

COMMENT T-8: 3. LANDFILL AND LEVEE VULNERABILITY

Intrusion and degradation of landfills are items not adequately addressed, if at all, in the DEIR, nor the selection of suitable stable soils for landfill.

In the DEIR, Appendix G, Hydrology, page 7: Drainage patterns show worst case levee failure near interior drainage pump station, in basin C.

Appendix G, Hydrology, page. 11. DEIR states: They conclude: "Given the uncertainty in these sea level projection scenarios,…an additional foot of fill needed for theoretical protecting against rising one-percent storm surge for an additional ten years or so…when the **weight of additional fill accelerates settlement**. An adaptive strategy…include an **earthen levee or structural floodwall** along the perimeter of the fill is more appropriate".

"Researchers have become increasingly concerned about ocean acidification linked with the absorption of carbon dioxide in seawater and the impact on shellfish and coral reefs". "Water that can corrode a shell-making substance called aragonite is already welling up along the California coast, decades earlier than existing models predict".

Increasing ocean acidification, along with increasing temperature and salinity, can degrade organic and inorganic alkaline earth metal complexes of calcium and magnesium, which bind the structure of the shells and bones together. Acidification also affects the toxicity of a variety of substances and the biological availability of important nutrients and other compounds.

Shells are also part of many sediments and soil strata near oceans. Levees and landfills, even their protective liners, including concrete (calcium and magnesium complex), **will** be compromised and can be degraded with changing ocean chemistry. Landfill and levee soil types, especially alkaline clays, with or without shell deposits, can be vulnerable as salt and ocean acidity becomes more corrosive.

Newark Planning Commission and the City Council have indicated that levees are not their problem and that it is regional. However, by building close to the Bay and in a highly vulnerable area, they are jeopardizing other agencies (and taxpayers), by transferring to them the responsibility and expense of protection and emergency response. The proper type of substrate that may be required may not even be available when levees are in need of construction or repair.

As described in the DEIR, dependency on other government agencies for protection with levees in Area 4 is deemed necessary, but likely sooner than expected. The onus of protection is placed on the government for a development in an isolated 'island-type' area. The project will be produced with much risk and uncertainty, at a time when numerous recommendations and policies, both State and Federal, are to locate developments away from vulnerable areas that are close to bay and shorelines.

RESPONSE T-8: The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

COMMENT T-9: 5. WETLANDS, FLOODS AND TRANSFER OF CONTAMINANTS
The DEIR, Appendix,G, Hydrology, page 6-7 quotes: "…implementation of the Specific Plan may result in filling (impacting) wetlands within the central residential/golf course plan..in areas B and C. **The quantity of filled wetlands could range from 0 to 93 acres."** This is an uncertain quantity, but the extent of disruption is evident.

Therefore the DEIR proposes potential loss of wetlands. The impact on hydrology and wildlife is ignored or claimed insignificant, in spite of numerous historical and current wildlife reports about Area 4. Reports demonstrate that Area 4 serves as an important shorebird habitat and is even in a waterfowl fly-zone area.

What about the Army Core of Engineer's wetland fill regulations, the Department of Water Resources, and the Clean Water Act-Section 404 regarding wetland loss, hydrologic disruption and destruction of habitat? The project therefore would produce irreversible losses to this environment. Also this project is an infraction of numerous new policies and proposals from the State, as described previously.

Quote: "Many of these 'disappearing climates' coincide with biodiversity hotspots, and with the added problem of fragmented habitats and physical obstructions to migration, it is feared many species will struggle to adapt to the new conditions." **Fragmenting the habitat and obstructing migration in Area 4 is another example of disruption, but unlike climate disruption, in this case it is direct and wanton human interference and physical obstruction**. **Mitigation is unacceptable and cannot undue the irreversible harm to waterfowl, and to migrating and foraging wildlife.**

The DEIR, Appendix G, Hydrology, page 18: States that there is a hydrology problem with runoff from sediment and urban pollutants. The solution is a storm wastewater pollution prevention plan and management plan, from the City, but is not adequately defined and has many uncertainties for this type of complex hydrology. They claim typical methods won't work due to presence of soils with low permeability and high water table. No practical specifics on control were provided. Any methods used will not prevent pollutants from entering into lower wetlands, since the proposed landfill to develop residences becomes a raised island that can only drain, through gravity, into lower areas. Any transfer of water to drainage ditches will be pumped out over the levees, where stable

contaminants can become ocean contaminants. Leaching of contaminants into the shallow groundwater will also occur and would become an environmental hazard.

RESPONSE T-9: As stated in the Draft EIR Section 3.8.3.11 (Draft EIR p. 204), impacts to water quality would occur from stormwater runoff due to sediment and pollutants. This impact is reduced to less than a significant impact by the proposed mitigation measures.

COMMENT T-10: FEMA:
a. The EIR states: None of the levees are certified by FEMA, Appendix. G, page 10. This indicates a public safety hazard. Pumping is the major protection proposed if a levee is breached or overtopped. However, if encroaching Bay water is the force that overtops the levees, little or no protection would occur, because the pump would work against itself as water eventually flows back to be re-circulated into the same pump in Area 4. Even salt ponds could potentially backflow into Area 4 if overtopping is experienced, thus causing significant contamination.

b. Sewage pumping and outflows would compound the contamination and flooding problems if backflow, levee overtopping and breaching, and other bay and oceanic catastrophes plagued Area 4.

c. Quote: "As sea level rises, flood maps should be redrawn and facilities retrofitted with additional required flood mitigation measures. The fact that FEMA has yet to complete the preparation of flood insurance risk studies for a substantial fraction of communities in the United States suggests that higher priority may have to be accorded to this function in the future".

RESPONSE T-10: Hazards posed by the non-certification of outboard levees are fully disclosed in the Draft EIR with appropriate mitigation. Since the levees are not certified, the FEMA maps that form the basis of the flooding impacts evaluation do not even acknowledge that levees are present. It is true that if enough levees break, water from the salt ponds could migrate into Sub-Area E. This does not, however, represent a change from existing conditions or an impact of substantially greater severity than already identified in the Draft EIR.

The nearest sewage outfall is at the Alvarado Wastewater Treatment plant located in Union City.

Quote "c" is not from the Draft EIR

COMMENT T-11: 6. CUMULATIVE IMPACTS (HYDROLOGY)
In the DEIR, Appendix G, Hydrology, page 25: Cumulative impacts of hydrology of project: They are "considered not significant, when added to impacts of related past, present and probably future projects".

Arguments in defending hydrology as "not significant" in the DEIR utilize the same deceptive methods as in many other determinations in the same DEIR. For example, in the DEIR, adding the hydrologic impact of Area 4 to the large number of other outside projects was assumed to be "not significant"—but only if you selectively address quantitative terms (a small number plus a large one yields a slightly larger number with little quantitative change). But those number comparisons are a diversion from the significant issue of judgment.

More appropriately, **the project has a large and significant impact on this specific area in profound ways**, as referenced throughout this critique. In fact, if all projects were examined with the type of "obfuscating logic" in this DEIR, there would be little or no improvements or implementation of recent and more suitable recommendations and policies for land use. We collectively would be overwhelmed with the same unacceptable (and cumulative) projects over and over, everywhere else.

RESPONSE T-11: Section 4.8 of the Draft EIR adequately describes the cumulative hydrology and water impacts. Future projects will not create a cumulative flooding impact since tidal influences rule and as long as any project complies with City, State and federal regulations regarding water quality within existing land use designations there should be no cumulative water quality impact on Mowry Slough or San Francisco Bay.

Other related projects would implement similar stormwater quality and drainage mitigation that would reduce potential impacts to downstream waterways to a less than significant level. Therefore, the proposed project, in conjunction with other planned and approved projects, would not have a cumulatively considerable impact on hydrology and water quality.

COMMENT T-12: 7. ALTERNATIVES TO THE PROPOSED PROJECT (DEIR, SECTION 5, Page 309)

In Hydrology: page 313 the DEIR states: "…Without developing Area 4, this alternative would not have sufficient acreage to include the golf course". On page 317 they even state they need to meet the General Plan goals and project objectives for providing a **golf course**, where the only acreage for it is in Area 4. This indicates that the only place for the desired golf course that is large enough is Area 4, in spite of its many problems and vulnerability. Therefore it stands to reason that they must have high-end houses to pay for it—apparently why they state that **reduced housing does not include Area 4**, page 318.

So this entire project revolves around the number one desire—the **golf course** (**clearly, not a requirement of the outcome of the 1999 Measure C**, which is as severely outdated as the DEIR's references to sea level rise and climate change). Evidence indicates the golf course would not be feasible anyway, due to economics as well as environmental concerns.

On page 318, the DEIR **wisely** describes that the **environmentally superior alternative is no development in Area 4—which would avoid impacts to wetland, marsh, and aquatic habitat.** Their circular arguments state that no development means no project objectives—which to them becomes a "significant" negative impact, but the negative impact includes only their desired definition of "their project", but excludes the environment it destroys. They need to simply focus on the best alternative that benefits the environment and complies with new State and Federal recommendations, climate change policies, Bills and many other mandates.

RESPONSE T-12: The commenter is directed to Section 5.7 of the Draft EIR which provides the concluding evaluation of the degree to which the project Alternatives meet Project Objectives. The inclusion or exclusion of a golf course in any of the project alternatives is not referenced. Instead, the Draft EIR concludes that the *No Development in Area 4 and Higher Density in Area 3* Alternative, as

well as the *Reduced Housing* Alternative fail to meet key project Objectives because they do not provide for *any* development in Area 4, or for the development of housing in Area 4. (Draft EIR p. 314.)

CEQA requires that an EIR compare the effects of a "reasonable range of alternatives" to the effects of the project. The alternatives selected for comparison should be those that would attain most of the basic objectives of the project and avoid or substantially lessen one or more significant effects of the project. (CEQA Guidelines Section 15126.6). CEQA also requires that the alternative be feasible, taking into account site suitability, availability of infrastructure, property control (ownership), and consistency with applicable plans and regulatory limitations. The range of alternatives to be compared is governed by a "rule of reason" which requires the EIR to set forth only those alternatives necessary to permit an informed and reasoned choice by the decision-making body and informed public participation. (CEQA Guidelines Section 15126.6(f).)

As discussed in the Draft EIR, the *No Development in Area 4 and Higher Density in Area 3* Alternative was considered because it would potentially reduce environmental impacts associated with development in Area 4, while continuing to provide the same number of housing units called for the project Objectives. In this way, the Alternative met the basic requirements of CEQA: it met most of the basic objectives of the project and it had the potential to avoid or substantially lessen one or more significant effects of the project. It was also proposed at a suitable site, with available infrastructure, property control, and consistency with applicable plans and regulatory limitations. The *No Development in Area 4 and Higher Density in Area 3* Alternative is one of a reasonable range of alternatives included in the Draft EIR.

COMMENT T-13: 8. SIGNIFICANT UNAVOIDABLE ENVIRONMENTAL IMPACTS WILL OCCUR (DEIR, SECTION 5, Page 323)

States that if the project is implemented, "one of the outcomes is that there will be **significant cumulative global climate change impact"**. This statement would also negate the development of the project in Area 4, due to its opposition to new climate change policies.
Unlike climate disruption, in this case development in Area 4 is direct and wanton human interference and physical disruption. **Mitigation is unacceptable and cannot undue the irreversible harm to the environment, waterfowl, and to migrating and foraging wildlife, irrespective of climate disruption.**

RESPONSE T-13: The comment does not raise any questions regarding the adequacy of the Draft EIR. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT T-14: 9. SIGNIFICANT IRREVERSIBLE IMPACTS (DEIR, SECTION 8, page 324)
CEQA Guidelines requires discussion of significant irreversible changes from this project. **The DEIR states that the project..."includes the use of nonrenewable resources, the commitment of**

future generations to similar use, irreversible damage resulting from environmental accidents associated with this project, and irretrievable commitments of resources". Transformation of these lands from an undeveloped/open space character to a suburban/urban environment would, from a practical perspective, be an irreversible change".

Again, these conclusive statements would also negate the development of the project in Area 4, due to its opposition to new climate change policies and regulations, and to its impact on the environment.

RESPONSE T-14: The comment does not raise any questions regarding the adequacy of the Draft EIR. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT T-15: 10. PUBLIC ACCESS

The DEIR states that the Bay Trail will be decided in the future, however the DEIR states, "*The future Specific Plan developer(s) of Area 4 will be required to provide an easement for the Bay Trail to run along the top of the levees that form the western edge of the project, if that ultimately is the preferred alignment.* The Specific Plan is consistent with the Bay Trail and does not conflict with efforts to complete the Bay Trail."

However, public access to the outboard levees along Mowry Slough should be discouraged, because wetland habitat on the old Pintail Duck Club, included endangered species, will be located between development and public access along the levees. Pets, such as dogs, would be unleashed as well.

RESPONSE T-15: Please refer to Response J-24.

COMMENT T-16: 11. PUBLIC HEALTH AND SAFETY

1. The DEIR, consisting of Newark urban sprawl again, indicates that it will not require an increase in police and fire protection, in spite of over a thousand new units being created on the edge of Newark, mostly in a land-locked area, along with the extra traffic that will be generated. In fact, recent news articles, Jan. 2010, claim there will be a cut in those public services due to Newark City budget cuts.

RESPONSE T-16: The City does not consider the proposed Specific Plan development, including Area 4, to be sprawl. On the contrary, the City notes that development of Areas 3 and 4 constitutes infill development that is close to jobs, transportation facilities, and infrastructure. Regionally speaking, Newark and the project area are within 15 miles of the job centers of Fremont, Milpitas, North San Jose, Hayward, and Palo Alto.

Please refer to Section 3.11.2.2. of the Draft EIR which discusses the police and fire increased demand. For the purposes of CEQA, a public service impact is considered significant if the project will result: in substantial adverse physical impacts associated with the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response time or other performance objectives for any of the public service: fire protection, police protection, schools, parks, or other public

facilities. The City of Newark Fire Department confirmed that the current physical facilities (fire stations) are adequate to serve the proposed development however; due to the existing insufficient number of personnel, the increase in service anticipated from proposed development will further strain the emergency service providers. By increasing the demand for police and fire service, the proposed development can cause an increase in the cost of providing the service (more personnel hours to patrol an area, additional fire equipment, etc). This is a fiscal impact, however, and not an environmental one. CEQA does not require an analysis of fiscal impacts. Since the project does not require the construction of new public facilities it would not have a significant impact. Therefore, there would be no physical change to the environment as a result in the increased demand for services. The issue of insufficient staff is a very important one to be considered by decision makers in their consideration of the project, but it is a fiscal issue and not a CEQA issue.

COMMENT T-17: 2. Increased car trips, in this commute zone, will cause much congestion on Cherry St. and exit-entrances to the isolated development, and likely more accidents will occur. Increased traffic and congestion will exacerbate air pollution through vehicle idling and stop-and-go accelerator activity.
3. **Drivers will seek alternative side streets** throughout the area and even use main arteries and freeways, in order to avoid congestion. This will increase problems with public safety as frustrated drivers will speed through residential areas, a typical result of this type of project. Speed bumps can impede drive-through, but have limitations due to needs of emergency vehicles and the associated costs of adding those impediments. (Example: The concerns with speeding traffic on Spruce St. lead to the creation of speed bumps all along the street. Consequently, speedy frustrated drivers and commuters take the side street, off Spruce St. to Bridgepointe Drive, which has no speed bumps but has become a road hazard safety area and a noisy street—as some Newark police have even noted).

RESPONSE T-17: The transportation impact analysis evaluated the magnitude of traffic entering and exiting the project site during the peak hours of travel and identified one Level of Service impact at Cherry Street/Mowry Avenue. Proposed intersection modifications would mitigation would alleviate impacts at this intersection. The trip distribution pattern and assignments for the proposed project were estimated based on existing travel patterns on the surrounding roadway system, the locations of complimentary uses, and recent travel demand forecast model runs using the latest version of the Alameda County Congestion Management Agency (CMA) model. It should be noted that from a transportation planning perspective, the close proximity of the project site to the adjacent business park make it a good location for residential development. Developing residential uses near employment uses results in shorter commute trips, which over the long term, helps to reduce traffic congestion regionally.

COMMENT T-18: 4.The long-term requirements for construction will produce excessive noise, pollution and congestions from dump trucks traveling to and from Area 3 and 4, as they transfer their landfill. Trucks travel at high speeds to reach their haul requirements and economic goals.
5. Increased traffic was considered by Mr. Grindall in the last public meeting, where he said that traffic is a problem that we all have to live with--can't do much about it. The DEIR's arguments

were centered on issues that deceptively ignored our government's policies and regulations associated with the problems of traffic and air quality. There are numerous more suitable and environmentally sound solutions if those regulations were properly addressed.

RESPONSE T-18: The anticipated route importing fill would utilize major highways (I-880) and major arterial roadways such as Mowry Avenue and Stevenson Boulevard. No noise impacts would occur as a result of this truck traffic because the truck traffic makes up a small percentage of the total traffic along area roadways. Please also refer to Response I-5.

Additional text has been added to the Transportation section of the Draft EIR to clarify the construction traffic; refer to Section 4.0 *Revisions to the Text of the Draft EIR*. Even when several hundred daily heavy vehicle trips are occurring at the project site, the relative impact on roadway operations of truck traffic would be considerably less than the amount of traffic generated by the project once occupied. The Draft EIR does acknowledge that even with proposed mitigation measures, haul truck vehicle exhaust would result in a significant unavoidable air quality impact due to the inability of the City to control independent trucking company's fleets and operations (Draft EIR p. 93).

COMMENT T-19: 12. PUBLIC DISCLOSURE

Future safety concerns and risk in living in this type of development, as proposed in the project DEIR for Area 4, poses a warning, both in near-term and in the future. As a warning for both financial and catastrophic risks, potential buyers and financial institutions would need "full disclosure", prior to purchase and financing of these vulnerable areas. Property insurance, flood and emergency disaster relieve may not be provided, as the State and other agencies have warned of vulnerability and to not develop in these areas. Exposure of people and development will provide a significant risk of loss, injury or death involving rapid drainage and flooding, including floods from failure of levees. Remember the past, no one can provide guaranteed protection, in any case, i.e. Katrina.

Consequently, responsible parties approving and developing Area 4 may very well bear the brunt of the cost and liability of disasters, even if they are not due to a catastrophic change in climate. Who will be responsible, accountable and even liable, added to the warnings and disclosure from the responses and advice provided towards this DEIR, as all the impacts are significant?

As a final note: Conflicts of interest no doubt exist in city planning. "Financial support" flows towards the City from developers and/or land owners for their desired projects. Their desires compete with more beneficial development plans and staff time, which is needed to comply with regional and state policies that mandate more sustainable and intercity development in addressing global climate change policies. In a final risk verses benefit analysis, a reduced quality of life for all current and new residents is apparent, as the City expands outward with further housing sprawl and isolationism.

RESPONSE T-19: The comment does not raise any questions regarding the adequacy of the Draft EIR. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

U. RESPONSE TO COMMENTS FROM GREG SCOTT, JANUARY 19, 2010:

COMMENT U-1: I am opposed to the development of Area 4 in the Specific Plan because its development is detrimental to the quality of life and health of Newark and surrounding communities' residents and because the Specific Plan Project Draft Environmental Impact Report is inadequate. I, as a Newark resident, would like answers to the following points.

The air quality impacts are not only inadequately analyzed, they are erroneous as to the impacts on the area.

1) The assumed specific period for determining imported fill truck hauling emissions based on URBEMIS2007 Modeling is "over one year". How much "over one year"? The number of truckloads per day is "100". The amount of material to be hauled for Areas 3 and 4 is 2.156 million cubic yards. In one year the number of trips would be maximally 36,500 truckloads carrying 59 cubic yards of material per truck. What truck carries this much material? Either the time period of 1 year is too short and needs to be specifically stated as to what the URBEMIS2007 Modeling used, or the number of daily truckloads is erroneous, both of which cast doubt on the assumptions used for truck hauling emissions.

2) Alternatives for a source of fill are not analyzed for air quality pollutants. What are the truck hauling emissions based on URBEMIS2007 Modeling if the fill from the Lake Elizabeth BART project is not available or is unsuitable? How exactly would the Area 3 and Area 4 be coordinated with its permits schedule and construction schedule now that the BART project has already commenced?

RESPONSE U-1: Please refer to Responses L-17 and L-18.

COMMENT U-2: 3) "Annual CO2 Emissions from Area 3 and 4 Specific Plan Alternative" lists annual emissions from mobile sources as 15,292 tons, which "includes reduction due to existing mix of uses, alternative transportation options and other project features that reduce trips and vehicle miles traveled". What exactly are these reductions when "Area 4 is located more than 0.5 miles away [from AC Transit bus routes] and would not be well served by existing transit"? How does this comply AB 32 scoping and implementation?

RESPONSE U-2: As stated in the Draft EIR this reduction is mostly applied to Area 3, because Area 3 is located within walking distance of some services for proposed project users, such as a school, retail establishments, and restaurants. The estimated 15,292 tons of GHG emissions from mobile sources is based primarily on a "business-as-usual" scenario, where current emission rates would apply. This will not likely be the case as AB 32 will require GHG emission reductions in all sectors. Transportation emission rates will likely decrease due to increased fuel efficiency and lower carbon content in fuels. The URBEMIS2007 model does not accurately reflect future fuel efficiency. Fuel efficiency is regulated by the U.S. Department of Transportation and current CARB regulations that address climate change. Newer fuel standards would increase light-duty automobile and light-duty truck fuel efficiency by 10 miles per gallon (to 34 miles per gallon for cars sold in 2020). CARB proposes more efficient standards as part of the State's efforts to reduce GHG emissions. These standards would apply to new vehicles sold, and therefore,

would gradually effect the overall fleet as these new vehicles replace older vehicles. As a result the CO2 emissions estimates for vehicle travel do not accurately reflect future conditions and it is likely that CO2 emissions with a more fuel-efficient vehicle fleet would be less.

V. RESPONSE TO COMMENTS FROM NADJA ADOLF, JANUARY 19, 2010:

COMMENT V-1: 1) Areas 3 & 4 should accept their fair share of moderate and lower income housing rather than permitting the developers to pay a fee and unfairly burden the other neighborhoods in the city with a disproportionate share of lower income residents.

RESPONSE V-1: The comment does not raise any questions regarding the adequacy of the Draft EIR. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT V-2: 2) European olive and tall fescue, recommended for Area 3 & 4 use are considered invasive species and are inappropriate for a wildland interface.

RESPONSE V-2: The description of the plant palette and the list of plants included in Draft EIR Appendix A has been revised. The plant materials for the new neighborhoods shall be selected from a palette approved by the City of Newark that is consistent with adopted *City of Newark Bay Friendly Landscape Guidelines*, the City's *Water Efficient Landscape Ordinance*, and any other standards applicable at the time of development. In all cases, continuity, simplicity, and ease of maintenance are to be considered as prime criteria for any detailed planting plans created for the site. The majority of the plant materials to be used are low water use, drought tolerant or natives. Refer also to Response N-14 regarding the proposed Bay-friendly landscape practices.

COMMENT V-3: 3) Progressive communities on the Peninsula are already limiting developments to no more than 500 square feet of lawn; this development in essence includes a "mega lawn" in the form of a golf course. Current forecasts advise that California water supplies will fall short between the years 2015-2017. What plans have been made to make the course independent of the need for irrigation or recharging water?

RESPONSE V-3: The Draft EIR includes the green practices, including landscaping practices, that will be implemented through the Specific Plan. For example, for the proposed Golf Course and landscape development within Areas 3 and 4, the Specific Plan requires that "water efficient irrigation systems include weather-based irrigation-controllers, drip irrigation systems for non-turf areas and the installation of drought tolerant landscaping in-lieu of irrigated turf, wherever possible." (Draft EIR p. 295.) Both Area 3 and 4 will be outfitted with a reclaimed water system for non-potable irrigation service. Prior to the availability of reclaimed water, the golf course would be irrigated with an existing on-site well. This well will draw from ACWD's managed groundwater resources in the Niles Cone, however it will not burden

ACWD's potable distribution system and production facilities.[26] At the time when reclaimed water is available near the project site, a connection(s) will be made and the irrigation needs of Area 4 could be switched over to reclaimed water service.

Mitigation Measures C-GCC-4.2 also requires that all public landscaping areas must follow the City of Newark's December 19, 2007 Bay Friendly Landscape Guide. A copy of the City's *Bay Friendly Landscape Guide* is attached as Appendix L to the Final EIR and includes requirements such as limiting turf area (expressed a percentage of total planted area) to 40-50 percent of the planted areas to reduce water needs and evaporation losses, requiring the use of drought-resistant turf, and minimizing use of water bodies as part of landscaping.

COMMENT V-4: 4) The combination of these developments will reduce the air quality in plans are being made to assist residents in these areas to relocation to safe environments?

RESPONSE V-4: The project will not result in any local air quality impacts; however, regional air quality impacts will occur. While mitigation measures are including to reduce this impact, the measures can not reduce the impact to a less than significant level. Residents will not be relocated as part of this project. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT V-5: 5) T.I.F. is involved in some of these projects and documents suggest that the city hopes to make up some revenue shortfalls by creating a demand for "larger format convenience stores." Have any demographic or marketing studies been performed to determine if these plans are realistic? How will the city, already unable to fund basic services, provide for these new residents?

RESPONSE V-5: The above comment does not raise any environmental issues or questions about the Draft EIR. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

COMMENT V-6: 6) Industrial and office space is being converted to non-revenue generating housing due to claims that there is no "short term demand" for these facilities. Where will Newark accommodate these types of businesses when the long term demand for them returns?

RESPONSE V-6: The proposed General Plan amendment and rezoning on the 78-acre portion of Area 3 from *Special Industrial* and *High Technology Park* to *Medium Density Residential* and *Residential District R-6000* is a discretionary action subject to review and approval by the City Council. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

[26] Alameda County Water District, "Water Supply Assessment for Newark Areas 3 & 4 Specific Plan EIR Project," November, 2008.

COMMENT V-7: 7) The Bay Area already has an oversupply of golf courses, especially upper end golf courses. Who will finance the building and maintenance of this facility? Will it be open to the public? If not, why are the generally lower income residents being required to fund a private facility for the wealthy while their own children's parks lack restrooms?

RESPONSE V-7: The Area 3 and 4 residential impact fees will finance of the golf course. The maintenance will be the responsibility of the golf course developer and/or operator. The proposed golf course will be open to the public.

COMMENT V-8: 8) Newark has closed the Senior Center, and the Community Center, and has proposed cutbacks of other facilities for existing residents. Why are these existing residents being requested to provide elaborate services for new residents while existing services vanish? In a city that cannot afford a Senior Center, or police, isn't it foolish to build a golf course which will require more than a million dollars a year for basic maintenance?

RESPONSE V-8: The above comment does not raise any environmental issues or questions about the Draft EIR. The commenter's concerns will be included in the Final EIR and thus will be before the City's decision-makers, the City Council, for their consideration.

COMMENT V-9: 9) These plans irreparably destroy scarce wildlife habitat for the benefit of a few and for short term gains. Endangered and threatened species don't return from extinction.

RESPONSE V-9: The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

COMMENT V-10: 10) The plans include the expense of a new school when the city has already declared that the district has surplus school facilities. Why is this unneeded expense being incurred? Who will pay for it?

RESPONSE V-10: The Specific Plan includes the dedication of land for a new elementary school site. It will be the School District's responsibility to determine the appropriate approach for the land.

COMMENT V-11: 11) The area 2 plan depends on non-existent mass transit; at the present time there is no short or long term plan for the new Dumbarton Rail to stop in the City of Newark as the Cal-Train and other connections occur in Fremont.

RESPONSE V-11: The Draft EIR addresses a Specific Plan for Areas 3 and 4, not Area 2. The commenter's concerns are hereby included in the Final EIR and will be before the City's decision-makers, the City Council, for their consideration.

4.0 REVISIONS TO THE TEXT OF THE DRAFT EIR

This section contains revisions to the text of the Draft EIR for the Newark Areas 3 and 4 Specific Plan Project, dated December 2009. Revised or new language is underlined. All deletions are shown ~~with a line through the text~~.

Page S-10 Summary Table, Biological Resources; **insert** the following text after MM BIO-1.2B:

MM BIO-1.3: Monitoring and Performance Standards: Annual monitoring of the mitigation sites by a qualified biologist will determine if the project has met its mitigation obligation. Attainment of the quantitative performance and final success criteria outlined below will indicate that the mitigation site is well on its way towards meeting the long-term habitat goals with little chance of failure. When the final success criteria is met, a final report shall be submitted to the agencies for approval. Furthermore, the monitoring program is designed to provide feedback to ensure a successful restoration project. The performance criteria are based on vegetation trends observed at comparable restoration projects.

The wetland mitigation sites shall be monitored for a 5-year period or until attainment of the final success criteria. During Years 1, 2, 3, and 5 the monitoring results shall be compared to performance criteria for vegetation establishment. Failure to meet the performance criteria will trigger an evaluation of the cause of poor performance and implementation of remedial actions. If the final success criteria have not been met, remedial actions shall be required and monitoring will continue until the final success criteria have been achieved.

Monitoring of performance criteria will evaluate the extent to which the wetland mitigation site is incrementally developing high-quality wetland habitat values. Furthermore, this information shall be utilized in the maintenance program.

Percent cover of wetland indicator species shall be monitored in Years 1, 2, 3, and 5 via quadrat sampling. At Years 2, 3, and 5 the percent cover values will have shown steady trends towards, or will have met the percent cover success criteria of wetland indicator species. The percent cover performance criteria for the mitigation site will be 15% for year 1, 35% for year 2, and 60% for year 3. No performance criterion for percent cover are set for Year 1 as cover will be limited to plantings. However, percent cover will still be quantified in Year 1 to obtain a baseline.

Final success criteria will be used to determine if the mitigation goals have been met. Attainment of the final goals will indicate that the on site mitigation is well on its way towards meeting the long-term habitat goals with little chance of failure. The performance of the mitigation site will be measured during the monitoring period to assess site development and influence management.

Percent cover will be used as the primary quantitative indicator of successful establishment of wetland habitat. The final success criterion for percent cover is 60% cover of native wetland indicator species throughout the created, restored, and enhanced tidal wetland areas.

An informal wetland delineation of the created jurisdictional habitats shall begin 3 years following site construction. The mitigation will be considered a success if the informal wetland delineation reveals that the requisite mitigation of wetlands was created. If the requisite acreage is not achieved in Year 3, a wetland delineation shall be undertaken at the site until the necessary wetland acreage is achieved or contingency measures are accepted by the agencies.

Page S-13 Summary Table, Biological Resources; **revise** the text as follows:

MM BIO-4.1: Pre-construction surveys for burrowing owls shall be completed in areas planned for fill placement and construction areas in general conformance with ~~CDFG~~the California Burrowing Owl Consortium's protocols. Because owls are known to occupy the site, these surveys shall be completed no more than 15 days prior (rather than 30 days prior, as per the Consortium's protocol) to the start of importing fill and construction to minimize the probability of immigration of owls between the time surveys are completed and the initiation of grading. If the initial disturbance is followed by periods of inactivity exceeding 15 days, or if the development is phased spatially and/or temporally such that an area in which construction activities are to commence has not been disturbed by construction activities within the prior 15-day period, a new burrowing owl pre-construction survey will be completed prior to the start of disturbance. If burrowing owls are detected on or within 250 ft of the site, Mitigation Measures MM BIO-4.2 and MM BIO-4.3, described below, shall be implemented.

Page S-17 Summary Table, Biological Resources; **insert** the following text after MM BIO-4.6 as follows:

MM BIO-4.7: Indirect effects of development could include an increase in non-native and urban-adapted native species, and an increase in domestic animals such as cats and dogs, that could prey on more sensitive native species in the on-site conservation areas. To reduce this effect, a predator management program will be developed and implemented. This program will focus on education of occupants of the new residential areas regarding measures to minimize the potential for subsidizing predator species and to minimize the potential effects of pets on sensitive species and enforcement of the program's measures, and restrictions on certain activities that could increase predation of sensitive species. The program will include, at a minimum, the following:

- Feeding pets outdoors will be prohibited so that pet food does not attract or subsidize the diets of nuisance species.
- Pets will be prohibited from ranging freely (off-leash dogs will be prohibited in conservation areas and no free-roaming outdoor cats will be permitted), to prevent their entry into sensitive species habitat.
- All food waste will be contained so that it does not attract or subsidize the diets of predators.

Any neighborhood association established for new residential areas will be responsible for disseminating this information, and the neighborhood association and City will be responsible for enforcing the program.

Page S-22 Summary Table, Biological Resources; **revise** the text as follows:

MM BIO-8.2: Prior to issuance of grading permits and under the supervision of a qualified biological monitor, who is permitted by the USFWS and CDFG to move salt marsh harvest mice out of the construction area, all salt marsh harvest mouse/wandering shrew habitat within the construction area shall be removed by hand (e.g., including weed-whacker if, with USFWS and CDFG approval, such equipment is used in such a way as to avoid impacting individual mice/shrews) within a given area…

Page S-27 Summary Table, Biological Resources; **insert** text after the last bullet of MM BIO-11.1 as follows:

- Heavy equipment and imported soils used at the development site shall be free of invasive weed seeds and plant parts to prevent introduction of invasive weeds.

Page S-32 Summary Table, Cultural Resources; **revise** the text of MM CUL-2.1 as follows:

- A limited program of hand excavation shall be undertaken by a professional archaeologist certified by the Register of Professional Archaeologists (RPA) subject to the following standards
  - If specimens are collected, a system for identifying and recording their proveniences must be maintained.
  - Uncollected entities such as environmental or cultural features, depositional strata, and the like, must be fully and accurately recorded by appropriate means, and their location recorded.
  - The methods employed in data collection must be fully and accurately described. Significant stratigraphic and/or associational relationships among artifacts, other specimens, and cultural and environmental features must also be fully and accurately recorded.
  - All records should be intelligible to other archaeologists. If terms lacking commonly held referents are used, they should be clearly defined.
  - During accessioning, analysis, and storage of specimens and records in the laboratory, the archaeologist must take precautions to ensure that correlations between the specimens and the field records are maintained, so that provenience contextual relationships and the like are not confused or obscured.
  - Specimens and research records resulting from a project must be deposited at an institution with permanent curatorial facilities, unless otherwise required by law.
  - The archaeologist has responsibility for appropriate dissemination of the results of her/his research to the appropriate constituencies with reasonable dispatch.

The hand excavation must take place at the locations of the three burials and two cultural features in order to ~~provide the following information~~: v~~V~~erify the presence of midden soils. Hand excavation will verify this, and will provide the researchers with the information needed to determine the aerial extent~~d~~ of the deposits.

Page S-35 Summary Table, Geology and Soils; **revise** MM GEO-1.1 as follows:

MM GEO-1.1: Prior to issuance of grading permits, further study will be required to characterize the lateral extent and magnitude of potential liquefaction-induced settlement for design of new structures and improvements within Areas 3 and 4. The project geotechnical engineer shall coordinate with ACWD prior to beginning any soil improvement measures to ensure impacts on groundwater resources are minimized. The results of the investigation shall be submitted to the Director of Public Works for review and approval. Structures will need to be supported on rigid foundations designed to tolerate the anticipated total and differential settlements. Alternatively, deep foundations may be required to support structures on firm soil below potentially liquefiable layers. Ground improvement techniques could also be used to mitigate liquefaction-induced differential settlement. **(Less Than Significant With Mitigation)**

Page S-36 Summary Table, Geology and Soils; **revise** MM GEO-3.1 as follows:

MM GEO-3.1: Settlement due to fill and building loads can be mitigated by supporting lightly loaded structures on rigid foundations designed to resist differential settlement. As an alternative, buildings could be supported on deep foundations. Design ground improvement techniques, such as surcharging, rammed aggregate piers, or soil/cement mixing, to mitigate settlement. If surcharging is considered, this would include installing vertical wick drains and surcharging building areas with additional imported fill to allow the settlement to occur at an increased rate. If this option is pursued, the Geotechnical Engineer shall work with ACWD during preparation of the design-level geotechnical report. The wick drain design approach shall include the following:

- Wick drains shall be confined within the compressible clay zone (upper 20 feet of soil profile). Additional subsurface exploration during the design-level geotechnical investigation shall confirm the depth of the compressible soil zone.
- Wick drains shall extend no further than 10 feet from the top of slope of the planned areal fill. This will provide at least 5 feet of soil between final grade and the tops of the wick drains, which would be installed prior to areal fill placement. This will reduce the potential for surface water to access the wick drains.
- Horizontal strip drains that are placed at the surface to collect water from the wick drains shall be connected to solid pipes that extended beyond the toe of the areal fill slopes. The horizontal strip drain/solid pipe transitions shall be at the outer row of wick drains. At the completion of the surcharge program, the solid pipes shall be grouted in place to abandon them.

The settlement mitigation approach shall be reviewed and approved by the Director of Public Works, prior to issuance of grading and building permits and the process for implementation of the settlement mitigation will be included on all construction bid documents. **(Less Than Significant With Mitigation)**

Page S-37 Summary Table, Geology and Soils; **revise** MM GEO-7.1 as follows:

MM GEO-7.1: Design underground improvements for potential hydrostatic uplift pressures. The Director of Public Works shall review and approve all underground

improvements prior to issuance of building permits. Groundwater losses due to dewatering shall be measured and the amount of water that may be extracted by dewatering shall be estimated and documented and shall be provided to ACWD. **(Less Than Significant With Mitigation)**

Page S-38 Summary Table, Hydrology and Water Quality; **revise** the text as follows:

MM HYD-1.1: All development projects within the Specific Plan shall comply with the National Pollution Discharge Elimination System (NPDES) permit requirements, ~~the Alameda County Clean Water Program standards~~, the City of Newark's ordinances, policies, and processes, and other applicable local, state, and federal requirements.

MM HYD-1.2: All development projects within the Specific Plan shall ~~prepare a SWMP that~~ include~~s~~ post-construction water quality BMPs that control pollutant levels as directed by the City of Newark or Alameda County as Permittees of ~~required under Section C.3 of the~~ NPDES Municipal Stormwater Permit issued by the RWQCB. Provision C.3 of the Municipal Stormwater Permit is applicable to new development within the Specific Plan Area. The development of a golf course clubhouse shall include applicable post-construction water quality BMPs that control pollutant levels as required under Section C.4 of the NPDES Municipal Stormwater Permit issued by the RWQCB. Golf course maintenance facilities shall be developed and operated to include applicable post-construction water quality BMPs that control pollutant levels as required under Section C.2.f of the NPDES Municipal Stormwater Permit issued by the RWQCB.

The use of low impact development (LID) techniques as required by Section C.3.c shall be emphasized. The City of Newark shall require the golf course operators to prepare, implement, and maintain a Stormwater Pollution Prevention Plan (SWPPP) for all corporation yards, vehicle maintenance, parking areas, and material storage facilities that comply with water quality standards by incorporating all applicable BMPs as described herein.

Post-construction water quality treatment BMPs typically will include infiltration basins and trenches, rain gardens, grassy swales, media filters, and biofiltration features. Since the Specific Plan Area is mostly underlain by soils of low permeability and there is a high groundwater table, BMPs that enhance water quality without relying on infiltration are most appropriate for development sites within the Specific Plan Area.

Water quality source control measures, site design elements, and post-construction treatment measures may include the following:

1. "No Dumping" signs at appropriate locations.
2. Stenciled storm drain inlets to prevent the ignorant disposal of pollutants and warn against the intentional dumping of pollutants into the storm drain system.
3. Runoff from roofs, sidewalks, paving and other hardscape areas directed into landscape areas rather than directly connected to storm drain systems.

4. Minimizing impervious surfaces to the maximum extent practicable and using permeable pavements where practical.
5. Locating and designing trash enclosures (all shall be covered) to and materials handling areas to prevent the discharge of pollutants into the streets and storm drain collection systems.

~~Neighborhood- and/or lot-level BMPs to promote "green" treatment of storm runoff shall be emphasized, consistent with Regional Board guidance for NPDES Phase 2 permit compliance. These types of BMPs include infiltration basins and trenches, rain gardens, grassy swales, media filters, and biofiltration features. Since the site has mostly D soils of low permeability and a high water table, BMPs that enhance water quality but do not rely on infiltration are most appropriate for this site. Other source control measures, site design elements, and post-construction treatment measures may include the following:~~

- ~~Disconnected downspouts that are directed into landscape areas;~~
- ~~Minimization of impervious surfaces and increased use of permeable pavement(s);~~
- ~~Location of all storm drain inlets to be stenciled with, "No Dumping! Flows to Bay" to discourage illegal dumping;~~
- ~~Location and design of trash enclosures (all shall be covered) and materials handling areas;~~
- ~~Use effective, site-specific erosion and sediment control methods during post-construction periods.~~

Page S-39 Summary Table, Hydrology and Water Quality; **insert** the following text after the last bullet of MM HYD-1.2:

- The transport of turfgrass chemicals shall be minimized by the proposed computerized irrigation system that will be connected to an on-site weather station, which shall minimize runoff and percolation to the groundwater table. The irrigation system shall include the features described below.
  - The weather station shall monitor daily average evapotranspiration (ET) conditions and automatically adjust sprinkler rates so that ET rates are matched;
  - The irrigation system shall also included multiple controls cycles so that sprinklers can be turned on and off, matching soil percolation rates with application rates;
  - The layout of the irrigation system shall be designed to avoid watering all moisture-sensitive habitat areas, roadways, and waterways.
- A long-term stormwater management and monitoring program. The stormwater at the outlets leaving the site shall be sampled on a first flush basis, once a year for the lifetime of the project. If the post-project sample results indicate that the quality of stormwater leaving the site has degraded from the base conditions, then the SWPPP shall be reviewed and revised, based upon consultation with the Regional Water Quality Control Board. A minimum of six parameters including pH, total suspended solids, oil and grease, nitrogen, and appropriate pesticide constituents should be analyzed.

- To prevent potential runoff of chemicals, the application of fertilizers, herbicides, and pesticides shall be avoided during periods of expected rainfall and immediately prior to schedule golf course irrigation.
- The golf course superintendent shall maintain a log of all pesticide and herbicide purchase and application, which shall be submitted periodically to the City Community Development Department for review.

Page S-42 Summary Table, Hazards and Hazardous Materials; **revise** the first sentence of MM HAZ-1.1 as follows:

- A Remediation Plan shall be developed and approved by the City, ACWD, and DTSC prior to issuance of grading permits for the residential development.

Page S-43 Summary Table, Hazards and Hazardous Materials; **revise** first bullet of MM HAZ-3.1 as follows:

- All additional testing and remediation described below shall be completed under oversight by the City and an appropriate regulatory agency, DTSC and/or ACWD prior to issuance of grading permits for the residential development.

Page S-43 Summary Table, Hazards and Hazardous Materials**; insert** this bullet after the first bullet of MM HAZ-3.1 as follows:

- Prior to the start of any subsurface drilling activities, the project proponent(s) shall obtain a drilling permit from ACWD. Application for a permit may be obtained from ACWD's Engineering Department, at 43885 South Grimmer Boulevard, Fremont or online at http://www.acwd.org/engineering/drillin8-Permit.php5. All permitted work requires scheduling for inspection; therefore, all drilling activities must be coordinated with ACWD prior to the start of any field work.

Page S-44 Summary Table, Hazards and Hazardous Materials**; revise** the sixth bullet of MM HAZ-3.1 as follows:

- Soil quality adjacent to on-site wells shall also be analyzed for spilled chemicals including pesticides. The results shall be provided to the City and the appropriate regulatory oversight to determine the appropriate remediation, if necessary. Prior to issuance of a grading permit, the project proponent(s) and ACWD shall identify all abandoned wells within the project boundary. Any wells identified or discovered during construction shall be appropriately destroyed in accordance with ACWD specifications and local standards ~~If no longer needed, the water supply wells shall be appropriately abandoned in accordance with local standards~~ prior to issuance of a grading permit.

Page S-44 Summary Table, Hazards and Hazardous Materials**; revise** seventh bullet of MM HAZ-3.1 as follows:

- Prior to any ground disturbance and issuance of grading permits at the unnamed parcel located to the west of the southern terminus of Stevenson Boulevard, shall

be further evaluated to assess the current environmental conditions of this area. This evaluation shall be provided to the City and ACWD for review and to determine the appropriate remediation, if warranted.

Page S-45 Summary Table, Hazards and Hazardous Materials**; revise** the text for MM HAZ-4.1 as follows:

- Soil and ground water quality investigations shall be completed at the auto wrecking operation properties prior to issuance of any demolition permits. If impacted soil or groundwater is detected that exceeds commercial screening levels, these parcels shall be remediated under oversight by the City and an appropriate regulatory agency, in this case likely DTSC and/or ACWD. The oversight agency shall be responsible for overseeing and directing all site investigation and cleanup activities in a manner that ensures that the standards and requirements of the State of California are fully addressed.

- Any future golf course development activities at the 10-acre Mowry Avenue property shall be coordinated with the City and the appropriate regulatory agency, DTSC and/or ACWD. Additionally, prior to issuance of grading permits, methane monitoring shall be completed at this property and results shall be provided to the City and the regulatory agenc~~y~~ies. If impacted methane levels exceeds commercial screening levels, these parcels shall be remediated under oversight by the City and in this case, likely DTSC and/or ACWD.

- The depth and quality of the former fill areas [Pick-N-Pull Parcel 1, Ace Auto Wrecker's property, and 115-acre Rogers property (filled ponds)] shall be investigated prior to issuance of grading permits. This investigation shall be provided to the City and/or ACWD for review and approval. Options for remediating impacted fill include capping, relocation, over-excavation and off-site disposal, and/or completing a risk assessment to evaluate whether this material is a risk to human health or the environment under the future golf course redevelopment plan.

Page S-49 Summary, Cumulative Global Climate Change; **insert** the following text after the Cumulative Air Quality as follows:

Impact C-GCC-4: The proposed project would result in a cumulatively considerable contribution global climate change impact. **(Significant Cumulative Impact)**

MM C-GCC-4.1: All residential subdivisions and new commercial buildings within the Specific Plan shall incorporate as many green practices as appropriate and feasible in buildings and structures constructed subject to approval of the City of Newark.

These measures shall include, but are not limited to:

- Pre-wire (or equivalent most current technology) residences and commercial buildings to facilitate the installation of solar power.
- LEED certification or equivalent for commercial buildings.

- Include plug-ins (or equivalent most current technology) in residences to facilitate the use of electric and hybrid vehicles.

MM C-GCC-4.2: All public landscaping areas within the Specific Plan shall follow the City of Newark's Bay Friendly Landscape Guide. Future homeowners associations or similar entity shall be encouraged to incorporate as many bay friendly landscape practices as appropriate and feasible.

These practices shall include, but are not limited to:

- No lawn areas less than 8 foot wide.
- Where practical, utilize underground irrigation systems rather than surface applied irrigation to reduce evaporative loss.
- Minimize mowed lawn areas in residential development neighborhoods and use mowed lawn areas only for active recreation areas in park spaces
- Minimize use of plants that require extensive pruning and/or generate large amounts of green waste.
- Utilize "Integrated Pest Management" principals in the landscape maintenance of the project.
- Employ recycled materials for landscape materials such as headers, paving, street furniture, and mulch wherever practical.
- Landscape lighting to respect dark sky principals, i.e. no light directed up-ward.

While incorporation of the above measures will partially reduce the global climate change impact, the overall implementation of the Specific Plan will still make a cumulatively considerable contribution to global climate changes impacts and, therefore, result in a significant unavoidable impact. (**Significant Unavoidable Impact)**

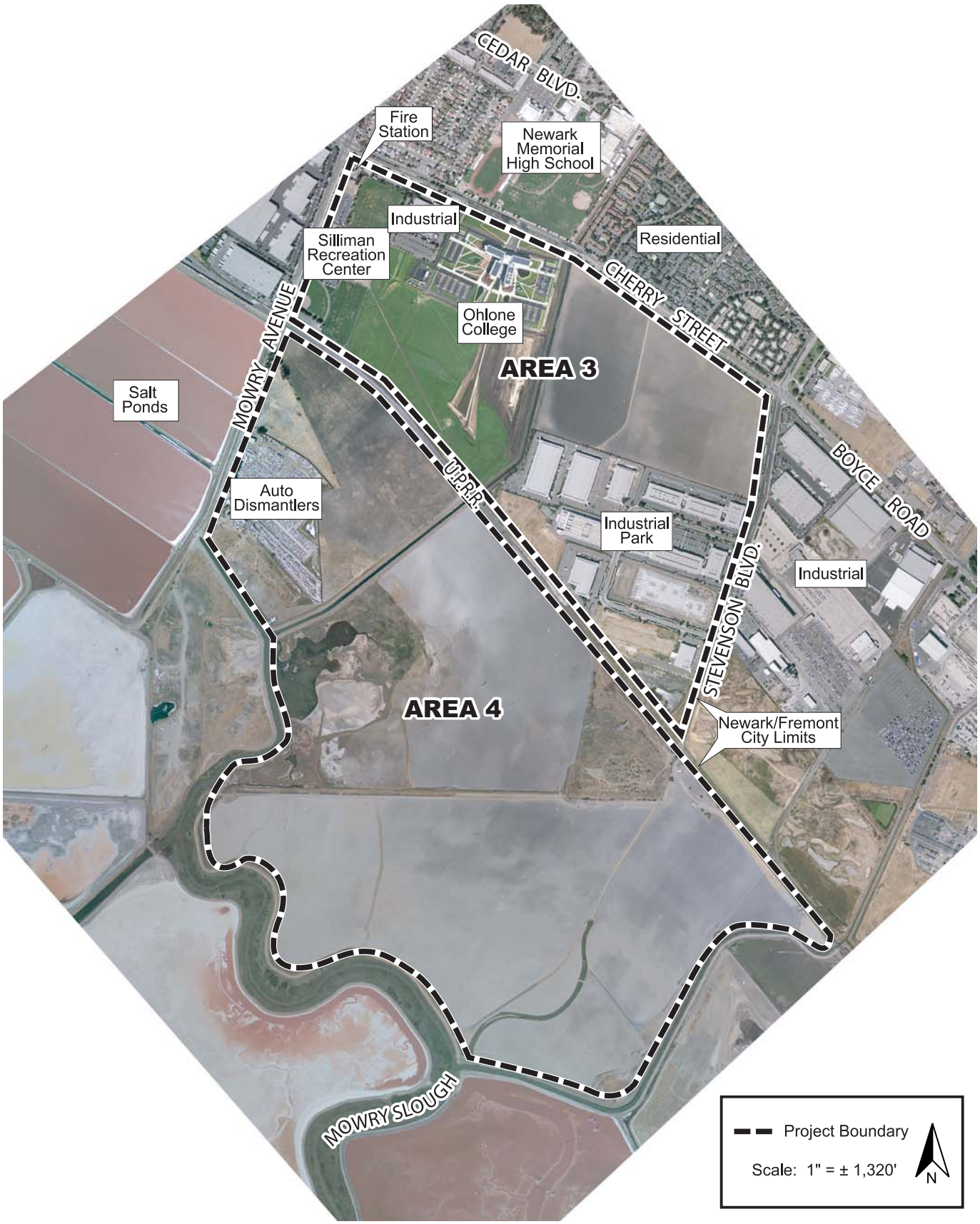
Page 2 Section 1.2 Uses of the EIR; **insert** the following text after the last bullet:

This EIR provides a discussion of a golf course including transportation, air quality, biological resources, hydrology, flooding, and water quality, hazardous materials, water supply, utilities and energy. At the time a detailed golf course design is proposed, the design will be evaluated by the City to determine what, if any, additional environmental review is necessary.

Page 6 Section 1.3 Project Location; **replace** Figure 1.2-3 with Figure 1.2-3 (REVISED) on the following page.

Page 11 Section 2.4.2 Area 4; **insert** text at the end of the last paragraph as follows:

An 80-foot setback from the centerline of railroad tracks is required for any residential development within Sub-Areas B and C.



AERIAL PHOTOGRAPH WITH LAND USES FIGURE 1.2-3(REVISED)

Page 13 Section 2.4.3 Golf Course; **insert** the following paragraph before the first paragraph on the page:

The following section provides a discussion of golf course development and operation on Area 4. The impacts of golf course construction and use are analyzed in the respective sections of this EIR, commensurate with the level of detail provided in the following description. The golf course use is analyzed in the respective sections of this EIR including, transportation, air quality, biological resources, hydrology, flooding, and water quality, hazardous materials, water supply, utilities and energy. At the time a detailed golf course design is developed, the design will be evaluated by the City to determine what, if any, additional environmental review is necessary.

Page 16 Section 2.4.6 Emergency Vehicle Access and Multi-Use Trail; **revise** the fourth sentence as follows:

Along the east side of the trail, a vandal-resistant ~~six-foot chain-link~~ fence will separate the trail from the railroad right-of way, and along the west side of the trail, a post and rail fence is proposed to separate the trail from the golf course (refer to Figure 2.4-3). At the time Sub-Area C is developed, the fencing in the vicinity of the flood control channel will be reviewed, to ensure public and railroad safety. Any changes to the UPRR crossing at Mowry Avenue will be submitted for review and approval by the California Public Utility Commission (PUC) and UPRR.

The proposed EVA/trail in Sub-Area D is located proximate to the railroad tracks, in order to provide the maximum development area for the proposed golf course. In the event an alternative recreation use is pursued on Sub-Area D, the location of the trail will be reconsidered.

Page 18 Section 2.4.6 Emergency Vehicle Access and Multi-Use Trail; **replace** Figure 2.4-3 with Figure 2.4-3 (REVISED) on the following page.

Page 26 Section 2.5 Project Objectives; **revise** last bullet as follows:

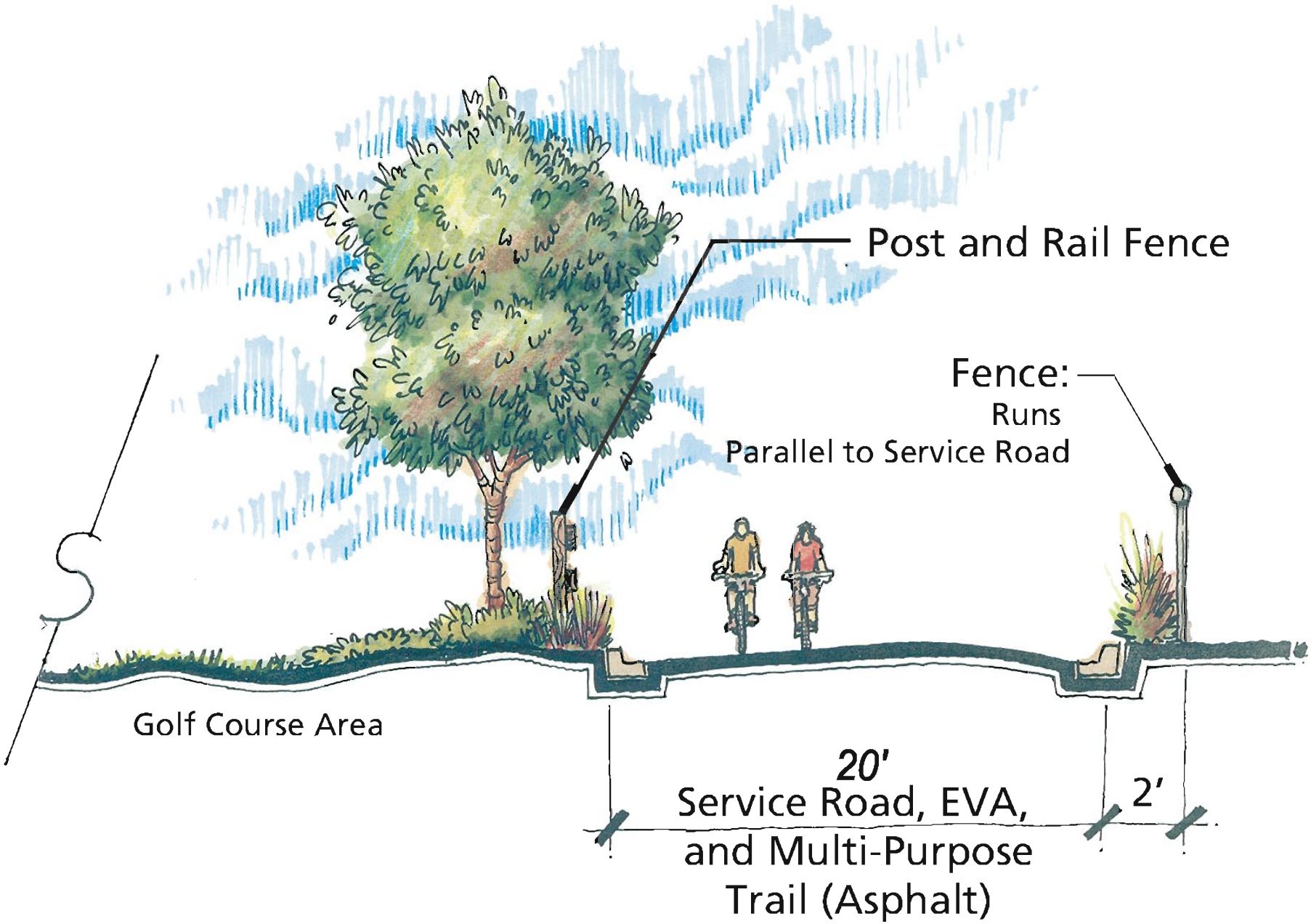
- If a golf course is found infeasible, then another recreation use that is acceptable to the City, and undergoes environmental analysis, shall be provided as a condition of development.

Page 26 Section 2.5 Project Objectives; **insert** bullet as follows:

- Provide park and open space amenities within Areas 3 and 4.

Page 28 Section 3.1.2 Surrounding Land Uses; **insert** after second paragraph as follows:

The ACFC&WCD dredge disposal site is located west of District Channel Line B and the project boundary. All proposed residential uses would be separated by the dredge disposal site by at least 1,000 feet, which would provide a substantial buffer between these uses. Beyond the ACFC&WCD property is the former Peterbilt test track that operated from 1977 to 1986 and former landfill (existed from 1964 to 1967). This property is currently vacant.



EMERGENCY VEHICLE ACCESS ROADWAY AND PROPOSED TRAIL CROSS-SECTION FIGURE 2.4-3(REVISED)

To the west of Area 3, located near the intersection of Eureka Drive and Stevenson Boulevard, the City of Fremont Fire Training Facility will be completed and operational by the end of 2010. This facility includes open grounds for training activities and an operational burn tower for training purposes.

Page 28 Section 3.1.1.2 Area 4; **revise** the first full paragraph as follows:

The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge, indicating that these lands were potentially to be included in the Refuge. Additional information about the Refuge is provided below.

Page 29 Section 3.1.2 Surrounding Land Uses; **insert** the following text before Section 3.1.3 Regulatory Overview:

3.1.2.2 San Francisco Bay Conservation and Development Commission (BCDC)

The San Francisco Bay Conservation and Development Commission (BCDC) is a California state agency that has jurisdiction over the open water, marshes, and mudflats of the greater San Francisco Bay including the following: the first 100 ft inland from the shoreline around San Francisco Bay, the portion of the Suisun Marsh below the 10-ft contour line, portions of most creeks, rivers, sloughs, and other tributaries that flow into San Francisco Bay, salt ponds, duck hunting preserves, game refuges, and other managed wetlands that have been diked off of San Francisco Bay. BCDC approval must be obtained before placing solid material, building or repairing docks or other structures, dredging or extracting material from the Bay bottom, substantially changing the use of any structure or area, constructing, remodeling, or repairing any structure, and/or subdividing property or grading land. Any impacts to Shoreline Band lands will require a permit from the BCDC. The ACFC&WCD channels and all other ditches on the site are not fully tidal, and, as such, do not fall under the jurisdiction of the BCDC.

3.1.2.3 *Don Edwards San Francisco Bay National Wildlife Refuge*

The Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) was founded in 1974 as the first urban National Wildlife Refuge established in the United States and is one of seven wildlife refuges in the San Francisco Bay Area. As of 2004, the Refuge owns and manages 30,000 acres of the total 51,218 acres (207 km2) located within the 1990 congressionally-approved refuge boundary. The approved boundary for the Refuge--the area within which the Service is authorized to work with willing landowners to acquire and/or manage land is 17,640.7 acres. Within the approved Refuge Boundary, the Service may pursue a number of approaches to conserve and manage lands, depending on the preferences of willing landowners. These may include: technical assistance, cooperative agreements, memoranda of understanding and acquisition of conservation or agricultural easements and fee title interest. The Refuge manages properties throughout South San Francisco Bay in Alameda, Santa Clara, and San Mateo Counties in California (Palo Alto, Mountain View, and Milpitas United States Geologic Survey (USGS) 7.5 minute quadrangles).

The lands and waters included within the Refuge consist of portions of the urbanized communities of San Lorenzo, Hayward, Union City, Fremont, Newark, Milpitas, San Jose, Sunnyvale, Mountain View, East Palo Alto, Menlo Park, and Redwood City.

Page 38 Section 3.1.4.3 Consistency with Plans and Policies; **insert** before Section 3.1.4.4:

San Francisco Bay Conservation and Development Commission (BCDC)

Any impacts to Shoreline Band lands will require a permit from the BCDC. The Specific Plan project (Sub Area E) proposes no development within 100 feet of Mowry Slough and any disturbance within Specific Plan Sub Area D would be subject to a BCDC permit, as described in Section 1.2, Uses of the EIR. The ACFC&WCD channels and all other ditches on the site are not fully tidal, and, as such, do not fall under the jurisdiction of the BCDC.

Don Edwards San Francisco Bay National Wildlife Refuge

The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future. Pre-approval of lands for addition to the refuge, however, does not grant the Refuge any jurisdictional authority over those lands or signify that the lands become part of the refuge until they are acquired. The pre-approval was not intended to influence local government land use decisions. Much of the land designated for addition to the Refuge is within Specific Plan Sub Area E, 244 acres proposed for wetland preservation, wetland creation/enhancement, or continued agricultural operations. Proposed Specific Plan Sub Area E uses are generally consistent with the intent of the Don Edwards San Francisco Bay National Wildlife Refuge.

The Baylands Habitat Goals Project (1999)

The Baylands Habitat Goals Project (1999) are a compilation of regional wetland goals and recommendations for the kinds, amounts, and distribution of wetlands and related habitats that are needed to sustain diverse and healthy communities of fish and wildlife resources in the San Francisco Bay Area. The Goals Project represents the culmination of more than three years of work by scientists, resource managers, and other participants. The Goals do not require any landowner, public or private, to modify current land uses or practices, or to sell land. They have no regulatory authority, and are designed only to inform public and private efforts aiming to improve the Bay Area's wetland habitats. In the project area, the Goals Project includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and the area of the (former) Pintail Duck Club." Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands. While the proposed Specific Plan includes development of the upland areas of Area 4, Specific Plan Sub Area E

designates 244 acres proposed for wetland preservation, wetland creation/enhancement, or continued agricultural operations, which is generally compatible with the Baylands Habitat Goals Project.

Page 39 Section 3.2.1.1 Overview: **revise** the last sentence on the page as follows:

Intersections in Fremont have a LOS standard of D or better.

Page 68 Section 3.2.3.5 Transit Impacts: **revise** the fifth sentence of the first paragraph as follows:

Assuming the existing service would remain unchanged, with three bus lines providing service with 30 and ~~to~~ 60-minute headways, the number of transit riders during the peak commute period (PM peak hour) would equate to about 12 riders per bus. (Three bus lines, each going in two directions, equals six buses with 67 riders equals approximately 12 riders per bus.)

Page 70 Section 3.2.3 Transportation Impact; **insert** the following text before Section 3.2.4

3.2.3.7 *Other Transportation Issues*

Impacts to Aircraft Operations

The project site is not located adjacent to or in the vicinity of any airports, where aircraft would be operating at low altitudes. The closest airports to the site are the Palo Alto Airport and Moffett Field, both of which are over seven miles away from the site.

At locations not in the vicinity of airports, such as the project site, the Federal Aviation Administration (FAA) requires that all proposed structures whose height will exceed 200 feet above ground level be evaluated to determine if the structure represents a hazard to aviation. High voltage transmission lines cross Area 4 on large towers within dedicated Pacific Gas and Electric (PG&E) easements. There are two existing PG&E towers that will be affected by the project, a 230 kV tower (Number 0/5) is currently 175 feet in height and will require a 20-foot height extension, and a 115 kV tower (Number 6/46) currently 90 feet in height will be moved approximately 25 feet to the northwest and replaced with a 135 foot tower. Since the maximum height of the towers is 195-feet above ground level, the project is not subject to this requirement and, therefore, would not constitute a hazard to aviation.

The high voltage towers described above are in the VFR (visual flight rules) landing and take-off path for small aircraft originating or traveling to both the Palo Alto and San Carlos Airports through the Sunol Grade. In urbanized portions of the Bay Area, including the project site, aircraft are required by the FAA to maintain a minimum altitude of 1,000 feet above ground surface. The fact that an aircraft could use the towers or any other landmark as an aid to navigation under visual flight rules would not change the fact that the aircraft would still need to be 1,000 feet above the ground. The proposed project, therefore, would not result in any impacts to air traffic patterns, mapping or communications. **(Less than Significant Impact)**

Construction Traffic Impacts

During construction, there would be a significant number of workers and heavy vehicles (large trucks) destined to and from the project site. For nearly all developments, however, the number of trips on the roadway during construction is less than the number of trips that the site produces once it is constructed and occupied. In particular, trucks have operational characteristics that make them equivalent to approximately two automobile trips in level of service calculations. The term used to described this is passenger car equivalents (PCE). The proposed project once occupied is projected to generate approximately 15,000 daily trips. During construction, the project is likely to generate on the order of a several hundred daily trips from construction workers and heavy vehicles over a period of several years. Even when several hundred daily heavy vehicle trips are converted to passenger car equivalents, the relative impact on roadway operations of truck traffic would be considerably less than the amount of traffic generated by the project once occupied. In addition, construction traffic is generally less sustained on a daily basis, as different workers are scheduled on different days in accordance with their skills and stage of construction. Thus, project construction would not cause any traffic impacts greater than those of the project, upon completion, and any improvements proposed under the project or cumulative scenarios would be adequate to accommodate the project trip generation during the construction phase.

Heavy vehicles can result in more wear and tear to pavement sections. Pavement wear is a function of environmental factors and loading. The loadings for new pavement sections are calculated on the basis of single axle loads over a 20 to 40 year pavement life, which are converted to traffic index (TI) values. Arterial and collector streets are designed with higher traffic index numbers, which accounts for greater usage by heavy vehicles. For the proposed project, nearly all of the traffic to and from the project site would use arterial and collector streets, such as Cherry Street, Stevenson Boulevard, and Mowry Avenue. In such cases, the truck routes are assumed to be constructed to handle the heavy traffic and further analyses of pavement sections, traffic index values, and pavement loading are typically not warranted.

The proposed project would not result in signification impacts related to construction traffic. **(Less Than Significant Impact)**

Page 71 Section 3.2.4 Conclusion; **insert** the following text after the third paragraph:

The two high voltage tower modifications would not result in any impacts to air traffic patterns, mapping or communications. **(Less than Significant Impact)**

The proposed project would not result in signification impacts related to construction traffic. **(Less Than Significant Impact)**

Page 101 Section 3.4.1.4 Existing Noise Environment; **replace** Figure 3.4-1 with Figure 3.4-1 (REVISED) on the following page.

Page 115 Section 3.5.2 Existing Biological Resources; **delete** the text in the first paragraph below.

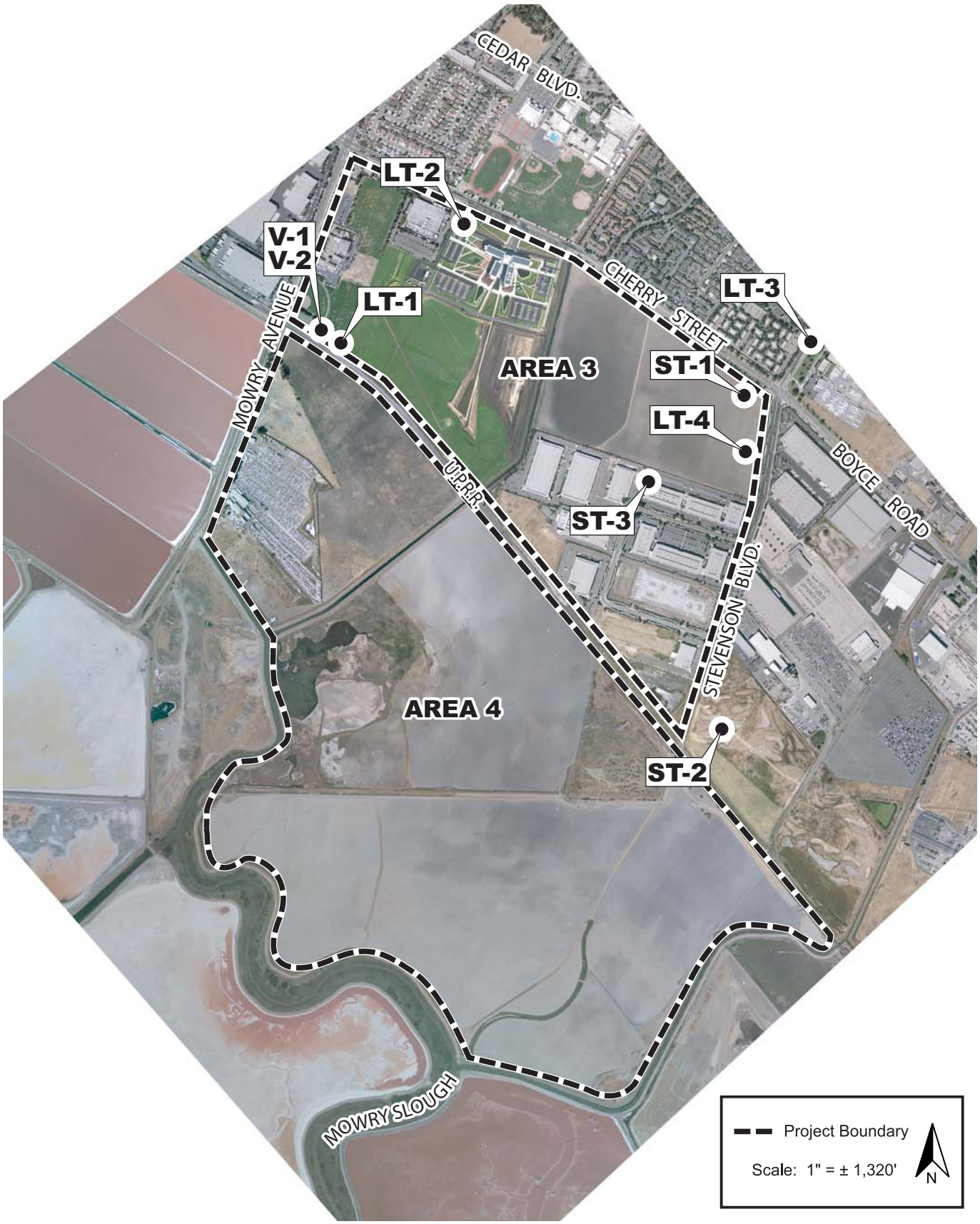
The value of Area 4 in providing upland transition zones adjacent to tidal wetlands has also been identified by the Baylands Ecosystem Habitat Goals Report (1999), a report of habitat recommendations prepared by the San Francisco Bay Area Wetland Ecosystem Goals Project, a consortium of nine state and federal agencies, including the San Francisco Estuary Institute. ~~As discussed~~

Page 124 Section 3.5.2.4 Jurisdictional Waters of the U.S/Waters of the State; **revise** the third paragraph as follows:

The California Regional Water Quality Control Board (RWQCB) has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7) ~~is responsible for protecting surface, ground, and coastal waters within its boundaries, pursuant to the Porter-Cologne Water Quality Control Act of the California Water Code~~. Under the CWA, the RWQCB has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in combination with permits issued by the USACE, under Section 404 of the CWA. When the RWQCB issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements (WDRs) for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the USACE (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the RWQCB, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of USACE jurisdiction may require the issuance of either individual or general WDRs from the RWQCB. All USACE jurisdictional waters are also Waters of the State, and no additional areas are considered as such.

Under the authority of the Porter-Cologne Water Quality Act, the RWQCB has developed, and implements, the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), which defines the Beneficial Uses of waters of the State within the San Francisco Bay Region.

Because habitats in Newark Area 4 are hydrologically connected to San Francisco Bay, the following beneficial uses of San Francisco Bay are also likely to apply to waters and wetlands in Area 4: estuarine habitat; preservation of rare and endangered species; contact water recreation; non-contact water recreation; shellfish harvesting; fish spawning; and wildlife habitat. Implementation of the proposed Specific Plan may impact Beneficial Uses of waters of the State in Area 4. In particular, Beneficial Uses related to habitat for rare and endangered species may be impacted by the Specific Plan.



NOISE MEASUREMENT LOCATIONS FIGURE 3.4-1(REVISED)

Page 136 Section 3.5.3.2 Impacts to Seasonal Wetlands, Freshwater Marsh, Brackish Marsh, Detention Basin, and Aquatic Habitat; **insert** the following text after MM BIO-1.2B:

MM BIO-1.3: Monitoring and Performance Standards: Annual monitoring of the mitigation sites by a qualified biologist will determine if the project has met its mitigation obligation. Attainment of the quantitative performance and final success criteria outlined below will indicate that the mitigation site is well on its way towards meeting the long-term habitat goals with little chance of failure. When the final success criteria is met, a final report shall be submitted to the agencies for approval. Furthermore, the monitoring program is designed to provide feedback to ensure a successful restoration project. The performance criteria are based on vegetation trends observed at comparable restoration projects.

The wetland mitigation sites shall be monitored for a 5-year period or until attainment of the final success criteria. During Years 1, 2, 3, and 5 the monitoring results shall be compared to performance criteria for vegetation establishment. Failure to meet the performance criteria will trigger an evaluation of the cause of poor performance and implementation of remedial actions. If the final success criteria have not been met, remedial actions shall be required and monitoring will continue until the final success criteria have been achieved.

Monitoring of performance criteria will evaluate the extent to which the wetland mitigation site is incrementally developing high-quality wetland habitat values. Furthermore, this information shall be utilized in the maintenance program.

Percent cover of wetland indicator species shall be monitored in Years 1, 2, 3, and 5 via quadrat sampling. At Years 2, 3, and 5 the percent cover values will have shown steady trends towards, or will have met the percent cover success criteria of wetland indicator species. The percent cover performance criteria for the mitigation site will be 15% for year 1, 35% for year 2, and 60% for year 3. No performance criterion for percent cover are set for Year 1 as cover will be limited to plantings. However, percent cover will still be quantified in Year 1 to obtain a baseline.

Final success criteria will be used to determine if the mitigation goals have been met. Attainment of the final goals will indicate that the on site mitigation is well on its way towards meeting the long-term habitat goals with little chance of failure. The performance of the mitigation site will be measured during the monitoring period to assess site development and influence management.

Percent cover will be used as the primary quantitative indicator of successful establishment of wetland habitat. The final success criterion for percent cover is 60% cover of native wetland indicator species throughout the created, restored, and enhanced tidal wetland areas.

An informal wetland delineation of the created jurisdictional habitats shall begin 3 years following site construction. The mitigation will be considered a success if the informal wetland delineation reveals that the requisite mitigation of wetlands was created. If the requisite acreage is not achieved in Year 3, a wetland delineation shall

be undertaken at the site until the necessary wetland acreage is achieved or contingency measures are accepted by the agencies.

Page 143 Section 3.5.3.2 Impacts to Burrowing Owls; **revise** the following text as follows:

MM BIO-4.1: Pre-construction surveys for burrowing owls shall be completed in areas planned for fill placement and construction areas in general conformance with ~~CDFG~~the California Burrowing Owl Consortium's protocols. Because owls are known to occupy the site, these surveys shall be completed no more than 15 days prior (rather than 30 days prior, as per the Consortium's protocol) to the start of importing fill and construction to minimize the probability of immigration of owls between the time surveys are completed and the initiation of grading. If the initial disturbance is followed by periods of inactivity exceeding 15 days, or if the development is phased spatially and/or temporally such that an area in which construction activities are to commence has not been disturbed by construction activities within the prior 15-day period, a new burrowing owl pre-construction survey will be completed prior to the start of disturbance. If burrowing owls are detected on or within 250 ft of the site, Mitigation Measures MM BIO-4.2 and MM BIO-4.3, described below, shall be implemented.

Page 145 Section 3.5.3.2 Impacts to Burrowing Owls; **insert** the following text after MM BIO-4.6 as follows:

MM BIO-4.7: Indirect effects of development could include an increase in non-native and urban-adapted native species, and an increase in domestic animals such as cats and dogs, that could prey on more sensitive native species in the on-site conservation areas. To reduce this effect, a predator management program will be developed and implemented. This program will focus on education of occupants of the new residential areas regarding measures to minimize the potential for subsidizing predator species and to minimize the potential effects of pets on sensitive species and enforcement of the program's measures, and restrictions on certain activities that could increase predation of sensitive species. The program will include, at a minimum, the following:

- Feeding pets outdoors will be prohibited so that pet food does not attract or subsidize the diets of nuisance species.
- Pets will be prohibited from ranging freely (off-leash dogs will be prohibited in conservation areas and no free-roaming outdoor cats will be permitted), to prevent their entry into sensitive species habitat.
- All food waste will be contained so that it does not attract or subsidize the diets of predators.

Any neighborhood association established for new residential areas will be responsible for disseminating this information, and the neighborhood association and City will be responsible for enforcing the program.

Page 152 Section 3.5.3.2 Impacts to Salt Marsh Harvest Mouse and Wandering Shrew; **revise** the text as follows:

MM BIO-8.2: Prior to issuance of grading permits and under the supervision of a qualified biological monitor, who is permitted by the USFWS and CDFG to move salt marsh harvest mice out of the construction area, all salt marsh harvest mouse/wandering shrew habitat within the construction area shall be removed by hand (e.g., including weed-whacker if, with USFWS and CDFG approval, such equipment is used in such a way as to avoid impacting individual mice/shrews) within a given area…

Page 156 Section 3.5.3.2 Impacts from the Spread of Non-native, Invasive Plant Species; **insert** text after the last bullet in MM BIO-11.1 as follows:

- Heavy equipment and imported soils used at the development site shall be free of invasive weed seeds and plant parts to prevent introduction of invasive weeds.

Page 157 Section 3.5.3.2 Impacts and Mitigation Measures; **insert** text before the *Impacts to Wildlife Movement*:

The proposed golf course could include a driving range, which would be oriented so that golf balls will be hit away from entry roads and wetland areas. Poles and nets would also surround the driving range to limit errant balls. The nets along the driving range will not impact birds and mammals through animal entanglement. Nets used at driving ranges are much more highly visible than other types of nets such as mist nets used to capture birds for banding, and do not have the very wispy, easily tangled quality that mist nets possess. Therefore, impacts of any nets that will be placed along the edges of the driving range on birds and mammals will be less than significant and no mitigation will be necessary. **(Less Than Significant Impact)**

Page 158 Section 3.5.3.2 Impacts and Mitigation Measures; **insert** the following text before *Short-term Impacts to Water Quality during Construction*:

Short-term Impacts to Wildlife during Construction

Construction-associated activities, including noise but also movement of heavy equipment and ground vibrations, are expected to result in some impacts to wildlife use of the site. Wildlife using the site, however, is already exposed to intermittent loud noise such as occurs when trains pass the site several times per day, and there are numerous examples of areas around San Francisco Bay where wildlife, particularly waterbirds, have habituated to loud noise and other disturbance. While there may be some reduction in wildlife use of areas very close to construction zones during construction as a result of noise impacts, wildlife species are expected to resume the use of these areas (to the extent described elsewhere in Section 3.5, *Biological Resources*) following the completion of construction. **(Less than Significant Impact)**

Page 165 Section 3.5.4 Conclusions; **insert** the following text after the seventh paragraph as follows:

Implementation of the proposed Specific Plan would not result in significant impacts to wildlife during construction as a result of noise impacts. **(Less than Significant Impact)**

Page 173 Section 3.6.3.3 Archaeological Resources Impacts, MM CUL-2.1; **revise** the text as follows:

- A limited program of hand excavation shall be undertaken by a professional archaeologist certified by the Register of Professional Archaeologists (RPA) subject to the following standards
  - If specimens are collected, a system for identifying and recording their proveniences must be maintained.
  - Uncollected entities such as environmental or cultural features, depositional strata, and the like, must be fully and accurately recorded by appropriate means, and their location recorded.
  - The methods employed in data collection must be fully and accurately described. Significant stratigraphic and/or associational relationships among artifacts, other specimens, and cultural and environmental features must also be fully and accurately recorded.
  - All records should be intelligible to other archaeologists. If terms lacking commonly held referents are used, they should be clearly defined.
  - During accessioning, analysis, and storage of specimens and records in the laboratory, the archaeologist must take precautions to ensure that correlations between the specimens and the field records are maintained, so that provenience contextual relationships and the like are not confused or obscured.
  - Specimens and research records resulting from a project must be deposited at an institution with permanent curatorial facilities, unless otherwise required by law.
  - The archaeologist has responsibility for appropriate dissemination of the results of her/his research to the appropriate constituencies with reasonable dispatch.

The hand excavation must take place at the locations of the three burials and two cultural features in order to ~~provide the following information~~: v~~V~~erify the presence of midden soils. Hand excavation will verify this, and will provide the researchers with the information needed to determine the aerial extent~~d~~ of the deposits.

Page 184 Section 3.7.3.2 Geology and Soils Impacts and Mitigation Discussion, Liquefaction-Induced Settlement; **revise** MM GEO-1.1 as follows:

MM GEO-1.1: Prior to issuance of grading permits, further study will be required to characterize the lateral extent and magnitude of potential liquefaction-induced settlement for design of new structures and improvements within Areas 3 and 4. The project geotechnical engineer shall coordinate with ACWD prior to beginning any soil improvement measures to ensure impacts on groundwater resources are

minimized. The results of the investigation shall be submitted to the Director of Public Works for review and approval. Structures will need to be supported on rigid foundations designed to tolerate the anticipated total and differential settlements. Alternatively, deep foundations may be required to support structures on firm soil below potentially liquefiable layers. Ground improvement techniques could also be used to mitigate liquefaction-induced differential settlement. **(Less Than Significant With Mitigation)**

Page 185 Section 3.7.3.2 Geology and Soils Impacts and Mitigation Discussion, Settlement Due to Compressible Soils – Area 4 Only; **revise** MM GEO-3.1 as follows:

MM GEO-3.1: Settlement due to fill and building loads can be mitigated by supporting lightly loaded structures on rigid foundations designed to resist differential settlement. As an alternative, buildings could be supported on deep foundations. Design ground improvement techniques, such as surcharging, rammed aggregate piers, or soil/cement mixing, to mitigate settlement. If surcharging is considered, this would include installing vertical wick drains and surcharging building areas with additional imported fill to allow the settlement to occur at an increased rate. If this option is pursued, the Geotechnical Engineer shall work with ACWD during preparation of the design-level geotechnical report. The wick drain design approach shall include the following:

- Wick drains shall be confined within the compressible clay zone (upper 20 feet of soil profile). Additional subsurface exploration during the design-level geotechnical investigation shall confirm the depth of the compressible soil zone.
- Wick drains shall extend no further than 10 feet from the top of slope of the planned areal fill. This will provide at least 5 feet of soil between final grade and the tops of the wick drains, which would be installed prior to areal fill placement. This will reduce the potential for surface water to access the wick drains.
- Horizontal strip drains that are placed at the surface to collect water from the wick drains shall be connected to solid pipes that extended beyond the toe of the areal fill slopes. The horizontal strip drain/solid pipe transitions shall be at the outer row of wick drains. At the completion of the surcharge program, the solid pipes shall be grouted in place to abandon them.

The settlement mitigation approach shall be reviewed and approved by the Director of Public Works, prior to issuance of grading and building permits and the process for implementation of the settlement mitigation will be included on all construction bid documents. **(Less Than Significant With Mitigation)**

Page 188 Section 3.7.3.2 Geology and Soils Impacts and Mitigation Discussion, Groundwater; **revise** MM GEO-7.1 as follows:

MM GEO-7.1: Design underground improvements for potential hydrostatic uplift pressures. The Director of Public Works shall review and approve all underground improvements prior to issuance of building permits. Groundwater losses due to dewatering shall be measured and the amount of water that may be extracted by dewatering shall be estimated and documented and shall be provided to ACWD. **(Less Than Significant With Mitigation)**

Page 192 Section 3.8.1.1 National Pollutant Discharge Elimination System; **revise** the third paragraph as follows:

The RWQCB also has issued a municipal stormwater NPDES permit (SFRWQCB Order R2-2009-0074) that encompasses cities and water agencies in Alameda County including the City of Newark and the Alameda County Flood Control and Water Conservation District. ~~to the Alameda Countywide Clean Water Program (ACCWP) and 14 Alameda County Cities (including Newark), the Alameda County Flood Control and Water Conservation District (ACFC&WCD), and the Zone 7 Water Agency as co-permittees. ACCWP assists the co-permittees with the implementation of local stormwater pollution prevention programs and the municipal permit.~~ Under the currently effective municipal permit, development of Areas 3 and 4 will be subject to low impact development requirements and numeric sizing criteria for pollutant removal treatment systems. Area 3 is potentially subject to limitations on increases of peak storm water runoff discharge rates (Hydromodification).

Page 194 Section 3.8.2.1 Drainage; **replace** Figure 3.8-1 with Figure 3.8-1 (REVISED) on the following page.

Page 195 Section 3.8.2.2 Flooding; **replace** Figure 3.8-2 with Figure 3.8-2 (REVISED) on the following page.

Page 198 Section 3.8.3.2 Long-Term Flooding Impacts; **insert** the text after the second paragraph as follows:

It is noted, for clarity, that the currently effective federal Flood Insurance Rate Map (FIRM) for Newark is dated August 3, 2009, a map published subsequent to the Notice of Preparation. However, other than a three-foot vertical datum shift, the new FIRM is essentially identical to the FIRM used for the preparation of the Draft EIR. The vertical datum shift does not change the depth of the flooding hazards nor does it change the area of 100 year flood zone, therefore, this would not change any of the impact conclusions. Figure 3.8-3 shows the 100-year floodplain under the previous FIRM and the currently effective FIRM.

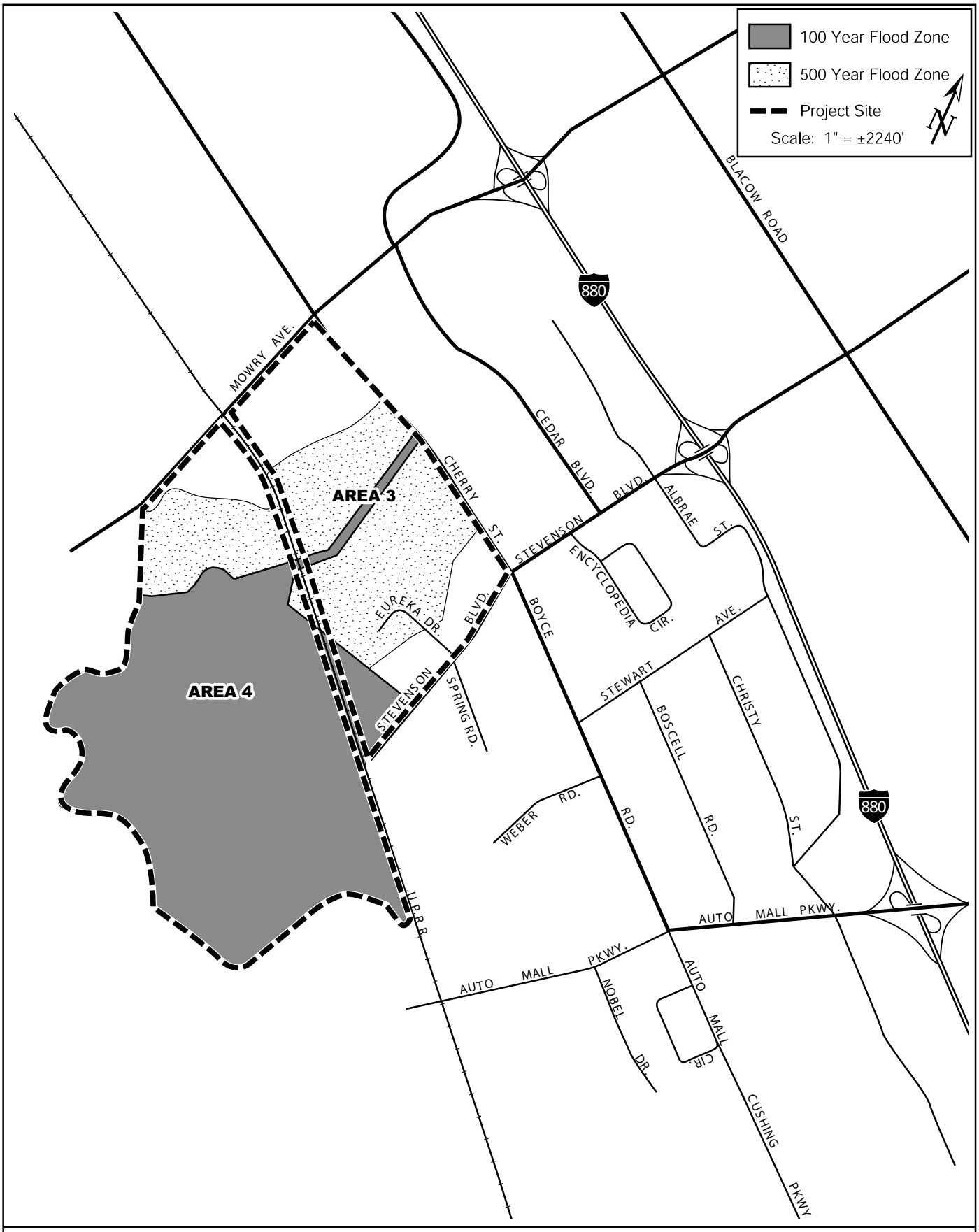
Page 199 Section 3.8.2.2 Flooding; **insert** Figure 3.8-3 on the following page.

Page 203 Section 3.8.3.9 Impacts Related to Water Quality Standards; **revise** the paragraph as follows:

~~The~~ P~~p~~roposed projects within the Specific Plan Area would be required to comply with water quality standards as administered through the NPDES permit. ~~During project design, a Stormwater Pollution Prevention Plan (SWPPP) and Stormwater Management Plan (SWMP) will be prepared to establish measure that would reduce potential impacts from pollutants and sedimentation in stormwater runoff.~~ Developers would be required to take enforceable measures that would reduce potential impacts from pollutants and sedimentation in stormwater runoff. Assuming compliance with these required measures, development under the Specific Plan would not violate any RWQCB water quality standards. **(Less than Significant Impact)**

ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT CHANNELS

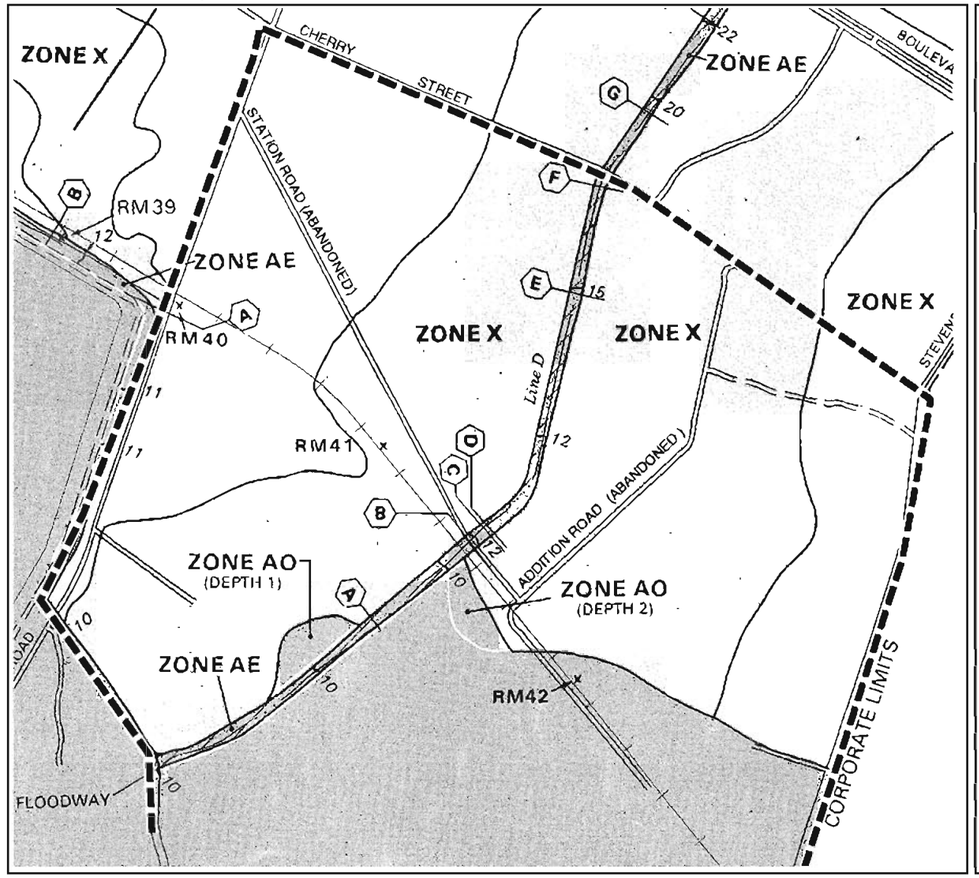
FIGURE 3.8-1 (REVISED)



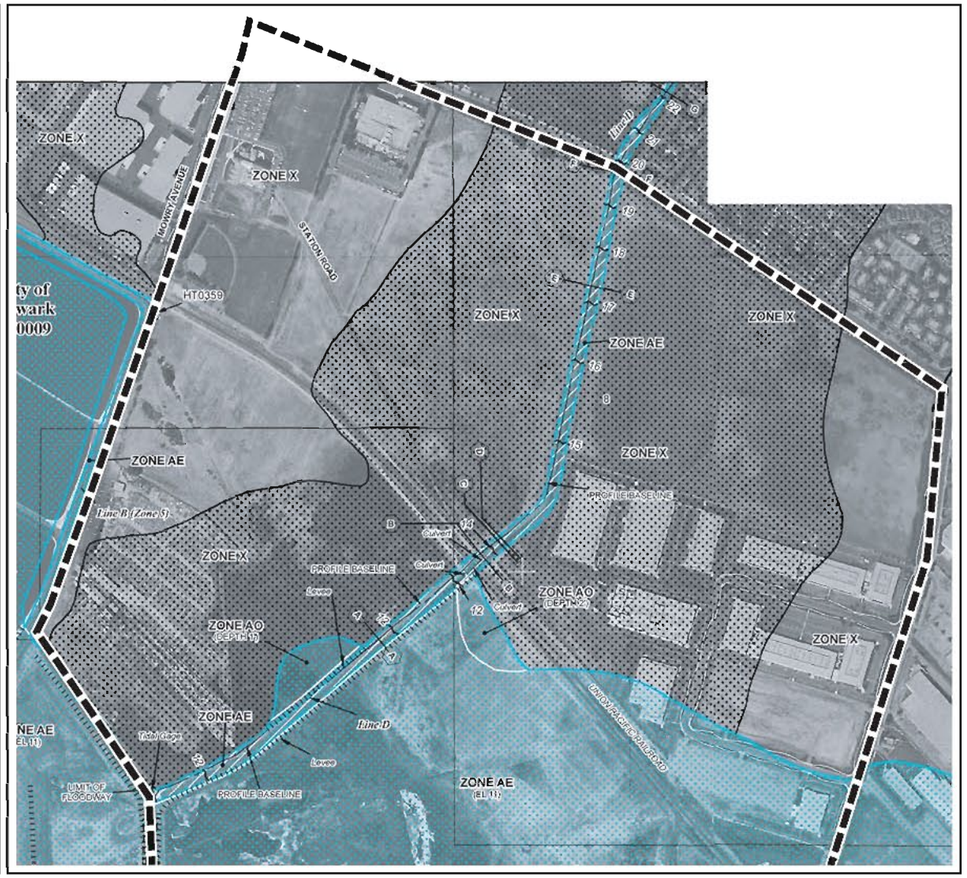
FLOOD ZONE MAP

FIGURE 3.8-2(REVISED)

FEBRUARY 9, 2000



AUGUST 3, 2009



LEGEND

SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

ZONE A	No Base Flood Elevations determined.
ZONE AE	Base Flood Elevations determined.
ZONE AH	Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
ZONE AO	Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
ZONE AR	Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
ZONE A99	Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
ZONE V	Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
ZONE VE	Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

ZONE X — Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS

ZONE X — Areas determined to be outside the 0.2% annual chance floodplain.

ZONE D — Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

1% annual chance floodplain boundary

0.2% annual chance floodplain boundary

Floodway boundary

Zone D boundary

CBRS and OPA boundary

Boundary dividing Special Flood Hazard Area Zones and boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.

FEMA FLOOD MAP COMPARISON

FIGURE 3.8-3

Page 204 Section 3.8.3.11 Long-Term Impacts to Stormwater Drainage Runoff Quality, MM HYD-1.1; **revise** the text as follows:

MM HYD-1.1: All development projects within the Specific Plan shall comply with the National Pollution Discharge Elimination System (NPDES) permit requirements, ~~the Alameda County Clean Water Program standards~~, the City of Newark's ordinances, policies, and processes, and other applicable local, state, and federal requirements.

MM HYD-1.2: All development projects within the Specific Plan shall ~~prepare a SWMP that~~ include~~s~~ post-construction water quality BMPs that control pollutant levels as directed by the City of Newark or Alameda County as Permittees of ~~required under Section C.3 of the~~ NPDES Municipal Stormwater Permit issued by the RWQCB. Provision C.3 of the Municipal Stormwater Permit is applicable to new development within the Specific Plan Area. The development of a golf course clubhouse shall include applicable post-construction water quality BMPs that control pollutant levels as required under Section C.4 of the NPDES Municipal Stormwater Permit issued by the RWQCB. Golf course maintenance facilities shall be developed and operated to include applicable post-construction water quality BMPs that control pollutant levels as required under Section C.2.f of the NPDES Municipal Stormwater Permit issued by the RWQCB.

The use of low impact development (LID) techniques as required by Section C.3.c shall be emphasized. The City of Newark shall require the golf course operators to prepare, implement, and maintain a Stormwater Pollution Prevention Plan (SWPPP) for all corporation yards, vehicle maintenance, parking areas, and material storage facilities that comply with water quality standards by incorporating all applicable BMPs as described herein.

Post-construction water quality treatment BMPs typically will include infiltration basins and trenches, rain gardens, grassy swales, media filters, and biofiltration features. Since the Specific Plan Area is mostly underlain by soils of low permeability and there is a high groundwater table, BMPs that enhance water quality without relying on infiltration are most appropriate for development sites within the Specific Plan Area.

Water quality source control measures, site design elements, and post-construction treatment measures may include the following:

6. "No Dumping" signs at appropriate locations.
7. Stenciled storm drain inlets to prevent the ignorant disposal of pollutants and warn against the intentional dumping of pollutants into the storm drain system.
8. Runoff from roofs, sidewalks, paving and other hardscape areas directed into landscape areas rather than directly connected to storm drain systems.
9. Minimizing impervious surfaces to the maximum extent practicable and using permeable pavements where practical.
10. Locating and designing trash enclosures (all shall be covered) to and materials handling areas to prevent the discharge of pollutants into the streets and storm drain collection systems.

~~Neighborhood- and/or lot-level BMPs to promote "green" treatment of storm runoff shall be emphasized, consistent with Regional Board guidance for NPDES Phase 2 permit compliance. These types of BMPs include infiltration basins and trenches, rain gardens, grassy swales, media filters, and biofiltration features. Since the site has mostly D soils of low permeability and a high water table, BMPs that enhance water quality but do not rely on infiltration are most appropriate for this site. Other source control measures, site design elements, and post-construction treatment measures may include the following:~~

- ~~Disconnected downspouts that are directed into landscape areas;~~
- ~~Minimization of impervious surfaces and increased use of permeable pavement(s);~~
- ~~Location of all storm drain inlets to be stenciled with, "No Dumping! Flows to Bay" to discourage illegal dumping;~~
- ~~Location and design of trash enclosures (all shall be covered) and materials handling areas;~~
- ~~Use effective, site-specific erosion and sediment control methods during post-construction periods.~~

Page 205 Section 3.8.3.11 Long-Term Impacts to Stormwater Drainage Runoff Quality, MM HYD-1.2; **insert** the following text after the last bullet:

- The transport of turfgrass chemicals shall be minimized by the proposed computerized irrigation system that will be connected to an on-site weather station, which shall minimize runoff and percolation to the groundwater table. The irrigation system shall include the features described below.
  - The weather station shall monitor daily average evapotranspiration (ET) conditions and automatically adjust sprinkler rates so that ET rates are matched;
  - The irrigation system shall also included multiple controls cycles so that sprinklers can be turned on and off, matching soil percolation rates with application rates;
  - The layout of the irrigation system shall be designed to avoid watering all moisture-sensitive habitat areas, roadways, and waterways.
- A long-term stormwater management and monitoring program. The stormwater at the outlets leaving the site shall be sampled on a first flush basis, once a year for the lifetime of the project. If the post-project sample results indicate that the quality of stormwater leaving the site has degraded from the base conditions, then the SWPPP shall be reviewed and revised, based upon consultation with the Regional Water Quality Control Board. A minimum of six parameters including pH, total suspended solids, oil and grease, nitrogen, and appropriate pesticide constituents should be analyzed.
- To prevent potential runoff of chemicals, the application of fertilizers, herbicides, and pesticides shall be avoided during periods of expected rainfall and immediately prior to schedule golf course irrigation.
- The golf course superintendent shall maintain a log of all pesticide and herbicide purchase and application, which shall be submitted periodically to the City Community Development Department for review.

Page 210 Section 3.9.1 Regulatory Overview, Table 3.9-1 Regulation of Hazardous Materials; **revise** the table as follows:

Table 3.9-1:
Regulation of Hazardous Materials

Agency	Responsibilities
U.S. Environmental Protection Agency (EPA)	Oversees Superfund sites; evaluates remediation technologies; develops standards for hazmat disposal & cleanup of contamination; implements Clean Air & Clean Water Acts.
U.S. Department of Transportation (DOT)	Regulates and oversees the transportation of hazardous materials.
U.S. Occupational Safety & Health Administration (OSHA)	Implements federal regulations and develops programs & procedures regarding the handling of hazardous materials for the protection of workers.
CA Department of Toxic Substances Control	Authorized by EPA to implement & enforce various federal hazmat laws & regulations, implements state hazardous materials regulations; oversees remediation of contamination at various sites.
CA Occupational Safety & Health Administration (Cal/OSHA)	Implements state regulations and develops programs & procedures regarding the handling of hazardous materials for the protection of workers.
CA Air Resources Board/ Bay Area Air Quality Management District	Regulates emissions of toxic air contaminants & requires information regarding the risk of such emissions to be available to the public.
CA Water Resources Control Board/Regional Water Quality Control Board	Regulates the discharge of hazardous materials to surface and groundwater; oversees remediation of contamination at various sites.
Alameda County Department of Environmental Health	Oversees the investigation and cleanup of soil and groundwater contamination from chemical releases and spills (e.g., pesticides, solvents, metals, etc.). ~~Implements Local Oversight Program (LOP) for the leaking underground storage tank clean-up.~~ As a Certified Unified Program Agency (CUPA), the Alameda County Department of Environmental Health (ACDEH) is authorized to carry out several hazardous materials regulatory programs administered by the State and City. The State laws and regulations covered by the CUPA include: 1) Underground Tanks; 2) Community Right to Know and Spill Notification; 3) Accidental Release Program (Risk Assessment and Control of Extremely Hazardous Substances); 4) Above Ground Tanks; 5) Hazardous Materials Inventory Reporting; and 6) Hazardous Waste Generator Permits. The City codes covered by the CUPA include: 1) Hazardous Materials Storage Permit Requirements; 2) Uniform Fire Code Hazardous Materials Requirements; and 3) Industrial and Commercial Inspections for the City's Storm Water Program.
Alameda County Water District	Assists with the identification of potential groundwater contamination; implements monitoring systems at hazardous materials storage sites; and provides technical oversight for investigations and cleanups at Leaking Underground Fuel Tank (LUFT) and the majority of the Spills, Leaks, Investigation, and

	Cleanup (SLIC) sites to assure the protection of the groundwater basin.
City of Newark Fire Department	The Fire, Life, and Environmental Protection Division (FLEP) Division is comprised of personnel from the Fire Prevention Bureau and Hazardous Materials Bureau. FLEP's hazardous material functions include: 1) conducting fire code compliance inspections, 2) regulating hazardous materials, and 3) issuing permits for hazardous materials facilities and hazardous materials site reviews. ~~As a Certified Unified Program Agency (CUPA), the Newark Fire Department is authorized to carry out several hazardous materials regulatory programs administered by the State and City. The State laws and regulations covered by the CUPA include: 1) Underground Tanks; 2) Community Right to Know and Spill Notification; 3) Accidental Release Program (Risk Assessment and Control of Extremely Hazardous Substances); 4) Above Ground Tanks; 5) Hazardous Materials Inventory Reporting; and 6) Hazardous Waste Generator Permits. The City codes covered by the CUPA include: 1) Hazardous Materials Storage Permit Requirements; 2) Uniform Fire Code Hazardous Materials Requirements; and 3) Industrial and Commercial Inspections for the City's Storm Water Program.~~

Page 212 Section 3.9.2 Existing Setting; **replace** Figure 3.9-1 with Figure 3.9-1 (REVISED) on the following page.

Page 217 Section 3.9.2.3, Off-Site Contamination Sources; **insert** the following text after the first paragraph:

Hazardous Materials Use & Storage in the Project Vicinity

A hazardous materials users survey was completed to identify facilities in the vicinity of the Specific Plan area having reported hazardous substance usage and to evaluate the significance of the identified hazardous substances for the proposed Specific Plan, if an accidental release were to occur. A visual survey of businesses within approximately 0.5 miles of the project site was completed to identify facilities likely to use, handle, and/or store significant quantities of hazardous substances. The hazardous materials/waste facilities identified through the visual survey were reviewed at the Fremont Fire Department (FFD) and Newark Fire Department (NFD). The California Accidental Release Program (CalARP) facilities, located within a 1-mile radius of the project site in the City of Fremont and the City of Newark, were also reviewed as part of this analysis. CalARP facilities are those that use or store specified quantities of toxic and flammable substances that can have off-site consequences if accidentally released. A regulatory agency database report was also reviewed to identify government agency-recorded facilities having significant hazardous substance inventories for the usage or having significant reported air emissions.

Alameda County Water District (ACWD)
Alameda County Flood Control & Water Conservation District (ACFC & WCD)

Source: Cornerstone Earth Group

PROPERTY OWNER LOCATION MAP FIGURE 3.9-1 (REVISED)

The above research identified eight facilities that use or store certain chemicals that, if a release were to occur, could pose a significant threat to future residents at the project site. These facilities, including their name, location, and chemical of concern are summarized in Table 3.9-2.

Table 3.9-2:
Summary of Nearby Facilities That Could Pose of Significant Threat

Facility Name	Location	Chemical of Concern
CertainTeed Corporation	6400 Stevenson Blvd., Fremont (approximately 0.08 miles northeast of the project site)	Propane
Hexion Specialty Chemicals	41100 Boyce Road, Fremont (approximately 0.26 miles east of the project site)	Ammonium hydroxide, formaldehyde, and methanol
PG&E Newark Substation	6453 Auto Mall Pkwy, Fremont (approximately 0.33 miles east – southeast of the project site)	Propane
BASF Corporation	38403 Cherry Street, Newark (approximately 0.45 miles northwest of the project site)	Aqua-ammonia and propane
Oatey Company	6600 Smith Avenue, Newark (approximately 0.47 miles northwest of the project site)	Solvent and hydrochloric acid
Sysco Food Services	5900 Stewart Avenue, Fremont (approximately 0.56 miles northwest of the project site)	Anhydrous ammonia
Evergreen Oil, Inc.	6880 Smith Street, Newark (approximately 0.50 miles northwest of the project site)	Liquid hydrogen and gas oil
Alameda County Water District Desalination Facility	6833 Redeker Place, Newark (approximately 0.91 miles northwest of the project site)	Aqua-ammonia and fluorosilicic acid

The above facilities were further reviewed by an industrial hygienist to identify and model the chemicals with the greatest potential to result in an impact to the proposed project. The results of the chemical release modeling are discussed in greater detail in Section 3.9.3.3, *Potential Sources of Risk due to Accidental Chemical Release*.

Page 219 Section 3.9.3.1 Area 3 Hazardous Material Impacts, MM HAZ-1.1; **revise** the sentence as follows:

- A Remediation Plan shall be developed and approved by the City, ACWD, and DTSC prior to issuance of grading permits for the residential development.

Page 222 Section 3.9.3.2 Area 4 Hazardous Materials Impacts, MM HAZ-3.1; **revise** first bullet as follows:

- All additional testing and remediation described below shall be completed under oversight by the City and an appropriate regulatory agency, DTSC and/or ACWD prior to issuance of grading permits for the residential development.

Page 222 Section 3.9.3.2 Area 4 Hazardous Materials Impacts, MM HAZ-3.1; **insert** this bullet after the first bullet as follows:

- Prior to the start of any subsurface drilling activities, the project proponent(s) shall obtain a drilling permit from ACWD. Application for a permit may be obtained from ACWD's Engineering Department, at 43885 South Grimmer Boulevard, Fremont or online at http://www.acwd.org/engineering/drillin8-Permit.php5. All permitted work requires scheduling for inspection; therefore, all drilling activities must be coordinated with ACWD prior to the start of any field work.

Page 222 Section 3.9.3.2 Area 4 Hazardous Materials Impacts, MM HAZ-3.1; **revise** the sixth bullet as follows:

- Soil quality adjacent to on-site wells shall also be analyzed for spilled chemicals including pesticides. The results shall be provided to the City and the appropriate regulatory oversight to determine the appropriate remediation, if necessary. Prior to issuance of a grading permit, the project proponent(s) and ACWD shall identify all abandoned wells within the project boundary. Any wells identified or discovered during construction shall be appropriately destroyed in accordance with ACWD specifications and local standards ~~If no longer needed, the water supply wells shall be appropriately abandoned in accordance with local standards~~ prior to issuance of a grading permit.

Page 222 Section 3.9.3.2 Area 4 Hazardous Materials Impacts, MM HAZ-3.1; **revise** seventh bullet as follows:

- Prior to any ground disturbance and issuance of grading permits at the unnamed parcel located to the west of the southern terminus of Stevenson Boulevard, shall be further evaluated to assess the current environmental conditions of this area. This evaluation shall be provided to the City and ACWD for review and to determine the appropriate remediation, if warranted.

Page 224 Section 3.9.3.2 Area 4 Hazardous Materials Impacts, MM HAZ-4.1; **revise** the text as follows:

- Soil and ground water quality investigations shall be completed at the auto wrecking operation properties prior to issuance of any demolition permits. If impacted soil or groundwater is detected that exceeds commercial screening levels, these parcels shall be remediated under oversight by the City and an appropriate regulatory agency, in this case likely DTSC and/or ACWD. The oversight agency shall be responsible for overseeing and directing all site

investigation and cleanup activities in a manner that ensures that the standards and requirements of the State of California are fully addressed.

- Any future golf course development activities at the 10-acre Mowry Avenue property shall be coordinated with the City and the appropriate regulatory agency, DTSC and/or ACWD. Additionally, prior to issuance of grading permits, methane monitoring shall be completed at this property and results shall be provided to the City and the regulatory agenc~~y~~ies. If impacted methane levels exceeds commercial screening levels, these parcels shall be remediated under oversight by the City and in this case, likely DTSC and/or ACWD.

- The depth and quality of the former fill areas [Pick-N-Pull Parcel 1, Ace Auto Wrecker's property, and 115-acre Rogers property (filled ponds)] shall be investigated prior to issuance of grading permits. This investigation shall be provided to the City and/or ACWD for review and approval. Options for remediating impacted fill include capping, relocation, over-excavation and off-site disposal, and/or completing a risk assessment to evaluate whether this material is a risk to human health or the environment under the future golf course redevelopment plan.

Page 225 Section 3.9.3.2 Golf Course Operation; **revise** the first paragraph as follows:

The proposed golf course will apply fertilizer to the maintained areas including the fairways, greens, and tees, and, less frequently, herbicides and pesticides. The application of agricultural chemicals will be avoided near wetland and other sensitive areas, as described in the *Section 2.4.4~~.~~3.1*

Page 226 Section 3.9.3 Hazardous Materials Impacts; **insert** text after the last paragraph on the page as follows:

3.9.3.3 *Potential Sources of Risk due to Accidental Chemical Release*

As noted previously, there are eight facilities in the vicinity of the project site that have the potential to impact the proposed project due to their use and storage of hazardous materials. Three of the facilities are CalARP facilties: 1) Hexion Speciality Chemicals, Inc.; 2) Sysco Food Services, and 3) Alameda County Water District Desalination Facility. CalARP is the Federal Risk Management Plan Program with additional state requirements, including an additional list of regulated substances and thresholds. As part of the CalARP program, each of these facilities has a Risk Management Plan (RMP) in place. The intent of the RMP is to provide basic information that may be used by first responders in order to prevent or mitigate damage to the public health and safety and to the environment from a release or threatened release of a hazardous material; and to satisfy federal and state Community Right-to-know laws.

Accidental release scenarios were modeled for both a worst-case and an alternative release scenario for the eight facilities. Both the EPA's and CalARP's guidance and regulations have defined the worst-case release scenario (largest theoretical release) as the total release of the largest quantity of a regulated substance from a single

vessel or process line failure that results in the greatest distance to an endpoint under conservative meteorological conditions. Worst-case release scenarios represent the failure modes that would result in the worst possible off-site consequences, however unlikely, and do not represent more likely smaller releases that would potential result in smaller impacts. The alternative release scenario is defined as those that are more likely to occur than the worst-case release scenario, and reach an endpoint off-site. Both are hypothetical scenarios base on process knowledge, health and safety systems and practices and history of the facility, but the probability of the release to occur is not required to be calculated or reported. As a result, even the alternative release scenario may describe an unlikely event.

The Bay Area Air Quality Management District (BAAQMD)'s CEQA Guidelines for Assessing the Air Quality Impacts of Project and Plan (1999) recommends the use of American Industrial Hygiene Association's (AIHA) Emergency Response Planning Guidelines exposure level 2 (ERPG-2) as the threshold for evaluating significant expose impacts. The ERPG-2 is defined as the maximum airborne concentration a person can be exposed to for up to one (1) hour without permanent ill effects or impairment of the person's ability to take protective actions.

Based on the modeling data, worst-case releases of ammonium hydroxide, formaldehyde solution, and methanol from Hexion Specialty Chemicals (41100 Boyce Road, Fremont) and anhydrous ammonia from Sysco Food Services (5900 Stewart Avenue, Fremont) could have significant impacts at the project site in Areas 3 and 4.

Under the assumed alternative case release scenarios presented in the CalARP files, releases from Hexion Specialty Chemicals and Sysco Food Services would not impact the project site. The City of Newark relies on the alternative release scenario as the basis to determine significant impacts to residential development from accidental chemical release in the project area, because this scenario acknowledges the process knowledge and required health and safety systems and practices the specific facilities have incorporated, in response to participating a RMP program and, therefore, represents a more credible release scenario. Accordingly, based upon the alternative release scenario relied upon by the City, future residents of the proposed Specific Plan would not be significantly impacted by accidental chemical release at any of the industrial facilities in the vicinity of the project. The impact of locating the proposed residential project near these facilities is, therefore, less than significant. **(Less Than Significant Impact)**

Union Pacific railroad tracks separate Areas 3 and 4 extending northwest to southeast across the site. According to a representative of Union Pacific Railroad, any form of freight, including hazardous materials could be transported in rail tank cars on any rail line. Describing and analyzing each specific chemical that trains could theoretically carry in the future would be speculative and infeasible and therefore not required under CEQA.

An accident involving such cars could result in a release of hazardous materials in the project vicinity. All trains carrying hazardous materials are required to comply with regulations of the Pipeline and Hazardous Material Safety Administration Office of

Hazardous Materials Safety (OHMS). OHMS is the Federal safety authority ensuring the safe transport of hazardous materials by air, rail, highway, and water. OHMS also works with other Department of Transportation operating administrations to help them administer hazardous material safety programs effectively.

As discussed in Section 3.4, the Mitigation Measures NOI-1.1 includes the construction of a wall, likely solid masonry, concrete or metal, along the residential frontage of Area 4, the closest residential area to the railroad tracks. Further, the City and the Specific Plan mandate setbacks of 80 feet from the centerline of rail tracks for any development. The presence of the barrier wall, in concert with the 80-foot setback, and the established safety protocols for the transport of hazardous material, would minimize the impact from any hazardous material that might be released from a rail tank car. Therefore, the location of future residential development near the railroad is not considered a significant impact. **(Less Than Significant Impact)**

Page 227 Section 3.9.4 Conclusion; **insert** text after the last paragraph as follows:

Impacts to the proposed project from accidental chemical release at an off-site source would be less than significant. **(Less Than Significant Impact)**

Page 240 Section 3.10.3.2 Visual and Aesthetic Resources Impact Discussion; **insert** text before the last paragraph as follows:

Construction phasing will likely occur over an extended period of time. There will be various construction vehicles, equipment, and stockpiles of soil throughout the Area 3 and Area 4 as the project develops. Even though construction will be temporary it is still part of the significant change that will occur on the site.

Page 251 Section 3.12.3.2 Water Supply; **revise** the first paragraph as follows:

The estimated water demand buildout of the proposed Areas 3 and 4 Specific Plan is 1,~~1~~000 acre-feet per year, as shown in Table 3.12-1. This water demand estimate is slightly lower (100 AF per year) than the Water Supply Assessment (WSA) results because the total number of single-family units was reduced after the WSA was prepared.

Page 251 Section 3.12.3.2 Water Supply; **revise** the second paragraph as follows:

At the time when reclaimed water is available near Areas 3 and 4, a connection will be made and the irrigation needs of Areas 3 and 4 ~~could~~ shall be switched over to reclaimed water service.

Page 251 Section 3.12.3.2 Water Supply, Table 3.12-1 Water Demand Estimate; **revise** the table as follows:

Table 3.12-1: Water Demand Estimate

Land Use	Number of units		Gallons Per Day / Planning Unit	Demand Estimate (AF/yr)
Single-Family Residential	1,071[1]	Dwelling Units	3~~8~~05	~~456~~366
Multi-Family Residential	189[2]	Dwelling Units	150	32
School	600	Students	15.7	11
Golf Course	130	Acres	3,371	491
Parks/Open Space	24.8	Acres	849	24
			Subtotal	~~1,01~~924
			8 % unaccounted for water	88[3]
			Estimated Project Demand (rounded to nearest 100 AF)	**1,~~1~~000**

[1] This total includes a range of residential densities to account for different development possibilities. For this table, 311 dwelling units were assumed to be 6,000 to 7,000 sq ft lots, 380 dwelling units were assumed to be townhouses, and 380 dwelling units were assumed to be 2,000 to 5,000 sq ft lots. This table differs slightly from the data in the WSA, due to minor changes made by the City of Newark after preparation of the WSA. These changes do not affect the results of the estimated water demand, because the total number of single-family units was reduced.

[2] The total number of multi-family units was also updated by the City of Newark after preparation of the WSA, but these changes did not affect the result of the estimated water demand.

[3] Long-term average 8 % unaccounted for water (UAW) assumed.

Note: The WSA included three-acres of office space within Area 3; this has since been removed from the project description and is an existing use and, therefore, is not included in the table.

Page 251 Section 3.12.3.2 Water Supply; **revise** the third paragraph as follows:

Area 3 potable water needs will be met via service from existing mains within the adjacent public streets within Cherry Street and Stevenson Boulevard (refer to Figure 3.1~~3~~2-1).

Page 253 Section 3.12.3.2 Water Supply; **revise** the first paragraph as follows:

The street network in Area 3 would also be outfitted with a reclaimed water (purple-pipe) system for non-potable irrigation service for park and school ground areas. At the time when reclaimed water is available near the project site, a connection ~~could~~ will be made and the irrigation needs of Area 3 ~~could~~ will be switched over to reclaimed water service.

Page 253 Section 3.12.3.2 Water Supply; **revise** the second paragraph as follows:

Area 4 potable water needs will be met via service from an existing 14-inch main within Cherry Street and Stevenson Boulevard. This would serve as a connection point to a new public water distribution system within the residential public streets proposed in Area 4. The public water mains will be extended along with the extension of Stevenson Boulevard, as well as a minimum of one additional connection to existing mains in either Mowry Avenue or Cherry Street (via the new potable water system to be installed in Area 3) to provide for system looping. This proposed distribution system would be sized according to the ultimate build-out needs of the proposed site development but can be estimated to be a standard 8-inch distribution service, which would be able to serve residential and fire service needs. Within the span of the bridge, utility sleeves will be able to accommodate public utility systems to serve Area 4 including possible water facilities. Redundant connections to the new public potable water system will be required in both Areas 3 and 4 such that all areas will be served from multiple existing water mains. In Area 4, this will result in the need for multiple crossings of the existing railroad.

Page 253 Section 3.12.3.2 Water Supply; **revise** the third paragraph as follows:

The park areas and golf course sites in Area 4 would also be outfitted with a reclaimed water (purple-pipe) system for non-potable irrigation service. Prior to the availability of reclaimed water, the golf course would be irrigated with an existing on-site well. This well will draw from ACWD's managed groundwater resources in the Niles Cone, however, it will not burden ACWD's potable distribution system and production facilities.[27] At the time when reclaimed water is available near the project site, a connection(s) ~~could~~ will be made and the irrigation needs of Area 4 ~~could~~ will be switched over to reclaimed water service.

The ultimate design of the proposed public water distribution system will require close coordination between ACWD, City of Newark, and project proponents.

Page 268 Section 3.13.3.2 Electricity and Natural Gas; **revise** the first paragraph as follows:

All ~~D~~development allowed by~~of~~ the proposed Specific Plan will be constructed to meet, at a minimum, the requirements of Title 24.11 California Green Building Standards Code, effective August 1, 2009, or the Building Standards Code in effect at the time of building design. ~~of the California Administrative Code, as it pertains to energy efficiency.~~ The California Green Building Standards Code is Part 11 of twelve parts of the official compilation and publication of the adoption, amendment and repeal of building regulations to the California Code of Regulations, Title 24, also referred to as the California Building Standards Code. The new 2009 codes give California the most advanced building standards in the United States, and require the following:

- Significant improvements in water usage for plumbing fixtures
- Specify household and landscape water conservation reductions of 20 percent for homes

[27] Alameda County Water District, "Water Supply Assessment for Newark Areas 3 & 4 Specific Plan EIR Project," November, 2008.

- Set 15 percent stronger requirements for energy savings than currently enforced. These energy savings are found through a combination of more efficient appliances, better insulation, and more efficient windows.
- This code also encourages the use of recycled materials in carpets and building materials, identify a number of improvements to air quality, and suggest various site improvements, including parking for hybrid vehicles and better storm water plans.

All development will also be required to comply with the City of Newark Green Building and Construction and Demolition Recycling Ordinance. The Specific Plan has…

Page 292 Section 4.4.4.1 Global Climate Change thresholds of significance; revise the third and fifth bullet as follows:

- be adversely impacted by sea level rise of 4.6~~two to three~~ feet; or
- be adversely impacted by increased electricity demand or water supply, particularly in the hot summer months.~~; or~~

Page 297 Section 4.4.4.2 Impacts from the Project, MM C-GCC-4.1; **insert** the following text after the first sentence of mitigation measure 4.1 as follows:

These measures shall include, but are not limited to:

- Pre-wire (or equivalent most current technology) residences and commercial buildings to facilitate the installation of solar power.
- LEED certification or equivalent for commercial buildings.
- Include plug-ins (or equivalent most current technology) in residences to facilitate the use of electric and hybrid vehicles.

Page 297 Section 4.4.4.2 Impacts from the Project, MM C-GCC-4.2; **insert** the following text after the second sentence of mitigation measure 4.2 as follows:

These practices shall include, but are not limited to:

- No lawn areas less than 8 foot wide.
- Where practical, utilize underground irrigation systems rather than surface applied irrigation to reduce evaporative loss.
- Minimize mowed lawn areas in residential development neighborhoods and use mowed lawn areas only for active recreation areas in park spaces
- Minimize use of plants that require extensive pruning and/or generate large amounts of green waste.
- Utilize "Integrated Pest Management" principals in the landscape maintenance of the project.
- Employ recycled materials for landscape materials such as headers, paving, street furniture, and mulch wherever practical.
- Landscape lighting to respect dark sky principals, i.e. no light directed up-ward.

Page 310 Section 5.1.2 Objectives of the Project; **revise** last bullet as follows:

- If a golf course is found infeasible, then another recreation use that is acceptable to the City, and undergoes environmental analysis, shall be provided as a condition of development.

Page 310 Section 5.1.2 Objectives of the Project; **insert** bullet as follows:

- Provide park and open space amenities within Areas 3 and 4.

Page 314 Section 5.3.1 Comparison of Environmental Impacts; **insert** this text after the first sentence of the second paragraph as follows:

The No Development in Area 4 and Higher Density Area 3 Alternative avoids new development in areas that cannot be protected from future flooding due to climate change, consistent with the 2009 California Climate Adaptation Strategy.

Page 326 Section 9.0 References; **insert** the following text:

Federal Aviation Administration, Title 14 Aeronautics and Space: http://edocket.access.gpo.gov/cfr_2004/janqtr/14cfr77.13.htm

Federal Aviation Administration, Federal Aviation Regulations Sec. 121.657 - Flight altitude rules: http://www.risingup.com/fars/info/part121-657-FAR.shtml

Appendices Draft EIR Volume II, Appendix A; **insert** revised Specific Plan in Appendix A of this document on page 278.

Appendices Draft EIR Volume II Appendix G, Hydrology and Water Quality Report page 7; **revise** the second sentence of the second paragraph as follows:

The quantity of filled wetlands could range from zero acres to 85.6 ~~93~~ acres. This section evaluates the full range of potentially impacted/filled wetlands.

Appendices Draft EIR Volume II; **insert** Appendix K, Hazardous Materials Users Survey in this document on page 332.

Appendices Draft EIR Volume II; **insert** Appendix L, City of Newark Bay Friendly Landscape Guide in this document on page 355.

Appendix A
Newark Areas 3 and 4 Specific Plan

NEWARK SPECIFIC PLAN

AREA 3 & 4 OF THE GENERAL PLAN

PREPARED FOR THE CITY OF NEWARK, CA
March, 2010

LIST OF CONSULTANTS

Planner	**The Frisbie Planning Company** 109 Baldwin Avenue San Mateo, CA 94401 650.696.8440
Architect	**Hunt, Hale, Jones, Architects** 444 Spear Street Suite 200 San Francisco, CA 94105 415.512.1300
Landscape Architect	**The Guzzardo Partnership, Inc.** 836 Montgomery Street San Francisco, CA 94133 415.433.4672
Civil Engineer	**Kier & Wright** 3350 Scott Blvd. Building 22 Santa Clara, CA 95054 408.727.6665
Biologist	**H.T. Harvey & Associates** 983 University Avenue Building D Los Gatos, CA 95032 408.458.3200

CITY OFFICIALS ACKNOWLEDGEMENTS

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Public Works Director:	Peggy Claasen
Senior Engineer :	Soren Fajean
Economic Development Director:	Clay Colvin
Planner :	Richard Fujikawa

HOW TO USE THIS PLAN

This Plan herein establishes three residential neighborhoods, and the standards and guidelines for development or each of those neighborhoods. The Planning Director is given the authority for Site Plan & Architectural approval for the design of each Neighborhood as long as the designs are in compliance with the provisions in this Plan. City Council approvals are required for all Tentative & Final Maps, which may be processed ahead of or after review by the Planning Director for Site and Architectural approval.

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6. Standards for the Conservation, Development, and Utilization of Natural Resources
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- Ownership Map
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- Architectural Design Theme & Siting Template 60’x80’ Lots
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- Conceptive Utility Diagram
- Entry Circle
- Section thru Entry Drive
- Sub Area C Park
- Pedestrian Bridge
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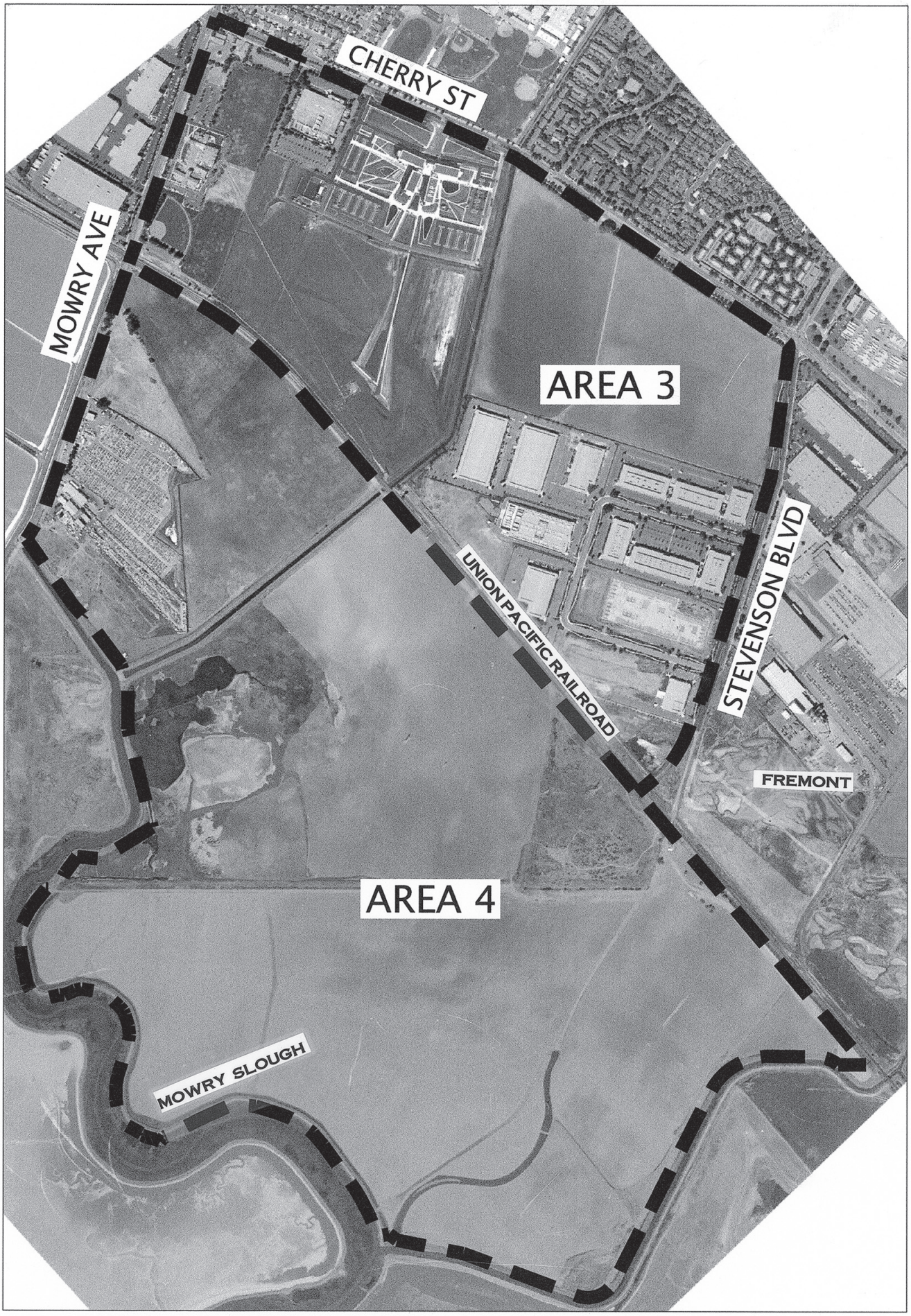
- Cherry Street Buffer
- Stevenson Blvd Buffer



NEWARK SPECIFIC PLAN DELINEATION

AREA 3 & 4 CITY OF NEWARK, CA

N.T.S.

1. Introduction & Background

The Specific Plan covers 856 acres of land in the western edge of Newark. There are two areas currently identified in the General Plan as Area 3, which is 296 acres and Area 4, which is 559 acres. Area 3 is the land bounded by Mowry Avenue, Stevenson Blvd., Cherry Street and the Union Pacific Railroad. The current General Plan for the area is: Special Business Park, Public Open Space and Public Institutional. The Specific Plan guidelines are intended to apply only to the southeastern-most 77 acre portion of Area 3. The remaining portion of Area 3 is not proposed to be changed. Area 4 is the land west of the Union Pacific Railroad extending to the Mowry Slough. Mowry Ave is the northern boundary with a flood control channel and the Durham Road Landfill in Fremont as the southern boundary. The current General Plan designation is Low Density Residential with the requirement of a Specific Plan being adopted prior to development. The General Plan envisions "high quality" residential uses along with a "golf course". According to the General Plan Text" … if the development of a Golf Course … is unfeasible as determined by the City, then residential may proceed with other recreation facilities acceptable to the City when a Specific Plan is adopted by the City…".

There are several property owners in Area 3 and 4, but only the "Newark Partnership" holdings are contributing to the costs of the Specific Plan and EIR at this time. As other property owners seek to develop pursuant to the Plan, the City shall recover a pro-rata share of the costs of the preparation of the Plan from them to reimburse the present property owners. The exhibit following, "Specific Plan Property Ownership Map", shows all the relevant ownerships within the Specific Plan's boundary. The Newark Partnership controls the parcels identified as: 9, 10, 11, 28, 33, 34, 35, 38, and 39.

2. Specific Plan Land Use

a. **Introduction.** Major land uses for the Specific Plan include Residential, Golf Course, and reserve land in which no development is planned and no changes in existing designations or zoning are proposed. Their locations are depicted on the "Specific Plan Land Use Diagram". In addition to those land uses, the plan's diagram also shows a new two lane bridge over the railroad connecting Stevenson Blvd with a two lane main entry road on the southwest side of the railroad leading into Area 4.

b. **Sub Areas.** The Specific Plan is divided into six sub areas, as identified on the "Specific Plan Land Use Diagram" as follows:

- **Sub Area A.** Sub Area A is the 77 plus acres of land bounded by Cherry Street, Stevenson Blvd, ACFC & WCD's flood control channel, and the existing and developed Industrial uses located on the southwestern edge of this sub-area. Uses planned for this area include single family detached homes on lots varying in size, attached or stacked housing, and school/park up to 12 acres in size. The school/park area is to take vehicle access from Cherry Street via an internal street connecting directly to Cherry Street. A pedestrian trail will be located adjacent to the Flood Control Channel to connect the School/Park with the residential area. To promote pedestrian and bike traffic from the residential area to the recreation use to the North, a pedestrian bridge across the

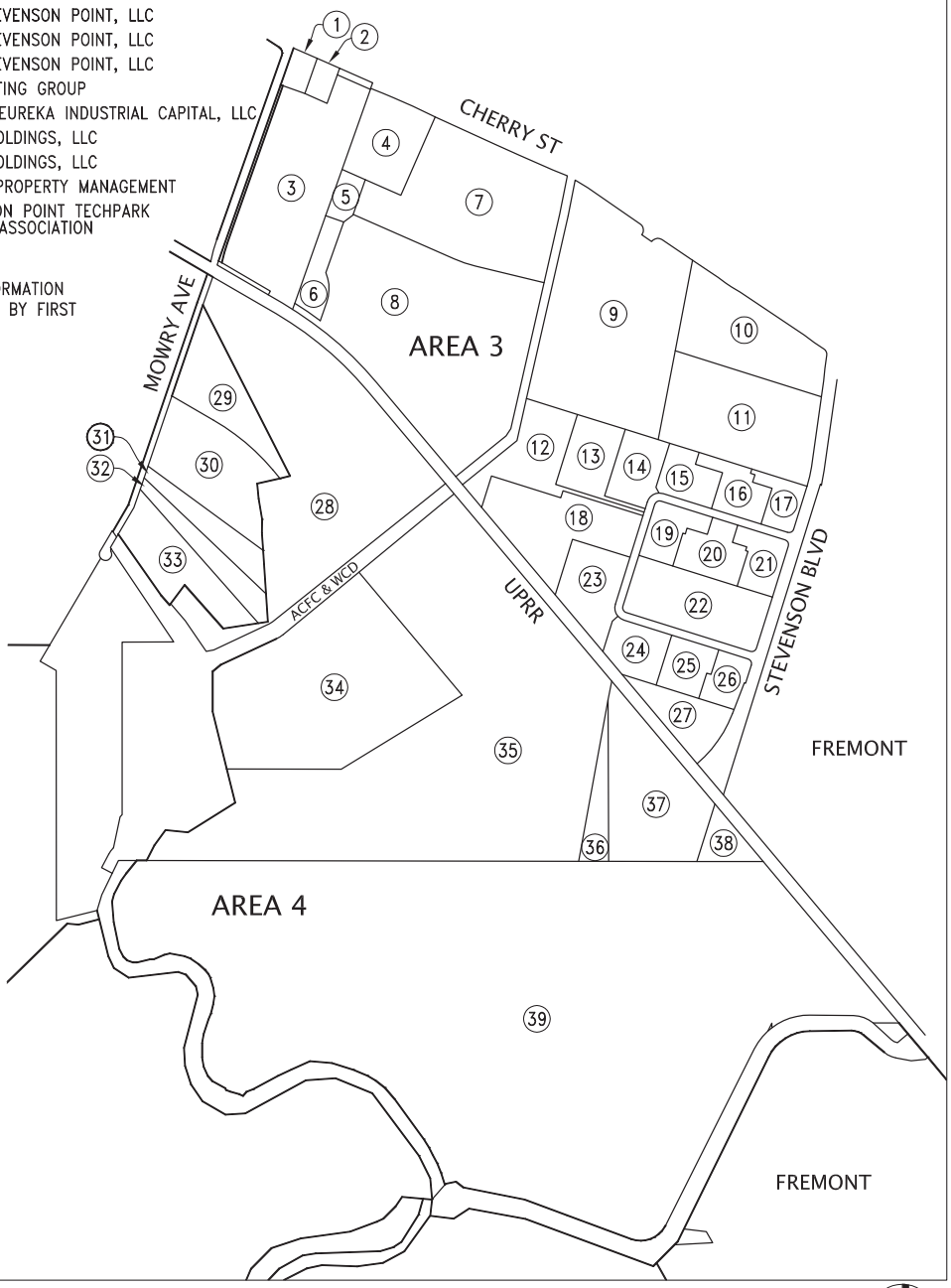
AREA 3 OWNERSHIP TABLE

	ACREAGE	PROPERTY OWNER
1	1.480 ± ACRES	CITY OF NEWARK
2	1.371 ± ACRES	CITY OF NEWARK
3	26.217 ± ACRES	CITY OF NEWARK
4	8.758 ± ACRES	AGILENT TECHNOLOGIES, INC
5	1.800 ± ACRES	CITY OF NEWARK
6	3.343 ± ACRES	CITY OF NEWARK
7	29.984 ± ACRES	OHLONE COMMUNITY COLLEGE DISTRICT
*8	51.766 ± ACRES	FREMONT NEWARK COMMUNITY COLLEGE DISTRICT
9	40.891 ± ACRES	SI XVIII, LLC
10	15.641 ± ACRES	SI XVIII, LLC
11	21.019 ± ACRES	SI XVIII, LLC
*12	8.747 ± ACRES	365 NEWARK DC, LLC
13	5.796 ± ACRES	365 NEWARK DC, LLC
14	4.832 ± ACRES	NEWARK EUREKA INDUSTRIAL CAPITAL, LLC
15	3.927 ± ACRES	BRCP STEVENSON POINT, LLC
16	4.027 ± ACRES	BRCP STEVENSON POINT, LLC
17	2.879 ± ACRES	BRCP STEVENSON POINT, LLC
*18	13.454 ± ACRES	APPLE COMPUTER INC
19	3.780 ± ACRES	BRCP STEVENSON POINT, LLC
20	4.793 ± ACRES	BRCP STEVENSON POINT, LLC
21	3.735 ± ACRES	BRCP STEVENSON POINT, LLC
22	12.309 ± ACRES	TASANN TING GROUP
23	7.199 ± ACRES	NEWARK EUREKA INDUSTRIAL CAPITAL, LLC
24	4.500 ± ACRES	CLARK HOLDINGS, LLC
25	3.714 ± ACRES	CLARK HOLDINGS, LLC
26	2.893 ± ACRES	EUREKA PROPERTY MANAGEMENT
27	5.841 ± ACRES	STEVENSON POINT TECHPARK OWNERS ASSOCIATION

AREA 4 OWNERSHIP TABLE

	ACREAGE	PROPERTY OWNER
28	56.018 ± ACRES	NEWARK PARTNERS, LLC
*29	9.805 ± ACRES	PICK-N-PULL AUTO DISMANTLERS
*30	14.408 ± ACRES	PICK-N-PULL AUTO DISMANTLERS
*31	4.997 ± ACRES	NUNES ALFRED C / NUNES LORRAINE M
*32	4.998 ± ACRES	HEBERT ELMER H / HEBERT PATRICIA J
33	10.000 ± ACRES	NEWARK PARTNERS, LLC
34	45.137 ± ACRES	NEWARK PARTNERS, LLC
35	115.136 ± ACRES	NEWARK PARTNERS, LLC
36	18.550 ± ACRES	KATY S O'CONNOR REVOCABLE TRUST
37	3.657 ± ACRES	KATY S O'CONNOR REVOCABLE TRUST
*38	2.880 ± ACRES	ARQUES INVESTMENT COMPANY, LLC
*39	266.978 ± ACRES	ARQUES INVESTMENT COMPANY, LLC

* DENOTES PROPERTY OWNERS INFORMATION OBTAINED VIA FASTWEB PROVIDED BY FIRST AMERICAN TITLE INSURANCE CO.



NEWARK SPECIFIC PLAN

PROPERTY OWNERSHIP DIAGRAM

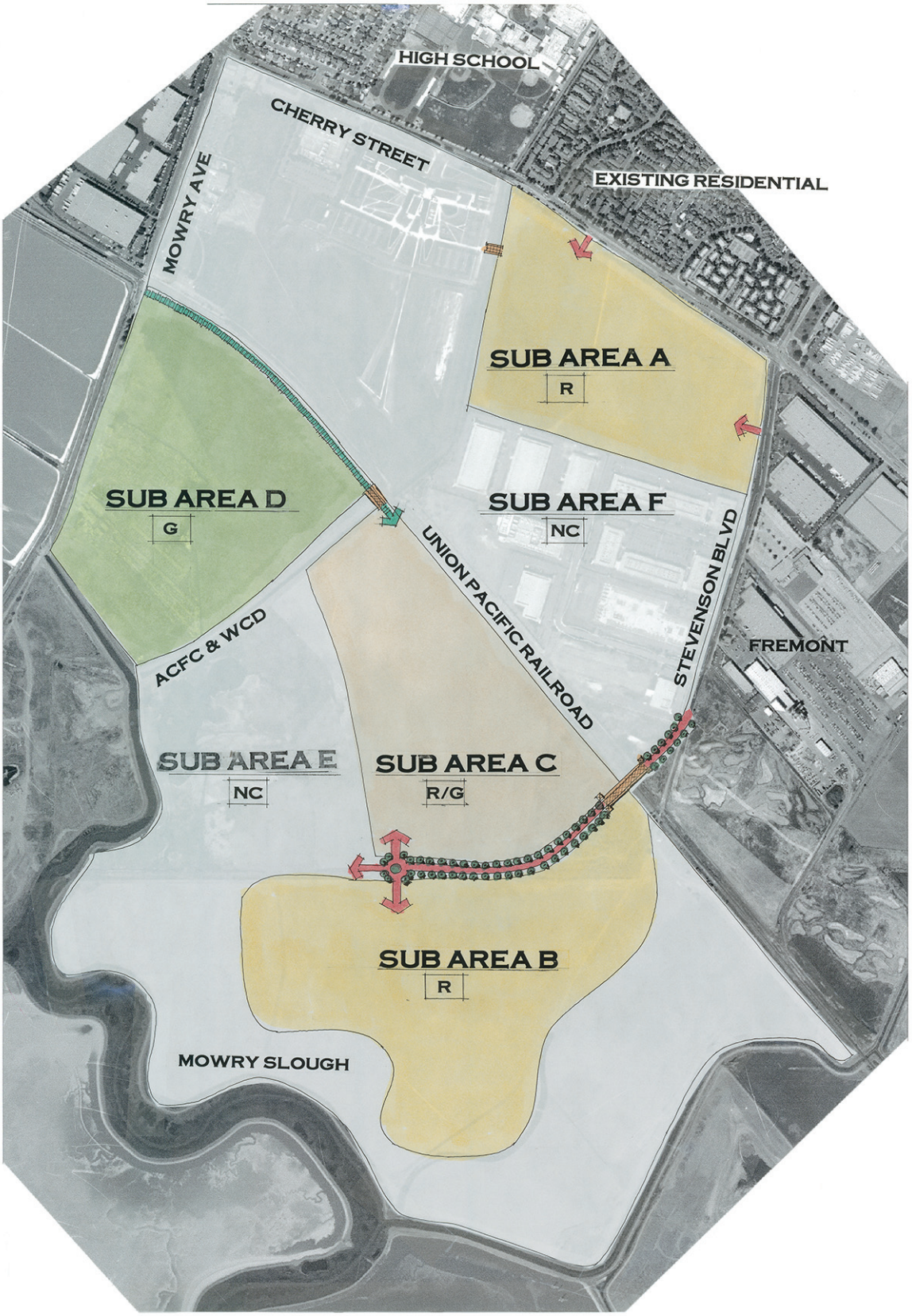
Channel will be provided. The bridge will be carefully placed to line-up with the walkways in the Ohlone College facility next door.

Sub Area A is currently designated as Special Industrial under the General Plan and zoned as MT-1 High Technology Park. The General Plan will be amended to a Medium Density Residential designation, and Sub-Area A will be rezoned to Residential District R-6000 (single family detached homes), as contemplated by this Plan. In anticipation that the majority of the lots will range from 3,000 to 6,000 square feet, a Planned Unit Development permit and a conditional use permit will also be granted simultaneously with the rezoning. These permits will allow for greater flexibility for requirements such as lot size and setbacks and will also allow for a portion of Sub Area A to be developed with high density multifamily housing in order to accommodate the City's affordable housing requirement, should the developer choose to do so on-site. In addition, a conditional use permit will be required for attached and stacked housing. Because the housing density will be averaged over the entire Specific Plan Area, the density required for attached and/or stacked housing will be allowed under the Medium Density Residential designation.

- **Sub Area B.** Sub Area B consists of 125 plus acres of land south of the main entry "Access Road" on the western side of the railroad. Approximately 86 acres are upland and the remaining are "wetlands". The area, except for the Access Road and a short length of the railroad, is bounded by land zoned and currently utilized for agriculture. Only single family detached homes of varying lot sizes, a small "nature Park" are envisioned within this sub area. An 80-foot setback from the centerline of railroad tracks is required for any residential development within this sub area. Vehicular access to this sub area will be via a new two lane bridge from Stevenson Blvd over the railroad connecting with the main entry's two lane access road. An esplanade is planned on the north side of this two lane road.

  Sub Area B is currently designated as Low Density Residential under the General Plan and zoned as Agricultural. The General Plan will be amended to a Medium Density Residential designation, and Sub Area B will be rezoned to Residential District R-6000 (single family detached homes), as contemplated by this Plan. In anticipation that the majority of the lots will range from 3,000 to 6,000 square feet, a Planned Unit Development permit and a conditional use permit will also be granted simultaneously with the rezoning. These permits will allow for greater flexibility for requirements such as lot size and setbacks.

- **Sub Area C.** Sub Area C consists of 90 plus acres of land bounded by the western edge of the railroad, southern edge of the Flood Control Channel, the northern edge of the main entry "Access Road", and the western edge currently zoned and utilized as agriculture. There are about 62 acres of uplands and the remaining are "wetlands" in this sub-area. This area is planned for all single family detached residential, or for single family detached residential land, some golf course, or all golf course. A small nature park will be located on the western edge of any residential usage. An 80-foot setback from the centerline of railroad tracks is required for any residential development within this sub area.



SPECIFIC PLAN LAND USE DIAGRAM

NEWARK, CA AREA 3 & 4

0' 400' 800'

LEGEND

- NC — NO CHANGE IN EXISTING GENERAL PLAN OR ZONING
- R — RESIDENTIAL
- R/G — RESIDENTIAL AND/OR GOLF COURSE
- G — GOLF COURSE OR RECREATIONAL
- TWO LANE ACCESS ROAD
- NEW TWO LANE BRIDGE
- NEW PED BRIDGE
- ACCESS POINT
- EVA/TRAIL
- ROTARY

Sub Area C is currently designated as Low Density Residential under the General Plan and zoned as Agricultural, with a small portion zoned Industrial. The General Plan will be amended to a Medium Density Residential designation, and Sub Area C will be rezoned to Residential District R-6000 (single family detached homes or a golf course), in accordance with this Plan. In anticipation that the majority of the lots will range from 3,000 to 6,000 square feet, a Planned Unit Development permit and a conditional use permit will also be granted simultaneously with the rezoning. These permits will allow for greater flexibility for requirements such as lot size and setbacks. The addition of a golf course will also require a conditional use permit. A golf course is in accord with the objectives and purposes of the R-6000 district because it will help to assure there is adequate light, air, privacy, and open space for each dwelling, as it is located in a Residential district. The golf course will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity because it will be located adjacent to existing residential uses, as well as Ohlone College. The golf course design will be of the highest quality, and therefore will produce an environment of stable and desirable character consistent with the objectives of the zoning code. Lastly, the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity as discussed above.

- **Sub Area D.** Sub Area D consists of 100 plus acres of land on the north side of the flood control channel, west of the railroad tracks, and the south side of Mowry Avenue. There are approximately 75 acres of uplands and the remaining are "wetlands" in this area. The entire sub area is reserved for a Golf Course or other recreational uses.

  Sub Area D is currently designated as Low Density Residential under the General Plan and zoned as Agricultural. Sub Area D will remain zoned Agricultural to allow construction of a golf course or other recreational uses in accordance with this Plan. A conditional use permit for the addition of a golf course or other recreational uses will be granted simultaneously with the approval of this Plan. A golf course or facility for other recreational use is in accord with the objectives and purposes of the Agricultural district because it reserves appropriately located lands for agricultural and natural resource production uses. The golf course or facility for other recreational use will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity because it will be located adjacent to existing residential uses, as well as Ohlone College. The golf course design will be of the highest quality, and therefore will produce an environment of stable and desirable character consistent with the objectives of the zoning code. Lastly, the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity as discussed above.

- **Sub Area E.** Sub Area E is the remaining area on the western side of the railroad and contains 244 plus acres of land. There are approximately 53.5 acres of uplands with the remaining being "wetlands" in this sub area. Both the existing General Plan designation and Zoning will continue to apply.

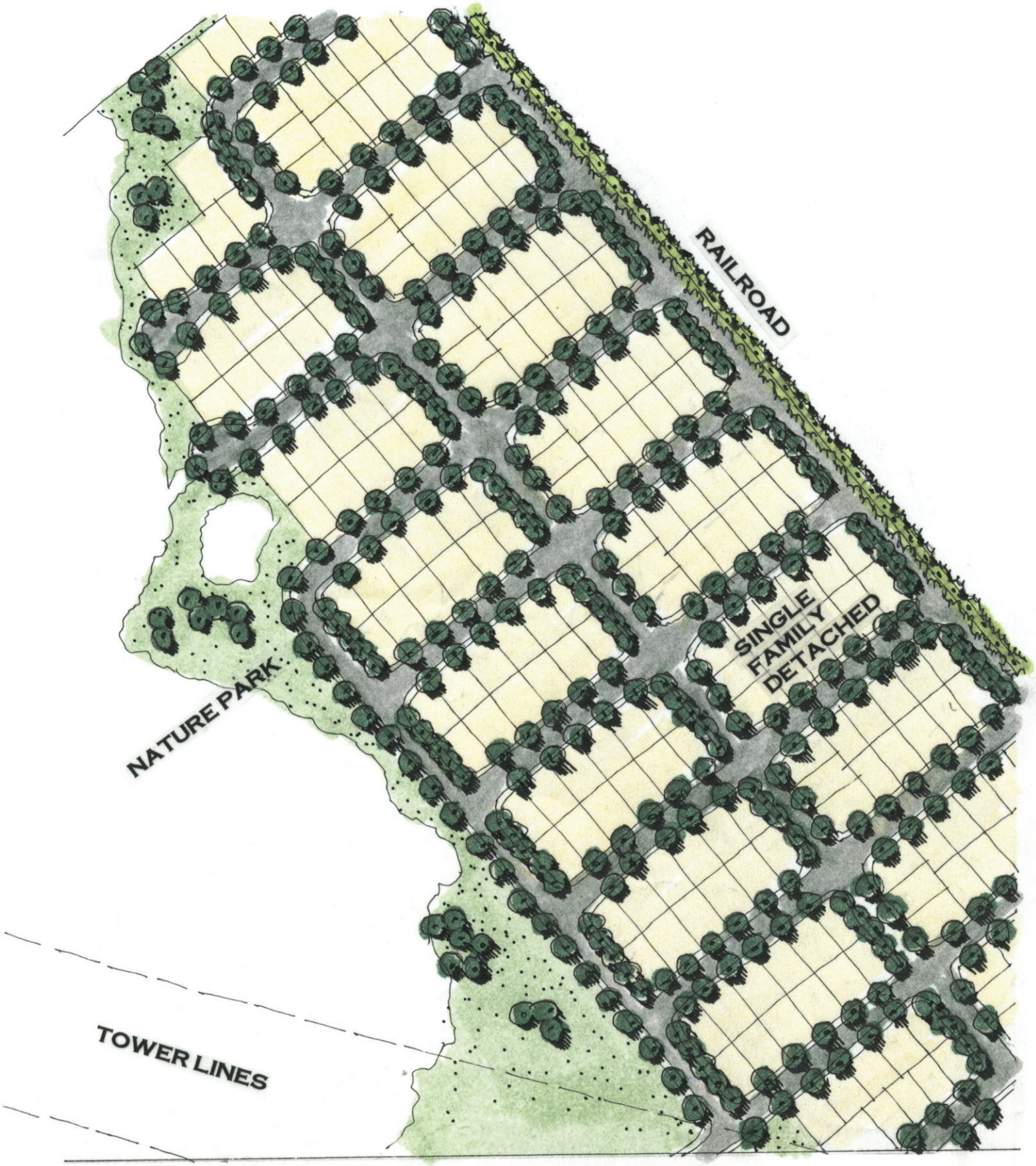
- **Sub Area F.** Sub Area F is the remaining 221 plus acres of land on the northeastern side of the railroad in Area 3. The current General Plan designation for Sub Area F is Special Industrial and it is zoned as Industrial Technology Park and High Technology Park. No

NEWARK SPECIFIC PLAN
CONCEPT SKETCH SUB AREA A

N.T.S.

NEWARK SPECIFIC PLAN
CONCEPT SKETCH SUB AREA B

N.T.S.



NEWARK SPECIFIC PLAN
CONCEPT SKETCH SUB AREA C

N.T.S.

change in the current usage is envisioned by this Specific Plan with this sub area. Both the existing General Plan designations and the Zoning limitations will continue to apply.

c. **Residential Density.** The Residential holding capacity for the Specific Plan is set at 1,260 dwelling units. Housing may only be located within the residential designated sub areas A, B, and C of the Land Use Plan. At this time the 1,260 units are allocated only to the "Newark Partnership" holdings. Any other Owner of property within the residential portions of the plan may obtain appropriate density through a major amendment to this Specific Plan.

d. **Conceptual Neighborhood Sketches.** On the plates that follow, several conceptual layouts for the various residential neighborhoods are shown. These are presented **only for visualization purposes** to depict how these neighborhoods could develop.

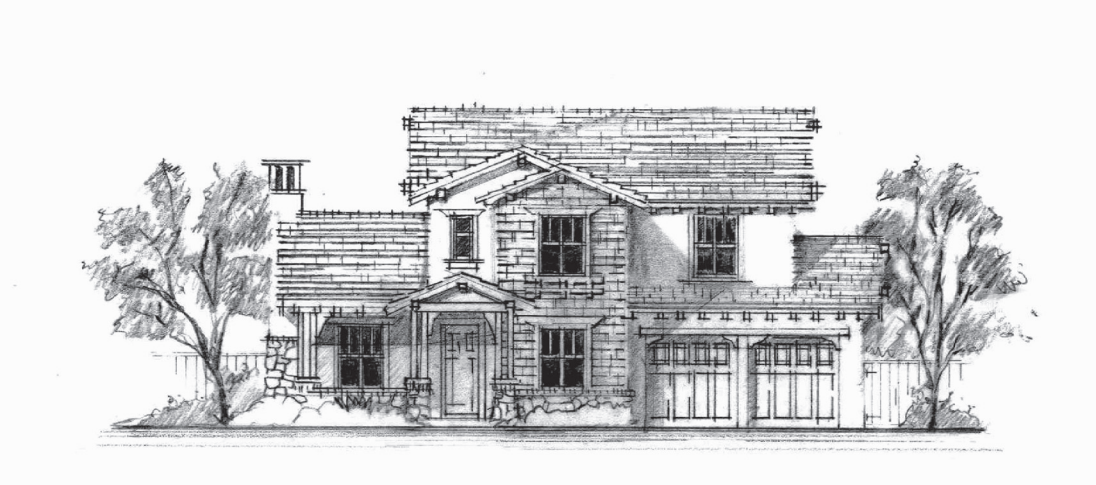
3. **Siting Standards & Architectural Design Guidelines**

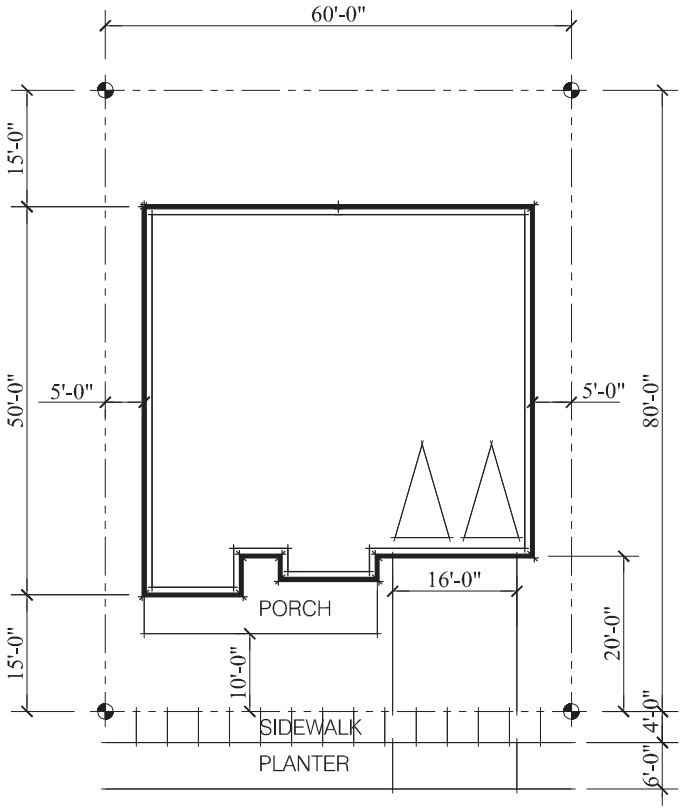
a. **Introduction. Single Family Lot Standards.** Five lot sizes are contemplated in the Specific Plan along with attached or stacked housing. The four plates that follow provide the lot criteria for 45'x70' lots, 50'x80' lots, 55'x80' lots, and 60'x80' lots. No criteria are provided for custom lots since they will be irregularly shaped. The Planning Director will establish appropriate setbacks during site and architectural review of a particular home on a custom or irregular lot. The standards for the attached and/or stacked housing criteria are listed following the SFD standards.

The architectural design concept of any housing is also shown on the plates. Custom and attached and/or stacked housing should be designed to be compatible with these design concepts. Other compatible design concepts may be considered as a minor amendment to the Specific Plan if they are deemed to be of equal or better quality than the ones presented herein.

b. **Multi-Family Siting Standards.** The Standards listed below are minimum, except for when they refer to a maximum allowed item. The architectural theme should be compatible and related to the Single Family Detached Themes.

- Maximum Height: Sixty feet
- Front and street side setbacks: Twenty feet
- Interior and rear setbacks: Ten feet or 75 feet for each foot of height when adjacent to a single family residence.
- Between parking or circulation areas and a public street right of way or private street easement: Fifteen feet
- Maximum Lot coverage: Fifty percent
- Common open space can be indoors or out
- Common open space shall be provided at 500 sq. ft. for the first five units and an additional fifty square feet for each additional unit
- Common open space shall not be located within required setbacks
- Balconies (above ground level) Minimum sixty square feet with at least interior dimension of six feet
- Patios (at ground level) Minimum one hundred square feet with at least interior dimension of ten feet





NOTES:

A. ALL DIMENSIONS ARE MINIMUM.

B. YARD ENCROACHMENTS AS ALLOWED BY N.M.C.

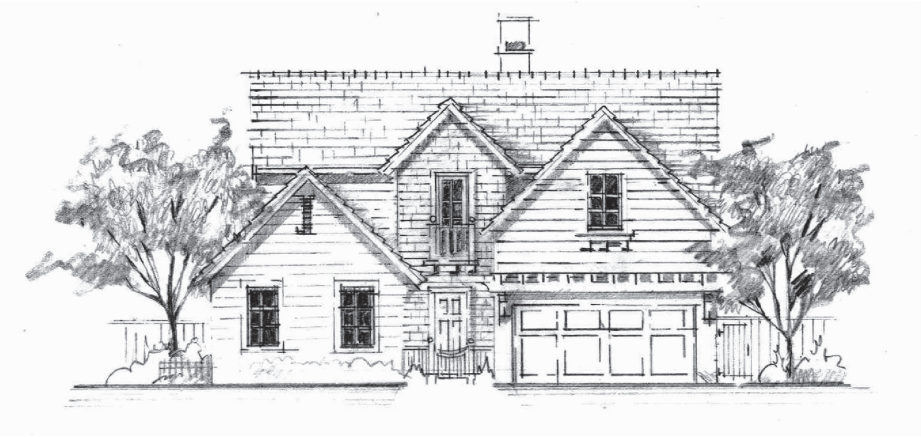
C. PORCHES MAY ENCROACH TO WITHIN 10' OF STREET R.O.W. MINIMUM PORCH DEPT OF 7' REQUIRED.

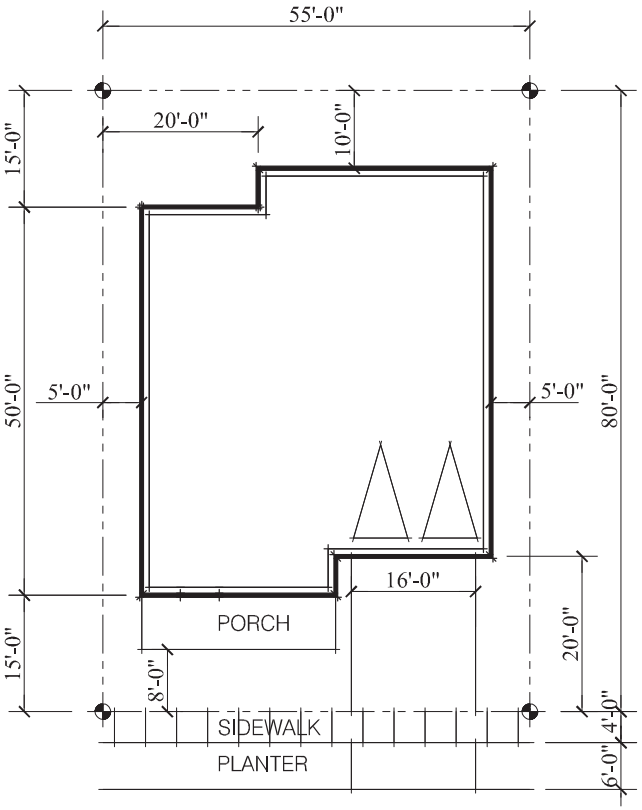
NEWARK SPECIFIC PLAN AREA

ARCHITECTURAL DESIGN THEME AND SITING TEMPLATE

NEWARK, CA

SINGLE FAMILY DETACHED
60' x 80' CONVENTIONAL HOMES





NOTES:

A. ALL DIMENSIONS ARE MINIMUM.

B. YARD ENCROACHMENTS AS ALLOWED BY N.M.C.

C. PORCHES MAY ENCROACH TO WITHIN 8' OF STREET R.O.W. MINIMUM PORCH DEPT OF 7' REQUIRED.

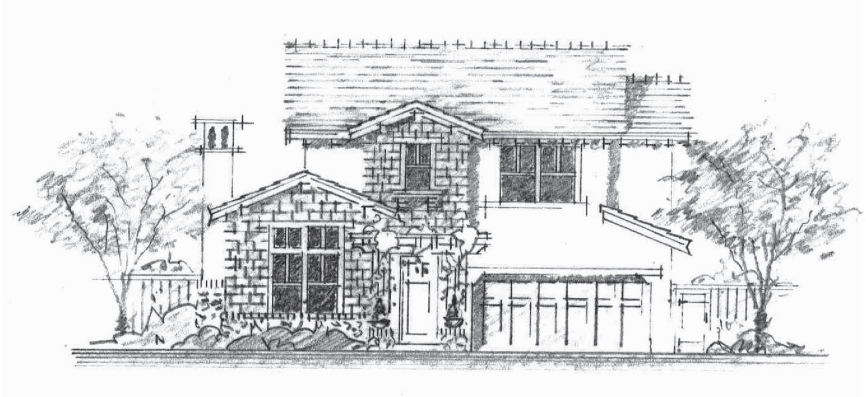
NEWARK SPECIFIC PLAN AREA

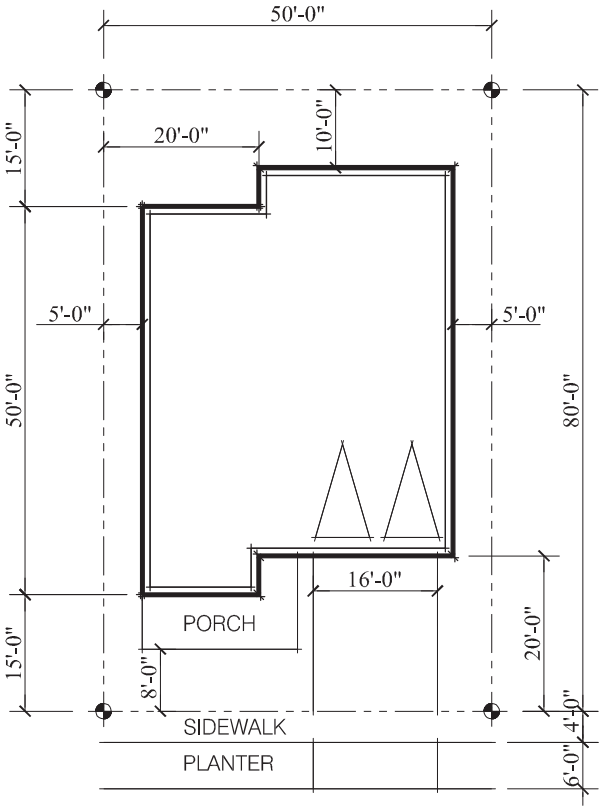
ARCHITECTURAL DESIGN THEME AND SITING TEMPLATE

NEWARK, CA

SINGLE FAMILY DETACHED
55' x 80' CONVENTIONAL HOMES

HUNT HALE JONES ARCHITECTS





NOTES:

A. ALL DIMENSIONS ARE MINIMUM.

B. YARD ENCROACHMENTS AS ALLOWED BY N.M.C.

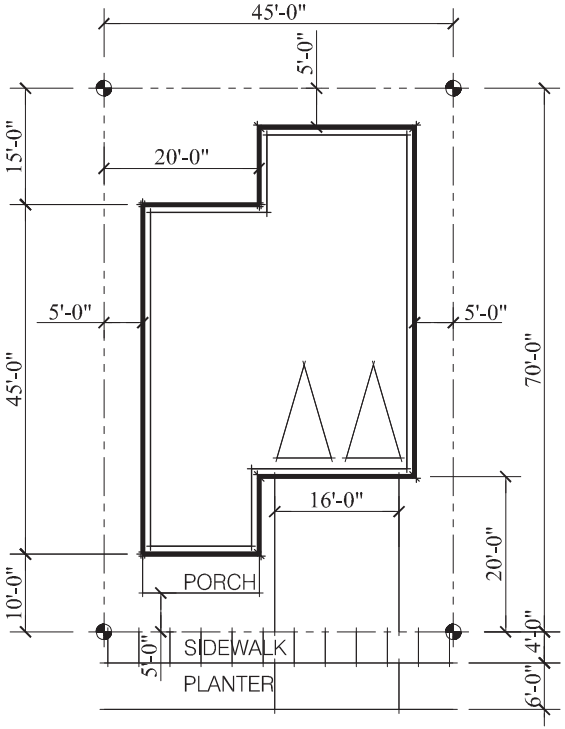
C. PORCHES MAY ENCROACH TO WITHIN 8' OF STREET R.O.W. MINIMUM PORCH DEPT OF 7' REQUIRED.

NEWARK SPECIFIC PLAN AREA

ARCHITECTURAL DESIGN THEME AND SITING TEMPLATE

NEWARK, CA

SINGLE FAMILY DETACHED
50' x 80' CONVENTIONAL HOMES



NOTES:

A. ALL DIMENSIONS ARE MINIMUM.

B. YARD ENCROACHMENTS AS ALLOWED BY N.M.C.

C. PORCHES MAY ENCROACH TO WITHIN 5' OF STREET R.O.W. MINIMUM PORCH DEPT OF 5' REQUIRED.

NEWARK SPECIFIC PLAN AREA

ARCHITECTURAL DESIGN THEME AND SITING TEMPLATE

NEWARK, CA

SINGLE FAMILY DETACHED
45' x 70' CONVENTIONAL HOMES

HUNT HALE JONES ARCHITECTS

- Studio and one bedroom: One covered parking space for residents and one-half uncovered guest space
- Two bedroom and larger: One covered space for residents, one-half space for residents, plus one uncovered guest space
- Seniors: One-half covered space for residents and one-half uncovered space for guests.

4. Engineering & Improvements

a. Introduction. The majority of the Sub-Areas within the Specific Plan are undeveloped requiring new infrastructure including public street networks, underground utility systems, grading of the topography and other infrastructure. The Specific Plan is located within the City of Newark Urban Service Area, with several utility districts governing various aspects of public utility infrastructure. The plan area is bounded by three public streets with existing utility infrastructure: Mowry Avenue, Cherry Street, and Stevenson Boulevard. The overall capacity and existing condition of this public infrastructure is adequate to serve the planned uses, however, some improvements and upgrading of existing utilities are necessary. This section establishes standards and policies for the design and installation of new engineered infrastructure for the Specific Plan. It takes into account long-term development objectives for the complete build-out of the plan and establishes the proper framework necessary for future development.

b. Street Design Standards. The residential street networks within the Specific Plan are designed to be dedicated as public streets maintained by the City of Newark. With the exception of the esplanade within Area 4, the remainder of the street network will be designed In accordance with the street sections provided in this plan and City of Newark standards. Any deviations from these standards will require review and approval by the City of Newark.

- **Residential Streets.** All residential streets will match City of Newark standard right-of-way width of 56 feet. Cul-de-sacs will be designed per city standards as well with a curb radius of 45 feet and right-of-way radius of 50 feet.

- **Stevenson Boulevard Overpass.** Due to the at-grade railroad crossing at the entrance into Area 4 on Stevenson Boulevard, an overpass bridge needs to be constructed for vehicular and pedestrian traffic. This is the preferred option with respect to public safety at an existing at-grade crossing. This will completely separate street traffic from rail traffic further enhancing this intersection. Design and construction of this overpass will require close coordination with various public agencies including the City of Newark, Union Sanitary District, the Public Utilities Commission, and Union Pacific Corporation. The overpass location faces several significant design considerations including the railroad, wetlands, high-voltage transmission lines and large sanitary sewer force mains in the area. Advanced preliminary designs have been completed for the overpass including catenary surveys of the transmission lines by PG&E, structural design of the overpass with respect to traffic load and structural support, and embankment design of the approach ramps. The engineered design of the bridge section for a single 12 foot travel lane in each direction adjacent to 5 foot wide bicycle lanes. Each direction is separated by a center median island. Both sides of the bridge will have pedestrian sidewalks with safety rails attached to the edge of the overpass. Within the span of the

Figure 4b.3

Stevenson Boulevard Overpass Street Section

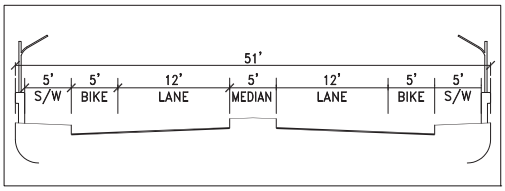


Figure 4b.4

PG&E High-Voltage Transmission Line Improvements

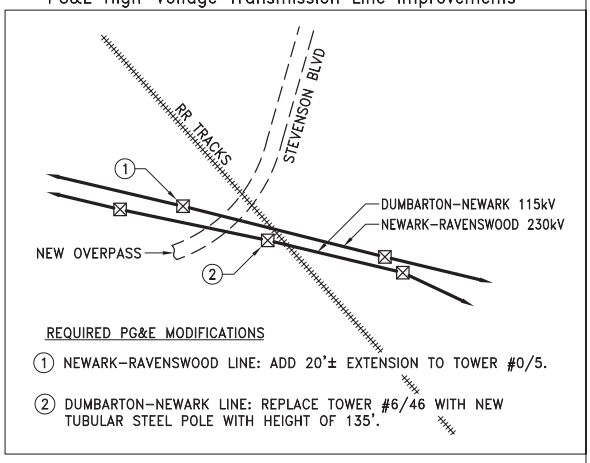


Figure 4b.1

Standard Residential Street

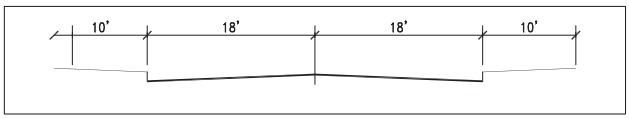


Figure 4b.2

Standard Cul de Sac

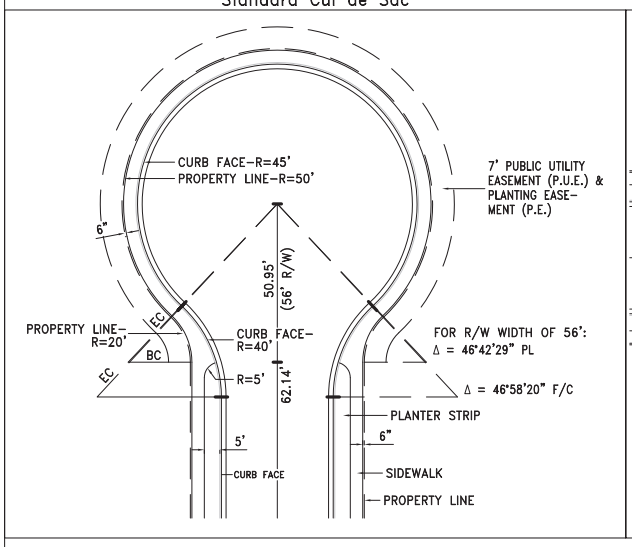
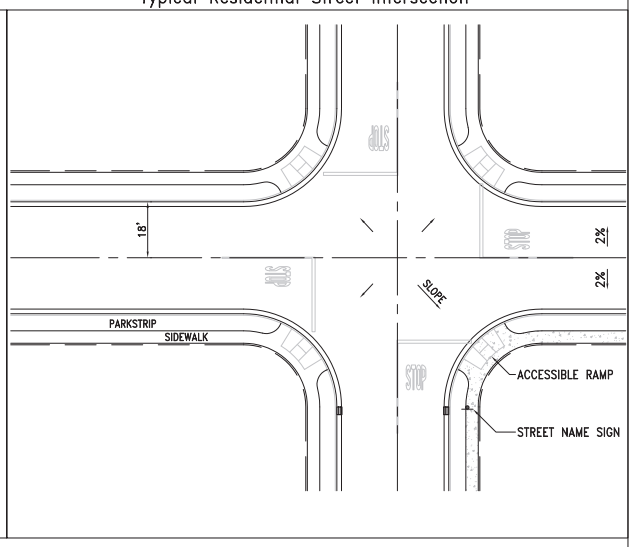


Figure 4b.5

Typical Residential Street Intersection



NEWARK SPECIFIC PLAN

STREET STANDARDS DIAGRAM

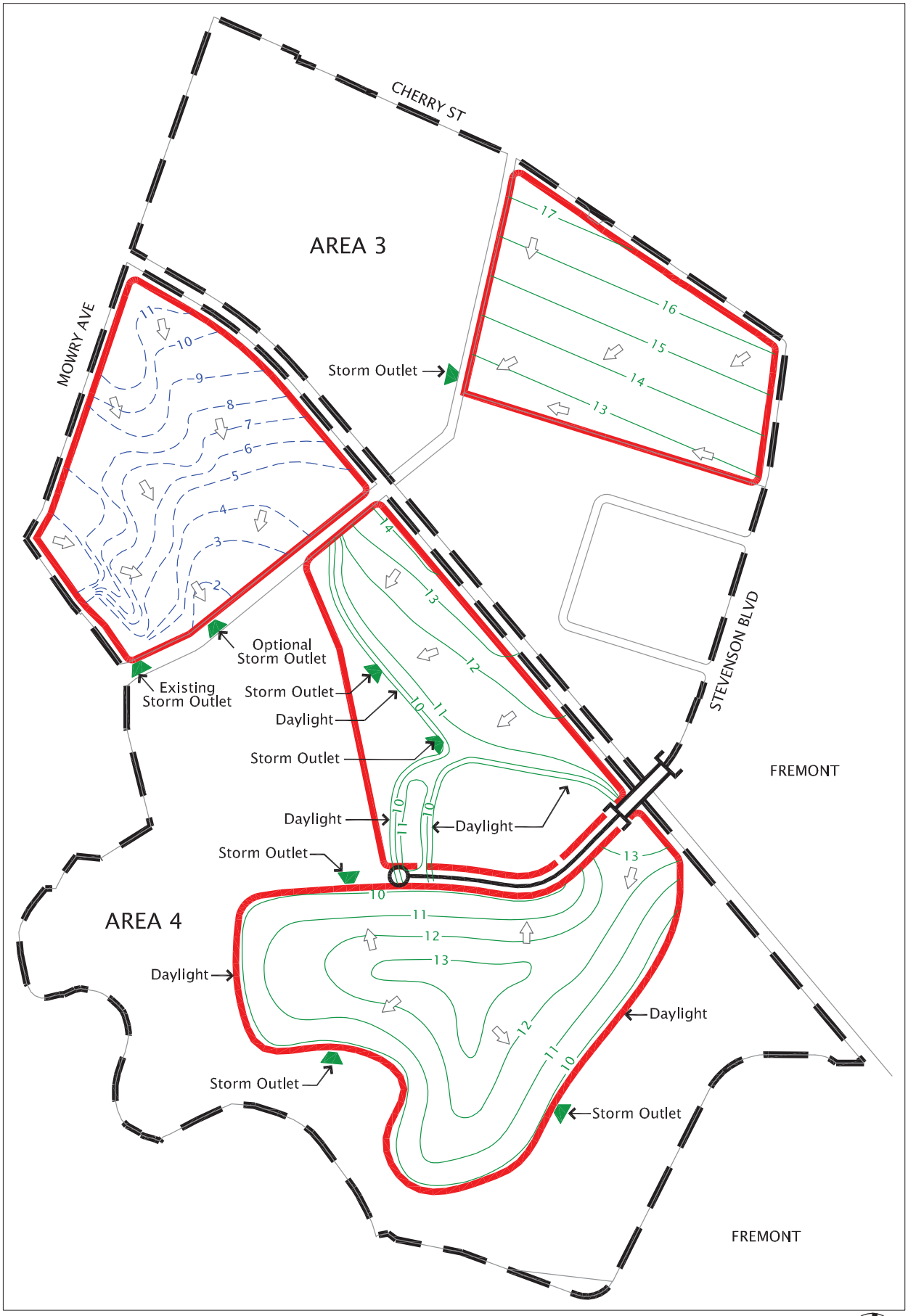
bridge, utility sleeves will accommodate public utility systems to serve the Area 4 including possible sanitary sewer, water, gas, electric, and communication facilities. The bridge spans across the Union Pacific Railroad right-of-way and directly beneath the high-voltage transmission lines. PG&E performed survey and design review of their lines, and concluded that The Dumbarton Newark 115 kV line will require replacement of one tower with a new tubular steel pole. It also concluded that the other line, The Newark Ravenswood 230 kV line, will require an extension of the nearest tower to raise it approximately 20 feet. These improvements allow the construction of the bridge to meet minimum clearance safety requirements above the railroad tracks and beneath the transmission lines.

- **Intersection Design.** The residential intersections and cul-de-sacs require specific design implementations to meet drainage, accessibility, and emergency requirements. A typical intersection of two residential streets with a 56 foot right-of-way is shown on the street standards Plate. MVTCD standard signage and striping will be used at all four-way intersections to include stop bars and stop signs in each direction as required by the City Engineer. Streets will be crowned with a typical 2% cross slope and should be designed to provide adequate drainage through the intersection of crowns.

- **Multi-Use Trail.** In Sub-Area D, along the east side of the trail, a vandal-resistant fence will separate the trail from the railroad right-of way, and along the west side of the trail, a post and rail fence is proposed to separate the trail from the golf course. The trail in Sub-Area D is located proximate to the railroad tracks, in order to provide the maximum development area of the proposed golf course. In the event an alternative recreation use is pursued on Sub-Area D, the location of the trail will be reconsidered. At the time Sub-Area C is developed, the fencing in the vicinity of the flood control channel will be reviewed, to ensure public and railroad safety.

c. **Topography & Grading.** The areas covered by the Specific Plan contain various topographic and drainage features that require specific guidelines in order to ensure conformance with local agency requirements as well as minimal impact to natural topography. The existing elevations within Sub Area A range from approximately 9 to 20 feet above mean sea level. The existing elevations within Area 4 range from approximately 0 to 16 feet above mean sea level. Existing drainage patterns within both sites currently drain runoff to various locations. Sub Area A discharges into the man-made Alameda County Flood Control Channel Line D abutting the western portion of this sub area. Area 4 discharges towards Mowry Slough generally from northeast to southwest. Drainage is collected within ditches that discharge at an existing pump, which in-turn lifts the water over the top of the levee where it discharges to Mowry Slough. The grading and drainage designs for the various aspects of the Specific Plan need to take into account the following goals and policies:

- **Flood Elevation Requirements.** Sub Area A is classified as Zone X. This indicates that the area has shallow flooding of less than one foot for the 100-year base flood or is prone to 500-year flooding. Area 4 is largely classified as Zone AE. In the event of 100-year flooding conditions, water up to an elevation of eight feet NGVD would flood that area. Development within the Specific Plan is required to comply with the City of Newark flood elevation standards for residential construction. The building pads of all occupied structures will be elevated to a minimum of 11.25 feet above mean sea level with the finished floor being a minimum of 6 inches above the building pad. The top of



NEWARK SPECIFIC PLAN

CONCEPTIVE GRADING & DRAINAGE DIAGRAM

LEGEND:

- STORM OUTLET
- DIRECTION OF FLOW
- 4 — EXISTING GROUND ELEVATIONS
- 4 — FUTURE MINIMUM GROUND ELEVATIONS

NOTE: FUTURE MINIMUM ELEVATIONS SHOWN ARE BASED ON THE DEVELOPMENT OF THE RESIDENTIAL CONCEPTS WHERE ALLOWED WITHIN THIS SPECIFIC PLAN.

curb grades for residential streets will be no less than 10.00 feet above mean sea level. All un-occupied structures (i.e. golf storage areas, sheds etc.) will either be elevated above the base flood elevation or flood proofed per City requirements.

- **Grading & Drainage.** Sub Area A will be designed to honor existing drainage patterns and release locations on the subject property. The residential pads will be elevated above the 100-year flood zone elevations mapped for Flood Channel Line D, where applicable across the site. The existing dual 42" outfall at the southwest corner of the site will be used to discharge storm water from the site. Because of the elevation requirements of the flood zone certain areas of Sub Area A require fill where existing elevations are too low. Overall approximately 56,000 cubic yards of fill is required based on the Conceptive Grading Plan. Due to the large size of Sub Area A this will be mitigated with cuts from existing portions of the site where elevations are higher than necessary.

  Area 4 will need to be elevated above the minimum City and FEMA base flood elevation requirements. Due to these elevation requirements significant amounts of imported fill will be necessary to elevate the site. Area 4 will need between 1.1 and 2.1 million cubic yards of fill. This fill can be achieved by a combination off off-site import and on-site excavation from elevated areas. The elevated site will be utilized to provide discharge outfalls at various locations to convey stormwater runoff out of the underground pipe network. This runoff will then discharge via natural drainage courses to the existing drainage pump and out to Mowry Slough.

  The golf course design in Area 4 will be graded along the existing terrain dependent on the ultimate layout of the course. The clubhouse and other buildings will be required to be elevated above the base flood elevations; however, the course will be constructed along the natural terrain to achieve an earthwork balance within the course.

  The drainage systems within the plan area are similar to most new developments. Lots, streets, and parks will be graded to convey surface runoff to new inlets within the development, which will then transport the storm water through underground piping networks to the discharge outlets. All public and private streets are to be designed to comply with the requirements of the City of Newark. All grading should conform with the general intent Conceptive Grading & Drainage Diagram. Changes to the grading as shown on the conceptual plan should follow the same general patterns and be subject to review and approval by the city.

  All grading should conform with the general intent of the Conceptive Grading & Drainage Diagram. The diagram portrays potential grading intents for the maximum potential fill necessary to develop the sub areas. This includes a potential for residential development within Sub Area C. Should a golf course alternative be pursued in that area then different elevation requirements apply as described above. Changes to the grading as shown on the conceptual plan should follow the same general patterns and be subject to review and approval by the city.

- **Soil Import & Stockpiling Operations.** Due to the significant quantity of fill material required to raise elevations across the site, a potentially long-term import operation

may be required to acquire the dirt necessary. This import operation will require preparation of grading plans, long-term erosion control plans, and other documents necessary to design and implement proper import requirements and best management procedures. A Grading Plan will be developed for mass-grading operations and soil stockpile management, which will require review and approval of the city and appropriate local agencies. This plan will be prepared in conjunction with a geotechnical investigation with recommendations for fill materials, import sources, earthwork guidelines, settlement monitoring, and other criteria.

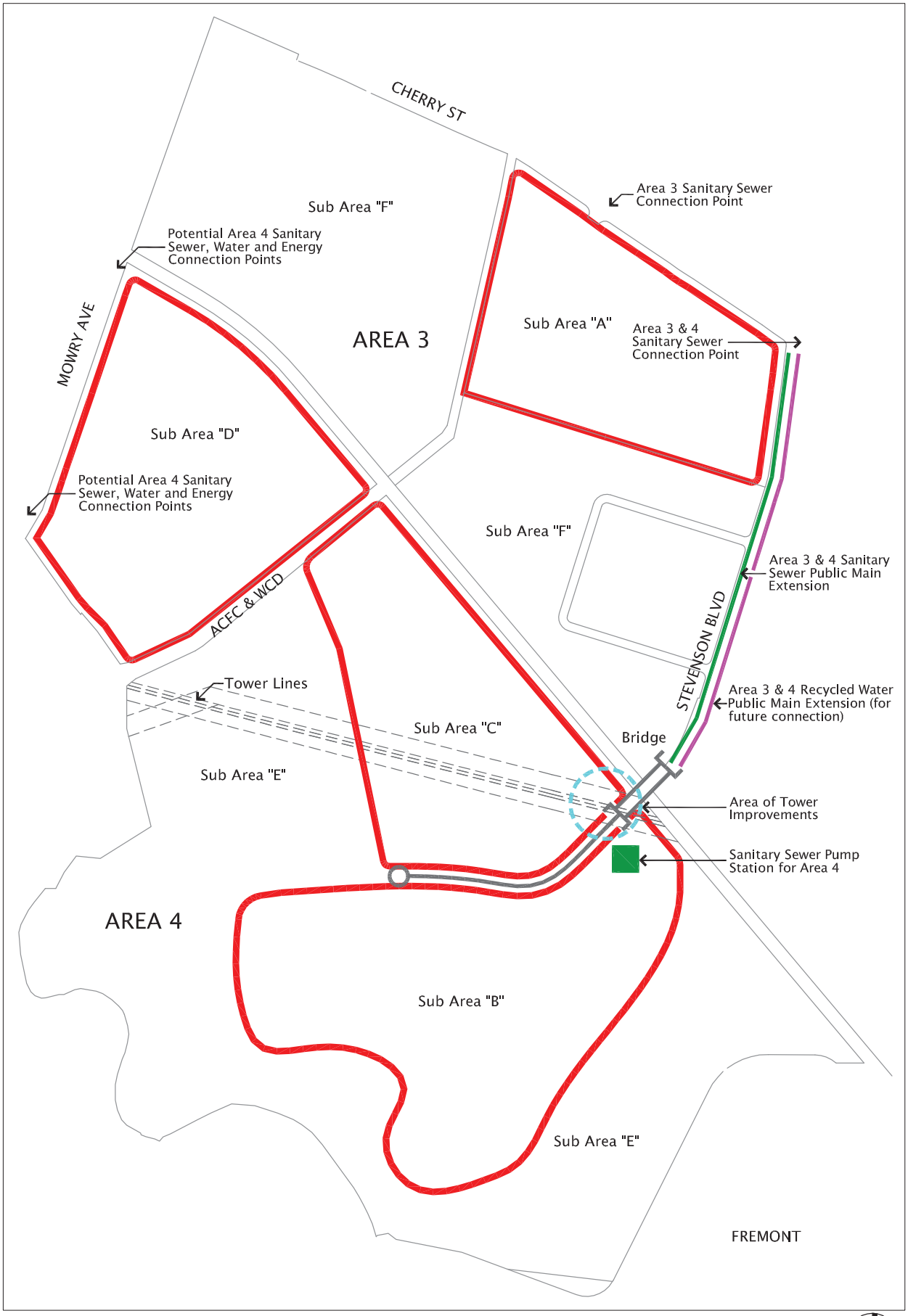
- **Storm Water Treatment. Storm Water Treatment.** All development projects within the Specific Plan are required to comply with water quality standards as administered through the National Pollution Discharge Elimination System (NPDES) permit requirements, the City of Newark's ordinances, policies, and processes, and other applicable local, state, and federal requirements. Under the currently effective municipal permit, development of Areas 3 and 4 will be subject to low impact development requirements and numeric sizing criteria for pollutant removal treatment systems.

  Developments will utilize a combination of various storm water treatment options for post-development treatment measures. These include the use of vegetated bio-swales, infiltration trenches, media filtration devices, hydrodynamic separators, retention/detention ponds, and other potential measures. Dependent on design constraints, one or all of these measures will be implemented. "Green-Treatment" methods will also be evaluated and implemented with first priority in accordance with the guidelines of the NPDES Regional Permit.

d. Infrastructure & Utilities. The Specific Plan requires new public and privately maintained utility infrastructure to serve the uses. The existing sites are primarily undeveloped land; therefore, almost no existing infrastructure resides within the development envelopes. The utility goals and policies in this section are broken down for Sub Area A and Area 4 separately in some portions, due to the variety of requirements between each. All discussion in this section refers to the Conceptive Utility Diagram.

- **Storm Drainage – Area 3.** Sub Area A currently discharges via overland release towards the southwest corner to an existing dual-42" concrete culvert. This culvert releases into the existing flood channel and is permitted to a maximum discharge rate by Alameda County Flood Control & Water Conservation District, (who maintains the channel.) A conventional underground storm drainage system, designed to City of Newark design standards, will include trunk and collector lines that convey surface runoff to the existing outfall. The future development of Sub Area A will not create new storm drain connections to Stevenson Boulevard or Cherry Street. Should additional new outlets be required to the flood channel, approval will be required by the ACFC&WCD.

- **Storm Drainage – Area 4.** Existing drainage in this Area is collected via drainage ditches that terminate at an existing pump, which then discharges the runoff above the existing levees surrounding the southern perimeter of the area. The existing pump system is intended to remain unchanged and pump at or below it's current capacity.



NEWARK SPECIFIC PLAN

CONCEPTIVE UTILITY DIAGRAM

Future storm drain systems will be designed to discharge at or below pump capacity. Modifications to these existing drainage patterns are required to serve the individual proposed uses. The various sub areas will be served by a conventional underground storm drainage systems, which will convey surface runoff to new outfalls located at various locations around the perimeter of the whole area. Due to the elevation requirements for residential pads, Area 4 should not require any pump systems to convey the underground drainage adequately. However, should pumps be necessary, they would be privately owned and maintained. The ultimate locations and quantities of the outlets will be dependent on the future residential layouts of the sub areas, but should conform to the Conceptive Grading & Drainage Diagram. The golf course within Area 4 will utilize on-site storm water treatment systems that can possibly function as storm water retention and/or detention basins well-integrated within the golf course landscape design.

- **Sanitary Sewer – Area 3.** Sanitary Sewerage within the City of Newark is operated and maintained by Union Sanitary District (USD). Area 3 is within the existing jurisdictional boundaries of USD, however, Area 4 will have to be annexed into the district. Existing sanitary sewer mains exist within Mowry Avenue, Cherry Street and Stevenson Boulevard to serve the proposed development areas. Existing force mains also exist within the railroad right-of-way which pump sewerage from the Cherry Street Pump Station located within Area 3 northwestward towards the Newark Pump Station and USD Treatment Plant in Union City. The future developments of Area 3 and 4 will not be allowed to connect to this existing force main due to capacity and maintenance issues with the existing system. Sub Area A will have conventional underground sewer systems within the public streets that will connect to the existing system within the intersection of Cherry Street and Stevenson Boulevard. Dependent on the ultimate design and layout of the Sub Area the new system may or may not require a pump system to convey flow to the existing public systems. Multiple connections will be made to this system off Cherry Street and Stevenson Boulevard. The development of Sub Area A may require improvements or contribution to improvements within Stevenson Boulevard to extend a new public sewer main to the intersection of Cherry Street and Stevenson Boulevard. This extension will need to be designed to take into consideration depth and sizing needs of the future Area 4 development, as well as existing infrastructure clearance requirements.

- **Sanitary Sewer – Area 4.** Development of the Sub Areas within Area 4 will require new privately owned and maintained pump stations primarily due to the lack of existing public infrastructure near the development envelopes, as well as the existing railroad crossing at Stevenson Boulevard. The development of the golf course and/or residential portions of the sub areas will contain conventional underground sanitary sewer systems, which will drain towards Stevenson Boulevard to a new lift station. This will pump the sewage either through the new overpass span or beneath the railroad tracks to Stevenson Boulevard. This new system will ultimately connect to the existing systems located within the intersection of Stevenson Boulevard and Cherry Street. New underground public infrastructure is required within Stevenson Boulevard to accomplish this. Sub Area D will require coordination with ACFC&WCD for any utility crossings above or below the existing flood control channel. Sewer connections will be possible at the termination of Mowry Avenue if future design analysis concludes adequate capacity

and depth is available. Coordination with USD, Union Pacific Railroad Company, the California Public Utilities Commission, and the City of Newark is required to ensure adequate design and minimal impacts to existing improvements.

- **Water Supply & Service.** Water service for the City of Newark is provided by Alameda County Water District (ACWD). Both Sub Area A and Area 4 are within the existing jurisdictional boundaries of ACWD. In accordance with Senate Bill 610, a Water Supply Assessment was prepared by ACWD for the proposed uses. This assessment concluded that there is adequate water supply. Existing water mains reside within the adjacent public streets surrounding the Specific Plan area and new underground infrastructure will be constructed within the Sub Areas to serve the proposed uses. These new mains will be separate for domestic and fire water service in one system, and recycled water in a separate system. The recycled water system will be fed from domestic water connections until a future recycled water system is constructed within Cherry Street and/or is available to serve the Specific Plan sub areas. This way the developments will be ready to switch over as recycled water becomes available. Only Area 4 will utilize an existing permitted underground well for irrigation needs until recycled water becomes available.

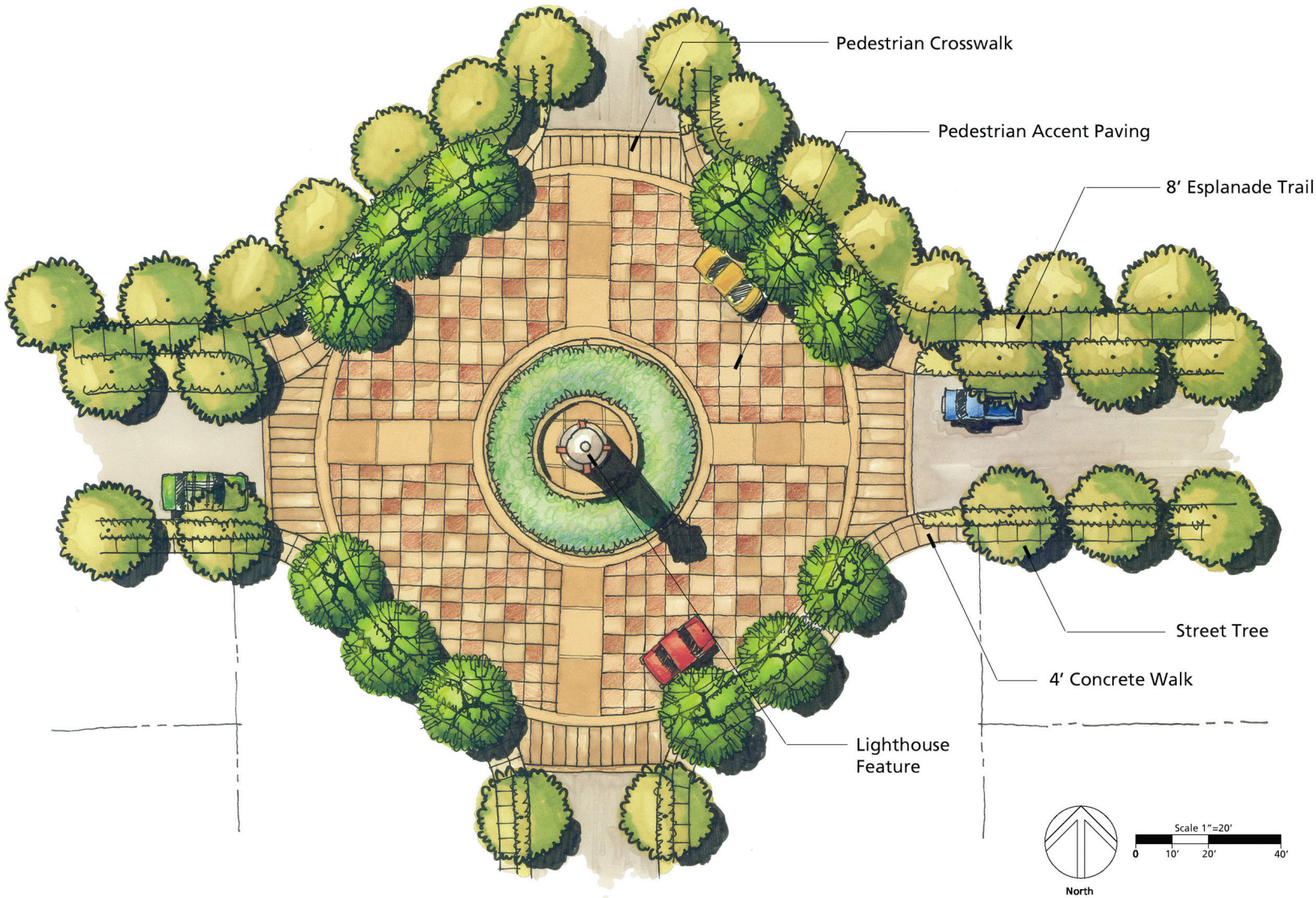
- **Gas and Electricity.** Pacific Gas & Electric Company (PG&E) provides electrical and natural gas service to the Specific Plan areas. Existing natural gas and electric infrastructure exists within the surrounding public streets. Existing above-ground high-voltage lines also exist within Area 4. New underground primary and secondary infrastructure will be designed with the development of uses within the various sub areas. This infrastructure will be primarily located within the new public street right-of-ways; however, easements may be necessary within private property to provide service to various aspects of the plan. The improvements to the high-voltage lines within Area 4 will need to be designed and completed prior to construction of the new overpass at Stevenson Boulevard.

5. Landscape Architectural Guidelines

a. Introduction and Landscape Concept. The landscape concept emphasizes the new urban streetscape for pedestrians, bicycles, and vehicles and places the new neighborhoods in that context. The open spaces and community parks will provide the visual center to this urban village, and are the heart of the landscape uses of the site. The esplanade entry with lighthouse turnaround will create a strong identity for this new community. A strong sense of entry is provided for visitors and residents alike.

The landscape must respond to the significant site climate issues including wind, poor soils, and cooler bayside climate. In order to carry out the landscape goals, plant selections must be resilient and tolerant of these conditions. Massed tree and shrub plantings are used in localized areas to allow for a more usable outdoor space. Dense plantings are proposed along the site perimeters to aid in screening off-site light and views toward the railroad.

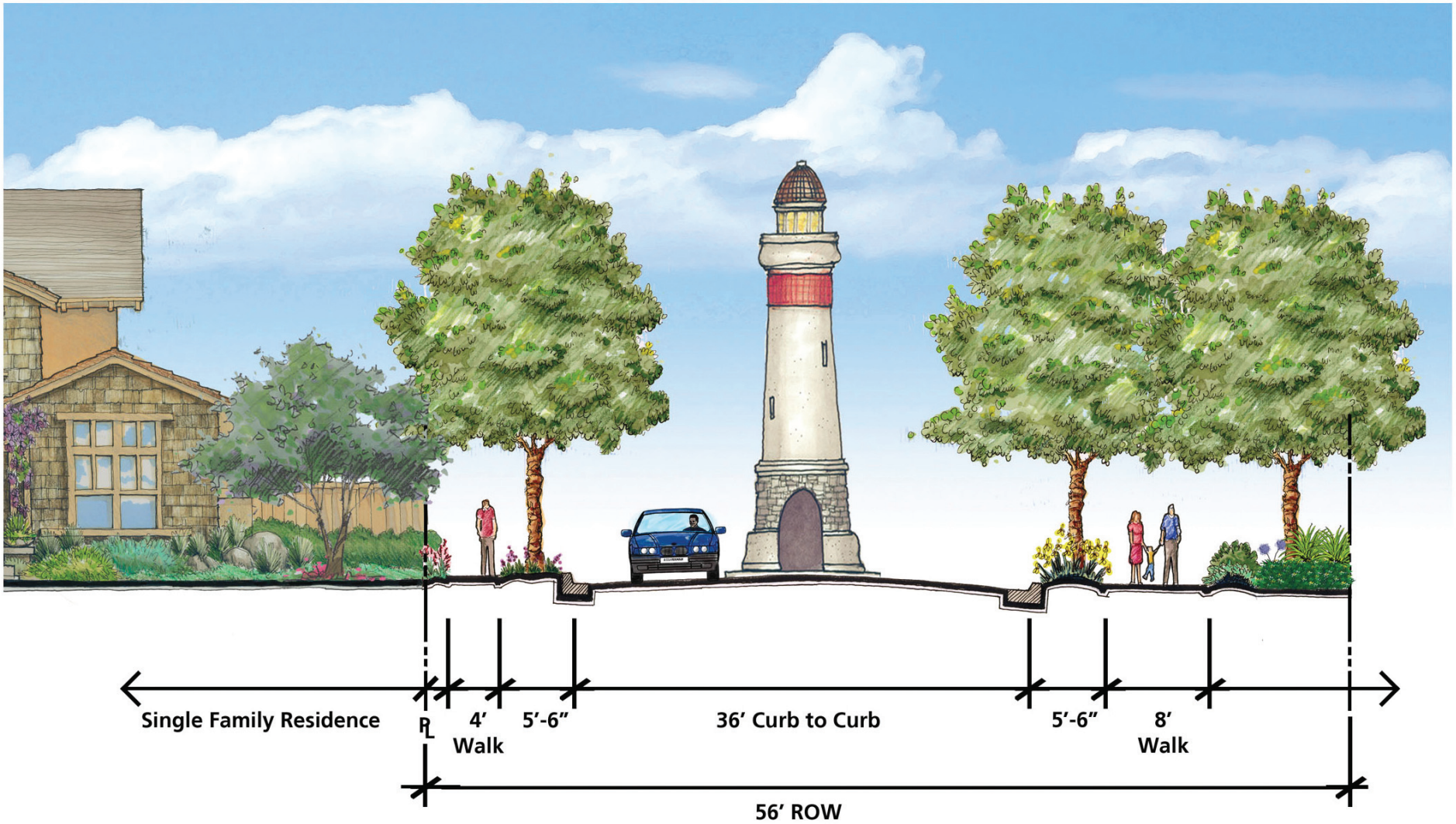
Landscape planting is used to reinforce the walkways, vista points and parks, and to help create smaller variations in texture and color as well as low maintenance will be considered in their selection. The individual neighborhoods will be designed to create a sense of individual place as an aid to way-finding and identity for the residents.



NEWARK SPECIFIC PLAN

Entry Circle

"For Illustrative Purposes Only"



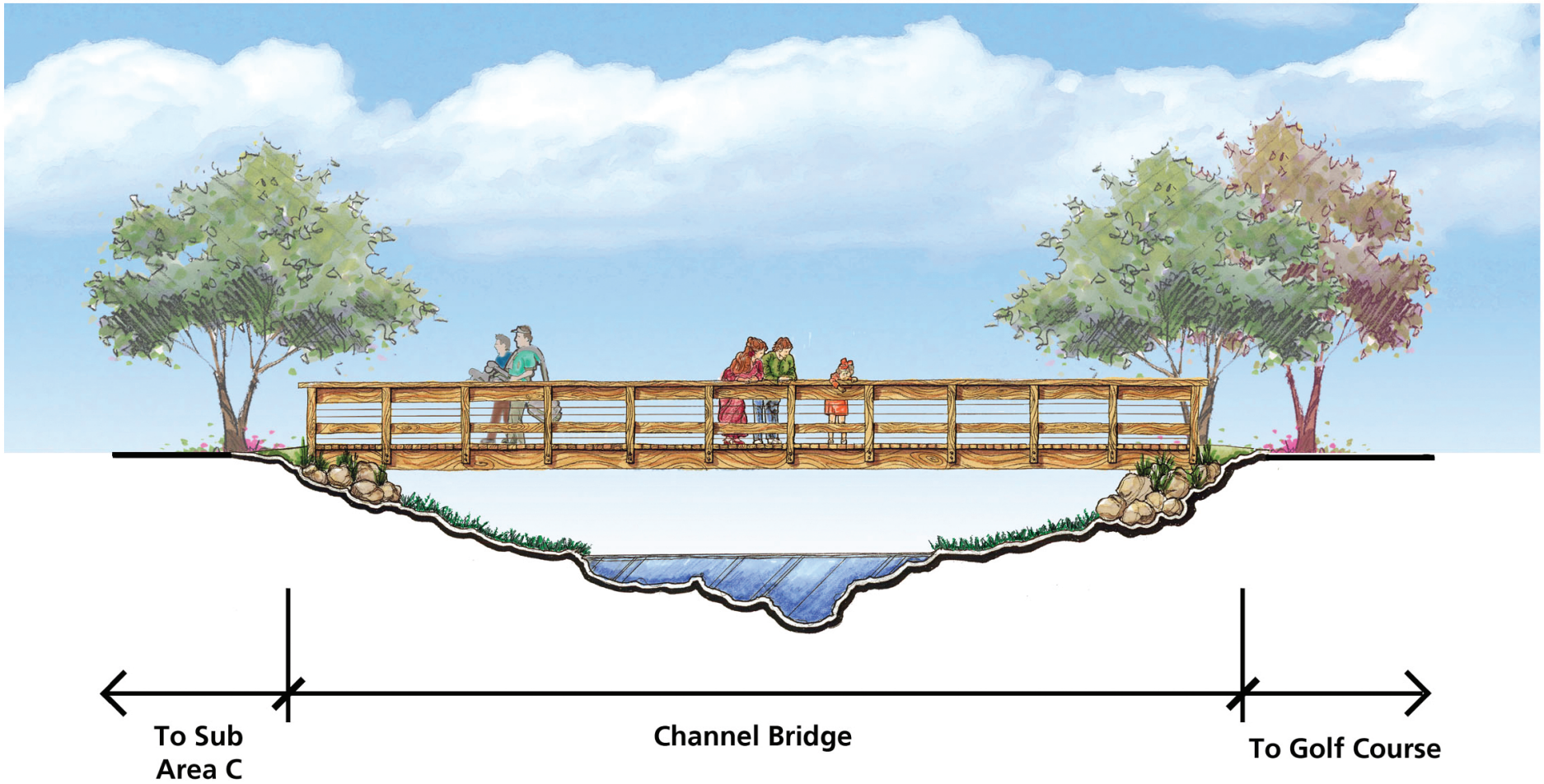
NEWARK SPECIFIC PLAN
Section at Area 4 Entry Drive

"For Illustrative Purposes Only"

NEWARK SPECIFIC PLAN

Sub Area C Park

"For Illustrative Purposes Only"



NEWARK SPECIFIC PLAN

Section at Alameda County Flood Control Channel

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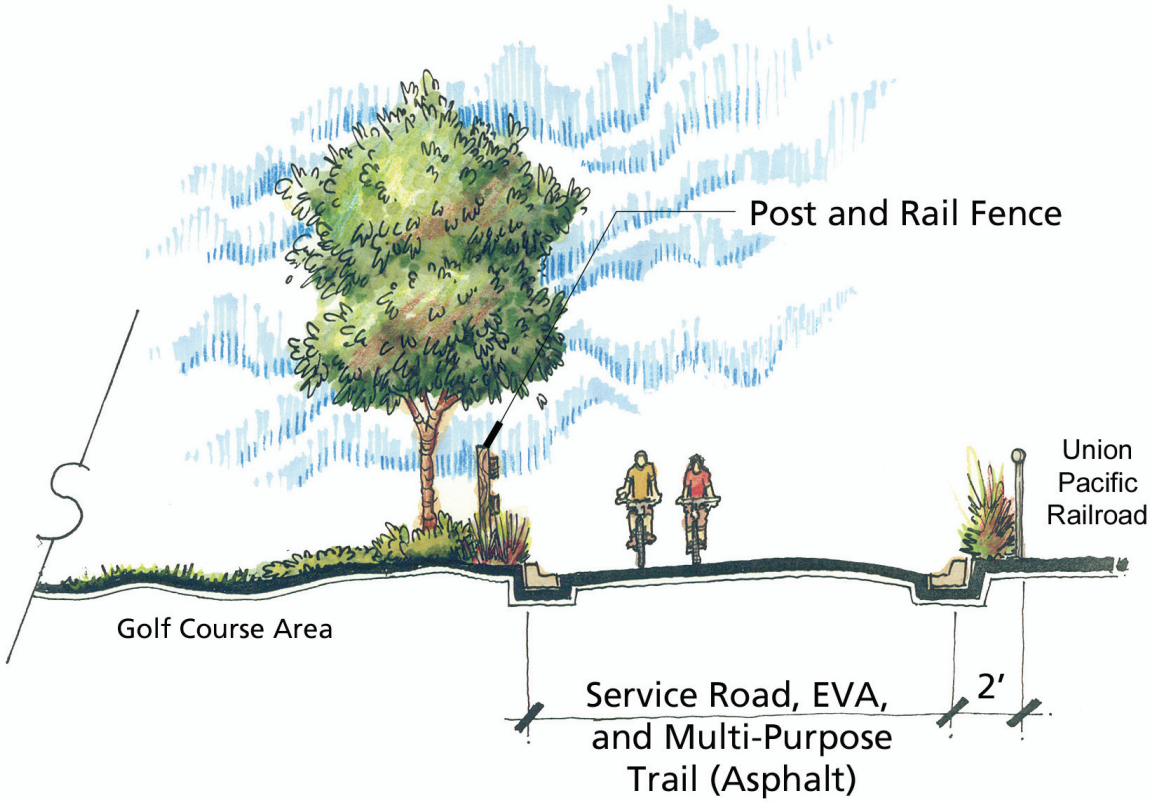
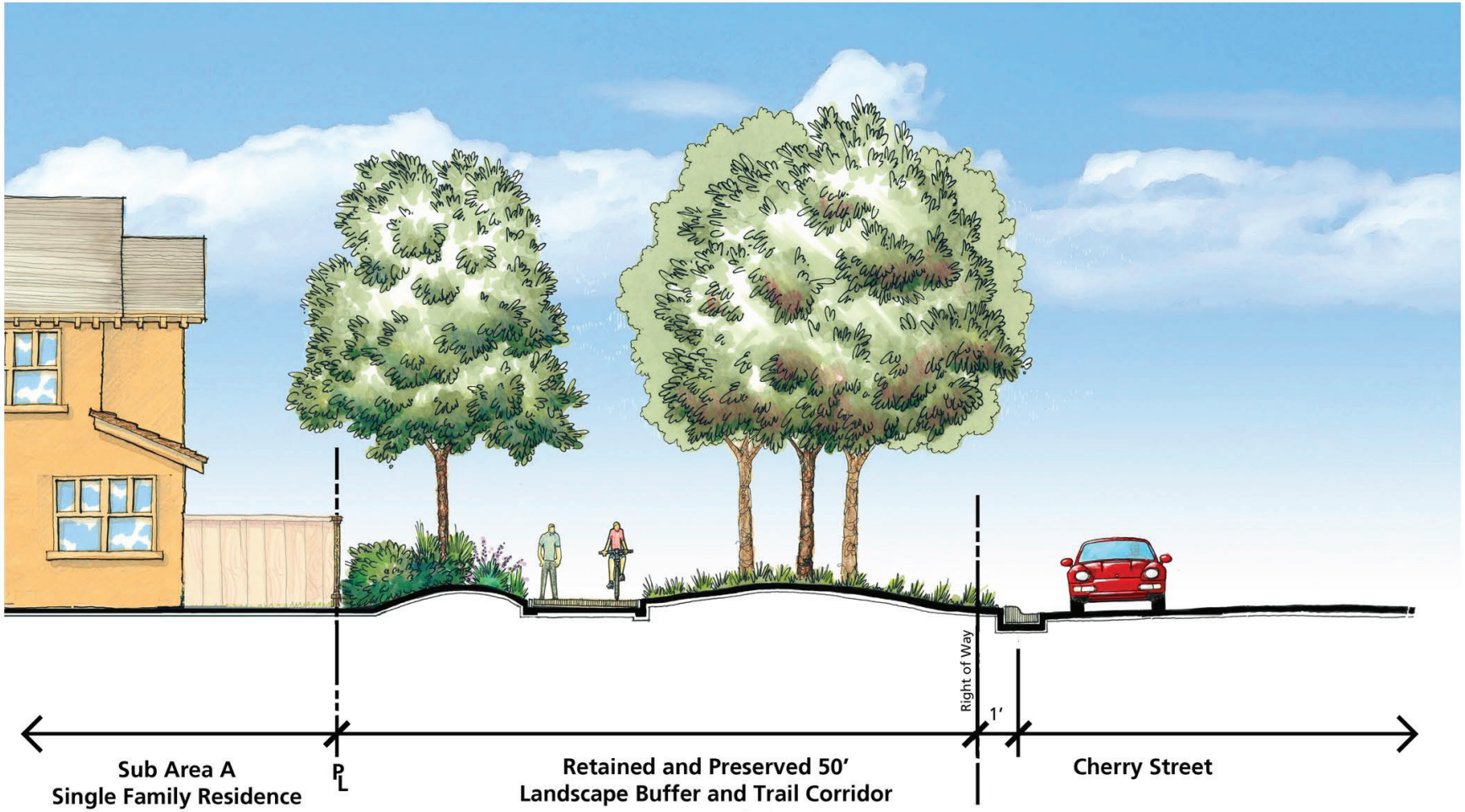


NEWARK SPECIFIC PLAN

EVA Trail Section

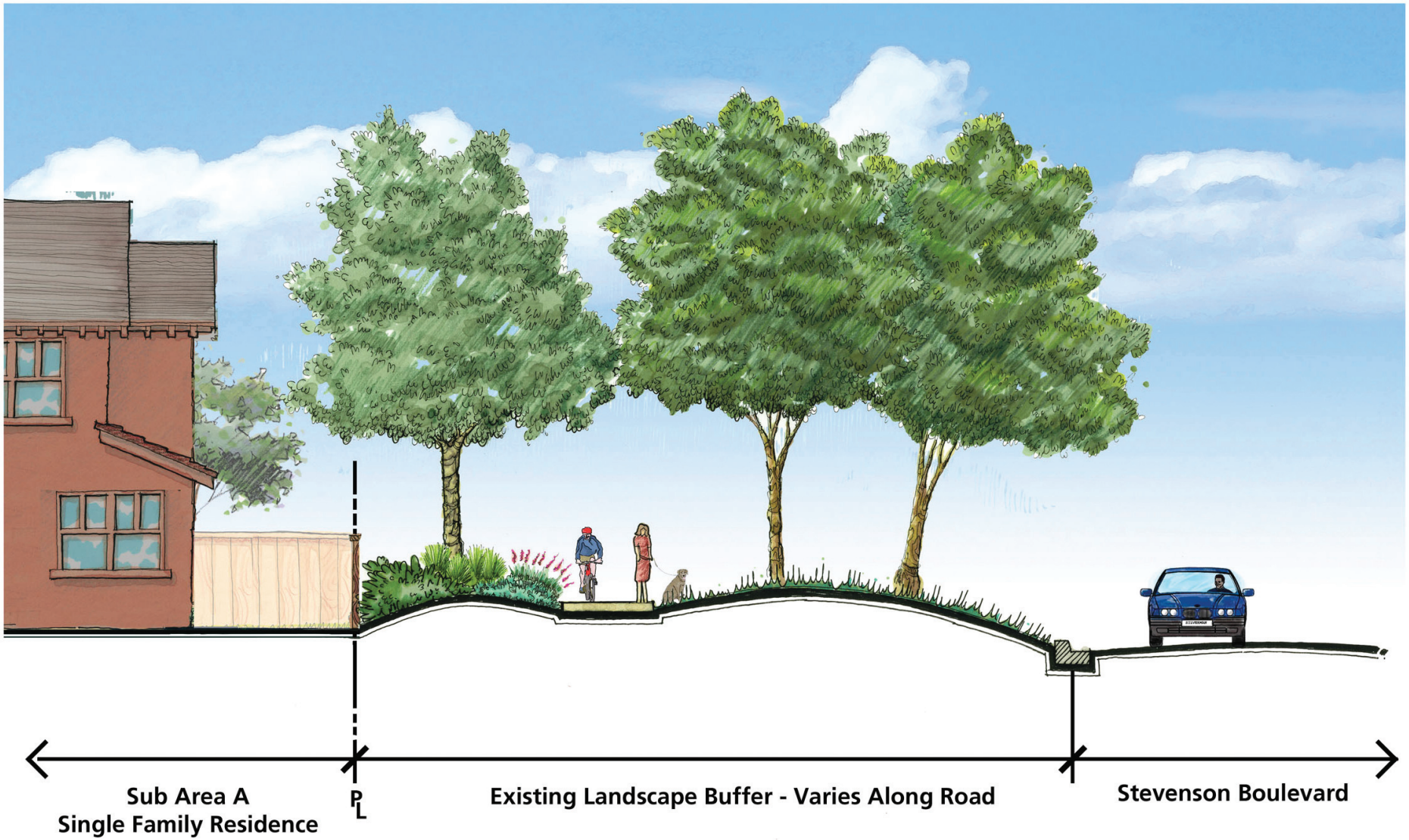
"For Illustrative Purposes Only"



NEWARK SPECIFIC PLAN

Section at Cherry Street and Trail Corridor

"For Illustrative Purposes Only"



NEWARK SPECIFIC PLAN

Section at Stevenson Boulevard

"For Illustrative Purposees Only"

Lawn will be used only in spaces where there is an expectation of play use or a need to frame the foreground of site entry features. The grass shall be double dwarf fescue sod to allow for water conservation and ease of long-term maintenance. Groundcover planting and mulch will cover all other soft landscape areas, designed to produce full coverage within 2 years after planting. The majority of the plant material must be low water use, drought tolerant or native. Of special interest is the use of filtering grasses in the linear spaces along greenways and pedestrian/parking areas in grassy swales. The linear treatment allows the lawn areas to be unencumbered by added water in the rainy season so they can be used for active play with less negative impact on the lawn surface.

The irrigation system on the site will be automatic, underground, state of the art systems using the latest water conservation and monitoring technologies available. The project will include a separate irrigation water distribution system to utilize recycled water when it is available from the Alameda County Water District. The irrigation controllers will be "weather based" and have the capability to be radio operated for maintenance ease. Spray irrigation near buildings will be minimized. A five to ten foot zone around the buildings will have drip irrigation to minimize issues related to sprayed water on buildings and finishes. Water features, if any, must use recycled water. Spray irrigation is to be minimized in all areas of the site.

b. **Exterior Hardscape Materials**. The site is envisioned as being paved with a hierarchy of materials, including gray concrete, beige concrete, interlocking paving stones with patterns in selected areas, decomposed granite which will serve to complement the architectural and landscape architectural palette. Seat walls, feature walls or retaining walls will have finishes that continue building ground plane materials which are most likely to be concrete block or stucco finishes. Other project wide design vocabulary items are described in the illustrations.

c. **Plant Palette** The plant materials for the new neighborhoods shall be selected from a palette approved by the City of Newark that is consistent with adopted City of Newark Bay Friendly Landscape Guidelines, the City's water Efficient Landscape Ordinance, and any other standards applicable at the time of development. In all cases, continuity, simplicity and ease of maintenance are to be considered as prime criteria for any detailed planting plans created for the site. The majority of the plant materials to be used are low water use, drought tolerant or natives.

6. Standards for the Conservation, Development, and Utilization of Natural Resources.

a. **Introduction.** The approximately 889-acre (ac) Project site is located in the City of Newark in Alameda County, California. The site is comprised of the 314-ac area known as Newark Specific Plan Area 3 and the 575-ac area known as Newark Specific Plan Area 4. Areas 3 and 4 are the largest remaining tracts of relatively undeveloped land in Newark.

The Newark Areas 3 and 4 Specific Plan proposes the development of a golf course, residential areas, a school, a park, and related infrastructure on two planning areas in the City of Newark, Alameda County, California. Area 3 is bounded by Cherry Street to the north, Stevenson Boulevard to the east, the Southern Pacific Railroad tracks to the south,

and Mowry Avenue to the west. Area 4 is located immediately to the southwest of Area 3, and is bounded by Mowry Avenue and Alameda County Flood Control and Water Conservation District (ACFC&WCD) Line B to the northwest, the Southern Pacific railroad tracks to the northeast, Mowry Slough to the west and southwest, and ACFC&WCD Line N to the southeast.

The Project elements for Area 3 and 4 will be phased, with residential development in Area 3 occurring before the development of Area 4. Development within Area 4 is conceptual at this time, and may include a golf course, single-family detached houses, and neighborhood parks. Areas inside and outside the development envelope in Area 4 could be utilized for wetland preservation, wetland creation/enhancement or remain unchanged (continued agricultural operation).

Existing developed land uses on Area 3 include the City's George M. Silliman Recreation Complex, City of Newark Fire Station No. 3, Ohlone College Campus, and light industrial/commercial buildings. All of these existing uses are included in the proposed Specific Plan. The specific plan includes proposed activities only in the northeastern corner of Area 3. A new residential development is proposed west of Cherry Street and north of Stevenson Boulevard. Land uses adjacent to Area 3 include residential development and Newark Memorial High School to the northeast, industrial development to the northwest, and industrial development and the Pacific Commons wetland and vernal pool tadpole shrimp (*Lepidurus packardii*) mitigation site to the southeast.

The Specific Plan development envelope in Area 4 includes up to 305 acres of potential development. Three ACFC&WCD channels are located within or adjacent to the Project site: ACFC&WCD Line D runs through the center of Areas 3 and 4, ACFC&WCD Line B runs along the western boundary of Area 4 (eventually becoming Mowry Slough), and ACFC&WCD Line N runs along the southeastern boundary of Area 4. Development within the envelope may include a golf course, single-family detached houses, and neighborhood parks. No residential uses, only golf course, or other recreational land uses are proposed in the area north of ACFC&WCD Line D. Detailed and precise development in Area 4 with respect to the exact location and configuration of residential lots and golf course and the configuration of the remaining agricultural areas will be determined at the time of subdivision map approval. As mentioned above, residential, golf course or neighborhood park use development will only occur within the development envelope, up to a maximum of 1260 residential units. Areas inside and outside the development envelope in Area 4 could be utilized for wetland preservation, wetland creation/enhancement or remain unchanged (continued agricultural operation).

Auto-wrecking yards, a private residence, and associated farm outbuildings constitute existing facilities within Area 4. Otherwise, agriculture is the main land use. Land uses immediately surrounding Area 4 include salt production in Cargill's active salt pond evaporators to the northwest, a former test track for Peterbilt trucks and lands owned by the ACFC&WCD across Mowry Slough from (west of) Area 4, active salt ponds M7 and M6 to the south, the Tri-Cities Landfill to the southeast, and the Pacific Commons vernal pool mitigation site to the northeast.

b. **Existing Natural Resources.** The majority of Area 4, and the portion of Area 3 where residential construction is proposed, is in active agricultural use, with much of the land regularly disked and graded. Historically, habitats in Area 4 were quite different from the site's current conditions. Most of Area 4 supported extensive coastal salt marshes, but the installation of levees, placement of fill, construction of numerous drainage channels as part of agricultural production, and the construction of salt ponds in the early 1900s immediately to the west of the site has removed or muted tidal influence. Most notably, the construction of the outboard levee that separates the site from Mowry Slough prior to salt production in the late 1800s has allowed the area to be actively farmed for decades. Depending on the yearly precipitation and inputs from groundwater, some areas of the site may not be farmed until late in the season, if at all. Aerial photographs have shown that disking and planting occur to greater extents in dry years than in wet years, and in some areas planting and the subsequent harvest may be delayed until late summer in wet years.

Thirteen biotic habitats were identified in Areas 3 and 4. These include upland agricultural, agricultural field/seasonal wetland (saline to brackish), agricultural field/seasonal wetland (brackish to fresh), ruderal, developed, aquatic, diked salt marsh, muted tidal salt marsh, freshwater marsh, brackish marsh, seasonal wetland, coastal scrub, and wrecking yard detention basins. Area 3 is dominated by developed, ruderal, and upland agricultural habitats. Agricultural fields variously characterized as uplands or seasonal wetlands (saline to brackish and brackish to fresh) comprise the majority of Area 4. Area 4 is mostly undeveloped, consisting primarily of cultivated fields. However, large portions of Area 4 are too wet for productive agriculture and support extensive marsh habitat exhibiting various degrees of tidal influence. A large wetland complex is located in the west-central part of Area 4.

The frequent, ongoing nature of disturbance of the upland agricultural habitats in the Specific Plan Areas limits the development of wildlife habitat and the ability of wildlife to nest and burrow within these areas. Raptors such as the red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), northern harrier (*Circus cyaneus*), and barn owl (*Tyto alba*) forage over agricultural habitats, primarily when they contain vegetation. As rain moistens the ground and low vegetation grows, American pipits (*Anthus rubescens*) savannah sparrows, and killdeer (*Charadrius vociferus*) feed in upland fields in small numbers. Mammals such as the western harvest mouse (*Reithrodontomys megalotis*), California vole (*Microtus californicus*), black-tailed hares (*Lepus californicus*) and desert cottontails (*Sylvilagus audubonii*) occur commonly in grasses associated with upland agriculture. California ground squirrels dig burrows in and around such areas, and these burrows provide roosting and nesting sites for burrowing owls (*Athene cunicularia*) which are known to occur within the Project area. Garter snakes (*Thamnophis* spp.), gopher snakes (*Pituophis melanoleucus*), and western fence lizards (*Sceloporus occidentalis*) are examples of reptiles common to habitats in the Specific Plan Areas.

In some parts of the San Francisco Bay area, seasonal wetlands near the bay provide important foraging and loafing habitat for waterbirds (LSA Associates 1989, Goals Project 1999). Waterfowl and some shorebird species forage in wetter areas regardless of the tidal stage in adjacent estuarine areas. Other shorebirds prefer to forage on intertidal mudflats at low tide and use seasonal wetlands as alternate foraging and roosting areas during high tide when their favored foraging habitat is inundated. Long-billed curlews (*Numenius americanus*) and killdeer often forage in fields, including cultivated seasonal wetlands.

Although seasonal wetlands in their dry condition (e.g., in summer and fall) can be used by roosting birds, the hard nature of the dry substrate and low prey availability during dry conditions make these areas useful to foraging shorebirds primarily when wet in late fall, winter, and early spring.

Although moist-soil conditions likely provide suitable foraging habitat for many waterbirds, the vast majority of observations of these species in the Specific Plan Areas have been in seasonal wetlands that support open water, such as the large wetland complex located in the west-central part of Area 4; such wetlands represent a minority of the seasonal wetlands areas on the site.

Eight special-status plant species were considered to potentially occur on the site: Contra Costa Goldfields (*Lasthenia conjugens*), alkali milk-vetch (*Astragalus tener* var. *tener*), Brittlescale (*Atriplex depressa*), Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), Hoover's button-celery (*Eryngium aristulatum* var. *hooveri*), prostrate vernal pool navarretia (*Navarretia prostrata*), Delta woolly-marbles (*Psilocarphus brevissimus* var. *multiflorus*), and San Joaquin Spearscale (*Atriplex joaquiniana*). While these species are absent from all of the proposed direct impact areas on the Project site, they may occur in natural habitat areas that were not surveyed and that could be indirectly impacted by the project.

Some special-status wildlife species may occur on the Project site only as uncommon to rare visitors, migrants, or transients, or may forage on the site in low numbers while breeding in adjacent areas, migrating or over wintering. These species include the California least tern (*Sterna antillarum browni*), black tern (*Chlidonias niger*), western snowy plover (*Charadrius alexandrinus nivosus*), bank swallow (*Riparia riparia*), American white pelican (*Pelecanus erythrorhynchos*), golden eagle (*Aquila chrysaetos*), Vaux's swift (*Chaetura vauxi*), California yellow warbler (*Dendroica petechia brewsteri*), grasshopper sparrow (*Ammodramus savannarum*), western red bat (*Lasiurus blossevillii*), and Townsend's big-eared bat (*Corynorhinus townsendii*).

Other special-status wildlife species may or are known to occur on the site more regularly and some may breed on the site. These include northern harrier (*Circus cyaneus*), white-tailed kite (*Elanus caeruleus*), peregrine falcon (*Falco peregrinus*), burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), Alameda song sparrow (*Melospiza melodia pusillula*), Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), San Francisco common yellowthroat (*Geothlypis trichas sinuosa)*, tricolored blackbird (*Agelaius tricolor*), pallid bat (*Antrozous pallidus*), salt marsh wandering shrew (*Sorex vagrans halicoetes*), and salt marsh harvest mouse (*Reithrodontomys raviventris*). Limited areas of potential habitat for the vernal pool tadpole shrimp (*Lepidurus packardi*), California tiger salamander (*Ambystoma californiens*) occur in Area 4, however, recent surveys for both have not found them to be present on the site. California clapper rail (*Rallus longirostris obsoletus*) and California black rail (*Laterallus jamaicensis coturniculus*) may occur in the adjacent Mowry Slough. A Pacific harbor seal (*Phoca vitulina*) pupping site is located along lower Mowry Slough, approximately 2 miles (mi) (4 stream mi) downstream from the Specific Plan areas. The Yuma myotis (*Myotis yumanensis*), while not on the California Department of Fish and Game's list of California species of special concern, is relatively rare in bayside areas in the South Bay and could occur in Area 4.

The more uncommon wetland and aquatic habitats provide habitats for uncommon and rare species in addition to some more common species. For example, the diked salt marsh provides high-quality habitat for the federally endangered salt marsh harvest mouse and possibly the salt marsh wandering shrew. Birds also nest within this habitat such as the song sparrow (*Melospiza melodia*), San Francisco common yellowthroat, Bryant's savannah sparrow, western meadowlark (*Sturnella neglecta*), and red-winged blackbird (*Agelaius phoeniceus*), and possibly the northern harrier. Freshwater marsh emergent vegetation on the site supports breeding birds such as San Francisco common yellowthroats, marsh wrens (*Cistothorus palustris*), song sparrows (*Melospiza melodia*), and red-winged blackbirds.

c. Environmental Measures

Goal: maintain, protect and enhance the planning areas' natural biological resources particularly sensitive habitats and associated rare plants and animals while integrating development and human uses.

- **Sensitive Habitat Areas**

  Given the declines in regional availability of seasonal wetland habitat around the South Bay, wetland, marsh, and aquatic habitats that occur in Specific Plan Area 4 are valuable habitat types. Seasonal wetlands, even in agricultural areas, have been increasingly lost to development in the South Bay (LSA Associates 1989, Goals Project 1999). Open, moist field habitat that was historically used as alternate foraging habitat for shorebirds during high tides (when favored intertidal foraging habitat was inundated) has also declined. Although salt ponds currently serve as surrogates for these seasonal wetlands from the perspective of high-tide use by shorebirds, planned restoration of at least some salt ponds in the South Bay by the South Bay Salt Ponds Restoration Project (which does not include the Newark salt ponds closest to the site) may reduce the extent of such salt ponds, albeit while enhancing other ponds for shorebird use.

  In addition, diked salt marsh, muted tidal salt marsh, freshwater marsh, and brackish marsh, of the kind found within Area 4, are significant as habitat for species listed as threatened or endangered under federal and state laws, like the California clapper rail and the salt marsh harvest mouse.

  While the City of Newark General Plan has identified development that is projected to occur within Area 4, this area has also been identified for its ecological value by regional planning efforts. The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future. The Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the [former] Pintail Duck Club." Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands. Upland habitats provide a buffer or transition area upslope from wetlands and marshes. Where such upland transition zones are located adjacent to tidal marsh, they provide important refugia for tidal marsh species during high tides

that inundate most of the marsh plain. Even in nontidal areas, such upland habitat can provide refugia for wetland species during periods of flooding.

The City of Newark commissioned the ranking of the value of various wetland, aquatic, and upland habitats on the site based on the hydrology, floristic composition, level of on-going disturbance through agricultural use, and observed levels of use by wildlife species in Specific Plan Area 4 (H. T. Harvey & Associates 2006a). These rankings were used to guide decisions regarding where the golf course and residential areas should be planned, so as to avoid direct impacts to the highest-quality habitats. Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that will be directly filled by this Project were determined to be of poor or marginal quality, primarily due to intensive agricultural disturbance and the resulting effects on plant communities and wildlife use.

In addition to wetland, marsh, and aquatic habitats that will be filled directly, indirect impacts to wetlands in several areas may be great enough so as to result in the functional loss of these habitats. Some wetland/aquatic habitats that will not be filled may still be functionally lost due to the level of disturbance associated with development activities that is expected to occur, as well as the potentially small or isolated nature of remaining features (which allows no buffer from such disturbance). Some species can no longer subsist in these smaller fragments, the fragments may be heavily influenced by surrounding stressors, or species may not reproduce successfully without exchange with other populations. If remaining fragments of undeveloped habitat are isolated from larger areas of contiguous habitat, the remaining habitats are expected to have lower biological values than those prevailing before development. Therefore, large contiguous habitat areas are important and isolation and fragmentation can severely affect wildlife and, in some cases, plant populations in preserved or remnant habitat areas.

Wetland, marsh and aquatic habitats are recognized as rare and declining by state and federal agencies charged with protection of natural resources. Due to the value of these sensitive habitats, it is important that this Specific Plan incorporate policies to protect and enhance these habitats.

Policy 6-1: Disturbance to and loss of all wetland and aquatic habitats should be avoided to the maximum extent feasible.

Policy 6-2: Wetland habitat should be created or enhance within non-development areas of Specific Plan Area 4 to offset functional or actual loss of existing sensitive wetland and aquatic habitat to the maximum extent feasible. These created and enhance habitat areas should be large, contiguous matrices of wetland and upland that maintain or increase habitat value and provide habitat opportunities for rare plant and wildlife species and that, by adjoin existing or preserved habitats adjacent to Area 4, may be functionally larger.

Policy 6-3: Development of the golf course should contain as much natural habitat as is feasible, such as unmaintained native grassland areas rather than turf and native trees and other vegetation where appropriate.

- **Hydrology Supporting Natural Resources**

  There are three primary sources of hydrology acting on the site, including incidental rainfall, groundwater table fed by springs, and lateral seeps. Area 3 is primarily affected by incidental rainfall. Some areas of Area 4 are also mainly influenced by surface precipitation which flows to slight depressions, including the areas within Area 4 proposed for residential development. The Specific Plan area is relatively flat, with little elevation change across large portions of the property. Small gradients in elevation (less than 1 ft difference between upland areas and potential wetland areas) at this site result in subtle depressions. The landscape surrounding these slight depressions then becomes the contributing watershed to these potential wetlands. However, subsurface flow within disked soils also allows water to move generally towards the pump in draining the site slowly.

  Groundwater does not appear to influence all areas of Area 4. Rather, the localized groundwater occurring within several perennial wetlands/ponds located in the western portion of Area 4 allows water in the top several inches of the soil to move laterally away from the ponds into the adjacent agricultural fields. The source for the groundwater appears to be a large aquifer that is recharged far upslope by the Fremont Percolation Ponds (which contribute to the Niles Cone Groundwater Basin which includes three aquifers: the deep aquifer, the Fremont aquifer, and the Newark aquifer). Recharge of the seasonal wetland and marsh habitats that are part of the large wetland complex located in the west-central part of Area 4 is from groundwater seeps and occurs in mid-to late-summer. The presence of surface and subsurface water deriving from underground seeps appears to influence seasonal wetland habitat within Area 4 east and south of the proposed golf course. The remaining areas of Area 4 are influenced by a combination of these hydrologic features.

  The portion of Area 3 where development is proposed as part of this Project drains westward to ACFC&WCD Line D. Portions of Area 4 northwest of ACFC&WCD Line D drain south/southwestward to a one-way outlet culvert on Line B near its confluence with Line D. This culvert allows water to drain from the site but does not allow water from Line B to enter the site. Lines D and N receive no runoff from Area 4. Portions of Area 4 southeast of ACFC&WCD Line D drain generally to the south/southeast through ditches that have been constructed on the site, including a large ditch that surrounds the southwestern portion of the site, to a large pump which continually pumps water from the site into Mowry Slough. Due to the relative ground within Area 4 and water levels within Mowry Slough and the Bay, pumping will be required even to preserve natural wetland habitats to move water into Mowry Slough.

  The exiting hydrology of Area 4, along with topography, determines the locations and extent of natural wetland or aquatic habitats. Currently, wetland habitat on the site is influenced by groundwater, seeps, and incidental rainfall. A change in the hydrology of the site, whether to increase or decrease the amount of water reaching wetland, marsh, and aquatic habitats, will affect the persistence and quality of these sensitive habitat types. Typically, development affects hydrology by 1) increasing impervious surfaces and thereby increasing the rate and amount of runoff entering undeveloped areas, 2) decreasing the amount of water entering undeveloped areas with the addition of features that retain or use additional water through ponding or vegetation, and 3)

adding nuisance flows into undeveloped areas during the dry summer months from landscape watering. In addition, runoff from development areas, including golf courses can impact the water quality in natural wetland and aquatic habitats on site and, subsequently, into Mowry Slough and the San Francisco Bay due to contamination from landscape chemicals, roadway contaminants, and sediments. After completion of construction, stormwater runoff from the Project's developed areas may contain eroded earthen materials or dissolved chemicals (from debris, landscaping fertilizers and pesticides, and vehicular traffic debris, including abraded tire and brake lining materials) that could affect the surrounding aquatic habitats through siltation, erosion, or contamination. In addition, siltation within these habitats may change the existing vegetation community present and/or eliminate any previously undisturbed habitat that could provide suitable habitat for special-status plant species in the future. In addition, if improperly conducted, remediation of any contamination in the auto wrecking yards could allow contaminants to leach into adjacent natural habitats from the auto wrecking yard area clean-up. These hydrologic alterations could affect the wetland and marsh habitats that will not be directly filled during site development and those preserved and enhanced in response to Policy 6-1.

These combined effects of development on the amount, location, velocity, and timing of water movement on the site would alter the character, quality, and distribution of natural habitats surrounding development features. Any reduction in the amount of water entering seasonal wetland or marsh habitats (i.e., through diversion of stormwater runoff) could reduce the hydroperiod and ponding depth of these wetlands, altering their functions and values for plants and animals. Additional water moving into natural habitat may result in seasonal wetland habitat becoming perennial wetland habitat after Project implementation or brackish and salt water marshes becoming fresher. In addition, this greater amount of water flow may be concentrated in fewer areas and/or smaller areas, causing erosion and channelization resulting in the creation of perennial aquatic habitat in channels in what is currently upland habitat or seasonal wetland habitat. Contaminants from development could also reduce water quality significantly.

These habitat effects could impact special-status species such as the salt marsh harvest mouse, salt marsh wandering shrew, Alameda song sparrow, Bryant's savannah sparrow, and San Francisco common yellowthroat. In addition, if special-status plants such as the alkali milk-vetch, Congdon's tarplant, Delta woolly-marbles, Hoover's button-celery, prostrate vernal pool navarretia, brittlescale, San Joaquin spearscale, and Contra Costa goldfields are present in areas of marsh, changes in hydrology could affect these species as well.

Policy 6-4: Maintain site hydrology and water quality in remaining or preserved natural habitats through incorporation of design features to duplicate existing hydrologic conditions and maintain or improve the current quality of water leaving the site. Such features may include the use of grassy swales to treat runoff, capture contaminants and allow water to infiltrate into the soil; surface materials to allow for infiltration on individual residential (private) properties (including permeable driveway material and individual detention features); water conservation; xeric (preferably native) landscaping; properly sized conveyance

structures; distribution of runoff (not narrowly focused); and the retention of water (particularly off-season nuisance flows) within the development footprint.

Policy 6-5: To maintain hydrology and water quality as currently exists in natural habitat areas, development of the golf course should use state of the art management methods such as a computerized irrigation system connected to an on-site weather station to limit watering to the exact needs of the course, sprinkler head designs to ensure a very even distribution of water to reduce water use and runoff, unmaintained native grasses in the outer roughs, designated irrigated and non-irrigated areas, retention of runoff (particularly off-season) within the golf course, accurate application of fertilizer to that required to eliminate contaminated runoff and retention of nuisance or off-season flows within the development area.

- **Wildlife Use and Wildlife Movement**

  Areas 3 and 4 are two of the three largest remaining tracts of relatively undeveloped land in Newark. Area 4 in particular provides habitat for wildlife. Upland portions of the site support wildlife species that are relatively common throughout the South Bay region. The frequent, ongoing nature of disturbance of the upland agricultural habitats on the site limits the development of wildlife habitat and the ability of wildlife to nest and burrow within these areas.

  The more uncommon wetland and aquatic habitats provide habitats for uncommon and rare species in addition to some more common species. For example, the diked salt marsh provides high-quality habitat for the federally endangered salt marsh harvest mouse and possibly the salt marsh wandering shrew. Birds also nest within this habitat such as the song sparrow (*Melospiza melodia*), San Francisco common yellowthroat, Bryant's savannah sparrow, western meadowlark (*Sturnella neglecta*), and red-winged blackbird (*Agelaius phoeniceus*), and possibly the northern harrier. Freshwater marsh emergent vegetation on the site supports breeding birds such as San Francisco common yellowthroats, marsh wrens (*Cistothorus palustris*), song sparrows (*Melospiza melodia*), and red-winged blackbirds.

  In parts of the San Francisco Bay area, seasonal wetlands near the bay provide important foraging and loafing habitat for waterbirds (LSA Associates 1989, Goals Project 1999). Although moist-soil conditions in the existing agricultural wetlands likely provide suitable foraging habitat for waterbirds, the vast majority of observations of waterbirds have been in seasonal wetlands that support open water; such wetlands are present in the large wetland complex is located in the west-central part of Area 4.

  In some areas, the upland habitats on the site provide a buffer or transition area upslope from wetlands and marshes. Where such upland transition zones are located adjacent to tidal marsh, they provide important refugia for tidal marsh species during high tides that inundate most of the marsh plain. Even in nontidal areas, such upland habitat can provide refugia for wetland species during periods of flooding.

  As described previously (see *Existing Natural Resources* above), several special-status wildlife species may occur on the Project site as occasional visitors, migrants, or transients but do not breed on the site. Other special-status species could potentially

breed on or adjacent to the site such as the northern harrier, white-tailed kite, loggerhead shrike, Alameda song sparrow, Bryant's savannah sparrow, and San Francisco common yellowthroat. Northern harriers may nest on the ground in the diked salt marsh in Area 4 and along the adjacent Mowry Slough. The Alameda song sparrow, Bryant's savannah sparrow, and San Francisco common yellowthroat nest primarily in marsh habitat. Several pairs of burrowing owls have also been recorded breeding in ruderal habitats on the Project site, both along the sides of levees and in vacant lots. Peregrine falcons can nest on electrical transmission towers in Area 4 and forage for waterbirds in seasonal wetland and marsh habitats on the site and on salt ponds nearby. The diked salt marsh provides high-quality habitat salt marsh harvest mouse and possibly the salt marsh wandering shrew. Pallid bats and Yuma myotis might roost in one or more of several buildings or trees on the site.

The ACFC&WCD channels that flow into Mowry Slough, and Mowry Slough itself, represent the primary aquatic movement pathways on and in the vicinity of the Project site. Development of the Specific Plan Areas will not disrupt these pathways, and thus will have little effect on movement by aquatic species. Although Area 4 supports important aquatic habitats, particularly in the large wetland complex located in the west-central portion, these habitats have little connectivity to off-site aquatic habitats (from the perspective of aquatic species movements) since water southeast of ACFC&WCD Line D has to be pumped into Mowry Slough and water northwest of Line D enters Mowry Slough through a one-way culvert.

While Specific Plan Areas 3 and 4 are the largest remaining tracts of relatively undeveloped land in Newark and natural habitats are available, the Specific Plan areas are surrounded by development to the north and east and salt production ponds to the northwest and west. Salt ponds and urban development prevent any substantive movement of terrestrial wildlife such as mammals, reptiles, and amphibians to or from the northwest (i.e., in the direction of the Refuge headquarters and Coyote Hills Regional Park). Likewise, extensive urban development to the north and east prevent movement of these species between the site and the undeveloped hills nearly 5 mi to the east. The only connectivity to open, upland wildlife habitat occurs to the southeast. However, the upland habitat areas southeast of the site are limited in size and isolated from extensive open space habitat (e.g., east of Interstate 880) by urban development. As a result, any movement by mammals, reptiles, and amphibians through the Project site would facilitate exchange of individuals or genes only locally, along the immediate edge of the Bay in the Fremont-Newark area; however, this movement is locally important. Within the immediate Specific Plan Areas, the footprint of the development will limit the movement of animals within the site, but wildlife will still be able to move through undeveloped areas and, to some extent, through the golf course. Development in the northeastern corner of Area 3 will have little effect on wildlife movement. The proposed residential area footprint will reduce the available connected habitat areas and constrict the corridors between them. The golf course, should it be built, will allow wildlife to traverse most of the northern portion of Area 4 to the extent they are not inhibited by human activity. However, as under existing conditions, the ACFC&WCD Line D will continue to impede terrestrial wildlife, and northwest/southeast wildlife movement must be at levee connection points.

Policy 6-6: Development of residential and golf course areas should be configured to optimize habitat areas (e.g., contiguous and large) for wildlife in remaining or preserved wetlands to provide needed habitat elements; limit disturbance from residences, the golf course, and recreational activities (e.g., hiking or dog walking along levees); avoid, to the extent feasible, or replace and enhance habitat for endangered species habitat lost; and allow for adequate movement for wildlife species within Area 4 with particular attention paid to waterbirds and special-status species found in the area: burrowing owls, peregrine falcons, tricolored blackbirds (colonies), salt marsh harvest mice, salt marsh wandering shrews, pallid bats, and Yuma bats and breeding northern harriers, Alameda song sparrows, Bryant's savannah sparrows, and San Francisco common yellowthroats.

- **Construction**

  As mentioned previously, there is habitat within Area 4 that should be avoided when planning development. This habitat itself, plants and wildlife, including Special-status Species, that reside in that habitat can be detrimentally affected during construction. For example, if burrowing owls are using burrows on or immediately adjacent to the site when Project construction commences, construction activities could result in the mortality or injury of individual owls in burrows, or cause the abandonment of active nests.

  Grading could result in mobilization of dust and introduction of silt and contaminants into aquatic habitats. Due to the presence of at least marginal-quality nesting habitat for tricolored blackbirds and this species' tendency to nest in large colonies, there is some potential for construction related impacts to nesting tricolored blackbirds too. The endangered salt marsh harvest mouse is known to occur in the diked salt marsh habitat in the large wetland complex located in the west-central portion of Area 4 (Shellhammer et al. 1985). Tidal salt marsh along Mowry Slough adjacent to the site and the muted tidal salt marsh in the northwestern part of Area 4 also provide suitable habitat for this species, and salt marsh harvest mice may also occur in the agricultural field/seasonal brackish marsh adjacent to the diked salt marsh habitat. Salt marsh wandering shrew may also be present in these habitats.

  Water quality affects during construction can also affect any of these habitats or species in remaining or preserved habitats. Construction may result in temporary impacts to water quality in several ways. Soil disturbance during soil stockpiling and grading can result in mobilization of dust that coats plants (possibly including special-status species) in areas that are not directly impacted, potentially adversely affecting their health. Soil disturbance can also result in soil erosion, transport, and siltation of wetlands that are not intended to be filled. Contamination of aquatic and wetland habitats can occur as a result of fuel leaks in construction equipment, abrasion of materials used in construction, and inputs of debris and runoff of concrete byproducts or slurry. Construction in and near seasonal wetland habitat, salt marsh habitat, any of the existing agricultural ditches present on the site, or the ACFC&WCD channels could have a substantial adverse effect on water quality due to increased turbidity and siltation from soil, if ground-disturbing activities occur during the wet season, or if soil is allowed to enter these habitats, or from chemical, particulate or debris contaminants. Soil or contaminants could also potentially be transported to aquatic habitats from activities in

upland habitats a considerable distance away from these habitats, for example, in storm runoff or accidental discharge of water. There is also the potential to add to construction-period water quality degradation during removal and clean-up of the auto wrecking yards in the northwest portion of Area 4. Chemicals, particularly petroleum-based chemicals, and particulates, such as asbestos brake lining materials, typically contaminate auto wrecking yards. If this cleanup is improperly conducted, these contaminants can leach into adjacent natural habitats during removal of the yards and construction of the golf course in the area. Degradation of water quality on and downstream from the site resulting from construction could adversely affect prey availability, foraging conditions, or the health of a variety of wildlife species, including harbor seals and fish within Mowry Slough; aquatic invertebrates that support foraging and breeding waterbirds in the sloughs, channels or wetland habitats; and terrestrial wildlife species including rare salt marsh associated species as well as common species that use wetland habitat for drinking water, foraging, and refugia.

Grading or importation of fill material can cause the spread of invasive non-native plant species. Of particular concern are species such as fennel (*Foeniculum vulgare*), pampas grass (*Cortaderia selloana*), perennial pepperweed (*Lepidium latifolium*), and small-flower tamarisk (*Tamarix parviflora*). Several non-native, invasive species occur on the site, including perennial pepperweed, black mustard, and prickly ox-tongue. Invasive species, particularly fast-growing herbaceous invaders, are often disturbance-adapted, and soil disturbance of the type that will occur during the construction is often followed by an aggressive invasion of the disturbed area by these species.

Under existing conditions, there are small populations of many invasive species throughout the Specific Plan Areas; however, ground disturbance associated with construction would create vast new areas suitable for recruitment of these non-native species (e.g., along the fill embankments), many of which form dense, monotypic stands, eliminating any natural habitat that the area previously supported. Expansion of these invasive plant populations on the site will also increase the seed bank on the site allowing spread to unimpacted natural habitats on the site. While the areas of the site that are in agricultural production contain some of these non-native, invasive plant species, the most damage would be caused by an increase in species that can have a severe ecological impact (fennel, pampas grass, perennial pepperweed, and smallflower tamarisk). Invasion by these non-native species will degrade the functions and values of preserved natural habitat for native plants and wildlife species and reduce the potential for native species to use the landscaped areas within the new development. In Area 3 and 4, fill material for the proposed residential construction may contain seed from non-native plant species not already found on the site, and site grading will likely spread non-native, invasive plant species imported in fill or already present on the site. In Area 4, there are already populations of fennel, pampas grass, perennial pepperweed, and small flower tamarisk within areas proposed for development that may be spread during construction, potentially resulting in substantial impacts to remaining natural habitats. Under existing conditions in Area 4, the levee banks are dominated by black mustard, forming dense thickets that are sprayed periodically with herbicide

Policy 6-7: Temporary disturbance to all wetland and aquatic habitat should be avoided to the maximum extent feasible during construction activities using

measures such as demarcation of construction areas with Environmentally Sensitive Area fencing

Policy 6-8: Minimize construction related impact on rare, threatened, endangered or other special-status species particularly in natural, created or enhanced habitat areas remaining or preserved on site such as burrowing owls, salt marsh harvest mice, salt marsh wandering shrews, pallid and Yuma bats, and nesting northern harriers, peregrine falcons, Alameda song sparrows, Bryant's savannah sparrows, San Francisco common yellowthroats, and tricolored blackbird colonies. Measures may include conducting pre-construction/pre-disturbance surveys, establishing buffer zones, avoiding habitat, creating alternate habitat, salvaging individuals, and during the breeding season: avoiding construction activities, excluding individuals from construction areas, removal of vegetation.

Policy 6-9: Minimize construction related impact water quality degradation in natural, created or enhanced habitat areas remaining or preserved on site using measures such as incorporating best management practices, minimizing soil disturbance adjacent to wetland and marsh habitat, suppressing dust during construction, and avoiding contamination of adjacent natural habitats during environmental cleanup of the auto wrecking yards.

Policy 6-10: The City of Newark shall require design and implementation of and must review and approval an Invasive Plant Species Management Plan prior to grading or importation of fill material as part of any proposed development in Specific Plan Areas 3 and 4 to reduce the potential establishment or spread of non-native, invasive weed populations as a result of development activities. This management plan will outline methods to control the existing populations of non-native, invasive weed species that are not a severe ecological threat and to remove those weed species present that pose a severe ecological threat from the accessible portion of the site to prevent the spread of their seed during and after construction and to prevent the invasion of graded area by invasive species.

- **Human Disturbance**

  After construction has been completed, residential and golf course development will be in close proximity to seasonal wetland, marsh, and aquatic habitats in Area 4. To the extent that these sensitive habitats currently support waterbirds and special-status species, it is likely that proximity to developed areas will result in diminished wildlife use after construction is completed. This decrease in habitat value of the wetlands that are not proposed to be directly impacted may occur for a variety of reasons. Noise, movement of people, domestic animals, and vehicles within the developed area; artificial lighting, and encroachment of people and domestic animals from the developed area into the natural area have the potential to render portions of the "preserved" wetlands unusable by wildlife, at least in areas near the source of disturbance while the disturbance is ongoing. In the absence of such sources of disturbance, wildlife that might otherwise use the site's wetland and aquatic habitats may avoid areas in close proximity to developed areas due to concerns about sight distance and predation risk (e.g., buildings and fill may reduce the distance at which foraging animals can detect predators).

Even if their habitat is not directly impacted, isolation of habitat for species such as the salt marsh harvest mouse and salt marsh wandering shrew resulting from development could adversely affect these species as well. Burrowing owls will be subject to disturbance of nesting and roosting birds by golfers, people walking along levees, and domestic animals, and possible predation by domestic animals and urban-adapted nuisance species. Suitable roosting and nesting habitat for these owls would most likely occur along levees or at the edges of the golf course, therefore, areas occupied by any owls that remain in Area 4 would be accessible to humans and other animals and would thus be subject to recreational disturbance and predation and harassment by pets and urban-adapted predators.

Domestic pets, cats in particular, will stray from the residential areas in both Areas 3 and 4 and may depredate salt marsh harvest mice or salt marsh wandering shrews and breeding special-status bird or their nests. Urban-associated non-native mammals such as house mice and black and Norway rats, as well as urban-adapted natives such as raccoons, are likely to increase on the Project site following development. These species also may compete with or, like pets, prey on salt marsh harvest mice or salt marsh wandering shrews. These species may compete with or prey on some of these special-status species.

Recreational activities in close proximity to sensitive habitats, etc have the potential to adversely affect sensitive habitats and species. Residential development will increase the number of people in this part of Newark who might use the golf course in Area 4 or who might walk or bike on levees adjacent to higher-quality habitats in Area 4. Thus, development in Area 3 and 4 will likely result in an increase in recreational disturbance of sensitive habitats and species in Area 4.

Due to the close proximity of the areas of potential recreational use (formal recreation on the golf course and informal recreation on levees) to sensitive habitats that are known to support special-status species and large numbers of foraging and roosting waterbirds (in the large wetland complex located in the west-central portion of Area 4), recreational activities have the potential to impact sensitive habitats and species. Two types of recreational activities are anticipated to occur, or increase in frequency and intensity, near sensitive habitats in Area 4 as a result of the Project: golfing on the new golf course and recreational use of the levees along the ACFC&WCD channels and along Mowry Slough.

Because the golf course abuts sensitive habitats such as wetlands, marsh, and aquatic habitats containing sensitive species, golfers are likely to disturb these habitats and species. Golfers may enter these habitats looking for stray balls, and the noise and human activity associated with golfing may disturb sensitive species in adjacent habitats or reduce the use of adjacent habitats by these species. Use of a golf cart bridge over the wetlands northwest of ACFC&WCD Line D to connect separate portions of the golf course will result in disturbance of wetland-associated wildlife species. These activities may result in degradation of wetland, marsh, and aquatic habitats; crushing of special-status plants, salt marsh harvest mice, and salt marsh wandering shrews; disturbance of nesting birds, including special-status species such as northern harriers, burrowing owls, San Francisco common yellowthroats, and Alameda song sparrows; and disturbance of nesting, foraging, and roosting waterfowl, shorebirds, and other species.

Although there are no official trails, people currently walk along the levees that line the ACFC&WCD channels and along the levee that follows the eastern side of Mowry Slough infrequently and in small numbers, but with the residential development in Areas 3 and 4 and the presence of the golf course, more visitors to these levees are anticipated. Levee users may enter sensitive habitats, and the noise and human activity associated with levee use may disturb sensitive species in adjacent habitats or reduce the use of adjacent habitats by these species. These activities may result in degradation of wetland, marsh, and aquatic habitats; crushing of special-status plants, salt marsh harvest mice, and salt marsh wandering shrews; disturbance of nesting birds, including special-status species such as northern harriers, burrowing owls, San Francisco common yellowthroats, and Alameda song sparrows; and disturbance of nesting, foraging, and roosting waterfowl, shorebirds, and other species. Levee users may also bring dogs to these areas, and the dogs have the potential to harass or even depredate bird and mammal species in the sensitive habitats along these levee. Development of the area is likely to be followed by formalizing levees as designated trails, increasing use and disturbance.

Policy 6-11: The design of the golf course should minimize, to the extent practicable, disturbance by golfers of adjacent sensitive natural resources such as sensitive habitats, vegetation wildlife, and rare plant or animals with such measures as having high-use areas such as tees and greens set back from the edge of the golf course, broad rough/out-of-bounds areas along the interface between the golf course and sensitive habitats, "out of bounds" areas clearly marked, and focused lighting that does not extend into natural or habitat areas.

Policy 6-12: Minimize disturbance from residential and recreational uses including refraining from developing recreational use areas near sensitive natural resources, educating the public about the importance of preserving the ecological integrity of the adjacent natural areas, instructing recreational users to stay on top of the levees out of sensitive habitats and keep dogs on leashes, developing signage along the ACFC&WCD levees and along Mowry Slough to educate users the ecological value of adjacent wetland areas and protection measures, avoiding artificial light pollution of habitat areas, and setting aside habitat areas sufficiently large that undisturbed areas are available to wildlife.

7. Implementations Programs and Measures.

a. **Development Phasing.** Both Area 3 and Area 4 will be developed independently of each other. Area 4 will not be developed until the bridge over the railroad is constructed. Phasing within each Area will be based on the provision of appropriate infrastructure.

b. **Public/Private Financing**. The residential portions of the plan will be solely financed by private funds. The various developers within areas of the plan will work closely with the City to bring public improvements on-line at the earliest possible date. The developers will fund all facilities needed to support the development.

c. **Allocation of Specific Plan Costs**. Costs will be proportionately allocated to the property owners with Sub Areas A, B, and C based on their ownership of developable land within those Areas.

d. Affordable Housing Implementation Strategy. The Specific Plan will comply with the affordable housing elements required by Chapter 17.18 of Newark's Municipal Code. The Plan will provide for the development and maintenance of 15% of the total number of dwelling units within the residential development as inclusionary units. These units may be provided in phases as senior ownership or rental, multifamily ownership or rental, or single family ownership or rental at the developer's discretion. In the alternative, the City will allow off site construction of the required units for the affordable housing requirement.

e. Implementation Policies and Strategies/Action Plan.

- **General Plan Amendment** – the General Plan will be amended simultaneously with the adoption of this Plan.
- **Zoning Changes** – the zoning changes will occur simultaneously with the adoption of this Plan.
- **Planned Unit Development Permits** – the requisite PUD permits will be granted simultaneously with the adoption of this Plan and will not expire during the term of the Development Agreement.
- **CUPs** – the requisite CUPs will be granted simultaneously with the adoption of this Plan.
- **Development Agreement** – the Development Agreement will be entered into simultaneously with this Plan.
- **Tentative Map** – the tentative map will be approved at a later date.

f. Review and Approval Process. Tentative and Final maps will go through the City's normal subdivision procedure with ultimate City Council approval required. Subdivisions conforming to the Specific Plan shall be approved and shall be deemed exempt from CEQA. See Public Resources Code § 21083.3 and Government Code § 65457. Any major changes in Land Use distribution or increase in intensity of development are not anticipated in the Specific Plan and will be processed as **major** amendments to the Specific Plan, and total cost allocation for such change will be borne solely by the entity requesting such change.

The Planning Director will have the authority to approve all **minor** changes to the Specific Plan within the context and guidelines contained within this document. All Site Plan and Architectural approvals will be made by Planning Director based solely on the standards and guidelines enumerated in this document. The minimum materials submitted to the Planning Director for review and approval shall be:

- Precise Site Plan at 1" = 40" – 00" scale
- Floor Plans and Elevations at ¼" = 1' – 00" scale
- Appropriate Engineering drawings
- Preliminary Landscape Plan at 1" = 40' – 00" scale with larger scale typicals.

Upon receipt of a completed submittal package, the Planning Director will act on the submittal within 30 days.

8. Relationship to the General Plan

a. **Area 3, Sub Area A.** Sub Area A is designated as Special Industrial under the General Plan, and will be amended to a designation of Medium Density Residential. As discussed above in section 2(b), Area 3, Sub Area A is currently zoned as MT-1 High Technology Park and will be rezoned to Residential District R-6000, and with a Planned Unit Development permit and conditional use permit to allow for greater flexibility in terms of requirements such as lot size, setbacks, and limited multifamily development.

b. **Area 4, Sub Area B.** Sub Area B is designated as Low Density Residential under the General Plan and will be amended to a designation of Medium Density Residential. As discussed above in section 2(b), Sub Area B is currently zoned as Agricultural and will be rezoned to Residential District R-6000, with a Planned Unit Development permit and conditional use permit to allow for greater flexibility in terms of requirements such as lot size and setbacks.

c. **Area 4, Sub Area C.** Sub Area C is designated as Low Density Residential under the General Plan and will be amended to a designation of Medium Density Residential. As discussed above in section 2(b), Sub Area C is currently zoned as Agricultural with a small portion zoned Industrial, and will be rezoned Residential District R-6000, with a Planned Unit Development permit and conditional use permit to allow for greater flexibility in terms of requirements such as lot size and setbacks. In addition, a conditional use permit will be granted to allow the construction of a golf course.

d. **Area 4, Sub Area D.** Sub Area D is designated as Low Density Residential under the General Plan, which provides for predominantly single-family homes. Consequently, the proposed uses are compatible. As discussed above in section 2(b), Sub Area D is currently zoned as Agricultural and will remain zoned Agricultural. However, a conditional use permit will be granted to allow construction of a golf course or another recreational use.

e. **Area 4, Sub Areas E** will remain designated as Low Density Residential in the General Plan and zoned predominantly Agricultural with a small area of General Industrial. No changes are proposed and therefore, it will remain consistent with the General Plan.

f. **Area 3, Sub Area F** will remain designated as Special Industrial in the General Plan and zoned Industrial Technology Park and High Technology Park. No changes are proposed and therefore, it will remain consistent with the General Plan.

g. **Conflicts with the General Plan and the Newark Municipal Code.** There are no Specific Plan conflicts with the General Plan.

h. **Consistency with other City Policies and Programs.** The Specific Plan significantly furthers two of Newark's Major Community Goals, as they are stated in the General Plan:

- **Goal 1:** Maintain a desirable quality of life in the community through preservation of the small town neighborhood atmosphere and the promotion of balanced land use that takes into account the need for economic diversity and future financial well being of the city.

  This development will not result in undue burdens upon the City. The Specific Plan makes accommodations for any resultant increase in traffic and utilities. The development will also be of the highest quality and complement existing adjacent uses, as discussed above in section 2(b).

- **Goal 2:** Promote high quality development that establishes the City's character as distinctive from that of other cities in the Bay area.

  The planned development will be of the highest quality and will not have significant impacts on adjacent properties. In fact, the planned uses complement the adjacent uses which include residential and Ohlone College.

APPENDIX

LITERATURE CITED

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Appendix K
Hazardous Materials Users Survey

March 31, 2010

Ms. Julie Mier
DAVID J. POWERS AND ASSOCIATES
1871 The Alameda, Suite 200
San Jose, California 95126

Re: Vicinity Hazardous Materials Users Survey, Newark Specific Plan Areas 3/4, Newark and Fremont, California

Dear Ms. Mier:

This vicinity hazardous materials users survey was performed for David J. Powers and Associates, who is preparing documents for the Newark Specific Plan, Areas 3 and 4. The project site is located along the Bay margin on the Fremont/Newark border, generally southeast of Cherry Street and Stevenson Boulevard, in Newark and Fremont, California.

Purpose
The purpose of this study was to identify facilities in the vicinity of the project site having observed or reported hazardous substance usage, and to evaluate the significance of the identified hazardous substances to proposed development if an accidental release were to occur. This letter was prepared in accordance with our agreement dated January 25, 2010.

Scope of Work
The scope of work performed for this study was the following.

- Performed a visual survey of the site vicinity to identify readily observable names and addresses of businesses, railroad tracks, and hazardous materials/waste pipelines located within a ½-mile radius of the project site (adjacent to site for pipelines), and appearing to have the potential to use, handle, and/or store significant quantities of toxic or hazardous materials and/or wastes (hazardous substances).

- Reviewed available hazardous materials/waste inventories for the facilities identified through the first task at the Fremont Fire Department (FFD) and Newark Fire Department (NFD), as appropriate.

- Reviewed the list of California Accidental Release Program (CalARP) facilities within the City of Fremont, provided by the FFD, and received verbal information on CalARP facilities within the City of Newark from the Alameda County Environmental Health Department (ACEHD), to identify which were located within a 1-mile radius of the project site.

- Obtained and reviewed a regulatory agency database report to identify government agency-recorded facilities having significant hazardous substance usage or having significant reported air emissions.

- Requested local pipeline location information from Chevron and Kinder-Morgan.

Observed Vicinity Hazardous Materials Facilities
On January 29, 2010, a visual survey of the businesses/facilities within approximately ½-mile of the project site was performed, in an attempt to identify those currently appearing likely to use, handle, and/or store significant quantities of hazardous substances. A summary of the businesses identified is presented in the table on the following pages.

BELINDA P. BLACKIE, P.E., R.E.A.
1355 POE LANE
SAN JOSE, CA 95130
PHONE/FAX: (408) 260-8627

OBSERVED BUSINESSES/FACILITIES WITH POTENTIALLY SIGNIFICANT QUANTITIES OF HAZARDOUS SUBSTANCES

Facility Name	Facility Address	Observations
PG&E Newark Substation	6453 Auto Mall Parkway, Fremont	Large electrical facility; hazardous materials placarding on fence indicating health hazard of 3, flammability hazard of 4, and reactivity hazard of 2, with additional hazard of corrosives
Waste Management Tri-Cities	7010 Auto Mall Parkway, Fremont	Landfill facility with hazardous materials placarding indicating health hazard of 3, flammability hazard of 4, and reactivity hazard of 2, with additional hazard of oxidizers
Winn VW	39695 Ballentine Drive, Newark	Car dealership
Moving Star*	41009, 41109 & 41119 Boyce Road, Fremont	Large industrial/warehouse building
Papercraft Elliott Laboratories PODS of San Francisco, LLC**	40999 Boyce Road, Fremont 41039 Boyce Road, Fremont 41049 Boyce Road, Fremont	Large industrial/warehouse building
Hexion Specialty Chemicals	41100 Boyce Road, Fremont	Multiple large, industrial structures and numerous large aboveground storage tanks; hazardous materials placarding indicating health and flammability hazards up to 4 and reactivity hazards up to 2, with additional hazards of corrosives, toxics, oxidizers, and water incompatibles
Fremont Recycling and Transfer Station	41149 Boyce Road, Fremont	Large industrial/warehouse building with associated corporation yard; hazardous materials placarding indicating health and reactivity hazards of 2 and flammability hazard of 4, with additional hazard of oxidizers
Walters and Wolf Precast	41777 Boyce Road, Fremont	Large industrial/warehouse building and adjacent smaller structure along with large storage/corporation yard; hazardous materials placarding indicating health hazards up to 3, flammability hazard of 4, and reactivity hazard of 2, with additional hazards of oxidizers and corrosives
Union Sanitary District	41997 Boyce Road, Fremont	Generator and lift station with hazardous materials placarding indicating the presence of diesel for a generator
PG&E Fremont Materials Distribution Center	42105 Boyce Road, Fremont	Large building with surrounding corporation yard; hazardous materials placarding indicating health and flammability hazards of 3 and reactivity hazard of 1
Newark Memorial High School/Marine Science and Technology Institute	39375 Cedar Boulevard, Newark	School campus
Good Year Auto Service	Cedar Boulevard, Newark	Automotive repair facility
John's Salt Service Crossroads Relocation Service Isis Food Service CHEM USA Holguin Moving and Storage Jet-Way Computer Corp.	38507 Cherry Street, Newark	Light-industrial/warehouse/ manufacturing building
Accurate Moulding and Millwork VM Displays Innovated packaging Specialized Packaging KYO Computer, Inc. i-de-as	38505 Cherry Street, Newark	Light-industrial/warehouse/ manufacturing building

(continued)

OBSERVED BUSINESSES/FACILITIES WITH POTENTIALLY SIGNIFICANT QUANTITIES OF HAZARDOUS SUBSTANCES (CONTINUED)

Facility Name	Facility Address	Observations
Economic Packaging R.B. High Tech Transport Ronbow Materials Corporation	38507 Cherry Street, Newark	Light-industrial/warehouse/ manufacturing building
BASF The Chemical Company	38403 Cherry Street, Newark	Industrial/manufacturing facility with numerous large aboveground storage tanks and structures; hazardous materials placarding indicating health hazard of 3 and flammability hazard of 2
Golden State Lumber Blue Linx	38801 Cherry Street, Newark 38811 Cherry Street, Newark	Industrial/manufacturing facility with large corporation yard/lumber yard; multiple tank cars on railroad spur behind facility
University of Phoenix M-Shift The Mission Peak Co.	40440 Encyclopedia Circle, Fremont 40460 Encyclopedia Circle, Fremont 40480 Encyclopedia Circle, Fremont	Commercial/school building
Digital Praise JEA Realty Biomedix Tomy Tech USA The Men's Wearhouse CompAir CalTech	40455 Encyclopedia Circle, Fremont 40463 Encyclopedia Circle, Fremont 40471 Encyclopedia Circle, Fremont 40475 & 40479 Encyclopedia Circle, Fremont 40485 Encyclopedia Circle, Fremont 40487 Encyclopedia Circle, Fremont 40491 Encyclopedia Circle, Fremont	Light-industrial/commercial building
Arist Instruments H&R Block* Pavad Medical Security Systems Carsmith Motors GPNP, Inc. Broadview Security	40515 Encyclopedia Circle, Fremont 40523 Encyclopedia Circle, Fremont 40539 Encyclopedia Circle, Fremont 40543 Encyclopedia Circle, Fremont 40555 Encyclopedia Circle, Fremont 40559 Encyclopedia Circle, Fremont 40563 Encyclopedia Circle, Fremont	Commercial building; hazardous materials placarding for Pavad Medical indicating health and flammability hazards of 3

(continued)

OBSERVED BUSINESSES/FACILITIES WITH POTENTIALLY SIGNIFICANT QUANTITIES OF HAZARDOUS SUBSTANCES (CONTINUED)

Facility Name	Facility Address	Observations
Unknown CDS Engineering	40683 Encyclopedia Circle, Fremont 40725 Encyclopedia Circle, Fremont	Light-industrial building; hazardous materials placarding indicating health and reactivity hazards of 2 and flammability hazard of 4
The Home Depot	40745 Encyclopedia Circle, Fremont	Warehouse; hazardous materials placarding indicating health hazard of 2 and flammability hazard of 4
Tiger Claw	40740 Encyclopedia Circle, Fremont	High-tech/light-industrial building
The Men's Wearhouse	40650 Encyclopedia Circle, Fremont	Commercial/warehouse building
MBA Electronics, Inc.	40760 Encyclopedia Circle, Fremont	High-tech/light-industrial building
Greystone Data Systems*	40800 Encyclopedia Circle, Fremont	Light-industrial/commercial building
Atkins Ranch	40880 Encyclopedia Circle, Fremont	Light-industrial/commercial building
Tonix	40910 Encyclopedia Circle, Fremont	Light-industrial/commercial building
The Men's Wearhouse Salutron	40971 Encyclopedia Circle, Fremont 40975 Encyclopedia Circle, Fremont	Commercial building
Vivid Logic	40990, 40992 & 40994 Encyclopedia Circle, Fremont	High-tech/commercial building
Siemens/SBS	39600 Eureka Drive, Newark	High-tech/light-industrial building
Austin Hughes	39611 Eureka Drive, Newark	High-tech/light-industrial building
Swim Outlet.com	39630 Eureka Drive, Newark	Light-industrial/warehouse building
In Sound Medical Novasys Medical	39660 & 39684 Eureka Drive, Newark 39672 Eureka Drive, Newark	Light-industrial/warehouse building
Nova Ray Sierra Wireless Triple Ring	39655 Eureka Drive, Newark 39677 Eureka Drive, Newark	Light-industrial/commercial building
Socket Mobile Dow-Corning Corporation	39700 & 39714 Eureka Drive, Newark	Light-industrial/warehouse building
Apple, Inc. **	39800 Eureka Drive, Newark	Large light-industrial/warehouse building
Smart Modular Technologies	39870 Eureka Drive, Newark	High-tech/light-industrial building; hazardous materials placarding indicating health and flammability hazards of 4 and reactivity hazard of 1, with additional hazard of corrosives
ZipZoomFly.com	39889 Eureka Drive, Newark	Large light-industrial/warehouse building
VIP Color/VM Services Venture Coaster	6701 Mowry Avenue, Newark 6723 & 6737 Mowry Avenue, Newark 6753 Mowry Avenue, Newark	High-tech/light-industrial building
Avision Labs, Inc. Advantek Calstar Products	6815 & 6827 Mowry Avenue, Newark 6839 Mowry Avenue, Newark 6851 Mowry Avenue, Newark	Light-industrial building
Valassis	6955 Mowry Avenue, Newark	Light-industrial/warehouse building
Pick N Pull Ace Auto Wreckers	7400 & 7550 Mowry Avenue Newark 7580 Mowry Avenue, Newark	Large dirt lots with multitude of wrecked cars
Global Logistics Nikon Precision* Hot Shot Services* Unknown	44091 Nobel Drive, Fremont 44101 Nobel Drive, Fremont 44111 Nobel Drive, Fremont	Multi-tenant commercial building

(continued)

OBSERVED BUSINESSES/FACILITIES WITH POTENTIALLY SIGNIFICANT QUANTITIES OF HAZARDOUS SUBSTANCES (CONTINUED)

Facility Name	Facility Address	Observations
Oatey	6600 Smith Avenue, Newark	Light-industrial building; hazardous materials placarding indicating health hazard of 2, flammability hazard of 3, and reactivity hazard of 1
Evergreen Oil Company	6880 Smith Avenue, Newark	Large tank farm and associated office and structures; hazardous materials placarding indicating health hazard of 3, flammability hazard of 4, and reactivity hazard of 2, with additional hazard of water incompatibles; facility just over ½ mile from site
Chevron	5895 Stevenson Boulevard, Newark	Service station
Zenprise Unknown Acorn Product Development Actelis Networks	6120 Stevenson Boulevard, Fremont 6130 Stevenson Boulevard, Fremont 6140 Stevenson Boulevard, Fremont 6150 Stevenson Boulevard, Fremont	Light-industrial/commercial building
CertainTeed Roofing Products – Fremont Plant	6400 Stevenson Boulevard, Fremont	Industrial/manufacturing facility
Victron, Inc.	6600 Stevenson Boulevard, Fremont	Large industrial/warehouse building; hazardous materials placarding indicating health and flammability hazards up to 3, with additional hazards of non-flammable gases and cryogenics
Insurance Auto Auctions	6700 Stevenson Boulevard, Fremont	Several large structures and associated large parking lots filled with cars
Oldcastle Glass	6850 Stevenson Boulevard, Fremont	Industrial/light-industrial building; hazardous materials placarding indicating health hazard of 3, flammability hazard of 4, and reactivity hazard of 2, with additional hazard of oxidizers
Quikrete	6950, 6970 & 6990 Stevenson Boulevard, Fremont	Industrial facility with several large buildings
Alaniz Construction, Inc. Unknown Diamond Collision Center Glover & Son Heating and Air Conditioning	7100 & 7160 Stevenson Boulevard, Fremont 7124 Stevenson Boulevard, Fremont 7140 Stevenson Boulevard, Fremont 7150 Stevenson Boulevard, Fremont	Light-industrial building; hazardous materials placarding indicating health hazards up to 2, flammability hazards up to 4 for Diamond Collision Center and health and reactivity hazards of 2 and flammability hazard of 4 for Alaniz Construction, Inc
PG&E General Construction Department	6330 Weber Road, Fremont	Corporation yard with storage of numerous materials; hazardous materials placarding indicating health and reactivity hazards of 3 and flammability hazard of 4 with additional hazard of oxidizers

*Facility name unavailable at time of reconnaissance; name obtained through reverse telephone directory.
**Facility name unavailable at time of reconnaissance; name obtained through FFD or NFD.

Vicinity Railroad Tracks

Main line Union Pacific Railroad tracks were observed extending generally northwest to southeast along the boundary line between Area 3 and Area 4 of the site. A spur from the main railroad line was observed extending north from the main line towards the Golden State Lumber/Blue Linx facilities at 38801 and 38811 Cherry Street, Newark. Multiple rail tank cars were observed on the spur line behind these facilities.

Adjacent Petroleum Pipelines
To obtain location information for the Kinder Morgan petroleum pipeline (reportedly a 10-inch diameter pipeline which transports gasoline, jet fuel, and diesel from Concord to the San Jose terminal) Ms. Dianne Sidorewicz of Kinder Morgan was contacted. According to Ms. Sidorewicz, Kinder-Morgan has no pipelines in the vicinity of the project site.

To obtain location information for the Chevron Bay Area Pipeline (another regional petroleum hydrocarbon pipeline), Mr. Cary Wages of Chevron was contacted. Mr. Wages indicated that no Chevron pipelines are located within 1 mile (or greater) of the project site.

Registered Vicinity Toxic Gas Facilities
Requests to the FFD and NFD were made regarding registered toxic gas facilities within their respective cities. At the time this letter was issued, responses had not been received and it does not appear that toxic gas facilities databases are available for either city.

Registered Vicinity CalARP Facilities
Names of CalARP facilities located within Newark were obtained verbally from the ACEHD and a list of CalARP facilities within the City of Fremont was obtained from the FFD. CalARP facilities are those that use or store specified quantities of toxic and flammable substances that can have off-site consequences if accidentally released. Based on the reported addresses of the registered facilities, three appeared to be located within 1 mile of the project site at the time of this study: the Alameda Water District Newark Desalination Facility (ACWD Desal), located at 6833 Redeker Place, Newark; Hexion Specialty Chemicals, Inc., located at 4110 Boyce Road, Fremont; and Sysco Food Services of San Francisco, Inc, located at 5900 Stewart Avenue, Fremont. A representative of the ACEHD stated that files for CalARP facilities under their jurisdiction (Newark) are not available for public review. For this reason, the hazardous materials inventory for the ACWD Desal facility was reviewed at the NFD, as summarized in the following section. CalARP file information for the Fremont facilities was available from the FFD, and is summarized below.

The Hexion Specialty Chemicals, Inc. Fremont facility is a Program Level 3 facility, which is a Federally-regulated CalARP facility. The regulated processes reportedly are formaldehyde manufacturing (formaldehyde solution), phenol formaldehyde resin manufacturing (formaldehyde solution), and urea formaldehyde resin manufacturing (formaldehyde solution and ammonia). The regulated substances are 1,500,000 pounds formaldehyde and 26,500 pounds ammonia. Based on release modeling for the facility included in the June 2009 risk management plan (Hexion 2009; Risicare 2010), the modeled distance to the toxic endpoint for a worst-case release of formaldehyde solution is 0.98 miles. This release model assumed a 15% formaldehyde solution emitted 520 pounds of formaldehyde gas – a release of 629 pounds per minute for 0.8 minute. The modeled distance to the toxic endpoint for one alternative-case release of gaseous formaldehyde solution is 0.07 mile. This release model assumed 8,250 pounds of a 54% formaldehyde solution spilled - a release of 4.8 pounds per minute over 10 minutes; urban dispersion coefficients of 3 meters/second wind speed and stability class D assumed. The modeled distance to the toxic endpoint for an additional alternative-case release of liquid ammonia is 0.1 mile. This release model assumed 4,404 pounds of a 29% ammonia solution spilled – a release of 68.4 pounds per minute over 10 minutes; urban dispersion coefficients of 3 meters/second wind speed and stability class D assumed.

The Sysco Food Services facility also is a Program Level 3 facility. The regulated process is refrigeration, with 11,000 pounds anhydrous ammonia as the regulated substance. Based on release modeling for the facility included in the June 2009 risk management plan (Tracer 2009), the modeled distance to the toxic endpoint for a worst-case release of gaseous anhydrous ammonia is 1.2 miles. The modeled distance to the toxic endpoint for an alternative-case release of gaseous anhydrous ammonia is 0.1 mile.

Review of Available NFD and FFD Files
To evaluate the potential significance of the businesses identified during the visual survey discussed previously, readily available information on hazardous materials usage and storage for the observed businesses/facilities was provided from FFD and NFD files by their representatives. Additional information for several Newark facilities also was obtained from the ACEHD. For the purposes of this study, primarily data on the chemical/waste inventories provided in the most recent hazardous materials business plans (HMBPs) was reviewed. Many of the identified facilities had no hazardous materials files on record at the NFD or FFD and, if evidence of the presence of hazardous substances was not identified through other sources, these facilities were discounted as posing a potentially significant hazardous materials threat to the

proposed development. The NFD and FFD information available for the facilities is summarized in the following table; key documents are included as appendices to this letter.

AVAILABLE FFD AND NFD FILE REVIEW INFORMATION

Document Date	Business Name	Document Type	Information Obtained
6453 Auto Mall Parkway, Fremont			
2/20/09	Pacific Gas and Electric Company – Newark Substation	HMBP	Maximum container sizes for hazardous materials in inventory included 10 pounds battery acid, 450 cubic feet fire suppressant, 3,201 gallons insulating oil, 228 cubic feet nitrogen, 18,200 cubic feet propane, 924 cubic feet sulfur hexafluoride, up to 70 gallons each assorted oils, up to 5 gallons each assorted paint, 217 cubic feet hexafluoropropane, 23,515 gallons insulating oil, 5 gallons hydraulic fluid, 5 gallons gasoline, 294 cubic feet acetylene, 435 cubic feet carbon dioxide, 249 cubic feet oxygen, and 60 pounds black top patch. Maximum container sizes for hazardous wastes included 458 pounds oily solids, 55 gallons oily water, 458 pounds adhesives, 55 gallons drilling mud and purge water, 458 pounds empty aerosols, 458 pounds waste fluorescent tubes, 458 pounds mercaptan contaminated debris, 458 pounds waste PCB electrical equipment, 458 pounds waste capacitors, 458 pounds dry cell batteries, 458 pounds empty containers, and 55 gallons waste oil.
7010 Auto Mall Parkway, Fremont			
2/3/09	Tri-Cities Recycling and Disposal Facility	HMBP	Maximum container sizes for hazardous materials in inventory included 2 pounds bird bomb whistles, up to 480 gallons each assorted oils, 480 gallons hydraulic fluid, 480 gallons drive train fluid, 147 cubic feet acetylene, 55 gallons grease, 55 gallons antifreeze, 281 cubic feet oxygen, 360 cubic feet helium, 1,420 cubic feet argon/carbon dioxide, 30 gallons cyclopentasiloxane, 30 gallons Safety Kleen solvent, 30 gallons solvent naphtha, 1 gallon aerosol paints, 289 gallons propane, 10,000 gallons diesel, 5 gallons gasoline, 261 cubic feet hydrogen, and 50 pounds chlorine tablets. Maximum container sizes for hazardous wastes included 110 gallons waste antifreeze and up to 1,000 gallons each assorted oils.
7010 Auto Mall Parkway, Fremont			
3/6/09	Raisch Products	HMBP	Maximum container sizes for hazardous materials in inventory included up to 80 gallons each assorted oils, 5 gallons gasoline, 150 cubic feet acetylene, 251 cubic feet oxygen, 125 cubic feet nitrogen, and 800 gallons diesel. Maximum container sizes for hazardous wastes limited to 80 gallons oil.
39695 Ballentine Drive, Newark			
10/10/99	Bob Lewis Volkswagen**	HMBP	Hazardous materials in inventory included motor oil, ethylene glycol, lead-acid batteries, Safety Kleen solvent, acetylene, and oxygen. Quantities not included on scanned copy of inventory from NFD. Hazardous wastes included motor oil and antifreeze.
40999 Boyce Road, Fremont			
2/20/08	Bunzl Distribution	HMBP	Maximum container sizes for hazardous materials in inventory included 187 gallons diesel and 40 gallons batteries. No hazardous wastes reported.
40999 Boyce Road, Fremont			
2/12/09	Sprint Cell Site	HMBP	Maximum container sizes for hazardous materials in inventory included 9.4 pounds battery electrolyte (sulfuric acid) and 75 pounds lead. No hazardous wastes reported.
41049 Boyce Road, Fremont			
1/1/09	PODS of San Francisco, LLC	HMBP	Maximum container sizes for hazardous materials in inventory included 5 gallons oil and 55 gallons diesel. Maximum container sizes for hazardous wastes limited to 55 gallons oil.

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AVAILABLE FFD AND NFD FILE REVIEW INFORMATION (CONTINUED)

Document Date	Business Name	Document Type	Information Obtained
41100 Boyce Road, Fremont			
2/27/09	Hexion Specialty Chemicals, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included 330 pounds triethylamine, 495 pounds diesel, 300 gallons mineral oil, 2,500 pounds methanol, 2,500 pounds condensed naphthalene sulfonic acid, 180,000 pounds phenol, 750,000 pounds formaldehyde, 55 gallons formaldehyde compound, 30,000 gallons formaldehyde wash water, 2,800 pounds sulfuric acid, 20,000 gallons USD wastewater, 2,200 gallons formaldehyde/methanol mixtures, 300 gallons each assorted Chemtreat formulations, 60 gallons diesel, 55 gallons Chemclor, 5 gallons gasoline, 55 gallons oil, 50 pounds dry blend adhesive, 50 pounds hexamine, 465 pounds resin antifoam, 465 pounds Surfax WO, 50 pounds each assorted Cascoset formulations, 450 pounds Cascotex (formaldehyde), 2,500 pounds triethanolamine hydrochloride, 50 pounds Haley Brothers #1, 300 cubic feet helium, 284 cubic feet hydrogen, 300 cubic feet nitrogen, 250 cubic feet oxygen, 240 cubic feet acetylene, 336 cubic feet argon, and 300 cubic feet carbon dioxide. Maximum container sizes for hazardous wastes included 55 pounds absorbent with formaldehyde, 1 bag asbestos, 55 pounds phenolic solids, 55 pounds assorted obsolete materials, 55 gallons oil, and 55 gallons absorbent with oil.
41149 Boyce Road, Fremont			
9/12/08	Fremont Recycling and Transfer Station	HMBP	Maximum container sizes for hazardous materials in inventory included 145 cubic feet acetylene, 55 gallons coolant, 230 cubic feet shielding gas, 110 gallons diesel, 55 gallons gear oil, 1,100 gallons hydraulic oil, 55 gallons lubricating oil, 230 cubic feet oxygen, 10 gallons propane, and 55 gallons automatic transmission fluid. Maximum container sizes for hazardous wastes included 55 gallons antifreeze, 55 gallons each of assorted flammables, oil-based paint, poisons, reactives and explosives, acids, bases, latex pain and oxidizers, 240 gallons antifreeze, pallet auto batteries, 1,050 gallons oil, 5 gallons mercury waste, 50 pounds lamps, 55 gallons rechargeable batteries, 55 gallons other batteries, and 44 gallons medical sharps.
41777 Boyce Road, Fremont			
7/1/08	Walters and Wolf Precast	HMBP	Maximum container sizes for hazardous materials in inventory included up to 55 gallons each assorted oils, 250 cubic feet oxygen, less than 1 gallon spray paints, 1 gallon spray adhesives and solvents, 130 cubic feet acetylene, 1 gallon brake cleaner, 5 gallons coolant, 300 cubic feet shielding gas, 270,000 pounds Portland cement, 800 gallons propanoicamine dimethocane, 330 gallons Krete, 55 gallons acrylic resin, 5 gallons each assorted "seals", 5 gallons methyl ethyl ketone (MEK), 4,000 gallons diesel, 500 gallons propane, 50 pounds concrete colorant, 55 gallons acrylic resin, 55 gallons hydrocarbon mixture, 5 gallons carnauba wax, 55 gallons epoxy hardener, 5 gallons toluene IPA, 330 gallons benzenesulfonic, 275 gallons Zep cleaner, 1 gallon muriatic acid, 55 gallons gasoline, and small quantities of assorted aerosol and other paints, and 55 gallons epoxy resin and hardener. Maximum container sizes for hazardous wastes included 100 gallons waste oil, 15 gallons Safety Kleen solvent, 5 gallons coolant, 40 pounds absorbents, and 30 pounds oil filters.
41997 Boyce Road, Fremont			
2/21/08	Union Sanitary District	HMBP	Maximum container sizes for hazardous materials in inventory limited to 70 gallons diesel. No hazardous wastes reported.

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AVAILABLE FFD AND NFD FILE REVIEW INFORMATION (CONTINUED)

Document Date	Business Name	Document Type	Information Obtained
42105 Boyce Road, Fremont			
2/20/09	Pacific Gas and Electric Company - Fremont Materials Distribution Facility	HMBP	Maximum container sizes for hazardous materials in inventory included 60 pounds blacktop patch, 600 gallons Diala oil, 10,000 gallons bio diesel, 10,000 gallons gasoline, up to 5 gallons each assorted lubricants, 60 gallons cement, 55 gallons each assorted oils, up to 5 gallons each assorted paints, alcohols, cleaners, and oils, 60 pounds concrete mix, 32 pounds bentonite, 60 pounds mortar mix, 10 pounds insulating compound, 55 gallons neutral pH cleaner, 329 cubic feet acetylene, 500 pounds concrete floor cleaner, 1 gallon gasoline, and up to 25 gallons each assorted wet-cell battery electrolytes. Maximum container sizes for hazardous wastes included 55 gallons insulating oil with polychlorinated biphenyls (PCBs), 458 pounds oily debris, 458 pounds adhesives, 458 pounds florescent light ballasts, 458 pounds empty containers, 458 pounds waste fluorescent tubes, 458 pounds HID lamps, 458 pounds liquid fuses, and 458 pounds dry-cell batteries, 458 pounds empty aerosols, 458 pounds decomposed flares, 458 pounds paint-related materials, 458 pounds wet-cell batteries, 55 gallons wastewater with organics, and 458 pounds solid caustics.
39375 Cedar Boulevard, Newark			
2/20/08	Newark Memorial High School	HMBP	Maximum container sizes for hazardous materials in inventory included 5 gallons/5 pounds or less of assorted acids, cleaners, flammable/combustible liquids, corrosive liquids, sulfuric acid, sodium hydroxide, irritant liquids, oxidizing liquids, oxidizer solids, toxic liquids, corrosive solids, and chemistry lab chemicals, 50 pounds potassium alum, 200 gallons muriatic acid, 40 pounds trichlorocyanuric acid, 100 pounds calcium hypochlorite, 100 pounds cyanuric acid, 100 pounds isocyanuric acid, 100 pounds Oxybrite non chlorine, up to 350 gallons assorted paints and stains, 100 cubic feet non-flammable gases, 140 cubic feet oxygen, and 10 pounds irritant solids. No hazardous wastes reported.
38403 Cherry Street, Newark			
8/14/09	BASF Construction Chemicals, LLC	HMBP	Maximum container sizes for hazardous materials in inventory included 55 gallons/50 pounds each assorted cleaners, acids, caustics, and other materials, 200 pounds sodium aluminate, 15,000 pounds lime, 2,800 pounds calcium carbonate, 380 gallons 30% ammonia solution, 110 pounds defoamer, 330 gallons Texanol, 500 pounds lithium carbonate, 475 pounds Aerosol OT, 300 gallons Foam Biasl, 350,000 pounds Portland cement, 100 pounds Fondu Cement, 700 pounds anhydrite cement, 1,000 pounds cream of tartar, 5,000 gallons Rhoplex, 330 gallons Acronal, 330 gallons DEEFO, 330 pounds foam blast, 330 gallons defoamers, 100 pounds Rhodoline, 5,000 pounds cements and grouts, 1,000 gallons water-based acrylic coatings, 1,000 cubic feet propane, 249 cubic feet oxygen, and 105 cubic feet acetylene. No hazardous wastes reported.
38505 Cherry Street, Unit C, Newark			
2/29/08	Innovated Packaging Co., Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included 8 pounds propane and one can citrus-based industrial cleaner. No hazardous wastes reported.
40471 Encyclopedia Circle, Fremont			
10/29/08	Biomedix, inc.	HMBP	Maximum container sizes for hazardous materials in inventory included less than 1 pound/1 gallon each of numerous laboratory chemicals. Maximum container sizes for hazardous wastes limited to 1 gallon off-specification pharmaceutical and lab materials.

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AVAILABLE FFD AND NFD FILE REVIEW INFORMATION (CONTINUED)

Document Date	Business Name	Document Type	Information Obtained
40487 Encyclopedia Circle, Fremont			
5/19/09	Compare Northern California	HMBP	Maximum container sizes for hazardous materials in inventory included 5 gallons oil, 60 cubic feet argon/carbon dioxide, 60 cubic feet oxygen, 40 cubic feet acetylene, and 20 cubic feet nitrogen. Maximum container sizes for hazardous wastes limited to 55 gallons oil.
40491 Encyclopedia Circle, Fremont			
2/21/08	Cal Tech	HMBP	Maximum container sizes for hazardous materials in inventory included 5 gallons flux, 5 gallons glycerol, and 7 pounds solder paste. Maximum container sizes for hazardous wastes limited to 5 pounds lead/tin dross.
40539 Encyclopedia Circle, Fremont			
3/3/09	Pavad Medical, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included up to 10 gallons each miscellaneous flammables, caustics, and corrosives. No hazardous wastes reported.
40645 Encyclopedia Circle, Fremont			
2/15/09	The Home Depot Distribution Center #5695	HMBP	Maximum container sizes for hazardous materials in inventory included 499 gallons liquefied petroleum gas. Maximum container sizes for hazardous wastes included 30 gallons waste aerosols, 5 gallons waste hypochlorite solution, 5 gallons paint-related materials, and 0.62 pounds universal waste mercury lamps.
40725 Encyclopedia Circle, Fremont			
9/12/08	CDS Engineering, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included from 5 to 55 gallons each assorted oils and greases, 55 gallons IPA, 5 gallons assorted paints and solvents, 275 gallons mineral oil, 55 gallons vegetable oil, 5 gallons acetone, 55 gallons Simple Green cleaner, 10 gallons propane, 331 cubic feet acetylene, 281 cubic feet oxygen, 365 cubic feet argon, 260 cubic feet helium, 336 cubic feet argon/carbon dioxide, 304 cubic feet nitrogen, 42 gallons liquid nitrogen, and 3 gallons methanol. Maximum container sizes for hazardous wastes included 5 gallons vegetable oil, 55 pounds rags with IPA, and 55 pounds rags with oils.
40760 Encyclopedia Circle, Fremont			
2/19/08	MBA Electronics	HMBP	No hazardous materials present at reportable quantities. Maximum container sizes for hazardous wastes limited to 10 gallons solder dross.
39600 Eureka Drive, Newark			
2/20/08	Siemens IT Solutions and Services, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included 1.607 gallons acid in lead-acid batteries and an unspecified quantity of diesel. No hazardous wastes reported.
39660 Eureka Drive, Newark			
2/27/08	InSound Medical, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included up to 10 gallons each assorted combustible, irritant, corrosive, and flammable liquids, 912 cubic feet nitrogen, 335 cubic feet argon, 40 gallons cutting oil, 600 cubic feet hydrogen/nitrogen mixture, 110 gallons latex, and 1 pound each assorted metal compounds. No hazardous wastes reported.
39714 Eureka Drive, Newark			
2/27/08	Dow Corning Corporation	HMBP	Maximum container sizes for hazardous materials in inventory included 5 to 220 gallons each assorted siloxane compounds, 55 gallons silicone compounds, 50 pounds calcined alumina, 50 pounds zinc oxide, 10 pounds silicon dioxide, 50 pounds Saytex, 120 gallons nitrogen, and 55 gallons isopropyl alcohol (IPA). No hazardous wastes reported.

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AVAILABLE FFD AND NFD FILE REVIEW INFORMATION (CONTINUED)

Document Date	Business Name	Document Type	Information Obtained
39800 Eureka Drive, Newark			
9/05/08	Apple, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included 6.98 pounds lead acid batteries, less than 1 pound nickel/cadmium batteries, 7 pounds non-spillable batteries, and 400 gallons diesel. No hazardous wastes reported.
39889 Eureka Drive, Newark			
3/11/08	ZipZoomFly	HMBP	Maximum container sizes for hazardous materials in inventory limited to 400 gallons diesel. No hazardous wastes reported.
6701 Mowry Avenue, Newark			
6/12/98	VM Services, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included 7 gallons Bioact wipes, 25 pounds solder, up to 5 gallons each assorted solder creams, flux, IPA, thinner, and solvent wipes. Maximum container sizes for hazardous wastes included unspecified quantities of flammable liquids and metal solids.
6955 Mowry Avenue, Newark			
2/26/08	Valassis Direct Mail, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included lead acid batteries, up to 5 gallons each assorted paints and concrete coatings, thinners, oils, lubricants, greases, methanol, inks, PVC glue, dry graphite, and a small quantity of MAPP gas. No hazardous wastes reported.
7400 Mowry Boulevard, Newark			
2/15/07	Newark Pick-N-Pull	HMBP	Maximum container sizes for hazardous materials in inventory included 125 gallons antifreeze, 55 gallons motor oil, 500 gallons diesel, and 1,000 gallons gasoline. Maximum container sizes for hazardous wastes included 55 gallons brake fluid, 55 gallons oil absorbent/dirt, 75 batteries on pallet, 310 gallons waste oil, 200 gallons Freon, and 55 gallons oil filters.
7550 Mowry Avenue, Newark			
2/15/08	Pick-N-Pull Core Center	HMBP	Maximum container sizes for hazardous materials in inventory included 55 gallons hydraulic oil, 55 gallons motor oil, and an unspecified volume of gasoline. Hazardous wastes included 55 gallons oil, 55 gallons antifreeze, Freon, and lead-acid batteries.
6833 Redeker Place, Newark			
2/29/08	ACWD Desalination Facility	HMBP	Maximum container size for CalARP-regulated substances 5,200 gallons 19% aqua ammonia and 5,200 gallons Fluorosilicic acid. Maximum container sizes for hazardous wastes included 55 gallons solid solvents, 55 gallons ABS/PVC solvents, and 255 pounds oil-based paint,
6600 Smith Avenue, Newark			
7/28/09	Oatey Co.	HMBP	Maximum container sizes for hazardous materials in inventory included 20,000 gallons methyl ethyl ketone, 20,000 gallons tetrahydrofuran, 20,000 gallons acetone, 10,000 gallons cyclohexanone, 600 gallons hydrochloric acid, 700 gallons sulfuric acid, 20,000 gallons PVC/ABS cement, and 10,000 gallons cleaner/primer. Maximum container sizes for hazardous wastes included 55 gallons solid solvents, 55 gallons ABS/PVC solvents, and 255 pounds oil-based paint.

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AVAILABLE FFD AND NFD FILE REVIEW INFORMATION (CONTINUED)

Document Date	Business Name	Document Type	Information Obtained
6880 Smith Avenue, Newark			
2/28/05	Evergreen Oil, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included up to approximately 1 gallon/1 cubic foot each assorted hydrocarbons, aerosols, acetone, alcohols, toluene, xylenes, acids, compressed gases, methyl ethyl ketone, ethyl acetate, toluene, and bleach, 1.55 cubic feet hydrogen, 1.55 cubic feet acetylene, 55 gallons ZEP cleaner, 55 gallon sea wash, 55 gallons antifreeze, 30 gallons argon, paints, 2 pounds grease, 6,000 gallons liquid hydrogen, 2,400 gallons liquid nitrogen, 50 pounds citric acid, 50 pounds aluminum sulfate, 360 pounds catalyst, 50 pounds AltaFloc, 55 gallons heptanes, 250 pounds/330 gallons Watercare chemicals, 2,500 gallons hydrochloric acid, 400 gallons citric acid, 5,000 gallons sodium hydroxide, 150 gallons diesel, 2,100 gallons sulfuric acid, 5 gallons gasoline, 55,000 gallons lubricating oils, 55 gallons naphtha solvent, 55 gallons coolant, 55 gallons sodium hypochlorite, 5,000 gallons Purate, 35,000 gallons asphalt flux, 192,993 gallons fuel oil, 24,532 gallons gas oil, 47,632 gallons lube distillate, 800 pounds aluminum sulfate, and 800 pounds clay. Maximum container sizes for hazardous wastes included 3 gallons corrosive waste, 5 gallons flammable liquid waste, 30 gallons oil, 24,532 gallons used oil, 10,000 gallons petroleum distillates, 47,632 gallons oil and water, 24,532 gallons antifreeze, 12,000 gallons treated wastewater, 500 pounds oily debris, 55 gallons corrosive liquids, 55 gallons flammable liquids, 55 gallons halogenated oil, 55 gallons waste paint, 500 pounds flammable solids, 500 pounds oily debris, 100 pounds flammable aerosols, 50 pounds fluorescent tubes, and 500 gallons oily water.
6400 Stevenson Boulevard, Fremont			
2/11/09	CertainTeed Corporation	HMBP	Maximum container sizes for hazardous materials in inventory included 55 gallons fatty acid methyl ester, 244 cubic feet nitrogen, 500 gallons propane, up to 5 gallons each assorted paints, up to 125 gallons each assorted oils and greases, 55 gallons oil-based cutting fluid, 382 cubic feet acetylene, 1 gallon assorted adhesives, 55 gallons antifreeze, 500 gallons diesel, 350 cubic feet oxygen, 1 gallon IPA, 5 gallons ink, 264,000 pounds copper coated granules, 800 pounds fiberglass, 250 gallons anti-tak soap, 80 gallons paint, 600 gallons heat transfer fluid, 55 gallons petroleum asphalt, 5 gallons trichloroethylene, 5 gallons tar remover, 5 gallons glycerol, 8 pounds desiccant, 100,000 gallons asphalt, and 250 cubic feet carbon dioxide. Maximum container sizes for hazardous wastes included 250 pounds used absorbent, 200 gallons mixed oils, 1 gallons latex paints, 20 gallons used cleaning compounds, and 55 pounds other organic solids.
6600 Stevenson Boulevard, Fremont			
1/1/09	Victron, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included 5 gallons IPA, 5 gallons IPA/glycolic acid, up to 2 pounds each assorted solder paste, 25 pounds bar solder, 64 gallons liquid nitrogen, 240 cubic feet nitrogen, 250 cubic feet argon, and 244 cubic feet helium. Maximum container sizes for hazardous wastes included 400 pounds carbon with lead, 150 pounds wipes with solder paste, 110 gallons waste flux, and 55 gallons waste oil.
6700 Stevenson Boulevard, Fremont			
3/1/09	Insurance Auto Auctions	HMBP	Maximum container sizes for hazardous materials in inventory included 480 gallons diesel, 75 gallons gasoline, 5 gallons propane, and 55 gallons motor oil. No hazardous wastes reported.

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AVAILABLE FFD AND NFD FILE REVIEW INFORMATION (CONTINUED)

Document Date	Business Name	Document Type	Information Obtained
6850 Stevenson Boulevard, Fremont			
2/6/09	Oldcastle Glass-Fremont	HMBP	Maximum container sizes for hazardous materials in inventory included 55 gallons kerosene, 55 gallons oil, 5 cubic feet sulfur dioxide, 5 gallons glycol ether, 5 gallons water-base frit, 5 gallons acetone, 1 gallon IPA, up to 55 gallons each assorted silicone rubber curing agents, 5 gallons penetrant, 5 cubic feet solvent, 220 cubic feet acetylene, 220 cubic feet oxygen, 280 cubic feet shielding gas, 300 cubic feet argon, 244 cubic feet nitrogen, and up to 220 gallons each assorted carbon black compounds. Maximum container sizes for hazardous wastes included 55 gallons waste oil, 55 gallons absorbent, and 20 gallons petroleum naphtha.
6950 Stevenson Boulevard, Fremont			
3/6/09	Quikrete of Northern California	HMBP	Maximum container sizes for hazardous materials in inventory included 150 cubic feet acetylene, 250 cubic feet argon, 230 cubic feet oxygen, 500 cubic feet propane, 5 gallons gasoline, 10,000 gallons diesel (in an underground storage tank), 1 million (?) pounds Portland cement, 250,000 pounds lime, 55 gallons acrylic polymer, 5,000 gallons ethyl vinyl acetate, 55 gallons propylene glycol, 55 gallons sodium polyacrylate, 250 pounds sodium citrate, 50 pounds titanium dioxide, 880 pounds lithium carbonate. 50 pounds hydrated aluminum magnesium silicate, 50 pounds polyethylene glycol, 50 pounds methyl cellulose, 410 pounds calcium sodium lignosulfate, 5 pounds calcium carbonate, 50 pounds sodium gluconate, 55 pounds polymerized melamine sulfonate, 50 pounds sodium carbonate, 50 pounds hydroxyethylene, 50 pounds cellulose aluminum, 50 pounds alkali carbonates, 150 pounds foam blast, 100 pounds psyllium, 50 pounds sulfite liquor, 50 pounds amorphous silica silicone dioxide aluminum powder, 50 pounds calcium sulfonate aluminate, 50 pounds sodium cocoyl isethionate, 50 pounds urea, 410 pounds defoamer, 50 pounds Hardflo AD-3, 50 pounds inorganic metal oxide, 50 pounds kaolin, 55 gallons automatic transmission fluid, 55 gallons hydraulic oil, and 55 gallons each assorted Zep cleaners. Maximum container sizes for hazardous wastes included 100 gallons antifreeze, 250 gallons motor oil, 30 pounds floor sweep, and 55 gallons oil filters.
7140 Stevenson Boulevard, Fremont			
1/28/08	Diamond Collision Center	HMBP	Maximum container sizes for hazardous materials in inventory included 325 cubic feet shielding gas, 1 gallon paint, 1 gallon primer, 1 gallon catalyst, and 55 gallons lacquer thinner. Maximum container sizes for hazardous wastes limited to 55 gallons solvent/paint.
7150 Stevenson Boulevard, Fremont			
7/22/07	Glover and Son Heating and Air Conditioning, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included 15 cubic feet acetylene, 125 cubic feet oxygen, 8 gallons propane, 125 pounds chlorofluoromethane, and 50 pounds carbon dioxide. Maximum container sizes for hazardous wastes limited to 55 gallons used oil.
7160 Stevenson Boulevard, Fremont			
1/14/08	Alaniz Construction, Inc.	HMBP	Maximum container sizes for hazardous materials in inventory included 55 gallons motor oil, 140 cubic feet acetylene, 260 cubic feet oxygen, 10 gallons miscellaneous lubricants, 1 gallon lead-acid batteries, 8 gallons propane, 380 cubic feet argon/carbon dioxide, 150 cubic feet nitrogen, and 55 gallons hydraulic oil. Maximum container sizes for hazardous wastes included 55 gallons used oil and 55 gallons coolant.

*Name of current tenant obtained from reverse telephone directory.
**HMBP of previous tenant, but current tenant likely to use similar hazardous materials.

Regulatory Agency Database Review

A summary of the reported facilities identified in the regulatory agency database report appearing to be potentially significant to the project site, with respect to hazardous materials usage/hazardous waste generation or significant air emissions, is presented in the table on the following pages. The complete regulatory agency database report, including a list of the databases reviewed, the search distances, and a

figure showing the business locations with respect to the project site (identified by map ID number), is included as an appendix to this letter.

POTENTIALLY SIGNIFICANT FACILITIES IDENTIFIED IN REGULATORY AGENCY DATABASE REPORT

Facility	Map ID No.	Address	Pertinent Information
Bob Lewis Volkswagen**	AP200	39695 Ballentine Drive, Newark	Present on Haznet database as generating waste oil/mixed oil, unspecified solvent mixture waste, and unspecified oil-containing waste.
Borden Chemical, Inc.**/ Hexion Specialty Chemicals	P82-P96	41100 Boyce Road, Fremont	RCRA large quantity generator of ignitable hazardous wastes, corrosive hazardous wastes, reactive hazardous wastes, non-halogenated solvents, formaldehyde, and phenol, No violations noted. Present on Haznet database as generating unspecified solvent mixtures, laboratory waste chemicals, off-specification/aged/surplus inorganics, polymeric resin waste, asbestos-containing waste, and organic solids, among other wastes. Listed in SSTS database as producing Formaldehyde Solution 37 and Bactrib K55 with microbiocide. Listed on EMI air emissions database for 2007* as emitting 6.815 tons total organic hydrocarbon gases, 6.454 tons reactive organic gases, 3.875 tons carbon monoxide, 1.8526 tons NOx, and 0.378 ton particulate matter with 0.245 ton less than 10 um in diameter.
Fremont Recycling and Transfer/BLT Enterprises of Fremont	V125/ V126/ V127	41149 Boyce Road, Fremont	Present on Haznet database as generating household waste and, liquids with pH less than 2, among other wastes. Present on AST database as having 1,500 gallons aboveground storage. Listed on EMI air emissions database for 2007* as emitting 0.069 ton total organic hydrocarbon gases, 0.006 ton reactive organic gases, 0.009 ton carbon monoxide, 0.051 tons NOx, and 0.001 ton particulate matter with 0.00099 ton less than 10 um in diameter.
Walters & Wolf Precast	AN187/ AS206	41777 Boyce Road, Fremont	Present on Haznet database as generating liquids with halogenated organic compounds greater than 1,000 mg/L, unspecified organic liquid mixtures, aqueous solutions with less than 10% total organic residues, and organic solids, among other wastes. Present on AST database as having 4,500 gallons aboveground storage. Listed on EMI air emissions database for 2007* as emitting 1.047 tons total organic hydrocarbon gases and 0.017 tons reactive organic gases.
Fremont Gas and Electric Meter Plant	BE284/ BE285	42100 Boyce Road, Fremont	RCRA large quantity generator of ignitable hazardous waste, corrosive hazardous waste, barium, cadmium, chromium, lead, mercury, and spent non-halogenated solvents. No violations recorded. Present on Haznet database as generating latex waste, unspecified organic liquid mixtures, paint sludge, and waste oil/mixed oil, among other wastes. Listed on EMI air emissions database for 2007* as emitting 0.034 ton total organic hydrocarbon gases, 0.031 ton reactive organic gases, 0.001 tons carbon monoxide, and 0.005 tons NOx.
Fremont Materials Distribution Center	BT347/ BT348/ BT349	42105 Boyce Road, Fremont	RCRA large quantity generator of ignitable hazardous waste, corrosive hazardous waste, barium, cadmium, chromium, lead, mercury, and spent non-halogenated solvents. No violations recorded. Present on Haznet database as generating unspecified organic liquid mixtures, aqueous solutions with less than 10% total organic residues, hydrocarbon solvents, and unspecified oil-containing wastes, among other wastes. Listed on EMI air emissions database for 2006* as emitting 0.003 ton total organic hydrocarbon gases, 0.003 ton reactive organic gases, 0.008 ton carbon monoxide, 0.037 ton NOx, 0.001 ton SOx, and 0.003 ton particulate matter with 0.0029 ton less than 10 um in diameter.

(continued)

POTENTIALLY SIGNIFICANT FACILITIES IDENTIFIED IN REGULATORY AGENCY DATABASE REPORT (CONTINUED)

Facility	Map ID No.	Address	Pertinent Information
Goodyear Auto Service Center	S104/ S105	39165 Cedar Boulevard, Newark	Present on Haznet database as generating aqueous solutions with less than 10% total organic residue, empty containers of 30 gallons or more, and unspecified oil-containing waste. RCRA small quantity generator of unspecified wastes. No violations noted.
BASF Corporation/BASF Construction Chemicals, LLC	AL177/ AL180	38403 Cherry Street, Newark	RCRA small quantity generator of ignitable hazardous waste, corrosive hazardous waste, and reactive hazardous waste. No violations noted. RCRA transportation/storage/disposal facility for hazardous waste. Listed on EMI air emissions database for 2007* as emitting 0.780 ton total organic hydrocarbon gases, 0.661 ton reactive organic gases, and 0.182 ton particulate matter with 0.163 ton less than 10 um in diameter.
Bluelinx Corporation	O75	38811 Cherry Street, Newark	Present on Haznet database as generating hydrocarbon solvents, oil-containing waste, and aqueous solutions with 10% or greater total organic residues.
PG&E Newark Substation	CF416/ CF417	6453 Durham Road, Fremont	RCRA small quantity generator of unspecified wastes with no violations recorded. Previous large quantity generator in 1986. Present on Haznet database as generating waste oil/mixed oil, liquids with pH less than 2, off-specification/aged/surplus organics, empty containers of 30 gallons or more, and unspecified oil-containing waste, among other wastes.
CDS Engineering, LLC	AK173/ AK174	40725 Encyclopedia Circle, Fremont	RCRA large quantity generator of ignitable hazardous wastes, corrosive hazardous wastes, benzene, tetrachloroethylene, trichloroethylene, and spent non-halogenated solvents. No violations noted. Present on Haznet database as generating waste oil/mixed oil, unspecified oil-containing waste, and organic solids.
Home Depot USA, Inc. HD 5695	AK176	40745 Encyclopedia Circle, Fremont	RCRA small quantity generator of ignitable hazardous wastes, corrosive hazardous wastes, mercury, 2,4-D, benzene, methyl ethyl ketone, and spent non-halogenated solvents. No violations noted. Present on Haznet database as generating off-specification/aged/surplus organics.
MBA Electronics	188	40760 Encyclopedia Circle, Fremont	Present on Haznet database as generating inorganic solid waste.
Greystone Data Systems, Inc.	AQ203	40800 Encyclopedia Circle, Fremont	RCRA large quantity generator corrosive hazardous waste, reactive hazardous waste, cadmium, lead, mercury, wastewater treatment sludge from production of chrome oxide green pigments, brine purification muds from mercury cell process in chlorine production, fulminic acid/mercury salt, and (acetate-o)phenyl-mercury. No violations noted.
Siemens SBS	50	39600 Eureka Drive, Newark	Listed on EMI air emissions database for 2007* as emitting 0.039 ton total organic hydrocarbon gases, 0.033 ton reactive organic gases, 0.239 ton carbon monoxide, 0.277 ton NOx, 0.008 ton SOx, and 0.010 ton particulate matter with 0.010 ton less than 10 um in diameter.
Insound Medical, Inc.	49	39660 Eureka Drive, Newark	Present on Haznet database as generating off-specification/aged-surplus organics, latex waste, and oil-containing waste, among other wastes.
DOW Corning Corporation	I41/I42	39714 Eureka Drive, Newark	Present on Haznet database as generating off-specification/aged/surplus organics, organic solids, and laboratory waste chemicals, among other wastes. Listed on EMI air emissions database for 2007* as emitting 1.121 tons total organic hydrocarbon gases and 0.048 ton reactive organic gases.

(continued)

POTENTIALLY SIGNIFICANT FACILITIES IDENTIFIED IN REGULATORY AGENCY DATABASE REPORT (CONTINUED)

Facility	Map ID No.	Address	Pertinent Information
VM Services, Inc.	B3/B10/ B11	6701 Mowry Avenue, Newark	Present on Haznet database as generating unspecified organic liquid mixtures, hydrocarbon solvents, and inorganic solid waste. Listed on EMI air emissions database for 2007* as emitting 1.742 tons total organic hydrocarbon gases and 1.373 tons reactive organic gases.
Calstar Cement	9	6851 Mowry Avenue, Newark	Present on Haznet database as generating inorganic solid waste.
Able Auto Wreckers	J51	7400 Mowry Avenue, Newark	Present on Haznet database as generating unspecified organic liquid mixtures.
Pick N Pull Auto Dismantlers	E30/J46/ J47	7550 Mowry Avenue, Newark	Present on Haznet database as generating aqueous solutions with less than 10% total organic residue, organic liquid mixtures, off-specification/aged/surplus organics, and unspecified oil-containing waste, among other wastes.
Oatey Company	AZ236	6600 Smith Avenue, Newark	RCRA small quantity generator of unidentified wastes. No violations noted. Present on Haznet database as generating off-specification/aged/surplus organics, organic solids, and unspecified oil-containing waste, among other wastes. Listed on EMI air emissions database for 2006* as emitting 16.127 tons total organic hydrocarbon gases, 13.822 tons reactive organic gases, and 0.387 ton particulate matter with 0.348 ton less than 10 um in diameter.
Evergreen Oil, Inc.	BC269-BC275 & BC277-BC283	6880 Smith Street, Newark	RCRA large quantity generator ignitable hazardous waste, corrosive hazardous waste, reactive hazardous waste, arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, benzene, chloroform, methyl ethyl ketone, spent halogenated solvents used in degreasing, other spent halogenated solvents, non-halogenated solvents, arsenic oxide, potassium cyanide, acetaldehyde, acrylamide, benzidine, dichloromethane, formaldehyde, phenol, and methyl-benzene. RCRA transportation/storage/disposal facility for hazardous waste. Violations for generator and transporter recorded annually from 1991 through 2008 with the exception of 1996. Present on Haznet database as generating unspecified organic liquid mixtures, aqueous solutions with less than 10% total organic residues, and waste oil/mixed oil, among other wastes. Listed on EMI air emissions database for 2005* as emitting 7.384 tons total organic hydrocarbon gases, 6.154 tons reactive organic gases, 1.566 tons carbon monoxide, 9.114 tons NOx, 4.657 tons SOx, and 0.132 ton particulate matter with 0.125 ton less than 10 um in diameter. Also multiple listings for assorted releases, primarily from rail cars.
CertainTeed Corporation	M70/M71	6400 Stevenson Boulevard, Fremont	RCRA small quantity generator of ignitable hazardous wastes, lead, mercury, corrosive hazardous waste, spent halogenated solvents used in degreasing, and other spent halogenated solvents. No violations noted. Present on Haznet database as generating latex waste, organic solids, empty containers of less than 30 gallons, hydrocarbon solvents, and pesticide rinse water, among other wastes. Present on AST database as having 1,500 gallons aboveground storage.
Victron, Inc.	K54/K55/ K56/K57	6600 Stevenson Boulevard, Fremont	RCRA small quantity generator of ignitable hazardous wastes and lead. No violations noted. Present on Haznet database as generating waste oil/mixed oil, liquids with lead greater than 500 milligrams per liter (mg/L), unspecified solvent mixtures, and inorganic solid waste, among other wastes. Listed on EMI air emissions database for 2007* as emitting 4.261 tons total organic hydrocarbon gases and 1.221 tons reactive organic gases.

(continued)

POTENTIALLY SIGNIFICANT FACILITIES IDENTIFIED IN REGULATORY AGENCY DATABASE REPORT (CONTINUED)

Facility	Map ID No.	Address	Pertinent Information
Golden Gate Auto Auction, Inc. **	G48	6700 Stevenson Boulevard, Fremont	RCRA small quantity generator of unidentified waste, with no violations noted. Present on Haznet database as generating unspecified solvent mixtures, oxygenated solvents, oil-containing waste, and waste oil/mixed oil, among other wastes. Listed on EMI air emissions database for 2005* as emitting 7.797 tons total organic hydrocarbon gases and 6.591 tons reactive organic gases.
Oldcastle Glass	D29	6850 Stevenson Boulevard, Fremont	Present on Haznet database as generating hydrocarbon solvents, organic solids, and waste oil/mixed oil.
Quikrete Northern California	F33/F38	6950 Stevenson Boulevard, Fremont	Present on Haznet database as generating oil-containing waste and waste oil/mixed oil. Listed on EMI air emissions database for 2007* as emitting 0.104 ton total organic hydrocarbon gases, 0.044 ton reactive organic gases, 1.217 tons carbon monoxide, 4.875 tons NOx, 0.020 ton SOx, and 10.512 tons particulate matter with 5.283 tons less than 10 um in diameter.
Chevron Stevenson	X132	5895 Stevenson Boulevard, Newark	RCRA small quantity generator of ignitable hazardous wastes. No violations noted. Present on Haznet database as generating off-specification/aged/surplus organics.

* Most recent year for which data was available to EDR from referenced databases.
** Facility name different from current facility, but appears likely to have similar processes to current facility.

Review of BAAQMD Data

Based on the emissions from the Evergreen Oil, Inc. (6880 Smith Street, Newark), Hexion Specialty Chemicals (41100 Boyce Road, Fremont), Oatey Company (6600 Smith Avenue, Newark), and Quikrete Northern California (6950 Stevenson Boulevard, Fremont) facilities reported in the regulatory agency database report summarized above, more detailed emissions data was requested from the BAAQMD. At the time this letter was issued, data from the BAAQMD had not been received. Once the data is received, it will be reviewed and an addendum issued if warranted.

Screening Level Risk Evaluation Results

Based on review of FFD and NFD chemical inventories for the identified vicinity facilities, screening level risk appraisal modeling of facilities appearing possibly to have quantities of hazardous materials which could adversely impact the site was performed by Risicare, LLC (Risicare 2010). Chemicals of concern and release scenarios to be modeled were determined by Risicare, LLC. The distance between the facility of concern and the project site, as identified in the following tables, was measured as the shortest distance between the property boundary of the facility of concern and the property boundary of the project site. Please note that distances from facilities of concern to specific developments within the project site may be greater than that identified in the table, depending on the location of the specific development.

Where worst-case scenario modeling identified potentially significant impacts to the project site, releases also were modeled using an alternate scenario, which included normal meteorological conditions. The following tables summarize the chemicals of concern identified by Risicare, LLC, and the results of the worst-case and alternate-case modeling. Modeling output, release rate calculations, and Emergency Planning Guideline definitions are included in the Risicare, LLC table appendix to this letter.

SCREENING LEVEL RISK EVALUATION RESULTS
WORST-CASE CHEMICAL RELEASE SCENARIOS

Concentration	Maximum Threat Zone	Maximum Site Outdoor Concentration[a]	Emergency Planning Guidelines
Pick-N-Pull – within site boundaries			
Gasoline Release[b] (1,000 gallons spilled into 500 ft^2 containment; gasoline assumed equipotent to toluene)	NC	231 ppm @ 100 m 65 ppm @ 100 m	IDLH = NE ERPG-2 = 300 (toluene) ERPG-3 = 1,000 (toluene)/ 14,000 ppm (LEL-gasoline)
CertainTeed Corporation – 0.08 mile from site			
Propane Release (1,500 gallons liquid released over 10 min.)			
Flammable Vapor Cloud	0.04 mile (60% LEL)	4,120 ppm	60% LEL = 12.,000 ppm
Blast Force (overpressure)	<LOC		1 psi
Hexion Specialty Chemicals - 0.26 mile from site			
Ammonium Hydroxide Release (26,500 pounds of 29% solution released into 1,000 ft^2 containment)	**0.39 mile** (ERPG-2)	**316 ppm**	IDLH = 300 ppm ERPG-2 = 150 ppm ERPG-3 = 750 ppm
Formaldehyde Solution Release[b] (750,000 pounds of 50% solution released into 5,500 ft^2 containment forming an evaporating pool; pool temperature assumed to be 55° C)	NC	**54 ppm**	IDLH = 20 ppm ERPG-2 = 10 ppm ERPG-3 = 25 ppm
Methanol Release (release through 6-inch diameter pipe from rail car with approximate capacity of 30,000 gallons)	**0.32 mile**	**1,360 ppm**	IDLH = 6,000 ppm ERPG-2 = 1,000 ppm ERPG-3 = 5,000 ppm
Blast Force (overpressure from vapor cloud explosion)	NS	NS	1 psi
Thermal Radiation (fireball generated from full railcar explosion)	**0.54 mile**	**8 kW/m^2**	2 kW/m^2
PG&E Newark Substation – 0.33 mile from site			
Propane Release (18,200 ft^3 gas released over 10 min.)			
Flammable Vapor Cloud	0.04 mile (60% LEL)	676 ppm	60% LEL = 12.,000 ppm
Blast Force (overpressure)	<LOC		1 psi
BASF Corporation – 0.45 mile from site			
Aqua-ammonia Release (380 gallons of 30% solution released into 500 ft^2 containment)	0.24 mile (ERPG-2)	47 ppm	IDLH =300 ppm ERPG-2 = 150 ppm ERPG-3 = 750 ppm
Propane Release (1,000 ft^3 gas released over 10 min.)			
Flammable Vapor Cloud	NS	22 ppm	60% LEL = 12,000 ppm
Oatey Company – 0.47 mile from site			
Solvent Release[b] (5,000 gallons tetrahydrofuran spilled unconfined during UST product delivery)	NC	134 ppm	IDLH = 2,000 ppm (LEL) ERPG-2 = 500 ppm ERPG-3 = 5,000 ppm
Hydrochloric Acid Release (480 gallons of 37% solution spilled into 500 ft^2 containment)	0.28 mile (ERPG-2)	8 ppm	IDLH =50 ppm ERPG-2 = 20 ppm ERPG-3 = 150 ppm

(continued)

SCREENING LEVEL RISK EVALUATION RESULTS
WORST-CASE CHEMICAL RELEASE SCENARIOS
(CONTINUED)

Concentration	Maximum Threat Zone	Maximum Site Outdoor Concentration[a]	Emergency Planning Guidelines
Evergreen Oil, Inc. – 0.50 mile from site			
Liquid Hydrogen Release (6,000 gallons liquid released over 10 min.) Flammable Vapor Cloud Blast Force (overpressure from vapor cloud explosion)	 0.46 mile 0.34 mile	 20,000 ppm 0.21 psi	 60% LEL = 24,000 ppm 1 psi
Gas Oil Release[b] (24,500 gallon release into 3,000 ft^2 containment; volatility assumed equivalent to gasoline and gasoline assumed equipotent to toluene)	NC	35 ppm	IDLH = NE ERPG-2 = 300 (toluene) ERPG-3 = 1,000 (toluene)/ 14,000 ppm (LEL-gasoline)
ACWD Desal – 0.91 mile from site			
Aqua-ammonia Release (5,200 gallons of 19% solution spilled into 1,000 ft^2 containment)	0.2 mile (ERPG-2)	11.5 ppm	IDLH = 300 ppm ERPG-2 = 150 ppm ERPG-3 = 750 ppm
Fluorosilicic Acid Release[b] (5,200 gallons of 23% solution spilled into 550 ft^2 containment)	NC	1.1 mg/m^3	TEEL-1 = 9.48 mg/m^3 TEEL-2 = 15.9 mg/m^3 TEEL-3 = 50 mg/m^3

Notes: All modeling and volatilization calculations performed by RISICARE, LLC.
Bold font indicates potentially significant impact to site
NE = not established; NC = maximum threat zone not calculated by U.S. EPA Screen 3 model; NS = not significant; LOC = level of concern
LEL = Lower Explosive Level; ERPG = Emergency Response Planning Guideline; IDLH = Immediately Dangerous to Life and Health; TEEL = Temporary Emergency Exposure Limit
psi = pounds per square inch; ppm = parts per million; kW/m^2 = kilowatts per square meter; mg/m^3 = milligrams per cubic meter; m = meter
All releases assume U.S. EPA Worst-Case conditions: loss of container contents over 10-minute period, Stability Class F, and Wind Speed of 1.5 meters per second.

[a] The maximum outdoor concentration is the concentration predicted at the site exterior after the plume reaches the site (ALOHA model except where indicated).

[b] U.S. EPA Screen 3 model

SCREENING LEVEL RISK EVALUATION RESULTS
ALTERNATIVE-CASE CHEMICAL RELEASE SCENARIOS

Concentration	Maximum Threat Zone	Maximum Project Outdoor Concentration[a]	Emergency Planning Guidelines
Hexion Specialty Chemicals - 0.26 mile from site			
Ammonium Hydroxide Release (26,500 pounds of 29% solution released into 1,000 ft^2 containment)	0.16 mile (ERPG-2)	57 ppm	IDLH = 300 ppm ERPG-2 = 150 ppm ERPG-3 = 750 ppm
Formaldehyde Solution Release[b] (750,000 pounds of 50% solution released into 5,500 ft^2 containment forming an evaporating pool; pool temperature assumed to be 55° C)	NC	9 ppm	IDLH = 20 ppm ERPG-2 = 10 ppm ERPG-3 = 25 ppm
Methanol Release (release through 6-inch diameter pipe from rail car with approximate capacity of 30,000 gallons)	0.06 mile (ERPG-2)	187 ppm	IDLH = 6,000 ppm ERPG-2 = 1,000 ppm ERPG-3 = 5,000 ppm

Notes: All modeling and volatilization calculations performed by RISICARE, LLC.
NC = maximum threat zone not calculated by U.S. EPA Screen 3 model; ppm = parts per million
ERPG = Emergency Response Planning Guideline; IDLH = Immediately Dangerous to Life and Health
All releases assume U.S. EPA Alternative-Case conditions: Stability Class D and Wind Speed of 3.0 meters per second.
[a] The maximum outdoor concentration is the concentration predicted at the site exterior after the plume reaches the site (ALOHA model).
[b] U.S. EPA Screen 3 model

Conclusions

Railroad Tracks – Union Pacific mainline railroad tracks were observed between Areas 3 and 4 of the site, extending generally northwest to southeast in either direction. A rail spur line also was observed extending towards the north to the Golden State Lumber and Blue Linx facilities at 38801 and 38811 Cherry Street, Newark. According to a representative of Union Pacific Railroad, any form of freight, including hazardous materials, could be transported on any rail line.

Based on the information available for this study, it appears that large quantities of hazardous materials could be transported in rail tank cars traveling within a ½-mile radius, as well as through the general center of, the project site. An accident involving such cars could result in a significant release of hazardous materials and, depending on the materials released, conditions created could potentially impact residents of a vicinity development.

Hazardous Materials/Waste Pipelines – Based on the data available for this study, there do not appear to be hazardous materials/waste pipelines adjacent to the project site.

Significant Hazardous Substance Facilities – Based on the modeling data available in the CalARP files and provided by Risicare, LLC, worst-case releases of ammonium hydroxide, formaldehyde solution, and methanol from Hexion Specialty Chemicals (41100 Boyce Road, Fremont) and anhydrous ammonia from Sysco Food Services (5900 Stewart Avenue, Fremont) could have significant impacts at the site exterior. Under the assumed alternative case release scenarios presented in the CalARP files and modeled by Risicare, LLC, releases from Hexion Specialty Chemicals and Sysco Food Services appeared unlikely to have significant impacts at the site exterior.

The location of specific developments within the site boundaries reportedly have yet to be determined, and therefore the distances between the identified facilities of potential concern and the specific developments could be greater than those modeled. This could result in a less than significant impact from the facilities at the specific development exteriors in some cases. Once the location of the specific developments has been determined, the distances between the identified facilities of concern and the developments could be remeasured to determine whether they remain within the modeled maximum threat zones of the identified facilities.

The Pick-N-Pull facility located on-site in the northwestern portion of Area 4 (7550 Mowry Avenue, Newark) was modeled by Risicare, LLC to have an approximately threat zone of less than 100 meters for a worst-

case release of gasoline. Since the Pick-N-Pull facility reportedly will be removed from the site prior to development, the potential threat zone modeled will not be significant.

Five vicinity facilities identified possibly as having significant quantities of hazardous materials did not have chemical inventories available at the FFD or NFD at the time this report was issued. Consideration should be given to obtaining chemical inventories for the Bluelinx Corporation (38811 Cherry Street, Newark), Greystone Data Systems, Inc. (40800 Encyclopedia Circle, Fremont), Fremont Gas and Electric Meter Plant (42100 Boyce Road, Fremont), Smart Modular Technologies (39870 Eureka Drive, Newark), and the PG&E General Construction Department (6330 Weber Road, Fremont) facilities through other means, so the inventories may be evaluated.

References

Tracer Environmental Sciences and Technologies, Inc. *Risk Management Plan for Sysco Food Services of San Francisco, 5900 Stewart Avenue, Fremont, California 94538*. Revision 4.0: June 16, 2009.

Hexion Specialty Chemicals. *Risk Management Plan for Hexion Specialty Chemicals, 41100 Boyce Road, Fremont, California 94538*. June 19, 2009.

Risicare, LLC. 1461 Newport Avenue, San Jose, California 95125; (408) 292-3266. Various Modeling Tables Summarizing Worst-Case and Alternative-Case Scenarios. February and March 2010.

Limitations

The conclusions and recommendations made in this letter regarding potentially significant hazardous substance users within the site vicinity were based on business names/addresses readily observable from accessible public right-of-ways and review of readily available documents containing data collected and/or reported by others at the time this study was performed. Other businesses using hazardous materials may have been located within ½ mile of the site, but were not observable or readily identifiable at the time this study was performed; data collected and/or reported by others may or may not have been accurate. The accuracy and completeness of hazardous materials information included in the available NFD and FFD files is unknown; more accurate information on types, quantities, and storage conditions of hazardous materials used at vicinity facilities could be obtained through performance of a site reconnaissance and/or interview with the business operators.

The results of the screening-level risk evaluation were based on the selection of chemicals for evaluation by Risicare, LLC, and Risicare's assumptions made regarding the size and location of each release, vapor pressures of released liquids, assumed area of liquid spills, surrogate use, and atmospheric conditions during the release. Chemicals/emissions were selected based on reported volume, recognized toxicity and/or flammability, and were judged to be representative of the potential release/emissions risks posed by each facility. All release scenarios assumed that the site was located plume centerline, down wind at the time of the release; wind speed and wind direction vary over time.

The data and conclusions presented in this letter are applicable only to the time this study was performed. Businesses within the site vicinity likely will change over time and this study should be updated as appropriate, to ensure that the most currently available data has been included. As with all hazardous materials surveys, the extent of information obtained was a function of client demands, time limitations, access limitations, and budgetary constraints.

This letter was prepared for the sole use of David J. Powers and Associates. No warranty, expressed or implied, has been made, except that the services have been performed in accordance with environmental principles generally accepted at this time and location.

Thank you for allowing me to assist you with this project. If you have any questions please do not hesitate to call me.

Sincerely,

Belinda P. Blackie, P.E., R.E.A.
P.E. Number C56448
R.E.A. Number REA-06746

Appendices

A – FFD HMBP Documents
B – NFD and ACEHD HMBP Documents
C – Regulatory Agency Database Report
D – Risicare, LLC Risk Assessment Modeling Tables, Output and Calculations

Appendix A
FFD HMBP Documents

Appendix B
NFD and ACEHD HMBP Documents

Appendix C
Regulatory Agency Database Report

Appendix D
Risicare, LLC Risk Assessment Modeling Tables, Output and Calculations

Due to the size of the Appendix K –Hazardous Materials Users Survey, the appendices to this report are included on a CD on the following page.

Appendix L
City of Newark
Bay Friendly Landscape Guide

ENVIRONMENTALLY FRIENDLY LANDSCAPE GUIDE

2nd Edition

December 19, 2007

City of Newark
Public Works Department
37101 Newark Blvd, Newark, CA 94560-3796 510-578-4589 Fax 510-578-4307

CITY OF NEWARK

ENVIRONMENTALLY FRIENDLY LANDSCAPE GUIDE

OBJECTIVE

It is the objective of the City to promote bay friendly landscaping practices through the use of drought tolerant plants, efficient design of landscape areas, minimizing the use of pesticides and herbicides, and efficient irrigation design in new developments without increasing the cost of landscaping over the life of the project or affecting the aesthetic value of the developments. To achieve this objective, the City has adopted this policy as a guide in the design, planting, and maintenance of landscaped areas. This policy shall be used in reviewing plans for developments except single-family residential developments with no common open space. Exceptions to this policy may be considered by the City Engineer on a case-by-case basis.

PLANTING DESIGN

1. Landscape plans should address functional, energy, environmental and aesthetic conditions specific to the site, as well as water conservation.

2. The turf area (expressed as a percentage of total planted area) should be limited to 40-50 percent of planted areas for industrial, commercial, multi-family, single-family residential with common area, and institutional developments. This will reduce water needs and evaporation losses. If turf is an essential part of development, such as playing fields for schools or parks, a higher percentage will be allowed. Alternatives to turf will be encouraged in median strips of roadways. Developers are encouraged to use low water-using plants within the landscaped area of model home sales complexes for single-family developments. It is recommended that at least one model home in the development be planted with low water-using plants and a maximum of 40-50 percent turf area.

3. Plants in non-turf areas should be low water-using plants. A list of appropriate water-conserving plants and landscapes is provided at the end of this guide. It is highly encouraged that this list be used in designing low water using landscapes. A small percentage of the planting area may be used for ornamentals that are not low water-using plants, subject to approval by the City Engineer. Water intensive landscape elements should be confined to areas of high visibility and to areas of high use. There should be a specific reason for each plant selection, based on the plant's function in the design.

4. Drought-resistant turf grass should be used. Warm season grasses, which turn brown in winter in this area, are more drought tolerant than cool season grasses. Tall fescue (Alta-fescue), a cool season grass which stays green in winter, is relatively drought tolerant.

5. Landscaping should be installed in mid-to-late fall whenever possible to utilize the generally cooler, moister winter weather in promoting plant establishment.

IRRIGATION

1. Specifications for irrigation systems shall include a watering schedule. Water used for irrigation shall be minimized to the amount needed to maintain adequate plant health and growth. Automatic irrigation controls for all landscaped areas are recommended. It is important that proper training in maintenance and operation of the irrigation control system be provided to ensure that this system works properly.

2. Low volume irrigation systems shall be required. This includes low volume sprinkler heads, drip emitters, and bubbler emitters. Low volume sprinklers are defined as "emitting less than 0.75 inches of water per hour." Apply water so that it soaks into the soils and is timed to apply the correct amount of water for each type of plant.

3. The application rate should not exceed .25" per cycle and should not exceed .75" per hour. Avoid wasted runoff by turning the water off as soon as runoff occurs and waiting one to two hours to continue irrigation.

4. Install separate valves for turf and nonturf areas. Sloped and flat areas should have separate valves to control proper water distribution. In many cases, mature plants require only infrequent irrigation. Separately valved systems can provide more water to shallow-rooted plants or to those in shallow soils which need more frequent watering and less water to deep-rooted, mature shrubs and trees. Consider separate valves for areas that are in full sun and predominantly shaded areas. Separate valve watering will encourage plants to extend deeper roots and to become less dependent on frequent watering.

5. Set electric irrigation controllers to irrigate between 10:00 p.m. and 7:00 a.m. Nighttime and early morning irrigation can reduce evaporation losses.

6. Sprinkler heads should have matched precipitation rates within each control valve circuit. This will help to avoid over-watering or under-watering.

7. For both turf and non-turf areas, the sprinkler coverage shall be 50 percent of the diameter of throw (50 percent overlap) for square spacing, and 60 percent of the diameter of throw (60 percent overlap) for triangular spacing. This is intended to minimize overspray and runoff.

8. If a system is found to have over-spray resulting in water wasted on paved or street areas, the City may require system modifications and/or adjustments at the developer's cost to prevent overspray.

9. Prevailing winds need to be considered in the design, installation, and operation of irrigation systems.

10. Deep watering systems should be used to promote deep root growth for trees.

11. The use of reclaimed water for landscape irrigation is highly encouraged at such time as it becomes available for such purposes.

SOILS

1. Add a 2-inch layer of 3/4- to 1-inch size bark mulch on the bare soil surface to reduce evaporation, moderate soil temperatures, and discourage weeds.

2. Perform soil tests to determine the type of soil, soil depth and uniformity. Soils vary widely in their water-holding capacity from site to site. Soil type and depth and the uniformity of the soil profile will determine how much water should be applied and how much runoff is likely to occur.

3. Incorporate decomposed organic matter into the soil. This improves infiltrations, water retention, and soil structure.

4. Apply fertilizer adequately but do not over-fertilize. Turf grass irrigation can be accomplished at 70 percent of the maximum evapotranspiration rate without affecting turf grass quality if fertilization regimes are maintained. Check soil tests to determine fertilizer needs. Over-fertilization causes the turf grass to develop top growth at the expense of root development. Plants are less able to tolerate drought when over-fertilized.

5. Pull weeds and discourage their invasion. Weeds compete against other plants for available water.

DECORATIVE USE OF WATER

1. Water bodies that are part of the landscaping for new developments should be minimized. Unless the water body is an integral part of the operations of the new development, the surface area of the water body shall be counted as turf in the calculations for limitation of turf for the landscaped area.

2. Fountains or other types of decorative water bodies where water is sprayed into the air are discouraged. Water used in fountains shall be recirculating.

PAVING

In areas that are too narrow, heavily trafficked, or in some other way impractical to landscape with plant materials, decorative paving is encouraged.

PLANTS FOR THE CALIFORNIA LANDSCAPE

List of Drought-Tolerant Plants

Contrary to the popular image of a water-conserving landscape, consisting solely of cactus plants or resembling a dusty scene of rocks and pebbles, drought-tolerant plants are highly attractive with lush foliage and showy flowering.

It is important to remember that most plants, even drought-tolerant ones, need water initially in order to become established. The degree of drought tolerance varies from site to site, from species to species, and from plant to plant form.

This plant list is not by any means a complete dictionary of drought-tolerant plants. Such a compilation would be nearly impossible. Rather, this list is intended to give those plants which are most likely to be available at the local nursery. This plant list contains plants to fit every landscape need, offering a variety of form, size, foliage color, flower color, and fruit color.

It is hoped that this plant list will encourage the use of drought-tolerant plants to develop water-conserving irrigation systems, resulting in water savings.

TREES

BOTANICAL NAME	COMMON NAME
Acacia melanoxylon	Black Acacia
Aesculus californica	California Buckeye
Albizia julibrissin	Silktree
* Arbutus menziesii	Madrone
* Arbutus unedo	Strawberry Tree
Callistemon viminalis	Weeping Bottlebrush
Cedrus atlantica	Atlas Cedar
Cedrus deodora	Deodar Cedar
Celtis australis	European Hackberry
Celtis occidentalis	Common Hackberry
Celtis sinesis	Chinese Hackberry
Ceratonia siliqua	Carob, St. John's Bread
* Cercis occidentalis	Western Redbud
Cinnamomum camphora	Camphor Tree
Cotinus coggygria	Smoke Tree
Crataegus spp.	Hawthorn
Eriobotrya deflexa	Bronze Loquat
Eucalyptus citriodora	Lemon-scented Gum
Eucalyptus nicholii	Peppermint Gum
Eucalyptus polyanthemos	Silver Dollar Gum
Eucalyptus rudis	Desert Gum

* California Native Plan

Eucalyptus sideroxylon .....Red Ironbark
Feijoa sellowiana .....Pineapple Guava
* Fremontondendron spp. .....Flannel Bush
Geijera parviflora .....Australian Willow
Gleditsia triacanthos .....Thornless Honey
"Moraine" .....Locust
Hakea laurina .....Sea Urchin Tree
* Heteromeles arbutifolia.....Toyon
Koelreuteria paniculata .....Goldenrain Tree
Lagerstroemia indica.....Crape Myrtle
Leptospermum laevigatum.....Australian Tea Tree
Ligustrum lucidum.....Glossy Privet
Maytenus boaria.....Mayten Tree
Melaleuca linarifolia .....Flaxleaf Paperbark
Melaleuca nesophila.....Pink Melaleuca
Melaleuca quinquenervia .....Cajeput Tree
Melaleuca styphelioides.....Prickly Melaleuca
Morus alba "Stribling".....Fruitless White Mulberry
Olea europaea.....Olive
Pinus canariensis.....Canary Island Pine
Pinus halepensis .....Aleppo Pine
Pinus thunbergiana.....Japanese Black Pine
Pistacia chinensis .....Chinese Pistache
Pittosporum spp. .....Pittosporum
Platanus acerifolia .....London Plane Tree
* Platanus "Yarwood".....Yarwood Sycamore
* Prunus ilicifolia.....Hollyleaf Cherry
* Prunus lusitanica .....Portugal Laurel
* Prunus lyonii .....Catalina Cherry
* Quercus agrifolia.....California Live Oak
Quercus ilex .....Holly Oak
Quercus suber.....Cork Oak
Robinia pseudoacacia.....Black Locust
Schinus molle.....Pepper Tree
Schinus terebinthifolius..... Brazilian Pepper
Sophora japonica.....Chinese Scholar Tree
Ulmus parvifolia .....Chinese Elm
Umbellularia californica .....California Bay
Zelkova serrata.....Sawleaf Zelkova

PALMS

BOTANICAL NAME	COMMON NAME
Chamaerops humilis	Mediterranean Fan Palm
Cordyline australis	Dracaena
Trachycarpis fortunei	Windmill Palm
* Washingtonia filifera	California Fan Palm
Washingtonia robusta	Mexican Fan Palm

SHRUBS

BOTANICAL NAME	COMMON NAME
Abelia grandiflora	Glossy Abelia
Agapanthus africanus	Lily-of-the-Nile
* Arctostaphylos densiflora "Howard McMinn"	McMinn Manzanita
* Arctostaphylos densiflora "Sentinel"	
* Arctostaphylos edmundsii	Little Sur Manzanita
Arctostaphylos "Emerald Carpet"	Emerald Carpet Manzanita
Arctostaphylos "Greensphere"	Greensphere Manzanita
* Arctostaphylos hookerii	Monterey Manzanita
* Arctostaphylos "Indian Hill"	Indian Hill
* Arctostaphylos Manzanita	Common Manzanita
Arctostaphylos manzanita "Dr. Hurd"	Dr. Hurd Manzanita
Arctostaphylos "Sandsprite"	Sandsprite Manzanita
Arctostaphylos "Sea Spray"	Sea Spray Manzanita
Arctostaphylos "Winterglow"	Winterglow Manzanita
Baccharis pilularis "Consanguinea"	Coyote Bush
Berberis darwinii	Darwin Barberry
Berberis "Golden Abundance"	Golden Abundance Barberry
Berberis irwinii	Dwarf Barberry
Berberis thundbergii	Japanese Barberry
Callistemon citrinus	Lemon Bottle Brush
Carissa grandiflora	Natal Plum
* Carpenteria californica	Bush Anemone
Cassia artemisioides	Feathery Cassia
* Ceanothus spp.	Ceanothus
* Ceanothus "Concha"	Wild Lilac
Ceanothus "Blue Buttons"	Blue Buttons Ceanothus
Ceanothus "Blue Whisp"	Blue Whisp Ceanothus
Ceanothus "Dark Star"	Dark Star Ceanothus
Ceanothus "Frost Blue"	Frosty Blue Ceanothus
Ceanothus griseus "Santa Ana"	Santa Ana Ceanothus
* Ceanothus "Joyce Coulter"	Coulter Ceanothus

* Ceanothus "Julia Phelps".....Ceanothus
Ceanothus rigidus "Snowball".....Snowball Ceanothus
Ceanothus thyrsiflorus "Snow Flurry".....Ceanothus
Ceanothus thyrsiflorus "Skylark" .....Ceanothus
Chaenomeles japonica .....Japanese Quince
Chaenomeles speciosa .....Flowering Quince
Cistus hybridus.....White Rock Rose
Convolvulus cneorum .....Bush Morning Glory
Coprosma kirkii .....Coprosma
* Cotinus coggygria .....Smoke Tree
Cotoneaster lacteal .....Red Clusterberry
Cotoneaster rotundifolia.....Redbox Cotoneaster
Cytisus scoparius .....Scotch Broom
Dodonaea viscosa and varieties .....Hopseed Bush
Echium fastuosum.....Pride of Madera
Elaeagnus multiflora .....Cherry Elaeagnus
Elaeagnus pungens.....Thorney Elaeagnus
* Eriogonum arborescens.....Buckwheat
Escallonia species .....Escallonia
Euonymus alatus compactus .....Dwarf Winged Euonymus
Euryops sp.....Euryops
Forsythia spp.....Forsythia
* Fremontodendron "California Glory".....Flannel Bush
* Fremontodendron mexicanum .....Southern Flannel Bush
* Fremontodendron californicum .....Common Flannel Bush
Grevillea lanigera.....Wooly Grevillea
* Grevillea noelli.....Grevillea
Grevillea rosmarinifolia .....Rosemary Grevillea
Grevillea thelemanniana .....Spider-net Grevillea
Hebe spp.....Hebe
* Heteromeles arbutifolia.....Toyon
Lantana species .....Lantana
Lavandula officinalis .....English Lavender
Ligustrum spp. .....Privet
Lonicera spp.....Honeysuckle
* Lupinus arboreus.....Lupine
* Mahonia aquifolium.....Oregon Holly Grape
Myrtus communis .....Myrtle
Nandina domestica.....Heavenly Bamboo
Nerium oleander.....Oleander
Phormium tenax .....Flax
Photinia serrulata .....Chinese Photinia
Pittosporum sp. .....Pittosporum
Pittosporum crassifolium .....Pittosporum
Plumbago capensis.....Cape Plumbago

* Potentilla fruticosa	Bush Cinquefoil
Prunus caroliniana	Carolina Laurel Cherry
Prunus ilicifolia	Hollyleaf Cherry
Prunus lusitanica	Portugal Laurel
Punica granatum	Pomegranate
Raphiolepis indica "Rosea"	Pink Indian Hawthorn
Rhamnus alaternus	Italian Buckthorn
* Rhamnus californica	California Coffeeberry
Rhamnus frangula	Alder Buckthorn
* Rhus ovata	Sugar Bush
* Ribes viburnifolium	Evergreen Currant
Romneya coulteri	Matilija Poppy
Rosmarinus officinalis	Rosemary
* Sambucus caerulea	Blue Elderberry
Teucrium fruticans	Bush Germander
Viburnum spp.	Viburnum species
Xylosma senticosa	Shiny Xylosma

GROUNDCOVERS

BOTANICAL NAME	COMMON NAME
Acacia redolens	Acacia
Ajuga reptans	Carpet Bugle
* Arctostaphylos densiflora "Howard McMinn"	Vine Hill Manzanita
Arctostaphylos	Emerald Carpet
Arctostaphylos "Havens Neck"	Havens Neck Manzanita
Arctostaphylos "Ophioviridis"	Manzanita
* Arctostaphylos hookeri "Monterey Carpet"	Monterey Manzanita
* Arctostaphylos "Point Reyes"	Bearberry, Kinnikinnick
* Arctostaphylos uva-ursi "Radiant"	Bearberry, Kinnikinnick
Arctotheca calendula	Capeweed
* Baccharis pilularis "Pidgeon Point"	Coyote Bush
* Baccharis pilularis "Twin Peaks"	Dwarf Coyote Bush
Carpobrotus edulis	Ice Plant
* Ceanothus gloriosus	Point Reyes Ceanothus
* Ceanothus griseus horizontalis "Yankee Point"	Carmel Creeper
Cerastium tomentosum	Show-in-summer
Cistus purpureus	Orchid Rockrose
Cistus salvifolius	White Dwarf Rockrose
Cotoneaster horizontalis	Rock Cotoneaster

Cotoneaster microphylla .....Rockspray Cotoneaster
Cotoneaster rotundifolia.....Cotoneaster
Gazania spp. .....Gazania
Hedera helix .....English Ivy
Hedera canariensis .....Algerian Ivy
Hypericum calycinum.....St. Johnswort
Juniperus conferta .....Shore Juniper
Juniperus procumbens.....Japanese Garden Juniper
Juniperus Sabina .....Tam Juniper
Lampranthus spp. .....Type of Ice Plant
Lotus berthelotii .....Parrot"s Beack
Myoporum parvifolium.....Prostrate Myoporum
Oenothera berlandieri.....Mexican Evening Primrose
Trachelospermum jasminoides .....Star Jasmine
Verbena peruviana .....Peruvian Verbena
Vinca minor .....Dwarf Periwinkle

ANNUALS/PERENNIALS

BOTANICAL NAME	COMMON NAME
Achillea tomentosa	Wooly Yarrow
Alyssum spp.	Alyssum
Arctotis grandis	African Daisy
Calendula officinalis	Calendula
Centaurea cineraria	Dusty Miller
Coreopsis spp.	Coreopsis
Gaillardia amblyodon	Indian Blanket
Gaillardia pulchella	Indian Blanket
Kniphofia uvaria	Red-hot Poker
Limonium perezii	Sea Lavender
Lobelia laxiflora	Lobelia
* Penstemon spp.	Beard Tongue
Salvia	Sage
Senecio cineraria	Dusty Miller
* Zauschneria spp.	California Fuchsia

VINES

BOTANICAL NAME	COMMON NAME
Bougainvillea	Bougainvillea
Campsis spp.	Trumpet Vine

Distictis buccinatoria.....Blood-red trumpet vine
Lantana spp. .....Lantana
Lonicera sempervirens.....Trumpet Honneysickle
Macfudyena unguis – Cati .....Cat's Claw Vine
Solandra hartwegii.....Cup-of-gold Vine
Solanum jasminoides .....Potato Vine
Tecomaria capensis .....Cape Honeysuckle
Vitus vinifera .....Wine Grape
Wisteria spp. .....Wisteria

GRASSES

BOTANICAL NAME	COMMON NAME
Festuca ovina "Glauca"	Blue Fescue

5.0 COPIES OF THE COMMENT LETTERS RECEIVED ON THE DRAFT EIR

The original comment letters on the Draft Environmental Impact Report Newark Areas 3 and 4 Specific Plan are provided on the following pages.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay National Wildlife Refuge Complex
9500 Thornton Avenue
Newark, California 94560

Terrence Grindall
Community Development Director
City of Newark
Newark, California 94560-3796

SUBJECT: Comments regarding Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan

Dear Mr.Grindall:

The Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) appreciates the opportunity to review the Draft Environmental Impact Report (DEIR) for the Newark Areas 3 and 4 Specific Plan. We reiterate our previous comment that Area 4 should not be developed as it has great potential to provide restored wetland habitat and flood protection from ponds on the border of Area 4. Area 4 was identified by Congress in 1990 as important wildlife habitat that should be included within the Refuge. Furthermore, the ponds adjacent to Area 4 are planned for restoration to tidal influence. Area 4 could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas. We have a substantial number of comments regarding the proposed action and analysis contained in the DEIR.

Comment 1:
Regardless of alternative eventually implemented, there will need to be some type of predator management program to protect the remaining and adjacent wildlife habitat from impacts associated with the development (trapping, predator proof fences, garbage containment, pets not fed outdoors, garbage containment measures, minimizing raptor perches, etc.). The DEIR also does not address the inappropriate species that may be drawn to the golf course area (e.g., gulls, geese).

Comment 2:
S-8, BIO-1, Mitigation Measure 1.2: Upland habitat areas on-site should not necessarily be destroyed to create/enhance wetland for mitigation of impacts. Adjacent uplands and adequate upland/marsh ecotone should be included in the wetland creation/enhancement design. These higher areas provide critical high tide refugia for marsh species like the salt marsh harvest mouse and California clapper rail. The Refuge is currently experimenting with ecotone and adjacent upland restoration at their Environmental Education Center.

Comment 3:
S-8, BIO-1, Mitigation Measure 1.2: It is unclear where acquisition of off-site wetlands for mitigation would occur. There are few mitigation banks left in the South Bay. Areas should be clearly identified in the DEIR to determine if they sufficiently address impacts of the proposed action. Any mitigation for the proposed action should result in one specific mitigation site with a detailed restoration plan. Individual detailed mitigation plans developed by each future developer as proposed in the DEIR will result in a fragmented patchwork of small parcels of poor quality wetland. Furthermore, any mitigation sites should include an endowment to support long-term management success.

Comment 4:
S-15, BIO-4, Mitigation Measure 4.5A: Burrowing owl habitat should be developed in remaining upland areas of Area 4.

Comment 5:
S-21, BIO-8, Mitigation Measure 8.2: First sentence is misleading. The mice will not be "moved out of the construction area" per se. Instead their habitat will be removed so that they are not present in the construction area.

Comment 6:
S-24, BIO-8, Mitigation Measure 8.4: Any marsh enhancement/restoration plan should incorporate an upland component as well as an adequate marsh/upland ecotone.

Comment 7:
S-25, BIO-9, Mitigation Measure 9.2: Who will enforce "out of bounds" closures to ensure habitat and wildlife are not disturbed?

Comment 8:
S-26, BIO-11, Mitigation Measure 11.1: Heavy equipment and imported soils used at the development site should be free of invasive weed seeds and plant parts to prevent introduction of invasive weeds.

Comment 9:
S-27, BIO-11, Mitigation Measure 11.2: Any plants seeded or planted should not be invasive to prevent spread into natural areas. Refer to CAL IPC recommendations and CA Dept. of Agriculture invasive plant lists.

Comment 10:
S-30, BIO-14: Trees should not be planted immediately adjacent to wetland restoration areas. Trees provide perches and nesting opportunities for raptors, which feed on the endangered clapper rail and harvest mouse. Invasive trees such as eucalyptus, acacia, or similar should not be planted.

Comment 11:
S-53: What cleanup is proposed for the Auto wrecking yards after they close. This area could potentially be cleaned up and developed into upland wildlife habitat??

Comment 12:
An education program should be implemented to educate residents of the development about the sensitive habitat and species nearby. The program should deter residents from leaving pet food outside and allowing pets to go off-leash near sensitive habitat areas.

Comment 13:
Lighting impacts of the development and golf course were not adequately addressed in the DEIR. There were no details to the lighting expected from the proposed action. Ambient lighting can have a negative impact on wildlife species and their habitat such as increased predation.

Thank you for considering our comments. We recommend that you to contact the U.S. Fish and Wildlife Service Endangered Species Division in Sacramento to discuss Section 7 consultation required of any impacts to listed species habitat. Please keep us informed of the EIR process, especially any future opportunities to provide comment. If you have questions regarding our comments, please contact Winnie Chan, refuge planner, at 510-792-0222.

Sincerely,

Eric Mruz
Refuge Manager,
Don Edwards San Francisco Bay
National Wildlife Refuge

Cc: Ryan Olah, USFWS
Brian Wines, SFB RWQCB
Carin High, Citizens Committee to Complete the Refuge

Department of Toxic Substances Control

Linda S. Adams
Secretary for
Environmental Protection

Maziar Movassaghi
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

RECEIVED
JAN - 4 2010
COMMUNITY DEVELOPMENT

December 28, 2009

Terrence Grindall
City of Newark
37101 Newark Boulevard
Newark, California 94560

Dear Mr. Grindall:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (Draft EIR) for Newark Areas 3 and 4 Specific Plan Project (Project) SCH# 2007052065. The Project involves a zoning amendment across 900 acres of land in the City of Newark. The Project involves development of up to 1,260 housing units, an elementary school, golf course, open space areas, and involves rezoning as well as retention of existing light industrial and institutional (Ohlone College, City fire station, park and community activity center) uses.

As you may be aware, the California Department of Toxic Substances Control (DTSC) oversees the cleanup of sites where hazardous substances have been released pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a Responsible Agency, DTSC is submitting comments to ensure that the environmental documentation prepared for this project under the California Environmental Quality Act (CEQA) adequately addresses activities pertaining to releases of hazardous substances.

Appendix H discusses hazards and hazardous materials and includes investigation reports. Although the text section discusses hazardous materials on pages S-42-47, it is too general to adequately address all issues related to the cleanups that might need to be addressed under the California Environmental Quality Act (CEQA).

In the Significant Environmental Impacts section on pages S-42, "Impact HAZ-1" addresses the Area 3 residential component of the development which is described as having a "Significant Impact" due to the presence of pesticides. Mitigation Measure HAZ-1 discusses that a Remediation Plan will be prepared to address concerns related to the contaminants of concern so that the impacts can be mitigated to "Less than Significant Impact with Mitigation" under DTSC oversight.

In the Significant Environmental Impacts section on pages S-42-43, "Impact HAZ-2" addresses the Area 3 school site development which is described as having a "Significant Impact" due to the presence of pesticides. Mitigation Measure HAZ-2 discusses that a Remediation Plan will be prepared to address concerns related the contaminants of concern so that the impacts can be mitigated to "Less than Significant Impact with Mitigation" under DTSC's School Property Evaluation and Cleanup Division oversight.

In the Significant Environmental Impacts section on pages S-43-45, "Impact HAZ-3" addresses the Area 4 residential component of the development which is described as having a "Significant Impact" due to the presence of contaminants related to the former duck club, agricultural operations, undocumented fill materials, and an adjacent landfill. Mitigation Measure HAZ-3.1 discusses that testing and remediation will be conducted to address the various concerns related the contaminants of concern so that the impacts can be mitigated to "Less than Significant Impact with Mitigation" under the oversight of various agencies.

In the Significant Environmental Impacts section on pages S-45-46, "Impact HAZ-4" addresses the Area 4 golf course development which is described as having a "Significant Impact" due to the presence of contaminants related to auto-wrecking facilities, and air quality concerns for methane and asbestos. Mitigation Measure HAZ-4 discusses that soil and groundwater investigations and remediation will be conducted to address the various concerns related the contaminants of concern so that the impacts can be mitigated to "Less than Significant Impact with Mitigation" under the oversight of various agencies including DTSC.

The various cleanups discussed on pages S-42-47 should not be identified as mitigation measures in situations where DTSC will provide oversight. For DTSC oversight projects that involve preparation of cleanup documents, whether a Remedial Action Plan (RAP, for projects costing more than $2 million) or a Removal Action Workplan (RAW, for projects costing less than $2 million) those are discretionary decision documents which must be accompanied by an evaluation under CEQA.

If you have any questions or would like to schedule a meeting, please contact me at (510) 540-3811. Thank you in advance for your cooperation in this matter.

Sincerely,

Tom Price, Project Manager
Brownfields and Environmental Restoration Program – Berkeley Office

cc: See Next page

cc: Governor's Office of Planning and Research
State Clearinghouse
P. O. Box 3044
Sacramento, California 95812-3044

Guenther Moskat
CEQA Tracking Center
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

State of California -TheNatural Resources Agency
DEPARTMENT OF FISH AND GAME
Bay Delta Region
Post Office Box 47
Yountville, California 94599
(707) 944-5500
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ARNOLD SCHWARZENEGGER, *Governor*
JOHN MCCAMMAN, *Acting Director*

January 14, 2010

Mr. Terrence Grindall
City of Newark
37101 Newark Boulevard
Newark, CA 94560

Dear Mr. Grindall:

Subject: Newark Areas 3 and 4 Specific Plan, Draft Environmental Impact Report, SCH #2007052065, City of Newark, Alameda County

Department of Fish and Game (DFG) staff has reviewed the draft Environmental Impact Report (EIR) for the Newark Areas 3 and 4 Specific Plan, in the City of Newark, Alameda County. The proposed Areas 3 and 4 Specific Plan, located in southwest Newark, allows for development of an 856-acre site with up to 1,260 housing units of various densities, an up to 600-student elementary school, a golf course, open space areas, as well as retention of existing light industrial and institutional (Ohlone College, City fire station, park, and community activity center) uses.

Specific Plan Area 3 is approximately 296 acres and extends from the railroad tracks northeast to Cherry Avenue, and from Stevenson Boulevard northwest to Mowry Avenue. It includes existing facilities such as the Silliman Recreation Complex, a fire station, Ohlone College, campus industrial park, and agricultural fields. Land uses adjacent to Area 3 include residential development and Newark Memorial High School to the northeast, industrial development to the northwest, and industrial development and the Pacific Commons wetland and the federally endangered vernal pool tadpole shrimp (*Lepidurus packardii*) mitigation site to the southeast. The project includes proposed activities only in the northeastern corner of Area 3.

Area 4 of the Specific Plan, approximately 560 acres, is surrounded by Mowry Avenue, the Union Pacific railroad tracks, the City of Newark/City of Fremont city-limits (generally Stevenson Boulevard), and Mowry Slough. Area 4 is mostly undeveloped, consisting primarily of cultivated fields. A large wetland complex is located in the west-central part of Area 4. Auto-wrecking yards, a private residence, and associated farm outbuildings constitute existing facilities within Area 4. Land uses immediately surrounding Area 4 include salt production in Cargill's active salt pond evaporators to the northwest, a former test track for Peterbilt trucks and lands owned by the Alameda County Flood Control and Water Conservation District across Mowry Slough from (west of) Area 4, active salt ponds M7 and M6 to the south, the Tri-Cities Landfill to the southeast, and the Pacific Commons vernal pool mitigation site to the northeast.

The Specific Plan does not identify the exact location and configuration of residential lots, golf course, or other recreational uses, as that will be determined through subsequent entitlement processes and analyses. Consequently, the exact amount and location of wetlands which will be avoided/impacted by development, and the configuration of the remaining agricultural areas will be determined at the time of subdivision map approval.

Since the draft EIR provides only general information on impacts, DFG can only provide general comments. The quantity and quality of the wetlands habitat remaining in California have been significantly reduced; thus, maintenance and restoration are essential to meet the needs of the public for fish and wildlife resources and related beneficial uses. In addition, the protection, preservation, restoration, enhancement and expansion of wetlands as migratory bird breeding and wintering habitat are justly recognized as being critical to the long-term survival of such species. Wetland habitat is also recognized as providing habitat for over half of the listed endangered and threatened species in California. DFG strongly discourages the development in wetlands.

Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) is located south and west of Area 4 and consists of over 30,000 acres of open bay, salt pond, salt marsh, mudflat, upland and vernal pool habitats. The Refuge provides critical habitat for endangered species, habitat for shorebirds and waterfowl along the Pacific Flyway, and opportunities for public use of the baylands. The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of Don Edwards San Francisco Bay National Wildlife Refuge, indicating that these lands were potentially to be included in the Refuge.

Mowry Slough, located on Refuge Land, is one of the larger sloughs in south San Francisco Bay (Fancher and Alcorn 1982) and is surrounded by saltmarsh habitat. Mowry Slough is considered the primary pupping site for harbor seals in the South Bay.

As acknowledged in the draft EIR (p. 115), the value of Area 4 in providing upland transition zones adjacent to tidal wetlands has also been identified by the Baylands Ecosystem Habitat Goals Report (1999), a report of habitat recommendations prepared by the San Francisco Bay Area Wetland Ecosystem Goals Project, a consortium of nine State and Federal agencies, including the San Francisco Estuary Institute.

Waterfowl hunting is currently authorized and supported by DFG within the Refuge. Waterfowl hunting season extends from approximately mid-October to mid-January. During the season, hunting is permitted daily from one half-hour before sunrise until sunset. The building of residential housing developments should not preclude the continued recreational hunting that has been in the area historically.

The project proposes to develop land that provides habitat for the western burrowing owl (*Athene cunicularia*). The Bay Area's population of western burrowing owls is clearly declining due to the intense pressure for urban development within suitable burrowing owl nesting and foraging habitat. Owl survival can be adversely affected by disturbance and

foraging habitat loss even when impacts to individual birds and nest/burrows are avoided. The owls observed at Area 4 are likely owls that have been evicted from the adjacent Ohlone College site or other previous development.

Western Burrowing Owl

The draft EIR (Impact BIO-4) proposes to mitigate for burrowing owls found in Area 3 by implementing avoidance measures (MM BIO-4.1 thru MM BIO-4.3) such as performing pre-construction surveys, maintaining a 150- to 250-foot buffer around occupied burrows, and eviction using one-way doors. There is no mitigation proposed for loss of habitat.

The draft EIR proposes to mitigate for owls in Area 4 by avoidance measures MM BIO 4.1 through MM BIO-4.3 in addition to preserving habitat on- and/or off-site and use of artificial burrows.

Initial pre-construction surveys should be conducted outside of the owl breeding season (January 15 to August 31) but as close as possible to the date that ground-disturbing activities will begin, to avoid the problem of waiting until March or April when the project would be delayed if owls are detected. Generally, initial pre-construction surveys should be conducted no more than 30 days prior to ground-disturbing activities (for example, disking, clearing, grubbing, grading). The time lapse between surveys and site disturbance should be as short as possible and will be determined by DFG based on specific project conditions but generally should not exceed seven days. Additional surveys are necessary when the initial disturbance is followed by periods of inactivity or the development is phased spatially and/or temporally over the project area.

The number of pre-construction surveys necessary to accurately detect current owl presence and owl locations will be driven by a number of interacting criteria such as: 1) the time period that has elapsed since the last breeding survey was completed; 2) height and density of vegetation that may obscure owl presence; 3) topographical conditions that may obscure owl presence; 4) time of year (e.g., in the winter, owls are more cryptic and spend more time in their burrows); 5) time of day and weather conditions when surveys are conducted; 6) long-term history of owl use at the site; 7) size of the parcel and degree of coverage by walking or by intensive observations via spotting scope, and 8) tolerance of owls to human presence. Generally, at a minimum, four survey visits on at least four separate days will be necessary, especially given the cryptic nature of this species during the non-breeding season.

Biologists conducting pre-construction surveys should expend enough effort, based on the above criteria, to assure with a high degree of certainty that take of owls will not occur once site modification and grading activities begin. The full extent of pre-construction survey efforts must be described and mapped in detail (e.g., dates, time periods, area(s) covered, and methods employed) in a biological report. Current vegetation and topographical conditions and their corresponding effect on visibility should also be described. The report should be submitted to DFG for review.

DFG's concurrence with the pre-construction survey results will depend on the level of detail that is provided in the Consultant's biological report that summarizes the methods, results, and level of survey effort. DFG has a responsibility to give input regarding measures that would result in avoiding take and minimizing unavoidable impacts to owls.

For both Areas 3 and 4, DFG advises nest burrows should be protected AND sufficient foraging habitat provided. Lands intended for burrowing owl conservation need to be of sufficient size to ensure ecological sustainability with minimum long-term maintenance needed by humans (e.g., rely on native grazers, compatible livestock grazing practices, burrow excavation by native animals and, where feasible, controlled burns). The conservation land should protect a sufficiently large acreage of suitable vegetation communities (grassland, scrublands, desert, urban, and compatible agricultural uses) for burrowing owl nesting, foraging, wintering, dispersal, and migration (i.e., during breeding and non-breeding seasons).

Lands intended for burrowing owl conservation should be chosen with regard to the problems caused by the urban-wildland interface, for example, burrow disturbance and destruction by unleashed dogs, human foot and vehicle traffic and predation by cats and dogs and urban-adapted wildlife, including raptors attracted to urban landscapes.

Projects impacting owls and owl habitat should mitigate all project-specific and cumulative impacts to nesting, foraging, wintering, dispersal, and migration habitat (i.e., breeding and non-breeding season) under the California Environmental Quality Act, to below a level of significance. The standard of 6.5 acres does not adequately compensate for habitat loss. Mitigation should be based on the acreage of any suitable habitat disturbed or destroyed, with consideration of number of owls present and significance of the area for all burrowing owl life history stages.

The use of artificial burrows should be avoided, except to temporarily attract owls, or where burrow installation is necessary as an integral owl population management tool. Artificial burrow installation must be accompanied by a management plan for the site and programs for burrow maintenance and effectiveness monitoring. Performance criteria should include site tenacity by owls, yearly successful reproduction by owls, documented fledging by juvenile owls, and colonization by owls from elsewhere.

Salt Marsh Harvest Mouse

The draft EIR (Impact BIO-8) describes impacts of loss of salt marsh harvest mouse (SMHM) habitat and proposes (MM BIO-8.2, MMBIO-8.3) to move SMHM out of the construction areas. SMHM is listed under both the California Endangered Species Act and the Federal Endangered Species Act as an endangered species. In addition, SMHM are designated as a fully protected species pursuant to Fish and Game Code Section 4700. Fully protected species may not be taken or possessed at any time. Therefore, DFG cannot authorize pre-construction trapping surveys for SMHM or relocation out of construction areas. DFG recommends avoidance of SMHM habitat. If habitat cannot be avoided, then DFG recommends hand removal of suitable habitat to avoid take of SMHM. Use of hand-operated mechanical trimming devices, as proposed in the draft EIR, is not recommended

since it may result in take of an individual SMHM. Exclusion fencing, approved by DFG, shall be placed around areas cleared of vegetation to preclude mice from moving back into the active construction zone.

Areas 3 and 4 are the largest remaining tracts of relatively undeveloped land in Newark. Due to the location near the Refuge, South Bay Ponds, and Pacific Commons mitigation area and because these areas, specifically Area 4, supports sensitive biological habitats, DFG recommends Area 4 be left undeveloped.

We are interested in continuing to work with the City of Newark in the resolution of the issues regarding endangered species and wildlife. If you have any questions regarding this response to the draft EIR for the Newark Areas 3 and 4 Specific Plan Project, please contact Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812; or Mr. Liam Davis, Habitat Conservation Supervisor, at (707) 944-5529.

Sincerely,

for

Charles Armor
Regional Manager
Bay Delta Region

cc: State Clearinghouse

References

Fancher, L. and Alcorn, D. 1982. Harbor seal census in south San Francisco Bay (1972-1977 and 1979-1980). Calif. Fish and Game 68(2): 118-121.

Goals Project. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. U.S. Environmental Protection Agency, San Francisco, Calif./S.F. Bay Regional Water Quality Control Board, Oakland, Calif.

STATE OF CALIFORNIA Arnold Schwarzenegger, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

January 26, 2010

Terrence Grindall
City of Newark
37101 Newark Boulevard
Newark, CA 94560

Re: Notice of Completion, Draft Environmental Impact Report (DEIR)
Newark Areas 3 and 4 Specific Plan Project
SCH# 2007052065

Dear Mr. Grindall:

As the state agency responsible for rail safety within California, the California Public Utilities Commission (CPUC or Commission) recommends that development projects proposed near rail corridors be planned with the safety of these corridors in mind. New developments and improvements to existing facilities may increase vehicular traffic volumes, not only on streets and at intersections, but also at highway-rail grade crossings. In addition, projects may increase pedestrian traffic at crossings, and elsewhere along rail corridor rights-of-way. Working with CPUC staff early in project planning will help project proponents, agency staff, and other reviewers to identify potential project impacts and appropriate mitigation measures, and thereby improve the safety of motorists, pedestrians, railroad personnel, and railroad passengers.

According to the DEIR project description, the proposed project includes 1,260 residential units, a 600 student elementary school, golf course and open space areas, as well as retention of existing light industrial and institutional (College, fire station, park, and community activity center) uses. We offer the following review comments:

The existing crossings include 1 public crossing at Mowry Avenue, and 3 private crossings in the project area. The private crossings need to be eliminated or otherwise effectively closed to public access (this may require an extensive locked barrier).

Mowry Avenue at-grade railroad crossing (CPUC # 001L-32.20):

This crossing must be eliminated or otherwise improved. Modification of an existing at-grade public crossing also requires CPUC authorization. Trespassing onto the tracks has been an issue in the area (recent incidents along right-of-way). This incident history at Mowry in particular is of concern because the proposal is to have it remain at-grade. There are several needed safety improvements at the Mowry Avenue crossing if it must remain at-grade. These include illumination, roadway widening, sidewalks, bike lanes, and medians. CPUC staff recommends that Mowry Avenue at-grade crossing be closed except for emergency vehicle access. A pedestrian/bicycle overpass may be appropriate.

Provide better separation between the public and the railroad by construction of a sound-wall all along the railroad right-of-way, and/or vandal-resistant fencing (tight weave, very strong, difficult to climb) as typical 6-foot chain link fence is not sufficient.

Access control around the flood control channel must be carefully reviewed. A locked gate is generally not sufficient to discourage non-motorized traffic from using the shortcut. In other locations such flood control channels have become illegal route access points.

Allow for a shared-use path alignment further from the railroad track. There is a general incompatibility between public use and active railroad operations. This is a particular problem at Mowry where the proposed access point would open onto the crossing.

Stevenson Boulevard Private Crossing (CPUC # 001L-33.30-X):

CPUC staff strongly recommends that a grade separation over the railroad track be pursued as has been proposed in the DEIR. A formal application to the CPUC will be required to establish a new public grade-separated crossing at Stevenson Boulevard. CPUC staff would oppose the establishment of a public at-grade crossing at this location.

There was an incident at this crossing on 9/13/2009 where a UPRR train struck a vehicle abandoned on the track just south of the crossing. A disoriented motorist became stuck on the track 67 feet south of the roadway. The unoccupied car was left on the track in the dark and was later struck by a northbound freight train.

The CPUC recommends the DEIR/FEIR mitigation monitoring section be revised to include the above referenced mitigation measures for each of the at-grade railroad crossings (public and private).

Thank you for your consideration of these comments. We appreciate the time extension given to complete our review and the copy of the DEIR. If you have any questions in this matter, please contact me at (415) 713-0092 or email at ms2@cpuc.ca.gov.

Sincerely,

Moses Stites
Rail Corridor Safety Specialist
Consumer Protection and Safety Division
Rail Transit and Crossings Branch
515 L Street, Suite 1119
Sacramento, CA 95814

California Regional Water Quality Control Board
San Francisco Bay Region

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Arnold Schwarzenegger
Governor

January 12, 2010
CIWQS Place ID No. 748275

Sent via electronic mail: No hardcopy to follow

City of Newark
37101 Newark Boulevard
Newark, CA 94519]

Attn: Terrence Grindall (Terrence.Grindall@newark.org)

Re: Comments on the Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan
SCH No.: 200705205

Dear Mr. Grindall:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciate the opportunity to review the December 2009 *Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan* (DEIR). The City of Newark is proposing a Specific Plan for Areas 3 and 4 in southwestern Newark, which is bound generally by Mowry Avenue, Cherry Street, Stevenson Boulevard, and the Mowry Slough. The proposed Areas 3 and 4 Specific Plan allows for development of up to 1,260 housing units of various densities, an up to 600-student elementary school, a golf course, and open space areas, as well as retention of existing light industrial and institutional (e.g., Ohlone College, City fire station, park, and community activity center) uses. Water Board staff have the following comments on aspects of the Specific Plan, as presented in the DEIR, which may impact waters of the State.

Comment 1
Section 3.5, Biological Resources, 3.5.2.4, Jurisdictional Waters of the U.S./Waters of the State, Page 124
The discussion of jurisdictional waters does not include a discussion of the State's Porter-Cologne Water Quality Act (Water Code Section 13000 et seq.). Water Board staff recommend including the following text as a discussion of Porter-Cologne authority in the revised EIR:

> The Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in combination with permits issued by the Army Corps of Engineers (ACOE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements (WDRs) for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that

> are outside of the jurisdiction of the ACOE (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of ACOE jurisdiction may require the issuance of either individual or general WDRs from the Water Board.
>
> Under the authority of the Porter-Cologne Water Quality Act, the Water Board has developed, and implements, the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), which defines the Beneficial Uses of waters of the State within the San Francisco Bay Region.
>
> Because habitats in Newark Area 4 are hydrologically connected to San Francisco Bay, the following beneficial uses of San Francisco Bay are also likely to apply to waters and wetlands in Area 4: estuarine habitat; preservation of rare and endangered species; contact water recreation; non-contact water recreation; shellfish harvesting; fish spawning; and wildlife habitat. Implementation of the proposed Specific Plan may impact Beneficial Uses of waters of the State in Area 4. In particular, Beneficial Uses related to habitat for rare and endangered species may be impacted by the Specific Plan.

Comment 2
Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Page 134
The DEIR states that:

> Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use.

The condition of these wetlands would be easily improved by discontinuing the agricultural disturbances in Area 4. The Basin Plan directs the Water Board to protect both existing and potential Beneficial Uses of waters of the State. In Area 4, the habitat value could be greatly enhanced by simply discontinuing agricultural disturbances. If these wetlands are filled under the proposed Specific Plan, then the potential for enhancing or restoring the wetlands will be lost. Mitigation for such an impact will require addressing the lost potential value of these wetlands.

Comment 3
Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Pages 135 and 136.
Implementation of the Specific Plan would result in the loss of up to 85.6 acres of wetland/march/aquatic habitat, including 7.65 acres of salt marsh harvest mouse/salt marsh wandering shrew habitat. As mitigation for this significant impact the DEIR offers Mitigation Measure BIO-1.2A.

> To offset impacts to the wetland and aquatic habitat on the site, the future project proponent(s) will utilize a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off site. The on-site component of the mitigation shall include creation of wetland and aquatic habitat within upland habitat that is currently disked and graded within Area 4 and will enhance portions of the remaining areas of agricultural field/seasonal wetland habitat within Area 4, as described below.
>
> Compensatory mitigation for impacts to these habitats shall consist of two parts: (1) creation of high quality wetland and aquatic habitat within Area 4 within upland habitat at an acreage ratio of 1:1 (habitat created/enhanced:habitat impacted) to prevent any net loss of habitat functions or values, and (2) enhancement of existing seasonal wetland habitat that is currently within agricultural production (mapped as agricultural field/seasonal wetland habitat) at an acreage ratio of 0.5:1 (such enhancement will include cessation of farming activities, seeding with appropriate seasonal wetland plant seeds, and may include minor earth moving activities). In summary, any impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at a total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted).

The *San Francisco Bay Area Wetlands Ecosystem Habitat Goals Project* recommended that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4). In addition, the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge, and the Bay Conservation and Development Commission (BCDC) has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands.

The proposed mitigation quantities appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation was demonstrably capable of providing equal habitat benefit for listed species. The proposal to convert some areas of uplands in Area 4 to wetlands is also problematic, since a combination of wetlands and associated uplands are essential to high habitat value.

At present, the DEIR does not demonstrate that adequate mitigation is available. Onsite mitigation will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. The DEIR does not identify any feasible locations for offsite mitigation. There are very few parcels of undeveloped land in private ownership that are

available for use as mitigation wetlands, and are in proximity to protected lands that currently provide habitat for listed species.

Proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act. The current DEIR does not demonstrate that it is feasible to mitigate all of the potentially significant biological impacts of the Project to a less than significant level. Although the current CEQA document covers a Specific Plan, it should contain proposed mitigation measures at a sufficient level of detail to allow an assessment of the feasibility of the proposed mitigation. Such proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. Such a demonstration could include the identification of available land for mitigation actions and the measures that would be necessary to establish mitigation wetlands on those properties. We encourage the City of Newark to revise the DEIR to include specific mitigation proposals for major impacts to wetlands and marsh habitats. In the project-level DEIRs, mitigation proposals should be provided in even greater detail. The revised DEIR should be re-issued for public review. Including specific mitigation measures in a Final EIR is inappropriate, since this information would not have been subject to public review before the Final EIR was adopted

Since the DEIR does not even include a conceptual mitigation plan, we are not able to assess whether or not it is possible to provide sufficient mitigation to reduce Project impacts to a less than significant level. We encourage the City of Newark to revise the DEIR to include conceptual mitigation plan(s). The conceptual mitigation plan(s) should include factors to account for potential distances between the areas of impact and the mitigation sites, temporal losses of habitat, and the uncertainty of success associated with any mitigation project. When mitigation is constructed, enhanced, or preserved offsite, the amount of mitigation should be increased to account for the distance between the impact site and the mitigation site. We also encourage project proponents to construct mitigation projects before impacting waters of the State. When impacts occur prior to the full functioning of mitigation sites, mitigation is required for the temporal loss of habitat between the time that habitat is impacted and the time that the mitigation site has developed sufficiently to be fully functioning as habitat. The amount of proposed mitigation should also account for the uncertainty associated with the successful creation of any wetland mitigation site.

The conceptual mitigation plan(s) should contain sufficient detail to demonstrate that proposed mitigation project(s) are hydrologically feasible and accessible to impacted wildlife species.

Mitigation should also be "in kind" as much as is feasible. When mitigation is not "in-kind", then the amount of mitigation must be increased to compensate for the disparity.

Comment 4
Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Pages 135 and 136.
As an alternative form of mitigation, the DEIR offers Mitigation Measure BIO-1.2B.

> Alternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. These off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements. The offsite component of the wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed.

Any mitigation plan that relies exclusively, or heavily, on the preservation of wetlands, would not be consistent with the State's "no net loss" policy. No net loss can only be achieved through avoidance of habitats or the successful creation of new habitats. Since preserved habitats are already in existence, the use of preservation results in a net loss of wetland habitat. Therefore, the proposed ratio of 1.5:1 is far too low for a mitigation measure that relies on preservation.

The mitigation measure also requires that, "off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements", and "wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed." The DEIR does not demonstrate that such wetlands, which should be capable of supporting salt marsh harvest mice, actually exist and are available for use by the Specific Plan.

Comment 5
Section 3.5, Biological Resources, Mitigation Measure BIO-8.4, Pages 153.
This mitigation measure for Salt Marsh Harvest Mouse states:

> Salt marsh harvest mouse and salt marsh wandering shrew habitat that is permanently lost due to fill, shading, or isolation due to the golf course access road will be mitigated at a 3:1 ratio by the creation or restoration of pickleweed-dominated salt marsh on Area 4. Habitat for these species that is indirectly impacted due to proximity to residential and golf course development (i.e., habitat that is not directly filled but that is located within 100 feet of direct impact areas) will be mitigated at a 2:1 ratio by on-site habitat restoration. This lower ratio is appropriate because habitat within 100 feet of developed areas will retain some habitat quality for mice and shrews. This habitat restoration can occur in the same locations as habitat creation, restoration, or enhancement performed for impacts to wetlands as long as suitable conditions for these two mammal species are targeted.

The DEIR should be revised to show how salt marsh harvest mouse (SMHM) habitat could be created onsite in quantities sufficient to satisfy the mitigation quantities proposed in Mitigation Measure BIO-8.4. The DEIR should also reference SMHM experts who support the proposed mitigation ratios and who can comment on the impact of development within 100 feet of habitat on SMHM habitat quality.

Comment 6
Alternatives Analysis.
Since wetlands in Area 4 support the Beneficial Uses of wildlife habitat and preservation of rare or endangered species, the Water Board is not likely to approve projects that permanently degrade these Beneficial Uses, since this would be inconsistent with the requirements of the Basin Plan. Before receiving permits from the Army Corps of Engineers (ACOE) and the Water Board, the proposed project must prepare a CWA Section 404(b)(1) alternatives analysis. If this analysis determines that there are viable alternatives that achieve the basic project purpose, but have less significant impacts to waters than the fill of wetlands in Area 4, then the Water Board would not be able to issue a permit that would allow the impacts to wetlands at Area 4. Please note that the *Objectives of the Project*, presented in Section 5.1.2 (page 310) of the DEIR, are much narrower than the project purpose used in a 404(b)(1) alternatives analysis. For the 404(b)(1) alternatives analysis, the project purpose is likely to be a specific number of housing units and opportunities for outdoor recreation. If this analysis determines that there are less damaging practicable alternatives to the proposed project in the Specific Plan, then the Water Board is unlikely to issue permits for the more damaging alternative. This is true even if the project proponent does not currently own the land that is necessary for the less damaging alternative.

Summary Comment.
In its present form, the DEIR does not demonstrate that impacts associated with the proposed fill of wetlands in Area 4 can be successfully mitigated to a less than significant level. Therefore, the DEIR is not likely to support the issuance of future permits from the Water Board for fill of waters of the State under the Specific Plan.

We encourage the City of Newark to revise the DEIR to include conceptual mitigation plan(s) for each of the proposed onsite and offsite mitigation measures. In addition to allowing the feasibility of mitigation measures to be assessed, conceptual mitigation plan(s) will be of value in evaluating the relative costs of the proposed mitigation measures.

Finally, the DEIR should not assume that the resource agencies will allow the fill of the wetlands at Area 4. Today large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to move up slope in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), BCDC, and the Water Board have all expressed strong reservations about the fill of wetlands in Area 4. We encourage the City of Newark to request an inter-agency meeting

with the ACOE, CDFG, USFWS, and the Water Board as soon as possible, in order to discuss permitting issues related to jurisdictional waters in Area 4.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at bwines@waterboards.ca.gov.

Sincerely,

Dale Bowyer
Senior Water Resources Control Engineer
South and East Bay Watershed Section

cc: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (by fax: 916-323-3018)
USACE, San Francisco District, Attn: Regulatory Branch, 1455 Market Street, San Francisco, CA 94103–1398 (cameron.l.johnson@usace.army.mil, jane.m.hicks@usace.army.mil)
CDFG, Central Coast Region, Attn: Marcia Grefsrud, P.O. Box 47, Yountville CA 94599 (mgrefsrud@dfg.ca.gov, sbrunson@dfg.ca.gov)
United States Department of the Interior, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825-1846 (Ryan_Olah@fws.gov, cay_goude@fws.gov, Winnie_chan@fws.gov, joseph_terry@fws.gov, james_browning@fws.gov)

ACWD
ALAMEDA COUNTY WATER DISTRICT

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January 15, 2010

Terrence Grindall
Community Development Director
City of Newark
37101 Newark Boulevard
Newark CA 94560-3796

Dear Mr. Grindall:

Subject: Draft Environmental Impact Report for Newark Areas 3 and 4 Specific Plan Project

The Alameda County Water District (ACWD) wishes to thank you for the opportunity to comment on the "Draft Environmental Impact Report for Newark Areas 3 and 4 Specific Plan Project."

ACWD has reviewed the Draft Environmental Impact Report (DEIR) and would appreciate your consideration of the following comments:

1. Groundwater Well Protection/Destruction: Local and imported water is percolated into the Niles Cone Groundwater Basin through percolation both in Alameda Creek and the adjacent recharge ponds in the Quarry Lakes Regional Park. The water is subsequently recovered through ACWD's groundwater production wells and provided as a potable supply to a population of over 333,000 in the cities of Fremont, Newark, and Union City. Therefore, it is imperative that ACWD protects the water quality and ensures the continued use of the groundwater basin for water supply for ACWD's customers.

   In order to protect the groundwater basin, each well located within the Project area must be identified and either protected or properly destroyed prior to or during construction activities. If the wells are to remain, a letter so indicating must be sent to ACWD. If a well is damaged or the surface seal is jeopardized in any way during construction activities, the wells must be destroyed in compliance with the City Well Ordinance.

   Historical records indicate the existence of abandoned wells located within the Project area. Any abandoned wells located within the Project area (including areas designated as open space or wetlands) must be properly destroyed prior to grading and/or construction activities. Since most of the wells have not been located, ACWD requests that the EIR include the provision that Project proponents coordinate with ACWD so that: a) ACWD can assist in

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identifying abandoned wells, and b) any wells identified or discovered during construction are properly destroyed in accordance with ACWD specifications.

2. Drilling Permit Requirement: As the enforcing agency for the City of Newark's Well Ordinance, ACWD requests that the EIR include the requirement of obtaining a drilling permit from ACWD prior to the start of any subsurface drilling activities. Application for a permit may be obtained from ACWD's Engineering Department, at 43885 South Grimmer Boulevard, Fremont or online at http://www.acwd.org/engineering/drilling_permit.php5. Before a permit is issued, the applicant is required to deposit with ACWD, cash or check in a sufficient sum to cover the fee for issuance of the permit or charges for field investigation and inspection. All permitted work requires scheduling for inspection; therefore, all drilling activities must be coordinated with ACWD prior to the start of any field work.

3. Access to ACWD Facilities: ACWD currently uses Station Road to access a number of our facilities. An ACWD water well ("Site A") and a number of ACWD's monitoring wells are located within Newark Areas 3 and 4 and along the railroad right-of-way between the two areas. ACWD's Site A water well is currently used as part of ACWD's Aquifer Reclamation Program to address saltwater intrusion and the information collected from the monitoring wells is used in the management of ACWD's groundwater resources. Therefore, ACWD requests that the EIR address maintaining access to ACWD's facilities.

4. Geology and Soils (Section 3.7)

   a) Dewatering: Reference is made to Section 3.7.2, Existing Setting and Section 3.7.3, Geology and Soils Impacts (pages 179 to 190). The DEIR acknowledges that groundwater is very shallow within the Project area; however, the DEIR does not address any temporary or permanent dewatering activities that may be required. In addition, ACWD requests that the following potentially significant impacts related to dewatering activities be addressed by the EIR:

      1) The Project area includes areas where known Spills, Leaks, Investigation, and Cleanup sites exist. The EIR should address the potential impacts that dewatering activities and construction may have on the investigation and cleanup of those sites.

      2) Since groundwater is an important component of ACWD's water resources, it is critical that the amount of water that may be extracted by dewatering be estimated and documented in the EIR. Alternative designs should be evaluated that would minimize the amount of dewatering required during and subsequent to construction. Groundwater losses due to dewatering should be measured and may be subject to a replenishment assessment fee. Mitigation measures should be proposed to replace all significant losses of ACWD's water supplies.

      3) ACWD regulates the installation and destruction of dewatering wells by working with licensed drilling contractors and agencies that require dewatering wells for

the installation of their facilities. ACWD permits are required for dewatering well installations and destructions within the City of Newark (City); however, dewatering wells are currently exempt from permit fees.

b) Soil Improvements: Reference is made to MM GEO-1.1 (page 184). The mitigation measure identifies that ground improvement techniques could be used to mitigate liquefaction-induced differential settlement. Since groundwater is shallow within the Project area, ACWD requests that the Project geotechnical engineer coordinate with ACWD prior to beginning any soil improvement measures to ensure impacts on groundwater resources are minimized.

c) Wick Drains: Reference is made to MM GEO-3.1 (page 186). The mitigation measure states that "if surcharging is considered, this would include installing vertical wick drains and surcharging building areas with additional imported fill to allow the settlement to occur at an increased rate." Vertical wick drains pose a significant threat to the groundwater basin because they remain in place after the surcharging activities are completed and create preferential pathways that allow runoff to rapidly infiltrate the subsurface where the capacity of soils for removing the pollutants and protecting the groundwater supply is significantly reduced. For this reason, alternative methods should be evaluated that would eliminate the need for the use of vertical wick drains. ACWD requests that the EIR address this potentially significant impact.

5. Hazards and Hazardous Materials (Section 3.9)

a) Regulation of Hazardous Materials: Reference is made to Table 3.9-1: Regulation of Hazardous Materials (page 210). The descriptions for the Alameda County Department of Environmental Health (ACDEH) and the City's Fire Department need to be updated and clarified. Effective February 1, 2009, the responsibility for oversight of the Certified Unified Program Agency (CUPA) program was transferred from the City to ACDEH. As a result of this change in the CUPA program, a Cooperative Agreement between ACWD, the City, and ACDEH was executed on October 8, 2009, that requests ACWD to continue its oversight of investigation and remediation at Leaking Underground Fuel Tank (LUFT) and the majority of the Spills, Leaks, Investigation, and Cleanup (SLIC) sites. ACWD has a similar Cooperative Agreement with the California Regional Water Quality Control Board for the LUFT and SLIC sites in the cities of Fremont, Newark, and Union City. ACDEH's Local Oversight Program does not cover sites in the cities of Fremont, Newark, or Union City.

b) Investigation and Remediation of Contaminated Soil and Groundwater: Reference is made to Section 3.9.3, Hazardous Materials Impacts, Impacts HAZ-1, HAZ-2, HAZ-3, and HAZ-4 (pages 218 to 225). The mitigation measures proposed for each of these impacts refers to investigation and remediation activities that will be conducted under the oversight of the City and the Department of Toxic Substances Control (DTSC). However, ACWD is the lead local agency for the LUFT and SLIC cases in the Project area and works in cooperation with the California Regional Water Quality Control Board,

San Francisco Bay Region. In addition, for sites where ACWD is not the lead agency, ACWD is still involved in reviewing any proposed investigation or remediation activities. Therefore, ACWD should be included in all of the proposed mitigation measures as one of the agencies involved with reviewing and approving investigation and remediation proposals.

c) Property Owner Location Map: Reference is made to Figure 3.9-1: Property Owner Location Map (page 213). This figure shows the property owners within the Project area. Figure 3.9-1 does not include ACWD's 0.28 acre parcel (APN 901 018501200) located northwest of Station Road. ACWD requests the map in the Final EIR be corrected.

6. Water Supply: Reference is made to Section 3.12.3.2 – Water Supply (page 251). In Table 3.12-1, the DEIR provides a water demand estimate for the Project. The unit demands for each of the land use categories are consistent with the unit demands provided by ACWD in the water supply assessment (WSA) for the Project, with the exception of the unit demands for the Single Family Residential land use category. As described in the footnotes to Table 3.12, the Single Family Residential category includes a mix of 2,000-5,000 square foot lots, 6,000-7,000 square foot lots, and townhouses. The WSA for the Project utilized unit demands of 250 gpd/unit, 440 gpd/unit and 150 gpd/unit, respectively, for each of these sub-categories. Based on ACWD's calculation, the representative weighted average unit use should be 305 gpd/unit. However, Table 3.12-1 utilizes a value of 380 gpd/unit. The EIR should either: a) utilize unit water use values consistent with that of the WSA, or b) provide a rationale for any alternate unit water use values utilized.

   In addition, throughout this section, the DEIR suggests that irrigation needs within Areas 3 and 4 including park areas and the golf course "could be" switched over to reclaimed water service at such time recycled water is available to the site. ACWD's demand projections, which form a basis for the referenced WSA, rely on this Project's use of recycled water to meet irrigation needs. The EIR should firmly commit that the source for such irrigation **will** be switched to the recycled water system when recycled water becomes available.

7. Public Water System Infrastructure: Reference is made to Section 2.4.10.1 – Water Service (page 23). The DEIR adequately describes the appropriate water system configuration for Area 3 which will include connections to existing water mains in Cherry Street and Stevenson Boulevard, and may also include connections to the existing water main in Mowry Avenue. However, there are no existing water mains fronting any portion of Area 4. Therefore, water service to Area 4 will require extension of public water mains along with the extension of Stevenson Boulevard, as well as a minimum of one additional connection to existing mains in either Mowry Avenue or Cherry Street (via the new potable water system to be installed in Area 3) to provide for system looping. It is important to note that redundant connections to the new public potable water system will be required in both Areas 3 and 4 such that all areas will be served from multiple existing water mains. In Area 4, this will result in the need for multiple crossings of the existing railroad and/or flood control channel.

Similarly, in order for the recycled water system to serve sub-areas "B," "C," and "D" within Area 4, the water system will be required to cross both the flood control channel and the railroad tracks at least once each.

The construction of such crossings may result in impacts to the environment. The EIR should describe these connections and should discuss any environmental impacts that may arise from their construction. Similar revisions to the water system description should be made to that provided in Section 3.12.3.2, Water Supply. In addition, the EIR should commit to close coordination with ACWD regarding water system planning and design.

8. ACWD Contacts: The following ACWD contacts are provided so that the City can coordinate with ACWD as needed during the CEQA process:

   - Eric Cartwright, Water Resources Planning, at (510) 668-4206, or by email at eric.cartwright@acwd.com, for coordination regarding water supply issues.

   - Steven Inn, Groundwater Resources Manager at (510) 668-4441, or by email at steven.inn@acwd.com, for coordination regarding ACWD's groundwater resources.

   - Michelle Myers, Well Ordinance Supervisor, at (510) 668-4454, or by email at michelle.myers@acwd.com, for coordination regarding groundwater wells and drilling permits.

   - Ed Stevenson, Development Services Manager, at (510) 668-4472, or by email at ed.stevenson@acwd.com, for coordination regarding public water system infrastructure and water services.

Thank you for the opportunity to comment on the Project at this time.

Sincerely,

Walter L. Wadlow
General Manager

es/tf
cc: Robert Shaver, ACWD
Eric Cartwright, ACWD
Thomas Niesar, ACWD
Steven Inn, ACWD
Michelle Myers, ACWD
Ed Stevenson, ACWD

CITY OF Fremont

Community Development
39550 Liberty Street, P.O. Box 5006, Fremont, CA 94537-5006
www.fremont.gov

January 19, 2010

City of Newark
Attn: Terrence Grindall
3701 Newark Boulevard
Newark, CA 94560

RE: Newark Area 3 & 4 Specific Plan

We have reviewed the Draft EIR for the proposed Area 3 & 4 Specific Plan and offer the following comments on the completeness and conclusions of the Draft EIR.

Transportation

1. On page 39, Section 3.2, last sentence, should be revised to state that acceptable LOS for signalized intersections in Fremont is LOS D or better.

2. On pages 48 and 49, the two intersections of Thornton Avenue and SR 84 Eastbound Ramps (Newark) and Paseo Padre Parkway and SR 84 Westbound Ramps (Fremont) should be removed from non-signalized intersections list and included in the signalized. Traffic signal construction for these two locations were completed in early part of 2009. Revise all write-ups and analysis about these two intersections to include information that the signalization of the intersections has been completed.

3. Please explain and include the intersection LOS analysis under the cumulative conditions that was discussed in the Transportation Impact Analysis (Appendix B) in the EIR. In the EIR, there is no discussions of the intersection LOS analysis under the cumulative conditions, only the segment LOS analysis for CMA consistency were include in the EIR. The Alternatives discussion (pg. S-55, pg. 313) of the No Project GP Buildout reference LOS F, but no project analysis is expanded upon after the summary of alternative. Fremont practice is to apply LOS standards to cumulative intersection analysis for the year 2030.

4. A Stevenson Boulevard grade separated bridge over the UPRR right-of-way at the westerly end of Stevenson Boulevard is proposed to access Area 4 of the plan. Any Stevenson Boulevard proposed roadway improvements should be a "complete street" for full access to the area for pedestrians and bicyclists. Complete improvements of Stevenson Boulevard to Cherry Street should occur prior to the completion of the overcrossing. Also, include in the discussions that all costs regarding the construction of the proposed grade separated Stevenson Boulevard extension over the UPRR right-of-way shall be the responsibility of the development or the City of Newark. The City of Fremont is not a planned participant in the improvement.

5. Include in the plan or mitigations for the plan the requirement to provide schematic or plans of any proposed access improvements on Stevenson Boulevard frontage to the City of Fremont for review. Any access improvements on the Newark side of Stevenson Boulevard should not adversely impact access to Stevenson Boulevard for vehicular or pedestrian access on the Fremont side. The development shall provide all needed full street improvements on Stevenson Boulevard to access Area 3 development as a complete street capable of serving the intended uses and modes of transportation.

6. For the traffic signal warrant analysis of Encyclopedia Circle/Stevenson Boulevard and Boyce Avenue/Stewart Drive we do not concur that the conclusion should be less than significant based on the EIR analysis. It is likely that under cumulative analysis these intersections operation are further degraded. A plan and costs of the identified signal installation should be estimated for each location in the Final EIR. Fremont recommends that a mitigation be added that includes timing triggers that if the City has included either of the two intersections in its Capital Improvement Program, signal prioritization list, or as part of a traffic impact fee project list prior to the final map for the development of Area 3 or Area 4 that a fair share contribution be provided by the proposed development to the City of Fremont. Alternatively, appropriate mitigation could also include a one time contribution prior to final map of a fixed dollar amount based on current estimated project costs and fair share estimates with the funds deposited with the City of Fremont traffic signal prioritization improvements program.

Hazards and Land Use Compatibility

The setting description of the EIR should more appropriately disclose that the surrounding uses are not just Industrial, but are in fact General Industrial. The types and range of uses allowed in General Industrial should be explained. Of note, General Industrial allows for the most intense users of hazardous materials. In addition, the setting should disclose that the City of Fremont Fire Training Facility will be completed and operational by the end of 2010, located near the intersection of Eureka Drive and Stevenson Boulevard. This facility includes open grounds for training activities and an operational burn tower for training purposes.

The EIR air quality analysis identifies CertainTeed as an air pollution source, but does not identify substantial hazardous materials users in the area and the potential for accidental exposure and off-site consequences. CertainTeed and the abutting Hexion Specialty Chemical to the south of CertainTeed, at 41100 Boye Road, are the most substantial users in the area. Hexion is within 1,000 feet of the Area 3 at its closest point. In addition, all of the area adjacent and south of Area 3 is designated General Industrial and could have potential substantial hazardous material users. The issue of accidental release and potential off-site consequences were not analyzed in the Hazards Section of the EIR. Analysis of potential off-site consequences from hazardous materials users should be included in the EIR and potential mitigation measure for protection of sensitive users. As noted in the NOP comments, consideration of a land use buffer of non-sensitive users nearest to Stevenson Boulevard should be considered in the plan.

Thank you for the opportunity to review the document and if there are any questions please feel free to contact me directly at kdiekmann@ci.fremont.ca.us or 510-494-4540. We look forwarding to reviewing the Final EIR when it is available.

Sincerely,

Kelly Diekmann
Senior Planner

cc: Jeff Schwob, Planning Director
Kunle Odumade, Transportation Engineer

From: Donna H. Olsen [mailto:tcecdonna@juno.com]
Sent: Monday, January 18, 2010 17:51
To: TERRENCE GRINDALL
Cc: tecedonna@juno.com
Subject: DEIR letter for Areas 3 and 4

Tri-City Ecology Center

P.O. Box 674, Fremont CA 94537 510-793-6222 www.tricityecology.org

January 16, 2010

City of Newark

Terrence Grindall, Planning Department

37101 Newark Blvd.

Newark, CA 945360

Re: Newark Areas 3 and 4 Specific Plan Project Draft EIR, SCH No. 2007052065

Dear Mr. Grindall,

Thank you for the opportunity to comment on the DEIR for Areas 3 and 4. Our comments will be brief. The ecology center has followed the development plans for this area for many years. We toured the site as early as 1989 when it was still known as Whistling Wings & Pin Tail.

Open Space & Conservation, General Plan (Section 3.1): The proposal seems inconsistent with the Newark General Plan Goals (**Goal 1**, Policy a Program 5 and Policy b Programs 10 and 11 and **Goal 2** policy a). The goals of open space preservation and respect for the Don Edward San Francisco National Wildlife Refuge boundaries are given little consideration with this plan.

Transportation & Air Quality: There is no doubt that the proposal will be detrimental to regional air quality. Increased vehicle emission would increase the "carbon footprint".

A. The mitigation measure of public transit is not realistic. Recent AC Transit cutbacks in Fremont and Newark have *reduced* existing transit service.

B. Appendix C - Air Quality Analysis (Introduction, page 2,) states, "Fill would be expected to come from BART extension project for subway under Lake Elizabeth." Has this concept been discussed with the City of Fremont? If so, what are the arrangements?

Noise: The mitigation of exposure to noise seems to be walls (barriers). While reducing noise, walls are aesthetically unpleasing, and do not allow open space views.

Biological Resources:

A. Area 4 is a biologically sensitive area with wetlands scattered throughout the site. A plan that causes the loss of 85.6 acres is not acceptable. The mitigation measures of off-site relocation and/or 1.5: 1 replacement are unsatisfactory.

B. The impact on the burrowing owl‘s (species of concern, [SOC]) habitat as well as that of the peregrine falcon, tri-colored blackbird (species of concern) , bats (SOC), the salt marsh harvest mouse (endangered), wandering shrew (SOC) is significant and not able to be mitigated satisfactorily. In addition, the area is used by migratory birds. As noted in the document, all of this falls under the Migratory Bird Treaty Act and California Endangered Species Act.

C. Non-native species are a severe threat to native plants. The possibility of invasive plants is great due to the introduction of landscaping (golf course and residential lawns and gardens).

D. The loss of existing trees is not acceptable.

Cultural: Area 4, and Area 3 to a lesser degree, may be the site of undiscovered archeological finds. Area 4 has been relatively undisturbed and needs to be carefully monitored.

Geology and Soils:

A. Both areas are subject to seismic shaking, liquefaction and lateral spreading impacts. The amount of mitigation required overcome these problems is huge.

B. The area has shallow groundwater conditions and could have an impact on grading and corrosive soils considerations. It may also have an impact on plants, trees and grasses (project landscaping).

Hydrology and Water Quality: Development in Areas 3 and 4 could result in water pollution and thus the degradation of waters flowing into the Bay. Protection of Bay waters is paramount.

Hazards and Hazardous Materials: Hazardous materials contamination from previous uses poses problems as well as hazardous materials associated with the potential development.

A. Schools constructed in Area 3 are exposed to previous pesticide use.

B. Houses in Area 4 would be exposed to contamination of various previous uses, including the auto dismantlers (fill areas).

C. Potential use of pesticides and herbicides on the proposed golf course is of concern.

Aesthetics: To quote from the document, “The proposed residential and golf course development and Stevenson Blvd. railroad overpass would substantially degrade the visual character of Area 4.” There are no mitigation measures applicable.

Conclusion and Recommendation: The DEIR makes it abundantly clear that there are “Significant Unavoidable Impacts” (Page S-530). In addition, there are numerous serious biological impacts involved with the proposed project. We do not believe that they have been adequately mitigated. Area 4, is a fragile wetland environment, which requires preservation and protection.

The center recommends the *No Project Alternative*.

Because the *No Project Alternative* requires “the identification of an environmentally superior alternative among the other alternatives”, we recommend the *No Development in Area 4 and Higher Density in Area 3 Alternative* as the next best plan. However, “Higher Density” is a subjective term. The continued development on Area 3 should be designed in an environmentally-sound manner, using green principles throughout.

We further recommend that Area 4 be donated to the Don Edwards San Francisco Bay National Wildlife Refuge…..a gift for future generations.

Sincerely,

Donna Olsen, Chair

Tri-City Ecology Center

Cc: Citizens Committee to Complete the Refuge

Grassetti
Environmental
Consulting

Environmental Assessment
NEPA/CEQA Compliance
Project Management
Planning and Permitting
Regulatory Process Consulting

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

January 17, 2010

SUBJECT: REVIEW OF ENVIRONMENTAL IMPACT REPORT FOR NEWARK AREAS 3 AND 4 SPECIFIC PLAN PROJECT

Dear Mr. Grindall;

Grassetti Environmental Consulting (GECo) has been retained by the Citizens' Committee to Complete the Refuge to review the Environmental Impact Report (EIR) on the Newark Areas 3 and 4 Specific Plan and relevant background documentation for technical adequacy and compliance with the California Environmental Quality Act (CEQA) and its implementing Guidelines. This review was conducted by Richard Grassetti, the firm's principal, and is based on my 25 years of experience in CEQA document preparation, review, and training. My comments are summarized below.

Uses of the EIR

The DEIR is vague as to its use with respect to future projects. On the bottom of p. 2, it cites instances where additional environmental review may be required. All of the referenced sections apply only to changed circumstances or changes to the project. This "disclosure" fails to address the need for subsequent Project level environmental review for ANY subsequent discretionary action required to implement the project. This DEIR is a programmatic analysis that neither describes nor assesses project-specific impacts of implementing any specific components of the project. Therefore it cannot assure, absent subsequent CEQA documentation, that full disclosure, analysis, or mitigation was included for as-yet undesigned specific project components. Please clarify that this is a program-level EIR and that project-level CEQA reviews will be required for any subsequent non-exempt discretionary project approvals.

Project Description

The project description defers the development of a number of plans the contents of which are critical to identifying the magnitude of potential project impacts. These include the Golf Course design, golf course management plans; herbicide, pesticide and

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fertilizer application plans; water quality management plans; grading plans consistent with proposed new land uses etc. The project description also includes grading to raise the portions of the site proposed for development to a minimum floor elevation of 11.25 feet, but the sea Level Rise discussion in the EIR notes that this floor level will likely be inadequate to project for sea level rise (and tidal surge) through the latter part of this century. Please add a description of the additional quantities of fill required to protect the project from sea level rise anticipated during the project live span (100 years?). Please note that the 50-year project life assumed in the Sea Level Rise discussion is illogical in the context of houses, which typically are in use far longer than that (at least 100 years; by the EIR's logic, houses built in 1960 would have no useful life left). For the 2.1 million cubic yards of fill proposed to raise the site to minimal flood protection levels, please describe where the fill is coming from, where/how it will be stockpiled, and by what routes it would be transported.

Project Objectives and Alternatives

Under CEQA, Alternatives are required to reduce project impacts while still achieving most of the project's objectives, even if at a higher cost. An EIR is required to assess a reasonable range of potentially feasible alternatives (Guidelines Section 15126.6). Ultimate feasibility of alternatives may be determined at the CEQA Findings stage, after completion of the Final EIR. Project objectives may not be so narrow as to unreasonably restrict the range of alternatives considered in the EIR or preclude other feasible alternatives that may be environmentally superior. This EIR includes Project Objectives that assert needs for which there is no supporting evidence, and which unreasonably restrict the range of alternatives considered in the document. Specifically, the project objectives set forth on p. 26 of the DEIR are little more than a regurgitation of the project description. The only substantive difference is that the Project Objectives include "up to" the number of units specified in the project description. Therefore, it is either literally impossible to find an alternative that would comply with all of the project objectives or, if the "up to" provisions are taken literally, nearly any housing would comply. As discussed below, the EIR uses the former interpretation in its assessment of whether the alternatives meet project objectives.

The DEIR identifies two no-project alternatives and four "build" alternatives. The DEIR concludes that all alternatives other than the No Golf Course Alternative fail to meet the project's objectives (see table 5.5-1). These alternatives fail to consider the "up to" provision in the project objectives, and, instead, assume that the objectives require buildout of the maximum number of units allowed. Further, reasons given in the EIR for the "No development in Alternative 4" alternative not meeting project objectives is that it would not include executive housing in Area 4, yet the project objectives do not specify any such objective. In addition, given the project objectives' "up to" clause for

residential uses, this alternative should be redesigned to include housing densities that do not exceed "the community's vision" (see p. s-55, first paragraph).

Similarly, the "Reduced Housing Alternative" is incorrectly judged to not meet the objective of executive housing in Area 4 that isn't even included in the list of Project Objectives on p. 26 of the DEIR. Using a varying and overly narrow set of "project objectives" to reject alternatives fails to meet CEQA requirements.

The No Golf Course alternative is not a true alternative, but rather a mitigation measure aimed at reducing impacts to biological resources. In order to form a true alternative, it should be combined with the "Reduced Housing Alternative" to form an alternative that mitigates more of the biological, geologic, air quality, and traffic issues. Please add this alternative to the FEIR.

Overall, the level of analyses of impacts of the alternatives is insufficient to permit decision makers to seriously consider the relative merits of the alternatives. There is less than one paragraph of impact analysis for each of the "Build" alternatives (factoring out the General Plan compliance language). This fails to comply with the Laurel Heights dictum regarding alternatives, that the EIR provide "meaningful detail" and "sufficient information to the public to enable it to understand, evaluate, and respond" to the agency's conclusions. (*Laurel Heights Improvement Assn. v. the Regents of the University of California,* 1988). Please add a discussion comparing each impact of the alternative with that of the project, or explaining why they would be the same.

Technical Issues

It is my understanding that the Citizens Committee to Complete the Refuge is submitting a detailed list of technical deficiencies under separate cover. Therefore, the technical comments herein focus only on the most egregious deficiencies, in the CEQA context.

Traffic: Please add an analysis of the traffic impacts of hauling fill material from the BART tunneling project to the site. Please provide some evidence that fill would be available from that project for this project, as assumed in the EIR? If the BART project were to proceed prior to this project or after this project, where would the fill for this project come from? What would the traffic impacts be in that case?

Air Quality: The DEIR fails to correctly address emissions associated with trucks hauling fill. On p.p. 91-92 the EIR assumes that 100 truckloads of material would be transported each day. At 10 cubic yards/truck, the 2.156 million cubic yards of proposed fill would require over 215,000 trucks, resulting in over 430,000 one-way trips. At 100 trips/day, filling the site would require nearly 12 years to transport the fill, working 365 days/year.

Given that the EIR states that "all grading activities were assumed to occur in the first two years", the EIR air quality assessment (and traffic assessment, too) should have assumed over 600 haul-trucks per day (or more, if no weekend work is to occur). Please address impacts on air quality if BART tunneling fill were not available to the project.

Noise: the Noise analysis states, "close to the noise source, the models are accurate to within about plus or minus 1-2 decibels." For traffic noise, does this take into account the margin of error of the traffic projections? What would the noise margin of error be including the margin of error of the traffic model? The construction noise analysis on p. 109 fails to include any analysis of the 600 or more haul trucks required to transport fill to the project site each day for over two years. What route would those trucks use? Please identify sensitive receptors along that route? What would the noise impacts be? Please address impacts on air quality if BART tunneling fill were not available to the project. Please include an analysis of the effects of repeated single event truck noise as required by the *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* decision (2002). Please also address the impacts of noise on sensitive wildlife, especially breeding birds.

Biological Resources: Eviction of burrowing owls as proposed in mitigation BIO-4.2 does not mitigate for the loss of burrowing owl habitat. In addition, please cite studies indicating that these evicted owls are not depredated at a higher rate than if not evicted, or do not otherwise suffer population losses as a result of this eviction. If no such studies exist, impacts to owls should be considered significant and unavoidable. Purchase of existing habitat elsewhere does not eliminate the loss of habitat at this site. CEQA requires that project impacts be compared with existing conditions, under which the project would result in a net loss of burrowing owl habitat. Please note that, while CDFG might accept eviction and purchase of other existing habitat as mitigation for their permits, it does not constitute mitigation from a CEQA perspective. Similarly, destroying peregrine falcon nesting habitat after the young have left the nests (Mitigation BIO5-3) assumes that plentiful habitat exists elsewhere for the birds. Please provide supporting evidence for this assumption, including evidence that falcons do not prefer to nest in the same sites in subsequent years.

Geology: Mitigation GEO-1.1 requires further study and then construction of rigid or deep pile foundations. Are these types of foundations feasible for single-family houses? If not, liquefaction impact should be considered significant an unmitigable.

Aesthetics: The visual drawings of post-project conditions included in the Aesthetics section do not accurately portray post-project conditions, but are actually an artist's rendition of a buildings obscured by full-grown trees. Please provide actual photo-simulations showing the views in the photos both upon completion of the project and, if

desired, after 10 years.

Flooding: The assessment of flooding impacts inappropriately relies on 2009 FEMA 100-year flood maps that don't include any sea level rise component and incorrectly concludes that "the proposed Specific Plan development would not subject housing to 100-year flood hazards. CEQA case law cautions against use of significance criteria that are not protective of the environment (see, for example, *Berkeley Keep Jets over the Bay v. Board of Port Commissioners*). Yet the DEIR relies on flood hazard maps that are intended not for impact assessment but rather for insurance purposes. Those maps are especially deficient because they ignore perhaps the greatest likely source of flooding in the project area, namely sea level rise.

While the EIR does include a summary of sea level rise in the cumulative impact section, it then fails to require mitigation for impacts assumed (possibly erroneously) after 50 years, and also fails to add the anticipated two feet of storm surge (acknowledged in that section) to the sea-level rise estimates. This results in an inadequate assessment of likely future flood hazards. Further, on December 8, the National Academy of Sciences published a new analysis showing that sea level rise is occurring faster than previously projected and could reach .75 to 1.9 meters by 2100 (http://www.sciencedaily.com/releases/2009/12/091207165252.htm). This is nearly twenty inches higher than the highest estimate uses in this DEIR.

The EIR should assess the potential impacts of sea level rise on flooding, both from the Bay and from stormwater that may back up in local drainage channels during heavy rainfall events and higher bay tides/sea levels. Given that there are a range of sea level rise estimates, the EIR should either bracket its impact assessment with the upper and lower sea level rise estimates, or just use the worst case estimate in its evaluation of this topic. Absent this information, this EIR fails to adequately address an important potentially significant impact.

Public Services:

Water: The water supply assessment uses the wrong baseline in assessing project impacts. That assessment compares the project's water demands to projections of water demand in the Coty's UWMP. However, CEQA requires that the comparison be made to existing conditions. The EIR has tables showing water demand, but not supply. Please show how the project's impacts would be less than significant in a drought period, where supplies are already considered insufficient.

Schools: The schools analysis acknowledges that the project's student generation would exceed the capacities of some local schools, based on 6-year-old data. However the

DEIR fails to analyze whether additional schools (beyond the one proposed as part of the project) would be necessary to house these students, and, if so, what the impacts to the physical environment might be of constructing those schools. While it is correct that an EIR cannot require additional schools fee, this does not relieve the EIR of the requirement to analyze and disclose the project's impacts on schools, including the impacts of new required school facilities, locations of potential school sites, and other schools-related impacts, including increased transportation of students.

Parks: The EIR states that Newark has a standard of 3.5 acres of park per 1000 residents. This would result in a project demand of about 12 acres of park for the 3427 estimated new residents. The EIR then inexplicably states that the provision of 5.5 acres of parks and trails not meeting the City's minimum park size would meet the project's needs. It also indirectly suggests that use of the school field and golf course, neither of which would be dedicated parks land, would somehow offset this shortage. Please clearly describe how the project would be providing the necessary park acreage in the required size.

Conclusion

As described above, this DEIR has a number of substantive flaws that fail to comply with CEQA analysis and disclosure requirements. These flaws must be rectified and the DEIR recirculated. Please feel free to contact me at 510 849-2354 if you have any questions regarding the comments herein.

Sincerely

Richard Grassetti
Principal
Grassetti Environmental Consulting

CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto CA 94306 Tel 650 493-5540 Fax 650 494-7640 e-mail: marsh@refuge.org

Terrance Grindall
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, CA 94560
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January 18, 2010

Re: Draft Environmental Impact Report (DEIR) Newark Areas 3 and 4 Specific Plan Project

This responds to the DEIR for the proposed specific plan for Areas 3 & 4 in Newark, CA. Areas 3 and 4 comprise approximately 850 acres of land (estimates vary from 850 acres to 856 acres within the DEIR and Specific Plan) located at the western edge of the City of Newark and bounded on the north by Mowry Avenue, to the east by Cherry Street, to the south by Stevenson Boulevard, and to the west by Mowry Slough.

The Citizens Committee to Complete the Refuge (CCCR) thanks you for the opportunity to review and comment on the DEIR for the Area 3 and 4 Specific Plan Project DEIR. Consultants Richard Grassetti of Grassetti Environmental Consulting and Carol Beahan of Wildscape Engineering Services have prepared substantive comments on behalf of CCCR and submitted letters under separate cover. Based upon our review of the DEIR we find it contains serious omissions, inaccuracies, and flaws that must be rectified to comply with California Environmental Quality Act (CEQA) requirements. For these reasons, as well as those articulated in the letters submitted by Mr. Grassetti and Ms. Beahan we urge the City to correct the fatal flaws of this DEIR and re-circulate the revised document.

Project Areas: Area 3 is approximately 296 acres and the portion of land bounded by Mowry Avenue, Cherry Street, Stevenson Boulevard, and the Union Pacific Railroad tracks. The current general plan for this portion of the specific plan is Special Business Park, Public Open Space, and Public Institutional. The current Specific Plan proposal only addresses re-designation of 77 or 78 acres (both numbers are used) located in the southeastern-most corner of the site.

Area 4 is approximately 560 acres (552 and 559 acres also used) of land surrounded by Mowry Avenue, the Union Pacific Railroad tracks, Stevenson Boulevard and the border between the City of Newark and the City of Fremont, and Mowry Slough. The general plan states Area 4 is planned for high-quality low-density residential use, and 18-hole golf course, and open space. The General Plan notes "if a golf course is found unfeasible then another recreation use that is acceptable to the City shall be provided as a condition of development."

Introduction: The DEIR concisely and adequately describes the requirement of the California Environmental Quality Act (CEQA) to prepare and EIR and the function of an EIR – that it is an "informational document, which will inform public agency decision makers, and the public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project" §15121(a). Also that certain types of "projects" such as those pertaining to the adoption or amendment of a

comprehensive zoning ordinance or local general plan, don't require an EIR be as detailed as an EIR on a specific project that might follow §15146 (b). And that:

> An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enable them to make a decision *which intelligently considers environmental consequences*. An evaluation of the environmental effects of the proposed project need not be exhaustive, but the *sufficiency of an EIR is to be reviewed in light of what is reasonably feasible*. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection, but *for adequacy, completeness, and a good-faith effort at full disclosure*. [emphasis added]

The DEIR fails to meet these requirements as we will discuss in sections to follow.

Uses of this EIR: While it appears the intent is that this DEIR serve as a "program" level DEIR, the City has not clearly defined what types of subsequent actions would trigger the requirement of preparing a "project" level EIR.

- Would changing the use of Sub Area D from "golf course" to some other form of recreation e.g. active sports fields trigger the preparation of an EIR? p. 12 of the DEIR states, "A conditional use permit will also be issued to allow the construction of a golf course *or another recreational use in Area C.* Other uses, depending on the type of recreation, could introduce different types and magnitudes of environmental impacts and should require the preparation of a "project" level EIR.
- Would a residential development proposal within the Specific Plan area that would fill 39 acres of wetlands trigger the necessity to prepare an EIR? The responsibility for submitting mitigation and monitoring plans is deferred to future developers – not only does this piece-mealing of the review of impacts versus mitigation, it also prevents meaningful public review and comment unless additional CEQA review is triggered.
- Would alignment of the Bay Trail along the Mowry Slough levee trigger preparation of a supplemental EIR?

Please provide some clarification.

Also under this section is the statement: "Acceptance and maintenance/access easements along levees and/or permit to move tide gate(s)," by Alameda County Flood Control and Water Conservation District (ACFC&WCD).

- What levees does this statement refer to? All levees both internal to the project site and along Mowry Slough? Please clarify what is meant by this statement. Who would be performing the "maintenance," what tide gates are being referred to, and who would be responsible for moving them? It is our understanding that an agreement was reached between the owners of one of the parcels (Peery and Arrillaga) and the State of California and State Lands Commission in 1994 regarding the ownership of the tidal lands immediately adjacent to their property, whereupon Peery and Arrillaga quit claimed all their right, title, and interest in the waterways and lands lying westerly of the outer toe of the existing levee adjacent to Mowry Slough. In return, the State granted specific

easements for drainage (this does not remove the requirement for CWA authorization) in very specific locations. If tide gates are to be moved outside the areas defined in the 1994 agreement, permits may be required from State Lands Commission.

Project Description:

2.4.1.2 Area 3 – General Plan Amendment and Rezoning: In response to the Notice of Preparation (NOP) for this EIR, Regis Homes submitted comments dated May 23, 2007. In their comment letter, Regis Homes specifically requested the City consider allowing a Medium Density Residential (MR) General Plan designation for their property that is currently zoned industrial and has been vacant since 2001. The 8.75 acre parcel is situated between the Silliman Center and the Ohlone College campus and across the street from existing residential housing and Newark Memorial High School. Other sites not owned by the New Technology Park Associates are included within the proposed specific plan that would require rezoning.

- Why has this site been left out when the property owners have submitted a specific request to be included? The site could provide additional housing capacity for the City and should be considered for rezoning to residential or residential mixed use.

2.4.2.1 Area 4 – Vehicular and Pedestrian Access: An Emergency Vehicle Access (EVA) road will be provided to access development in Area 4 via Mowry Avenue through a locked gate.

- We assume all emergency personnel will have access to the key to the gate, but how would residents gain access through the gate in the event of an emergency?

2.4.4.1 Area 3 and 4 Street Standards and Improvements: Stevenson Boulevard: The information provided in the DEIR is inadequate to assess the potential impacts of this component of the Specific Plan on existing wetlands, aquatic habitat, and listed species.

- Will all construction of the proposed flyover fully avoid any impacts to the Pacific Commons/Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) mitigation area immediately southeast of Stevenson Blvd.? If not impacts to the biotic resources of this area must be clearly stated and mitigation measures proposed.
- The EIR states "No seasonal wetland, aquatic freshwater marsh, brackish marsh, or detention basin habitat occurs within the 78-acre project footprint of Area 3. Therefore, proposed development in Area 3 will have no impacts to these habitat types." Does this include the wetland mitigation area to the northwest of Stevenson Blvd.? If not, what impact will the Stevenson Boulevard flyover have on the existing wetland mitigation site? Impacts and mitigation measures must be provided.
- If no impacts within these existing wetland mitigation areas, the boundaries of the construction area much be clearly delineated to avoid adverse impacts to the mitigation areas on either side of Stevenson Blvd.

2.4.5 PG & E Towers and Lines: Please note if "crane access" is required for the use of a vertical cage or waist cage to raise the 230 kV tower (Number 0/5) adverse impacts to endangered species habitat may occur and consultation with the U.S. Fish and Wildlife Service

must occur in advance of any work in the area. In addition, seasonal prohibition of work may be required to avoid "take" of listed species.

Stockpiling of fill and construction of fill pad: The EIR does not adequately describe:

- where fill will be stockpiled (a generalized stockpile envelope could suffice),
- whether New Technology Park Associates will begin stockpiling material immediately (grading permit required),
- a more definitive period of time the stockpiled material might be stored than "for longer periods of time",
- whether wetlands fill will be necessary to access the stockpile site(s)
- who will be responsible for regularly inspecting the efficacy of mitigation measures to prevent mobilization of stockpiled soils into adjacent (?) wetlands
- at what point filled to be stockpiled will be tested for "quality" (this information will need to be made available to the USACE and RWQCB prior to placement in wetlands)
- sources of fill other than the Irvington BART station (and e.g. whether soil from the undergrounding of the Hetch Hetchy pipeline would even be suitable)
- What happens with the remaining fill if all the parcels in Area 4 aren't developed? Does it remain on-site in stockpiles forever or would it eventually be sold? Impacts of removing the fill on the newly developed and surrounding neighborhoods would require environmental review and mitigation measures.

The DEIR also fails to give any indication of how introduction of fill to the site might occur.

- Will it be all at once over the entirety of Sub Areas B and C in advance of the sale of land to developers of residential housing?
- Will it be in phases and if so, will the fill begin at the Union Pacific Railroad tracks and move out towards Mowry Slough as developers purchase the lands?
- Or will it occur in a more haphazard fashion and is there any possibility the western edges of Sub Area B could be developed prior to Sub Area c?

Answers to questions inform decision makers and the public about how undeveloped lands may be conserved or fragmented, which in turn influences the viability and value of any mitigation.

3.1.3.1 Newark General Plan – The General Plan (GP) dates back to 1992. The Land Use Goals and Policies must be updated to reflect current and developing recommendations for mitigating impacts of climate change, e.g. the siting of new development closer to existing transportation hubs to reduce vehicle miles traveled, embracing and incorporating the recommendations of the 2009 California Climate Change Strategy, etc. The GP goals and policies do not reflect new information regarding site geology, hydrology, or extent of wetlands.

Transportation Goals and Policies:

Goal 1: Provide for a quality environment with *smooth, convenient*, and *safe* vehicular travel throughout Newark.

The proposed project is located at the southernmost boundary of the City. The project will introduce 5 million car trips per year. There is no convenient public transportation to Area 4 – Area 4 is at least ½ mile away from an existing bus stop, and close to a mile away from the nearest shops, etc. It is unlikely parents in Area 4 would walk their child to school in Area 3 or to the Silliman Center. There is a public safety issue of children crossing over an at grade railroad crossing at Mowry Avenue to access the playing fields or recreational facilities of the Silliman Center. There is only one access road in to the development with only two lanes of travel.

Open Space and Conservation Goals and Policies:

- **Goal 1:** Encourage the conservation and preservation of unique open space and conservation of resources that help to define the quality and character of the City.

Policy b. Program 10: Evaluate every land development proposal for potential contributions to the Newark open space system. Identified unique open space, vegetation, animal habitat, or natural resource areas should be protected where possible and appropriate.

Policy b. Program 11: Avoid *development of any lands identified as having natural hazards* where potential risk cannot be reduced to acceptable levels through mitigation measures (e.g. flood hazards areas, lands with severe potential for earthquake shaking, liquefaction, etc.).

- Goal 2: *Acknowledge the San Francisco Bay National Wildlife Refuge acquisition and its value as a community resource*.
- Policy a: *Support actions to preserve and maintain the lands of the Refuge.*

The Specific Plan is in conflict with the City's Open Space and Conservation Goals and Policies. Development of over half of Area 4 is inconsistent with Goals 1 and 2. DESFBNRW – has identified most of Area 4 as a Priority 1 acquisition area because of the unique ability of the site to provide endangered species habitat, a diversity of habitats including pickleweed wetlands, seasonal wetlands, open water, transition zone to uplands and uplands. Proximity of the site to the Ohlone College campus provides a unique opportunity to incorporate the site into educational programs.

Proposed development would severely impact on site resources (human disturbance, use of chemicals, run-off from streets, nuisance species, light pollution, etc.) and resources on adjacent Refuge lands.

Environmental Safety Goals and Policies – Policy a. Program 4. Monitor information about the "greenhouse effect" and the possible resulting rising sea level and, when determined necessary, take or support actions to protect the Newark community from potential adverse impacts of such phenomenon.

This Specific Plan is inconsistent with the 2009 California Climate Adaptation Strategy – it is at best reactive, as opposed to the recommendation:

Consider project alternatives that avoid significant new development in areas that *cannot be adequately protected* (planning, permitting, development, and building) from *flooding*, wildfire and erosion *due to climate change*. The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is *to carefully consider new development within areas vulnerable to inundation* and erosion. *State agencies should generally not plan, develop, or build any* ***new significant structure*** *in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure*. However, vulnerable shoreline areas containing **existing** development that have regionally significant economic, cultural, or social value may have to be protected, and in-fill development in these areas may be accommodated. State agencies should incorporate this policy into their decisions and other levels of government are also encouraged to do so. (CS-2; OCR-1 and 2; W-4 and 9; TEI -2 and 7)."[emphasis added]

3.1.4 Land Use Impacts:

3.1.4.1 Thresholds of Significance:

For the purposes of this EIR, based upon Appendix G of the CEQA Guidelines, a land use impact is considered significant if the project will:

- conflict with any applicable habitat conservation plan or natural community conservation plan; or
- conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect;

The Specific Plan is inconsistent with Public Law 100-56, the recommendations of the Goals Project, and the recommendations of the 2009 California Climate Adaptation Strategy.

Public Law 100-556 the "Land Protection Plan, Potential Additions to San Francisco Bay National Wildlife Refuge, Alameda, San Mateo, and Santa Clara Counties, September 1990." The congressionally approved Refuge Expansion Boundary expressly identified large portions of Area 4 as Priority One for acquisition because of the ability of these lands to provide for the preservation and enhancement of highly significant wildlife habitat and for the protection of waterfowl and sensitive and rare wildlife species, including species known to be threatened with extinction.

The Baylands Ecosystem Habitat Goals Report is described as "The concept to develop regional wetlands goals is recommended by the Governor's "California Wetlands Conservation Policy" and by the Comprehensive Conservation and Management Plan (CCMP) of the U.S. Environmental Protection Agency's San Francisco Estuary Project. It is also supported by most of the agencies and non-governmental groups with major planning, operational, or regulatory interests in Bay Area wetlands."

The Goals Project Report (June 2000) states in the section of "Unique Restoration Opportunities," "…There are opportunities to restore historic tidal marsh/upland transitional

habitat and associated vernal pool habitat at the upper ends of Newark, Plummer, Mowry, and Albrae Sloughs." Under the "Recommendations" section the report states, "…Protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail duck club. The report also recommends that tidal influence be restored on this site and that seasonal wetlands be improved.

The 2009 California Climate Change Strategy states:

> p. 51 Wetland habitats from the Sacramento Valley southward to the Salton Sea and the tidal marshes of San Francisco Bay also provide essential wintering habitat for hundreds of thousands of birds as they migrate north and south along the Pacific Flyway.
>
> p. 52 Moreover, *inland migration is frequently hindered by development* such as bulkheads, seawalls, roads, and buildings. Continued growth and development in coastal areas will only *increase the direct pressure on remaining habitats and make inland migration more difficult*. Sea-level rise, especially at the increasing rates projected for the 21st century, may result in the loss of substantial areas of critical habitat for a variety of coastal species.
>
> p. 74 Habitat Protection **–** The state should identify priority conservation areas and recommend lands that should be considered for acquisition and preservation. The state should *consider prohibiting projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones.*
>
> The strategy should likewise encourage projects that protect critical habitats, fish, wildlife and other aquatic organisms and connections between coastal habitats. The state should pursue activities that can increase natural resiliency, such as restoring tidal wetlands, living shoreline, and related habitats; managing sediment for marsh accretion and natural flood protection; and maintaining upland buffer areas around tidal wetlands. *For these priory conservation areas, impacts from nearby development should be minimized, such as secondary impacts from impaired water quality or hard protection devices.*

The public law, policy, and strategy listed above emphasize the importance of Area 4 from a regional perspective. The mixture of wetlands, aquatic, and other habitats including uplands are important for sustaining current populations of waterfowl and listed and sensitive plant and wildlife species, as well as providing a hedge for these species and habitats in the face of sea level rise.

The Land Use Impacts proposed in Area 4 by the Specific Area plan are in conflict with regional, in fact State, policies and strategies, and the adverse impacts are significant.

San Francisco Bay Trail: ""The future Specific Plan developer(s) of Area 4 will be required to provide an easement for the Bay Trail to run along the top of the levees that form the western edge of the project, if that ultimately is the preferred alignment. The Specific Plan is consistent with the Bay Trail and does not conflict with efforts to complete the Bay Trail."

- We have repeatedly requested this alternative route be abandoned. We have done this in writing during the scoping period for the DEIR; we have made these comments publicly during community meetings. This will have a significant adverse impact on Biological Resources e.g. significant increase in human disturbance, noise, nuisance species on listed species and wetlands. Please refer to the discussion of Biological Resources for additional comments. If this alternative is proposed for implementation a "project" level EIR should be required, any necessary "improvements" to the privately owned levees described, and all environmental impacts identified.

3.2 Transportation: Were vehicle trips associated with the transport of school-aged children to and from school included in the traffic calculations? For all school levels? Were vehicle trips associated with transporting students to school from Area 4 included in the calculations? Were calculations done to account for parents driving their students from the Specific Plan area to other elementary schools should an elementary school not be constructed in Area 3? This could have a significant impact on congestion on surface streets during the morning commute.

Footnote 24, page 49, "The traffic counts that comprise the basis of the traffic analysis were taken in 2006-2007, when vehicle traffic was heavier than under current 2009 conditions. No major development has occurred in Newark since the traffic counts were taken, so the analysis is still considered valid and a conservative estimate of traffic impacts of the project."

The numbers used as background should reflect current traffic counts – 2009 conditions. Utilizing the 2006-2007 data when traffic was heavier would tend to make the projected impacts of the proposed Specific Plan, almost 5 ½ million car trips per year appear less significant.

3.3 Air Quality: The assumptions made when analyzing the impacts of haul trucks bringing fill to the project site are seriously flawed. If it is assumed 2.1 million cubic yards of fill will be delivered to the site with only 100 truck trips per day, then trucks with 20 cy yard capacity, working only 5 days per week would require four years to bring that amount of fill to the site, and that time frame may be conservative if two-feet of freeboard are required to reduce air quality impacts.

The EIR fails to address the fundamental flaw of the Specific Plan that is locating a large development at the edges of the city, away from city services and amenities, and away from major public transportation hubs. Rather than attempting to reduce vehicle miles traveled a true indicator of public transit-pedestrian-bicycle friendly development, the DEIR proposes mitigation measures that either still focus on automobile travel as the main mode of transportation (reducing LOS by widening streets, including dedicated turn lanes, etc.) while proposing public transit mitigation measures that are may not result in reduction in Greenhouse Gas Emissions (GGEs) because they do not provide for actual public transportation, rather the facilities associated with public transit (e.g. bus stop shelters, etc.).

> The Specific Plan shall incorporate the following measures, which would reduce transportation-related emissions. The measures listed in below are expected to include implementation of appropriate TCMs. Incorporation of these measures would reduce the impact to a less-than-significant level.

• Improve existing or construct new bus pullouts and transit stops at convenient locations along Cherry Street and Stevenson Boulevard. Pullouts shall be designed so that normal traffic flow on arterial roadways would not be impeded when buses are pulled over to serve riders. Bus stops shall include shelters, benches and posting of transit information;
• Appropriate bicycle amenities shall be included. This would include bike lane connections throughout the project site. Off-site bicycle lane improvements shall be considered for roadways that would serve the project;
• The City and project proponents shall *explore* and *implement feasible* means to bring transit or shuttle service to Area 4; [emphasis added]

These mitigation measures, while they may sound good on paper, have little value in reducing the GGEs of the Specific Area plan when it is estimated only 3% of the residents will ride bicycles, and only 12 people from the neighborhoods ride a bus during peak hours, if buses continue to be available. Nor does "exploring" or "implementing *feasible*" transit or shuttle service to Area 4 ensure this will actually occur.

Therefore, implementation of these mitigation measures cannot be assumed to reduce the GGE contributions of the Specific Area plan to a level that is less than significant.

3.4 Noise: The DEIR fails to identify, analyze or mitigate the impacts of noise or vibration on wildlife. Construction and post-construction activities may "harass" sensitive wildlife species, as well as migratory, and nesting birds by disrupting normal roosting, feeding, breeding, or nesting behaviors. Studies have revealed noise can impact a species ability to communicate with potential mates or can increase an individual's susceptibility to predation.
This analysis should be prepared and the results circulated for public review and comment.

Vibration – The DEIR fails to discuss construction impacts of soil compaction, whether vibration impacts will result from compaction activities, and how adverse impacts of the vibration generated on wildlife will be mitigated.

3.5 Biological Resources: We would like to commend the level of effort that went into identifying on-site resources.

Land Use Goals and Policies:

GOAL 2, Policy d. Support preservation of the lands of the San Francisco Bay National Wildlife Refuge, and protection of San Francisco Bay and bay lands.

Program 7. Support the activities of Federal, State, and regional agencies to preserve the existing lands of the San Francisco Bay National Wildlife Refuge.

Open Space and Conservation Goals and Priorities

GOAL 2 Acknowledge the San Francisco Bay National Wildlife Refuge acquisition, and its value as a community resource.

Policy a. Support actions to preserve and maintain the lands of the San Francisco Bay National Wildlife Refuge (SFBNWR).

The Specific Plan area is in conflict with the above cited goals and policies. The plan does not support the goals of preserving and maintaining the lands of the Refuge.

The Specific Plan states:

> While the City of Newark General Plan has identified development that is projected to occur within Area 4, this area has also been identified for its ecological value by regional planning efforts. The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future. The Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the (former) Pintail Duck Club." Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of the few places in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands. Upland habitats provide a buffer or transition area upslope from wetlands and marshes. Where such upland transition zones are located adjacent to tidal marsh, they provide important refugia for tidal marsh species during high tides that inundate most of the marsh plain. Even in nontidal areas, such upland habitat can provide refugia for wetland species during periods of flooding. (Appendix A, p. 16)
>
> And
>
> ...The value of Area 4 in providing upland transition zones adjacent to tidal wetlands has also been identified by the Baylands Ecosystem habitat Goals Report (1999), a report of habitat recommendations prepared by the San Francisco Bay Area Wetland Ecosystem Goals Project, a consortium of nine state and federal agencies, including the San Francisco Estuary Institute.

We concur with this assessment. Lands such as those identified for acquisition were included within the Refuge Expansion Boundary because of the scarcity of this habitat within the acreage of the original Refuge acquisition and its importance in preserving the biodiversity of the bay ecosystem. The Specific Plan proposal would consume most of the uplands habitat present within Area 4. Depending upon what figures one uses, either the information from the body of the text of the DEIR or the information from the Specific Plan there could be approximately only 53.5 acres of uplands habitat remaining if all of Sub Areas B, C, and D are developed. That is a mere 21% of the total undeveloped uplands in Area 4. Wetland creation is proposed in this upland area to off-set the losses of up to 85.6 acres of wetlands/waters habitat. Lastly, the remaining uplands in Area 4 would be located between the levees along Mowry Slough and the wetlands to be preserved and/or the development envelope leaving this area vulnerable to human disturbance, nuisance species, light and noise pollution, etc. thereby reducing its habitat value for species attempting to move upslope away from rising sea levels.

Thus, the Specific Plan will not support actions to preserve and maintain the lands of the [Don Edwards] San Francisco Bay National Wildlife Refuge and is in conflict with the Land Use Goals and Policies of the General Plan.

p. 117 – We concur that land management practices of frequent and ongoing disturbance has resulted in reduced habitat values. This is an artificial condition and habitat values would improve if agricultural habitats in particular seasonal wetlands were not frequently disced.

We also question whether (p.120) discing within the past three years of areas that have supported pickleweed cover isn't a violation of the Clean Water Act and Endangered Species Act, as areas that support pickleweed clearly are not in agricultural production and therefore should not qualify for agricultural exemptions. We are also extremely concerned that areas that were previously dominated by pickleweed but have been disced have been subsequently invaded by Russian thistle.

3.5.2.4 Jurisdictional Waters of the U.S./Waters of the State

We concur a Section 404 Clean Water Act permit from the U.S. Army Corps of Engineers (USACE) will be required for the placement of fill in wetlands/other waters of the U.S. In addition, certification or waiver will be required from the San Francisco Bay Regional Water Quality Control Board (RWQCB) under Section 401 of the Clean Water Act.

The proposed project is clearly not "water dependent," therefore, under the 404 (b) (1) Guidelines (40 C.F.R. 230.10) the applicants must rebut the presumption that a practicable alternative exists that is less environmentally damaging. The preamble to the Guidelines states that it is the applicant's responsibility to rebut this presumption. The Memorandum of Agreement between EPA and the Corps concerning mitigation under the CWA 404 (b)(1) Guidelines (Mitigation MOA) states:

1. Section 230.10(a) allows permit issuance for only the least environmentally damaging practicable alternative. The thrust of this section on alternatives is avoidance of impacts. Section 230.10(a)(1) requires that to be permittable, an alternative must be the least environmentally damaging practicable alternative *(LEDPA)*. In addition, Section 230.10(a)(3) sets forth rebuttable presumptions that 1) alternatives for non-water dependent activities that do not involve special aquatic sites are available…

2. Minimization. Section 230.10(d) states that appropriate and practicable steps to minimize the adverse impacts will be required through project modifications and permit conditions.

Sequencing requires the applicant must first *avoid* impacts to wetlands, next *minimize* those impacts, and only after avoidance and minimization of impacts has occurred, compensate for any unavoidable impacts. However, as wetlands are considered "Special aquatic sites" and it is presumed a less damaging practicable upland alternative to placing fill in wetlands exists.

USACE Permit Authorization: p. 73 of Appendix E, Biological Resources Technical Report states, "A permit from the USACE (*either a Nationwide Permit* or an Individual Permit,

depending on the impact) will be required from the USACE for any *Project-related impacts* to jurisdictional Waters of the U.S."[emphasis added]

Due to the regional environmental importance of Area 4, the complexity of issues that must be balanced (e.g. wetlands vs. uplands, endangered species and their habitats, etc.) it would be appropriate to submit an application to the USACE for the entirety of Area 4. We recognize that phasing will pose a problem, but clearly all of the development within the boundaries of Area 4 is inter-related. Certainly a precedent exists as both the San Francisco and Sacramento Districts have processed Clean Water Act authorizations for specific area plans.

Piece-mealing of project impacts is prohibited under the Clean Water Act and the National Environmental Policy Act (NEPA). The USACE definition of "Independent utility can be found in the Nationwide Permit definitions, "A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility." All projects within Area 4 will be dependent upon the establishment of a fill pad and utility infrastructure ranging from the establishment of the Stevenson Blvd. flyover to the installation and hook up of the storm drain system, electrical, etc. As such submittal of individual permit applications including nationwide permit authorization requests would be considered piece-mealing and should be prohibited.

Similarly it is not possible to determine if adverse impacts to listed species (USFWS) or wetlands and waters (USACE and Environmental Protection Agency – EPA) are adequately mitigated if the review is piece-mealed.

Furthermore, due to the regional significance of the site, the large amount of wetlands fill proposed, and the complexity of competing resource needs, it would be appropriate for the Corps to prepare an Environmental Impact Statement (EIS) for the Specific Area plan.

Thresholds of significance: Please refer to the discussion under 3.1.4.1 Thresholds of Significance under Land Use Impacts. As we stated earlier, we believe the Specific Plan conflicts with established regional planning for maintaining habitat diversity as well as recent State strategies for preserving biodiversity in anticipation of sea level rise impacts. The impacts of the Specific Plan on buffer areas adjacent to tidal wetlands, i.e. seasonal wetlands and uplands transition zones and uplands is significant and unmitigated.

The EIR is fatally flawed – Inadequate information provided:

Indirect Impacts:

Impacts of Alteration of Site Hydrology on Avoided Wetlands and Associated Species
The DEIR discusses some impacts to the hydrological regime of the site that might alter the extent and quality of unfilled wetlands. For example, p. 91 of the DEIR states:

> The Project is expected to affect hydrology by 1) increasing impervious surfaces and thereby increasing the rate and amount of runoff entering undeveloped areas, 2) decreasing the amount of water entering undeveloped areas with the addition of the golf course features that will most likely retain additional water through the evapotranspiration of large expanses of grass, and 3) adding nuisance flows into undeveloped areas during the dry summer months. These hydrologic alterations could affect the wetland and marsh habitats that will not be directly filled during site development.

However, the DEIR fails to discuss the impacts of groundwater pumping for the golf course on existing wetlands of high value. Page 11 of Appendix G – Hydrology states:

> Recharge of the seasonal wetland and marsh habitats near the Pintail Duck Club from groundwater seeps occurs in mid-to late-summer. Evidence of this recharge from groundwater seeps includes bubbling water and the presence of a greater extent of surface water and hydrophytic vegetation in areas near the former Pintail Duck Club during the late summer months as compared to water levels in the early spring or summer, as observed in the summers of 2006, 2007, and 2008.

And page 14, of that appendix states:

> Before reclaimed water is available, the golf course will be irrigated using an existing onsite well with an estimated demand of 490 acre-feet per year. This well will draw from ACWD's managed groundwater resources in the Niles Cone without placing a burden on the District's potable water production facilities.1 Therefore, the project will have a ***less-than-significant*** impact on groundwater supplies or areas of groundwater recharge.

But provides no assessment of what if any impacts groundwater pumping will have on Area 4 seasonal wetland and marsh habitats near the Pintail Duck Club.

The DEIR must also give some indication of the areal extent of indirect impacts, the number may be conservative, but based upon a "worst case scenario" what is the areal extent of indirect impacts that would require mitigation?

Nuisance species: The DEIR provides a section that describes some of the potential impacts of invasive plants species and preserved, created, and enhanced wetlands, but provides no such discussion of nuisance species. The DEIR admits nuisance species such as domestic pets and feral cats may pose problems for existing wildlife populations, but fails to identify the suite of likely nuisance species or to suggest mitigation measures to reduce their negative impacts on wildlife species in general and listed and sensitive species in particular. For example, the Specific Plan depicts picnic areas overlooking wetlands habitat, but the DEIR fails to discuss the attractiveness of trash cans to nuisance species like raccoons, gulls, corvids, etc. or what measures will be implemented to prevent access to garbage, etc.

The DEIR mentions a mitigation measure requiring dogs to be on leash along the levees, but does not mention how this issue will be addressed for other areas of the development, nor how it will be enforced.

Page 141 of the DEIR states:

> Domestic pets, cats in particular, may stray from the project's residential areas and may depredate these potentially breeding special-status species or their nests. Non-native mammals are likely to increase on the project site following development. These species may compete with or prey on some of these special-status species. As discussed below under *Impacts to Sensitive Habitats and Species from Recreational Disturbance*, golfers and visitors may go beyond established recreational areas and access the ACFC&WCD and Mowry Slough levees which may disturb, crush, or degrade habitat for these species. Planting of trees within the golf course or residential areas will provide additional perches and nesting sites for raptors that may prey on these special-status species.
>
> If on-site mitigation for impacts to wetlands, waterbird foraging habitat, and special-status species habitat is provided per measures to mitigate other project impacts, such mitigation will increase the extent and quality of nesting and/or foraging habitat for these special-status species, restoring the project's adverse effects to some extent.

There is no mention of specific mitigation measures dealing with feral cats, gulls, corvids, Canada geese on the golf course, etc. Rather the DEIR concludes that because additional high quality habitat will be provided through mitigation and enhancement these significant adverse impacts will be less than significant.

See the discussion below regarding compensatory mitigation that explains why such a determination cannot be made.

Please add a section to the DEIR identifying nuisance species that are likely to occur and mitigation measures that are enforceable and effective to ensure nuisance will not have a significant adverse impact on wildlife species in general and listed and sensitive species in particular.

Compensatory mitigation – wetlands, waters, species:

Pursuant to §15121(a) and §15146(b) of CEQA, the DEIR does not provide decision-makers or the public a clear understanding of the location or acreages of habitat in which compensatory mitigation could be implemented for wetlands and species. Thus decision makers and the public are unable to determine if the mitigation measures purported to reduce significant adverse impacts to a level that is less than significant are realistic and capable of being implemented.

The DEIR proposes 1.5:1 replacement of seasonal wetlands that may be created/enhanced on-site, off-site, mitigated through the purchase of mitigation credits, etc. Mitigation ratios cannot be ascertained to be appropriate without understanding the opportunity to evaluate the:

- likelihood of success of implementation (e.g. does sufficient hydrology to maintain the created wetlands without detriment to existing habitats, etc.),
- the landscape context in which the habitat would be created (e.g. for salt marsh harvest mouse habitat is upslope escape habitat available free from human disturbance and nuisance species impacts and in an area that wouldn't make the mouse susceptible to predation?),
- the surrounding land uses (e.g. open space or residential? isolated or corridors available? Etc.)
- nature of habitats that might be converted from one type to another
- proximity of off-site mitigation to project site

- in-kind vs. out-of-kind mitigation
- whether mitigation is being proposed for more than one type of impact in the same area (double-dipping mitigating for more than one impact in the same acreage is not acceptable – e.g. expecting seasonal wetlands to provide 50% burrowing owl foraging habitat)

The DEIR should clearly indicate the area and acreage available in which to create wetland habitat, where wetland enhancement might occur on-site given the current development envelopes, and how indirect impacts would be prevented from degrading the value of the mitigation creation and enhancement activities. Based on calculations from information provided in Appendix H, Part 1 and from the Specific Plan, it appears the amount of uplands available in which wetlands and sensitive species (e.g. burrowing owl) mitigation could occur would be approximately 53.5 to 59 acres.

Clearly this is not enough area in which to create 1.5:1 mitigation for loss of wetlands. The DEIR must provide more definitive and realistic mitigation measures, given the "worst case scenario" of up to 85.6 acres of wetlands fill and a currently unknown figure of indirect impacts:

- how much mitigation can occur on-site,
- where will it be located on-site (Mitigation squeezed between the development envelope and the outboard Mowry Slough levee may not provide adequate escape habitat for the salt marsh harvest mouse, may become inundated over time, may be subject to constant disturbance, etc.)
- how much will need to occur off-site,
- does land that could be acquired to mitigate the impacts of Specific Plan implementation actually exist within 10 miles of the project site along the eastern shoreline? It is our impression that most of the land from San Leandro down to Alviso are in some form of public ownership. Thus is this even a viable mitigation measure?
- Where would mitigation credits be purchased and for what habitat and species?

These are issues that are critical in determining the efficacy, long-term viability, and feasibility of the proposed mitigation measures in actually lowering the significant impacts of the project to levels that are less than significant. Without this information the DEIR cannot assert the adverse biological impacts are less than significant.

Proposed mitigation measures are unenforceable or ineffective:

Page 141 of the DEIR states:

> Maintenance activities around the golf course and residential areas, or golfers and residents, who enter natural areas, may unintentionally disturb or destroy nests. Although the project does not include the establishment or improvement of any formal trails along Mowry Slough, the number of people and domestic animals expected to access the levee along Mowry Slough will be greater following project development, subjecting pairs of these species nesting along Mowry Slough to more disturbance.
>
> And

The DEIR mentions that implementation of the Specific Plan may result in more people accessing the levees and walking their dogs in these areas, more specifically that levee users may "bring dogs to these areas that may harass or prey on sensitive bird and mammal species." (p.154)

The DEIR proposes mitigation measures as follows:

> Incorporation of the following measures will reduce special status species and sensitive habitat impacts to a less than significant level:
>
> **MM BIO-9.1:** As the design of the golf course progresses disturbance by golfers of adjacent sensitive habitats and species shall be minimized. For example, high-use areas such as tees and greens shall be set back from the edge of the golf course, and broad rough/out-of-bounds areas shall occur along the interface between the golf course and sensitive habitats.
>
> **MM BIO-9.2:** On the golf course, areas that are "out of bounds" (which will include the artificial burrowing owl burrow complexes and all natural areas that are not directly filled during golf course construction) shall be clearly marked as such, explaining the importance of preserving the ecological integrity of the adjacent natural areas. Signs will be erected along the ACFC&WCD levees and along Mowry Slough describing the ecological value of adjacent wetland areas and instructing users to stay on the ACFC&WCD levee tops, stay out of sensitive habitats, and keep dogs on leashes. **(Less Than Significant Impact with Mitigation)**

Human disturbance of nesting birds can result in abandonment of nests and chicks, resulting in decreased reproductive success (Rodgers and Smith 1995, Carney and Sydeman 1999, USFWS 2001, Ruhlen and others 2003, Lafferty and others 2006). Disturbance can also lead to decreased abundance or behavioral alteration of non-breeding birds (Burger and Gochfeld 1991, Schummer and Eddleman 2000, Lafferty 2001, Burger and others 2004).

Signage has been demonstrated to be completely ineffectual in reducing trespass into areas supporting populations of sensitive or listed species. Recent studies by USGS scientist Kevin Lafferty at the Coal Oil Point U.S. Reserve in Santa Barbara (*2005 Final Report on the Western Snowy Plovers; Restoration of breeding by snowy plovers following protection from disturbance, Biodiversity and Conservation 92006) 15:2217-2230)* concerning human impacts to shorebirds on a beach showed that after a year of very adequate signage there was no improvement in the public's adherence to staying out of restricted areas. However, once a steward/docent program was in place on the beach, the public's compliance with restricted zones increased exponentially.
While a docent program may not be possible, monitoring of public compliance with signage and an enforcement program must be implemented.

Refuge staff have extensive experience with the issue of people along levee trails failing to comply with leash requirements. At Bair Island signage was posted regarding leash laws and the consequences should dog walkers fail to comply. A required % of compliance was posted, in addition volunteers provided information, consequences of non-compliance was advertised – no dogs allowed, and non-compliance was monitored. In the end, even with an extension of the monitoring period, the public failed to comply with the leash requirement, and dog walking may be prohibited once trails are reopened to the public (currently shut down for restoration work).

Unless some regular enforcement program is funded and implemented on a regular and frequent basis, access to the Mowry Slough levees should be prohibited.

Similarly, unless an enforcement program is funded and implemented for sensitive habitat areas on the golf course and elsewhere in the development, a determination cannot be made that the impacts of human disturbance have been reduced to less than significant levels cannot be made.

3.5 Biological Resources additional comments:

Mitigation measures for nesting peregrine falcons, raptors, loggerhead shrike, tri-colored blackbirds and bats do not provide for replacement of lost nesting/maternity roost habitat.

Buffer zones around sensitive species should be reviewed and approved by the California Department of Fish and Game (CDFG) and USFWS.

Environmentally Sensitive Area and exclusion fencing for the salt marsh harvest mouse and salt marsh wandering shrew should include installed and inspected daily by a qualified mammalogist. Use of weed whackers should be prohibited in areas where hand removal of vegetation is required … *hand removal*…

Mitigation ratios will be determined during Section 7 consultation (Biological Opinion process) with the USFWS for impacts to habitat of salt marsh harvest mouse and salt marsh wandering shrew. The mitigation and monitoring plan will require the approval of the USFWS, CDFG, USACE, and RWQCB.

If trucks must cross wetland areas, measures must be taken to reduce soil compaction, and before and after topography should be provided to the USACE and RWQCB to ensure flow of water across the landscape is not adversely impacted.

No night lighting should occur during construction.

p. 163 – Who will bear the responsibility of enforcing MM-BIO2.1 AND MM-BIO-2.2 to ensure stockpile soils do not migrate into adjacent wetland areas? Inspections of the stockpile mitigation measures should be conducted on a daily basis and should be monitored during and after rain events to ensure they are effective.

3.7 Geology and Soils:

3.8 HYDROLOGY, Flooding, and Water Quality: Please refer to the letter submitted on behalf of CCCR by Carol Beahan.

3.8 Hazards and Hazardous Material:

3.10 Aesthetics and Visual Resources: The DEIR fails to address the impacts of light pollution on wildlife species – the only mention of the biotic habitat is "No night lighting would be directed towards the undisturbed wetland areas." This single sentence fails to acknowledge significant levels of light pollution will be introduced by the neighborhoods, development infrastructure, and golf course facilities to an area that currently has low levels of artificial light.

Light pollution is documented to have serious adverse impacts for a wide range of wildlife ranging from invertebrates to mammals. It disrupts migratory patterns, foraging capabilities, predation, nesting, breeding, etc. (Longcore and Rich, "Ecological Light Pollution" Front Ecol Environ 2004, 2(4): 191-198). Longcore and Rich report the findings of Buchanan (1998 "Low-illumination prey detection by squirrel treefrogs," J Herpetology 32: 270-74) in which three different species of amphibians forage at different illumination intensities. As an example the squirrel treefrog (*Hyla* squirrela) forages only between 10^{-5} lux and 10^{-3} lux under natural conditions, while the western toad (*Bufo boreas*) only forages at illuminations between 10^{-1} and 10^{-5} lux.
Evidence suggests light pollution affects the choice of nesting sites in the black-tailed godwit, with choice locations being the farther away from roadway lighting (De Molenaar et al 2000, in Longcore and Rich). Buchanan found frogs he was studying stopped their mating calls when the lights of a nearby stadium were turned on.

Sufficient evidence exists that demonstrates artificial lights have adverse impacts on wildlife. The DEIR must estimate the increase in light levels that could occur as a result of the Specific Area Plan and propose mitigation measures that will reduce adverse impacts to on-site and adjacent wildlife populations.

The assessment of visual and aesthetic resources impacts fails to assess the impacts to the viewshed that will be experienced by pedestrians, bicyclists, and drivers along Cherry Street. While existing development does partially block some of the views, the installation of sound barriers along Cherry Street will prohibit any remaining views across the bay.

4.0 Cumulative Impacts: [Please refer to the Climate Change discussion in the letter submitted by Carol Beahan on behalf of CCCR]

Please note a previous request: The EIR should analyze the cumulative impacts of the loss of upper tidal marsh habitat, transition zones, and uplands in proximity to the bay on the federally listed species and special status species that have been identified on the site or immediately adjacent to the site (e.g. salt marsh harvest mouse, burrowing owl). Note this comment from the South Bay Salt Pond Restoration Project FEIS:

> The land within the Authorized Expansion Boundary reflects the diversity of wildlife habitats that could be restored to tidal wetlands, brackish marsh, managed ponds, seasonal wetlands, vernal pools, grasslands, riparian, freshwater marshes and *adjacent uplands*…
> … Some lands outside the SBSP Restoration Project Area are more suitable for certain types of restoration than lands within the Project Area…
> … Some of these privately owned lands also provide opportunities to restore locally rare habitats (*e.g.*, riparian, seasonal wetlands, former duck clubs) that *are limited when considering only the lands within the Project Area*. [emphasis added]

5.0 Alternatives Analysis: [Please note CEQA non-compliance issues in the letter submitted by Richard Grassetti on behalf of CCCR.] The DEIR states the "primary objective of the Areas 3 and 4 Specific Plan is to provide low density residential, a golf course, and/or recreational facilities, and land for a school for the current and future residents of Newark." And identifies the following specific project objectives:

- Through a General Plan amendment allow residential uses;
- Provide up to 1,260 units of low density residential uses (4.2 – 8.5 units per acre) in Areas 3 and 4;
- Provide high quality residential uses including a mix of executive housing types;
- Provide up to 189 below market rate housing units that are within the 1,260 total residential units;
- Provide land for an up to 600-student elementary school in Area 3 to serve both the Specific Plan development and neighboring residential;
- Provide vehicle access to Area 4 via a railroad overcrossing at Stevenson Boulevard;
- Provide and contribute toward community recreational facilities;
- Provide land for a golf course available to the public.
- *If a golf course is found unfeasible, then another recreation use that is acceptable to the City shall be provided as a condition of development*. (emphasis added)

The alternatives considered by the City include:

1. a "No Project Alternative" in which current conditions continue,
2. a "No Project Alternative" [perhaps more appropriately titled "Implementation of the Current General Plan"?] in which the existing General Plan would be implemented,
3. a "No Development in Area 4 and Higher Density Area 3 Alternative," in which an elementary school with a 600-student capacity and 1260 homes would be built within the 77-78 acres described in this DEIR,
4. a "Reduced Housing Alternative" in which the development of Area 3 would proceed as proposed in this DEIR, but no housing would be constructed in Area 4 – only a 120-acre golf course would be constructed designed to minimize impacts to wetlands,
5. a "No Golf Course Alternative" in which everything would be developed as proposed in this DEIR except that a passive park would replace the golf course and housing would not be condensed to minimize wetland fill and impacts to wildlife resources, but would remain as depicted,
6. and the "Location (Area 2) Alternative" that would presumably provide 1260 housing units but no golf course?

As was stated earlier, Regis Homes submitted comments dated May 23, 2007, in response to the Notice of Preparation (NOP) for this EIR. In their comment letter, Regis Homes specifically requested the City consider allowing a Medium Density Residential (MR) General Plan designation for their property that is currently zoned industrial and has been vacant since 2001. The 8.75 acre parcel is situated between the Silliman Center and the Ohlone College campus and across the street from existing residential housing and Newark Memorial High School. Other sites not owned by the New Technology Park Associates are included within the proposed specific plan that would require rezoning. It is inappropriate that this request received no response in the DEIR.

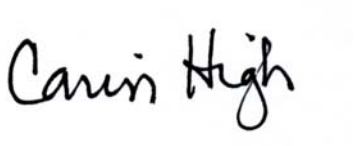
This site could be incorporated with the 77-78 acres already described in this DEIR into an alternative that slightly reduces the number of housing units, still provides for a 600-student

capacity elementary school, and has no development of Area 4. Some mixed-use component that would allow for development of a coffee shop/sandwich shop, laundromat, and other small scale amenities that could encourage pedestrian circulation within the neighborhoods, provide amenities for the Ohlone College Campus, while reducing most of the significant adverse impacts of the current Specific Plan. Portions of Area 4 might be suitable as passive recreation and Nature-Research Center that could benefit Ohlone College Campus and the Newark Unified School District. This would increase the recreational acres/resident ratio.

As mentioned in Richard Grassetti's letter the level of analysis provided reviewing the relative merits of the alternatives fails to comply with the Laurel Heights dictum and prevents decision makers and the public from understanding, evaluating, and substantively responding to the City's conclusions. Please provide a comparative discussion of the alternatives and including Alternative 7 "Reduced density in Area 3 – including the Regis Homes site, an elementary school, and some mixed-use amenities that would benefit the local community" as suggested above.

For all the numerous reasons we have cited above and for the reasons identified in the letters of Richard Grassetti and Carol Beahan, the DEIR as written contains numerous omissions, inaccuracies, and flaws and does not comply with the requirements of CEQA. We urge the City to address and correct these issues and to re-circulate the EIR. Thank you for the opportunity to provide comments.

Sincerely,



Carin High
CCCR Vice-Chair

cc: Mayor Dave Smith
Newark City Council Members
Newark Planning Commission
John Becker, City Manager
Mendel Stewart, Program Manager, USFWS
Eric Mruz, Refuge Manager, USFWS
Winnie Chan, USFWS
Joy Albertson, USFWS
James Browning, USFWS
Jane Hicks, Chief, Regulatory Branch, USACE
Cameron Johnson, South Section Chief, USACE
Mike Monroe, Environmental Protection Agency
Carl Wilcox, Chief, Water Branch, CDFG
Marcia Grefsrud, CDFG
Greg Martinelli, CDFG
Bruce Wolfe, San Francisco Bay Regional Water Quality Control Board
Brian Wines, San Francisco Bay Regional Water Quality Control Board

San Francisco Bay Air Quality Management District
Alameda County Flood Control and Water
Federal Emergency Management Agency
Native American Heritage Commission
Bob Doyle, Assistant General Manager of Land Acquisition, EBRPD
Mike Anderson, Assistant General Manager Planning and Stewardship, EBRPD
Stewardship Manager, EBRPD
Brad Olson, Environmental Programs Manager, EBRPD
Alameda County Flood Control District & Water Conservation District
Alameda Creek Alliance
California Native Plant Society
Friend of Coyote Hills
Greenbelt Alliance
Ohlone Audubon Society
Sierra Club
Transportation and Land Use Coalition (TransForm)

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January 19, 2009

Terrance Grindall
Community Development Director
City of Newark
37101 Newark Blvd
Newark, CA 94560
E-mail: terrance.grindall@newark.org

TO: Terrance Grindall
SUBJECT: Comments Regarding Newark Areas 3 and 4 Specific Plan Project Draft Environmental Impact Report

Wildscape Engineering Services (WES) was contracted by the Citizen's Committee to Complete the Refuge to review and comment on the adequacy of hydrology and water quality assessments provided in the Draft Environmental Impact Report (DEIR) and related technical reports for the Newark Areas 3 and 4 Specific Plan Project.

The comments are organized under the following five categories, (1) General, (2) Floodplain Modification, (3) Drainage Modification, (4) Wetland Impacts and (5) Climate Change and include the relevant significance criteria.

1. General

There is a general concern regarding the emphasis given to the City of Newark General Plan's (Plan) goals for Area 4 to have a high-quality, low-density use and an 18-hole golf course. The Plan was adopted almost 20 years ago and therefore didn't take into consideration more recent evidence of climate change and sea level rise expectancy and its related impacts to shoreline development and the importance of wetland and salt marsh habitat to water quality and special status species. The 1999 community rejection of the ballot measure to change Area 4's designation to conservation, open space and agriculture was also many years prior to recently developed information regarding climate change and predicted sea level rise.

Since the City of Newark (City) is willing at this time to consider re-designating Area 3 from R&D High Tech Business Park (i.e. Special Industrial) to residential use for the purposes of the proposed project, we ask that the City also consider re-designating Area 4 from low density residential to either open space, conservation or a combination thereof given the potential for substantial environmental and hazardous impacts resulting from developing in such a hydrologically sensitive and flood prone area.

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2. Floodplain Modifications

Significance Criteria

- *Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map;*
- *Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.*

It is understood the vast majority of Area 4 is located within the FEMA 100-year floodplain with a general base flood elevation of 8 feet NGVD. The existing levees are not certified and would likely not meet certification requirements since much of their length doesn't provide the required freeboard.

For improved representation it is recommended that the FEMA base flood elevation contours be included on the Flood Zone Map (Figure 3.8-2). Also the DEIR references the 2000 FEMA maps, however a new FEMA map for the area became effective in August 2009 and should be incorporated into the analysis and the 100-year flood boundary shown on the figure should be corrected (i.e. some of the boundary lines on the north and east side of Area 4 are shown as straight when those on the 2009 FEMA maps are curved).

In order to avoid any potential significant flooding impacts, the project proposes to use up to 2.1 million cubic yards of fill in Area 4 to raise the building pad elevations 10 to 14.5 feet in order to reach a minimum elevation of 11.25 feet NGVD to be out of the designated floodplain per City code requirements. This is a substantial alteration of the landscape in order to allow for residential buildings within an existing floodplain. The constructed drainage release points from the built out areas in Area 4 would be at elevations around 10 feet NGVD and there would be a continual reliance upon the pumping mechanism at the Area 4 outlet to Mowry Slough.

It was established in the DEIR that since all housing would be placed on fill above the FEMA base flood elevation that there would be no significant impact due to flooding. However, given the likelihood of the levees to fail in the near future combined with the potential for the raised building pads to settle over time and the reliance on mechanical means to continuously circulate water out of Area 4, a more comprehensive analysis should be undertaken. The supplemental analysis should examine the potential impacts to the integrity of the building pads if inundated and exposed to standing water for periods of time due to overtopped or breached levees, the potential for the proposed storm drain outlets in Area 4 to no longer function as a result of inundation and backwater under flood conditions, and the ability of the pumping mechanism to continuously operate under high water conditions.

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3. Drainage Modifications

Significance Criteria

- *Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on-or off-site*;
- *Substantially alter the existing drainage pattern of the site or area, including the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site:*
- *Create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff;*

The proposed project plans to use the existing 42-inch diameter storm drain outfall that currently collects runoff from Sub-Area A within Area 3 and releases it to the Alameda Flood Control and Water Conservation District (ACFC/WCD) Line D. It doesn't appear that adequate analysis has been done to confirm that the existing storm drain and outfall has the remaining capacity and necessary outfall protection to accommodate increased runoff due to the roughly 65% increase in impervious area within Sub-Area A. Further analysis is recommended to determine if the existing pipe and infrastructure could accommodate the increased runoff and peak flows from the proposed development within Area 3 under different high tide and rainfall events and predicted sea level rise with or without additional modifications.

Drainage for Area 4, including Sub-Areas B and C assumes that approximately five storm drain outlets will be used to release water to Sub-Area E and ultimately convey to Mowry Slough via the existing ditches on the inboard side of the levee and interior drainage pump on the southwest end. There is no evidence of investigation as to whether the increased runoff from the proposed development can be adequately conveyed into Area E and ultimately pumped into Mowry Slough. Recommend that an analysis be done considering the increased impervious area's impact on peak runoff and runoff volumes under high groundwater conditions and what that may mean to proposed wetland habitat surrounding the developed areas (i.e. potential to create continuous aquatic conditions in more areas than existing) and whether or not a pump system will continue to work adequately under such an increased demand and alternating high tide conditions.

It is stated in Appendix G the Hydrology and Water Quality Report that development in Area 4 would have a less than significant impact to on-site flooding since increased flows from increased impervious areas are released directly to the Bay and won't affect Bay tides, which are the source of the 100-year flood elevation. But, has consideration or analysis been done over whether increased runoff from the impervious areas in Sub-Areas C and B could overrun the pumping system, particularly during extreme high tide or flood events and potentially back up into the wetland areas

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and even into the storm drain outfalls to Sub-Area B and C, in turn resulting in detrimental flooding of the mitigated wetlands and residential areas?

Appendix G also states that an adequate system will be designed to utilize the existing pump outfall in Area 4 with possibly a different size and type of pump and therefore there will be a less-than-significant impact downstream of the outfalls. Increased pump capacity was also analyzed to determine feasibility to retain existing water levels in the ditches. What is not clear is if those analyses were also done in the context of extreme tidal events and whether there may be a significant impact to the areas upstream of the outfall in Area 4 if the pump is tasked with removing runoff during high groundwater and extreme tidal events.

4. Wetland Impacts

Significance Criteria

- *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;*
- *Have a substantial adverse impact on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to: marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrologic interruption, or other means.*

It is understood that an array of wetland types and shallow groundwater conditions occur in Area 3 and predominantly Area 4 due to the low elevations and proximity to the Bay and aquifers.

These existing freshwater and brackish wetlands and adjacent upland transitional zones are important habitat and are currently supported by sheet flow and groundwater seeps. The proposed exorbitant amount of fill, particularly in Sub-Areas B and C in Area 4, redirection of drainage patterns and pumping of groundwater in Sub-Area D in order to facilitate site development and support the golf course is expected to significantly alter the location, type, extent and duration of wetland areas that now exist and support several plant and animal species. Concern is therefore over the ability to "design" adequate mitigation wetland to replace what is lost given the significant number of variables that will be changed and could affect the type and size of wetland lost or modified. For example, given the large increase in impervious surface areas in Sub-Areas B and C there could be substantially more runoff volume that collects within Sub-Area E that does not infiltrate through the low permeability soils and high water table and results in more aquatic habitat or larger areas with standing water for longer periods of time and possibly less salt marsh habitat important to the salt marsh harvest mouse than may be desired. Additionally, there may be a reduced opportunity for water quality BMPs given the inability to rely on infiltration within Sub-Area E and minimal available footprint within the created building pads.

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The statement under MMBIO – 1.1, *"Temporary disturbance to and permanent loss of all wetland and aquatic habitat in Area 4 will be avoided to the maximum extent feasible"* is subjective and vague in regards to how temporary disturbance and permanent loss will be avoided and in what relative proportion to the existing wetland and aquatic habitat.

Mitigation measure MMBIO – 1.2A proposes creating wetlands and aquatic habitat within upland habitat that is currently disked and graded within Area 4 in order to mitigate for existing wetlands and aquatic habitat that are eliminated. It has not been demonstrated that adequate analysis has been done to show that the upland areas have the necessary soil composition, groundwater depths and hydrologic regime to make the pledge that this tactic will provide sustainable high quality wetland and aquatic habitat as required in order to provide adequate mitigation at a ratio of 1:1 and prevent any net loss of habitat functions or values. Additionally mitigation measure MMBIO-1.2 proposes enhancement of existing seasonal wetland habitat that is currently within agricultural production at a ratio of 0.5:1 by terminating farming activities, seeding and possibly grading. The question is will this area be able to truly be restored if pumping operations are continued in a similar fashion as present in order to provide vector and/or flood control?

There are two concerns regarding MMBIO-1.2A, *"A detailed mitigation plan shall be developed by a qualified biologist under contract to each future developer for individual development projects within the Specific Plan areas which result in direct impacts to wetland habitats. This plan will be submitted to and approved by the City of Newark prior to the initiation of grading within wetlands"*. (1) The first concern is in regards to the timing of the mitigation plan, given the significance of potential wetland loss and degradation and indirect impacts to the special status species that depend upon them. Approval of the Specific Plan insinuates that adequate wetland replacement and enhancement can be provided on site, however investigation and proof of that doesn't occur until after the plan is approved and just before grading is to begin. This is too late in the process and a more developed analysis and mitigation plan should be enacted before the Specific Plan is approved. (2) The second concern is regarding the designation of a qualified biologist, given the critical and underlying factors to support high quality wetland and aquatic habitat and intricate balance in terms of freshwater and brackish water inputs, it is crucial that a qualified hydrologist is also involved in the analysis and development of a mitigation plan and that the plan also include a hydrologic analysis in order to determine that site selection, wetland basin size and depth will result in adequate and sustainable support for the 1:1 replacement qualification and/or targeted plant and animal species required.

In regards to mitigation measure BIO-2.4, how will the measures described to minimize perennial ponding within the existing seasonal wetlands be enforced? For example the measure states that nuisance runoff will be minimized and controlled, proper irrigation using only the amount of water that can be taken up by the plants shall be implemented and water shall be applied at dawn to limit evaporation. How will these mandates, particularly for the private residential housing be enforced to ensure compliance?

Under MM BIO-2.5 the golf course will be designed to drain internally in order to confine nuisance flows to the salt marsh habitat during the dry season. This will also disrupt overland flows from reaching these areas during the wet season and is a change from existing conditions, therefore has analysis been done to determine that cutting off wet season surface flows to these areas won't damage them over time?

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Given the golf course will be irrigated via an existing onsite well has analysis been done as to whether groundwater pumping during the dry season may have a negative effect on the adjacent wetlands and marsh habitats in Area 4?

There appears to be disagreement between what is proposed under mitigation measure MM BIO-2.1 and what is shown in the drainage plan and conceptual grading plan, Figure 2.4-5. Mitigation measure MM BIO 2.1 states that storm water runoff for the proposed residential development and golf course within Area 4 will drain from multiple discharge points to simulate a more natural flow via a more dispersed discharge of collected runoff so that the existing hydrologic condition is not substantially altered. However the drainage plan shows only three storm water outlets for Sub-Area B and two for Sub-Areas C and D. Please provide more explanation and representation on a figure for how flow dispersal will be achieved.

5. Climate Change

Significance Criteria

- *Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.*

Future sea level rise is considered under the cumulative impacts section of the DEIR and the resultant flooding significance due to climate change is determined by whether the project would be adversely impacted by sea level rise of two to three feet. The DEIR acknowledges that future sea level rise would considerably increase flooding along areas of the proposed development currently shown to be in the 100-year floodplain which equates to most of Area 4. Analysis was then conducted, however a less than significant cumulative impact was assigned given there would be sufficient freeboard along the building pads for up to the 100-year event under a 50-year planning horizon. The caveat is also provided that if the “high” sea level rise scenario proves to be true (i.e. would inundate the minimum building pad elevation of 11.25 feet NGVD by 10.2 inches) adaptive strategies to improve flood protection (i.e. levees or floodwalls) may prove necessary in the future. These conclusions are viewed as inadequate for the following reasons:

a) Given the permanency of residential homes and associated buildings placed on an elevated pad and the high level of risk to life and property the overall approach and 50-year window are inadequate. More analysis is warranted in terms of outlier effects such as drainage impacts, and it would be more appropriate to consider a 100-year planning horizon.
b) Additional geotechnical analysis may be warranted to determine that the raised building pads could be designed to tolerate periodic flooding without undergoing deterioration.
c) Given the compressible soils and unknown nature of imported fill, it is not clear whether the proposed 10 to 14 feet of fill compensates for the predicted amount of settlement over time

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(i.e. 12 inches over the 50 year post construction period). In other words, is enough fill being placed so that the minimum 11.25 feet elevation will remain once settlement has ceased?

d) The proposed plan is dependent upon raised building pad elevations, however fails to consider impacts to the storm drain outlets proposed to release at 10 feet elevation and the ability of the pump to function properly and adequately drain Area 4 under higher tide levels that would result from predicted sea level rise.

e) Given the permanency of the building pads, the "adaptive strategy" component (as recommended by the Army Corps of Engineers and Department of Water Resources) relies heavily on the uncertain option to build taller levees or floodwalls as sea level rise becomes more evident. This puts a significant amount of merit on the ability to construct an adequate levee or floodwall without investigating whether the right structural conditions are there or can be attained. It is recommended that preliminary analysis be done to demonstrate that there is adequate foundation stability, settlement avoidance and interior drainage for a "future" flood levee or wall, so that reliance upon it can be trusted. The analysis should also examine whether such a structure would have direct impacts on the preserved or created wetlands within Area 4 and the fringe wetlands on the outboard side of the existing levee.

f) The approach doesn't necessarily follow the San Francisco Bay Conservation and Development District's (BCDC) preliminary recommendations for the Bay Plan amendments mentioned in the DEIR that include; discourage new projects that will require new structural shoreline protection during the expected life of the project; determine whether alternative measures that would involve less fill or impacts to the Bay are feasible; require that where shoreline protection is necessary, ecosystem impacts are minimized.

g) Given the potential risk to life and property in the long term and the range of sea level rise estimates by several reliable sources, recommend that the DEIR examine the potential flooding impacts due to sea level rise using a bracketed lower and higher sea level rise estimate in order to demonstrate a conservative scenario and a "worst-case" scenario.

h) Given the recent education that the state and nation have undergone in regards to flood hazard and catastrophe to developments constructed behind levees and the recent state legislation that is now trying to correct those issues for the Sacramento and San Joaquin River watersheds in California, has it been seriously considered if development within an existing floodplain, particularly Area 4 is appropriate? Currently the state of California is requiring any new development in nearby San Joaquin County to provide a 200-year level of flood protection. Has the proponent analyzed whether more is needed or higher building pad elevations would be required to provide the proposed development with a 200-year level of protection if mandated in the near future?

With the considerable amount of potentially significant hydrologic, wetland and flooding impacts in Area 4 that require multiple intensive and thoughtful mitigation actions to alleviate, we ask that you seriously reconsider the two alternatives, "No Development in Area 4 and Higher Density in Area 3" and "Reduced Housing Alternative" that would remove the residential building footprints and excessive fill required within Area 4.

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We look forward to receiving your responses to further clarify and speak to the proposed project and its potential impacts. If you have any questions regarding our comments, please feel free to contact me at 415-924-6970 or wildscape_eng@sbcglobal.net.

Sincerely,

Carol Beahan, P.E.
Owner, Wildscape Engineering Services

FRIENDS OF COYOTE HILLS

January 19, 2010

Terrence Grindall
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, California 94560-3796

Subject: Comments in Response to the Newark Areas 3 and 4 Specific Plan Project Draft Environmental Impact Report SCH No.: 200705205

Dear Mr. Grindall:

The Friends of Coyote Hills is a grassroots organization dedicated to the conservation and preservation of open space and the plant and wildlife habitats it supports, and to engaging public involvement with local and regional environmental issues through community outreach, education, collaborative efforts, and advocacy. Our members hail from Newark, Fremont and Union City. This letter is in response to the Draft Environmental Impact Report (DEIR) for the Newark Areas 3 and 4 Specific Plan. We appreciate the opportunity to comment on a project that will impact our community and the quality of life in the Tri-Cities area.

The DEIR fails to provide a complete project description and sufficient degree of analysis to provide decision makers with information which enable them to make a decision which intelligently considers environmental consequences. We find that the document contains serious omissions, inaccuracies, and flaws that must be rectified to comply with California Environmental Quality Act (CEQA) requirements.

Project Location

Areas 3 and 4 comprise approximately 850 acres and are generally bounded by Mowry Avenue to the north, Cherry Street to the east, Stevenson Boulevard to the south and Mowry Slough to the west. The DEIR indicates that the specific plan will retain the existing light industrial, institutional and City fire station, park and community center uses. Thus, the project actually appears to be the development of the 560 acres in Area 4 bounded by Mowry Avenue and Stevenson Boulevard to the north and south respectively and the Union Pacific Railroad and Mowry Slough along San Francisco Bay to the east and west respectively and the 78 acres of remaining undeveloped land in Area 3.

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Defining a "Specific Plan"
Other property owners within Area 3 (Regis Homes) who requested land use designation changes were summarily ignored throughout this specific plan process (see NOP scoping comments and community workshop notes). Community members who suggested alternative recreational amenities to the golf course, a City Council condition for granting a General Plan redesignation the 78-acre site in Area 3, were also summarily ignored (see community workshop notes). Failure to address these other opportunities within the scope of a "specific plan" forces property owners and Newark taxpayers to bear additional expenses to develop in the future. For example, Regis Homes would be required to undertake a full planning process and environmental review to redevelop their property in Area 3. Should the golf course be deemed infeasible, for any number of plausible reasons raised during the planning process, then the City of Newark would need to shoulder the full costs of a new environmental review for any other type of recreational development including sport fields, trails, open-air community theatre by the Bay, etc. that might have served as an alternative recreational amenity for the community.

It is disappointing that the broader and more collaborative planning that was requested and for which additional cost sharing could have been negotiated was not championed by City leaders. Thus, this specific plan results in a rigid range of opportunities for the community and property owners further reducing Newark's potential for economic recovery and eroding the quality of life for residents. As for the DEIR, it is unclear whether this document serves as a "specific plan" encompassing the entire 850 acres or as a truncated project level review of property proposed for development by New Technology Park Associates (NTPA), primary owners of the undeveloped land in Areas 3 and 4.

Project Description

The DEIR states that the project would include development of up to 1,260 housing units of various densities, an up to 600-student elementary school, a golf course and open space areas. The project also requires a structural overpass at Stevenson Boulevard crossing above the UPRR rail line and below the PG&E high voltage tension lines to access Area 4, an emergency vehicle access (EVA) paralleling the UPRR right-of-way connecting the development to Mowry Avenue that would dually serve as a pedestrian and bike trail for residents and cart path for golfers and a bridge for the EVA spanning ACFC&WCD D-Line creek that drains to Mowry Slough. The development would require:

- Relocation and raising the height of the PG&E towers to accommodate the Stevenson overpass.
- An at-grade crossing of the UPRR active rail line that supports freight and the Capital Corridor and ACE commuter lines.
- Up to 2,156,000 cubic yards of fill to raise the buildings pads (at existing elevations ranging from 0 to 16 feet NGVD) 10 to 14.5 feet in order to attain a minimum building pad elevation of 11.25 feet NGVD.
- Potable water to serve 1,260 new housing units and street landscaping.

- Potable water and ground water pumping to irrigate an 18-hole golf course to be constructed on former tidal flats high in salinity.
- A new signal on Cherry Street to accommodate the approximately 14,000 new car trips per day or nearly 5 million car trips per year.

An Incomplete Project Description

The DEIR description of "existing operations/conditions" provides an overview of land uses but lacks a basic discussion about the physical and biological properties of the lands proposed for development. Thus, a reader does not immediately have a sense that the project is primarily located in the existing 100-year floodplain, includes 277 acres of wetlands, that Area 4 was historically tidal wetlands, experiences 20 commuter train trips plus freight traffic per day and is in the small aircraft flight path between the Palo Alto and San Carlos airports and the Sunol grade. It indicates that the zoning in Area 4 is primarily Agriculture. It does not mention that the site is routinely disked and actively pumped to drain into Mowry Slough. These actions have changed the character of plant and animal communities and distribution across the site. These actions are not intended to result in a meaningful food crop, but simply to continuously disturb the site to prevent the land from returning to its former mosaic of wetlands and transitional upland habitats. The project description does not set the existing conditions context of the site for the reader.

The DEIR provides a meager two-page description of the 18-hole golf course and amenities upon which the DEIR authors are to base the environmental impact analysis. It provides no conceptual layout for the course. It suggests that a portion of the acreage designated for the course, Subarea C, could actually become low-density housing precluding the opportunity to build an 18-hole golf course. It appears as though the focus of the DEIR is on the residential component of the project and that all other potential uses have been minimized to such an extent that a reasonable analysis of the golf course impacts is unachievable.

The DEIR lacks a discussion on project sequencing. It fails to provide even a broad overview of which initial actions would be required to support development, when mitigation might occur, how the various subareas would develop, etc. This failing makes it difficult to evaluate impacts to the resources.

The DEIR lacks a consistency of facts and figures among the various chapters and subsections. For example, assumptions made by the air quality author on truck travel do not jive with the assumptions used in the traffic analysis. Acreage impacts between the biology and hydrology sections are not consistent. This results in varying levels of analysis and internal inconsistencies in the DEIR.

Project Objectives

There are inconsistencies between the project objectives and the project description.

- The project objectives indicate that 189 of the 1,260 residential units be provided as below market rate housing. However, the project description indicates that these units could be constructed off-site at a site yet to be determined.
- The project description briefly describes an 18-hole golf course as project element, but the project objectives indicate the project will "provide land for a golf course." It is not clear whether sufficient land for a golf course is even an objective.
- The project objectives acknowledge that a golf course may be found infeasible and in this case "another recreation use that is acceptable to the City shall be provided as a condition of development" but no other potential recreation uses are described or evaluated in the specific plan.
- The project description indicates the project will provide open space. This is not a project objective nor is the location of the open space and its relationship to the proposed development described.

The incomplete nature of the project description and the inconsistencies between the project objectives and project description leave a reader wondering what is actually proposed where within the City of Newark. The lack of project clarity also muddles the environmental analyses. The analyses are by default incomplete if the project description fails to fully illuminate the scope of the project.

Specific Plan Impacts and Mitigations

3.1 Land Use

The land use analysis appears to rely on the outdated City of Newark General Plan (1992) and yet to be completed plan by Fremont and Newark to realign the San Francisco Bay Trail. It seems as though Newark is attempting to cobble together several Specific Plans (Area 2 and Areas 3 and 4) in lieu of updating the 18-year old General Plan. The DEIR does not acknowledge any other regional plans that incorporate the lands contained in the specific plan areas. The DEIR analysis applies CEQA Appendix G thresholds of significance for land use that include, but are not limited to:

- *conflict with any applicable habitat conservation plan or natural community conservation plan;*
- *conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project adopted for purposes of avoiding or mitigating an environmental impact*

The DEIR analysis fails to address our scoping comments of June 11, 2007 which highlight other plans that address the project area. These plans include in 1) the Congressionally approved 1990 Refuge Boundary Expansion for the Don Edwards San Francisco Bay Wildlife Refuge ("Land Protection Plan, Potential Additions to San Francisco Bay National Wildlife Refuge," based upon Congressional approval of Public Law 100-556, in 1988) and 2) the 2000 Baylands

Ecosystem Habitat Goals Project and 3) the Bay Conservation and Development Commission Bay Plan.

Recently, the State of California has adopted the 2009 California Climate Adaptation Strategy that outlines planning policies for adapting to impacts associated with climate change. Some of these polices by which the Specific Plan should be evaluated include:

- Consider project alternatives that avoid significant new development in areas that *cannot be adequately protected* (planning, permitting, development, and building) from *flooding*, wildfire and erosion *due to climate change*. The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is *to carefully consider new development within areas vulnerable to inundation* and erosion. *State agencies should generally not plan, develop, or build any* ***new significant structure*** *in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure*. State agencies should incorporate this policy into their decisions and other levels of government are also encouraged to do so.

The land use analysis fails to review the project in light of these adopted conservation and land use plans and policies.

3.2 Transportation

The proposed Stevenson overpass at the UPRR railroad tracks requires that PG&E high voltage towers would be both raised and relocated. Raising one tower by 20 feet and relocating another tower 25 feet northwest of its current location and raising it by 45 feet may be a significant impact to pilots operating under Visual Flight Rules (VFR) while approaching Palo Alto and San Carlos Airports. These towers are in the VFR landing and take-off path for small aircraft originating or traveling to both the Palo Alto and San Carlos Airports through the Sunol Grade. No mention of this air traffic corridor is made in the DEIR nor is the potential impact of modifying the high voltage towers in this VFR Corridor addressed. Would these changes impact air traffic patterns, mapping or communications?

The DEIR does not address the safety and proximity of the Emergency Vehicle Access (EVA)/pedestrian and bicycle trail to the at-grade crossing of the UPRR tracks at Mowry Avenue. If the trail extends to Mowry Avenue pedestrian and bicyclists will naturally want to cross the tracks. Is this a safe crossing? Has access been granted by UPRR?

The traffic analysis proposes a number of measures to reduce traffic, but concludes that only 12 riders per day during peak commute hours would use alternative forms of transportation including walking, bicycling and County buses. Thus, it appears as though these measures are feasible but ineffective at getting residents who live far from services out of their cars.

The traffic analysis relies on Average Daily Traffic (ADT) and Level of Service (LOS) as a measure of significance, but vehicle miles traveled (VMT) may be more accurate measurement of traffic and the resulting air quality impacts.

3.3 Air Quality

An assessment of construction impacts on air quality is attempted. It assumes that emissions resulting from the hauling and placement of the 2.1 million cubic yards of fill will be conducted over one year period with 100 trucks arriving and departing from the site daily for 365 days. In one year this would be maximally equate to 36,500 truckloads that would need to carry 59 cubic yards of material per truck. No truck carries this much material. The time period of one year is too short or the number of daily truckloads is erroneous, both of which cast doubt on the assumptions used for truck hauling emissions resulting from construction. This analysis assumes trucks would travel between the Lake Elizabeth BART project and the Specific Plan area, a distance of approximately 10 miles. What are the truck hauling emissions if the fill from the Lake Elizabeth BART project is not available or is unsuitable for use?

3.4 Noise

The noise impacts from construction are underestimated. The construction noise analysis does not address the hauling, stockpiling, placement, grading and compaction of 2.1 million cubic yards of fill needed to raise the building pad elevations in Area 4. Truck hauling is proposed on city streets. The Transportation Chapter estimated 100 truck trips per day traveling to and from Area 4. This construction impact must be analyzed.

The DEIR did not assess noise and ground vibration associated with the pile driving necessary for the placement of the Stevens Boulevard overpass. These are omissions in the analysis.

3.5 Biological Resources

The DEIR makes a substantial effort at evaluating the biological impacts associated with the residential development, but provides an incomplete analysis of the proposed golf course. This may have resulted due to a lack of information provided about the golf course.

Numerous weaknesses surround the feasibility of mitigating the biological impacts that were identified in the DEIR. These weaknesses include:

- The project relies on numerous mitigation measures to reduce significant biological impacts to less than significant. However, it is not clear that the site will support the full range of mitigation measures proposed. For example, the project proposed various on-site wetland mitigation strategies to convert uplands to wetland habitat (MM BIO 1.1-1.2). It then overlays another on-site mitigation to provide sufficient grassland habitat to support burrowing owls (MM BIO 4.1-4.6). It also suggests that

pickleweed-dominated wetland habitat of the federally and state listed endangered salt marsh harvest mouse and salt marsh wandering shrew will be mitigated through habitat creation or restoration (MM BIO 8-4). The DEIR also proposes the creation or enhancement of waterbird habitat on-site (MM BIO 10-1). It is not clear that the undeveloped lands would support all these mitigation needs even assuming that the regulatory agencies concur with the mitigation ratios proposed in the DEIR. No mapping is provided to indicate where these various mitigation sites would occur. No evidence is provided that the proposed mitigation sites are not already providing the ecological services intended by the mitigation measures and that the project could therefore be attempting to claim existing resources as mitigation. We question the feasibility of these tiered habitat creation, enhancement and restoration mitigation strategies.

- The DEIR seems to recognize that not all the mitigation might be achievable on-site and therefore suggest off-site mitigation in some instances. The DEIR suggests the possibility of developing off-site wetland mitigation within 10 miles of the project. No sites are provided to support the feasibility of this suggestion. The DEIR suggests mitigating for the loss of burrowing owls and their habitat at an off-site mitigation bank located outside of the South Bay. It is not clear adequate space is available in one of these mitigation banks. It is not clear these mitigation banks are working to maintain owl populations. It is obvious that use of this off-site mitigation strategy results in the local extirpation of burrowing owls from Newark. This strategy clusters burrowing owl populations making them more prone to population impacts and further reduces the quality of life for residents who enjoy and benefit from a connection to nature. Again, the feasibility and potential ecological success is not demonstrated.

- The on-site mitigation is proposed adjacent to the residential development and golf course. No discussion is provided to evaluate how this proximity to the urban environment might diminish the mitigation value.

- Will any of the Area 4 lands be needed to reduce the threat of flooding to existing Newark businesses and residences? How would a "super levee" fit within the Specific Plan? If lands are needed by the US Army Corps of Engineers to construct a "super levee" how will this impact the feasibility of mitigation proposed on Subarea E. Is this project being coordinated with the South San Francisco Bay Shoreline Study being conducted by the Army Corps of Engineers?

- The DEIR states, "... future project proponent(s) will utilize a combination of on-site wetland creation and enhancement…." It seems as though the DEIR is relying on a variety of developers/builders to implement these mitigation measures (Page 135 and 151). It is not clear where the responsibility lies for mitigating the impacts to the project. It also seems to suggest that the mitigation could occur in piecemeal fashion.

- The DEIR fails to identify the potential sequencing for implementing these mitigation measures. As a result, a reader could conclude that the site will be disturbed and habitat destroyed prior to replacing these resources either on or off-site. Habitat creation and/or enhancement takes time and is not always successful when measured by ecological function. For example, a wetland mitigation site may be secured and constructed (graded and planted), but fail to attract the target species. This recognition also calls into question the feasibility and potential effectiveness of these mitigation measures.

It is simply not evident in the DEIR and the Appendices that the identified significant impacts to biological resources can all be mitigated to a less than significant impact with mitigation. The DEIR fails to provide sufficient detail to support this claim.

Land Use Goals and Policies regarding Biological Resources

The DEIR indicates that "All future development addressed by this DEIR will be subject to the biological resources policies listed in the City's General Plan." We highlight just of few of the project inconsistencies with these policies.

<u>Open Space and Conservation Goal 1</u> *"Encourage the preservation of unique open space and conservation resources that help define the quality and character of the City. Policy B – Encourage private property owners to preserve unique open space areas and natural features of their lands."*

The City of Newark under the leadership Mayor Smith is actually encouraging New Technology Park Associates (NTPA), primary owners of the undeveloped land in Areas 3 and 4, to destroy sensitive conservation and cultural resources identified by the regulatory agencies and public in his requirement that the developer build a golf course in exchange for consideration of a General Plan redesignation of the 78-acre site in Area 3 (Page 7).

<u>Open Space and Conservation Goal 2</u> *"Acknowledge the San Francisco Bay National Wildlife Refuge acquisition, and its value as a community resource."*

The Areas 3 and 4 Specific Plan DEIR fails to acknowledge the Congressionally approved 1990 Refuge Boundary Expansion for the Don Edwards San Francisco Bay Wildlife Refuge that includes the vast majority of Area 4. Instead, the City supports burying these former tidal wetlands under 2.1 million cubic yards of fill!

Thresholds of Significance regarding Biological Resources

The DEIR analysis applies CEQA Appendix G thresholds of significance for biological resources. It does an adequate job of identifying the regulatory framework surrounding these resources but fails to acknowledge and apply the regional land use plans based upon scientific principles of conserving habitat that are routinely referenced by the regulatory agencies. These plans include:

- 1990 Refuge Boundary Expansion for the Don Edwards San Francisco Bay Wildlife Refuge
- 2000 Baylands Ecosystem Habitat Goals Project
- Bay Conservation and Development Commission Bay Plan
- 2009 California Climate Adaptation Strategy

The goals and polices embodied in these plans should serve as thresholds of significance in evaluating the impacts to biological resources.

Biological Impacts Missing or Incomplete in the Analysis

<u>Impacts to Upland Agricultural, Ruderal Herbaceous Field, Developed and Coastal Scrub Habitat</u>

The Geology and Soils Chapter of the DEIR states, "Specific Plan Areas 3 and 4 lie just east of the former tidal marshes of the San Francisco Bay. Based on historic topographic maps, the marshes west of the railroad tracks were subject to tidal influences…. Prior to creating the dikes, numerous narrow, shallow, tidally influenced channels meandered through Area 4." The land described above is now identified in the Biological Resources Chapter with the statement, "Implementation of the proposed project would result in impacts to upland agricultural, ruderal herbaceous field, developed and coastal scrub habitat." These same lands are identified within the Wildlife Refuge's acquisition boundary, and the *2000 Baylands Ecosystem Habitat Goals Project.* The Habitat Goals Project identified the Mowry Slough Area as an opportunity "to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper ends of Newark, Plummer, Mowry and Albrae sloughs." The Goals Project states that the Mowry Slough marshes are "centers for populations of California clapper rail and salt marsh harvest mouse." The existing levees and salt pans may be used by nesting snowy plovers. Outer Mowry Slough is one of the largest harbor seal haul-out and pupping locations in the entire San Francisco Bay.

The Biological Resources Chapter fails to illuminate these connections and instead indicates that these "habitats are regionally abundant and the associated plant and wildlife species represent a very small proportion of regional populations. In addition, although the upland habitats provide a buffer or transition area upslope from wetlands and marshes, those on-site do not provide high quality transitional habitat because of regular disturbance by agricultural activities (Pages 133-134). These lands were former tidal wetlands; they retain the appropriate elevations, soil characteristics and high water table to support restoration. The Cultural Resources Chapter indicates that the exploratory trenching in Area 4 that uncovered Native American human remains "were cut to depths of less than four feet due to the presence of a very high water table." This trenching was undertaken in September and October 2008, the driest part of the year. The loss of these uplands should be considered a significant impact when evaluated against the current regional land use plans listed above.

In addition, 2009 California Climate Adaptation Strategy #7 recommends:

"Using existing research the state should identify key California land and aquatic habitats that could change significantly during this century due to climate change. Based on this identification, the state should develop a plan for expanding existing protected areas or altering land and water management practices to minimize adverse effects from climate change induced phenomena. (BH-1; W-5; F-5)."

The report also goes on to indicate that "*Increasing sea levels will submerge many low-lying portions of California's coastal wetlands. Of particular concern are coastal salt marshes, which have already been decreased by 91 percent from historical levels. If vegetation and sediment accretion occurs rapidly, wetlands could maintain their present location and the wetland footprint would not decline. For example, while some very high accretion rates occur in the San Francisco Bay region (i.e., up to 80 mm per year), the average rate is approximately 1-2 mm per year. This rate has kept pace with recent sea level rise, but will likely fall short of the projected future sea-level rise of 2-3 mm (or more) per year. The high degree of development and infrastructure placed in near-shore areas restricts the inland migration of wetlands in many locations, thus more coastal wetlands are likely to be lost."*

The existing research has been under taken through the *1990 Refuge Boundary Expansion for the Don Edwards San Francisco Bay Wildlife Refuge* and the *2000 Baylands Ecosystem Habitat Goals Project* and these upland habitats should be recognized for the importance to preserve regional biodiversity in the face of climate change. The lands in Area 4 will require little human manipulation to begin serving as a refuge for native species against the rising tide.

<u>Nuisance Species and the Golf Course</u>

The DEIR provides some discussion of domestic pet impacts on the adjacent open space habitats but provides no discussion of potential to attract nuisance species, primarily gulls, to the turf of the golf course. Large flocks of gulls are routinely observed on turf areas at golf course, schools and play field. The proximity of the golf course to sensitive species habitat should be addressed in the DEIR. The attraction could lure gulls into these sensitive areas and result in increased predation on nesting birds.

<u>Construction Noise Impacts on Wildlife</u>

The DEIR does not describe the noise impacts to wildlife that will results from construction of the project which includes accepting, stockpiling, placing and grading 2.1 million cubic yards of fill, rough and finish grading and utility placement, piling driving for the Stevenson overpass, housing and golf course construction. The area will be subject to truck traffic, back-up beepers, pile driving and a full range of construction equipment over a period of many years. How will the noise and general site disturbance impact resident species and migratory waterfowl that use the open water and fields as forage?

Residential Plant Palette

The planting concept and plant palette provided in the Specific Plan (Pages 10-13) describes the challenging site conditions of wind, salt and cool Bayside climate but then suggests a plant palette that will struggle to survive in this environment. In addition, the plant palette uses only a handful of California native plants. The landscape is another example of how this project does not respond to the site and the unique conditions of the landscape but instead forces an urban overlay across what could be a carpet of glowing native wildflowers, grasses and perennials. There is no understanding of the interface between the built environment and the natural world is communicated by this planting concept. No recognition of the importance of local plants to support local wildlife populations is attempted. Does the proposed planting concept and palette follow Newark's Bay Friendly Landscape Guide? Nothing about the plant palette appears to be "Bay Friendly."

The biologist evaluating the impacts to the site should undertake a wholesale review of the planting concept and plant palette. This evaluation should consider drought tolerance, ability to produce food for wildlife, potential for invasive, non-native plants to be introduced and spread across the sensitive habitats and the relevance of the plants in the California landscape. This is a unique site on the wildland edge of the city. It deserves so much more than a routine, urban, cookie cutter landscape that is completely out-of touch with the natural environment.

Golf Course

The golf course impact analysis suffers from an incomplete project description. Here are just a few of the areas that lack analysis:

- Use, treatment and run-off from fertilizers, herbicides, pesticides and rodenticides used on the course and supporting facilities.
- Light impacts from the facility on the adjacent habitats.
- Plant and turf selection in a highly saline environment. When the operation of Newark's Silver Pine golf course stopped irrigating the golf course was reclaimed by nature.
- Impact of errant golf balls on the adjacent trail, railroad and habitats.
- Increased need for irrigation water in an extremely windy and saline climate.

3.6 Cultural Resources

The DEIR states that significant unavoidable impacts will occur at Native American archeological sites. "Areas 3 and 4 contain as many as three areas which may contain unique archeological resources, as evidenced by the burials in what appears to be midden matrixes, and two additional cultural features similar to those already excavated nearby the project area." Mechanical trenching in Area 4 yielded "abundant evidence of Native American use of the area including cultural resource deposits and Native American human remains…." The cultural resources "appear to be intact and retain high degree of integrity.

This enhances their eligibility for both the state and National registers." All resources will be affected by the project in some manner.

- The cultural resources work was limited to Subareas A (Area 3 housing), B and C (Area 4 housing). No analysis was conducted for Subarea D (Area 4 golf course) and E (Area 4 existing wetlands). This analysis is incomplete for the proposed development sites included in the Specific Plan. This also means that Newark would shoulder all future expenses to investigate Subarea D should the City proceed with the development of ANY recreational amenity in Subarea D or habitat restoration of Subarea E unless this analysis is undertaken prior to the release of the Final DEIR. This analysis is incomplete.

- The cultural resources analysis fails to evaluate the potential for stockpiling dirt prior to construction. How would archeological resources be impacted by up to 2.1 million cubic yards of dirt placed in stockpiles on the site?

None of the mitigation proposed can preserve the "high degree of integrity" of these Native American archeological resources. Development of Areas 3 and 4 results in significant unavoidable impacts to Native American archeological sites. The only way to preserve these resources is through avoidance. The locations are not specified in the DEIR in order to protect the sites from vandalism, but we know resources were uncovered in Area 4. The Project Alternatives section indicates that impacts to cultural resources would still occur under the "No Development in Area 4 Alternative." Thus, there must be resources in both areas. The "No Development in Area 4 Alternative" would preserve in place at least some of the cultural resources detected during the course of this review.

3.8 Hydrology, Flooding and Water Quality

Why has this project not been coordinated with the South San Francisco Bay Shoreline Study being conducted by the Army Corps of Engineers? Will any of the Area 4 lands be needed to reduce the threat of flooding to existing Newark businesses and residences? How would a "super levee" fit within the Specific Plan? Why is this critical long range planning issue absent from the Specific Plan and DEIR? If lands are needed how will this impact the feasibility of mitigation proposed on Subarea E.

3.13 Energy

The DEIR fails to adequately address energy usage and thus energy impacts. The DEIR references Title 24 California Energy Efficiency Standards for Residential and Non-residential Buildings as "these standards include *minimum* energy efficiency requirements related to building envelope mechanical systems i.e., heating, ventilation, AC and water heating, etc. that would "not result in the inefficient unnecessary or wasteful consumption of energy". However, the DEIR interprets this standard to mean that the project only needs to implement a few energy conserving *appliances* and a few *pathways to bus stops* to demonstrate that

it is not a "wasteful consumption of energy." However, these so-called mitigation measures fall far below what could be done and thus belie the intent and purpose of the Title 24 standard. The energy mitigations should require the implementation of the newly adopted Title 24.11 Green Building standards as a minimum effort to reduce the carbon footprint of the development.

The project does not respond to the site conditions by aligning the residential and school development to take advantage of the solar orientation that would support both passive and active solar use. The development is simply more urban sprawl without any unique elements to minimize its carbon footprint. The mandatory and voluntary element identified in the Green Building standards should be required mitigation measure for this development. The project is not in keeping with the U.S. Mayors Climate Protection Agreement that was signed by Mayor David Smith. The Agreement's goal is to conserve the nation's energy and reduce the greenhouse gas emissions that threaten our planet. Participating mayors make several commitments to greenhouse gas reduction in their own communities. The first of which is to take action implement "anti-sprawl land-use policies." The most important step a community can make to reduce greenhouse gases is the reduction of sprawl and the creation of transit-oriented development. Development of Area 4 is contrary to this Agreement.
The DEIR states that the vehicular trips associated with the project "would substantially increase the demand for gasoline", and then states that the implementation of pedestrian sidewalks and paths, bicycle lanes, new bus pull outs on Cherry Street and Stevenson Boulevard, a shuttle service to Area 4 and pedestrian friendly signs will reduce this impact to "less than significant."

The feasibility and effectiveness of these mitigation measures is suspect. Residents are not likely to use sidewalks that require they climb an overpass in an otherwise flat landscape. Alameda County transit is reducing and consolidating bus routes. It is highly unlikely that bus service would be provided to the 560 homes planned in Area 4. These suspect measures will not significantly reduce the energy impact of up to 1260 new houses, as people will continue to drive their petroleum based cars to work and shopping causing a significant increase in vehicular traffic and a significant increase in petroleum consumption (The Argus, Jan. 10, 2010, Crisis, transportation funding losses, so fewer busses to outer areas likely.).

The increase in energy consumption and lack of feasible and effective mitigation measures is in direct opposition to a number of newly adopted pieces of legislation. The project would add to the global warming burden in opposition to AB 32, AB375, Governor's Panel of 23 (Dec. 2009), 2009 Climate Change Adaptation Strategy (CA governor's), etc., which try to also discourage development that is "vulnerable" and is "sprawl and isolated."

The Adaptation Strategy Report also included efficient energy usage when developing that should now be incorporated into the project and Final DEIR. In addition, 2009 California Climate Adaptation Strategy #11 recommends:

Climate Adaptation Report Ref. No. 11: "State agencies should meet...greater energy conservation and an increased use of renewable energy."

Cumulative Impacts

The Tri-City area is under significant development pressure. The cumulative impact analysis highlighted many of the development proposals. It now appears as though the project must consider the A's stadium project as a new proposal is under consideration by the City of Fremont and Major League Baseball.

The cumulative impact analysis must incorporate the most current science in evaluating impacts to the project from Global Climate Change. The DEIR relies on adopted standards that are 5 to 7 years out of date with new research. Thus, all of the assumptions the standards were based upon are now outdated and the impacts on public safety, flooding and regional biodiversity must be reevaluated.

Closing Comments

We appreciate the opportunity to provide written comments on the Draft DEIR. While the DEIR suffers from significant omissions, inaccuracies, and flaws that must be rectified to comply with California Environmental Quality Act (CEQA) requirements. We do want to express general support for development of Area 3.

We would like to see a small retail area incorporated into the northeast corner of Area 3 to serve students, employees and residents. We imagine this retail center to interact with the creek and Cherry Street and provide a place to obtain basic services, to enjoy conversions with neighbors and colleagues and to study. We see students traveling along the creek footpath to reach this retail service center.

We oppose all development in Area 4. This is the wrong place to expand the urban footprint. These lands have unique Bayside characteristics that should be restored and preserved for future generations. Development of Area 4 is folly that will only put additional burdens on the Newark taxpayers and city services.

We had hoped for a more inclusive Specific Plan process. We now renew this hope for wise decision making for the future.

Sincerely,

Newark Residents
Martin Doyle
Dean and Margaret Lewis
Wayne and Mari Miller
Dan and Gaby Ondrasek
Virgil and Linda Patterson
Greg Scott and Jana Sokale

Fremont Residents
Carin and Howard High
Linda Ramus
Ann L. Rice
William E. Spicer

cc: Mayor David Smith
Newark City Council Members

Newark Planning Commission
John Becker, City Manager
Mendel Stewart, Program Manager, USFWS
Eric Mruz, Refuge Manager, USFWS
Jane Hicks, Chief, Regulatory Branch, USACE
Mark D'Avignon, South Section Chief, USACE
Mike Monroe, Environmental Protection Agency
Carl Wilcox, Chief, Water Branch, CDFG
Bruce Wolfe, Sam Francisco Bay Regional Water Quality Control Board
San Francisco Bay Air Quality Management District
Federal Emergency Management Agency
Native American Heritage Commission
Bob Doyle, Assistant General Manager of Land Acquisition, EBRPD
Mike Anderson, Assistant General Manager Planning and Stewardship, EBRPD
Joe DiDonato, Stewardship Manager, EBRPD
Brad Olson, Environmental Programs Manager, EBRPD
Alameda County Flood Control District
Milt Werner, Superintendent, Fremont Unified School District
Alameda Creek Alliance
California Native Plant Society
Citizens Committee to Complete the Refuge
Greenbelt Alliance
Ohlone Audubon Society
Sierra Club
Transportation and Land Use Coalition

From: Arthur Feinstein [mailto:arthurfeinstein@earthlink.net]
Sent: Tuesday, January 19, 2010 17:02
To: TERRENCE GRINDALL
Subject: Comments on the Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan (DEIR)

San Francisco Bay Chapter

Serving Alameda, Contra Costa, Marin and San Francisco Counties

January 19, 2010

City of Newark
37101 Newark Boulevard
Newark, CA 94519

Attn: Terrence Grindall (Terrence.Grindall@newark.org)

Sent via electronic mail: No hardcopy to follow

Re: Comments on the Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan (DEIR)

SCH No.: 200705205

Dear Mr. Grindall:

The Sierra Club appreciates the opportunity to comment on the above referenced DEIR.

In a world facing one of the largest mass extinctions of wildlife, this project fails to identify threats to endangered species and poses inadequate or even unspecified mitigations for other impacts to those species thus putting their existence in jeopardy. In a Bay Area facing a sea-level rise of three to six feet (or even more according to some credible scientists) this project proposes to build housing on land that may ultimately be under bay waters. In a Bay Area that recognizes the importance of preserving and restoring wetlands this project proposes to fill 85.6 acres of wetlands as well as 7.65 acres of salt marsh harvest mouse/salt marsh wandering shrew habitat with no plan for mitigation other than to say we will mitigate. In a Bay Area that recognizes the need for the preservation of uplands adjacent to tidal wetlands in order to allow for those wetlands to move uplands as the Bay rises, this project proposes to build housing and a golf

course on lands among the most suitable for such tidal marsh movement and that are included within the Don Edwards San Francisco Bay National Wildlife Refuge expansion boundary.

This lack of sound planning policy is matched only by a DEIR that is fatally flawed in its failure to identify impacts to endangered species, failure to fully assess the impacts of building on lands that may be under water in 100 years or less and that fails to define appropriate mitigations for these and other impacts.

These flaws are so significant that they cannot be resolved through a Final EIR but instead require the preparation of a fully revised DEIR.

Specific comments:

The project proposes to use up to 2.1 million cubic yards of fill in Area 4 to raise the building pad elevations. The DEIR does not provide sufficient analysis on the safety of such a massive fill. For example,

- the DEIR fails to adequately address the stability of this fill over many years including the possibility of subsidence as a result of inundation and standing water (if the pumps that are necessary to export stormwater over the levees around the project fail or are inadequate),
- the DEIR fails to adequately address where the project will acquire that immense amount of fill (while the BART expansion project may provide much of the fill, other projects may compete for that fill requiring some or much of the fill to come from other sources- a more global analysis is required),
- will obtaining that amount of fill result in impacts to the environment that would otherwise not take place (e.g., taking fill material from sites that would otherwise be providing wildlife habitat),

The failure to adequately address these issues that could impact both human safety and wildlife habitat requires a depth of analysis that insists on a revised DEIR, not simply responses in a FEIR.

The project fails to address significant endangered species issues, for example:

- the DEIR fails to address the inescapable impacts of pet cats, feral cats and off-leash dogs on the salt marsh harvest mouse (SMHM) and salt marsh wandering shrew. We believe this is an unmitigable impact since these animals are an inevitable component of modern communities and we are not aware of any project that has been able to curtail the movements of these predators, While the DEIR acknowledges that such predators may have impacts on wildlife species it shockingly fails to identify it as a specific impact to be mitigated not to mention offering no mitigations for such impacts. It is well known that these exotic predators are some of the principle causes of tidal marsh species population declines (see and US Fish and Wildlife Service biological opinion on tidal marsh listed species in the Bay Area) and to fail to identify them as significant impacts is inexcusable.
- the DEIR fails to adequately address the impacts of the introduction or the increased presence of predators such as ravens, crows and raccoons that would result from the implementation of the proposed housing development on the salt marsh harvest mouse and salt marsh wandering shrew. The increase or introduction of these species would result from the

increased food resources made available to them from human garbage and other human sources of food.

The failure to address these impacts on two endangered species goes beyond the ability of an FEIR to redress and requires the preparation of a revised DEIR to address these significant and possibly unmitigable impacts.

The project fails to adequately address the impacts to the salt marsh harvest mouse from habitat loss. The significance of the impact of habitat loss to these species is emphasized by the fact that the US Fish and Wildlife Service has estimated that less than 3% of historic salt marsh harvest mouse habitat is still extant. The 1992 Estuary Project *Status and Trends Report on Wildlife of the San Francisco Estuary* states, " …survival of the southern subspecies depends on the protection and management of remaining formerly tidal marshes which have been diked but continue to support harvest mice…(page 165)." This is an accurate description of the current project site

For a species in such dire straits, the project's mitigation proposed for this species is woefully inadequate both in description and in amount. While mitigation for habitat impacts is proposed at a 3:1 or 2:1 ratio we question if there is sufficient acreage on site for that purpose as well as for general wetland mitigation for 85.6 acres of wetlands.

The DEIR is abundantly vague about how much SMHM mitigation will be required. At a 3:1 that would be over 21 acres. That makes up a need for over 100 acres of wetlands mitigation assuming that one doesn't double-dip and count wetland mitigation as SMHM mitigation. The DEIR suggests that mitigation for one should suffice for the other. We disagree. These are separate impacts requiring separate mitigation amounts. Furthermore, the DEIR's proposed 2:1 ratio for SMHM "habitat" loss that will be within 100 feet of the developed areas is inappropriate since there is no reason to believe that such habitat will support the SMHM and in fact the recovery plan for the species asks for a buffer of at least 100 feet from human use.

Mitigation

Mitigation Measure BIO-1.2B is flawed when it states, "[A]lternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. These off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements. The offsite component of the wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed."

We are not aware of any mitigation banks or private lands along the South San Francisco Bay shoreline within 10 miles of the project site that meets this need. Since a large number of mitigation acres are needed we do not believe that this mitigation measure can be met. The DEIR must identify available sites for such mitigation rather than just state that such mitigation opportunities exist. We believe that all of the shoreline land between San Leandro and the project site are publicly owned and

thus not available as mitigation banks or mitigation sites. Similar difficulties are met in the other direction.

Furthermore, the idea that the "preservation" of wetlands is adequate mitigation for the loss of wetlands is not tenable. State regulations require a "no net loss" of wetlands, but "preservation" as the only mitigation tool obviously results in a net loss of wetlands. While federal regulations may allow some preservation be used for mitigation it is clearly identified as a rare use only for preserving sites of special importance. We do not believe there are any **available** sites in the south bay that meet that qualification under the Army Corps guidance of being so important that their preservation may be used as mitigation and, in fact, if there were such sites the project Area 4 site would be one of them due to its providing critical habitat for such endangered species as the SMHM.

We also disagree with the 1.5-acre mitigation ratio proposed in the DEIR for the loss of seasonal wetlands. Seasonal wetlands are some of the most difficult to replicate in function. We believe a 3:1 or even higher ratio is appropriate (see *Restoration of Aquatic Ecosystems*, National Research Council, 1992, page 309, "Require 3:1, 5:1, or 10:1 habitat replacement ratios…").

Just as egregious is the DEIR's MMBIO-1.2A, *"A detailed mitigation plan shall be developed by a qualified biologist under contract to each future developer for individual development projects within the Specific Plan areas which result in direct impacts to wetland habitats. This plan will be submitted to and approved by the City of Newark prior to the initiation of grading within wetlands"*.

For a site as important as this one providing habitat for two endangered species and adjacent to a marine mammal (harbor seal) breeding and haul out at Mowry Slough and located within the expansion boundary for the Don Edwards San Francisco Bay National Wildlife Refuge, mitigation for any wetland impacts should be described in some detail in order to provide decision-makers with some confidence that such mitigation will be successful or even feasible. Here, such decisions are left up to a "qualified biologist" with evidently no further review by regulatory agencies other than the City of Newark. As mentioned above, seasonal wetland habitat is one of the most difficult to replicate in all its functions. Leaving mitigation planning to future "qualified biologists" with only acreage requirement guidelines is simply not acceptable.

Since we do not believe that there is sufficient acreage available on-site to implement even a 1.5:1 mitigation ratio, and believe that there are no off-site opportunities of significant size for the amount of mitigation required by this project we believe that a full mitigation concept plan must be provided that assures the public and decision-makers that such mitigation as is necessary is possible. A revised DEIR should be prepared that includes a full mitigation concept plan that indicates how mitigation will be achieved in the face of the problems cited above.

Finally, the project proposes to fill wetlands and wetlands are §404(b)(1) special aquatic sites and thus there is a presumption that there are alternate upland sites available for the general purpose of the project that would have less environmentally damaging impacts. The project's general purpose is housing and we believe there are other sites in the Bay Area where housing can be built that would not require the destruction of wetlands and endangered species habitat.

There are many other issues we have not had time to address. The Citizens Committee to Complete the Refuge has addressed many of them and we concur with their findings.

We thank you for your consideration of our concerns and hope that a revised DEIR will be the outcome of your deliberations.

yours,

Arthur Feinstein, Vice-Chair

Sierra Club, San Francisco Bay Chapter Executive Committee

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January 19, 2010

VIA ELECTRONIC MAIL AND HAND DELIVERY
Terrence.Grindall@newark.org

Terrence Grindall
City of Newark
37101 Newark Boulevard
Newark, California 94560

RE: COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT FOR SPECIFIC PLAN PROJECT FOR AREAS 3 AND 4 (INCLUDING PROPOSED SPECIFIC PLAN)

Dear Mr. Grindall:

This firm represents Pick-N-Pull Auto Dismantlers ("Pick-N-Pull"), owner of property within "Area 4" and operator of the auto dismantling and recycling business located at 7400 Mowry Avenue and 7550 Mowry Avenue in the City of Newark, California. The following comments are submitted on our client's behalf in connection with the December 2009 Draft Environmental Impact Report ("DEIR") prepared by the City of Newark ("City") for the proposed Specific Plan Project (the "project") for Newark Areas 3 and 4 (including the proposed Specific Plan, which is Exhibit A to the DEIR).

As a business owner and operator, and as the owner and long-term lessee of substantial acreage within "Area 4," Pick-N-Pull has a very keen interest in the City's plans for its properties and for the surrounding properties in that area of the City. To that end, Pick-N-Pull has been attempting to work with the City in its efforts to advance acceptable land use development scenarios for that area. Unfortunately, Pick-N-Pull has not been afforded the opportunity to participate in the City's on-going work with other landowner/developers on the development planning or entitlement documents. However, it is clear that the City has deviated from its announced intentions (several years ago) as to the type, timing and form of development for the lands owned or controlled by Pick-N-Pull and those that surround those properties. Due specifically to those significant changes in identified potential development scenarios, and the lack of any single specific development proposal, Pick-N-Pull's interest is particularly keen because its prior expectations are significantly adversely affected by the current DEIR and proposed Specific Plan.

We trust that the City's intention is to provide a thorough, complete and legally adequate Specific Plan and CEQA environmental review document for that plan. On behalf of Pick-N-Pull, we have carefully reviewed the DEIR and proposed Specific Plan in order to assist the City in that effort.

Unfortunately, we have concluded that the current draft documents contain numerous significant deficiencies rendering them legally inadequate under the California Environmental Quality Act ("CEQA") (Public Resources Code Sections 21000 *et seq.*) and the Planning and Zoning Law (Government Code Section 65000 *et seq.*). Accordingly, we respectfully suggest that the City correct these deficiencies by supplementing and recirculating the DEIR for the proposed Specific Plan Project for Newark Areas 3 and 4, and revising the underlying proposed Specific Plan, to address the following items:

I. Comments Regarding the DEIR for the Proposed Specific Plan

1. Public Transit Impacts Analysis

The DEIR's analysis of impacts on public transit is set forth in Section 3.2.3.5 and Appendix B. Section 3.2.3.5 of the DEIR states:

> Existing AC Transit bus routes travel along Mowry Avenue, Cherry/Boyce Street and Stevenson Boulevard, in the vicinity or adjacent to the project street frontages. It is reasonable to assume that transit trips will comprise no more than four percent of the travel mode share to the site during the peak commute periods. This would equate to approximately 57 new transit riders during the AM peak hour and approximately 67 new transit riders during the PM peak hour. Within the vicinity of the project there are three bus lines. Assuming the existing service would remain unchanged, with the three bus lines providing service with 30 to 60-minute headways, the number of transit riders during the peak commute period (PM peak hour) would equate to about 12 riders. These new riders could easily be accommodated by the current available ridership capacity of the existing transit facilities in the project study area. Therefore, the project is not expected to increase transit demand such that improvements to the existing bus service would be necessary … The proposed Specific Plan project would not adversely impact transit service … (**Less than Significant Impact**). (Bold in original.)

Appendix B of the DEIR is titled "Transportation" and indicates that the three AC Transit bus lines in the vicinity of the project are Stevenson Boulevard Route 214, Albrae Street Route 235 and Albrae Street Route 329. According to Appendix B of the DEIR (see page 11), the headways for Stevenson Boulevard Route 214 are every 30 minutes, and the headways for Albrae Street Route 235 and Albrae Street Route 329 are every 60 minutes. Section 3.2.3.5 and Appendix B of the DEIR do not provide any data or support relating to the computation of public transit's travel share mode for the project nor do they provide any data concerning current ridership rates on these bus routes or the ridership capacity of the buses that service these routes.

In light of the above, the following deficiencies in the DEIR transportation/public transit analysis are noted below:

First, given the sparse public transit information provided in Section 3.2.3.5 and Appendix B of the DEIR, the DEIR does not appear to contain substantial evidence to support the DEIR's determination that public transit will account for only four percent of the total travel share mode for new residents for the proposed project. This four percent figure seems particularly low in light of the fact that the project proposes to build 189 below market rate (BMR) multi-family units (see Section 2.4.1 of the DEIR). Presumably the rate of automobile ownership and usage among residents of these proposed 189 BMP residential units is lower than non-BMR residential units (suggesting greater reliance on public transit), yet there is no indication in the DEIR as to whether or how the inclusion of these 189 BMR units was reflected in the determination that public transit will account for only four percent of the total travel share mode for new residents for the proposed project.[1]

Second, the DEIR does not appear to contain substantial evidence to support the DEIR's general claim of "30 to 60 minute headways" for the three AC Transit bus lines providing service in the vicinity of the project. More specifically, according the Appendix B of the DEIR, although the headways for Stevenson Boulevard Route 214 are every 30 minutes, the headways for Albrae Street Route 235 and Albrae Street Route 329 are every 60 minutes. This suggests that average headways for the bus routes servicing the project are much closer to 60 minutes than 30 minutes.

Third, in light of the two observations noted above regarding travel mode share and headways, there does not appear to be substantial evidence to support the DEIR's projection of anticipated new public transit riders for the AM peak hour and PM peak hour.

Fourth, although Section 3.2.3.5 of the DEIR attempts to analyze the number of additional public transit riders for the AM peak hour, it does not do so for the PM peak hour. No explanation is provided for the omission of this information for the PM peak hour.

Fifth, because Section 3.2.3.5 and Appendix B of the DEIR does not provide any data concerning current ridership rates on these AC transit bus routes or the ridership capacity of the buses that service these three routes, there does not appear to be substantial evidence to support the DEIR's determination that "new riders could easily be accommodated by the current available ridership capacity of the existing transit facilities in the project study area." For instance, if the current buses that service these routes during peak hours are already near ridership capacity (i.e., under baseline conditions) in terms of available seats, then the addition of 12 passengers from the project (or likely more than 12 passengers for the reasons noted above) might well be a significant public transit impact. Without this basic information, there is no basis for the DEIR to reach the conclusion that the impact of these additional bus passengers will be less than significant.

Sixth, for all of the reasons note above, the DEIR lacks substantial evidence to support the determination that the project will have a "Less than Significant Impact" on public transit services.

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[1] We note that these 89 units represent approximately fifteen percent of the total proposed 1,260 units.

2. Roadway Network Impact Analysis

Section 3.2.2.4 of the DEIR sets forth the methodology used in the DEIR to determine the significance of the project's impacts on the roadway network (streets and freeways). Section 3.2.2.4 explains its reliance on "background conditions" as follows: "Background conditions were represented by future background traffic volumes on the near-term future roadway network. Background traffic volumes were estimated by adding to existing peak-hour volumes the projected volumes from *approved* but not yet completed developments." (Italics in original.) Section 3.2.2.4 then explains: "Future traffic volumes with the project were estimated by adding to background traffic volumes the additional traffic generated by the project. Project conditions were evaluated relative to the background conditions in order to determine potential project impacts." (Underline added.)

As set forth above, the DEIR therefore used its computation of "Background Conditions" (which included projects approved but not yet constructed) as the baseline/environmental setting for evaluating the significance of the project's roadway network impacts.

CEQA Guidelines § 15125 is titled "Environmental Setting" and provides that CEQA environmental impact assessment documents must:

> Include a description of the **physical** environmental conditions in the vicinity of the project, **as they exist at the time** the notice of preparation is published, or if no notice of preparation is published, **at the time** environmental analysis is commenced. This environmental setting will normally constitute the **baseline** physical conditions by which a Lead Agency determines whether an impact is significant. (Bold added.)

The leading CEQA case on CEQA Guideline 15125 and "baseline" conditions is Environmental Planning and Information Council (EPIC) v. County of El Dorado (1982) 131 Cal.App.3d 350. In EPIC, a CEQA document was prepared for a General Plan amendment. In assessing the impacts of new projects proposed in the General Plan amendment, the CEQA document compared the new proposed projects not against the baseline of actual existing conditions but rather compared the new proposed projects against what had been previously approved under the old General Plan. In EPIC, the California Court of Appeal rejected the use of this baseline, holding that the CEQA analysis should have compared the project proposed under the General Plan amendment to *current* conditions on the ground. According to the Court in *EPIC*, under CEQA Guideline Section 15125 this current condition was "the **actual** environment upon which the proposal will operate" and the reliance on this improper baseline rendered the CEQA analysis "**misleading**." (Bold added.)

Earlier this year, Contra Costa County Superior Court reached the same conclusion as the Court in EPIC. In Communities for a Better Environment v. City of Richmond (Contra Costa County Superior Court Case No. CIVMSNO8-1429, decision issued June 4, 2009), an EIR was prepared for proposed changes to a Chevron oil refinery. In its CEQA document, Chevron had argued that the "baseline" for analysis of air quality impacts should be the levels of emissions allowed under the refinery's permit rather than the *current/actual* pollution and greenhouse gas emissions being emitted from the refinery (which were below the amount approved). Just as in

EPIC, the Court in Communities for a Better Environment rejected this baseline as inconsistent with CEQA Guideline 15125, holding "Environmental setting at time of notice of preparation [of the EIR] was published will normally constitute baseline environmental conditions by which the lead agency determines whether an impact is significant. See 14 CCR Section 15125(a)."

Because the "background conditions" relied upon in Section 3.2.2.4 of the DEIR reflects "approved" projects rather than those projects actually constructed (existing conditions), this baseline is not consistent with CEQA Guidelines § 15125 and the EPIC and Communities for a Better Environment court decisions noted above.

Moreover, the DEIR's conclusion that the impact of the proposed project would have a less than significant impact on the regional roadway network is flawed because it again relies on improper baseline conditions - this time the development on Areas 3 and 4 allowed under "the existing General Plan." Section 3.2.3.3 of the DEIR relating to "CMA Modeling of the Project," states in part:

> The existing General Plan land use designations on the undeveloped portions of Areas 3 and 4 allow for up to 1.175 million square feet of industrial park use, up to 2,700 dwelling units, an 18-hold golf course, and open space. The proposed Specific Plan would allow up to 1,260 dwelling units, a 600 student elementary school, an 18-hole golf course, and open space. **Thus, the proposed Specific Plan project results in less overall development on Areas 3 and 4 than is allowed under the existing General Plan land use designations**.
>
> . . .
>
> **Based on the existing General Plan designation** and considering the assumed growth in the CMA's Alameda County travel forecast model, Newark Areas 3 & 4, under no project conditions, were assumed to contain 800 dwelling units and 2,318 jobs under year 2015 conditions, and 1,260 dwelling units and 2,920 jobs under year 2030 conditions. With the proposed Specific Plan, Areas 3 and 4 would contain 1,260 dwelling units and 1,838 jobs under year 2015 conditions, and 1,260 dwelling units and 1,940 jobs under year 2030. **Compared to the no project (existing General Plan) conditions**, the proposed project would result in 37 more trips during the AM peak hour and 113 more trips during the PM peak hour under year 2015 conditions. Under year 2030 conditions, the proposed project would result in 327 fewer trips during the AM peak hour and 344 fewer trips during the PM peak hour. Although the proposed project would result in less overall traffic from the site in 2030, the directionality of residential trips is opposite the directionality of employment trips. Outbound residential trips peak in the morning, while employment trips peak in the early evening. Thus, despite the fact that the overall volume of traffic from the project vicinity would be less than under the current General Plan, some street segments will experience increases as a result of the proposed Specific Plan. See, DEIR, p. 62. (Emphasis added.)

Based of the foregoing analysis, the DEIR then formulated a traffic model, which aimed to project traffic impacts for year 2015 and year 2030. The DEIR then concluded:

> In order to determine the impact of the project for the 2015 and 2030 horizon years, the net project volumes of the residential and employment uses were added to the forecasted 2015 and 2030 peak-hour traffic volumes. The resulting traffic volumes and levels of service of the affected regional roadway segments with and without the proposed project.
>
> . . .
>
> The results of the traffic model show that in 2015 and 2030, the regional roadway segments in the vicinity of the project would operate at congested traffic conditions in the peak-directions. In particular, portions of I-880 are projected to operate at LOS F under years 2015 and 2030 during both peak hours. Although the proposed Specific Plan would add some traffic to these roadways, on no study segment would the proposed Specific Plan add more than 32 peak hour trips (or about one car every 2 minutes). This small addition, when added incrementally to the trips of other projects, is not cumulatively considerable. **In addition, because the proposed Specific Plan would result in less overall land use density in Areas 3 and 4 than allowed under the existing General Plan, several of the roadway segments projected to operate at LOS F under the existing General Plan would experience traffic decreases under the proposed Specific Plan, thereby improving traffic conditions.** For these reasons, it was concluded that the impact of the proposed project would have a less than significant impact on the CMA roadway network. See, DEIR, p. 63. (Bold and underline added.)

The DEIR's use of existing conditions based on development allowed under the existing General Plan contravenes CEQA Guidelines Section 15125 and the EPIC and Communities for a Better Environment court decisions noted above. Therefore, the DEIR's traffic analysis violates CEQA and must be corrected to utilize existing conditions as those *currently reflected on the ground in Areas 3 and 4*, not the development thereof contemplated by the General Plan.

Furthermore, the DEIR's conclusion that the Specific Plan's addition of no more than "32 peak hour trips (or about one car every 2 minutes)" is not cumulatively considerable "when added incrementally to the trips of other projects" is not supported by substantial evidence. When determining whether a cumulative impact must be analyzed under CEQA, there are two related determinations to make:

(1) Is the combined impact of the project and other projects significant? and

(2) Is the project's incremental effect cumulatively considerable?

See, Stephen L. Kostka & Michael H. Zischke, Practice Under the California Environmental Quality Act (Continuing Education of the Bar 2009), § 13.39 - Significant Cumulative Impacts Must Be Discussed ("CEQA Practice"), citing 14 Cal. Code Regs. § 15030(a)(2). A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." See, 14 Cal. Code Regs. § 15065(a)(3).

The CEQA Guidelines set forth two methods for satisfying the cumulative impacts analysis requirements:

(1) the list-of-projects approach (i.e. a list of past, present, and probable future projects producing related impacts, including those outside the lead agency's control); and

(2) summary-of-projections approach (i.e., summary of projections adopted in a general plan or related planning document).

Under either method, the EIR must summarize the expected environmental effects of the project and related projects, provide a reasonable analysis of cumulative impacts, and examine reasonable options for mitigation or avoiding the project's contribution to any significant cumulative impacts. Id. at §§ 13.40, 13.42-13.43, citing 14 Cal. Code Regs. §§ 15130(b)(1)(A)-(B), 15130(b)(4)-(5).

Here, the DEIR relies upon development contemplated by the existing General Plan and amorphous "other projects" to conclude that there will be no cumulative traffic impacts. As discussed above, this is not a proper cumulative impacts analysis. The DEIR, thus, should be supplemented to include a full discussion of cumulative traffic impacts or, in the alternative, provide substantial evidence to demonstrate that the project will not have cumulatively considerable impacts on traffic.

3. Air Quality Impact Mitigation Analysis

The DEIR concludes that there will be a significant impact on air quality from construction activity producing emissions in excess of the proposed Bay Area Air Quality Management District (BAAQMD) significance thresholds. Specifically the DEIR states:

> Based upon the proposed BAAQMD significance thresholds for construction activity, temporary daily emissions of PM_{10} and $PM_{2.5}$ from truck hauling, along with emissions from on-site equipment used to move fill materials would have emissions below the daily BAAQMD daily thresholds. Construction activity ROG emissions would be above significance thresholds for three of the eight-year estimated construction period and emissions of NOx would be significant for seven of the eight year construction period. Because NOx and ROG emissions are above the proposed BAAQMD significance threshold of 54 pounds per day, the effect of these emissions to the air basin would be significant. (**Significant Impact**). See, DEIR, Impact AIR-3, p. 93. (Bold in original.)

The DEIR concludes that there are no mitigation measures to reduce this air quality impact and therefore it constitutes a significant unavoidable impact. Specifically, the DEIR concludes:

> **MM AIR-3.1:** The project proponent and the City cannot control emissions from independent trucks used to haul fill materials. Additionally, due to the large size and extended duration of the construction, there are no mitigation measures to reduce this impact, and it would remain significant and unavoidable.
>
> It should be noted that use of fill from the planned Warm Springs BART extension or other nearby construction projects may reduce emissions associated with these local

> projects, because the proposed project could provide a more convenient location for transporting fill. This would reduce those planned truck trips. (**Significant Unavoidable Impact**). See, p. 93. (Bold in original.)

The DEIR also concludes that this air quality impact has significant cumulative impacts and that there are no measures to reduce its impact to a less than significant level. See, Impact C-AIR-3, p. 281.

The DEIR fails to proffer substantial evidence to support its findings that the City cannot control emissions from independent trucks and thus no mitigation measures exist to reduce this impact. CEQA requires that an EIR propose and describe feasible mitigation measures to minimize the significant environmental effects identified in the EIR. See, Pub. Res. Code, §§ 21002, 21002.1(a), 21081(a), 21100(b)(3); 14 Cal. Code Regs., § 15126.4. Mitigation includes:

- Avoiding an impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of an action.
- Compensating for the impact by replacing or providing substitute resources or environments. 14 Cal. Code Regs., § 15370.

CEQA Guideline Section 15364 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." See also, Pub. Res. Code, § 21061.1. Mitigation measures must either be incorporated into the design of the project or be fully enforceable through conditions, agreements, or other means. See, 14 Cal. Code Regs., § 15126.4.

Here, as the lead agency, the City may impose conditions or enter into an agreement with the developer of the project to ensure that feasible mitigation measures be put into effect during construction of the project. Examples of such feasible mitigation measures, include, but are not limited to:

- Imposition of emission controls/retrofitting of trucks and on-site equipment,
- Proper maintenance of trucks and on-site equipment,
- Periodic audits or maintenance inspections of controls and facilities installed to mitigate impacts,
- Limitation of vehicle travel on unpaved roads,

- Limitation of idling vehicles,

- Energy conservation measures (use of alternate fuels and energy systems (particularly renewable sources), reduction of peak energy demand, siting of the Project to reduce energy consumption (including transportation energy), and

- Application of water or chemical stabilizers (with no secondary environmental effects) to roads to avoid dust generation. See, 14 Cal. Code Regs., §§ 15126.4(a)(1)(C), 15370(b)-(d), and Appendix F; see also, OPR Technical Advisory, CEQA and Climate Change Through California Environmental Quality Act (CEQA) Review, June 19, 2008, Attachment 3, and OPR's Proposed Amendments to 14 Sections of the CEQA Guidelines; see generally, California Air Resources Board and Bay Area Air Quality Control District guidance.

Furthermore, payment of fees and/or the purchase of offsets constitute a feasible mitigation measure when linked to a specific mitigation program. See, Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th 1173.

Another feasible mitigation measure that would both minimize and reduce air quality impacts related to construction activities would be the re-design of the project plan to lessen the amount of fill required. See, generally 14 Cal. Code Regs., § 15370(b) & (d).

Moreover, the DEIR completely failed to consider implementation of off-site mitigation measures that the City could undertake to mitigate air quality impacts of construction-related emissions (e.g., adopting an incentive program for sustainable transportation in the City of Newark or paying for retrofitting or elimination of other emission sources).

Finally, it is unclear why the DEIR summarily concluded that there were *no* mitigation measures, but chose to include a notation that fill may be used from the planned Warm Springs BART extension or other nearby construction projects to reduce emissions.

In light of the foregoing comments, the City should supplement the EIR to propose and describe feasible mitigation measures that will minimize the significant effects of construction-related air emissions.

4. Climate Change Impact Mitigation Analysis

Expanding upon the comments above, the DEIR fails to provide substantial evidence to support its conclusion that no mitigation measures will reduce the significant unavoidable impacts of the Project on global climate change.

In accordance with the mandates set forth in AB 32 and Senate Bill 97, if an EIR evaluates greenhouse gas emissions, and determines that the project's contribution to climate change impacts is cumulatively considerable, the EIR should evaluate mitigation measures that may reduce this impact. CEQA Practice, § 20.85 –Evaluate Mitigation.

Here, the DEIR concludes that: "The proposed project would result in a cumulatively considerable contribution global climate change impact. **(Significant Cumulative Impact)**." See, Impact C-GCC-4, p. 297. (Bold in original.) As a result, it proposes two mitigation measures:

> All residential subdivisions and new commercial buildings within the Specific Plan shall incorporate as many green practices as appropriate and feasible in buildings and structures constructed subject to approval of the City of Newark.
>
> . . .
>
> All public landscaping areas within the Specific Plan shall follow the City of Newark's Bay Friendly Landscape Guide. Future homeowners associations or similar entity shall be encouraged to incorporate as many bay friendly landscape practices as appropriate and feasible. See, MM C-GCC-4.1 and 4.2, p. 297.

Despite the foregoing mitigation measures, the DEIR concludes, "the overall implementation of the Specific Plan will still make a cumulatively considerable contribution to global climate changes impacts and, therefore, result in a significant unavoidable impact. **(Significant Unavoidable Impact)**." See, DEIR, p. 297. (Bold in original.)

The DEIR's proposed mitigation measures are inadequate because they improperly defer formulation of specific performance standards to reduce the project's significant impacts on global climate change. See, 14 Cal. Code Regs., § 15126.4(a)(1)(B) (see detailed discussion regarding deferral of mitigation, infra). MM C-GCC-4.1 proposes to have all buildings within the Specific Plan incorporate as many "green practices as appropriate and feasible." This mitigation further requires that the City of Newark approve such "green practices" presumably prior to their implementation. The DEIR fails to quantify what "green practices" shall be incorporated or to specify the performance standards that must be met. Moreover, it is wholly unclear from the DEIR how "appropriate and feasible" will be evaluated and what standards the City will use to evaluate whether the "green practices" are "appropriate and feasible."

For similar reasons, MM C-GCC-4.2 also improperly defers formulation of performance standards because it merely encourages homeowners associations to incorporate "as many bay friendly landscape practices as are appropriate and feasible." Moreover, this mitigation measure fails to quantify and/or specify the criteria for determining what landscape practices are "appropriate and feasible."

Furthermore, since the DEIR concludes that the Project will have a significant cumulative impact notwithstanding the "green practices" discussed, the City is obligated to identify and impose additional off-site mitigation measures to reduce the Project's greenhouse gas impacts. Numerous examples of potentially feasible mitigation measures are set forth in the previous section and further mitigation measures, including but not limited to carbon offsets, are now available yet not even considered in the DEIR. Some such mitigation measures are set forth in the cited guidance. See, 14 Cal. Code Regs., §§ 15126.4(a)(1)(C), 15370(b)-(d), and Appendix F; see also, OPR Technical Advisory, CEQA and Climate Change Through California Environmental Quality Act (CEQA) Review, June 19, 2008, Attachment 3, and OPR's Proposed

Amendments to 14 Sections of the CEQA Guidelines; see generally, California Air Resources Board and Bay Area Air Quality Control District guidance.

The DEIR's inclusion of artificially limited, legally insufficient, mitigation measures falls short of CEQA's requirements. Consequently, the City should correct the DEIR to include further mitigation measures that will reduce the project's impacts on global climate change.

5. Saltwater Wetlands Loss Mitigation Analysis

Section 3.5 of the DEIR is titled "Biological Resources." Subsection 3.5.3.2, addressing "Impacts and Mitigation Measures for Biological Habitats," discusses, among other things, impacts of the project on seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat. See DEIR, pp. 134-136. The DEIR concludes that the project will have significant adverse environmental impacts on wetlands, by stating:

> The project would result in the loss of up to 85.6 acres of wetland/marsh/aquatic habitat. This would result in a substantial adverse affect on riparian habitat and on federally protected wetlands through the loss of these habitats. (**Significant Impact**). See, Impact BIO-1, p. 135. (Bold in original.)

The City includes the following (among others) as proposed mitigation measures for Impact BIO-1:

> **MM BIO-1.2A:** To offset impacts to the wetland and aquatic habitat on the site, the future project proponent(s) will utilize a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off site. The on-site component of the mitigation shall include creation of wetland and aquatic habitat within upland Area 4 will enhance portions of the remaining areas of agricultural field/seasonal wetland habitat within Area 4, as described below.
>
> Compensatory mitigation for impacts to these habitats shall consist of two parts: (1) creation of high quality wetland and aquatic habitat **within Area 4 within upland habitat** at an acreage ratio of 1:1 (habitat created/enhanced: habitat impacted) to prevent any net loss of habitat functions or values, and (2) enhancement of existing seasonal wetland habitat that is currently within agricultural production (mapped as agricultural field/seasonal wetland habitat) at an acreage ratio of 0.5:1 . . . In summary, any impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at a total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted).
>
> **A detailed mitigation plan shall be developed by a qualified biologist under contract to each future developer for individual development projects within the Specific Plan areas which results in direct impacts to wetland habitats. This plan will be submitted to and approved by the City of Newark prior to the initiation of grading within wetlands.**
>
> The detailed mitigation plan will outline the necessary steps for mitigation . . . **Potential biological impacts associated with grading activities required for the mitigation of the seasonal wetlands have been considered during this current Specific Plan CEQA**

> **impact analysis and no additional significant impacts have been identified** . . . (Bold and underline in text added).
>
> **MM BIO-1.2B**: Alternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio of 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. These off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements. The off-site component of the wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed. **(Less Than Significant Impact with Mitigation)**. See, pp 135-136, bold in original.

There are a number of deficiencies with respect to the City's proposed mitigation measures relating to the significant impacts of the project on wetlands:

First, as a preliminary matter, the DEIR's proposed mitigation measures fail to reflect the legal preference for using credits from a wetland mitigation bank over other forms of compensatory mitigation measures (i.e. permittee-responsible mitigation and in-lieu fee mitigation). See, 40 CFR Part 230, Subpart J and 33 CFR Part 332; EPA, Wetlands Compensatory Mitigation Guidance, EPA-843-F-08-002, Clean Water Act and Federal regulations; EPA Mitigation Banking Factsheet. The Federal regulations base the preference on the following:

> Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts this rule established a preference for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation. See, 40 CFR Part 230, Summary.

Instead, of requiring the use of mitigation banks, the above mitigation measures propose permittee-responsible wetland creation/enhancement measures on-site and state the use of "mitigation banks or other private lands" off-site as an alternative "at the discretion of the project developer(s), and as approved by the City of Newark." As described below, the permittee-responsible wetland mitigation measures on-site are inadequate for numerous reasons. Accordingly, the above mitigation measures should be revised to require compensatory mitigation by way of approved mitigation banks, rather than propose that banks be used as an alternative in the discretion of the developer and approved by the City.

Second, the DEIR lacks substantial evidence to support MM BIO-1.2A's creation of "high quality wetland and aquatic habitat within Area 4 within upland habitat" and "enhancement of existing seasonal wetland habitat that is currently within agricultural production" are legally adequate mitigation measures. (Emphasis added.) As previously noted, CEQA requires that an EIR propose and describe feasible mitigation measures to minimize the significant environmental effects identified in the EIR. See, Pub. Res. Code, §§ 21002, 21002.1(a), 21081(a), 21100(b)(3); 14 Cal. Code Regs., § 15126.4. To be legally adequate, mitigation

measures must be capable of "avoiding the impact altogether by not taking a certain action or parts of an action"; "minimizing impacts by limiting the degree or magnitude of the action and its implementation"; "rectifying the impact by repairing, rehabilitating, or restoring the impacted environment"; or "reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action." See, 14 Cal. Code Regs., § 15370.

Here, the DEIR fails to elucidate whether creation of wetlands in the upland habitat of Area 4 and enhancement of wetlands currently within agricultural production will minimize the project's significant adverse effects on the wetlands characterized as "tidal marsh/upland transition," which are located along the southern and western edges of Area 4. See, Biological Resources Technical Report, Appendix E, pp. 11-12. Appendix E states in relevant part:

> While the City of Newark General Plan has identified development that is projected to occur within Area 4, this area has also been identified for its ecological value by regional planning efforts. The **southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating that these lands were pre-approved for addition to the Refuge in the future**. The Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the [former] Pintail Duck Club." **Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of the few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the site's potential value in providing upland transition zones adjacent to tidal wetlands**. See, Appendix E, p. 12, emphasis added.

As this passage of Appendix E clearly demonstrates, the "tidal marsh/upland transition wetlands" are unique because of, among other things, their geographic location, ecological value, and salinity levels. The DEIR fails to supply any evidence whatsoever demonstrating that the proposed creation of wetland habitat within the upland portion of Area 4 and in portions of Area 4 currently in agricultural production (which both have divergent characteristics from the tidal marsh transitional portions of Area 4), will minimize the adverse impacts of filling the "tidal/marsh upland transition" wetlands.

Third, along the same lines, the DEIR fails to specify the on-site location where the wetland mitigation will occur, but instead improperly defers that determination. Deferral of the formulation of mitigation measures is improper under CEQA. See, 14 Cal. Code Regs., § 15126.4(a)(1)(B).

Some courts have held that deferral of the formulation of the specifics of a mitigation measure pending further study or regulatory agency approval (where such agency will issue a permit or other approval for a project) was in line with CEQA. See, San Joaquin Raptor Rescue Ctr. v. County of Merced (2007) 149 Cal.App.4th 645, 671; Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 794; Defend the Bay v. City of Irvine (2004) 119 Cal.App.4th 1261, 1275. However, such cases are distinguishable from the situation presented here because the DEIR improperly defers formulation of the specifics regarding wetland mitigation to preparation of a mitigation plan by biologists retained by the future developers.

The DEIR further contemplates that such deferred mitigation plan will be approved by the City of Newark prior to grading of the site. The problem with this deferral is that the DEIR does *not* call for any further environmental review or consultation with regulatory agencies regarding the proposed wetland mitigation. Instead, the DEIR summarily concludes without any support, "[p]otential biological impacts associated with grading activities required for the mitigation of seasonal wetlands have been considered during this current Specific Plan CEQA impact analysis and no additional significant impacts have been identified." See, MM BIO-1.2A, p. 135. Consequently, the DEIR's deferral of the specifics relating to mitigation of wetlands is improper. The DEIR should be revised to either: (1) specify the location of on-site wetland mitigation, or (2) allow for further environmental review (including consultation with regulatory agencies) once the specific locations of on-site mitigation are delineated to ensure that the mitigation measures provide the required mitigation benefits and that such measures themselves have no additional significant impacts.

Fourth, the ratio of creation of wetlands to wetlands impacted on-site is not supported by substantial evidence. MM BIO-1.2A calls for "creation of high quality wetland and aquatic habitat within Area 4 within upland habitat at an **acreage ratio of 1:1 (habitat created/enhanced: habitat impacted) to prevent any net loss of habitat functions or values**." (Emphasis added.) Section 3.5.3.2 of the DEIR attempts to justify the DEIR's mitigation ratios by stating:

> The mitigation ratios for impacts to sensitive habitats are based on those required or commonly required under applicable policies, laws, and regulations. Implementation of the following mitigation measures will reduce impacts to the less than significant level. See, DEIR, p. 133.

The DEIR fails, however, to identify the "applicable policies, laws and regulations" relating to the mitigation ratios that it relies upon. Notably, contrary to the DEIR's contention, EPA Guidance specifically requires successful creation/establishment of new wetland habitat result in a "net gain in wetland acres and function." See, EPA Wetlands Compensatory Mitigation. Here, the DEIR deceivingly states:

> In summary, any impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at a **total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted)**. (Emphasis added.)

It is disingenuous, however, for the DEIR to aggregate the habitat created and enhanced to give the impression that the mitigation measures result in a net gain of wetland acres. To accomplish a net gain in acreage, the City must require the habitat created to habitat impacted ratio be increased to *at least* 1.5 to 1, but more aptly in the range of 2 or 3 to 1, given the unique features of the "tidal/marsh upland transition" wetlands (discussed above).

Fifth, the City fails to specify success monitoring performance standards to monitor the proposed wetland mitigation measures. Federal regulations require that compensatory mitigation programs have "measurable, enforceable ecological performance standards and regular monitoring" and that they include "assurances of long-term protection of compensation sites, financial assurances, and identification of the parties responsible for specific project tasks." See, 40 CFR Part 230, Summary. Here, the City fails to delineate specific ecological performance

standards for wetland mitigation. It further fails to require that regular monitoring occur. In addition, the mitigation measures fail to specifically include performance standards for long-term wetland protection or to require additional measures if the functions and values of the mitigation measures do no meet performance standards. Moreover, these mitigation measures further neglect to articulate assurances and identify the parties responsible for specific project tasks with respect to wetland mitigation. Accordingly, the DEIR should be revised to cure the above mentioned defects.

6. Analysis of Impacts on Endangered Salt Marsh Harvest Mouse

Section 3.5 of the DEIR is titled "Biological Resources" and notes that the Salt Marsh Harvest Mouse, which is listed as an endangered species under the federal Endangered Species Act ("ESA"), is known to occur in the salt marsh habitat along Area 4. The DEIR (see page 151) then concedes that "Domestic pets, cats in particular, may stray from the residential areas in Area 3 and may depredate salt marsh harvest mice" and acknowledges that "increased predation by domestic species would result in significant impacts to the mouse."

Notwithstanding the DEIR's acknowledgement of significant impacts on the ESA-protected Salt Marsh Harvest Mouse from cats that are anticipated to stray from the Area 3 residential areas, the DEIR does not contain *any* quantitative or qualitative analysis whatsoever of the severity of this predation and its effect on the condition of the species or its habitat. Moreover, the DEIR contains *no* post-construction mitigation measures to avoid or reduce predation of the Salt Marsh Harvest Mouse from domestic cats associated with the new residences proposed to be constructed in Areas 3 and 4, such as prohibiting cats as domestic pets in such residences or on the use vegetation, fencing or other effective barriers to exclude cats from salt marsh areas where the endangered species of mice are know to occur.

Additionally, given the anticipated predation of the ESA-protected mouse as a result of the project, the DEIR does not evaluate whether such anticipated predation (killing) of the species by domestic cats would require the issuance of an ESA "incidental take" permit by the United States Fish & Wildlife Service.

Section 21001(c) of the CEQA statute provides that it is the policy of the State of California to: "Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities." CEQA Guideline § 15065(a)(1) provides that a lead CEQA agency shall find a project has a significant impact on biological/wildlife resources if the project may "substantially reduce the number or restrict the range of an endangered, rare or threatened species." Moreover, in December 2009, the Los Angeles County Superior Court issued a ruling that specifically addressed the issue of CEQA's applicability to impacts resulting from wildlife predation by cats (*Urban Wildlands Group et al. v. City of Los Angeles Department of Animal Services*, Case No. BS115483). This lawsuit was filed in June 2008 by Urban Wildlands Group and other environmental organizations (collectively "Plaintiffs"), and alleged that the City of Los Angeles had violated CEQA by failing to analyze the wildlife impacts of a its "Trap-Neuter-Return" Program ("TNR Program") to allow feral cats to run free. In a December 2009 decision, Los Angeles County Superior Court Judge Thomas I. McKnew, Jr. granted Plaintiffs' writ of mandate and enjoined the City of Los Angeles from implementing the TNR Program "unless and until an environmental review in compliance

with the California Environmental Quality Act is completed." See, December 4, 2009, Decision, p. 1. (See, Decision attached as Exhibit A). Other CEQA cases have recognized the availability of mitigation measures to address predation by domestic animals from proposed development. See, e.g., Mira Mar Mobile Community v. City of Oceanside (2004) 119 Cal.App.4th 477, 494, 495 (requiring barriers and signs as mitigation measures).

Given the applicable CEQA standards, the DEIR's acknowledgment that such predation would result in significant impacts on the endangered mouse, and given the DEIR's absence of analysis of the severity of this predation and its effect on the condition of the species or its habitat, there is absolutely no evidence to support the DEIR's determination that the project will have a "Less Than Significant Impact with Mitigation" on the ESA-protected Salt Marsh Harvest Mouse. Accordingly, the DEIR is defective and requires revision to include analysis of the significant impacts of predation on the Salt Marsh Harvest Mouse as well as mitigation measures to reduce the significant impacts of such predation.

7. Impacts of Golf Course Fertilizer/Herbicide Runoff on Water Quality

Section 2.4.3.1 of the DEIR (titled "Golf Course Operation" in Section 2 on "Description of the Proposed Project") states:

> The golf course will apply fertilizer to the maintained areas including the fairways, greens, and tees. Fertilizer is measured in pounds of nitrogen per 1,000 square feet and soil tests dictate the demand. Fairways typically require about two to three pounds fertilizer (nitrogen) annually. Greens and tees require approximately one pound per month during the growing season, so six to eight pounds annually.

Section 3.9 of the DEIR (titled "Hazards and Hazardous Materials") includes a section on "Golf Course Operations" which states: "The proposed golf course will apply fertilizer to the maintained areas including the fairways, greens and tees, and, less frequently, herbicides and pesticides. The application of agricultural chemicals will be avoided near wetland and other sensitive areas, as described in *Section 2.4.4*." Section 2.4.4 of the DEIR, however, is titled "Areas 3 and 4 Street Standards and Improvements" and contains no analysis or provisions relating to golf course operations, agricultural chemicals or protection of wetlands and other sensitive areas.

Section 3.8.3.11 of the DEIR determines, without specific reference to golf course runoff, that: "Untreated runoff generated by the proposed project would potentially result in long-term degradation of water quality, which could affect aquatic and wetland habitats. Without mitigation, the effects on surface water quality could be significant."

The DEIR, however, does not include any quantitative analysis of the volume of water that will run off the golf course into Mowry Slough and the surrounding Bay wetlands, any quantitative analysis of the total volume of fertilizer (nitrogen), herbicides and pesticides associated with the golf course that will runoff into Mowry Slough and the surrounding Bay wetlands, or any quantitative or qualitative analysis of the impacts of such runoff on Bay water quality, wetlands or biological resources. In lieu of this impact analysis, Section 2.4.3.1 of the DEIR states generically: "A comprehensive and responsible program to control pests will ensure

a healthy environment for both people and wildlife. Managing turf areas with environmental sensitivity requires educating workers and members about plant management, pesticide application and use of fertilizers."

Continuing in this generic vein, DEIR Mitigation Measure MM HYD-1.4 (in the DEIR Section on *Hydrology, Flooding and Water Quality*) states that "all development projects within the Specific Plan shall implement storm water management program measures, such as…outreach regarding appropriate fertilizer and pesticide use practices…" Section 3.8.3.11 of DEIR also notes that a post-construction stormwater pollution prevention plan will later be prepared for the development proposed in the Specific Plan, but includes no information as to the extent to which such a SWPPP would apply to ongoing golf course operations of how such a SWPPP would prevent runoff from the golf course from degrading the Bay.

In short, the DEIR acknowledges substantial ongoing fertilizer, herbicide and pesticide use on the golf course proposed to be located immediately adjacent to the Mowry Slough, wetlands and the Bay, and acknowledges that these are particularly sensitive resources, but then contains no environmental analysis of the impact of this use and no credible or enforceable mitigation to reduce the impact to a level less than significant. In the absence of such analysis and mitigation, there is not substantial evidence to support the DEIR's determination in Section 3.8.3.11 that the drainage runoff from the project will have a "less than significant impact" on water quality.

8. Other Stormwater Runoff Impacts

A. The Stormwater Analysis is Based on an Outdated Municipal Permit

The discussion of National Pollutant Discharge Elimination System requirements in Section 3.8.1.1 (*Clean Water Act Requirements*) references the municipal stormwater NPDES permit issued to the Alameda Countywide Clean Water program. This permit has been subsequently replaced by a new municipal NPDES permit that encompasses not only the cities and water agencies of Alameda County, but all of the cities and water agencies of San Mateo, Santa Clara and Contra Costa Counties as well. The new permit, known as the Municipal Regional Permit ("MRP"), adopted by the RWQCB in October 2009, also includes the cities of Fairfield, Suisun City, Vallejo, and the Vallejo Sanitation and Flood Control District.

The MRP replaces the previous individual municipal NPDES permits for the Bay Area countywide stormwater programs of the above-mentioned counties. In addition to numerous minor language revisions to provide clarification, the MRP makes substantial changes to stormwater requirements, including specifying different mandatory treatment measures, and including changes to address key issues such as costs of compliance with the new requirements, water quality monitoring, trash load reduction, mercury and PCB controls, and exempted and conditionally exempted (non-stormwater) discharges. One of the most significant of the changes, from a land development perspective, is the series of new provisions related to new and redevelopment treatment measures (Provision C.3), which require the use of Low Impact Development techniques for stormwater treatment.

The DEIR's stormwater impact analysis and conclusions are based upon reference to the old, inoperative permit and, therefore, is flawed.

B. DEIR's Analysis Lacks Substantial Evidence to Support Significance Conclusion and Improperly Defers Analysis of Mitigation

The discussion under **Impact HYD-1** implies that potentially significant impacts can be mitigated through the preparation and implementation of an erosion control plan, stormwater pollution prevention plan (SWPPP) and stormwater management plan (SWMP). Mitigation Measure **MM HYD-1.2** further states that the preparation of a SWMP is "required under Section C.3 of the NPDES Municipal Stormwater Permit issued by the RWQCB." As previously mentioned, this permit no longer exists, and Provision C.3 of the new MRP does not include any reference to the preparation of a SWMP. Thus, there is no basis for this mitigation measure and, therefore, no basis for relying up its claimed mitigative results.

Moreover, the DEIR provides virtually no information about the proposed SWMP or the SWPPP. This absence of information means that the conclusion that the project, as mitigated by the undescribed SWMP and SWPPP, would not have significant impacts is not supported. To remedy this flaw, the DEIR should include a description of the requirements of such plans, and any references to compliance with the RWQCB requirements or the NPDES permit (MRP) should include a description of Low Impact Development treatment measures. Moreover, the impact discussion under **3.8.3.9**, which refers to and relies upon a SWMP to conclude that water quality standards are not significantly impacted by the proposed project, also must be revised.

A SWPPP is intended to reduce construction phase stormwater impacts, and is a standard requirement for construction activities under the current Statewide Construction General NPDES Permit. Erosion control plans are typically included in SWPPPs. The impact statement and **MM HYD-1.2** should be rewritten to accurately describe these plan requirements.

MM HYD-2.4 references the 2003 version of the California Stormwater BMP Handbook for Construction. This document has been revised and updated by the California Storm Water Quality Association in 2009. The mitigation measure should not reference an outdated, inapplicable version of this Handbook.

Also importantly, the need for compliance with the requirements under the new MRP will require that the analysis of flooding impacts (discussed separately below) be revisited, because more stormwater will have to be retained longer on the project site.

Overall, since the DEIR does not identify the actual project or the specific mitigation measures that will be applied through the SWMP and SWPPP, there is no way to determine if the specific mitigation may itself have impacts that need to be analyzed. For example, some of the mitigation may require one time or ongoing creation/maintenance of wetlands, or diversion and treatment of stormwater that would require a basin to be constructed (involving grading) or may require other construction activity to implement. Both the construction and operation of such mitigation facilities could themselves result in significant impacts. By failing to describe any details of the ultimate development but purporting to insert mitigation that will reduce the impacts of the ultimate development, the City has seriously undermined a key requirement of CEQA.

9. Impacts Resulting from Project Infill of Floodplain

The DEIR's conclusions that there will be less than significant impacts with respect to: 1) Off-Site Flooding from the Project; 2) Project Alteration of Drainage Patterns Resulting in Increased Flooding; and 3) Project Alteration of Drainage Patterns Resulting in Increased Erosion are not supported by substantial evidence.

First, in Section 3.8.3.3 of the DEIR, entitled "Off-site Flooding Impacts from Project" the DEIR states that the proposed placement of fill for residential uses in Area 3 would not significantly change active flow conveyance (thereby increasing off-site flood elevations) because the proposed development would not block the active conveyance of flood flows. That is, the DEIR asserts that flood conveyance is blocked by a "large landscaped berm and neighboring development, and downstream by a solid concrete wall," without citation of specific supporting evidence. See, DEIR, p. 198. Accordingly, the DEIR concludes, "the proposed placement of fill for residential uses would not significantly change active flow conveyance through this reach of Line D." Id. The DEIR also summarily states that fill in Area 4 would not impact flooding because "the impedance of tidal conveyance through the area would not influence the water surface elevation in San Francisco Bay." Based on the foregoing contentions, DEIR concludes there will be a less than significant impact. Id. at p. 199. The DEIR, however, fails to provide substantial evidence to support its contentions, and is (at best) incomplete.

Second, Section 3.8.3.5 of the DEIR, entitled "Project Alteration of Drainage Patterns Resulting in Increased Flooding" concludes that the area covered by impervious surfaces will increase by 65% in Area 3. See, DEIR, p. 200. The DEIR then compares existing and projected off-site flooding impacts. In so doing, the DEIR states that time of concentration modeling calculations under existing conditions is 0.70 hour (overland sheet flow through short grass and flow through typical cross-section of existing ditch). Post-development conditions (i.e. storm drain plus a roof to gutter time) resulted in total time of concentration of 0.33 hour. Accordingly, the DEIR concluded that 100-year peak storm discharge in flood channel Line D will be the same pre- and post-project 938 cfs. DEIR then concludes, "Area 3 is near the outlet of the watershed, the increased impervious surfaces proposed in Area 3 produce a shorter time of concentration. The site discharge is increased, but the shorter time of concentration allows the peak project flow to be discharged to Line D an hour before the peak of main watershed . . . reaches the outfall. Therefore, the alteration of drainage patterns and increased discharge from Area 3 does not affect the 100-year discharge in Line D." Id. Based on the foregoing discussion, the DEIR concludes there is a less than significant impact. Id. As discussed in the preceding section of these Comments, the new MRP will require re-analysis of the flooding impacts in light of the differing requirements for retention and on-site treatment.

As to Area 4, the DEIR concludes that "augmented flows from increased impervious areas are released directly to the Bay and cannot affect Bay tides, residential development in Area 4 would not substantially alter the existing drainage pattern . . . that would result in flooding in the area or downstream of the area." Id. at p. 201. The DEIR further concludes (without supplying credible evidence) that the development of a golf course would not affect drainage patterns because "runoff volumes from golf courses are generally the same as for undeveloped land" and therefore there would be a less than significant impact. Id. The DEIR

again fails to provide substantial evidence to support its conclusory contentions, and is, therefore, deficient.

Section 3.8.3.6 of the DEIR, "Project Alteration of Drainage Patterns Resulting in Increased Erosion," concludes that the increase in impervious surfaces in Area 3 would result in an increased runoff rate, creating potential for hydromodification and impacts to off-site erosion. Id. at pp. 201-202. The DEIR concludes, though, that Line D is sufficient to handle any increased runoff. The DEIR further notes that additional measures are discussed later in the Chapter to reduce on-site erosion. Based on the foregoing, the DEIR concludes that there would be a less than significant impact. Id. at p. 202.

As to Area 4, the DEIR states, "[i]ncreased sedimentation due to Area 4 Specific Plan development is not considered to be a problem . . . runoff from Area 4 is contained on the inboard side of the levees until it reaches the pump and is discharged into Mowry Slough." Id. p. 202. The DEIR further states (without inclusion of supporting evidence) that "Mowry Slough is tidally influenced and is, therefore, exempt from hydromodification requirements." The DEIR concludes that there would be a less than significant impact. Id. Without any evidence supporting this analysis, the DEIR's conclusions regarding alteration of drainage patterns are faulty.

10. Analysis of Impacts of Native American Human Remains/Burial Grounds

Section 3.6 of the DEIR addresses Cultural Resources. Subsection 3.6.2.2 provides an Archaeological Overview that states, "[t]he proposed Areas 3 and 4 Specific Plan is located in an area of high archaeological sensitivity." Notably, the DEIR further states that: "[h]uman remains were encountered on September 25th, 2008 while trenching in Area 4." See, DEIR, p. 169. Subsection 3.6.3.3 entitled "Archaeological Resources Impacts" further states:

> Based upon the discovery of human remains and cultural artifacts found through survey work on the Specific Plan site, it appears that there are large intact archaeological deposits containing human burials eligible for the state and national registers which will be impacted by the project.
>
> . . .
>
> **In conclusion, the research done to date suggests that Areas 3 and 4 contain as many as three areas which may contain unique archaeological resources** . . . See, DEIR, pp. 169-173. (Bold and underline added.)

Based on the foregoing, among other things, the DEIR concludes that the project would create significant impacts on unique archaeological resources. Specifically, the DEIR identifies the following significant impact:

> Implementation of the proposed Areas 3 and 4 Specific Plan will impact unique archaeological resources and disturb human remains, including those interred outside of formal cemeteries through compression of soils and excavation of existing soils. (**Significant Impact**). See, Impact CUL-2, p. 173. (Bold in original.)

In light of the project's significant impacts on archaeological resources, the DEIR proposed a number of mitigation measures, which read in part:

> **MM CUL-2.1:** The following mitigation measures shall be completed **prior to issuance of a grading permit and prior to any earth moving activities** in those areas of the Specific Plan already identified as potentially containing archaeological resources based upon the research and survey work completed by *Holman & Associates.*
>
> - A **limited program of hand excavation** shall be undertaken by a professional archaeologist certified by the Register of Professional Archaeologists (RPA) at the locations of the three burials and two cultural features… (Bold and underline added.)
>
> . . .
>
> **MM CUL-2-2:** Prior to any future development in areas identified as potentially containing archaeological resources bases upon the research and survey work completed by *Holman & Associates* or areas for which any additional information has been gathered through hand excavations under MM CUL-2.1, plans shall be designed to avoid impacting known cultural resources. (Bold in original.)
>
> …
>
> **MM CUL-2-3:** All grading and/or construction activities shall, **to the extent feasible**, avoid all areas identified as potentially containing archaeological resources based upon research and survey work completed by *Holman & Associates* or areas which any additional information has been gathered through hand excavations under MM CUL-2.l. However, to the extent that these areas cannot be avoid, then mitigation for burial resources shall be achieved through either preservation in place . . . or a program of data recovery. (Bold and underline added.)
>
> . . .
>
> **MM CUL-2-4: The following measures shall be completed during all development activities** that include excavation or disturbance of existing ground surfaces, installation of utility lines, or other subsurface trenching . . . (Bold and underline added.)
>
> . . .
>
> Based upon the current known extent of unique cultural materials on the site, it is unlikely that total avoidance of impacts is possible with implementation of the proposed Specific Plan. While incorporation of the above measures will partially reduce the cultural resources impact, **the overall implementation of the Specific Plan will destroy archaeological deposits through placement of fill and soil compression and, therefore, result in a significant unavoidable impact**. (Emphasis added.)

The proposed mitigation measures are deficient for numerous reasons.

First, the proposed mitigation measures do not incorporate CEQA's preference for "in situ" preservation of unique archaeological resources. CEQA urges lead agencies to require reasonable mitigation measures to permit some or all of the resources to be preserved in place or left undisturbed. See, Pub. Res. Code, § 21083.2(b). Examples of such mitigation measures are:

- Planning construction to avoid the archaeological sites;
- Deeding the archaeological sites into permanent conservation easements;
- Capping or covering the archaeological sites with a layer of soil before building on the sites; or
- Planning parks, green space, or other open space to incorporate archaeological sites. See, Pub. Res. Code, § 21083.2(b).

While MM CUL-2.2 acknowledges that plans should be designed to avoid impacts to unique archaeological resources, footnote 41 shuns "in situ" mitigation without providing substantial evidence in support thereof, by stating:

> It should be noted that 'capping' or covering the known archeological resources would not mitigate the impacts to cultural resources because all grading activities, placement of fill, and compaction of the soil would crush and destroy the known cultural resource deposits. See, DEIR, p. 174.

Later, in MM CUL-2.3, while the DEIR contemplates "in situ" preservation, it neglects to specify how such "in situ" mitigation will be accomplished.

Second, the DEIR fails to delineate the performance standards required for the "limited program of hand excavation" called for in MM CUL-2.1. As noted above with respect to air quality, global climate change, and biological resources impacts, such deferral of mitigation is prohibited by CEQA.

Third, the DEIR does not clarify what "feasible" means with respect to MM CUL-2.3, which states "[a]ll grading and/or construction activities shall, **to the extent feasible**, avoid all areas identified as potentially containing archaeological resources..." (Emphasis added.) Without clarification regarding this limitation, the DEIR again improperly defers mitigation in contravention of CEQA.

Moreover, notably, the above mitigation measures call for implementation "prior to issuance of a grading permit" and prior to "grading and/or construction activities." The timing of these mitigation measures is inappropriate. The project approvals covered by the DEIR contemplate a tentative subdivision map as well as the Specific Plan. A tentative subdivision map would include location and massing of buildings. Accordingly, the location of significant Native American remains should occur before rather than after approval of the tentative subdivision map. Otherwise, the later in the planning process the mitigation measures are imposed the more likely that the preferred "in situ" preservation options will become infeasible.

11. Scenic and Visual Resource Impacts Analysis

Section 3.10.3 of the DEIR discusses visual and aesthetic resources impacts. Section 3.10.3.2 entitled, "Impacts to General Plan Elements of Visual Significance and Scenic Vistas" states:

> Views from the Area 4 residential out toward the slough and greater San Francisco Bay, and beyond to the Santa Cruz Mountains, will not be affected by the proposed Specific Plan development. Implementation of the Specific Plan will not result in an adverse visual impact to this visual feature.

Based on the foregoing, among other things, the DEIR concludes that "the Specific Plan would not adversely impact any locally significant resources (i.e., General Plan elements of visual significance), nor will the project have a substantial effect on a scenic vista. **(Less than Significant Impact).**" See, DEIR, p. 239. (Bold in original.) While the DEIR concludes that there will be no significant impacts on views from Area 4 toward the San Francisco Bay, it fails to analyze the project's visual impacts on views of the site *from* the Bay. Accordingly, the EIR should be supplemented to include analysis of potential adverse impacts on views of the site from the San Francisco Bay.

Furthermore, the DEIR fails to identify appropriate mitigation measures in terms of height of buildings and light and glare.

As to height of buildings, the DEIR concludes that the residential development in Area 4 will have a significant impact. The DEIR specifically states:

> [W]hile Area 4 is relatively isolated and is not visible from many surrounding vantage points, the proposed Specific Plan will substantially alter its existing visual character. The proposed raising elevation of 10 to 14 feet for the residential development, the addition of residences, streets, landscaping, and golf course on what is now flat, open agricultural land, and the proposed two-lane Stevenson Boulevard railroad overpass will all change the existing visual character of Area 4. It is a subjective decision whether the proposed development would adversely degrade the site; however, the extent of the change is sufficient to consider it a significant visual impact. See, DEIR, Impact VIS-1, pp. 240-241.

The DEIR further concludes that "[t]here are no feasible mitigation measures that would mitigate for the significant change in visual character, which would result from the development of Area 4. **(Significant Unavoidable Impact)**." See, DEIR, p. 241. (Bold in original.)

CEQA requires that feasible mitigation measures be proposed to mitigate significant adverse impacts. Here, the DEIR does not propose mitigation measures limiting the visual impacts resulting from residential development in Area 4, yet there are no credible reasons why such mitigation measures were omitted. As discussed more fully below, there does not appear to be substantial evidence to support the finding that visual impacts pose a significant unavoidable impact in light of the fact that the *No Development in Area 4 and Higher Density Area 3 Alternative* discussed in the DEIR would significantly avoid and lessen the project's environmental impacts, especially with respect to the alteration of the visual character of Area 4.

Furthermore, the DEIR should have proposed a mitigation measure that restricts the location of buildings in Area 4 to mitigate the visual impacts of the project.

As to light and glare impacts, the DEIR concludes that the proposed "Specific Plan would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area. **(Less than Significant Impact)**." See, DEIR, p. 241. (Bold in original.) The DEIR proceeds, however, to delineate numerous avoidance measures to "further reduce light and glare impacts of the Specific Plan." Id. The DEIR is therefore inconsistent. The DEIR fails to include substantial evidence to support its conclusion that there will be no significant light and glare impacts. More tellingly, the DEIR's inclusion of avoidance measures implies that in fact there *is* significant light and glare impacts. Therefore, to the extent there are significant light and glare impacts, CEQA requires that the DEIR include feasible mitigation measures; mere avoidance measures will not suffice.

12. Water Supply Analysis and Water Supply Assessment

Section 3.12 of the DEIR is titled "Water Supply and Utilities and Service Systems" and Appendix I to the DEIR is titled "Water Supply." The water supply analysis presented in Section 3.12 and Appendix I of the DEIR is legally deficient for the following reasons.

First, to comply with CEQA and SB 610's water supply requirements, the City proposes to rely on a November 2008 Water Supply Assessment prepared for the project by the Alameda County Water District ("2008 WSA"). Yet, at set forth in Appendix I of the DEIR, in May 2009 the ACWD provided written notification to the City that the information presented in 2008 WSA was no longer timely or accurate due to the recent decision by Federal District Court Judge Oliver Wagner in litigation regarding the operation of California's State Water Project. After noting that SWP deliveries account for 40% of the ACWD's water supply portfolio, the ACWD May 2009 notification to City then explains:

> Under the "Post-Wagner" scenario, ACWD's water supply "buffer" (i.e. supplies in excess of demands) is reduced substantially from 5000 AF to approximately 400 AF under normal year conditions. Given that ACWD is facing additional water supply uncertainties that were not factored into the November 2008 WSA scenarios (e.g. Delta smelt BO[Biological Opinion], salmonid BO[Biological Opinion], etc.) there is a likelihood that there may be further reductions in ACWD water supplies which, without the implementation of additional water management measures beyond ACWD's existing IRP strategy, could result in a water supply/demand imbalance (demands greater than supply availability).

This May 2009 update from ACWD suggests that there is no longer substantial evidence to support reliance on the previous 2008 WSA for the project and that a new WSA needs to be prepared. This May 2009 update from ACWD also suggests that the DEIR for the project needs to include additional mitigation analysis to deal specifically with these more severe anticipated water supply reductions.

Second, the 2008 WSA upon which the City relies for its water supply analysis was itself based on the water demand forecast set forth in a 2006 Urban Water Management Plan ("2006 UWMP"). The 2008 WSA explains that, in the 2006 UWMP, the "portion of Area 3 included in

the Project had previously been planned as a high-tech park" (see pages 1 and 5 of the 2008 WSA) and that "because of the change in the land use assumptions at the Project site, the Project will result in a slightly **different breakdown in the aggregated demands** for the land use categories reported in the UWMP." (See page 6 of the 2008 WSA, bold added.) The 2008 WSA then determines: "Area 3 was intended for a high-tech industrial park but will now be converted to additional housing. Despite the change in the proposed land use, the projected demands of the Project are consistent with the range of demands that were anticipated during the development of the UWMP demand forecast." (See page 6 of the 2008 WSA.) To the extent the phrase "different breakdown of aggregate demands" can be understood to mean that the amount of water needed to serve housing in Area 3 will be greater than the amount of water need to service a high-tech park in Area 3, this conclusory analysis is not sufficient. Without a quantitative comparison of the water demands for these different uses, there is not substantial basis to support the City's continued reliance on the 2006 UWMP or to support the DEIR's conclusion that the project s water demand of (and water supplies available for) the proposed Area 3 housing are "consistent" with the high-tech park land use assumption in the 2006 UWMP.

Third, in a May 26, 2009, letter to the City regarding the housing element update to the City's General Plan (which was included in Appendix I to the DEIR for the project), the ACWD commented: "The DPEIR [Draft Program Environmental Impact Report] states that, as a mitigation measure, all future housing projects will be required to install low flow plumbing features, install drought tolerant landscaping and install automatic irrigation systems. However, the DPEIR does not provide sufficient information to confirm that this mitigation will reduce water supply impacts to "less than significant" as stated in the DPEIR." Since Section 3.12 of DEIR for the project includes that same type of mitigation measures and also relies upon these mitigation measures to support the CEQA determination of a "less than significant" impact on water supply, the ACWD's comments on the DPEIR for the General Plan housing element update are equally applicable to the DEIR for the project. Namely, there is not substantial evidence to support the DEIR's conclusion that the proposed mitigation measures regarding water conservation will reduce the water supply impacts of the project to a level that is "less than significant."

Fourth, in its May 26, 2009, letter to the City regarding the housing element update to the City's General Plan (which was included in Exhibit I to the DEIR for the project), the ACWD commented in a section of the letter titled "Groundwater": "[T]here is documentation of a large historical spring area near that flood control channel that may be currently active in Area 4. Since these facts indicate that groundwater is near the surface and may be impacted by any proposed development, the DPEIR should include a detailed evaluation of the potential impact on groundwater resources." (See page 3 of ACWD's May 26, 2009 letter to the City.) Notwithstanding these comments from ACWD regarding Area 4, Section 3.12 and Appendix I of the DEIR for the project contain no information concerning the historical spring area or groundwater resources located beneath Area 4. Without information about the baseline conditions of the historical spring area and groundwater resources beneath Area 4 and without information about the anticipated impact of the project on this historical spring area and groundwater resources, there is not substantial evidence to support the DEIR's conclusion that the project will have a "less than significant impact" on water supply.

Finally, it should also be noted that while SB 610 requires preparation of a water supply assessment for the City's adoption of project tentative subdivision map, SB 221 will later require that the City subsequently adopt a "Written Verification" of a secure 20-year water supply for the final approval of the project subdivision map. The requirements for establishing a SB 221 Written Verification are even more exacting and rigorous than the requirements for a SB 610 water supply assessment. In light of the serious SWP water supply uncertainties documented in the ACWD's May 2009 update sent to the City, it seems highly questionable whether the City will be able to meet SB 610's requirements (which means it is also highly questionable whether the City will be able to approve the final subdivision map needed for the project described in the DEIR to ultimately proceed).

13. Analysis of Current and Future Uses at 7400 and 7550 Mowry Avenue

The DEIR highlights the following past, current and future land uses at 7400 and 7550 Mowry Avenue:

- Agricultural production of row crops;
- Able Auto Wreckers and Little Al's Auto Wreckers past auto dismantling operations;
- Pick-N-Pull's current auto dismantling and recycling operations; and
- "According to a conditional use permit with the City Newark, these [auto dismantling] businesses must cease to operate within Area 4 no later than 2014."

See, DEIR, pp. S-53, 7, 27, and 215. In so doing, however, the DEIR excludes critical information and improperly assumes that the auto dismantling and recycling operations will cease and thus neglects to analyze the impacts of replacing the auto dismantling and recycling use with residential and/or recreational uses in contravention of CEQA.

A. The DEIR Fails to Include the Current Uses in Baseline Conditions and to Account for Those Continued Uses within Area 4

The DEIR incorrectly presupposes that the auto dismantling and recycling uses at 7400 and 7550 Mowry Avenue will automatically cease no later than 2014. See, pp. S-53. In so doing, the DEIR omits the pivotal fact that the aforementioned conditional use permit only applies to Pick-N-Pull's operations on 7400 Mowry Avenue, not its operations on 7550 Mowry Avenue, which are governed by a distinct conditional use permit that was granted in 1985 without a term limitation. See, DEIR, pp. S-53, 215; see also, Memo from Clay Colvin, Assistant Planner for the City of Newark to File, regarding Able, Ace, and Little Al's Auto Wreckers, dated February 1, 1993, and City of Newark Resolution No. 885. **Accordingly, the conditional use permit governing Pick-N-Pull's operations on 7550 Mowry Avenue allows auto dismantling and recycling use of that property indefinitely.**

As to Pick-N-Pull's operations at 7400 Mowry Avenue, the DEIR also contains important errors. First, the expiration of the existing conditional use permit does not necessarily mean that the existing use of the site will cease as of that date. To simply assume a cessation of that use for purposes of conducting environmental review is erroneous. For example, the DEIR fails to account for the possibility that the City would approve an extension of Pick-N-Pull's conditional use permit (as it has consistently done since 1985) to continue the use into the future. Second,

regardless of what may or may not occur in 2014 – four years into the future, the DEIR completely ignores the existing site use as a Baseline Condition against which impacts in the DEIR must be analyzed. Furthermore, the DEIR further fails to consider that given its agricultural zoning, the property would revert to agricultural production if the auto dismantling use were to cease.[2]

Due to these significant omissions, the DEIR contains a fundamentally flawed analysis with respect to the impacts of replacing the auto dismantling and recycling use with residential and recreational uses, as proposed in the Specific Plan. Therefore, the DEIR should be corrected to properly include such analysis.

B. The DEIR Fails to Evaluate the Impacts of the Proposed Termination of the Auto Dismantling and Recycling Business

Moreover, the DEIR also completely fails to evaluate the significant environmental impacts associated with cessation of Pick-N-Pull's operations, as contemplated by the Specific Plan. During the administrative proceedings related to Pick-N-Pull's most recent extension of its conditional use permit in February 2008, numerous persons testified before the Planning Commission as to the changes that would occur due to the proposed closure of the Pick-N-Pull's facility.[3] These effects include, among other things:

- Abandoned vehicles being left on the streets of the City Newark and surrounding jurisdictions because, absent a nearby facility, tow truck operators would decline to retrieve such vehicles;

- Significantly increased vehicle miles driven (with concomitant air emissions) by customers and suppliers currently using the Pick-N-Pull's facility. (As noted in this testimony, the next nearest comparable facilities are in Hayward and San Jose, respectively 15 and 25 miles away from the Pick-N-Pull Property.)

    - Pick-N-Pull estimates that there are approximately 330 vehicle trips to and from its facility each working day. These air quality and traffic impacts from extra vehicle miles and visual impacts from abandoned vehicles on city streets present a reasonable probability of a significant environmental impact.

Accordingly, the DEIR should be modified to include an evaluation of the significant environmental impacts associated with the proposed termination of Pick-N-Pull's auto dismantling and recycling operations in Area 4, which is a feature of the proposed project.

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[2] Certainly, the City of Newark must acknowledge, and must base its analysis in the DEIR on, the fact that the 7400 and 7550 Mowry Avenue properties are in private ownership, by ownership that has expressed no intention to undertake the type of development contemplated in the Specific Plan. Property owners have the right to use their property subject to valid police power regulation; as such, private property rights and current uses cannot simply be assumed away for expediency in environmental review.

[3] Pick-N-Pull hereby incorporates by reference the information concerning the impacts of such cessation of operations submitted by it and others to the City in connection with that prior administrative process.

14. Alternatives Analysis and Project Objectives

Section 5 of the DEIR is titled "Alternatives." Section 5.3 of the DEIR considers the *No Development in Area 4 and Higher Density Area 3 Alternative*, and Section 5.4 of the DEIR considers the *Reduced Housing Alternative*.

In terms of the *No Development in Area 4 and Higher Density Area 3 Alternative*, Section 5.3 of the DEIR states:

> Given the biological, hydrologic, and other environmental issues involved with developing Area 4, an alternative to the proposed Specific Plan would be no development in Area 4 and to intensify the housing development on Area 3…Without developing any of Area 4, this alternative would not have sufficient acreage to include the golf course. The No Development in Area 4 and Higher Density Area 3 Alternative consists of the same number of residential units as the proposed Specific Plan project, but all the residential units would be located within Area 3.

Section 5.3.1 then acknowledges that "All wetland, marsh, and aquatic habitat and specific status species impacts would be avoided under this alternative since there is none of this habitat within the planned development portion of Area 3" and that "[t]he imported fill necessary to raise the Area 4 residential area out of the floodplain would also not be required. With no development and no need to import fill, cultural resources impacts would be avoided in Area 4." Section 5.3.3 then notes that "This alternative would result in substantially less biological impacts compared to the proposed project" and that the "significant unavoidable visual impacts associated with development in Area 4 and short-term air quality impacts related to importing fill in Area 4 would not occur under this alternative." However, Section 5.3.3. then concludes that:

> While this alternative is feasible from a land-use and planning standpoint, and would avoid all impacts from development within Area 4, it would not meet the General Plan goals and project objectives of providing high quality housing with a mix of executive house types and a golf course within Area 4. This alternative would also result in densities in Area 3 that are not consistent with the communities vision and which could create greater aesthetic impacts due to building height and massing.

In terms of the *Reduced Housing Alternative*, Section 5.4 of the DEIR states:

> For the Reduced Housing Alternative, the development within Area 3 would be the same as the proposed project. Approximately 400 single-family units and 189 multi-family units were assumed to be constructed in Area 3 under this alternative. There would be a 120-acre golf-course in Area 4 but no residential development within Area 4.

Section 5.4.1 notes that "Impacts to wetland, marsh, and aquatic habitat and specific status species would be reduced under this alternative" and that "[w]ith less ground disturbance and no imported fill in Area 4, it is likely cultural resource impacts could be avoided in Area 4 through design of the golf course." Section 5.4. 3 then concludes: "This alternative is feasible from land use and planning standpoint, but would not meet the General Plan objective to provide up to 1,260 high quality, executive (low density) housing and provide housing within Area 4."

Section 5.7 of the DEIR, titled "Environmentally Superior Alternative" then states:

> The No Development in Area 4 and Higher Density Area 3 Alternative and the Reduced Housing Alternative would be the environmentally superior alternatives. The No Development in Area 4 and Higher Density Area 3 Alternative would avoid impacts to wetland, marsh, and aquatic habitat, because no development would occur in Area 4. The Reduced Housing Alternative would result in less impacts to wetland, marsh, and aquatic habitat compared to the proposed project but not to a less than significant level. Both alternatives would avoid land use impacts and would not result in impact in Area 4 associated with import of soil compared to the proposed project. These Alternatives would not meet all of the project objectives because the No Development in Area 4 and Higher Density Area 3 Alternative will not provide any development in Area 4 which is one of the main objectives of the project. The Reduced Housing Alternative does not include housing in Area 4 which is also one of the main project objectives. (Underline added.)

The alternatives analysis in Section 5 of the DEIR is deficient for the reasons noted below:

First, Section 5.7 rejects the environmentally superior the *No Development in Area 4 and Higher Density Area 3 Alternative* and the *Reduced Housing Alternative* on the basis that these alternatives do not provide for "development" and "housing" in Area 4, which is described in Section 5.7 described as a main "objective" of the project. This description in Section 5.7, however, is not supported by Section 2.5 (titled "Project Objectives") of the DEIR which states: "The primary objective of the Areas 3 and 4 Specific Plan is to provide low density residential, a golf course, and/or recreational facilities, and land for a school for the current and future residents of Newark." As set forth in Section 2.5 of the DEIR, the primary objective of the proposed project is not development of Area 4 (or Area 3 for that matter); rather the proposed development of Area 3 and Area 4 are simply a "means" to pursue certain broader objectives for the residents of Newark that are not dependant on the development of a particular parcel of land. Thus, Section 5.7 is incorrect in its determination that an alternative that forgoes development or housing in Area 4 would be inconsistent with the primary objective of the proposed project. As a leading treatise on CEQA Compliance explains, if alternatives in an EIR are rejected because they do not fulfill basic project objectives, the rationale for this rejection "should be consistent with the statement of objectives in the project description." CEQA Practice, § 12.13 - Statement of Objectives.

Moreover, to narrowly define the primary "objective" of the proposed project as the development of Area 4 would itself constitute a violation of CEQA since such a restrictive formulation would improperly foreclose consideration of alternatives. See, City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, holding that when project objectives are defined too narrowly an EIR's treatment of analysis may also be inadequate. As another leading treatise on CEQA compliance cautions, "The case law makes clear that…overly narrow objectives may unduly circumscribe the agency's consideration of project alternatives." Remy, Thomas, Moose & Manley, Guide to CEQA (Solano Books, 2007), p. 589.

Second, Section 5.7 does not take proper account of the fact that Section 2.5 does not list development of a golf course as a "primary objective" of the Project, but rather lists the objective as "a golf course, and/or recreational facilities." (Underline added.) The inclusion of the word "or" in this provision Section of 2.5 is important, as it provides that that this primary objective could also be met by development of non-golf course recreational facilities, such as hiking, jogging and pedestrian trails. Given that the DEIR project objectives make clear that a golf course is not necessarily part of the project, the rejection of these project alternatives cannot be based on the absence of a golf course.

Third, under CEQA, rejection of an environmentally superior alternative is not required simply because "one" of a proposed project's objectives may not be completely fulfilled by this alternative. Rather, CEQA Guidelines Section 15126.6 defines a feasible alternative as one that attains "most of the basic objectives of the project." In terms of the proposed project, the vast majority of the proposed housing is to be located in Area 3 rather than Area 4. As such, the *Reduced Housing Alternative* (which eliminates the housing for Area 4 but retains such housing for Area 3) would nonetheless fulfill "most" of the housing objective set forth in Section 2.5 of the DEIR. Section 5.7 of the DEIR's rejection of the reduced housing alternative as not fulfilling "all" of the project's objectives does not take proper account of CEQA's approach to this question.

Finally, the formulation of the *No Development in Area 4 and Higher Density Area 3 Alternative,* rather than a straightforward *No Development in Area 4 Alternative,* introduced an unnecessary environmental "straw man" into the alternatives analysis. That is, the inclusion of the "and Higher Density Area 3" resulted in the need to increase the height of certain structures on Area 3 from two to three stories thereby resulting in increased anticipated "visual/scenic" impacts resulting from this alternative. The resulting "visual/scenic" impacts resulting from their taller structures on Area 3 provided the basis for Section 5.3.3 of the DEIR to conclude that the *No Development in Area 4 and Higher Density Area 3 Alternative* would "result in densities in Area 3 that are not consistent with the communities vision which would create greater aesthetic impacts due to building height and massing." This "height and massing" impact was manufactured by improperly joining the *No Development in Area 4 Alternative* and th*e Higher Density Area 3 Alternative* in one hybrid alternative. With a straightforward *No Development in Area 4 Alternative*, the "height and massing" impacts discussed in Section 5.3.3 of the DEIR would not occur. Moreover, the impacts from cessation of the auto dismantling and recycling uses would not occur under any alternative that eliminated new development in Area 4. As such, the impacts from loss of that use, referred to above, would make such an alternative environmentally preferable.

15. Lack of Substantial Evidence that Project's Environmental Impacts are "Unavoidable" or Project Measures to "Substantially Lessen" Such Impacts

The DEIR for the project determines that there will be "significant unavoidable impacts" on cultural resources (due to impacts on Native American human remains/burial grounds), air quality, visual impacts, and climate change. If the City adopts a final EIR for the project that includes these same CEQA significance determinations, CEQA only permits the City to proceed with approval of the underlying project if the City also adopts a *Statement of Overriding Considerations*, CEQA Guidelines §15093. Section 15093(a) provides that adoption of a

Statement of Overriding Considerations is only proper if the adverse environmental effects of the project are "unavoidable," and Section 15093(b) provides:

> When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record. (Underline added.)

Based on the information presented in the DEIR, it seems unlikely that the City would be in a position to prepare a *Statement of Overriding Consideration* that satisfies the requirements of CEQA Guidelines §15093. For the reasons noted above, there is ample evidence that (through participation in off-site NOx and GHG emission mitigation programs) the anticipated air quality and climate change impacts of the project can be mitigated to a less than significant level. For the reasons noted above, there is also ample evidence that the anticipated impacts on the Salt Marsh Harvest Mouse (biological resources) and cultural resources could be demonstrably reduced through appropriate mitigation. Moreover, the DEIR identified at least two alternatives – the *No Development in Area 4 and Higher Density Area 3 Alternative* and the *Reduced Housing Alternative* – that would have significantly "avoided" and "substantially lessened" the projects environmental impacts while still fulfilling most of the primary objective set forth in Section 2.5 of the DEIR. Finally, and as discussed above, since Section 2.5 of the DEIR provides that the development of a golf course **or** the development of other non-golf recreational facilities would be consistent with the project's main objective, there does not appear to be a basis for the City to contend that the need for a golf-course on Area 4 somehow qualifies as an "overriding consideration."

As such, there does not appear to be substantial evidence to support a finding by the City in a *Statement of Overriding Considerations* that the adverse environmental effects of the project are "unavoidable" or that there are credible reasons why mitigation to "substantially lessen" known adverse environmental impacts were not incorporated into the project.

16. DEIR Recirculation

The items noted above request the inclusion of supplemental information in EIR that is new, and of a significant and substantive nature. Generally, an EIR is circulated for one round of review and comment by the public and by public agencies. If significant new information is added to an EIR after notice of public review has been given but before certification of an EIR, however, the lead agency must issue a new notice and recirculate the EIR for comments and consultation. See, CEQA Practice, § 16.15, Information Added to Final EIR, citing Pub. Res. Code, § 21092.1; 14 Cal. Code Regs., § 15088.5.

The critical issue in determining whether recirculation is required is whether any new information added to the EIR is "significant." If information added to the EIR is significant, then recirculation is required. See, CEQA Practice, § 16.15. The California Supreme Court in Laurel Heights Improvement Ass'n. v. Regents of Univ. of Cal. (Laurel Heights II)(1993) 6 Cal.4th 1112, 1135, decided before Guidelines Section 15088.5(a) was enacted, gave four examples of situations in which recirculation is required:

1. When new information shows a new, substantial environmental impact resulting either from the project or from a mitigation measure;

2. When the new information shows a substantial increase in the severity of an environmental impact, except that recirculation would not be required if mitigation that reduces the impact to insignificance is adopted;

3. When the new information shows a feasible alternative or mitigation measure, considerably different from those considered in the EIR, that clearly would lessen the environmental impacts of a project and the project proponent declines to adopt it; and

4. When the draft EIR was "so fundamentally and basically inadequate and conclusory in nature" that the public comment on the draft EIR was essentially meaningless. See, 6 Cal.4th 1130.

CEQA Guideline 15088.5(a) then incorporated these examples. Based on the foregoing authority, the inclusion of the supplemental information above constitutes significant new information that would necessitate the preparation and recirculation of a revised DEIR for public and agency comment.

17. Potential Use of EIR in Connection with Tentative Subdivision Map Approval or Other Project-Specific Entitlements

Section 2.4.2 of the DEIR, in the section titled "Description of the Proposed Project," explains: "The Specific Plan does not identify the exact location and configuration of residential lots, golf course, or other recreational uses, as that will be determined through subsequent entitlement process and analyses." (Underline added.) Such subsequent entitlement process would include consideration of a Tentative Subdivision Map, as well as the supplemental CEQA environmental analyses that would be required with consideration of a Tentative Subdivision Map. The same is true for other development entitlements that will be required for ultimate development of Areas 3 and 4.

Somewhat confusingly, however, Section 1.2 of the DEIR (titled "Uses of the EIR") states: "The information contained in this EIR will be used by the City of Newark (the CEQA Lead Agency) as it considers whether or not to approve the proposed Specific Plan project. If the project is approved, the EIR would be used by the City and possibly other agencies in conjunction with various approvals and permits. These actions include…Tentative Map." (Underline added.) The suggestion here in Section 1.2 appears to be that, although an application for a Tentative Subdivision Map for Areas 3 or 4 has not yet been prepared or submitted, and although the DEIR's project description does not include approval of a Tentative Subdivision Map and the DEIR itself contains no analysis of the location or configuration of residential lots or other facilities, that the DEIR prepared for the Specific Plan for Areas 3 and 4 will nonetheless be sufficient to satisfy CEQA's environmental impact assessment requirements for the City's approval of a future Tentative Subdivision Map.

If this is in fact the position of the City concerning what CEQA requires, this position is legally incorrect. For the reasons noted in the DEIR, the particular location of the proposed buildings and facilities will result in particular impacts on scenic, cultural and biological

resources, and such particularized impacts were not analyzed in the DEIR for the Specific Plan (because the particular location and configuration of such buildings and facilities are set forth in a Tentative Subdivision Map, which had not been prepared or submitted at the time the DEIR for the Specific Plan was prepared). Given the significant scenic, cultural and biological impacts resulting from the location and configuration of buildings and facilities to be set forth in this Tentative Subdivision Map, CEQA would require preparation of a separate environmental impact report ("EIR") in conjunction with the City's future consideration of approval of a Tentative Subdivision Map.

Succinctly put, since the Proposed Project as described in the DEIR (see Section 2.1) does not include the adoption of a Tentative Subdivision Map (which it could not because no such map has yet been submitted to the City), this DEIR cannot alone satisfy CEQA requirements for approval of such a future project. The same is true for a range of other subsequent approvals that would be required for development in Areas 3 and 4 that are not part of the currently proposed Project.

II. Comments Regarding the Specific Plan

1. Inconsistency with the City of Newark General Plan

The Specific Plan's call for development of Area 4 is inconsistent with the overarching goals and policies pertaining to wetlands set forth in the General Plan. See, Gov. Code, § 65451(b); Napa Citizens for Honest Gov't v. County of Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 366. The consistency doctrine requires that a specific plan do more than simply recite goals and policies that are consistent with those set forth in the county's general plan, making clear that an outright conflict is not required for a finding of inconsistency. Napa, 91 Cal.App.4th at 366. "A project is consistent with the general plan if, considering all its aspects it will further the objectives and policies of the general plan and not obstruct their attainment." Napa, 91 Cal.App.4th at 378, citing FUTURE v. Board of Supervisors (1998) 62 Cal.App.4th 1332, 1336 and Corona-Norco Unified Sch. Dist. v. City of Corona (1993) 17 Cal.App.4th 985, 994.

Here, the General Plan contains numerous statements regarding the importance of conserving wetlands and wildlife, and identifies the fact that wetlands create development obstacles (specifically with respect to Area 4), namely:

> Much of the undeveloped land in Newark is also located at its west and northwest sides. Some of the vacant sites are on land classified as potential wetlands and are therefore environmentally sensitive and subject to close environmental review by regional, state and federal agencies. Additionally some of the lands are subject to flooding. As a result, development of these sites is expensive and problematic. See, General Plan, p. 3-3.
>
> . . .
>
> The goals policies and programs of this element [land use] specifically address the anticipated growth and change over the next 20 years. They reflect the impacts of the

> strong borders that exist around Newark, including Highway 880, the Route 84 Freeway and the San Francisco Bay National Wildlife Refuge. Id. at p. 3-5.
>
> . . .
>
> Wetlands will impact development potential [in Area 4]. Id. at 3-11.
>
> . . .
>
> Other privately held open lands along the western boundary of the City are proposed for more intensive development as shown on the Plan Diagram and described in the Land Use chapter. **However, it is recognized that development of some of these lands will also be constrained by the presence of wetlands. It is City policy that all identified wetlands be preserved**, however, the City has also determined that the identification of wetlands is primarily a matter between the private property owner and the federal agencies charged with administration of wetlands regulations and programs. Therefore, this plan contains policy for land development with greater intensities than may ultimately be possible. All private property owners whose lands are potentially constrained by wetlands limitations are encouraged to complete early negotiations with the appropriate federal agencies so that any development projects they may wish to pursue with the City can move ahead in a reasonable time frame and not be limited by wetlands uncertainties. Id. at 6-1. (Emphasis added.)

Moreover, one express policy in the General Plan reads: "**Support preservation of the lands of the San Francisco National Wildlife Refuge**, and protection of San Francisco Bay and bay lands. Id. at p. 3-7, Policy d., emphasis added. Programs 7-9, within Program d. read, respectively:

> Support the activities of Federal, State, and regional agencies to **preserve the existing lands of the San Francisco National Wildlife Refuge**.
>
> Encourage potentially affected property owners to enter into early negotiations with appropriate agencies to resolve debates over wetlands areas and claims as to whether or not their lands **should** be included in areas of federal jurisdiction.
>
> Evaluate new development to ensure that it will not adversely affect water quality. (Emphasis added.)

The proposed Specific Plan spends a great deal of time discussing wetlands in the "Existing Natural Resources" and "Environmental Measures" sections, specifically acknowledging

> [w]hile the City of Newark General Plan has identified development that is projected to occur within **Area 4, this area has also been identified for its ecological value by regional planning efforts. The southern and western portions of Area 4 were included in the approved 1990 Refuge Boundary Expansion area of the Don Edwards San Francisco Bay National Wildlife Refuge (SFBNWR), indicating**

> **that these lands were pre-approved for addition to the Refuge in the future**. The Baylands Habitat Goals Project (1999) includes recommendations to "protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the [former] Pintail Duck Club. See, Draft Specific Plan, p. 16. (Emphasis added.)

The proposed Specific Plan further states that:

> Being situated between existing salt production ponds that were formerly tidal wetlands and vernal pool habitat east of the site, Area 4 provides one of the few areas in the South Bay with upland habitat transitioning between tidal wetlands and vernal pools, and the Goals Project identified the sites potential value in providing upland transition zones adjacent to tidal wetlands. Upland habitats provide a buffer or transition area upslope from wetlands and marshes. Where such upland transition zones are located adjacent to tidal marsh, they provide important refugia for tidal marsh species during high tides that inundate most of the marsh plain. Id.

The proposed Specific Plan then seeks to minimize the quality of the wetlands based on H.T. Harvey's ranking system conducted in 2006. See, proposed Specific Plan, pp. 16-17.

As a whole, however, the proposed Specific Plan adopts a development scheme that is directly contrary to the General Plan policies discussed above. First, even though the proposed Specific Plan includes some policies to protect and enhance wetland habitats, the proposed development of wetland areas within Area 4 is directly inconsistent with the primary policy not only of the General Plan, but also regional planning, to preserve and enhance these wetlands. In addition, the plan includes development plans for areas that are designated within the Refuge. Accordingly, the development of Area 4 is wholly inconsistent with the General Plan's policies regarding preservation of wetlands. Therefore, the proposed Specific Plan should be revised to be consistent with the General Plan policies set forth above.

2. Failure to Formulate an Area Plan

The General Plan calls for an Area Plan to be formulated prior to the development of a Specific Plan. The GP further contemplates that the Area Plan will become part of the General Plan. See, General Plan, p. 3-12. There is no evidence in the record that an Area Plan was prepared by the City of Newark prior to creation of the proposed Specific Plan. Accordingly, the City is required to prepare an Area Plan for both Areas 3 and 4 prior to adoption of any Specific Plan for those areas.

3. The Specific Plan Fails to Include the Proper Elements

State law (Government Code Section 65451(a)) requires that a specific plan include text and a diagram or diagrams that specify all the following in detail:

- The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.

The proposed Specific Plan fails to specify the proposed distribution, extent and intensity of public and private transportation as required. See, Gov. Code, § 65451(a). Therefore, the proposed Specific Plan is deficient. Similarly, the proposed Specific Plan fails to specify the proposed distribution, extent and intensity of solid waste disposal. Accordingly, the proposed Specific Plan should be revised to delineate the distribution, location, extent and intensity of public and private transportation and solid waste disposal.

* * *

Thank you for your consideration of the comments above. In light of the foregoing comments, we urge the City to correct the numerous defects we have identified by modifying and then recirculating the DEIR for the proposed Specific Plan Project for Newark Areas 3 and 4, and by revising the underlying proposed Specific Plan. We reserve the right to supplement these comments by further written submission and/or at presentation at the public hearings.

Very truly yours,

FITZGERALD ABBOTT & BEARDSLEY LLP

By

Barry H. Epstein

CC: Eric Mruz, Manager, Don Edwards San Francisco Bay National Wildlife Refuge, USFWS
Chris Nagano, Endangered Species Program, USFWS
Jane Hicks and Mark D'Avignon, Regulatory Division Chief, US Army Corps of Engineers
Jim Grove, Regional Enforcement Coordinator, Office of Enforcement and Compliance Assurance, USEPA
Bruce Wolfe, Executive Officer, San Francisco RWQCB
Jack Broadbent, Executive Officer/APCO, Bay Area Air Quality Management District
Chuck Armor, CDFG Region 3
Terry Roberts, Director, State Clearing House, Office of Planning and Research
Will Travis, Executive Director, BCDC
Larry Myers, Executive Secretary, California Native American Heritage Commission
Daniel Woldesenbet, Alameda County Flood Control & Water Conservation District, and Alameda County Public Works Agency
David Lewis, Save The Bay
Mark Welther, Golden Gate Audubon Society
Gary Bobker, The Bay Institute
Michael Bornstein and Misha Rashkin, San Francisco Bay Chapter, Sierra Club
Deb Self and Susan Cleveland-Knowles, San Francisco Baykeeper

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/04/09 | DEPT. SE H

HONORABLE THOMAS I. MC KNEW, JR. JUDGE | T. FRALA DEPUTY CLERK

HONORABLE JUDGE PRO TEM | ELECTRONIC RECORDING MONITOR

C. LOKUAN Deputy Sheriff | NONE Reporter

1:30 pm BS115483
In RE the Matter of:
THE URBAN WILDLANDS GROUP,
ET AL.
VS
CITY OF LOS ANGELES, ET AL.
"CEQA"

Counsel for Petitioner NO APPEARANCES

NATURE OF PROCEEDINGS:

RULING ON PETITION FOR WRIT OF MANDAMUS HEARD 11/20/09

The Court has reviewed the pleadings filed by counsel and the oral argument made by counsel and rules as follows:

Petitioner THE URBAN WILDLANDS GROUP, et al.'s petition for writ of mandate is GRANTED. CCP sections 1085, 1094.5; PRC sections 21168, 21168.5.

The CITY OF LOS ANGELES is ENJOINED from implementing a Trap Neuter and Release (TNR) Program for Ferl Cats unless and until an evironmental review in compliance with the California Environmental Quality Act is completed. The City is PROHIBITED from encouraging third parties to carry out such a program by providing incentives for, or otherwise facilitating, the capture, sterilization and release of feral cats by: providing traps free of charge, providing any discounts for spay and neuter surgeries for cats, providing information about such programs sponsored by other entities on its website or provding information about such programs sponsored by other entities on its website or providing cyberlinks thereto, by developing or distributing literature on the TNR Program or by conducting public outreach on TNR using press releases, fliers or other media except in conjunction with the CEQA process. That portion of

MINUTES ENTERED
12/04/09
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR
C. LOKUAN Deputy Sheriff	NONE Reporter

1:30 pm	BS115483 In RE the Matter of: THE URBAN WILDLANDS GROUP, ET AL. VS CITY OF LOS ANGELES, ET AL. "CEQA"	Counsel for Petitioner NO APPEARANCES

NATURE OF PROCEEDINGS:

Municipal Code Section 53.69(b) which auuthorizes LAAS to waive cat trap rental fees or security deposits for TNR groups is unenforceable. Petitioner is directed to submit a proposed judgment, writ, and an appropriate and enforceable injunctive order.

Petitioner THE URBAN WIDLANDS GROUP, et al.'s request for judicial notice is GRANTED in part. To the extent that the some of the requests are not judicial noticeable (declarations, e-mails, etc.) the court construes petitioners request as a motion to augment the record and as such GRANTS the motion. The Court considered all exhibits except "J". Extra record evidence may be necessary "when the courts are asked to review ministerial or informal administrative actions [] because there is often little or no administrative record in such cases. SN Sands Corp. v. City and County of San Francisco (2008) 167 Cal. App. 4th 185, 194 (citing Western States Petroleum Ass'n v. Superior Court (1995) 9 Cal. 4th 550, 576.

Respondents CITY OF LOS ANGELES (LA), BOARD OF ANIMAL SERVICES COMMISSIONERS (BOARD), and DEPARTMENT OF ANIMAL SERVICES (LAAS)'s request for judicial notice is GRANTED.

Respondents' request that the record be entered into evidence is DENIED. The record was received and lodge. PRC section 21167.6(b)(1).

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Counsel for Petitioner: NO APPEARANCES

NATURE OF PROCEEDINGS:

The Court has already ruled on the issue of the statute of limitations. See Minute Order of February 26, 2009. The Court does not find the evidence contradicts the petitioners' allegations of the date of discovery. Despite assurances from officials that "in order for the Department [LAAS] to proceed with establishing a TNR policy, a report outlining the potential effect on the environment must be completed," there is evidence of subsequent and/or ongoing violations. 1818, see infra.

In administrative mandamus actions, the court's review is limited to determination of whether the reposndent has proceeded without or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. CCP section 1094.5. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are supported by the evidence. Id.

In all other actions attacking a decision of a public agency on the grounds of noncompliance with CEQA, the court's inquiry shall only extend to whether there was a prejudicial abuse of discretion. PRC section 21168.5. Abuse of discretion 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. Id. "There are two types of traditional mandamus actions; those challenging

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NATURE OF PROCEEDINGS:

ministerial or informal administrative actions and those challenging quasi-legislative administrative decisions."

This case involves a combination or hybrid of the types of actions described above. The "record" in this case is unclear since no "official action" was taken. After much debate, an "administrative record" was produced even though the agencies insisted that no official determination or decision had been made. The Court ordered production of a broad category of documents to include "everything in the records pertaining to the City's program, if there is one, or former program, if there was one or its program to urge third parties to conduct trapping and bringing in for neutering cats." Request for judicial notice, Exhibit E at 17. "The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with non-reviewability at one end and independent judgment at the other. Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." Western States Petroleum Ass'n v. Superior Court (1995) 9 Cal. 4th 559, 575-576 (citations omitted).

A public agency must prepare an EIR whenever

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substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment. Pub. Res. Code sections 21100, 21151; 14 CCR sections 15002(f)(1), (f)(2); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75. The parties agree that enviornmental review is necessary in order to implement a Trap Neuter and Release Program. The question before the Court is whether the respondents have abused their discretion by not proceeding in a manner required by law by "secretly and unoffically" implementing the program before the environmental review was completed.

A project is subject to CEQA if it may cause either a direct physical change of the environment, or a reasonably foreseeable indirect physical change in the environment. Santa Monica Chamber of Commerce v. City of Santa Monica (2002) 101 Cal. App.4th 786, 788, n.2. (discussing parking restrictions). It is a reasonable inference that the removal of restrictions is also a project if there is a potential for adverse impact. Here, the evidence in the record establishes that respondents have removed restrictions, facilitated the impemetation of TNR and even provided incentives to promote a policy of TNR without the benefit of environmental review.

While respondents claim that the program was adopted "in concept only," the record establishes that the respondents have done much more that that. Respondents also deny that they are distributing or have ever

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NATURE OF PROCEEDINGS:

issued vouchers.

Petitioners have produce evidence of respondents' involvement with the FELIX program and other organizations advocating the maintence of feral cat populations. Exhibit C, 2523, 2528, 2527, 2529, 2624, 2822, 2627. Petitioners have presented evidence of a LAAS voucher system providing discounts to TNR organizations. 1694, 2532-3, 2612, Exhibit E.

A Municipal Ordinance provides for a discretionary waiver of certain fees to TNR groups. 1669-70. Delegating that discretion, without a Program EIR review, would, in effect, define each decision to waive fees a "project" within the meaning of CEQA. PRC section 21065 (an activity supported through subsidies or other forms of assistance). While the ordinance itself cannot be challenged, because the time in which to do so has passed, the discretion it purports to delegate cannot be exercised without violating the law. In that respect, the ordinance is unenforceable.

This is not a case where a single employee has acted inconsistently with an agency's instructions. Petitioners have provided evidence that, despite official denial, the implementation of the program is pervasive, albeit "informal and unspoken." Exhibit A.

Therefore, the Court grants the petitioners' writ

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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C. LOKUAN Deputy Sheriff	NONE Reporter

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NATURE OF PROCEEDINGS:

of mandate, declares that CITY has been implementing a TNR program eithout CEQA compliance and grants the petitioners'request of injunctive relief.

Evidentiary Objections
Exhibit J SUSTAINED

All other objections are OVERRULED.

A copy of this minute order is faxed this date to:

BABAK NAFICY (805) 593-0946

MARY J. DECKER (213) 978-8090

MINUTES ENTERED
12/04/09
COUNTY CLERK

From: jeffy631-harbor@yahoo.com [mailto:jeffy631-harbor@yahoo.com]
Sent: Sunday, December 06, 2009 14:54
To: TERRENCE GRINDALL
Subject: Area 3 & 4

Dear Terrence,

There are a glut of homes on the market and many people are going into foreclosure. We have lost a number of Newark & Fremont employers and are likely to lose NUMMI. I fail to see the logic of building expensive homes when people can hardly keep food on their tables now.

The plan, if it does not affect the environment and roads, may not be bad. The timing is ridiculous.

Terrence Grindall
City of Newark
37101 Newark Blvd
Newark, CA 94560

January 14, 2010

Dear Mr. Grindall, Community Development Director,

The City of Newark is proposing the development of Areas 3 and 4.[1] The development plan calls for housing units (at least 1008 of the homes to be detached houses; 252 could be condo style and dedicated as affordable), parks and open space amenities, school site in addition to school fees, and the potential for a future golf course. The description of the potential golf course and its operation is outlined in Section 2.4.3 and 2.4.3.1 of the EIR.[2]

I am writing to comment on the proposal to develop and operate a golf course. While my comments below will reference the EIR, this letter is not one directed at the environmental impacts of the proposed development plan. This letter stands independent of the call for responses to the EIR.

The City of Newark has indicated through the above referenced EIR, other community postings, and informational meetings that a golf course be built as a part of the development of Areas 3 and 4. However, the Planning Department has the city has failed to present an adequately developed, fiscally sound business plan for the endeavor.

In the below series of arguments and fact patterns, I outline why the building and operating a golf course in the City of Newark is poorly planned, is logically unsound, and is fiscally irresponsible.

Lack of Voice of Customer or Resident Surveys

In no section or documentation posted on the website is there any is there any evidence that a survey of the potential customer base has been conducted. Key findings from such an analysis would include data on how many people are likely to use a the described golf course, how often they would use the course and facilities, how much they would be willing to spend at each visitation to the course, how far they would be willing to travel to use the facilities, etc.

Thus there is no evidence that supports the conclusion that there is an adequate potential customer base to fiscally justify the building of a golf operation.

Inadequate Customer Base

There are 26.2 million golfers in the United States. A golfer is defined as anyone ages 18 and above who played at least one regulation round of golf in the past 12 months. And the median cost of a weekend round of golf at an 18-hole municipal golf course in the U.S. is $36 including cart and green fee.[3]

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[1] http://www.ci.newark.ca.us/departments/planning-and-economic-development/planning/on-going-projects/area-3-4-housing-and-golf-course/

[2] http://www.newark.org/images/uploads/comdev/pdfs/Area3_4/DraftEIR/Areas%203%20and%204%20DEIR.pdf

[3] http://www.golfchannelsolutions.com/markets/usa

According to the demographic figures listed on the City of Newark website[4], just over 42,000 people live in Newark. Extrapolating the above figures and percentages, one can roughly estimate that the proposed course would make approximately $420,000/year. (see estimates below).

Age Range	Number
20 to 24 years	2,795
25 to 34 years	7,011
35 to 44 years	7,556
45 to 54 years	5,442
55 to 59 years	1,980
60 to 64 years	1,565
65 to 74 years	2,071
75 to 84 years	1,013
	29,433
% of Golf Enthusiasts (est)	10%
Total Newark Golf Enthusiasts (est)	2,943
Average annual visits to the golf course	4
National Average Green Fee (Public Course)	$ 36.00
Estimated Annual Revenue	$ 423,835

This estimate does not factor in enthusiasts traveling from other cities and thus underestimates the total revenues. However, it does not factor in other compounding demographics such as race, median income, and household status. Given Newark's diverse, low-to-medium income range, this estimated annual revenue is likely over estimated.

It should also be recognized that the "total number of people who play [golf] has declined or remained flat each year since 2000, dropping to about 26 million from 30 million, according to the National Golf Foundation and the Sporting Goods Manufacturers Association."[5] In estimating the total potential market for the Area 3 and 4 golf facility, the city should estimate a declining number of customers.

Expenses Likely to Exceed Revenue

The National Golf Foundation reports that the median annual expense for a daily-fee golf club is $695,000. Private and semi-private clubs usually spend much more than that.[6] The EIR describes a complex golf course, complete with high-tech weather stations, a computerized irrigation system, wireless devices capable of individual head control, proposed lighting for the golf course and driving range lighting, and fleet of golf carts. Other operations are also described.

Without a formal business plan including a forecast Profit and Loss Statement, Balance Sheet, and Cash Flow statement, the financial soundness of the facility cannot be determined. Based on

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[4] http://factfinder.census.gov/servlet/QTTable?_bm=y&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U&-_lang=en&-geo_id=16000US0650916

[5] More Americans Are Giving Up Golf, LA Times, February 21, 2008,

[6] http://www.triadgolf.com/sept99/oncourse_golf_courses.htm

the description, it is difficult to believe that the course will be operated below the national average. And thus would likely be a financial strain on the city of Newark.

Weather Conditions Not Conducive to Golf

Having spoken with avid golfers about their preferred golfing conditions,[7] they enjoy playing in moderate temperatures, still air, and a low-noise environment. Areas 3 and 4 do not in any way offer these conditions. Specifically, strong winds blow from the Bay and hit the Bay-front lands on a regular basis for many of the spring, summer, and fall months. These winds are particularly strong in afternoons and evenings when the working segment of the customer base is likely to be available to play. Moreover, these winds create for a noisy environment, imposing on the peace and tranquility that the golfing community enjoys during their play.

The project proposes a 10,000 to 20,000 square foot golf course clubhouse, which will provide capacity for 150 to 220 people. The clubhouse restaurant and banquet facilities will provide seating for 100 to 144 persons, for golf tournament banquets and other events such as parties and wedding receptions. As with golfers, persons patronizing the club and banquet facilities will desire tranquil conditions, especially wedding parties. The often windy conditions of the site will not be desirable and the banquet site will generate below average revenue.

History of Failed Golf Courses in Newark

Newark has a history of failed golf courses and driving ranges. All have failed and thus are no longer in business. This is clear evidence that the local population, which likely has changed little over the years, cannot sustain a golf course operation.

There is no evidence in the provided materials on the Newark website recognizing the failure of these courses and proof that the course proposed in the Area 3 and 4 materials will not suffer the same fate as Newark's previous courses.

Nationally Golf Courses Are Struggling

According to a recent LA Times article[8], "through September of this year, at least 114 of the nation's 16,000 or so golf courses had closed, according to the National Golf Foundation, a number that was offset only partly by the opening of 44 new courses." Jeff Woolson, a real estate broker who specializes in the sale and purchase of golf courses, says of the state of golfing, "people are cutting golf out of their diets because they've got to cut something." Experts estimate that many golf courses have lost 30 to 50 percent of their worth in the last few years.

There is no evidence in the provided materials on the Newark website recognizing this national trend and proof that the course proposed in the Area 3 and 4 materials will not suffer the same fate as other courses throughout the country.

Local Golf Courses Are Struggling

The greater Bay Area has a prevalence of indebted and struggling golf courses. San Jose's Los Lagos Golf Course does not cover its operating costs and debt load and therefore it remains a financial drag on the city.[9] San Francisco's Harding Park Golf Course is also a money losing operation and whose indebtedness is also a strain on the city.[10] San Francisco's other courses

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[7] Personal communication

[8] http://www.chapter7.com/bankruptcy-filing-par-for-many-california-golf-courses/ (1 of 4)1/7/2010 7:44:56 AM

[9] Initial Review of the Los Lagos Golf Course, September 4, 2007.

[10] Harding Park's finances show S.F.'s struggles C.W. Nevius Thursday, October 8, 2009, SF Gate

are not fairing well either. “The city's public golf courses, with the exception of Harding, are being used at 40 percent capacity, according to a recent study by the National Golf Foundation.”[11]

There is no evidence in the provided materials on the Newark website recognizing these local issues and proof that the course proposed in the Area 3 and 4 materials will not suffer the same fate as other courses throughout the Bay Area.

Failed Golf Courses Negatively Impact Housing Values

According to the above cited LA Times article, failed golf course and operations severely impacts the housing values of nearby homes. “Joseph Leggett owns a home on what used to be the beautiful courses of the Palm Desert Country Club golf course. But the club had to file for Chapter 11 bankruptcy, so the fairway was overgrown, and the view from Leggett’s property was spoiled after 30 years of residence… Leggett “estimated that his home of 30 years had lost half its value because of the ruined view.”

No Evidence of Support from Newark Residents

In no section or documentation posted on the Area 3 & 4, Housing and Golf Course website[12] is there any evidence that a city-wide survey has been conducted and that concludes that the residents of Newark support building, owning, and operating a golf course in our community.

In conclusion, the posted documents on the Newark website describe the proposed golf course and associated facilities in Areas 3 and 4, there is no evidence that the city has developed a business plan of any sort for the facility. As a result, the city is entering the residents of Newark into a business proposition without knowledge of the fiscal impact on the city. In light of the City’s fiscal situation, Newark cannot afford to enter into a money-losing operation. One only need to read recent articles in the Argus quoting Mayor Smith, the rhetoric of the recent Measure L proponents, or the City’s posted financials to conclude that a money-loosing endeavor will only serve to further burden the City.

Based on an estimated small and shrinking customer base, the small estimated revenue, likely high operational costs, and the potential impact on local housing in the event of a failed operation, construction of a golf course by the City’s current administration is fiscally irresponsible and will burden the citizens of our city. The city of Newark should not develop this facility.

Regards,
Martin Doyle
36551 Lakewood Dr
Newark, CA 94560

cc:
David Smith, Mayor
Members of the City Council
John Becker, City Manager

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[11] http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2007/05/21/EDGQ4PSSLP1.DTL&type=printable

[12] http://www.newark.org/departments/planning-and-economic-development/planning/on-going-projects/area-3-4-housing-and-golf-course/

January 17th, 2010

Terrence Grindall
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, California 94560-3796

Dear Mr. Grindall,

Newark's Mayor Dave Smith has signed on the U.S. Mayors Climate Protection Agreement. The agreement's goal is to conserve the nation's energy and reduce the greenhouse gas emissions that threaten our planet. Participating mayors make several commitments to greenhouse gas reduction in their own communities. The first of which is to take action in "anti-sprawl land-use policies."

The most important step a community can make to reduce greenhouse gases is the reduction of sprawl and the creation of transit-oriented development.

The proposed development for the Area 3 and 4 does the opposite and is problematic in the area of transportation for Newark and the surrounding areas for several reasons:

Massive Increase in Car Trips:
Alameda County Congestion Management Agency coordinates transportation planning, funding and other activities in a Congestion Management Program (CMP). CMP legislation requires that each CMP contain mandatory elements; one of which is "a transportation demand management and trip reduction element. The Area 3 and 4 developments would bring estimated car trips to 14,970 a day.
This equates to 5.464 Million car trips a year.

The closest freeway to the development is 880 which the EIR states "portions of I-880 are projected to operate at LOS F under the years 2015 and 2030 during both peak hours. The document states that the development's addition to traffic is a "small addition." We do not see 5.5 Million car trips a year as a small addition.

What is the traffic Impact on the intersection of Stevenson and Cherry:
Nowhere in the EIR is there analysis of the traffic impact of this huge development on the very important intersection of Stevenson and Cherry. What is the impact of this development to the intersection and will there be a need for costly street

realignment/construction to meet the demands of the new residents? This is the intersection most impacted by this development. Residents would have to drive to get everywhere: to the grocery store, to the coffee shop, to Pacific Commons, to high school or intermediate school, to the library. Currently there is just one left turn lane from what is Boyce Road in Fremont to westbound Stevenson. Stevenson from the railroad tracks to Boyce-Cherry is already busy from all the industries on Stevenson.

The EIR discusses intersection improvements at Cherry and Mowry; making an additional left turn lane on Cherry to Mowry. This leads to the Silliman Center and on past to the railroad crossing and the auto dismantlers.

Based on PUC and UP letters in the NOP, it does not seem reasonable to focus on this intersection as the railroad does not want the overcrossing to get more traffic than it already has. Union Pacific switches at the Newark yard and frequently blocks the Mowry overcrossing. In addition, the PUC and UP are asking for a grade-separating pedestrian overcrossing at Mowry. Why then is the intersection improvements listed at this location and not at Stevenson and Cherry?

Cumulative Impact of the Oakland A's coming to Fremont and other developments planned for the area

On page, 276 of the DEIR (Cumulative Impact), it is stated "…the Ohlone College Newark Campus stadium project and the A's Ballpark Village project in its cumulative analysis; however, both projects are no longer reasonably foreseeable projects and are not included in the cumulative project list.

A 1/9/10 article in the Argus titled "Fremont deals again for the A's" states: Fremont re-entered the bidding Friday to become the new home of the Oakland A's by 2015 with a proposed 36,000-seat ballpark on land owned by the NUMMI auto plant. Major League Baseball asked the city to submit stadium plans while it determines whether a suitable stadium site exists for the A's in the East Bay.

Now that the city of Fremont is again considering the development of a major league ballpark to the NUMMI site, which is even larger than the previous plan by four thousand seats), this will have major implications to the Cherry, Mowry, Stevenson corridor. What will these impacts be? This information must be reanalyzed and reported to the citizens.

In addition, what if Oakland Athletics' management asks for the previously planned 3,150 houses to offset construction costs as they did last time? The previous plan was estimated to add over 40,000 car trips a day not counting traffic created on game days.

Additional potential car trips will be created by the development of over 700 houses on and around the Patterson Ranch in Northern Fremont (including the Tupelo property) and the 2,100 houses being considered for Area 2, the old chemical plant ally off Enterprise Drive. Just these three developments combined with the proposed development of Area 3 and 4 would add over 80,000 car trips a day to our already congested roadways and freeways.

Air Traffic Patterns:
In our original comments to be considered for the development, The Friends of Coyote Hills asked: "Would the project… result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks. Due to the need for a transit overpass over the railroad tracks, it appears the PG & E tower would have to be both raised and relocated. Raising one tower by 20 feet and relocating another tower 25 feet northwest of its current location and raising it by 45 feet is very significant. While it is stated that this will not have an impact on car traffic, will this have an impact on air traffic patterns? Could it have an impact on public safety not only in Newark but in the region?

Putting People Next to Transit

California's Governor recently appointed a task committee to evaluate what is needed …. There recommendations are to "develop guidelines to establish buffer areas and setbacks to avoid risks to structures within projected "high" future sea level rise or flooding inundation zones." (Quoted from Strategy 7 – TRANSPORTATION: Develop transportation design and engineering standards to minimize climate change risks to vulnerable transportation infrastructure - **2009 California Climate Adaption Strategy** – a report to the Governor of California in response to executive order S-13-2008)

Chapter 4.4 "Transportation Goal, Policies and Program" of the City of Newark's own General Plan include the goal to "Promote the development and use of alternative modes of transportation."

Some solutions mentioned in the EIR to help alleviate the transportation problem (mentioned in the Air Quality portion of the report) state:

- Improve existing or construct new bus pullouts and transit stops at convenient locations along Cherry Street and Stevenson Boulevard. Pullouts shall be designed so that normal traffic flow on arterial roadways would not be impeded when buses are pulled over to serve riders.
- Bus stops shall include shelters, benches and posting of transit information;

- Appropriate bicycle amenities shall be included. This would include bike lane connections throughout the project site. Off-site bicycle lane improvements shall be considered for roadways that would serve the project;
- The City and project proponents shall explore and implement feasible means to bring transit or shuttle service to Area 4.
- Provide pedestrian sidewalks or paths throughout the project site with convenient access to bus stops along adjacent arterials

All of these options indicate that the solution to alleviation of the transportation issue that this development creates is to take the bus or a bike.

Upon examination, this option will do little to get residents out of their cars.
The DEIR states that "the number of transit riders during the peak commute period (PM peak hour would equate to 12 riders" as a result of the new development – 12 people. The balance of the thousands that will move out there will be forced into their cars to add our traffic congestion and air quality problems.

In our estimation, the typical resident would have to walk one mile to reach the nearest bus stop (it is .8 mile from the current bus stop located on Cherry to the property fence on Stevenson). This distance makes it increasing difficult for anyone to consider utilizing current transit options in the area and further exemplifies why developments should not be placed on the outer most regions of the city.

The EIR goes on to say that "bicycle trips will comprise no more than three percent of the travel mode…" and is also therefore not a viable option to relieve traffic

In addition, BART would not be a viable option for residents either. This development couldn't be any further away from BART and mass transit unless you put it in the Bay. The Mowry BART station is nearly 4 miles on a very congested Mowry Ave. A peak commute could take as long as 20 minutes one way making this option difficult for residents.

The impact of Sea Level Rise on Site transportation
The State of California Department of Water Resources has been studying the issue of sea level rise and has ***increased*** forecasted sea level rise predictions to 55" by the end of the century. The Bay Conservation and Development Commission have produced a new series of maps that show areas vulnerable to 16 inches of sea level rise at mid-century and 55 inches by 2099. This means that a majority of the development planned for this development will be flooded and uninhabitable in only a few decades.

To quote a Sacramento Bee 04/20/08 article: "A panel appointed by Governor Schwarzenegger is urging him to prepare for a sea level rise of 55 inches…likely (to) flood thousands of acres of low-lying urban land."

The DEIR does not discuss what will happen to the ability to home owners and emergency service workers to enter and exit the development in the likely event of flooding or storm surge.

In conclusion, Mayor Smith has pledged to support anti-sprawl land-use policies. This support cannot wait.

To quote Tom Cochran, executive Director of US Conference of Mayors:
"…the emerging threat of global climate change, due largely to widespread fossil fuel use, has made it clear that business as usual, as far as energy use is concerned, is not sustainable."

The Area 3 and 4 developments does not reduce emissions and traffic efficiency – but increases both. This development was conceived 20 years ago when Bay Area cities were sprawling outward with little concern for smart growth. Twenty years ago, we did not have the traffic we had today. Twenty years ago, the term telecommuting did not exist and few of us knew what global warming meant and what we were doing to increase it Twenty years ago, gasoline cost $1.40 a gallon.

The impacts of this development and developments like it in the furthest most reaches of the city and not by viable transit hubs simply do not work and will lead to very costly problems in our future.
This is 1987 planning and we, as citizens of this city and this environment, ask you today to re-think it –
To not back a plan defined for citizens twenty years ago but rather to look twenty years ahead and plan for this.

There is no other choice.

Sincerely,

Gaby and Dan Ondrasek
36653 Bridgepointe Dr.
Newark, CA 94560

18 January 2010

RECEIVED
JAN 19 2010
COMMUNITY DEVELOPMENT

Terrence Grindall
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, CA 94560

Re: Comments on the DEIR Areas 3 and 4 City of Newark

Dear Mr. Grindall,

The Draft Environmental Impact Report for Areas 3 and 4 fails to adequately identify, analyze and mitigate the proposed project's impacts. Some sections are vague and misleading. It is clear that the only reason for this DEIR is to construct an 18-hole golf course, 200-space parking lot, clubhouse with a restaurant and banquet facilities for up to 220 people, and a driving range. The proposal for housing is just incidental as the DEIR does not say how many housing units would be proposed for Area 3 and how many for Area 4. They are lumped together with just one number, 1260 units. How many houses or dwelling units are proposed for each area?

Historic Overview and Background: The DEIR is based on an 18 year-old general plan that has not been updated with current rules and regulations on air quality, sea level rise and greenhouse gas emissions among others. At the western end of Mowry Avenue is located a former Peterbilt truck test track and a County Flood Control storage yard and dredge disposal and drying facility. The southern boundary of Area 4 is over-shadowed by the Durham Landfill. The DEIR erroneously states that complex ownership issues have prevented development plans. It is the City of Newark and the Mayor who have prevented housing development from occurring in Area 3. For more than 20 years the City has denied the Area 3 landowner zoning for housing.

Over the past 30 years, development plans have been floated for Area 4. Plans died because of the site's remote location, unstable soils and abundance of wildlife and habitat. Those same issues exist today. Area 4 remains unsuitable for housing and a golf course complex.

Land Use: The proposed development of over half of Area 4 is inconsistent with the Goals of the Open Space and Conservation element of the 1992 General Plan. The Don Edwards San Francisco Bay National Wildlife Refuge has identified most of Area 4 as a Priority 1 acquisition area. Goal 2 of the Open Space and Conservation element states "Acknowledge the San Francisco Bay National Wildlife Refuge acquisition and its value as a community resource."

Adjacent properties such as the former Peterbilt test track, Alameda County Flood Control dredge disposal site and the Durham Landfill are not discussed as impacts to executive housing and a golf course complex on Area 4. The DEIR must disclose possible future uses and what would be allowed for the former test track.

Transportation: The DEIR lacks analysis of the intersection of Cherry St. and Stevenson Blvd. This intersection will be the hub of vehicle use for Areas 3 and 4. It is also heavily used by vehicles using the Stevenson Point Tech Park and various industries along the western end of

Stevenson Blvd. Where are the traffic numbers for Stevenson Blvd. west of Cherry-Boyce? Cumulative impacts are lacking. Why does the DEIR call for improvements to the intersection of Cherry St. and Mowry Ave.?

Public transportation for Area 4 is lacking. BART is at least 4 miles away in Fremont. Bus service to the region is being cut back by AC Transit due to budget constraints. It is unreasonable to expect residents of a proposed "executive" housing development to walk or ride bicycles to distant shopping or other service areas. Mitigation in the DEIR is vague and misleading.

The impact of truck traffic carrying fill to Area 4 has been grossly understated and underestimated. The DEIR claims trucks carrying fill materials would only run for one to two years. With the amount of fill needed and the amount trucks can carry in a single trip, the time needed to provide fill to Area 4 runs closer to 10 to 12 years. Please correct the DEIR calculations to reflect the true numbers. Truck traffic will have major severe negative impacts to local roads. City budgets are not able to handle routine street maintenance much less streets that are destroyed from heavy unrelenting truck traffic. What is the mitigation for these impacts?

Who will pay for maintenance and repair of roads? What routes through Fremont and Newark would be designated for truck traffic of this magnitude? Who would provide and pay for daily sweeping and cleaning of the streets? What would be the impact to nearby residential areas? Please note the DEIR calls for up to 2.1 million cubic yards of fill material. The average dump truck holds 10 to 12 cubic yards of fill depending on weight.

The DEIR notes several high voltage towers and lines will need to be raised and relocated to accommodate construction of a vehicle overpass at Stevenson and the UP railroad tracks. This will be a significant impact to small aircraft that use the towers as Visual Flight Rules between Palo Alto and San Carlos airports through Sunol Grade. Has the FAA or other aircraft authority given permission for these changes? Please provide proof.

The City plans only one way to enter or exit Area 4; that being a proposed vehicle overpass at the railroad tracks at the end of Stevenson Blvd. A proposed emergency vehicle access point is indicated at the Mowry at-grade crossing. This crossing point is problematic due to frequent blockage by trains switching the Newark yards. During such long periods of blockage at the crossing, there is no way emergency vehicles can access Area 4. This is unsafe and unacceptable. Please note the letter from the PUC on the Notice of Preparation. The DEIR also states the EVA road will be protected by a locked gate. Who will have the keys in the event of an emergency and what is the alternate route in the event the railroad crossing is blocked by trains switching Newark yard?

Air Quality: Here again, the public needs to know how many truckloads of fill will be needed for Area 3 and how many for Area 4? The DEIR appears to call for 100 truckloads a day for more than a year. Is this correct? Will this provide enough fill for Area 3 or 4 or both together? Air quality will be adversely impacted by that many trucks over a long period of time. There will also be long-term impacts from trucks providing building and construction material to Areas 3 and 4. What is the mitigation?

Air quality will have significant negative impacts due to proposed future residents of Area 4 needing to drive to get things they need. There is not nearby shopping or transit. Residents will

have to take to their cars for everything. This leads to an increase in air pollution. Walking or bicycling over the railroad overcrossing is not mitigation for auto use.

Noise: There will be cumulative noise from truck traffic, construction related soil preparation, construction of housing, construction from the golf course and clubhouse and driving range and parking lot. Plus noise from train traffic, noise at the Durham Landfill, noise at the Flood Control dredge drying site and who knows what all. Noise from traffic going to and leaving the golf course and clubhouse after all those parties and banquets and wedding receptions. Noise disrupts wildlife living in the marshes and wetlands of Area 4. How will this significant impact be mitigated?

Biological Resources: Newark puts a bull's eye on biological resources and the environment. Golf courses are cool; wetlands with endangered species or burrowing owl habitat is uncool. Anything that abolishes habitat is just fine with the City. That's why we have this DEIR for a golf course and executive housing in a wildlife habitat/flood zone area. This proposal is inconsistent with the expansion boundary of the federal Wildlife Refuge. Years ago Newark had a golf course that went bankrupt. It had a clubhouse and banquet facilities that could not be supported. Newark also had a driving range that went bankrupt. Significant biological resources on Area 4 must not be destroyed for yet another failed dream.

The proposed development will cause the loss of seasonal wetland, wetland, marsh and aquatic habitat. It will lead to a loss of up to 85.6 acres of wetland. Wetlands would be filled so a golf course and houses can be built. Mitigation is proposed through on-site wetland creation or acquisition of existing wetlands off-site.

Exactly where on-site will wetlands be created? Will it be in upland areas? Where exactly in upland areas? On the railroad tracks? What is the procedure and success ratio of creating wetlands in upland areas? How will the hydrology match a natural wetland and seasonal wetland? Wetlands must be created and functioning over an extended period of time before wetlands are filled.

Who will create new habitat for salt marsh harvest mice? Where will it be located? Who will move mice to the new habitat and make sure they stay? Will the new habitat have wetlands as well as uplands? Who will keep the family pets out of wildlife habitat areas?

If habitat will be found off site where will it be? There is no wetland or seasonal wetland habitat availed in the south bay area to be used for mitigation. And if an off-site area is already wetland, there will be a net loss of wetland resources if Area 4 is developed.

What is the fate of upland habitat with development in Area 4? Wildlife and endangered species use uplands as refuge from rising water in wetlands. With projected sea level rise in the Bay Area and Area 4 is in the 100 year flood hazard zone, development leaves no refuge from rising water.

The proposed project will require a fill permit from the Corps of Engineers and Water Quality Certification from the Regional Water Board. Has anyone from the City or developer met with these and other affected agencies such as Fish and Game and Fish and Wildlife Service? What is their opinion of development on Area 4?

Development in Area 4 will degrade Mowry Slough and waters that flow into San Francisco Bay. This will impact fish populations in the bay as will as the harbor seals that use hauling out locations along Mowry Slough. Numerous studies have shown Newark Slough and its complex of landscapes to be an important habitat type in the Bay Area. How will the significant impacts to this resource be mitigated?

Impacts to burrowing owls is unacceptable. Newark has a long sad history of destroying burrowing owl habitat. Development of Area 4 is just another saga. Where will new habitat be created? On-site or off and where exactly? It is well known that burrowing owls do not easily relocate. Nesting spots along the margins of a golf course are unacceptable. Burrowing owls should be protected and left alone. They should not another victim of a golf course and housing proposal.

All told, the significant negative impacts to wildlife and habitat in Area 4 makes development unacceptable. Wildlife and habitat should not be destroyed to build a golf course or any other kind of so-called community recreation the City may envision. The only vision for Area 4 should be open space and conservation with no development. That means no more draining and plowing the land for pretend-farming.

The DEIR calls for the golf course to have a driving range. Driving ranges have very tall nets to prevent golf balls from going astray and smacking people or property. With wildlife habitat nearby, the tall nets will be a significant negative impact. Birds and mammals will be trapped in the nets. This impact must be disclosed as well as mitigation.

Allowing public access on Mowry Slough levees creates adverse impact to wildlife that live along the levees and in the nearby marsh. People walking dogs create hazards when dogs go off-leash. There should be no public access allowed on the levees. Signs do not work; education does not work. No access should be allowed, period.

Cultural Resources: Native American remains and evidence of middens were discovered in Area 4. What will be the impact to these historic resources if tons of fill are placed on them and compacted? If these sites and remains are eligible for state and national registers they must be preserved and not buried under tons of fill. This significant impact can be avoided by not developing Area 4.

Geology and Soils: Soils in Area 4 are in a state-designated Liquefaction Hazard Zone. There appears to be a variety of soil types leading to a strong possibility of differential settlement when tons of fill are applied to the site. Differential settlement occurs with uneven settlement of fill over different soil types. This would have significant impacts to private property, infrastructure and the public. There is no guarantee the Stevenson overpass at the railroad would maintain its integrity. Even the DEIR questions this.

Also putting the public at risk would be a pedestrian overcrossing near the Mowry at-grade railroad crossing. As the PUC stated in its letter to the NOP a pedestrian overcorssing would be necessary to prevent the public from trying to cross the tracks when the crossing is blocked by switching Newark yard. The DEIR mentions nothing about a pedestrian overcrossing. This must be corrected.

The true amount of fill needed is unknown due to site settlement over time. Please explain how water, sewer and gas lines will be protected from rupture and what mitigation measures will be required in the event of failure of any or all of these systems. The DEIR mentions severe soil corrosion to underground utilities. How will this be mitigated?

Possible ground improvement techniques are mentioned as mitigation for unstable soils. Explain what these techniques are and how they would be applied. Explain where these techniques have been previously used and the success ratio or lack thereof.

What is the technical geologic and hydrologic expertise of the Director of Public Works? The DEIR states this person will be responsible for permitting work on Area 4. To avoid litigation the City should use a certified and qualified geologist and hydrologist. This is no place for shortcuts.

Hydrology, Flooding and Water Quality: Area 4 is a complex of soils and hydrology. Data cited in the DEIR is outdated. Sea level rise impacts are all but ignored. The DEIR must contain all up-to-date information including the latest FEMA maps from last year. There should also be information about the latest regulations on levee protection and building in flood zones. Building houses on top of fill in a flood zone does not put residents out of harm's way. It leaves the City vulnerable to litigation after a disaster.

Increased run-off from impervious surfaces increases the chances of flooding in Area 4. That combined with sea level rise and storm surges places the proposed pumping system on overload. The DEIR calls for a pump to lift water 10 to 12 feet over the top of the existing levee to discharge into Mowry Slough. How will this water be monitored for pollution from streets, public and private property in Area 4? Who will maintain the pump or pumps and what happens when it or they fail? People and property are at risk.

What are the plans for maintenance and improvement of the county flood control channels in Areas 3 and 4? With additional capacity needed, who will be responsible for the costs? Has the City consulted with the county flood control agency? If so, what are their comments?

The impacts of the addition of a clubhouse, driving range, restaurant and large parking lot associated with the golf course have not been addressed. These facilities will add to the pollution of stormwater as well as pollution from pesticides and herbicides associated with the golf course and driving range. What will mitigate for these impacts? The DEIR goes into great detail regarding the Audubon International Program for golf courses. This organization has been discredited by National Audubon. Audubon International's only business is to assist with golf courses. The amount of detail put into this section of the DEIR is further proof this DEIR is to serve as promoting a golf course in Area 4.

What will be the impacts of pumping groundwater on Area 4? The DEIR states groundwater will be used to water the golf course. Pumping will increase ground subsidence and the possibility of dewatering ponds and the wetland area on Area 4. What will be the mitigation for these impacts?

Hazards and Haz Mat: The DEIR must disclose soil contamination problems encountered with construction at Ohlone College Newark campus. It appears very likely these same issues will impact the rest of Area 3 where the city is proposing housing and an elementary school?

Who will be responsible for cleanup and remediation of Area 3? What are the DTSC restrictions on the Newark Ohlone site?

It appears the City would be responsible for acquiring land and building a golf course on Area 4. Who would be responsible for soil cleanup and remediation for a golf course or other public amenity? How would the city fund land purchase and building and maintaining the golf course and clubhouse, driving range and other amenities? Have studies been done by the Department of Toxic Substance Control for Areas 3 or 4?

Does the city or landowner have approval from the PUC or Union Pacific Railroad to use the unimproved Stevenson at-grade crossing to access Area 4 for placement of fill? Explain how the constant stream of dump trucks would not prove a hazard to fast moving freight and passenger trains. How would this rail crossing be managed until an overpass is in place? Who will be responsible when a train smacks a dump truck?

Aesthetics and Visual Resources: The DEIR does not mention the Durham Landfill which is located at the southern boundary of Area 4. Although it is closed to the public it still accepts construction debris. Even after it closes and is capped it is still an eyesore.

The County Flood Control storage site and dredge drying area to the west of Area 4 are an industrial use that is not compatible with executive housing and a golf course. Since the Flood Control facility has been in use before housing was proposed, that use must continue. Besides, the city does not own the site and cannot force Flood Control to move. What are the visual impacts of this facility on proposed executive housing on Area 4?

A huge vehicle overcrossing is proposed for the end of Stevenson Blvd. at the railroad tracks. Likewise a pedestrian overcrossing is proposed by the PUC and UP Railroad at Mowry. Both will need to be high enough for railcar clearance. These are visual nightmares that cannot be mitigated.

The high voltage towers and lines in Area 4 are not aesthetically pleasing. They do not announce that here lies an executive housing development. Proposed sound walls along the railroad tracks give the appearance of cutting off the development from the rest of Newark. Proposed housing and a golf course on Area 4 would truly be cut off from the rest of Newark. Is this what the City envisions as an "upscale" neighborhood? The DEIR states that housing would be constructed a little at a time due to uncertain economic times. This means there would likely be constant construction over the time span of many years. How would this significant negative visual impact be mitigated?

The DEIR discusses viewing access to Mowry Slough. Exactly how will this be accomplished since Mowry Slough will be at the distance equal to two football fields? The DEIR states it will be within 500 to 700 feet.

The Open Space Element of the General Plan states that Newark should "…enhance and identify Newark as a special place in the region." Newark is not a "special place" if it builds housing and a golf course in a flood zone on tons of fill behind sound walls along a busy railroad track. Yuck, this is not a place people would want to live. The DEIR says Area 4 would be visible to train passengers. What would they want to see, a sound wall or a beautiful marsh and wetland full of shorebirds and waterfowl? I am voting for the marsh.

Public Service: Newark is in the midst of a financial crisis of its own doing. Cuts are being made to all aspects of city services. The City is even outsourcing its Planning Department. The City cannot afford to build and maintain a golf course much less purchase land for such a facility. Explain where the money and staff time are coming from?

Cutbacks are expected in police and public safety. Revenue from housing does not pay for its fair share of police and fire protection. The City will be unable to maintain its city parks to current standards. Development of Area 4 will place further strains on City services. The City cannot afford a golf course or other public recreation on Area 4.

If the City decides to construct a park on Area 4 in lieu of a golf course, access will be a nightmare. The public would have to drive through the executive housing development to reach the park. A pedestrian overcrossing at Mowry would not be convenient for people trying to reach a park. A public park in this location would be difficult for the City to manage due to access restrictions.

In its NOP letter, Union Sanitary District said it is unable to handle additional wastewater from Area 4. USSD said they are not staffed to operate and maintain any additional pump station with the Area 4 service area. How will this impact plans to develop Area 4?

Future residents of Area 4 would be isolated from shopping and other services. They would have to drive at least 4 miles to reach the Fremont BART station, a long distance to reach the Newark library and City Hall, a long way for anything. Development on Area 4 is urban sprawl at its finest. Newark does not need it.

Energy: The DEIR recommends energy saving appliances and pathways to bus stops. Explain how this will be accomplished when the buses stop running due to budget cuts. The City expects development to occur over a long period of time. Without enough riders, buses won't come at all. Area 4 will be a huge energy-waster.

There will be increased demand for gasoline because proposed residents will have to drive everywhere. There is no nearby shopping for even simple items. Increased driving means more greenhouse gas emissions. How does Newark propose to reduce GHG emissions as the state is proposing? Newark is not doing its share. How will this be mitigated?

The DEIR states that local sites shall be utilized for fill material for Areas 3 and 4. How can the City make this a requirement? Will Areas 3 and 4 be filled at the same time? The DEIR states that designated travel routes from fill sources to the project sites shall be approved by the Community Development Director. Does this mean the Director has the authority to mandate truck routes through Newark? What about Fremont? Does Newark have control over Fremont truck routes? What will be the impacts to Fremont with all this truck traffic over years and years?

The DEIR states that project managers will reduce equipment and vehicle idle times and ensure equipment is properly tuned and maintained. Who is going to monitor and ensure compliance?

Alternatives: I recommend No Development in Area 4. The high number of significant negative impacts makes any development unfeasible. It is impossible to mitigate for wildlife and habitat loses. It is impossible to mitigate for geology and hydrology hazards. People and property must not be put at risk by development in Area 4. Wetlands must not be filled for non-

water dependent projects. Newark cannot afford to build and maintain a golf course. Golf courses around the country are closing and going bankrupt. Even in the Bay Area, golf courses are facing bankruptcy and conversion to other uses.

There could be a slight density increase to Area 3 plus rezoning the former Agilent site for housing. The owners of the former Agilent site, Regis Homes have requested a housing designation for their site. Housing along with small services would be appropriate. A coffee shop or other small businesses to serve the neighborhood and Ohlone campus could be a consideration.

This Specific Plan calls for rezoning Area 3 for housing and a change from the General Plan. That is acceptable. The Specific Plan calls for executive housing and a golf course in Area 4 as per the General Plan. If Area 3 wants a change from the General Plan so too for Area 4. Change Area 4 from housing and a golf course to Open Space and Conservation with no development. Change the Agilent site to housing and/or some retail. The City needs to think creatively and get its collective mind away from a golf course.

Sincerely,

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January 18, 2010

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(Sent by email to terrence.grindall@newark.org)

This letter is in response to the ***Newark Areas 3 & 4 Specific Plan Project Draft Environment Impact Report*** SCH No.: 200705205 and is responding to the sections on energy and noise specifically.

ENERGY

Note: The EIR separates energy impacts into 2 categories: **operational** (after construction, the energy impacts of household energy use and vehicular traffic) and **construction** (building the proposed project).

Regarding the EIR's assessment of operational energy impacts:

1. The EIR fails to adequately address energy usage and thus energy impacts. E.g., it quotes Title 24 California Energy Efficiency Standards for Residential and Non-residential Buildings as "these standards include *minimum* energy efficiency requirements related to building envelope mechanical systems. i.e., heating, ventilation, AC and water heating, etc. that would "not result in the inefficient unnecessary or wasteful consumption of energy". However, the EIR interprets this standard to mean that the project only needs to implement a few energy conserving *appliances* and a few *pathways to bus stops* to demonstrate that it is not a "wasteful consumption of energy". These proposed mitigation measures fall **far below** what is required by the Title 24 Energy Efficiency Standards law. More importantly, the EIR needs to be revised and updated to include **new** "Title 24-Part 6" energy code building standards which became law effective Jan. 1, 2010.

2. The EIR fails to identify what specific energy efficiency standards will be implemented regarding appliances. The project proposes to build 1260 new housing units of which 189 will be multi-family homes in Area 3 and 500 will be multi family homes in Area 4 equaling approximately 690 multi family units. A conservative estimate for 690 units (which is less than all units proposed to be built) would consume about 4,416,000 kWh and about 469,200 Therms, plus would emit about 8,281,380 lbs of CO2

into the atmosphere. This will result in a significant increase in electricity and natural gas consumption for home heating, cooling, water heating and lighting plus contribute to the global warming crisis which is in direct opposition to the 2009 Climate Change Adaptation Strategy (see items 6 and 7 below). The EIR states "energy conserving appliances will be used" but does not state what kinds or whether they will comply with even the minimum standards for energy conserving appliances, such as the State of California's Energy Star Homes Program. The benefits of an energy efficient Energy Star home include improved comfort, improved indoor air quality, quality construction, strong positioning for high resale value, and easy access to preferred mortgage financing. The EIR needs to be revised and updated to state that at least Energy Star standards will be implemented in this project.

3. Green building is not adequately defined in the EIR and is too open ended. This could result in non-green materials and designs being implemented. The EIR needs to be revised and updated to include specific examples of what kind of green building measures would be taken. E.g., house configuration, cool roofs, building materials, what standard of insulation would be used and where (e.g., attic, windows, slab floor perimeters, etc.), major appliances, heating and cooling system, water heating, lighting, ducts, pipes and thermostats, what type of furnace, etc.

4. The EIR states that the vehicular trips associated with the project "would substantially increase the demand for gasoline", and then states that the implementation of pedestrian sidewalks and paths, bicycle lane, new bus pull outs on Cherry Street and Stevenson Boulevard, a shuttle service to Area 4 and pedestrian friendly signs will reduce this impact to "less than significant". However, merely providing pedestrian walkways to bus stops and these other measures will not significantly reduce the energy impact of "up to 1260" new houses, as people will continue to drive their petroleum based cars to work and shopping centers, causing a significant increase in vehicular traffic and a significant increase in petroleum consumption. Furthermore, whether the proposed bus pull outs can be built is very uncertain. (See: Recent ***Argus*** Sunday paper articles, Jan. 10, 2010, on the crisis in transportation funding resulting in fewer buses to outlying areas.)

5. The EIR describes a new homes project that does not take into consideration new California State programs and initiatives (such as The California Solar Initiative, the California Energy Commission's New Solar Homes partnership program, etc.) which would create substantial energy use savings and reduce the energy impacts significantly. These programs have demonstrated that the use of passive solar designs for houses or other alternative sources (e.g., solar water heating or solar photovoltaics) create more energy-efficient homes and save homeowners money on their electric bills, protect the environment, and reduce the energy impact. They have also demonstrated that recent improvements in solar photovoltaic roof installations do not significantly add to the cost of new homes. Builders in California that integrate solar photovoltaic (PV) electricity systems and high energy-efficiency standards throughout their developments are eligible to participate and receive financial incentives. Homes from builders participating in the New Solar Homes Partnership program are at least 15 percent more efficient than current building standards and other energy efficiency measures can provide an average 30%

reduction in energy use. Solar homes also qualify for a federal income tax credit and energy efficiency measures may qualify the home for an additional $2,000 in federal tax credits.

6. The EIR describes a new homes project that is traditional sprawl, with large homes spread out and only carbon-based energy sources planned (PGE, electric grid, oil, petroleum and natural gas)—non renewable sources of energy. The significant increase in energy consumption that would result from the proposed project is in direct opposition to a number of bills and recommendations. The project would add to the global warming burden in opposition to AB 32, AB375, Governor's Panel of 23 (Dec. 2009), 2009 Climate Change Adaptation Strategy (CA governor's), etc., which also try to discourage development that is "vulnerable" and is "sprawl and isolated".

7. The EIR does not include or address the requirements of the 2009 California Climate Adaptation Strategy report to the Governor of the State of CA, in response to executive order S-13-2008 (also referenced in the EIR Hydrology G Appendix on the last page), specifically sections in No. 3 and 7 which state that building in vulnerable areas (such as wetlands) should be avoided, and to expand land use and water management to minimize adverse effects from climate change.

Climate Adaptation report Ref. No. 11: "State agencies should meet...greater energy conservation and an increased use of renewable energy. Renewal energy supplies should be enhanced through the Desert Renewable Energy Conservation Plan that will protect sensitive habitat that will while helping to reach the state goal of having 33 percent of California's energy supply from renewable sources by 2020. (TEI-2)."

Regarding the EIR's assessment of construction impacts:

1. The EIR grossly underestimates the energy impacts of the construction activity. The EIR's estimates assume the project will take about 1 year to build, but failed to include any reasonable estimates regarding the planned landfill (e.g., 2.1 million cubic yards of dirt to be trucked to Areas 4 to elevate the building pads out of the current 100-year floodplain). Area 3 also requires elevation with 56,000 cubic yards of fill. Availability of suitable soils for this type of vulnerable landfill is also unknown.

2. The EIR needs to adequately assess what the energy impact of 100 dump trucks per day running 353 days per year for 2 years would actually be.

3. Regarding other construction energy impacts: Merely having the construction superintendants informing truck drivers to turn engines off when idling for more than 5 minutes is not adequate to reduce what the EIR has already identified as "significant impact" to less than significant. Such a measure (while laudable) will be difficult to identify, manage and control and will not result in any significant reduction of energy usage.

4. There will still be significant emissions from energy consumption, even if construction vehicles are "properly tuned", (not to mention noise, air pollution, etc.).

5. EIR states project will utilize local and regional building materials, but did not identify what kinds of materials, how much and where they would come from. It is not clear that all these materials can be obtained locally, or what kind of oversight would be involved.

6. The EIR does not appear to require that a signed construction contract is developed with the contractors to ensure compliance, or that they even follow recommendations of the EIR. Other recommendations or regulations within the EIR may not be followed either if the EIR does not require a signed agreement from the City of Newark.

NOISE

Note: The EIR separates noise impacts into 2 categories: **exterior** (not to exceed 60DBA Ldn according to Newark General Plan) and **interior** (not to exceed 45 dBA Ldn). It also mentions impacts from construction.

Exterior: Regarding the EIR's assessment of exterior noise impacts:

1. The EIR fails to adequately address noise impacts for exterior sources. EIR states that "future residential uses would be exposed to exterior noise levels greater than 60 dBA Ldn, which *exceeds* the noise and land use compatibility standards contains in the City of Newark General Plan". Main sources of noise identified were from railroad trains, Cherry/Stevenson vehicular traffic and some nearby industrial activity (Quickcrete, etc.).

2. Proposed mitigation measures are: 11 foot high sound barriers along Cherry Street and 8 foot high sound barriers for homes adjacent to UPRR. These measures will not adequately reduce these impacts to less than significant because they failed to take into consideration the increased noise levels from the increased vehicular traffic that "up to 1260" new houses would create along the streets. On page 17, App. D Noise: They measured traffic, before construction, and then estimated the 1260 houses and other sources of traffic would "only increase noise by 2dBA Ldn, which would not perceptible and not substantial". Seems highly unlikely, if 1260 houses has an average 11 car trips/day=13,860 trips/day added to existing traffic. Noise levels would vary and be much higher during commute time, which will occur when they drive to and from their houses on the [outer edge] of Newark.

3. Railroad crossing and power lines: Also the 8 foot wall to mitigate RR noise was contingent upon the building of a RR overcross bridge at Stevenson Blvd which would negate the need for the train to blow its whistle. It is not clear that such an overcross could be built due to FAA regulations governing the flight paths to Palo Alto airport and restrictions regarding raising/moving power lines, etc.

4. These proposed mitigation measures are not required but "shall be *considered*" by the City of Newark. If deemed unfeasible, the resulting noise impacts remain "very significant" and greatly exceed General Plan standards.

5. Noise impacts from construction are greatly underestimated. First, it is based on a 1 year building time and does NOT take into consideration the landfill (dump trucks and soil compaction machinery) that would be required to elevate building pads in Area 4. While these impacts are temporary (2 years or more), they are still very significant and greatly exceed minimum standards.

6. EIR also did not assess noise impacts of pile drive for construction which are estimated to be in excess of 100 DBA (and with new data regarding a 2 year build time period) is completely unacceptable.

Interior: Regarding the EIR's assessment of interior noise impacts:

1. Proposed mitigation measures include sound insulation, forced-air mechanical ventilation for all new units with direct line of sight to RR noise sources, sound rated windows and doors, sound rated wall constructions, acoustical caulking, but then states these will be implemented on a "unit-by-unit basis". More information is needed as to how these determinations will be made.

2. Another proposed mitigation is the building of noise barriers at private use areas along Cherry St., Stevenson Blvd. and the railroad tracks. However, the EIR did not adequately measure the increased noise impacts from the increased vehicular traffic that would result from the building of up to 1260 new homes, and therefore, the proposed noise barriers will probably not be adequate.

Sincerely,

Mari T. Miller

cc:

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January 18, 2010

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Subject: Comments in Response to the Newark Areas 3 & 4 Specific Plan Project Draft Environmental Impact Report SCH No.: 200705205

SUMMARY

These comments primarily discuss hydrology, water and public safety, as they have a large impact on potential development of this project in Area 4

The DEIR concentrates primarily on outdated information, and it barely addresses and even avoids some of the recent updates and changes in policies and mandates that have been published from scientific reports, and from federal and state governments. Examples of recent reports are discussed in this critique, some taken from the California report of the 2009 California Climate Adaptation Strategy (CCAS), including AB32, AB375, Clean Water Act, Title 24 Part 6-Energy Standards, and the "2009 Governor's Panel of 23". If these policies and recommendations were followed, they would essentially dictate "no development in Area 4", under any mitigating circumstances, and to restore wetlands therein for flood protection and to protect and enhance wildlife habitat.

When were different sections of the EIR written and compiled, and to what extent was it modified or edited by the City of Newark? The organized sections reflect the "quality" of the DEIR, confusing and obfuscating, with redundant and biased discussions, likely written by different persons at different times and with limitations on communications between contributors—all of which becomes confusing to readers and generates difficulty in commenting on the issues.

Therefore the DEIR should be rewritten or even discarded, as new requirements and scientific evidence supersedes the outdated policies and

directives of the "same old ways", due to the need to immediately implement suitable objectives of more recent climate change reports and California law.

1. REFERENCES ON CLIMATE CHANGE

Most of the DEIR references are old and are based on outdated information. In Section 3.1.3.1 Newark General Plan, the General Plan even dates back to 1992.

Global climate change, more appropriately described by scientists as "climate disruption", is discussed in the DEIR, which tends to concentrate on the outdated IPCC reports, primarily 2007 projections and earlier. However, an estimated "worst case" scenario that was chosen in the DEIR is discussed: Appendix G, Hydrology, page 4, cites projection of sea level rise of 4.6 feet for 2100. These projections, far into the future, are only calculated with empirical and theoretical formulas, where there is much uncertainty, adding to the unknown effects of storm surge, flooding, possible El Nino, liquefaction from earthquakes, and settling of landfills to lower levels from soil saturation. These and other forces impacting the project are further discussed in this critique.

DEIR Appendix G, Hydrology, page 11: The EIR states…"projected sea level rise would overwhelm the project by 2089 for the 'high' sea level rise scenario". (That is 4.6 feet, but is becoming a low or intermediate estimate in newer reports, as projections for the rise are also accelerating.) The DEIR concludes: "Given the uncertainty in these sea level projection scenarios,…an additional foot of fill needed for theoretical protecting against rising one-percent storm surge for an additional ten years or so…when the **weight of additional fill accelerates settlement**. An adaptive strategy…include an **earthen levee or structural floodwall** along the perimeter of the fill is more appropriate". (But levees are not part of this development, unless they are created by another agency bearing the responsibility).

BCDC, who apparently decides on shoreline developments, has produced outdated and conservative estimates for sea level rise and the overall impact of local and global climate disruption.

There is excessive risk for the near future for Area 4 residents, during and after the calculated life of the project (50 years by BCDC, or longer life by the project projections in the DEIR?). However, the DEIR does not adequately take into account numerous other considerations, whether natural or man-made.

EXAMPLES OF MORE RECENT SCIENTIFIC QUOTES:

“2007 IPCC is **outdated** by current predictions on sea level rise and climate change.” “Evidence accumulated since the 2007 IPCC report suggests that the world is getting hotter than predicted, and that the pace of change is faster than expected”. Reports from 2009 UN Environmental Group, with 100’s of scientific papers, i.e. “current CO2 and temperatures would drive sea level 25 to 40 meters higher than present…recent climate news **(2009)** all seems ominous…Greenland and Antarctic melting is **accelerating** much faster than previously thought…projections thought to occur in the future are already happening”. Science, Sept. 2009. “The pace and scale of climate change may now be outstripping even the most sobering predictions of the last report of the Intergovernmental Panel of Climate Change (IPCC)—2007”. (Quantitative projections are presented in many scientific papers.)

These quotes are among the findings of a report released by the United Nations Environment Programme (UNEP) entitled Climate Change Science Compendium **2009.** The Compendium reviews some 400 major scientific contributions to our understanding of Earth Systems and climate change that have been released through peer-reviewed literature, or from research institutions, over the last three years.

Important conclusive statements from scientific reports are as follows:

In analysis of the very latest peer-reviewed science indicates that many predictions at the upper end of the IPCC's **forecasts are becoming ever more likely.**

Meanwhile, the newly emerging science points to some events thought likely to occur in longer-term time horizons, as **already happening** or set to happen far sooner than had previously been thought.

Losses from glaciers, ice-sheets and the Polar Regions appear to be happening faster than anticipated, with the Greenland ice sheet, for example, recently seeing melting some **60 percent higher** than the previous record of 1998.

The loss of ice from West Antarctica is estimated to have increased by 60 per cent in the decade to 2006, and by 140 percent from the Antarctic Peninsula in the same period.

Because the Pine Island Glacier contains enough ice to almost double the [Intergovernmental Panel on Climate Change's] best estimate of 21st century sea level rise, the manner in which the glacier will respond to the accelerated thinning is a matter of great concern, he said in a statement.

Losses of tropical and temperate mountain glaciers affects perhaps 20 percent to 25 percent of the human population in terms of drinking water, irrigation and hydro-power.

Shifts in the hydrological cycle is resulting in the disappearance of regional climates with related losses of ecosystems.

Growth of the global economy in the early 2000s and an increase in its carbon intensity (emissions per unit of growth), combined with a decrease in the capacity of ecosystems on land and the oceans to act as carbon "sinks", have led to a rapid increase in the concentrations of carbon dioxide in the atmosphere. This has contributed to **sooner-than-expected impacts including faster sea-level rise, ocean acidification, melting Arctic sea ice, warming of polar land masses, freshening of ocean currents and shifts in the circulation patterns of the oceans and atmosphere.**

Recent estimates of the combined impact of melting land-ice and thermal expansion of the oceans suggest a plausible average sea level rise of between 0.8 and 2.0 meters above the 1990 level by 2100. This compares with a projected rise of between 18 and 59 centimetres in the last (outdated) IPCC report, which did **not** include an estimate of large-scale changes in ice-melt rates, due to lack of consensus. (Even more current estimates are projecting greater catastrophic changes, due to unforeseen forces in oceanographic environments that could easily accelerate the process, as many of these forces tend to exponentially influence and enhance one-another. Some of those are discussed herein).

There is also growing concern among some scientists that thresholds or tipping points may now be reached in a matter of years or a few decades. The report also underlines concern by scientists that the planet is now committed to some damaging and irreversible impacts as a result of the greenhouse gases already in the atmosphere.

Recent science suggests that it may still be possible to avoid the most catastrophic impacts of climate change. However, this will only happen if there is immediate, cohesive and decisive action to both cut emissions and assist vulnerable countries adapt.

The United Nations Secretary-General said, “This Climate Change Science Compendium is a **wake-up call**. The time for hesitation is over. We need the world to realize, once and for all, that the time to act is now and we must work together to address this monumental challenge. This is the moral challenge of our generation." "…scientific knowledge on climate change and forecasting of the likely impacts **has been advancing rapidly since the landmark 2007 IPCC report**," he added.

The research findings and observations in the Compendium are divided into five categories: Earth Systems, Ice, Oceans, Ecosystems and Management.

The Environmental Defense Fund (EDF) report of 1-12-2010:

In the last year alone, new evidence has emerged that the climate crisis is nearer—and scarier—than we had believed.

The stakes are high. We must start cutting our carbon emissions now, or we may soon lose the ability to prevent runaway global warming.

Here are **10 startling facts** we learned in **2009** that underscore the climate threat:

1. A study published in the journal Science reports that the current level of carbon dioxide (CO2) in the atmosphere – about 390 parts per million – is higher today than at any time in measurable history -- at least the last 2.1 million years. Previous peaks of CO2 were never more than 300 ppm over the past 800,000 years, and the concentration is rising by around 2 ppm each year.
2. The World Meterological Organization reported that 2000-2009 was the hottest decade on record with 8 of the hottest 10 years having occurred since 2000.
3. 2009 will end up as one of the 5 hottest years since 1850 and the U.K.'s Met Office predicts that, with a moderate El Nino, 2010 will likely break the record.
4. The National Snow and Ice Data Center reported that while a bit more summer Arctic sea ice appeared in 2009 than the record breaking lows of the last two years, it was still well below normal levels. Given that the Arctic ice cover remains perilously thin, it is vulnerable to further melting, posing an ever increasing threat to Arctic wildlife including polar bears.
5. The Arctic summer could be ice-free by mid-century, not at the end of the century as previously expected, according to a study by the National Oceanic and Atmospheric Administration.
6. Recent observations published in the highly respected Nature Geosciences indicate that the **East Antarctica** ice sheet has been shrinking. This surprised researchers, who expected that only the West Antarctic ice sheet would shrink in the near future because the East Antarctic ice sheet is colder and more stable.
7. The U.S. Global Change Research Program completed an assessment of what is known about climate change impacts in the US and reported that, "Climate changes are already observed in the United States and… are projected to grow." These changes include "increases in heavy downpours, rising temperature and sea level, rapidly retreating glaciers, thawing permafrost, lengthening ice-free seasons in the ocean and on lakes and rivers, earlier snowmelt, and alterations in river flows."
8. According to a report by the US Geological Survey, slight changes in the climate may trigger abrupt threats to ecosystems that are not easily reversible or adaptable, such as insect outbreaks, wildfire, and forest dieback. "More vulnerable ecosystems, such as those that already face stressors other than climate change, will almost certainly reach their

threshold for abrupt change sooner." An example of such an abrupt threat is the outbreak of spruce bark beetles throughout the western U.S. caused by increased winter temperatures that allow more beetles to survive.

9. The EPA, USGS and NOAA issued a joint report warning that most mid-Atlantic coastal wetlands from New York to North Carolina will be lost with a sea level rise of 1 meter or more.
10. If we do not reduce greenhouse gas emissions by the end of the century, some of the main fruit and nut tree crops currently grown in California may no longer be economically viable, as there will be a lack of the winter chilling they require. And, according to a study published in the Proceedings of the National Academy of Sciences, U.S. production of corn, soybeans and cotton could decrease as much as 82%.

Sources for EDF climate facts:

- http://www.sciencedaily.com/releases/2009/06/090618143950.htm
- http://www.usgs.gov/newsroom/article.asp?ID=2110&from=rss_home
- http://www.epa.gov/climatechange/effects/coastal/sap4-1.html
- http://www.wmo.int/pages/mediacentre/press_releases/pr_869_en.html
- http://www.metoffice.gov.uk/corporate/pressoffice/2009/pr20091210b.html
- http://nsidc.org/news/press/20091005_minimumpr.html
- http://www.noaanews.noaa.gov/stories2009/20090402_seaice.html
- http://sciencestage.com/resources/climatic-changes-lead-declining-winter-chill-fruit-and-nut-trees-california-during-1950-2099
- http://news.ncsu.edu/releases/crop-yields-could-wilt-heat/
- http://www.globalchange.gov/publications/reports/scientific-assessments/us-impacts
- http://earthobservatory.nasa.gov/Newsroom/view.php?id=41455

Other scientific reports projecting more catastrophic sea level rise and climate change:

a. Land based ice. See Scientific American. Unquiet Ice, Feb. '08, article on Antarctic and Greenland. Antarctic ice will have a much more profound effect on rising sea level, due to **previously ignored** impact of warming climate. Ice shelves break up, speeding the **warming of subglacial water within Antarctic land masses**, thus increasing the flow of vast streams of ice to the sea. Sea level rises as the ice sheet melts and flows into a warmer ocean. **Loss of [land-based ice] of Antarctic and Greenland could add 200 ft of global sea level rise**.

b. Collapse. The National Geographic (www.climate.ngm.com) and the special issue of June 2008, “The Science Is In”, states “…ice sheet [collapse] in both Greenland and Antarctica would raise sea level **20 feet, inundating many coastlines**”.

Note: The **20-foot rise represents "collapse" and the 200-foot level represent "loss of land-based ice**", or a minor change verses a major melt-down of sub-glacial ice, which from international studies looks ominous. (Area 4, and beyond, could not be protected by creating excessive landfill and levees.)

2. CLIMATE CHANGE ADAPTATION FOR AREA 4

The DEIR concludes that landfilling and other short-term impacts are deemed to be "insignificant". The project proposes unsuitable, ambiguous and limited mitigations in order to avoid implementing current State mandates and climate change policies.

Recent California report: 2009 California Climate Adaptation Strategy (CCAS), including AB32, AB375, Governor's panel of 23, etc. Recommends moving (or eliminating) new developments from high risk areas vulnerable to flooding and sea level rise.

CCAS quote: "State agencies should generally not plan, develop, or build any new significant structure in a place where the structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure". "Recommends to protect wetlands and habitats as well…manage marshlands for flood protection…State recommends acquisition and preservation of vulnerable areas containing critical habitat".

Some specific quotes and recommendations of the California Climate Adaptation Strategy:

CCAS Report, Page 73: ***Strategy 1: Establish State Policy to Avoid Future Hazards and Protect Critical Habitat.***
Near -Term Actions:

a. Hazard Avoidance Policy – State agencies should consider project alternatives that avoid significant new development in areas that cannot be adequately protected (planning, permitting, development, and building) from flooding or erosion due to climate change.

The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is to carefully consider new development within areas vulnerable to inundation and erosion, and to consider prohibiting development of undeveloped, vulnerable shoreline areas containing critical habitat or opportunities for habitat creation.

State agencies should generally not plan, develop, or build any **new significant** structure in a place where that structure will require significant protection from

sea-level rise, storm surges, or coastal erosion during the expected life of the structure. However, vulnerable shoreline areas containing **existing** development or proposed for new development that has or will have regionally significant economic, cultural, or social value may **have to be protected**, and **in-fill** development in these areas should be closely scrutinized. State agencies should incorporate this policy into their decisions, and other levels of government are also encouraged to do so. Some state agencies already base decisions on hazard avoidance, for example **Coastal Act** provisions require that new development in the coastal zone be designed to minimize risks from current and future hazards, which would include risks from expected **sea-level rise**, the Act restricts new development in hazardous areas, especially if it would require the construction of a **protective device**.

> **Note:** The Newark project in Area 4 would incorporate **excessive landfill and levee protection as "protective devices"**, exacerbated by construction of high-end housing and the associated golf course, NONE of which would likely bring significant **economic value, only increased costs** from State, Federal and the city of Newark.

b. Innovative Designs – If agencies do plan, permit, develop or build any new structures in hazard zones, agencies should employ or encourage innovative engineering and design solutions so that the structures are resilient to potential flood or erosion events or can be **easily relocated or removed to allow for progressive adaptation to sea level rise, flooding, and erosion**.

c. Habitat Protection – The state should identify priority conservation areas and recommend lands that should be considered for **acquisition and preservation**. The **state should consider prohibiting projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones. (Area 4 fits this description).**

The strategy should likewise encourage projects that **protect critical habitats, fish, wildlife and other aquatic organisms and connections between coastal habitats**. The state should pursue activities that can **increase natural resiliency, such as restoring tidal wetlands, living shoreline, and related habitats; managing sediment for marsh accretion and natural flood protection**; and maintaining upland buffer areas around tidal wetlands. For these priory conservation areas, impacts from nearby development should be minimized, such as **secondary impacts from impaired water quality or hard protection devices**. **(Area 4 fits this description, again).**

Long -Term Actions:

d. Coordinate Policy Implementation – State agencies should use outreach and incentive programs to promote hazard avoidance policies and sound management decisions for coastal habitat protection and development to all levels of government.

CCAS Report, Page 77: v. New Development Techniques – Building codes can be amended to require that coastal development incorporate features that are resilient to sea-level rise (e.g., require that development begin on the second floor).

vi. Relocation Incentives – Federal, state and local funding or tax incentives to relocate out of hazard areas.

vii. Rolling Easements – Policies and funding to facilitate easements to a) **relocate developments further inland**, b) remove development as hazards encroach into developed areas, or c) **facilitate landward movement of coastal ecosystems subject to dislocation by sea-level rise and other climate change impacts**."

In the DEIR, Appendix G, Hydrology, page 11: The EIR acknowledges the CCAS (2009 California Climate Adaptation Strategy), **but they do not cite or identify the conditions described above**!

The conditions in the above cited CCAS Report should more than qualify area 4 as one that should not be developed, and should be returned to its protective wetland habitat. This development and its severe vulnerability should be reported and properly addressed to these agencies for jurisdiction. Transportation funding--to this sprawling area--is one condition that is limited in these developments when they are not approved by the agency.

Federal and State Actions Proposed for States with Similar Coastal Issues: cited in a Chesapeake Report at http://www.nwf.org/sealevelrise/pdfs/NWFChesapeakeReportFINAL.pdf:

Federal Actions:

a. Congress should reauthorize the Coastal Zone Management Act:

To require relevant state agencies to consider sea-level rise in coastal management plans to qualify for federal funding; **prohibit federal subsidization** of infrastructure development and **coastal armoring** in ecologically sensitive areas; and encourage public and private land acquisition of coastal habitats and upland buffers.

b. The Federal Emergency Management Agency:

Should remap potential hazard areas in coastal zones to reflect anticipated sea level rise, taking into account potential storm surge impacts, and establish policies to **reduce or eliminate federal flood insurance for new construction and rebuilding in high-risk areas.**

c. Congress should expand the Coastal Barrier Resources system:

To **discourage new development** in areas needed to buffer natural resources and existing development from **sea-level rise**. Such areas should be **denied federal subsidies such as federal flood insurance, disaster relief, and loans for sewer, water, and highway construction**. **(Potential buyers and financial institutions would also need full disclosure of risks, prior to purchase and financing of these high-risk areas).**

State and Local Actions (recommended for Maryland and Virginia, where California and other states need to follow suit):

a. Local governments:

"….requiring local governments to consider sea-level rise when amending their plans for coastal land use, open space, wetland protection policies, and other relevant activities".

b. State governments:

"…should develop state tidal wetlands conservation and restoration plans that promote designation of wetland migration corridors and remove and discourage use of hard shoreline erosion structures in coastal marsh environments…..accommodate impacts of sea-level rise.

c. State Regulations:

States should also expand enforcement of current regulations and prevent any attempts to weaken these provisions in relevant legislation….establish policies such as rolling easements or mandatory setbacks….to discourage new development in vulnerable coastal areas
(**Science News).**

3. PUMPING AND GROUND WATER CONTAMINATION

a. Risks to Area 4

In the DEIR, development establishes housing in a 100-year flood hazard area. Requires infill to excessive heights, creating islands to avoid levee maintenance, with potential flood hazards. Claims insignificant effect on flow of drainage

around the development in Area 4, but requires excessive pumping (pump failure during flooding and or storm surge, and sea level rise?). Claims the development has a finite life and meets BCDC 50-year life protections. Claims it has 100-year protection due to raised landfill, but indicates development likely needs levees later on—from the County, State or Federal sources.

DEIR, Appendix G, Hydrology, page 7-8: Claims levees are an impediment to storm water runoff, Area 4 is confined and enclosed, therefore Area 4 needs to be pumped. "Interior drainage is collected in ditches that run along the inboard side of the privately owned levees, terminating at an existing pump that lifts water **10 to 12 feet** over the top of the levee were it discharges into Mowry Slough (Fig. 4)". **What about power/pump failure, even generator backup failure due to inundation from excessive demand from flooding, sea level rise and sudden inward surge of Bay water, all impacted catastrophically by earthquakes and liquefaction?** Pumps and gas generators do fail frequently and need maintenance. (The existing private levees are not maintained nor FEMA certified).

The DEIR states that most drainage would occur around outer areas of the raised landfill development, but there is increased potential erosion around the raised island due to the impediments of the island itself, including the golf course. They claim the development would be insignificant in affecting drainage due to drainage ditches and required pumping. But this does not adequately account for the unknowns including catastrophes, as described above. The DEIR claims that at some point levees will be required.

In the DEIR, Appendix G, Hydrology, page 20: Hydrology and pump discharge required is calculated with empirical equations and theoretical assumptions that are simple projections. There is insufficient evidence that this calculation will comply with the actual needs of this unknown area, **i.e. complex land structure historically pumped, impermeable soils, flooding, seismically unstable soils, intertwining wetlands, complex shallow drainage ditches to surround a man-made island fill, shallow underground water with saline permeation, deep saline aquifers, adjacent to rising sea level with increasing ocean acidity, and abuts to unprotected (FEMA uncertified) private levees adjacent to Cargill salt ponds. There is the unknown Cargill salt pond history and levee manipulation for salt making, for now and in the future.**

b. Evidence within the DEIR:

The DEIR for Area 4 consistently does not adequately account for sea level rise and high tides or storm surges that could cause back-flow, as well as salt intrusion and infiltration into Area 4 surfaces and into ground water (no levee maintenance, only vulnerable fill). However it admits that sea salt is already in the shallow aquifers of Newark (hence desalinization is used). They do not address the adjacent Cargill salt ponds (near old levees) that are draining back

into the groundwater, exacerbated by sea level rise and ocean acidification. The DEIR contains illustrations (page 13, Appendix G) showing the salt ponds and sampling wells that penetrate deep into different groundwaters, in order to sample and analyze the ground water, thus proving infiltration and high salinity.

"Saltwater intrusion into aquifers is a man-made problem in many places in California, resulting from over-pumping (the DEIR projects the need for Area 4 maintenance), but it will be accelerated and made worse by sea level rise. Area 4 has been pumped to keep dry since the 80's". Earthen levees, not maintained, were also built to prevent Bay water intrusion, but in spite of the corrective actions, much of the land is saturated and historically has existed as wetlands. Rising sea level will requiring **excessive pumping** as corrosive salt intrudes into groundwater and translocates up into landfill.

c. Supporting References on Saltwater Intrusion into Groundwater and Aquifers

"Saltwater intrusion into aquifers is a man-made problem in many places in California, resulting from over-pumping, but it will be accelerated and made worse by sea level rise. It occurs where saline water moves inland into a freshwater aquifer, contaminating it with salts and making it unsuitable for water supply or irrigation. Pumping coastal aquifers in excess of natural recharge rates draws down the surface of the aquifer. When the ocean has a higher "potentiometric surface," or water elevation, it causes the saltwater wedge to intrude further inland (Figure 35). Seawater intrusion is already problematic in California's coastal aquifers throughout Central and Southern California. (Also a problem cited in the Newark DEIR).

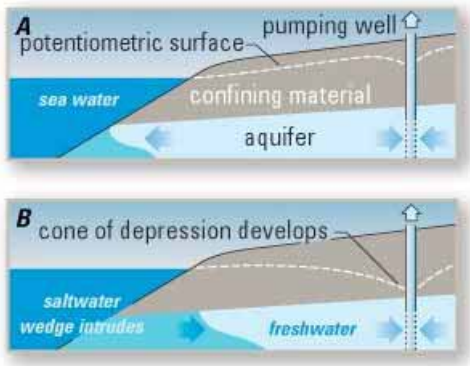

Figure 35. Saltwater intrusion **(**Edwards and Evans 2002)"

Pumping of wells, aquifer collapse and salt intrusion with dwindling California water supplies:

http://www.csmonitor.com/Environment/2010/0111/Will-drilling-more-wells-in-California-help-or-hurt:

“Farmers, conservationists and engineers are criticizing the Interior Department's plan to spend taxpayer money on digging more wells, saying the approach risks marring the environment. **Canals buckle, aquifers collapse and drinking water turns saltier due to so much pumping, and studies show that the state's water supplies are dwindling.** Despite recent storms, the pain is not expected to let up anytime soon. Last month, the Department of Water Resources announced it would release a record-low amount of water to farmers and urban dwellers next year, a response to dry weather and environmental protections for a native fish in the Sacramento-San Joaquin Delta.”

d. Overview on Effects of Drainage and Bay Water on Area 4

In summary, Bay tidal influence coupled with intrusion of water from the adjacent salt ponds is inducing hydrologic pressure, both above and below ground in those inland areas, thus causing contamination from permeation of surface ground water and lower aquifers. The aqueous upward pressure and translocation by absorption is apparently forcing water to flow into near soil surfaces in Area 4, not adequately addressed in the DEIR. At the same time, forward gravitational pressure from drainage of uplands into lower soils creates sheet-flow within the contaminated region, in spite of drainage ditches surrounding the confined area.

Extremes from storm drainage, Bay storm surge and sea level rise, alone would induce pressure from all sides, thereby imposing hydrologic constraints within the confined (trapped) Area 4 development, as well as on a proposed golf course. In addition, the salt-intolerant vegetative species planned for the “tree city” in Area 4 would be inundated with salt burn and stunting, which would include plantings and any grasses within the golf course. Even worse, internal confluence of flood waters would prove to cause irreparable damage to wetlands and aquatic habitat.

The hazardous conditions in Area 4 would be enhanced by landward pressure of corrosive salt water from adjacent Bay-salt works, as sea level progressively rises--not discussed in the DEIR.

The DEIR claims Area 4 is land-locked and therefore the only alternative measure of “potentially adequate” safety from flood hazard is excessive future pumping requirements, but again it excludes the impact of rising sea level. The DEIR did not adequately address those issues, except to place the onus of hazard protection for this development on outside agencies—an unknown quantity, when funding is questionable and while those very agencies are professing “no development” in those vulnerable areas, i.e. see 2009 California Climate Change Strategy Report.

Best alternative: If pumping were stopped much or all of the land would be returned to wetlands, its native condition, and provide improved flood protection for neighboring long-time residents. Restoration of aquatic habitat, including desirable salt-tolerant foliage, would conveniently become a valuable asset of this action—which would comply with current state policies and recommendations. Calculations have demonstrated that development of Area 3 would provide more than enough financial benefits, even without the proposed development in Area 4.

4. LANDFILL AND LEVEE VULNERABILITY

Intrusion and degradation of landfills are items not adequately addressed, if at all, in the DEIR, nor the selection of suitable stable soils for landfill.

In the DEIR, Appendix G, Hydrology, page 7: Drainage patterns show worst case levee failure near interior drainage pump station, in basin C.

Appendix G, Hydrology, page. 11. DEIR states: They conclude: "Given the uncertainty in these sea level projection scenarios,…an additional foot of fill needed for theoretical protecting against rising one-percent storm surge for an additional ten years or so…when the **weight of additional fill accelerates settlement**. An adaptive strategy…include an **earthen levee or structural floodwall** along the perimeter of the fill is more appropriate".

"Researchers have become increasingly concerned about ocean acidification linked with the absorption of carbon dioxide in seawater and the impact on shellfish and coral reefs". "Water that can corrode a shell-making substance called aragonite is already welling up along the California coast, decades earlier than existing models predict".

Increasing ocean acidification, along with increasing temperature and salinity, can degrade organic and inorganic alkaline earth metal complexes of calcium and magnesium, which bind the structure of the shells and bones together. Acidification also affects the toxicity of a variety of substances and the biological availability of important nutrients and other compounds.

Shells are also part of many sediments and soil strata near oceans. Levees and landfills, even their protective liners, including concrete (calcium and magnesium complex), **will** be compromised and can be degraded with changing ocean chemistry. Landfill and levee soil types, especially alkaline clays, with or without shell deposits, can be vulnerable as salt and ocean acidity becomes more corrosive.

Newark Planning Commission and the City Council have indicated that levees are not their problem and that it is regional. However, by building close to the

Bay and in a highly vulnerable area, they are jeopardizing other agencies (and taxpayers), by transferring to them the responsibility and expense of protection and emergency response. The proper type of substrate that may be required may not even be available when levees are in need of construction or repair.

As described in the DEIR, dependency on other government agencies for protection with levees in Area 4 is deemed necessary, but likely sooner than expected. The onus of protection is placed on the government for a development in an isolated 'island-type' area. The project will be produced with much risk and uncertainty, at a time when numerous recommendations and policies, both State and Federal, are to locate developments away from vulnerable areas that are close to bay and shorelines.

5. WETLANDS, FLOODS AND TRANSFER OF CONTAMINANTS

The DEIR, Appendix,G, Hydrology, page 6-7 quotes: "…implementation of the Specific Plan may result in filling (impacting) wetlands within the central residential/golf course plan..in areas B and C. **The quantity of filled wetlands could range from 0 to 93 acres."** This is an uncertain quantity, but the extent of disruption is evident.

Therefore the DEIR proposes potential loss of wetlands. The impact on hydrology and wildlife is ignored or claimed insignificant, in spite of numerous historical and current wildlife reports about Area 4. Reports demonstrate that Area 4 serves as an important shorebird habitat and is even in a waterfowl fly-zone area.

What about the Army Core of Engineer's wetland fill regulations, the Department of Water Resources, and the Clean Water Act-Section 404 regarding wetland loss, hydrologic disruption and destruction of habitat? The project therefore would produce irreversible losses to this environment. Also this project is an infraction of numerous new policies and proposals from the State, as described previously.

Quote: "Many of these 'disappearing climates' coincide with biodiversity hotspots, and with the added problem of fragmented habitats and physical obstructions to migration, it is feared many species will struggle to adapt to the new conditions." **Fragmenting the habitat and obstructing migration in Area 4 is another example of disruption, but unlike climate disruption, in this case it is direct and wanton human interference and physical obstruction**. **Mitigation is unacceptable and cannot undue the irreversible harm to waterfowl, and to migrating and foraging wildlife.**

The DEIR, Appendix G, Hydrology, page 18: States that there is a hydrology problem with runoff from sediment and urban pollutants. The solution is a storm

wastewater pollution prevention plan and management plan, from the City, but is not adequately defined and has many uncertainties for this type of complex hydrology. They claim typical methods won't work due to presence of soils with low permeability and high water table. No practical specifics on control were provided. Any methods used will not prevent pollutants from entering into lower wetlands, since the proposed landfill to develop residences becomes a raised island that can only drain, through gravity, into lower areas. Any transfer of water to drainage ditches will be pumped out over the levees, where stable contaminants can become ocean contaminants. Leaching of contaminants into the shallow groundwater will also occur and would become an environmental hazard.

FEMA:

a. The EIR states: None of the levees are certified by FEMA, Appendix. G, page 10. This indicates a public safety hazard. Pumping is the major protection proposed if a levee is breached or overtopped. However, if encroaching Bay water is the force that overtops the levees, little or no protection would occur, because the pump would work against itself as water eventually flows back to be re-circulated into the same pump in Area 4. Even salt ponds could potentially backflow into Area 4 if overtopping is experienced, thus causing significant contamination.

b. Sewage pumping and outflows would compound the contamination and flooding problems if backflow, levee overtopping and breaching, and other bay and oceanic catastrophes plagued Area 4.

c. Quote: "As sea level rises, flood maps should be redrawn and facilities retrofitted with additional required flood mitigation measures. The fact that FEMA has yet to complete the preparation of flood insurance risk studies for a substantial fraction of communities in the United States suggests that higher priority may have to be accorded to this function in the future".

6. CUMULATIVE IMPACTS (HYDROLOGY)

In the DEIR, Appendix G, Hydrology, page 25: Cumulative impacts of hydrology of project: They are "considered not significant, when added to impacts of related past, present and probably future projects".

Arguments in defending hydrology as "not significant" in the DEIR utilize the same deceptive methods as in many other determinations in the same DEIR. For example, in the DEIR, adding the hydrologic impact of Area 4 to the large number of other outside projects was assumed to be "not significant"—but only if you selectively address quantitative terms (a small number plus a large one

yields a slightly larger number with little quantitative change). But those number comparisons are a diversion from the significant issue of judgment.

More appropriately, **the project has a large and significant impact on this specific area in profound ways**, as referenced throughout this critique. In fact, if all projects were examined with the type of "obfuscating logic" in this DEIR, there would be little or no improvements or implementation of recent and more suitable recommendations and policies for land use. We collectively would be overwhelmed with the same unacceptable (and cumulative) projects over and over, everywhere else.

7. ALTERNATIVES TO THE PROPOSED PROJECT (DEIR, SECTION 5, Page 309)

In Hydrology: page 313 the DEIR states: "…Without developing Area 4, this alternative would not have sufficient acreage to include the golf course". On page 317 they even state they need to meet the General Plan goals and project objectives for providing a **golf course**, where the only acreage for it is in Area 4. This indicates that the only place for the desired golf course that is large enough is Area 4, in spite of its many problems and vulnerability. Therefore it stands to reason that they must have high-end houses to pay for it—apparently why they state that **reduced housing does not include Area 4**, page 318.

So this entire project revolves around the number one desire—the **golf course** (**clearly, not a requirement of the outcome of the 1999 Measure C**, which is as severely outdated as the DEIR's references to sea level rise and climate change). Evidence indicates the golf course would not be feasible anyway, due to economics as well as environmental concerns.

On page 318, the DEIR **wisely** describes that the **environmentally superior alternative is no development in Area 4—which would avoid impacts to wetland, marsh, and aquatic habitat.** Their circular arguments state that no development means no project objectives—which to them becomes a "significant" negative impact, but the negative impact includes only their desired definition of "their project", but excludes the environment it destroys. They need to simply focus on the best alternative that benefits the environment and complies with new State and Federal recommendations, climate change policies, Bills and many other mandates.

8. SIGNIFICANT UNAVOIDABLE ENVIRONMENTAL IMPACTS WILL OCCUR (DEIR, SECTION 5, Page 323)

States that if the project is implemented, “one of the outcomes is that there will be **significant cumulative global climate change impact”**. This statement would also negate the development of the project in Area 4, due to its opposition to new climate change policies.

Unlike climate disruption, in this case development in Area 4 is direct and wanton human interference and physical disruption. **Mitigation is unacceptable and cannot undue the irreversible harm to the environment, waterfowl, and to migrating and foraging wildlife, irrespective of climate disruption.**

9. SIGNIFICANT IRREVERSIBLE IMPACTS (DEIR, SECTION 8, page 324)

CEQA Guidelines requires discussion of significant irreversible changes from this project. **The DEIR states that the project...”includes the use of nonrenewable resources, the commitment of future generations to similar use, irreversible damage resulting from environmental accidents associated with this project, and irretrievable commitments of resources”. Transformation of these lands from an undeveloped/open space character to a suburban/urban environment would, from a practical perspective, be an irreversible change”.**

Again, these conclusive statements would also negate the development of the project in Area 4, due to its opposition to new climate change policies and regulations, and to its impact on the environment.

10. PUBLIC ACCESS

The DEIR states that the Bay Trail will be decided in the future, however the DEIR states, "*The future Specific Plan developer(s) of Area 4 will be required to provide an easement for the Bay Trail to run along the top of the levees that form the western edge of the project, if that ultimately is the preferred alignment.* The Specific Plan is consistent with the Bay Trail and does not conflict with efforts to complete the Bay Trail."

However, public access to the outboard levees along Mowry Slough should be discouraged, because wetland habitat on the old Pintail Duck Club, included endangered species, will be located between development and public access along the levees. Pets, such as dogs, would be unleashed as well.

11. PUBLIC HEALTH AND SAFETY

1. The DEIR, consisting of Newark urban sprawl again, indicates that it will not require an increase in police and fire protection, in spite of over a thousand new units being created on the edge of Newark, mostly in a land-locked area, along with the extra traffic that will be generated. In fact, recent news articles, Jan. 2010, claim there will be a cut in those public services due to Newark City budget cuts.

2. Increased car trips, in this commute zone, will cause much congestion on Cherry St. and exit-entrances to the isolated development, and likely more accidents will occur. Increased traffic and congestion will exacerbate air pollution through vehicle idling and stop-and-go accelerator activity.

3. **Drivers will seek alternative side streets** throughout the area and even use main arteries and freeways, in order to avoid congestion. This will increase problems with public safety as frustrated drivers will speed through residential areas, a typical result of this type of project. Speed bumps can impede drive-through, but have limitations due to needs of emergency vehicles and the associated costs of adding those impediments. (Example: The concerns with speeding traffic on Spruce St. lead to the creation of speed bumps all along the street. Consequently, speedy frustrated drivers and commuters take the side street, off Spruce St. to Bridgepointe Drive, which has no speed bumps but has become a road hazard safety area and a noisy street—as some Newark police have even noted).

4. The long-term requirements for construction will produce excessive noise, pollution and congestions from dump trucks traveling to and from Area 3 and 4, as they transfer their landfill. Trucks travel at high speeds to reach their haul requirements and economic goals.

5. Increased traffic was considered by Mr. Grindall in the last public meeting, where he said that traffic is a problem that we all have to live with--can't do much about it. The DEIR's arguments were centered on issues that deceptively ignored our government's policies and regulations associated with the problems of traffic and air quality. There are numerous more suitable and environmentally sound solutions if those regulations were properly addressed.

12. PUBLIC DISCLOSURE

Future safety concerns and risk in living in this type of development, as proposed in the project DEIR for Area 4, poses a warning, both in near-term and in the future. As a warning for both financial and catastrophic risks, potential buyers and financial institutions would need "full disclosure", prior to purchase and financing of these vulnerable areas. Property insurance, flood and emergency disaster relieve may not be provided, as the State and other agencies have

warned of vulnerability and to not develop in these areas. Exposure of people and development will provide a significant risk of loss, injury or death involving rapid drainage and flooding, including floods from failure of levees. Remember the past, no one can provide guaranteed protection, in any case, i.e. Katrina.

Consequently, responsible parties approving and developing Area 4 may very well bear the brunt of the cost and liability of disasters, even if they are not due to a catastrophic change in climate. Who will be responsible, accountable and even liable, added to the warnings and disclosure from the responses and advice provided towards this DEIR, as all the impacts are significant?

As a final note: Conflicts of interest no doubt exist in city planning. "Financial support" flows towards the City from developers and/or land owners for their desired projects. Their desires compete with more beneficial development plans and staff time, which is needed to comply with regional and state policies that mandate more sustainable and intercity development in addressing global climate change policies. In a final risk verses benefit analysis, a reduced quality of life for all current and new residents is apparent, as the City expands outward with further housing sprawl and isolationism.

Sincerely,

Wayne Miller

cc:

Newark City Council Members
Newark Planning Commission
John Becker, City Manager
Mendel Stewart, Program Manager, USFWS
Eric Mruz, Refuge Manager, USFWS

January 19, 2010

Terrence Grindall
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, California 94560-3796

Subject: Comments in Response to the Newark Areas 3 and 4 Specific Plan Project Draft Environmental Impact Report SCH No.: 200705205

Dear Mr. Grindall:

I am opposed to the development of Area 4 in the Specific Plan because its development is detrimental to the quality of life and health of Newark and surrounding communities' residents and because the Specific Plan Project Draft Environmental Impact Report is inadequate. I, as a Newark resident, would like answers to the following points.

The air quality impacts are not only inadequately analyzed, they are erroneous as to the impacts on the area.

1) The assumed specific period for determining imported fill truck hauling emissions based on URBEMIS2007 Modeling is "over one year". How much "over one year"? The number of truckloads per day is "100". The amount of material to be hauled for Areas 3 and 4 is 2.156 million cubic yards. In one year the number of trips would be maximally 36,500 truckloads carrying 59 cubic yards of material per truck. What truck carries this much material? Either the time period of 1 year is too short and needs to be specifically stated as to what the URBEMIS2007 Modeling used, or the number of daily truckloads is erroneous, both of which cast doubt on the assumptions used for truck hauling emissions.

2) Alternatives for a source of fill are not analyzed for air quality pollutants. What are the truckhauling emissions based on URBEMIS2007 Modeling if the fill from the Lake Elizabeth BART project is not available or is unsuitable? How exactly would the Area 3 and Area 4 be coordinated with its permits schedule and contruction schedule now that the BART project has already commenced?

3) "Annual CO2 Emissions from Area 3 and 4 Specific Plan Alternative" lists annual emissions from mobile sources as 15,292 tons, which "includes reduction due to existing mix of uses, alternative transportation options and other project features that reduce trips and vehicle miles traveled". What exactly are these reductions when "Area 4 is located more than 0.5 miles away [from AC Transit bus routes] and would not be well served by existing transit"? How does this comply AB 32 scoping and implementation?

Cordially,

Greg Scott

7788 Hazelnut Drive
Newark, CA 94560

-----Original Message-----
From: Yakima Belle [mailto:yakimabelle@yahoo.com]
Sent: Tuesday, January 19, 2010 11:37
To: TERRENCE GRINDALL
Subject: Area 3&4 development; Area 2

19 January 2010

1) Areas 3 & 4 should accept their fair share of moderate and lower income housing rather than permitting the developers to pay a fee and unfairly burden the other neighborhoods in the city with a disproportionate share of lower income residents.

2) European olive and tall fescue, recommended for Area 3 & 4 use are considered invasive species and are inappropriate for a wildland interface.

3) Progressive communities on the Peninsula are already limiting developments to no more than 500 square feet of lawn; this development in essence includes a "mega lawn" in the form of a golf course. Current forecasts advise that California water supplies will fall short between the years 2015-2017. What plans have been made to make the course independent of the need for irrigation or recharging water?

4) The combination of these developments will reduce the air quality in plans are being made to assist residents in these areas to relocation to safe environments?

5) T.I.F. is involved in some of these projects and documents suggest that the city hopes to make up some revenue shortfalls by creating a demand for "larger format convenience stores." Have any demographic or marketing studies been performed to determine if these plans are realistic? How will the city, already unable to fund basic services, provide for these new residents?

6) Industrial and office space is being converted to non-revenue generating housing due to claims that there is no "short term demand" for these facilities. Where will Newark accomodate these types of businesses when the long term demand for them returns?

7) The Bay Area already has an oversupply of golf courses, especially upper end golf courses. Who will finance the building and maintenance of this facility? Will it be open to the public? If not, why are the generally lower income residents being required to fund a private facility for the wealthy while their own children's parks lack restrooms?

8) Newark has closed the Senior Center, and the Community Center, and has proposed cutbacks of other facilities for existing residents. Why are these existing residents being requested to provide elaborate services for new residents while existing services vanish? In a city that cannot afford a Senior Center, or police, isn't it foolish to build a golf course which will require more than a million dollars a year for basic maintenance?

9) These plans irreparably destroy scarce wildlife habitat for the benefit of a few and for short term gains. Endangered and threatened species don't return from extinction.

10) The plans include the expense of a new school when the city has already declared that the district has surplus school facilities. Why is this unneeded expense being incurred? Who will pay for it?

11) The area 2 plan depends on non-existent mass transit; at the present time there is no short or long term plan for the new Dumbarton Rail to stop in the City of Newark as the Cal-Train and other connections occur in Fremont.

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I swear I seen a twelve-foot-high hump-shouldered elk
with no antlers and swan neck - 19th C. miner, quoted
in "Lonesome Dromedary", The Big Book of the
Weird Wild West, Paradox Press, 1998.