

Appendix J  
Notice of Preparation and  
Response Letters

**Appendix I**  
**NOTICE OF PREPARATION**

To: Responsible Agencies,  
Trustee Agencies, and  
Interested Parties

From: City of Newark, Terrence Grindall  
37101 Newark Boulevard  
Newark, CA 94560

**Subject: Notice of Preparation of an Environmental Impact Report and Notice of Public Scoping Meeting**

The City of Newark will be the Lead Agency under the California Environmental Quality Act (CEQA) and will prepare an Environmental Impact Report (EIR) for the project described below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency may need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the potential environmental effects are contained in the attached materials. A copy of the Initial Study ( is  is not) attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date, but not later than 30 days after receipt of this notice.

Please send your written response to Terrence Grindall, Community Development Director, City of Newark, CA 94560-3796 or by email: [terrence.grindall@newark.org](mailto:terrence.grindall@newark.org). We will need the name of a contact person in your agency.

**Project Title:** Newark Area 3 & 4 Specific Plan

**Project Applicant, if any:** Not Applicable

**Project Description:** The approximately 950-acre site is located in southwest Newark and is generally bounded by Mowry Avenue on the north, Cherry Street on the east, Stevenson Boulevard on the south, and salt flats on the west (refer to attached map). The current site uses include light industrial, auto dismantlers, agricultural land, institutional (Ohlone College, under construction) and City of Newark fire station, park and George Silliman community center uses. The project site is known as General Plan Study Areas 3 and 4. Area 3 is located on the west side of Cherry Street, east of the railroad tracks, between Mowry Avenue and Stevenson Boulevard. Currently, Area 3 has a General Plan designation of *Special Industrial*. Area 4 is west of Area 3 and extends to Mowry Slough. Area 4 has a General Plan land use designation of *Low-Density Residential (4.2-8.5 units per acre)*. Planned uses include low-density housing, a golf course and open space. The General Plan calls for a Specific Plan to be prepared as a detailed guide to development of the area. The proposed Area 3 & 4 Specific Plan will include an 18-hole golf course, approximately 1,200 housing units of various densities, an elementary school, open

space wetland mitigation areas, as well as retention of existing light industrial, institutional, and City fire station, park, and community center uses. The project includes a General Plan amendment on Area 3, to be consistent with the proposed Specific Plan uses.

The probable environmental effects to be addressed in the EIR are described in the attached document.

Date: May 8, 2007

Signature:

Title:

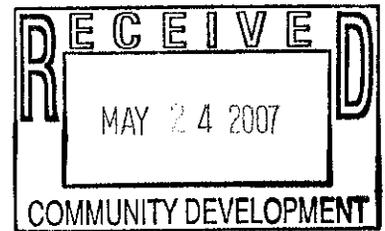
Telephone:



Community Development Director

510-790-7208

Reference: California Administrative Code, Title 14, Sections 15082, 15103, and 15375



May 23, 2007

Terrence Grindall  
Community Development Director  
City of Newark  
City Administration Building  
37101 Newark Blvd.  
Newark, CA 94560

**Re: Newark Area 3 & 4 Specific Plan**

Dear Terrence,

As the current owner of the property located at 39201 Cherry Street in Newark, CA, we have a vested interest in the outcome of the Specific Plan update to Newark Areas 3 and 4. Our property, a vacant industrial facility, is located on Cherry Street between Mowry Avenue and Joaquin Murieta Avenue within Newark Area 3. It is our understanding that the Specific Plan being developed for Area 3 would accommodate a conversion of land use, from an industrial park to a variety of residential uses. Since our property was first developed as a manufacturing facility for Avantek, many changes have taken place within the City of Newark, particularly with respect to the areas surrounding our property. Even more changes are planned through this Specific Plan process. As you know, Agilent, who had occupied the building after its spin-off from Hewlett-Packard, ceased operations at the property in 2001; the property has been vacant since that time. Due to these past and proposed land use changes in Area 3, we request that a residential land use designation be allowed on our property.

Our 8.75 acre parcel used to sit wholly within an industrial belt, surrounded on all sides by land designated for similar uses or buildings of a similar look and feel. In the last five years, however, the development which has occurred surrounding our property has led to a complete separation from land of similar uses. The property is now located between the recently completed Silliman Center (an amazing recreational resource for the residents of Newark), a community park with play fields, and the newly emerging Ohlone College campus expansion.

Without consideration of the changes contemplated in the Specific Plan for Area 3, the evolving land uses on either side of our property alone, coupled with proximity to existing residential across Cherry Street justify consideration of a residential use on our site.

As part of the Specific Plan process, we request the City of Newark to consider allowing a Medium Density Residential (MR) General Plan designation and an R-2,500 zoning district for our property (6.5 to 15 dwelling units per net acre) in addition to the current industrial designation. We feel ultimately that the residential use is better suited to the evolving Area 3 land uses.

As an interested property owner, please keep us fully informed during the Specific Plan process for Newark Areas 3 and 4. We will need to be in a position to ensure that our interests are protected and our property is evaluated in the most appropriate manner. Please feel free to contact me with any questions. I can be reached via e-mail at [cbirdwell@srgnc.com](mailto:cbirdwell@srgnc.com) or at (650) 377-5731.

Thank you for your consideration.

Very truly yours,

CHERRY STREET-REGIS, LLC, a California limited liability company

By: Regis Homes of Northern California, Inc., a California corporation.  
Its: Authorized Member

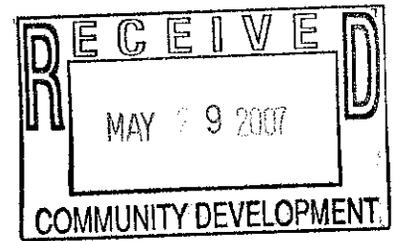
A handwritten signature in black ink, appearing to read 'Chris Birdwell', written over a horizontal line.

Chris Birdwell  
Project Manager

cc: File  
Mark Kroll  
Todd Regonini  
Andrew Hudacek  
Tamsen Plume, Holland + Knight LLP



Making San Francisco Bay Better



May 24, 2007

Terrence Grindall  
Community Development Director  
City of Newark  
37101 Newark Boulevard  
Newark, California 94560-3796

**SUBJECT:** Newark Area 3 & 4 Specific Plan, City of Newark, Alameda County  
(BCDC Inquiry File No. AL.FT.7025.1)

Dear Mr. Grindall,

Thank you for providing staff with the opportunity to comment on the Notice of Preparation for an Environmental Impact Report (EIR) for the Newark Area 3 & 4 Specific Plan. The EIR would address potential environmental effects of the proposed project at Area 3 & 4. The proposed Area 3 & 4 Specific Plan includes: (1) an 18-hole golf course; (2) approximately 1,200 housing units of various densities; (3) an elementary school; (4) open space wetland mitigation areas; and (5) retention of existing light industrial, institutional, and City fire station, park, and community center uses. In addition, the project would require a General Plan amendment on Area 3 that is consistent with the proposed Specific Plan uses. The proposed project site is approximately 950 acres.

It appears that a portion of the proposed project would fall within the Commission's jurisdiction; therefore, the project proponent must obtain a permit from BCDC before commencing any work. The Commission's jurisdiction includes all areas of San Francisco Bay, including named sloughs, below Mean High Water, or the inland edge of marsh vegetation in tidal marshlands, or below the 5-foot contour line or, within the 100-foot shoreline band (100 feet inland from Mean High Water or the inland edge of marsh vegetation). In addition, the Commission's jurisdiction also includes "certain waterways" jurisdiction, which includes those portions of other waterways, however named, that are in fact parts of San Francisco Bay on the San Francisco Bay Plan Maps. Based on the information provided to us your project may be located within 100 feet of Mowry Slough, a portion of San Francisco Bay.

The Commission staff has reviewed the Notice of Preparation (NOP) and is submitting its comments regarding the document. Although the Commission itself has not reviewed the environmental document, the staff comments are based on the *McAteer-Petris Act* and the Commission's *San Francisco Bay Plan* (Bay Plan).

### **Fill**

Section 66605 of the McAteer-Petris Act states that fill in San Francisco Bay should only be authorized when: (1) the public benefits from the fill clearly exceed the public detriment from the loss of water area; (2) no upland alternative location is available for the project purpose; (3) the fill is the minimum amount necessary to achieve the purpose of the fill; (4) the fill will minimize harmful effects to the Bay; and (5) that the fill should be constructed in accordance with sound safety standards. If the proposed project would involve fill in the Bay, the project proponent will need to show that fill associated with the project meets all of the above listed criteria. We ask that the Environmental Impact Report (EIR) evaluate any proposed fill in light of The Commission's Law.

### **Public Access**

The Bay Plan's policies on public access state that, "...maximum feasible public access to and along the waterfront and on any permitted fills should be provided in and through every new development on the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts....In these cases, in lieu access at another location preferably near the project should be provided...." Additionally, the policies state that, public access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human intrusion...public access should be sited, designed and managed to prevent significant adverse effects on wildlife...."

The EIR should include an analysis of the project's impact on public access and evaluate appropriate public access that could be provided as part of the project to be consistent with the Commission's policies on public access. Additionally, the EIR should evaluate how the proposed project would impact views to and of the Bay from public streets. Finally, the EIR should evaluate the potential impacts of the proposed public access on sensitive wildlife species and habitats.

### **Water Quality**

The Bay Plan's policies on water quality state that, "new projects should be sited, designed, constructed and maintained to prevent, or if prevention is infeasible, to minimize the discharge of pollutants to the Bay...." Additionally, in order to protect the Bay from the water quality impacts of nonpoint source pollution, "new development should be sited and designed consistent with standards in municipal stormwater permits and state and regional stormwater management guidelines....To offset the impacts from increased impervious areas and land disturbances, vegetated swales, permeable pavement materials, preservation of existing trees and vegetation, planting native vegetation and other appropriate measures should be evaluated and implemented where appropriate...." The EIR should evaluate the potential impacts of the proposed development on the water quality of the Bay and should propose best management practices and mitigation measures to minimize adverse impacts to water quality.

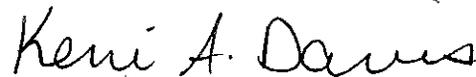
### Sea Level Rise and Safety of Fills

The Bay Plan findings and policies on the safety of fills discuss the need to account for climate change and sea level rise in the Bay. The Bay Plan policies on the safety of fills state that, "[t]o prevent damage from flooding, structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by component engineers." Additionally, the policies state that, "[t]o minimize the potential hazard to Bay fill projects and bayside development from subsidence, all proposed development should be sufficiently high above the highest estimated tide level for the expected life of the project or sufficiently protected by levees...." Finally, the policies state that, "[l]ocal governments and special districts with responsibilities for flood protection should assure that their requirements and criteria reflect future relative sea level rise and should assure that new structures and uses attracting people are not approved in flood prone areas or in areas that will become flood prone in the future, and that structures and uses that are approvable will be built at stable elevations to assure long-term protection from flood hazards...."

The EIR should include an analysis of how an increase in sea level under multiple sea level rise scenarios could impact the proposed project. This should include information on (1) current elevations of the project site and recent data, if available, documenting the vertical land motion (e.g., subsidence or uplift); (2) current rates of sedimentation, if known, for the project site or sites located nearby; (3) estimated rate of relative sea level rise for the project area (relative sea level rise equals the sum of the change in global sea level and the change in land elevation); (4) projected changes in wetland communities sea level rise (this should also include information on surrounding areas); (5) projected hydraulic changes around the project site that would result in a change in tidal heights, duration of ponding, drainage, erosion, or sedimentation; and (6) levee heights around the project site necessary to protect adjacent property from flood tides estimated for at least a 20 year period. Sea level rise scenarios should not include rates of global sea level rise less than the rate of global sea level rise in the past 100 years or 0.076 in (1.9 mm) per year. The following rates of global sea level rise are generally consistent with the California Climate Action Team Reports on Climate Change: (1) a low rate of 0.08 inches (2 mm) per year; (2) a medium rate of 0.18 in (4.6 mm) per year; and (3) a higher rate of 0.33 in (8.4 mm) per year.

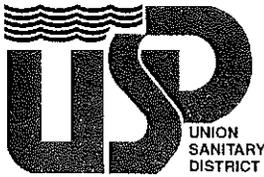
If you have any questions, please do not hesitate to contact me at (415) 352-3617.

Sincerely,



KERRI DAVIS  
Coastal Program Analyst

KD/mm



May 30, 2007

Terrence Grindall  
City of Newark  
Economic Development and Planning  
37101 Newark Blvd.  
Newark, CA 94560-3796

Attention: Mr. Terrence Grindall

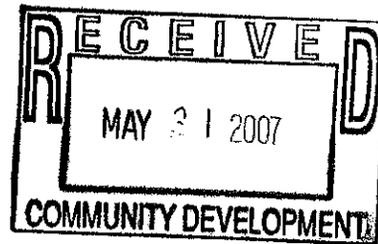
RE: Notice of Preparation of an Environmental Impact Report and Notice of Public Scoping Meeting – Newark Area 3 & 4 Specific Plan

Dear Mr. Grindall:

Thank you for notifying Union Sanitary District (USD) about the public scoping meeting for the preparation of an Environmental Impact Report for Newark Area 3 & 4. The Notice of Preparation proposes a plan to construct approximately 1,200 housing units, elementary school, 18-hole golf course, open space wetland mitigation areas and retention of existing light industrial, institutional, and City fire station, park and community center uses in Area 3 and 4. Study Areas 3 and 4 are located in Union Sanitary District's Irvington Sewer Basin.

We have completed review of the proposed project regarding its impact on USD facilities and offer the following comments:

1. We are pleased to inform you that our Alvarado Treatment Plant has sufficient capacity to treat the wastewater that will be generated by the proposed projects.
2. The sanitary sewer capacity model study for the Irvington Basin Sewer Master Plan Update, completed in April 2004, indicates that there are no capacity deficiencies in the existing sanitary sewer lines near the project area. However, the sewer modeling result was based on the assumption that the land use zoned for Area 3 is light industrial per the City's General Plan. Due to the proposed change in land use from light industrial to residential, USD will need to reassess the impact of additional wastewater flows that will be generated from the proposed residential development in Area 3. Please provide the maximum number of proposed residential units for Area 3 so that we may proceed and perform a revised sanitary sewer pipe capacity model study based on the new information.
3. Study Area 4 is not within USD's current boundary and needs to be annexed to the District before we can serve the proposed development. The annexation process may take anywhere from six months to a year to be completed.



**Directors**  
Pat D. Gacoscos

Pat Kite

Anjali Lathi

Jennifer Toy

Dan Wilkowsky

**Officers**  
Richard B. Currie  
*General Manager*  
*District Engineer*

David M. O'Hara  
*Attorney*

4. USD's Cherry Street Pump Station, while well situated in-between Area 3 and Area 4, is not adequate to handle any additional wastewater generated from Area 4. The pump station was specifically built to handle wastewater flows from the zoned light industrial areas in Area 3 and USD has no plans to upsize the pump station in the future.
5. USD is planning on replacing and upsizing the existing pump station on Boyce Road, located approximately 3600 feet south of Stevenson Blvd. Any wastewater flows generated from Area 4 will need to be conveyed north to the existing 24-inch sewer on Boyce Road that can convey this flow to the Boyce Road Pump Station. Because all of Area 4 is considered low-lying area, wastewater generated from the area would most likely need to be pumped via a force main from a new pump station. Planning, design, and construction of this new force main and pump station will be the responsibility of the developer. Currently, USD is not staffed to operate and maintain any additional pump station proposed to be built within the service area.

If you have any questions, please call me at (510) 477-7602.

Truly yours,



Rollie Arbolante, P.E.  
Coach/Senior Engineer

cc: Jesse Gill  
Al Bunyi

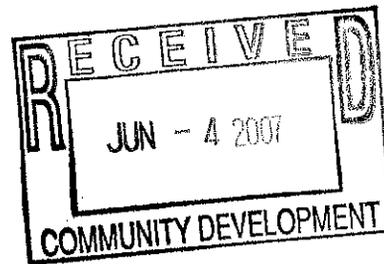
## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



June 1, 2007

Terrence Grindall  
City of Newark  
37101 Newark Boulevard  
Newark, CA 94569



RE: Newark Area 3 and 4 Specific Plan, SCH# 2007052065

Dear Mr. Grindall:

As the state agency responsible for rail safety within California, we recommend that any development projects planned adjacent to or near the rail corridor in the County be planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade highway-rail crossings. This includes considering pedestrian circulation patterns/destinations with respect to railroad right-of-way (ROW).

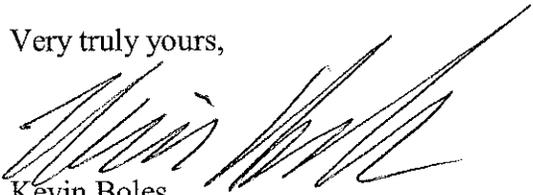
Safety factors to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade highway-rail crossings due to increase in traffic volumes and appropriate fencing to limit the access of trespassers onto the railroad right-of-way. Any project that includes a modification to an existing crossing or proposes a new crossing is legally required to obtain authority to construct from the Commission. If the project includes a proposed new crossing, the Commission will be a responsible party under CEQA and the impacts of the crossing must be discussed within the environmental documents.

Staff supports the plan for a grade-separated crossing at Stevenson Boulevard. However, the emergency access planned at Mowry Avenue should be through a locked security gate, in conjunction with a grade-separated pedestrian crossing; the close proximity of the rail yard just north of the project site will at times block access over the crossing and could cause pedestrians to attempt to climb over or under stopped trains. Grade separation of the railroad crossing points in combination with vandal-resistant fencing along both sides of the Union Pacific Railroad right-of-way would provide a rail corridor closed to public access. This would significantly mitigate trespassing along the railroad tracks, thereby addressing a primary safety issue related to the project.

The above-mentioned safety improvements should be considered when approval is sought for the new development. Working with Commission staff early in the conceptual design phase will help improve the safety to motorists and pedestrians in the County.

If you have any questions in this matter, please call me at (415) 703-2795.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin Boles", written in a cursive style.

Kevin Boles  
Environmental Specialist  
Rail Crossings Engineering Section  
Consumer Protection and Safety Division

cc: Terrel Anderson, Union Pacific Railroad  
Andrew Bassak, Steefel, Levitt & Weiss

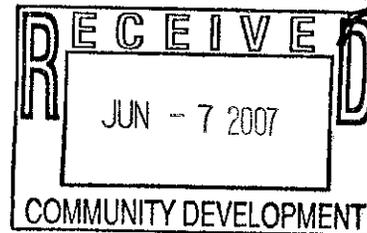
# Ohlone Audubon Society, Inc.

*A Chapter of the National Audubon Society  
Southern Alameda County, California*



June 5, 2007

Mr. Terrence Grindall  
Community Development Director  
City of Newark  
37101 Newark Boulevard  
Newark, California 94560-3796



Subject: Notice of Preparation of an Environmental Impact Report, City of Newark. Date: May 8, 2007.

Dear Mr. Grindall:

The Ohlone Audubon Society has reviewed the subject document and has the following comments and questions.

**LAND USE:** The proposed project site that is west of the Union Pacific Railroad tracks will be discussed in this review of AREA 4. Are the 40 acres owned by Alameda County Flood Control located at the end of Mowry Avenue included in the plan? Does the project boundary line bisect the 34 acre PACAR property? Early maps of the site indicate that AREA 4 was mostly all wetlands with duck clubs and vernal pools. Subsequent disking of the area destroyed most of the wetland vegetation. One large deep pool remains on the former duck club property. Will this pond be retained?

**TRAFFIC and CIRCULATION;** The understanding is there will be a grade separation at Stevenson Blvd and the railroad tracks. For 1,200 housing units there should be another grade separation.

**BIOLOGICAL RESOURCES;** What is the status of the remnant slough in the southern part of the site? Does State Lands Commission have jurisdiction over this remnant slough? There is a pumping system in the area where the remnant slough contacts Mowry Slough. Who will be responsible for this pump system? Maps indicate there are numerous flood control channels on the site. How will these channels be maintained? Who will be responsible for maintaining the levees along Mowry Slough, since the slough has been included within the project boundary line?

AREA 4 has numerous shallow depressions that pond water during the rainy season. These depressions provide habitat for waterfowl and shorebirds. Filling of these wetlands will require appropriate mitigation.

Mr. Terrence Grindall  
June 5, 2007  
Page 2.

HYDROLOGY and WATER QUALITY; How will the chemical run-off from the proposed golf course be treated before the run-off enters Mowry Slough? Mowry Slough is a major Harbor Seal resting, feeding, and pupping site. Will golf course water hazard sites be used to treat chemical run-off? Remember, waterfowl and shorebirds will be using these ponds. Stormwater run-off from the residential development must be treated in detention basins on site.

GEOLOGY and SOILS; The City of Newark should be aware of past experience with golf courses on hydric soil wetlands. Failure rate is 100% for such golf courses.

Will AREA 4 be raised to FEMA standards? What will be the source of the fill material?

UTILITIES and SERVICE SYSTEMS; What is the source of water long term for the development? There is no certainty that water will be available during times of drought especially for a golf course.

ALTERNATIVES; AREA 4 is a sensitive wildlife habitat, therefore the majority of the site should remain in open space.

The Ohlone Audubon Society appreciates this opportunity to comment on this Notice of Preparation.

Sincerely yours



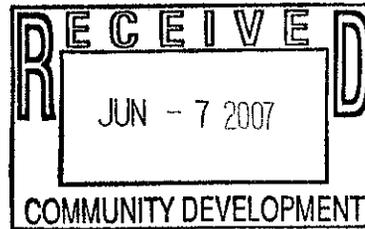
Frank and Janice Delfino  
Ohlone Audubon Society  
Conservation Section  
18673 Reamer Road  
Castro Valley, California 94546  
Phone: 510-537-2387

**DEPARTMENT OF TRANSPORTATION**

111 GRAND AVENUE  
P. O. BOX 23660  
OAKLAND, CA 94623-0660  
PHONE (510) 286-5505  
FAX (510) 286-5559  
TTY (800) 735-2929



*Flex your power!  
Be energy efficient!*



June 6, 2007

ALA880675  
ALA-880-6.24/7.18  
SCH2007052065

Mr. Terrence Grindall  
City of Newark  
37101 Newark Boulevard  
Newark, CA 94560

Dear Mr. Grindall:

**Newark Area 3 and 4 Specific Plan – Notice of Preparation**

Thank you for including the California Department of Transportation (Department) in the early stages of the environmental review process for the above referenced project. The following comments are based on the Notice of Preparation of an Environmental Impact Report (EIR) and Notice of Public Scoping Meeting. As lead agency, the City of Newark is responsible for all project mitigation, including any needed improvements to state highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures. The project's traffic mitigation fees should be specifically identified in the EIR. Any required roadway improvements should be completed prior to issuance of project occupancy permits. While an encroachment permit is only required when the project involves work in the State Right of Way (ROW), the Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore, we strongly recommend that the lead agency ensure resolution of the Department's CEQA concerns prior to submittal of the encroachment permit application. Further comments will be provided during the encroachment permit process; see the end of this letter for more information regarding the encroachment permit process.

***Traffic Impact Analysis***

The Department is primarily concerned with impacts to the State Highway System. Specifically, a detailed Traffic Impact Analysis (TIA) should identify impacts to Interstate 880 ramps and mainline. The TIA should include, but is not limited to the following:

1. Information on the project's traffic impacts in terms of trip generation, distribution, and assignment. The assumptions and methodologies used in compiling this information should be addressed.

2. Average Daily Traffic (ADT) and AM and PM peak hour volumes on all significantly affected streets and highways, including crossroads and controlling intersections.
3. Schematic illustration of the traffic conditions for: 1) existing, 2) existing plus project, and 3) cumulative for the intersections in the project area.
4. Calculation of cumulative traffic volumes should consider all traffic-generating developments, both existing and future, that would affect the State Highway facilities being evaluated.
5. Mitigation measures should consider highway and non-highway improvements and services. Special attention should be given to the development of alternate solutions to circulation problems that do not rely on increased highway construction.
6. All mitigation measures proposed should be fully discussed, including financing, scheduling, implementation responsibilities, and lead agency monitoring.

We encourage the City of Newark to coordinate preparation of the study with our office, and we would appreciate the opportunity to review the scope of work. Please see the Caltrans' *"Guide for the Preparation of Traffic Impact Studies"* at the following website for more information:  
<http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>

We look forward to reviewing the TIA, including Technical Appendices, and EIR for this project. Please send two copies to the address at the top of this letterhead, marked ATTN: Lisa Carboni, Mail Stop #10D.

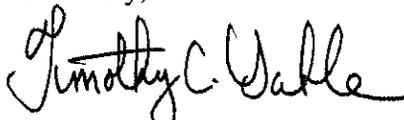
***Encroachment Permit***

Any work or traffic control within the State ROW requires an encroachment permit that is issued by the Department. Traffic-related mitigation measures will be incorporated into the construction plans during the encroachment permit process. See the following website link for more information:  
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

To apply for an encroachment permit, submit a completed encroachment permit application, environmental documentation, and five (5) sets of plans which clearly indicate State ROW to the address at the top of this letterhead, marked ATTN: Michael Condie, Mail Stop #5E.

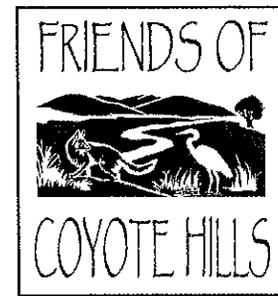
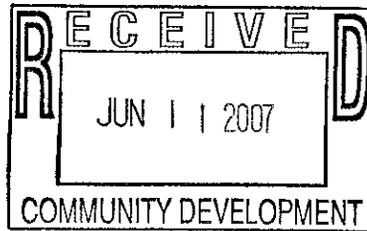
Should you have any questions regarding this letter, please call Lisa Carboni of my staff at (510) 622-5491.

Sincerely,



TIMOTHY C. SABLE  
District Branch Chief  
IGR/CEQA

c: State Clearinghouse



June 11, 2007

Terrence Grindall  
Community Development Director  
City of Newark  
37101 Newark Boulevard  
Newark, California 94560-3796

Subject: Comments in Response to the Notice of Preparation of an  
Environmental Impact Report and Notice of Public Scoping Meeting  
for Newark Area 3 & 4 Specific Plan

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. We have an active leadership group of 24 members, a volunteer base of 120 members and a communications circle of several hundred members. Our members hail from Newark, Fremont and Union City.

This letter is in response to the Notice of Preparation (NOP) of an Environmental Impact Report and Notice of Public Scoping Meeting for the Newark Area 3 and 4 Specific Plan. Our comments begin with some thoughts on the public process associated with planning the largest development in Newark's history and conclude with technical comments regarding the land capabilities of Area 3 and 4, the cumulative impacts of developments in the Tri-City Area and the development of project alternatives for Area 3 and 4.

### **Project Description and the Planning Process**

The NOP indicates that the project is approximately 950 acres and is generally bounded by Mowry Avenue on the north, Cherry Street on the east, Stevenson Boulevard on the south and the salt flats on the west. The description also 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

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39120 Argonaut Way, Box 769 Fremont, CA 94538-1304

510-793-5329

[www.ProtectCoyoteHills.com](http://www.ProtectCoyoteHills.com)

respectively and the Union Pacific Railroad and salt ponds and sloughs along San Francisco Bay to the east and west respectively and the 77 acres of remaining undeveloped land in Area 3. Is this project a specific plan or simply a project level development proposal for the undeveloped acreages in Areas 3 and 4? Why are existing facilities included in this environmental impacts report (EIR)? Will any future environmental impacts reports be tiered off the EIR prepared under this NOP? Does Newark have established thresholds of significance for evaluating impacts? If no, how will thresholds of significance be determined? The relationship of Area 4 to San Francisco Bay and the history of the land indicate that this project may be subject to numerous regulatory permits (U.S. Army Corps of Engineers, Regional Water Quality Control Board, U.S. Fish and Wildlife Service, Bay Conservation and Development Commission, California Department of Fish and Game, State Lands Commission and Alameda County Flood Control) and significant agency coordination (Union Pacific Railroad, Pacific Gas and Electric, Alameda County Flood Control, etc.). We noticed a light turnout for the April community meeting and essentially very limited turnout at the Scoping Meeting? What has been and will be Newark's efforts to solicit comments from these agencies? In addition, as Newark residents we wonder how much coordination/outreach there has been or will be with residents?

There has been little outreach to the community to date. It appears there have been only two workshops (fall 2006 and spring 2007) that provided a very brief introduction to the project. At these meetings we learned that the project description was based upon the Newark General Plan. This plan was purportedly adopted in 1992. What environmental impact report was conducted for the adoption of the General Plan (please note neither of these documents are available for public review in the Newark Library)?

At the April meeting we also learned that the City might be getting a golf course in exchange for giving away significant development approvals. We learned that this golf course might be valued at nearly \$20 million dollars and would be a condition of the development. Yet at the this most recent meeting, residents made suggestions for other desired types of community facilities if a development agreement were to be executed. Is a golf course what Newark needs? The previous Silver Pines golf course (built on similar landscape to Area 4) and two driving ranges have failed. Has Newark conducted surveys to determine community interest? Has Newark examined how a golf course would operate? Would this course be publicly or privately owned? If publicly owned, would the City be required to subsidize the operations and maintenance? The San Jose Mercury News recently reported on the financial struggles of publicly owned golf courses in Santa Clara County. When will the community be given the opportunity to provide input into the scope of the project description? How does the city plan to fully understand what are the interests of the current citizens? Will the city consider polling citizens on the development? We believe Newark residents need to be invited into all discussions that may bring about community amenities in exchange for development approvals. Inclusive community input should help craft the eventual project description associated with this environmental impact report.

## Land Use

The lands of Area 4 are included in the 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). These lands have the potential to provide important habitat for migratory waterfowl and breeding shorebirds. The lands may also provide habitat for endangered species for which recovery plans have been established. How will this project work to implement the 1990 Refuge Boundary Expansion?

## Hydrology and Water Quality

Areas 3 and 4 drain to Mowry Slough, which historically served as a landing for seasonal shipments of grain grown in Newark fields and bagged salt collected from the salt crystallizers (Centennial History of Newark). The slough was surrounded by tidal wetlands and transitional upland habitats that extended both east and west of the railroad line (Baylands and Creeks of South San Francisco Bay, Oakland Museum, 2005). The upland areas were used for dairy farming through the 1950s. This land use maintained the soil structure and plant communities of these habitats. Later, the land was manipulated and managed for use as hay fields and row crops. Up until the early 1980s the Whistling Wings Duck Club and Pintail Duck Club hunted on ponds filled by seasonal rains and freshwater that was pumped into these ponds from nearby wells in Area 4.

Today, much of Area 4 is diked marshes and seasonal wetlands situated at very low elevation ranging from 3 to 10 feet above sea level (USGS, 1997). Even the hayfields on the upland areas show evidence of persistent wetland vegetation through Google Earth. Although some of the land was drained and disked in the late 1980s, the character of the soils and local hydrology create a landscape eager to return to wetlands. The lower elevation lands still support wetland vegetation evidencing the propensity of this landscape to remain moist much of the year and support various forms of wetland habitat. Much of this area was subject to floods prior to the flood control improvements of the 1950s and is still today covered in poorly draining clay soils that pond water in the winter providing seasonal wetland habitat for migratory shorebirds and waterfowl.

Global Warming is the latest effect that may return these lands to wetlands or tidal mudflats. The Bay Conservation and Development Commission has released mapping that indicates the potential inundation of lands surrounding San Francisco Bay under the conservative 1 meter sea level rise scenario ([http://www.bcdc.ca.gov/media/planning/CCP\\_ESouthBay\\_H.jpg](http://www.bcdc.ca.gov/media/planning/CCP_ESouthBay_H.jpg)). This sea level rise scenario does not take into account some of the data surrounding polar ice cap melt and ice sheet degradation. These scenarios project even higher sea level rise and are less optimistic. Even under planning scenario adopted by BCDC much of Area 4 is under water.

Given the history the land, the nature of the soils and the projections for the future, we encourage Newark to carefully evaluate the following with regards to hydrology, water quality and flooding:

- This past winter was the third driest winter on record in Newark. Will the wetland delineation be accurate and reflect the boundaries that would occur in a normal rainfall year?
- Will the updated FEMA flood plain maps be available for use in developing this EIR? Will the flood assessment evaluate both today's tidal and storm flood risk as well as the forecasted impact of sea level rise on the site and project. Will Newark clearly illuminate the one-meter rise scenario as well as less optimistic scenarios. In addition, we ask that you discuss not only sea level rise but also the various rates of sea level rise describing whether the 1-meter rise could occur suddenly over a few years or gradually over decades and how these different scenarios would impact the land and proposed project.
- Will the flood assessment clearly indicate the criteria for flood insurance and whether flood insurance could be obtained for Areas 3 and 4? Will the new post-Katrina FEMA flood insurance program guidelines apply? Would this insurance be provided by the State of California or through the Federal government? What if any modifications to land and/or certifications would be necessary for obtaining flood insurance?
- How will this project be coordinated with the South San Francisco Bay Shoreline Study being conducted by the Army Corps of Engineers? Are any of these lands needed to reduce the threat of flooding to existing Newark businesses and residences? How would the project be protected from flooding? If the area does flood, what is the city's liability?
- What will be the effect of sea level rise on local ground water resources? Will there be any effect on the new desalinization plant that is currently treating local ground water? If there is an effect on ground water, how could the effect(s) impact the project or the community's water supply, which is partially dependent upon local ground water resources?
- How will runoff be treated to prevent pollution from entering Mowry Slough and San Francisco Bay? Nonpoint source pollution is one of the largest threats to the Bay's water quality. How will the proposed golf course be designed and managed to limit the transportation of herbicides, pesticides, rodenticides and fertilizers from entering the estuary?

### **Biological Resources**

The lands in Area 4 provide suitable habitat for endangered species and wetland dependent species. The regional significance of these lands is acknowledged by the Federal government through the inclusion of these lands in *1990 Land*

*Protection Plan, Potential Additions to San Francisco Bay National Wildlife Refuge* and area scientists in 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 former duck hunting clubs clearly supported populations of migratory waterfowl and shorebirds. The waterfowl, shorebirds and small mammals were also likely hunted by a variety of raptor species the peregrine falcon, northern harrier, white-tailed kite, red tailed hawk, etc. Burrowing owls were known to occur at the Newark Ohlone campus and have a strong likelihood of being present on Area 3 and 4. The history of the site also indicates that the Area 4 land is likely an enormous seed bank of wetland species. Many wetland plants are opportunistic and the seeds can last for decades dormant the soil. Area 4 is likely a treasure chest of seed bank biological diversity.

Most of the species discussed above are afforded protection under the Federal Endangered Species Act, California Endangered Species Act, Marine Mammal Protect Act or the Migratory Bird Treaty Act. In many cases, recovery plans have been established for listed species.

- Will sufficient time be committed to field observations and protocol level surveys to adequately document the presence/absence of the species and to evaluate the suitability of the habitat for restoring these species?
- Given the sensitivity and special status of many of these species, what will be Newark’s approach to habitat protection? Will the Project and Project Alternatives work to avoid or minimize impacts to suitable habitat?
- In general, we are not supportive of compensatory mitigation. If compensatory mitigation is included in the plan, will this mitigation be performed and monitored to ensure the functional ecological values are achieved prior to the destruction of any existing habitat?
- How will the seed bank be documented?
- How will wildlife corridors through the sites be documented?

The Project Description indicates the Specific Plan will include open space wetland mitigation areas.

- What is the definition of “open space” used by Newark?

- Where will the wetland mitigation and/or open space lands be sited? Will these lands be contiguous to other other protected lands? Will they support wildlife movement or will the built environment fragment the land making less suitable for wildlife?
- If lands are preserved or restored who would manage these lands?

Development creates both direct and indirect impacts on the natural world. Indirect impacts can take the form of predation by domestic pets on sensitive species, escape of exotic invasive plants from public or private landscaping, creation of artificial habitat that supports higher than typical populations of native species (for example Newark Lake and Canada geese). At times the expanded native populations have a deleterious effect on other native species.

- How will Newark prevent this project from having a negative predation effect on sensitive species?
- How will landscaping materials be selected?
- Will the artificial environment of the golf course attract and support an increase in native predators such as gulls and corvids which may in turn effect the recovery plans of the least tern, snowy plover or other listed species?

### **Geology and Soils**

The USGS has recently updated the liquefaction susceptibility mapping for the Bay Area (<http://pubs.usgs.gov/of/2006/1037>). Areas 3 and 4 are located in an area of high susceptibility for liquefaction.

- How will this affect the proposed housing?
- How will this effect levees surrounding Area 4 that provide flood protection?
- Will construction contribute to erosion or siltation? How will this be mitigated?
- How much fill is needed for this development?

### **Cultural Resources**

- Is the historic Mowry Landing located within Area 4? What is the significance of this historic landing site?
- Are there Native American prehistoric resources on the sites?

## Utilities and Service Systems

- How will the project impact local or regional water supplies? How is the impact of Global Warming on the Sierra snow pack being taken into consideration in planning this project?
- How much water would be needed to support the golf course?
- Would Newark be required to hire golf management and maintenance staff?
- How will the Newark Unified School District accommodate new students?

## Safety and Health

In addition to the risks posed by tidal flooding and storm events, we raise the following health hazards questions.

- What potential contamination is present on Area 3 and 4? Are there residual pesticides from former agricultural practices? Are there hydrocarbon contaminants from the auto dismantlers or from the light industrial facilities located in Area 3? What is the status of the old landfill? Are leachates impacting groundwater? What other contaminants have effect these Newark lands? If any contaminants were present, how would these contaminants effect the project, the safety of families moving into the proposed housing and the wetland mitigation?
- Mold has become a serious remediation issue in schools, public buildings and homes. Do the soil types, ponding nature of the landscape and low elevations of Area 3 and 4 predispose the proposed development project to the any higher risk of mold growth? If yes, how would this risk be mitigated?

## Aesthetics

Area 4's bayfront location affords it a viewshed of the Peninsula. The Santa Cruz Mountains can be viewed from the end of Mowry Avenue and Stevenson Boulevard. How would the proposed project impact these views? At the April 2007 public meeting it was suggested that an overpass at the UPRR line would be required to access Area 4 located to the west of railroad. Any overpass would need a minimum vertical clearance of 26 feet to allow freight trains to pass beneath the overpass. This height is more than twice the total elevation difference across the entire site (elevations range from 0 to 13). How will views be preserved?

## Energy

- How will this development implement the U.S. Mayor's Climate Protection Agreement recently adopted by the Newark City Council?

## Traffic and Circulation

- How would Area 4 be accessed? What new roads, bridges and/or overpasses would be built to provide day-today circulation as well as egress in the event of an emergency such as a fire, earthquake or tsunami? Who would pay for these improvements?
- How will the cumulative impacts of other new neighboring developments (A's ballpark village, Patterson Ranch, Globe retail center) exacerbate traffic conditions?
- Will transit service (rail or bus) be a viable solution in this area?

## Cumulative Impacts

The Tri-City area is under significant development pressure. Specifically, three of the largest development proposals to impact Fremont and Newark are proposed on the lands west of Cherry Street and Paseo Padre Parkway. Over 5,000 homes, half a million square feet of retail, a major league ballpark and a golf course are proposed between the A's Ball Park Stadium, Area 3 and 4 Specific Plan and Patterson Ranch.

- How will the cumulative impacts on biological resources, traffic, water resources and energy be addressed?
- All of these developments are at the fringes of the cities and far removed from public transportation? How will these developments impact air quality and traffic congestion?
- What will happen to Newark's "small town feel" when there are 50,000 to 80,000 more cars trip per day along the Cherry Street corridor?
- What are the cumulative impacts to wetlands and stream courses?

## Project Alternatives

Why has there been essentially no community involvement in developing the basic objectives of a project that is intended to provide community resources in exchange for community impacts (traffic, congestion, loss of small town feel, threat to the San Francisco Bay wetlands)? How will the Project Alternatives be selected? Will the community be provided an opportunity to suggest Project

Alternatives? The Friends of Coyote Hills would recommend that at least one of the project alternatives should be compatible with the land capabilities of the site as defined by the soils, hydrology and biological resources and by the diminishing resources of the future including potable water, energy, sensitive species and dry land.

We encourage the preservation and restoration of our remaining open space lands. The Project and Project Alternatives should include the expansion of the San Francisco Bay Wildlife Refuge as respite for Newark residents and as habitat wildlife.

We appreciate the opportunity to provide written scoping comments.

Sincerely,

Jana Sokale and Greg Scott

Dan and Gaby Ondrasek

Linda and Virgil Patterson

Wayne and Mari Miller  
Newark Residents of Friends of Coyote Hills

Administered by the Association of Bay Area Governments  
P.O. Box 2050, Oakland, CA 94604-2050  
Phone: (510) 464-7900 Fax: (510) 464-7970



# Fax

**To:** Terrence Grindall **From:** Lee Huo

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**Fax:** (510) 790-7265 **Pages:** 3 (Including Cover Sheet)

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**Phone:** (510) 790-7208 **Date:** June 11, 2007

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**Re:** Newark Area 3 & 4 Specific Plan NOP **CC:**  
Comment Letter

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**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

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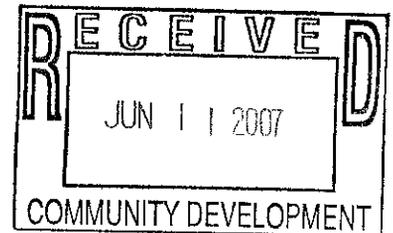
Terrence,

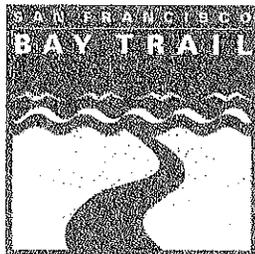
This is a fax copy of the San Francisco Bay Trail Project's comments on the Notice of Preparation for the Newark Area 3 & 4 Specific Plan. Another copy will follow via U.S. Mail.

Please feel free to contact me at (510) 464-7915 if you have any questions regarding these comments or the Bay Trail. I'm looking forward to working with you on this project.

Sincerely,

Lee Huo





June 11, 2007

Terrence Grindall  
City of Newark  
37101 Newark Boulevard  
Newark, CA 94560

**Subject: Notice of Preparation for the Newark Area 3 & 4 Specific Plan EIR**

Dear Mr. Grindall:

On behalf of the San Francisco Bay Trail Project, I am writing to submit comments on the Notice of Preparation (NOP) for the Environmental Impact Report (EIR) for the proposed Newark Area 3 & 4 Specific Plan (Specific Plan). The Bay Trail Project is a nonprofit organization administered by the Association of Bay Area Governments (ABAG) that plans, promotes, and advocates for the implementation of the Bay Trail. The Bay Trail is a planned 500-mile continuous network of multi-use bicycling and hiking paths that, when complete, will encircle San Francisco and San Pablo Bays in their entirety. It will link the shoreline of all nine Bay Area counties, as well as 47 cities. To date, 290 miles of the proposed Bay Trail system has been developed.

Two segments of the adopted Bay Trail alignment run through the Specific Plan area. There is an existing segment of the Bay Trail that runs along Cherry Street and Boyce Road and is composed of Class II bicycle lanes and sidewalks. The Specific Plan area also includes a planned segment of the Bay Trail that would run along the current Union Pacific Railroad (UPRR) corridor. The existing Cherry Street/Boyce Road trail alignment provides the commuter route of the Bay Trail through this region while the Bay Trail planned along the UPRR corridor provides a more recreational alignment for users.

It is paramount that the EIR analyzes the project specific and cumulative impacts of the Specific Plan on the existing and proposed Bay Trail and identifies any proposed mitigation for those impacts. As part of the analysis, the EIR for this project should incorporate a discussion and evaluation of how the Specific Plan and other projects located within the vicinity of the Specific Plan area such as the proposed A's Baseball Stadium and the Tri-cities Recycling and Disposal Facility Landfill Closure Project and Land Use Plan are consistent with the adopted Bay Trail Plan and Policies, Bay Trail alignment, and Bay Trail Design Guidelines. When analyzing the potential impacts to the Bay Trail, the EIR should look at criteria that include, but are not limited to, visual quality, aesthetics, noise, shadow impacts, visual access, physical access, land-use, and the public nature/feel of the Bay Trail. The EIR should also include a discussion and analysis of the project-specific and cumulative impacts on the demand for alternative commute opportunities through regional trails, trail recreational opportunities such as the Bay Trail, and public access to Mowry Slough and identify measures to mitigate those impacts. Potential mitigation for increased Bay Trail demand and demand for access to Mowry Slough should include the designation of new Bay Trail alignments along Mowry Slough, the construction of new Bay Trail segments and

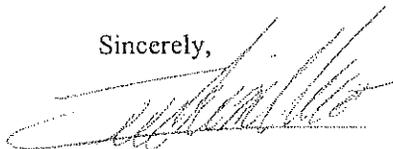
*Terrence Grindall**June 11, 2007**Page 2*

associated amenities within the vicinity of the project site, and a program for long term maintenance of those Bay Trail segments. In addition, the EIR should consider and evaluate an alternative Bay Trail alignment along Mowry Slough as part of the project analysis. This alternative Bay Trail alignment would fulfill the Bay Trail Plan policy requirements of providing an off-street, Class I trail that is located as close to the Bay environment as feasible.

The Bay Trail Plan and Policies and Bay Trail Design Guidelines may be obtained on our website at <http://baytrail.abag.ca.gov/>, or by contacting me at the telephone number below. Please add me to the mailing list for this project and send a copy of the draft EIR and draft Specific Plan for our review when they become available.

The Bay Trail Project appreciates the opportunity to comment on this NOF and looks forward to working with you on this project. Please do not hesitate to call me at (510) 464-7915 if you have any questions regarding the above comments or the Bay Trail.

Sincerely,



Lee Chien Huo  
Bay Trail Planner

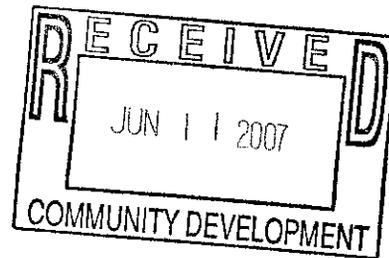
Cc: Jim Townsend, East Bay Regional Park District  
Steve McAdam, San Francisco Bay Conservation and Development Commission

## TERRENCE GRINDALL

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**From:** Robin, Renee L. [rlrobin@stoel.com]  
**Sent:** Monday, June 11, 2007 16:49  
**To:** TERRENCE GRINDALL  
**Subject:** FW: EIR Scope for Specific Plan Area 3 and 4

Mr. Terrence Grindall  
Community Development Director  
City of Newark  
City Administration Building,  
37101 Newark Blvd.  
Newark, CA 94560



Sent VIA E-MAIL

June 11, 2007

Re: EIR Scope for Newark Specific Plan for Area 3 and 4

Dear Mr. Grindall:

This message is written on behalf of my client Schnitzer Steel Industries, and its subsidiary Pick-N-Pull, located at 7400 Mowry Avenue in Newark. While I provided oral comments, and summary written comments, at the time of the City's EIR scoping session on the Newark Specific Plan for Areas 3 and 4 on May 31, 2007, I wanted to follow up with these specific written comments. The following are additional items we request be covered in the scope of the proposed EIR.

1. We want to reiterate that the scope of the EIR as articulated in the materials by the City are incorrect with regard to the proposed comparison to existing land uses under CEQA. Specifically, the EIR should focus on the negative environmental impacts cause by the proposed project. The scope of EIR should not examine the effects of the existing land uses onthe proposed project - which would be an inappropriate reverse comparison.
2. We request that the EIR consider an alternative for the proposed project that allows for the continued operation of existing business and land uses in Area 4.
3. We request that the EIR consider the increase effects of carbon emissions and other greenhouse gases caused by the proposed project.

We are submitting these comments in addition to the oral and written comments provided at the scoping session.

Please contact me if you have any additional question regarding our comments on the EIR scope.

Sincerely yours,

Renee L. Robin

Stoel Rives, LLP  
111 Sutter Street  
San Francisco, CA 94104  
415-617-8908



## CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto CA 94306

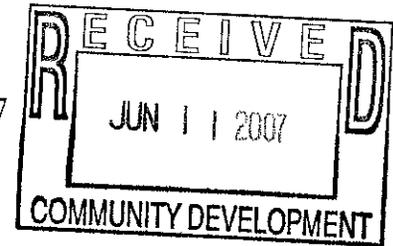
Tel 650 493-5540

Fax 650 494-7640

e-mail: marsh@refuge.org

Terrance Grindall  
Community Development Director  
City of Newark  
37101 Newark Boulevard  
Newark, CA 94560  
E-mail: terrence.grindall@newark.org

June 11, 2007



Re: Notice of Preparation (NOP) of an Environmental Impact Report (EIR) and Notice of Public Scoping Meeting, Newark Area 3 & 4 Specific Plan

Dear Mr. Grindall,

This responds to your NOP for the proposed specific plan for areas 3 & 4 in Newark, CA. Areas 3 & 4 comprise approximately 950 acres in southwest Newark, between Mowry Avenue on the north, Cherry Street on the east, Stevenson Boulevard on the east, to the west by Mowry Slough and salt ponds, and on the southwestern boundary Mowry Slough and the Don Edwards San Francisco Bay National Wildlife Refuge.

The Citizens Committee to Complete the Refuge has an ongoing history of interest in wetlands protection, wetlands restoration and wetlands acquisition. The Committee was originally formed in 1965. Our senior members were part of a group of citizens who became alarmed at the degradation of the Bay and its wetlands. We joined together, and with the support of Congressman Don Edwards, requested that Congress establish a Wildlife Refuge. The process took 7 long years and in 1972 legislation was passed to form the San Francisco Bay National Wildlife Refuge. We turned to Mr. Edwards again, and in 1988 (the first year he submitted it) his legislation to double the size of the Refuge was signed into law.

Our efforts have led to Refuge additions of 1600 acres of Bair Island in Redwood City, 288 acres of the Warm Springs Unit of the Refuge in Fremont, 128 acres of Mayhews Landing in Newark, the Munster property in Union City, the Cullinan Ranch in Napa, and the Marin Islands, to name just a few.

We have taken an active interest in Clean Water Act (CWA) and California Environmental Quality Act (CEQA) regulations, policies, implementation and enforcement. We have established a record of providing information regarding possible CWA violations to both the Corps and EPA, regularly responding to Corps public notices and informing the public of important local CWA issues. We also respond to CEQA Negative Declarations and Environmental Impact Reports (EIRs). All of these actions demonstrate our ongoing commitment to wetland issues, towards protecting the public interest in wetlands, in Section 404 and 401 of the CWA, and CEQA.

## **Environmental significance of the lands of Area 4:**

Citizens Committee to Complete the Refuge has followed the activities on the lands of Area 4 for many years. Several of our members were familiar with the Whistling Wings and Pintail duck clubs and the tremendous varieties and numbers of shorebirds, waterfowl, and mammal species the lands of Area 4 have supported. The lands of Area 4 were included in the 1990 Refuge Boundary Expansion (“Land Protection Plan, Potential Additions to San Francisco Bay National Wildlife Refuge,” based upon Congressional approval of Public Law 100-556, in 1988) for the Don Edwards San Francisco Bay Wildlife Refuge because of their value to provide opportunity for the preservation and enhancement of highly significant wildlife habitat for the protection of migratory waterfowl and other wildlife including endangered species.

The Baylands Ecosystem Habitat Goals Report (June 2000) in the section of “Unique Restoration Opportunities” for this segment of the bay states, “...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 “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. (*emphasis added*)

Salt marsh harvest mouse a federally listed endangered species has been observed on portions of Area 4 in the past. Burrowing owl, a species of special concern have been observed on portions of Area 4 in the past.

All these attributes of the lands of Area 4 are of regional significance in maintaining the biodiversity of the San Francisco Bay ecosystem and not just of local importance.

## **Project Description:**

The City of Newark has stated the specific plan will include an 18-hole golf course, approximately 1200 housing units of various densities, an elementary school and open space wetland mitigation areas. The specific area will retain the existing light industrial, institutional (Ohlone College’s “green” campus), city fire station, park, and community center uses.

The implementation of the specific plan may require a general plan amendment, rezoning, development agreement, tentative map, and related permits from the City of Newark. In addition, development of Area 4 will likely require permits from other regulatory agencies, i.e. the Corps of Engineers, the San Francisco Bay Regional Water Quality Control Board, U. S. Fish and Wildlife Service, California Department of Fish and Game, Bay Conservation and Development Commission, and possibly the State Lands Commission.

It is our understanding that the last update to the General Plan was in 1992. As mentioned above, the project description includes 1200 housing units of various densities and an 18-hole golf course (with associated “high-end housing”). We have a number of questions pertaining to the project description:

- The acreage of lands encompassed by the specific area plan is unclear. **Would you please provide a map that clearly delineates the acreages and ownership of all of the parcels that are included in this specific plan proposal?**
- The city MOU states, “. . .Because of the desire to improve the availability and quality of housing and recreational opportunities to members of the community. . .” **Has the community at large requested this “improvement?”**
- **What input has the public had in the 15 years since the General Plan was last updated in determining the suite of uses the community could support as the “project description?”**
- **Specifically, what opportunities have the residents of Newark had prior to the initiation of this California Environmental Quality Act (CEQA) process to voice whether they support the proposed project description?**
- The City of Newark had a golf course that was not sustainable, the Silver Pines Golf Course. **What studies, surveys, or polls were conducted prior to the initiation of this CEQA process that demonstrate the residents want a golf course in this area or any area of Newark?**
- **What is the level of support within the community for an 18-hole golf course (e.g. number of residents surveyed and percentage of residents surveyed who desire an 18-hole golf course be constructed)?**
- **Who will own, maintain, and be financially responsible for the golf course?**
- **What other services, land uses or amenities have been identified by the community as desirable?**
- **If such information has not been collected, will studies, surveys, or polls be conducted during the CEQA process and prior to the completion and circulation of the draft EIR (DEIR)?**
- **If not, why not?**

**Interface with Corps and Environmental Protection Agency (EPA) Clean Water Act Guidance with respect to filling of wetlands:**

The “Memorandum of Understanding between New Technology Park Associates and the City of Newark” (MOU), “Exhibit ‘A’ Scope of Services – Biological Resources” (Scope) indicates Area 4 contains wetlands and several special status species. The “Scope” refers to a phased acquisition (*update*) of information to help inform the development of alternatives, “. . .In this way, the Specific Plan design can *either avoid or minimize impacts to the environment, or include the necessary mitigation for any impacts resulting from the proposed development.*” (*emphasis added*) The section on Biological Resources states, “. . .The amount of land available for the golf course and housing in the Plan depend directly upon the type, size, and quality of the existing lands for mitigation, as well as the anticipated project impacts and replacement ratios.”

These two passages suggest that all mitigation consists merely of compensation (replacement wetland acreage), and requires no avoidance or minimization of fill in wetlands and other waters.

- **Does the City of Newark assume that compensatory wetland mitigation can be used exclusively, with not substantial avoidance and minimization of impacts to waters of the U.S.?**
- **Will the City of Newark look towards land use designs and uses that will minimize fill and alteration of waters of the U.S.?**

Wetlands are considered special aquatic sites, and the proposed project is clearly not “water dependent,” therefore, under the 404 (b) (1) Guidelines (40 C.F.R. 230.10) the city (applicants) must *first* 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:

The Council on Environmental Quality (CEQ) has defined mitigation in its regulations at 40 CFR 1508.20 to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. The Guidelines establish environmental criteria which must be met for activities to be permitted under Section 404. <sup>2</sup> The type of mitigation enumerated by CEQ is compatible with the requirements of the Guidelines; however, as a practical matter, they can be combined to form three general types: *avoidance, minimization and compensatory mitigation*. The remainder of this MOA will speak in terms of these general types of mitigation. (*emphasis added*)

The Clean Water Act and the Guidelines set forth a goal of restoring and maintaining existing aquatic resources. The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and *for wetlands, will strive to achieve a goal of no overall net loss of values and functions. In focusing the goal on no overall net loss to wetlands only, EPA and Army have explicitly recognized the special significance of the nation's wetlands resources.* This special recognition of wetlands resources does not in any manner diminish the value of other waters of the United States, which are often of high value. All waters of the United States, such as streams, rivers, lakes, etc., will be accorded the full measure of protection under the Guidelines, including the requirements for appropriate and practicable mitigation. (*emphasis added*)

The MOU further 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 permissible, an

alternative must be the least environmentally damaging practicable alternative. 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...*(emphasis added)*

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.

Simply put, the 404 (b)(1) Guidelines (Guidelines) require an applicant for a CWA discharge of fill to *first avoid* impacts, next *minimize* their impacts, and *only* as the *final resort*, *compensate* through mitigation to reduce the adverse impacts of the project to a *minimal* level. To ensure the City's CEQA process will mesh with Clean Water Act regulatory requirements (i.e. CWA permit process), it would behoove the City to emphasize *avoidance of wetland impacts first, minimization of impacts second*, and only after complying with the first two requirements, looking to compensatory mitigation for those impacts that are truly unavoidable in their selection of alternatives. This approach to evaluating land use designs will help avoid costly redesigns of projects and help to ensure a timelier processing of any subsequent CWA permit applications.

We are aware through Freedom of Information Act (FOIA) requests submitted to the Corps of Engineers and to the U.S. Fish and Wildlife Service that there have been several estimates of wetland acreage for Area 4 in previous years.

During the Public Scoping Meeting of May 30, 2007 Mr. Grindall, Community Development Director for the City of Newark indicated there will be community workshop meetings during the summer of 2007.

- **Will these meetings be held prior to the selection of alternatives to be reviewed for the EIR?**
- **Will maps showing the approximate location and extent of wetlands be available for the public to review prior to the determination of alternatives to be evaluated?**
- **Will the public be provided an opportunity to provide input on how best to avoid wetlands, etc. in siting of areas to be developed?**

#### **Possible need for an Environmental Impact Statement (EIS):**

At this time, the public has not been informed of the extent of acreage that will be impacted by the proposed project, however, we believe it is prudent for the city to consult with the Corps and with EPA regarding the possible need for preparation of a joint/EIR/EIS (Public Resource Code Division 13, Section 21093.5 – 21083.7; CEQA Guidelines Section 15170). The issuance of a CWA permit authorization will require the Corps to be in compliance with the National Environmental Quality Act (NEPA) regulations. According to Corps National Environmental Policy Act (NEPA) regulations (40 C.F.R. 1508.27, 1501.4 and 33 C.F.R. 325 Appendix B), the Corps must as lead agency prepare an Environmental Impact Statement (EIS) if a project will cause

*significant impacts to the quality of the human environment. “Significance” must be analyzed in terms of “context” and “intensity”. The City should consider the likelihood of a requirement for an EIS by reviewing NEPA guidance for evaluating “significant” impacts (40 CFR 1508.27):*

- *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. (Area 4 was included in the refuge expansion boundary in recognition of the site’s value to provide opportunity for the preservation and enhancement of highly significant wildlife habitat for the protection of migratory waterfowl and other wildlife including endangered species. And the recommendations of the Bay Goals Project were to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper ends of Newark, Plummer, Mowry, and Albrae Sloughs; protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail duck club; and restore tidal influence on this site and that improve seasonal wetlands.)*
- *The degree to which the effects on the quality of the human environment are likely to be highly controversial. (Growing concerns are appearing in bay area newspapers regarding the problems of sea-level rise. Many planning agencies such as the Bay Conservation and Development Commission are advising avoidance of new development in low-lying areas that would be prone to flooding as a result of sea-level rise.)*
- *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. (Currently there are many unknowns such as the issues protection of new development in this area against sea-level rise, seismic events, etc. In addition, the full extent of impacts – direct and indirect, have not been identified.)*
- *The degree to which an action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. (The NOP makes mention of the possibility of involvement of the Corps in flood protection for the site and specifically references the Corps Shoreline Study.)*
- *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. (Area 4 provides known habitat for a federally-listed species, a species of special concern, and the areas adjacent to Area 4 provide habitat for listed species and possibly species of special concern.)*

#### **Land Use:**

The NOP states the EIR will describe the historic and existing land uses on the site and in the project area in addition to the current land use designations for the site in the General Plan.

### **Traffic and Circulation:**

- **What is the planned point of access to Area 4 of the specific area? Is this adequate to evacuate the project site in the event of an emergency (e.g. fire, earthquake, etc.)?**
- **Since the General Plan was last updated in 1992, does the City of Newark have up-to-date thresholds of significance for levels of service (LOS) for the streets that are adjacent to the project site?**
- **If so, how were those standards set?**
- **What traffic analysis scenarios will be addressed in the EIR?**
- **Under “Evaluation of Background Conditions” the MOU states “Planned and funded improvements will be included in the background analysis.” Are the “improvements” improvements to the traffic system or was this term referring to development projects? If this was referring to traffic improvements then a descriptions of what those improvements are should be included in the EIR. Has the money for these improvements been secured? How soon will the “planned improvements” be actually be implemented?**
- **How many of the 15 roadway segments to be studied are located within the City of Fremont?**
- **How will significant impacts to City of Fremont streets or intersections be mitigated?**
- **This area is on the southernmost edge of Newark and in addition to the Sillman Recreation Center it will now support the new Ohlone College Newark Center for Health Sciences and Technology Campus. The addition of the land uses described in this NOP will have a significant and adverse impact on the level of traffic congestion in the surrounding areas. Will improved public transportation be included in consideration of mitigation measures?**

### **Biological Resources:**

As was mentioned earlier in this letter, the entirety of Area 4 is located within the refuge expansion boundary due to the site’s existing resources and habitats, the site’s potential for restoration of important and scarce upper tidal marsh and the transition to an expanse of upland habitat (extremely rare in the bay ecosystem), and the documentation of this site teeming with migratory birds such as waterfowl and shorebirds, and documentation federally listed species and species of special concern on the site and in the areas adjacent to Area 4 reflects the sites environmental importance. For these reasons, a golf course and executive housing is the highest and best use for the land and we urge the City to consider alternative uses of this land.

- **Will the environmental impact report review alternatives other than housing and an 18-hole golf course for Area 4? Specifically, we request an alternative land use be considered for Area 4 in which the lands should be preserved or restored to tidal marsh, transitional, and uplands habitat.**

The NOP states under the “Biological Resources” section that “...Mitigation and avoidance measures will be identified, as appropriate.” Again let us emphasize the Guidelines require *avoidance* of impacts first, *minimization* of impacts second, and only as a *last resort*, compensatory mitigation. The City must understand avoidance and compensatory mitigation are not interchangeable under Corps CWA regulations. It would best for the City and future project proponents to take this under serious consideration when selecting alternatives for review and when selecting the preferred alternative. Under Corps CWA regulations, the “preferred” alternative will be the least environmentally damaging (to waters of the U.S.) alternative.

Contouring the land to create a golf course will still be considered “fill” if the activity takes place in a water of the U.S. As was mentioned earlier in this letter, the Guidelines require avoidance of impacts, then minimization of impacts, and only as a last resort, compensatory mitigation to reduce adverse impacts to a minimal level. Furthermore, the MOU between EPA and the Corps regarding mitigation stresses “no net loss” of wetlands functions and values. The NOP mentions the preservation of lands does not replace lost functions and values.

- **How will the project proponents achieve a “no net loss” of wetlands functions and values if fill activities occur in Area 4?**
- **If preservation is a component of the adopted land uses, will the open space be turned over to a resource agency? If so, will there be provisions for the long-term maintenance and management of the open space?**

Development, housing, and a golf course could have significant adverse impacts to federally listed and special status species for a number of reasons. Studies demonstrate free-roaming domestic cats can have a significant adverse impact on populations of birds, small mammals, reptiles, and amphibians. Ground nesting birds are particularly vulnerable (e.g. waterfowl, shorebirds, etc.). Cat predation in conjunction with habitat loss can greatly magnify negative impacts on bird populations (e.g. <http://www.abcbirds.org/cats/factsheets/predation.pdf>, “Domestic Cat Predation on Birds and Other Wildlife.” or Gay, Frank 1999. “Reducing Cat Predation on Wildlife.” Outdoor California.). The federally listed endangered salt marsh harvest mouse (*Reithrodontomys raviventris*) was trapped within Area 4 in 1985 and suitable habitat for the mouse was identified on-site. We would assume the mouse is still present on the site and that suitable habitat still exists. Burrowing owl (*Athene cunicularia*), a special status species was reported on-site in the 1984 DEIR. California clapper rail (*Rallus longirostris obsoletus*) has been observed in Mowry Slough, which is immediately adjacent to Area 4.

- **How will the City and project proponents assess potential indirect impacts of development on predator populations (rats, raccoons, feral cats, domestic cats and dogs) on special-status wildlife species on the site and adjacent habitats, including salt marsh harvest mouse, the burrowing owl, and California clapper rail?**

- **Who will be responsible for dealing with nuisance species or non-native predators and how will this be managed in perpetuity?**

Habitat fragmentation magnifies the adverse impacts of habitat loss by dividing the landscape into smaller, disconnected parcels. This can be through the construction of roads, golf course areas of play, siting of developed areas, etc. The ramifications of habitat fragmentation are disruption of wildlife and plant populations through isolation of breeding populations, increased area for edge-dependent species and human dependent species such as invasive plant and nuisance species, increased effects of predation on federally listed and special status species, etc.

- **How will the city and project proponents design land use features to avoid fragmentation of open space and wildlife habitat?**
- The city MOU mentions the project will include bicycle and pedestrian trails. We fully support access to open space areas if proper planning and consideration are incorporated. For example, locating a trail along the outboard levee would have serious detrimental effects on wildlife and potentially listed species that utilize the narrow fringing marshes along Mowry Slough through the significant increase in human disturbance, potential harassment and predation by domestic animals, and utilization of these trails for easy access to the tidal marsh by non-native predators and nuisance species. **How will the city minimize the adverse impacts on retained open space areas and the Mowry Slough habitats when locating pedestrian and bicycle paths?**
- **If mitigation is implemented, how will the mitigation areas be situated to provide adequate wildlife corridors (i.e. actually large enough to allow movement of species without elevated risk of predation, adverse impacts of human disturbance, adequate cover, etc.) between endangered species habitat, tidal marsh and uplands, etc.?**
- **How will roads be sited within Area 4 to avoid and prevent road-kill of federally listed species, special status species, and other wildlife? What other measures will be undertaken to ensure road-kill of wildlife does not become a problem and to what extent have these measures been effective in preventing road-kill of wildlife?**

Invasive nuisance species are an issue of concern. For example, species such as *Lepidium latifolium* aggressively exploit areas of disturbed soils and can quickly and effectively invade upper tidal marsh areas and levee berms. Once such a species gains a foothold, habitat diversity significantly declines as more typical species are replaced with monotypic stands of the non-native invasive.

- **What mechanisms will be employed to ensure non-native invasive species do not gain competitive advantage in Area 4 and the adjacent tidal wetland? Who will be responsible for monitoring for nuisance species and then undertaking remedial actions should non-native invasives be identified on site?**

- **How will the city and project proponents ensure plants used in landscaping (of publicly *and* privately owned areas) do not invade open space and natural habitats? Who will be responsible and how will this be addressed in perpetuity?**

#### **Air Quality:**

The City of Newark is a member of the Cities for Climate Protection Campaign. The goal of the program is to reduce greenhouse gas and air pollution emissions throughout a community.

- **Vehicular and industrial emissions will be the major contributors to air pollution if Areas 3 & 4 are developed as proposed. What measures will be undertaken to reduce these emissions? This is particularly important as this development is located away from amenities that are within easy walking distance which means most residents or visitors to the specific area will travel to and from by vehicle.**

#### **Noise:**

- **Noise can have significant indirect impacts on wildlife resulting in their moving away from an existing territory, abandonment either temporarily or permanently a nesting site, cessation of normal feeding, resting, or breeding behavior, etc. What measures will be undertaken to reduce the adverse impacts of noise on wildlife to a minimal level?**
- **What noise impacts, if any, will the new Ohlone College campus have on new residences constructed within the specific area?**

#### **Hazardous Materials:**

The NOP states the EIR will “evaluate the potential hazardous materials impacts from existing contamination from previous uses on or near the project site.” Please define what is meant by “near the project site.”

- **Will the EIR investigate ground water contamination caused by industries currently or previously located “near the project site” if contaminated plumes are located in proximity to the project site or are migrating towards the project site? What influence will plumes of contamination have on the land use design if remediation is not required by existing or previous landowners, but by adjacent landowners?**
- **What will become of the 40-acre landfill site?**
- **What will become of the auto dismantlers located within Area 4?**
- **If these areas are not remediated, how will the city and project proponents ensure the contaminants do not migrate?**

## Hydrology and Water Quality:

The “Scope of Services” document states:

The project area is subject to both tidal flooding from San Francisco Bay, and overflows from the Line D flood control channel that crosses the area. The majority of Area 4 west of the UPRR is located below the 100-year tide level and is shown as flooded on the effective FEMA Flood Insurance Rate Map. The majority of Area 3, east of the UPRR is above the 100-year tide level, but may be subject to shallow flooding.

The “Scope of Services” also states, “The flooding evaluation will be based on existing information to the maximum extent possible. This will include review of the existing FEMA information...” The FEMA Flood Insurance Rate Map referred to was last revised February 9, 2000 and clearly does not take into account the latest information regarding sea-level rise, but even without the incorporation of the latest information regarding sea-level rise, all of Area 4 to the west of the UPRR are designated in the A zone or the Special Flood Hazard Area (SFHA). Current conservative estimates for sea-level rise in the bay area range from a rise of four inches to three feet by 2100. Sea-level rise maps prepared by BCDC show the majority, if not all, of Areas 3 & 4 under water ([http://www.bcdc.ca.gov/media/planning/CCP\\_ESouthBay\\_H.jpg](http://www.bcdc.ca.gov/media/planning/CCP_ESouthBay_H.jpg)).

- **Will development of the site for the proposed golf course and residential uses require lowering groundwater (subdrainage) below prevailing groundwater elevations? Will drainage or groundwater management in Area 4 have indirect adverse effects on adjacent site wetland hydrology (i.e. existing wetlands preserved as open space)?**
- **How will the proposed golf course and housing development be protected from flooding and sea-level rise? Will the proposed development increase the need for subsequent flood control projects, or will flood protection levees be proposed as part of the project? Is the City proposing to “super-size” the existing levee? What impacts will this have on existing waters of the U.S. both on-site and immediately adjacent to the project site?**
- **Building flood control levees will have significant adverse impacts on the aquatic environment in the face of sea level rise. Levees are generally steep-sided leaving little habitat for tidal marsh species in the face of rising water levels. Very few areas remain along the edges of the bay where development or levees have been built right at the water’s edge (or very close to it). Area 4 represents one of the few places where the land elevations would permit tidal marsh transgression (movement of species and habitats upslope from current positions) as sea level rises. This is significant when you take into consideration the existing populations of listed species or special status species on-site or in the tidal wetlands adjacent to the site. We reiterate we would like to see an alternative included that preserves and restores wetlands on Area 4 rather than a golf course and executive housing.**

- **If the city and project proponents are proposing to utilize a levee as protection against flooding and sea level rise, we would like to know how this engineering feat will be accomplished and by whom? How will this “flood control” levee be maintained and by whom, and how would adequate funding be assured to guarantee this levee is maintained to FEMA standards? Will this be a cost born by the residents of Newark? The NOP makes mention of the Shoreline Study, however, it is unclear how soon the Corps will be evaluating shoreline protection in areas other than Alviso.**

The NOP states, The EIR will evaluate the future development areas that may be served by the existing drainage systems and drainage constraints and necessary improvements to serve the Specific Plan development.”

- 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 drainage features are planned outside the areas defined in the 1994 agreement, permits may be required from State Lands Commission.
- **Any reduction in the extent of existing wetlands as a result of drainage activities will be regulated by the Corps and require a CWA permit as this cannot be accomplished without the placement of fill in waters of the U.S. Under this scenario the acreage of impacts would include not only the area directly impacted by the fill activities, but also the acreage of the area drained.**
- **As a note of warning, water hazards may provide some sediment retention and storm flow desynchronization, however, they should not be considered compensatory mitigation since they require regular maintenance, do not replace wildlife values, and provide habitat for nuisance species and predators of concern such as bullfrogs.**

Golf courses, landscaped areas, homes, roadways, and other impervious surfaces have many significant adverse impacts on water quality and the aquatic environment. Golf courses, public and privately owned landscaped areas contribute year-round freshwater flows that can significantly alter the natural hydrologic regime resulting in changes in salinities and ultimately in the alteration of plant communities. Year-round freshwater flows also provide habitat for highly undesirable predatory species such as bullfrog.

Run-off from golf courses, publicly and privately landscaped areas, roadways, and other impervious surfaces can degrade water quality through the introduction of herbicides, pesticides, fertilizers, hydrocarbons, heavy metals, etc. and result in plant community changes (through nutrient loading), and adverse impacts to listed species and

species of special concern. Federally listed species exist on-site and immediately adjacent to the project location. **Mowry Slough is the primary pupping location for harbor seals (*Phoca vitulina richardsi*) in the South San Francisco Bay.** Adverse impacts to water quality could negatively impact listed species, species of special concern, and a marine mammal.

- **How will the city and project proponents ensure the projects do not have an adverse impact on water quality? What measures would be implemented to ensure protection of water quality both on-site and off-site in perpetuity?**
- **Who would have the responsibility of ensuring water quality is not degraded and through what mechanism?**

#### **Geology and Soils:**

The NOP indicates the project site is at a location "...where historic occurrences of liquefaction and where groundwater conditions indicate the potential for ground displacement and compressible soils."

- **What methodology will be employed to render the site suitable for housing?**
- **What measures will be taken to ensure levee stability in the event of a seismic event?**

#### **Cultural Resources:**

- **Rather than "discussing the likelihood that archaeological or other cultural resources could be impacted by the project," why isn't avoidance of impacts given due consideration?**

#### **Utilities and Service Systems:**

- **Does the Union Sanitary District have the capacity to support the proposed project? If not what changes are required?**
- **What impact will the proposed project have upon solid waste? Will the transfer station have adequate capacity to deal with the addition of 1200 homes?**
- **What modifications will be required of the existing storm drain system and how will storm water run-off be treated before being discharged to the bay?**
- **Will changes to the existing PG & E alignment be required? Will other modifications to the towers be required (e.g. raising of lines)? Where would the elementary school and homes be located with respect to the high power line alignment?**

#### **Public Services:**

- **Where will the elementary school be located?**

- **What impact will the addition of 1200 homes have on the junior high and high schools?**
- **Given the construction of the Ohlone College campus and the proposed development, will additional police and fire protection facilities or staff be required?**
- **What acreage of natural open space exists in Newark? Are there state guidelines regarding the amount of natural open space that should be preserved by cities?**

**Energy:**

- **We encourage the City of Newark to incorporate energy saving features within this proposed project.**

**Cumulative Impacts:**

This project will likely result in significant adverse impacts both individually and cumulatively. The EIR should include in the review of cumulative impacts:

- the Ohlone College campus,
- the Patterson Ranch proposal in northern Fremont,
- the redevelopment of the former Kids R Us site (sorry don't know the name),
- the continued development of the Pacific Commons area,
- and the potential addition of an Oakland Athletics' stadium, Santana Row-like development with approximately 2,000 housing units (this is not a complete list).
- In addition to analyzing the cumulative impacts of "proposed project in combination with other past, pending and reasonably foreseeable future development in the area" **the EIR should analyze the impacts of "levee improvements" (super-sizing) on the long-term viability of tidal marsh habitat and the species associated with that habitat.**
- **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 (salt marsh harvest mouse, California clapper rail, burrowing owl).**
- **The EIR should analyze the impact of the proposed project on the ability of the City to continue to provide current levels of city services to residents of Newark.**

**Alternatives:**

- **The city should include under alternative #2 "reduced development alternative" the preservation/restoration of area 4. Under this alternative the city should examine not only the environmental benefits of this**

alternative, but also the educational opportunity that could be seized by having this wetland area adjacent to Ohlone College's green campus. Under this alternative the city should also seriously examine the need/desire of the community at large for a golf course. The demands upon city services to protect the golf course from flooding, maintained, etc. should be weighed against the city's ability to continue to provide the current level of service to Newark residents. Financial solvency of Bay Area golf courses should also be reviewed. Under alternative #2, the city should also examine different numbers/densities of housing units to enable decision-makers and the public an opportunity to review the varying degree of impacts to all of the factors considered in the EIR review (i.e. traffic, biological resources, city services, etc.).

- Under alternative #3 "alternative location", the city should include in its assessment sites where the golf course and housing could be sited separately, i.e. the city should not restrict its assessment to only sites that could accommodate a golf course and a housing development of 1200 units.

#### Consistency with General and Regional Plans:

- The city must make a copy of the general plan available to the public. Interested members of the public were referred to the Newark Library, but a copy could not be located there.
- Should strive for consistency with the Association of Bay Area Governments (ABAG) smart growth plan and with the Cool Cities Plan.

#### Significant unavoidable impacts – how will thresholds be determined?

As we have stated, the lands of Area 4 are rare in their ability to provide upper tidal marsh habitat, transitional zones, and very rare uplands habitat. The site and its surrounding areas support several federally listed species, special status species, and abundant waterfowl and shorebirds. The area was included in the refuge expansion boundary and in the Bay Goals Project for these reasons. It is worthy of preservation and restoration.

We thank you for the opportunity to provide comments.

Sincerely,

*Florence M. LaRiviere*

Florence M. LaRiviere  
Chairperson

cc: Ryan Olah, USFWS  
Craig Aubrey, USFWS  
Cay Goude, USFWS  
Mendel Stewart, USFWS

Mike Monroe, EPA  
Jane Hicks, USACE  
Mark D'Avignon, USACE  
Carl Wilcox, CDFG  
Janice Gan, CDFG  
Bruce Wolfe, SFBRWQCB  
BCDC

# Tri-City Ecology Center

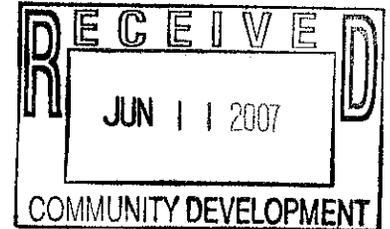
P.O. Box 674, Fremont CA 94537

510-793-6222

www.tricityecology.org

June 8, 2007

City of Newark  
Terrance Grindall, Planning Department  
37101 Newark Blvd.  
Newark, CA 945360



Re: Newark Development Proposal

Dear Mr. Grindall,

For many years, the Tri-City Ecology Center has monitored development plans that impact sensitive areas in the Tri-City Area. The proposed development of Areas 3 and 4 on your western border falls into that category. Although early in the process, with few details available, we wish to be on record with our concerns and ideas about the proposed development and golf course in Newark.

The area designated for an 18-hole golf course is along the western edge of the Area 4 and is unique. Its development would affect wetlands, and the nearby home of a harbor seal colony. The 1990 Fish & Wildlife Service Potential Addition Map suggests that tract #95 would be an appropriate addition to the Don Edwards San Francisco Bay National Wildlife Refuge. The center concurs.

Although the area has not been evaluated by the US Army Corps of Engineers, any development would depend on its determination as well as the approval of other state and federal agencies. A feasibility study of golf courses is also a necessity. The location may not be suitable for a variety of reasons, i.e. wind, soil quality, etc. In addition, golf courses around the Bay are not as profitable as they once were.

We assume a donation to the Wildlife Refuge is part of the plan. The ecology center has helped several local landowners work out donation agreements with the Wildlife Refuge. As a result, almost 800-acres have been added to the Refuge (or soon will be). The sites include Caruff (255-acres), King & Lyons (90-acres) and Catellus (390-acres). Other donations are under discussion. An addition to the Refuge would be permanent legacy.

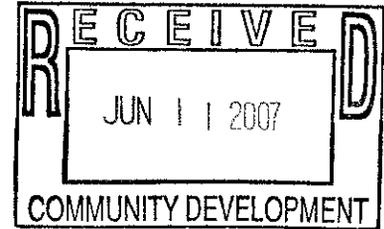
Sincerely,

A handwritten signature in cursive script that reads "Donna Olsen".

Donna Olsen, Chair  
Tri-City Ecology Center

7 June, 2007

Mr. Terrance Grindall  
Community Development Director  
City of Newark  
37101 Newark Boulevard  
Newark, CA 94560



Re: NOP of an EIR and Notice of the Public Scoping Meeting for Areas 3 and 4, City of Newark Specific Plan.

Dear Mr. Grindall,

The following are my comments regarding the scoping meeting for Areas 3 and 4, City of Newark.

The Specific Area Plan as presented is not water dependent under guideline of the Clean Water Act. Explain how Newark's CEQA process is in line or is not in line with Clean Water Act guidelines.

The maps showing the boundary of Area 4 are inconsistent. The map from the public meeting in April is different than the map used for the scoping meeting. Please explain the differences and provide information on which one is correct. Also, please explain how a golf course and executive housing are compatible in an area bounded by mixed industrial, a regional landfill, major rail line and a large slough complex. Area 4 currently contains two auto dismantlers and a 40 acre landfill. What are the plans for these businesses and the landfill? Who will be responsible for clean-up and remediation? What is the time line?

Provide a map showing ownership parcels, who owns what and where it is located. List all owners. Show location of historic duck clubs and acreage amounts. Are all owners willing to participate in the development plan? If not, how will their property be acquired? Describe the laws regarding such acquisition. The MOU states that all owners in Areas 3 and 4 "shall reimburse Developer for the cost of the Specific Area Plan and EIR above its pro rata share of the cost of the plan." What will these costs be and exactly who is paying how much? Are all property owners willing to pay this fee? What recourse does the city have against property owners who do not pay

The city's general plan states that planned use in Area 4 includes "open space." The Specific Plan calls for "open space wetland mitigation areas." Explain what is meant by "open space" and "open space wetland mitigation areas." Include any limitations or lack of limitations on use of the land. It is unclear what lands would be preserved and under what conditions. What is planned for management and maintenance of "open space" and "open space wetland mitigation areas." Who pays and to whom will the land be turned over? Will there be a trust fund established?

The MOU between New Technology Park Associates and the City states that there will be "public recreational amenities such as trails and open space." Where will trails be located? Will they impact wetland mitigation areas? The MOU further states that there will be "bicycle and pedestrian trails, permanently protected open space and other recreational amenities." Where will these be located, who pays to permanently protect open space, how "permanent" is permanent and what other "recreational amenities" are planned?

Page 2 of the MOU states that the project will be developed in light of Policy 2a of the Housing Element of the City's General Plan; noting that it is the "policy of the City to '[c]ontinue to seek a developer for Area 4 to provide high-end housing associated with a new golf course to expand the range of housing options

available in the community.” Does the state law with regard to housing elements in general plans require high-end housing with golf courses? Golf courses have nothing to do with houses. To say that Area 4 must have both to be in compliance with the housing element seem suspect at best. Neither houses nor a golf course are water dependent as previously mentioned. The EIR must provide information on other areas of the city that could be used for housing. A golf course is not a requirement.

Another question arises in the authorization of the Mayor to sign the MOU to wit; “In return for the development of the golf course in particular, the City will, as outlined in the proposed MOU consider changing the proposed use of Mr. Sobrato’s property from industrial to residential. The “golf course in particular” does not mean golf course and high-end housing. This means, according to the MOU that area 3 would have housing; not that area 4 would have a golf course and housing. The Specific Plan as it appears is nothing more than an attempt by the Mayor to have a golf course constructed on Area 4 in exchange for rezoning Area 3 from industrial to housing. This must be thoroughly explained in the DEIR; and if this is incorrect it must be clarified. Will this generate a general plan amendment?

The last general plan update is 15 years old. What studies and/or community surveys have been conducted to prove residents want a golf course in Area 4? A previous golf course and two golf driving ranges went out of business a number of years ago. The Specific Area Plan offers no alternative other than a golf course and housing on Area 4. And yet, as state above, the MOU upon which this is based is unclear about is planned for Areas 3 and 4.

What is the status of Area 4 regarding the Williamson Act? Has the process of withdrawal begun and if so when and what type of withdrawal is being considered? What is the location of utility easements and how will these impact development? This includes the current PG&E towers.

Provide details on current FEMA maps and maps currently under study showing projected sea level rise and the impacts to Area 4. What is the status of the levees and flood control channels in Areas 3 and 4? Who will be responsible for levee upgrades and maintenance? What will be the impacts of levee upgrades and maintenance on wetlands in Area 4? Will surveys and studies be done before the DEIR? If not, why not? Who will be responsible for improvements to the flood control channel and what is the timeline for upgrades and improvements to the channel and all slough levees? What will be the impacts to wildlife that currently uses the levee areas? What studies have been done on wildlife and habitat on and along the levees?

Describe in detail the use of Mowry Slough by harbor seals. What are the impacts of development on harbor seal populations especially as it relates to the spring and early summer pupping season? What are the impacts to seals from possible polluted urban runoff from housing and the proposed golf course? What will be the impacts from increased flow of fresh water from the proposed golf course, landscaping, residential landscaping and roads? How much fresh water is expected to enter Mowry Slough from Areas 3 and 4?

Identify all listed and rare species of plants, animals and minerals including all reported in the past. Describe impacts of the 32 million ton sand and gravel deposit and note its location in Area 4. Provide information on potential for liquefaction in soils of Area 4 and how this would restrict development. Include details on the high water table and its impacts.

What is the extent of wetlands in Area 4? What is the status of wetland jurisdiction by the US Army Corps of Engineers? According to documents obtained in a FOIA request of 1992 there have been several estimates of wetland acreage. Please provide that information along with the biological studies done before and after that time frame. What other agencies have jurisdiction; BCDC, State Lands etc.? What is the status of the remnant slough which is shown on maps of Area 4 leading off from Mowry Slough in the southern part of Area 4? What studies are being done of this site? What is planned to protect this remnant slough?

Describe the location and types of access to Area 4. Just one access at Stevenson is not enough for a proposed project of this size. What is planned for emergency vehicle access; location and type? If an overpass is planned for Mowry please describe how it will impact the nearby city recreation complex, industrial park east of the railroad tracks and wetlands to the west of the tracks. Who will pay for overpasses or other access roads?

The City of Newark has previously noted that development in Area 4 will be far from transportation and city services. What mass transit programs will service Area 4 and what are already in place before development? What will be the impacts to highway 880 and roads leading to the freeway? What will be impacts to surface streets in Fremont near the proposed project?

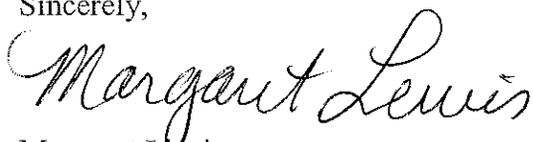
Community workshop meetings are planned during the summer of 2007. How many meetings will be held? Will they be held at a time when Newark and Fremont residents are able to attend? How will the meetings be announced? Will there be maps showing the extent of wetlands? Will there be maps showing where development is planned, where the road access points will be placed, where utility easements will be located and where levee and other drainage points will be located? The recent scoping meeting provided no details on which to base a development plan. When will those details be presented?

Please provide information on the lost potential for restoration of the wetlands on Area 4. The city is aware of the fact that Area 4 lies within the proposed expansion boundary of the Don Edwards San Francisco Bay National Wildlife Refuge. It was selected because of its wetlands, uplands and transitional habitat types which are rare in the bay area. Endangered Salt Mouse Harvest Mice are known to exist on parts of Area 4; and endangered clapper rail are likely to reside along Mowry Slough. Explain how development of a golf course and housing would destroy one of the last remaining restorable wetland and mixed transitional habitats in the bay area. As further regards the federal wildlife refuge which currently lies on the western edge of Mowry Slough, what would be impacts to the refuge from this proposed development of Area 4?

The alternatives given for Area 4 are deficient. A fourth alternative must be included; inclusion in the Don Edwards San Francisco Bay National Wildlife Refuge. As already noted Area 4 is within the proposed expansion boundary and would make a logical addition to the refuge. It would provide much needed open space in Newark and in time would provide hiking and limited recreational uses. There could be educational benefits in partnerships with educational facilities to restore wetlands and study wildlife. Newark is one of the only, if not the only, city in the bay area with no natural open space.

Explain how development in Area 4 is in conflict with comments made by the mayor of Newark to support the Kyoto Protocol in limiting urban sprawl. Development in Area 4 would be in conflict with the nearby Newark Ohlone College campus which has pledged to be the "first 'green' community college campus in the nation, one that teaches environmental stewardship." What will be the impacts to the community college from a large nearby development as proposed for Areas 3 and 4?

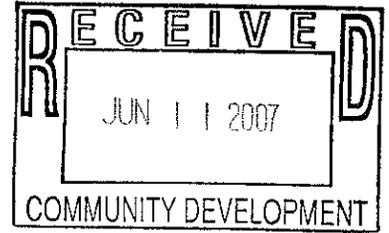
Sincerely,



Margaret Lewis  
36102 Spruce St.  
Newark, CA

June 6, 2007

City of Newark  
Attn: Terrence Grindall  
3701 Newark Boulevard  
Newark, CA 94560



**RE: Newark Area 3 & 4 Specific Plan**

Thank you for the opportunity to provide input on the scope of the Draft EIR for the Specific Plan. The City of Fremont's concerns pertain primarily to the interface of uses with general industrial development located in Fremont. There are hazardous material users in the general area of Stevenson Boulevard and Boyce Road and with its General Industrial zoning, additional hazardous material users could locate in this area. Although land use designations were not specifically described in the NOP, we request that during land use planning alternatives Newark consider a buffer of appropriate uses along Stevenson Boulevard that are not considered sensitive populations. Our Hazmat Division is willing to discuss locations and users in the general area for consideration in the EIR.

In addition to considering the above land use conflicts, we ask for certain street intersections to be analyzed within the EIR. At a minimum we ask for the following intersections a.m. and p.m. peak hour LOS analysis for both existing and future (e.g. 2030) traffic flow conditions be included in the analysis:

- 1) Auto Mall Pkwy/I-880 Northbound Ramp
- 2) Auto Mall Pkwy/Boyce Rd.
- 3) Stevenson Blvd/I-880 Northbound Ramp
- 4) Stevenson Blvd/I-880 Southbound Ramp
- 5) Stevenson Blvd/Albrae St.
- 6) Stevenson Blvd/Cedar Blvd.
- 7) Stevenson Blvd/Boyce Rd.
- 8) Mowry Ave/I-880 Northbound Ramp
- 9) Mowry Ave/Southbound Ramp

For project background and cumulative consideration we note that the Globe Shopping Center project, located on Stevenson Boulevard, was modified in February 2007 from its earlier 2006 approval. The staff report described the final approved plan in 2007 as approximately 470,000 square feet of shopping center and 16,000 square feet of performing arts theater for a total trip generation of 22,748 average daily trips and 359 a.m. and 1,307 p.m. peak hour trips. The project is currently under construction.

In regards to Automall Parkway conditions, a number of projects factor into background and cumulative conditions. Although there is public awareness of an Athletic's baseball village proposal, an application has not submitted for City consideration. Despite the public discussion

of a future project the subject area does have a current entitlement. The majority of that potential project area is General Planned for office development and is part of previously entitled commercial and business park development of Pacific Commons. The total Pacific Commons entitlement remaining for the area allows for approximately 4,668,000 square feet. Office/R&D with projected traffic (trips) of 42,241 daily, 5,042 during the AM peak hour and 5,042 during the PM peak hour; 30,000 retail with projected traffic of 1,193 daily, 13 during AM peak, and 92 during the PM peak. A number of retail and auto dealer projects are under construction in the area and the Planning Division is available to review project status of specific locations when developing background and cumulative conditions.

Please feel free to contact me with any questions and we look forward to reviewing the Draft EIR when it is made available for public comment.

Sincerely,

A handwritten signature in cursive script that reads "Kelly Diekmann".

Kelly Diekmann,  
Senior Planner  
City of Fremont  
[kdiekmann@ci.fremont.ca.us](mailto:kdiekmann@ci.fremont.ca.us)  
510-494-4540

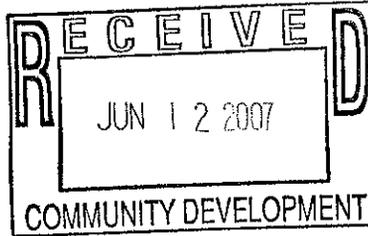


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Operations Manager

June 8, 2007



Terrence Grindall  
Community Development Director  
City of Newark  
37101 Newark Boulevard  
Newark CA 94560-3796

Dear Mr. Grindall:

Subject: Notice of Preparation of an Environmental Impact Report for Newark Area 3 & 4 Specific Plan

The Alameda County Water District (ACWD) wishes to thank you for the opportunity to comment on the "City of Newark Area 3 & 4 Specific Plan Notice of Preparation of an Environmental Impact Report (EIR) and Notice of Public Scoping Meeting."

ACWD has reviewed the Notice of Preparation of an EIR and Notice of Public Scoping Meeting and would appreciate your consideration of the following comments:

1. Water Supply:

- a. Water Supply Assessment: Senate Bill 610 (California Water Code Sections 10910 – 10915) requires that any land use project that is subject to CEQA and has 500 residential units or more, will require a water supply assessment. Because the proposed project exceeds the 500 unit threshold, a water supply assessment will need to be included in the EIR. Pursuant to the Water Code, ACWD will prepare this assessment within 90 days of receiving a formal request from the City of Newark. However, we will need additional information from the City on the proposed land uses (e.g. number of low, medium, and high density units, size of proposed golf course and parks, etc.) in order to evaluate projected water demands and complete this assessment.
- b. Recycled Water: ACWD's water management planning, as documented in ACWD's 2006-2010 Urban Water Management Plan (UWMP), includes provisions for supplying recycled water to golf courses and other large landscaped areas in Area 3 and Area 4. ACWD is reviewing several options for providing recycled water to the service area,

however, recycled water is not currently available. Therefore, the EIR should address the potential future use of recycled water for large landscape areas by considering the installation of a separate, non-potable distribution system (i.e. "purple pipe") for the golf course and other non-residential large landscape needs. This distribution system should, at a minimum, include a non-potable water transmission main extending through the site with at least two points of connection to Cherry Street (for connection with a future recycled water main) at the northern and southern limits of the site's frontage with Cherry Street. The on-site system should also include non-potable distribution mains extending to areas where recycled water could be used.

In order to minimize the project's impacts on ACWD water supplies and production facilities, the EIR should also consider the use of groundwater from private, on-site well(s) as an irrigation water source in the interim period before recycled water becomes available.

- c. Water Use Efficiency: In order to minimize additional demands on potable water supplies, the EIR should consider the installation of the latest technology in water efficient plumbing fixtures and irrigation systems at both residential and non-residential developments. Water efficient plumbing fixtures include high efficiency toilets, washers, water heaters, showerheads, and faucet aerators. Water efficient irrigation systems include weather-based irrigation-controllers and drip irrigation systems for non-turf areas. In addition, the EIR should also consider the installation of drought-tolerant landscaping in lieu of irrigated turf, wherever possible.
2. Groundwater: 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 320,000 in the cities of Fremont, Newark and Union City. From this description, it should be apparent that protecting the groundwater basin is a high priority for ACWD. The majority of Newark Area 4, located west of the railroad, is low elevation land. Our records indicate that most of this land was a former marsh area that existed prior to the early 1900's. In addition, there is documentation of a large historical spring area near the flood control channel that may be currently active. Since these facts indicate that groundwater is near the surface and may be impacted by the proposed development, the EIR should include a detailed evaluation of groundwater and the spring area and the potential impacts on groundwater resources. In addition, ACWD requests that the following potentially significant impacts related to the protection of groundwater be addressed by the EIR:
    - a. Well Protection/Destruction: In order to protect the groundwater basin, each well located within the project area must be 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. In addition, any abandoned wells located within the project area must be properly destroyed prior to construction activities. 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 of Newark Well Ordinance.

- b. 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 the Alameda County Water District 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](http://www.acwd.org/engineering/drilling_permit.php5). Before a permit is issued, the applicant is required to deposit with ACWD a check or cash 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.
- c. Spills, Leaks, Investigation, and Cleanup Sites: 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.
- d. Dewatering: Since groundwater is an important component of ACWD's water resources, the EIR should address temporary and permanent dewatering activities and the potential impact of the project on the local drinking water supply. 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 are subject to a replenishment assessment fee. Mitigation measures should be proposed to replace all significant losses of ACWD's water supplies.

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; however, dewatering wells are exempt from permit fees.

- e. 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 Area 3 & 4 and along the railroad right-of-way between the two areas. ACWD's 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.

Terrence Grindall  
Page 4 of 4  
June 8, 2007

3. 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 and the ACWD water supply assessment.
  - 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 Program Coordinator, at (510) 668-4454, or by email at michelle.myers@acwd.com for coordination regarding groundwater wells and drilling permits.
  - Ed Stevenson, Development Services Supervisor, at (510) 668-4472, or by email at ed.stevenson@acwd.com, for coordination regarding public water systems and water services.

Thank you for the opportunity to comment on the project at this time. Please issue two copies of the Draft EIR to me when it is available.

Sincerely,



Robert Shaver  
Engineering Manager

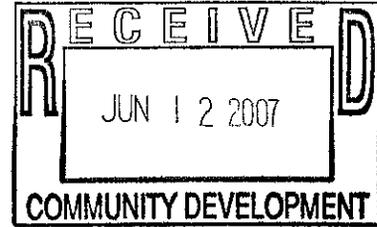
es/tf

cc: Eric Cartwright  
Thomas Niesar  
Steven Inn  
Michelle Myers  
Ed Stevenson



ALAMEDA COUNTY  
CONGESTION MANAGEMENT AGENCY

1333 BROADWAY, SUITE 220 • OAKLAND, CA 94612 • PHONE: (510) 836-2560 • FAX: (510) 836-2185  
E-MAIL: mail@accma.ca.gov • WEB SITE: accma.ca.gov



**AC Transit**  
Director  
Greg Harper

June 8, 2007

**Alameda County**  
Supervisors  
Nate Milley  
Scott Haggerty  
Chair

Mr. Terrence Grindall  
Community Development Director  
City of Newark  
Newark, CA 94560-3796

**City of Alameda**  
Mayor  
Beverly Johnson

**City of Albany**  
Councilmember  
Farid Javandel

**SUBJECT:** Comments on the Notice of Preparation of an Environmental Impact Report for the Newark Area 3 and 4 Specific Plan in the City of Newark

**BART**  
Director  
Thomas Blalock

Dear Mr. Grindall:

**City of Berkeley**  
Councilmember  
Kiss Worthington

**City of Dublin**  
Mayor  
Janet Lockhart

**City of Emeryville**  
Vice-Mayor  
Ruth Alkin

**City of Fremont**  
Vice-Mayor  
Robert Wiczkowski

**City of Hayward**  
Mayor  
Michael Sweeney

**City of Livermore**  
Mayor  
Marshall Kamena

**City of Newark**  
Councilmember  
Luis Freitas

**City of Oakland**  
Councilmember  
Larry Reid

**City of Piedmont**  
Councilmember  
John Chiang

The ACCMA respectfully submits the following comments:

**City of Pleasanton**  
Mayor  
Jennifer Hosterman

**City of San Leandro**  
Councilmember  
Joyce R. Starosciak

**City of Union City**  
Mayor  
Mark Green  
Vice Chair

**Executive Director**  
Dennis R. Fay

- The Newark City Council adopted Resolution #6585 on October 8, 1992 establishing guidelines for reviewing the impacts of local land use decisions consistent with the Alameda County Congestion Management Program (CMP). Based on our review of the NOP and the land uses that are being considered, the proposed project appears to generate at least 100 p.m. peak hour trips over existing conditions. If this is the case, the CMP Land Use Analysis Program requires the City to conduct a traffic analysis of the project using the Countywide Transportation Demand Model for Year 2015 and

2030 conditions. Please note the following paragraph as it discusses the responsibility for modeling.

- The CMA Board amended the CMP on March 26<sup>th</sup>, 1998 so that the local jurisdictions are now responsible for conducting the model runs themselves or through a consultant. The City of Newark has a signed Countywide Model Agreement with the ACCMA dated January 28, 2002. The Countywide model based on Cube software, developed incorporating ABAG's socio-economic data for Projections 2005, is available to the local jurisdictions for this purpose. Before the model can be used for this project, a letter must be submitted to the ACCMA requesting use of the model and describing the project. A copy of a sample letter agreement is available upon request.
- Potential impacts of the project on the Metropolitan Transportation System (MTS) need to be addressed. (See 2005 CMP Figures E-2 and E-3 and Figure 2). The EIR should address all potential impacts of the project on the MTS roadway and transit systems. These include I-880, SR-84 (Dumbarton Bridge), Thornton Avenue, Newark Boulevard, Mowry Avenue east of I-880 in Fremont, Stevenson Boulevard east of I-880 in Fremont, as well as BART and AC Transit. Potential impacts of the project must be addressed for 2015 and 2030 conditions.
  - Please note that the ACCMA does not have a policy for determining a threshold of significance for Level of Service for the Land Use Analysis Program of the CMP. Professional judgment should be applied to determine the significance of project impacts (Please see chapter 6 of 2005 CMP for more information).
- Potential impacts of the project on CMP transit levels of service must be analyzed. (See 2005 CMP, Chapter 4). The EIR should address the issue of transit funding as a mitigation measure in the context of the CMA's policies as discussed below.
- The adequacy of any project mitigation measures should be discussed. The CMA Board adopted three criteria for evaluating the adequacy of EIR project mitigation measures:
  - Project mitigation measures must be adequate to sustain CMP service standards for roadways and transit;
  - Project mitigation measures must be fully funded to be considered adequate;
  - Project mitigation measures that rely on state or federal funds directed by or influenced by the CMA must be consistent with the project funding priorities established in the Capital Improvement Program (CIP) section of the CMP or the Regional Transportation Plan (RTP).

The EIR should discuss the adequacy of proposed mitigation measures relative to these criteria. In particular, the EIR should detail when the proposed roadway or transit route improvements are expected to be completed, how they will be funded, and what would be the effect on LOS if only the funded portions of these projects were assumed to be built prior to project completion.

Mr. Terrence Grindall  
June 8, 2007  
Page 3

- The EIR should also consider demand-related strategies that are designed to reduce the need for new roadway facilities over the long term and to make the most efficient use of existing facilities (see 2005 CMP, Chapter 5). The DEIR could consider the use of (Travel Demand Management) TDM measures, in conjunction with roadway and transit improvements, as a means of attaining acceptable levels of service. Whenever possible, mechanisms that encourage ridesharing, flextime, transit, bicycling, telecommuting and other means of reducing peak hour traffic trips should be considered. The Site Design Guidelines Checklist may be useful during the review of the development proposal. A copy of the checklist is enclosed.
- The Alameda Countywide Bicycle Plan was approved by the ACCMA Board on October 26, 2006. The EIR should consider opportunities to promote countywide bicycle routes identified in the Plan through the project development review process. The approved Countywide Bike Plan is available at <http://www.accma.ca.gov/pages/HomeBicyclePlan.aspx>

Thank you for the opportunity to comment on this Notice of Preparation. Please do not hesitate to contact me at 510/836-2560 ext. 24 if you require additional information.

Sincerely,



Saravana Suthanthira  
Senior Transportation Planner

file: CMP - Environmental Review Opinions - Responses - 2007

Design Strategies Checklist  
for the  
Transportation Demand Management Element  
of the  
Alameda County CMP

The Transportation Demand Management Element included in the 2003 Congestion Management Program requires each jurisdiction to comply with the "Required Program". This requirement can be satisfied in three ways: 1) adoption of "Design Strategies for encouraging alternatives to auto use through local development review" prepared by ABAG and the Bay Area Quality Management District; 2) adoption of new design guidelines that meet the individual needs of the local jurisdictions and the intent of the goals of the TDM Element or 3) evidence that existing policies and programs meet the intent of the goals of the TDM Element.

For those jurisdictions who have chosen to satisfy this requirement by Option 2 or 3 the following checklist has been prepared. In order to insure consistency and equity throughout the County, this checklist identifies the components of a design strategy that should be included in a local program to meet the minimum CMP conformity requirements. The required components are highlighted in bold type and are shown at the beginning of each section. A jurisdiction must answer Yes to each of the required components to be considered consistent with the CMP. Each jurisdiction will be asked to annually certify that it is complying with the TDM Element. Local jurisdictions will not be asked to submit the back-up information to the CMA justifying its response; however it should be available at the request of the public or neighboring jurisdictions.

Questions regarding optional program components are also included. You are encouraged but not required to answer these questions. ACTAC and the TDM Task Force felt that it might be useful to include additional strategies that could be considered for implementation by each jurisdiction.

## CHECKLIST

### **Bicycle Facilities**

Goal: To develop and implement design strategies that foster the development of a countywide bicycle program that incorporates a wide range of bicycle facilities to reduce vehicle trips and promote bicycle use for commuting, shopping and school activities. (Note: an example of facilities are bike paths, lanes or racks.)

Note: Bold type face indicates those components that must be included the "Required Program" in order to be found in compliance with the Congestion Management Program.

Local Responsibilities:

**1a. In order to achieve the above goal, does your jurisdiction have design strategies or adopted policies that include the following:**

**1a.1 provides a system of bicycle facilities that connect residential and/or non-residential development to other major activity centers?**

Yes No

1a.2 bicycle facilities that provide access to transit?

Yes No

1a.3 that provide for construction of bicycle facilities needed to fill gaps, (i.e. gap closure), not provided through the development review process?

Yes No

1a.4 that consider bicycle safety such as safe crossing of busy arterials or along bike trails?

Yes No

1a.5 that provide for bicycle storage and bicycle parking for (A) multi-family residential and/or (B) non-residential developments?

Yes No

1b. How does your jurisdiction implement these strategies? Please identify.

Zoning ordinance

Design Review

Standard Conditions of Approval

Capital Improvement Program

Specific Plan

Other

**Pedestrian Facilities**

Goal: To develop and implement design strategies that reduce vehicle trips and foster walking for commuting, shopping and school activities.

Local Responsibilities

**2a. In order to achieve the above goal, does your jurisdiction have design strategies or adopted policies that incorporate the following:**

**2a.1 that provides reasonably direct, convenient, accessible and safe pedestrian connections to major activity centers, transit stops or hubs parks/open space and other pedestrian facilities?**

Yes No

Note: Bold type face indicates those components that must be included the "Required Program" in order to be found in compliance with the Congestion Management Program.

**2a.2 that provide for construction of pedestrian paths needed to fill gaps, (i.e. gap closure), not provided through the development process?**

Yes No

2a.3 that include safety elements such as convenient crossing at arterials?

Yes No

2a.4 that provide for amenities such as lighting, street trees, trash receptacles that promote walking?

Yes No

2a.5 that encourage uses on the first floor that are pedestrian oriented, entrances that are conveniently accessible from the sidewalk or transit stops or other strategies that promote pedestrian activities in commercial areas?

Yes No

2b. How does your jurisdiction implement these strategies? Please identify.

Zoning ordinance

Design Review, such as ADA Accessibility Design Standards

Standard Conditions of Approval

Capital Improvement Program

Specific Plan

Other

## Transit

Goal: To develop and implement design strategies in cooperation with the appropriate transit agencies that reduce vehicle trips and foster the use of transit for commuting, shopping and school activities.

Local Responsibilities

**3a. In order to achieve the above goal, does your jurisdiction have design strategies or adopted policies that include the following:**

**3a.1 provide for the location of transit stops that minimize access time, facilitate intermodal transfers, and promote reasonably direct, accessible, convenient and safe connections to residential uses and major activity centers?**

Yes No

Note: Bold type face indicates those components that must be included the "Required Program" in order to be found in compliance with the Congestion Management Program.

**3a.2 provide for transit stops that have shelters or benches, trash receptacles, street trees or other street furniture that promote transit use?**

Yes No

**3a.3 that includes a process for including transit operators in development review?**

Yes No

**3a.4 provide for directional signage for transit stations and/or stops?**

Yes No

**3a.5 that include specifications for pavement width, bus pads or pavement structure, length of bus stops, and turning radii that accommodates bus transit?**

Yes No

**3.b How does your jurisdiction implement these strategies? Please identify.**

- Zoning ordinance
- Design Review
- Standard Conditions of Approval
- Capital Improvement Program
- Specific Plan
- Other

### **Carpools and Vanpools**

Goal: To develop and implement design strategies that reduce the overall number of vehicle trips and foster carpool and vanpool use.

Local Responsibilities:

**4a. In order to achieve the above goal, does your jurisdiction have design strategies or adopted policies that include the following:**

**4a.1 For publicly owned parking garages or lots, are there preferential parking spaces and/or charges for carpools or vanpools?**

Yes No

**4a.2 that provide for convenient or preferential parking for carpools and vanpools in non-residential developments?**

Yes No

Note: Bold type face indicates those components that must be included the "Required Program" in order to be found in compliance with the Congestion Management Program.

4.b How does your jurisdiction implement these strategies? Please identify.

- Zoning ordinance
- Design Review
- Standard Conditions of Approval
- Capital Improvement Program
- Specific Plan
- Other

### **Park and Ride**

Goal: To develop design strategies that reduce the overall number of vehicle trips and provide park and ride lots at strategic locations.

Local Responsibilities:

5a. In order to achieve the above goal, does your jurisdiction have design strategies or adopted policies that include the following:

5a.1 promote park and ride lots that are located near freeways or major transit hubs?

Yes No

5a.2 a process that provides input to Caltrans to insure HOV by-pass at metered freeway ramps?

Yes No

5b. How does your jurisdiction implement these strategies? Please identify.

- Zoning ordinance
- Design Review
- Standard Conditions of Approval
- Capital Improvement Program
- Specific Plan
- Other

Note: Bold type face indicates those components that must be included the "Required Program" in order to be found in compliance with the Congestion Management Program.



October 2, 2007

VIA FACSIMILE 408-248-9641

Mr. Terrence Grindall  
City of Newark  
3710 Newark Boulevard  
Newark, CA 94560

Re: Notice of Preparation of Environmental Impact Report ("EIR") for the  
Proposed Newark Area 3 and 4 Specific Plan Project ("Area 3 and 4 Plan")

Dear Mr. Grindall:

Union Pacific Railroad Company ("UP") provides this letter in response to the attached notice. The EIR is being prepared for the Area 3 and 4 Plan. UP's main line rail corridor runs between Areas 3 and 4. The Area 3 and 4 Plan proposes substantial residential uses and an elementary school in close proximity to the UP main line. Accordingly, UP wishes to raise the following issues.

Residential and school development near the UP main line can negatively impact freight rail service and create unintended consequences that are in neither UP's nor the public's best interests, including land use conflicts due to the nature of rail operations that may cause mechanical odor, noise and vibration. Also, new housing and other development will attract more cars and pedestrians to the areas around UP lines, and people may trespass onto the railroad right of way as well.

In addition to the obvious safety concerns of which UP remains vigilantly aware, these factors also have the result that trains may be forced to proceed more slowly, and/or to make more frequent emergency stops, which makes rail service less effective and efficient. In

**Christine M. Smith**  
Assistant General Counsel

**UNION PACIFIC RAILROAD**  
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580  
ph. (402) 544-5761 fx. (402) 501-0127  
csmith2@up.com

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the event of train slow-downs or stoppages, train cars may be forced to block at-grade roadway intersections, causing traffic disruptions.

UP requests that the City of Newark analyze and seek to mitigate the impacts that the Area 3 and 4 Plan will have on the UP main line and rail service by requiring appropriate mitigation measures. Possible mitigation measures that should be provided by developers of property within the Area 3 and 4 Plan include, for example, sound walls, setbacks, fences and other barriers, public education and disclosure.

In addition, because of vehicular and pedestrian traffic issues, UP believes that any at-grade crossings in the area should be closed and that no new at-grade crossings should be allowed.

Please give notice to UP of all future hearings and other matters with respect to Newark as follows:

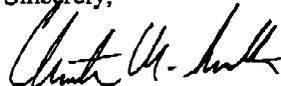
Mr. Terrell Anderson  
Manager of Industry and Public Projects  
Union Pacific Railroad Company  
10031 Foothills Blvd.  
Roseville, CA 95747

With a copy to:

Ms. Donna Coltrane  
Union Pacific Railroad Company  
1400 Douglas Street - STOP 1580  
Omaha, Nebraska 68179-1580

Please do not hesitate to contact the undersigned if you have any questions or concerns.

Sincerely,



Christine M. Smith  
Assistant General Counsel  
Union Pacific Railroad Company

Enclosure

cc: Mr. Terrell Anderson (w/o Enclosure)  
Union Pacific Railroad Company