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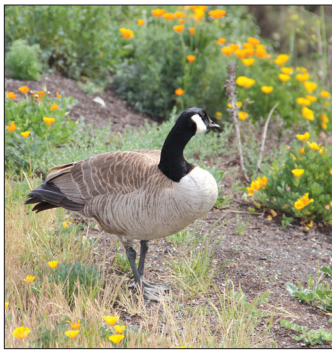
NEWARK
California



General Plan Tune Up Final EIR

for the City of Newark

State Clearinghouse No. 2013012052

The Planning Center | DC&E

October 24, 2013

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Prepared by:

The Planning Center | DC&E

October 24, 2013

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1. *Executive Summary*

This ~~Draft~~ Environmental Impact Report (~~Draft~~ EIR) addresses the environmental effects associated with the implementation of the proposed Newark General Plan Tune Up (proposed Plan). The California Environmental Quality Act (CEQA) requires that local government agencies, prior to taking action on projects over which they have discretionary approval authority, consider the environmental consequences of such projects. An Environmental Impact Report is a public document designed to provide the public and local and state governmental agency decision-makers with an analysis of potential environmental consequences to support informed decision-making.

This ~~Draft~~ EIR has been prepared pursuant to the requirements of CEQA (California Public Resources Code, Division 13, Section 21000, et seq.) and the State CEQA Guidelines (Title 14 of the California Code of Regulations, Division 6, Chapter 3, Section 15000, et seq.) to determine if approval of the identified discretionary actions and related subsequent development could have a significant impact on the environment. The City of Newark, as the Lead Agency, has reviewed and revised as necessary all submitted drafts, technical studies, and reports to reflect its own independent judgment, including reliance on applicable City technical personnel and review of all technical subconsultant reports. Information for this ~~Draft~~ EIR was obtained from on-site field observations; discussions with affected agencies; analysis of adopted plans and policies; review of available studies, reports, data, and similar literature in the public domain; and specialized environmental assessments (e.g., air quality, hazards and hazardous materials, hydrology and water quality, noise, and transportation and traffic).

1.1 ENVIRONMENTAL PROCEDURES

This ~~Draft~~ EIR has been prepared pursuant to CEQA to assess the environmental effects associated with implementation of the proposed Plan, as well as anticipated future discretionary actions and approvals. The six main objectives of this document as established by CEQA are:

- To disclose to decision-makers and the public the significant environmental effects of proposed activities.
- To identify ways to avoid or reduce environmental damage.
- To prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures.
- To disclose to the public reasons for agency approval of projects with significant environmental effects.
- To foster interagency coordination in the review of projects.
- To enhance public participation in the planning process.

An EIR is the most comprehensive form of environmental documentation identified in the statutes and in the CEQA Guidelines. It provides the information needed to assess the environmental consequences of a proposed project, to the extent feasible. EIRs are intended to provide an objective, factually supported, full-disclosure analysis of the environmental consequences associated with a proposed project that has the potential to result in significant, adverse environmental impacts. An EIR is also one of various decision-making tools used by a lead agency to consider the merits and disadvantages of a project that is subject to its discretionary authority. Prior to approving a proposed project, the lead agency must consider the information contained in the EIR, determine whether the EIR was properly prepared in accordance with CEQA and the CEQA Guidelines, determine that it reflects the independent judgment of the lead agency, adopt findings concerning the project's significant environmental impacts and alternatives, and must adopt a Statement of Overriding Considerations if the proposed project would result in significant impacts that cannot be avoided.

REPORT ORGANIZATION

This document, together with the Draft EIR, will constitute the Final EIR if the City of Newark City Council certifies it as complete and adequate under the California Environmental Quality Act (CEQA).

The Draft EIR is organized into the following chapters:

- **Section 1. Executive Summary**: Summarizes the background and description of the proposed Plan, the format of this EIR, alternatives, any critical issues remaining to be resolved, and the potential environmental impacts and mitigation measures identified for the Plan. A Summary Table describing recommended mitigation measures and indicates the level of significance of environmental impacts before and after mitigation is also included for clarity.
- **Section 2. Introduction**. Provides a preface and overview describing both the intended use of the document and the review and certification process of both the proposed Plan and the EIR.
- **Section 3. Project Description**. Describes the Draft General Plan Tune Up in detail, including a summary of the chapters of the Plan and a listing of proposed land use designation changes.
- **Section 4. Environmental Assessment**. Organized into 15 chapters corresponding to the environmental resource categories identified in Appendix G of the CEQA Guidelines, this section provides a description of the physical environmental conditions in the vicinity of the project as they existed at the time the Notice of Preparation was published, from both a local and regional perspective, as well as an analysis of the potential environmental impacts of the proposed Plan and recommended mitigation measures, if required, to reduce their significance. The environmental setting included in each chapter provides baseline physical conditions from which the lead agency determines the significance of environmental impacts resulting from the proposed Plan. Each chapter also includes a description of the thresholds used to determine if a significant impact would occur; the methodology to identify and evaluate the potential impacts of the Plan; and the potential cumulative impacts associated with the proposed Plan and other existing, approved, and proposed development in the area.
- **Section 5. Significant Unavoidable Adverse Impacts**: Describes the significant unavoidable adverse impacts of the proposed Plan.

- **Section 6. Alternatives to the Proposed Plan**. Considers three alternatives to the proposed Plan, including the CEQA-required "No Project Alternative," the Reduced Residential Alternative, and the Restricted Growth Alternative.
- **Section 7. CEQA-Mandated Sections**. Discusses growth inducement, cumulative impacts, unavoidable significant effects and significant irreversible changes as a result of the proposed Plan. Additionally, this section identifies environmental issues scoped out pursuant to CEQA Guidelines Section 15128.
- **Section 8. Organizations and Persons Consulted**: Lists the people and organizations that were contacted during the preparation of this EIR for the proposed Plan.
- **Appendices**. The appendices for this document (presented in PDF format on a CD attached to the back cover) contain the following supporting documents:
  - Appendix A: Notice of Preparation Comment Letters
  - Appendix B: Air Quality and Greenhouse Gas Emissions Data and Calculation Sheets
  - Appendix C: Noise Monitoring and Calculation Sheets
  - Appendix D: City of Newark General Plan Tune Up Traffic Study, Hexagon Transportation Consultants, June 7, 2013.

The Final EIR is organized into the following chapters:

- **Chapter 1: Executive Summary.** This chapter is a summary of the findings of the Draft and the Final EIR. It has been reprinted from the Draft EIR with necessary changes made in this Final EIR.
- **Chapter 2: Introduction.** This chapter discusses the use and organization of this Final EIR.
- **Chapter 3: Revisions to the Draft EIR.** Corrections to the text and graphics of the Draft EIR are contained in this chapter. Underline text represents language that has been added to the EIR; text with ~~strike-through~~ has been deleted from the EIR.
- **Chapter 4: List of Commenters.** Names of agencies, organizations, and individuals who commented on the Draft EIR are included in this chapter.
- **Chapter 5: Comments and Responses.** This chapter contains reproductions of the letters received from agencies and the public on the Draft EIR. The responses are keyed to the comments which precede them.
- **Appendices. The appendices for this document (presented in PDF format on a CD attached to the back cover) contain the following supporting documents:**
  - **Appendix A: Contents of CD submitted with Comment Letter Lippe Gaffney Wagner**
  - **Appendix B: Contents of CD submitted with Comment Letter High**
  - **Appendix C: Recurring Comment Letters**

TYPE AND PURPOSE OF THIS DRAFT EIR

According to Section 15121(a) of the CEQA Guidelines, the purpose of an EIR is to:

> *Inform public agency decision makers and the public generally of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.*

Given the long-term horizon of the proposed Plan and the permitting, planning, and development actions that are related both geographically and as logical parts in the chain of contemplated actions for implementation, this ~~Draft~~ EIR has been prepared as a Program EIR for the General Plan Tune Up project, pursuant to Section 15168 of the CEQA Guidelines. As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects.

Once a Program EIR has been prepared, subsequent activities within the program must be evaluated to determine whether additional CEQA documentation needs to be prepared. However, if the Program EIR addresses the program's effects as specifically and comprehensively as possible, many subsequent activities could be found to be within the Program EIR scope and additional environmental documents may not be required (CEQA Guidelines Section 15168[c]). When a Program EIR is relied on for a subsequent activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities (CEQA Guidelines Section 15168[c][3]). If a subsequent activity would have effects not within the scope of the Program EIR, the lead agency must prepare a new Initial Study leading to a Negative Declaration, Mitigated Negative Declaration, or an EIR. In this case, the Program EIR still serves a valuable purpose as the first-tier environmental analysis.

1.2 LOCATION AND BOUNDARIES OF THE PLAN AREA

The City of Newark is located in southern Alameda County, between Interstate 880 (I-880) and San Francisco Bay, south of State Route 84, as shown on Figure 3-1. The City of Newark is an enclave, surrounded on all sides by land within the limit of the City of Fremont. The Don Edwards San Francisco Bay National Wildlife Refuge is located along the western perimeter of Newark on the shore of San Francisco Bay. The City's sphere of influence (SOI), the planning boundary set by the Alameda County Local Agency Formation Commission to designate the City's future service area, is coterminous with the Newark City limit.

1.3 PLAN SUMMARY

The proposed Plan is a "tune up" of the 1992 City of Newark General Plan. The vision for the growth and development of the community outlined in the 1992 General Plan remains a valid reflection of community values and priorities today, and the land use designations and policies of the 1992 General Plan provide a solid base on which to build. The Plan proposes an updated policy framework and consolidated land use designations intended

to guide future development and redevelopment in Newark. Future development would be concentrated primarily in the four focus areas: the Dumbarton Transit-Oriented Development (TOD) Focus Area, the Southwest Newark Residential and Recreational Focus Area, the Old Town Focus Area, and the Greater NewPark Focus Area. The proposed Plan is projected to result in approximately 60,510 residents, 19,699 housing units, and 22,609 jobs in Newark by 2035.

The proposed Plan has a long-term planning horizon, addressing a time frame extending to 2035, yet it brings deliberate, overall direction to the day-to-day decisions of the City Council, its commission, and City staff. The proposed Plan is described in more detail in Chapter 3 of this Draft EIR.

1.4 SUMMARY OF ALTERNATIVES TO THE PROPOSED PLAN

The CEQA Guidelines (Section 15126[a]) require the description and comparative analysis of a range of alternatives to the proposed Plan that could feasibly attain the objectives of the Plan, while avoiding or substantially lessening potential impacts. The alternatives were based on their potential ability to reduce or eliminate the following impacts determined to be significant and unavoidable for the proposed Plan:

- Aesthetics
- Air Quality
- Cultural Resources
- Greenhouse Gas Emissions
- Noise
- Transportation and Traffic

As described in Chapter 6 of the Draft EIR, three alternatives were identified and analyzed for relative impacts as compared to the proposed Plan:

- No Project Alternative;
- Reduced Residential Alternative;
- Restricted Growth Alternative.

Please refer to Chapter 6 of the Draft-EIR for a complete discussion of the relative impacts associated with each alternative. The following presents a summary of each of the alternatives analyzed in the ~~Draft~~ EIR.

- **No Project Alternative**. Under this alternative, the Newark General Plan Tune Up would not be adopted and future development in Newark would occur under the goals, policies, programs, and land use designations set forth in the existing General Plan. Existing plans and policies, including Dumbarton Transit-Oriented Development (TOD) Specific Plan, the Area 3 and 4 Specific Plan, the 2009-2014 Housing Element, and the Climate Action Plan would continue to be implemented. The No Project Alternative could result in up to 17,900 housing units in Newark by 2035, including approximately 10,950 single-family homes and 6,950 multi-family units, as well as approximately 20,600 jobs.
- **Reduced Residential Alternative**. Under the Reduced Residential Alternative, the Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area would not be developed as

envisioned in the respective specific plans for those sectors of the city and instead the 1992 General Plan land use designations would apply. Consequently, residential development would not be permitted in the Dumbarton TOD Focus Area and that area would allow general industrial uses through 2035. In the Southwest Newark Residential and Recreational Focus Area, low density housing at between 4 and 8 units per acre would be permitted in the larger sector formerly known as Area 4 as under the 1992 General Plan; however, residential development would not be permitted in Area 3, which would allow special industrial business park uses. Additionally, under this scenario, the land use designations in the vicinity of NewPark Mall would remain as under the 1992 General Plan and the diversification and intensification of uses in this area envisioned in the proposed Plan would not occur. Development in the Old Town Focus Area would occur as under the proposed Plan. The goals, policies, and actions contained in the proposed Plan would apply under this alternative as well, with the exception of goals, policies, and actions specific to the Dumbarton TOD Focus Area and the smaller noncontiguous sector of the Southwest Newark Residential and Recreational Focus Area that would not be developed as under the Plan. The Reduced Residential Alternative could result in up to 16,280 housing units by 2035, including 11,981 single-family homes and 4,299 multi-family homes. This alternative could result in up to 24,800, jobs in Newark, concentrated largely in the northwestern part of the city and in existing industrial areas along its western edge.

- **Restricted Growth Alternative**. Under this alternative, future growth in environmentally sensitive areas along the western edge of Newark would be restricted. Future growth would occur entirely on previously developed land in the urbanized portion of the city. Development in the Old Town Focus Area and the Greater NewPark Focus Area would take place as under the proposed Plan; however, the Dumbarton TOD Focus Area and the larger sector of the Southwest Newark Residential and Recreational Focus Area south of the Union Pacific Railway Line would be designated as Open Space. The smaller sector formerly known as Area 3 would be developed with two- and three-story residential structures at an intensity of 18 dwelling units per acre, as well as an elementary school. Overall, this alternative could result in up to 16,995 housing units in Newark by 2035, including 9,635 single-family homes and 7,360 multi-family units, as well as up to 22,300 jobs. The goals, policies, and actions contained in the proposed Plan would apply under this alternative as well, with the exception of goals, policies, and actions specific to the Dumbarton TOD Focus Area and the smaller non-contiguous sector of the Southwest Newark Residential and Recreational Focus Area that would not be developed as under the proposed Plan.

1.5 ISSUES TO BE RESOLVED

Section 15123(b)(3) of the CEQA Guidelines requires that an EIR identify issues to be resolved, including the choice among alternatives and whether or how to mitigate significant impacts. With regard to the proposed Plan, the major issues to be resolved include decisions by the City of Newark, as lead agency, related to:

- Whether this ~~Draft~~ EIR adequately describes the environmental impacts of the Plan.
- Whether the benefits of the Plan override those environmental impacts that cannot be feasibly avoided or mitigated to a level of insignificance.
- Whether the proposed land use changes are compatible with the character of the existing area.

- Whether the identified goals, policies, or mitigation measures should be adopted or modified.
- Whether there are other mitigation measures that should be applied to the Plan besides those Mitigation Measures identified in the Draft EIR.
- Whether there are any alternatives to the Plan that would substantially lessen any of the significant impacts of the proposed Plan and achieve most of the basic objectives.

1.6 AREAS OF CONTROVERSY

The City of Newark issued a Notice of Preparation of an EIR on January 15, 2013 and held a scoping meeting on January 24, 2013. The scoping period for this EIR ran from January 15 through February 13, 2013, during which time responsible agencies and interested members of the public were invited to submit comments as to the scope and content of the EIR. The comments received focused primarily on the following issues:

- Water and Groundwater Quality
- Clean Up of Contaminated Sites
- Sea Level Rise
- Conflicts with the San Francisco Bay Conservation and Development Commission's San Francisco Bay Plan
- Flood Hazards
- Fill of Jurisdictional Wetlands
- Biological Resources
- Vehicular Circulation

To the extent that these issues have environmental impacts and to the extent that analysis is required under CEQA, they are addressed in Sections 4 through 7 of the Draft EIR.

1.7 SIGNIFICANT IMPACTS AND MITIGATION MEASURES

Table 1-1 summarizes the conclusions of the environmental analysis contained in the ~~Draft~~ EIR and presents a summary of impacts and mitigation measures identified. It is organized to correspond with the environmental issues discussed in Section 4, Chapter 4.0 through 4.14 of the Draft EIR. The table is arranged in four columns: 1) environmental impacts; 2) significance prior to mitigation; 3) mitigation measures; and 4) significance after mitigation. For a complete description of potential impacts, please refer to the specific discussions in Section 4, Chapter 4.0 through 4.14.

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
AESTHETICS			
AES-1: The proposed Plan would not have a substantial adverse effect on a scenic vista.	LTS	N/A	LTS
AES-2: The proposed Plan would not substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings, within a State scenic highway.	LTS	N/A	LTS
AES-3: The proposed Plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review.	S	AES-3: There is no feasible mitigation which would reduce impacts to a less-than-significant level.	SU
AES-4: The Plan would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.	LTS	N/A	LTS
AES-5: The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics.	LTS	N/A	LTS
AIR QUALITY			
AIR-1: While the proposed Plan would support the primary goals of the 2010 Bay Area Clean Air Plan, buildout of the proposed Plan would not be consistent with the Clean Air Plan because the projected vehicle miles traveled (VMT) increase from buildout of the proposed Plan would be greater than the projected population increase.	S	AIR-1: Numerous goals, policies, and actions contained in the proposed Plan address future increase in VMT and criteria air pollutants under the Plan; however, the projected growth in VMT in the Plan Area would still exceed the rate of population growth. There are no additional measures that would reduce this impact.	SU

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
AIR-2: The Plan would not violate any air quality standard or contribute substantially to an existing or projected air quality violation.	LTS	N/A	LTS
AIR-3: The proposed Plan would not result in a cumulatively considerable contribution related to an increase in criteria pollutants for which the San Francisco Bay Area Air Basin is designated a non-attainment area.	LTS	N/A	LTS
AIR-4: The proposed Plan would result in less-than-significant impacts with respect to the placement of sensitive receptors proximate to major sources of air pollution or the siting of new sources of air pollution proximate to sensitive receptors in the City.	LTS	N/A	LTS
AIR-5: The Plan would not create or expose a substantial number of people to objectionable odors.	LTS	N/A	LTS
BIOLOGICAL RESOURCES			
BIO-1: Buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area.	LTS	N/A	LTS
BIO-2: Buildout of the proposed Plan would result in less-than-significant impact to wetlands, riparian habitat, and sensitive natural communities in the Plan Area.	LTS	N/A	LTS
BIO-3: Buildout of the proposed Plan would result in less-than-significant impact to as-yet undelineated waters of the US in the Plan Area.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
BIO-4: The proposed Plan would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.	LTS	N/A	LTS
BIO-5: The proposed Plan would not conflict with the City of Newark tree preservation ordinance.	LTS	N/A	LTS
BIO-6: The proposed Plan would result in less-than-significant impacts related to conflicts with the Basin Plan and the Habitat Goals.	LTS	N/A	LTS
BIO-7: The proposed Plan would result in less-than-significant cumulative impacts related to biological resources.	LTS	N/A	LTS
CULTURAL RESOURCES			
CULT-1: The Plan would not cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5.	LTS	N/A	LTS
CULT-2: Construction activities associated with buildout of the proposed Plan could cause a significant impact to archaeological resources in the Southwest Newark Residential and Recreational Focus Area by potentially damaging or disturbing as yet undiscovered archaeological deposits through the placement of fill and soil compression.	S	CULT-2: Regulatory compliance and implementation of proposed Plan policies would reduce but not eliminate the potential for damage or disturbance. No additional feasible mitigation exists to further reduce this impact.	SU
CULT-3: The Plan would not directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
CULT-4: Construction activities associated with buildout of the proposed Plan could cause a significant impact to a significant impact to Native American human remains in the Southwest Newark Residential and Recreational Focus Area by potentially damaging or disturbing as yet undiscovered Native American human remains through the placement of fill and soil compression.	S	CULT-4: While compliance with the provisions of SB18, California Health and Safety Code Section 7052 and 7050.5, and California Public Resources Code Section 5097 and 15064.5 together with implementation Mitigation Measure 4.4-1 from the 2009-2104 Housing Element EIR, and Mitigation Measures CUL-2.1 through CUL-2.4 from the Area 3 and 4 Specific Plan EIR, described above, would reduce the potential for accidental damage or disturbance of human remains during construction activities associated with buildout of the proposed Plan, damage or disturbance of human remains through the placement of fill and soil compression could still result during construction activities associated with buildout. No additional feasible mitigation exists to further reduce this impact.	SU
CULT-5: The Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to cultural resources.	LTS	N/A	LTS
GEOLOGY, SOILS, AND SEISMICITY			
GEO-1: The proposed Plan would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving surface rupture along a known active fault; strong seismic ground shaking; seismic-related ground failure, including liquefaction; and landslides.	LTS	N/A	LTS
GEO-2: Implementation of the proposed Plan would not result in substantial soil erosion or the loss of topsoil.	LTS	N/A	LTS
GEO-3: Development under the proposed Plan would not result in a significant impact related to development on unstable geologic units and soils or result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
GEO-4: Development under the proposed Plan would not create substantial risks to life or property as a result of its location on expansive soil, as defined in Table 18-1-b of the Uniform Building Code (1994).	LTS	NA	LTS
GEO-5: Implementation of the proposed Plan would not result in impacts associated with the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater.	No Impact	N/A	No impact
GEO-6: The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils.	LTS	N/A	LTS
GREENHOUSE GAS EMISSIONS			
GHG-1: The proposed Plan would generate substantial GHG emissions in excess of the long-term 2050 GHG reduction target interpolated from Executive Order S-03-05.	S	GHG-1: To further reduce 2035 GHG emissions resulting from future development under the proposed Plan, the City shall require the following Uniformly Applicable Development Standards for new developments: ▪ Pedestrian and Bicycle Friendly Design/Bicycle Parking. Site plans submitted shall identify pedestrian and bicycle facilities on-site, including bicycle parking. ▪ Pedestrian and Bicycle Provisions within New Development. Circulation plans submitted shall identify pedestrian and bicycle routes. ▪ Source Reduction and Diversion for New Construction. Major new non-residential developments shall submit a plan that identifies solid waste source reduction and diversion measures (e.g. location of recycling bins on-site). ▪ Sustainable Design/Tree Planting in New Development/Minimizing Impervious Surface Coverage. Landscape plans submitted shall minimize impervious surfaces and identify features to reduce the heat island effect (e.g. tree coverage, permeable pavement, cool pavement).	SU

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
		However, it should be noted that while CARB is currently updating the Scoping Plan to identify additional measures to achieve the long-term GHG reduction targets, at this time, there is no plan past 2020 that achieves the long-term GHG reduction goal established under Executive Order S-03-05. As identified by the California Council on Science and Technology, the State cannot meet the 2050 goal without major advancements in technology.	
GHG-2: The proposed plan would not conflict with an applicable plan, policy, or regulation for the purpose of reducing the emissions of GHGs.	LTS	N/A	LTS
HAZARDS AND HAZARDOUS MATERIALS			
HAZ-1: The Plan would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.	LTS	N/A	LTS
HAZ-2: The Plan would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.	LTS	N/A	LTS
HAZ-3: The proposed Plan would not result in significant impacts associated with hazardous emissions or handling of hazardous or acutely hazardous materials, substances, or waste within ¼-mile of an existing or proposed school.	LTS	N/A	LTS
HAZ-4: Implementation of the Plan would not create a significant hazard to the public or the environment as a result of development on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
HAZ-5: Implementation of the Plan would not result in a safety hazard for people residing or working in the Plan Area due to development within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport.	No Impact	N/A	No impact
HAZ-6: Implementation of the Plan would not result in a safety hazard for people residing or working in the Plan Area due to development in the vicinity of a private airstrip.	No Impact	N/A	No impact
HAZ-7: The proposed Plan would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.	LTS	N/A	LTS
HAZ-8: Implementation of the Plan would not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.	LTS	N/A	LTS
HAZ-9: The Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to hazards and hazardous materials.	LTS	N/A	LTS
HYDROLOGY AND WATER QUALITY			
HYDRO-1: The proposed Plan would not violate any water quality standards or waste discharge requirements.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
HYDRO-2: The proposed Plan would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.	LTS	N/A	LTS
HYDRO-3: The proposed Plan would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation, or flooding on- or off-site.	LTS	N/A	LTS
HYDRO-4: The proposed Plan would not create or contribute runoff water, which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.	LTS	N/A	LTS
HYDRO-5: The proposed Plan would not otherwise substantially degrade water quality.	LTS	N/A	LTS
HYDRO-6: The proposed Plan would not result in a significant impact with respect to the placement of housing or structures, which would impede or redirect flood flows within a 100-year flood hazard area as	LTS	N/A	LTS
mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map.			
HYDRO-7: The proposed Plan would not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
HYDRO-8: The proposed Plan would not result in significant adverse effects related to inundation by seiche, tsunami, or mudflow.	LTS	N/A	LTS
HYDRO-9: The proposed Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to hydrology and water quality.	LTS	N/A	LTS
LAND USE AND PLANNING			
LU-1: The proposed Plan would not physically divide an established community.	LTS	N/A	LTS
LU-2: The proposed Plan would not conflict with an applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.	LTS	N/A	LTS
LU-3: The proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan.	LTS	N/A	LTS
LU-4: The proposed Plan, in combination with past, present, and reasonably foreseeable development in the surrounding area, would result in less-than-significant-cumulative impacts with respect to land use and planning.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
NOISE			
NOISE-1: The proposed Plan would not expose people to or generate noise levels in excess of standards established in the General Plan or the Municipal Code, and/or the applicable standards of other agencies.	LTS	N/A	LTS
NOISE-2: The proposed Plan would not expose people to or generate excessive groundborne vibration or groundborne noise levels.	LTS	N/A	LTS
NOISE-3: Implementation of the proposed Plan would result in a substantial permanent increase in ambient noise levels in the Plan Area above levels existing without Plan implementation.	S	NOISE-3: Increases in vehicular traffic resulting from implementation of the proposed Plan in conjunction with regional growth would result in permanent increases to ambient noise levels that would exceed applicable standards along ten major roadway segments in the Plan Area. Proposed Plan policies and actions, including Policy EH-7.4, Action EH-6.D, Action EH-6.E, Action EH-6.H, and Action EH-7.B, described above, would reduce associated impacts; however, increases in noise in excess of the applicable standards could still occur. Although the most effective mitigations such as soundwalls or earthern berms may theoretically be capable of reducing increases to ambient noise to levels below the above standards, such reductions cannot be guaranteed; and, in many cases, other considerations will prevent the use of these noise-attenuating features. Therefore, there are no additional measures available to reduce the associated impacts to a less-than-significant level.	SU
NOISE-4: Construction activities associated with buildout of the proposed Plan would not result in substantial temporary or periodic increases in ambient noise levels in the Plan Area above existing levels.	LTS	N/A	LTS
NOISE-5: The proposed Plan would not result in exposure of people residing or working in the vicinity of the plan area to excessive aircraft noise levels, for a project located within an airport land use plan, or where such a plan has not been adopted, within 2 miles of a public airport or public use airport.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
NOISE-6: The proposed Plan would not result in exposure of people residing or working in the project area to excessive noise levels, for a project within the vicinity of a private airstrip.	LTS	N/A	LTS
NOISE-7: Implementation of the proposed Plan, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable noise, or groundborne noise and vibration impacts.	LTS	N/A	LTS
POPULATION AND HOUSING			
POP-1: The Plan would not induce substantial unexpected population growth, or growth for which inadequate planning has occurred, either directly or indirectly.	LTS	N/A	LTS
POP-2: The Plan would not displace substantial numbers of existing housing units, necessitating the construction of replacement housing elsewhere.	LTS	N/A	LTS
POP-3: The Plan would not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.	LTS	N/A	LTS
POP-4: The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to population and housing.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
PUBLIC SERVICES AND RECREATION			
PS-1: The proposed Plan would not result in the provision of or need for new or physically altered fire protection facilities, the construction or operation of which could cause significant environmental impacts.	LTS	N/A	LTS
PS-2: The proposed Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to fire protection service.	LTS	N/A	LTS
PS-3: The proposed Plan would not result in a significant impact related to the construction or expansion of police facilities.	LTS	N/A	LTS
PS-4: The proposed Plan, in combination with past, present, and reasonably foreseeable growth, would result in less than significant cumulative impacts with respect to law enforcement services.	LTS	N/A	LTS
PS-5: The proposed Plan would not result in the provision of or need for new or physically altered school facilities, the construction or operation of which could cause significant environmental impacts.	LTS	N/A	LTS
PS-6: The proposed Plan, in combination with past, present, and reasonably foreseeable growth in the NUSD service area, would result in less than significant cumulative impacts with respect to schools.	LTS	N/A	LTS
PS-7: The proposed Plan would not result in substantial adverse physical impacts associated with the provision of new or physically altered parks and recreational facilities in order to maintain the City's adopted ratio of parkland per thousand residents.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
PS-8: The proposed Plan would not increase the use of existing neighborhood and regional parks or other recreational facilities, such that substantial physical deterioration of the facility would occur, or be accelerated.	LTS	N/A	LTS
PS-9: The proposed Plan would not include or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.	LTS	N/A	LTS
PS-10: The proposed Plan, in combination with past, present, and reasonably foreseeable growth, would result in less than significant cumulative impacts with respect to parks and recreational facilities.	LTS	N/A	LTS
PS-11: The proposed Plan would not result in the need for new or physically altered library facilities.	LTS	N/A	LTS
PS-12: The proposed Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to libraries.	LTS	N/A	LTS
TRANSPORTATION AND TRAFFIC			
TRANS-1: Implementation of the proposed Plan would cause intersection operation to degrade to unacceptable LOS F at the a) Ardenwood Boulevard and SR 84 westbound ramps intersection during the AM peak hour in 2035, b) the Newark Boulevard and SR 84 eastbound ramps intersection during the PM peak hour in 2035, and c) the Cherry Street/Boyce Road and Stevenson Boulevard intersection during the PM peak hour in 2035.	S	TRANS-1a: To mitigate this impact, the Ardenwood Boulevard and SR 84 westbound ramps intersection would require converting a through lane to a second left-turn lane on Ardenwood Boulevard, south of the Highway 84 westbound ramps. Re-striping of the northbound approach (i.e., Ardenwood Boulevard) would be necessary. LOS calculations show that with implementation of these improvements, the intersection would operate at an acceptable LOS C under proposed Plan conditions in 2035. However, because this mitigation measure is for an intersection under the jurisdiction of Caltrans and located in the City of Fremont, implementation is outside the jurisdiction of the City of Newark. The City of Newark will work with Caltrans and the City of Fremont to implement the mitigation measure and contribute on a fair-share	SU

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
		basis; however until such time as there is an implementation plan in place and funding is secured, this impact is considered significant and unavoidable.	
		TRANS-1b: To mitigate this impact, the Newark Boulevard and SR 84 eastbound ramps intersection would require adding a right turn lane in addition to the shared through-right lane on the Highway 84 eastbound off-ramp at Newark Boulevard. There is sufficient roadway right-of-way for this improvement, therefore the improvement could be implemented with re-striping of the off-ramp and roadway widening would not be necessary. LOS calculations show that with implementation of these improvements, the intersection would operate at an acceptable LOS D during the PM peak-hour under proposed Plan conditions in 2035. However, because this mitigation measure is for an intersection under the jurisdiction of Caltrans, implementation is outside the jurisdiction of the City of Newark. The City of Newark will work with Caltrans to implement the mitigation measure and contribute on a fair-share basis; however until such time as there is an implementation plan in place and funding is secured, this impact is considered significant and unavoidable.	
		TRANS-1c: To mitigate this impact, the Cherry Street/Boyce Road and Stevenson Boulevard intersection would require an additional through lane on the northbound approach (Boyce Road/Cherry Street is considered the north-south street for this intersection). There is potentially sufficient roadway right-of-way on Boyce Road/Cherry Street for this improvement; therefore, the improvement could be implemented with re-striping of Cherry Street. The northbound approach (e.g., south leg) of the intersection is located in Fremont. It would also require that the intersection be re-aligned. On the north side of Stevenson Boulevard, Cherry Street would need to be re-striped for approximately 800 feet. The implementation of these improvements would improve intersection LOS to an acceptable LOS D during the PM peak hour under proposed Plan conditions in 2035. Implementation of the above measure would improve conditions at the intersection to LOS D during the PM peak hour, which would be acceptable. However, because this mitigation measure is for an intersection located partly in the City of Fremont, full implementation is outside the jurisdiction of the City of Newark. The City of Newark will work with the City of Fremont to implement the mitigation measure and contribute on a fair-share basis; however until such time as	SU

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
		there is an implementation plan in place and funding is secured, this impact is considered significant and unavoidable.	
TRANS-2: The proposed Plan would not conflict with the 2011 Alameda CTC Congestion Management Program.	LTS	N/A	LTS
TRANS-3: The proposed Plan would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.	LTS	N/A	LTS
TRANS-4: The proposed Plan would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).	LTS	N/A	LTS
TRANS-5: Implementation of the proposed Plan would not result in inadequate emergency access.	LTS	N/A	LTS
TRANS-6: Implementation of the proposed Plan would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.	LTS	N/A	LTS
TRANS-7: Implementation of the proposed Plan, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable impacts.	LTS	N/A	LTS
UTILITIES AND SERVICE SYSTEMS			
UTIL-1: Implementation of the proposed Plan would increase Water Demand, however, sufficient water supplies are available to serve the project from existing entitlements and resources.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
UTIL-2: The proposed Plan would not require or result in the construction of new water facilities or expansion of existing facilities, the construction of which would cause significant environmental effects.	LTS	N/A	LTS
UTIL-3: The Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to water supply.	LTS	N/A	LTS
UTIL-4: The proposed Plan would not exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board (RWQCB).	LTS	N/A	LTS
UTIL-5: The proposed Plan would not require or result in the construction of new wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.	LTS	N/A	LTS
UTIL-6: The proposed Plan would not result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.	LTS	N/A	LTS
UTIL-7: The Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to wastewater.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
UTIL-8: The proposed Plan would not require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.	LTS	N/A	LTS
UTIL-9: The Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to stormwater facilities.	LTS	N/A	LTS
UTIL-10: The proposed Plan would be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs.	LTS	N/A	LTS
UTIL-11: The proposed Plan would comply with federal, State, and local statues and regulations related to solid waste.	LTS	N/A	LTS
UTIL-12: The Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to solid waste.	LTS	N/A	LTS

Note: The abbreviations used in Table 1-1 are as follows: LTS = Less than significant; SU = Significant and Unavoidable; N/A = Not applicable; S = Significant

2. *Introduction*

2.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

This document provides responses to comments received on the Draft Environmental Impact Report (Draft EIR) for the proposed General Plan Tune Up for the City of Newark and it includes revisions to the text and analysis in the Draft EIR made in response to comments. The Draft EIR identified significant impacts associated with the proposed Plan, and examined alternatives and recommended mitigation measures that could avoid or reduce potential impacts.

This document, together with the Draft EIR, will constitute the Final EIR if the City of Newark City Council certifies it as complete and adequate under the California Environmental Quality Act (CEQA).

2.2 ENVIRONMENTAL REVIEW PROCESS

The City of Newark is the lead agency for this EIR. This EIR has been prepared in compliance with CEQA. This EIR uses CEQA significance thresholds as listed in Appendix G of the CEQA Guidelines.

According to CEQA, lead agencies are required to consult with public agencies having jurisdiction over a proposed project, and to provide the general public and project applicant with an opportunity to comment on the Draft EIR. This Final EIR has been prepared to respond to comments received on the Draft EIR and to clarify any errors, omissions, or misinterpretations of discussions of findings in the Draft EIR.

The Draft EIR was made available for public review on August 14, 2013. The Draft EIR was distributed to local and State responsible and trustee agencies and the general public was advised of the availability of the Draft EIR through public notice. Copies of all written comments received on the Draft EIR are contained in this document.

2.3 DOCUMENT ORGANIZATION

This document is organized into the following chapters:

- **Chapter 1: Executive Summary.** This chapter is a summary of the findings of the Draft and the Final EIR. It has been reprinted from the Draft EIR with necessary changes made in this Final EIR.
- **Chapter 2: Introduction.** This chapter discusses the use and organization of this Final EIR.

- **Chapter 3: Revisions to the Draft EIR.** Corrections to the text and graphics of the Draft EIR are contained in this chapter. Underline text represents language that has been added to the EIR; text with ~~strike-through~~ has been deleted from the EIR.
- **Chapter 4: List of Commenters.** Names of agencies, organizations, and individuals who commented on the Draft EIR are included in this chapter.
- **Chapter 5: Comments and Responses.** This chapter contains reproductions of the letters received from agencies and the public on the Draft EIR. The responses are keyed to the comments which precede them.
- **Appendices.**The appendices for this document (presented in PDF format on a CD attached to the back cover) contain the following supporting documents:
    - **Appendix A:** Contents of CD submitted with Comment Letter Lippe Gaffney Wagner
    - **Appendix B:** Contents of CD submitted with Comment Letter High
    - **Appendix C:** Recurring Comment Letters

3. *Revisions to the Draft EIR*

This chapter presents specific changes to the text, tables, or figures of the Draft EIR that are being made in response to comments made by the public and/or reviewing agencies. In each case, the revised page and location on the page is set forth, followed by the textual, tabular, or graphical revision. These changes clarify and amplify the discussion in the Draft EIR. They do not indicate that any new or substantially more severe impacts would occur or result in any significant new information added to the EIR. Thus, the Draft EIR does not need to be re-circulated.

3.1 CHANGES TO THE TEXT OF THE DRAFT EIR

Additions to the text are shown in double underline and deletions are shown in ~~strikethrough~~. All changes to Chapter 1, Executive Summary of the Draft EIR, including changes to the Summary of Impacts and Mitigation Measures for the proposed Plan, are included in Chapter 1 of this Final EIR. Additionally, minor changes to the language of goals, policies, and actions in the Draft General Plan that are being made in response to public comments on that document are summarized in Table 3-1 below. To the extent the goals, policies, and actions being clarified are referenced in the Draft EIR, that language is hereby amended.

TABLE 3-1 REVISIONS TO POLICIES AND ACTIONS TO THE NEWARK GENERAL PLAN TUNE UP

Policy/Action No.	Policy/Action
Land Use Element	
Action LU-2.D	When development occurs within 100 feet of ~~adjacent to~~ wetlands or other ecologically sensitive areas, require mitigation programs which preserve ecological integrity.
Action LU-4.A	Develop special design standards and improvement plans for entry points and gateways into the City, including Thornton Avenue, ~~Mowry Avenue,~~ Newark Boulevard, and Cherry Street, and the existing gateways at Mowry Avenue and Stevenson Boulevard.
Action LU-9.A	Complete an ~~Area~~ Master Plan for the Greater New Park Mall Area that explores maintaining its regional retail focus while transforming the area into a dynamic urban center. ~~After the Area Master Plan's completion, undertake a Specific Plan or adjust the zoning regulations to implement the Plan's recommendations.~~ NewPark should be a contemporary, sustainable, and exciting destination for the entire Bay Area.
Transportation Element	
Action T-2.A	Adopt the Draft Newark Pedestrian and Bicycle Master Plan, consistent with the alignments shown on Figure T-2 and in the Bay Trail Feasibility Study, and proceed with implementation of its priority projects. Periodically update the list of projects…

TABLE 3-1 REVISIONS TO POLICIES AND ACTIONS TO THE NEWARK GENERAL PLAN TUNE UP

Policy/Action No.	Policy/Action
NEW Action T-5.K	Managing Regional Cut-Through Traffic. Consider signage and other measures to reduce the volume of regional traffic using Newark's arterials and collectors as bypass routes to Interstate 880 and SR 84, particularly along Cherry Street/Newark Boulevard.
Action T-6.C	Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue between Filbert and Sycamore Streets with a contribution of funding from the Dumbarton TOD project. Pursue state and federal grant funding to carry out this project.
Delete/Renumber	*Delete Action T-6.D and re-label Action T-6.E and T-6.F as T-6.D and T-6.E.*
Economic Development Element	
Action ED-4.B	When development occurs within 100 feet of ~~adjacent to~~ wetlands or other ecologically sensitive areas, require mitigation programs which preserve ecological integrity.
Policy ED-5.6	Promote the image of Newark as a bayfront city, with ~~shoreline~~ amenities such as trails to the shoreline, ~~bayfront~~ open space, wildlife refuges, and bay vistas.
Action ED-5.B	Periodically evaluate the City's regulations applicable to businesses to identify if there are opportunities to make regulations more consistent and transparent, to expedite plan checking and permitting procedures, or to reduce or eliminate restrictions.
Conservation and Sustainability Element	
Action CS-1.A	Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas.
Policy CS-2.1	Ensure that land use decisions ~~consider~~ avoid and mitigate potential impacts on wildlife to the extent feasible.
Policy CS-2.3	~~Preserve and maintain~~ Encourage the preservation and maintenance of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~
Policy CS-2.6	Encourage the management of salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service to enhance their value for wildlife habitat and recreation. Such activities should be consistent with Cargill's perpetual rights to utilize the salt ponds as part of its solar salt production system. ~~In the event that salt production ceases, conduct a Specific Plan to explore a balance between development and preservation of important wildlife and open space resources.~~
Action CS-2.C	Undertake a series of measures, as annotated in the text below, to address the potential impacts of proposed development in areas where special status plant and animal species may occur. Coordination with regulatory and resource agencies shall be required as appropriate to ensure any measures undertaken will be effective and sufficiently protective.
Action CS-2.E	Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.
Policy CS-4.1	Maintain and improve City programs for protecting and preserving trees.

TABLE 3-1 REVISIONS TO POLICIES AND ACTIONS TO THE NEWARK GENERAL PLAN TUNE UP

Policy/Action No.	Policy/Action
Action CS-4.B	Tree Planting and Maintenance Criteria. Periodically review the City's street tree planting criteria, maintenance practices, and street tree list to ensure that they are achieving the city's goal of sustaining a healthy urban forest. Modify tree trimming and management practices if it is found that they do not support this goal. Encourage tree trimming on private property to use practices which ensure long-term tree health. ~~reflect revisions to City policies and changing horticultural practices~~.
Policy CS-5.8	Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise.~~
Parks and Recreation Element	
Action PR-1.A	Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay. Future restoration activities should be consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service.
Action PR-1.B	Use the environmental review process to encourage new development to designate areas with unique vegetation, wildlife habitat, or natural resources as open space or to provide adequate mitigation for impacts to such areas.
Policy 5.1	Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay.
NEW	*Action PR-5.E: Public Access Requirements. Ensure that future land use and capital improvement decisions for areas within the jurisdiction of the Bay Conservation and Development Commission (BCDC) are consistent with BCDC's public access requirements and do not preclude maximum feasible access to and along the waterfront."*
Environmental Hazards Element	
Policy EH-3.9	Consider the effects of rising sea level on the potential for flooding in low-lying areas and participate in regional adaptation efforts for these areas. Information on flood hazards related to sea level rise should be used to ensure that flood risk is reduced.

Note: *Italics* refers to new or deleted actions/policies.

Chapter 3.0, Project Description, Revisions

Under the Dumbarton TOD heading on page 3-12 of the Draft EIR, the first sentence is hereby revised as follows:

The Dumbarton TOD Area Specific Plan (TOD Plan), adopted by the City of Newark in 2011 ~~on September 8, 2010~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark.

The second bullet point under the Dumbarton TOD Area Specific Plan heading on page 3-12 of the Draft EIR is hereby revised as follows:

Surrounding residential uses throughout the rest of the TOD Plan Area, with townhomes and medium to medium-high density housing within a ½-mile radius of the planned transit station, and single-family homes beyond that to the south;

The last paragraph on page 3-14 and continuing on page 3-15 of the Draft EIR is hereby revised as follows:

A recalibration of the residential categories is proposed, to better reflect existing and proposed housing densities in the city. The Low Density Residential category now includes neighborhoods developed at densities less than 8.7 ~~from 1.0 to 8.5~~ units per net acre. The Medium Density category has been retitled Low Medium Density. The density range is ~~has not changed and continues to be~~ 8.5 to 15 units per net acre ~~or less~~. The Low Medium category is intended for small lot subdivisions and zero lot line type development. The former High Density category has been retitled Medium Density. The density range is from ~~has not changed and continues to be 15~~ 14 to 30 units per net acre. A new High Density category has been added for housing in the ~~30~~ 25 to 60 units per acre range. Adjustments have been made to the land use map so that developed multi-family parcels have been placed in the category which best reflects their actual densities. Within the Dumbarton TOD area, the Land Use Map reflects the "best fit" designations using these categories, but the text acknowledges that slightly different density ranges may apply, as prescribed by the adopted Specific Plan.

Figure 3-6 of the Draft EIR is hereby replaced with Figure 3-6 as shown overleaf:

The last full paragraph on page 3-17 of the Draft EIR is hereby revised as follows:

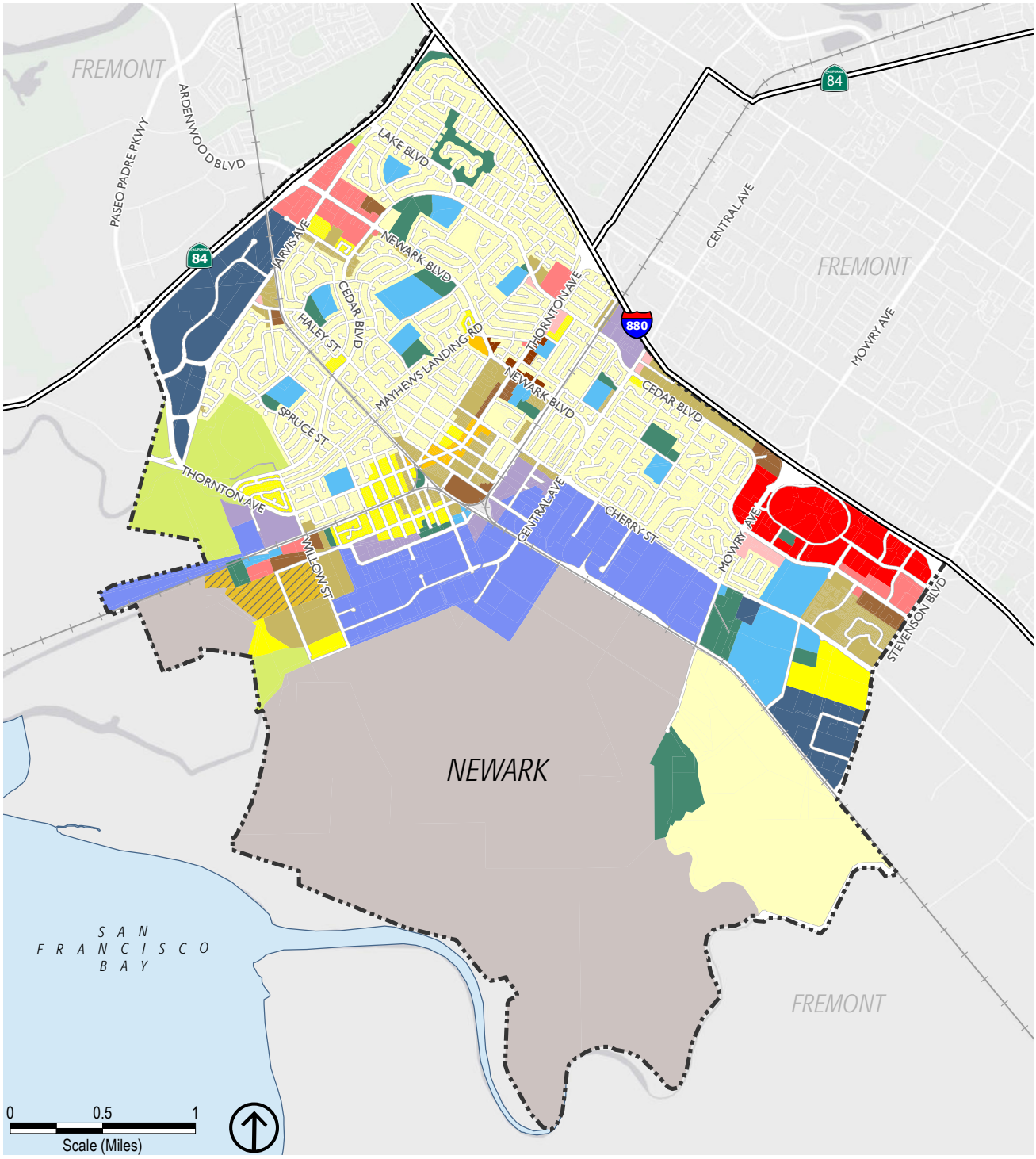
The Plan also proposes a reorganization of agricultural and open space designations. The Agriculture/Resource Production designation is renamed Salt Harvesting, Refining and Production in order to more accurately reflect the nature of activities taking place on land to which it applies. This designation applies to approximately 3,000 acres of privately owned properties used for salt harvesting, refining and production, including the land holdings of the Cargill Salt Company on the western side of the city.

Under the Dumbarton Transit-Oriented Development Focus Area on page 3-20 of the Draft EIR the paragraph is hereby revised as follows:

The vision for the DTOD Focus Area is also the same, and the proposed Plan incorporates the TOD Plan without proposing additional land use changes over and above those already incorporated into the existing General Plan at the time the TOD Plan was adopted by Newark City Council in 2011 ~~2010~~.

The paragraph under the Buildout Projections heading on page 3-23 of the Draft EIR is hereby revised as follows:

This section provides a quantification of the future population, housing units, and jobs that could result from buildout of the proposed Plan. Buildout projections have been developed in order to allow for an evaluation of the "reasonably foreseeable" direct and indirect impacts of the proposed Plan, as required under CEQA. This



Source Data: City of Newark, 2012; The Planning Center | DC&E, 2013; Tiger Roads 2010; ESRI, 2010; FTC, 2010.

Open Space Designations
- *Parks and Recreational Facilities*
- *Conservation - Open Space*

Industrial Designations
- *Limited Industrial*
- *Special Industrial*
- *General Industrial*

Residential Designations
- *Low Density Residential*
- *Low-Medium Density Residentail*
- *Medium Density Residentail*
- *Medium-High-Density Residential*
- *High-Density Residential*

Public - Institutional Designations
- *Public-Institutional*

Commercial Designations
- *Neighborhood Commercial*
- *Community Commerical*
- *Commercial Mixed Use*
- *Regional Commercial*
- *Office Commercial*

Resource Production Designations
- *Salt Harvesting, Refining and Production*

- *City Limits*

THE PLANNING CENTER | DC&E

Figure 3-6

Proposed General Plan Land Uses

section includes a discussion of baseline data, and horizon year buildout projections, ~~and maximum theoretical buildout of~~ for the proposed Plan.

The first paragraph on page 3-25 of the Draft EIR is hereby revised as follows:

Growth projections from the Dumbarton TOD Specific Plan EIR were added to the base year totals to project 2035 buildout. The Dumbarton TOD Focus Area is located in TAZs 931 and 932 and growth projections from the TOD Specific Plan EIR were divided between these TAZs in accordance with the land use designations proposed in the proposed Plan. It was assumed that Medium Density Residential (MDR) would develop at an intensity of 22 du/acre that Medium/High Density Residential (MHDR) would develop at an intensity of 30 du/acre and that High density Residential (HDR) would develop at an intensity of 45 du/acre. On this basis, 375 of the ~~2,600~~ 2,500 total units that are likely to be built under the TOD Specific Plan were assigned to TAZ 931 and the balance was assigned to TAZ 932. Based on the proposed land use designations in TAZ 931, it was assumed that 135 of the 375 units would be multi-family units and 240 units would be single-family units. In TAZ 932, it was assumed that 1,530 of the 2,225 units would be multi-family and 695 units would be single-family, based on the proposed land use designations.

Chapter 4.0, Environmental Analysis, Revisions

The first sentence on page 4.1-9 of the Draft EIR is hereby revised as follows:

The proposed Plan could affect the visual character and quality of the Dumbarton TOD, as it would allow development of up to ~~2,600~~ 2,500 residential units, a neighborhood center containing retail shops, a grocery store and associated visitor-serving and residential uses, new infrastructure supportive of the new development, and parks on what is now primarily vacant land with few structures on it.

Chapter 4.2, Air Quality, Revisions

The first full sentence at the top of page 4.2-19 of the Draft EIR is hereby revised as follows:

Implementation of proposed Plan goals, policies, and programs, including ~~Policy EH-1.6~~ and Action HW-1F ~~EH-1.C~~, described below, would ensure these impacts are less than significant.

The paragraph under the Siting Receptors Proximate to Odor Sources heading on page 4.2-46 of the Draft EIR is hereby revised as follows:

Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2-7. Additionally, sensitive receptors could be located in the vicinity of the salt harvesting, refining, and production operations ~~ponds operated~~ by Cargill, Incorporated, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by

an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be *less than significant*.

Chapter 4.3, Biological Resources, Revisions

The discussion of the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan beginning towards the bottom of page 4.3-2 and continuing on page 4.3-3 of the Draft EIR is hereby revised as follows:

The San Francisco Bay National Wildlife Refuge was established by the United States Congress in 1972 for a total not to exceed 23,000 acres.[1] The Refuge was one of the first urban National Wildlife Refuge established in the United States. The first lands were acquired for the Refuge in 1974. In 1988, the USFWS's acquisition authority was increased from 23,000 to 43,000 acres. Most of the existing refuge lies within the City of Fremont. Cargill has the perpetual right within the refuge (and outside Newark city limits) to utilize evaporator ponds, commonly referred to as "salt ponds" or "evaporators" for its solar salt production system.

In 1990, the USFWS issued the Final Environmental Assessment for the Refuge boundary expansion, which identified 24,500 acres as potential additions (Areas for Potential Additions) because not all lands would be added to the Refuge. The Areas for Potential Additions ~~areas~~ identified by the USFWS are recognized through USFWS policy as the approved acquisition boundary for the Refuge. The USFWS does not have jurisdiction over the Areas for Potential Additions ~~lands within the acquisition boundary~~, and these lands are not part of the Refuge unless they are purchased or placed under an agreement that provides for management under the Refuge System.[2] In addition, USFW's acquisition plans do not preclude lawful, environmentally sound development, as determined by the local government in whose jurisdiction a potential addition area lies, and land within Areas for Potential Additions may only be acquired from willing sellers.[3] In fact, to date, many lands within the approved 1990 acquisition boundary have already been converted to urban developments.[4]

In 1995, the Refuge was renamed as the Don Edwards San Francisco Bay National Wildlife Refuge in 1995 to honor Congressman Don Edwards' efforts to create the refuge.[~~3~~5] The Refuge was created with three main purposes: to preserve natural resources, including habitat for migratory birds, harbor seals, and threatened and endangered species; to provide environmental education and wildlife interpretation opportunities; and to preserve open space and wildlife-oriented recreation.[~~4~~6]

The Refuge and Areas for Potential Additions ~~approved acquisition boundary~~ are shown in Figure 4.3-1. As of April 2013, the USFWS owned and/or managed approximately 30,000 acres. ~~under the approved acquisition boundary.[5]~~ As shown in Figure 4.3-1, none of the focus areas contain lands within the Refuge and most of the Refuge lies within the City of Fremont. However, Area 4 includes lands within the Areas for Potential Additions ~~approved acquisition boundary~~.

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[3] U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 8.

[4] U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 9.

~~5 U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 10.~~

The last paragraph on page 4.3-3 of the Draft EIR is hereby revised as follows:

The California Endangered Species Act (CESA) (California Fish and Game Code Section 2050 *et seq.*) establishes State policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. The CESA mandates, if a development project would result in the "take" of a threatened or endangered species – defined as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" – mitigation must be provided as part of an Incidental Take Permit issued by the California Department of Fish and Wildlife (CDFW). ~~that State agencies should not approve projects that jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy.~~ For projects that would affect a species that is on the federal and State lists, compliance with the FESA satisfies the CESA if the ~~California Department of Fish and Wildlife (~~CDFW~~)~~ determines that the federal incidental take authorization is consistent with the CESA under California Fish and Game Code Section 2080.1. For projects that would result in take of a species that is only State listed, the project proponent must apply for a take permit under Section 2081(b).

Figure 4.3-1 of the Draft EIR is hereby replaced with Figure 4.3-1 as shown overleaf:

Figure 4.3-2 of the Draft EIR is hereby replaced with Figure 4.3-2A shown overleaf:

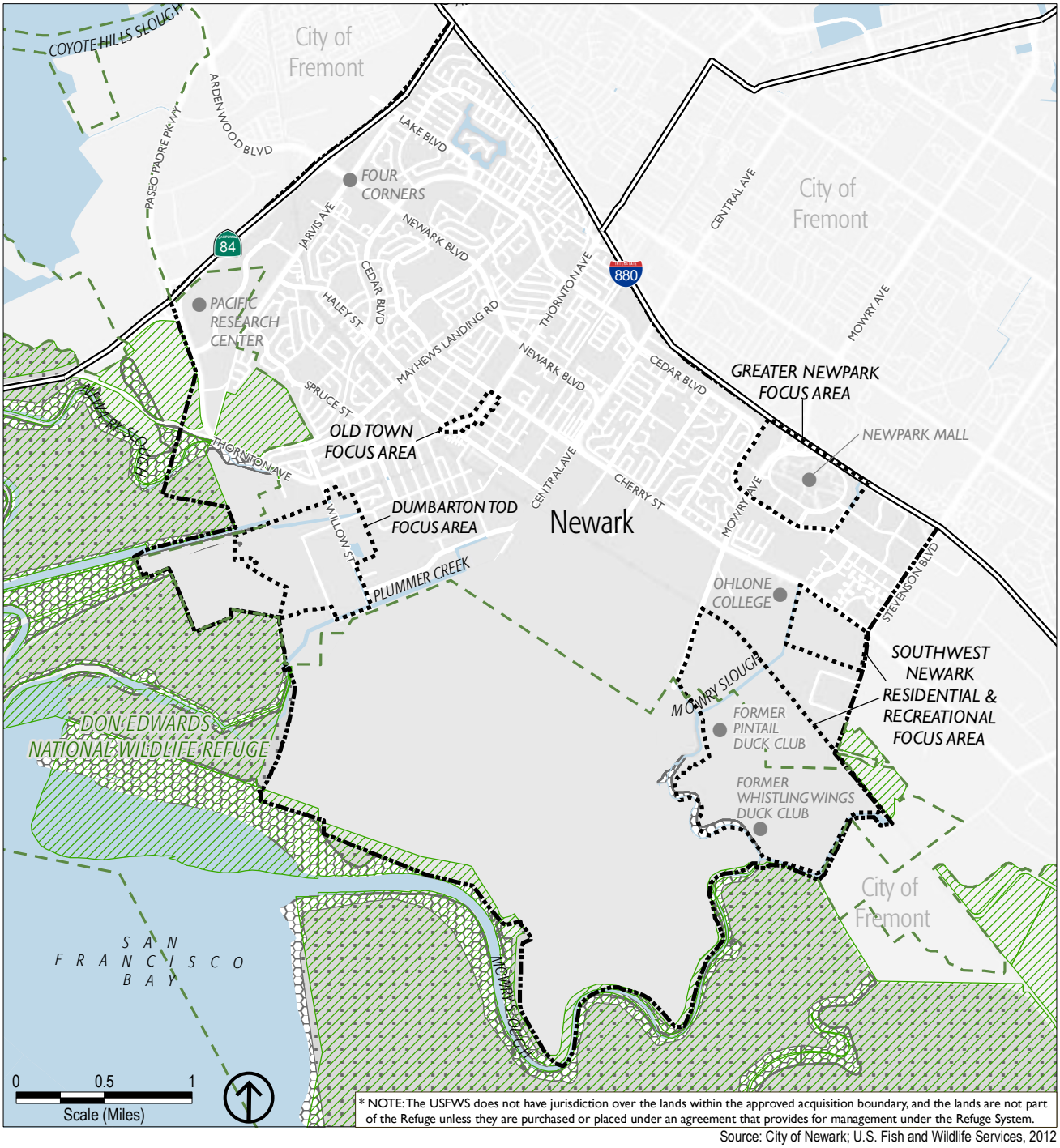
Figure 4.3-2B is now added as shown overleaf:

The first paragraph on page 4.3-9 of the Draft EIR is hereby revised as follows:

This section discusses the wildlife and plant communities and special-status species that are known to occur or have potential to occur in the Plan Area. As described in chapter 3.0 of this Draft EIR, the majority of land in the Plan Area is urbanized and developed; however, a large area of land along the western perimeter of Newark is occupied by ~~the~~ Cargill for salt harvesting, refining and production ~~Corporation salt evaporation ponds~~. Additionally, a portion of the Don Edwards San Francisco Bay National Wildlife Refuge is adjacent to the Plan Area outside the City limit. The Refuge ~~Both these areas~~ provides habitat for biological resources occurring or potentially occurring adjacent to ~~in~~ Newark.

Under the description of the Lacustrine habitat type on page 4.3-9 of the Draft EIR, the language is hereby is revised as follows:

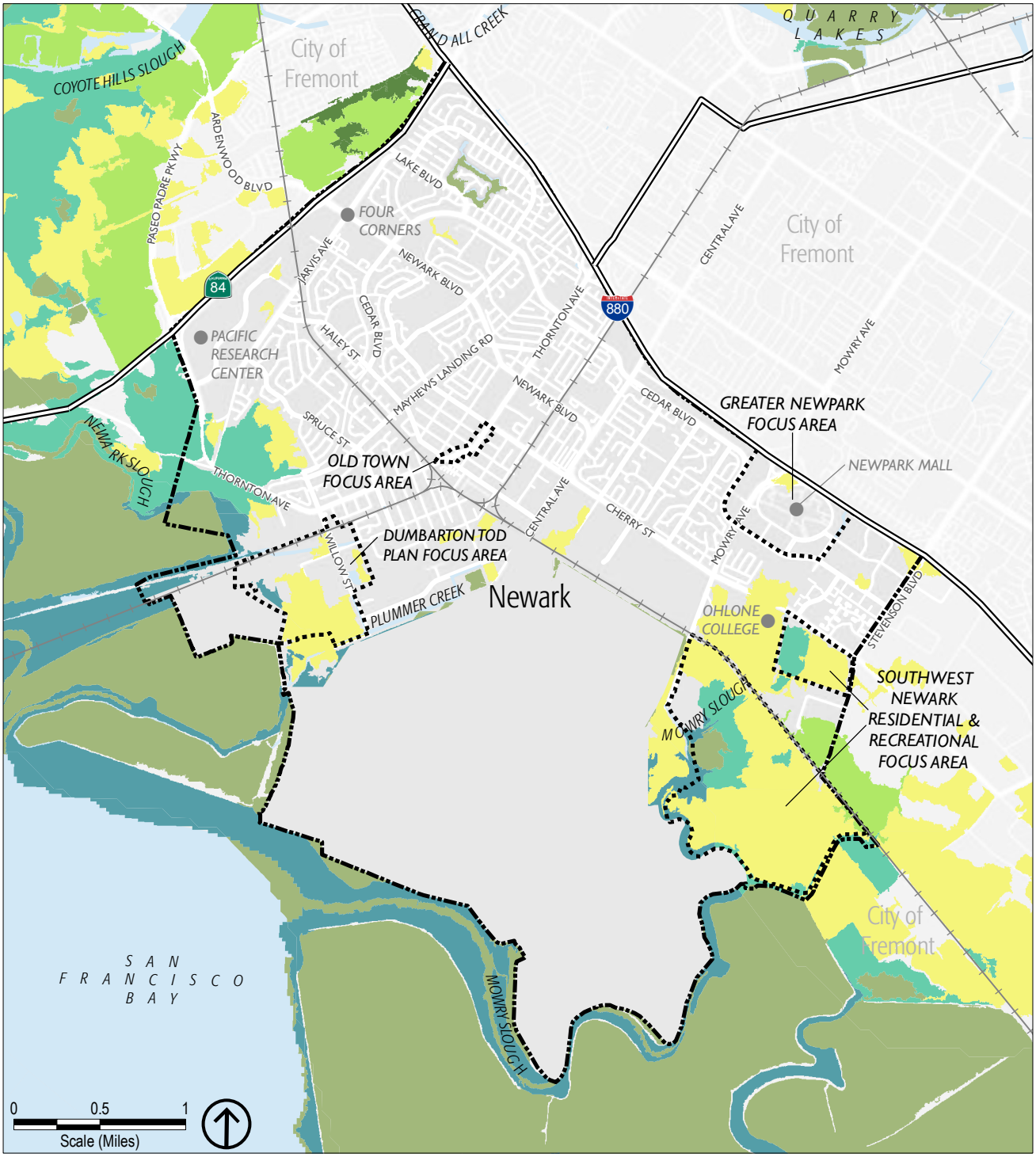
Lacustrine habitats are the predominant non-urban habitat type in Newark ~~and include the salt ponds, which are described in further detail below~~.



Source: City of Newark; U.S. Fish and Wildlife Services, 2012

City Limit
Railroads
Landmarks
Don Edwards San Francisco Bay National Wildlife Refuge
Don Edwards San Francisco Bay National Wildlife Refuge Potential Addition*
Focus Area
Tidal Marsh
Managed Wetlands

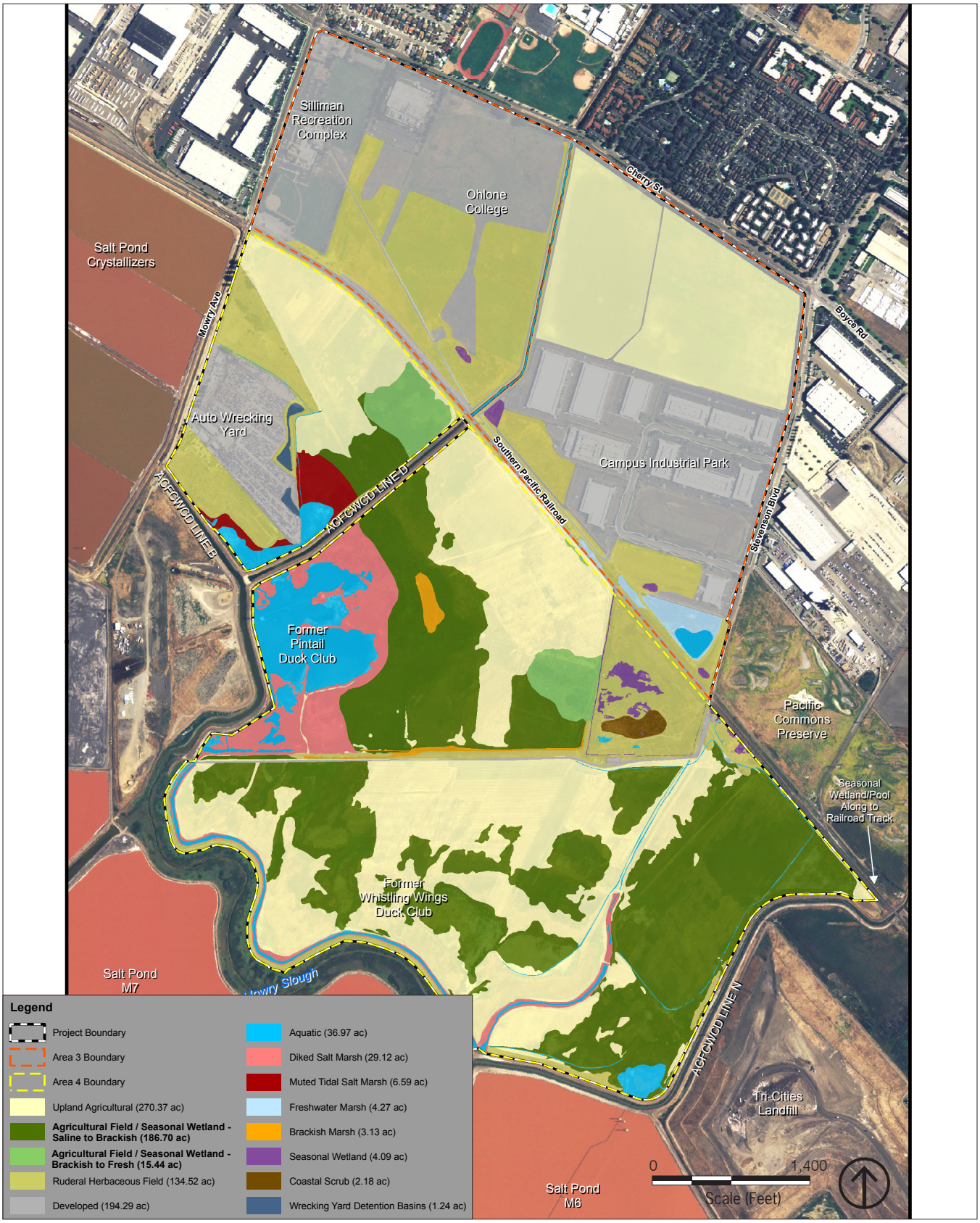
Figure 4.3-1
Don Edwards SF Bay National Wildlife Refuge and Areas for Potential Addition



Source: City of Newark, 2012; U.S. Department of Agriculture Forest Service, 2007.

City Limit
Landmarks
Railroads
Focus Area
Annual Grass
Cropland
Valley Oak Woodland
Lacustrine
Fresh Emergent Wetland
Saline Emergent Wetland

Figure 4.3-2A
Vegetation and Habitat Types



Source: H.T. Harvey & Associates.

Figure 4.3-2b
Vegetation and Habitat Types Areas 3 and 4

The description under the Salt Ponds heading on page 4.3-11 of the Draft EIR is hereby revised as follows:

The commercial salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge, and adjacent to the Plan Area outside the City limit, are large, open ~~water~~ areas ranging in salinity from similar to sea water at 32 parts per million to ~~135~~180 parts per million, or more than ~~four~~ five times the salinity of ~~more salty than~~ sea water.[22] These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water.

Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds within the Refuge for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt.[23] Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin.[24]

Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.[25]

Cargill, which sold and donated 12,500 acres of salt ponds within the Refuge, has retained perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system and will continue its operations for the foreseeable future. Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural evaporation. The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds, in connection with the San Francisco Bay Plan (Bay Plan), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[26]

After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities within the western portion of the City of Newark (the Newark Plant Site). Brines are placed within "crystallizers" at the Newark Plant Site, which are large man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations with the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment.

Hence, while some of the salt evaporators with the Refuge (and outside the city of Newark) provide habitat for specific species of wildlife, the Newark Plant site is industrial in nature and consists of hypersaline brines and/or

precipitated salts that, in general, contain very limited or no vegetation or biological characteristics or habitat to support special use.[27]

[26] San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 6-7 (Staff Report - October 2005).
27 San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 27-28 (Staff Report October 2005).

Figure 4.3-3 of the Draft EIR is hereby revised as follows to correct a typographical error in the Congdon tarplant name as shown overleaf:

The second paragraph under BIO-3 on page 4.3-39 of the Draft EIR is hereby revised as follows:

A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area was received from the USACE in October 2007. The USACE determination established approximately 242 acres of wetlands and 34.21 acres of "other waters" for a total of 277 acres. These areas include all aquatic, diked salt marsh, seasonal wetlands, muted tidal saltmarsh, freshwater marsh, brackish marsh, and tidal salt marsh. Jurisdictional determination has also been made for 7.2 acres of wetlands on the Torian property, located within the Dumbarton TOD Focus Area. Additionally, other portions of the Plan Area along the western perimeter of Newark may ~~likely~~ support wetland vegetation, wetland hydrology, and wetland soils as shown on Figure 4.3-3, and therefore it is possible ~~likely~~ that there are additional Waters of the US within these areas, although no formal delineation has been made by USACE.

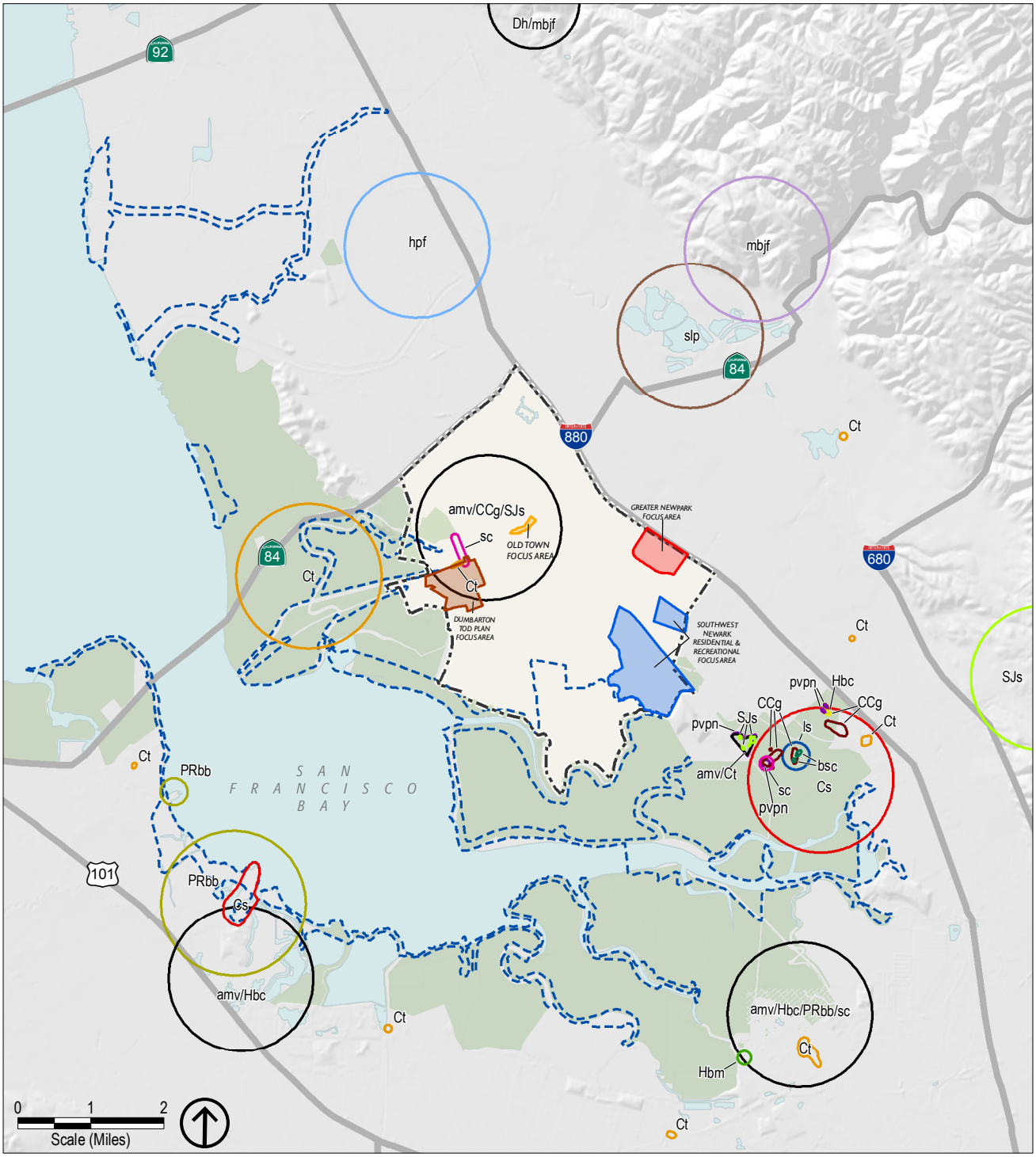
The first paragraph under BIO-4 on page 4.3-42 of the Draft EIR is hereby revised as follows:

The proposed Plan would result in a significant impact if new development would interfere with species movement or involve barriers or threats within wildlife corridors. Given the highly urbanized context of the Plan Area and the extent of existing development, vehicular traffic, and human and pet presence in Newark, opportunities for wildlife movement in the urbanized portion of the city are minimal. Existing development, including buildings, fencing, flood control channels, major roadways, or other similar improvements, represent substantial barriers to wildlife movement. The best opportunities for wildlife migration exist along the western edge of the Plan Area, adjacent to the Don Edwards National Wildlife Refuge, but excluding Cargill's existing salt harvesting, refining and production operations as designated in Figure LU-1 of the proposed Plan.

Chapter 4.7, Hazards and Hazardous Materials, Revisions

The beginning of page 4.7-2 of the Draft EIR is hereby revised as follows:

California Health and Safety Code Chapter 6.95, ~~and~~ Title 19 California Code of Regulations Section 2729, and Title 22, Division 4.5, of the California Code of Regulations set out the minimum requirements for business emergency plans and chemical inventory reporting. These regulations require businesses to provide emergency response plans and procedures, training program information, and a hazardous material chemical inventory



Source: City of Newark, California Natural Diversity Database, 2012.

- CCg - Contra Costa goldfields
- Cs - California seablite
- Ct - Congdon's tarplant
- Hbc- Hoover's button-celery
- Hbm - Hall's bush-mallow
- PRbb - Point Reyes bird's-beak
- SJs - San Joanquin spearscale
- bsc - brittlescale
- hpf - hairless popcorn-flower
- ls - lesser saltscale
- mbjf - most beautiful jewel-flower
- pvpn - prostrate vernal pool navarretia
- sc - saline clover
- slp - slender-leaved pondweed
- Multiple occurences
  - amv - alkali milk-veetch
  - Dh - Diablo helianthella
  - SJs - San Joaquin spearscale
- Northern Coastal Salt Marsh Terrestrial Community
- Don Edwards SF Bay National Wildlife Refuge

Figure 4.3-3
Special Status Plant Species and Sensitive Natural Communities

disclosing hazardous materials stored, used, or handled on site. A business which uses hazardous materials or a mixture containing hazardous materials must establish and implement a business plan if the hazardous material is handled in certain quantities.

The addition of a second paragraph under the State Water Resources Control Board heading has been added on page 4.7-4 of the Draft EIR and hereby revised as follows:

The RWQCBs Toxics Cleanup Division staff oversees the investigation and cleanup of leaking underground fuel tanks (LUFT) sites and spills, and leaks, and cleanup (SCP) sites, pursuant to California Water Code 13304, where hazardous substances have been discharged and deposited into Waters of the State and have created a condition of pollution and nuisance.

The bullet on the last page of 4.7-7 and a portion of Table 4.7-1 on page 4.7-8 and 4.7-10 of the Draft EIR is hereby revised as follows:

~~Ashland Chemical, located at 8600 Enterprise Drive, Newark, was a packaging and distribution center involving a variety of chemicals. Contaminants that have been detected and removed from the soil are toluene, xylene, ethylbenzene, PCE, and TCE. Ongoing efforts to extract and treat groundwater are supervised by the RWQCB.~~[14]

[14] ~~San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 27-28 (Staff Report October 2005).~~

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK

NO.	NAME	ADDRESS	CITY	TYPE	STATUS	DATABASE
1	A & S Enterprises	7275 Thornton Ave	Newark	LUST Cleanup Site	Open – Remediation	GeoTracker
2	Abe Oil, Inc.	8130 Enterprise Drive	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
3	Ac Transit-Newark Facility	37650 Sycamore Street	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
4	Agilent Technologies	39201 Cherry Street	Newark	Tiered Permit	Inactive – Needs Evaluation	EnviroStor
5	Alcan Plastic Packaging Plant	6590 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
6	American National Can	6590 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
~~7~~	~~Ashland Chemical~~	~~8600 Enterprise Drive~~	~~Newark~~	~~State Response~~	~~Refer: RWQCB~~	~~EnviroStor; GeoTracker~~
8	Ashland Chemical	8610 Enterprise Drive	Newark	Tiered Permit; Other Cleanup Site	Refer: RWQCB; Open – Verification Monitoring	EnviroStor; GeoTracker
~~9~~	~~Ashland Specialty Chemical Co~~	~~8600 Enterprise Ave~~	~~Newark~~	~~Corrective Action~~	~~Refer: RWQCB~~	~~EnviroStor; GeoTracker~~

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK

NO.	NAME	ADDRESS	CITY	TYPE	STATUS	DATABASE
~~10~~	~~Ashland Specialty Chemical Co~~	~~8600 Enterprise Ave~~	~~Newark~~	~~Non-Operating~~	~~RCRA~~	~~EnviroStor; GeoTracker~~
….						
45	Honeywell International, Inc.	8333 Enterprise Drive	Newark	Corrective Action	~~Completed~~ Ongoing	Envirostor; Geotracker

Under Applicable Regulations on page 4.7-21 of the Draft EIR, the following bullet point was added:

- California Code of Regulations (Title 22)

The applicable regulations on pages 4.7-23, 4.7-26, and 4.7-30 of the Draft EIR is hereby revised as follows to reflect the addition of California Code of Regulations (Title 22):

- California Code of Regulations (Title 22) ~~DTSC (2011-2016 Strategic Plan)~~

The first paragraph under HAZ-8 on page 4.7-28 of the Draft EIR is hereby revised as follows:

The Plan Area is surrounded on all sides by land within the limits of the City of Fremont. The Don Edwards San Francisco Bay National Wildlife Refuge is located along the western perimeter of the Plan Area on the shore of San Francisco Bay. As shown on Figure 4.7-2, the Plan Area does not include State Responsibility Areas of very high, high, or moderate risk from wildfire. The Plan Area does, however, include some Local Responsible Areas of high and moderate risk from wildfire, although the majority of the Plan Area is designated as non-wildland/non-urban and urban unzoned.

Chapter 4.8, Hydrology and Water Quality, Revisions

The first paragraph under the San Francisco Bay Conservation and Development Commission heading on page 4.8-7 of the Draft EIR is hereby revised as follows:

~~The California Coastal commission carries out its mandate locally through~~ The San Francisco Bay Area Conservation and Development Commission's (BCDC'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." BCDC's jurisdiction for San Francisco Bay includes all sloughs, marshlands between mean high tide and 5 feet above mean sea levels, tidelands, submerged lands, and land within 100 feet of the Bay shoreline. The precise boundaries are determined by BCDC upon request. For planning purposes, BCDC assumes that projects have a lifespan of at least 50 to 90 years.[1]

[1] Bay Area Conservation and Development Commission (BCDC), 2011, *San Francisco Bay Plan,* http://www.bcdc.ca.gov/laws_plans/plans/sfbay_plan.shtml accessed on March 25, 2013.

The second paragraph under the San Francisco Bay Conservation and Development Commission heading on page 4.8-7 of the Draft EIR is hereby revised as follows:

As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for any proposed fill, extraction of materials, or change is use of any water, land, or structure within the Commission's jurisdiction. The BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands in the Southwest Newark Residential and Recreational Focus Area. Projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection. These policies state that adequate flood protection should consider future relative sea level rise and all proposed development should be above the highest estimated tide level for the expected life of the project or sufficiently protected by levees. In addition, BCDC's policies to protect the Bay from the water quality impacts of nonpoint pollution state that new development should be sited and designed consistent with standards in municipal storm water permits and state and regional storm water management guidelines. To offset the impacts from increased impervious areas and 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.

Figure 4.8-1 of the Draft EIR is hereby replaced with Figure 4.8-1 shown overleaf:

The second paragraph on page 4.8-14 of the Draft EIR is hereby revised as follows:

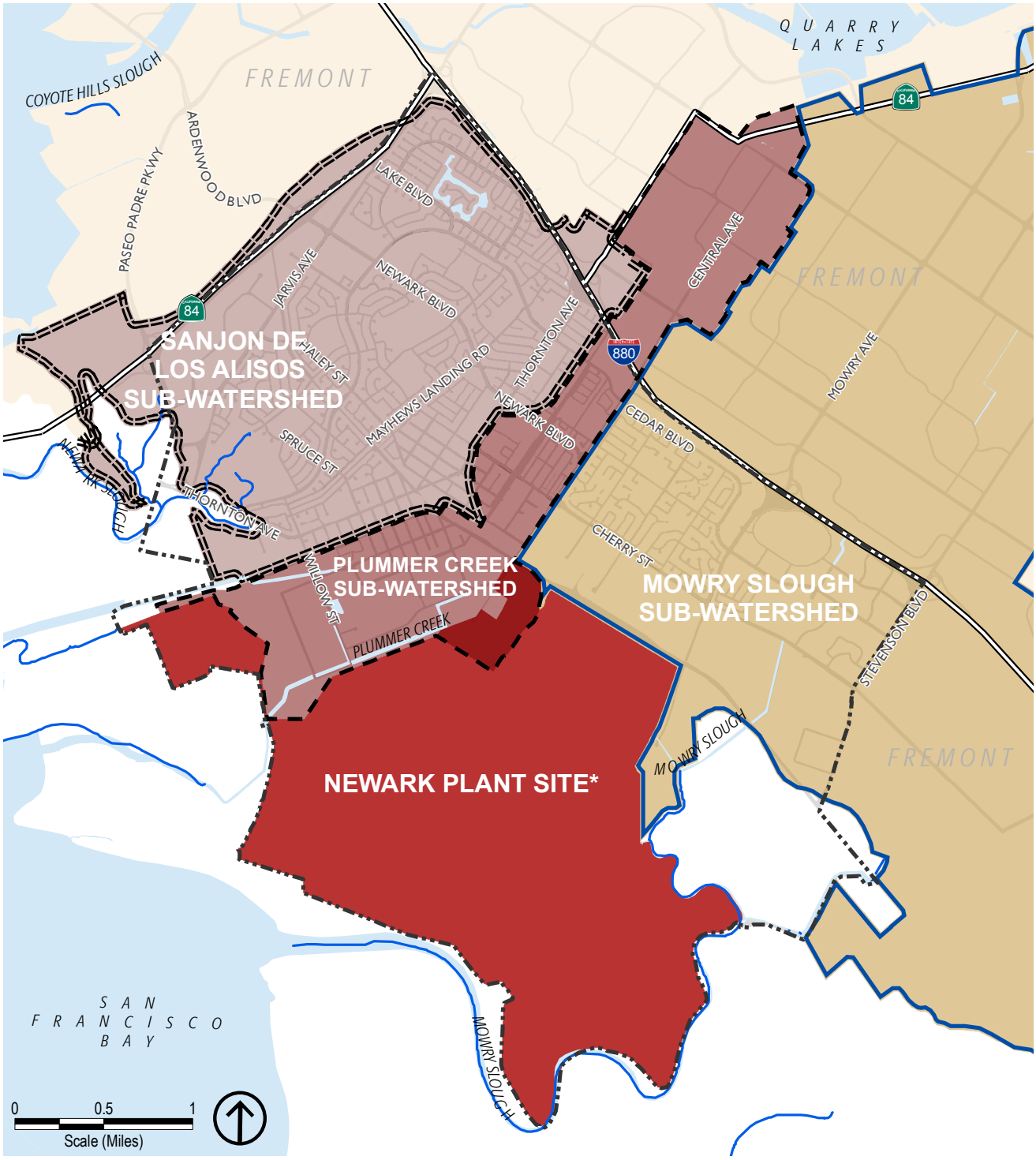
~~Approximately 22 percent of the water supplied by the ACWD is from groundwater wells.[2]~~ Approximately 40 percent of the water supplied by the ACWD is from groundwater wells with 22 percent supplied by well fields and 18 percent supplied by the Newark Desalination Facility. The groundwater level in the Newark Aquifer ranges from 2.2 to 8.5 feet bgs. When water levels in the Newark Aquifer fall below sea level, saline water from the Bay and salt evaporation ponds will flow inward, causing saltwater intrusion. The Newark Aquifer water levels are presently above sea level and are forecast to remain above sea level through at least June 2013.[3]

The last sentence of the first paragraph under the Water Quality heading on page 4.8-14 of the Draft EIR is hereby revised as follows:

The surface water bodies that currently exist in the Plan Area include engineered channels maintained by the ACFC, Plummer Creek, Newark Slough, Mowry Slough, tidal marshes, tidal flats, ~~salt ponds~~, and small tidal estuaries.

~~[2] Alameda County Water District, 2013, *Survey Report on Groundwater Conditions,* February.~~

[3] Alameda County Water District, 2013, *Survey Report on Groundwater Conditions,* February.



Source: City of Newark, 2012; Santa Clara County, 2012; The Planning Center | DC&E, 2012; ESRI, 2010; FTC, 2010; Fugro William Lettis & Associates, Inc., 2010.

City Boundary
Creek
Newark Plant Site*
*This is a closed, engineered system, for salt production and nothing is released or discharged to San Francisco Bay.

Watersheds
Mowrey Slough Sub-Watershed
Sanjon de los Alisos Sub-Watershed
Plummer Creek Sub-Watershed
Other Lower Alameda Creek Watersheds

Figure 4.8-1
Watersheds in the Vicinity of the Plan Area

The first sentence of the second paragraph under the Water Quality heading on page 4.8-14 is hereby revised as follows:

Under the Alameda County Urban Runoff Clean Water Program, stormwater within Alameda County has been characterized in terms of water quality and runoff pollutant loading. ~~No site-specific data regarding stormwater runoff from the Plan Area exists.~~

The first sentence of the last paragraph on page 4.8-14 of the Draft EIR is hereby revised as follows:

As mentioned earlier, the Plan Area consists of open space, ~~and~~ undeveloped and non-urbanized land near the bay shoreline and developed land further inland.

The third and fourth paragraph on page 4.8-15 continuing on page 4.8-16 of the Draft EIR is hereby revised as follows:

Much of this area is open space, areas if salt harvesting, refining and production ~~salt flats~~, and tidal marshes with no plans~~ned~~ for urbanized development. However, many of the planned future housing sites in the Dumbarton TOD and Southwest Newark Residential and Recreational Focus Areas, are within the 100-year floodplain. In addition, the areas immediately adjacent to the ACFC storm drain channels (Lines B, D, F, H, and I) are within the 100-year floodplain with some of the outlying areas mapped as being within the 500-year floodplain. The flood prone areas within the City of Newark are depicted on Figure 4.8-4.

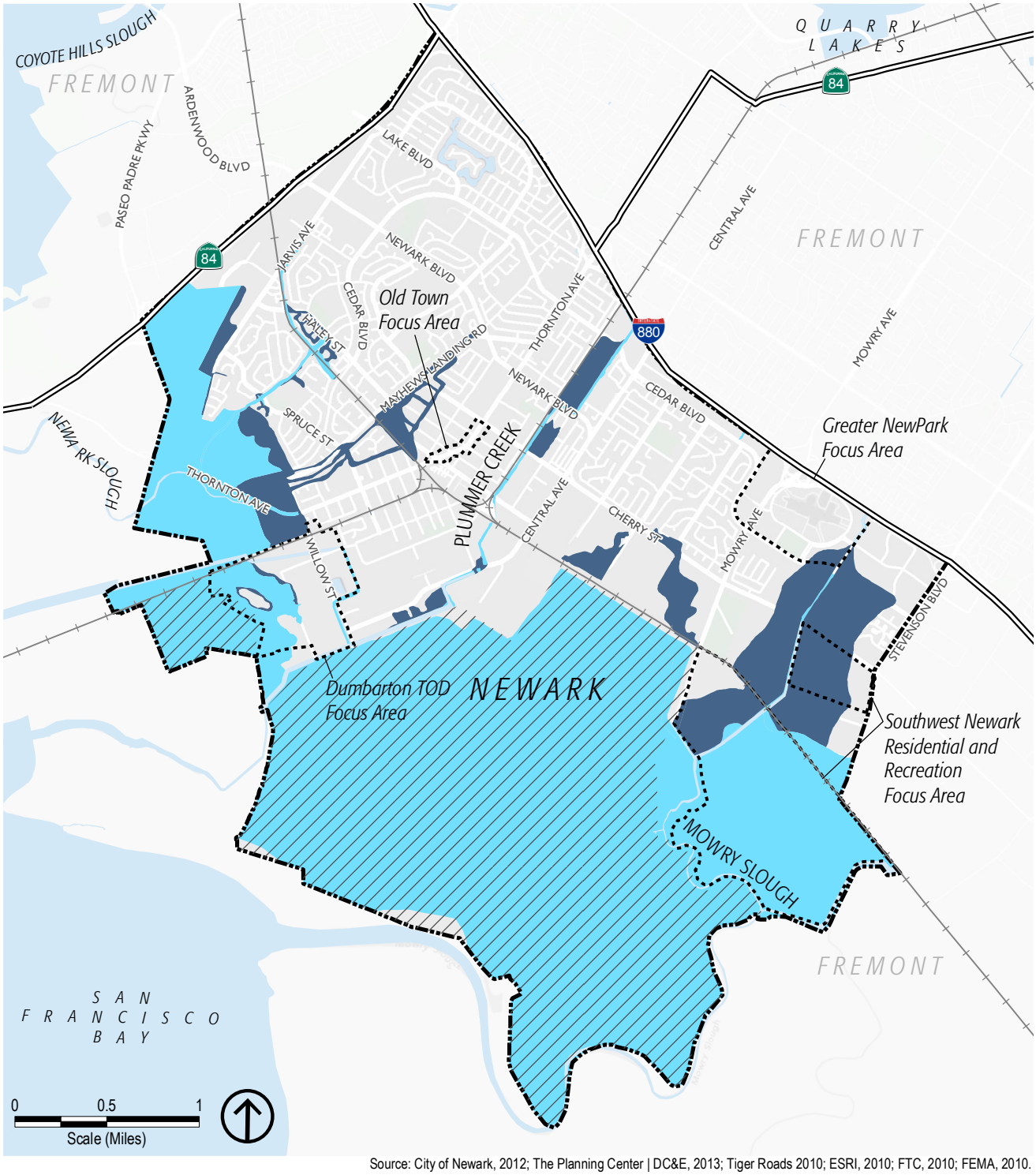
~~Although some locations within the City are protected from flooding by levees,~~ FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability.[4] Although levees do exist at some locations within the City, ~~M~~most of these levees ~~within the City of Newark~~ were not designed to provide flood protection and are not certified. Therefore, the areas next to these levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event.

Figure 4.8-4 of the Draft EIR is hereby replaced with Figure 4.8-4 as shown overleaf:

The first paragraph on page 4.8-33 of the Draft EIR is hereby revised as follows:

The protected portion of the San Francisco Bay near the City of Newark is not subject to potential flooding by seiches, since the several levees and long distance of shallow salt ponds ~~water~~ associated with salt pond production within the Don Edwards San Francisco Bay National Wildlife Refuge ~~and harvesting operations~~ between San Francisco Bay and the City of Newark would minimize waves generated by a seiche. In addition, the City of Newark is not located below any steeply sloped areas that would result in a mud or debris flow. The land within the City of Newark is relatively flat and is not within any identified earthquake-induced rainfall-induced landslide areas, according to ABAG hazard maps. For these reasons, the City is not considered to be subject to significant risk from tsunamis, seiches, or mudflows.

[4] FEMA, 2013, *Levee Certification vs. Levee Accreditation*. http://www.fema.gov/library/viewRecord.do?id=4828m accessed March 19, 2013.



Source: City of Newark, 2012; The Planning Center | DC&E, 2013; Tiger Roads 2010; ESRI, 2010; FTC, 2010; FEMA, 2010.

City Limit

Salt Harvesting, Refining and Production

100-Year Flood Zone

500-Year Flood Zone

Figure 4.8-4
FEMA Flood Zones

Chapter 4.9, Land Use and Planning, Revisions

The first sentence under the Dumbarton Transit-Oriented Development Area Specific Plan on page 4.9-2 is hereby revised as follows:

The Dumbarton Transit-Oriented Development (TOD) Area Specific Plan, adopted by the City of Newark in ~~on September 8,~~ 2011 ~~2010~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark.

The second paragraph under the Distribution of Existing Land Uses heading on page 4.9-3 of the Draft EIR is hereby revised as follows:

The remaining 50 percent of Newark's land area consists of undeveloped or non-urbanized land. Of this total, approximately 960 acres is vacant and zoned for development, with 280 acres of "conservation" open space, 70 acres of agriculture, 160 acres of public parkland and other "improved" open space, and approximately 3,025 acres of land used for salt harvesting, refining and production. ~~evaporation ponds and ancillary facilities used for salt production.~~

Page 4.9-5 of the Draft EIR is hereby revised as follows:

Undeveloped and Non-Urbanized Land

Undeveloped and non-urbanized areas in Newark are principally located in the southern and western parts of the city. The Cargill salt harvesting, refining and production operations ~~evaporation ponds~~ constitute a majority of this area; however, approximately 960 acres of land in Newark is vacant and zoned for development. Most of this land is clustered in two areas: the Southwest Newark residential and Recreational Focus Area, west of Cherry Street between Mowry and Stevenson; and the Dumbarton TOD Focus Area. There are also several vacant tracts within the Pacific Research Center, in other industrial parks, and in the NewPark Mall vicinity.

The bulleted list on page 4.9-11 through 4.9-12 of the Draft EIR is hereby revised to include the following two policies at the end of the list:

- Policy PR-5.7: Trail Sustainability. Consider long-term sustainability issues, such as projected sea level rise, surface durability, and the condition of levees, in the design of shoreline and wetland trail facilities.

- Policy PR-5.8: Trail Design and the Environment. Design trails and public access features to minimize impacts on wetlands and other sensitive habitats, including habitat fragmentation. If necessary, identify secondary alignments in the event a trail must be seasonally closed for habitat protection purposes.

Chapter 4.10, Noise, Revisions

The second sentence on page 4.10-1 of the Draft EIR is hereby revised as follows:

The chapter ~~beings~~ begins with a discussion of the fundamentals of sound and vibration, and an examination of relevant federal, State, and local guidelines, policies, and standards regarding noise and vibration.

Chapter 4.13, Transportation and Traffic, Revisions

The first paragraph under State Regulations on page 4.13-2 of the Draft EIR is hereby revised as follows:

California Transportation Commission and California Department of Transportation

At the State level, California Transportation Commission (CTC) set transportation priorities and prepares the State Transportation Improvement Program (STIP), a multi-year capital improvement program. The California Department of Transportation (Caltrans) ~~is the primary State agency responsible for transportation issues~~ manages the ~~One of its duties is the construction and maintenance of the~~ State highway system, consisting of 45,000 miles of freeway and highway lanes and works with local agencies to manage local transportation projects. ~~Caltrans approves~~ This management includes the planning, design, and construction of improvements for all State-controlled facilities including I-880, State Route (SR) 84, and the associated interchanges for these facilities located in the Plan Area. Caltrans has established standards for roadway traffic flow and developed procedures to determine if State-controlled facilities require improvements. For projects that may physically affect facilities under its administration, Caltrans requires encroachment permits before any construction work may be undertaken. For projects that would not physically affect facilities, but may influence traffic flow and levels of services at such facilities, Caltrans may recommend measures to mitigate the traffic impacts of such projects.

The last paragraph under the Alameda County Congestion Management Program headings on page 4.13-4 of the Draft EIR is hereby revised as follows:

There are two roadways in Newark that are part of the CMP roadway system: SR-84 from Thornton Avenue ~~the San Mateo County line~~ to I-880 and I-880 as it runs along the eastern perimeter of Newark. Additionally, Thornton Avenue and Newark Boulevard are MTS routes.

The second sentence of the paragraph under the Chapter 16.12 – Streets and Lots heading on page 4.13-5 of the Draft EIR is hereby revised as follows:

The Code contains a table indicating required widths for various public roadway types, and specifies that these standards shall apply unless superseded by future General Plan amendments or other City resolutions.

The paragraph on under the Newark Traffic Calming Program heading on page 4.13-5 of the Draft EIR is hereby revised as follows:

The City of Newark has adopted a ~~brief~~ list of potential traffic calming measures in order to reduce traffic and speeding-vehicle impacts in residential areas and along collector streets. The City offers six potential traffic-calming measures, listed in descending order of preference: (1) resident education and selective speed limit enforcement, (2) street centerline striping, (3) stop signs, (4) chicanes, (5) center islands/medians, and (6) speed bumps. The City of Newark considers speed bumps to be a measure of "last resort." For items 1, 2, and 3, such actions may be initiated by citizen complaints, subject to evaluation by and coordination with the City Engineer based on the appropriateness for a specific street. Generally, in order for measures ~~items~~ further down the list to be considered, it must be ascertained that more preferred measures ~~items~~ failed to have the desired traffic-calming effect. Physical alternations for traffic calming must be initiated through a petition submitted to the City Engineer. In order to

prompt action, the petition must be signed by residents of the street or street segment being considered for physical treatments, only one signature per household will be counted, and a minimum of two-thirds of the residents on a street or street segment must be signatories of the petition. In all cases, the implementation of traffic calming measures shall be subject to the evaluation of the City Engineer and noticing of residents for selected measures is required. As part of this evaluation, the City Engineer will ~~shall~~ perform traffic studies to determine traffic volumes and speeds and to collaborate with residents to determine the most appropriate physical traffic calming approaches. Prior to the implementation of traffic calming measures, the City Engineer will ~~must~~ submit an informational report to the City Council regarding the recommended measures.

Portions of the text under the Newark Complete Streets Policy heading on page 4.13-6 of the Draft EIR are hereby revised as follows:

Serving all users and modes, including pedestrians, bicyclists, persons with disabilities, motorists, movers of commercial goods and freight, transit riders and operators, emergency responders, seniors, children, youth, and families.

Responding to context, such that considered roadway features and amenities are reflective of the surrounding area and working with ~~meet the expectations of~~ key stakeholders;

Addressing complete streets as part of routine procedure for all City ~~city~~ departments; and

The first sentence of the last paragraph on page 4.13-6 of the Draft EIR is hereby revised as follows:

The local street network in the Plan Area is composed of arterials, collector streets, and local streets. I-880 runs along the eastern edge of the Plan Area and roadways in Newark that generally run ~~running~~ parallel to it are referred to in this Draft EIR as having a north-south orientation.

Several bullet points have been revised on page 4.13-7 and continuing to page 4.13-8 of the Draft EIR and revised as follows:

- *Stevenson Boulevard* is an east-west arterial street ~~roadway~~ located on the city's southern boundary with the city of Fremont. Between I-880 and Cedar Boulevard, Stevenson Boulevard features six travel lanes, raised medians, and turn lanes at major intersections. At Cedar Boulevard, the roadway narrows to four travel lanes, and this configuration extends west through Cherry Street/Boyce Road. Stevenson Boulevard provides access to commercial and light-industrial areas and also extends east over I-880 into Fremont.
- *Mowry Avenue* is an east-west arterial street ~~roadway~~ located north of Stevenson Boulevard. Between I-880 and Cedar Boulevard, Mowry Avenue features six travel lanes, raised medians, and turn lanes at major intersections. At Cedar Boulevard, the roadway narrows to four travel lanes, which continue to Cherry Street. West of Cherry Street, the roadway has two westbound travel lanes and one eastbound travel lane, with a two-way left-turn lane. At the Union Pacific railroad tracks, the roadway has an at-grade crossing and narrows to two travel lanes. Mowry Avenue provides access to commercial-retail, residential, and light-industrial areas, and also extends east over I-880 into Fremont.
- *Cherry Street* is generally a four-lane, north-south arterial street ~~roadway~~ located between Thornton Avenue and Stevenson Boulevard. Between Thornton Avenue and Mowry Avenue, Cherry Street has a combination of

raised medians and two-way left-turn lanes and provides access to commercial, residential, and industrial areas. South of Mowry Avenue, Cherry Street has raised concrete medians and provides access to light-industrial and residential areas. South of Stevenson Boulevard, at the city of Fremont boundary, Cherry Street becomes Boyce Road.

- *Boyce Road* is the continuation of Cherry Street as it continues south of Stevenson Boulevard, where it becomes a four-lane, north-south roadway that extends to Auto Mall Parkway. Located entirely in the city of Fremont, Boyce Road has raised concrete medians and provides access to light-industrial and commercial areas.
- *Central Avenue* is primarily a four-lane, east-west arterial street ~~roadway~~ that extends from Willow Street in Newark to Fremont Boulevard in Fremont. It is a two-lane arterial with raised medians between Willow Street and Filbert Street. East of Filbert Street, Central Avenue widens to a four-lane arterial street with a combination of raised medians and two-way turn lanes, continuing across ~~through~~ I-880, until it terminates at Fremont Boulevard. Central Avenue provides access to light-industrial and retail areas between Willow Street and Cherry Street. East of Cherry Street, the roadway provides access to both commercial and residential areas in Newark.
- *Thornton Avenue* is a two- or four-lane arterial street that aligns mostly southwest-northeast through the City of Newark between SR 84 and I-880, and extending into the city of Fremont. North of SR 84 and outside the City ~~city~~ of Newark, Thornton Avenue becomes Paseo Padre Parkway. From SR 84, Thornton Avenue extends in a southeasterly direction as a two- or four-lane arterial roadway to Willow Street. Just before Willow Street, Thornton Avenue turns northward, assuming a west-southwest to east-northeast orientation. Between Willow Street and Sycamore Street, Thornton Avenue has two travel lanes and a two-way left-turn lane. East of Sycamore Street, Thornton Avenue widens to three travel lanes (one lane westbound and two lanes eastbound), to Cherry Street. Between Sycamore and Cherry streets, Thornton turns more northward, assuming the southwest-northeast orientation that continues through the remainder of Newark. East of Cherry Street, Thornton Avenue widens to a four-lane roadway continuing across ~~through~~ I-880 and into the City ~~city~~ of Fremont. Thornton Avenue provides access to residential, light-industrial, and commercial areas in the northern and eastern areas of Newark.
- *Newark Boulevard* is a four-lane, north-south arterial street ~~roadway~~ that extends from Central Avenue to SR 84, where it becomes Ardenwood Boulevard in the city of Fremont. Thornton Avenue provides access to residential and commercial-retail areas, as well as public buildings such as the City Administration Building, the Newark Library, the Newark Community Center, and the Alameda County Health Center.
- *Jarvis Avenue* is an east-west arterial that extends between Gateway Boulevard and Lake Boulevard. Jarvis Avenue provides access to residential, commercial, and light-industrial areas, and has four ~~two~~ travel lanes between Gateway Boulevard and Cardiff Street ~~Haley Street~~ with a combination of raised medians and two-way left turn lanes. The roadway is reduced to two ~~expands to four~~ travel lanes as it extends east to Lake Boulevard.
- *Gateway Boulevard* is classified as an arterial street segment for the four-lane portion between Jarvis Avenue and Thornton Avenue. North of Jarvis Avenue, Gateway Boulevard is a multi-directional two-lane collector with some raised medians that extends to Fircrest Street.

- *Sycamore Street* is a north-south roadway extending between Mayhews Landing Road and Central Avenue. Sycamore Street provides access mainly to residential areas in the center of the city and has two travel lanes and a two-way left-turn lane.
- *Willow Street* is a north-south roadway that extends between Central Avenue and Thornton Avenue. Willow Street is four lanes between Central Avenue and Enterprise Drive, and provides access to light-industrial and warehouse uses. North of Thornton Avenue, Willow Street narrows to two travel lanes and provides access to residential areas.
- *Enterprise Drive* is an east-west, four-lane roadway that extends between Hickory Street and Filbert Street and provides access to light-industrial and commercial uses.
- *Lafayette Avenue* is an east-west, two-lane residential collector street located south of Jarvis Avenue. Lafayette Avenue extends between Cherry Street and Cedar Boulevard, and provides access to residential and institutional (school) uses.
- *Mayhews Landing Road* is an east-west, two-lane collector street located south of Lafayette Avenue. Mayhews Landing Road extends between Thornton Avenue and Sycamore Street, and provides access to residential and commercial areas.
- *Cedar Boulevard* is a major cross-town roadway that arterial street ~~extends~~ through most of Newark. Cedar Boulevard begins at Haley Street and extends north and east past Newark Boulevard before turning southeastward at Lake Boulevard. It then continues past Lafayette Avenue ~~Newark Boulevard~~ in a generally southeasterly direction past Thornton, Central, and Mowry Avenues before terminating at Stevenson Boulevard. Cedar Boulevard is a two-lane roadway between Haley Street and Lido Boulevard, and widens to a four-lane roadway south of Lido Boulevard. Cedar Boulevard provides access to commercial, light-industrial, and residential areas throughout Newark.
- *Smith Avenue* is an east-west, two-lane residential collector street that extends from west of Cherry Street to Cedar Boulevard. Smith Avenue provides access to residential and institutional (mainly school) uses.
- *Alpenrose Court/NewPark Mall Road* extends north-south across Mowry Avenue to provide access to the large retail areas south of Mowry Avenue, including NewPark Mall.
- *Balentine Drive/Albrae Street* is a north-south, multi-directional four-lane roadway that extends east-west from Cedar Boulevard and north-south between ~~of~~ NewPark Mall and ~~just past~~ Stevenson Boulevard. South of Stevenson Boulevard, in the city of Fremont, Balentine Drive becomes Albrae Street. Balentine Drive/Albrae Street provide access to retail-commercial and light-industrial areas.

The first paragraph under the Existing Traffic Operations heading on page 4.13-9 of the Draft EIR is hereby revised as follows:

To establish baseline traffic conditions in the Plan Area, Hexagon Transportation Consultants conducted an analysis of 30 signalized intersections and 7 ~~seven~~ unsignalized intersections in Newark and the surrounding area. These intersections, shown on Figure 4.13-1 and listed below, represent the main intersections that would provide access for future traffic under the proposed Plan.

Number 33 of the list on page 4.13-9 of the Draft EIR has been revised as follows:

Wells Ave ~~Dr~~ and Enterprise Dr

The paragraph under Signal Warrants on page 4.13-11 of the Draft EIR is hereby revised as follows:

The level of service analysis at unsignalized intersections is supplemented with an assessment of the need for signalization of each intersection. This assessment is made on the basis of signal warrant criteria adopted by Caltrans. For this Draft EIR, the need for signalization is assessed on the basis of the peak-hour traffic signal warrant, Warrant #3 described in the 2012 ~~2006~~ California Manual on Uniform Traffic Control Devices (CAMUTCD). This method provides an indication of whether traffic conditions and peak-hour traffic levels are, or would be, sufficient to justify installation of a traffic signal.

The paragraph under Existing Transit Service on page 4.13-13 of the Draft EIR is hereby revised as follows:

Existing local and regional transit service in the Plan Area and vicinity are provided by Alameda-Contra Costa Transit (AC Transit), Bay Area Rapid Transit (BART), Amtrak's Capital Corridor, and the Altamont Commuter Express (ACE). Newark is served directly by eleven AC Transit bus routes, and indirectly by nearby BART, commuter rail, and regional rail stations located in Fremont and Union City. The existing services are described below and existing transit services in the immediate Newark area are shown in Figure 4.13-3.

The last paragraph on page 4.13-20 of the Draft EIR is hereby revised as follows:

ACE provides service between San Jose and Stockton, with stops in Santa Clara, Fremont, Pleasanton, Livermore (two stops), Tracy, and Lathrop-Manteca. On weekdays, ACE offers four afternoon/evening eastbound trains from Fremont to Stockton, making stops in Pleasanton, Livermore (two stops), Tracy, and Lathrop-Manteca, and four morning westbound trains from Fremont to San Jose, making two stops in Santa Clara. ACE does not currently offer weekend or holiday service.

The first and second paragraph on page 4.13-21 of the Draft EIR is hereby revised as follows:

Pedestrian facilities in Newark consist primarily of sidewalks along the City ~~city~~ streets. Sidewalks and crosswalks are found along virtually all previously described local roadways in the ~~city~~ City.

According to the latest Alameda Countywide Bicycle Plan that was adopted on October 25, 2012, bicycle facilities are located on Thornton Avenue ~~Paseo Padre Parkway,~~ Newark Boulevard, Haley Street, Cherry Street, and Ardenwood Boulevard. These facilities are classified as Class I, Class II, and Class III facilities that are described below. Figure 4.13-4 illustrates the existing bicycle facilities in the City of Newark.

The first sentence under the Aviation Activity heading on page 4.13-21 of the Draft EIR is hereby revised as follows:

There are multiple airports and airfields in the region surrounding the City ~~city~~ of Newark; however, all of these facilities are approximately four or more miles from the Plan Area, and no area of Newark falls within the airport planning area for any of these facilities.

Figure 4.13-4 of the Draft EIR is hereby replaced with Figure 4.13-4 shown overleaf:

The first full sentence on page 4.13-23 under Definition of Significant Intersection Impacts is hereby revised as follows:

For this analysis, the set of relevant criteria for impacts on intersections is based on LOS standards established for the City of Newark ~~and for the Alameda County Transportation Commission (Alameda CTC)~~.

The first paragraph under TRANS-1 on page 4.13-23, continuing onto page 4.13-24, of the Draft EIR is hereby revised as follows:

As described above, the City of Newark has ~~and the Alameda CTC have~~ established vehicular LOS standards for intersection performance. Hexagon Transportation Consultants modeled future traffic conditions under the proposed Plan in 2035 in order to evaluate impacts with respect to established standards. Impacts to MTS roadways segments are discussed below under TRANS-2.

The footnote on the bottom of page 4.13-23 of the Draft EIR is hereby revised as follows:

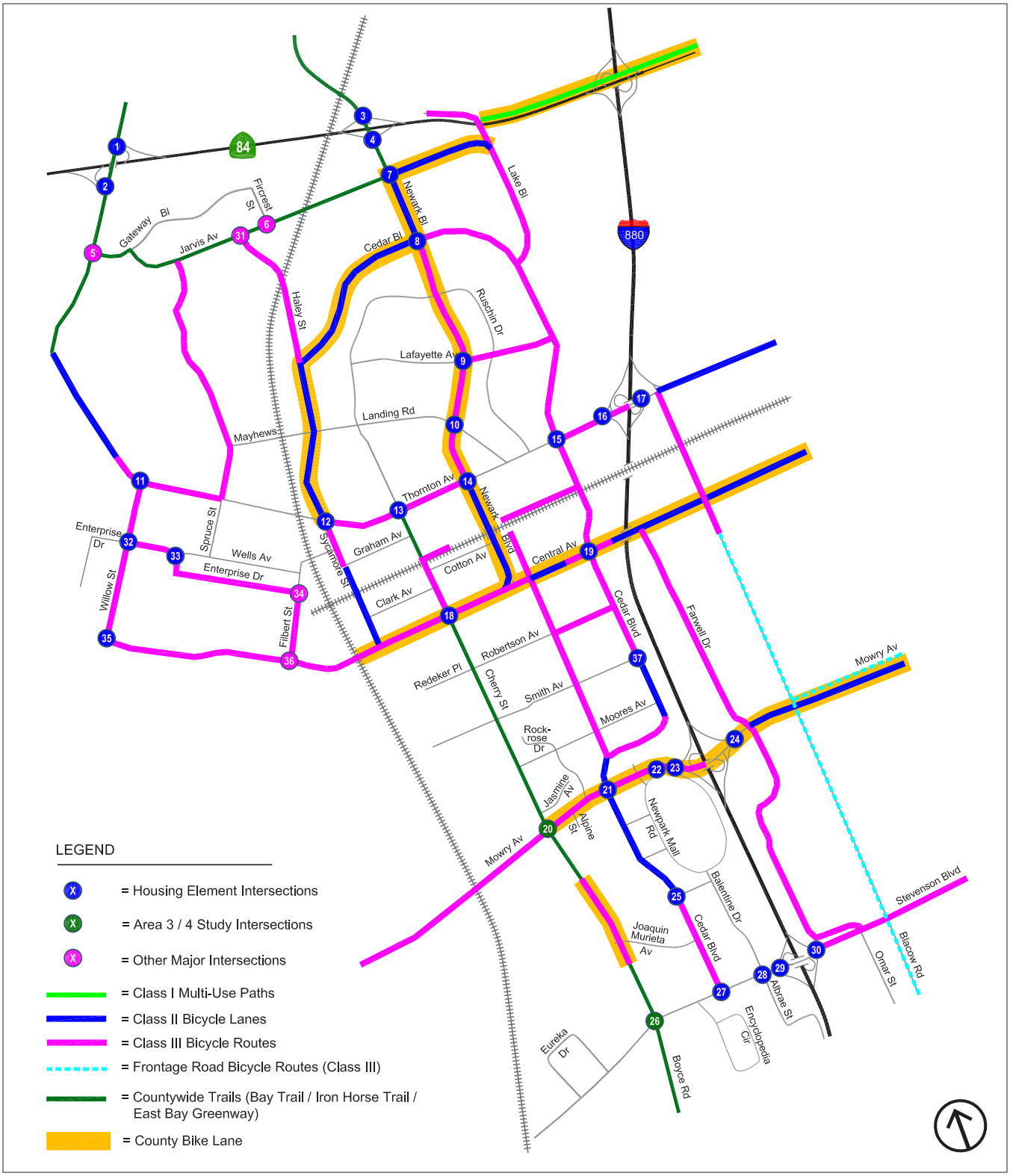
The sources for threshold of acceptable LOS in Newark are the Dumbarton TOD Specific Plan (~~September 2009~~ 2010) and the ~~Southwest Newark Residential and Recreational Focus~~ Area 3 and 4 Specific Plan (July 2011).

The text in Table 4.13-5 on page 4.13-32 pertaining to Cherry Street and Mowry Venue is hereby revised as follows:

Adding a second left-turn lane on the westbound approach (Mowry Av) and realigning the intersection. Since this intersection is in relatively close proximity to a high school, community college, and park, and is located along a road with transit service that is also a Countywide Bicycle Route (component of the Bay Trail), opportunities for improving pedestrian access and bicycle access through this intersection should be considered in the context of mitigation. Options for accommodating all users should be considered.

The bullet point list on page 4.13-39 of the Draft EIR is hereby revised as follows:

- Policy T-1.6: Traffic Calming. Use traffic design features and traffic calming techniques to improve safety and maintain the quality of life in Newark neighborhoods. Traffic calming should be incorporated into urban design and streetscape plans so that a safer environment is provided for all users.



Source: Hexagon Transportation Consultants, Inc., 2013.

Figure 4.13-4
Existing Bicycle Facilities

- Action T-1.B: Best Practices in Street Design. Follow the City's adopted standards for the design of streets. As appropriate, update the City's street classification and engineering design standards to ensure that the roadway system accommodates all users.

- Policy T-2.7: Pedestrian and Bicycle Safety. Improve actual and perceived pedestrian and bicycle safety. Make use of the latest technologies available to provide increased safety measures. Special attention should be given to facilitating the safety of children walking or bicycling to school.

- Policy T-2.8: Safety Awareness and Health Benefits. Encourage bicycle and pedestrian safety training in schools and through City recreation programs. Such programs should aim to reduce the rate of bicycle and pedestrian accidents while increasing awareness of available facilities and the health benefits of bicycling and walking.

- Policy T-2.10: Railroad Crossings. Ensure that any future grade separated railroad crossings include sidewalks and designated lanes for bicycles.

- Policy T-5.11: Hazardous Street Conditions. Identify and correct any hazardous street conditions, including obstructed sight lines, on a regular basis.

- Policy T-6.5: Freight Rail Service. Work with the Union Pacific Railroad to ensure the continued viability of freight rail service through Newark, and the availability of rail spurs and sidings to serve Newark's industrial users. Work with the Union Pacific Railroad to assure compliance with adopted standards regarding blocking of roadways. The City supports efforts by the Union Pacific Railroad to improve maintenance, upgrade equipment, and improve the safety of existing railroad grade crossings.

- Policy T-6.6: Grade Separations. Reduce the number of at-grade rail crossings in Newark. Grade separations are strongly supported as a way to facilitate emergency vehicle response, improve safety, reduce delays, and improve aesthetics.

Chapter 6.0, Alternatives, Revisions

The third paragraph under Section 6.6, Environmentally Superior Alternative, on page 6-27, of the Draft EIR is hereby revised as follows:

Additionally, the Restricted Growth Alternative would conflict with the City's recent major planning initiatives, including the recently adopted Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element. Also, the Restricted Growth Alternative would likely subject the City of Newark to significant damages arising from the condemnation or inverse condemnation of private property. Further, as this alternative would not involve development in the Dumbarton TOD Focus Area, it would not promote the development of compact, walkable neighborhood in this sector of the city, which is identified as a priority development area (PDA) in the SCS. Development in PDAs is integral to the land use concept plan for the region articulated in the SCS. The SCS allocates well over two-thirds of all regional growth in the Bay Area through 2040 within PDAs, and PDAs are expected to accommodate 80 percent (or over 525,570 units) of new housing and 66 percent (or

744,230) of new jobs in the region over that same time frame. Consequently, because the Restricted Growth Alternative would not satisfy all the project objectives, because it would conflict with specific plans previously adopted by the City of Newark, and because it would not support development of the Dumbarton TOD PDA as envisioned in the SCS, the Restricted Growth Alternative is considered infeasible.

4. List of Commenters on the Draft EIR

This chapter identifies and lists the agencies, organizations, and individuals who submitted written comments on the Draft EIR. Commenters are listed by category first, and then alphabetically within each category.

Additionally, this chapter lists the individuals who submitted an almost identical recurring comment letter by email.

Federal Agencies

- United States Department of the Interior

State Agencies

- California Department of Transportation

Regional/Local Agencies

- Alameda County Transportation Commission
- Alameda County Water District
- San Francisco Bay Conservation and Development Commission
- San Francisco Regional Water Quality Control Board

Corporations and NGOs

- Ashland (Barry J. Shotts, Attorney at Law)
- Audubon Society
- Cargill Salt Company
- Defenders of Wildlife
- Enterprise Drive LLC
- Greenbelt Alliance
- NMW Newark LLC
- Save the Bay
- Santa Clara Valley Audubon Society
- San Francisco Baykeeper

- Citizens Committee to Complete the Refuge
- Lippe Gaffney Wagner LLP on behalf of Citizens to Complete the Refuge
- Grassetti Environmental Consulting on behalf of Citizens Committee to Complete the Refuge

General Public

- Bradley, John and Becky
- Burrows, Matt
- Dorman, Michael
- Elkins, David
- Hooper, Molly
- Rea, Paul
- Lewis, Margaret
- Miller, Wayne
- Sokale, Jana

Recurring Comments from the Public

Last Name	First Name	Address
a'Becket	Suzanne	Cupertino, CA
Abel	Jae	Palo Alto, CA
Ablin	Arthur	San Rafael, CA
Abraham	Julie	Redwood City, CA
Acosta	Elise	Sausalito, CA
Adam	Sondra Gail	Walnut Creek, CA
Adams	A	Cupertino, CA
Adams	Chris	Oakland, CA
Adams	Laura	Sebastopol, CA
Adolph	Barbara	San Ramon, CA
Agnew	Michele	San Francisco, CA
Ague	Kate	Menlo Park, CA
Aiken	Edwin	Sunnyvale, CA
Alejandro	Patricia	Covina, CA

Last Name	First Name	Address
Alexander	Carrie	Lake Forest, CA
Alexander	June	Rohnert Park, CA
Allen	Dennis	Santa Barbara, CA
Allen	John	Lafayette, CA
Alleyne-Chin	Donna	Montara, CA
Althouse	Sherrie	Rio Nido, CA
Amador	Robert	Berkeley, CA
Amato	Julie	Mountain View, CA
Ammini	Krishna	Mountain View, CA
Anania	Dale	Berkeley, CA
Andersen	Kristen	Palo Alto, CA
Anderson	Clark	Hopland, CA
Anderson	Darcy	Redwood City, CA
Anderson	Gary	San Carlos, CA
Anderson	Gene	Oakland, CA
Anderson	Timothy	Mer Rouge, LA
Andrade	Michele	Novato, CA
Andreas	Leticia	El Cerrito, CA
Andrus	M	Calimesa, CA
Angelos	Christina	Oakland, CA
Anjo	Hal	Boulder Creek, CA
Anton	Colby	Orinda, CA
ap Rees	Caroline	Danville, CA
Applebaum	Robert	San Jose, CA
Arbuckle	Nancy	Redwood City, CA
Arcadi	Larry	Fremont, CA
Arcure	Anthony	Fresno, CA
Armitage	Tami	Studio City, CA
Armstrong	Marsha	Los Gatos, CA
Arnold	Jack	Berkeley, CA
Aroner	Ai	Redwood City, CA
Aronson	Allen	Torrance, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Aronson	Gregg	Fremont, CA
Aronson	Reevyn	Redwood City, CA
Arteaga	Siria	Modesto, CA
Atkinson	Jay	El Sobrante, CA
Atkinson	Julia	Redwood City, CA
Auston	Nora	Oakland, CA
Axelrod	Andrew	San Francisco, CA
Aylward	David	Mountain View, CA
Babst	Christa	W. Hollywood, CA
Baca	Gilda	Dublin, CA
Backus	Jon	Berkeley, CA
Bailey	Brenda	Oakland, CA
Bailey	Kathy	San Francisco, CA
Baker	Kelsey	Novato, CA
Baldwin	Deborah	Oakland, CA
Baldwin	Ryan	San Francisco, CA
Ball	Janet	Saratoga, CA
Ballator	Nada	Redwood City, CA
Bambo	Gregg	Richmond, CA
Bangert	Marybeth	Santa Ana, CA
Bankovitch	Walter	Berkeley, CA
Barany	Bill	San Francisco, CA
Barberini	Bernadette	Alameda, CA
Barger	Michael	Livermore, CA
Barkley	Jim	San Rafael, CA
Barnard	Kathryn	Redwood City, CA
Barnby	Nancy	Menlo Park, CA
Barnes	Linda	Daly City, CA
Barnett	Melanie	Sunnyvale, CA
Barney	Bryan	San Jose, CA
Barney	Lisa	San Jose, CA
Barresi	Bruna	San Francisco, CA

Last Name	First Name	Address
Barrett	Steven	Walnut Creek, CA
Barrington	Vanessa	San Francisco, CA
Bartens	Deborah	Palo Alto, CA
Bartlett	Stephen	San Francisco, CA
Bartlett	Stephen	San Francisco, CA
Bartley	Eddie	San Francisco, CA
Bartoldus	Rainer	Menlo Park, CA
Basile	Matthew	Sunnyvale, CA
Basye	John	Burlingame, CA
Bates	Abigail	Los Angeles, CA
Batten	Candace	Los Angeles, CA
Batten	Carol	Silver Springs, FL
Bauer	Wendy	San Francisco, CA
Baum	Kay	Foster City, CA
Baum	Rhona	Saratoga, CA
Bayer	John	Washougal, WA
Beacom	Maureen	Campbell, CA
Beardsley	Patricia	San Francisco, CA
Bechmann	Elisabeth	Pasadena, MD
Beebe	Adam	San Francisco, CA
Beeck	Nicole	San Jose, CA
Begin	Claudette	Union City, CA
Belef	Michael	Santa Clara, CA
Belknap	Lidia	San Rafael, CA
Bell	Dee	Point Richmond, CA
Bellak	Nina	Bolinas, CA
Belloso-Curiel	Jorge	Richmond, CA
Bellrose	Cheryl	Rio Vista, CA
Belmessieri	Claudia	Newark, CA
Bender	Emily	Fairfax, CA
Benioff	Jeanne	Redwood City, CA
Benjamin	Allison	Redwood City, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Benner	Emily	Berkeley, CA
Bennett	Allen	San Francisco, CA
Bennett	Ian	Berkeley, CA
Benvenutto	Pia	Alameda, CA
Bergsma	Debi	Fontana, CA
Berkheimer	James	Fremont, CA
Berkowitz	Judith	San Francisco, CA
Bertea	Christina	Oakland, CA
Berwaldt	Cathy	Palo Alto, CA
Betts	Ardith	Alameda, CA
Beyaert	Bruce	Richmond, CA
Beyeler	Arturo	San Francisco, CA
Bey-McCurdy	Rozane	Santa Clara, CA
Bier	Aline	Burlingame, CA
Billigmeier	Melanie	Redwood City, CA
Binckley	Charles	Point Richmond, CA
Binkley	Peter	Los Gatos, CA
Black	Michelle	San Francisco, CA
Black	Patricia	San Jose, CA
Blacketer	Linda	San Francisco, CA
Blake	Ann	Alameda, CA
Blalack	Russell	Cupertino, CA
Blesi	Donald	Redwood City, CA
Blevins	Patricia	San Jose, CA
Bloom	Richard	Cotati, CA
Bloxham	Mary	Lafayette, CA
Blum	Jan	San Francisco, CA
Bly	Joe	San Francisco, CA
Blythe	Frances	Dixon, CA
Bochte	Sara	Antioch, CA
Bodiford	Loretta	Soulsbyville, CA
Boeck	Elisabeth	Novato, CA

Last Name	First Name	Address
Boehme	Robert	Santa Clara, CA
Bogart	David	Menlo Park, CA
Boggs	Larry	San Rafael, CA
Bogin	Ronald	El Cerrito, CA
Bogios	Constantine	Walnut Creek, CA
Bogisich	Allison	Newark, CA
Bohn	Willard	Kensington, CA
Bohnert	Allen	Davis, CA
Boken	Eileen	San Francisco, CA
Boland	Donna	San Rafael, CA
Bolesta	Murray	Green Valley, AZ
Bollman	Brian	Windsor, CA
Bolman	Diane	Novato, CA
Bonacci	James	Pleasanton, CA
Bondoc	Jose Ricardo	San Francisco, CA
Bone	Kathleen	San Francisco, CA
Bonilla	Neryza	Newark, CA
Bonvouloir	A	Sunnyvale, CA
Borden	Robert	San Francisco, CA
Borgonovo	Roberta	San Francisco, CA
Bosch	Milton	Napa, CA
Bouboussis	Nayiri	Berkeley, CA
Bouissou	Adrien	Palo Alto, CA
Bouissou	Patricia	Palo Alto, CA
Bouissou	Philippe	Palo Alto, CA
Bourgeault	Lisa	Los Altos, CA
Bournellis	Cynthia	San Jose, CA
Bowles	Carmi	San Francisco, CA
Bowling	Earl	Oakland, CA
Boyce	Nancy	San Rafael, CA
Boyd	Abby	Palo Alto, CA
Boyle	Henry	Berkeley, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Boyle	Robert	Alameda, CA
Bozzo	Patricia	Coulterville, CA
Bradley	Mark	Concord, CA
Bragman	Larry	Fairfax, CA
Brandt	Adrian	Redwood City, CA
Brannan	Thomas	San Francisco, CA
Bratberg-Shastri	Rania	Palo Alto, CA
Bray	Ilona	Oakland, CA
Breckenridge	Bonnie	San Diego, CA
Bremner	Ayden	Richmond, CA
Brengle	Marshall	San Jose, CA
Brennan	Jennifer	Martinez, CA
Brenner	Summer	Berkeley, CA
Brett	Patricia	San Jose, CA
Brewer	Kris	Mill Valley, CA
Briant	Cicily	Martinez, CA
Briggs	Janet	Portola Valley, CA
Brigham	Paul	Fairfax, CA
Broderson	Donald	Crockett, CA
Brommer	Linda	Fremont, CA
Bronson	Wanda	Berkeley, CA
Brooks	Eric	San Francisco, CA
Brooks	Jonica	San Francisco, CA
Brotze	Wayne	Oakland, CA
Brown	Emma	Albany, CA
Brown	Irene	Los Altos, CA
Brown	Julia	Menlo Park, CA
Brown	Kathleen	San Francisco, CA
Brown	Letitia	San Francisco, CA
Brown	Richard	Oakland, CA
Brown	Shepherd	Belmont, CA
Brown	Stephen	Berkeley, CA

Last Name	First Name	Address
Brown	Vera	Redwood City, CA
Browning	Craig	Alameda, CA
Brunetti	Nina	Castro Valley, CA
Brustman	Thomas	Walnut Creek, CA
Buensuceso	Jill	San Jose, CA
Buhowsky	Joseph	San Ramon, CA
Bulger	Paul	Santa Rosa, CA
Bull	Barbara	Berkeley, CA
Bull	Grace	Lodi, CA
Bull	Henrik	Berkeley, CA
Bullock	Ken	Berkeley, CA
Bump	Cathy	San Mateo, CA
Bungarz	Kathleen	Walnut Creek, CA
Burke	Julia	Piedmont, CA
Burns	Kelly	Capitola, CA
Burns	Susan	San Mateo, CA
Burt	Robert	Castro Valley, CA
Bustamante	Maria	Albany, CA
Butler	Marianne	Fairfield, CA
Byas	Barbara	San Lorenzo, CA
Byers	Andrea	Oakland, CA
Cacciatore	Edith	Novato, CA
Cahill	Dorothy	Berkeley, CA
Caidoy	Kristal	Milpitas, CA
Caldwell	Wendel	Berkeley, CA
Calhau	Eugene	American Canyon, CA
Calhoun	Charles	San Francisco, CA
Callahan	Patricia	San Francisco, CA
Calvinperez	Martha	Redwood City, CA
Camaraota	Richard M	Novato, CA
Cameron	Meghan	Napa, CA
Campbell	Mary	Saratoga, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Campbell	Norma	Campbell, CA
Campi	Rosemary	San Jose, CA
Canfield-Lenfest	Monica	Oakland, CA
Canter	M	Tiburon, CA
Cappella	Mike	Redwood City, CA
Cappels	Amy	Redwood City, CA
Cappels	Jimmy	Redwood City, CA
Card	Junko	Exeter, CA
Card-Derr	Geraldine	Exeter, CA
Cargill	Anne	Healdsburg, CA
Carlson	Chad	Cupertino, CA
Carpenter	Benjamin	Oakland, CA
Carpenter	Gary	Pacifica, CA
Carpenter	Victoria	Oakland, CA
Carr	Donna	Encinitas, CA
Carrillo	Dan	San Bruno, CA
Carroux	Charles	Belmont, CA
Carter	Patricia	San Jose, CA
Cass	Mike	Novato, CA
Caswell	Gail	San Francisco, CA
Catskill	Clover	Pinole, CA
Caughman	Erin	San Francisco, CA
Cavanaugh	Alice	Newark, CA
Chalmers Herbst	Nancie	Tuscon, AZ
Chambers	Christopher	Sunnyvale, CA
Chambers	Derrell	Kensington, CA
Chan	Lincy	Fremont, CA
Chan	Peter	Fremont, CA
Chan	Sampson	San Francisco, CA
Chapek	S	San Francisco, CA
Chapman	Justin	Concord, CA
Chartier	Bruno	Oakland, CA

Last Name	First Name	Address
Chase	Kate	Berkeley, CA
Chastain	Peter	San Jose, CA
Chaudoin	Ambre	San Jose, CA
Chavez	Anne	San Leandro, CA
Chen	Allan	Alameda, CA
Cherbowsky	Ariel	Berkeley, CA
Chestnut	Paul	Palo Alto, CA
Childs	Elena	Oakland, CA
Childs	Peter	Rancho Mirage, CA
Chinn	Karen	Cloverdale, CA
Chiu	Albert	Oakland, CA
Chou	Ana	Palo Alto, CA
Chourre	Martin	Fairfax, CA
Chowenhill	C	Redwood City, CA
Ciani	Lisa	Pacific Grove, CA
Clapp	Angela	Oakland, CA
Clark	Alan	Walnut Creek, CA
Clark	Andrew	Palo Alto, CA
Clebsch	Carolyn	Menlo Park, CA
Clements Owens	Carly	Alamo, CA
Clifford	Ruth	San Jose, CA
Club	Sierra	Southern Alameda County Group
Clyde	J	Portland, OR
Clymo	Jerry	Union City, CA
Coates	Portland	San Francisco, CA
Cochran	J.C.	San Francisco, CA
Cockshott	Shiela	Belmont, CA
Cody	William	Benicia, CA
Cohen	Eleanor	Oakland, CA
Cohen	Robert	Berkeley, CA
Colburn	Pat	Alameda, CA
Cole	Maureen	Redwood City, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Cole	Stephen	Oakland, CA
Coleman	Donald	Berkeley, CA
Collins	Evan	Healdsburg, CA
Collins	Lex	Alameda, CA
Columbia	James	Bakersfield, CA
Conner	Kristen	San Pablo, CA
Cooley	Trisha	Santa Clara, CA
Cooluris	Helen	San Francisco, CA
Cooper	Lynne	Santa Cruz, CA
Copp	May Lou	Mountain View, CA
Corah	Janet	San Rafael, CA
Corbelli	Karen	Berkeley, CA
Corbett	A	Oakland, CA
Cordova	Ute	San Francisco, CA
Corey	Norma	Redwood City, CA
Corio	Joe	San Francisco, CA
Cornell	George	Pleasanton, CA
Cornette	J Simon	Santa Clara, CA
Cornwell	Yulia	Fairfax, CA
Correia	Edmund	Los Altos Hills, CA
Cossins	Sue	Burlingame, CA
Coston	Joan	Sunnyvale, CA
Cowan	Leticia	San Jose, CA
Cowans	Heather	Redwood City, CA
Cox	Adele	Redwood City, CA
Crabb	Aric	Castro Valley, CA
Crag	Aaron	San Francisco, CA
Craig	Alex	Toledo, OH
Crane	Mark	Los Angeles, CA
Cresseveur	Jessica	New Albany, IN
Crisafulli	Alexandra	Berkeley, CA
Crocker	Sharon	San Jose, CA

Last Name	First Name	Address
Cross	Melanie	Palo Alto, CA
Crumo	Kasondra	Yuba City, CA
Cruz	Marian	Hollister, CA
Cuciz	Holly	Milpitas, CA
Cwynar	Judith	Oakland, CA
Daebel	Ulrike	San Jose, CA
Dahlen	Beverly	San Francisco, CA
Dalition	Mitch	San Francisco, CA
Dallas	Polly	Carmichael, CA
DalPino	Ida Jane	Corte Madera, CA
Dambowic	Judith	Oakland, CA
Dark	Stephanie	Walnut Creek, CA
Datz	Alison	San Francisco, CA
David	Joseph	San Francisco, CA
Davies	Lynne	San Francisco, CA
Davis	Carla	Corte Madera, CA
Davis	Karen	Redwood City, CA
Davis	Paul	San Jose, CA
Davis	Phapha	Sonoma, CA
Dayton	Susan	Palo Alto, CA
de Forest	John	San Francisco, CA
De Giuli	Marta	Los Altos, CA
De Goff	Victoria	Berkeley, CA
Dean	Willow	San Francisco, CA
DeAngelo	Vic	San Francisco, CA
Dearborn	Lisa	San Jose, CA
Debasitis	Brian	San Jose, CA
Deely	Jacqueline	San Jose, CA
Del Villar	Christina	Newark, CA
Delgado	Lenore	Palo Alto, CA
Delman	Jamie	San Francisco, CA
DeMeo	Edgar	Palo Alto, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Demers	Melanie	Mountain View, CA
Dempsey	Vicki	Palo Alto, CA
Dennis	Gudrun	Gainesville, FL
Denton	Paul	San Mateo, CA
Deppong	Genevieve	Los Altos, CA
DeProspero	DJ	Sunnyvale, CA
Desfor	Paul	Berkeley, CA
Detzer	Christopher	Oakland, CA
Devine	Connie	San Jose, CA
deVries	Joyce	Berkeley, CA
Diamond	Mitchell	Sunnyvale, CA
Diamond	Stephen	South Lake Tahoe, CA
Dickason	Carol	Sonoma, CA
Dickemann	Jeffrey	Richmond, CA
Dickens	Aaron	Spring Valley, CA
DiGiulio	Sandra	Mountain View, CA
Dileanis	Sue	San Jose, CA
Dill	Alana	Alameda, CA
Dillard	Terry	Belmont, CA
DiLuzio	Patricia	San Anselmo, CA
Dimatteo	Richard	San Diego, CA
Dipboye	Loretta	San Francisco, CA
Dippel	Carolyn	Fremont, CA
Docker	Fumiko	San Francisco, CA
Dodge	Dana	Newark, CA
Dodge	Donald	San Francisco, CA
Dolan	Sabrina	San Rafael, CA
Domnitser	Leonid	San Jose, CA
Donaghue	Tabitha	Portland, OR
Donaldson	Christa	Albany, CA
Donaldson	John	Fresno, CA
Donofrio	Tristan	San Jose, CA

Last Name	First Name	Address
Donohue	Gloria	San Francisco, CA
Dorer	Michael	Fremont, CA
Doublet_Weislak	Yvette	Morgan Hill, CA
Dougherty	Dennis	San Rafael, CA
Douglas	Patrick	San Francisco, CA
Dowdy	Michael	Fremont, CA
Dragavon	Linda	San Francisco, CA
Drain	Rick	Alameda, CA
Dresser	David	Berkeley, CA
Drukman_Feldstein	Sophie	San Francisco, CA
Drum	Dave	Berkeley, CA
Drutz	Kimberly	Brisbane, CA
Du Bois	Julie	West Hills, CA
DuBois	Andrew	Alameda, CA
duBois	Marilyn	San Rafael, CA
DuClaud	Monica	San Francisco, CA
Duffin	PK	San Leandro, CA
Dugery	John	Redwood City, CA
Durkin	Samuel	Faifield, CA
Duval	Maranda	Redwood City, CA
DuVal	Trenton	Berkeley, CA
Duvall	Lori	Redwood City, CA
Dyer	Joan	Cupertino, CA
Dykema	Cornelius	Castro Valley, CA
Eastwood	Kerry	Bellingham, WA
Eble	Anita	Berkeley, CA
Eddie	Gloria	Atherton, CA
Eddie	Gloria	Menlo Park, CA
Edgerly-Rooks	Janice	San Jose, CA
Edgren	Margery	Woodside, CA
Edwards	Amy	Santa Clara, CA
Edwards	Bita	Woodacre, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Edwards	Rita	Newark, CA
Edwards	Robert	Richmond, CA
Eielson	Olivia	Oakland, CA
Elder	Lauren	Oakland, CA
Elder	Linda	Tomales, CA
Ellingham	Lewis	San Francisco, CA
Elliott	Ed	Ben Lomond, CA
Elliott	Vince	San Bruno, CA
Ellis	Robert	Oakland, CA
Elsbury	Jennifer	San Francisco, CA
Ely	Ernest	San Francisco, CA
Emerich	Barbara	Los Altos, CA
Engel	Dara	San Francisco, CA
England	Jenny	San Carlos, CA
Erickson	Karen	San Jose, CA
Erickson	Lisa	Watsonville, CA
Erway	Ricky	Redwood City, CA
Esajian	Nancy	Emeryville, CA
Espana	Lizette	San Francisco, CA
Estes	Douglas	San Francisco, CA
Etzion	Tami	Oakland, CA
Euser	Hannah	Sonoma, CA
Evans	Christopher	Berkeley, CA
Evans	Dick	Alameda, CA
Evans	Keisha	East Palo Alto, CA
Evans	Keith	Bolinas, CA
Evans	Lynn	San Jose, CA
Evans	Michael W	Los Angeles, CA
Everett	Rob	El Cerrito, CA
Fabiano	Donna	Forestville, CA
Fabing	Keith	Seattle, WA
Fahlgren	Vivian	Paradise, CA

Last Name	First Name	Address
Falcon	Sylvia	El Cerrito, CA
Falzone	Stephanie	Alameda, CA
Farnum	Benjamin	San Jose, CA
Farrell	Kelleen	Placerville, CA
Farwell	David	San Jose, CA
Fawkes	Nathan	Oakland, CA
Fazeli	Renee	Newark, CA
Fechner	Krista	San Rafael, CA
Feichtl	James	Belmont, CA
Fellner	David	San Leandro, CA
Fenwick	Janet	Los Altos, CA
Fenwick	Valerie	Mountain View, CA
Ferea	Curtis	San Jose, CA
Fernandez	Magaly	San Francisco, CA
Ferreira	Christine	Hayward, CA
Fiandaca	Anastasia	San Francisco, CA
Fierer	Joan	Oakland, CA
Figge	Donald	Fresno, CA
Figueroa	Cynthia	Apple Valley, CA
Filipelli	Deborah	The Sea Ranch, CA
Fillin	Amy	Berkeley, CA
Finegold	Mary	Wallingford, PA
Fink	Christine	Stockton, CA
Fischer	Kayte	Oakland, CA
Fischer	Rani	Sunnyvale, CA
Fisher	Abigail	San Francisco, CA
Fisher	Ellen	El Cerrito, CA
Fisher	Jim	Kensington, CA
Fisk	James	Alameda, CA
Fitzgerald	Jennifer	Redwood City, CA
Fitzgerald	Steven	Oakland, CA
Flannery	Marcia	Oakland, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Fletcher	Jude	Oakland, CA
Flewitt	Claire	Hayward, CA
Flye	S.	San Francisco, CA
Foerster	Grant	Albany, CA
Fogarty	Dan	Santa Rosa, CA
Foord	Miriam	Concord, CA
Ford	Lauren	Venice, CA
Ford	Michael C.	Watsonville, CA
Forkish	Jo	Sunnyvale, CA
Formoso	Jennifer	Oakland, CA
Forrest	Elizabeth	Berkeley, CA
Forrest	Natalie	Hayward, CA
Foti	Mike	San Francisco, CA
Fouche	Suzanne	Redwood City, CA
Fournier	Andrea	Oakland, CA
Francisco	Eddy	Berkeley, CA
Frasieur	Forest	Benicia, CA
Frazer	James	Orinda, CA
Fredrick	Barbara	Palo Alto, CA
Freedman	Paula	San Rafael, CA
Freeman	Lena	Santa Rosa, CA
Freeman	Susan	Saratoga, CA
Freemire	Ron	San Francisco, CA
Freid	Jocelyn	San Rafael, CA
Frey	Rebecca	Santa Rosa, CA
Freytag	John	Benicia, CA
Fricano	Marian	San Jose, CA
Friedman	Leslie	Mountain View, CA
Friedman	Martin B	Berkeley, CA
Friedman	Michael	El Sobrante, CA
Fritsch	Sharon	Chico, CA
Frizzell	Julianne	Palo Alto, CA

Last Name	First Name	Address
Froiland	J	Rohnert Park, CA
Froiland	Karen	Rohnert Park, CA
Fry	Kent	Redwood City, CA
Fryman	Colleen	Fremont, CA
Fryman	Margit	Fremont, CA
Fryman	Megan	Fremont, CA
Fudali	Karen	San Pedro, CA
Fuenzalida	Patricia	Burlingame, CA
Fuller	Robert	San Francisco, CA
G	June	Belmont, CA
Galdo	Querido	Oakland, CA
Gale	Michael	Vallejo, CA
Gallagher	Sarah	Crockett, CA
Gallegos	Geoffrey	San Francisco, CA
Galyen	Nathalie	Kensington, CA
Ganesan	Venkat	Fremont, CA
Gangadharappa	Kiran	Cupertino, CA
Gannon	Patricia	Alameda, CA
Garcia	Rosandrea	Richmond, CA
Garrecht	Jamila	Petaluma, CA
Garrity	Michael	Nevada City, CA
Garsull	J	San Rafael, CA
Garza	Mickey	San Francisco, CA
Gatto	Gina	Castro Valley, CA
Gawthrop	Janet	Oakland, CA
Gearhart	Susan	Fremont, CA
Geis	Tanja	Berkeley, CA
Geller	Phil	Palo Alto, CA
Geluz	Gemma	Fairfield, CA
Gendvil	Derek	Las Vegas, NV
Gentes	Mija	Saratoga, CA
George	Carolyn	Palo Alto, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Georgetti	Dianne	Redwood City, CA
Germain	William	Denver, CO
Gernand	Jim	Redwood City, CA
Gerwein	Joel	Berkeley, CA
Getz	Melissa	El Cerrito, CA
Gewecke	Tom	San Jose, CA
Ghini	Elle	Alameda, CA
Giedt	Jean	Mariposa, CA
Giese-Zimmer	Astrid	Berkeley, CA
Gigliotti	Carol	San Francisco, CA
Gil	Karyn	Sacramento, CA
Gilbert	Tracy	Fremont, CA
Gillis	Craig	Moss Beach, CA
Ginnebaugh	Diana	Belmont, CA
Girma	Yohana	San Leandro, CA
Givens	Louise Blue	Santa Rosa, CA
Gjersand	Tasha	Oakland, CA
Glanville	Mary	Mendocino, CA
Glatfelter-Jones	Ed	Santa Cruz, CA
Glieden	Todd	Castro Valley, CA
Gloe	Janice	Oakland, CA
Glon	Hervé	San Rafael, CA
Goldman	Jane	Half Moon Bay, CA
Golembiewski	Mark	Pacifica, CA
Golinveaux	Joseph	Berkeley, CA
Gong	Cynthia	San Jose, CA
Gonsalves	Carole	San Jose, CA
Gonsman	James	Occidental, CA
Gonzales	Marina	San Jose, CA
Gonzales	Ron	San Jose, CA
Gonzalez	Veronica	San Mateo, CA
Good	N	San Francisco, CA

Last Name	First Name	Address
Goodale	Margaret	Pacifica, CA
Goodyear	David	San Francisco, CA
Gordon	Kit	Los Altos Hills, CA
Gordon	Marc	Sunnyvale, CA
Gordon	Sharon	Newark, CA
Gorringe	Richard	Portland, OR
Gosai	Praneel	San Leandro, CA
Gottesman	Judith	San Rafael, CA
Gower	Douglas	San Francisco, CA
Graly	Thomas	Berkeley, CA
Grant	Jill	Half Moon Bay, CA
Grant	Nancy	Studio City, CA
Granucci	Paula	San Francisco, CA
Gray	David	El Cerrito, CA
Green	Don	Oakland, CA
Green	Ed	Fremont, CA
Greene	Becci	Petaluma, CA
Greenwood	Anne	San Pablo, CA
Greenwood	Eugene	San Jose, CA
Gregory	Probyn	Tujunga, CA
Gregory	Shirley	Moraga, CA
Grey	Dara	Oakland, CA
Grieco	Joe	Fresno, CA
Grieco	Mercy	Fresno, CA
Griffin	Kate	Menlo Park, CA
Griffiths	David	San Mateo, CA
Griffiths	Diane	San Ramon, CA
Grimes	Bruce	Santa Rosa, CA
Grimm	Arlynn	Livermore, CA
Grindle	Russell	Fairfield, CA
Grissom	Sue	San Francisco, CA
Groll	Amber	Marysville, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Groome	Malcolm	Topanga, CA
Gross	Herbert	San Jose, CA
Grossman	Aaron	Mountain View, CA
Grossman	Bonnie	Novato, CA
Grubb	Jacqueline	San Francisco, CA
Grush	Marilyn	Pleasanton, CA
Grush	Melissa	Union City, CA
Gubelman	Joyce	San Francisco, CA
Guilarte	Eduardo	Palo Alto, CA
Gurdin	J. Barry	San Francisco, CA
Gurney	Chris	Oakland, CA
Gutfleisch	Ellen	Sussex, WI
Haas	Steve	Menlo Park, CA
Haberly	Brian	Santa Clara, CA
Hacker	Carolyn M	San Rafael, CA
Haffner	Rick	Cupertino, CA
Hagen	Kai	Thurmont, MD
Hagg	Cigdem	Richmond, CA
Haggard	Alan	San Diego, CA
Hahn	Virginia	Fremont, CA
Haldenwang	Christina	Albany, CA
Halko	Laura	Camas, WA
Hall	Adriana	Pacifica, CA
Hall	Diana	Mountain View, CA
Hall	Jonathan	San Carlos, CA
Hall	Robert	San Francisco, CA
Hall	Sally	Rocklin, CA
Hallgarth	Catherine	Alameda, CA
Halpern	Alicia	Alameda, CA
Hamilton	Alison	Alameda, CA
Hamilton	Christine	Redwood City, CA
Hamilton	Healy	Fairfax, CA

Last Name	First Name	Address
Hamilton	Kerri	San Jose, CA
Hamilton	Lisa	San Francisco, CA
Hamilton	Robert	San Jose, CA
Hammermeister	Lisa	Grananda Hills, CA
Hampton	Susan	El Cerrito, CA
Hanavan	Richard	Los Altos, CA
Hancock	Emily	Berkeley, CA
Handel	Joshua	Mountain View, CA
Hanley	Mark	Oakland, CA
Hannibal	Roberta	Oakland, CA
Hansen	Joseph	San Carlos, CA
Hansen	Lisa	Pleasanton, CA
Hansen	Mary Lynn	Oakland, CA
Hardin	Joseph	Santa Monica, CA
Harkins	Lynne	Cambria, CA
Harpe	Barbara	Lomita, CA
Harper	Renee	San Leandro, CA
Harrell	Roger	Hermosa Beach, CA
Harris	Charles	San Rafael, CA
Harris	Lois	Claremont, CA
Harris	Susan	Oakland, CA
Harris	William	Oakland, CA
Harrison	Jennifer	San Francisco, CA
Hartman	Chris	San Jose, CA
Harvey	Brit	Berkeley, CA
Haseleu	Rebecca	Burlingame, CA
Hasselgren	Joan	San Francisco, CA
Hattisburg	Brenda	Hayward, CA
Hattorimanabe	Dave	San Jose, CA
Hawman	Shael	San Jose, CA
Hayes	Tim	El Cajon, CA
Heckman	Brad	Walnut Creek, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Heinold	Christian	Oakland, CA
Heintz	Michael	Livermore, CA
Hellmuth	Cynthia	Benicia, CA
Hemingway-Proia	GA	Oakland, CA
Henderson	Almalee	Berkeley, CA
Henderson	Kathleen	Hollister, CA
Henley	Charlene	San Jose, CA
Hennen	H	San Mateo, CA
Henry	Devin	Nichols, NY
Hensley	Jon	Roseville, CA
Hepner	Jean	Redwood City, CA
Hermann	Birgit	San Francisco, CA
Hermann	Genevieve	Berkeley, CA
Herndon	Laura	Burbank, CA
Herr	Sarah	Berkeley, CA
Herrera	Ana	San Francisco, CA
Herzog	Jan	Berkeley, CA
Hester	J	Morgan Hill, CA
Hetherington	Kylie	Pinole, CA
Hettenbach	Gerri	San Jose, CA
Hewitt	Barbara	Burlingame, CA
Hibshman	Steven	Foster City, CA
Hickson	Nick	Phoenix, AZ
Hilberman	Dan	Menlo Park, CA
Hildebrandt	Joel	Berkeley, CA
Hilles	Ryan	Redwood City, CA
Hilliard	Llewellyn	Berkeley, CA
Hills	Michelle	Half Moon Bay, CA
Hingel	Richard	San Francisco, CA
Hitchcock	Brian	Union City, CA
Hixon	Ananya	San Anselmo, CA
Ho	Ivy	San Francisco, CA

Last Name	First Name	Address
Hodges	Jeff	Redwood City, CA
Hoemberg	Joanne	Fremont, CA
Hoernschemeyer	Don	Aptos, CA
Hoff	Anne	Martinez, CA
Hoffman	Jeff	Berkeley, CA
Hofland	Freda	Los Altos, CA
Hofrichter	Patricia	Santa Clara, CA
Hogan	Tim	Denver, CO
Holland	Brett	Los Angeles, CA
Hollis	Chris	Kentfield, CA
Hollis-Franklyn	Candace	Tiburon, CA
Holmes	Daniela	Mercede, NY
Holmes	Melissa	Fremont, CA
Holmquist	Kirsten	Sunnyvale, CA
Holt	William	Pleasanton, CA
Holter	Norbert	San Francisco, CA
Holtzclaw	John	San Francisco, CA
Holtzman	Jed	San Francisco, CA
Hooson	Clare	Belmont, CA
Hopkins	David	El Cerrito, CA
Hopkins	Dotty	Napa, CA
Hopkins	Miles	Redwood City, CA
Hopper	Lisa	Oakland, CA
Horwitz	Martin	San Francisco, CA
Howlett	Julia	San Jose, CA
Howlett	Sally	Berkeley, CA
Hrabosky	Dan	San Francisco, CA
Hsu	Suzie	Sunnyvale, CA
Hudak	Lesley	Orinda, CA
Huddleston	Molly	Santa Rosa, CA
Hudson	Andrew	Santa Rosa, CA
Huerta	Sandra	Manhattan, KS

LIST OF COMMENTERS

Last Name	First Name	Address
Huey	Clinton	San Leandro, CA
Hughes	Bettina	Forest Knolls, CA
Hughes	Bonnie	Berkeley, CA
Humphrey	Vernon	San Francisco, CA
Humrich	Gilia	Forestville, CA
Hunter	Shannon	San Jose, CA
Hutton	Edyth	Incline Village, NV
Iimura	Wallace	Cupertino, CA
Illick	Joseph	San Francisco, CA
Ingalls	Libby	San Francisco, CA
Ingenthron	Karen	Oakland, CA
Inguanzo	Segifredo	Newark, CA
Irwin	Yvette	Martinez, CA
Ito	Brad	Redwood City, CA
Ja	Tia	San Jose, CA
Jackman	Jean	Davis, CA
Jacob	Ron	San Jose, CA
Jacobs	Suzanne	Palo Alto, CA
Jacoby	David	Belmont, CA
Jacques	Karen	Sacramento, CA
Jailer	Todd	Berkeley, CA
Jaime	Brenda	San Jose, CA
James	Wilson	Napa, CA
Janakiraman	Anna	Los Altos, CA
Javrotsky	Julie	San Rafael, CA
Jay	Nalani	Hillsborough, CA
Jayapandian	Magesh	San Jose, CA
Jeffery	Brian	Sunnyvale, CA
Jensen	Abby	Santa Rosa, CA
Jensen	Cheriel	Saratoga, CA
Jepsen	Richard	Alameda, CA
Jewett	Nancy	Turlock, CA

Last Name	First Name	Address
Jimenez	Heather	San Francisco, CA
Job	Isaias	Fremont, CA
Johl	Corey	Gilroy, CA
Johnsen	John	Richmond, CA
Johnson	Asali	Cupertino, CA
Johnson	Jeffrey	Castro Valley, CA
Johnson	Linn	Redwood City, CA
Johnson	Peggy	San Rafael, CA
Johnson	Thomas	Woodside, CA
Johnson	Wayne	San Francisco, CA
Johnston	Catherine	El Cerrito, CA
Jones	Jill	Oakland, CA
Jones	Karen	Venice, CA
Jonson	Suzanne	San Francisco, CA
Jordan	Cynthia	San Anselmo, CA
Joscelyn	Miriam	Richmond, CA
Josephson	Stephen	Berkeley, CA
Juarez	Francisco	San Francisco, CA
Jurich	Bernadette	Hayward, CA
K	Charlie	San Francisco, CA
Kahn	Jeffery	Oakland, CA
Kantmann	Hillary	Oakland, CA
Kasuya	Tauny	San Rafael, CA
Katz	Michael	Lafayette, CA
Kaufman	Jon	Alameda, CA
Kayan	Helmut	San Francisco, CA
Kean	Andrea	Berkeley, CA
Keats	Adam	San Francisco, CA
Keay	Andrew	San Francisco, CA
Keefe	Marie	Burbank, CA
Keenan	Margaret	San Jose, CA
Keith	Sheery	Berkeley, CA

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Last Name	First Name	Address
Keller	Emily	Berkeley, CA
Kelley	Mary	San Francisco, CA
Kelly	Colleen	Redwood City, CA
Kelly	Gaye	Alameda, CA
Kelly	Kathy	Larkspur, CA
Kelly	Paul	Davis, CA
Kelsberg	Jane	Antioch, CA
Kennedy	William	Redwood City, CA
Kennelly	Martha	Castro Valley, CA
Kenney	Michael	El Cerrito, CA
Kerhin	Michael	Redwood City, CA
Kerr	Heather	San Jose, CA
Kersten	Tom	Hayward, CA
Kessler	Robert	Oakland, CA
Khufu	Sita	San Anselmo, CA
Kiernan	Barbara	Plumas Lake, CA
Kiernan	Frank	Olivehurst, CA
Kimball	Aubrey	Newark, CA
Kimball	Carrie	Newark, CA
King	Barbara	Los Angeles, CA
King	Jan	Glendora, CA
King	Jean	Livermore, CA
King	Julie	Redwood City, CA
King	Richard	Glendora, CA
King	Susan	Concord, CA
Kiplinger	Allysyn	Oakland, CA
Kirk	John	Redwood City, CA
Kirk	Judith	Redwood City, CA
Kissee	Sherry	Henderson, NV
Kleber	Tracey	Los Angeles, CA
Klein	Anne & Joseph	Benicia, CA
Klein	Karen	San Ramon, CA

Last Name	First Name	Address
Klein	V. Joseph	Benicia, CA
Klingner	Christian	Sunnyvale, CA
Kloberdanz	Ron	South San Francisco, CA
Klosterman	Pete	New York, NY
Klovstad	Kathy	Mill Valley, CA
Knapper	Karl	San Francisco, CA
Knickerbocker	Al	Mountain View, CA
Knight	Linda	Kenwood, CA
Knight	Marla	San Francisco, CA
Knoll	Heather	Sebastopol, CA
Ko-Dial	June	Oakland, CA
Koivisto	Ellen	San Francisco, CA
Kolarik	John	Vallejo, CA
Konno	June	San Mateo, CA
Kopisch	Manfred	Menlo Park, CA
Korelich	Greg	Santa Rosa, CA
Korpos	Michele	Concord, CA
Koss	James	Point Richmond, CA
Kossy	Barbara	Moss Beach, CA
Kracht	Pattie	Redwood City, CA
Kralovansky	Caryn	El Dorado Hills, CA
Kramer	Julie	San Francisco, CA
Kramer-Rolls	Dana	Richmond, CA
Kraus	Janine	Berkeley, CA
Krauss	Sabrina	Santa Rosa, CA
Krauss	Vanessa	Livermore, CA
Krausz	Lisa	Tiburon, CA
Krigbaum	Jessika	Newark, CA
Krikourian	Robert	El Dorado Hills, CA
Krouse	Tom	Novato, CA
Krupinski	K	Los Angeles, CA
Kubota	Ria Tanz	El Sobrante, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Kuelper	Carol	Oakland, CA
Kumar	Hema	Fremont, CA
Kwek	Leng	Fremont, CA
LaBrecque	Cheryl	San Francisco, CA
Lacy	Sharon	Sebastopol, CA
LaFollette	Anita	Petaluma, CA
LaFrance	Roberta	San Leandro, CA
Lagarde	Mark	San Jose, CA
Lahren	Missy	San Francisco, CA
Lamanno	Ray	Danville, CA
Lamarche	Nicole	San Jose, CA
Lamont	Juliet	Berkeley, CA
Land	Martha	Concord, CA
Landau	Beryl	San Francisco, CA
Lane	Apryl	Fremont, CA
Lane	David	Los Gatos, CA
Lane	Rochelle	Sherman Oaks, CA
LaNew	Maryann	San Clemente, CA
Lang	Roger	Concord, CA
Lang	Sue	Concord, CA
Lange	Christopher	San Mateo, CA
Langlitz	Seretha	Alameda, CA
Langmaid	Daniel	Oakland, CA
Lantz	Jamie	San Francisco, CA
Lanum	Glenn	Menlo Park, CA
Lapin	Ellis	Larkspur, CA
Lareau	Audrey	Redwood City, CA
Larsen	Ady	Brisbane, CA
Larsen	Denise	Woodside, CA
Larson	Fran	Pacifica, CA
Larson	Janet	Atherton, CA
Larstein	Francine	Watsonville, CA

Last Name	First Name	Address
Lasahn	J	El Cerrito, CA
Laslett	Lawrence	Sacramento, CA
Latimer	Matthew	Union City, CA
LaTourette	Jeff	San Jose, CA
LaTourette	Peter	Los Altos, CA
Lauritsen	Dana	San Jose, CA
Lavalli	Timothy	Berkeley, CA
Lawson	Jennifer	Corte Madera, CA
Le Doux	Linaia	Newark, CA
Leaf	Peter	San Francisco, CA
Leahy	Andrew	San Francisco, CA
Leddy	Matthew	Redwood City, CA
Lee	Ed	Santa Clara, CA
Lee	James	Orinda, CA
Lee	Phillip	Redwood City, CA
Leeder	Cynthia	San Jose, CA
Legaroff	Kyra	Richmond, CA
Leikam	Bill	Palo Alto, CA
Leinwand	Allen	San Jose, CA
Leiva	E	Concord, CA
LeMay	Mitch	San Francisco, CA
Lemons	Robert	San Francisco, CA
Lent	Kelli	Alameda, CA
Lenz	Stinson	Berkeley, CA
Leonelli	Lorraine	Sunnyvale, CA
Lester	George	San Pablo, CA
Leung	Lily	Alameda, CA
Levendos	Mary	San Jose, CA
Levensaler	Kurt	Danville, CA
Levine	Noemi	Berkeley, CA
Lewis	Ashley	San Francisco, CA
Lewis	Cheryl	San Francisco, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Lewis	Don	Richmond, CA
Lewis	Donna	Van Nuys, CA
Lewis	Katherine	Walnut Creek, CA
Lidicker	Naomi	Kensington, CA
Lieb	James	Santa Cruz, CA
Lillie	Krist	Mountain View, CA
Lim	Ken	Saratoga, CA
Lim	Olivia	Fremont, CA
Lim	Sarah	Hayward, CA
Lin	Jessie	San Jose, CA
Lintott	David	San Mateo, CA
Lipkind	Lawrence	San Francisco, CA
Lipman	Kate	Fremont, CA
Lippert	Amy	Martinez, CA
Lish	Christopher	Olema, CA
Little	James	Palo Alto, CA
Little	Timothy	Pleasanton, CA
Litzinger	Faye	Oakland, CA
Liu	Melanie	Palo Alto, CA
Livingston	John	Redding, CA
Livingstone	Betsy	Forestville, CA
Locks	Renee	Mill Valley, CA
Loewer	Vera	Pacifica, CA
Longley	Toni	Eureka, CA
Lopez	Ruben	Newark, CA
Lorraine	Hilary	Kensington, CA
Lotz	Elizabeth	Santa Rosa, CA
Louie	Denise	San Francisco, CA
Louie	Vincent	San Francisco, CA
Lowry	Marsha	El Sobrante, CA
Lubitz	Iris	Mountain View, CA
Lucas	Janie	San Francisco, CA

Last Name	First Name	Address
Luckman	Paul	Oakland, CA
Lugo	Joseph	Gilroy, CA
Lukas	Robert	Fremont, CA
Lukaszewski	Aggie	Oakland, CA
Lumpkin	Kirk	El Cerrito, CA
Lumpkin	Susan	Fremont, CA
Luther	Carol	San Anselmo, CA
Lutman	Robert	San Jose, CA
M.D.	Warren	Mill Valley, CA
MacDermott	Gordy	San Rafael, CA
Mack	Amelia	Berkeley, CA
Mackay	Leslie	San Francisco, CA
MacKenzie	Michelle	San Carlos, CA
MacKenzie	Susan	Kentfield, CA
Mackey	Claudia	Stockton, CA
Mackey	Suzanne	San Rafael, CA
Mackowski	Marty	Redwood City, CA
Madding	jess	San Francisco, CA
Maddison	Ian	San Francisco, CA
Maghakian	Mike	Hercules, CA
Magill	Catherine	Palo Alto, CA
Maher	Mary Lou	Antioch, CA
Maldonado	Gloria Linda	Redwood City, CA
Malmuth	Sonja	Santa Ynez, CA
Manrique	Sonia	Berkeley, CA
Manske	Kent	Redwood City, CA
Manwaring	Pamela	Fairfax, CA
Mara	Leo	Livermore, CA
Marcellini	Marcia	Lafayette, CA
Marks	Jim	San Francisco, CA
Marks	Richard B.	Watsonville, CA
Markus	Mary	Garden Grove, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Marlin	Anita	Belmont, CA
Marsh	Sherry	Oceanside, CA
Marsh	Theresa	San Mateo, CA
Marsullo	Lenore	Newark, CA
Martin	Ben	Mountain View, CA
Martin	Drew	Lake Worth, FL
Martin	Mary	Mountain View, CA
Martin	Susan	Oakland, CA
Martin	Susan	Oakland, CA
Martin	William	Cupertino, CA
Martinez	Casey	San Francisco, CA
Masek	M	Danville, CA
Maselbas	June	Larkspur, CA
Maslin	Cheryl	Alameda, CA
Mason	Ann	Palo Alto, CA
Matlock	KL	San Jose, CA
Matthews	Laurie	Hayward, CA
Matz	Tamara	Los Angeles, CA
May	Andrew	San Jose, CA
Mayhew	Sarah	Davis, CA
mc Guire	William	San Francisco, CA
McBirney	John	Los Altos, CA
McBirney	Madeline	Los Altos, CA
McCallister	Janet	Paradise, CA
McCallister	Linda	Vacaville, CA
McCarthy	Setsurin	San Francisco, CA
McCarthy	Sharon	San Rafael, CA
McCarty	Ingrid	San Mateo, CA
McComas	Barney	Berkeley, CA
McConachie	Wendy	La Honda, CA
McCullough	Denali	San Jose, CA
McDermott	Paul	Los Angeles, CA

Last Name	First Name	Address
McDonald	Kathryn	Fremont, CA
McDonough	Rebecca	Menlo Park, CA
McDowell	Judi	Fremont, CA
McFadden	Clara	El Cerrito, CA
McFarland	James	Redwood City, CA
McFarlane	Sadie	San Francisco, CA
McGowan	Michael	Orinda, CA
McGowan	Richard	San Jose, CA
McHenry	Steve	San Jose, CA
McIntyre	Rene	San Francisco, CA
McKay	Anne	Brooklyn, NY
Mckenna	Caephren	Piedmont, CA
McKinney	Mary	Concord, CA
McKinsey	Garry	Redwood City, CA
McMullen	Marilyn	Vallejo, CA
McRae	Carol	Fairfax, CA
Means	Robert	Milpitas, CA
Medal	Tomasita	San Francisco, CA
Mehrkens	Patricia	San Jose, CA
Mehta	Purvi	Belmont, CA
Melchior	Karen	Los Altos, CA
Mello	Annette	Boulder Creek, CA
Mellon	Ronald	El Cerrito, CA
Melnick	Andrew	Los Gatos, CA
Menasco	Jamie	Martinez, CA
Mendelson	Debbie	Woodside, CA
Mendez	David	Milpitas, CA
Mendez	Molly	Oakley, CA
Merrill	Rodney	Berkeley, CA
Mestas	Rebecca	Newark, CA
Meyer	Alexander	Redwood City, CA
Meza	Joel	San Francisco, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Mezai	Lisa	Mountain View, CA
Michael	Joseph	Berkeley, CA
Middleton	Jim	Sacramento, CA
Mikich	Tripp	Diamond Springs, CA
Mikkelsen	Erik	Santa Cruz, CA
Mikulic	Barbara	San Mateo, CA
Miles	Janice	Redwood City, CA
Miljanich	George	Redwood City, CA
Miller	Alan	El Cerrito, CA
Miller	Charly	Whittier, CA
Miller	Daniel	Fremont, CA
Miller	Joshua	Alameda, CA
Miller	Julie	San Francisco, CA
Miller	Stephanie	Santa Rosa, CA
Milligan	Susan	Concord, CA
Mills	Melissa	Menlo Park, CA
Mills	Russell	San Francisco, CA
Milrod	Lara-Miya	San Jose, CA
Mimeau	Patricia	San Francisco, CA
Mischel	David	San Francisco, CA
Mitchell	William	Oakland, CA
Mitcheltree	Cody	San Francisco, CA
Mitsuda	Michael	Fremont, CA
Mixon	Thea	Alameda, CA
Mock	Carol	Fremont, CA
Moldovan	Lori	Miami, FL
Molina	Ron	San Francisco, CA
Monroe	Dianne	Santa Rosa, CA
Monroe	James	Concord, CA
Monson	Mike	El Cerrito, CA
Montapert	Anthony	Ventura, CA
Mont-Eton	Elaine	San Rafael, CA

Last Name	First Name	Address
Montgomery	Kris	San Rafael, CA
Montgomery	Melodye	Alameda, CA
Montoya	Lynn	Redwood, CA
Moore	Andrea	San Francisco, CA
Moore	Elizabeth	Sunnyvale, CA
Moose	Mary Etta	San Francisco, CA
Moresi	Mary	Oakland, CA
Moretti	Vicente	Mountain View, CA
Morgan	Beverly	Oakland, CA
Morgan	Jill	Menlo Park, CA
Morris	Cynthia	Fremont, CA
Morris	Keith	Los Angeles, CA
Morris	Megan	Sacramento, CA
Morrison	Anastasia	Redwood City, CA
Morrison	Fred	Hayward, CA
Moser	Anne	Menlo Park, CA
Moser	Kaitlyn	Newark, CA
Mueller	Gretchen	San Francisco, CA
Mugglestone	Lindsay	Berkeley, CA
Muldaur	Maria	Mill Valley, CA
Mullan	John	Stockton, CA
Mulvey	Lori	Comstock Park, MI
Munoz	Angela	Oakland, CA
Munoz	Jeanne	San Francisco, CA
Murphy	Denise	Watsonville, CA
Murray	Gwyn	Menlo Park, CA
Murray	Hayden	San Francisco, CA
Murray	Margaret	Pinole, CA
Myers	Jean	Gilroy, CA
Mykytyn	Anita	Danville, CA
Nadir	Kelly	Los Altos, CA
Naifeh	Karen	San Mateo, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Najia	Rose	Los Gatos, CA
Narciso	Elizabeth	Newark, CA
Nascimento	Antoinette	Alameda, CA
Naumann	Robert	El Cerrito, CA
Naylor	Katharine	
Neklason	Karen	Fremont, CA
Nelson	Bill	Santa Rosa, CA
Nelson	Dency	Hermosa Beach, CA
Nelson	Michael	Redwood City, CA
Nelson	Scott	Bethel Island, CA
Nelson	Tom	Orinda, CA
Nemechek	Krista	Piedmont, CA
Newman	Roberta E.	Mill Valley, CA
Newsham	Brad	Oakland, CA
Newton	Alice	Menlo Park, CA
Nicholas	Julie	Mill Valley, CA
Nickle	Donna	Fremont, CA
Nielsen	Randi	Richmond, CA
Nill-Snow	Kristine	San Leandro, CA
Nohmberg	Adelina	Sunnyvale, CA
Nolan	Fiona	San Rafael, CA
Nolan	Heather	Mill Valley, CA
Nolan	Katherine	Cupertino, CA
Noori	Laila	San Jose, CA
Norcz	Judith	Redwood City, CA
Noriega	Tessa	San Carlos, CA
Norr	Carolyn	Oakland, CA
Norwood	Darlene	Fairfield, CA
Norwood	Katherine	Redwood City, CA
Nothern	Marjorie	Danville, CA
Novak	Lindy	Orinda, CA
Obrien	Cecille	San Jose, CA

Last Name	First Name	Address
O'Brien	Bettina	Santa Rosa, CA
Ochoa	Victor	Oakland, CA
Oda	John	San Francisco, CA
Ogle	Annie	San Francisco, CA
O'Hare	Kevin	Oakland, CA
Oldershaw	Susan	Oakland, CA
Olson	Carol	Mountain View, CA
Olson	D	Palo Alto, CA
Olson	James	Foster City, CA
Olson	M	Sunnyvale, CA
Olson	Sarah	Forestville, CA
O'Meara Dietrich	Chris	San Jose, CA
Omodt	Winnie	San Bruno, CA
Ondrasek	Dan	San Jose, CA
Opperman	Erin	Sebastopol, CA
O'Reilly	Brain	Los Angeles, CA
Orellana	Marisa	Burlingame, CA
Orlove	Hannah	New York, NY
Oroz	Michelle	Morgan Hill, CA
Orozco	Angela	San Francisco, CA
Osborn	Oliver	Corte Madera, CA
Osborn-Gagen	Vicki	Redwood City, CA
Oseguera	Laura	Redwood City, CA
Oser	Wendy	Berkeley, CA
Ostwald	David	Portola Valley, CA
Owen	Linda	Santa Monica, CA
Owens	Lois	Foster City, CA
Padelford	Grace	Los Angeles, CA
Padilla	Andrew	San Francisco, CA
Padmanabhan	Urmila	Fremont, CA
Pagano	Adriana	San Francisco, CA
Page	Charles	Novato, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Page	Garril	San Anselmo, CA
Pajuelo	Melissa	Newark, CA
Palacio	Diane	San Francisco, CA
Panigada	Allison	Hayward, CA
Pardini	Jennifer	Fremont, CA
Parisi	Nicole	San Francisco, CA
Park	Richard	Novato, CA
Park	Robert	Sunnyvale, CA
Parker	Nancy	Berkeley, CA
Parmeley	Tish	Hood River, OR
Parrent	David	Redwood City, CA
Parris	Ann	San Francisco, CA
Parrish	Joan	Santa Cruz, CA
Parsons	Amy	Redwood City, CA
Parzen	Elinor	Oakland, CA
Parzygnot	Jeanne	San Jose, CA
Paski	Brandon	Redwood City, CA
Patenaude	Richard	Hayward, CA
Patrick	Cyndy	Fremont, CA
Patterson	Kim	Benicia, CA
Patterson	Virgil	Newark, CA
Patton	Carol	Kensington, CA
Patton	Lois	Larkspur, CA
Peakes	William	Hayward, CA
Pearson	Enid	Palo Alto, CA
Pedroni	Aaron	El Cerrito, CA
Pedroza	Donna	Alameda, CA
Pell	Jill	Millbrae, CA
Pelton	Janet	Grass Valley, CA
Perkins	Robert	Newark, CA
Perlman	Janet	Berkeley, CA
Perron	Maureen	Half Moon Bay, CA

Last Name	First Name	Address
Perry	Cyrle	Orinda, CA
Perry	David	Palo Alto, CA
Perry	David	San Francisco, CA
Pesenson	Igor	Berkeley, CA
Peters	Richard	Sonoma, CA
Petersen	John	Oak View, CA
Peterson	Ellen	Berkeley, CA
Peterson	Michael	San Francisco, CA
Peterson	Nancy	Scotts Valley, CA
Petranto	Nancy	Novato, CA
Pettersson	Bernt	Lafayette, CA
Pham	Tee	San Jose, CA
Pharazyn	Jonathan	Mountain View, CA
Phelps	Walter	Vacaville, CA
Phillips Michel	Barbara	Danville, CA
Phipps	Nicole	San Francisco, CA
Pierce	Arden	Palo Alto, CA
Pierce	Morgan	Sausalito, CA
Pillsbury	Lesley	Petaluma, CA
Piotrowsky	Nancy	Vallejo, CA
Pitts	Jeanne	Redwood City, CA
Pleva	Anthony	Campbell, CA
Polchow	Greg	San Francisco, CA
Polick	Melissa	Mill Valley, CA
Polk	Gabe	San Francisco, CA
Pomies	Jackie	San Francisco, CA
Potter	Bridgette	San Francisco, CA
Potts	Catherine	San Jose, CA
Pound	Laura	Mariposa, CA
Powell	Jolena	Sonoma, CA
Powers	Matt	Hayward, CA
Prak	Karen	Menlo Park, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Preisser	Jonelle	Palo Alto, CA
Prendergast	Angela	Danville, CA
Price	C	Palo Alto, CA
Price	Tammy	Concord, CA
Prihode	Sarah	Newark, CA
Primrose	Candace	Sacramento, CA
Pringle	M	San Francisco, CA
Proia	Martina	Oakland, CA
Pryor	Lois	Alameda, CA
Przybylowicz	Donna	Berkeley, CA
Puaoi	Richard	Novato, CA
Purwar	Anuj	Fremont, CA
Quadrini	Philip	Sausalito, CA
Quadros	John	Fremont, CA
Quenelle	Leah	Morgan Hill, CA
R	Miranda	Novato, CA
Raag	Reeta	Orinda, CA
Rahman	Sabera	San Jose, CA
Raines	Eric	Fremont, CA
Rainey	Terryll	San Francisco, CA
Raman	Suresh	Santa Clara, CA
Ramtrom	Eric	Redding, CA
Rand	Christopher	Richmond, CA
Randolph	Katherine	Mill Valley, CA
Rasler	Ken	Fremont, CA
Rausis	Maria	Mountain View, CA
Ray	Carol	Fontana, CA
Ray	Rebecca	San Jose, CA
Ray	Rita	Mountain View, CA
Rayhill	Kevin	Berkeley, CA
Raymond	Sheila	Los Gatos, CA
Rayton	Linden	Berkeley, CA

Last Name	First Name	Address
Rea	Paul	Newark, CA
Read	Michael	Burlingame, CA
Reback	Mark	Los Angeles, CA
Recine	Barb	Mountain View, CA
Redden	Nancy	San Leandro, CA
Redish	Maryellen	Palm Springs, CA
Redwitz	Jenny	Oakland, CA
Reed	Robert	Lake Elsinore, CA
Reeder	Joyce	San Carlos, CA
Reel	Joseph	Pacific Grove, CA
Regalado	Geoff	Burbank, CA
Reid	Jena	Temecula, CA
Reid	Rebecca	Fresno, CA
Reinholz	Donald	Union City, CA
Reis	Alvaro	Santa Clara, CA
Reom	Carol	Piedmont, CA
Reyering	Nancy	Woodside, CA
Reynolds	Judy	San Jose, CA
Reynolds	Robert	Fremont, CA
Reynolds	Sharon	Napa, CA
Rhoades	Michael	San Jose, CA
Riccitiello	Kim	San Jose, CA
Rice	Jay	Novato, CA
Richaardson	Katherine	Pleasant Hill, CA
Richman	Dan	San Francisco, CA
Rickard	Rick	Oakland, CA
Rickers	Frederick	Lincoln, NE
Rickman	Roz	Castro Valley, CA
Ridder	Lynette	Concord, CA
Riech	Laurie	Orinda, CA
Riehart	Dale	San Francisco, CA
Rinaldo	Arlene	San Jose, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Rinne	Freda	San Francisco, CA
Risseeuw	William	Redwood City, CA
Ritter	Rebecca	Healdsburg, CA
Rivera	Joe	Redwood City, CA
Rivera	Mara	San Francisco, CA
Roat	Jess	Burlingame, CA
Robbins	John	Greenbrae, CA
Roberts	Katherine	San Francisco, CA
Robertson	Lynne	Mill Valley, CA
Robie	Lisa	San Lorenzo, CA
Robinson	Elaine	San Jose, CA
Robinson	Julianna	Venice, CA
Robinson	Larry	San Francisco, CA
Robinson	Merrily	Redwood City, CA
Robinson	Rebecca	San Pablo, CA
Robinson	Richard	Manhattan Beach, CA
Robles	Sidney	Napa, CA
Roby	Marsha	Greenville, CA
Rocha	Candace	Los Angeles, CA
Rocha	Candy	Los Angeles, CA
Roche	Carol	Napa, CA
Rocke	Janice	Monterey, CA
Rodgers	Mary	Menlo Park, CA
Rodrigues	Amanda	Manteca, CA
Rodrigues	S	Fremont, CA
Rodriguez	Anna	Newark, CA
Rodriguez	Magdalena	Alta Loma, CA
Roe	Barbara	Alameda, CA
Roe	Geraldine	Palo Alto, CA
Rogers	Karen	Lancaster, CA
Rogers	Suzanne	Burlingame, CA
Rohlfs	Kelly	Mountain View, CA

Last Name	First Name	Address
Rollison	Sheri	Novato, CA
Romero	Jana	Oakland, CA
Roome	Benjamin	San Francisco, CA
Rosas	Greg	Castro Valley, CA
Rose	Beth	Novato, CA
Rose	Michael	Oakland, CA
Rose	Nancy	Oakland, CA
Rosenberg	Bob	Kentfield, CA
Rosenbloom	Margaret	Palo Alto, CA
Rosenblum	Stephen	Palo Alto, CA
Rosenfeld	Henry	Riverside, CA
Rosenfeld	Zachary	Riverside, CA
Ross	Sally	San Francisco, CA
Row	Margaret	Palo Alto, CA
Royer	Allen	San Jose, CA
Rubel	Scott	Los Angeles, CA
Ruff	Bryan	San Jose, CA
Ruffolo	Marc	San Francisco, CA
Rufo	Maggie	Novato, CA
Ruiz	Linda	Chesapeake, VA
Rummel	Thomas	Los Angeles, CA
Runyan	Renee	Fremont, CA
Ruppel	Kathleen	Stanford, CA
Rusay	Suzanne	Lafayette, CA
Rush	Brian	Redwood City, CA
Rusiniak	Karen	Berkeley, CA
Ruskin	Susan	Mill Valley, CA
Russell	Kat	Mill Valley, CA
Russell	Steven	Redwood City, CA
Russell	Susan	El Cerrito, CA
Ruth	Lucymarie	Richmond, CA
Rutherdale	Jay	Sacramento, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Ryan	Paul	Napa, CA
Ryon	Richard	Livermore, CA
Sailor	Dan	Redwood City, CA
Saiu	Joanne	San Jose, CA
Salama	Moktar	Fountain Valley, CA
Salazar	Lisa	Foster City, CA
Salcido	John	Belmont, CA
Sallee	Lara	Alameda, CA
Salyers	Helen	Mill Valley, CA
Sames	John	San Rafael, CA
Samson	Alyson	Fairfield, CA
Samson	Lars	San Jose, CA
Samuels	Michele	Mill Valley, CA
Samuels	Mike	San Rafael, CA
Sanchez	Jessica	Fremont, CA
Sanchez	Ralph	Santa Cruz, CA
Sanchez	Rebecca	Portlandville, NY
Sanderell	Richard	San Francisco, CA
Sanders	Brenda	Danville, CA
Sansone	V R	Vallejo, CA
Santos	Crystina	Fremont, CA
Sarris	Dorian	Craftsbury, VT
Sasaoka	Julie	Concord, CA
Savage	Patricia	Mammoth Lakes, CA
Sawicki	Benjamin	Emeryville, CA
Schader	Kevin	Walnut Creek, CA
Schafer	Judy	Greenbrae, CA
Schamach	Michelle	Petaluma, CA
Schardt	Lynn	Garden Valley, CA
Scheifler	Donna	Redwood City, CA
Schiffman	Lauren	Richmond, CA
Schildgen	Bob	Berkeley, CA

Last Name	First Name	Address
Schink	Margaret	Portola Valley, CA
Schlansker	Jana	Los Altos, CA
Schlecker	Rose	South San Francisco, CA
Schmeder	Nadya	Napa, CA
Schmidt	Debbie	Alameda, CA
Schnabel	Erik	San Francisco, CA
Schneider	Mary	Pleasanton, CA
Schoene	William	Santa Monica, CA
Schoenstein	Andrew	Half Moon Bay, CA
Schongut	Emanuel	San Francisco, CA
Schram	Theodore	Redwood City, CA
Schuler	Jeanette	San Leandro, CA
Schulz	Jean	Santa Rosa, CA
Schupp	Norma	Sacramento, CA
Schwartz	Jake	Petaluma, CA
Schwindt	Vila	Oakland, CA
Scott	Greg	Newark, CA
Scott	Sally	Kentfield, CA
Scott	Susanne	Sequim, WA
Scullion	Clive	Oakland, CA
Sea	Kevin	Claremont, CA
Seaborg	Dave	Walnut Creek, CA
Seeley	Marsha	San Francisco, CA
Selan	Ruth	San Jose, CA
Sellge	Hans	Redwood City, CA
Settel	Elizabeth	Mill Valley, CA
Sham	Rjaat	Palo Alto, CA
Shane	Jeremy	Richmond, VA
Shankle	Susan	San Mateo, CA
Sharpe	Regina	San Jose, CA
Shea	Monette	Newark, CA
Sheinfeld	Susan	San Francisco, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Shek	Mei-Ling	Sunnyvale, CA
Sheldon	Sher	Novato, CA
Shenk	Mary	Menlo Park, CA
Sherman	Richard	Berkeley, CA
Sherwood	Marta	Gilroy, CA
Sherzer	Teresa	San Francisco, CA
Shiba	Laurel	San Francisco, CA
Shoemaker	Victoria	Oakland, CA
Shubert	Lois	Camarillo, CA
Shuman	Carolyn	San Francisco, CA
Shuman	Derek	Berkeley, CA
Silver	Jon	Portola Valley, CA
Silverman	Marc	Los Angeles, CA
Simon	Philip	San Rafael, CA
Simons	Lori	Fremont, CA
Simons	Sandra	Richmond, CA
Simpson	Frank	San Mateo, CA
Sims	Katherine	San Leandro, CA
Singer	D	Oakland, CA
Sisneros	Susan	Livermore, CA
Sivesind	Torunn	Lafayette, CA
Skeels	Wade	Middletown, CA
Skoczek	Christianna	Kittery Point, ME
Sloan	Robin	Novato, CA
Smalley	Brian	Oakland, CA
Smith	Ann	Pleasant Hill, CA
Smith	Benita	Berkeley, CA
Smith	Charles	San Jose, CA
Smith	Clark	Berkeley, CA
Smith	Don	Livermore, CA
Smith	Elinor	Fremont, CA
Smith	Gaye	Los Angeles, CA

Last Name	First Name	Address
Smith	Gwyneth	Escondido, CA
Smith	Jill	Alviso, CA
Smith	Judith	Oakland, CA
Smith	Karen	Berkeley, CA
Smith	Leslie	Oakland, CA
Smith	Lynn	Rohnert Park, CA
Smith	Marilynn	San Jose, CA
Smith	RL	Redwood City, CA
Smith	Scott	Berkeley, CA
Smith	Winnafred	Fremont, CA
Smythe	Fiona	San Francisco, CA
Snyder	Todd	San Francisco, CA
Sobel	Ceevah	Menlo Park, CA
Solomon	Shelby	Piedmont, CA
Somers	John	Sonoma, CA
SongerNelson	Liesl	Orinda, CA
Soong	Daniel	Minneapolis, MN
Soto	Carol	San Francisco, CA
Sowell	Catherine	Santa Rosa, CA
Sowisdrzal	John	Newark, CA
Spence	Kathryn	San Francisco, CA
Spencer	Gayle	Menlo Park, CA
Spencer	Jeremy	Pacifica, CA
Spickler	Julie	Menlo Park, CA
Spillane	Nicki	Kensington, CA
Spindler	Rebecca	Union City, CA
Spittler	Nancy	San Lorenzo, CA
Spitzer	Daniel	Berkeley, CA
Spivak	Lawrence	San Jose, CA
Springmeyer	Erin	Santa Clara, CA
St. John	Rick	San Francisco, CA
St. Louis	Emily	Milpitas, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Stanojevic	Erica	Santa Cruz, CA
States	Jack	Oakland, CA
Stebbings	Barrie	Stinson Beach, CA
Steele	Lisa	Roseville, CA
Steelman	Brent	Redwood City, CA
Steelman	Katryn	Redwood City, CA
Steere	John	Berkeley, CA
Steffen	Eric	Richmond, CA
Stein	Jasper	Newark, CA
Steinhart	Peter	Palo Alto, CA
Stelzer	Samantha	San Mateo, CA
Stephenson	Bryan	Alviso, CA
Steponaitis	John	San Francisco, CA
Stern	Robert	San Rafael, CA
Stern	Robert	San Rafael, CA
Sternberg	Laura	San Jose, CA
Stevenson	Douglas	Fremont, CA
Stevick	Susan	Atherton, CA
Stewart	Christine	Escondido, CA
Stewart	John	Redway, CA
Stowell	Robert	Redwood City, CA
Strailey	Faith	Quincy, CA
Strand	Brenda	Fremont, CA
Stratman	Gerald	Glen Ellen, CA
Straub	Carolyn	San Jose, CA
Strauss-White	Terry	Mill Valley, CA
Stuart	Arlene	Hayward, CA
Sturges	Dale	San Francisco, CA
Sullivan	Giselle	Simi Valley, CA
Sultar	Joanne	Berkeley, CA
Sundell	Carol	San Francisco, CA
Surdam	Herschel	San Mateo, CA

Last Name	First Name	Address
Surovik	Margo	Davis, CA
Susman	Neilda	Portola Valley, CA
Sutherland	Mark	Gazelle, CA
Swanson	Margaret	Sunnyvale, CA
Sweeny	Joy	Mountain View, CA
Sweet	L	Vallejo, CA
Swenning	C	Richmond, CA
Swiss	Sue	Hopatcong, NJ
Swoiskin	Mark	Mill Valley, CA
Syrett	Edward	Menlo Park, CA
Syrett	Suzan	Menlo Park, CA
Szymanski	Ron	Hathaway Pines, CA
Szymanski	Val	El Sobrante, CA
Taggart	Carol	Menlo Park, CA
Tamm	Ryan	Redwood City, CA
Tamm	Sharon Ryals	Berkeley, CA
Tang	Henry	Fremont, CA
Tanke	Carrie	Moorpark, CA
Tapley	Dennis	Sebastopol, CA
Tarras	Gail	Mill Valley, CA
Tash	Deborah	San Francisco, CA
Taylor	Deborah	San Jose, CA
Templeton	Sara	San Francisco, CA
Teply	Michael	Chico, CA
Ternahan	Patricia	Oakland, CA
Terranova	N	Redwood City, CA
Thein	Van	Emerald Hills, CA
Theis	Mary	Los Altos, CA
Thibodeau	Barbara	Pacifica, CA
Thies	John	San Rafael, CA
Thole	Timothy	San Francisco, CA
Thomas	Joe	Newark, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Thomas	Karen	Oakland, CA
Thomas	Michelle	Highlands Ranch, CO
Thomas	Vicki	Oakland, CA
Thomason	Anita	Culver City, CA
Thompson	Dana	Los Gatos, CA
Thompson	Lawrence	Livermore, CA
Thompson	Stephanie	Novato, CA
Thompson	Susan	East Falmouth, MA
Thompson	Teagan	San Francisco, CA
Thomson	Rebecca	San Mateo, CA
Thresher	Catherine	San Francisco, CA
Thwaite	Whitney	Menlo Park, CA
Tilden	Margaret	San Rafael, CA
Tinney	Douglas	Fremont, CA
Toews	Margret	Menlo Park, CA
Tolbert	Tim	Los Gatos, CA
Tom	Julia	Berkeley, CA
Tomczyszyn	Michael	San Francisco, CA
Toner	Sheila	Auburn, CA
Torres	Maegan Leslie	Redwood City, CA
Townsend	Alan	San Francisco, CA
Travis	Annabelle	El Sobrante, CA
Trivisonno	Susan	San Jose, CA
Troisi	Mary	Redwood City, CA
Trueblood	Sharon	San Jose, CA
Truitt	Roberta	Mill Valley, CA
Truro	Heather	Pleasanton, CA
Tsia	Kristen	Half Moon Bay, CA
Tu	LeBinh	South San Francisco, CA
Tuazon	Monica	Union City, CA
Turner	Cheryl	Sunnyvale, CA
Turner	Tom	Los Altos Hills, CA

Last Name	First Name	Address
Twigg	Brian	Newark, CA
Twigg	Janet	Newark, CA
Uchida	Greydon	San Leandro, CA
Ucovich	Claire	San Francisco, CA
Udovch	Shelagh	Piedmont, CA
Underwodd	Ashley	Oakley, CA
Ungar	Ruth	Oakland, CA
Uselton	Elizabeth	Fremont, CA
Valencia	Pamela	South San Francisco, CA
Valencia	Richard	Pasadena, CA
Valkova	Jitka	San Francisco, CA
Van den Bogaerde	Jack	Oakland, CA
Vanderleelie	Roy	Joshua Tree, CA
VanTassell	Robin	San Rafael, CA
Varon	Martin	Mountain View, CA
Vasquez	Henry James	Colton, CA
Vaught	Jasmine	Capitola, CA
Verpeet	Karen	Oakland, CA
Vetrano	Pamela	Sonoma, CA
Vickers	Margaret	San Francisco, CA
Vie	Phoenix	Berkeley, CA
Viken	Barbara	San Francisco, CA
Vincent	David	Richmond, CA
Vogel	Nathan	City of your first elemantary school?
Vogel	Randy	Oakland, CA
Volk	S	Castro Valley, CA
Volpi	Cynthia	Oakland, CA
Von Feldt	Alexandra	Portola Valley, CA
von Sacher-Masoch	Michael	Everett, WA
Wachter	Andrea	San Francisco, CA
Waetermans	Hygi	Windsor, CA
Waggoner	Gene	Pinon Hills, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Waldhauer	Ruth	La Honda, CA
Walker	R.A.	Berkeley, CA
Wallace	David	San Francisco, CA
Wallace	Ronald	Orinda, CA
Walter	Marilyn	Portola Valley, CA
Wandro	Cathy	San Carlos, CA
Wang	Moses	Fremont, CA
Wang	Nancy	San Francisco, CA
Wark	Dana	Concord, CA
Wartenberg	Mark	Redwood City, CA
Warwick	Scott	Monrovia, CA
Wasgatt	Ann	Roseville, CA
Waters	Brian	Orinda, CA
Waters	Michelle	Los Gatos, CA
Watkins	Anita	Oakland, CA
Watrous	Ann	Lafayette, CA
Watson	Claire	Pleasant Hill, CA
Watt	Julie	Mountain View, CA
Watterson	Sylvia	Soulsbyville, CA
Watts	Susan	Riverside, CA
Watts-Penny	Kristen	San Mateo, CA
Weaver	Madeline	Hayward, CA
Webster	D L	Concord, CA
Wechsler	Steve	Brisbane, CA
Wedel	Eric	Mountain View, CA
Weed	Sally	Walnut Creek, CA
Weeden	Noreen	San Francisco, CA
Wehman	Angela	Citrus Heights, CA
Wehrman	Karen	Castro Valley, CA
Wehrman	Karen	Castro Valley, CA
Weiden	Laura	Los Altos, CA
Weigel	Alice	Watsonville, CA

Last Name	First Name	Address
Weills	Anne	Oakland, CA
Weimer	Mo	San Mateo, CA
Weinberger	Mark	San Francisco, CA
Weinert	Denise	Windsor, CA
Weininger	Gail	Alameda, CA
Weiss	Julie	San Carlos, CA
Weiss	Lenore	Oakland, CA
Weissburg	Robert	Belmont, CA
Weisz	Russell	Santa Cruz, CA
Wells	Bonnie	Walnut Creek, CA
Wenger	Benedicte	San Carlos, CA
Wernert	Tony	Lincoln City, OR
Werning	Karla	Castro Valley, CA
Westman	Betty	Nevada City, CA
Wheaton	Joyce	Willits, CA
Whisenand	Gretchen	Santa Rosa, CA
Whitacre	Susan	Honolulu, HI
White	Jusef	Fremont, CA
White	Mary	Berkeley, CA
White	Santa Maria	San Jose, CA
Whitley	C	San Jose, CA
Whitley	Linda	San Mateo, CA
Whitnah	Carol	Inverness, CA
Whitney	Searle	Berkeley, CA
Whitson	Helene	Berkeley, CA
Whyle	Amanda	Dublin, CA
Wice	Lisa	San Francisco, CA
Wiesner	John	Castro Valley, CA
Wilder	Jenny	Apple Valley, CA
Willcox	Cathryn	Cool, CA
Williams	Jayna	Pomona, CA
Williams	Jennifer	San Francisco, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Williams	Penny	San Carlos, CA
Williams	Priscilla	Santa Cruz, CA
Williamson	Arlene	Hayward, CA
Williamson	Barbara	Albany, CA
Willis	Cathy	San Francisco, CA
Willis	Jennifer	San Francisco, CA
Willis	Nancy	Emeryville, CA
Willoughby	Laura	El Cerrito, CA
Wilson	Amelia	Orinda, CA
Wilson	Eric	Santa Monica, CA
Wilson	James	San Francisco, CA
Wilson	John	Redwood City, CA
Wilson	Ken	Santa Rosa, CA
Wilson	Lois	Novato, CA
Windrum	Ken	Los Angeles, CA
Winston	Hathily	Pleasanton, CA
Wishinsky	BJ	Mountain View, CA
Wittenstein	Andreas	Woodacre, CA
Wolcott	James	Evansville, IN
Wolf	Josh	_, CA
Wolf	Maya	Oakland, CA
Wolf	Rachel	Santa Cruz, CA
Wolfe	Elizabeth	San Jose, CA
Wolfson	Toni	Felton, CA
Wolter	Manuela	St. Cruz, IA
Wong	Kathleen	El Cerrito, CA
Wong	Liana	Millbrae, CA
Wong	Melanie	Oakland, CA
Wong	Melanie	Oakland, CA
Wong	Rebecca	Castro Valley, CA
Woodford	Laura	Alameda, CA
Woolery	Alex	San Rafael, CA

Last Name	First Name	Address
Worden	Susan	Rio Vista, CA
Workman	Kim	San Francisco, CA
Wornum	Claudia	Oakland, CA
Worrell	Jasmine	Oakland, CA
Wright	Harriet	Oakland, CA
Wu	Blake	Lafayette, CA
Wu	Dennis	San Jose, CA
Wurzburg	Beth	Oakland, CA
Wyatt	Donna	Alameda, CA
Yam	Jane	San Francisco, CA
Yee	Michael	Fremont, CA
Yellis	Stefanie	Oakland, CA
Yiu	Faustine	Pinole, CA
Yuan	Ping	Palo Alto, CA
Yurman	Rich	San Francisco, CA
Yusavage	Marianne	San Francisco, CA
Zamenes	Andy	Redwood City, CA
Zanajni	Ana	Walnut Creek, CA
Zavattero	Elisabeth	Petaluma, CA
Zaveri	Ameet	Pleasanton, CA
Zeigler	A. Lee	San Francisco, CA
Zeigler	Margaret S.	San Francisco, CA
Zelaya	Mario	Berkeley, CA
Zemke	Mark	Mountain View, CA
Zhang	Hong	Fremont, CA
Ziauddin	Mohamed	Pleasanton, CA
Zierikzee	R	San Francisco, CA
Ziff	Linda	Los Altos, CA
Zimmer	Arlene	Rancho Palos Verdes, CA
Zimmermann	Cindy	Imperial Beach, CA
Zlotoff	Mary	San Jose, CA
Zolotar	Jeff	Mountain View, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Zon	Christine	Oakland, CA
Zornoza	Elvis	Pleasanton, CA
Zubkousky-White	Vanessa	Richmond, CA

5. Comments and Responses

This chapter includes a reproduction of, and responses to, letters received during the public review period. In total, 1,861 comment letters were received, including 31 comment letters containing comments on environmental issues and 1,830 nearly identical recurring comment letters submitted by email.

Letters containing comments on environmental issues are reproduced in their entirety, in the same order listed in Chapter 4 of this Final EIR. The CD delivered with the Lippe Gaffney Wagner letter is included on CD as Appendix A to this Final EIR. The CD delivered with the letter from Carin High is included on CD as Appendix B to this Final EIR. The letters containing comments on environmental issues are grouped by category as follows:

- Federal Agencies
- State Agencies
- Regional Agencies
- Local Agencies
- Corporations and Non-Governmental Organizations
- Members of the General Public

Each comment is labeled with a reference number in the margin.

Responses to comments on environmental issues are presented in a matrix. The reference number and text of the comments are presented alongside the response for ease of reference. Where the same comment has been made more than once, a response may direct the reader to another numbered comment and response. Where a response requires revisions to the Draft EIR, these revisions are explained and shown in Chapter 3 of this Final EIR document.

Additionally, the following five master responses have been prepared to allow for a more detailed response to environmental issues of particular concern to the public:

- Master Response 1: Appropriate Baseline for Environmental Review
- Master Response 2: Treatment of Previous Environmental Review
- Master Response 3: Appropriacy of Alternatives
- Master Response 4: Sea Level Rise
- Master Response 5: Clarifications Regarding Development Envisioned in the Area 3 and 4 Specific Plan

Responses in the matrix direct the reader to the master responses as appropriate. The master responses are included before the response to comment matrix in Section 5.1 of this chapter.

Recurring comment letters are included on CD, organized alphabetically, as Appendix C to this Final EIR. A single copy of the recurring letter is reproduced below in Section 5.2 of this Final EIR, followed by a master response to the recurring comment letters.

5.1 COMMENT LETTERS ON ENVIRONMENTAL ISSUES

This section contains comment letters on environmental issues, master responses, and the response to comments matrix. Below is a list of commenters, ID attached to the comment as referenced in the matrix, and the date the comment was submitted. The comment and response matrix is addressed in the same order as the list below.

Federal Agencies

- United States Department of the Interior (Fish and Wildlife Service), FWS, September 19, 2013

State Agencies

- California Department of Transportation, DOT, September 25, 2013
- California Public Utilities Commission, PUC, August 29, 2013

Regional/Local Agencies

- Alameda County Transportation Commission, ACTC, September 26, 2013
- Alameda County Water District, ACWD, September 26, 2013
- San Francisco Bay Conservation and Development Commission, BCDC, September 27, 2013.
- San Francisco Regional Water Quality Control Board, RWQCB-A, September 26, 2013
- San Francisco Regional Water Quality Control Board, RWQCB-B, September 27, 2013

Corporations and NGOs

- Ashland (Barry J. Shotts, Attorney at Law), Ashland, September 27, 2013
- Ohlone Audubon Society, OAS, September 29, 2013
- Cargill Salt Company, Cargill, September 27, 2013
- Defenders of Wildlife, DOW, September 19, 2013
- Enterprise Drive LLC, EDLLC, September 27, 2013
- Greenbelt Alliance, GA, September 27, 2013
- NMW Newark LLC, NMW, September 27, 2013
- Save the Bay, STB, September 27, 2013
- Santa Clara Valley Audubon Society, SCVAS, September 24, 2013
- San Francisco Baykeeper, SFBK, September 27, 2013
- Citizens Committee to Complete the Refuge, CCCR, September 27, 2013
- Lippe Gaffney Wagner LLP on behalf of Citizens to Complete the Refuge, LGW, September 26, 2013

- Grassetti Environmental Consulting on behalf of Citizens Committee to Complete the Refuge, GECO, September 26, 2013

General Public

- Bradley, John and Becky, Bradley-1, September 25, 2013
- Bradley, John and Becky, Bradley-2, September 27, 2013
- Burrows, Matt, Burrows, September 26, 2013
- Dorman, Michael, Dorman, September 17, 2013
- Elkins, David, Elkins, September 13, 2013
- Hooper, Molly, Hooper, September 26, 2013
- Rea, Paul, REA, September 25, 2013
- Lewis, Margaret, Lewis, September 27, 2013
- Miller, Wayne, Miller, September 27, 2013
- Sokale, Jana, Sokale, September 27, 2013

5.1.2 COMMENT LETTERS

The following comment letters address environmental issues and are presented in the same order as the list above. In each comment letter there is a comment ID and number which corresponds to the comment and response matrix, which can be found after the comments themselves.

COMMENT LETTER # FWS

United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay National Wildlife Refuge Complex
1 Marshlands Road
Fremont, California 94555

September 19, 2013

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

SUBJECT: Comments regarding the Newark General Plan Tune Up Draft EIR for the City of Newark

Dear Mr. Grindall:

The U.S. Fish and Wildlife Service (Service), Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) appreciates the opportunity to comment on the Newark General Plan Tune Up Draft EIR for the City of Newark. The Service has previously commented on proposed plans for Areas 3 and 4 in letters dated June 5, 2007; December 18, 2008; and January 20, 2010. In each of these letters we have expressed our concerns with the proposed development. We reiterate our previous comments that Area 4 should not be developed as it provides wetland habitat that support endangered species and flood protection from ponds on the border of Area 4. This site is one of the few areas in the south bay immediately adjacent to a tidal slough that still has undeveloped uplands, and a mix of wetland types, including areas where the Salt Marsh Harvest Mouse (*Reithrodontymys raviventris*), a federally endangered species and California state fully protected species, has been trapped previously. The proposed development of Area 4 will only add to the cumulative losses of tidal wetlands in San Francisco Bay and endangered species that are dependent on that habitat. **FWS-1**

The Refuge also has concerns with the proposed development and its potential to attract nuisance and predator species (e.g., gulls, geese, invasive weeds) that effect native species and habitat, and threaten the recovery of endangered species. In addition, lighting and noise impacts created by residential and golf course developments produce ambient lighting that can have a negative effect on wildlife. These issues have also been addressed in our previous comments. **FWS-2** **FWS-3**

Area 4 would be an extremely valuable addition to the Refuge as it could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas. We ask that the City of Newark implement the proposed Plan policies Action POS-1.A as stated in the Draft EIR: **FWS-4**

TAKE PRIDE® IN AMERICA

"Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay." (Page 4.1-14 of the DEIR)

In 1990, the Service issued the Final Environmental Assessment, Potential Additions to the San Francisco Bay National Wildlife Refuge, Alameda, San Mateo, and Santa Clara Counties, California (Final EA). The preferred alternative in the Final EA included a map and a boundary in which the Refuge could expand to include the additional 20,000 acres authorized by PL 100-556. The map and boundary depicted in the 1990 Final EA identified 24,500 acres as "potential additions" and Area 4 lies within this approved acquisition boundary. These potential additions were again affirmed in the Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan, published in October 2012. Approval of an acquisition boundary does not grant the Service jurisdiction or control over lands that have been identified as potential additions, but it does provide the Service the authority to seek willing sellers to acquire and/or manage lands through acquisition of fee title, conservation easements, or other agreements, based upon planning and environmental compliance processes. **FWS-4 cont.**

Thank you for considering our comments. We recommend that you also contact the U.S. Fish and Wildlife Service, Endangered Species Division in Sacramento to discuss potential effects of the proposed development to listed species and their habitat. Please keep us informed of the EIR process, especially any future opportunities to provide comment. If you have questions regarding our comments, please contact Wildlife Refuge Specialist, Melisa Amato at 510-792-0222. **FWS-5**

Sincerely,

Anne Morkill
Project Leader

cc:
Eric Mruz, Don Edwards San Francisco Bay National Wildlife Refuge (email)
Margaret Lewis, Citizens Committee to Complete the Refuge (email)
Carin High, Citizens Committee to Complete the Refuge (email)
Brian Wines, San Francisco Bay Regional Water Quality Control Board (email)
Cay Goude, USFWS Endangered Species Division (email)

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-6053
FAX (510) 286-5559
TTY 711

Flex your power!
Be energy efficient!

September 25, 2013

ALAGEN256
SCH#2013012052

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

Dear Mr. Grindall:

Newark General Plan Tune Up – Draft Environmental Impact Report

Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the Newark General Plan Tune Up. The following comments are based on the Draft Environmental Impact Report.

Regional Transportation Impact Fee Program
Under TRANS-1, the proposed plan will significantly impact Ardenwood Boulevard and State Route (SR-) 84 westbound ramps intersection during the AM Peak, and Newark Boulevard and SR-84 eastbound ramps intersection during the PM peak hour. Mitigation Measure TRANS-1a states that the impact is considered significant and unavoidable since the mitigation measure is under jurisdictions of Caltrans and the City of Fremont, and the implementation is outside the jurisdiction of the City of Newark (City). Per our comments to the traffic study scope of work, we had previously recommended the City develop a Regional Impact Fee Program (RIFP) to fund regional roadway improvements. The RIFP would collect fair-share funding from proposed projects that impact regional transportation facilities and use the funds collected to implement regional improvement at a future date. Caltrans strongly recommends the City develop a RIFP in lieu of evaluating the need for fair-share contribution on project by project basis. DOT-1

Should you have any questions regarding this letter, please call Yatman Kwan, AICP of my staff at (510) 622-1670.

Sincerely,

ERIK ALM, AICP
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse

COMMENT LETTER # PUC

STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
320 WEST 4TH STREET, SUITE 500
LOS ANGELES, CA 90013
(213) 576-7083

August 29, 2013

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

Dear Terrence:

Re: SCH 2013012052 Newark General Plan Tune Up DEIR

The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings in California. The Commission Rail Crossings Engineering Section (RCES) is in receipt of the Draft *Environmental Impact Report (DEIR)* for the proposed City of Newark (City) General Plan Tune Up project.

The project areas are located on both sides and within the vicinity of an active railroad track. RCES recommends that the City add language to the General Plan so that any future development adjacent to or near the railroad/light rail right-of-way (ROW) is 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 crossings. This includes considering pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act. Mitigation measures to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW. **PUC-1**

If you have any questions in this matter, please contact me at (213) 576-7076, ykc@cpuc.ca.gov.

Sincerely,

Ken Chiang, P.E.
Utilities Engineer
Rail Crossings Engineering Section
Safety and Enforcement Division

C: State Clearinghouse

ALAMEDA
County Transportation Commission

1111 Broadway, Suite 800, Oakland, CA 94607 • 510.208.7400 • www.AlamedaCTC.org

September 26, 2013

Terrence Grindall
Community Development Director
City of Newark
Community Development Department
37101 Newark Blvd
Newark, CA 94560

SUBJECT: Comments on the Draft Environmental Impact Report for the Newark General Plan Tune Up Project

Dear Mr. Grindall,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Newark General Plan Tune Up.

The Project is contained within the City of Newark boundaries. The Project is designed to update the policy framework and land use designations that will guide future development in Newark through 2035; to comprehensively incorporate recent planning efforts, including the completed and adopted Dumbarton Transit Oriented Development Specific Plan (2010), Area 3 and 4 Specific Plan (2009), 2009-2014 Housing Element (2010) and Climate Action Plan into the General Plan so as to ensure Citywide policy consistency; and to address and satisfy new State and regional regulations that have come into force since the General Plan was last updated including Assembly Bill (AB) 162, Senate Bill (SB) 5, the Complete Streets Act of 2008, and the greenhouse gas (GHG) reduction goals of AB 32 and SB 375. The General Plan Tune Up includes updates to the following State-mandated elements: Land Use, Transportation, Open Space and Conservation, and Safety and Noise. The State-mandated Housing Element continues to stand on its own as a separate document. Additionally, the optional Parks and Recreation Element is updated, and three new optional elements added: Economic Development, Sustainability, and Health.

The Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments:

- On page 4.13-21, the description of the Countywide Bicycle Plan should be revised to differentiate between the countywide bicycle network and local bicycle routes. The map on the following page, depicts both local and countywide routes, for instance. Also, the countywide bicycle network and countywide pedestrian plan include major interjurisdictional trails, such as the Bay Trail in Newark. ACTC-1

- On page 4.13-23, the statement that "the City of Newark and the Alameda CTC have established vehicular LOS standards for intersection performance is inaccurate." The Alameda CTC has no intersection-based LOS standards, and LOS thresholds apply to roadway segments and to ACTC-2

biennial LOS monitoring, not cumulative impact analysis of developments through the land use analysis program. **ACTC-2 cont.**

- The mitigation measures presented in Table 4.13-5 at Ardenwood Boulevard and State Route 84 WB Ramps and at Newark Boulevard and State Route 84 EB Ramps, while primarily intended to improve auto circulation, should consider opportunities to include upgrades to facilities for other modes. The Alameda Countywide Bicycle Plan identifies improvements to this interchange as a major capital project need. As the City of Newark explores mitigation measure here in conjunction with Caltrans and the City of Fremont, opportunities to improve the bikeway along Newark Boulevard should be sought. Such coordination would be consistent with the Draft Plan's Policy T-1.3: Incorporating Complete Streets Elements in Transportation Projects which specifies that "Any construction, reconstruction, retrofit, maintenance, operations, alteration, or major repair of the street network should consider ways to make streets safer for all users." **ACTC-3**

- The Draft General Plan acknowledges on page T-37 that the City of Newark's intersection LOS D standard should be considered in a context sensitive fashion: "The City will determine the need for exceptions to its LOS standards on a case by case basis in the future." The Draft Plan specifically names the Old Town Newark commercial district as one such area where "maximizing vehicular flow through intersections may not be the highest priority" as "the City seeks to create a welcoming environment for pedestrians, bicyclists, and transit users with vibrant local businesses and an attractive streetscape." In this context, the DEIR should strong consider impacts to all users from the following mitigation measures proposed in Table 4.13-5
    - Cherry Street and Thornton Avenue: the DEIR proposes adding a through lane on Cherry Street. This intersection is within the Old Town Newark commercial district and is located near the Old Town Mixed Use Priority Development Area. The DEIR should consider options for accommodating all users. **ACTC-4**
    - Cherry Street and Mowry Avenue: the DEIR proposes widening Mowry Avenue. This intersection is close to a high school, a community college, and a park, and is located along a road with transit service that is also a Countywide Bicycle Route (component of the Bay Trail). The DEIR should consider options for accommodating all users.

We appreciate the opportunity to comment on thie DEIR. Please contact me at (510) 208-7405 or Matthew Bomberg of my staff at (510) 208-7444 if you have any questions.

Sincerely,

Beth Walukas
Deputy Director of Planning

cc: Matthew Bomberg, Assistant Transportation Planner
Tess Lengyel, Deputy Director of Policy, Public Affairs, and Legislation

COMMENT LETTER # ACWD

Terrence Grindall
Community Development Director
510-578-4208

Begin forwarded message:

From: Michelle Myers <Michelle.Myers@acwd.com>
Date: September 26, 2013, 17:21:20 PDT
To: "terrence.grindall@newark.org" <terrence.grindall@newark.org>
Cc: Steven Inn <Steven.Inn@acwd.com>
Subject: Newark General Plan Tune Up DEIR

Hi Terrence,
The District doesn't have any formal comments regarding the DEIR; however, there is one typo regarding the amount of groundwater used on page 4.8-14.

The DEIR states that approximately 22% of the water supplied by ACWD is from groundwater wells. The percentage should be 40%, with 22% supplied by the wellfields and 18% supplied by the Newark Desalination Facility (page 8 of the Survey Report on Groundwater Conditions, February 2013).

Thanks!

Michelle A. Myers
Well Ordinance Supervisor

Alameda County Water District
43885 South Grimmer Boulevard
Fremont, CA 94538

Phone: (510) 668-4454
Fax: (510) 651-1760
E-mail: michelle.myers@acwd.com

ACWD-1

COMMENT LETTER # BCDC

Making San Francisco Bay Better

September, 27th 2013

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

Via Email: terrence.grindall@newark.org

Subject: Newark General Plan Tune Up, BCDC Inquiry File No. AL.FT.7025.1

Dear Mr. Grindall:

As you are aware, by letter dated February 6, 2013, the staff of the BCDC provided comments on the City's NOP for an EIR for the *Newark General Plan Tune Up*. It has recently come to our attention that the City has issued a Draft Environment Impact Report (DEIR) for this planning effort and has established an associated comment period.

This letter sets forth the comments of the staff of the BCDC, as distinguished from the Commission itself. The comments set forth below are based on the Commission's enabling legislation, the *McAteer-Petris Act* (MPA), Cal. Government Code § 66600 *et seq.*, the regulations that the Commission has adopted to implement that law (Cal. Code of Regulations, Title 14, Div. 5), and relevant findings and policies of the Commission's *San Francisco Bay Plan* (Bay Plan). As a permitting authority along the San Francisco Bay shoreline, the BCDC is responsible for granting or denying permits for any proposed fill (earth or any other substance or material, including pilings or structures placed on pilings, and floating structures moored for extended periods), extraction of materials or change in use of any water, land or structure within the Commission's jurisdiction*.

Jurisdiction and Authority. BCDC's jurisdiction over San Francisco Bay extends over Bay tidal areas up to the mean high tide level, including all sloughs, and in marshlands up to five feet above mean sea level; a shoreline band consisting of territory located between the shoreline of the Bay and 100 feet landward and parallel to the shoreline; salt ponds; managed wetlands (areas diked from the Bay and managed as duck clubs); and certain waterways tributary to the Bay, specifically as mentioned in MPA § 66610(e)(1), "Plummer Creek in Alameda County, to the eastern limits of the saltponds....". In addition to said MPA language staff has determined that the Commission's Bay jurisdiction within the area of the General Plan Tune Up includes "... on Mowry Slough [extending to] culvert at Mowry Avenue bridge crossing" (Inquiry File AL.AA.6516.1 File 5, Lacko, 2004) and "At bend in channel near Plummer Creek" (Inquiry File AL.HY.6801.1 FILE 3, Permit M81-14) **BCDC-1**

The DEIR references the above language but could provide a more accurate characterization of BCDC's managed wetland jurisdiction over a portion of the project area in Focus Area 4, specifically the sites referred to as the Pintail and Whistling Wing Duck Clubs referenced in figure 4.3.1 ("Biological Resources") of the DEIR. Section 66610(d) of the MPA states, in part that "the area of jurisdiction of the San Francisco Bay Conservation and Development Commission

* Please see note about jurisdiction and responsibilities in Water Quality section

includes… Managed wetlands consisting of all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature as a duck hunting preserve, game refuge or for agriculture." BCDC has considerable evidence gathered by the California Department of Fish and Wildlife that the Pintail and Whistling Wings duck clubs were actively used during the three-year period in 1966 through 1969 referred to in MPA § 66610(d). Based on the information we have, we believe these areas fall under the Commission's managed wetlands jurisdiction. This area is now delineated in page 193, figure CS-1 of the Draft General Plan by two dots, one for each club. Figures 4.3-1 and CS-1 of the DEIR should be revised to show the areas that comprise the two clubs and the status of these areas as "managed wetlands" under the MPA. Based on current information we are unable to determine whether portions of the areas currently delineated for housing use lie within the Commissions managed wetland jurisdiction.

BCDC-1 cont.

BCDC-2

If a project is proposed within the Commission's managed wetlands jurisdiction, it must be authorized by the Commission pursuant to a Commission permit, and the Commission will use relevant provisions of the MPA as well as the managed wetlands policy, along with other relevant policies in the Bay Plan, to evaluate the project. The Commission can grant a permit for a project if it finds that the project is either (1) necessary to the health, safety or welfare of the public in the entire Bay Area, or (2) is consistent with the provisions of the MPA and the Bay Plan. The DEIR correctly states that projects "in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on safety of fills and shoreline protection." However, the MPA, at section 66605(d), also requires that the Commission find that the "nature, location, and extent of any fill" placed anywhere within the Commission's area of jurisdiction, including managed wetlands, "be such that it will minimize harmful effects to the bay area…" Specifically with regard to "managed wetlands," section 66602.1 of the MPA provides that "it is in the public interest to encourage continued maintenance and operation of …managed wetlands" and that "if development is proposed for these areas, dedication or public purchase of some of these lands should be encouraged in order to preserve water areas; [and] that if any such areas are authorized to be developed and used for other purposes, the development…should retain the maximum amount of water surface area consistent with the project." Consistent with MPA § 66602.1, the Managed Wetland policy in the Bay Plan states, in Policy 2, that the purpose of public dedication or purchase shall be to "restore [the managed wetland] to tidal or subtidal habitat, or retain, enhance and manage these areas as diked wetland habitat for the benefit of multiple species" and, in Policy 4.a, that "water surface area retained can include a variety of subtidal and wetland habitat types including diked areas managed for wildlife or restoration of managed wetlands to tidal action."

BCDC-3

The MPA, at section 66605, also provides for fill in the Bay, such as those areas of the Bay noted above as being with the area of the General Plan Update, for water-oriented uses only where there is no alternative upland location, and requires that any fill that is placed in the Bay is the minimum that is necessary for the project. The MPA, at section 66602, also requires that proposed projects include the maximum feasible public access consistent with the project to the Bay and its shoreline.

Climate Change and Safety of Fills. It appears that some areas within the plan area and along the adjacent shoreline that are within the Commission's jurisdiction may be vulnerable to projected sea level rise. BCDC has conducted an assessment of the region's exposure to sea level rise that is based on a projected 16-inch sea level rise at mid century (2050) and 55-inch sea level rise at the end of the century (2100). The South Bay map in the BCDC report (attached) shows that part the area of the proposed project may be vulnerable to a 16-inch rise in sea level and a larger part of the area may be vulnerable to a 55-inch rise. Please note that the BCDC maps of vulnerable areas do not account for existing shoreline protection or creek levees, and do not describe the existing or future 100-year flood zones. In addition to BCDC's assessment, various agencies have recently produced data and information, which can better characterize the plan

BCDC-4

BCDC-5

area's vulnerability to sea level rise. Staff recommends that the latest data from the National Oceanic Atmospheric Administration Coastal Services Center on sea level rise vulnerability be used, and that the latest science-based sea level rise projections for the area be utilized when considering the vulnerability of the project areas. Though the DEIR references Policy CS-5.8 as Planning for Sea Level Rise, neither the Draft EIR nor the Draft General Plan have taken into account more recent estimates of sea level rise for the area and still reference 2007 IPCC estimates of 7 to 23 inches by the end of the century. The Draft EIR should evaluate future projects in light of more recent scientific data on sea level rise. The DEIR should discuss the potential for inundation and its impacts on land use, transportation, hydrology, water quality, hazards, infrastructure and utilities and public services. **BCDC-5 cont.**

The Draft EIR should include an analysis of how an increase in sea level under multiple sea level rise scenarios could impact proposed projects, specific plans and resource categories that are within BCDC's jurisdiction. This should include information on (1) current elevations of the project sites and recent data, if available, documenting the vertical land motion (e.g., subsidence or uplift); (2) a risk assessment prepared by a qualified engineer based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area (3) whether existing levee heights for any housing areas within managed wetlands within the project area that are necessary to protect adjacent property from flood tides are adequate for a period matching the likely duration of human habitation (4) how public access provided as a condition of development will remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project could be provided nearby. Finally, the policies state that, "To address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes." **BCDC-6**

The Bay Plan policies on the safety of fills state that, "Adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project. " Additionally, the policies state that, "New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity.... " Projects in BCDC jurisdiction that involve Bay fill or fill within managed wetlands must be consistent with the Bay Plan policies on the safety of fills and shoreline protection and it is likely that many of the proposed structures within the Specific Plans would be expected to last until 2100. The Draft EIR could consider the use of open space as a flood zone buffer area.

Public Access. Section 66602 of the McAteer-Petris Act states, in part, that "existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Furthermore, the McAteer-Petris Act authorizes the placement of fill in the Bay only for water-oriented uses or minor fill for improving shoreline appearance or public access. The MPA, at section 66602.1, also requires that in managed wetlands "in any such areas are authorized to be developed and used for other purposes, the development should provide the maximum public access to the Bay, consistent with the project..." **BCDC-7**

Development policies for areas identified in the DEIR that are within BCDC's jurisdiction should be consistent with BCDC's public access requirements and not preclude, "maximum feasible access to and along the waterfront and on any permitted fills should be provided in and

through every new development in the Bay or on the shoreline….and maximum access, consistent with the project" in areas of managed wetlands approved for development. BCDC-7 cont.

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 DEIR should include an analysis of the impacts 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. POS-5.7 & POS-5.8 as noted in the DEIR and General Plan Draft are an adequate start in this direction. Additionally, the DEIR should evaluate how the proposed projects would impact views to and of the Bay from public streets. Finally, the DEIR should evaluate the potential impacts of the proposed public access on sensitive wildlife species and habitats. BCDC-8 BCDC-9 BCDC-10 BCDC-11

Bay Trail Connections. The City of Newark contains several miles of existing and planned Bay Trail alignment. The DEIR should discuss how these existing trails could be connected with the development of trails, parks and open space within the proposed project area. POS-5.1, POS 5.2 and POS-5.3 are suitable initiations of this discussion and we endorse continuing the refinement and enhancement of these policies. BCDC-12

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. The DEIR must evaluate any proposed fill in its scope in light of the Commission's law. BCDC-13

Water Quality The DEIR erroneously states in the Hydrology and Water Quality section (4.8-7) that "The California Coastal commission carries out its mandate locally through the San Francisco Bay Area Conservation and Development Commission (BCDC)." The California Coastal Commission is a separate state agency with its own jurisdiction, laws, policies and mandates. It does not carry out its mandate locally through BCDC. We would greatly appreciate the correction of said misstatement. 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 storm water permits and state and regional storm water 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 .... " Though the DEIR references BCDC's policies with regard to safety of fills and shoreline protection in the Hydrology and Water Quality section it should evaluate the potential impacts of the proposed projects to be included in the General Plan Tune Up on the water quality of the Bay and should propose best management practices and mitigation measures to minimize adverse impacts to water quality. BCDC-14 BCDC-15

Thank you for your careful consideration of the foregoing comments on the Draft Environmental Impact Report for the *Newark General Plan Tune Up*. If you have any questions please contact me directly at (415) 352-3667.

BCDC-15 cont.

Sincerely,

Javier del Castillo
Coastal Planner

cc: Ana Apodaca

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

September 26, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, CA, 94560

Subject: **Comments on the *General Plan Tune Up, Draft Program Environmental Impact Report (DEIR) for the City of Newark* dated August 13, 2013**
State Clearinghouse Number (SCH #) 2013012052

Dear Mr. Grindall:

Thank you for the opportunity to comment on the *General Plan Tune Up Draft Program EIR* (DEIR) for the City of Newark, dated August 13, 2013. The DEIR evaluates an updated policy framework and consolidated land use designations that are intended to guide future development and redevelopment in Newark, concentrated primarily in the following focus areas:

- Dumbarton Transit Oriented Development (TOD)
- Area 3 and 4 focus Area (renamed Southwest Newark Residential & Recreational Focus Area in the DEIR)
- Old Town
- Greater New Park Area

As a responsible and reviewing agency under CEQA, staff of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) provided comments on the Notice of Preparation (NOP) for the DEIR on February 13, 2013. Based on our review of the DEIR, it appears that our comments were not consulted in the preparation of the DEIR. We are, therefore, submitting our original comments to the City of Newark (See the attachment to this letter) with the hope that the City will address these comments in the preparation of the Final EIR for the General Plan Tune Up. **RWQCB-A-1**

As we noted in the cover letter for our February 13, 2013, comments on the NOP, we are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with General Plan Tune Up. The Watershed Division comments are presented as Attachment A to the February 13, 2013, comments. The Watershed Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code. **RWQCB-A-2**

Toxics Cleanup Division (TCD) comments on the NOP are presented as Attachment B to our February 13, 2013, comments. TCD as the lead agency oversees the investigation and cleanup of contaminated sites (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution or nuisance. TCD also indirectly oversees the investigation and cleanup of approximately 80 other contaminated sites in the Project area, which are assigned to Alameda County Water District (ACWD) as lead oversight agency (see the State's GeoTracker database (https://geotracker.waterboards.ca.gov). TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites overseen by ACWD. The California Department of Toxic Substances Control (DTSC) also oversees the investigation and cleanup of sites in the Project area (see the State's Envirostor database (http://www.envirostor.dtsc.ca.gov/public/). **RWQCB-A-3**

We would also like to take this opportunity to point out that we disagree with the way in which the DEIR assesses conflicts with the Baylands Ecosystem Habitat Goals (Habitat Goals). Text on page 4.3-45 of the DEIR states:

> The Bay Plan recommends that the Baylands Ecosystem Habitat Goals (Habitat Goals) be used as guides for wetlands restoration in the vicinity of San Francisco Bay. The Habitat Goals envision the restoration of tidal marsh and similar habitat throughout the South Bay region, including the Plan Area, and contain recommendations for enlarging tidal marshes and protecting and enhancing marsh transition areas. However, the Habitat Goals are a set of recommendations that have not been adopted by any agency and therefore are not considered an approved local, regional, or State habitat conservation plan under CEQA.

In our comments on the NOP, the Water Board provided the following guidance for using the Habitat Goals in developing the DEIR.

> The Project EIR should address conflicts that the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan have with the *Baylands Ecosystem Habitat Goals* (1999) (*Habitat Goals*). The Biological Resources discussion in the Project EIR should address Project compatibility with the *Habitat Goals* and its companion document *Baylands Ecosystem Species and Community Profiles* (2000)(*Profiles)*, which should be recognized as regional habitat conservation plans. The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM. **RWQCB-A-4**

Since the DEIR addresses conflicts with the Basin Plan and the Basin Plan acknowledges the Habitat Goals, the DEIR should have fully addressed conflicts with the Habitat Goals. Other EIRs for projects in Alameda County have addressed conflicts with the Habitat Goals. For example, the recent Draft EIR for the Alameda Point Project (SCH # 2013012043) makes the

following assessment of the relevance of the Habitat Goals to CEQA review (page 4.E-43 of the Alameda Point DEIR).

> The Baylands Ecosystem Habitat Goals Project (Goals Project) was established in June 1995 to establish a long-term vision for a healthy and sustainable baylands ecosystem. The final report, published in 1999 (Goals Project, 1999) enumerated a series of recommendations for habitat protection and restoration. . . . The Goals Project was recommended by the Governor's "California Wetlands Conservation Policy" and by the Comprehensive Conservation and Management Plan (CCMP) of the U.S. Environmental Protection Agency's San Francisco Estuary Project. It is also supported by most of the agencies and non-governmental groups with major planning, operational, or regulatory interests in Bay Area wetlands.

We encourage the City of Newark to thoroughly address conflicts with the Habitat Goals in the Final EIR and to consult the Water Board's full comments on the Habitat Goals in our February 13, 2013, comments on the NOP.

RWQCB-A-4 cont.

We once again urge the City to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. Projects covered by the General Plan Tune Up could cause substantial impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any permit applications or plans it receives for proposed activities within the areas covered by the Project. We continue to disagree with the City of Newark's conclusions in the EIRs for the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan that conflicts with the Basin Plan can be mitigated to less than significant levels through the mitigation measures presented in those EIRs. Therefore, we also disagree with the DEIRs assertion that the General Plan Tune Up will not have significant impacts to jurisdictional waters.

We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. We urge you to revisit our past correspondence (listed below) for the Areas 3 and 4 Specific Plans and the Dumbarton TOD Specific Plan.

RWQCB-A-5

- January 12, 2010, Letter to City of Newark, Watershed Division Comments on Draft EIR for Newark Areas 3 and 4 Specific Plans (included in Attachment A).
- April 30, 2010, Letter to City of Newark, TCD Comments on NOP for Dumbarton TOD Specific Plan.
- June 30, 2011, Email to City of Newark, TCD Comments on Draft EIR for Dumbarton TOD Specific Plan.
- July 27, 2011, Letter to City of Newark, TCD Comments on Dumbarton TOD Specific Plan Final EIR.
- February 13, 2013, Letter to City of Newark, Watershed Division and TCD Comments on the Newark General Plan Tune Up NOP
- March 8, 2013, Letter to City of Newark, TCD Comments for NOP for Dumbarton Transit Oriented Development (TOD) Trumark Residential Project

RWQCB-A-5 cont.

If you have any questions regarding our comments, please contact Brian Wines (bwines@waterboards.ca.gov) in our Watershed Division at (510) 622-2342 or Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.

Sincerely,

Shin-Roei Lee

Digitally signed by Shin-Roei Lee
Date: 2013.09.26 16:03:47 -07'00'

Shin-Roei Lee
Division Chief
Watershed Division

Attachment:
February 13, 2013, Water Board comments on the NOP for the General Plan Tune Up

cc w/attach: Mailing List

Alameda County Water District, Attn Steven Inn (steven.inn@acwd.com)
Ashland, Inc., Attn: Michael Dever (mbdever@ashland.com)
SHH LLC, Attn: Peter Schneider (pds5000@aol.com)
FMC Corporation, Attn: James Bodamer (jbodamer@fmc.com)
Cargill, Inc., Attn Penny Streff (penny_streff@cargill.com)
Jones-Hamilton Co., Attn: Gerry Danes (gdanes@jones-hamilton.com)
Trumark Commerical, Attn: Veronica Vargas (vvargas@trumark-co.com)
Honeywell International Inc., Attn: Benny DeHigh (benny.dehghi@honeywell.com)
Integral Communities, Attn: Glenn Brown (gbrown@integralcommunities.com)

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

Date: February 13, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, CA, 94560

Subject: Comments on Newark General Plan Tune Up Notice of Preparation (NOP) dated January 2013

Dear Mr. Grindall:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) that we received January 17, 2013, for the Newark General Plan Tune Up Project (Project). The attached comments are intended to guide the City of Newark as it prepares an Environmental Impact Report (EIR) and other CEQA documents for the Project, which will result in an updated policy framework and consolidated land use designations intended to guide future development and redevelopment in Newark, concentrated primarily in the following focus areas:

- Dumbarton Transit Oriented Development (TOD)
- Area 3 and 4 focus Area
- Old Town
- Greater New Park Area

As a responsible and reviewing agency under CEQA, staff of the San Francisco Bay Regional Water Quality Control Board are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with this Project. The Watershed Division comments are presented as Attachment A. The Watershed Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code.

RWQCB-A-6

Toxics Cleanup Division (TCD) comments are presented as Attachment B. TCD oversees the investigation and cleanup of six contaminated sites in the Dumbarton TOD (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution and nuisance. TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites. TCD also indirectly oversees the investigation and cleanup of

approximately 80 other contaminated sites in the Project area, which are assigned to Alameda County Water District (ACWD) as lead oversight agency (see the State's GeoTracker database (https://geotracker.waterboards.ca.gov). TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites overseen by ACWD. The Department of Toxic Substance Control (DTSC) also oversees the investigation and cleanup of sites in the Project area (see the State's Envirostor database (http://www.envirostor.dtsc.ca.gov/public/).

We urge the City to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. The Project could cause substantial impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any permit applications or plans it receives for proposed activities within the areas covered by the Project.

We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. We urge you to revisit our past correspondence (listed below) for the Areas 3 and 4 Specific Plans and the Dumbarton TOD Specific Plan.

RWQCB-A-6 cont.

- January 12, 2010, Letter to City of Newark, Watershed Division Comments on Draft EIR for Newark Areas 3 and 4 Specific Plans (included in Attachment A).
- April 30, 2010, Letter to City of Newark, TCD Comments on NOP for Dumbarton TOD Specific Plan.
- June 30, 2011, Email to City of Newark, TCD Comments on Draft EIR for Dumbarton TOD Specific Plan.
- July 27, 2011, Letter to City of Newark, TCD Comments on Dumbarton TOD Specific Plan Final EIR.

If you have any questions regarding our comments, please contact Brian Wines (bwines@waterboards.ca.gov) in our Watershed Division at (510) 622-2342 or Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.

Sincerely,

Shin-Roei Lee acting for

Shin-Roei Lee
2013.02.13
16:30:29 -08'00'

Bruce Wolfe
Executive Officer

Attachments:

Attachment A – Watershed Division Comments
Attachment B – Toxics Cleanup Division Comments

cc w/attach: Mailing List

Alameda County Water District, Attn Steven Inn (steven.inn@acwd.com)
Ashland, Inc., Attn: Michael Dever (mbdever@ashland.com)
SHH LLC, Attn: Peter Schneider (pds5000@aol.com)
FMC Corporation, Attn: James Bodamer (jbodamer@fmc.com)
Cargill, Inc., Attn Penny Streff (penny_streff@cargill.com)
Jones-Hamilton Co., Attn: Gerry Danes (gdanes@jones-hamilton.com)
Trumark Commerical, Attn: Jessica Roseman (jrose@trumark-co.com)
Honeywell International Inc., Attn: Benny DeHigh (benny.dehghi@honeywell.com)
Integral Communities, Attn: Glenn Brown (gbrown@integralcommunities.com)

Attachment A

Watershed Division Comments on the Newark General Plan Tune-Up Project

1. General Comments on Water Board Mandate, Authority, and Potential Future Permitting Requirements

Proposed developments in areas covered by the Project would fill more than 100 acres of waters of the State and United States, many of them adjacent to tidal sloughs and marsh habitat.

- Dumbarton Transit Oriented Development (TOD), which would include fill of an unknown number of acres of wetlands, on the order of at least 20 acres.
- Area 3 and 4 Focus Area, which would include fill of up to 85.6 acres of wetland/marsh/aquatic habitat.

The acres of impacts to waters of the State are unknown in the Dumbarton TOD, since wetland delineations have only been performed in the Torian parcel, which represents about one-fifth of the Dumbarton TOD Specific Plan land area. Based on Figure 4.3-1 in the EIR for the TOD Specific Plan, it appears that at least 20 acres of jurisdictional wetlands are likely to be present in the TOD Specific Plan area.

The proposed amount of fill in the Dumbarton TOD and Areas 3 and 4 Specific Plans are unusually large for projects receiving approvals from the U.S. Army Corps of Engineers (Corps) and the Water Board. Fill of about 100 acres of wetlands will require significant review by the Water Board to consider any project-related applications for fill of waters of the State and United States, for discharges of wastewater and stormwater, and for related issues.

RWQCB-A-7

As a part of CEQA review of the Environmental Impact Report (EIR) for the Newark General Plan Tune-Up Project, the Water Board will consider any project proposals to fill waters of the State and United States under the following:

- The California Water Code, which requires persons proposing to discharge waste to waters of the State to submit a Report of Waste Discharge and receive appropriate approvals from the Water Board prior to discharge;
- Section 401 of the federal Clean Water Act (CWA), which requires state certification that federal permits to fill waters of the United States meet state water quality standards;
- The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) (Section 4.23). The Basin Plan is available at http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan.
- The Basin Plan directs the Water Board to consider specific guidelines and requirements, including the following, as a part of its mandated duty to protect waters of the State:
    - The California Wetlands Conservation Policy (Governor's Executive Order W-59-93 and Senate Concurrent Resolution No. 28), requiring no net loss and a long-term net gain in the quantity, quality, and permanence of wetlands in California, including the San Francisco Bay region.

As noted in the Basin Plan, it is preferable to avoid wetland disturbance. When this is not possible, disturbance should be minimized. Mitigation for lost wetland acreage and functions through restoration or creation should only be considered after disturbance has been minimized. Thus, as we describe in more detail below, the City should evaluate in its CEQA documents project alternatives that avoid and minimize fill. This may include substantially smaller projects

than those that are currently proposed in the Dumbarton TOD and Areas 3 and 4 Focus Area components of the Project.

In addition to the State directives to protect wetlands, the Basin Plan also directs Water Board staff to use alternatives analyses prepared pursuant to federal guidelines—the U.S. Environmental Protection Agency's CWA Section 404(b)(1) guidelines—to determine circumstances under which the filling of wetlands may be permitted, and requires that attempts be made to avoid, minimize, and only lastly to mitigate for adverse impacts. As noted above, the Water Board's review of any applications to fill wetlands will include review of whether all or a portion of the Project could be located at an off-site location(s), whether the project design can be altered to reduce impacts, such as by increasing project densities, modifying project layout, and eliminating proposed project elements that are ancillary to the basic project purpose. Thus, it is important that CEQA documents recognize that components of the Project may be changed in scope and design, based on their relationship to the project purpose, their contribution to wetland fill, and their capacity to be accommodated via changes in project design and/or at an off-site location(s).

The current EIRs for the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan, which are proposed for incorporation into the General Plan Tune Up Project, do not incorporate alternatives that provide for significant avoidance of fill of waters of the State (See comments 2, 3, and 4, below). Because of this, individual projects that are consistent with these specific plans are likely to result in 404(b) (1) alternatives analyses that are not acceptable to the Corps or the Water Board. For example, applications for authorization to fill jurisdictional waters in the Torian Parcel, consistent with the proposed fill in the TOD Specific Plan, were submitted to the Corps and the Water Board in November of 2011. As of February of 2013, the applications had not yet been accepted by the Corps, Water Board, or the U.S. EPA. Therefore, it appears that the Specific Plans for the Dumbarton TOD and Areas 3 and 4 are directing project proponents to develop project proposals that have very low likelihoods of being authorized by the Corps or the Water Board.

RWQCB-A-7 cont.

Finally, California's jurisdiction to regulate its water resources is broader than that of the federal government. The Water Board's jurisdiction extends to "waters of the State," which is broadly defined as "any surface water or groundwater, including saline waters, within the boundaries of the State." This definition includes isolated wetlands, and any action that may impact isolated wetlands is subject to the Water Board's jurisdiction. Please note that the approvals the Project may require from the Water Board for fill of waters of the State and the United States include issuance of Waste Discharge Requirements and/or CWA Section 401 Water Quality Certification.

2. Recommendations for Revising Specific Area Plans for the TOD and Areas 3 and 4, Prior to Incorporating them into the General Plan Tune Up Project

In the interest of expediting the permitting process for future projects within these Specific Plan areas, the Water Board seriously urges the City of Newark to consider revising these Specific Plans to emphasize reduced fill alternatives. The City of Newark should more thoroughly evaluate reduced fill alternatives that would:

RWQCB-A-8

- Reduce the area of wetlands and their surrounding upland buffers that would be converted to residential and commercial uses; and

- Provide a wider buffer between new development and preserved and restored wetlands, and also reduce the length over which developed areas would be in contact with preserved and restored wetlands. This should include considering options such as massing development on a smaller portions of sites covered under the Project, reducing proposed amounts of total development (e.g., number of dwelling units and area of other uses), increasing densities for all land uses, and locating appurtenant land uses (e.g., office/commercial, playfields and upland parks, other civic uses such as libraries, schools, and places of worship) in already-developed portions of Newark or nearby cities.

3. Elements of the Dumbarton TOD Specific Pan EIR that will Hinder Permitting in the Specific Area.

The General Plan Tune-Up will incorporate the Dumbarton Transit Oriented Development Specific Plan into the General Plan. Water Board staff have reviewed the *EIR for the Dumbarton Transit Oriented Development Specific Plan* and have identified the following problems that compromise the usefulness of this EIR in supporting permit applications for future development in the Dumbarton TOD.

- The EIR has a low level of detail with respect to biological resources and jurisdictional waters.
- The EIR has a low level of detail with respect to proposed mitigation measures for impacts to jurisdictional waters.
- The EIR did not meaningfully assess opportunities for avoidance and minimization of impacts to jurisdictional waters.
- The EIR piece-meals impacts to jurisdictional waters.
- The EIR did not consider the impacts of new residential development on introducing new sources of predators into the adjacent marshes, including the Plummer Creek Restoration Site.
- The EIR did not consider the impacts of residential development on isolating the Plummer Creek Restoration Site from other habitat.
- The EIR did not consider the recommendations of the 1999 *Baylands Ecosystem Habitat Goals*.
- The EIR did not evaluate specific options for anticipating sea level rise

At the time that the FEIR was certified, wetland delineations had only been performed on the Torian property, which consists of only 40 acres of the total 205-acre Dumbarton TOD Specific Plan area. While potential areas of wetlands were identified on the Cargill Tract and the potential existence of vernal pools on Parcel E was noted, the exact locations and extent of these jurisdictional habitats were not established through approved delineations. Because of this, the EIR does not do an adequate job of identifying all potential impacts to jurisdictional waters in the Specific Plan Area.

The Dumbarton TOD EIR suggests that impacts to wetlands can be mitigated at offsite mitigation banks, but does not identify mitigation banks with available credits for seasonal wetlands, or mitigation banks with vernal pool credits, in the event that the presence of vernal

RWQCB-A-8 cont.

pools is confirmed in the Specific Plan area. If mitigation banks are not available, the EIR suggests that mitigation may be created either onsite or at unspecified offsite mitigation locations. As the Port of Oakland discovered in its recent search for mitigation locations, it is difficult to find opportunities for mitigation of large acreages of wetlands in the South Bay. In order for the EIR to be adequate, the Dumbarton TOD EIR should have identified all jurisdictional waters that may be impacted and should have presented real opportunities to mitigate for those impacts. Without this level of detail, it is impossible for reviewers of the document to assess whether or not all impacts can be mitigated to less than significant levels.

The Dumbarton TOD EIR also failed to explore opportunities for consolidated mitigation in the near marsh parcels in the Specific Plan area. Alternative 2: High Density Residential illustrated how most of the potential wetlands could be avoided. This alternative assumed that there would be a transfer of development rights for those properties that would provide additional open space and parks. However, the City of Newark does not appear to have pursued this alternative, which would have resulted in impacts avoidance for wetlands. The need to use a transfer of development rights to make Alternative 2 feasible also illustrates an internal inconsistency in the Dumbarton TOD Specific Plan EIR. Alternative 2 requires meaningful coordination between the City and property owners. But the preferred alternative appears to leave development decisions up to individual property owners. This has the effect of favoring private development proposals that rely on fill of all wetlands, since each property owner is left to maximize development potential on their own holdings.

RWQCB-A-8 cont.

The U.S. Fish and Wildlife Service (USFWS) described the impact of predators associated with residential development in its comments on the Dumbarton TOD Specific Plan EIR. The USFWS noted that, "Nearby housing would likely increase disturbance and predation of migratory birds by nuisance species and house pets." USFWS also noted that the residential build out of the site would result in the, "increased presence of predators (e.g., Norway rates, California gulls, feral cats, red foxes, raccoons, and skunks) that prey on California clapper rails and salt marsh harvest mice." But impacts resulting from the introduction of predators associated with residential development were not acknowledged in the City's response to comments.

The EIR also does not consider the recommendations of the 1999 *Baylands Ecosystem Habitat Goals*, which recommended exploring options to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper end of Plummer slough (Chapter 3, page 133).

4. Elements of the Areas 3 and 4 Specific Plan EIR that will Hinder Permitting in the Specific Area.

The General Plan Tune Up will incorporate the Areas 3 and 4 Specific Plan into the General Plan. The Water Board's January 11, 2010, comments on the *Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan* (SCH No.: 200705205) are included as an attachment to the Water Board's comments on the Newark General Plan Tune Up NOP. As we noted in our January 12, 2010, letter, the proposed mitigation quantities in the Areas 3 and 4

RWQCB-A-9

Specific Plan EIR appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. The EIR relies on a combination of onsite wetland creation/enhancement and offsite wetland preservation. Onsite mitigation, which is only proposed at a 1:1 ratio, will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. With respect to offsite mitigation, the EIR does not provide sufficient detail to demonstrate that feasible locations exist for offsite mitigation.

While the City of Newark might disagree with the Water Board over the level of detail necessary for the discussion of proposed mitigation measures in the EIR for the Areas 3 and 4 Specific Plan, we would like to point out that the City itself set the parameters for offsite mitigation by requiring that "off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements", and "wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed." The EIR fails to demonstrate that the City of Newark can achieve its own objectives for offsite mitigation, using either mitigation banks or other private lands. At most, the EIR refers to a potential mitigation bank that may be capable of providing less than half of the mitigation necessary for proposed impacts to wetlands at Area 4. Recent projects in the South Bay have not been able to find even half of the acreage of mitigation that would be required to mitigate all of the impacts to waters of the State that are proposed in the Areas 3 and 4 Specific Plan.

Also, as Water Board staff noted in our comment letter on the Areas 3 and 4 Specific Plan DEIR, any mitigation plan that relies exclusively, or heavily, on the preservation of wetlands, as is currently proposed in the EIR for offsite mitigation, would not be consistent with the State's "no net loss" policy. No net loss can only be achieved through avoidance of habitats or the successful creation of new habitats. Since preserved habitats are already in existence, the use of preservation results in a net loss of wetland habitat. Therefore, the Water Board comment on the EIR noted that the proposed ratio of 1.5:1 is far too low for a mitigation measure that relies on preservation.

RWQCB-A-9 cont.

Finally, we would like to reiterate that the City should not assume that the resource agencies will allow the fill of the wetlands at Area 4. Large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the Bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to transgress (move up slope) in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), the Bay Conservation and Development Commission (BCDC), and the Water Board have all expressed strong reservations about the fill of wetlands in Area 4. While the City has not yet identified sufficient mitigation opportunities for impacts associated with the implementation of the Specific Plan, Area 4 itself presents significant opportunities for use as mitigation for other projects. Successful wetland mitigation sites require a unique combination of hydrology and topography, which Area 4 possesses. The Water Board encourages the City of Newark to consider the potential use of Area 4 as a mitigation bank. There are significantly fewer regulatory and physical barriers to creating a

mitigation bank at Area 4 than there are to placing fill in Area 4 and seeking to create adequate mitigation for that fill. RWQCB-A-9 cont.

5. The General Plan Tune Up Project EIR Should Address the Impacts of Development on Adjacent Habitats.

The EIR should evaluate both individually and cumulatively the impacts of individual projects that are authorized under the Project on the use of existing nearby waters and wetlands as wildlife habitat, including habitat for rare, threatened, and endangered species. Portions of the Dumbarton TOD and Area 4 have the potential to be restored to habitat capable of supporting uses, including estuarine habitat, preservation of rare and endangered species, warm freshwater habitat, and wildlife habitat. The proximity of existing tidal marsh habitat in the nearby Plummer Creek Restoration Site and the Don Edwards National Wildlife Refuge (Refuge) would make such restored habitat especially valuable.

Current proposals to develop lands in the Dumbarton TOD and Area 4 up to the borders with the preserved habitats are likely to significantly impact habitat values at the Plummer Creek Restoration Site and the Refuge. However, the analysis of impacts in the Dumbarton TOD and Areas 3 and 4 Specific Plan EIRs do not address the increased level of predation that is associated with placing residential development adjacent to habitats that support listed species. Residential neighborhoods have higher populations of domestic animals (e.g., cats and dogs), and also attract raccoons and corvids that feed on domestic refuse. Cats, raccoons, and corvids are predators of birds and rodents. Introducing residential neighborhoods adjacent to wetlands, such as the Plummer Creek Restoration Site and the Refuge, will increase the predation pressure on bird species and the salt marsh harvest mouse (SMHM). Domestic dogs may also flush birds from nesting habitat or cause migratory birds to expend energy in fleeing from dogs that enter foraging habitat. At other residential developments, predator barriers have been required between new residential neighborhoods and marsh habitat. However, the Dumbarton TOD and Areas 3 and 4 Specific Plan EIRs contain no mitigation measures for the increased population of predators that will be brought adjacent to marsh habitats when the specific plans are implemented. Therefore, the Project CEQA document should address this potential impact on species in adjacent marsh habitats. RWQCB-A-10

6. The General Plan Tune Up Project EIR Should Address Conflicts with the *Baylands Ecosystem Habitat Goals*.

The Project EIR should address conflicts that the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan have with the *Baylands Ecosystem Habitat Goals* (1999) (*Habitat Goals*). The Biological Resources discussion in the Project EIR should address Project compatibility with the *Habitat Goals* and its companion document *Baylands Ecosystem Species and Community Profiles* (2000)(*Profiles)*, which should be recognized as regional habitat conservation plans. The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM. RWQCB-A-11

The *Habitat Goals Project* recommends exploring options to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper end of Plummer slough

(Chapter 3, page 133), which includes lands covered by the Dumbarton TOD Specific Plan. This recommendation was not addressed in the Dumbarton TOD Specific Plan

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

Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation is demonstrably capable of providing equal habitat benefit for listed species. Therefore, at Area 4, the City should evaluate the environmental impacts of an alternative project that would consist solely of restoring tidal marshes and/or open water habitat at the site, consistent with the Habitat Goals. Evaluation of an alternative that would restore the site to tidal marsh should consider how the alternative could help retard, store, and filter floodwaters, and preserve sufficient upland area to serve as a buffer against sea level rise (i.e., to ensure that the area of restored marsh is not reduced, for example by being converted to open water, as a result of sea level rise) and storms. **RWQCB-A-11 cont.**

7. Recommendations for the Discussion of Post-Construction Stormwater Management in the EIR for General Plan Tune Up Project

The EIR should describe how development or redevelopment in the areas covered by the General Plan should incorporate a combination of low impact development (LID) features to reduce discharge of pollutants to waterways. The EIR should cite the specific treatment standards required for these measures, including those required under Provision C.3. of Water Board Order No. R2-2009-0074, the Municipal Regional Stormwater Permit (MRP), under which the City of Newark is a co-permittee.

The EIR should note that the LID approach encompasses a broad range of urban planning issues associated with new and re-development projects, including street and circulation designs, innovative approaches to parking, drainage designs, land use densities and structure locations, and similar issues. The EIR should indicate that future individual projects in the areas covered by the Project will be required to incorporate not simply treatment controls based on an LID approach, but the range of LID approaches, including implementing “skinny street” or “green street” designs, parking maxima, identifying opportunities to minimize impervious surfaces by implementing shared and/or structure parking, and the like. **RWQCB-A-12**

California Regional Water Quality Control Board
San Francisco Bay Region

Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

January 12, 2010
CIWQS Place ID No. 748275

Sent via electronic mail: No hardcopy to follow

City of Newark
37101 Newark Boulevard
Newark, CA 94519]

Attn: Terrence Grindall (Terrence.Grindall@newark.org)

Re: Comments on the Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan
SCH No.: 200705205

Dear Mr. Grindall:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciate the opportunity to review the December 2009 *Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan* (DEIR). The City of Newark is proposing a Specific Plan for Areas 3 and 4 in southwestern Newark, which is bound generally by Mowry Avenue, Cherry Street, Stevenson Boulevard, and the Mowry Slough. The proposed Areas 3 and 4 Specific Plan allows for development of up to 1,260 housing units of various densities, an up to 600-student elementary school, a golf course, and open space areas, as well as retention of existing light industrial and institutional (e.g., Ohlone College, City fire station, park, and community activity center) uses. Water Board staff have the following comments on aspects of the Specific Plan, as presented in the DEIR, which may impact waters of the State.

RWQCB-A-13

Comment 1
Section 3.5, Biological Resources, 3.5.2.4, Jurisdictional Waters of the U.S./Waters of the State, Page 124
The discussion of jurisdictional waters does not include a discussion of the State's Porter-Cologne Water Quality Act (Water Code Section 13000 et seq.). Water Board staff recommend including the following text as a discussion of Porter-Cologne authority in the revised EIR:

> The Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in combination with permits issued by the Army Corps of Engineers (ACOE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements (WDRs) for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that

are outside of the jurisdiction of the ACOE (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of ACOE jurisdiction may require the issuance of either individual or general WDRs from the Water Board.

Under the authority of the Porter-Cologne Water Quality Act, the Water Board has developed, and implements, the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), which defines the Beneficial Uses of waters of the State within the San Francisco Bay Region.

Because habitats in Newark Area 4 are hydrologically connected to San Francisco Bay, the following beneficial uses of San Francisco Bay are also likely to apply to waters and wetlands in Area 4: estuarine habitat; preservation of rare and endangered species; contact water recreation; non-contact water recreation; shellfish harvesting; fish spawning; and wildlife habitat. Implementation of the proposed Specific Plan may impact Beneficial Uses of waters of the State in Area 4. In particular, Beneficial Uses related to habitat for rare and endangered species may be impacted by the Specific Plan.

Comment 2
Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Page 134
The DEIR states that:

RWQCB-A-13 cont.

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

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

Comment 3
Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Pages 135 and 136.
Implementation of the Specific Plan would result in the loss of up to 85.6 acres of wetland/march/aquatic habitat, including 7.65 acres of salt marsh harvest mouse/salt marsh wandering shrew habitat. As mitigation for this significant impact the DEIR offers Mitigation Measure BIO-1.2A.

To offset impacts to the wetland and aquatic habitat on the site, the future project proponent(s) will utilize a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off site. The on-site component of the mitigation shall include creation of wetland and aquatic habitat within upland habitat that is currently disked and graded within Area 4 and will enhance portions of the remaining areas of agricultural field/seasonal wetland habitat within Area 4, as described below.

Compensatory mitigation for impacts to these habitats shall consist of two parts: (1) creation of high quality wetland and aquatic habitat within Area 4 within upland habitat at an acreage ratio of 1:1 (habitat created/enhanced:habitat impacted) to prevent any net loss of habitat functions or values, and (2) enhancement of existing seasonal wetland habitat that is currently within agricultural production (mapped as agricultural field/seasonal wetland habitat) at an acreage ratio of 0.5:1 (such enhancement will include cessation of farming activities, seeding with appropriate seasonal wetland plant seeds, and may include minor earth moving activities). In summary, any impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at a total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted).

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

RWQCB-A-13 cont.

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

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

available for use as mitigation wetlands, and are in proximity to protected lands that currently provide habitat for listed species.

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

RWQCB-A-13 cont.

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

The conceptual mitigation plan(s) should contain sufficient detail to demonstrate that proposed mitigation project(s) are hydrologically feasible and accessible to impacted wildlife species.

Mitigation should also be "in kind" as much as is feasible. When mitigation is not "in-kind", then the amount of mitigation must be increased to compensate for the disparity.

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

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

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

RWQCB-A-13 cont.

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

Comment 5
Section 3.5, Biological Resources, Mitigation Measure BIO-8.4, Pages 153.
This mitigation measure for Salt Marsh Harvest Mouse states:

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

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

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

RWQCB-A-13 cont.

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

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

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

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

If you have any questions, please contact me at (510) 622-5680, or via e-mail at bwines@waterboards.ca.gov.

Sincerely,

Dale Bowyer
Senior Water Resources Control Engineer
South and East Bay Watershed Section

RWQCB-A-13 cont.

cc: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (by fax: 916-323-3018)
USACE, San Francisco District, Attn: Regulatory Branch, 1455 Market Street, San Francisco, CA 94103–1398 (cameron.l.johnson@usace.army.mil, jane.m.hicks@usace.army.mil)
CDFG, Central Coast Region, Attn: Marcia Grefsrud, P.O. Box 47, Yountville CA 94599 (mgrefsrud@dfg.ca.gov, sbrunson@dfg.ca.gov)
United States Department of the Interior, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825-1846 (Ryan_Olah@fws.gov, cay_goude@fws.gov, Winnie_chan@fws.gov, joseph_terry@fws.gov, james_browning@fws.gov)

Attachment B
San Francisco Bay Regional Water Quality Control Board
Toxics Cleanup Division Comments
NOP for the Newark General Plan Tune Up EIR

We are commenting on the Notice of Preparation (NOP) that we received on January17, 2013. As a Resource Agency, the San Francisco Bay Regional Water Quality Control Board is submitting comments for the Newark General Plan Tune Up project (Project) Environmental Impact Report (EIR). This attachment (B) includes comments by staff of the Toxics Cleanup Division, intended to ensure that the environmental documentation under the California Environmental Quality Act (CEQA) adequately addresses the soil and groundwater pollution, and to ensure that appropriate mitigation measures pertaining to releases of hazardous substances at the Project are implemented.

Toxics Cleanup Division staff are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with this Project. Our comments address hazardous materials and water quality, and touch upon the elements of air quality and utilities that are impacts associated with the presence of hazardous materials and groundwater pollution.

Project Description
The City of Newark is undertaking a "Tune Up" of its 1992 General Plan. The purpose of the General Plan Tune Up is threefold:

- to update the policy framework and land use designations that will guide future development in Newark through 2035;
- to comprehensively incorporate recent planning efforts, including the completed and adopted Dumbarton Transit Oriented Development Specific Plan (2010), Area 3 and 4 Specific Plan (2009), 2009-2014 Housing Element (2010), and Climate Action Plan, into the General Plan so as to ensure Citywide policy consistency; and
- to address and satisfy new State and regional regulations that have come into force since the General Plan was last updated, including Assembly Bill (AB) 162, Senate Bill (SB) 5, the Complete Streets Acts of 2008, and the greenhouse gas (GHG) reduction goals of AB 32 and SB 375.

Pursuant to the CEQA Act Section 15063, the City has determined that an EIR is required and an Initial Study has not been prepared. The City of Newark will be the Lead Agency and will prepare an EIR for the Project. The NOP invites comments in writing as to the scope and content of the EIR. The City needs to know the views of the Responsible and Trustee Agencies as to the scope and content of the environmental information that is germane to each agency's statutory responsibility in connection with the proposed Project. Responsible Agencies will need to use the EIR prepared by the City when considering their permit or other approval for the Project.

RWQCB-A-13 cont.

Staff Recommendations for the EIR
As explained below, Regional Water Board staff recommends that the EIR address the following:

- Cleanup and mitigation measures to remove polluted shallow soil and groundwater in private properties and public right-of-ways in the Project prior to development.
- Exposure to chemicals and assessment of risk to human health and the environment.
- Potential for further migration of pollutants and adverse impacts to water quality.
- Evaluation and, if necessary, appropriate mitigation for potential vapor intrusion of pollutants to indoor air.
- Compliance with cleanup orders, existing land use covenants, etc.
- Management of contaminated soil and groundwater during grading, construction, dewatering actions.
- Health and Safety planning for construction workers, utility workers, etc.
- Risk Management and Construction planning prior to, during and after development.
- Monitoring and ongoing cleanup after the project is built out.
- Institutional constraints and who will enforce them.
- Environmental deed restrictions/notices where significant pollution is left in-place.
- Placement of underground structures and utility corridors in areas of soil and groundwater pollution.
- Community outreach, public notification and participation.
- Assurance that permits to grade, build, or construct will not be issued by the City until the appropriate Overseeing Agencies have signed-off on cleanup and mitigation measures needed to protect human health and the environment.

RWQCB-A-13 cont.

The Regional Water Board Toxics Cleanup Division staff has been working with the City of Newark and other stakeholders to address the existing soil and groundwater pollution in the Dumbarton Transit Oriented Development (TOD) area of the Project, and have submitted comments dated April 30, 2010, June 30, 2011, and July 27, 2011, to assist in moving the redevelopment project forward. Some of our comments have been incorporated into the TOD Specific Plan Final EIR, Hazardous Materials Section 4.7 (page 4.7-30) Mitigation Measures as follows.

4.7a Prior to issuance of gradient or building permit for an individual property within the Specific Plan area with known, suspected or potential residual environmental contamination. that the ***property owner shall*** *to the extent such activities have not been performed by the property owner pursuant to the requirements of the Regional Water Quality Control Board (RWQCB) or other overseeing agency under applicable environmental laws (Oversight Agency) do all of the following:*

1) *summarize available data regarding the extent and magnitude of soil and groundwater contamination at the subject property;*
2) *perform a data gap analysis;*
3) *based on the results of the data gap analysis determine whether additional investigation is needed to fill data gaps and if so, propose and perform such investigation with the approval of the Oversight Agency;*

4) *provide either a health risk assessment (HRA) or Feasibility Study (FS) containing a health risk assessment to summarize potential risks to human health and the environment posed by the contamination with respect to the proposed development;*
5) *based on the HRA or as set forth in the FS, develop remedial actions to address the identified risks based upon the proposed development, which remedial option may include engineering and institutional controls, and tentatively select the most appropriate remedial option to ensure that the proposed development will not present an unacceptable risk to human health and environment as required by applicable environmental laws, as well as procedures for proper management of contaminated soil and groundwater that may be encountered during development; and*
6) *submit a report to the Oversight Agency for review and regulatory approval of the proposed remedial plan, including engineering and/or institutional controls, under applicable environmental laws.*

General Comments

While the Regional Water Board does not approve or disapprove specific development projects, we are often asked if a proposed future use is compatible with residual site contamination. Based upon the known residual concentrations remaining at these sites in the TOD, we recommend the following:

1. Environmental risk assessment for human health and ecological risks for the entire project area, conducted prior to development.

2. Additional data gap investigations: To be suitable for residential use, the sites must be thoroughly assessed for the presence and absence of contamination. A higher level of effort is needed to demonstrate the data gaps have been filled. The data is needed to perform a comprehensive human health risk assessment and to develop cleanup standards to support residential development.

3. Additional remediation for future sensitive land uses such as residential should be determined based on the results of the environmental risk assessment and proposed future uses. Any properties proposed for residential use must be cleaned up to a level protective of residential use. The cleanup can be based on the San Francisco Bay Regional Water Board Environmental Screening Levels for Residential Use, or to a level protective of human health and safety based on a site-specific human health risk assessment. To be suitable for future residential use, the property needs (1) remediation to a level that allows unrestricted use or (2) risk management to assure that the future residents will not be exposed to unhealthy levels of contamination. Regarding the second option, we are generally reluctant to approve a risk management approach at residential sites, particularly single-family residential, and would only do so if the residual contamination was modest, the project design minimized potential exposure, and the local agency (City of Newark) played an active role in tracking and enforcing risk management measures.

4. Site-specific risk management plans may also be required to manage any significant residual pollution. Possible elements of a risk management plan include: a deed restriction prohibiting supply wells or sensitive site uses (e.g. residential use),

RWQCB-A-13 cont.

requirement for vapor barriers and passive ventilation systems to mitigate possible vapor migration into new buildings (generally not allowed for residential use), and a health and safety plan for construction workers who will be doing subsurface work at the site.

5. Regional risk management plan (similar to Mission Bay in San Francisco) may also be required for consistent area-wide plume management for City right-of-ways, utility corridors, groundwater management and dewatering projects by municipalities that may not be aware of the residual soil and groundwater contamination.

6. Capped Areas: Currently, there are three capped areas in the Dumbarton TOD. Two capped areas exist at FMC's property: the elemental phosphorous pit area in Parcel A, and the ethylene dibromide and 1,2-dichloroethane (1,2-DCA) area in Parcels B and I. Neither area is suitable for development at this time. Active source removal should be seriously considered. Additionally, a capped area exists at the former Jones-Hamilton site that contains elevated pentachlorophenol, 1,2-DCA, and dioxins and furans. A cleanup plan, dated December 18, 2012, has been submitted for cap removal, soil excavation (138,000 yd^3) to a depth of ten feet below grade, and groundwater pumping to remove a 1,2-DCA hot spots. This work plan is currently under review.

7. Protection of Groundwater: Residual pollution left in place must be adequately managed to ensure that the impacted groundwater does not further deteriorate. The proposed project must incorporate mitigation measures to prevent further migration of pollutants from soil to groundwater and also prevent further migration to deeper aquifers in the project area.

RWQCB-A-13 cont.

8. Protection from Vapor Intrusion: Volatile organic compounds left in place at concentrations exceeding residential standards may pose unacceptable vapor intrusion risks.

9. Amended SCR Orders: The Water Board will likely amend the SCR orders for long-term risk management of residual pollution for the individual sites. Alternatively, the Water Board may adopt one comprehensive SCR to enforce a region-wide risk management plan that addresses the entire TOD area, to ensure long-term management of residual pollution, including but not limited to institutional constraints, soil vapor monitoring, groundwater monitoring and remediation, vapor barriers, sub-slab venting systems, etc.

Environmental Conditions and Regulatory Oversight of Cleanup Sites in the TOD
Soil and groundwater pollution exists in the Dumbarton TOD area and poses a threat to human health and safety under a variety of scenarios, including residential receptors, commercial workers, construction workers, and utility workers, etc. The pollution results from decades of processing and manufacturing chemicals and hazardous waste facility operations. A large portion of the TOD area is contaminated with a variety of chemicals, including organic and inorganic compounds, petroleum hydrocarbons, metals, elemental phosphorous, pesticides and herbicides. The most prevalent pollutants include TCE, PCE, 1,2-DCA and EDB; pentchlorophenol; benzene, toluene, ethylbenzene and xylenes; arsenic, chromium, lead, dioxins and furans. These

chemicals constitute hazardous materials as that term is defined in the Health and Safety Code Section 25260.

The Regional Water Board, Toxics Cleanup Division currently oversees the investigation and cleanup of six contaminated sites (listed below) in the TOD (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution and nuisance.

- FMC Corporation, 8787 Enterprise Drive, SCR Order R2-2002-0060
- Ashland Inc., 8610 Enterprise Drive, SCR Order R2-2005-0038
- SHH, LLC, 37445 Willow Street, SCR Order R2-2008-0081
- Jones-Hamilton, 8400 Enterprise Drive, SCR Order R2-2001-0054
- Former Baron-Blakeslee, 8333 Enterprise, SCR Order R2-2005-0004
- Torian Properties, 37555 Willow Street

Investigation and cleanup of these sites have been conducted independently by individual property owners rather than a collaborated joint effort. The Water Board adopted individual cleanup orders to those responsible for the cleanup (dischargers) which included FMC, Ashland, Jones-Hamilton, Honeywell, and SHH. The Orders required that the pollution be defined, that contamination sources be removed, and that water quality be restored, consistent with the Clean Water Act, and in *accordance with State* Board *Resolution* 68-16: "Statement of Policy with Respect to Maintaining High Quality of Waters in California" *(referred to as* the Antidegradation Policy). **The Site Cleanup Requirements (SCR) Orders adopted soil and groundwater cleanup standards to support continued industrial/ commercial land, and not residential use.** **RWQCB-A-13 cont.**

Prior to the Regional Board's regulatory oversight, the Department of Toxic Substances Control (DTSC) was the lead agency for several Resource Conservation and Recovery Act (RCRA) Permitted facilities in the TOD area. Accordingly, DTSC case files contain relevant information on the location of historic operations, spills, violations and sources areas of contamination. DTSC files containing inspection photographs and notes will be helpful in locating buried ponds, pits, tanks, sumps and other buried obstacles that were closed under DTSC's oversight. In addition to DTSC, the Newark Fire Department has inventory records, emergency response records, notices of violations and other key information that should be consulted to ensure that the cleanup of contaminated sites in the Project are adequately assessed.

Various cleanup technologies have been implemented over the years and the cleanup actions implemented to date have not been entirely successful however. Given the nature and extent of the impacts to soil and groundwater in the TOD area, cleanup efforts in the past have largely focused on continued industrial or commercial land use. Accordingly, the previous site conceptual models, cleanup goals, cleanup actions, and cleanup standards that were developed to meet industrial and commercial land uses are no longer appropriate and a higher level of characterization and cleanup is needed to support residential reuse. Additionally, the "duration of time" needed to reduce the pollution to safe levels to prevent vapor intrusion risks may exceed the scheduled construction at a particular parcel.

The Dumbarton TOD EIR and Final EIR did not evaluate environmental impacts from soil and groundwater impacts. The lateral and vertical extent of soil, soil gas, and groundwater contamination in the Project area needs to be thoroughly, characterized and defined. Once the contamination in soil, soil gas and groundwater has been thoroughly assessed, characterized and defined, a human health and ecological risk assessment that evaluates all exposure pathways is needed, along with a feasibility study which determines the most cost and time-efficient clean up alternative that results in removal of soil contamination (sources, gross contamination, nuisance and residual levels of contamination to a level that ensures short-term and long-term protection of human health and the environment for decades to come.

The Newark General Plan Tune Up needs to thoroughly assess the pollution impacts with respect to the human health and safety of future site receptors (new residents/homeowners), the development timetable, and the long-term responsibility of managing the residual pollution. If the pollution underlying properties planned for residential use cannot be reduced to risk levels protective of $1x10^{-6}$ (one in a million cancer risk), we will require engineering controls be incorporated into the design such as active and passive sub-slab venting systems, monitoring devices to ensure the systems are working properly, and long-term groundwater monitoring and sampling of shallow zone and Newark Aquifer wells. If needed, long-term groundwater extraction and treatment systems will also be needed in the TOD area to control migration of the groundwater plume.

If any residual contamination is left in place within the public right-of -ways is a concern, engineering controls and other mitigation measures must be implemented. Air monitoring will be important for utility workers that may be exposed to unsafe levels of chemicals when entering confined spaces. Special precautions must also be incorporated into the design of utility corridors to ensure the workers are adequately protected as well.

RWQCB-A-13 cont.

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MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

September 27, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, CA 94560

Subject: Regional Water Quality Control Board (Toxics Cleanup Division) Supplemental Comments on the *General Plan Tune Up, Draft Program Environmental Impact Report (DEIR) for the City of Newark* dated August 13, 2013

Dear Mr. Grindall:

Thank you for the opportunity to comment on the *General Plan Tune up Draft Program EIR (DEIR)* for the City of Newark dated August 13, 2013. Please include these additional comments from the Toxics Cleanup Division staff to supplement our agency letter dated September 26, 2013.

These comments on the DEIR pertain to Section 4.7 Hazards and Hazardous Materials (pages 4.7-1 through 4.7-32) and Table 1-1, Summary of Impacts and Mitigation Measures, to ensure that the environmental documentation under the California Environmental Quality Act (CEQA) adequately addresses soil and groundwater pollution in the City of Newark and to protect human health and the environment. RWQCB-B-1

Regional Water Board (Toxics Cleanup Division) staff oversees the investigation and cleanup of numerous for numerous leaking underground fuel tanks (LUFT sites) and spills, leaks, and cleanup sites (SCP sites) in the proposed project areas, pursuant to California Water Code 13304, where hazardous substances have been discharged and deposited into Waters of the State and have created a condition of pollution and nuisance.

Section 4.7 (Hazards and Hazardous Materials) does not accurately depict the extent and magnitude of existing soil and groundwater pollution in Newark areas, and does not appropriately evaluate potentially significant hazards to public health and the environment from RWQCB-B-2 RWQCB-B-3

harmful chemicals in the soil, soil vapor and groundwater and ongoing migration of pollutants in groundwater. Shallow groundwater pollution can pose significant threats to human health can be problematic for redevelopment, and can take decades to restore its beneficial uses. RWQCB-B-3 cont. RWQCB-B-4

The DEIR does not identify any mitigation measures for hazardous materials. Table 4.7-1, Hazardous Materials Sites in Newark, lists more than 100 hazardous material sites; however, in Table 1-1, Hazards and Hazardous Materials Impact Criteria (HAZ-1 through HAZ-9) were "less than significant (LTS)" before mitigation and Mitigation Measures were "not applicable (N/A)."

We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. RWQCB-B-5

If you have any question or comments, please contact Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.

Sincerely,

Mary Rose Cassa for

Digitally signed by Mary Rose Cassa
Date: 2013.09.27
16:18:19 -07'00'

Bruce H. Wolfe
Executive Officer

Attachment
cc: w attachment
Alameda County Water District, Attn Steven Inn (steven.inn@acwd.com)
Ashland, Inc., Attn: Michael Dever (mbdever@ashland.com)
SHH LLC, Attn: Peter Schneider (pds5000@aol.com)
FMC Corporation, Attn: James Bodamer (jbodamer@fmc.com)
Cargill, Inc., Attn Penny Streff (penny_streff@cargill.com)
Jones-Hamilton Co., Attn: Gerry Danes (gdanes@jones-hamilton.com)
Trumark Commerical, Attn: Veronica Vargas (vvargas@trumark-co.com)
Honeywell International Inc., Attn: Benny DeHigh (benny.dehghi@honeywell.com)
Integral Communities, Attn: Glenn Brown (gbrown@integralcommunities.com)
William Lyon Homes, Inc., Attn: Eric Keller (eric.keller@lyonhomes.com)

Attachment

Regional Water Quality Control Board (Toxics Cleanup Division) Staff - Supplemental Comments on the *General Plan Tune Up, Draft Program Environmental Impact Report (DEIR) for the City of Newark* dated August 13, 2013

The following comments are provided to encourage the City to take an active role in ensuring hazardous materials sites are adequately remediated prior to development.

1. Past industrial activities such as chemical handling, manufacturing, and transporting in the vacant western portion of Newark have caused conditions of pollution and nuisance. Soil and groundwater are contaminated with chemicals that are known to cause cancer, birth defects, and internal and respiratory health problems. These chemicals include volatile and semi-volatile organic compounds including benzene, ethylene dibromide (EDB), 1,2-dichloroethane (1,2-DCA), trichloroethene (TCE) tetrachloroethene (PCE), pentachlorophenenol (PCP), various metals including arsenic; dioxins/furans and polychlorinated biphenols (PCBs), polyaromatics (PAHs), petroleum hydrocarbons. **RWQCB-B-6**
2. Cleanup actions implemented by dischargers to address the pollution and nuisance conditions, especially in western Newark in the Dumbarton TOD area (TOD), have not been entirely successful and will likely take years to restore groundwater beneficial uses. **RWQCB-B-7**
3. Human health risk assessments have been completed at many of the hazardous materials sites, and the results often find excessive exposure risks to human health, attributed from residual chemicals in soil, soil vapor, and groundwater. **RWQCB-B-8**
4. Vapor barriers and underground venting systems (i.e., engineering controls) are being proposed some of the property owners in the TOD to mitigate vapor intrusion risks. The use of vapor barriers and active ventilation systems to mitigate possible vapor migration into new buildings is a risk management approach that is considered viable only for industrial and commercial sites with "modest" levels of contamination and only after aggressive remedial actions are first implemented to the fullest extent prior to occupancy. To be suitable for future residential use, the sites need to be remediated to a level that allows for unrestricted use (i.e., 1×10^{-6} for carcinogens and Hazard Index of 1 for noncarcinogens). Staff is generally reluctant to approve a risk management approach at residential sites, particularly single family residential, and would only do so if (1) the residual contamination were modest (e.g., between1×10^{-5} and 1×10^{-6} cancer risk); (2) the project design minimized potential exposure, and (3) a local agency (presumably the City of Newark) played an active role in tracking and enforcing risk management measures. **RWQCB-B-9**
5. Cleanup of contaminated soil can pose potentially significant impacts to human health. At the Jones Hamilton hazardous materials site, an estimated 138,000 cubic **RWQCB-B-10**

yards of contaminated soil is proposed to be excavated and off-hauled by truckloads through residential neighborhoods and City streets. The final EIR should address hazardous materials cleanup projects that can exposure residents to harmful chemicals dusts, and vapors during excavation, loading, and transporting. **RWQCB-B-10 cont.**

6. Harmful chemicals and vapors that collect within utility corridors can pose potentially significant impacts to utility workers and service employees working in confined spaces within polluted public streets. These workers can also be exposed to contaminated groundwater during dewatering. **RWQCB-B-11**

7. The phasing and timing of the particular developments should to be managed appropriately by the City to prevent exposure to hazardous materials. Soil cleanups should be implemented in advance of developing new vacant properties in Newark, to prevent exposure to construction workers and occupant of new residences. Protective measures are needed to ensure that removal of cleanup actions take place prior to any new residents moving into the affected areas of Newark. **RWQCB-B-12**

To address potentially significant impacts and hazards to the public or the environment, staff recommends the following actions:

a. Include measures to ensure protection of human health from exposure to hazardous materials at contaminated properties. The Dumbarton TOD Specific Plan EIR addressed potentially significant impacts with mitigation measures 4.7-1a through 4.7-1e.
b. Consider supplemental EIRs for developments overlying soil and shallow groundwater plumes to adequately evaluate the potential hazards to the public during cleanup of soil and groundwater pollution underlying sites.
c. Consider development only at parcels where hazardous materials and residual pollution have been aggressively and successfully remediated to the fullest extent, particularly to ensure protection from potential vapor intrusion risks. **RWQCB-B-13**
d. Allow installation of engineering controls (i.e., vapor barriers and venting systems) only at commercial and industrial properties. Ensure that these engineering controls are appropriately effective by routine monitoring that takes place prior to permitting occupancy and continues long-term, as needed.
e. Include post-construction mitigation measures to ensure that future homeowners are protected from underlying residual pollution and financial responsibilities associated with any residual pollution. Mitigation measures should address the following:
    i. Long-term risk management of pollution, long after the development is constructed;
    ii. Inspection and monitoring of any engineered vapor mitigation systems to ensure the system are working effectively;

iii. Long-term groundwater monitoring, sampling, and reporting until the cleanup goals are reached;
iv. Proper abandonment of wells after the cleanup goals are reached;
v. Periodic indoor air monitoring of buildings that are constructed over plumes with elevated levels of volatile organic compounds.

f. Provide for community outreach, warnings and public notices to advise local residents and workers of the potential hazards with the cleanup, before work has started.

g. Include measures to ensure protection of public utility corridors for abating hazardous vapors and for long-term treatment of contaminated groundwater, as appropriate.

h. Create a system for community notification such as a website (see "www.Redfieldsite.org")

RWQCB-B-13 cont.

BARRY J. SHOTTS
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1224 EDWARDS STREET
SAINT HELENA, CALIFORNIA 94574
TEL: 415-595-2821

COMMENT LETTER # Ashland

September 27, 2013

VIA EMAIL

Mr. Terrance Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, California 94560

Re: Ashland, Inc. Comments on: (i) General Plan Tune Up Draft Program EIR for the City of Newark, and (ii) Newark General Plan – Draft for Public Review

Dear Mr. Grindall:

On behalf of Ashland Inc. ("Ashland"), thank you for the opportunity to comment on the General Plan Tune Up Draft Program Environmental Impact Report for the City of Newark ("DEIR"), and (ii) Newark General Plan – Draft for Public Review dated August 2013 ("Draft General Plan"). Ashland has two comments regarding these documents for your consideration.

First, in the Draft General Plan, which is incorporated by reference in the DEIR, many of the proposed land use designations are inconsistent with approved land use designations in the Dumbarton Transit Oriented Development Specific Plan ("Specific Plan"), which was approved by the City of Newark in September 2011. Specifically, among other inconsistencies, land which was approved for "Medium/High Density Residential" use in the Specific Plan, at an approved density of 16 to 60 units per acre, is mapped at Figure LU-1 of the Draft General Plan for "High Density Residential" use at an approved density of 30 to 60 units per acre.

Ashland-1

As you know, Ashland owns property within the Specific Plan which is approved for Medium/High Density Residential use. Placing the property in a High Density Residential use category would nearly double the required minimum density from 16 to 30 units per acre. The residential product which could be constructed at these two minimum densities is completely different, and Ashland never agreed to a minimum density of 30 units per acre for its property.

There is no apparent intent by the City in the Draft General Plan to amend the approved Specific Plan. So we are assuming that the absence of any Medium/High Density Residential category at 16 to 60 units per acre, as approved in the Specific Plan, was an oversight. The Draft General Plan therefore needs to be revised to either create a new Medium/High Density Residential designation, at 16 to 60 units per acre, to apply to all properties within the Specific Plan area which are currently so designated. Alternatively, the Draft General Plan should

expressly state that the land use designations and densities applicable to Specific Plan properties are as stated in the Specific Plan, and that the City-wide land use designations and densities created in the Draft General Plan do not apply to the Specific Plan area. Ashland also concurs in comments made by Cargill Incorporated regarding these points in a letter from Paul Shepherd dated September 27, 2013, to the City of Newark commenting on the Draft General Plan.

Ashland-1 cont.

Secondly, the DEIR at Page 4.7-7 states that the Ashland property (within the Specific Plan area) is, present tense, "one of three State Response sites that DTSC defines as confirmed release sites that are generally high-priority and high potential risk." For this statement, DEIR cites to the EnviroStor database maintained by DTSC for the Ashland property. The EnviroStor database contains no entries for the Ashland property past 1984.

The Ashland property is not a State Response site and is not under the active oversight of DTSC. Oversight of the property was transferred to the San Francisco Bay Regional Water Quality Control Board ("RWQCB") in 1984 and nearly 30 years ago. The only current, accurate and relevant information regarding the Ashland property may be found on the Geotracker website maintained by the RWQCB. The EnviroStor file is terribly outdated and any reference to it or to Ashland as a "State Response site" must be removed in order for the DEIR to convey accurate information to the public and to the City of Newark regarding the Ashland property. For your assistance, I have included a proposed redline of relevant excerpts from the DEIR making this correction at Attachment 1 to this letter.

Thank you again for the opportunity to comment on the Draft General Plan and DEIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me.

Ashland-2

Very truly yours,

Barry J. Shotts

Attachment

cc: Kimberly Humphrey Czirr
Michael Dever
Kristina Woods

Attachment 1
Proposed Revisions to DEIR
(attached)

Known Hazardous Materials Sites

Regional Water Quality Control Board (GeoTracker Database)

The GeoTracker database is the RWQCB's data management system for managing sites that impact groundwater, especially those that require groundwater cleanup (Underground Storage Tanks (USTs), Department of Defense, Site Cleanup Program) as well as permitted facilities such as operating USTs and land disposal sites. GeoTracker contains well, tank, and pipeline data in California. A database search, conducted on June 18, 2013, revealed a total of 110 listings in or near the Plan Area.[11] Of these, 10 are permitted underground storage tank (UST) facilities, 37 are leaking underground storage tank (LUST) cleanup sites (16 of which are closed), and 45 are other cleanup sites (22 of which are closed). The locations of these sites are shown on Figure 4.7-1 and information about each of these sites is provided in Table 4.7-1, Hazardous Materials Sites.

Department of Toxic Substances Control

The DTSC's EnviroStor database is an online search tool for identifying sites that were contaminated or are potentially contaminated and in need of further investigation. The EnviroStor database also identifies facilities that are authorized to treat, store, dispose of, and/or transfer hazardous waste. The EnviroStor database includes lists of the following site types: federal Superfund sites; State Response, including Military Facilities and Federal Superfund; Voluntary Cleanup; and School sites. EnviroStor provides the site name, site type, status, address, any restricted use and/or recorded deed restrictions, past use(s) that caused contamination, potential contaminants of concern, site history and planned and completed activities. Sites in the EnviroStor database may also be included in the GeoTracker database and vice versa.

Ashland-3

As of June 18, 2013, there are 22 regulatory properties within the immediate Plan Area that require DTSC action or evaluation reported via the EnviroStor database search and five which require no further action.[12] The locations of these sites are shown on Figure 4.7-1 and information about each of these sites is provided in Table 4.7-1, Hazardous Materials Sites.

There are no federal Superfund sites in the Plan Area. However, there are three State Response sites that DTSC defines as confirmed release sites that are generally high-priority and high potential risk.[13] The State Response sites are:

- Ashland Chemical, located at 8600 Enterprise Drive, Newark, was a packaging and distribution center involving a variety of chemicals. Contaminants that have been detected and removed from the soil are

[11] California State Water Resources Control Board, GeoTracker, http://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=Newark%2C+CA, accessed on February 1, 2013.

[12] California Department of Toxic Substances (DTSC), EnviroStor Database www.envirostor.dtsc.ca.gov, accessed on February 1, 2013.

[13] California Department of Toxic Substances (DTSC), EnviroStor Database Glossary, http://www.envirostor.dtsc.ca.gov/public/EnviroStor%20Glossary.pdf, accessed on February 1, 2013.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
1	A & S Enterprises	7275 Thornton Ave	Newark	LUST Cleanup Site	Open – Remediation	GeoTracker
2	Abe Oil, Inc.	8130 Enterprise Drive	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
3	Ac Transit-Newark Facility	37650 Sycamore Street	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
4	Agilent Technologies	39201 Cherry Street	Newark	Tiered Permit	Inactive – Needs Evaluation	EnviroStor
5	Alcan Plastic Packaging Plant	6590 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
6	American National Can	6590 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
7	Ashland Chemical	8600 Enterprise Drive	Newark	State Response	Refer: RWQCB	EnviroStor; GeoTracker
8	Ashland Chemical	8610 Enterprise Drive	Newark	Tiered Permit; Other Cleanup Site	Refer: RWQCB; Open – Verification Monitoring	EnviroStor; GeoTracker
9	Ashland Specialty Chemical Co	8600 Enterprise Ave	Newark	Corrective Action	Refer: RWQCB	EnviroStor; GeoTracker
10	Ashland Specialty Chemical Co	8600 Enterprise Ave	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
11	Baron-Blakeslee	8333 Enterprise Drive	Newark	Closed Other Cleanup Site	Open – Remediation	GeoTracker
12	Bay Mirror, Inc.	6756 Central Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
13	Bay Mirror, Inc.	6792 Central Avenue	Newark	Tiered Permit; Other Cleanup	Inactive – Needs Evaluation; Completed – Case Closed	EnviroStor; GeoTracker
14	BP Oil Gas Station (Former Mobil Station)	35425 Newark Boulevard	Newark	Permitted SUT Site; LUST Cleanup Site	Open – Site Assessment	GeoTracker
15	Cargill Salt	7200 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
16	Cellco Partnership	37555 Sycamore Street	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
17	Cerro Metal Products Company	6707 Mowry Avenue	Newark	Evaluation	Refer: RWQCB	EnviroStor
18	City of Newark Service Station	37440 Filbert Street	Newark	Permitted UST Site		GeoTracker
19	Cherry Properties	37409 Cherry	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
20	Chevron #9-3751	5502 Thornton Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
21	Columbus Coated Fabrics	38083 Cherry St	Newark	Evaluation	No Action Required	EnviroStor; GeoTracker
22	Consolidated Freightways Corp.	8130 Enterprise Drive	Newark	Other Cleanup Site	Open – Remediation	GeoTracker
23	Country Club Cleaning	35233 Newark Boulevard	Newark	Other Cleanup Program Site	Open – Site Assessment	GeoTracker
24	Desert Petroleum	36589 Newark Blvd	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
25	Dodge Property	5625 Robertson Avenue	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
26	Dutra Art Stone Facility	8175 Wells Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
27	Earl Automotive	6953 Jarvis Avenue	Newark	LUST Cleanup Site	Case Closed	GeoTracker
28	Edwards Enterprises	8455 Cabot Court	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
29	European Auto Wrecking	7324 Wells Avenue	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
30	Evergreen Oil Inc.	6880 Smith Ave	Newark	Corrective Action	Active	EnviroStor; GeoTracker
31	Evergreen Oil Inc.	6880 Smith Ave	Newark	Operating	RCRA	EnviroStor
32	Exxon No. 7-7116 (Thornton Avenue)	5835 Thornton Ave	Newark	Permitted UST Site; LUST Cleanup Site	Open – Remediation	GeoTracker
33	FERMA Corporation	6655 Smith Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
34	FMC Corporation	8787 Enterprise Dr	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
35	FMC Corporation	8787 Enterprise Dr	Newark	Corrective Action; Other Cleanup Site	Refer: RWQCB; Open – Remediation	EnviroStor; GeoTracker
36	Freitas Property	7721 Sunset Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
37	Freemont Paving	38370 Cedar Boulevard	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
38	Full Bloom Baking Company	6500 Overlake Place	Newark	Other Cleanup Program Site	Case Closed	GeoTracker
39	Georgia-Pacific – Former Peterbilt Motor Co	38811 Cherry Street	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
40	Grace Construction Products	6851 Smith Ave	Newark	LUST Cleanup Site	Open – Remediation	GeoTracker
41	Grand Auto Store	35382 Newark Blvd	Newark	Other Cleanup Program Site	Case Closed	GeoTracker
42	H.B. Fuller Co.	6925 Central Ave	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
43	Holland Oil	8130 Enterprise Drive	Newark	State Response	Certified	EnviroStor; GeoTracker
44	Honeywell International, Inc.	8333 Enterprise Drive	Newark	Post Closure	RCRA	EnviroStor
45	Honeywell International, Inc.	8333 Enterprise Drive	Newark	Corrective Action	Completed	EnviroStor; GeoTracker
46	Hulbert Lumber	37500 Cedar Blvd	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
47	Inland Paperboard & Packaging, Inc.	37333 Cedar Blvd	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
48	International Paper Company	38083 Cherry St	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
49	J&M Concrete	38288 Cedar Blvd	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
50	Jarvis Avenue Shell	6005 Jarvis Avenue	Newark	Permitted UST Site; LUST Cleanup Site	Open – Remediation	GeoTracker
51	JC Cleaners	39253 Cedar Blvd	Newark	Other Cleanup Program Site	Open – Site Assessment	GeoTracker
52	Jones-Hamilton Co.	8400 Enterprise Dr	Newark	Tiered Permit; Other Cleanup Site	Refer: RWQCB; Open – Site Assessment	EnviroStor; GeoTracker
53	Kim's Classic Cleaners (Former)	6259 Jarvis Ave	Newark	Other Cleanup Program Site	Open – Verification Monitoring	GeoTracker
54	Lafleur Machinery	8025 Enterprise Dr	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
55	Leslie Salt Company	7200 Central Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
56	Leslie Salt/FMC Magnesia Waste Pile	West of Enterprise Dr	Newark	State Response	Certified	EnviroStor; GeoTracker
57	Lewis Property	7969 Enterprise Dr	Newark	Other Cleanup Site	Open – Inactive	GeoTracker
58	Lido Chevron Station	6104 Jarvis Ave	Newark	Permitted UST Site		GeoTracker
59	LTD Ceramics, Inc.	7411 Central Ave	Newark	Tiered Permit	Inactive – Needs Evaluation	EnviroStor

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
60	Matheson Tri-Gas, Inc.	6775 Central Ave	Newark	Non-Operating; Other Cleanup Site	Open – Site Assessment	Envirostor; GeoTracker
61	MCI Worldcom Network Service	398 Eureka Dr	Newark	Other Cleanup Program Site	Open – Verification Monitoring	GeoTracker
62	Newark Landfill	8100 Mowry Ave	Newark	Land Disposal Site	Open	GeoTracker
63	Newark Printers	7679 Thornton Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
64	Newark Pump Station	8700 Thornton Ave	Newark	Permitted UST Site		GeoTracker
65	Newark Sportsman Club		Newark	Other Cleanup Site	Open – Inactive	GeoTracker
66	Newark Sportsman's Club	37447 Willow St	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
67	Newark Unified School District	37370 Birch St	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
68	Nordstrom	37599 Filbert St	Newark	Permitted UST Site		GeoTracker
69	Nortrax West	38600 Cedar Blvd	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
70	Oatey Company	6600 Smith Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
71	Ohlone Community College District Site	Cherry St Near Mowry	Newark	Voluntary Cleanup	Certified/Operation & Maintenance	EnviroStor
72	Oliveira Vincent Shell Station	6714 Thornton Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
73	Pabco Gypsum	37851 Cherry St	Newark	LUST Cleanup Site	Open – Verification Monitoring	GeoTracker
74	Paccar, Inc.	38801 Cherry St	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
75	Paccar, Inc.	38801 Cherry St	Newark	Corrective Action	Refer: RWQCB	EnviroStor; GeoTracker
76	Paccar/Lincoln	38505 Cherry St	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
77	Pacific Coast Transportation Services	37853 Cherry St	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
78	Private Residence	Private Residence	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
79	Quikrete	6950 Stevenson Blvd	Newark	Permitted UST Site		GeoTracker

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
80	Redwood Lumber	7091 Central Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
81	Redwood Lumber Company	7091 Central Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
82	Regal Station (Now Exxon)	6788 Thornton Ave	Newark	Permitted UST Site; LUST Cleanup Site	Open – Remediation	GeoTracker
83	Romic Environmental Technologies Corp.	37445 Willow St	Newark	Hazardous Waste	Case Closed	EnviroStor; GeoTracker
84	Romic Environmental Technologies Corp.	37445 Willow St	Newark	Corrective Action; Other Cleanup Site	Refer: RWQCB; Open – Remediation	EnviroStor; GeoTracker
85	Shell Station – 5489 Thornton Avenue	5489 Thornton Ave	Newark	LUST Cleanup Site	Open – Remediation	GeoTracker
86	Silvey – Liquid Air Property	8175 Wells Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
87	Silvey Transportation	8175 Wells Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
88	Smith (A.O.) Water Products	37171 Sycamore St	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
89	S.P. Dumbarton Branch R.O.W.	8785 Enterprise Dr	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
90	Standard Dry Wall Products	38403 Cherry St	Newark	Non-Operating		EnviroStor; GeoTracker
91	Standard Dry Wall Products	38403 Cherry St	Newark	Corrective Action	No Further Action	EnviroStor; GeoTracker
92	Steffensen Property – Wells Avenue	8040 Wells Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
93	Steffensen Property – Enterprise Drive	8140 Enterprise D	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
94	Stevenson Tire	6110 Jarvis Ave	Newark	LUST Cleanup Site	Case Closed	GeoTracker
95	Super Kmart	5401 Thornton Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
96	Summerhill Commons	36840 Cherry St	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
97	Sun Microsystems	39001 Cherry St	Newark	Other Cleanup Program Site	Case Closed	GeoTracker
98	Thornton Business Center	8500 Thornton Willow	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
99	Thoro System Products	38403 Cherry St	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
100	TNT Incorporated	38201 Cherry St	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
101	Tolbertson Property	Terminus of Mowry Ave	Newark	Other Cleanup Program Site	Open – Verification Monitoring	GeoTracker
102	Torian Holdings	37555 Willow St	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
103	Track 7004	SW Corner I-880/ Hwy 84	Newark	Other Cleanup Program Site	Case Closed	GeoTracker
104	Two Count Company	37590 Sycamore St	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
105	Unocal	5799 Mowry Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
106	Unocal Chemicals	6800 Robertson Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
107	Union Sanitary District, Newark Stp.	8700 Thornton Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
108	Ups Freight – Newark Terminal	6700 Smith Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
109	Villa Cleaners	36565 Newark Blvd	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker

Ashland-3 cont.

toluene, xylene, ethylbenzene, PCE, and TCE. Ongoing efforts to extract and treat groundwater are supervised by the RWQCB.[14]

- Holland Oil, located at 8130 Enterprise Drive, Newark, once contained six aboveground waste oil tanks and has also been used as a trucking terminal. The potential contaminants of concern are benzene, TPH-Diesel, and TPH-Gas. The potential media affected include groundwater (not used for drinking water) and soil.[15]
- Leslie Salt/FMC Magnesia Waste Pile, located west of Enterprise Drive, Newark, was a disposal site for process wastes including: off-grade magnesia, dolomite, general rubbish, phosphorus sludges, gypsum, and excess catalysts (containing mercury). All material has been certified as removed from the site.[16]

[14] California Department of Toxic Substances (DTSC), Ashland Chemical, http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=01280046, accessed on February 1, 2013.

[15] California Department of Toxic Substances (DTSC), Holland Oil, http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=01290019, accessed on February 1, 2013.

[16] California Department of Toxic Substances (DTSC), Leslie Salt/FMC Magnesia Waste Pile, http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=01280072, accessed on February 1, 2013.

COMMENT LETTER # OAS

Ohlone Audubon Society, Inc.
A chapter of the National Audubon Society
Serving Southern Alameda County, CA

RECEIVED
OCT 10 2013
COMMUNITY DEVELOPMENT

Terrance Grindall

September 29, 2013

City of Newark

37101 Newark Boulevard

Newark, CA 945560

Re: Comments on Draft Environmental Impact Report for the Newark General Plan Update

Dear Mr. Grindall,

This letter is being written in response to Newark's Draft Impact Report for the General Plan Update. It is being written to protest the destructive plan to fill and develop Area 4 on the Newark marsh area. This is critical habitat in a number of ways. Even if it were not for the endangered species found there Newark would be unwise to build a golf course or any other development in such a fragile environment. The latest evidence for sea level rise indicates that the level will be quite a bit higher than previously thought. Golfers might have to wear wet suits when golfing within a few years.

Another very important reason for keeping Area 4 intact as a marsh is that as such the marsh is able to absorb more water and slow some of the flooding that might otherwise occur as sea level rises or there is a heavy rainfall.

Filling the nearly 400 acres of wetlands that fall within the expansion boundaries would deprive almost a dozen special status species of habitat in two ways. One is the naturally occurring habitat and the other is that there is the possibility of creating upland transition zone habitat for species as refugia in the event of high tides. The 1999 Baylands Ecosystem Habitat Goals Project also states that these two habitats are critical to the health of the Bay. OAS-1

The San Francisco Bay Regional Water Quality control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south central San Francisco Bay and that Area4 represents a rare opportunity to ...provide an area for tidal marsh species to move up slope in response to sea level rise.

The California Department of Fish and Wildlife have noted that this wetland is an integral component of the San Francisco Bay ecosystem and of critical importance to waterfowl and shorebirds.

Along with sensitive species there must be strong protection for the highly endangered Salt Marsh Harvest Mouse. There are other more suitable places to build houses, golf courses and other amenities

of urban and suburban living. Newark would be well served to protect Area 4 in its entirety and focus its development efforts in a more plausible location.

OAS-1 cont.

Yours truly,

Evelyn M. Cormier, President

Ohlone Audubon Society

31020 Carroll Avenue

Hayward, CA 94544

September 27, 2013

VIA EMAIL

Mr. Terrance Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, California 94560

Re: Cargill Comments on General Plan Tune Up Draft Program EIR for the City of Newark

Dear Mr. Grindall:

On behalf of Cargill, Incorporated ("Cargill"), thank you for the opportunity to comment on the General Plan Tune Up Draft Program EIR for the City of Newark, dated August 13, 2013 ("DEIR"). Cargill has enjoyed a long and close working relationship with the City and looks forward to continuing to play a role in Newark's future success. With that in mind, we request that the DEIR be revised to take into account the following comments to ensure factual accuracy in the City's planning and decision-making process and compliance with the California Environmental Quality Act ("CEQA").[1]

Cargill's Solar Salt Production System

There are many instances in which the DEIR confuses Cargill Salt's operations within the City of Newark (the "Newark Plant Site") and its solar salt production system elsewhere. The following discussion is intended to clarify the nature of Cargill's operations.

Cargill-1

Operating Salt Ponds (Outside City of Newark)

The Don Edwards San Francisco Bay National Wildlife Refuge ("Refuge") was established in 1974 through Cargill's conveyance of over 12,000 acres of operating salt ponds adjacent to the western boundary of the City of Newark. Cargill maintains perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system.

[1] Under separate cover dated September 27, 2013, Cargill is also submitting comments today ("Cargill's Draft General Plan Comment Letter") on the Newark General Plan – Draft for Public Review dated August 2013 ("Draft General Plan"). Given the inter-relationship between the Draft General Plan and the DEIR, and the fact that some of Cargill's proposed revisions to the Draft General Plan would necessitate corresponding revisions to the DEIR, Cargill incorporates its comments on the Draft General Plan herein by reference.

7220 Central Avenue
Newark, CA 94560-4205

Tel (510) 797-1820
Tel (800) 321-1458
Fax (510) 790-8189

Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators. The brines are then pumped or transferred by Cargill sequentially through a series of evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural evaporation.

The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds ("BCDC Staff Report"), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[2]

Cargill Newark Plant Site (Within City of Newark)

After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities at its Newark Plant Site within the western portion of the City of Newark. Brines are placed within "crystallizers" at the Newark Plant Site, which are large, man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations within the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment. In short, Cargill's operations at its Newark Plant Site are very industrial in nature as the photographs illustrate at Attachment 1.

Hence, while some of the salt evaporators within the Refuge (and outside the City of Newark) provide habitat for specific species of wildlife, the Newark Plant Site contains very limited or no vegetation or biological characteristics or habitat to support species use.[3] Enclosed as Attachment 2 is a letter prepared by Professional Wetland Scientist Michael Josselyn, PhD, of WRA Environmental Consultants, summarizing the corrections needed to ensure that the DEIR contains an accurate presentation of Cargill's operations.

Cargill-1 cont.

Comments and Necessary Revisions to Chapter 3 – Project Description

Enclosed as Attachment 3 are proposed revisions to the text of the DEIR.

Cargill-2

The proposed revisions to Chapter 3 – Project Description are necessary: (i) to note that the Dumbarton TOD Specific Plan (the "Specific Plan") was approved by the City of Newark in 2011, and not 2010 (this is an error that is made throughout the Draft General Plan and DEIR), (ii) to make certain revisions to the residential land use designations and density ranges;

Cargill-3

[2] BCDC Staff Report at 6-7.
[3] BCDC Staff Report at 27-28.

currently, certain density ranges are inconsistent with the density ranges approved by the City in the Specific Plan in 2011 (see Cargill's Draft General Plan Comment Letter), (iii) to clarify the nature of Cargill's operations at its Newark Plant Site as described above (salt refining and production, in addition to "salt harvesting"). Cargill-3 cont. Cargill-4

Comments and Necessary Revisions to Chapter 4.1 – Aesthetics

Revisions are necessary to Chapter 4.1 as set forth in Attachment 3 to correct or clarify the following matters. First, the City of Newark is not physically located on the "bayfront." We understand the City's desire to re-orient with San Francisco Bay and to celebrate and take advantage of its proximity to the Bay, but it is misleading to say that the City fronts the Bay when the City of Fremont and the Refuge lay directly between Newark and the Bay. So we have suggested some revisions to correct this while still promoting Newark's strategic and scenic location. Cargill-5

Second, the San Francisco Bay Trail has already been completed through the City of Newark; it does not need to be "completed" as Policy PR 5.1 states. So we would suggest changing this Policy to say that the Bay Trail should be "realigned." And we have added that the Bay Trail should be realigned "where feasible." For instance, it would not be feasible, safe or legal to run the Bay Trail through the middle of Cargill's Newark Plant Site, as past City drawings have proposed. Cargill-6

Finally, with respect to Action PR-1.A, we have added that the Refuge may be expanded by working with "willing" property owners. A willing property owner is a necessary condition precedent to Refuge expansion in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service, in addition to numerous other conditions. Cargill-7

Comments and Necessary Revisions to Chapter 4.2 – Air Quality

Minor revisions are necessary at Page 4.2-46 to clarify that Cargill does not operate salt ponds within the City of Newark at its Newark Plant Site, as opposed to within the Refuge, as noted in the Background discussion above. Cargill-8

Comments and Necessary Revisions to Chapter 4.3 – Biological Resources

Cargill's Refuge Salt Ponds Versus Its Newark Plant Site

More than any other chapter of the DEIR, Chapter 4.3 – Biological Resources confuses Cargill's solar salt evaporation ponds within the Refuge (within the City of Fremont) and its Newark Plant Site (within the City of Newark). Cargill-9

For instance, both Figures 4.3-1 and 4.3-2 mislabel Cargill's Newark Plant Site and do not accurately reflect the conditions of the property.[4] In actuality, these areas consist of the harvesting, refining and production areas and should be labeled as set out in our comments attached at Attachment 3.

As discussed above, in contrast with the Refuge salt evaporator ponds, the crystallizers of the Newark Plant Site are of "low foraging value" and "support virtually no aquatic life" because of the presence of hypersaline brines (8 times the salinity of sea water), precipitated salts and heavy equipment associated with Plant Site operations. BCDC Staff Report at 27. Dr. Josselyn's letter at Attachment 2 details this important distinction and confirms that the crystallizers at the Newark Plant Site do not support any wetland vegetation and are not considered as "wetlands." **Cargill-9 cont.**

Therefore, Figures 4.3-1 and 4.3-2 must be revised to accurately depict Cargill's active salt making operations at its Newark Plant Site, as detailed in Attachment 3 and as illustrated in Attachment 4 to this letter. There are a number of other, similar textual revisions which are necessary in the Draft General Plan as detailed in Attachment 3, primarily at Page 4.3-11.

Refuge Expansion

Revisions are necessary, primarily at Page 4.3-3, of the DEIR's discussion of the potential expansion of the current Refuge boundaries. As made clear in the Final Environmental Assessment by the USFWS, areas considered by the USFWS are "Areas of Potential Additions," and may only be acquired from willing sellers. **Cargill-10**

Other Necessary Revisions

Other revisions to Chapter 4.3 of the DEIR are necessary as indicated in Attachment 3 to clarify the nature of Cargill's operations, to modify certain actions and policies pertaining to new development, and to clarify that the Refuge is mostly within the City of Fremont and managed by the USFWS. **Cargill-11**

Comments and Necessary Revisions to Chapter 4.5 – Geology and Soils

Cargill's Newark Plant Site was mislabeled at Figure 4.5-1 of Chapter 4.5. As discussed above, this area consists of crystallizers and other salt harvesting, refining and production areas and facilities. Revisions to Figure 4.5-1 are needed as indicated in Attachments 3 and 4. **Cargill-12**

Comments and Necessary Revisions to Chapter 4.8 – Hydrology and Water Quality

Revisions are necessary to Chapter 4.8 – Hydrology and Water Quality where indicated in Attachments 3 and 4 to: (i) clarify that any levees associated with salt production were not designed for flood protection purposes, (ii) to clarify (at Figure 4.8-1) that the Newark Plant **Cargill-13** **Cargill-14**

[4] The DEIR cites to a number of sources for its discussion centering on Figures 4.3-1 and 4.3-2, but none of these sources actually refers to or maps the Newark Plant Site. They all contain general descriptions of habitat types and refer to salt ponds well outside the Newark City limits.

Site is a closed, engineered system for salt production, nothing is released or discharged to San Francisco Bay, and the Plant Site is not part of any of the watershed areas shown at Figure 4.8-1, and (iii) to make other clarifying revisions to flood protection measures and standards where indicated. Cargill-14 cont. Cargill-15

Comments and Necessary Revisions to Chapter 4.9 – Land Use

Policy CS-2.6 entitled "Salt Pond Management" encourages the management of the salt ponds and states that if "salt production ceases" a Specific Plan should be conducted "to explore a balance between development and preservation of important wildlife and open space resources." This once again confuses the salt ponds of the Refuge, which lie within the City of Fremont and which cannot be the subject of a Specific Plan created by City of Newark (not only because the salt ponds are in Fremont but also because the Refuge will not be the subject of future development) with Cargill's Newark Plant Site. Because Policy CS-2.6 refers to "wetlands and baylands," and, therefore, the salt ponds of the Refuge and not the Newark Plant Site, the reference to Cargill's Newark Plant Site within the Policy should be deleted.[5] Cargill-16

Other revisions are necessary to Chapter 4.9 where indicated in Attachment 3 to clarify matters discussed above, including the nature of Cargill's operations, and the management and potential expansion of the Refuge.

Comments and Necessary Revisions to Chapter 4.12 – Public Services and Recreation

As noted above, the San Francisco Bay Trail has already been completed through the City of Newark; it does not need to be "completed" as Policy PR 5.1 states. So we would suggest changing this Policy as indicated in Attachment 3 to say that the Bay Trail should be "realigned." And we have added that the Bay Trail should be realigned "where feasible" for the reasons noted above. Cargill-17

Comments on Chapter 6.0 – Alternatives

Finally, the Alternatives analysis of the DEIR contains, as required by CEQA, a consideration of project alternatives to the proposed Draft General Plan and an analysis of the relative environmental impacts of each alternative.

Cargill recognizes that the City of Newark is required to consider alternatives to the project proposed in the Draft General Plan to comply with CEQA, but has specific concerns regarding the "Restricted Growth Alternative" described at Page 6-2 of Chapter 6. According to the DEIR, under the Restricted Growth Alternative, "future growth in environmentally sensitive areas along the western edge of Newark would be restricted" and "[f]uture growth would occur entirely on previously developed land in the urbanized portion of the city." Cargill-18

[5] At the same time, Cargill would support the inclusion of a policy or objective elsewhere in the DEIR concerning a possible, future Specific Plan concerning its Newark Plant Site, but this should be contained in a separate policy to avoid confusion with the Refuge.

The DEIR goes on to say that:

> the Dumbarton TOD Focus Area …would be designated as Open Space. This alternative envisions restoration of key areas with potential for high habitat values; however, although these areas would be designated as Open Space, the underlying zoning would continue to permit economically viable uses such as agriculture.

DEIR at 6-19.

Cargill notes that the DEIR does not specify exactly where these "key areas with potential for high habitat values" are located or why it would be necessary or even lawful to declare them as "open space" without allowing any new development to occur. Property within the Dumbarton TOD Focus Area, including property owned by Cargill, is currently zoned for residential use in light of the City of Newark-approved Dumbarton TOD Specific Plan or, in the case of property owned by FMC Corporation, for commercial and high density residential and mixed use. Therefore, none of the properties within the Dumbarton TOD Specific Plan are zoned for or limited to agricultural use. Declaring these properties as "open space" and limiting them to agricultural use would amount to an unlawful taking of private property, which would subject the City of Newark to damages equal to the value of the highest and best use of these properties. **Cargill-18 cont.**

Cargill also notes that the Dumbarton TOD Specific Plan already requires mitigation measures which would reduce the impacts of Specific Plan projects to any sensitive biological resources to a level of insignificance, as the DEIR itself notes (DEIR at Page 6-20). Declaring these properties as open space would therefore offer no advantages over the proposed Draft General Plan in terms of impacts to biological resources. **Cargill-19**

The DEIR ultimately rejects the Restricted Growth Alternative as being infeasible because it would fail to achieve important Project Objectives set out in the DEIR, would conflict with the Specific Plan and would not support development of the Dumbarton TOD Specific Plan area as a Priority Development Area. Cargill would add to this list the fact that the Restricted Growth Alternative would likely subject the City of Newark to significant damages arising from the condemnation or inverse condemnation of private property. **Cargill-20**

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Summary

Cargill requests that the City revise the DEIR as discussed above and in Attachment 3 to ensure that the document is accurate, is based upon substantial evidence and serves the goal of informed decision-making by the public and the City as required by CEQA. To the extent any of the errors or inconsistencies discussed above or in Dr. Josselyn's letter are repeated in other sections of the DEIR, Cargill requests that these other sections be revised in accordance with these comments, so that all sections will be consistent, both internally and with respect to one another **Cargill-21**

Thank you again for the opportunity to comment on the DEIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me.

Cargill-21 cont.

Sincerely

Paul Shepherd
Cargill, Incorporated

Attachments

Attachment 1

Photographs of Newark Plant Site

Cargill-22

Cargill-22
cont.

Cargill-22 cont.

Cargill-22 cont.

Cargill-22 cont.

Attachment 2

Letter from Michael Josselyn, PhD, of
WRA Environmental Consultants

ENVIRONMENTAL CONSULTANTS

VIA EMAIL (terrence.grindall@newark.org)

September 27, 2013

Mr. Terrance Grindall
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, California 94560

Re: Comments on: (i) General Plan Tune Up Draft Program EIR for the City of Newark, and (ii) Newark General Plan – Draft for Public Review

Dear Mr. Grindall:

I am writing to providing comments on both the General Plan Tune Up Draft Program EIR for the City of Newark ("DEIR"), and (ii) Newark General Plan – Draft for Public Review ("Draft General Plan") based on my professional experience and knowledge of the area covered by the DEIR and General Plan. I am a Professional Wetland Scientist with 35 years of experience working in the bay tidal wetlands as a Professor of Biology at San Francisco State University and more recently as a Principal with WRA, Inc, an environmental consulting firm based in San Rafael, CA.

I am familiar with the area covered by the DEIR and Draft General Plan, including the salt evaporator ponds of the Don Edwards San Francisco Bay National Wildlife Refuge (the "Refuge") and the Cargill Salt facility for the harvesting, refining and production of salt within the City of Newark ("Newark Plant Site"). These comments are meant to provide clarification of the areas present, and the relative habitat value and their use by wildlife.

Cargill-23

It is important that the DEIR and Draft General Plan distinguish between the types of salt making areas that are present in the Refuge versus the Newark Plant Site. Salt production requires that bay water be brought into an initial evaporator pond where the salinity of the brines is increased over time as they are moved by gravity or pumps to sequential ponds in the process.[1] The process of producing brines that are close to, but not at the critical threshold of precipitation, takes 5 to 7 years. This process occurs within salt evaporators, none of which are present at the Newark Plant Site. Salt evaporators, depending upon their salinity do support fish and wildlife and considerable study has been made on their use by migratory birds.

[1] The classic description of the salt making process has been described by Ver Planck, 1958, Salt in California, 1 Bulletin 175, Divisions of Mines, San Francisco, CA at page 168.

2169-G East Francisco Blvd., San Rafael, CA 94901 (415) 454-8868 tel (415) 454-0129 fax info@wra-ca.com www.wra-ca.com

These studies have shown that as the salinity of the brine increases, fish and wildlife use dramatically declines; however, within the intake ponds and in ponds of intermediate salinity, bird use continues.

Eventually, when the brines are near saturation (very saline), they are transferred to a salt production facility such as Cargill's Newark Plant Site, where the sodium chlorides are precipitated and the resultant brines are stored as bittern. The complexes containing these brines are not evaporators, but are facilities designed to crystallize sodium chloride in a manner that results in a pure crystallized product and requires carefully controlled and manipulated brine transfers to assure a quality product. The transfer of brines from evaporators within the Refuge is through many miles of pipelines and other facilities. The crystallizers are specifically engineered for salt crystallization and the bottoms are compacted and flat to allow heavy equipment to be used to remove the final product.

The distinction between evaporators and the salt production facilities is important because the extremely high salinities of the brines (8 to 10 times that of seawater) are inhospitable to life within the crystallizers, pickle ponds, and bittern ponds. This distinction between these types of "ponds" appears to not have been considered when preparing the Biological Resources chapter of the DEIR and the Conservation and Sustainability chapter of the Draft General Plan, as well as many other chapters in both documents. **Cargill-23 cont.**

Therefore, the DEIR and Draft General Plan should clearly distinguish between those areas with salt evaporators (or former salt evaporators) and those where salt precipitation and production occurs (such as the Newark Plant Site operated by Cargill Salt). Within the Refuge, since these salt evaporator ponds have not been involved in the precipitation of salt, it is expected that they do have higher wildlife use. However, in my observations of the Cargill's Newark Plant Site, there is no native vegetation or other sensitive resources, including wetlands, within the facility and it would therefore be incorrect to classify it as such. The Newark Plant Site is more similar to other industrial areas in the Fremont and Newark area.

When referring to Cargill's Newark Plant Site, the following corrections should be made:

1. The term "salt <u>ponds</u>" is not the proper nomenclature to describe this area. Salt crystallizers or simply crystallizers should be used.

2. The salt crystallizers do not support any wetland vegetation and are not considered as "wetlands" under the Corps of Engineers definition. As noted above, it is more similar to other industrial facilities within the City of Newark. At the very least, they should be separated out from any discussion on wetlands and placed in a separate category as "salt production and harvesting facilities". **Cargill-24**

3. The salt crystallization brines are inhospitable to life. It is only during periods when precipitation reduces salinities that species such as microalgae and bacteria can grow. At times, brine flies and brine shrimp may be temporarily present, but these die out as salinities increase as a result of the salt making process and are not found in the crystallizers and other production facilities within the Newark Plant site. **Cargill-25**

4. The DEIR states that a number of birds are associated with salt ponds (Page 4.3-11). However, it should be noted that salt crystallizers and other salt production facilities within the Newark Plant site **Cargill-26**

do not support Wilson phalarope or American white pelican as the salinities are too high. The California clapper rail is not found in salt ponds, but only within vegetated salt marshes. Due to the absence of life within the crystallizers and salt production facilities at the Plant site, raptors are not regularly present. Other birds listed may be found roosting on levees, but are generally not found within the brines or using the brines and are more commonly found in the salt ponds within the Refuge outside of the City of Newark.

Cargill-26 cont.

5. I concur in the revisions Cargill has proposed to both the DEIR and General Plan in letters from Paul Shepard dated September 27, 2013, regarding the distinctions between the salt evaporator ponds of the Refuge and the salt crystallizers of the Newark Plant Site.

I hope that these comments will assist the City in providing a clear description of biological resources associated with these facilities.

Cargill-27

Sincerely yours,

Michael Josselyn, PhD
Principal

Attachment 3

Cargill Proposed Revisions to DEIR

Cargill-28

Attachment 3 to September 27, 2013 Cargill Comment Letter on Tune Up Draft Program EIR for the City of Newark dated August 13, 2013

Proposed Revisions to Chapter 3 – Project Description

Page 3-12

Dumbarton TOD Area Specific Plan

The Dumbarton TOD Area Specific Plan (TOD Plan), adopted by the City of Newark on September 8, 2011~~0~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark. A portion of the TOD Plan Area, previously referred to as Area 2, was identified as an area with significant potential for change in the 1992 General Plan. In conjunction with adoption of the TOD Plan, the City amended General Plan land use designations and zoning for this former industrial area to allow for development of 2,500 new homes, 195,000 square feet of professional office and other commercial uses, 35,000 square feet of new retail uses, and 16.3 acres of parkland, including a connection to the San Francisco Bay Trail.

Key features of the TOD Plan, shown in Figure 3-5, include:

- A neighborhood center near the planned transit station with retail to serve the daily needs of residents and transit users, high-density housing with an allowable density of between 25 and 60 du/acre, and 195,000 square feet of professional office and commercial uses;

- Surrounding residential uses throughout the rest of the TOD Plan Area, with townhomes and medium to medium-high density housing within a ½-mile radius of the planned transit station, and single-family homes beyond that to the south;

Cargill-28 cont.

Pages 3-14, -17

Proposed Land Use

The proposed Plan includes a total of 17~~6~~ different land use designations applied to land within the City limit, as shown in Figure 3-6. This represents two~~three~~ fewer categories than in the existing General Plan, because the proposed Plan has consolidated some existing General Plan designations. The Commercial Mixed Use category has been consolidated from two designations into one, with the caveat that zoning will be used to distinguish limited mixed-use areas from other mixed-use areas.. The Specialty Commercial category has been eliminated since it had already been largely replaced by the two Commercial Mixed Use categories, which were not defined by the 1992 Plan.

Cargill-29

A recalibration of the residential categories is proposed, to better reflect existing and proposed housing densities in the city. The Low Density Residential category now includes neighborhoods developed from 1.0 to 8.5 units per net acre. The Medium Density category has been retitled Low Medium Density. The density range is ~~has not changed and continues to be 8.5 to~~ 15 units per net acre or less. The Low Medium category is intended for small lot subdivisions and zero lot line type development. The former High ~~d~~Density category has been retitled Medium Density. The density range ~~has not changed and continues to be~~ is from 1~~5~~4 to 30 units per net acre. A

Cargill-30

new Medium/High Density category has been added for housing in the 16 to 60 units per acre range, pertaining only to specific property within the Dumbarton TOD Specific Plan. A new ~~h~~High ~~d~~Density category has been added for housing in the 25~~30~~ to 60 units per acre range. Adjustments have been made to the land use map so that developed multi-family parcels have been placed in the category which best reflects their actual densities.

Cargill-30 cont.

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The Plan also proposes a reorganization of agricultural and open space designations. The Agriculture/Resource Production designation is renamed Salt Harvesting, Refining and Production in order to more accurately reflect the nature of activities taking place on land to which it applies. This designation applies to approximately 3,000 acres of privately owned properties used for salt harvesting, refining and production, including the land holdings of the Cargill Salt Company on the western side of the city. The Public Parks and Open Space designation has also been renames and is now called Parks and Recreational Facilities. It establishes land primarily for active recreational activity, such as tennis courts, playgrounds, picnic areas, and sports fields. Buildings for recreation and community purposes are allowed under this designation. Finally, the Conservation – Open Space designation is maintained in the proposed Plan, intended to protect wildlife habitat and wetlands and is not intended for direct human habitation or work.

Cargill-31

Figure 3-6

[Figure 3-6 should be revised to designate as "Medium/High Density Residential" the land designated as Medium/High Density Residential on Figure 3-5 in connection with the Dumbarton TOD Specific Plan. In addition, "Salt Harvesting on Figure 3-6 should be re-labeled as "Salt Harvesting, Refining and Production."]

Cargill-32

Table 3-4

[Table 3-4 should be revised as follows: (1) "Low-Medium Density Residential" should have a density range of "15 units per acre or less," (2) "Medium-Density Residential" should have a density range of "14 to 30 units per acre," (3) a "Medium/High Density-Residential" category should be added with a density range of "16 to 60 units per acre," (4) "High-Density Residential" should have a density range of "25 to 60 units per acre," (5) "Resource Production" and "Open Space" should split into different categories, with "Salt Harvesting" falling under "Resource Production" and "Parks and Recreational Facilities" and "Conservation Open Space" falling under "Open Space," (6) "Salt Harvesting" under "Resource Production" should be re-labeled as "Salt Harvesting, Refining and Production" and the "Development Intensity" description should read as follows: "A standard of development intensity does not apply, as buildings unrelated to salt production are generally not appropriate in these areas."]

Cargill-33

Page 3-20

Dumbarton Transit-Oriented Development Focus Area

The boundaries of the Dumbarton TOD (DTOD) Focus Area articulated in the proposed Plan are the same as those of the new neighborhood envisioned in the TOD Plan. The vision for the DTOD Focus Area is also the same, and the proposed Plan incorporates the TOD Plan without proposing additional land use changes over and above those already incorporated into the existing General Plan at the time the TOD Plan was adopted by Newark City Council in 2011~~0~~.

Cargill-34

Page 3-25

Dumbarton Transit-Oriented Development Focus Area

Growth projections from the Dumbarton TOD Specific Plan EIR were added to the base year totals to project 2035 buildout. The Dumbarton TOD Focus Area is located in TAZs 931 and 932 and growth projections from the TOD Specific Plan EIR were divided between these TAZs in accordance with the land use designations proposed in the proposed Plan. It was assumed that Medium Density Residential (MDR) would develop at an intensity of 22 du/acre, that Medium/High Density Residential (MHDR) would develop at an intensity of 30 du/acre and that High density Residential (HDR) would develop at an intensity of 45 du/acre. On this basis, 375 of the 2,5~~6~~00 total units that are likely to be built under the TOD Specific Plan were assigned to TAZ 931 and the balance was assigned to TAZ 932. Based on the proposed land use designations in TAZ 931, it was assumed that 135 of the 375 units would be multi-family units and 240 units would be single-family units. In TAZ 932, it was assumed that 1,530 of the 2,225 units would be multi-family and 695 units would be single-family, based on the proposed land use designations.

Cargill-35

Proposed Revisions to Chapter 4.1 – Aesthetics

Page 4.1-7

4.1.3 Impact Discussion

AES-1 The proposed Plan would not have a substantial adverse effect on a scenic vista.

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Policy LU-4.13. Proximity to San Francisco Bay~~front Identity~~. Reinforce Newark's proximity to San Francisco Bay ~~identity as a bayfront city~~ by orienting new development on the western and southern edges of the city toward the bay and shoreline areas. Future projects in these areas should enhance views to the water and wetlands and be compatible with the area's scenic and recreational qualities. The bay-orientation~~front~~ identity should be emphasized in gateways and public art as well.

Cargill-36

Page 4.1-9

Dumbarton Transit-Oriented District Focus Area

The proposed Plan could affect the visual character and quality of the Dumbarton TOD, as it would allow development of up to 2,5~~6~~00 residential units, a neighborhood center containing retail shops, a grocery store and associated visitor-serving and residential uses, new infrastructure supportive of the new development, and parks on what is now primarily vacant land with few structures on it. At buildout, this development would transform the area from one with relatively low-slung, utilitarian buildings with little architectural detail and a minimal street network to a brand new neighborhood featuring a variety of primarily residential structures in a cohesive blend of architectural styles with additional streets, sidewalks, landscaping, and street lighting, and more buildings.

Cargill-37

Page 4.1-14, -15

4.1.4 Cumulative Impacts

AES-5 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics.

***

Policy PR-5.1 Bay Trail. Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay. Pursue trails that are separated from motor vehicle traffic and pursue pedestrian crossings of railroad rights of way to allow for connections to regional open spaces without conflicts with motorized vehicles.(new)

Cargill-38

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Action PR-1.A. Don Edwards National Wildlife Refuge Expansion. Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and

Cargill-39

the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service.

Cargill-39 cont.

Proposed Revisions to Chapter 4.2 – Air Quality

Page 4.2-46

Site Receptors Proximate to Odor Sources

Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2-7. Additionally, sensitive receptors could be located in the vicinity of the salt harvesting, refining and production operations ponds operated by Cargill, Incorporated Corporation, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be *less then significant*.

Cargill-40

Proposed Revisions to Chapter 4.3 – Biological Resources

Page 4.3-3

Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan

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The San Francisco Bay National Wildlife Refuge was established by the United States Congress in 1972 for a total not to exceed 23,000 acres. The Refuge was one of the first urban National Wildlife Refuge established in the United States. The first lands were acquired for the Refuge in 1974. In 1988, the USFWS's acquisition authority was increased from 23,000 to 43,000 acres. Most of the existing Refuge lies within the City of Fremont. Cargill has the perpetual right within the Refuge (and outside the Newark city limits) to utilize evaporator ponds, commonly referred to as "salt ponds" or "evaporators" for its solar salt production system.

In 1990, the USFWS issued the Final Environmental Assessment for the Refuge boundary expansion, which identified 24,500 acres as potential additions (Areas for Potential Additions) because not all lands would be added to the Refuge. The Areas for ~~p~~Potential ~~a~~Additions ~~areas~~ identified by the USFWS are recognized through USFWS policy as the approved acquisition boundary for the Refuge. The USFWS does not have jurisdiction over the Areas for Potential Additions~~lands within the acquisition boundary~~, and these lands are not part of the Refuge unless they are purchased or placed under an agreement that provides for management under the Refuge System. In addition, USFW's acquisition plans do not preclude lawful, environmentally sound development, as determined by the local government in whose jurisdiction a potential addition area lies, and land within Areas for Potential Additions may only be acquired from willing sellers.[1] In fact, to date, many lands within the approved 1990 acquisition boundary have already been converted to urban developments.[2]

Cargill-41

In 1995, the Refuge was renamed as the Don Edwards San Francisco Bay National Wildlife Refuge in 1995 to honor Congressman Don Edwards' efforts to create the refuge. The Refuge was created with three main purposes: to preserve natural resources, including habitat for migratory birds, harbor seals, and threatened and endangered species; to provide environmental education and wildlife interpretation opportunities; and to preserve open space and wildlife-oriented recreation.

The Refuge and Areas for Potential Additions ~~approved acquisition boundary~~ are shown in Figure 4.3-1. As of April 2013, the USFWS owned and/or managed approximately 30,000 acres ~~under the approved acquisition boundary~~. As shown in Figure 4.3-1, none of the focus areas contain lands within the Refuge and most of the Refuge lies within the City of Fremont. However, Area 4 includes lands within the Areas for Potential Additions~~approved acquisition boundary~~.

[1] U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 8.

[2] U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 9.

State Regulations

The most relevant State laws regulating biological resources are the California Endangered Species Act, the California Fish and Game Code, the California Native Plant Protection Act, and the Marine Life Protection Act, each of which is described below.
California Endangered Species Act

The California Endangered Species Act (CESA) (California Fish and Game Code Section 2050 *et seq.*) establishes State policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. The CESA mandates that, if a development project would result in the "take" of a threatened or endangered species – defined as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" -- mitigation must be provided as part of an Incidental Take Permit issued by the California Department of Fish and Wildlife (CDFW).~~State agencies should not approve projects that jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy.~~ For projects that would affect a species that is on the federal and State lists, compliance with the FESA satisfies the CESA if the ~~California Department of Fish and Wildlife (~~CDFW~~)~~ determines that the federal incidental take authorization is consistent with the CESA under California Fish and Game Code Section 2080.1. For projects that would result in take of a species that is only State listed, the project proponent must apply for a take permit under Section 2081(b).

Cargill-42

Figure 4.3-1

[This figure contains a number of errors and is inconsistent with the CCP: (i) Figure 4.3-1 erroneously maps Cargill's Newark Plant Site as "Managed Wetlands/Salt Ponds" within active salt making facilities, as discussed in Cargill's Comment Letter, and should therefore be shaded solid (without dots) white and, if labeled at all, should be re-labeled as "Salt Harvesting, Refining and Production," and (ii) potential additions to the Refuge should be designated as "Areas of Potential Additions" or "Potential Additions" consistent with the language of the USFWS Final Assessment and CCP. Attached as Attachment 4 to Cargill's Comment Letter on the DEIR is a marked up copy of Figure 4.3-1 with these corrections.]

Cargill-43

Figure 4.3-2

[Figure 4.3-2 erroneously maps "saline emergent wetland" and "lacustrine" areas within active salt making facilities where no such wetlands exist. These labels and overlays should be removed from the Cargill Plant Site in this Figure as they do not accurately represent the conditions of the salt harvesting, refining, and production areas as described in Cargill's Comment letter. Attached as Attachment 4 to Cargill's Comment Letter on the DEIR is a marked up copy of Figure 4.3-2 with these corrections.]

Cargill-44

Page 4.3-9

4.3.1.2 Existing Conditions

This section discusses the wildlife and plant communities and special-status species that are known to occur or have potential to occur in the Plan Area. As described in chapter 3.0 of this Draft EIR, the majority of land in the Plan Area is urbanized and developed; however, a large area of land along the western perimeter of Newark is occupied by ~~the~~ Cargill for salt harvesting, refining and production~~Corporation salt evaporation ponds~~. Additionally, a portion of

Cargill-45

the Don Edwards San Francisco Bay National Wildlife Refuge is adjacent to the Plan Area outside the City limit. The Refuge ~~Both these areas~~ provides habitat for biological resources occurring or potentially occurring adjacent to~~in~~ Newark.

Cargill-45 cont.

Vegetation, Habitat Types, and Wetlands

Habitat types, as classified by the United State Department of Agriculture Forest Service, are shown in Figure 4.3-2. The distribution of habitat areas in Newark is closely associated with topography and hydrology, with habitat types associated with wetlands primarily located adjacent to the San Francisco Bay and grasslands and croplands located inland. Some wetland areas are scattered throughout the inland portion of Newark. The majority of inland Newark consists of urban lands. Each of these areas is described below:

- **Lacustrine** habitats are the predominant non-urban habitat type in Newark~~ and include the salt ponds, which are described in further detail below~~. These habitats are inland depressions or dammed riverine channels that contain standing water and vary from small ponds to large areas. Lacustrine habitats are used by several bird, mammal, reptile, and amphibian species for reproduction, food, water, and cover. Within Newark, approximately 2,500 acres are classified as lacustrine habitat.

Cargill-46

Page 4.3-11

Salt Ponds

The commercial salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge, and adjacent to the Plan Area outside the City limit, are large, open ~~water~~ areas ranging in salinity from similar to sea water at 32 parts per million to 180~~135~~ parts per million, or more than five~~four~~ times the salinity of ~~more salty than~~ sea water.[3] These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water. Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds within the Refuge for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt. Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin. Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.

Cargill-47

Cargill, which sold and donated 12,500 acres of salt ponds within the Refuge, has retained perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system and will continue its operations for the foreseeable future. Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators. The brines are then pumped or transferred by Cargill sequentially through a series of evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural

Cargill-48

[3] San Francisco Bay Conservation and Development Commission, 2005, Staff Report – Salt Ponds, page 27.

evaporation. The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds, in connection with the *San Francisco Bay Plan* (Bay Plan), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[4]

After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities within the western portion of the City of Newark (the Newark Plant Site). Brines are placed within "crystallizers" at the Newark Plant Site, which are large, man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations within the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment.

Hence, while some of the salt evaporators within the Refuge (and outside the city of Newark) provide habitat for specific species of wildlife, the Newark Plant site is industrial in nature and consists of hypersaline brines and /or precipitated salts that, in general, contain very limited or no vegetation or biological characteristics or habitat to support species use.[5]

Cargill-48 cont.

Page 4.3-34

4.3.3 Impact Discussion

BIO-1. Buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area.

***

Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas.

Cargill-49

***

Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~

Cargill-50

[4] San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 6-7 (Staff Report - October 2005).
[5] San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 27-28 (Staff Report - October 2005).

Page 4.3-39

BIO-3. Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the US in the Plan Area.

***

Figure 4.3-3 shows areas of wetland vegetation in Newark, although it does not depict federally protected wetlands USACE jurisdictional waters. A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007. The USACE determination established approximately 242 acres of wetlands and 34.21 acres of "other waters" for a total of 277 acres. These areas include all aquatic, diked salt marsh, seasonal wetlands, muted tidal saltmarsh, freshwater marsh, brackish marsh, and tidal salt marsh. Jurisdictional determination has also been made for 7.2 acres of wetlands on the Torian property, located within the Dumbarton TOD Focus Area. Additionally, other portions of the Plan Area along the western perimeter of Newark may~~likely~~ support wetland vegetation, wetland hydrology, and wetland soils as shown on Figure 4.3-3, and therefore it is possible~~likely~~ that there are additional Waters of the US within these areas, although no formal delineation has been made by USACE.

Cargill-51

Page 4.3-41

BIO-3. Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the US in the Plan Area.

***

Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~

Cargill-52

***

Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.

Cargill-53

***

Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.

Cargill-54

Page 4.3-42, -43

BIO-4 The proposed Plan would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

***

The proposed Plan would result in a significant impact if new development would interfere with species movement or involve barriers or threats within wildlife corridors. Given the highly urbanized context of the Plan Area and the extent of existing development, vehicular traffic, and human and pet presence in Newark, opportunities for wildlife movement in the urbanized portion of the city are minimal. Existing development, including buildings, fencing, flood control channels, major roadways, or other similar improvements, represent substantial barriers to wildlife movement. The best opportunities for wildlife migration exist along the western edge of the Plan Area, adjacent to the Don Edwards National Wildlife Refuge, but excluding Cargill's existing salt harvesting, refining and production operations as designated at Figure LU-1 of the proposed Plan..

Cargill-55

***

Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~

Cargill-56

***

Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.

Cargill-57

Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.

Cargill-58

Page 4.3-45

BIO-6 The proposed Plan would result in less-than-significant impacts related to conflict with the Basin Plan and Habitat Goals.

Cargill-59

***

Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~

Cargill-59 cont.

***

Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.

Cargill-60

***

Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.

Cargill-61

Page 4.9-9

Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan

***

Action CS-1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provide for any impacts to such areas.

Cargill-62

Proposed Revisions to Chapter 4.5 – Geology and Soils

Figure 4.5-1

[Cargill's Newark Plant Site was mislabeled at Figure 4.5-1 of Chapter 4.5. As discussed in Cargill's Comment Letter and above, this area consists of crystallizers and other active salt harvesting, refining and production areas and facilities. Figure 4.5-1 should therefore be revised to accurately depict the Newark Plant Site.]

Cargill-63

Proposed Revisions to Chapter 4.8 – Hydrology and Water Quality

Figure 4.8-1

[Please re-label "Salt Production" as "Newark Plant Site" and add the following notation: "This is a closed, engineered system for salt production and nothing is released or discharged to San Francisco Bay." Shade the entire "Newark Plant Site" area in red, not just a portion, and separately from the watershed areas shown. A mark up illustrating these corrections is shown in a markup to Figure CS-1 of the Draft General Plan in Attachment 4.] **Cargill-64**

Page 4.8-14

Water Quality

Most of the streams and creeks that originally flowed through the City of Newark have been replaced by a network of storm drains and channels that discharge urban runoff into Newark Slough, Plummer Creek Slough, and Mowry Slough. The surface water bodies that currently exist in the Plan Area include engineered channels maintained by the ACFC, Plummer Creek, Newark Slough, Mowry Slough, tidal marshes, tidal flats~~, salt ponds~~, and small tidal estuaries. **Cargill-65**

***

As mentioned earlier, the Plan Area consists of open space, ~~and~~ undeveloped and non-urbanized land near the bay shoreline and developed land further inland. Stormwater is transported through the ACFC's regional network of storm drains, underground culverts, or engineered drainage channels that eventually discharge into San Francisco Bay. There are sites in the Plan Area with known past groundwater contamination that have undergone remediation and are continuing to be monitored. This issue is discussed more fully in Chapter 4.7, Hazards and Hazardous Materials. **Cargill-66**

Page 4.8-15, -16

Flooding

***

The southern portion of the City of Newark is within the 100-year floodplain subject to tidal flooding from San Francisco Bay. Much of this area is open space, areas of salt harvesting, refining and production~~salt flats~~, and tidal marshes with no plans~~ned~~ for urbanized development. However, many of the planned future housing sites in the Dumbarton TOD and Southwest Newark Residential and Recreational Focus Areas, are within the 100-year floodplain. In addition, the areas immediately adjacent to the ACFC storm drain channels (Lines B, D, F, H, and I) are within the 100-year floodplain with some of the outlying areas mapped as being within the 500-year floodplain. The flood prone areas within the City of Newark are depicted on Figure 4.8-4. **Cargill-67**

~~Although some locations within the City are protected from flooding by levees,~~ FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability. Although levees do exist at some locations within the City, ~~M~~most of these levees ~~within the City of Newark~~were not designed to provide flood protection and are not certified. **Cargill-68**

Therefore, the areas next to these levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event. **Cargill-68 cont.**

Figure 4.8-4

[Please re-label the area designated as "Salt Harvesting Ponds" as "Salt Harvesting, Refining and Production."] **Cargill-69**

Page 4.8-26

HYDRO-3. The proposed Plan would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation, or flooding on- or off-site. **Cargill-70**

***

Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~. **Cargill-71**

Page 4.8-28

HYDRO-4 The proposed Plan would not create or contribute runoff water, which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.

***

Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~. **Cargill-72**

Page 4.8-33

HYDRO-8. The proposed Plan would not result in significant adverse effects related to inundation by seiche, tsunami, or mudflow.

***

The protected portion of the San Francisco Bay near the City of Newark is not subject to potential flooding by seiches, since the several levees and long distance of shallow salt ponds~~water~~ associated with salt pond production within the Don Edwards San Francisco Bay National Wildlife Refuge~~and harvesting operations~~ between San Francisco Bay and the City of Newark would minimize waves generated by a seiche. In addition, the City of Newark is not located below any steeply sloped areas that would result in a mud or debris flow. The land within the City of Newark is relatively flat and is not within any identified earthquake induced rainfall-induced landslide areas, according to ABAG hazard maps. For these reasons, the City is not considered to be subject to significant risk from tsunamis, seiches, or mudflows. **Cargill-73**

***

Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~.

Cargill-74

Proposed Revisions to Chapter 4.9 – Land Use Planning

Page 4.9-2

The Dumbarton Transit-Oriented Development (TOD) Area Specific Plan, adopted by the City of Newark on September 8, 2011~~0~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark. In conjunction with adoption of the TOD Plan, the City amended General Plan land use designations and zoning for this former industrial area to allow for development of 2,500 new homes, 195,000 square feet of professional office and other commercial uses, 35,000 square feet of new retail uses, and 16.3 acres of parkland, including a connection to the San Francisco Bay Trail.

Cargill-75

Page 4.9-3

Distribution of Existing Land Uses

***

The remaining 50 percent of Newark's land area consists of undeveloped or non-urbanized land. Of this total, approximately 960 acres is vacant and designated for development. The remaining 3,535 acres includes "conservation" open space (280 acres), agriculture (70 acres), public parkland and other "improved" open space (160 acres), and approximately 3,025 acres of land used for salt harvesting, refining and ~~evaporation ponds and ancillary facilities used for salt~~ production. Salt harvesting, refining and production represents approximately one-third of Newark's land area. It is the largest single land use in the city in terms of its geographic extent.

Cargill-76

Page 4.9-4

Table 4.9-1 DISTRIBUTION OF EXISTING LAND USES

[Change "Salt Evaporation Ponds" in Table 4.9-1 to "Salt Harvesting, Refining and Production"]

Cargill-77

Page 4.9-5

Undeveloped and Non-Urbanized Land

Undeveloped and non-urbanized areas in Newark are principally located in the southern and western parts of the city. The Cargill salt harvesting, refining and production operations ~~evaporation ponds~~ constitute a majority of this area; however, approximately 960 acres of land in Newark is vacant and zoned for development. Most of this land is clustered in two areas: the Southwest Newark residential and Recreational Focus Area, west of Cherry Street between Mowry and Stevenson; and the Dumbarton TOD Focus Area. There are also several vacant tracts within the Pacific Research Center, in other industrial parks, and in the NewPark Mall vicinity.

Cargill-78

Page 4.9-9, -10

Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan

***

Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas. **Cargill-79**

***

Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~ **Cargill-80**

***

Policy CS-2.6. Salt Pond Management. Encourage the management of salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service to enhance their value for wildlife habitat and recreation, consistent with Cargill's perpetual rights to utilize the salt ponds as part of its solar salt production system. ~~In the event that salt production ceases , conduct a Specific Plan to explore a balance between development and preservation of important wildlifeand open space resources.~~ **Cargill-81**

***

Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation. **Cargill-82**

***

Action PR-1.A. Don Edwards National Wildlife Refuge Expansion. Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service. **Cargill-83**

Action POS-1.B: Environmental Review and Open Space. Use the environmental review process to encourage new development to designate areas with unique vegetation, wildlife habitat, or natural resources as open space or to provide adequate mitigation for impacts to such areas. **Cargill-84**

Proposed Revisions to Chapter 4.12 – Public Services and Recreation

Page 4.12-24

PS-10 The proposed Plan, in combination with past, present, and reasonably foreseeable growth, would result in less than significant cumulative impacts with respect to parks and recreational facilities.

Cargill-85

***

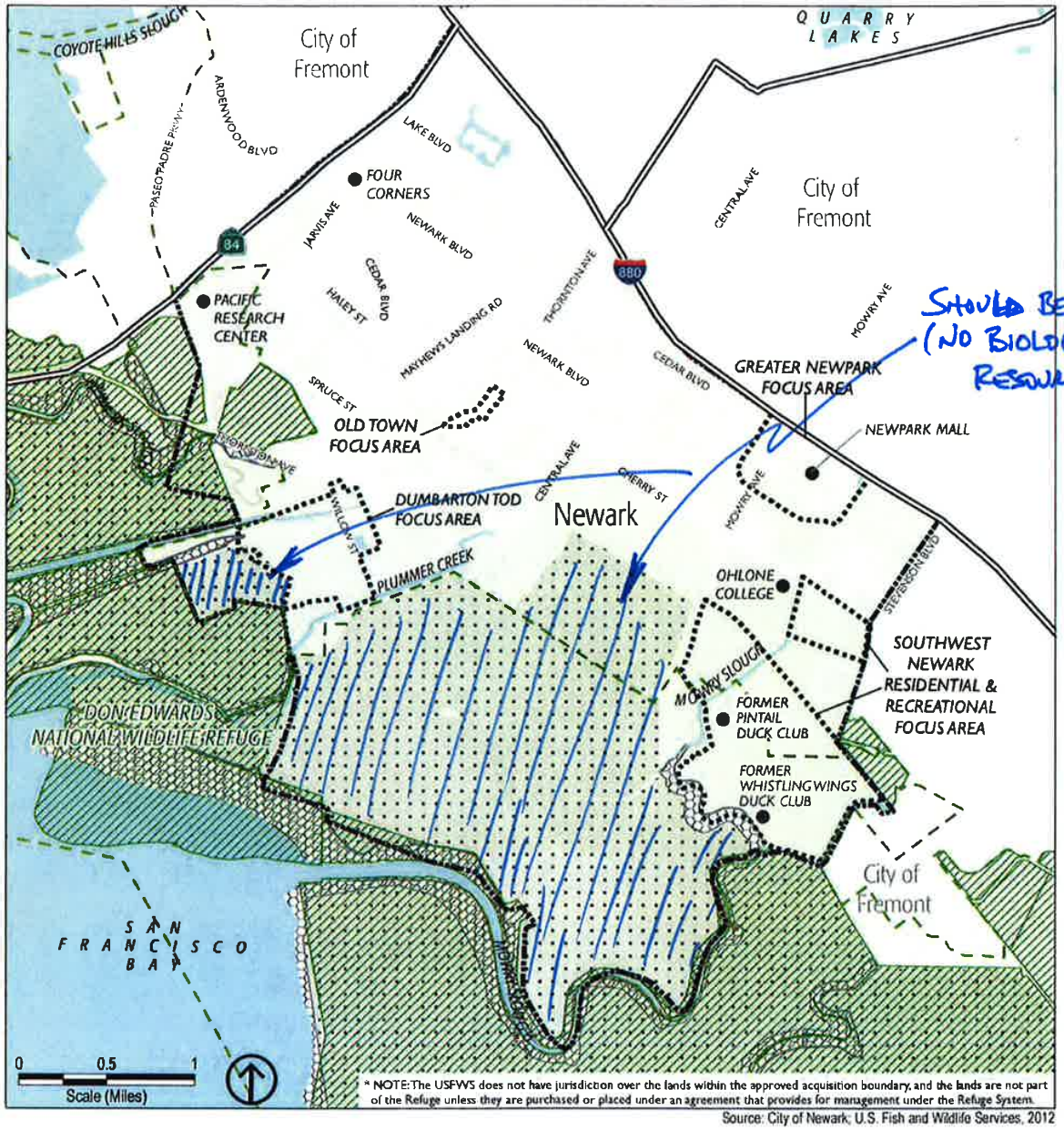
Policy PR-5.1 Bay Trail. Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay. Pursue trails that are separated from motor vehicle traffic and pursue pedestrian crossings of railroad rights of way to allow for connections to regional open spaces without conflicts with motorized vehicles.

Cargill-86

Attachment 4

Revisions to Figures

Cargill-87



SHOULD BE WHITE (NO BIOLOGICAL RESOURCE)

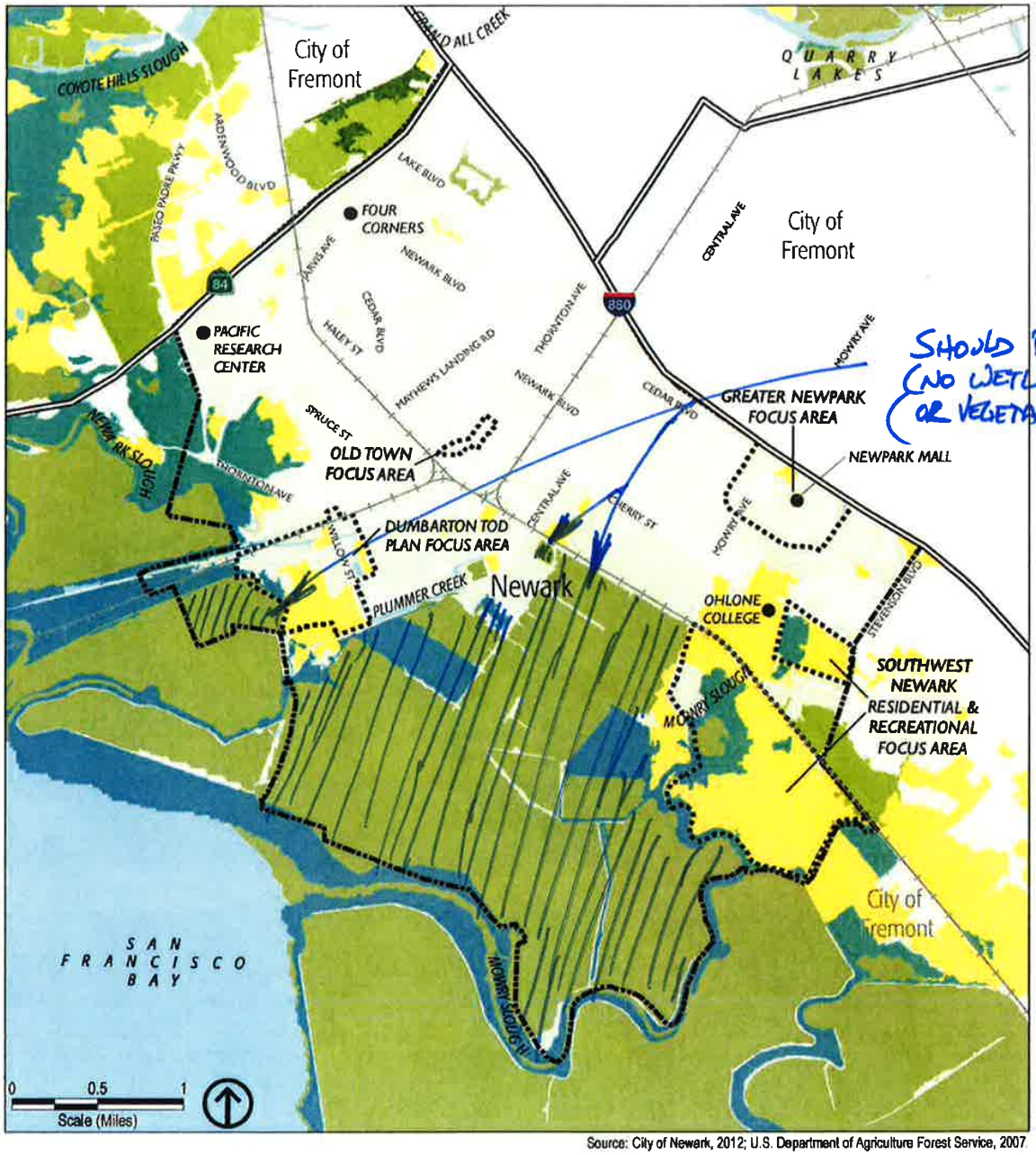
Source: City of Newark; U.S. Fish and Wildlife Services, 2012

City Limit
Landmarks
Railroads
Don Edwards San Francisco Bay National Wildlife Refuge
Don Edwards San Francisco Bay National Wildlife Refuge ~~Approved Acquisition Boundary*~~
Focus Area
Tidal Marsh
~~Managed Wetlands~~/Salt Pond

POTENTIAL ADDITION

Figure 4.3-1
Don Edwards SF Bay National Wildlife Refuge and Managed Wetlands in Newark

Cargill-87



SHOULD BE WHITE (NO WETLANDS) (OR VEGETATION)

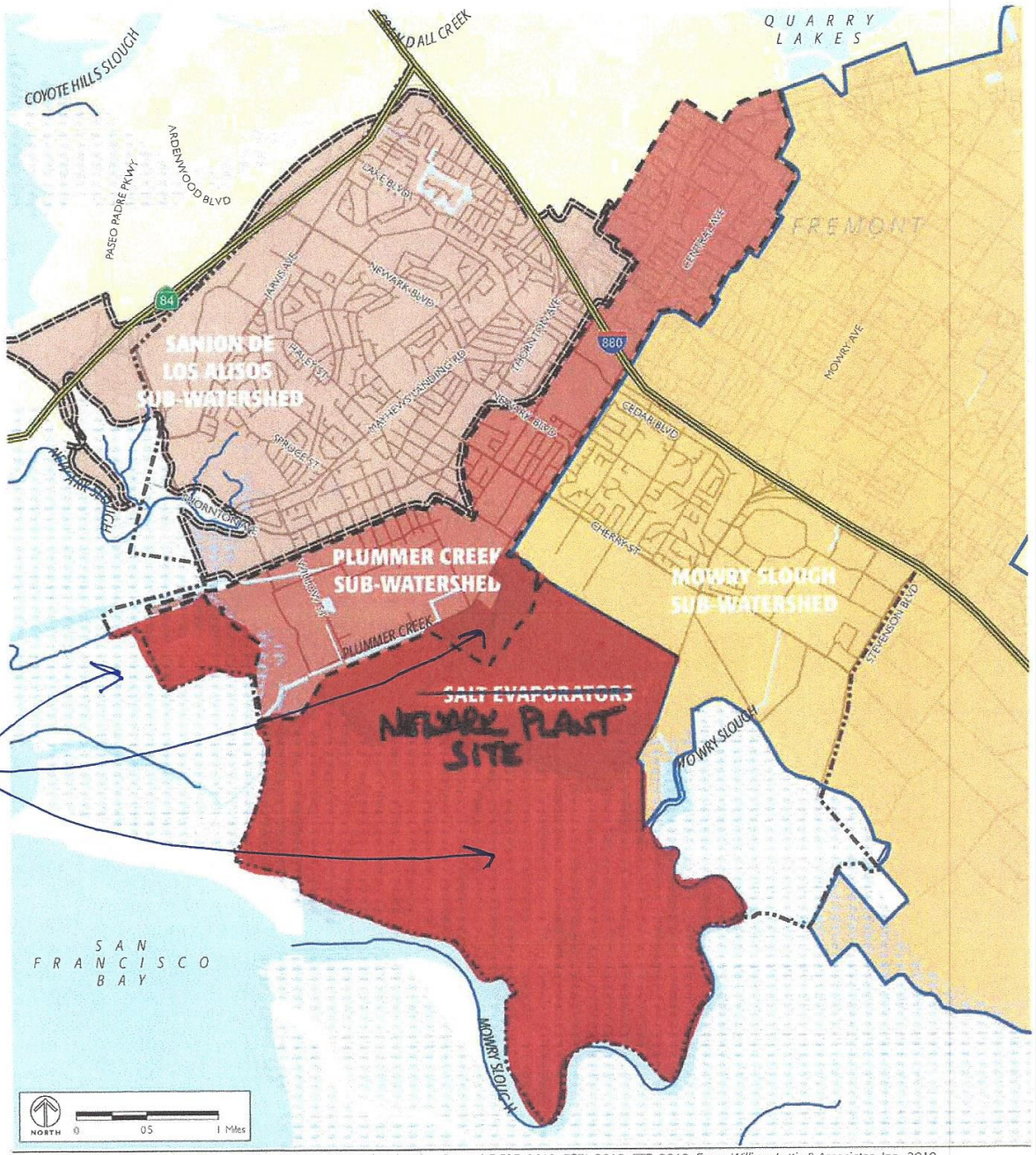
Source: City of Newark, 2012; U.S. Department of Agriculture Forest Service, 2007

City Limit
Landmarks
Railroads
Focus Area
Annual Grass
Cropland
Valley Oak Woodland
Lacustrine
Fresh Emergent Wetland
Saline Emergent Wetland

Figure 4.3-2
Vegetation and Habitat Types

Cargill-87

Note - This is also a mark up for Figure 4.8-1 of DEIR



Added Red

Source Data: City of Newark, 2012; Santa Clara County, 2012; The Planning Center | DC&E, 2012; ESRI, 2010; FTC, 2010; Fugro William Lettis & Associates, Inc., 2010.

City Boundary
Creek
Tidal or Fresh Water Marsh and Ponds
~~Salt Evaporators~~

Watersheds
Mowrey Slough Sub-Watershed
Sanjon de los Alisos Sub-Watershed
Plummer Creek Sub-Watershed
Other Lower Alameda Creek Watersheds

FIGURE CS-1
LOCAL HYDROLOGY/ WATERSHEDS

Newark Plant Site *

* This is a closed, engineered system for salt production and nothing is released or discharged to San Francisco Bay.

Cargill-87

COMMENT LETTER # DOW

September 19, 2013

Via Electronic Mail

Terrence Grindall
City of Newark
37101 Newark Boulevard
Newark, CA 94560
terrence.grindall@newark.org

Re: Comments on Draft Environmental Impact Report for the Newark General Plan Update

Dear Mr. Grindall,

On behalf of Defenders of Wildlife's more than 120,000 members and supporters in California, I am writing in response to the City of Newark's General Plan Tune Up Draft Program EIR. Defenders of Wildlife ("Defenders") is a national, non-profit, public interest conservation organization with more than one million members and supporters. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities, and has been involved for years in wetlands protection, San Francisco Bay conservation and restoration, and promoting the interests of national wildlife refuges, including the Don Edwards San Francisco Bay National Wildlife Refuge.

Defenders of Wildlife joins Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing Newark's plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge.

As Historic Bay wetlands with significant restoration potential, 550-acre Area 4 is simply an inappropriate place for development. Not only does Area 4 fall within the expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge, but it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary breeding ground for San Francisco Bay Harbor Seals.

DOW-1

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926 J Street, Suite 522
Sacramento, CA 95814
Telephone 916-313-5800
Fax 916-313-5812
www.defenders.org

National Headquarters
1130 17th Street NW
Washington, DC 20036
Telephone 202-682-9400
Fax 202-682-1331
www.defenders.org

Development in Area 4 would fill nearly 100 acres of wetlands and aquatic habitat with an 18-hole golf course and nearly 500 single-family houses, exposing future Newark residents to significant flooding hazards, threatening the health of special status species populations, and preventing the restoration of a site uniquely suited for the preservation and recovery of rare and critical Bay habitat.
Scientists and regulatory agencies agree that Area 4 offers a crucial opportunity to restore San Francisco Bay:

- The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

- The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise"

- Similarly, the California Department of Fish and Wildlife have stated that "this wetland is an integral component of the San Francisco Bay ecosystem," and "critically important to waterfowl and shorebirds."

We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

Thank you for the opportunity to comment on your General Plan Draft EIR. If you have any questions or comments, please do not hesitate to contact me at (916) 313-5800 ex. 108 or hstewart@defenders.org.

Sincerely,

Haley Stewart
California Program Associate

DOW-1 cont.

COX CASTLE NICHOLSON

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File No. 68293

VIA EMAIL AND U.S. MAIL

September 27, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd
Newark, CA 94560

Re: Enterprise Drive LLC's Comments on Draft General Plan Update

Dear Mr. Grindall:

On behalf of Enterprise Drive LLC, thank you for the opportunity to comment on the City of Newark's August 2013 Draft General Plan Update. Enterprise Drive LLC owns 2.14 acres (parcel number 092-0140-008) in the Dumbarton Transit Oriented Development (TOD).

EDLLC-1

The Draft General Plan Update would set the minimum allowable density in Medium Density Residential districts at 15 dwelling units per gross developable acre. This new proposed minimum density is indicated, among other places, on page LU-12 of the Draft Update. As you know, in September 2011, the City of Newark approved the Dumbarton TOD Specific Plan. The City set the allowable minimum density for Medium Density Residential districts to 14 dwelling units per gross developable acre in the Dumbarton TOD. (Dumbarton TOD Environmental Impact Report, p. 3-25.) I write to request that the Dumbarton TOD Specific Plan be treated as an exemption to the Draft General Plan Update (for a comparison of residential densities in the Dumbarton TOD Specific Plan and the Draft General Plan Update, see the September 27, 2013 comment letter submitted by Cargill, Inc.).

Enterprise Drive LLC has planned a development relying on this set minimum of 14 units per acre. The approval process has been ongoing for some time, with tentative map fees paid on October 10, 2012 and rezoning, architectural, and site plan fees paid on October 31, 2012. A change to 15 units per acre at this stage would adversely affect Enterprise Drive LLC's ability to complete the project.

Enterprise Drive LLC thus requests the City treat the Dumbarton TOD Specific Plan as an exemption to the Draft General Plan Update, and that the established minimum density of 14 units per acre in Medium Density Residential districts in the Dumbarton TOD remain in effect. Thank you again for the opportunity to comment on the Draft General Plan Update for the City of Newark. Should you have any questions, please do not hesitate to contact me.

EDLLC-1 cont.

Sincerely,

/DKK

R. Clark Morrison

cc: Veronica Vargas (vvargas@trumarkco.com)
Ron Winter (rwinter@trumarkco.com)

COMMENT LETTER # GA

SAN FRANCISCO SAN JOSE SANTA ROSA WALNUT CREEK

GREENBELT ALLIANCE

Walnut Creek Office
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September 27, 2013

City of Newark
Attn: Terrence Grindall
37101 Newark Boulevard
Newark, CA 94560
terrence.grindall@newark.org

Dear Mr. Grindall:

RE: Draft Environmental Impact Report for the Newark General Plan Update

We join Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing the city's plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge. GA-1

Numerous impacts of development in Area 4 are insufficiently addressed in the DEIR. Among them are the following:

Habitat

The 560-acres of diked baylands that comprise Area 4 contain a variety of wetland and upland habitat types. These habitats support numerous migratory waterfowl and several rare and endangered species, including the salt marsh harvest mouse, salt marsh wandering shrew, and burrowing owls. The area is identified as an important conservation priority in the 1999 Baylands Ecosystem Habitat Goals. Most of the area was included in the congressionally-approved USFWS Refuge Expansion Boundary Map of 1990. The area was identified in Greenbelt Alliance's 2012 At Risk report as "highly at risk."

Flooding and Sea Level Rise

Because Area 4 features tracts of uplands in proximity to tidal waters it provides a rare opportunity to maintain transitional habitat for tidal marsh species in the face of sea level rise. These same features make the land difficult and hazardous to develop. Since the entire area is within the 100-year flood plain, a large amount of would be required to support development. These measures may not be sufficient to address the impacts of sea level rise projected to occur during the next 100 years. Other public safety concerns include seismically unstable soils and limited emergency access. **GA-1 cont.**

We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services. **GA-2**

Sincerely,

Matt Vander Sluis
Senior Field Representative
Greenbelt Alliance
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File No. 68293

VIA EMAIL AND U.S. MAIL

September 27, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd
Newark, CA 94560

Re: NMW Newark LLC's Comments on Draft General Plan Update

Dear Mr. Grindall:

On behalf of NMW Newark LLC, thank you for the opportunity to comment on the City of Newark's August 2013 Draft General Plan Update. NMW Newark LLC is the developer for the 21.27 acre Jones Hamilton property in the Dumbarton Transit Oriented Development (TOD).

NMW-1

The Draft General Plan Update would set the minimum allowable density in Medium Density Residential districts at 15 dwelling units per gross developable acre. This new proposed minimum density is indicated, among other places, on page LU-12 of the Draft Update. As you know, in September 2011, the City of Newark approved the Dumbarton TOD Specific Plan. The City set the allowable minimum density for Medium Density Residential districts to 14 dwelling units per gross developable acre in the Dumbarton TOD. (Dumbarton TOD Environmental Impact Report, p. 3-25.) I write to request that the Dumbarton TOD Specific Plan be treated as an exemption to the Draft General Plan Update (for a comparison of residential densities in the Dumbarton TOD Specific Plan and the Draft General Plan Update, see the September 27, 2013 comment letter submitted by Cargill, Inc.).

NMW Newark LLC has planned a development relying on this set minimum of 14 units per acre. The approval process has been ongoing for some time, with tentative map fees paid on October 31, 2012 and again on June 14, 2013. A change to 15 units per acre at this stage would adversely affect NMW Newark LLC's ability to complete the project.

NMW Newark LLC thus requests the City treat the Dumbarton TOD Specific Plan as an exemption to the Draft General Plan Update, and that the established minimum density of 14 units per acre in Medium Density Residential districts in the Dumbarton TOD remain in effect. Thank you again for the opportunity to comment on the Draft General Plan Update for the City of Newark. Should you have any questions, please do not hesitate to contact me.

NMW-1 cont.

Sincerely,

R. Clark Morrison

cc: Veronica Vargas (vvargas@trumarkco.com)
Ron Winter (rwinter@trumarkco.com)

COMMENT LETTER # STB

September 27, 2013

via electronic mail

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

Re: Draft Environmental Impact Report (DEIR) for the Newark General Plan Update

Dear Mr. Grindall,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Newark General Plan Tune Up. Representing 50,000 members and supporters throughout the Bay Area, including hundreds of residents of Newark, Save The Bay is concerned that the City's updated General Plan would extend urban sprawl into one of the largest expanses of undeveloped, restorable baylands in south San Francisco Bay. This is the type of development that the Bay Area has worked for 50 years to move away from, and it should not be encouraged or supported by the City of Newark.

We request that the City make changes to the DEIR to rectify its significant deficiencies and ensure full compliance with the California Environmental Quality Act and other applicable laws and regulations, and we look forward to the City's detailed responses to our comments in advance of certification of any EIR.

The 559-acre Area 4 is diked historic San Francisco Bay tidal marsh and an inappropriate place for development. Area 4 should be protected and restored for the benefit of the San Francisco Bay ecosystem, and for Newark and Bay Area residents alike. Area 4 falls within the Congressionally-approved expansion boundaries of the federal Don Edwards San Francisco Bay National Wildlife Refuge, and it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary pupping site for San Francisco Bay Harbor Seals. **STB-1**

Area 4 has long been identified by scientists, environmental organizations, and state and federal regulatory agencies as a priority area for restoration:

- The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay (Baylands Ecosystem Goals, Segment Q: Mowry Slough Area, p.132-33)

- The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4

represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise" (San Francisco Bay Regional Water Quality Control Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010, p.2)

- The U.S. Fish and Wildlife Service has been consistent in stating their interest in protecting and acquiring Area 4 for the Don Edwards San Francisco Bay National Wildlife Refuge, recently reiterating that, "the proposed development of Area 4 will only add to the cumulative loss of tidal wetlands in San Francisco Bay and endangered species that are dependent on that habitat," and "Area 4 would be an extremely valuable addition to the Refuge as it could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas" (US Fish and Wildlife Service letter to City of Newark in response to the General Plan DEIR, Sept. 19, 2013)

STB-1 cont.

With the majority of Area 4 located within a 100 year flood zone behind levees that lack FEMA certification, and with significant opportunity for wetland restoration, Area 4 should be protected and restored in order to protect Newark and surrounding communities from flooding, rather than paved over, putting more people at risk.

STB-2

<u>The City of Newark should develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.</u>

STB-3

The General Plan Is Inconsistent with the BCDC Bay Plan, the US Fish and Wildlife Service Comprehensive Conservation Plan, and the Baylands Ecosystem Habitat Goals

Despite assurances that "the proposed Plan would not conflict with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect," (DEIR, Impact LU-2, 4.9-7) the City of Newark's proposed development of Area 4 conflicts with numerous federal, state and regional policies intended to protect San Francisco Bay, its habitats and wildlife.

STB-4

The San Francisco Bay Conservation and Development Commission (BCDC) Bay Plan

The DEIR acknowledges that "BCDC has jurisdiction…over managed wetlands in the Southwest Newark Residential and Recreational Focus Area" and that "projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection" (DEIR, 4.8-7). But it fails to acknowledge the Bay Plan policies that expressly discourage development in restorable areas like Area 4.

BCDC has informed Newark "that the Commission has managed wetland jurisdiction over a portion of the project area in Focus Area 4, specifically the sites referred to as the Pintail and Whistling Wing Duck Clubs" and that "the Commission's San Francisco Bay Plan managed wetland policies state, in part that, 'The continued operation and maintenance of managed wetlands for waterfowl hunting, as game refuges, or for waterfowl food production should be encouraged... If the owner of any managed wetland withdraws any of the wetlands from their present use, the public should make every effort to buy these lands and

STB-5

restore them to tidal or subtidal habitat, or retain enhance and manage these areas as diked wetland habitat for the benefit of multiple species.'" (BCDC letter to City of Newark in response to the General Plan NOP, February 13, 2013, p. 2.)

In addition, the DEIR fails to acknowledge BCDC's Bay Plan policy regarding undeveloped shoreline areas, such as Area 4, with restoration potential that are vulnerable to sea level rise:

> *To address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes.*
>
> (BCDC Bay Plan, Climate Change Policy #4.)

STB-5 cont.

U.S. Fish and Wildlife Service, Don Edwards SF Bay National Wildlife Refuge Comprehensive Conservation Plan (CCP)

The DEIR incorrectly asserts that "the proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan." (DEIR, Impact LU-3, 4.9-8.)

In fact, the U.S. Fish and Wildlife Service for the Don Edwards San Francisco Bay National Wildlife Refuge recently reiterated its strong concerns to the City in a September 19, 2013, DEIR comment letter.

As the CCP states, "the Refuge is particularly interested in acquiring unprotected high marsh, ecotonal, and upland habitats that will benefit migratory birds that are Refuge trust species… [and] acquiring those lands within the approved acquisition boundary that can address climate change efforts." (Don Edwards SF Bay NWR, CCP, p. 191.) Development of Area 4 would conflict with the CCP's goal to "conserve, restore, enhance, create and acquire habitats to support the diversity and abundance of migratory birds and other native flora and fauna that depend on Refuge lands." (Don Edwards SF Bay NWR, CCP, p. 180.) Area 4 is one of the largest remaining sites within the Refuge's acquisition boundary that can meet these specific needs, and therefore it is apparent that the General Plan has a significant conflict with the Comprehensive Conservation Plan.

The Fish and Wildlife Service also has "concerns with the proposed development and its potential to attract nuisance and predator species (e.g., gulls, geese, invasive weeds) that affect native species and habitat, and threaten the recovery of endangered species," amongst other issues they have identified to the City in its previous comment letters (June 5, 2007; December 18, 2008; January 20, 2010).

STB-6

Baylands Ecosystem Habitat Goals Project

As stated by the Water Board, the SF Bay Ecosystem Habitat Goals Project and its companion document "should be recognized as regional habitat conservation plans." The

STB-7

General Plan's focus on developing Area 4 is in direct conflict with those regional habitat conservation plans:

> *The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM...*
>
> *The Habitat Goals Project recommends that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4), and the BCDC has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. In addition, the Refuge has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge.*
>
> (Water Board letter to City of Newark, General Plan NOP, February 13, 2013, Attachment A, p. 6-7.)

STB-7 cont.

The DEIR Fails to Plan for, Avoid or Mitigate the Impacts of Sea Level Rise

Sea level rise will have an incredible impact on coastal California, particularly cities located along the San Francisco Bay shoreline, like the City of Newark. It is therefore deeply troubling that the City is not meeting its responsibility to actually study, avoid or mitigate for sea level rise in its General Plan and DEIR.

The Pacific Institute's July 2012 report, "The Impacts of Sea Level Rise on the San Francisco Bay," commissioned by the California Energy Commission, estimates that $62 billion worth of property and infrastructure is at risk in the Bay Area, including $15 billion in Alameda County alone. (Pacific Institute, p. 20, Table 11.) There are 12,000 people already at risk from a 100-year flood in Alameda County, and that number is expected to rise to 66,000 people by 2100. Alameda County has the second highest exposure of all the nine Bay Area counties. (Pacific Institute, p. 7, Table 3.)

STB-8

Further, maps by BCDC demonstrate that significant portions of the Newark shoreline are expected to be inundated within the next 40 years if protective measures are not taken. (BCDC, "Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on the Shoreline," 2009.) This includes virtually all of Area 4, which is already mostly within a FEMA-designated 100-year flood zone, as the General Plan illustrates in Figure EH-2, "Flood Hazard Areas." (Draft General Plan, EH-11.)

The City's failure to address sea level rise in its General Plan would directly endanger its residents, their property, and the city's economy.

The DEIR fails to acknowledge the environmental impacts, as sea levels rise, of building up to 500 houses and an 18-hole golf course in an area with existing wetlands and significant wetland restoration potential. Resources agencies have specifically identified Area 4 as a

STB-9

STB-10

critical location where Bay wetlands, and the species that depend on this habitat, could migrate upland:

> *Large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise*
> (Water Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010, p.2.)

By focusing future development along the shoreline in Area 4, the City of Newark is significantly inhibiting the potential for tidal marsh to migrate upland in this area, as well as creating potential future impacts due to the probable need to construct additional flood protection measures that would likely impact adjacent wetlands. This is a significant, avoidable impact on the Bay, Bay wetlands and special status species including but not limited to the endangered California Clapper Rail and the endangered Salt Marsh Harvest Mouse. **STB-10 cont.**

The DEIR's Analysis of Environmental Impacts Resulting from the Proposed Development of Area 4 is Inadequate

The DEIR fails to adequately evaluate and mitigate the environmental impacts that will result from the conversion of Area 4 to hundreds of housing units and an 18-hole golf course. According to the Draft General Plan, "the areas of greatest expected future land use change are in Southwest Newark and on the western edge of the city," and "this would likely represent an irreversible change" as it "would involve the transformation of undeveloped/open space to a suburban/urban environment." (Draft General Plan, LU-9 and 7-4.) Yet the environmental impacts from this change are either ignored or significantly downplayed in the DEIR. **STB-11**

Potential environmental impacts that the DEIR fails to adequately document or mitigate include but are not limited to the effect that the loss of Area 4 wetlands will have on special status species known to occur onsite. The DEIR also fails to consider the impact of the loss or degradation of wetlands and other habitat characterized by the San Francisco Bay Regional Water Quality Control Board as "regionally significant" on other Bay wildlife species. (Water Board letter to City of Newark in response to the General Plan NOP, February 13, 2013, Attachment A, p. 7.) **STB-12** **STB-13**

Additionally, the DEIR fails to adequately evaluate the alteration to wetland hydrology and impairment of water quality that may result from development-induced runoff pollution, including the use of pesticides associated with the proposed 18-hole golf course, and changes in runoff patterns associated with the filling of hundreds of acres of Baylands and nearly 100 acres of wetlands and other aquatic habitat. The DEIR also fails to include an adequate discussion of the reduction in habitat quality associated with locating development immediately adjacent to sensitive wildlife habitat. **STB-14** **STB-15**

The DEIR's treatment of existing biological conditions also fails to adequately characterize environmental conditions within Area 4. For example, the Vegetation and Habitat Types map included within the DEIR (Figure 4.3-2), only depicts a small portion of the jurisdictional wetlands that occur within Area 4, representing the majority of Area 4 as annual grassland instead. This is inconsistent with the figure "Existing Habitat" of the Areas 3 and 4 Specific Plan Draft EIR (Appendix E, Figure 4), which, corresponding to the **STB-16**

Jurisdictional Determination completed by the Army Corps of Engineers in 2007 (USACE File #2006-400075S), illustrates that more than 200 acres of Area 4 is composed of various types of wetlands and aquatic habitat. **STB-16 cont.**

Finally, discussions of impacts in the General Plan DEIR should not rely on conclusions or mitigation measures from the Areas 3 and 4 Specific Plan EIR that is currently the subject of legal challenge. Instead, the EIR should contain a *de novo* investigation of those issues, and the City should recirculate a revised DEIR containing this information for review and comment by the public, stakeholders and responsible agencies. **STB-17**

Existing conditions must be accurately represented in order for decision makers and the public to understand the environmental changes that will occur as a result of General Plan goals and policies, including the proposed development in Area 4. **STB-18**

Developing Area 4 Is Inconsistent With Numerous General Plan Policies, Actions and Goals

Development within Area 4 conflicts with many Draft General Plan policies and actions that are listed within the DEIR as justification for the "less than significant before mitigation" determinations made for many of the environmental impacts discussed.

For example, in concluding in Impact BIO-1 that "buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area," the DEIR claims that "the Proposed Plan includes policies and actions that would also protect special-status species and minimize impacts associated with future development under the Plan," listing policies CS-1.1, CS-1.2, CS-1.3, CS-2.1, CS-2.2, CS-2.3, CS-2.7 and others that are in fact inconsistent with the City's proposed development of Area 4. (DEIR, 4.3- 32-34.) **STB-19**

The City may not assert that vague General Plan policies will ensure less than significant impacts to the environment, when the development of Area 4 would preclude implementation of those policies. Additionally, the City many not rely on "compliance with applicable federal, state, and local regulations" in asserting that "impacts from the proposed Plan would be less-than-significant." As the lead agency under CEQA, it is not adequate for the City of Newark to rely on mitigation measures that have not been formulated. *(Gentry v. City of Murrieta (1995) 36 Cal.App.4th at p. 1397.)* The city may not assume that these agencies would necessarily "reduce potential impacts to wetlands, riparian habitat, and sensitive natural communities that could result from buildout of the proposed Plan to the maximum extent practicable." (DEIR, 4.3-39.) **STB-20**

The proposed General Plan Policies, Actions and Goals, that conflict with development of Area 4 include, but are not limited to:

- *Policy CS-1.2: Conservation of Sensitive Areas. Support the conservation of environmentally sensitive areas and unique natural resources in the city.*
- *Policy CS-1.3: Interagency Cooperation. Participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas.*

STB-21

- *Policy CS-2.1: Wildlife and Habitat Protection. Preserve and protect Newark's plant and animal species and habitats, including wetlands, salt marshes, creeks and lakes. Ensure that land use decisions consider potential impacts on wildlife habitat.*
- *Policy CS-2.2: Special Status Species. Ensure that adverse impacts on special status species, including those deemed rare, threatened, endangered or candidate species for protection, are avoided and mitigated to the greatest extent feasible as development takes place.*
- *Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay.*
- *Policy CS-2.7: Coordination with State and Federal Agencies. Coordinate with the California Department of Fish and Game, the US Fish and Wildlife Service, surrounding cities, the Regional Water Quality Control Board and other appropriate agencies to protect wildlife species and habitat.*
- *Goal CS-2: Conserve Newark's wetlands and baylands*
- *Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay.*

STB-21 cont.

The City Should Develop a General Plan Alternative that Protects Area 4 from Development

While an EIR "need not consider every conceivable alternative to a project… it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation." (CEQA Guidelines §15126.6(a).) Area residents, environmental organizations, and regulatory agencies have been consistent in their communications with the City on the need to protect and restore Area 4.

In response to the General Plan Notice of Preparation, the San Francisco Bay Regional Water Quality Control Board requested that "the City should evaluate in its CEQA documents project alternatives that avoid and minimize fill." (Water Board, letter to City of Newark in response to the General Plan NOP, February 13, 2013, Attachment A, p. 1.) Carin High from the Citizens Committee to Complete the Refuge also requested "an alternative that retains Area 4 in its current condition." (Carin High email to City of Newark in response to the General Plan NOP, February 13, 2013, p. 1-2.)

STB-22

Including an alternative that would protect Area 4 from development by maintaining the existing agricultural zoning, while allowing development in other priority growth areas, would allow the City to meet all of the Project Objectives identified in the DEIR while significantly lessening the environmental impacts of the Plan. In fact, some of the Project Objectives meet with greater success under this proposed alternative, specifically the objective to "embrace Newark's bayfront location."

Numerous General Plan policies, actions and goals could be better met with this proposed alternative. For example, in the General Plan the City aspires to build a "bayfront identity" (Policy LU-4.13, LU-45) and "stronger connections to San Francisco Bay" (LU-32), stating:

> *Newark aspires to reorient itself to San Francisco Bay and establish itself as a bayfront city … Construction of the Bay Trail, restoration of wetlands … and establish stronger connections to the marshes and sloughs that define the city's western flank* (ED-17)

The General Plan also includes Policy ED-5.6:

> *Bayfront Location. Promote the public image of Newark as a bayfront city, with shoreline amenities such as trails, bayfront open space, wildlife refuges, and bay vistas. The City's natural features and connections to San Francisco Bay are a "selling point" that should be leveraged to attract new employers* (ED-30)

The DEIR identifies the "Environmentally Superior Alternative" as the "Restricted Growth Alternative" which would prohibit development in ***both*** Area 4 and the "Dumbarton Transit-Oriented Development Priority Development Area." In addition to the "Restricted Growth Alternative," the City should study a separate alternative that protects Area 4 by maintaining the existing Agricultural zoning, but allows the development of other priority development locations in the City, near transit, shops, and services. This is a feasible project alternative that would meet the all of the Project Objectives while "clearly lessen[ing] the environmental impacts of the project." (CEQA Guidelines §15088.5(a)(3).) **STB-22 cont.**

Thank you for considering our comments and recommendations.

Sincerely,

David Lewis
Executive Director

Enclosures

Attachments:

1. Don Edwards San Francisco Bay National Wildlife Refuge Expansion Boundaries – Regional View
2. Don Edwards San Francisco Bay National Wildlife Refuge Expansion Boundaries – Local View
3. Historic Baylands – Regional View
4. Historic Baylands – Local View
5. Areas 3 and 4 Existing Habitat, Newark Areas 3 and 4 Specific Plan Draft EIR, Appendix E, Figure 4
6. Projected Inundation Areas from Sea Level Rise – U.S. Geological Service
7. Projected Inundation Areas from Sea Level Rise – Bay Conservation and Development Commission
8. The Pacific Institute, “The Impacts of Sea Level Rise on the San Francisco Bay,” July 2012
9. Baylands Ecosystem Habitat Goals Report - Segment Q- Mowry Slough Area
10. San Francisco Bay Regional Water Quality Control Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010
11. San Francisco Bay Regional Water Quality Control Board letter to City of Newark in response to the General Plan NOP, February 13, 2013
12. Bay Conservation and Development Commission letter to City of Newark in response to the General Plan NOP, February 13, 2013
13. Carin High letter to the City of Newark in response to the General Plan NOP, February 13, 2013

Santa Clara Valley
Audubon Society

September 24th, 2013 *via email*

Terrence Grindall
City of Newark
37101 Newark Boulevard
Newark, CA 94560
terrence.grindall@newark.org

Re: Comments on Draft Environmental Impact Report for the Newark General Plan Update

Dear Mr. Grindall,

Santa Clara Valley Audubon Society (SCVAS) joins Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing Newark's destructive plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. SCVAS has over 3500 members in the Bay Area, and our mission embraces open space, nature and birds as we offer field trips and education programs, and engage in conservation activities. We believe that Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge.

SCVAS-1

Historic Bay wetlands with significant restoration potential, 550-acre Area 4 is simply an inappropriate place for development. Not only does Area 4 fall within the expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge, but it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary breeding ground for San Francisco Bay Harbor Seals.

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Development in Area 4 would fill nearly 100 acres of wetlands and aquatic habitat with an 18-hole golf course and nearly 500 single-family houses, exposing future Newark residents to significant flooding hazards, threatening the health of special status species populations, and preventing the restoration of a site uniquely suited for the preservation and recovery of rare and critical Bay habitat.

Scientists and regulatory agencies agree that Area 4 offers a crucial opportunity to restore San Francisco Bay:

- The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

- The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise"

- Similarly, the California Department of Fish and Wildlife have stated that "this wetland is an integral component of the San Francisco Bay ecosystem," and "critically important to waterfowl and shorebirds."

SCVAS-1 cont.

We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

SCVAS-2

Thank you,

Shani Kleinhaus, Environmental Advocate

22221 McClellan Road, Cupertino, CA 95014 Phone: (408) 252-3748 * Fax: (408) 252-2850
email: scvas@scvas.org * www.scvas.org

COMMENT LETTER # SFBK

SAN FRANCISCO BAYKEEPER

Mr. Terrence Grindall
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, CA 94560
Tel. (510) 578-4208
Email: terrence.grindall@newark.org

Re: City of Newark, General Plan Tune Up Draft Program Environmental Impact Report, SCH No. 2013012052 ("DPEIR")

Dear Mr. Grindall:

Please accept the following comments on behalf of San Francisco Baykeeper ("Baykeeper") and our 2,500 members in our pursuit to protect and enhance the water quality of the San Francisco Bay and its tributaries.

I. The Purpose and Scope of the "Project" are Unclear

Baykeeper is unclear as to the purpose of this General Plan tune up, and recommends that this opportunity be seized as one to develop a sustainable infrastructure and pro-conservation approach to Newark's remaining habitat and open space. This overarching goal resonates with the DPEIR's stated Project objective to "Embrace Newark's bayfront location." (DPEIR 3-3.) Consistent with this objective, and as discussed further, below, the City should adequately prepare for rising sea levels along Newark's bayfront, revision the City's minimal stormwater pollution controls, and reconsider its proposed Area 4 development.

SFBK-1

II. The DPEIR Fails to Consider Impacts Associated with Rising Sea Levels

The DPEIR fails to apply its own threshold of significance as to whether "[t]he proposed Plan would not expose people or structures to a significant risk of loss, injury or death involving flooding." (DPEIR 4.8-31.) The DPEIR artificially segregates flooding as a result of existing environmental conditions, from any increased flooding that could be caused by future rising sea levels, as if even flood risks today could somehow be untwined from present rises in sea levels caused by global warming. It is simply internally inconsistent and incoherent to apply this threshold of significance to all flooding *except flooding caused by sea level rise*. Present and future increases in flooding caused by rising Bay levels must be part of this analysis.

Notably, the legal theory on which the DPEIR rests its flawed assumption that impacts from sea level rise should not be considered under CEQA was recently rejected by the California Court of Appeal.[1] Furthermore, the DPEIR acknowledges that its impact from greenhouse gas emissions will be significant and unavoidable, and admits that sea level rise is a direct result of increased greenhouse gas emissions. Therefore, the DPEIR is wrong to state that rising sea levels are a condition of the existing environment, but not an effect of the Project.

SFBK-2

[1] See *California Building Industry Assn. v. Bay Area Air Quality Management Dist.*, 218 Cal. App. 4th 1171, 1194-1196 (declining to follow *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455).

The DPEIR must also evaluate the reasonably foreseeable adverse impacts from the Project to the environment. While the DPEIR asserts that rising sea levels are, in and of themselves, a condition of the existing environment, the DPEIR still must adhere to CEQA's fundamental purpose to evaluate any impacts that the Project *itself* will cause in conjunction with projected sea level rise. For example, it is well documented that, if flooding or inundation occurs as a result of sea level rise, the Project's pollution loading to the Bay and its tributaries will likely increase.[2] This increased pollutant load would come from the Project itself, not from the rising sea level, and must be evaluated in this DPEIR. Similarly, wastewater and stormwater infrastructure may be compromised by rising sea levels, with serious resulting consequences to water quality.[3] The DPEIR identifies "the areas immediately adjacent to the ACFC storm drain channels" (DPEIR 4.8-15), but fails to discuss how the Project's contaminated stormwater could be managed if stormwater infrastructure is inundated by sea level rise.

SFBK-2 cont.

SFBK-3

SFBK-4

As a result of, and in conjunction with, foreseeable sea level rise, the Project Area will likely be required to implement further mitigation and/or adaptation measures to protect habitat, open space, and developed property from flooding by rising sea levels. The DPEIR must evaluate the extent to which such mitigation measures may be needed, and their resulting environmental impacts, as all such reasonably foreseeable mitigation and adaptation measures will be a consequence of the Project itself. For example, the construction of sea walls would cause further greenhouse gas impacts and erosion. What is the Project's plan for adapting to sea level rise?

SFBK-5

SFBK-6

Rising sea levels will also affect the greater loss of existing wetlands, projected to be permanently inundated by rising tides. This foreseeable change in the environment places a premium on undeveloped upland habitat that may be able to adapt to transition to future wetland areas as sea levels rise.[4] The cumulative impact of wetland loss under the City's General Plan development must be considered in this light. Not only would near-term direct loss or degradation of wetland habitat be cumulatively considerable in conjunction with projected loss through sea level rise, but also any loss or degradation of upland habitat suitable for wetland transitional zones must be analyzed and avoided or mitigated where feasible.

SFBK-7

III. The DPEIR Fails to Consider the Project's Impacts on Stormwater and Receiving Water Quality

Rather than evaluate whether the additional pollutant loading caused by the Project would threaten or impair the beneficial uses of area water bodies, the DPEIR simply asserts that compliance with the San Francisco Regional Municipal Stormwater Permit ("MRP") would necessarily render any impact associated with contaminated stormwater discharges to less than significant levels. Unfortunately, however, the MRP is no panacea, as significant pollution loading from stormwater runoff persists even under the permit. While the DPEIR states that "[n]o site-specific data regarding stormwater runoff from the Plan Area exists" (DPEIR 4.8-14), voluminous data on both stormwater generally, as well as recent and ongoing municipal performance under the existing MRP, is available and should have been considered by the DPEIR.

SFBK-8

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[2] http://www.pacinst.org/wp-content/uploads/2013/02/report16.pdf (attachment 1), http://www.icleiusa.org/static/San_Diego_Bay_SLR_Adaptation_Strategy_Complete.pdf (attachment 2)
[3] http://www.adaptingtorisingtides.org/vulnerability-and-risk-assessment-report/ (attachments 3 and 4)
[4] http://www.adaptingtorisingtides.org/vulnerability-and-risk-assessment-report/ (attachment 5)

For example, the MRP purports to lessen the onus on municipalities to reduce pesticide loading to area water bodies under the theory that pesticide regulation is solely a matter of statewide concern. Nevertheless, through its general plan process, the City could certainly consider and require land use patterns and design elements that would place land uses known for intensive pesticide use, such as golf courses or office parks, away from potentially affected water bodies, with intervening buffer areas. All urban creeks throughout the region are listed by the Regional Water Board as impaired for pesticide toxicity, and recent monitoring reports submitted under the MRP confirm that municipal stormwater continues to discharge pesticide-contaminated stormwater in toxic amounts. Yet the DPEIR fails to evaluate this significant threat to water quality. **SFBK-8 cont.**

Moreover, the DPEIR fails to describe the beneficial uses of the impacted water bodies at all, rendering any evaluation of whether such beneficial uses may be impaired impossible. **SFBK-9**

IV. The City should Reconsider Development of Area 4

In determining the land-use plan for Area 4, the City of Newark has the opportunity to distinguish itself as a leader in the arena of responsible planning. Area 4 is located within the 100-year floodplain and the majority of the site would be inundated by a one-meter sea-level rise according the mapping released by the San Francisco Bay Conservation and Development Commission (BCDC). This poses serious public safety issues including emergency response time and access, traffic ingress and egress, seismic and liquefaction issues, etc. With the opportunity to re-vision its general plan blueprint for future development, we sincerely urge the City of Newark to consider an alternative plan that will preserve and restore the lands within Area 4 rather than trying to force development that would be inconsistent with City and regional goals of preservation, conservation, and sensible development. **SFBK-10**

Thank you for your careful consideration of these comments and concerns, and your good stewardship of these vital ecological resources.

Sincerely,

Jason Flanders
Program Director, San Francisco Baykeeper

CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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Via Email September 27, 2013

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560
Terrence.Grindall@newark.org

Re: Draft General Plan Tuneup (GPT) and GPT DEIR

Dear Mr. Grindall,

This responds to the Draft General Plan Tuneup (GPT) and GPT Draft Program environmental impact report (DEIR). The Citizens Committee to Complete the Refuge (CCCR) thanks you for the opportunity to review and provide comment. Based upon our review of the DEIR, we find that it contains serious omissions, inaccuracies, and flaws that must be rectified to comply with the California Environmental Quality Act (CEQA) requirements. For these reasons, as well as those articulated by our attorneys, Lippe Gaffney Wagner LLP, and Richard Grassetti of Grassetti Environmental Consulting, the DEIR must be corrected and re-circulated. CCCR-1

Newark General Plan "Tuneup"

The city held public workshops in late 2011 and early 2012, facilitated by graduate students from California Polytechinic State University San Luis Obispo. The City also held joint study sessions between the city council and planning commission, though these do not appear to have been widely advertised. Members of CCCR only found out about these joint workshops by perusing the planning commission and city council agendas.

Public participation is a required component of the general plan process California Government Code §65351, and public participation can:

- Educate the public about community issues.
- Increase the public's ability and desire to participate in the community.
- Enhance trust in government by strengthening the relationship between elected officials, government
- staff, and the public.
- Encourage working towards community consensus and creating a vision for the future.
- Lay the groundwork for community revitalization and increased investment in the community.
- Allow decision makers to obtain public input regarding plan policies and community issues and objectives.
- Provide the public with opportunities to evaluate alternative plans and to participate in developing
- and choose a plan that works for their community.
- Inform decision-makers about public opinion.

The characterization of this general plan update as a "tuneup" conveys to the public that there is actually little need for the public to participate in the process. That the purpose of this "tuneup" is to merely tie up a few loose ends. This impression is solidified with the following text: CCCR-2

> The effort leading to the adoption of a new General Plan in 2013 was referred to as a General Plan "Tune Up" rather than a major revision. This is because the values represented by the 1992 Plan remained valid and appropriate at the time of Plan adoption. By 2011, however, the 1992 Plan's data and maps were becoming dated and the absence of a discussion of recent planning efforts was becoming more apparent. The 1992 Plan did not reference regional planning initiatives and legislative changes, nor did it address emerging issues such as climate change and sustainability. The intent of the "Tune-Up" was to update baseline data and projections, refresh the narrative text which describes planning issues, and move the planning horizon forward by 20 to 25 years. [emphasis added]

And:

> The basic vision established by the 1992 Plan continues to guide this General Plan. This vision seeks to sustain Newark as a high quality community with attractive neighborhoods, great shopping, diverse workplaces, excellent public services and parks, and a healthy natural environment. Many of the areas identified for development by the 1992 Plan continue to be identified for development today—this General Plan provides greater detail on the types of uses and the issues to be addressed as such development takes place. [emphasis added]

It has been over twenty years since the crafting of the existing general plan. The Draft GP acknowledges that it carries forward many of the concepts of 1992 GP, including development of the city's western edge. However, significant new information has come to light since the early 1990's. As the general plan update indicates, new policies and strategies have developed over the intervening years, with different visions of how we should interact with the landscape, especially in low lying areas close to the edges of the bay. The general plan update process is an appropriate time to re-evaluate the long-term sustainability of the existing general plan's vision of land use.

CCCR-2 cont.

As an example, the GPT carries forward the concept of a golf course and upscale housing on Area 4, the former Whistling Wings and Pintail duck clubs. A 2012 Wall Street Journal article[1] reported the financial woes of golf communities, describing how private golf course communities are "repurposing" golf courses by reducing the number of holes from 18 to 9 and then selling off the excess land. Property values in a number of golf course communities have plummeted. In South Carolina, lots that previously sold for $150,000, were on sale in 2012 for $1. In Florida, a lakefront home associated with an Arnold Palmer golf course sold for $795,000 in 2011, but had sold in 2007 for $1.6 million. In Bend, Oregon, a couple paid $500,000 for a lot in 2006. A similar-sized lot sold for $10,000 in early 2012. As of 2011, 2,000 golf courses of a total of 16,000 courses were in financial distress, and it was estimated an additional 4,000 to 5,000 would find themselves in a similar situation if their model of operation remained unchanged.

Jonathan Lansner [2] of the Orange County Register reports, during the period between 2005-2011, golf as a sport, lost 4.3 million golfers, and there were 37 million fewer rounds of golf were played in the period from 2005-2011. Lansner writes:

> Today, golf is largely out as a housing theme because developers have learned that golf courses are an expensive and narrow way to keep a new housing community green.
>
> "Lakes, walking paths and central amenities are used by all residents, as opposed to only about 15 percent to 20 percent of residents" for golfing, Boud says.

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[1] Keates, Nancy. "Fore Sale." July 24, 2012. Wall Street Journal.

[2] Lansner, Jonathan. "Golf courses hit rough economics." April 13, 2012. Orange County Register. http://www.ocregister.com/articles/golf-349198-says-courses.html Accessed 9-26-13

> While builders could sell golf-course view homes at a steep premium, Boud says that "when costs are considered, open spaces and trails often overtake golf in terms of benefiting the master plan, and a lake -- which is relatively cheap and easy to maintain -- beats golf in view premiums. Though obviously, fewer homes tend to benefit from the view because a lake is generally much smaller than a course."

Lastly, Alicia Robinson[3] of the Press Enterprise exposes the difficulties the City of Riverside has encountered when operators who held contracts to run two of three golf courses in the city stopped paying their city leases.

The 1992 general plan, was its vision of a golf course and upscale housing was developed during an unprecedented boom in the construction of high end golf courses. The period of the 1990's to early 2000 was a period of rapid growth for golf course construction. But as described above, there has been a sharp course correction as the popularity of the sport has decreased. The evidence above, suggests a golf course would be anything but an asset to the city. Why does the city continue to incorporate the vision of a golf course in Area 4?

This is just one example of an instance where carrying forward the visions of the 1992 plan may be out of synch with reality, and an indication that more than a tuneup is warranted. Other more pressing issues, such as adaptive planning for sea level rise, have not adequately been incorporated into the vision of land use promoted by the draft general plan.

CCCR-2 cont.

The GPT and the GPT DEIR are not user friendly:

The draft general plan and general plan DEIR are not user friendly, they do not encourage public participation in formulating a vision of growth for the city. Terms such as FAR (floor area ratio) have little meaning to the general public and housing unit densities are difficult to visualize. The Fremont general plan includes figures that help the reader visualize how the various housing densities or floor area ratios impact the landscape. Why can't the Newark GPT include similar figures?

CCCR-3

The DEIR is inconsistent in providing information necessary to evaluate the adequacy of impact identification, identification of indirect impacts, mitigation and monitoring measures, etc. Impact assessment and mitigation and monitoring requirements are spread amongst at least four different documents - this DEIR, the HEU EIR, the Area 2 EIR, and the Area 3 and 4 EIR (refer to earlier comment regarding the inclusion of the suspended EIR). Rather than providing the actual wording of the mitigation measures from these other documents, the GPT DEIR provides one sentence summaries of the mitigation measure(s) in question.

p. 2-3 states: Whenever existing environmental documentation or previously-prepared documents and studies are used in the preparation of this Draft EIR, the information is summarized for the convenience of the reader and incorporated by reference.

As an example:

4.3-33 -

> Additionally, previous environmental review conducted for the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified the following mitigation measures to address potential impacts to special-status plant and animal species. The Dumbarton TOD EIR identifies Impacts 4.3-1

CCCR-4

[3] Robinson, Alicia. "Riverside: Cities rarely fare well in golf business." July 19, 2013. The Press Enterprise. http://www.pe.com/local-news/riverside-county/riverside/riverside-headlines-index/20130719-riverside-cities-rarely-fare-well-in-golf-business1.ece Accessed 9-26-13.

> through 4.3-5 associated with impacts to the salt marsh harvest mouse, nesting raptors, the western burrowing owl, the tricolored blackbird, saltmarsh common yellowthroat, and other nesting passerine birds, as well as special-status plant species. These impacts would be mitigated to less-than-significant levels through the implementation of various assessment, survey, avoidance, buffer, preservation, and protection, and replacement measures specified in Mitigation Measures 4.3-1 and 4.3-5 from the Dumbarton TOD Specific Plan EIR.

CCCR-4 cont.

The information contained in this summary is insufficient to determine what type of impacts are anticipated and whether the mitigation measures referred to are adequate to reduce the impacts to a level that is less-than-significant. Furthermore, the HEU DEIR doesn't appear to be online, making review of the severity of the impacts proposed by the GPT DEIR nearly impossible for anyone who doesn't have a copy of the document.

The GPT DEIR incorporate all mitigation measures in one document, ensure the measures are consistent, and then re-circulate the information for public review and comment.

CCCR-5

The statement on p. 2-5 that "the Mitigation Monitoring Program for the proposed Plan <u>will be completed as part of the FEIR</u> and will be completed prior to consideration of the Plan by the Newark City Council." The typical comment period for an FEIR is 10 days. This delay in providing the MMP perpetuates the impression that the GPT and GPT DEIR are done deals and comments made by the public will not be considered seriously.

CCCR-6

It is not possible to determine from the GPT DEIR the level of CEQA review or opportunities for public comment that will occur in the future.

[Please refer to the letters of LGW and Richard Grassetti regarding why it is improper for the GPT DEIR to rely on conclusions, mitigation measures, etc. from the Area 3 and 4 DEIR and specific area plan. This statement should be inserted anywhere Area 3 and 4 is discussed henceforth.]

The GPT has been described during public meetings as being "self-mitigating." Please explain what that means and the ramifications for future CEQA review and public comment opportunities.

p. 1-3 of the DEIR states:

> ...this Draft EIR has been prepared as a Program EIR for the General Plan Tune Up project, pursuant to Section 15168 of the CEQA Guidelines. As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. <u>Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects</u>. [emphasis added]
>
> However<u>, if the Program EIR addresses the program's effects as specifically and comprehensively as possible, many subsequent activities could be found to be within the Program EIR scope and additional environmental documents may not be required (CEQA Guidelines Section 15168[c])</u>. When a Program EIR is relied on for a subsequent activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities (CEQA Guidelines Section 15168[c][3]). If a subsequent activity would have effects not within the scope of the Program EIR, the lead agency must prepare a new Initial Study leading to a Negative Declaration, Mitigated Negative Declaration, or an EIR. In this case, the Program EIR still serves a valuable purpose as the first-tier environmental analysis. [emphasis added]

This is passage describes the process normal process of tiering following the preparation of a program EIR. The GPT DEIR is confusing however, because it states that it incorporates by reference the analyses and mitigation measure

reporting programs of previously conducted EIRs. This makes it nearly impossible for the public to comprehend what will trigger future environmental review for the Area 2 (DTOD) and parcels covered by the HEU EIR (and Area 3 and 4 though that environmental review process is currently suspended). As an example: **CCCR-6 cont.**

p. 4.1-13:

> Furthermore, there are provisions in place to address light impacts from development located at the northwestern edge of the urbanized portion of Newark, where such impacts could potentially be most pronounced. Mitigation Measure 4.1-1 from the Newark Housing Element EIR requires that lighting plans containing specific measures to reduce the adverse impacts of additional light sources to less-than-significant levels for development in areas adjacent to the Don Edwards National Wildlife Refuge. Additionally, the proposed Plan incorporates a policy from the Dumbarton TOD Specific Plan requiring the incorporation of types of lighting and illumination that reduce glare and over-lighting impacts in the vicinity of the Dumbarton TOD Focus Area. [emphasis added]

CCCR-7

What if any, additional CEQA and public review of aesthetics can be expected within the sphere of the Newark Housing Element and the DTOD? Does the determination that the adverse impacts of additional light sources are reduced to a level that the city has determined to be less-than-significant for development in areas adjacent to the Refuge, mean that light impacts will not be reviewed further, even at the project level? What about other aesthetics impacts? If further environmental review will occur will there be any opportunity for public comment?

What are the anticipated triggers and what elements of the statement the GPT DEIR has incorporated by reference previous EIRs for the Dumbarton Transit Oriented Development (DTOD), the Area 3 and 4, and the Housing Element Update. **CCCR-8**

The incorporation of those EIRs and in particular, their mitigation measures into the existing baseline is improper.

Inconsistencies:

Comparisons of the GPT and GPT DEIR are difficult because the two documents do not use consistent language.
GPT CS-18 Newark does not allow development within the 100-year flood zone and *requires development to be elevated at least 8 feet above mean high tide (11 feet for residential development).*
GPT DEIR p.4.8-32: Furthermore, any development within the Plan Area would be subject to the City's flood elevation standards for lands within Special Flood Hazard Areas (SFHAs), as defined by FEMA (Section 15.40.51 of the Newark Municipal Code). These standards require building pads of all residential structures to be a minimum of 11.25 feet elevation *National Geodetic Vertical Datum (NGVD*). In addition, *the City requires the top of curb grades for residential streets to be no less than ten feet above mean sea level throughout the City* (Section 16.08.06 of the Newark Municipal Code). **CCCR-9**

Aesthetics:

4.1-4 - This section discusses visual character of Newark and includes the views of Coyote Hills, the east bay hills, and low-lying wetlands fronting San Francisco Bay, but does not mention the views of the hills across the bay. Shouldn't that view be part of the existing conditions? **CCCR-10**
4.1-6 - Shouldn't the views across the bay be mentioned under the discussion of Area 4? **CCCR-11**
AES-1 - The proposed Plan would not have a substantial adverse effect on a scenic vista. Once Area 3 is constructed, you will no longer be able to see across the bay while driving along Cherry. The sense of openness will also be lost as there will be medium density development on both sides of the street. **CCCR-12**
Policy LU-4.13 - How is Newark's Bayfront Identity reinforced by building high density housing in Area 2 and importing 2.1 million cubic yards of fill into Area 4? **CCCR-13**
Policy LU-4.14- Views of the Peninsula Hills and San Francisco Bay will be obscured by development in Area 3 and 4 and in Area 2. One might have a view of the bay however, if one is perched in a high density housing unit? **CCCR-14**

AES-3 The proposed Plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review. We concur that the proposed plan will have a significant adverse impact on the visual character of Area 3 and 4. **CCCR-15**

AES-4 States, "The Plan would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area." and rationalizes the conclusion with "future development under the proposed Plan would create new sources of light and glare; however, in the urbanized context of Newark this increase would not substantially and adversely affect daytime or nighttime views. Area 4 is isolated from development and in an area where there is no light at night. The introduction of lighting in this area will likely be visible from other parts of town. **CCCR-16**

AES-5 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics.
How is it possible to reach this conclusion? High density housing is proposed in Area 2, a large area of existing open space will be built out in Area 3, 2.1 million cubic yards of fill will be imported into Area 4 raising the elevation 10'-14', taller buildings are proposed in the New Park Mall area, and high density housing is proposed at the site of the library and city hall. How can the Plan buildout not visually alter the character of Newark? **CCCR-17**

Air Quality:
p. 4.2-13 - Existing Ambient Air Quality - The DEIR states the air quality monitoring station closest to the City is the Hayward Monitoring Station. Why wasn't the monitoring station in Fremont on Chapel Way utilized? That station in air miles is only 3.32 miles away? The site is reported to have sensors for O3, PM2.5, PM10, CO, NOx, HC, and Tox. **CCCR-18**

p. 4.2-15 - The DEIR refers to recent case law and states: "...the Guidelines language in thresholds d and e (exposure of sensitive receptors to substantial pollutant concentrations and creation of objectionable odors), as they relate to the placement of sensitive receptors under the proposed plan, above are not examples of an environmental effect caused by the development, but instead is an example of an effect on the Project caused by the environment (and therefore according to bad case law, are not required to be analyzed under CEQA). From a public health and safety perspective, it would seem irresponsible not to analyze and mitigate these impacts. **CCCR-19**

p. 4.2-18. - The City of Newark is already largely developed. <u>Future growth under the proposed Plan would be accommodated in infill sites and redevelopment of existing sites</u>. [emphasis added] This description of proposed development under the draft general plan is inaccurate as development is proposed on Area 4. The statement is inconsistent with other portions of the DEIR and GPT:

> page 3-8 - Area 4 is one of the last undeveloped sectors of the city and is <u>largely in agricultural use today</u>.
> Page 4.8-21 - However, future housing sites will be primarily located on underutilized land, infill sites, and along transit corridors, <u>most of which (excepting Area 4) have already been developed and currently have a high percentage of impervious surfaces</u>.
> Page 4.4-10: Additionally, <u>the Southwest Newark Residential and Recreational Focus Area contains a large area of undeveloped land</u>, some of which would be developed with buildout of the Plan.
> GP EH-31 - In particular, [...] <u>residential development in Southwest Newark will result in a larger population in areas that are presently vacant</u>.
> GPT LU- 23-26: This <u>is the largest area proposed for future development in Newark, comprising 636 acres</u> [emphasis added]

CCCR-20

p. 4.2-35: BAAQMD's CEQA Air Quality Guidelines do not require an evaluation of emissions from program-level planning activities such as the proposed Plan. Given the programmatic nature of the proposed Plan, <u>specific operational information individual projects that would operate under the Plan is not known</u>, <u>and furthermore, subsequent environmental review of development projects would be required to assess potential impacts under BAAQMD's</u> **CCCR-21**

project-level thresholds. Please clarify what additional environmental review would be required and would there be an opportunity to provide public comment? **CCCR-21 cont.**

p. 4.2-39 - States: Implementation of the above-listed policies would reduce operational emissions from development projects under the proposed Plan to the maximum extent practicable. Additionally, as noted above, future development projects under the proposed Plan would be subject to subsequent environmental review pursuant to CEQA and would be required to assess potential impacts under BAAQMD's project-level thresholds. Therefore, impacts associated with operational emissions of criteria air pollutant from the proposed Plan would be less than significant.

It is not possible to reach a conclusion of a less-than-significant impact. The policies are predominately advisory and there is no assurance they will be implemented. How is it possible to state impacts will be less-than-significant merely based on the requirement of future environmental review? As an example, what if significant impacts are identified, but there is a determination of "significant" followed by statements of over-riding concern? How would the adverse impacts of the project be less-than-significant? This same problem pertains to most of the impacts and mitigation measures discussed under the Air Quality section, e.g. AIR-3. With respect to AIR-3, it is unclear how a determination of less-than-significant before mitigation can be reached when there has been non-attainment for some constituents in previous years. **CCCR-22**

Action HW-1.F - Why locate sensitive receptors in areas of known "major sources" of air pollution at all? **CCCR-23**

p. 4.2-44 - New land uses in the City of Newark that are permitted under the proposed Plan that use trucks, including trucks with TRUs, could generate an increase in DPM that would contribute to cancer and non-cancer health risk in the SFBAAB. As identified in Table 4.2-6, impacts could occur at facilities that permit 100 or more truck trips per day or 40 or more trucks with TRUs within 1,000 feet of a sensitive land use. These new land uses could be near existing sensitive receptors within and outside the City of Newark. In addition, trucks would travel on regional transportation routes through the SFBAAB contributing to near-roadway DPM concentrations.
With implementation of Action EH-1.C, projects that would generate new sources of TACs would be required to reduce emissions to the BAAQMD's performance levels. Impacts would be less than significant. **CCCR-24**

The proposed development of Area 4 and the commiserate need for transport of fill to the site would require up to 100 trucks per day and this impact was not analyzed, nor mitigation proposed in the Area 3 and 4 EIR.

Please describe Policy EH-1.6 and Action EH-1.C. They do not appear in the DEIR or the GPT. **CCCR-25**

p. 4.2-45 - AIR-5 - "The Plan would not create or expose a substantial number of people to objectionable odors."
"There are two types of odor impacts: 1) siting sensitive receptors near nuisance odors, and 2) siting new sources of nuisance odors near sensitive receptors."
p. 4.2-46 -

> Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2-7. Additionally, sensitive receptors could be located in the vicinity of the salt ponds operated by Cargill Corporation, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be *less then significant*. [emphasis added]

Please clarify how the impacts of locating housing units and recreational facilities in proximity to the Cargill salt ponds was determined to be less than significant. There is no classification for the odors generated by the salt ponds or **CCCR-26**

appropriate distances to these sources on Table 4.2-7. Odors generated by the salt ponds can be particularly strong, but it is not clear how Cargill could be expected to abate the odor nuisance generated by the natural decay of algae, or by anaerobic mud. Additionally, wetlands can sometimes release the strong odor of rotten eggs due to the reducing conditions of the soils. There is nothing that can abate the smell, except for distance. **CCCR-26 cont.**

Biological Resources:
Figure 4.3-2 - Vegetation and Habitat Types - This figure grossly mischaracterizes the conditions on Area 3 and 4. Area 4 has a mosaic of uplands and wetlands across the site. Islands of uplands are surrounded by wetlands. To our knowledge the 78 undeveloped acres of Area 3 do not support wetlands habitat, yet nearly half the site is depicted as having wetlands. The area abutting the southeastern portion of Area 4, east of the railroad tracks is not cropland, but a vernal pool mitigation site, and should be depicted as a complex of grasslands and vernal pools. This figure needs to be amended to correctly reflect the habitats of Area 4. **CCCR-27**

p. 4.3-9 - Vegetation, Habitat Types, and Wetlands.
This section significantly downplays the significance of the mosaic of wetlands, waters and uplands that occur on Area 4. The tremendous potential to preserve and restore ecological functions on this site is of great significance. The Bay Goals Project[4] observed:

> Historically, moist grasslands existed in large expanses near Suisun Marsh, in the upper reaches of Sonoma Creek and the Petaluma River, and adjacent to much of the baylands in South Bay. Today, examples of large areas of this habitat exist near Fairfield and in the Petaluma River area. Smaller areas of moist grasslands with seasonal wetlands are in Marin at St. Vincent's/Silveira Ranch. <u>In South Bay, development has destroyed most of the historical moist grasslands; notable exceptions exist east of Coyote Hills in the Ardenwood area and near the upper reach of Mowry Slough in Newark.</u> [emphasis added]

The Bay Goals Project had the following recommendation for Area 4, "Protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail duck club. Similar habitat can be protected and restored at the upper ends of Newark, Plummer, and Albrae sloughs." **CCCR-28**

p. 4.3-10 - The DEIR states the Corps and CDFW generally exercise authority over the various wetland habitat types. The San Francisco Bay Regional Water Quality Control Board would also have authority over wetlands and waters of the state. **CCCR-29**

p. 4.3-11 -

> *Salt Ponds*
> The commercial salt ponds are large, open water areas ranging in salinity from similar to sea water at 32 parts per million to 135 parts per million, or more than four times more salty than sea water.22 These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water.
> Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt.23 Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin.24 Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.25

CCCR-30

[4] Goals Project. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. U.S. Environmental Protection Agency, San Francisco, Calif./S.F. Bay Regional Water Quality Control Board, Oakland, CA

This description should be added to the description of salt ponds on page CS-6 of the GPT. CCCR-30 cont.

Figure 4.3-3 Special Status Plant Species and Sensitive Natural Communities - The figure neglects to include Point Reyes bird's beak that occurs in the LaRiviere Marsh of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge). CCCR-31

Figure 4.3-4 Special Status Animal Species - CCCR-32

- Burrowing owl have been reported to occur within Area 4.
- Loggerhead shrike is listed as having been observed in Area 4 but does not appear on the map.

Table 4.3-1 Special Status Plant Species in the Newark Vicinity: CCCR-33

- Contra Costa goldfields - amend the table - confirmed occurrence in Area 2, refer to EIR.
- Point Reyes bird's-beak - amend the table - confirmed occurrence in the LaRiviere Marsh of the Refuge

Table 4.3-2 - Special Status Animal Species in the Newark Vicinity: CCCR-34

- Snowy egret - amend the table this species has been observed numerous times on the mitigation pond just east of Area 4 within Area 3. observations entered on eBird - (http://ebird.org/ebird/GuideMe?src=changeDate&getLocations=hotspots&hotspots=L827703&parentState=US-CA&reportType=location&monthRadio=on&bMonth=01&eMonth=12&bYear=2000&eYear=2013&continue.x=69&continue.y=8&continue=Continue)
- Western snowy plover - observed immediately adjacent to Area 2 (DTOD) (data from the Western Snowy Plover Pacific Coast Population Recovery Plan Volume 2 (Appendices)
- white-tailed kite - several observations at the Stevenson Blvd mitigation pond. See eBird link above
- salt marsh harvest mouse - has been trapped within Area 4 (letters provided in attachments). Many occurrences within Mayhews Landing close to Area 2. (map provided in attachments)

p. 4.3-31 - Please explain why Congdon's tarplant is not expected to remain for another five years. Does it have anything to do with how the site is currently managed? CCCR-35

p. 4.3-31 - Wildlife Corridors - The DEIR fails to recognize that levees provide movement corridors. CCCR-36

BIO-1 - Buildout of the proposed Plan would result in less-than-significant impacts to special status plant and animal species in the Plan Area. CCCR-37

As was mentioned above, the mitigation and monitoring requirements need to be condensed into one stand alone document, rather than expecting decision makers and the public to hunt down all the mitigation measures, and the public needs to be given adequate time to review all of the detailed mitigation measures in their entirety. Furthermore, the mitigation measures need to be reviewed holistically to ensure that while the individual impacts of the various focus areas may appear to be less-than-significant, adequate mitigation measures exist for the entirety of the "Project." CCCR-38

The Policies listed under BIO-1 are inadequate to protect biological resources within the City of Newark and on lands adjacent to the City of Newark.

- Policy CS-1.1: Ensure that development minimizes its impacts on Newark's environment and natural resources through sound planning, design, and management. The proposal to fill up to 86 acres of wetlands that have been deemed by the Bay Goals Project, the Refuge Expansion Boundary, etc. is not an example of "minimizing" impacts on natural resources. CCCR-39
- Policy CS-1.2: Support the conservation of environmentally sensitive areas and unique natural resources in the city. Refer to the comments above and the excerpts from the Bay Goals Project cited above. CCCR-40

- Policy CS-2.1: Preserve and protect Newark's plant and animal species and habitats, including wetlands, salt marshes, creeks and lakes. Ensure that land use decisions consider potential impacts on wildlife habitat. It is one thing to "consider" potential impacts on wildlife habitat and an entirely different thing to "avoid" impacts to wildlife habitat. The City of Newark has taken the former approach and then approved filling of wetlands. How is approval of a development that will fill up to 86 acres of wetlands without knowing where mitigation for those losses might occur protective? **CCCR-41**
- Policy CS2.2: Special status species - requiring mitigation "as development takes place" is not protective of special status species due to temporal losses of habitat and the uncertainty of whether the proposed mitigation will actually be successful. Requiring mitigation be completed prior to the initiation of impacts, is protective of special status species. Habitat is not lost before successful replacement habitat is provided. **CCCR-42**
- Policy CS-2.3: DESFBNWR - placing a transit center and medium density housing next to lands that might eventually become part of the Refuge (Hickory Street parcel, Plummer Creek parcel) is not protective of the Refuge. **CCCR-43**
- Policy CS-2.5: Development near wetlands - Placing housing and all the human disturbance factors including trash, invasive plants, nuisance species attracted to the housing, domestic pets, next to wetlands is not protective of wetlands. There are also concerns about accompanying changes to the wetland hydrological regime, siltation, etc. **CCCR-44**
- Policy CS-2.7: Coordination with agencies is already required. Coordination in advance of any proposed development so that the development can be designed to avoid or minimize impacts is a worthwhile effort. **CCCR-45**
- Action CS1.A - Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation. This certainly sounds good on paper, would that it were actually taken to heart. This has not been the practice to date. How would the approval of filling up to 86 acres of wetlands be considered consistent with this Action? **CCCR-46**
- Action CS-2C - The Action should be explicit that coordination with regulatory and resource agencies is necessary to ensure any measures undertaken will be effective and sufficiently protective. **CCCR-47**

The impacts of BIO-1 cannot be determined to be less than significant without comprehensive review of the mitigation measures the City plans to incorporate into the mitigation and monitoring program. Also, the policies and actions listed above are of no value unless they are actually implemented. **CCCR-48**

BIO-2 - Buildout of the proposed Plan would result in less than significant impacts to wetlands, riparian habitat, and sensitive natural communities in the Plan Area.

BIO-2 as currently worded, does not adequately capture the significant and adverse impacts that will result from buildout of the Plan. As mentioned earlier, restoration scientists, resource agencies, and regulatory agencies, regard the tremendous opportunities for restoration of the wetland/upland mosaic of Area 4 as extremely rare along the edges of the San Francisco Bay ecosystem. This is a site of regional significance. The uplands and seasonal wetlands, though continually degraded by manipulation of the land, have incredible restoration potential. In addition, the site is known to support the endangered salt marsh harvest mouse, burrowing owl, migratory and resident waterbirds, and birds that forage in uplands and seasonal wetlands. Not only will the filling of up to 86 acres of wetlands result in significant environmental harm, but the mitigations necessary to stabilize and 2.1 million cubic yards of fill could irreparably alter the hydrologic regime of existing wetlands. The adjacent development will expose the remaining habitat to all the negative impacts associated with human disturbance, and the wetland mitigation required to offset the filling of wetlands may result in the conversion of any undeveloped uplands to wetland mitigation. **CCCR-49** **CCCR-50**

86 acres is an unprecedented amount of wetlands fill. The developer of Area 4 will need to demonstrate that wetlands cannot be avoided, or impacts cannot be minimized. The City of Newark would be doing its residents a disservice if off-site mitigation (outside the City's boundaries) occurs, as the functions and values that wetlands provide will benefit another community and not Newark residents.

Policy CS-4 - Wetlands Delineation. This policy sounds good on paper - the question is whether there are any other remaining large potentially developable properties with wetlands other than Area 4? Have wetland delineations yet to be done for any other area of Area 4 not currently proposed for development (i.e. besides sub areas, b, c, d, and e?) **CCCR-51**

(4)(a) - The City should take into consideration that allowing the purchase of mitigation credits elsewhere (e.g. within 10 air miles of Newark) means that another community benefits from the functions and values wetlands provide, flood protection, erosion control, flood desynchronization, water quality aspects, groundwater recharge, etc. and not Newark residents. **CCCR-52**

(5) - The length of required monitoring should be dependent upon the habitat being mitigated. Also, the City should include language that would provide for additional monitoring should contingency measures be required. Usually the extension for monitoring is at least two years beyond any human intervention and the requirement for monitoring ceases only after success criteria have been met. **CCCR-53**

BIO-3 Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the U.S. in the Plan Area.

How can this determination be reached??? How does the performance of a wetland delineation, and verification that wetlands exist, help reduce the impacts of buildout to less than significant?
Delineating wetlands informs a property owner if they have a resource they need to deal with. However, he reduction of impacts occurs if wetland impacts are avoided or minimized to the maximum extent possible. Then, and only after an earnest attempt has been made to redesign a project to avoid and minimize impacts, should compensatory mitigation be considered. **CCCR-54**

The mitigation measures described under BIO-2 <u>will not and cannot reduce the adverse impacts of Plan buildout in Area 4 to a level that is less than significant!</u> **CCCR-55**

One of the mitigation measures for Area 4 MMBIO-1.2A is inconsistent with the stated and regionally documented need to preserve upland transition zones as retreat habitat for the recovery of listed species in the face of sea level rise. MMBIO-1.2A attempts to mitigate for the loss of filled wetlands by creating/enhancing wetlands out of other habitats of importance for survival of bay edge species. This measure would destroy the unique mosaic of habitats these lands currently host - a mosaic of wetlands and upland habitats that provide habitat resiliency and preserve regional biodiversity. **CCCR-56**

A conceptual mitigation plan still does not exist that would indicate the locations of proposed mitigation areas and their relationship to the existing mosaic of wetlands and transitional uplands scattered across Area 4. No attempt was ever made to offer this level of detail or even indicate conceptually what areas would be considered impacted by the direct placement of fill, by the indirect impacts of the changed conditions resulting from the fill, and the direct and indirect impacts of mitigation measures placed on the remaining landscape. **CCCR-57**

MM BIO-1.2B indicates**:** Alternatively, <u>at the discretion of the project developer(s), and as approved by the City of Newark</u>, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. [emphasis added] **CCCR-58**

This decision should certainly not be left to the discretion of the project developers. In addition, there is no indication of where such private lands might exist, no indication of how the lands would be acquired, and no conceptual plan of how mitigation will occur on the site. Acquisition and preservation does not equal “no net loss” as is the policy of the State. **CCCR-58 cont.**

To date there is no way of knowing how this Area 4 will be developed, where mitigation will occur onsite and what it’s proximity will or won’t be to the development envelope. This is important with respect to indirect impacts of the development on the mitigation site and with respect to habitat continuity – patches of mitigation surrounded by the development envelope are unacceptable mitigation. Nor is it possible for the City to determine if the development project is feasible and/or would produce sufficient property tax revenues to offset public service liabilities associated with a development on the outskirts of the City. **CCCR-59**

The focus on mere replacement of wetland acres may jeopardize the local populations of salt marsh harvest mouse and salt marsh wandering shrew. The mitigation proposed (aside from the puzzling master response above) has been focused in Sub Area E – converting the uplands in this area to wetlands, presumably by soil removal to lower the topographic position and allowing the former uplands to be inundated by rainfall or springs. This would remove higher elevation escape habitat for the salt marsh harvest mouse and salt marsh wandering shrew, leaving only the developed areas as less than desirable escape habitat that would further imperil these species. **CCCR-60**

Goal CS-2 - Conserve Newark's wetlands and baylands. Well this sounds good on paper. Please explain how this is actually reflected in the GPT. **CCCR-61**

Action CS-E - Support acquisition of wetlands and other environmentally sensitive areas by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no other conflicts with other General Plan goals and objectives.

In general, we do not support the use of mitigation banks, particularly for waters of the U.S. as the wetlands functions and values are lost to the community in which the filling is occurring, and instead benefit some other community, often far from the impact site. Other than the Plummer Creek site, please explain where this policy is being implemented. **CCCR-62**

There should be a (1)(a) inserted between the requirement of a wetland delineation and requiring authorization from the Corps or the RWQCB, that requires the land owner to avoid filling of the wetlands. If that is not completely possible, then wetland fill should be minimized. The 404 (b)(1) Guidelines require avoidance and minimization before compensatory mitigation is even considered. **CCCR-63**

BIO-4 - We do not concur that the Plan will not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. The Plan will in fact build to the edge of Newark's "bayfront" and could disrupt the movement of species along the western edges of the city. The Plan could discourage the use of the duck pond on that remains on Area 4 by resident, migratory and nesting birds due to human and domestic pet disturbance. **CCCR-64**

BIO-5 - The proposed Plan would not conflict with the City of Newark tree preservation ordinance. It is impossible to determine if this if true or not as we do not know the footprint of the Plan buildout. Therefore, the City cannot conclude that the impacts are less than significant. **CCCR-65**

BIO -6 - The proposed Plan would result in significant impacts related to conflict with the Basin Plan and Habitat Goals. We have already described Bay Goals recommendation that the area at the head of Mowry Slough be preserved and restored. This area represents a unique opportunity at a regional level. The DEIR mentions the Bay Goals recommendations to protect and enhance marsh transition zones. Please note, there are exceedingly few locations along the edges of the bay where this could be accomplished so quickly and easily. **CCCR-66**

Regarding the Basin Plan - The SFBRWQCB responded to the Area 4 DEIR and FEIR. Their DEIR comments regarding the development proposal and Basin Plan:

> Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Page 134 The DEIR states that:
> Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use.
>
> The condition of these wetlands would be easily improved by discontinuing the agricultural disturbances in Area 4. The Basin Plan directs the Water Board to protect both existing and potential Beneficial Uses of waters of the State. In Area 4, the habitat value could be greatly enhanced by simply discontinuing agricultural disturbances. If these wetlands are filled under the proposed Specific Plan, then the potential for enhancing or restoring the wetlands will be lost. Mitigation for such an impact will require addressing the lost potential value of these wetlands. [emphasis added]

And:

> The *San Francisco Bay Area Wetlands Ecosystem Habitat Goals Project* recommended that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4). In addition, the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge, and the Bay Conservation and Development Commission (BCDC) has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. **CCCR-67**
>
> The proposed mitigation quantities appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation was demonstrably capable of providing equal habitat benefit for listed species. The proposal to convert some areas of uplands in Area 4 to wetlands is also problematic, since a combination of wetlands and associated uplands are essential to high habitat value.
>
> At present, the DEIR does not demonstrate that adequate mitigation is available. Onsite mitigation will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. The DEIR does not identify any feasible locations for offsite mitigation. There are very few parcels of undeveloped land in private ownership that are available for use as mitigation wetlands, and are in proximity to protected lands that currently provide habitat for listed species.

... The current DEIR does not demonstrate that it is feasible to mitigate all of the potentially significant biological impacts of the Project to a less than significant level.

In addition, the SFBRWQCB submitted comments to the FEIR:

The FEIR, as written, does not demonstrate that impacts associated with the proposed fill of wetlands in Area 4 can be successfully mitigated to a less than significant level. The mitigation quantities proposed in the FEIR appear to be insufficient to compensate for the impacts associated with the proposed fill of wetlands in Area 4. The mitigation proposed in the FEIR relies on a combination of onsite wetland creation/enhancement and offsite wetland preservation. Onsite mitigation, which is only proposed at a 1:1 ratio, would be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. With respect to off-site mitigation, the FEIR does not provide sufficient detail to demonstrate that feasible locations exist for offsite mitigation.

On page 12 of the FEIR, the following statement is made:
The proposed mitigation measures for impacts to wetlands described in the Draft EIR treat wetlands as biological habitats and not State or Jurisdictional features. The City has determined based on extensive analysis by its biological experts that the mitigation requirements for wetland impacts (both in terms of amount and location of mitigation) described in the Draft EIR are more than adequate to mitigate the described impacts to a less than significant level.

We would like to point out that the resource agencies have not concurred with this assessment. When the City of Newark teams with individual developers to implement the Specific Plan, the City and developers should be aware that mitigation as proposed in the FEIR would appear to be far short of the mitigation that will be necessary to secure permits from the resource agencies for the impacts proposed to wetlands in Area 4. Therefore, project-level CEQA documents will likely be necessary to support permitting of Specific Plan implementation projects.

We would also like to reiterate that, by certifying the FEIR as written, the City should not assume that the Water Board or other resource agencies will allow the fill of the wetlands at Area 4 as proposed. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant, and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation is demonstrably capable of providing equal habitat benefit for listed species.

The City should recognize that large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to transgress (move up slope) in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), the Bay Conservation and Development Commission (BCDC), and the Water Board have all expressed strong reservations about the potential fill of wetlands in Area 4.

In summary, the FEIR as written does not demonstrate that impacts associated with the proposed fill of wetlands in Area 4 can be successfully mitigated to a less than significant level. Therefore, the FEIR is not likely to support the issuance of future permits from the Water Board for fill of waters of the State under the Specific Plan. [emphasis added]

CCCR-67 cont.

Based on these comments it is unclear how the City thinks the significant adverse impacts of the Plan could be reduced to a level that is less than significant even with mitigation. **CCCR-68**

Bio-7 - The proposed Plan will not result in less-than-significant cumulative impacts related to biological resources. Please refer to all of the statements above.

The GPT DEIR itself acknowledges:

> In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation.

But rather than heeding the strong language of the SFBRWQCB's comment letters, and those of the Refuge and CDFW, the DEIR erroneously concludes the mitigation it has proposed is sufficient to reduce the impacts of the Plan buildout. **CCCR-69**

The DEIR also makes the interesting statement: "Additionally, future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas." Once again raising the question of what would trigger additional environmental review and will there be additional opportunities for public comment. **CCCR-70**

Geology:
According to California Geological Survey's 2003 seismic hazard report, the entire Plan Area has been mapped as a liquefaction hazard zone. Most of the soils that have been mapped within the Plan Area have a high shrink swell potential which can lead to heaving and cracking of concrete foundations or flatwork built on top of the soils. The western part of the Plan Area may contain unstable geologic units, which can lead to differential settlement.

The DEIR once again references two recent court cases that hold CEQA analyzes the impacts of the project on the environment and not the environment on the project. Once again we state, that bad case law aside, if, a city approves development in an area prone to seismic hazard then it should do due diligence to ensure the public is not put in harm's way. **CCCR-71**

GEO-1 The proposed Plan would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving surface rupture along a known active fault; strong seismic ground shaking; seismic-related ground failure, including liquefaction; and landslides.

> Policy EH-1.1: Development Regulations and Code Requirements.
> Policy EH-1.2: Considering Hazards in Project Location and Design. Policy EH-1.2: Considering Hazards in Project Location and Design. Prohibit development in any area where
> it is determined that the potential risk from natural hazards cannot be mitigated to acceptable levels.
> Action EH-1.A: Development Review. Review all development applications to ensure their compliance with all relevant building and safety codes, including those related to fire, flooding, soil, and geologic hazards.
> Action EH-1.B: Code Updates.
> Goal EH-2: Reduce risks to life and property associated with geologic hazards.
> Policy EH-2.1: Earthquake Safety in New Construction.
> Policy EH-2.2: Seismic Retrofits. Encourage the retrofitting
> Policy EH-2.3: Earthquake Awareness. Inform Newark residents
> Policy EH-2.4: Infrastructure Resilience. Maintain standards

CCCR-72

Action EH-2.A: Geotechnical Studies. At the discretion of the Director of Public Works, require detailed investigations of ground shaking, liquefaction, soil stability, and other geologic hazards as specific development projects are proposed
Action EH-2.B: Geotechnical Staff Assistance. As needed, retain outside consulting
Action EH-2.C: Mandatory Seismic Upgrades. If feasible and appropriate
Action EH-2.D: Homeowner Education on Earthquake Safety
Action EH-2.E: Seismic Safety at Schools. Work with
Action EH-2.F: Earthquake Hazard Maps. Periodically update maps

With the exception of Policy EH-1.1, and Action EH-1.A and EH-1.2, there seems to be a lot of discretion in the degree to which these policies and action items are applied.

CCCR-72 cont.

GEO-2 Implementation of the proposed Plan would not result in substantial soil erosion or the loss of topsoil.

This section mentions methods of erosion control and discusses Newark's Municipal Code. Isn't a Construction Activities Stormwater General Permit from the SFBRWQCB required for sites where more than an acre of land is being graded?

CCCR-73

GEO-3 Development under the proposed Plan would not result in a significant impact related to development on unstable geologic units and soils or result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.

- Action EH-2.A: Geotechnical Studies. <u>At the discretion of the Director of Public Works</u>, require detailed investigations of ground shaking, liquefaction, soil stability, and other geologic hazards as specific development projects are proposed. Such investigations shall be prepared by a qualified geologist or soils engineer, with appropriate mitigation measures identified and implemented.
- Additionally, Mitigation Measure 4.5-1, from the Dumbarton TOD EIR, requires <u>future developers within the Dumbarton TOD area to perform a design-level geotechnical engineering investigation for their individual property or properties prior to development and as a condition for grading permit approval.</u>

Since Newark is in a liquefaction hazard zone, why is the requirement for detailed investigations of ground shaking, etc. discretionary? Why isn't it mandatory for any development? How often are detailed investigations required? Are the detailed investigations of Action EH-2.A required prior to the issuance of a grading permit? One would certainly hope so. it should be so stated in the language of the Action.

CCCR-74

Are detailed design-level studies required for Area 3 and 4? According to this DEIR Area 3 sits atop sand deposits that could be susceptible to liquefaction.

CCCR-75

GEO-4 Development under the proposed Plan would not create substantial risks to life or property as a result of its location on expansive soil, as defined in Table 18-1-b of the Uniform Building Code (1994).
"Development within the Plan Area in almost all instances would be preceded by suitably detailed geotechnical evaluations, the scope of which would include tests to determine and quantify the presence of expansive soils. The need for such geotechnical evaluations are triggered by CGS-determined liquefaction hazard zones that embrace all of the Plan area, as well provisions of the CBC and related City of Newark building and grading permit requirements."
What are the situations under which such plans would not be required? Why not require detailed geotechnical evaluations for all development in Newark since the entire city appears to be within a liquefaction hazard zone?
And why are there no mitigation requirements for Area 3 and 4? Especially since a school site is proposed within Area 3?

CCCR-76

GEO-6 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils.

Once again the discussion mentions additional mitigation measures for the DTOD and HEU, but not Area 3 and 4. Why?

CCCR-77

Also, the discussion of impacts and mitigation measures never touch on the types of soil stabilization techniques that might be utilized. This information is critical as the City should consider whether there could be any direct or indirect impacts to any of the other elements of the DEIR and GPT. For example, dynamic deep compaction could require mitigation measures for noise or vibration impacts to sensitive receptors. Could any of the GEO mitigation measures have adverse impacts to groundwater, mobilization of toxic groundwater plumes, dewatering of wetlands, adverse impacts to levees, adverse impacts to biological resources, etc.

CCCR-78

Hydrology:

The analysis of flood hazard is focused solely on the FEMA 100-year flood plain and the only means of addressing the risk of flooding is the requirement to construct new development atop building pads, requiring the import of millions of cubic yards of fill (Area 4).

CCCR-79

page 4.8-17 states:

> Although some locations within the City are protected from flooding by levees, FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability.35 Most of the levees within the City of Newark are not certified. Therefore, the areas next to the levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event. [emphasis added]

In other words, the majority of levees that currently provide some flood relief are not recognized as flood control levees. As an example, the levees on the bayward side of Area 4, are privately owned and maintained. The City is therefore, not relying on the existing levees to provide flood protection. Instead, the City has stated the requirement that new development be constructed atop building pads that are at minimum one foot above the 100-year flood elevation will be adequate to reduce potential flooding.

CCCR-80

Conspicuously absent in the DEIR analysis of flood hazard, is any mention of the additive impacts of sea level rise on flood risk. Sea level rise inundation maps depict much of the Dumbarton TOD and Area 4 at risk of inundation with a 1 foot rise in sea level. See the attached map or visit http://www.csc.noaa.gov/slr/viewer/# to view inundation risk with just a 1-foot rise in sea level and under varying sea level rise scenarios.

The DEIR avoids meaningful analysis of the additive risk sea level rise may have on new development permitted within the existing 100-year flood plain (low lying areas along Newark's bayfront) with the following explanation:

> **The City notes that the purpose of this EIR is to identify the significant effects of the Plan (which is considered a Project under CEQA) on the environment, not the significant effects of the environment on the Plan.** (*South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1614-1618; City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal.App.4th 889, 905.*) While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes.

CCCR-81

> Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of this Draft EIR (see *Guidelines, § 15063, subd. (f)*). However, a few of the questions on the form concern the exposure of people or structures to environmental hazards and could be construed to refer to not only the Project's exacerbation of environmental hazards but also the effects on users of

CCCR-82

the Project and structures in the Project of preexisting environmental hazards. **To the extent that such questions may encompass the latter effects, the questions do not relate to environmental impacts under CEQA and cannot support an argument that the effects of the environment on the Project must be analyzed in a Draft EIR.** (*Ballona Wetlands Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 473-474.*) **Accordingly, a discussion of flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA.**

CCCR-82 cont.

The DEIR references the issue of sea level rise, but goes no further. The language of the draft policies requires assessments and consideration of possible impacts related to sea level rise, but is silent as to whether that information, once collected will be utilized to ensure flood risk is reduced.

P. 4.2-28:

- Policy CS-5.8: Planning for Sea Level Rise. Require developments below 10' above mean sea level to include an assessment of possible impacts related to sea level rise.
- Policy S-3.9: Sea Level Rise. Consider the effects of rising sea level on the potential for flooding in low-lying areas, and participate in regional adaptation efforts for these areas.

P. 4.8-28:

Furthermore, City goals and policies under the proposed Plan would further reduce potential impacts to the existing storm drain infrastructure:

- Policy CS-5.8: Planning for Sea Level Rise. Require proposed development close to the Newark bayfront or in low-lying areas to include an assessment of possible impacts related to sea level rise.

P.4.8-33:

- Policy EH-3.9: Sea Level Rise. Consider the effects of rising sea level on the potential for flooding in low-lying areas, and participate in regional adaptation efforts for these areas.
- Policy CS-5.8: Planning for Sea Level Rise. Require proposed development close to the Newark bayfront or in low-lying areas to include an assessment of possible impacts related to sea level rise.

P. 4.12-24:

- Policy PR-5.7 Trail Sustainability. Consider long-term sustainability issues, such as projected sea level rise, surface durability, and the condition of levees, in the design of shoreline and wetland trail facilities.

CCCR-83

As stated above, while these policies give the impression that measures will be taken to reduce risk from sea level rise inundation, there is no language within the General Plan Goals, Policies, or Actions that require that such risk will be reduced. The rationale, is reliance on the court cases mentioned above, "flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA." This is irresponsible in terms of disclosure of impacts of a project and from a planning perspective a failure to incorporate meaningful analysis that could in fact lead to the permitting of projects that will impact the environment if sea level rise adaptation is not incorporated into the development design. As an example, if the only requirement to reduce flood risk is that new development is constructed at minimum, one foot above existing mean sea level (mean sea level at the time of permitting), and does not include sea level rise adaptation (not providing for estimates of sea level rise that could place the proposed development at risk of inundation), then the project may well have impacts to the environment that include the need for construction of flood protection levees, filling of adjacent wetlands to construct flood protection or from erosion of building pads, the need to re-engineer storm drain facilities, transportation facilities, etc.

The "State of California Sea-Level Rise Guidance Document"[5]states:

CCCR-84

[5] "State of California Sea-Level Rise Guidance Document." March 2013 Update. Developed by the Coastal and Ocean Working Group of the California Climate Action Team (CO-CAT) with science support provided by the Ocean Protection Council's Science Advisory Team and the California Ocean Science Trust.

SLR potentially will cause many harmful economic, ecological, physical and social impacts and incorporating SLR into agency decisions can help mitigate some of these potential impacts. For example, SLR will threaten water supplies, coastal development, and infrastructure, but early integration of projected SLR into project designs will lessen these potential impacts.

CCCR-84 cont.

The Guidance also addresses the importance of incorporating sea level rise adaptation into project design:

The consequences of failing to address SLR adequately for a particular project will depend on both adaptive capacity and the *potential* impacts of SLR to public health and safety, public investments, and the environment. Figure 1 in Appendix C illustrates how adaptive capacity and potential impacts combine to produce consequences.

Adaptive capacity is the ability of a system to respond to climate change, to moderate potential damages, to take advantage of opportunities, and to cope with the consequences.6 In most situations, adaptive capacity must be front-loaded, or built into the initial project; it cannot be assumed that adaptive capacity can be developed when needed unless it has been planned for in advance. A project that has high adaptive capacity and/or low potential impacts will experience fewer consequences.

CCCR-85

The DEIR mentions BCDC and its regulatory authority over portions of Plummer Creek, Mowry Slough and portions of Area 4:

p.4.8-7:
As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for any proposed fill, extraction of materials, or change is use of any water, land, or structure within the Commission's jurisdiction. The BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands in the Southwest Newark Residential and Recreational Focus Area. Projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection. These policies state that adequate flood protection should consider future relative sea level rise and all proposed development should be above the highest estimated tide level for the expected life of the project or sufficiently protected by levees.

The DEIR should also note that BCDC's sea level rise policies, "Encourage preservation and habitat enhancement in undeveloped areas that are vulnerable to future flooding and contain significant habitats or species, or are especially suitable for ecosystem enhancement."[6]

CCCR-86

The 2009 California Climate Change Strategy[7] states:

p. 51 Wetland habitats from the Sacramento Valley southward to the Salton Sea and the tidal marshes of San Francisco Bay also provide essential wintering habitat for hundreds of thousands of birds as they migrate north and south along the Pacific Flyway.
p. 52 Moreover, inland migration is frequently hindered by development such as bulkheads, seawalls, roads, and buildings. Continued growth and development in coastal areas will only increase the direct pressure on remaining habitats and make inland migration more difficult. Sea-level rise, especially at the increasing rates projected for the 21st century, may result in the loss of substantial areas of critical habitat for a variety of coastal species.

CCCR-87

[6] New Sea Level Rise Policies Fact Sheet. San Francisco Bay Conservation and Development Commission. http://www.bcdc.ca.gov/planning/climate_change/SLRfactSheet.shtml Accessed 9-26-13.
[7]

p. 74 Habitat Protection – The state should identify priority conservation areas and recommend lands that should be considered for acquisition and preservation. The state should consider prohibiting projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones.
The strategy should likewise encourage projects that protect critical habitats, fish, wildlife and other aquatic organisms and connections between coastal habitats. The state should pursue activities that can increase natural resiliency, such as restoring tidal wetlands, living shoreline, and related habitats; managing sediment for marsh accretion and natural flood protection; and maintaining upland buffer areas around tidal wetlands. For these priory conservation areas, impacts from nearby development should be minimized, such as secondary impacts from impaired water quality or hard protection devices.

CCCR-87 cont.

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

This is policy is pertinent to Area 4. The majority of Area 4 is within the Don Edwards San Francisco Bay National Wildlife Refuge expansion boundary. The site contains a rare mix of upland, seasonal wetland, muted tidal wetland, and a fresh water pond. The endangered salt marsh harvest mouse has been trapped on this site and the proposed development could fill up to 86 acres of seasonal wetlands.

CCCR-88

Traffic:

Does the traffic analysis for account for the 600 student elementary school proposed in Area 3 or the truck traffic that will be required to transport 2.1 million cubic yards of fill to Area 4?

CCCR-89

Are the dates of studies listed in the footnote on page 4.13-23 correct?

CCCR-90

p. 4.13-24 states:

The traffic analysis assumed that the transportation network, including roadways and intersection lane configurations, would be the same in 2035 as that described above in section 4.13.1.2, Existing Conditions, of this chapter. New development projected within the Plan Area at buildout of the proposed Plan, including net increases over 2012 baseline conditions of 16,580 residents, 6,208 housing units, and 2,882 jobs, was input to the Alameda County Transportation Commission (ACTC) model in order to generate 2035 traffic forecasts. The resulting traffic volumes are shown on Figures 4.13-5a and 4.13-5b.

CCCR-91

TRANS-1 With buildout of the proposed Plan, three signalized study intersections would operate at unacceptable LOS in 2035.
The analysis of TRANS-1 states:

With implementation of Action T-5.J from the proposed Plan, all seven impacted intersections would operate at acceptable LOS in 2035; however, the Cherry Street/Boyce Road and Stevenson Boulevard intersection and the Ardenwood Boulevard and SR 84 WB Ramps intersection are located in the City of Fremont, and additionally the Ardenwood Boulevard and SR 84 WB Ramps and Newark Boulevard and SR 84 EB Ramps intersections are under the jurisdiction of Caltrans. Therefore, implementation of improvements at these three intersections is outside the jurisdiction of the City of Newark, and as there is no implementation plan in place for improvements at these three intersections, it is not reasonably foreseeable at this time that impacts would be reduced to less-than significant levels with buildout of the proposed Plan in 2035. Consequently, impacts at these three intersections in 2035 would be significant prior to mitigation: Cherry Street/Boyce Road and Stevenson Boulevard; Ardenwood Boulevard and SR 84 WB Ramps; Newark Boulevard and SR 84 EB Ramps.

CCCR-92

When will Newark begin coordinating with the City of Fremont and with Caltrans to implement the proposed mitigation measures at these three intersections? **CCCR-92 cont.**

It appears most of the policies and actions proposed to alleviate or reduce traffic congestion are purely volunteer, that is that they are totally dependent upon Newark residents altering their choices regarding transit. How will Newark determine if these policies are having any benefit and what will Newark do, if they are not? **CCCR-93**

TRANS-4 The proposed Plan would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).

Wouldn't pedestrian and bicycle at grade crossings be considered an incompatible use and why wasn't this issue analyzed under traffic? Especially since the traffic analysis includes a discussion of the Complete Streets Program? **CCCR-94**

Policy T-2.12: Trails Along Railroads and Utilities. Consider the use of railroad, flood control, and utility rights of way for jogging, biking, and walking trails, provided that safety and operational issues can be fully addressed.

Does this policy pertain to abandoned railroad right of ways? If not, it is difficult to understand how this would be compatible with biking, jogging, or walking trails. **CCCR-95**

TRANS-7 Implementation of the proposed Plan, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable impacts.

> "Cumulative impacts to transportation and traffic resulting from implementation of the proposed Plan are addressed locally, through specific road improvements, as well as through implementation of the goals, policies, and actions of the proposed Plan itself. These policies seek to reduce existing vehicle trips, minimize the addition of new vehicle trips, and lower per capita VMT. Additionally, the potential cumulative impacts of the proposed Plan at the regional level are examined through analysis related to the Alameda CTC Congestion Management Program."

It is difficult to imagine the policies proposed will result in an appreciable reduction in VMT.
The proposal to build upscale housing in an area that has no shopping, medical, dining, or other amenities within easy walking distance would seem to only encourage the continued use of automobiles as a mode of transportation.
What are the current plans for providing mass transit in the DTOD? It seems any realization of Dumbarton Rail will be in the distant future if ever at all. What are the plans to provide a public transportation system for an area that is proposed to have an additional 2500 housing units? **CCCR-96**

Alternatives Analysis:

The Alternatives Analysis Chapter is inconsistent with the requirements of CEQA. The DEIR correctly states:

> The following discussion is intended to inform the public and decision makers of the feasible alternatives that would avoid or substantially lessen any significant effects of the Plan, and to compare such alternatives to the proposed Plan. Section 15126.6 of the CEQA Guidelines states that:
> <u>An EIR shall describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.</u>

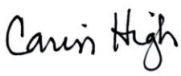
CCCR-97

The DEIR provides an alternative, the Restricted Growth Alternative, that would preserve Area 4, but also restricts any development of the Dumbarton Transit Oriented Development. This is an alternative that has been structured to fail. The Area 2 (DTOD) has already been identified by the Association of Bay Area Governments as a Priority Development Area, so it would seem that in spite of the reduction in environmental impacts, an alternative that prohibits any development is unrealistic. The city must provide an alternative that preserves Area 4, facilitates clean-up of contaminated sites and provides for sustainable development in Area 2. **CCCR-98**

Conclusion:

The GPT DEIR has significant flaws as identified in the letters submitted by LGW LLP and Richard Grassetti. Therefore, the GPT DEIR will need to be revised and re-circulated. Please keep us advised of any time tables pertaining to this review process.

Sincerely,



Carin High
CCCR Vice Chair

Attachments to follow

cc: Mayor Nagy
Newark City Council
Newark Planning Commission
John Becker, City Manager
Anne Morkill, Project Leader, USFWS
Eric Mruz, Refuge Manager, USFWS
Cay Goude, Endangered Species Division, USFWS
Jane Hicks, Chief, Regulatory Branch, USACE
Cameron Johnson, South Section Chief, USACE
Jason Brush, Environmental Protection Agency
Marcia Grefsrud, CDFW
Bruce Wolfe, San Francisco Bay Regional Water Quality Control Board
San Francisco Bay Conservation and Development Commission
Brian Gaffney
Richard Grassetti
Florence LaRiviere
SF Baykeeper
Save the Bay
Ohlone Audubon Society
Sierra Club

CCCR-99

COMMENT LETTER # LGW

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Brian Gaffney
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September 26, 2013

Via Email and Fed Ex

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560
Terrence.grindall@newark.org

RE: Draft General Plan Tune Up Program EIR

Dear Mr. Grindall;

This office represents Citizens Committee to Complete the Refuge ("Citizens") and its members in regards to the City of Newark proposed revised General Plan and Draft EIR ("DEIR"). Attached hereto please find detailed comments about the Draft EIR and the Project's compliance with CEQA. The DEIR violates CEQA, *inter alia*, through 1) the use of an improper baseline, 2) reliance on a void Specific Plan EIR for analysis of impacts and mitigations from the proposed General Plan, 3) failure to conduct adequate "project level" review where the General Plan includes the Specific Plan details, 4) a flawed cumulative impact analysis, and 5) a flawed alternatives analysis. **LGW-1**

Because the Draft EIR is fundamentally and basically inadequate, meaningful public review and comment are precluded. Once the Draft EIR is fixed it must be recirculated for public review and comment. Prior to the City Council's decision, if ever, that the EIR complies with CEQA and therefore may be certified, no action in furtherance of the Project should be permitted.

Thank you for your attention to this matter.

Sincerely,

Brian Gaffney

Brian Gaffney

cc: Citizens Committee to Complete the Refuge

Attachment: CD by Fed Ex delivery by September 27, 2013

I. The Proposed General Plan and DEIR Fail to Use a Proper Environmental Baseline by Employing Hypothetical Conditions Based on a Void Areas 3 and 4 Specific Plan.

LGW-2

A. The Proposed General Plan Uses an Improper Baseline.

The proposed General Plan falsely and improperly assumes that the Areas 3 and 4 Specific Plan has been adopted and is in effect.[1] "A Specific Plan for the 636-acre [Areas 3 and 4] was adopted in 2010." (Proposed General Plan, pp. PF-14, PF-15, LU-21, LU 24.) The Areas 3 and 4 Specific Plan has "been formally adopted by the City of Newark, but [is] not part of the General Plan per se." (Proposed General Plan, I-4.)

This error is also found in the Land Use Background Report. "Two major development projects were approved in 2010 and 2011, Areas 3 and 4, and Dumbarton Transit Oriented Development (TOD) Specific Plans." (Land Use Background Report, p. 4-6.) Under the heading "Existing Conditions," the Land Use Background Report states that "The [Areas 3 and 4] Specific Plan and final Environmental Impact Report, along with a statement of overriding considerations, Mitigation Monitoring Report, and map amendment to title 17 of the Newark Municipal Code (zoning) were adopted in 2010." (Land Use Background Report, p. 4-31.)

LGW-3

These assertions in the General Plan are false and misleading to the public. The City of Newark has not properly adopted the Areas 3 and 4 Specific Plan nor properly certified the Areas 3 and 4 Specific Plan EIR. On November 20, 2012, the Alameda Superior Court issued its Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions. That Order is attached to these comments. "To ensure that the [Areas 3 and 4 Specific Plan] project does not proceed until the EIR is effective," the court ordered the City to "SUSPEND Resolution 9745 (Certifying the EIR) and Resolution 9746 (adopting the Newark Areas 3 and 4 Specific Plan Project and the related General Plan Amendment" pending resolution of the case or further order of the court. That suspension was in effect when this DEIR was released to the public, and is in effect at the time of filing these comments.[2]

Moreover, as a matter of law the Areas 3 and 4 Specific Plan cannot be deemed "approved" in the absence of a valid certified EIR. "CEQA requires the completion of an EIR before a specific plan can become effective." (*3570 East Foothill Blvd., Inc. v. City of Pasadena*, 980 F.Supp. 329, 333 (C.D.Cal. 1997). Before approving a specific plan the decision makers must be informed of the intended impacts and if that impact is adverse how it will be addressed. (*Vineyard Area Citizens for*

LGW-4

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[1] "Areas 3 and 4 Specific Plan" and the "Southwest Newark Residential and Recreational Project" are two names for the exact same project. (Proposed General Plan, p. I-4, fn. 1.)

[2] Pursuant to Pub. Res. Code § 21168.9, the Areas 3 and 4 Specific Plan approvals and Areas 3 and 4 Specific Plan EIR certification must be considered void. Pub. Res. Code § 21168.9, subd. (a)(1) provides that if a court finds that any determination, finding, or decision of an agency has been made without CEQA compliance, the court shall enter an order that includes a mandate that the determination, finding, or decision be voided by the agency. Citizens has consistently maintained that under 21168.9 the approvals and certification must be set aside.

Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412, 429 citing *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206.) Thus, the Areas 3 and 4 Specific Plan is not in effect, and it was error for the proposed General Plan to represent it as approved. (*Deltakeeper v. Oakdale Irrigation Dist*. (2001)94 Cal.App.4th 1092, 1009 ["The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an [EIR] that does not provide the decision-makers, and the public, with the information about the project that is required by [CEQA]."].) **LGW-4 cont.**

B. <u>The Draft General Plan EIR Uses an Improper Baseline</u>.

In addition, the Draft EIR, in describing the "Southwest Newark Residential and Recreational Focus Project" repeatedly asserts that the Areas 3 and 4 Specific Plan has been "adopted" by the City of Newark. (GP DEIR, pp. 3-20 to 3-21 (" The proposed Plan does not include any additional land use changes over and above those already incorporated into the existing General Plan at the time the Areas 3 and 4 Specific Plan was adopted by Newark City Council in 2010.) "In June 2010, the City of Newark adopted the Areas 3 and 4 Specific Plan ... ." (GP DEIR, p. 3-8.) **LGW-5**

While the Draft EIR acknowledges that the Areas 3 and 4 Specific Plan is in litigation and that there is a stay on any further action with respect to the Areas 3 and 4 Specific Plan, the EIR relies on the Specific Plan and mitigation measures created for that plan as background conditions:

> After certification of the EIR, a lawsuit was filed challenging the adequacy of the EIR (Alameda Co. Sup. Ct. #RG10-530015). An order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Areas 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. As of August 12, 2013, that litigation remains pending and that suspension remains in effect, however, the information and analysis in the Areas 3 and 4 Specific Plan, **EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR.**

(GP DEIR, 3-11 (emphasis added).) It is entirely inappropriate for the City to discuss the Areas 3 and 4 Specific Plan as though it is approved and its mitigation measures are adopted and enforceable, and then treat them as "background conditions" for purposes of the 2013 General Plan EIR. **LGW-6**

Under CEQA, impacts must be measured against real conditions on the ground – not against what may potentially occur pursuant to a planning document. The Supreme Court's discussion in *Communities for a Better Environment* points out this DEIR's fundamental error:

> By comparing the proposed project to what could happen, rather than to what was actually happening, the [agency] set the baseline not according to "established levels of a particular use," but by "merely hypothetical conditions allowable" under the permits. *(San Joaquin Raptor Rescue Center v. County of Merced, supra*, 149 Cal.App.4th at p. 658, 57 Cal.Rptr.3d 663.) Like **an EIR**, an initial study or negative declaration **"must focus on impacts to the existing environment, not hypothetical situations**." *(County of Amador v. El Dorado* **LGW-7**

> *County Water Agency, supra*, 76 Cal.App.4th at p. 955, 91 Cal.Rptr.2d 66.) **An approach using hypothetical allowable conditions as the baseline results in "illusory" comparisons that "can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts," a result at direct odds with CEQA's intent**. (*Environmental Planning Information Council v. County of El Dorado*, supra, 131 Cal.App.3d at p. 358, 182 Cal.Rptr. 317.)

Communities For A Better Env't v. S. Coast Air Quality Mgmt. Dist., (2010) 48 Cal. 4th 310, 322. **LGW-7 cont.**

Recently, the California Supreme Court affirmed that "the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Auth*. (2013) 57 Cal. 4th 439, 448 (emphasis in original) citing *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320–322.) **LGW-8**

So here, this DEIR uses the hypothetically approved Areas 3 and 4 Specific Plan as the background condition. The Areas 3 and 4 Specific "EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR." (GP DEIR, 3-11 to -12.) "This Draft EIR compares the buildout potential for the proposed Plan with the existing baseline condition." (GP DEIR, p. 3-3.) Because the Specific Plan adoption and EIR certification have been not been properly adopted and certified, this DEIR can only mislead the public as to the true General Plan impacts and subvert full consideration of the actual environmental impacts, contrary to CEQA's intent. **LGW-9**

II. The DEIR Improperly Relies On the Areas 3 and 4 Specific Plan EIR for Analysis of the Proposed General Plan's Impacts and Mitigations.

The DEIR improperly relies heavily on the Areas 3 and 4 Specific Plan EIR for its analysis of impacts and mitigations.[3] For example, regarding riparian impacts, the DEIR states: **LGW-10**

> The Areas 3 and 4 Specific Plan EIR identifies Impacts BIO-1 associated with impacts to riparian habitat. This impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measures BIO-1.1 through BIO-1.2B, which require wetland and habitat avoidance to the maximum extent feasible and either on-site wetland creation (at a ratio of 1:1) and enhancement (at a ratio of 0.5:1) or off-site mitigation banking at a ratio of 1.5:1. Additionally, Impact BIO-2, related to substantial adverse impacts on wetlands and associated species due to altered

---

[3] The proposed General Plan likewise incorrectly states that the EIR for the Areas 3 and 4 Specific Plan is valid and assumes, based thereon, that the impacts of the Southwest Newark Project will be mitigated. For instance, it asserts that "future noise environment in Newark will be impacted not only by changes in traffic volumes, but also by changes in land use.... The <u>environmental impact reports (EIRs) prepared for approved development in these areas included measures to mitigate potential noise impacts</u>. Likewise, future EIRs will include such measures, as appropriate." (Proposed General Plan, EH-31 (emphasis added).) **LGW-11**

> hydrology, and Impact BIO-3, regarding significant impacts to marsh habitat and associated special-status species due to an increase in freshwater flows, would be mitigated to less-than-significant levels with the implementation of mitigation measures MM BIO-2.1 through 2.5 from the Areas 3 and 4 Specific Plan EIR. Further, Impact BIO-10, regarding indirect impacts to waterbirds associated with the loss of wetlands, would be mitigated to less-than-significant levels with the implementation of Mitigation Measure BIO-10.1, requiring a mitigation plan for creation or enhancement of replacement wetlands.
>
> Previous environmental review has determined that impacts to wetlands, riparian habitat, and sensitive natural communities in the ...Southwest Newark Residential and Recreational Focus Area could be mitigated to less-than-significant levels with the implementation of the mitigation measures described above. The proposed Plan would incorporate the development envisioned in the ...Areas 3 and 4 Specific Plan ... and would not include any additional development in the ... Southwest Newark Residential and Recreational Focus Area over and above that which has already been analyzed in previous EIRs. As such, the implementation of the proposed Plan would not result in significant, new environmental impacts to wetlands, riparian habitat, and sensitive natural communities in the ... Southwest Newark Residential and Recreational Focus Area.

(DEIR, pp. 4.3-36 to -37.)

Regarding impacts to wetlands/ marsh/aquatic habitat, the DEIR states:

> The Areas 3 and 4 Specific Plan EIR concluded that Specific Plan implementation would result in the loss of up to 85.6 acres of wetland/marsh/aquatic habitat in the Southwest Newark Residential and Recreational Focus Area. Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use. It was determined that implementation of the following measures would reduce associated impacts to a less-thansignificant level: Mitigation Measure Bio-1.1 requiring grading plans designed to avoid permanent impacts to wetland and aquatic habitat; Mitigation Measure Bio-1.2A, requiring a detailed mitigation plan shall be developed by a qualified biologist and incorporating a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off-site; and Mitigation Measure Bio-1.2B, requiring, as an alternative to Measure Bio-1.2A, the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank or other private lands within 10 air miles of the affected area and along the eastern shore of south San Francisco Bay within the same geographic watershed.
>
> Previous environmental review has determined that impacts to waters of the US in the Dumbarton TOD Focus Area and in the Southwest Newark Residential and Recreational Focus Area could be mitigated to less-thansignificant levels with the implementation of the mitigation measures described above. The proposed Plan

LGW-11 cont.

> would incorporate the development envisioned in the Dumbarton TOD Specific Plan, the Areas 3 and 4 Specific Plan, and the 2009-2014 Housing Element and would not include any additional development in the Dumbarton TOD Focus Area or the Southwest Newark Residential and Recreational Focus Area over and above that which has already been analyzed in previous EIRs. As such, the implementation of the proposed Plan would not result in significant, new environmental impacts to waters of the US in the Dumbarton TOD Focus Area or the Southwest Newark Residential and Recreational Focus Area.

(DEIR, p. 4.3-40.)

Regarding cumulative losses of seasonal wetland habitat, the DEIR states:

> The Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area are the largest remaining tracts of relatively undeveloped land in the Plan Area. In the absence of project-specific mitigation measures identified in previous environmental review conducted by the City of Newark, potentially significant impacts related to special-status plants and animal species, wetlands, riparian habitat, and sensitive natural communities would all contribute to cumulatively significant impacts in the South Bay. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. **However, as determined in previous environmental review conducted by the City, the mitigation measures prescribed for all of these impacts would adequately mitigate the project's contribution to these cumulative impacts. Buildout of the proposed Plan would not include any additional development in these areas over and above that which has already been analyzed in previous EIRs**." (DEIR, p. 4.3-48, emphasis added.)

Regarding growth inducing impacts, the DEIR states "the extension of existing utility lines and the construction of new roadways would be required, **and associated impacts have been analyzed and mitigated in previous EIRs prepared by the City of Newark for the respective specific plans**." (DEIR, p. 7-6, emphasis added.)

LGW-11 cont.

This approach of relying on a previous EIR which was not properly certified, as well as a Specific Plan whose adoption has been set aside, is clearly illegal. First, the Alameda Superior Court found that the Areas 3 and 4 Specific Plan EIR is materially deficient and that the "court cannot meaningfully evaluate whether the City's findings and conclusions in the EIR are supported by substantial evidence." (November 2012 Order at p. 19.) Second, to the extent that this DEIR is attempting to "tier" off the analysis of impacts and mitigations in the Areas 3 and 4 Specific Plan EIR, such tiering violates CEQA as the prior EIR's certification is void. (Pub. Res. Code § 21094, subd. (a)(1).) CEQA authorizes tiering only where the previous EIR was properly certified. (*Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1384-1387.) The instant General Plan DEIR should not be certified based on this CEQA violation alone. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1229.) Third, this DEIR does not state where a copy of the prior EIR may be examined (Pub. Res. Code § 21094, subd. (f)), and the General Plan Tune Up initial study - if one was even prepared - did not analyze

LGW-12

LGW-13

LGW-14

whether the revise General Plan may cause significant impacts not examined in the prior EIR. (Pub. Res. Code § 21094, subd. (c).)[4] For these reasons, the DEIR improperly relies on the analysis, conclusions, and mitigation measures of the invalid Areas 3 and 4 Specific Plan EIR. **LGW-14 cont.**

In addition, by relying on the Areas 3 and 4 Specific Plan EIR, this DEIR necessarily incorporates many of the CEQA errors in that document. Citizens challenged the Areas 3 and 4 Specific Plan EIR for 1) use of improper "baseline" for CEQA analysis and mitigation, particularly regarding traffic, 2) failure to adequately disclose or analyze cumulative impacts, 3) improper deferral of mitigations of impacts to trees and also habitats and special status species, 4) failure to use or apply the Areas 3 and 4 Specific Plan EIR's thresholds of significance to cumulative land use impacts, cumulative biological resource impacts, and cumulative hydrology, water quality and water supply impact, and 5) the Areas 3 and 4 Specific Plan EIR is inadequate to serve as project level CEQA review. Citizens renews each of these objections in regards to the adequacy of the instant DEIR, particularly given that the DEIR's project description states that "the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR."[5] (GP DEIR, p. 3-11.) **LGW-15**

Citizens is submitting as part of these DEIR comments a CD that includes its pleadings and briefings challenging the Areas 3 and 4 Specific Plan EIR, as well as the administrative record in that prior litigation - which includes Citizens and others administrative comments on the Areas 3 and 4 Specific Plan EIR. Please include each of the documents on the attached CD as part of the administrative record for this General Plan Tune Up Program EIR. **LGW-16**

III. The DEIR Improperly Fails to Conduct Adequate "Project Level" Review Where the General Plan Includes the Specific Plan Details.

The General Plan EIR erroneously states that " regardless of whether the Areas 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan." (GP DEIR, 3-11--12.) **LGW-17**

This statement is wrong for the reasons stated above, and further because the proposed General Plan does more than change the land use designation for a portion of [former] Area 3. As noted above, the proposed General Plan obligates the City to implement the Areas 3 and 4 Specific

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[4] It would also be improper for the City of Newark to incorporate by reference any Areas 3 and 4 Specific Plan statement of overriding considerations because the Areas 3 and 4 Specific Plan approvals and EIR are void (Pub. Res. Code § 21094, subd. (a)(2)) and because the prior EIR was certified more than three years ago. (Pub. Res. Code §§ 21094,subd. (a)(2)(D).)

[5] *See also* GP DEIR, p. 4.13-23, fn. 3 which states: "The sources for threshold of acceptable LOS in Newark are the ... Southwest Newark Residential and Recreational Focus Area Specific Plan (July 2011)." While CCCR is unaware of what document constitutes the "Southwest Newark Residential and Recreational Focus Area Specific Plan (July 2011)," to the extent the DEIR is referencing the Areas 3 and 4 Specific Plan EIR, CCCR objects for the reasons stated herein and in previous comments (attached on CD) about the Areas 3 and 4 Specific Plan EIR adequacy.

Plan. LGW-17 cont.

Because the proposed General Plan incorporates and requires implementation of this Specific Plan, it is not a standard General Plan -- it includes the same level of detail (if not more, in some instances) as the Areas 3 and 4 Specific Plan as proposed in 2010. Therefore, under CEQA this DEIR must subject this portion of the proposed General Plan to project-level environmental review. Herein, we first note many of the specifics incorporated into the proposed General Plan, and thereafter the CEQA provisions requiring greater environmental review. LGW-18

Numerous General Plan "Policies" require implementation consistent with the Areas 3 and 4 Specific Plan[6]:

Policy LU-7.1 Southwest Newark Residential and Recreational Project (Area 3 and 4 Development). Facilitate the development of the 637 acres formerly known as "The Area 3 and 4 project" consistent with previously approved plans for this area. The residential holding capacity of this area shall be 1,260 units.

Policy LU-7.6 The preferred open space use is an 18-hole golf course with clubhouse.

Policy LU-7.9 Address inclusionary housing requirements consistent with the Area 3 and 4 Development Agreement.

Several proposed General Plan "actions" also direct the City to implement the Southwest Newark Project as proposed in the Areas 3 and 4 Specific Plan.[7] For example, Action LU-7.D (Design Standards) specifies implementation of "the standards in previously approved plans for this area addressing lot size, height, setback, lot coverage, open space, patios, and balconies, and parking." Action LU-7.E (Grading and Fill) "require[s] grading and fill plans which ensure long-term mitigation of flood hazards, consistent with previously approved plans for the Southwest Newark Residential and Recreational Project area. Building pad and curb elevations shall conform to previously adopted standards." So also, Action LU-7 (A Street and Path Network) and Action LU-7.B (Railroad Overcrossing) requires actions consistent with previously approved plans. LGW-19

The Land Use Element of the proposed General Plan provides the following specificity regarding the Southwest Newark Residential and Recreational Project

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[6] "A policy expresses the City's commitment and intent on a topic area related to the goal." (Proposed General Plan, I-4.) "A goal is a general, overall and ultimate purpose, aim or end toward which the City will direct its efforts." (*Ibid*, underscore added.) The word "will" indicates that this provision is mandatory. (Proposed General Plan, I-5 ["'Must', 'shall,' or 'will' identify provisions which are mandatory. Verbs such as "require" reflect similar obligatory directives."].) This provides further evidence that the proposed General Plan will implement the specifics of the Areas 3 and 4 Specific Plan.

[7] "An action is a specific program to be carried out in response to an adopted policy... ." (Proposed General Plan, I-4.)

This is the largest area proposed for future development in Newark, comprising 636 acres in the area bordered by Mowry Avenue on the west, Stevenson Boulevard on the east, Cherry Street on the north, and Mowry Slough on the south. The Union Pacific Railroad bisects the area.

Previous General Plans for Newark referred to the land north of the railroad as "Area 3" and the land south of the Railroad as "Area 4." Area 3 was originally 298 acres, but 221 acres of this total has been committed to other land uses, including the Newark campus of Ohlone College, Sportsfield Park, and the Stevenson Point Technology Park. The remaining 77 acres, which is located along the south side of Cherry Street west of Stevenson Boulevard, was vacant as of 2013.

A Specific Plan for the 636-acre area was adopted in 2010. The Plan calls for the development of up to 1,260 housing units, a major recreational facility such as an 18-hole golf course, and the dedication of conservation open space on some of the low-lying areas south of the railroad tracks. An area facing Cherry Street just east of Ohlone College has been set aside for a new 600-student elementary school and a new neighborhood park. The rest of former Area "3" has been designated for Low-Medium Density Residential uses on the General Plan Map. The Specific Plan envisions single-family lots ranging from 3,150 square feet to 4,800 square feet, although the flexibility exists to transfer the allowable density within this area to facilitate multi-family housing construction on a portion of the site.

Development of single-family lots is planned south of the railroad tracks. Some of the area designated as "Low Density Residential" on the Map will be conserved as wetland habitat and some will be improved with recreational facilities. The Specific Plan divides the area south of the tracks into four lettered sub-areas (B, C, D, and E). Of these four areas, Area B (125 acres) is planned for housing, Area D (100 acres) may be used for a golf course or similar recreational amenity, Area E (244 acres) is to be conserved as open space, and Area C (90 acres) may be used for either recreation or housing.

LGW-19 cont.

In the event a golf course is developed, it is envisioned as an 18-hole public course. A golf course could provide an amenity that is lacking in Newark today and would round out the range of recreational opportunities available to those who live and work in the city. It could also be an economic development asset that can attract businesses, executive housing, and higher quality retail uses nearby. Ancillary facilities such as a clubhouse, banquet facility, driving range, and maintenance buildings, could potentially complement such a facility. Construction of a golf course is contingent on its fiscal feasibility, market demand, and other factors. In the event a golf course is not developed, another citywide recreational amenity should be provided here.

The Specific Plan includes residential street and intersection standards, along with plans for a railroad overpass at Stevenson Boulevard. The Stevenson Avenue Bridge should include a 12-foot travel lane in each direction, adjacent to 5-foot bike lanes. One side of the bridge will have a sidewalk for pedestrians. A pedestrian and bicycle bridge across the Alameda County Flood Control Channel is also planned, connecting the site to Ohlone College. A multi-use trail is also proposed across the southern part of the site, providing a component of the Bay Trail.

A grading and fill plan for this area has been prepared. ... .Building pads of occupied structures will be at least 11.25 feet above mean sea level (msl), with the finished floor at least six inches above the building pad. The top of curb grades for residential streets will be

no less than 10 feet above msl. Detailed grading and stockpile management plans will be required before construction is approved and stormwater management plans will be required to contain runoff. A new network of water, sewer, and storm drain lines will be constructed to serve the development, supplemented by related infrastructure such as pump stations.

(Proposed General Plan, pp. LU-23 to LU-26.)

Similarly, the Parks, Recreation, and Open Space section states:

The Southwest Newark Residential and Recreational Development includes plans for a golf course or major public recreational facility. A golf course would likely be 120 acres or larger and could potentially double the City's total park acreage. The Specific Plan for Southwest Newark (formerly Areas 3 and 4) also includes an approximately 5-acre neighborhood park, to be co-located with an elementary school on the south side of Cherry Street east of Ohlone College. The park will not only serve new residents, it will remedy a park access deficiency in the residential area on the north side of Cherry Street in this area.

LGW-19 cont.

(Proposed General Plan, p. PR-11.)

Likewise, the Draft EIR provides specificity regarding the Southwest Newark Residential and Recreational Focus Project. This Draft EIR is unequivocal that "The proposed Plan would incorporate the development envisioned in the ...Areas 3 and 4 Specific Plan" (DEIR, pp. 4.3-36 to -37.). The EIR's project description (at DEIR, p. 3-11) lays out in specific detail that:

The Area 3 and 4 Specific Plan amended 1992 General Plan Land Use designations to allow for development of up to 1,260 single- and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas. The Specific Plan envisions the preservation of approximately 200 acres of open space in Area 4 and the, retention of existing light industrial and institutional uses in most of Area 3, Key components of the Area 3 and 4 Specific Plan, shown in Figure 3-4, include:

- A new 78-acre residential neighborhood in Subarea A composed of single-family detached homes and multifamily residential units, including up to 189 multi-family units at below market rate. (Note: Below-market-rate (BMR) housing units are priced to be affordable to households with moderate income or below.)
- Single-family detached homes in Subarea B and C;
- A new elementary school in Subarea A, capable of accommodating 600 students;
- An 18-hole golf course in either Subarea C or D, configured to optimize habitat areas and limit disturbance to wildlife and wetlands to the extent feasible;
- Improvements to the circulation network, including:
- A public street extension of Stevenson Boulevard with a structural overpass providing vehicular and pedestrian access into Area 4 over the Union Pacific railroad tracks. Modifications to two Pacific Gas & Electric (PG&E) transmission towers to accommodate the overpass.
- A new driveway providing access from Cherry Street into Subarea A. A new traffic signal and pedestrian crosswalk are planned at this intersection;

LGW-20

- A new driveway providing access to Subarea A from Stevenson Boulevard, midway between Cherry Street and the existing industrial uses;
- A paved trail and pedestrian bridge over the flood control channel in Area 3, providing connection between the new residential neighborhood, Ohlone College, and the George M. Silliman Recreation Complex;
- A multi-use trail at Mowry Avenue in Area 4, providing east-west access for emergency vehicles, pedestrians, and cyclists; and
- Utilities infrastructure, including a new public water distribution system within the residential streets of Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge wastewater generated by new uses in Area 4.

LGW-20 cont.

Further at DEIR, pp. 3-20--3-21, the project description states:

> The Southwest Newark Residential and Recreational Focus Area is made up of two non-contiguous sectors in the southwest of the city, as shown in Figure 3-7. Together, these two sectors cover an area of 637 acres. The boundaries of the larger of the two sectors correspond to the boundaries of Area 4, as delineated in the Areas 3 and 4 Specific Plan adopted by the City in 2010 and described earlier in this chapter. The boundaries of the smaller sector correspond to the vacant, undeveloped portion of Area 3, bounded by Ohlone College to the north, Cherry Street to the west, Stevenson Boulevard to the south, and the Stevenson Point Technology Park to the west. The vision for the Southwest Newark Residential and Recreational Focus Area contained in the proposed Plan is consistent with the vision outlined in the Areas 3 and 4 Specific Plan. The proposed Plan does not include any additional land use changes over and above those already incorporated into the existing General Plan at the time the Areas 3 and 4 Specific Plan was adopted by Newark City Council in 2010. At the time the Specific Plan was adopted the land use designation in the 78-acre portion of the focus area formerly known as Area 3 was changed from Special Industrial to Medium Density Residential. The land use designation for the larger portion formerly known as Area 4 was already Low Density Residential in the 1992 General Plan and no changes were made at the time the Specific Plan was adopted.

LGW-21

> As described in the proposed Plan, the Southwest Newark Residential and Recreational Focus Area is envisioned as one of Silicon Valley's premier new neighborhoods, with executive housing and high quality recreational opportunities. Proposed Plan land use designations applicable to this Focus Area would allow for the development of 1,260 single and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas as envisioned in the Areas 3 and 4 Specific Plan. Additionally, the proposed Plan contains policies that support development envisioned in the Areas 3 and 4 Specific Plan, including the 1,260 housing units, the golf course, an interior street and path network, and an overpass crossing the Union Pacific Railroad tracks at Stevenson Boulevard. The proposed Plan also includes policies intended to protect and enhance sensitive natural resources in the Southwest Newark Residential and Recreational focus area, including wetland and aquatic habitat, natural hydrological features, and other biological resources.

LGW-22

CEQA requires that given the specifics involved in the proposed General Plan, that this

LGW-23

LGW-23 cont.

DEIR correspondingly provide detailed analysis of potential impacts. "The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." (CEQA Guidelines 15146.) In addition, an EIR on a project such as the adoption or amendment of a general plan "should focus on the secondary effects that can be expected to follow from the adoption or amendment." (CEQA Guidelines 15146, subd. (b).)

> The sufficiency of the information contained in an EIR is reviewed in light of what is reasonably feasible. (Guidelines, § 15151; Kings County Farm Bureau v. City of Hanford, supra, 221 Cal.App.3d at p. 733.) At minimum, an EIR "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (Laurel Heights, supra, 47 Cal.3d at p. 405.)

LGW-24

(*Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1992) 5 Cal. App. 4th 351, 375.) Here, given the great specificity known about the "Southwest Newark Residential and Recreational Project," this DEIR is required, but failed to, more detailed analysis. Simply calling it a program EIR will not suffice under CEQA given that is reasonably feasible to provide greater specificity.

IV. The DEIR's Cumulative Impacts Analysis Is Deeply Flawed.

A. It Is Improper for the DEIR's Cumulative Impacts Analysis to Rely on the Areas 3 and 4 Specific Plan and Areas 3 and 4 Specific Plan EIR

LGW-25

CEQA provides that "[p]reviously approved land use documents, including ... specific plans ..., may be used in cumulative impact analysis." (Pub. Res. Code § 21100, subd. (e) (emphasis added).) The CEQA Guidelines further provide that a "pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs." (CEQA Guideline 15130, subd. (d) (emphasis added).) The Areas 3 and 4 Specific Plan has not been properly approved and the Areas 3 and 4 Specific Plan EIR has not been properly certified. As argued above, to the extent that this DEIR is attempting to "tier" off the analysis of impacts and mitigations in the Areas 3 and 4 Specific Plan EIR, such tiering violates CEQA as the prior EIR was not properly certified. (Pub. Res. Code § 21094, subd. (a)(1).)

LGW-26

It is also inappropriate to rely on the mitigation analysis in the Areas 3 and 4 Specific Plan EIR and any measures "adopted" as part of the Areas 3 and 4 Specific Plan. Areas 3 and 4 Specific Plan has not been properly approved and the Areas 3 and 4 Specific Plan EIR has not been properly certified. These approvals have been set aside by court order since November 2012, months before the Notice of Preparation for the General Plan Update Draft EIR was issued on January 18, 2013. Further, Citizens challenged the Areas 3 and 4 Specific Plan EIR for, *inter alia*, failure to adequately disclose or analyze cumulative impacts, and improper deferral of mitigations of impacts. Citizens renews each these objections in regards to the adequacy of the instant DEIR, particularly given that the DEIR's project description states that "the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR." (DEIR, p. 3-11.)

B. It Is Improper to Conclude That The General Plan Update's Cumulative

LGW-27

Impacts Will Be Less Than Significant Based Simply On Mitigation Measures for Specific Plans or Other Projects.

LGW-27 cont.

The DEIR violates CEQA by concluding that the General Plan's cumulative impacts will be less than significant simply because the impacts of an individual plan or project will be mitigated. Under CEQA, significant cumulative impacts may occur even if individual projects mitigate the impacts of that project to a level of insignificance.

The DEIR assumes, for many resource areas, that cumulative impacts will be less than significant simply because individual projects will be required to mitigate the impacts of that project to a level of insignificance. For instance, the DEIR concludes that the General Plan's cumulative biological impacts will be less than significant before mitigation as follows:

> This section analyzes potential impacts to biological resources that could result from a combination of the proposed Plan and other past, present, and reasonably foreseeable development in the South Bay. Such development includes infill development in the adjacent City of Fremont as well as the South Bay Salt Ponds restoration project, which will provide habitat for a number of tidal habitat-associated species, including the salt marsh harvest mouse, salt marsh wandering shrew, and will include enhancement of managed ponds specifically for use by waterbirds.
>
> The Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area are the largest remaining tracts of relatively undeveloped land in the Plan Area. In the absence of project-specific mitigation measures identified in previous environmental review conducted by the City of Newark, potentially significant impacts related to special-status plants and animal species, wetlands, riparian habitat, and sensitive natural communities would all contribute to cumulatively significant impacts in the South Bay. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. However, as determined in previous environmental review conducted by the City, the mitigation measures prescribed for all of these impacts would adequately mitigate the project's contribution to these cumulative impacts. Buildout of the proposed Plan would not include any additional development in these areas over and above that which has already been analyzed in previous EIRs. Proposed Plan policies and actions detailed above provide a framework that promotes context-sensitive development and seeks to minimize impacts on sensitive natural resources. Additionally, future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas. Therefore, with adherence to applicable federal, State, and local regulations and implementation of mitigation measures identified in previous environmental review and adopted by the City of Newark, the proposed Plan would result in less-than-significant cumulative impacts to biological resources in the South Bay.

LGW-28

(DEIR, p. 4.3-48.)

This repeats the flaws in the Areas 3 and 4 Specific Plan EIR (which Citizens renews its prior objections to) and ignores the very purpose of cumulative impacts analyses. The biological impact mitigation measures for the Specific Plan will only "minimize" impacts, not eliminate them, and because these impacts are minimized, but not avoided, an EIR can not avoid considering such impacts as part of its cumulative impacts analysis.[8]

The courts have long recognized that even individually "minimized" impacts can still be cumulatively significant when considered in connection with past, present and future projects. As explained in *EPIC v. Johnson*:

> CDF then stated that timber operations in general had to substantially lessen significant adverse impacts on the environment, and closed with this comment: "To address the cumulative effect issue the Department has taken the tact [sic] that if the adverse effects are minimized to the maximum on each individual operation, then the total effect in the surrounding area will also be minimized to an acceptable level." This statement is at odds with the concept of cumulative effect, which assesses cumulative damage as a whole greater than the sum of its parts.

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[8] For example, the Areas 3 and 4 Specific Plan EIR states that "Impact BIO-2" is significant because "Development within Area 4 would result in substantial adverse effects on federally protected wetlands (seasonal wetlands) and associated special status species due to altering the hydrology on the project site." (AR 466.) The Areas 3 and 4 Specific Plan EIR proposes Mitigation Measures BIO-2.1 through 2.5, which it finds will reduce this significant incremental impacts to less-than-significant. (AR 466-468.) One of these, Mitigation Measures BIO-2.4, provides that "[t]he following measures shall be implemented to <u>minimize</u> any perennial ponding within the existing seasonal wetlands.... Nuisance runoff from the proposed residential and golf course uses <u>shall be minimized</u> and controlled to <u>reduce</u> their input into the remaining natural habitat during the dry season." (AR 467 (emphasis added).) Similarly, the Areas 3 and 4 Specific Plan EIR states that "Impact BIO-8" is significant because "Project development would result in significant impacts due to the loss of federally and state listed endangered salt marsh harvest mouse and California species of special concern salt marsh wandering shrew individuals and habitat." (AR 480.) The Areas 3 and 4 Specific Plan EIR proposes Mitigation Measures BIO-8.1 through 8.4, which it finds will reduce this significant incremental impacts to less-than-significant. (AR 481-482.) Mitigation Measures BIO-8.1 provides: "Temporary disturbance to and permanent loss of salt marsh harvest mouse and salt marsh wandering shrew habitat <u>shall be avoided to the maximum extent practicable</u>." (AR 481 (emphasis added).) Mitigation Measures BIO-8.3 provides: "Mitigation Measure MM BIO-8.2 will <u>minimize</u> the probability of salt marsh harvest mice and salt marsh wandering shrews entering the site but in addition, any individuals already in the impact areas shall be salvaged and translocated to the exterior of the construction exclusion area. Although detecting every individual on a site <u>is not feasible</u> due to these species' secretive habits ...." (AR 481 (emphasis added).) In other words, the measures in question acknowledge that these impacts will not or cannot be <u>entirely</u> avoided.

LGW-28 cont.

(*Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 624-625 (emphasis added).)

Put simply: individual, incremental impacts that are "minimized" are still not reduced to zero; and, therefore, CEQA's independent, cumulative analysis procedures require that such minimized impacts must be considered in the context of similarly "minimized" impacts of "other closely related past, present, and reasonably foreseeable probable future projects" in order to assess whether the aggregated cumulative "change in the environment" may be significant. (CEQA Guideline 15355(b).) Again, the case law is clear: for purposes of determining the significance of a project's cumulative impacts, it is not enough to find that the project's individual, incremental contributions are "minimized" (*EPIC v. Johnson, supra,* 170 Cal.App.3d at pp. 624-625), less-than-significant (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App. 3d 692, 729) or de minimis (i.e., negligible) (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 117-119.).

> Proper cumulative impact analysis is vital "because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.'" (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114, 126 Cal.Rptr.2d 441, fns. omitted; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025, 68 Cal.Rptr.2d 367.) "[C]onsideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." (*Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306, 223 Cal.Rptr. 18.)

(*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214-1215.)

LGW-28 cont.

C. The DEIR Fails to Properly Consider The Cumulative Biological Impacts of Development.

The DEIR states cumulative biological impacts could result from a "combination of the proposed Plan and other past, present, and reasonably foreseeable development in the South Bay." (2013 GP DEIR, 4.3-48.) Yet, the DEIR's cumulative impacts section only considers three "sources" of cumulative biological impacts: (1) the General Plan, (2) the Areas 3 and 4 Specific Plan, and (3) the Dumbarton TOD Specific Plan, and based on these three "projects" concludes that any cumulative biological impacts will be less than significant.

LGW-29

The DEIR improperly omits any consideration of any South Bay development beyond these three sources, and specifically omits consideration of the well documented losses of seasonal wetlands and uplands in the South Bay.[9] This omission is particularly egregious given that the DEIR itself acknowledges that "the cumulative losses of seasonal wetland habitat around the South Bay are significant." Despite this admission, the DEIR includes no discussion of the extent to which habitat will be lost due to other development, and no discussion of whether the cumulative impact will remain significant even if Newark's plans are mitigated. **LGW-29 cont.**

D. The Draft EIR Improperly Relies On Assumed Future Mitigation to Conclude that Cumulative Impacts Are Less Than Significant.

Another premise supporting the DEIR's conclusion that cumulative biological impacts will be less than significant is that "future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas." (DEIR, p. 4.3-48.) Courts have found similar analysis inadequate. For example, a quantitative cumulative impact analysis for groundwater cannot be avoided by simply assuming that impacts of future projects would be mitigated through water conservation efforts. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App. 3d 692, 729.) **LGW-30**

For these reasons, the DEIR's cumulative impacts analysis is flawed.

V. The DEIR Improperly Analyzes Alternatives.

The DEIR's analysis of alternatives improperly used a baseline where the Areas 3 and 4 Specific Plan is considered part of the "existing built environment." The Areas 3 and 4 Specific Plan is considered one of the "existing plans and policies" under the No Project Alternative (DEIR, p. 6-1) and the Areas 3 and 4 Specific Plan "would continue to be implemented." (DEIR, p. 6-3.) The DEIR's improper approach skews its analysis of other alternatives, included the preferred alternative, by comparing the proposed Project to a baseline where the Areas 3 and 4 Specific Plan already exist. **LGW-31**

While analysis of the no project alternative must include a discussion of "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services" (CEQA Guideline 15126.6, subd. (e)(2)), here the set aside Areas 3 and 4 Specific Plan is not a current plan nor can it reasonably be expected to occur in the foreseeable future if the General Plan were not approved.

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[9] The EPA/Regional Water Board's "Baylands Ecosystem Habitat Goals Report" (1999) by Monroe et al. states that "since the mid-19th century, 80 percent of original tidal marsh as well as large amounts of mudflats, seasonal wetlands, and upland habitats in the San Francisco Bay have been lost due to human development," that historically, moist grasslands existed in large expanses adjacent to much of the baylands in South Bay, and that in the South Bay "development has destroyed most of the historical moist grasslands" with notable exceptions including the "upper reach of Mowry Slough in Newark."

VI. The EIR Will Need to Be Recirculated for Additional Responsible Agency and Public Comment

Because significant new information will need to be is added to the EIR before certification, the City of Newark will be required to recirculate the DEIR. Such new information will include, *inter alia*, changes in the environmental setting, and additional specific information about the impacts and mitigations related to the Areas 3 and 4 specific plan. (CEQA Guideline 15088.5.) Recirculation will also be required because this draft EIR is so fundamentally and basically inadequate that meaningful public review and comment is precluded. (*Mountain Lion Coalition v. Fish & Game Com*.(1989) 214 Cal.App.3d 1043). LGW-32

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

September 26, 2013

SUBJECT: REVIEW OF ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF NEWARK GENERAL PLAN TUNE UP DRAFT PROGRAM EIR

Dear Mr. Grindall;

Grassetti Environmental Consulting (GECo) has been retained by Citizens' Committee to Complete the Refuge (Citizens) to review the Draft Program Environmental Impact Report (EIR) on the City of Newark's General Plan Tune Up for compliance with the California Environmental Quality Act (CEQA) and its implementing Guidelines. This review was conducted by Richard Grassetti, the firm's principal, and is based on my 30+ years of experience in CEQA document preparation, review, and training. GECO-1

My review indicates that the CEQA documentation for the project is inadequate and incomplete, and that the EIR fails to meet CEQA Guidelines. The bases for these conclusions are detailed below.

Vague and Unclear Project Description - What's a Tune Up?

State planning law includes provisions for adopting General Plans, Specific Plans, Master Plans, Subdivision, Rezoning, and other planning and entitlement approvals. Nowhere among those various options is a "tune up". Therefore, neither the public nor the City decision makers are readily informed by the DEIR as to what the actual project (discretionary action and underlying activities) is. Reading the Executive Summary doesn't help – Section 1.3 refers to the Tune Up as an "updated policy framework", which is also not a discretionary act under CEQA. Similarly, on p. 2-1, Section 2.1, describing the Proposed Action, fails to inform the reader as to the City's proposed action. It is not until p. 3-23, that the EIR states that this is, in fact, a new General Plan, and then only peripherally, "As required by state law, the Public review Draft General Plan will be circulated for review…" This is the first mention of the actual discretionary action proposed by the City, and the first mention that the project is, in fact, an updated General Plan. Only on p. 3-28, a full 58 pages into the document, does the EIR finally mention (in a table), that the project for which the EIR is being prepared is "the proposed Plan", but even there, the DEIR does not tell the public that this is a new, updated, General Plan. GECO-2

Backwards Planning has Resulted in Backwards CEQA Tiering

Land use planning in California is based on the concept of a General Plan being the blueprint for development within a city or county. Specific plans are adopted after adoption of a General Plan, with which the specific plans must be consistent. Newark has adopted specific plans that were not generally consistent with its General Plan, and is now attempting to rectify the inconsistencies by "Tuning Up" its General Plan to be consistent with its specific plans. In addition to not complying with California's planning hierarchy, it also results in inconsistencies between this DEIR and the EIRs that were prepared for the Specific Plans and Area Plans. Further, this EIR fails to allow those EIRs to tier off of the General Plan EIR, but instead, appears to tier the general Plan EIR off of the Specific Plan/Area Plan EIRs. This DEIR acknowledges the correct environmental review sequence on the bottom of page 1-3, but fails to follow that sequence. As detailed in the tables below, this has resulted in conflicting and confusing EIR conclusions of significance, where the General Plan EIR concludes that impacts are less-than-significant impacts while the underlying specific plans/area plans have been determined to have potentially significant impacts. Additionally, this General Plan EIR frequently defers impact analyses to future EIRs that, in reality, have already been done.

GECO-3

GECO-4

GECO-5

This problem is compounded by the confusion, confirmed by a November, 2012 trial court order holding that the Area 3 and 4 EIR does not specify whether it provides program or project-level analysis of the Area 3 and 4 plan. Program EIRs based on other Program EIRs that defer analysis to never-to-be-required project EIRs does not constitute CEQA compliance.

GECO-6

Reliance on Past Environmental Impact Reports

The DEIR relies in part on the Areas 3 and 4 EIR and a Housing Element EIR. The Areas 3 and 4 EIR has been suspended by the Alameda Superior Court as it was materially deficient. One of the primary issues in the case was whether the Area 3 and 4 EIR provided an adequate level of analysis to serve as a project-level EIR. For both these reasons, it is inappropriate for this DEIR to rely on the findings of that prior document. Further, the DEIR assumes that the Areas 3 and 4 General Plan Amendments have been approved – this is wrong, as the approvals have been suspended by the court.

GECO-7

The Housing Element EIR relied on the environmental setting, impact analysis, and mitigation measures contained in two previous EIRs adopted by the City of Newark. Those EIRs covered the City's General Plan and a previous proposal for development of Area 2, and were prepared in 1992 and 1999, respectively. Given the age of those documents (17 and 9 years), the amount of new development in Newark and adjacent communities since their preparation, the abundance of more recent data on biological resources, traffic, and air quality, and regulatory changes since 1992 and 1999, their analyses of traffic, air quality, noise, hydrology, land use, and biological resources settings, impacts, and mitigation measures are obsolete and cannot be assumed to be adequate for the currently proposed project. Basing this EIR on those EIRs in any substantive

GECO-8

way results in a shell game, where impacts of the "Tune Up" are never actually identified and compared to existing setting conditions. **GECO-8 cont.**

CEQA Baseline and Sea Level Rise – Ignoring the Elephant in the Room

This DEIR's environmental setting and impact analyses are entirely silent on the greatest environmental issue to affect some of the opportunity areas, namely sea-level rise[1]. The San Francisco Bay Conservation and Development Commission (BCDC), which has jurisdiction over shoreline areas of the City, recommends the following consideration of sea level rise (BCDC, San Francisco Bay Plan, http://www.bcdc.ca.gov/laws_plans/plans/sfbay_plan#38):

Climate Change, findings:

> c. Global surface temperature increases are accelerating the rate of sea level rise worldwide through thermal expansion of ocean waters and melting of land-based ice (e.g., ice sheets and glaciers). Bay water level is likely to rise by a corresponding amount. In the last century, sea level in the Bay rose nearly eight inches. Current science-based projections of global sea level rise over the next century vary widely. Using the IPCC greenhouse gas emission scenarios, in 2010 the California Climate Action Team (CAT) developed sea level rise projections (relative to sea level in 2000) for the state that range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. The CAT has recognized that it may not be appropriate to set definitive sea level rise projections, and, based on a variety of factors, state agencies may use different sea level rise projections. Although the CAT values are generally recognized as the best science-based sea level rise projections for California, scientific uncertainty remains regarding the pace and amount of sea level rise. Moreover, melting of the Greenland and Antarctic ice sheet may not be reflected well in current sea level rise projections. As additional data are collected and analyzed, sea level rise projections will likely change over time. The National Academy of Sciences is in the process of developing a Sea Level Rise Assessment Report that will address the potential impacts of sea level rise on coastal areas throughout the United States, including California and the Bay Area. **GECO-9**

BCDC also suggests that planning efforts address sea-level rise as follows:

> e. Shoreline areas currently vulnerable to a 100-year flood event may be subjected to inundation by high tides at mid-century. Much of the developed shoreline may require new or upgraded shoreline protection to reduce damage from flooding. Shoreline areas that have subsided are especially vulnerable to sea level rise and may require more extensive shoreline protection. The Commission, along with other agencies such as the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency, the United States Army Corps of Engineers, cities, counties, and flood control districts, is responsible for protecting the public and the Bay ecosystem from flood hazards. This can be best achieved by using a range of scientifically based scenarios, including projections, which correspond to higher rates of sea level rise. In planning and designing projects for the Bay shoreline, it is prudent to rely on the most current science-based and regionally specific projections of future sea level rise, develop strategies and policies that can accommodate sea level rise over a specific planning horizon **GECO-10**

[1] The DEIR identifies City policies regarding sea-level rise, but includes no information on the physical environmental setting, impacts, or mitigation measures, which are the focus of CEQA.

(i.e., adaptive management strategies), and thoroughly analyze new development to determine whether it can be adapted to sea level rise.

o. Approaches for ensuring public safety in developed vulnerable shoreline areas through adaptive management strategies include but are not limited to: (1) protecting existing and planned appropriate infill development; (2) accommodating flooding by building or renovating structures or infrastructure systems that are resilient or adaptable over time; (3) discouraging permanent new development when adaptive management strategies cannot protect public safety; (4) allowing only new uses that can be removed or phased out if adaptive management strategies are not available as inundation threats increase; and (5) over time and where feasible and appropriate, removing existing development where public safety cannot otherwise be ensured. Determining the appropriate approach and financing structure requires the weighing of various policies and is best done through a collaborative approach that directly involves the affected communities and other governmental agencies with authority or jurisdiction. Some adaptive management strategies may require action and financing on the regional or sub-regional level across jurisdictions.

w. The California Climate Adaptation Strategy recognizes that significant and valuable development has been built along the California coast for over a century. Some of the development is currently threatened by sea level rise or will be threatened in the near future. Similarly, the coastal zone is home to many threatened or endangered species and sensitive habitats. The strategy acknowledges that the high financial, ecological, social and cultural costs of protecting everything may prove to be impossible; in the long run, protection of everything may be both futile and environmentally destructive. The strategy recommends that decision guidance strategies frame cost-benefit analyses so that all public and private costs and benefits are appropriately considered.

The strategy further recommends that state agencies should generally not plan, develop, or build any new significant structure in a place where that structure will require significant protection from sea-level rise, storm surges, or coastal erosion during the expected life of the structure [emphasis added]. However, the strategy also acknowledges that vulnerable shoreline areas containing existing development or proposed for new development that has or will have regionally significant economic, cultural, or social value may have to be protected, and infill development in these areas should be closely scrutinized and may be accommodated. The strategy recommends that state agencies should incorporate this policy into their decisions. If agencies plan, permit, develop or build any new structures in hazard zones, the California Climate Adaptation Strategy recommends that agencies employ or encourage innovative engineering and design solutions so that the structures are resilient to potential flood or erosion events, or can be easily relocated or removed to allow for progressive adaptation to sea level rise, flood and erosion.

GECO-10 cont.

The City cannot rely on the Area 3 and 4 EIR as it severely understated the potential impacts of sea level rise. The current DEIR apparently takes the position that, due to the Ballona Wetlands decision, it need not address this issue at all. As discussed below, it is my professional opinion that the City's approach is in error.

GECO-11

CEQA both permits and requires that the baseline used in an EIR to be adjusted to consider all potentially significant environmental impacts. The DEIR uses existing conditions as its setting, which is normally the appropriate baseline for CEQA documents. However, as discussed in a

GECO-12

recent California Supreme Court decision, a future baseline condition may be substituted for existing conditions if using the existing conditions as a baseline "would be misleading or without informational value"[2]. Given that the scientifically accepted projections of sea-level rise would result in a far different setting scenario than under existing conditions, and given that the project's environmental impacts would be significant and more severe under those condition, a future baseline should be used for this issue, either in place of, or in addition to, the existing condition baseline.[3] Under the likely future conditions (sea-level rise of 5 feet or more), portions of the City of Newark's sewage disposal, storm drainage, flood control, and roadway networks likely would not function adequately to serve the proposed development, which would result in impacts of the project on the environment (for example project-generated increases in flood flows, increase in sewage problems, unmet water supply demands, etc.). CEQA also requires that an EIR on a long-term project address long-term impacts of the project[4]. Given CEQA's requirement that EIRs disclose a project's environmental impacts and the potential severity of impacts, a long-range, plan-level EIR that does not address the substantial long-range environmental impacts associated with sea-level rise is inadequate.

GECO-12 cont.

Cumulative impacts associated with long-term sea level rise also must be addressed. The EIR should analyze how cumulative development proposed in the new Plan would affect infrastructure capacity and need to improve both utilities and flood protection infrastructure.[5]

GECO-13

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[2] Neighbors for Smart Rail v. Exposition Metro Line Construction Authority and Los Angeles County Metropolitan Transportation Authority, August 5, 2013 (*Smart Rail*).

[3] *Smart Rail* at p. 448: "existing conditions is the normal baseline under CEQA, but factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decision makers."

Smart Rail at p. 449: "Communities for a Better Environment provides guidance here in its insistence that CEQA analysis employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts. (Communities for a Better Environment, supra, 48 Cal.4th at pp. 322.)"

Smart Rail at p. 454: "nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project's significant adverse effects."

[4] Smart Rail at p. 454: "An EIR should consider "both direct and indirect effects and [give] due consideration to both the short-term and long-term effectsof the project. (Cal.Code Regs., tit. 14, § 15126.2, subd. (a).)"

Smart Rail at p. 455: "The CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades. That a project will have a long operational life, by itself, does not justify an agency's failing to assess its impacts on existing environmental conditions."

footnote for GECO-12

[5] Smart Rail at p. 450 states, "In particular, the effects of the project under predicted future conditions, themselves projected in part on the assumption that other approved or planned projects will proceed, are appropriately considered in an EIR's analysis of cumulative impacts (see Cal.Code Regs., tit. 14, § 15130) or in a discussion comparing the project to the "no project alternative" (id., § 15126.6, subd. (e)). "

footnote for GECO-13

Finally, the EIR, in some cases, assumes that an approved Areas 3 and 4 Plan is the baseline and in other cases uses existing conditions. CEQA does not permit a Plan-to-Plan analysis absent a compelling reason to do so. **GECO-14**

Analytical Gaps

The purpose of an EIR is to provide an evidence-based analysis of environmental impacts leading to a conclusion regarding potential significance of the impact, and to set forth and analyze mitigation measures for potentially significant impacts. In many cases this EIR provides a skeletal discussion of the existing conditions, then a list of policies in the proposed Plan and other documents, and then a conclusion of significance. What's missing is the analytical step of explaining how the EIR got from the list of policies to a finding of non-significance. Said another way, the EIR fails to include an analysis of impacts; instead in only includes a list of policies followed by conclusions of significance. In so doing, in many areas as identified in the Deficiencies in the Technical Analyses discussion below, the EIR lacks an analytical bridge between the environmental setting, proposed General Plan policies, and the determination of impacts significance[6]. **GECO-15**

For example:

- The EIR does not provide any analysis of cumulative aesthetic impacts, just a listing of policies and a conclusion. Further, the conclusion of no significant cumulative impacts because of implementation of policies that have been determined not to be effective for Areas 3 and 4 is contradictory and nonsensical. **GECO-16**
- The EIR's construction related air quality "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no supporting analyses. **GECO-17**
- The air toxics "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis. **GECO-18**
- The Impact BIO-1, BIO-2, and BIO-3 "analyses" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis. Those impacts also rely on future CEQA review and mitigation to reduce impacts to less than significant, which apparently is not proposed by the City. **GECO-19**
- The Impact GEO-3 "analysis" (p. 4.5-15) does not assess any impacts associated with **GECO-20**

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and again at Smart Rail, p. 454: "As the Sunnyvale West court observed, a project's effects on future conditions are appropriately considered in an EIR's discussion of cumulative effects and in discussion of the no project alternative. (Sunnyvale West, supra, 190 Cal.App.4th at pp. 1381–1382.)

[6] It should be noted that cities may approve projects by that do not meet all of a Plan's policies, so that the mere adoption of policies does not assure mitigation of impacts. **footnote for GECO-15**

major hazards in proposed development areas, including lateral spreading, liquefaction, subsidence, or collapse. A list of policies followed by a conclusion is not an impact assessment. **GECO-20 cont.**

- In addition, the EIR (Impacts HYDRO-1, 3, 4, and 5) fail to include any analysis the project's potential impacts on stormwater quality, either during construction of post-construction, beyond a listing of policies and a conclusion. **GECO-21**

- Impact UTIL-8 includes no actual analysis, just a list of policies and a conclusion. **GECO-22**

Inappropriate Use of CEQA Checklist Approach

The DEIR fails to identify a number of impacts, as identified below, because of its inappropriate use of the CEQA Initial Study checklist questions as the only possible impacts. That checklist is intended as a preliminary screening mechanism, not a detailed listing of all possible impacts. Once it has been determined that an EIR is required, the EIR should focus on actual impacts that may result from a project, not just responding to CEQA checklist questions. Additionally, as noted below, there are a number of instances where the EIR employs an impact heading which states that the project would not result in a significant impact, while the discussion that follows the heading reaches the opposite conclusion, thereby confusing the reader. **GECO-23** **GECO-24**

Project Objectives
The objective of "Embrace Newark's bayfront location" (p.3-3) is unclear. "Embrace" is a vague term preventing any measure of whether the project's alternatives' will achieve such an objective. Why is the preservation of open space along the bayfront not "embracing" this location? This is important because the DEIR concludes that the restricted Development Alternative does not achieve this objective, while never actually defining the objective. Given BCDC's policies encouraging protection of these bayfront areas as habitat and open space, we suggest removing this objective or defining it in terms of compliance with the Bay Plan's objectives. **GECO-25**

Deficiencies in the Technical Analyses

Aesthetics
The aesthetics discussion for the Southwest Newark and Residential Recreational Focus Area (SNRRFN) goes into great detail about parking lots and fire station building details, but fails to portray the overall change, at a Plan level, of the proposed Plan change. This is not appropriate and fails to provide the reader with an overview of what aesthetics might be changed by the project. **GECO-26**

Impact AES-1 lists General Plan policies and concludes, without analysis, that development of the Plan would not result in significant impacts, but fails to explain how it reached this conclusion. **GECO-27**

Similarly, the discussion of Impact AES-3 just lists statutes and policies, and summarily concludes that development of the Plan would not result in significant impacts, but does not explain how it reached this conclusion. There is no analytical bridge between the statement of policies and the determination of significance of impacts. **GECO-28**

The conclusion of AES-3 identifying the impact as significant appears to conflict with the statement on p. 4.1-8 that this impact would be less than significant. **GECO-29**

Air Quality: The DEIR indicates that the project would have a large jobs/housing imbalance, which would generate more vehicle miles traveled and, therefore, more emissions, than otherwise generated. Plan growth would exceed BAAQMD Plan Area projections. In addition, the DEIR acknowledges that project VMT (and associated emissions) would exceed proportional population growth. The DEIR acknowledges that these emissions would constitute a significant impact (p. 4.2-34). However, the DEIR also states that the project is consistent with the 2010 Bay Area Clean Air Plan (p. 4.2-19). The project cannot be consistent with the plan if it exceeds plan per-capita emissions and planned population growth. **GECO-30**

The DEIR (p. 4.2-39) then concludes that, because future CEQA analyses would be required to analyze air pollution emissions, operational emissions of criteria air pollutants under the plan would be less than significance. There are three problems with this approach. First, this EIR ignores that the EIRs for the changes in the Plan have already been completed, and future EIRs apparently are not contemplated. Second, this conclusion of non-significance directly conflicts with the actual analysis of plan emissions, which showed that it would exceed district assumptions and significance standards. This EIR's confusing and contradictory approach fails to provide the reader with consistent information needed to consider the project's impacts. **GECO-31** **GECO-32** **GECO-33**

Third, impacts cannot become less than significant simply based on future analysis. For example, this EIR considers construction related air quality impacts to be reduced to less than significant by future environmental review (p. 4.2-39). Yet, as discussed above, such a review is not even proposed by the City because the City apparently intends to rely on past environmental reviews for most of the entitlements in these areas. Further, the construction emissions analyses in both this EIR and the Areas 3 and 4 EIR upon which this study relies, fail to account for transport and grading of millions of cubic yards of materials to form huge earthen platforms needed to raise portions of Areas 3 and 4 out of flood hazard zones and create the massive new levees required to protect those areas from effects of sea level rise. **GECO-34** **GECO-35** **GECO-36**

The cumulative air quality impacts analysis (AIR-3) and odors analysis (AIR-6) also rely on future environmental review to identify and require mitigation, while the City apparently is not contemplating any such future reviews. The City and the public can not know if approval of the proposed General Plan "tune-up" will have significant impacts if, as here, the EIR improperly defers analysis of impacts and mitigation measures. **GECO-37**

Biological Resources: The biological resources discussion relies on mitigation measures in the Housing Element EIR and Areas 3 and 4 EIRs to reduce impacts to less than significant. As **GECO-38**

described below, those measures from other EIRs may not be effective or sufficient: **GECO-38 cont.**

Housing Element EIR Mitigation Measures:

- The biological resources setting Table 4.3-1 and the conclusions that there are no substantial wildlife migration corridors do not reference any supporting biologist or biological resources report. What is the evidence/source document supporting the assertions of species likelihood, as summarized in the table, or wildlife corridors, as claimed on p. 41? **GECO-39**

- Given that detailed biological resources assessments have been completed for some or all of Areas 2 and 4, please include that information in the EIR. For example, it is *known* that the federally –listed endangered salt marsh harvest mouse occurs on Area 4. Therefore, it is incumbent on this EIR to include and consider that known information. **GECO-40**

- Mitigation Measures 4.3-1 and 4.3-2 are inappropriate deferrals of analysis (in conflict with Sundstrom v. County of Mendocino) to future mitigation measures. At a minimum, this EIR should include prescriptive measures, similar to others approved by regulatory agencies for other projects in the area that would clearly mitigate the project's potential impacts to special status species. **GECO-41**

Areas 3 and 4 EIR Mitigation Measures[7]

- Eviction of burrowing owls as proposed in mitigation BIO-4.2 may result in those evicted owls being depredated at a higher rate than if not evicted, or otherwise suffer population losses as a result of this eviction. The comment notes that, if no such studies exist, impacts to owls should be considered significant and unavoidable.

  Please note that the document, "Status of Burrowing Owls in Southern California," published by the nonprofit Institute for Bird Populations, found that the owl population in western Riverside County continues to drop despite a sweeping habitat conservation plan that is supposed to protect the birds and 145 other species of animals and plants. As reported in the Riverside Press Enterprise, January 14, 2008: **GECO-42**

  > The study's authors found that one-fourth of the owl habitat in western Riverside County was destroyed in the first three years after the habitat plan went into effect. "As long as we treat the mitigation efforts the same, it is very likely burrowing owls will become extinct from the local area," said the study's lead author, Jeff Kidd, a wildlife biologist who lives in the Lake Mathews area of Riverside County. Developers in Riverside County most often use "passive relocation" when owls stand in the way of development. In passive relocation,

[7] As noted above, it is improper for this EIR to rely upon an EIR that has been suspended because it was materially deficient.

> one-way doors are installed at burrow entrances to keep the owls from re-entering and being killed when the land is graded, said Kidd, a licensed wildlife biologist. Kidd said he calls the process "active eviction." "They usually have no other home to go to, so they die. They get predated or they get hit by vehicles," he said.

GECO-42 cont.

Impacts BIO-5 and BIO-6 are examples of why the EIR should not have relied upon the Initial Study Checklist questions in its determination of impact topics – the CEQA physical environmental issues that should have been addressed in these impact discussions are loss of trees and impacts to SF Bay Refuge habitats and sensitive species. Instead, the EIR focuses on compliance with the City's tree ordinance and Basin Plan and Habitat Goals, which are not a physical environmental effect and are therefore peripheral to the CEQA analysis.

GECO-43

Cultural Resources

The historic structures discussion relies on studies completed in 1989, nearly 25 years ago; it is likely that additional structures have become eligible for listing since that time. Please update this list.

GECO-44

The policies described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less-than-significant level. Potential loss of historic structures has been determined by the courts to be an unavoidable significant impact (i.e. League for Protection of Oakland's Historic and Architectural Resources v. City of Oakland). These policies do not prohibit such a loss therefore this impact remains significant and unavoidable.

GECO-45

Geologic Resources

The erosion discussion (Impact GEO-2) fails to address potential erosion impacts associated with the grading and placement of millions of cubic yards of fill required to form earthen huge platforms needed to raise portions of Areas 3 and 4 and other low-lying areas out of flood hazard zones and future need to create the massive new levees required to protect those areas from effects of sea level rise.

GECO-46

In addition, reliance on seismic design requirements from the California Building Code (Impacts GEO-1, 2, and 3) will not reduce impacts to infrastructure, such as roadways and pipelines.

GECO-47

Hydrology and Water Quality

As discussed earlier in this letter, this section fails entirely to address sea level rise. The only flood hazard discussion is based on the 2009 FEMA flood hazard maps, which do not include rise in sea level and are currently being revised. New tidal and flood hazard elevations are currently being developed by FEMA in conjunction with the Alameda County Flood Control District[8]. As described in the plan for that study:

GECO-48

> FEMA's coastal study and mapping efforts benefit from new technologies and coastal data, including the latest 2010 detailed

[8] San Francisco Bay Area Coastal Study, California Coastal Analysis and Mapping Project, September 2012.

> topographic data collected as part of the California Coastal Mapping Program. The coastal flood hazard analyses use regional-scale storm surge and wave models of San Francisco Bay. These models produce time-series output of water levels, open ocean swells, and wind-driven waves at over eight thousand points along the complex San Francisco Bay shoreline. Input parameters to the regional-scale models include ocean tide levels, lower Sacramento River discharges, wind and pressure fields, and various river and creek discharges.
>
> The model output from the regional models is used to estimate wave runup and overtopping along the Bay's myriad of shoreline structures and steep shorelines, as well as overland wave propagation over beaches, marshes, and inland developed areas. These onshore analyses will form the basis for potential revisions to the Base Flood Elevations (BFEs) and Special Flood Hazard Areas (SFHAs) within the coastal areas of the nine Bay Area counties. Coastal High Hazard Areas (Zone VE) will be mapped when supported by flood hazard modeling results.

Any long-term planning effort for bayfront areas should include the findings of this study. **GECO-48 cont.**

The DEIR correctly notes that BCDC assumes projects will have a lifespan of at least 50-90 years. Therefore, the analysis of impacts (and the baseline) should consider projected reasonable worst-case tidal heights during that time period. Recent estimates of up to 69 inches of sea level rise during the lifetime of proposed project housing would, if they occur, result in the project contributing to large-scale flooding of many of the proposed sites. In addition, rising sea levels will result in rearward flooding of local creeks draining to the Bay. The EIR relies on mitigation measures provides no evidence that raising Area 4 and other low-lying areas outside of possible sea level rise flood levels is even feasible while allowing flood control channels to continue to function. In addition, such elevation increases could require placement and grading of millions of cubic yards of material, which could result in significant erosion and associated water pollution not assessed in this document. **GECO-49**

Maps of both revised FEMA flood elevations and projected sea level rise inundation of portions of the site should be added to the EIR. **GECO-50**

Impacts HYDRO 6 and HYDRO-9 use the wrong baseline and therefore fail to consider impacts of a 50-90 year Plan, as recommended by BCDC. See also previous comment regarding adequacy of flooding and sea level rise issues. **GECO-51**

Public Services

The Plan should identify potential locations and impacts associated with construction of a new police station, which would be required to serve the increased population as well as the reconstruction of City Hall and library necessitated by implementation of high-density housing on the current City Hall site. **GECO-52**

Utilities

Water: The water supply analysis uses adequacy of water supply normal rainfall years as its criteria of significance. The DEIR acknowledges that water supply in single- or multiple-dry years would not be adequate for the proposed increased buildout envisioned by the General Plan Tune Up (Table 4.14-3). Yet the DEIR finds this impact to be less than significant solely on the basis of Plan policies that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence upon which to base the conclusions of a less-than-significant impact in these dry years. Further, the assumption that other water supplies would be available in such years (bottom of p. 4.14-10) is unsupported, as no firm contracts have apparently been established by the City or ACWD for those sources, and multiple agencies will by vying for any such sources in those years. **GECO-53**

Wastewater and Stormwater Systems: Projected sea-level rise during the project lifetime (at least 50-90 years) will require massive changes to the City's wastewater and stormwater system. Project-generated increases in flows into the systems, development of low-lying areas or construction of large developments on raised platforms, and construction of new high levees to protect the new development will exacerbate these problems and expand the need for facility alterations. The Plan should address the potential need for new lift stations, pumping plants, drainage issues, and contingencies for the projected sea-level rise baseline. We suggest coordinating with the ACFCD in this analysis. **GECO-54**

Alternatives: The benefits (reduced impacts compared to the proposed project) of the Restricted Growth Alternative are understated. Air pollution and GHG emissions would be further reduced by elimination of the need to construct huge levees and earthen platforms for flood protection of development in flood areas. Hydrologic and water quality impacts would be substantially reduced by eliminating much of the planned development in flood-prone areas and areas where flooding will worsen substantially with sea-level rise over the next 50-90 years. **GECO-55**

The environmentally Superior Alternative discussion should be revised to eliminate or clarify the vague objective of "embracing Newark's bayfront location". Further, it is unclear why the Restricted Growth Alternative could not be designed to meet the objectives of facilitating clean-up of contaminated sites and foster TOD. Please revise the description of that alternative to meet those goals. **GECO-56**

Conclusion

As described above, this DEIR has numerous substantive flaws that render it inadequate under CEQA. It is my professional recommendation that this EIR must be revised as indicated in this letter and recirculated for further public review and comment. Please feel free to contact me at 510 849-2354 if you have any questions regarding the comments herein. **GECO-57**

Sincerely

Richard Grassetti
Principal
Grassetti Environmental Consulting

GECO-57 cont.

COMMENT LETTER # Bradley-1

Terrence Grindall
Community Development Director
City of Newark
510-578-4208
510-673-5837

From: John and Becky Bradley [mailto:jandbbradley@sbcglobal.net]
Sent: Wednesday, September 25, 2013 16:28
To: TERRENCE GRINDALL
Cc: 'C/H High'
Subject: My Remarks on the City of Newark's Draft General Plan Addressed to the City of Newark's Planning Commission on September 24, 2013
Importance: High

Bradley-1-1

Dear Mr. Grindall:

For the record, I have attached the "written" version of the comments I made last night at the Planning Commission meeting.
I would appreciate your sharing them with all the planning commissioners. Again, thanks, for the chance to comment.
Sincerely, John Bradley, 4958 Bosworth Court, Newark, CA 94560 Tel: 510-744-1062.

Newark Planning Commission Remarks 9/24/2013

- My name is John Bradley. I live at 4958 Bosworth Ct. in Newark (since 2005).
- Thank you for the opportunity to address you regarding the GPT.
- First let me alert you to the opportunity which was lost to encourage citizens to read over the draft version of the new General Plan. Like you, I would like more citizens to become involved in its vision and formulation. I recently received the latest edition of Newark's official publication, the *Newark News*. Did I find notification of the Draft General Plan Tune Up and its Draft Environmental Impact Report? even a brief mention of the draft documents being out on the streets and on the City's website for public review? Unfortunately, no. I would like commissioners to consider using all the media at their disposal to encourage citizens to share their views regarding the proposed Plan.
- Second, I would like you to know that I think there are some very good policies and actions proposed in the latest draft of the General Plan. For example, I really like the fact that City policy does not allow development in 100-year floodplains. I have heard what flooding in the 1980's did to the community of Alviso, just south of us. I think that most folks would consider the policy very sound.
- The first of two messages I would like to share with you tonight is simply this: all the good policies in the world are only as good their implementation. The planning documents say that the City does not allow development in flood plains. Unfortunately, many if not most of the policies and actions in the new Plan were not drafted in the kind of language that would actually require much in the way of compliance with their intent. I would urge planning commissioners to remove from the draft General Plan most of the "should's", the "may's", the "encourage" or "promote" or "facilitate", and the "to the extent practical". Why? Because as long as the General Plan policies and actions remain conditional, indeterminate, vague and voluntary, the policies will rarely be implemented in the manner or the spirit for which they were created. By allowing developers proposing to build in flood plains to mitigate the risks by building structures which are situated 11 feet atop pads placed in the flood plain does not cut it.
- And my second message? It is a foreboding: I fear that most of the City's limited resources and well-intentioned efforts are going to be sucked up with implementing the Dumbarton TOD Plan Focus area and recently dubbed Southwestern Newark Residential and Recreation Focus Area. I fear that it will be another 20 years before the City finds the time to focus on what I believe the majority of Newark citizens would like to see addressed now, namely, the challenges of renewing and revitalizing our existing neighborhoods and our retail, commercial and industrial areas. How? Through many of the policies and actions

Bradley-1-1 cont.

which, for me stand out as the visionary policies and actions that are also in the draft Plan: the policies and actions which address in-fill, pedestrian and bicycle friendly streets and corridors, maintenance and needed rehabilitation of parks, library, and other public facilities, more convenient access to local, out-of-walking-distance destinations such as the regional BART station and medical centers.

- I believe that those of you who live in this community would really appreciate a General Plan that puts real meat on the policy bones, and actions that will focus on the types of services we all know are needed now, not some 20 to 30 years down the line. If you allow the major targets of growth and development to focus on the Dumbarton TOD and Southwestern Newark Recreation and Residential projects, then those will be the priorities, and not the types of core development that we need now. I would urge commissioners not to recommend the draft General Plan as it stands today. I would urge commissioners to come up with a real update reflecting the tremendous changes in physical, socio-demographic and economic landscape that have occurred since 1992. You should not continue to make recommendations to the Council that result in "business as usual." The Plan, as it stands now, and as it was just described to you by the City's consultant, will largely result in creating more urban density, traffic congestion, over-priced residential housing, and a continuing deterioration of the quality of life in our existing community.
- Again, thank you for the opportunity to share my thoughts on this draft update of the City's General Plan.

Bradley-1-1 cont.

Janet Drews
Term expires: 12/2014

Theresa Ballard Dias
Term expires: 12/2014

Debbie Otterstetter
Term expires: 12/2015

Karen Bridges
Term expires: 12/2016

William Fitts, Chairperson
Term expires: 12/2015

Bernie Nillo, Vice-Chairperson
Term expires: 12/2013

Michael Hannon
Term expires: 12/2016

COMMENT LETTER # Bradley-2

Terrence Grindall
Community Development Director
510-578-4208

Begin forwarded message:

From: "John and Becky Bradley" <jandbbradley@sbcglobal.net>
Date: September 27, 2013, 14:19:56 PDT
To: <terrence.grindall@newark.org>
Subject: Public Comment on the DEIR for the Draft General Plan Tune Up

Dear Mr. Grindall, I appreciate the City's resources that make sending the subject comments (attachment) by email. It was a dreadfully long document to review, but obviously represents a great deal of work on the part your staff and consultants. I apologize for the line numbers in my letter, but I could not get my Microsoft Word program to insert page numbers. Would you acknowledge receipt of the attached comments. I want to assure that there are no problems with the attachment that would delay your review. I will be passing by the Newark Library later this afternoon and will drop a hard copy of my comments (if there's a drop box available). Sincerely, John

Bradley-2-1

4958 Bosworth Court
Newark, CA 94560
September 27, 2013

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

Re: Letter Responding to Newark's Draft Environmental Impact Report (DEIR) Addressing the Draft General Plan Tune Up (DGPT)

Thank you for the opportunity to comment on the draft General Plan Tune Up (DGPT) and related Environmental Impact Report (DEIR). I ask that my comments be given careful consideration as it has taken a great deal of time and effort to review and try to understand the documents. If other persons besides yourselves are tasked with reviewing comments from the public and drafting responses to the comments, then I ask you to personally assure that their responses are appropriate and not merely form-type responses.

First, let me comment on the fact that, as a resident and postal customer of the Newark community, I recently received in the mail a copy of the *Newark News*, an official publication of the City. As you know, it is a newsletter which the City officials share with the residents to keep them posted as to what's going on in the community. I was mildly surprised that I found no mention of the DGPT/DEIR which had been released for a minimal public comment period. I presume there were many reasons why no mention of these documents was made in the *Newark News*. Nevertheless, I was disappointed that there was no announcement of the General Plan Tune-Up nor a request, however brief, that residents take a look at it and letter City Council representatives know if the plan is in fact in tune with their thinking. After all, it is the plan, with all its well-meaning policies and action directives, that will provide the guidance and foundation on which you, our elected officials and City staff, will move forward in serving residents in so many vital elements of our community life. I do presume that the City fulfilled its minimal obligatory notifications (which is probably noted somewhere in the 568-page DEIR). However, the fact that I did not see notice of it in the *Newark News*, nor hear it openly discussed by officials in community forums such as neighborhood association meetings, causes me to wonder in what ways City Council Members and City staff persons might inspire residents to become more involved in the formulation of such an important and visionary plan.

Bradley-2-2

Second, I want you to know that I think there are numerous policies and tasks in the draft version of the new, updated General Plan. However, this letter will not focus on all the good points of the draft General Plan Tune-Up, but rather on what I find confusing or deficient or inconsistent about the draft and its accompanying report on environmental impacts. I do very much appreciate for instance that the City does not allow development in 100-year flood plains. On the

Bradley-2-3

other hand, I think it very ingenuous to get around this policy by placing development on artificially created mounds in the 100-year flood plain. And this is exactly what the draft GPT suggests as a way to mitigate. First it states that it does not allow development in 100-year flood plain and then makes an exception to the policy by stating it will be okay if the developer places the residential units at least 11+ feet above mean high tide. The mitigation that is proposed in several policy and action items under different elements of the DGPT do not avoid or minimize impacts to our environment in any but the legally most minimal manner possible, and in many cases I do not see how they meet even legally minimal criteria. This is my concern: that the DGPT appears to go to considerable lengths to assert that future development proposals will not have significant impacts; or if there will be significant impacts, then they will be mitigated to a level of non-significance; or if the impacts cannot be reduced to a level of non-significance, then the project will be considered of such overwhelming public benefit that they will be approved notwithstanding the significant environmental impacts.

The remainder of my letter is a compilation of my annotations made during my review of those parts of the DGPT that I was able to find time to read and reflect upon. I will try to lay them out in some order, following the outline of the DEIR. Some of my comments may appear trivial but I have tried to be observant and frank in my critical review of the DGPT/DEIR. I was struck by how much work must be involved in updating our General Plan every so often, and I agree with the need for periodically reassessing our progress and status because conditions do change that require readjustments. It is my hope that both the final EIR and final GP will serve in a real way as a vision and guide for City Council members, Planning Commissioners, City planners and other staff, and , last but not least, Newark residents.

Bradley-2-3 cont.

Page 1-1

The term "discretionary" appears to be used six times in the DEIR. The text states that it relates to "actions and approvals." However, I cannot find in the DEIR a detailed list of such discretionary actions and approvals. In an un-numbered table on page 3-28 of the DEIR it specifies such actions and approvals as recommendations from Planning Commission regarding GPT and DEIR or actions by the City Council addressing the adoption of the GPT and certification of the DEIR, as well as adoption of "ordinances, guidelines, programs, and other mechanisms for implementation of the [GPT]." If possible, I would like to see a list of all actions and approvals that associated with the GPT implementation.

Bradley-2-4

Page 1-2

There appears to be a typographic error: "statuts" should probably be "statute." Please let me know as to which statute is the author(s) referring?

Bradley-2-5

Page 1-3

The GPT includes some non-mandated sections: Chapters 6, 10, and 11 of the General Plan are considered optional elements, since they are not explicitly required by state law. These elements address economic development, public health, and community services and facilities. The DEIR states that these elements have been included because of the importance of these issues to the future of Newark, and their integral relationship to the topics addressed elsewhere in the Plan. Am I correct in assuming that, once adopted, the optional elements will carry the same legal weight as the mandated elements? **Bradley-2-6**

The DEIR attempts to explain why it has been prepared as a "Program EIR". It states that "As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects." And yet the DEIR appears to deal with some very specific plans for development that were already approved but not compatible with the existing General Plan, namely, the Dumbarton TOD and Area 3 and 4 projects. At a later point in the DEIR it states that the Specific Plans for these developments are incorporated by reference. The latter plans which are not consistent with the 1992 General Plan are being included anyhow. Will the Dumbarton TOD and Area 3 and 4 projects require EIRs subsequent to this General Plan Tune Up? I do not presume that the City is proposing to require new or supplemental EIRs for these projects. But is there any further review of those projects that required by CEQA? If so, what type(s) of review and approvals need to be addressed before the implementation of those projects? Will there be some "monitoring review" to assure citizens that those projects, before being implemented, are in accord with the updated General Plan? **Bradley-2-7**

Toward the end of this page, the DEIR states that when a Program EIR is relied on for a "subsequent" activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities. I ask the question how many of the mitigation measures documented in the Dumbarton TOD and Area 3 and 4 Specific Plans are incorporated within the DGPT? or the this "Program EIR"? Also I ask the question, are there any new mitigation measures and alternatives developed in the DGPT that are not reflected in the EIRs for those projects? If so, what are they? **Bradley-2-8**

Page 1-4

In explaining CEQA requirements providing for "the analysis of a range of alternatives that could feasibly attain the objectives of the Plan," I question whether or not the "No Project" alternative would meet the apparent objectives of the Plan. Is this a simple matter of the "No Project" alternative not having to meet the objectives under CEQA? What exactly is the purpose of the "No Project" alternative? If one of the objectives of the draft GPT is to implement already approved specific plan developments which are not entirely consistent with the existing 1992 General Plan, how do the non-no-project alternatives meet that this objective? Am I correct in assuming that each of the alternatives analyzed in the DEIR are real and that they could be **Bradley-2-9**

recommended by the Planning Commission to the City Council for adoption? The DEIR does not really make the options clear to me. **Bradley-2-9 cont.**

There are many other elements in the draft GPT that are addressed in the DEIR, however, they do not appear to be given equal focus. Instead what I have read appears to focus on the impacts of urbanizing the last, relatively undeveloped, natural spaces remaining within the City limits.

In the paragraph initiating section 1.4 - Summary of Alternatives to the Proposed Plan, it states that the DEIR will only address alternatives based on their potential ability to reduce or eliminate the following impacts determined to be significant and unavoidable for the proposed Plan: Aesthetics, Air Quality, Cultural Resources, and Greenhous [sic] Gas Emissions. It appears then that addressing impacts of development on "open space" resources which have many significant values, including "ecosystem services," and other General Plan Elements will not be given much attention. That is not the most appropriate strategy by which to develop alternatives in my opinion. Apparently impacts to our open space resources (and many other elements) were not deemed significant nor unavoidable by planners. I do not see water supply, climate change, nor biology in this list of elements found to have significant and unavoidable impacts, although they are cited below on page 1-6 as controversial issues. **Bradley-2-10**

I call your attention to a typographic error in the last bullet item on the page: "Greenhous" should be "Greenhouse." **Bradley-2-11**

Pages 1-5 and 1-6

What is the "proposed Plan"? Is it one of the alternatives, or is it something else? Is not the "proposed project" usually one of the alternatives. What choice, if any, are City residents and City decision-makers being offered with respect to amending the current General Plan? Do planners and decision-makers actually have a choice in approving any one or combination of the alternatives? **Bradley-2-12**

The statement under the No Project Alternative that it " could result in up to 17,900 housing units in Newark by 2035, including approximately 10,950 single-family homes and 6,950 multifamily units, as well as approximately 20,600 jobs" appears at odds with what is stated below in the "reduced residential" alternative. It makes it sound as if even under the "no project" alternative, the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan would be implemented. Is it possible to proceed with development plans that are not entirely consistent with the General Plan? How are the proposed developments to be implemented without modifying the current General Plan? The statement does not appear to clearly reflect or convey the reality of the matter. Again, how is it possible that the No Project alternative could result in all the additional housing when Specific Plans are not compatible with the existing General Plan. Is this a case where project proponents desire developments that are neither envisioned nor condoned (if that's the appropriate word) by the existing General Plan and so they want to change it? If this is the case, then the Final EIR should make it more explicit. To many citizens, it makes more sense to change general plans first and then consider and approve more specific plans as they are proposed. I know that this is often the way the land use planning and decision-making process proceeds, by putting the proverbial cart before the horse, so as to accommodate **Bradley-2-13**

every Tom-Dick-and-Harry-proposed variance and amendment, but it does not lead to implementing a vision which fosters a sense of sustainable place and community. I believe citizens have had enough of the growth-oriented, short-term profitable, quantity-over-quality kind of city planning and development.

Am I correct in understanding the Restricted Growth Alternative that it focuses on filling in, improving our existing neighborhoods, retail/commercial and industrial areas, that is revitalizing what the Newark community currently has or could improve upon without having to urbanize the two remaining relatively undeveloped areas of open space in the southwest and western portions of the City? Both the latter areas current provide buffers between the Cargill Salt operations and continued space in Area 2 for job creation if needed, and greater, less costly insurance against sea level rise.

In the description of each alternative, there is data regarding potential housing units and jobs: 17,900 and 20,600 under the No Project alternative; 16,280 and 24,800 under the Reduced Residential alternative; and 16,995 and 22,300 under the Restricted Growth alternative. It is not clear to me how these figures could be so similar to those given in the previous alternatives. Would you explain how the numbers were arrived at? If the numbers are correct, than am I correct in assuming that there could be almost 17,000 additional housing units and more than 22,000 job positions created under the Restricted Growth alternative? If the figures are correct, why would the draft GPT be including the urban development of the City's last remaining natural open spaces, particularly that in Area 4? The draft Plan does not appear to be very visionary with respect to natural open space resources nor at all in tune with the citizenry's increased awareness over the past 20 years of the valuable ecosystem and socio-cultural services such open space provides the our human populations. Indeed, there appears to be a very "business-as-usual" attitude underlying the proposed DGPT.

Bradley-2-13 cont.

I see also on this single page of the DEIR, the sections summarizing the "issues to be resolved" and the "areas of controversy." I did note, by its absence from the list of issues to be resolved the idea of whether or not the draft GPT should be adopted "as is". I think that this is the most significant issue to be resolved, that is, whether or not the draft GPT represents a plan which will lead toward assuring a better place for the Newark community.

As to the issues needing resolution that were stated I appreciated the summation, however brief. Because my time is so limited, I relied on word processing search tools to expedite my review of the DEIR; and when I searched the entire document for the "issues to be resolves" and "resolve" I could not find anywhere in the document where the City planners have described and explained if or how these issues were resolved. I suggest that the final document include a brief description of how the issues were either resolved, or attempted to be resolved, or will be resolved. I appreciate the fact that there are sections of the DEIR that do address these issues in very concise, legalistic terms, but I hope there will be some text in the final document that clearly focuses on the resolution in layman terms.

Bradley-2-14

Page 1-9

Please clarify which "public actions can only be taken after a finding that the action is consistent with an adopted general plan" by providing in the final DEIR as relevant a list as possible of these public actions as they relate to the DTOD and Southwest Newark Residential and Recreation Focus Area projects. In order to better understand the full scope of the draft GPT, please also provide a listing of the actions in the draft GPT which "provide specific direction for how these implementing ordinances [covering zoning and subdivision regulations] should be revised to better achieve the Plan's goals."

Bradley-2-15

Page 2-1

The DEIR describes the proposed Plan as "a 'tune up' of the 1992 City of Newark General Plan." It states that "the vision for the growth and development of the community outlined in the 1992 General Plan remains a valid reflection of community values and priorities today." It further asserts that "the land use designations and policies of the 1992 General Plan provide a solid base on which to build." As long as the objective of the proposed plan is to concentrate future development primarily in four areas, namely, the Dumbarton TOD Focus Area, the Southwest Newark Recreational and Residential Focus Area, the Old Town Focus Area, and the Greater New Park Focus Area, then it will be difficult to develop any alternatives to the proposed Plan that achieve these objectives. For example, if the objective is to convert Area 4 into a residential/recreational development it seems nearly impossible to come up with a viable alternative that would result in the achievement of that objective in Area 4. City planners appear to be offering citizens a Plan that, at least in its draft form, can have no feasible options? Is this correct? If not, please clarify this confusion in the Final EIR.

Even if these were the direction and intent of the General Plan adopted in 1992, the proposed Plan appears not to recognize that times, environmental conditions and individual attitudes have significantly changed. Citizens', including their children's awareness of such phenomena as aging demographic structure, long-term physical and mental well-being, economics of ecosystem services, a San Francisco Bay Area-wide natural resources-oriented Bay Plan, the adverse effects resulting from the disappearance of local open space, and sea level rise has increased greatly since 1992, even if City planners do not seem in their proposed tune-up to be tuned in to these watershed changes on the on the natural and demographic landscapes.

Bradley-2-16

Page 2-5

I see toward the bottom of page 2-5 that "all responses to comments submitted on the Draft EIR by agencies will be provided to those agencies at least 10 days prior to final action on the Plan." Just above this it states that "All persons who commented on the Draft EIR will be notified of the availability of the FEIR and the date of the public hearing before the City." Is it possible for private residents such as myself to view responses to our comments prior to any final action on the Plan. I am not sure how public comment such as mine will be handled. I am aware that individual comments from letters (including letters from agencies) often are grouped together by subject matter and then responses by subject matter are drafted by staff. In any case, on the same page of the DEIR it states that "public input is encouraged at all public hearings before the City."

Bradley-2-17

I will be difficult for me to provide informed input to Council Members without first knowing how the comments in my letter have been responded to. I thank you ahead of time for your consideration and "encouragement" in this matter.

Bradley-2-17 cont.

Will the required monitoring program described on Page 2-5 become available to the public for comment before the proposed final GPT is submitted to the City Council for consideration? I think it is important that the public has the opportunity to review the monitoring/reporting plan for its relevance, completeness, and validity with respect to its intended purpose. This is a part of the planning process that sadly has been neglected in the past but, without it, citizens and decision-makers can have no assurance that plans are implemented and objectives achieved as intended. I would like the opportunity to review and have the chance to comment on it before it is presented to the City Council for adoption; perhaps it could be posted on the City's website.

Bradley-2-18

Page 3-1

On this page, City planners assert that "The vision for the growth and development of the community outlined in the 1992 Newark General Plan remains a valid reflection of community values and priorities today." The year 1992 was a long time ago and I'm wondering how the planners ascertained that the '92 plan continues to be a "valid reflection of community values and priorities" after some 20 years. Is this assessment based on any systematic collection survey results? Is this assertion more anecdotal in nature, not based on the results of any valid survey or research? To be forthright, I was not around the Bay Area in 1992. I became a Newark resident/homeowner in 2005. It would be helpful to see data documenting and identifying what the community values and priorities actually were in 1992. Can Newark City planners offer any data substantiating their characterization of the community's values in 1992 and their adequacy for today's population and the socio-cultural milieu of 2013?

It is asserted in the DEIR that vision of the draft General Plan Tune Up promotes the same, strong sense of community and neighborhood familiarity that the 1992 General Plan apparently advocated for. But the same Tune Up espouses previously inconsistent decisions which allowed for residential neighborhood development on the outskirts of our community (albeit on a greener side of the railroad tracks as it urbanizes the last remaining natural open spaces. Please explain in the Final GPT how the proposed Plan is consistent with the timing and location of development given the projections for sea level rise and the majority of citizens not in favor of filling bay lands.

Bradley-2-19

One of the draft GPT's objectives is to "meet the regional need for housing, as defined in State Legislation and the Bay Area's Sustainable Community Strategy (SCS) and provide a wide range of housing opportunities for all housing types and income levels." Neither the draft GPT nor the DEIR adequately explain why it is incumbent on Newark to meet the region's additional housing needs. It seems to me that Newark has already done more than fair its share of filling up land with housing. Is there space for more? Sure, but it does not have to be located in the last remaining open space that Newark has. Instead the City's General Plan ought continue to plan for housing on vacant property in already developed areas. Instead continue to plan for

Bradley-2-20

increasing housing density as redevelopment opportunities arise. Nowhere can I find an explanation for why the City must endeavor to urbanize or industrialize every last parcel of unused, vacant, natural open space. What forces a community to urbanize their last remaining large parcels of natural open space? Why can't it be preserved as open space? Do flood plains need to be filled in order to meet regional housing needs. Can't this need for housing be met by using other lands besides flood plains and lands immediately adjacent to the Bay?

Bradley-2-20 cont.

I would argue that over the past 20+ years, the attitudes of the majority of citizens in Newark have evolved. They are not in favor of allowing flood plains and baylands to be filled with more urbanization. Instead, citizens want to see flood plains and the bay lands conserved. Citizens want to see the integrity of the Bay estuary preserved. Citizens from all around the Bay, including the majority of citizens in Newark, expect to see the Bay protected from any further encroachment by urban and industrial development. I would argue that since the drafting of the 1992 Newark General Plan, we have "discovered" that the climate is warming up, the ocean's mean high tide is rising and subsequent risk of flooding increasing, the San Francisco estuary's natural indigenous communities are in serious decline, and the quality of fresh water aquifers in our watershed is becoming compromised. Our City's planners and decision-makers will miss the boat if they approve the proposal Plan as it is currently formulated. Doesn't all this newly found appreciation for leaving still undeveloped bay lands intact have any significant value?

Bradley-2-21

Page 3-11

It appears that "modifications to two Pacific Gas & Electric (PG&E) transmission towers" to accommodate the proposed structural overpass over the Union Pacific railroad tracks into Area 4. I have heard that the costs of such modifications are extremely expensive, as in the tens of millions of dollars. What are the estimated costs of implementing these modifications? Who is paying for the PG&E transmission tower modifications? The developers? the City? or the rate payers?

" Utilities infrastructure, including a new public water distribution system within the residential streets of
Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge
wastewater generated by new uses in Area 4." From the California General Plan Guidelines:

> Capital facilities must be consistent with the general plan (Friends of B Street v. City of Hayward (1980) 106 Cal.App.3d 988). The network of publicly-owned facilities, such as streets, water and sewer facilities, public buildings, and parks form the framework of a community. Although capital facilities are built to accommodate present and anticipated needs, some (most notably water and sewer facilities and roads) play a major role in determining the location, intensity, and timing of development.

Bradley-2-22

For instance, the availability of sewer and water
connections can have a profound impact upon the fea

Were the proposed capital facilities determined to be consistent with the 1992 General Plan? If not, were there amendments made to the General Plan prior to the proposed Plan?

Bradley-2-22 cont.

Page 3-12

The DEIR states that "Furthermore, the only land use designation change addressed in the Area 3 and 4 Specific Plan EIR was the change of 78 acres in Area 3 to Medium Density Residential from Special Industrial. At a program EIR level of detail, these uses have substantially similar impacts on the environment. (This is documented in section 6: Alternatives). Therefore, regardless of whether the Area 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan." If impacts are substantially similar, then are we really being presented with "alternatives"? The reasoning appears circular. It appears that the City's planners are admitting that if the Area 3 and 4 EIR is <u>not</u> upheld, they will rely on the associated mitigation measures as part of the background condition for purposes of analysis in the GP-T EIR and this results in DEIR assertion that "this Program EIR fully addresses the environmental impacts of the proposed General Plan."

Bradley-2-23

Page 3-15

In Table 3-3, the DEIR states that the proposed Plan's State-mandated topic of conservation is to be combined with the topic of sustainability, thus creating a new Element. policies which keep Newark a business-friendly, economically competitive community. The Conservation Element addresses wetlands management, vegetation and wildlife, waterways and water quality, salt production, and urban forestry are addressed. The Sustainability Element includes strategies to curb nonrenewable resource consumption, reduce greenhouse gas emissions, encourage recycling, promote green building and renewable energy, and implement other measures which make Newark a more sustainable city. Unfortunately, this DEIR does not address this element very well.

The DGPT fails to address sea level rise with the most current information. And the City's planners have opted not to address the issue of sea level in the DEIR because it is not necessary to analyze environmental impacts on the proposed Plan but only the proposed Plan's impacts on the environment. But not to discuss the reality of rising sea level in more detail appears irresponsible to me.

Bradley-2-24

Page 3-28

Although the DEIR states that "no specific developments are proposed as part of the Plan," why are there so many pages in both the GPT and the DEIR devoted to the DTOD Project and the Area 3 and 4 Project (renamed the Southwestern Newark Recreational and Residential Focus Project)? The text of this paragraph does not point out that at least two Specific Plans had been previously approved and that those Plans were not entirely consistent with the original 1992

Bradley-2-25

Plan. Did the adoption and certification of the two Specific Plans (DTOD and Area 3 and 4 Project) treat inconsistencies with 1992 GP as significant and otherwise mitigated to level of non-significance or given "overriding" consideration? What the text of the DEIR does not tell us is if there are any discretionary actions left regarding the implementation of the DTOD and the Area 3 and 4 Project. Are there? If there are, what are they? What becomes of those projects if the proposed GPT is not adopted or its DEIR is not certified?

Bradley-2-25 cont.

I would like to see included in the Final EIR information that gives me an idea of what happens to future proposals which upon review are found not to be consistent with the General Plan. As it stands, the DEIR simply tells me that future development proposals will be reviewed for consistency and adequately reviewed per CEQA. Please include a brief discussion in both the final EIR and GPT what happens to proposals that do not pass GP and/or CEQA muster. If such projects are proposed in the future, does the City simply amend the GP to conform with the project and determine "overriding considerations" in the case of unavoidable significant environmental impacts?

The DEIR reiterates on this page the fact that the [final] EIR will serve as the environmental document for all discretionary actions associated with development of the proposed Project. Please see and respond to my comments above regarding "discretionary." The DEIR is also intended to assist other responsible agencies in making approvals that may be required for development under the proposed Plan. Do these Federal, State, regional, and other regulatory agencies have any discretion in their determinations? If not discretion, do these agencies have ministerial authority that could preclude the implementation of the projects as referred to in the GPT?

Bradley-2-26

Page 3-29

The DEIR states that the proposed Plan would also require discretionary and ministerial actions by the three other agencies and that these actions would occasion the revisions of regional models related to growth and development projections. However, I have been under the impression that much of the project proposals and their prior adoption by City planning and council members relied on the existing model projections. Would you please clarify what models were used in the analyses underlying the DEIR and why they may require revision?

Bradley-2-27

4.2-10

The DEIR states that one objective of the County-wide Transportation Plan (CWTP) is to "[e]encourage a pattern of major employment centers and employment in general with convenient transit access and nearby mixed use and residential areas." It seems that the City has approved and permitted the development of a number of office and light-to-moderate industrial facilities which lack *convenient* connection with BART as well as adequate arterial access to and from many facilities. The railroad infrastructure in Newark is another barrier to an enhanced, efficient mobility. The City already has several employment centers. Now the challenge is to make them convenient to residents and commuters. Our resources over the next 25 years should be directed toward these types of improvements, not toward creating residences near new, costly transit stations that will only serve to create more congestion. There is serious doubt about a rail

Bradley-2-28

station ever being built as envisioned in the Dumbarton TOD Project as its adverse impacts on the environment are to great and it is so very expensive; I have heard that rail transit is the most expensive, cost inefficient infrastructure to build and maintain. It is in my opinion unfortunate that City planners have not provided a discussion of the actual prospects for obtaining the funds necessary to implement the rail project.

Toward the bottom of this page of the DEIR it states that "Projects in the 2012 CWTP are eligible to receive local, regional, and federal funding through 2040." Which of the PDAs and GOAs in Newark are projects in the 2012 CWTP? The paragraph above refers to the Alameda County Draft Land Use Scenario Concept (which title sounds very, very preliminary and imaginary). What generally does it mean that the Newark PDAs "are included in MTC's Plan Bay Area?

Bradley-2-28 cont.

Page 4.2-15

In discussing CEQA thresholds, the DEIR states: "While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes." This is not clear to me. Perhaps you could illustrate the meaning with a brief example. What it seems to be saying is that pointing out a proposed project's vulnerability to an environmental hazard is consistent with CEQA, but explaining the effects of the environmental hazard, such as the results of an earthquake on the project's infrastructure, is not consistent with CEQA's purpose.

The DEIR goes on to state: " Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of this Draft EIR (see *Guidelines, § 15063, subd. (f)*)." I am not sure what the author(s) are trying to say. Please clarify this in the Final EIR.

Bradley-2-29

Also below, there appears to be a typographic error where "*Bellona*" should be "*Ballona*" as in most other references cited in the DEIR?

Bradley-2-30

The DEIR states: "Accordingly, while the City provides the following informational analysis of threshold d taken from Appendix G of the CEQA Guidelines, that the Guidelines language in thresholds d and e, as they relate to the placement of sensitive receptors under the proposed Plan, above are not examples of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment." Again, the writing of this sentence is not very clear. I am understanding that some environmental condition like traffic noise is measured but, because they are not effects of a proposed development project, they will not get analyzed in an EIR? With all due respect, this doesn't make any common sense. Can you state or explain what you are intending to say in plainer English? I think is important. For instance, with respect to traffic noise in the background environment, there is a lot of proposed mitigation measures to make sure that folks will not be too adversely affected by the noise. (I live in an "orange" noise zone according to the City's maps, in a house that was built in the early 1970's. I sure wish the City's decision-makers back then would have required the developers to

Bradley-2-31

build more insulated homes so I would not be so exposed to the constant rumble of the nearby freeways.)

Bradley-2-31 cont.

Page 4.2-16

In using acronyms such as BAAQMD, please spell out acronyms the first time they are used, and additionally if there's lots of pages between usages. I presume there is a glossary of abbreviations used in this document, but I find it hard to navigate to when viewing and inserting comments electronically. I had to go back to a footnote several pages prior to the determine it stood for Bay Area Air Quality Management District. (Before retiring, I used to work in government and understand how pervasive acronyms have become. Guess I might understand them better if I practiced texting on a cell phone?)

Bradley-2-32

The DEIR states that "A comparison that the project VMT or vehicle trip increase is less than or equal to the projected population" must be determined. I am not sure I understand this bullet. Please consider rewording it in the context of completing the phrase "but an analysis of the following:".

Neither does the last bullet make much sense to me. It is not understandable in the context following the phrase "but an analysis of the following:" Instead it sounds like an excuse…or the analysis itself. If it is intended as an analysis, it probably should not be formatted as a bullet. In any case, could it be re-phrased in the Final EIR?

I think such footnotes as number 19 appear overly pedantic and contribute to the general un-readability of a documents which is intended for review by "interested public" and decision-makers.

Bradley-2-33

Page 4.2-17

The DEIR states that "The BAAQMD's significance thresholds for local community risk and hazard impacts apply to both the siting of a new source and to the siting of a new receptor" and notes that "the purpose of this EIR is to identify the significant effects of the Plan on the environment, not the significant effects of the environment on the Project." In this case, as a result of the proposed General Plan, there may be impacts in two respects: (1) a project resulting in new sources of pollution, and (2) those new sources possibly having impacts on current and future residents. The air quality resulting from the project implementation becomes a part of the human environment that affects humans in that modified environment. Does this make sense? or am I writing gibberish also?

Bradley-2-34

The DEIR states that the "City of Newark is not in one of the six impacted communities identified in BAAQMD's CARE program." What is the CARE program?

The DEIR states that "For a plan-level analysis, a project must also identify goals, policies, and objectives to minimize potential impacts and create overlay zones for sources of TACs and receptors." Please clarify what is the issue that the DEIR is attempting to address? What is the

Bradley-2-35

522 bottom line? Would you try and state this in plainer English. If you really think that the
523 proverbial "man on the street" can comprehend this, then do not bother.
524
525 **Page 4.2-18**
526
527 I think that the AIR-1 sentence "While the proposed Plan would support the primary goals of the
528 2010 Bay Area Clean Air Plan, buildout of the proposed Plan would not be consistent with the
529 Clean Air Plan because the projected vehicle miles traveled (VMT) increase from buildout of the
530 proposed Plan would be greater than the projected population increase" would be improved if
531 stated thus: ….because the increase in projected vehicle miles traveled (VMT) would exceed the
532 goal??? After reading it 5 times, I still do not understand exactly what the DEIR is attempting to
533 say.
534
535 **Page 4.2-19**
536
537 The DEIR states that "New policies would be introduced as part of the proposed Plan to
538 minimize impacts. With the additional measures proposed in the City's CAP, impacts would be
539 less than significant." Are these "additional measures" newly proposed in the proposed General
540 Plan? or are they already part of the "prepared and approved" CAP?
541
542 The sentence "Table 4.2-4 identifies the control measures included in the 2010 Bay Area Clean
543 Air Plan, and, as shown, implementation of the proposed Plan goals, policies and actions in
544 Table 4.2-4 would ensure that the proposed Plan would be consistent with the 2010 Bay Area
545 Clean Air Plan and that the impacts due to inconsistency would be less than significant...." is
546 poorly stated. In the first part of sentence the author states that the proposed Plan would be
547 consistent with the 2010 Bay Area Clean Air Plan, and then in the second part of the sentence
548 asserts that there would be inconsistencies (but not significant ones).
549
550 Under Regional Growth Projections for VMT and Population and Employment, the DEIR states
551 that "As a result, BAAQMD's approach to evaluating impacts from criteria air pollutants
552 generated by long-term growth associated with a plan is done in comparison to BAAQMD's
553 AQMP rather than a comparison of emissions to project-level significance thresholds." Is noun
554 "criteria" serving as an adjective to pollutants? I am not sure what the phrase "criteria air
555 pollutants" refer to.
556
557 **Page 4.2-20**
558
559 With regard to the "stationary and area source control measures," does the City's General Plan
560 have a policy and action that would assure that new and existing sources of stationary and area
561 sources are complied with? Does the City's General Plan take on the responsibility of checking
562 with the BAAQMD? or receiving from the responsible source evidence of its compliance? Will
563 this be part of the Mitigation and Monitoring Report Plan?
564
565 With regard to the "mobile source control measures," does the proposed General Plan include
566 policy and actions to assure that mobile sources and their owners, especially those associated
567 with development, are CARB-compliant?

Bradley-2-35 cont.

Bradley-2-36

Bradley-2-37

Bradley-2-38

Bradley-2-39

Bradley-2-40

Bradley-2-41

Page 4.2-24

I am not in favor of the Action t-3B because I am not in favor of the Dumbarton Rail project due to the disturbance to wildlife and wildlife habitat that it will create both during its construction and operations and maintenance activities. I am guessing that the residential component of the project will only result in further congestion on Newark roadways. **Bradley-2-42**

Page 4.2-39

I think there is a "non sequitur" in the sentence toward the bottom of this page that states: "Further, future development under the proposed Plan would be subject to separate environmental review pursuant to CEQA in order to identify and mitigate potential air quality impacts. As such impacts from construction emissions under the proposed Plan would be *less than significant*." Separate environmental review may identify air quality impacts that cannot be mitigated. The "less than significant" is not a slam-dunk simply based on review and identification of potential air quality issues. This is not necessarily "self-mitigating." **Bradley-2-43**

Page 4.2-40

In the sentence "The analysis under was based on 2035 traffic data in the Alameda County Travel Demand Forecast model, which incorporate cumulative development anticipated in the county and the region through 2035 as projected by ABAG" the DEIR does not explain "under" what or "under" where. I presume this is a typographical error. **Bradley-2-44**

The DEIR states that "cumulative impacts from the proposed Plan related to criteria air pollutant increases would be the same as the Plan-specific impacts discussed previously in this chapter." But this doesn't make sense. How does the Alameda County Travel Demand Forecast model incorporate "cumulative development"? Were any of the development projects in the proposed Plan actually incorporated into that model in any specific manner? If so, to which page of which document(s) can I go to verify this? **Bradley-2-45**

The DEIR asserts that the "implementation of the proposed Plan policies cited under AIR-2 would reduce operational emissions of criteria air pollutants from development projects under the proposed Plan to the maximum extent practicable. As such, impacts from construction and operational emissions of criteria air pollutants generated with buildout of the proposed Plan would be less than significant." This is confusing; it appears to be a repetition of the previous sentence. **Bradley-2-46**

Page 4.2-41

In the next to the last paragraph on this page the DEIR states: "Because these are screening distances, refined analysis of the effects from many of the high volume roadways would likely show much lower potential TAC exposure and smaller buffer zones." The DEIR does not explain what "screening distances" means? nor what "refined analysis" means in this context? nor who **Bradley-2-47**

is responsible for carrying out such analysis? It would help if you provided these clarifications in the final EIR?

Bradley-2-47 cont.

Page 4.2-43,44

The DEIR states under Action HW-1.F: Health Risk Assessments that the City shall requires project development proponents to submit a Health Risk Assessment within 1,000 feet of the I-880 or SR 84 freeways. I would amend this to specify that the "1,000 feet" is from the edge of the CalTrans right-of-way closest to the proposed development. The overall action could be good if the BAAQMD guidelines are conservative. But I do not know what they. Does a HRA typically take into account prevailing winds? Also I do not know if the agencies have identified "acceptable" impact levels; have they? what are they? where can they be verified? Of course Newark has a few residential neighborhoods that are clearly within the 1000 feet "screening" area, one of which I live in. How does the Lake neighborhood deal with TACs from both SR-84 and I-880? Do assessment tools take these potential double whammies into account?

Bradley-2-48

Page 4.2-48

The DEIR describes Mitigation Measure AIR-1: Numerous goals, policies, and actions contained in the proposed Plan address future increase in VMT and criteria air pollutants under the Plan; however, the projected growth in VMT in the Plan Area would still exceed the rate of population growth. There are no additional measures that would reduce this impact. Where in the document does it explain why increase in VMT will exceed rate of population growth? I would like to review and understand this conclusion. If impacts are significant and unavoidable, would this not be reasonable grounds for denying permits on a project? Just how are proposed project benefits measured against significant and unavoidable impacts? Am I correct in stating that the City Council members always have discretionary authority ignore significant and unavoidable impacts with the adoption of a statement of overriding considerations?

Bradley-2-49

Page 4.3-6

In the section covering local regulations the DEIR describes the role of the San Francisco Bay Conservation and Development Commission (BCDC). First off I would like to see a map in the final DEIR that delineates the BCDC's jurisdiction in the City of Newark. It would clarify where precisely "the ending at the culvert at the Mowry Avenue bridge crossing is located; it would also help to clarify where precisely the "the bend of the channel near Plummer Creek" is located. Unfortunately Figure 4.3-2 does not have the BCDC jurisdictional delineation.

There is a typographical error in the phrase "or change is..."; it should read "or change in...".

Bradley-2-50

Page 4.3-8

The following remarks pertain to Figure 4.3-2:

The northern portion of The Lake should also be colored emergent freshwater green.

Bradley-2-51

I am not sure to which grassland area, between Newark Blvd and Cedar Blvd. the DEIR is referring? Would you please clarify in the Final EIR.

The figure shows more grassland in the Mayhews Landing area than I think there actually is. There is the possibility that saltmarsh wetlands have become infested with invasive annual grasses and other weeds. To my knowledge, there is only a relatively narrow strip of grassland around the perimeter of the Mayhews Landing unit of the National Wildlife Refuge.

There should be wetlands of some type delineated in the Dumbarton TOD Plan Focus Area. Sensitive resources in the area may show up in the subsequent Figure 3.3-3, but even this figure is difficult to interpret. Albeit fragmented and isolated, at least two parcels adjacent to the railroad track on the east side of Willow street support seasonal wetland vegetation. Every year there is saturated soil that holds water for days on end and support vernal pool-like ephemeral vegetation. Butterflies and other insects abound although I'm unaware of even presence-absence surveys being undertaken to see if there might be any Threatened and Endangered or otherwise sensitive plants and organisms exist. The San Francisco Public Utilities District may have performed some surveys in the area due to their maintenance work on the Hetch Hetchy Pipeline.

The figure makes everything appear to be annual grassland in the vicinity of the Dumbarton TOD Plan Focus Area. It may be that the resolution of the figure is too coarse to indicate the location of a wetland mitigation parcel managed by Urban Wildlands in that area, but it is certainly worth taking note of and assessing potential impacts on this area resulting from proposed development.

I am wondering if the US Fish and Wildlife Service's Wetland Inventory database for this region was used? If not, I would recommend requiring project proponents to take advantage of this information. It is a valuable adjunct to information provided by the Department of Agriculture. See the following link: http://www.fws.gov/wetlands/index.html.

Bradley-2-51 cont.

Page 4.3-11

Under salt pond habitat (and nearby grassland habitat also), I do not see Short-eared Owl, Golden Eagle or any swift, swallow or bat species mentioned? But on walks taken around salt ponds I have observed at least these avian creatures. I think the Final EIR should include the most comprehensive lists of critters that are currently available and that the proposed Plan should incorporate requirements that project proponents use the most current information available regarding biological resource data. I request that the biological resource data upon which this DEIR relies is not considered adequate for future proposed projects (as "programmatic" might imply). The biological data which is being presented or incorporated by reference in the DEIR is not used to automatically "tier off" of and relieve future project proponents of their responsibilities to investigate each project. I am very concerned that City planners will use the "programmatic" nature of the proposed Plan to expedite in an inappropriate manner the project planning process. I request assurance in the Final DEIR and General Plan Tune-up that this is not the City's intent.

Bradley-2-52

The DEIR refers to the Coyote Hills Regional Open Space. Is there distinction between Coyote Hills Regional Open Space and Coyote Hills Regional Park?

I appreciate the City's efforts to review the California Natural Diversity Database (CNDDB) or to require project proponents to do so. There is in this database a wealth of useful information. Nevertheless, there are limitations of the CNDDB, and these should be stated clearly. For instance, sensitive plant species in the Dumbarton TOD may not be listed in the database. Review of data from CNDDB will never substitute for on-the-ground reconnaissance, survey, and "truthing". Again, when it comes to evaluating biological resources that may be affected directly or indirectly by project development, the CNDDB may provide a starting point but it should not be the "last" word. Even with non-biological resources, a utility pipeline for example, we would never rely solely on a utility facilities map or text description; instead we would require on-site visit and investigation before proceeding with project implementation.

Bradley-2-52 cont.

Page 4.3-12

There is a typographical error in the "legend" at the bottom of Figure 4.3-3: "Congdon's tarplan" should be "Congdon's tarplant."

Bradley-2-53

Page 4.3-13

The following remarks refer to Table 4.3-1:

Referring to Alkali milk-vetch, I request that references to surveys need to be supported with citations/reference---which include who, what, where, when, why. These citations/references are especially important when City planners reach a conclusion appearing in column three --- "potential for occurrence [of a species]" --- that "further surveys for the area were deemed to be warranted for impact assessment."

Actually, any time I see in the DEIR the statement "[was] deemed to be unwarranted," I would request that the conclusion be supported in the Final EIR by citations/references which include the "who, what, where, when, why" information.

Referring to the Arcuate bush mallow, I would expect that where inadequate information exists to rank occurrence, then policy would require site surveys at plant-appropriate times of the year.

Referring to Brittlescale, when were the surveys performed? What protocol was followed? I agree that there is suitable habitat. I think the plant has been observed and recorded on the Warm Springs unit of the DESFBNWR (Reynolds, S. 2005) which is located immediately southeast of Newark in city of Fremont.

With respect to California sea-blite, and all other plants and animals, when further surveys are indicated, General Plan policy should require that project proponents follow protocols acceptable to the California Department of Fish and Wildlife, the California Native Plant Society, the US Fish and Wildlife Service or other regulatory agency.

Bradley-2-54

748 Referring to the Caper-fruited tropidocarpum, here is an example of the author recommending
749 further surveys in development areas based on habitat type, viz., valley and foothill grassland. I
750 do not understand why the author did not offer similar a recommendation for Congdon's tarplant.
751 This appears to be inconsistent.
752
753 **Page 4.3-14**
754 Continuation of remarks related to Figure 4.3-1:
755
756 With respect to Chaparral harebell, I am not sure what is meant by "to rank the occurrence."
757 This statement made in several instances in this table 4.3-1. It is my understanding that this
758 species generally
759 occurs in a higher elevation range (300-1250 meters).
760
761 With respect to Congdon's tarplant, the table entry is confusing. I am not sure whether or further
762 surveys are being recommended or not. The second sentence says they should be, at least in
763 certain areas. As an amateur plant enthusiast, I personally am in favor of requiring further
764 surveys because I think I have seen it in the Newark area and also given that suitable habitat,
765 namely, "disturbed California annual grassland habitat (with alkaline substrates), particularly
766 near seasonal wetland," is fairly abundant in the Newark vicinity. In addition, in the same tabular
767 information related to Congdon's tarplant, I do not know what they mean by "pre-development
768 surveys"? Would you please clarify in the final DEIR with respect to the timing of such surveys?
769
770 With respect to California goldfields, what survey protocol did the City's consultants follow?
771 Was the protocol acceptable to the regulatory agencies? Regarding its "confirmed absence from
772 impact areas," does this refer to the proposed Plan area?
773
774 Regarding Delta wooly-marbles, who says it only occurs in vernal pool areas? The next column,
775 labeled "Habitat," shows several other types of habitat in which this plant may occur. Do
776 grassland or ephemeral wetlands occur in Areas 2, 3 or 4? Why does an action statement like
777 "surveys would only be required for those areas" appear under the heading Potential Occurrence?
778
779 Regarding Santa Cruz manzanita, there appear to be several occurrences on record (much of it
780 historical) of this plant, although it seems to be located in chaparral area of the east Oakland
781 Hills. I request that the final Proposed Plan require that surveys by qualified personnel be
782 conducted to confirm presence or absence of this species.
783
784 Regarding Santa Cruz tarplant, since there is inadequate information I request that the final
785 Proposed Plan require surveys to confirm the presence or absence of this plant. There are, as the
786 City's consultants probably know, historic sightings of this species in the region.
787
788 **Page 4.3-19**
789 Continuation of remarks related to Figure 4.3-1:
790
791 With respect to Slender-leaved pondweed, although the DEIR states Newark "generally lacks
792 appropriate habitat," I request that the final Proposed Plan require surveys to confirm the
793 presence or absence of this species because it has been found "in the vicinity of Newark." Upon

Bradley-2-54 cont.

checking, I discovered that at least one place it's been located is the Alameda Creek area near or in the Patterson Ranch area, which is practically across the street from the City of Newark. Still, there are a few remaining areas where shallow freshwater habitat occurs in what is left of Newark's mostly urbanized landscape, especial in Areas 2 and 4, which may not be too unlike where it was previously identified.

With respect to Uncommon jewelflower, although Calflora maps show many occurrences in Alameda County including at least one occurrence along east bay shoreline north of Newark.

Page 4.3-20
Continuation of remarks related to Figure 4.3-1:

Regarding Western leatherwood, as far as I know it has only been located in the west Bay Area, where there are number of known locations (Rancho San Antonio Open Space Preserve in Los Altos and Jasper Ridge Biological Preserve in Palo Alto), none near the shoreline.

With respect to Wooly-headed lessingia, there are known occurrences of this plant in the Milpitas-San Jose area as well as Alameda County and therefore I would request that the final Proposed Plan require surveys by qualified personnel to determine its presence or absence from proposed project sites with habitat determined appropriate by a qualified professional.

As both a citizen and member of the California Native Plant Society, I appreciate the fact that the City and its consultants are using the society's *Inventory of Rare and Endangered Plants*, as well as the California Natural Diversity Database as mentioned above.

Bradley-2-54 cont.

Page 4.3-21
Continuation of remarks related to Figure 4.3-1:

With respect to the Monarch butterfly, I think the concern here is ability of species to persist in our immediate area, our town. If we (my wife and I) have to drive out of the City to enjoy observing them, then they are too far away in my opinion. Fortunately, we still have them occasionally in our front and back yard due we think to cultivation of native plants instead of traditional sod. Otherwise we can infrequently admire them floating across the National Wildlife Refuge salt marshes, or walk or bike over to some regional park like Coyote Hills or Quarry Lakes but these are outside the Newark City limits. It sure would be nice to have some accessible open space in Newark that boasted these charismatic insects and more proactive encouragement by the City for the creation of butterfly habitat in the residential parks and neighborhoods.

With respect to Vernal Tadpole Shrimp, I would like the DEIR to provide citations/references to the subject surveys. What survey protocols were used? Who was it that made the determination of "absence"? When, where, how, and why? Were surveys conducted in potential site in the Dumbarton TOD Plan Focus area?

Page 4.3-22
Continuation of remarks related to Figure 4.3-1:

With respect to the California Tiger Salamander, I appreciate the slightly more detailed summary as to its potential occurrence. Still I request that the final DEIR include citation/reference to the mentioned surveys.

Page 4.3-23
Continuation of remarks related to Figure 4.3-1:

Regarding the Alameda Whipsnake, is there any evidence of occurrence or suitable habitat in the proposed development areas? I request that the City require in its final General Plan Tune-up appropriate surveys by qualified personnel to determine presence or absence of this species in all areas proposed for development.

With respect to the Alameda Song Sparrow, I request a citation/reference in the final EIR to the information under the heading Potential Occurrence. Also I would like to know if the Alameda Song Sparrow has been heard or seen in the areas proposed for development, how many and where. As above in many instances, I request that the City include a policy/action in the final GPT which requires surveys by qualified personnel using appropriate protocols to determine presence or absence.

Page 4.3-24
Continuation of remarks related to Figure 4.3-1:

With respect to the Peregrine Falcon, I request that the annotation under habitat reflect the fact that the birds frequently find tall urban structures with ledge-like features, e.g. utility and bridge towers, suitable habitat for nesting. They often use the third-story ledges of the aLoft Hotel in Newark for refuge during rainy weather.

With respect to American White Pelicans, this species use the freshwater storm runoff ponds in the Coyote Hills Regional Park and also the salt ponds of the south Bay. I have seen them foraging on the freshwater lake in Newark's Lake neighborhood, and also over in Quarry Lakes Regional Park and Lake Elizabeth in adjacent Fremont.

With respect to Bryant's Savanna Sparrow, how do we know it does not use/nest in the Dumbarton TOD project area? There is certainly suitable habitat in vicinity. I request the City include in its final GPT requirements for presence/absence surveys by qualified personnel following professional protocol.

Page 4.3-26
Continuation of remarks related to Figure 4.3-1

Regarding Black Rail, the bird definitely occurs in La Riviere Marsh on the National Wildlife Refuge, across Thornton Avenue from the Mayhews Landing unit. Refuge biologists can confirm occurrence based on vocalizations although their breeding status is still unknown.

Regarding California Clapper Rail, have City planners checked with biologists at the National Wildlife Refuge as to the presence or absence of this species in Mowry and Newark Sloughs? I

Bradley-2-54 cont.

886 doubt that rails will persist for another 50 years at the southeast end of the Bay unless we can
887 assure them the protection of higher elevation refugia during extreme high tide events. I request
888 that the final DEIR include the citation/references regarding the summary information for this
889 species. For your information, there potential habitat for this bird in portions of Plummer Creek.
890
891 Regarding California Least Tern, this species may be making a modest comeback in the San
892 Francisco estuary. Small, nesting colonies of the bird are being observed along the Hayward
893 shoreline south of a prime colony at Alameda Point. When did anyone specifically look for it in
894 the vicinity of Area 4? I would probably agree with conclusion "unlikely due to..." although I am
895 not very familiar the shoreline in the City of Newark's purview. I know that red fox and feral and
896 stray cats can wreak havoc with nesting colonies, as well as avian predators such as ravens and
897 kestrels. I would request that policies and actions in the final GPT require final project designs
898 to minimize the exposure of potential tern nesting colonies from potential urban predators. In
899 this case, I am asking the City to do what it can to promote the full recovery of this species, a
900 recovery that is seriously vulnerable to sea level rise.
901
902 Regarding Great Blue Heron, I would point out that these birds can even establish themselves in
903 urban park habitat. We have substantial colonies of nesting egrets and night-herons in the tree-
904 topped islands of the Lake in the Lake neighborhood of Newark.
905
906 Regarding Loggerhead Shrike, this is a California bird of special concern and population
907 declines in Alameda County over past 3 decades are presumed to result from grassland, both
908 natural and ruderal, habitat lost to urban developments. By continuing down the path of paving
909 over every last bit of grassland remaining in natural open space areas, our City is contributing
910 sadly to the problematic decline.
911
912 **Page 4.3-27**
913 Continuation of remarks related to Figure 4.3-1
914
915 With respect to Common Yellowthroat, I know that there are Common Yellowthroat in
916 freshwater marsh on edge of Lake Elizabeth in Fremont, and also along marsh edges of both
917 Coyote Hills and Quarry Lakes Regional Parks in Fremont. Am not sure if they are same
918 subspecies as ones found in salt marshes. I have also observed these birds in the Mayhews
919 Landing unit of the DESFBNWR, not more than 1 mile from Area 2.
920
921 As for the Western Burrowing Owl, I have observed individuals at the Warm Springs unit of the
922 National Wildlife Refuge which is relatively close to proposed development areas in Newark. In
923 the Breeding Bird Atlas for Alameda County, it remarks that "many undeveloped areas near the
924 San Francisco Bay, (….) which formerly supported nesting pairs in the early to mid-1980's, have
925 since been replaced by warehouses and other businesses." I request that the final GPT include
926 policies and actions that would promote the recovery in this bird in our town.
927
928 **Page 4.3-28**
929 Continuation of remarks related to Figure 4.3-1
930

Bradley-2-54 cont.

As for the White-tailed Kite, in the Potential Occurrence column, "May be" is too soft an expression. They have been sighted in these areas by bird watchers. There is even some evidence in the *Alameda Breeding Bird Atlas* (2011) of possible nesting.

As for the Willow Flycatcher, there appears to be a contradiction here. There may not be suitable nesting habitat, but obvious there's suitable foraging habitat. Please include in the final DEIR citations to support the conclusion of "absence."

With respect to the Yellow Warbler, there also appears to be some confusion. There is the statement that there is no suitable nesting habitat, but obvious there probably is some suitable habitat (for foraging?) if migratory individuals are observed. Please clarify this in the final DEIR.

Page 4.3-29
Continuation of remarks related to Figure 4.3-1

With respect to the American Badger, please include in the Final EIR a reference(e) to the who, what, where, when, how, and tabular information.

With respect to the Harbor Seal, the phrase "May be" in the Potential Occurrence column is not accurate. They are there. A friend of mine, Norton Bell, has been collecting data on them for both Mowry and Newark Sloughs for at least the past decade. For example:

Bradley-2-54 cont.

> Here are the abbreviations, names and coordinates of the Harbor Seal observation locations and most likely haulout locations. To see the sites, copy the coordinates and paste them into the search bar in Google Maps satellite view at http://maps.google.com/maps (Coordinates for a location in google maps can be found by clicking on "what's there".)
>
> SSP, Salt Pile (mound) observation location: 37.488548,-122.032056
> SSP, Salt Pile (mound) haulout location: 37.484377,-122.033043
>
> MSN, Mowry Slough North Bank observation location: 37.492703,-122.034631
> MSN, Mowry Slough North Bank haulout location: 37.493213,-122.043257
>
> MSS, Mowry Slough South Bank observation location: 37.494269,-122.047462
> MSS, Mowry Slough South Bank haulout location: 37.491647,-122.042989
>
> NS, Newark Slough observation location: 37.506219,-122.083426
> NS, Newark Slough haulout location: 37.491647,-122.042989

Please take such data into account in the Final EIR. I think Norton Bell can be reached through the biologists with the Don Edwards San Francisco Bay National Wildlife Refuge.

With respect to the Pallid Bat, please include in the Final EIR reference(s) for the information. I am interested in when and how the observations were made?

With respect to the Salt Marsh Harvest Mouse, I do not believe the assumption made for the statement in the Potential Occurrence column is a valid one, if no other reason but sea level rise and climate change. Please provide reference(s) in the Final EIR. Where did the authors get information relative to characterizing the population in northwest Newark as 'large and healthy…and [its] habitat in excellent condition. The Mayhews Marsh unit of the National Wildlife Refuge is a mess, with plenty of non-native house mice (and rats?), as well as non-native, invasive plant species. I would like to see some policy commitments and action made in the final version of the General Plan regarding the recovery of endangered and threatened species which occur within the City of Newark. This is especially critical in the future given sea level rise projections. There are certainly lands remaining in the City that could contribute toward assuring the persistence of the endangered Salt Marsh Harvest Mouse. A major document dealing with the recovery of endangered and threatened species in the San Francisco Bay tidal marsh is due to be published by the U.S. Fish and Wildlife Service in the very near future. I am not sure that it will be available in time to inform the proposed General Plan, but I request that the City do whatever is possible to contribute toward recovery efforts. If vegetation such as pickleweed, for instance, exists in or could be restored into Area 2 or Area 4, then paving over or otherwise drastically modifying such areas would not be contributing to the animal's recovery.

Bradley-2-54 cont.

Page 4.3-30

Continuation of remarks related to Figure 4.3-1

As pertains to the Salt Marsh Wandering Shrew, it is possible that biologists at the Don Edwards National Wildlife Refuge have documented the animal in the Mayhew Landing unit. If the City has not assured that their consultants actively pursued solicitation of information from the National Wildlife Refuge, I would request that this be done before the submitting to the City Council, the final draft of EIR for certification.

As pertains to the Townsend's Big-eared Bat, I do not know much. If the City's biological consultants have not checked with Dr. ??? at San Jose State University, then I request that they try to confer with this bat research regarding the status and distribution of bats in the study area.

Page 4.3-31

In discussing the data in Table 4.3-1, the DEIR states that a population of the sensitive Congdon's tarplant occurring in Newark "is not expected to remain for another five years"? Please include in the final EIR a reference to this conclusion. Who is making this assertion and on what assumptions is it based? Please provide this information in the final EIR. No matter if true, it appears to make short shrift of a very sensitive plant resource. It somehow attempts to justify a finding of "no real significance." I suggest that if we have a population of any sensitive biological resource and it is not projected into the plan horizon, this makes it very significant.

Bradley-2-55

I request that the final EIR give citizens and decision-makers an idea of what "sensitive natural community" designation entails and why such communities are important ecologically and on a local scale by including appropriate text.

Page 4.3-32

By the time the DEIR gets into describing the Standards of Significance in the biological resource section, I still have not seen that the author(s) have addressed the "natural" ecosystem and the important and valuable landscape services it provides the human community. Section 4.3 appears to focus on the animal and plant communities. Perhaps a discussion of the impacts on the other component of the natural ecosystem, namely, that abiotic dimension is touched on under hydrology or air quality. I would ask that the author of the DEIR find a way to discuss the big picture ecosystem and the invaluable services it supplies the human population. The Final EIR would be seriously deficient if discussion of the ecosystem as a whole is omitted. And perhaps it is dealt with in a piecemeal fashion while discussing other elements like air quality, groundwater supply, flood control, and natural open space. But the biological dimension of each of these "non-living" resources is critical. The vegetation in salt marshes can be critical in mitigating storm surges at extreme high tides, the vegetation and soil bacteria significantly affect the quality of water that seeps in our groundwater supply. These are critical resources of the human environment that provide us much of economic value and impacts from developments can compromise the integrity of these ecosystem processes resulting in many environmental problems that we are still trying solve at tremendous expense in human health and wealth (e.g. air pollution, ground water contamination, toxic chemical dumps, land subsidence, flooding, etc.).

Bradley-2-56

In the first sentence after the heading Standards of Significance, the authors use the term "cultural." I wonder why the word "cultural" is being used as it generally related to a specific subset of resources in the human environment. In fact, I did not find the term "cultural" in Appendix G of CEQA in the context it is being used here. I this a typographical error?

In the fifth standard, "Conflict with any local policies or ordinances protecting biological resources...", is the Bay Conservation and Development Commission's Bay Plan considered "local"? Does Alameda County have any local policies aimed at protecting biological resources which might be at odds with this proposed General Plan Tune-up?

In the sixth standard, I ask the question: Can the Don Edwards San Francisco Bay National Wildlife Refuge's Comprehensive Conservation Plan be construed as an HCP? I have heard that a consortium of cities, agencies, and Santa Clara County have adopted a Habitat Conservation Plan. If so, is this HCP relevant? It is my understanding that the Pacific Gas & Electric Company is developing an HCP. If so, would this be relevant to this standard of significance?

Under Section 4.3.3 Impact Discussion, the DEIR states in BIO-1 that the "Buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area." This is neither a discussion nor an analysis of impacts in the DEIR at this point. The statement in BIO-1 is a conclusion. By placing it in this position in the text, it makes the subsequent discussion/analysis appear to be a post-facto justification for the conclusion. I request that the statement in BIO-1 is positioned in the final EIR at the end of the discussion and analysis leading to its conclusion. I also request that the same reformatting of all of the "conclusions" related to the significance of impacts throughout the DEIR be placed **afte**r the discussion and analysis. The discussion and analysis of impacts in an EIR should be a

Bradley-2-57

straightforward, objective exposition exploring the potential effects the proposed action may have on the environment. The discussion and analysis should appear as an explanatory logic leading to a conclusion regarding significance of impacts.

The discussion and analysis are filled with conditional modifiers. If I am reading it correctly, it appears to say that (1) Given that Newark is already a pretty urbanized place, no one considers it to have any real wildlife habitat value; and (2) Buildout of the Plan could potentially result in both direct and indirect adverse impacts to sensitive plant and wildlife species. These statements do not appear to complement each other.

Bradley-2-57 cont.

Page 3.3-33

The DEIR states that "The federal, State, and local regulations described in Section 4.3.1.1 of this chapter would protect special-status species present or potentially present within the Plan Area and compliance with these regulations would minimize potential impacts." This is theoretically true, but who assures compliance? And although potential impacts might be minimized, who is saying they would be minimized to a level of non-significance? Also, I am concerned that the City seems to be more interested in meeting the bare minimal compliance. From a wildlife habitat perspective, our goal is protect the habitat, not just the sensitive animals. Converting open space areas into developed urban residential areas reduces the opportunities for assuring adequate space for plants and critters. By maximizing urban development we would be minimizing open space within the City and reducing opportunities for citizens to connect with nature via walking and bicycling to the natural spaces. We are making it impossible for our children not to be what the author Richard Louv refers to as the "last child in the woods."

BIO-1 is one of innumerable instances in the DEIR where it is being concluded that impacts to biological resources are being reduced to a level of insignificance based on compliance with other agencies' regulatory jurisdiction. But this is I think very flawed thinking and it is a flawed approach which applies to most of the innumerable instances in the DEIR wherein the conclusion of "no significant impact" is being made.

Bradley-2-58

At a Planning Commission Work Session on September 24, 2013, the City's consultant was explaining to the planning commissioners the progress that had been made to date on updating the General Plan. He explained how the consultants (and I am not sure at whose direction) "cut and pasted" in a wholesale fashion all the mitigation measures from the Specific Plans for the Dumbarton TOD and the Areas 3 and 4 Projects directly into the policies and actions making up the latest draft version of the General Plan. He explained to the five or six members of the Planning Commission who were present for the Work Session that by doing the cut-and-paste job it was making the new proposed General Plan a "self-mitigating" Plan. The idea which pervades the entire DEIR that the General Plan is somehow self-mitigating because it has incorporated the mitigation measures from other project Specific Plans is simply false. Each development project is unique. Each development project will have its unique mitigation measures, sometimes incorporated into its project proposal or imposed upon it by a City or State or Regional State agency that has jurisdiction. The mitigation measures are specific to the project Specific Plans. They may be and sometime are measures found in other Specific Plans, but when a project is finally approved by a land use authority such as the City Council, the mitigation

Bradley-2-59

measures are not policies, not directives, not recommendations or best management practices, they are in fact legal **requirements** with which project proponents must comply with. To assert, as I think the City's consultant did, that the mitigation measures as expressed in General Plan policy terms result in some type of "self-mitigating" General Plan whereby almost any significant impact resulting from proposed projects can be reduced to a level of non-significance is specious and fallacious.

Besides the uniqueness of each proposed project and whatever final mitigation measures it may entail, there is the flaw I think in assuming that "policy" equates to "requirement". I am not sure how this holds up in a court of law. But in everyday reality, exceptions to policy are commonplace. I think in land use planning they are referred to as "variances." It is my opinion, therefore, that if we have valid reasons to assume that exceptions to policy occur, then we cannot presume or conclude that exceptions will not occur to "self-mitigating" policy. We cannot in effect be assured that project impacts will be reduced to levels of non-significance simply because we boast "self-mitigating" policies. If this line of reasoning is incorrect, I would request that you provide me with an explanation of its defectiveness. If it is not, then I request that all of the conclusions regarding impacts being reduced to a level of non-significance based on the "self-mitigating" character of the proposed Plan be revised to either indicate they are or may be significant, or revised to state that there is simply not enough information to make a determination at the programmatic plan level as to the level of significance of impacts resulting from future proposed projects.

Bradley-2-59 cont.

Page 3.3-34

In explaining mitigation measures associated with the City's Housing Element and the Dumbarton TOD Project, the DEIR states that preconstruction surveys and additional surveys would require avoidance and relocation measures. I would point out that avoidance of direct impacts often does not adequately offset adverse impacts but serves only to isolate the resource. Such "mitigation" often focuses on the minimal avoidance measures and does little or nothing to contribute to the long-term survival of the resource.

Bradley-2-60

The DEIR identifies the Policy CS-1.3 in the draft proposed Plan related to interagency cooperation. It call for the City to "participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas." The DEIR does not discuss or reference to what extent the City of Newark has participated in cooperative efforts with the National Wildlife Refuge or the Fish and Wildlife Office of the U.S. Fish and Wildlife to encourage long-term preservation of the baylands for instance. The DEIR does not attempt to share with the public the extent to which this policy been implemented? Did the 1992 General Plan contain such a reasonable policy? The DEIR does not attempt to describe what "participate in cooperative efforts" means. The City, for instance, has a representative who sits on the Bay Conservation and Development Commission. Does this activity pass for "participate in cooperative efforts..."? Does participating in meetings with the proponents of the Dumbarton Rail Project, a project which could have numerous adverse impacts on biological resources of our baylands, agreeing to support the type of high density community which could facilitate the funding of the project, constitute participation in cooperative efforts to encourage long-term preservation of the

Bradley-2-61

baylands? I request that the City revise the DEIR to include better descriptions of what its policies mean in practical everyday language and some relevant examples. This should not prove too difficult if in fact the City has been implementing the General Plan policies. **Bradley-2-61 cont.**

The DEIR refers to Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. It appears that a number of citizens have been telling the City that much of the land in the proposed DTOD and Areas 3 and 4 Projects are very sensitive natural areas. Historic baylands in Area 4 are considered essential to the expansion of the area under the management of the National Wildlife Refuge. Conservation of both areas could contribute to assuring the long-term conservation of baylands especially given sea level rise. **Bradley-2-62**

Page 3.3-35

It appears that Action CS-2.B is missing.

In the section of the DEIR describing Action CS-2.C: Impacts on Special Status Species, paragraph (3)
states that "As appropriate based on the results of the preconstruction surveys, construction limits shall be clearly flagged as directed by the biologist to ensure that impacts to sensitive biological resources are avoided or minimized to the extent feasible." This reminds me of the inadequate measures being taken to protect the roosting and rookery areas of the islands in the manmade lake in the Lake neighborhood: One of the three island rookeries has been allowed to become connected to the shoreline making it accessible to mammalian predators. The construction crews have clearly flagged the limits of construction but have done nothing to protect the sensitive resources on one of the islands where a great many egrets and herons nest and roost.

In the same section, under paragraph (4), the DEIR states that the City "shall require ...." I appreciate the use of the word "shall" in this case as it demonstrates the City's commitment to cooperating with these agencies. These are all excellent (and nowadays standard) mitigation/best management practices. **Bradley-2-63**

Toward the bottom of this page the DEIR states that "Applicable federal, State, and local regulations, together with proposed Plan policies and actions listed above would reduce potential impacts to special-status species that could result from buildout of the Plan, compliance, and implementation to the maximum extent practicable. I think that the phrase "compliance, and implementation to the maximum extent practicable" is better placed before the action part of the sentence. Thus: "...and actions listed above, including compliance and implementation to the maximum extent practicable, would reduce…".
I also request that the word "practicable" be revised to "feasible."

Page 3.3-36

With respect to BIO-2 in the DEIR, please see my remarks and requested revision above for BIO-1. These "headings" (which I pointed out above ought not to be "headings") should reflects **Bradley-2-64**

the conditional nature of "self-mitigating policy/measures. Thus: ":…would result in less-than-significant……**if** mitigation policies and measures are fully implemented."

In the third paragraph on this page, the DEIR states that "Previous environmental review for the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified impacts to riparian habitat and sensitive natural communities in the Dumbarton TOD Focus Area and in the Southwest Newark Residential and Recreational Focus Area, including mitigation measures to address those impacts." I request that the final EIR state whether or not these referenced mitigation measures received concurrence and approval from the relevant regulatory agencies. If not, then those measures may not be enough to reduce the impacts to a level of "no or less-than significant." To be transparent, again I request that all assertions of "no or less-than significant" impacts should clearly reflect their conditional status.

In the fourth paragraph on the page the phrase "...was determined reduce the impacts" the word "to" should be inserted after "reduce."

In the fourth paragraph, the DEIR states that "Under Mitigation Measure 4.3-6, wetland plant and animal populations shall be relocated from any impacted wetlands." Were the direct and indirect impacts of plant and animal relocation identified and discussed? If not, then I request that a discussion and analysis of this measure be included in the pertinent environmental documents.

Bradley-2-64 cont.

In the fifth paragraph, the DEIR states: "The Areas 3 and 4 Specific Plan EIR identifies Impacts BIO-1 associated with impacts to riparian habitat. This impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measures BIO-1.1 through BIO-1.2B, which require wetland and habitat avoidance to the maximum extent feasible and either on-site wetland creation (at a ratio of 1:1) and enhancement (at a ratio of 0.5:1) or off-site mitigation banking at a ratio of 1.5:1." I have never heard of a 1:1 ratio for wetland/riparian mitigation except perhaps in cases where the creation of replacement wetland/riparian areas has been successfully implemented before project construction begins. Usually wetland mitigation ratios between 3:1 and 5:1 are the case. As I stated previously in this letter, each proposed project is unique, each proposed project site is unique, and the determination of mitigation ratios usually hangs on the nature of the impacts, their direct and indirect effects, their permanent or temporal duration. Again, I request that the final EIR state whether or not these referenced mitigation measures received concurrence and approval from the relevant regulatory agencies. If not, then the measures described above may not be enough to reduce the impacts to a level of "no or less-than significance."

Page 3.3-37

The DEIR states that "Impact BIO-10, regarding indirect impacts to waterbirds associated with the loss of wetlands, would be mitigated to less-than-significant levels with the implementation of Mitigation Measure BIO-10.1, requiring a mitigation plan for creation or enhancement of replacement wetlands." I would remark that a mitigation plan in and of itself is not adequate or suitable mitigation. It is the implementation of an appropriate and regulatory agency-acceptable

Bradley-2-65

plan that is paramount. Therefore, the measure in and of itself would not mitigate the referenced impacts. I request that the Final EIR be revised on this point to reflect the reality.

Has this measure ever been implement in the history of the urbanization of the Newark area? Has it occurred in any manner for the proposed DTOD or Area 3 and 4 developments?

With reference to Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation. To what extent was this accomplished by the City before the Dumbarton TOD or Area 3 and 4 proposed developments? I request that one or two examples be included in the final DEIR in order to give citizens like me an idea of open space that already has been set aside by the City and managed to ensure long-term conservation.

There is a typographic mistake above: "CS1.A" should be CS-1.A.

Pertaining to "Policy CS-4: Wetlands Delineation. Encourage the owners of large potentially developable properties to enter into early discussions with appropriate agencies conduct wetland delineation studies. Such studies should be used to identify areas to be conserved as permanent open space, as well as appropriate mitigation measures to offset any wetland impacts." This is probably a good policy, but it does not actually require anything of development proponents. Who is considered an owner? What "large potentially developable properties" still remain in Newark? It is not clear in the policy just who ought to conduct the wetland delineation studies? The project proponents? the agencies? both? How "early" is early? I suggest that the policy be revised in the Final GPT to provide more specific guidance as to timing of such well intentioned discussions and ways they will pursue to determine if in fact the City "encouragement" is resulting in the desired objective. Have the proponents of the Dumbarton TOD and Area 3 and 4 Projects already begun such discussion with the "appropriate agencies"? Have they conducted wetland delineation studies yet?

Pertaining to "Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas." I request that the policy be revised per my previous comment regarding specification of the timing of the action and how they City is to monitor the effectiveness of this policy.

Bradley-2-65 cont.

There is a typographic mistake: CS2.B should be CS-2.B.

Page 3.3-38

Pertaining to "Policy CS-3.6: Abating Illegal Dumping. Prohibit and abate the dumping of debris and refuse in and near wetlands and waterways, and the illicit discharge of pollutants into the storm drain system." The City says it will do this, however, they appear not to have sufficient staff or on-call contractors to accomplish this. Another problem is that they will often "pawn" off the responsibility and work to some other potential accountable agency, such as Caltrans, Alameda County Water District, etc. This was the experience that staff at the National Wildlife

Bradley-2-66

Refuge often had in the matter of illegal dumping in the vicinity of the Mayhews Landing unit of the Refuge along Thornton Avenue. It was extremely difficult to get the City to go to dump sites in a timely fashion. **Bradley-2-66 cont.**

Farther along on this page the DEIR states that "Once that map is "verified," the full extent of waters of the U.S./State would be known and the extent of impacts on regulated areas ascertained." The wetland delineation process and "verified map" are distinct from "ascertaining the extent of impacts". Please revise the DEIR (and proposed Plan, if appropriate) to reflect this fact. **Bradley-2-67**

Page 3.3-39

There is a grammatical mistake, an incomplete sentence or "typo". Thus " A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007." should probably be "...was received from...".

Toward the bottom of this page the DEIR states**: "**Significance Before Mitigation: Less than significant." This statement in facts occurs throughout the DEIR. What does this line mean? It appears to be wrong because it is concluded above (and in numerous places throughout the DEIR) that it is compliance with the **mitigation policies and measures** that would lead to meeting a "less than significant" threshold. Am I correct? The implementation of these policies and actions comes **after**, not before, the finding in the DEIR as to "meeting a 'less than significant' threshold." If this is the case, then please revise the "Before Mitigation" phrases in the Final EIR to read "After Mitigation". *Please do this for every such finding in the DEIR where this is the case.* **Bradley-2-68**

Page 3.3-40

The DEIR states that "It was found that this impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measure 4.3-6, which requires a wetland delineation to be conducted." It is difficult to see how merely the performance of wetland delineation would be adequate mitigation for impacts to waters of the U.S. unless of course the wetland delineation shows that no impacts actually occur in the USACE's jurisdiction. Please clarify this matter in the final EIR. **Bradley-2-69**

The DEIR states that "... or if avoidance is not feasible, that a program be prepared and approved to create and enhance on-site wetlands or create suitable wetland resources off-site." It is difficult to conceive how the mere preparation of a program to create and enhance on-site wetlands... could achieve adequate mitigation. It would be the requirement of successfully implementing such a program that would result in real mitigation. And I would suggest that the City, if the regulatory agencies have not, insist that such mitigation programs are fully assured by bonding. Some developers walk away from unsuccessful implementation of mitigation measures/commitments and neither the City nor the agencies have the personnel to assure compliance. Financial bonding would accomplish such contingencies. **Bradley-2-70**

It is difficult to understand how any permanent loss of wetlands situated so relatively close to the baylands could be adequately mitigated for by such measures. It may sound reasonable but it is likely not very practical. **Bradley-2-70 cont.**

The DEIR states that "...Mitigation Measure Bio-1.2B, requiring, as an alternative to Measure Bio-1.2A, the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank or other private lands within 10 air miles of the affected area and along the eastern shore of south San Francisco Bay within the same geographic watershed." I would point out that the fact of sea level rise poses another challenge in terms of any flat, undeveloped open space that is close to the existing Bay shore or salt ponds. The best use for such land may be to serve as buffer to protect existing urban infrastructure. **Bradley-2-71**

At the bottom of the DEIR states that "Additionally, the proposed Plan includes the following goal, policies, and actions that address potential impacts to wetlands, including waters of the US:... It appears the following section (from this point forward to page 4.3-42) is redundant. It is repetition of policies and measures that already were enunciated. Hopefully it was not intentional but a case of inadvertent mis-copy-and-paste.

Page 3.3-41

Pertaining to Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. Does this policy include those lands within the Refuge's "acquisition boundaries" which were identified over 20 years ago as lands worthy of consideration for inclusion within the boundaries of the National Wildlife Refuge at some future date? This is the last relevant open space within the Newark City limits. It will be too late to directly contribute to the National Wildlife Refuge if the City allows appropriate open space to be developed for other urban uses. This policy consequently seems specious. One wonders, given the fact that the acquisition boundaries have been known since 1989, why it is not a reasonable alternative to be considered. Certainly there are citizens in Newark who would support this general plan vision and land use alternative. **Bradley-2-72**

Land Use

Page 4.9-2

With regard to the Dumbarton TOD Specific Plan, I wonder to what extent the existing General Plan had any influence. What is the sense of having a General Plan if the City Council tends to amend it each time a new development proposed that is not compatible with the current Plan? The General Plan is intended to establish direction and principles to guide growth and sustainable, long-term development. I plead ignorance. Was the word "sustainable" used in the 1992 General Plan? **Bradley-2-73**

Page 4.9-5 **Bradley-2-74**

Pertaining to the section of "Undeveloped Lands" in Newark, the salt evaporation ponds are only "undeveloped" in the sense that there are not buildings or paved streets. The ponds were built. The levees surrounding the ponds were built. They require a substantial amount of expensive, on-going maintenance.

Bradley-2-74 cont.

Page 4.9-7

Regarding Land Use Action T-2.B: Cedar Boulevard Pedestrian and Bicycle Trail, I think this would be a great project, really contributing to the pedestrian/bicycle-friendly goal. This could also provide connectivity with the commercial facilities to the north of Jarvis and to the west of Thornton and also access to the Dumbarton Bridge and the regional Bay Trail on the Don Edwards San Francisco Bay National Wildlife Refuge.

The DEIR states under LU-2 that "The proposed Plan would not conflict with an applicable land use plan, policy, or regulations adopted for the purpose of avoiding or mitigating an environmental effect." The DEIR further states that "Per State law, the General Plan is the primary planning document for the community. Once adopted, the proposed Plan would replace the 1992 Newark General Plan. The Area 3 and 4 Specific Plan and the Dumbarton TOD Area Specific Plan would remain in force. Were these proposed developments actually consistent with the 1992 General Plan? or did they require major amendments to the General Plan and Zoning Ordinance? Again, I wonder if this General Plan Tune-up is not simply an bureaucratic exercise to bring what was the primary planning document for our community into conformity with inconsistent revisions and amendments previously recommended and adopted by the Planning Commission and City Council, respectively? Is there some truth in what I am saying?

Bradley-2-75

Page 4.9-8

With regard to Action LU-7.B: Street and Path Network, has there been an economic analysis done to indicate whether or not the City will have enough revenue to be responsible for the operation and maintenance of these public streets? How is all the residential development in this proposed project consistent with smart growth principles? Will we not be creating a relatively isolated residential community west of the railroad tracks with no locally available goods and services unless residents get into cars and travel?

Further reading of this section indicates that the Zoning Ordinance will need to be updated to ensure consistency with the proposed Plan after adoption. So the Zoning Ordinance has not been amended yet to bring the Dumbarton TOD and Area 3 and 4 Projects into conformity with a General Plan. These are major changes. Why wasn't the General Plan updated before approvals were granted? There is a great deal of emphasis in the proposed Plan to revitalize our existing community. One would think that the City ought to be trying to discourage the development of new neighborhoods that will be more or less isolated (divided?) from the existing community.

With respect to the section of the DEIR that begins on this page with "As described in Chapter 4.6, Greenhouse Gas Emissions, of this Draft EIR, the proposed plan would not conflict ... ", I am not sure why this paragraph is stated here. It appears out of context. Is it somehow meant to imply that the City's proposed land uses will be in compliance with regional GHG emissions

Bradley-2-76

reduction strategies? Building more pedestrian and bicycle-friendly infrastructure might advance such strategies, but the building of new medium density residential, relatively isolated from commercial/retail outlets and local transportation infrastructure will not. Buildout of the proposed Plan, as the DEIR shows, will certainly translate into more VMT and thus GHG emission. But then the City appears to put its collective head in the ground and proceed with unwarranted growth and development by adopting a resolution of "overriding consideration."

When the DEIR claims that "Overall, implementation of the proposed Plan would not conflict with an applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect and associated impacts would be less than significant...", I'm not sure this is entirely accurate given the goals and policies of the BAAQMD and MTC/ABAG and the proposed residential development in parts of Area 4. There are, in fact, other more regionally and locally beneficial uses for Area 4 lands that would result in less traffic and consequently less VMT and greater offset of GHG. This is one of those ecosystem services, not discussed under Biological Resources that natural open space could provide. Could the 960+ acres of open space be translated into its beneficial contribution to achievement and maintenance of air quality?

Here it is again, the statement that before any mitigation, the level of significance is "less-than-significant." This language is confusing when there is so much talk above about mitigation policies and actions.

Again, the statement found on this page "Significance Before Mitigation**:** Less than significant" appears contrary. Should not the statement read "Significance **After** Mitigation"?

Regarding the assertion that "Conflicts with the Habitat Goals and the Basin Plan are discussed in Chapter 4.3, Biological Resources, of this Draft EIR ...", conflicts with the Habitat Goals were not discussed in Chapter 4.3. They were not even identified. The only information in Chapter 4.3 regarding any conflicts was a sentence stating that no official agency had formally adopted the "habitat goals" plan or guidelines, and therefore presumably the City was not required to describe and discuss possible conflicts with the Habitat Goals? As a matter of fact, regulatory agencies such as the Bay Conservation and Development Commission do use the Habitat Goals document to guide their implementation of the Bay Plan. To me, this type of issue avoidance in the DEIR demonstrates the City's lack of sincerity in the realms of conservation and sustainability.

Bradley-2-76 cont.

Page 4.9-9

The DEIR enumerates some of the "numerous policies and actions [in the proposed Plan] intended to minimize such [inevitable] disturbances and support the goals of the [National Wildlife Refuge's Comprehensive Conservation Plan] CCP. But the DEIR does not appear to describe or analyze any of the "inevitable" conflicts that might result from the proposed Plan. It makes reference to "limitations on off-leash dogs" and the "avoidance of excessive night lighting," but gives the reader neither description nor analysis of how these might have adverse effects on the protection and conservation of wildlife. I could find no mention of "cats" in the DEIR although the depredation of wildlife resulting from house cats in urban areas is well known and researched. Although most of the policies and actions referred to on this and the next

Bradley-2-77

page appear to be very laudatory, they are not discussed in any detail. Nor do any of them address the impacts of urban land uses on the long-term protection and preservation of the baylands and other open space habitats within the current expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge.

Bradley-2-77 cont.

Page 4.9-10

One of the policies referred to in my previous comment is "Policy CS-2.6: Salt Pond Management. Encourage the management of salt ponds to enhance their value for wildlife habitat and recreation. In the event that salt production ceases, conduct a Specific Plan to explore a balance between development and preservation of important wildlife and open space resources cited in the DEIR." What exactly does this imply? Could the wording of this policy be revised to better reflect the refuge's goals in its CCP or even more broadly, given the limited planning horizon, its [the National Wildlife Refuge System's] mission statement?

This policy also appears contradictory/inconsistent as the urban development of Area 4 does nothing in the way of encouraging long-term preservation of the baylands etc. Guess it's the difference between narrowly conforming with existing wetland protection laws and promoting landscape open space resource preservation.

One of the CCP-supportive actions, Action CS-2.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives." This latter provision totally limits the scope of the City's future support, given that the City has been trying their utmost to incorporate into the Plan update the urbanization of the two largest remaining areas of open space.

Bradley-2-78

The City also cites as an action to support the Refuge's CCP the following: "Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay." But this an embarrassingly belated, practically irrelevant gesture of support since the City, over the past few years, has been advocating and promoting the residential and commercial development of the last remaining open spaces in the City.

Page 4.9-11

In the DEIR's conclusion (appearing at the top of this page) that the "overall, implementation of the proposed Plan would result in a less-than-significant impact with respect to conflicts with the CCP," would you please state in the final EIR if City planners or their consultants formally or informally consulted with Refuge personnel to seek concurrence on this important matter?

Bradley-2-79

With regard to the statement in the DEIR that "BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer

Creek ...", it is extremely difficult locate this jurisdictional landmark on the map provided in the DEIR. In the final EIR, would you please more clearly delineate the on the map for this reader. I don't see the bridge and I'm not sure if I'm looking at the referenced "bend in the Plummer Creek channel."

The statement in the DEIR to the effect that "Neither the adopted Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs" is very good news indeed. Although I cannot distinguish in sufficient detail the boundaries of these historic duck clubs, I presume the hunting was carried out in wetlands and nearby uplands. Just how close to the duck clubs is the City anticipating development?

With regard to the policy statement in the DEIR, namely, "Policy CS-1.2: Conservation of Sensitive Areas. Support the conservation of environmentally sensitive areas and unique natural resources in the city," I believe there is a strong case to support addressing Area 4 as "unique natural resources" in that it pretty much represents the last remaining intact natural open space area in the City of Newark and as such are valuable and unique de facto? All the open space west of the railroad tracks in Area 4 it has unique value as open space. There is Shoreline Lake and the Silliman Complex but these are dedicated to the preservation and conservation of natural open space. I urge the City Planning Commissioners to recommend dedicating as much of Area 4 as possible.

Perhaps finding a way to implement the proposed "Policy CS-1.3: Interagency Cooperation. Participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas" before proceeding with or during the on-going development of the Areas 3 and 4 Project would achieve the preservation of this unique and valuable resource.

Bradley-2-79 cont.

Page 4.9-12

It is on this page that the DEIR concludes that "Under the proposed Plan, the land use designation and zoning applicable to the duck clubs would remain unchanged as Low Density Residential. No development is envisioned on the location of the duck clubs, nor could any development of these areas, to the extent they are managed wetlands as defined under the McAteer-Petris Act, occur without a permit from BCDC or any other agency with jurisdiction over these areas. Further, as BCDC policies do not explicitly prohibit development on these locations and as none is envisioned in the proposed Plan, conflicts with the Bay Plan would be less than significant." In the finalization of the proposed Plan, I suggest that a policy directive be developed that would result in converting all those portions of Area 2 and Area 4 where development is not envisioned from the existing "low density residential" zoning to an "open space" designation. It just makes good sense; it the right thing to do. Why wait until it would require another round of amending the General Plan and Zoning Ordinance.

I am still uncertain as to how the City can, in the proposed Land Use Planning element, come to a finding of "less than significant" **before** any required mitigation is determined. Who knows if impacts will be able to be mitigated to a level of "less than significance"?

Bradley-2-80

Page 4.9-13

The DEIR states that "... buildout of the proposed Plan would not contribute to a cumulative impact associated with division of an existing community." No, but what is the rationale behind creating an isolated community? Cherry Avenue serves as a clear and formidable separation of residential neighborhoods from commercial/industrial, except in the southern portion of the Newark Old Town area. If dividing an existing community is not advocated, then why would we want to promote the creation of a divided Newark community? By locating residential units in Area 4, the City would actually be creating a fairly isolated residential enclave. This seems contrary to policies in the proposed Plan for improving and cultivating a greater sense of community.

At the bottom of this page, the DEIR tersely states that "The Plan would not result in any significant Plan-specific or cumulative impacts related to land use and planning and therefore no mitigation measures are required." But would it not be more honest to state something to the effect that: Since all adverse impacts have been reduced to a level "less-than-significant" through policies and actions that avoid or minimize impacts to the maximum extent practical, no *additional* mitigation measures are required? Because throughout the DEIR there is reference made to compliance with whatever, yet-to-be-determined mitigation measures required by the numerous, non-City regulatory agencies, the statement regarding cumulative impacts of land use that "no mitigation measures are required" is very distressing and confusing to say the least.

Bradley-2-81

Page 4.10-1

There is a typographical error: "beings" in line 2 should probably be "begins".

Bradley-2-82

Page 4.10-4

How exactly is one supposed to "read" Table 4.10-2? The numbers do not match any text in several instances. There are several dBA figures that are not associated with any source. Please revise for the Final EIR.

Page 4.10-9

Under Vibration Standards the DEIR that "For industrial uses, the City of Newark likewise requires that no vibrations be perceptible beyond the boundaries any particular site, *with an exception for vibration caused by temporary construction*." Should not even temporary construction noise be mitigated to the maximum extent practical because in many cases "temporary" construction can go on for days and weeks?

Bradley-2-83

Page 4.10-10

The DEIR states that "Figure 4.10-1 shows the existing 65 dBA CNEL train noise contours, along with those from motor vehicle traffic." I do not see any noise contours delineated. It displays noise monitoring point locations, not noise contours.

Bradley-2-84

Page 4.10-22

The DEIR cites "Action EH-6.A: Noise Ordinance – Limits on Noise Levels. Draft and adopt a Noise Ordinance that establishes acceptable noise levels and standards, as well as provisions for enforcement and penalties in the event these levels are exceeded." As with many other "actions" referenced in the DEIR, it does not appear that the planners have recommended any target dates for completion of the recommended actions. Please consider including "target dates for completion" of all actions in the proposed Plan.

Bradley-2-85

Page 4.10-28

The DEIR cites "Policy EH-7.6: New Noise Sources. Require new developments that have the potential to create long-term noise increases to mitigate potential impact to off-site receptor properties." Will this policy apply to on-site open space resource receptors, that is, the wildlife and the folks who may be using the open space? If not, please include in the final Plan policy that would address receptors occupying open space.

Page 4.10-35

In its conclusion regarding Noise Impacts, the DEIR states that Although the most effective mitigations such as soundwalls or earthen berms may theoretically be capable of reducing increases to ambient noise to levels below the above standards, such reductions cannot be guaranteed; and, in many cases, other considerations will prevent the use of these noise-attenuating features. Therefore, there are no additional measures available to reduce the associated impacts to a less-than-significant level....No feasible mitigation measures are available to reduce noise impacts to less than significant levels, impacts would remain significant and unavoidable." I am not sure that I understand what's being asserted. Cannot the noise-reducing mitigation measures be guaranteed? Many measures are proven to reduce noise impacts. Although they may not reach target levels, they are better than nothing. What other considerations? for example? might preclude the use of noise-attenuating features. The conclusion that there is "no feasible mitigation measures available to reduce noise impact to less than significant is sad, very sad. It is a difficult assertion to prove, especially given our discretion to regulate land use and setbacks, and so forth. I am suspect that when you attempt to meet the standards set by regulatory agencies, it will find that much the same, namely that it is not possible to mitigate every impact resulting from proposed development to a less than significant level.

Bradley-2-86

Page 4.12-5

The DEIR cites "Action CSF-4.F: Improving Fire Response Capacity. Ensure the provision of sufficient facilities and additional fire personnel, to respond to the demand created by new development." Of course this sounds like a responsible policy, however, in the discussion of Page 4.11-4, it claims that there will not be a need for new facilities, and it does not mention increases in fire personnel. It is hard to comprehend that the proposed increase in number of residents will not require additional personnel and equipment and probably facilities. How often do citizens hear statements to the effect that an agency "does not anticipate that this increase

Bradley-2-87

would require the construction or expansion of facilities," and then 10-15 years down the line hear from the same folks that such expansion is needed? or that a rehabilitation is needed and facilities will be expanded at the same time? It does not seem to make common sense that the increase in service population would be accommodated using existing stations? And how about personnel and equipment? Or does planning skip over those issues because CEQA may not require it? Farther down on this page, under the discussion regarding Cumulative Impacts, the phrase "modification of existing facilities" is introduced. I did not see that idea in the above discussion. Of course such modifications can be very expensive.

Bradley-2-87 cont.

Page 4.12-6

Under a discussion of Newark Capital Facilities Fees the DEIR states that the fees as they pertain to residential development need not be paid to the City until the issuance of the Certificate of Occupancy Why isn't the fee paid before construction in the case of residential development? It would appear that needs for law enforcement would arise (with occupants moving in, and before) and fees not being received until such time as would result in a lag before they could be used to construct or modify facilities and secure the personnel needed to address the protection of homes and residents?

Bradley-2-88

Page 4.12-15

In section 4.12.4 PARKS AND RECREATION, the DEIR "describes the regulatory framework and existing conditions, and the potential for environmental impacts related to parks and recreation." There is no reference in this major heading to Open Space. However, above it was referred to as a mandatory element. There does not appear to be any acknowledgment of open space per se nor an impact analysis…. In its discussion of parks, the DEIR offers no analysis of space that would allow opportunities for unstructured play. Perhaps the planners are taking a minimally required perspective, namely, parks and school grounds, period. There is little if anything setting the background as to the value of open space, why it is a mandatory element, and so forth. Again, I would suggest that in as much as the proposed Plan could eliminate much of the remaining open space in the City and that much of that would be on lands adjacent to baylands that are fully capable of sustaining bay restoration.

On Page 7 of the draft GPT it states that the City has expanded two of the state-mandated categories. The Open Space, it stated, was expanded to cover Parks and Recreation. So far in this DEIR, it appears that sodden parks and playing fields are the only kind of park land the DEIR is focusing on relative to this mandatory Open Space element.

Reference is made under the DEIR description of Regional and State Park to the Don Edwards San Francisco Bay National Wildlife Refuge encompassing 30,000 acres. The reader should probably know that half of the 30,000 acres is located on the west side of the Bay, and that most of the remainder on the Newark side of the Bay is not accessible by citizens due to Cargill salt operations. I suggest in discussions of this sort that the DEIR consider addressing acreage in terms of available miles of accessible trails.

Bradley-2-89

Page 4.12-22

The DEIR states that "Additionally, continued implementation of the parkland dedication requirements established in the Municipal Code would ensure that existing parks or public facilities are well-maintained and improved as needed." Inspection of almost any park in Newark would show that policy and ordinances do not assure that existing parks or public facilities are well-maintained and improved when and as needed. For example, the exercise equipment in the Lakeshore park have needed replacement for several years. The paved trail providing accessibility has been in various stages of disrepair for several years, as has been the park irrigation system. The City is slowly, extremely slowly, addressing the huge backlog of maintenance repair and replacement needs it has. How can the City Council and City Planning Commissioners go on promoting new facilities when we do such an inadequate job of maintaining what we already have? **Bradley-2-89 cont.**

Page 7-1

I do not think this is accurate. In fact the federal government owns much of this property in fee-title. Leslie Salt Co. and its successor Cargill Inc. have salt resource extraction rights in perpetuity. Nonetheless, the salt evaporation ponds function as significant migratory water bird and waterfowl habitat. The designation Salt Harvesting does perhaps more accurately reflect that nature of activities from a layman's perspective; however the designation Agriculture / Resource Production does help the layman understand why the land is eligible for Williamson Act benefits. I am not sure why the designation name change for this acreage. From another perspective it could be designated migratory bird habitat. **Bradley-2-90**

This concludes my comments. Again, I urge you to consider carefully the suggestions I have made and address the questions I have raised.

Sincerely,

John R. Bradley

COMMENT LETTER # Burrows

Terrence Grindall
Community Development Director
City of Newark
510-578-4208
510-673-5837

-----Original Message-----
From: mattman41@hotmail.com [mailto:mattman41@hotmail.com]
Sent: Thursday, September 26, 2013 11:44
To: TERRENCE GRINDALL
Subject: Please protect Area 4 from development - another failed golf course project?

MattM Burrows
3364 La Mesa Drive, #11
San Carlos, CA 94070-4211

September 26, 2013

Terrence Grindall
Community Development Director, City of Newark

Dear Terrence Grindall:

Dear Mr. Grindall,

I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay. **Burrows-1**

I read the financial analysis of the various scenarios, and of course you are going with Area 4, which accoriding to the analysis provides the bigges upside. Unfortunately, he key assumptions of your analysis did not seem to evaluate the environmental costs of filling in Bay wetlands, or the threat of sea level rise from global warming. Nor did it evaluate potential financial upsides of folding the properties into the Don Edwards National Wildlife Refuge. Seems a bit shortsighted. There was a golf course out in that general area in the past, which has disappeared into the wetlands of history - why do you want to repeat that failure? When this project goes upside down, your name will remain attached to it. **Burrows-2**

Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from
development:

-The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

-The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise"

-Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem"
and "critically important to waterfowl and shorebirds"

I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

Burrows-3

With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.

Sincerely,

Matt Burrows

Burrows-4

COMMENT LETTER # Dorman

Terrence Grindall
Community Development Director
510-578-4208

Begin forwarded message:

From: Michael Dorman <michael@mosaic-industries.com>
Date: September 17, 2013, 16:20:00 PDT
To: terrence.grindall@newark.org
Subject: Protect Area 4 from development

Dear Mr. Grindall,

My family has lived in Newark since 1989, and I co-own a business located in Newark. I oppose the plans to fill Area 4. It's the wrong plan in the wrong area. I've heard all the arguments for development, including that the "developers will sue the city" if we don't dump 2 million cubic yards of fill into this wetland area. I don't find these arguments compelling.

In the long run, the right thing to do is to protect Area 4. Please work to develop a General Plan EIR alternative that would accomplish this protection. Let's think about our kids and grand-kids, and let's not build housing stock that will be subject to flooding as sea levels rise.

I know you care deeply about the city. We can do better than the current plan. Let's do the right thing.

Michael Dorman
36551 Mulberry St
Newark, CA 94560

Dorman-1

COMMENT LETTER # Elkins

Terrence Grindall
Community Development Director
City of Newark
510-578-4208
510-673-5837

-----Original Message-----
From: elkinseye@yahoo.com [mailto:elkinseye@yahoo.com]
Sent: Friday, September 13, 2013 08:17
To: TERRENCE GRINDALL
Subject: Do Not Develop Area 4

David Elkins
1664 Everett Ave
San Jose, CA 95125-3815

September 13, 2013

Terrence Grindall
Community Development Director, City of Newark

Dear Terrence Grindall:

Dear Mr. Grindall,

The plan to develop "Area 4" into residential housing and a golf course is clearly not forward thinking. With seal levels rising, you will literally and figuratively be bailing out any residents that live in this development within the next 50-100 years.

I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay.

This plan is rooted in thinking that is about a century too late.

Elkins-1

Sincerely,

David Elkins

COMMENT LETTER # Hooper

Terrence Grindall
Community Development Director
City of Newark
510-578-4208
510-673-5837

-----Original Message-----
From: mollyhoo@aol.com [mailto:mollyhoo@aol.com]
Sent: Thursday, September 26, 2013 11:54
To: TERRENCE GRINDALL
Subject: Please protect Area 4 from development. Clearly it makes no sense to endanger the Don Edwards National Wildlife Area. Moreover, do you know that King Tides will raise water levels nine feet within 25 years. Wetlands are one of the few things that sta

Molly Hooper
201 Buena vista East
san francisco, CA 94117-4103

September 26, 2013

Terrence Grindall
Community Development Director, City of Newark

Hooper-1

Dear Terrence Grindall:

Dear Mr. Grindall,

Clearly it makes no sense to endanger the Don Edwards National Wildlife Area with extensive development in Area 4. Moreover, do you know that King Tides will raise water levels nine feet within 25 years. Wetlands are one of the few things that will protect your community from climate change and rising seas.

I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included

in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay.

Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from
development:

-The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

-The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise"

-Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem"
and "critically important to waterfowl and shorebirds"

Hooper-1 cont.

I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

Hooper-2

With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.

Sincerely, Molly Hooper

Hooper-3

Molly Hooper
4155528144

COMMENT LETTER # REA

Terrence Grindall
Community Development Director
510-578-4208

Begin forwarded message:

From: "Paul W. Rea" <paulrea@sbcglobal.net>
Date: September 25, 2013, 11:03:51 PDT
To: terrence.grindall@newark.org
Cc: Wayne Miller <wmcats@aol.com>, John Bradley <jandbbradley@sbcglobal.net>, John Raidl <johnraidl@aol.com>, "Sandy L. Cashmark" <redheadsteachbest@yahoo.com>, Danny Radcliff <dannyradcliff@prodigy.net>, Debbie Raidl <debiraidl@aol.com>
Subject: One Citizen's Input on the "Tuned-Up" General Plan

Mr. Terrence Grindall,
Community Development Director
City of Newark, Ca.

One Citizen's Input on the "Tuned-Up" General Plan 9/25/13

Dear Mr. Grindall:

Thanks for running a professional public meeting last night. Please allow me to elaborate on the remarks I made.

You may recall that I emphasized the need for the Plan to articulate i**ssues of quality of life** in Newark, especially the need to create more opportunities for **building a sense of shared community**.

One of the means to do this, of course, is to promote public space for **community gardens**. Local Ecology and Agriculture Fremont (LEAF) is doing this with considerable success at several plots: http://www.leafcenter.org/ And public gardens with native plants are also well underway in the Quarry Lakes area, where native plants are now labeled. Why not Newark, too?

REA-1

We're hoping to make it happen not only at Lakeshore Park now more broadly. After working with Bob Costa for a couple years now, several of us citizen gardeners are calling for less lawns and more flower beds devoted to specific kinds of drought-resistant plants, such as succulents, California natives, and sunflowers representing various countries. Such well-tended, well-labeled plots could provide opportunities for educating the public—and particularly school children.

Such endeavors might involve creating Newark versions of the San Jose Rose Garden, where residents from different areas or affiliations would commit to steward a project of their own conception. As in San Jose, these would not only provide esthetic interest and scientific information, but also great opportunities for community building—another challenge for Newark, which has the quietest PO I've ever known!

REA-1 cont.

On the issue of sea-level rise, you may have seen the following story in today's paper:

Plan on moving to Alameda Point someday? You might want to pack a swimsuit and snorkel.

Much of the former Naval Air Station - site of a projected 1,425-home development - will be underwater by the end of the century due to sea level rise brought on by climate change, according to the city's draft environmental impact report on the project released this month.

"For a lot of people, this is a very scary subject. We in the Bay Area have to come to grips with this not just at Alameda Point, but throughout the region," said Randy Rentschler, spokesman for the Metropolitan Transportation Commission, which is among the agencies studying the impacts of sea level rise in the Bay Area. (*Chronicle* Wed. 9/25/13).

Clearly this issue of sea-level rise bears up the proposed developments here in Newark; the new General Plan needs to treat them more fully fairly, fully, and seriously.

REA-2

Finally, I need to emphasize **the need for much improved democratic process**, which is a serious problem in many areas of Newark city government. The classic example occurred last April, when the president of the League of Women Voters scolded the Council for regularly violating the Brown Act—and then, just moments later, the Council ducked into closed session.

In the case of the General Plan, it's clear that there was inadequate publicity for last night's public meeting/study session: nothing in the Newark News or Patch, no announcement via LARA or Island organizations, etc. And, as several citizens pointed out last night, allowing two days for public comment period is hardly sufficient.

Finally, one might note how democratic process has declined since Barry Miller helped to author the original Plan back in 1992. At that time, city planner Charles Cashmark took the Plan around to several different neighbors, often getting impressive turnouts. Reversing this downward trend would seem to be an important issue for the New General Plan Few issues could be more important to the City's future.

Thank you for your attention —

REA-3

Paul W. Rea

--

Paul W. Rea, Ph.D.

35376 Newcastle Ct.

Newark, CA 94560

[510] 818-1202

COMMENT LETTER # Lewis

September 27, 2013

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

RE: City of Newark Draft General Plan "Tune-Up" DEIR

Dear Mr. Grindall;

Thank you for providing this marvelous work of science fiction. Where did the city find written in state government code that a city may provide a "tune-up" to replace a genuine general plan update. Does state law allow a half-baked EIR that relies on studies from more than twenty years ago and an outdated general plan and EIR? What is the time frame of this "tune-up"? It appears to be between 20 and 25 years thus giving the city a general plan that will be about 40 years old. This is worrisome. **Lewis-1**

The DEIR is confusing as it appears to base itself from previous Specific Plan EIR's. It also relies on phantom master plans that will not come before public review until next year. NewPark Mall is one example. There are also no specifics for so-called Old Town and the city hall/library complex. A supplemental EIR for part of the Dumbo Rail TOD is not completed. Upon what is this "tune-up based? **Lewis-2**

The Executive Summary is shameful. It appears to have been written by a pre-school class. There is no explanation of what LTS means or the significance of N/A. It appears that LTS means Less than Significant (impacts) and in that case this summary is dead wrong. What studies were done to conclude these findings? **Lewis-3**
The DEIR claims to be self-mitigating. What does that mean? Is it like do-it-yourself brain surgery? **Lewis-4**

What is "focused high-density housing" proposed for Dumbarton TOD? According to state guideline transit oriented developments are supposed to have housing, public transit and commercial within the development footprint. DTOD has none of this. There isn't even a train to nowhere; there is no train period. No bus no trolley no nothing. There are only a few nearby businesses such as a trucking company and chemical plant. There is nothing to indicate anything will be built anytime soon due to the need for soil and groundwater clean-up. **Lewis-5**

Another strange use of the English language are the words "embrace Newark's bayfront location". What does that mean? Is this a CEQA term? Where is Newark's bayfront? Last time I looked at a map Newark was surrounded by Fremont, salt and bittern ponds and two sloughs. Newark does have wetlands so we could embrace them. The photo labeled seasonal wetlands in the DEIR is wrong. It is tidal. But you would not expect the pre-schoolers to know that. Newark has seasonal wetlands in DTOD and proof has been sent to the city. There are also seasonal wetlands elsewhere in the city but this document leaves them out. **Lewis-6** **Lewis-7** **Lewis-8**

This DEIR is not based on the entire city. It concentrates on a few sites; NewPark Mall, part of Old Town, Areas 3 and 4 and Dumbarton TOD with slight mention of the city hall and library complex. The mall master plan won't be available until sometime in 2014. The section of Old Town comprises a few blocks on **Lewis-9** **Lewis-10** **Lewis-11**

Thornton Avenue. It doesn't even include the deserted city fire station. Areas 3 and 4, (the Southwest Newark R and R) is in litigation and cannot be considered approved for use in this DEIR. Dumbarton TOD is derailed and environmental review has not been completed. A new city hall and library are not on the horizon. Where does that leave this DEIR? Dead in the water. Lewis-11 cont Lewis-12 Lewis-13 Lewis-14

Speaking of water, the DEIR is remiss in discussing and disclosing the impacts of housing and development on the "bayfront". The city has no policy or studies on sea level rise and instead points to state and/or federal agencies to take care of the problem. The city claims it will build on massive amounts of fill out of the flood zone and all will be well.

Meanwhile Union Sanitary District who takes care of wastewater in Newark and Fremont is very concerned about their infrastructure. There are two pump stations; one on Cherry Street in Newark and the other one the Newark Pump Station located near Dumbarton TOD. In a recent study on their infrastructure, USD stated that all future infrastructure projects west of the Nimitz Freeway should incorporate future sea-level rise planning and include appropriate improvements if needed. There are also concerns about placing pipelines in filled areas as settlement could cause pipeline failure. The city can contact USD for a copy of the study. Lewis-15

I could comment more on this flawed document but my brain has run out of bandwidth. After slogging for weeks trying to make sense of the DEIR and draft general plan I have decided it is nothing more than a bunch of bologna that makes no sense whatsoever. Did the youngsters at CalPoly submit their report to the city on the so-called meetings they held? Are their recommendations and studies part of this process? If so, where are those documents located? How much did this DEIR and draft general plan cost the city? Since it is pretty much worthless I hope the city gets a substantial refund and finds competent consultants to do the project right. And stop with the "tune-up" nonsense. It is insulting to our intelligence.

Margaret Lewis
36102 Spruce Street
Newark, CA 94560

Wayne W. Miller
36505 Bridgepointe Dr.
Newark, CA 94560
September 27,2013

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

SUBJECT: GENERAL PLAN (GP) and EIR TUNEUPS: HYDROLOGY AND WATER QUALITY *(my comments are in italics)*

SUMMARY

My comments are a general critique of the tuneup documents of the City of Newark, and I reference some pages specifically. My comments primarily address Hydrology and Water Quality.

What really is a GP DEIR tuneup—your very confusing conglomeration of regulations and uncommitted references to not take action? The general consensus of readers will find throughout the new tuneup plans that almost every nonspecific, generic claim by the City concludes insignificance, often even before nonspecific mitigations that have no details of action. Contradictions between different sections and lack of commitment makes one wonder who composed these confusing documents? Many members of the public claimed to be confused, due to the unprecedented proposals in these end-run tunups, which were obviously quickly created to circumvent faults in the prior EIRs. Timelines for public input were also very short. Specific corrective actions in the tuneups were not proposed to address prior faults. Many illogical and circular arguments, appeared to eventually contradict themselves. **Miller-1**

Frequent claims by the City lack committed actions. For example, attempts were cited "to do something, support, participate, work with them, address issues, consult with, provide some kind of guides and incentives, no future reviews by the City, defer analytical evaluations or mitigations into self-mitigations, etc." How could this even be considered a tuneup when the Plan does little or nothing to address the reality of the impact of these developments? The tuneup is more appropriately a "tuneout". The tuneup is only a means of quickly escaping proper creation and review of the prior EIRs **Miller-2**

and its flaws, and specifically circumventing needed corrections of the cited flaws. So why not appropriately rename the "Tuneup" a "Tuneout"? **Miller-2 cont.**

As stated, numerous regulations, policies and recommendations in the General Plan Tuneup were cited, in detail, throughout many sections. Ironically, few if any have been adhered to in an acceptable or mitigatable manner to be less than significant, especially for CEQA requirements—also previously cited in comments from the public, numerous attorneys and agencies of interest. Explain why you have intentionally avoided the required specifics in implementing these regulations and policies with plans of timely implementation. These City plans need to reveal that the impacts are indeed ***significant*** *and not adequately mitigatable in the development of Area 2 and 4, including the proposed unbuildable golf course in environmentally undesirable sensitive areas.* CEQA law requires environmental review of "discretionary" development projects. If **significant** impacts are found, an environmental impact report (EIR) is required, together with mitigation of **significant i**mpacts. Resources Code §21000, et seq., http://ceres.ca.gov/ceqa/stat. **Miller-3**

Alternatives:

Compare your existing Plan realistically to the alternative in developing a walkable and environmentally preferable and sustainable development in the old town and inner City infrastructure areas. These are ***quality of life*** *concerns that many other cities have taken into consideration.*

The City needs to specifically address the true intentions and the monetary influence that many land owners and developers (Area 2 and 4 sprawl at edge of City) have had on the City for many years. You must consider that these development sprawls take resources and staff away from addressing the internal needs of the City, such as true infill and walkable towns that concentrate near inner City existing transportation and resources, or we will be saddled once again with lost opportunities. **Miller-4**

Added to depleting resources from population expansion, accelerating climate change, now and in the future, impacts of these large-scale new developments, ironically, also have been a significant contributing human cause of climate change and sea level rise. The environmental impacts of human developments, excessive consumption and associated pollution are creating environmental impacts that, in turn, are collectively and significantly affecting the projects themselves. Thus, logically, the science is requiring further assessments of the cumulative effects of all these projects on the environment and the effects of the changing environment on the projects themselves—as all are interrelated and **Miller-5**

inseparable. Project developments affect themselves through the self-created environmental changes they impose. The Area 2 and 4 development Plan simply exacerbates the circular environmental impacts on these developments that are coming back to haunt us—whether or not you attempt to degrade the application of CEQA law, regulations and policies, in order to put people into harm's way in Area 2 and 4, as well as the surrounding communities.

Miller-5 cont.

Alternative Plan for Restoration:

The DEIR includes an alternative to restore and to preserve Area 4. However, the intended consequences are to connect the Area 4 development to the Dumbarton Transit Oriented Development (DTOD). The alternative has been designed to prevent restoration of Area 4. The DTOD has been included in the ABAG and is part of the Bay Plan. The city must preserve Area 4 and produce an alternative that is more viable, like focusing on the more important concerns within the inner city areas, as many areas have been reported to be available. The DTOD has been considered defunct, economically and for numerous other reasons.

Miller-6

The City needs to show that conversion of Area 2 and 4 to open space and restoration is the preferred alternative, as requested by the public and agency comments. Why does the City continually defer to development in the outer limits in the sprawl areas when it is not economical nor is it environmentally desirable? Do you realize that the City needs to become current by implementing a plan that utilizes ***[current climate change impacts, sea level rise and public needs]*** *to adapt to changing environments? Do you ignore or argue around these illogically because of the influence of benefits to City staff from developers and certain land owners, while ignoring the needs of producing a plan that is actually beneficial to the citizens who live in Newark? I reiterate and emphasize: You must consider that these development sprawls take resources and staff away from addressing the internal needs of the City, such as true infill and walkable towns that concentrate near inner City existing transportation and resources.*

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For example, Mt. View already has a plan to address sea level rise and climate change. Also look at other cities and Mt. View who developed the walkable, environmentally friendly and publically desirable inner city areas, which also impacted high marks for schools--in comparison to the degradation pattern of Newark's diversion to develop into areas vulnerable to sea level rise, even within the life of the project.

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WATER QUALITY AND AVAILABILITY:
General Plan PAGE CS-5; DEIR page 4.8-14, 4.8-21+

"Discharge into these waters is also regulated by the California Regional Water Quality Control Board (RWQCB). When development is proposed in areas where wetlands may be present, detailed on-site surveys are required and mitigation must be provided for any potential habitat impacts. If there will still be a possibility of impacts once a development is built, long-term agreements are required to ensure that wetlands are permanently protected".

Miller-9

See **Water Quality Control Board (RWQCB) letter of Feb 2013 to the City of Newark**: *The Newark Plan has not complied to address Water Board's comments and concerns nor does the Plan have a permanent and sustainable protection plan, only to defer or ignore the issues. If fact, the proposal is to cause destruction of certain wetland areas, which is also contrary to Newark's policies on protecting wetlands. Furthermore, if pumping is stopped, Area 4 would be nearly or all wetlands, as it has been prior to pumping. Therefore the land should be left to restoration, as suggested by the WQCB, EPA and numerous other historical comments throughout the years, which the City refuses to utilize as an alternative.*

HYDROLOGY AND WATER QUALITY, GP page CS-8:

As stated in PCS-8: "Newark is under the jurisdiction of the San Francisco Bay RWQCB. In addition, the Department of Water Resources oversees water-related activities. Among the concerns expressed in its **most recent Water Management Plan are drought, aging infrastructure, climate change, population growth, and sea level rise**".

Miller-10

*The **Feb. 2010 letter from RWQCB** expressed numerous issues for Newark to address, but non-specific generic statements, and lack of direct and specific plans expressed by the Newark Tuneup and prior documents reveals noncompliance towards resolving the concerns. The concerns of the Water Management Plan that include **drought, climate change, population growth and sea level rise** have not been adequately addressed either, as they are all interrelated.*

My letter to the City on January 18, 2010 extensively criticized and begged answers regarding the Newark Areas 3 & 4 Specific Plan Project Draft Environmental Impact Report SCH No.: 200705205, due to the serious impacts of climate change and hydrology. So far, inadequate or no specific comments were provided by the City, mostly responding as "comments noted", "references to prior statements", or "already commented, or irrelevant". So we ask the question as to why the City has continued to

ignore many of these issues, where many were brought up repeatedly, again and again, by numerous sources with hundreds of pages of logical questions?

Reduction in water usage as required was only addressed in the GP with nonspecific intentions again. For example the GP stated the Newark will "work with" (nonspecific commitment) the ACWD to reduce water usage. In contrast, in Area 2 and 4, its proposed plan will increase usage as developments continue to sprawl, rather than conserve through restoration or through existing or inner City infill areas that have a history of exposure to drought years. Incentive programs and public education, as referenced, are counter to the proposed increase in population and housing that will increase its use of resources in the sprawl plan of Area 2 and 4 of the GP and EIR. How does the City expect that projected long-term drought conditions to not have a significant effect on water consumption in the new exterior significantly large and sprawling developments, even with conservation?

Miller-10 cont.

CLIMATE CHANGE AND SEA LEVEL RISE: GP page CS-18; and DEIR page 4.8-19 to 20, 4.9-20

Climate change and sea level rise *are large topics, all interrelated, and have been specifically discussed thoroughly, where arguments of science continuously reject developments in these vulnerable areas, both by government agencies, various assemblies and institutions throughout the world, and the public.*

Again, to emphasize, the ***action*** *of human influence has affected our environment, through climate change and sea level rise, which, in turn, cannot be separated from the science that demonstrates that climate change is affecting and reacting to both new and existing developments. We are not realistically changing to adapt or rectify our influence, only making it worse by placing more vulnerable, energy intensive sprawl in external areas.*

Creation of climate disruption and sea level rise by humans has caused a reversal of consensus to also include the environmental effects on the very developments that are, in turn, influencing the need to mitigate or, in particular, even avoid developments in the environmentally vulnerable areas. The environment is having an effect on these developments and must be considered in the evaluation of all proposals, now and in the future. The semantic arguments to avoid this reality are contrary to the laws, regulations or policies that address the environmental impacts ***on*** *the projects at this point.*

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PROGRESSIVE UPDATES (See GP, page CS-18):

Current climate change and sea level rise projections demonstrate that prior studies were far too conservative, i.e. ***2007 IPCC****, as many of the forces of nature that are causing change are non-linear, accelerating and can exacerbate one-another. Do you not agree that current changes and disruptions are rapidly causing us to perform more scientific studies, with reassessment and upgrading--by not only the IPCC but also numerous domestic and international research activities that are being forced to address the truth? Greenhouse gas reductions are not effective in most areas, and temperatures and greenhouse gases (C02 and more damaging gases) are rising much faster than predicted, as of 2013.*

For sea level rise and the impact of accelerated climate disruption, the EIR(s) from the City tend to utilize the 2007 IPCC projections, but then there are current arguments that can discredit much of those [conservative] projections, including reports from other sources of national and international monitoring. For example, to bring current the proposed GP and DEIR Tuneup, some quotes are as follows (comments in prior City documents cite a considerable amount of updates that were also ignored):

1. Current projections will eventually be 4-30 cm for 2000-2030, 12 to 61 cm for 2000-2050, and 42 to 167 cm for 2000-2100 in http://hazardmitigation.calema.ca.gov/plan/state_multi-hazard_mitigation_plan_shmp_commenting_2013.

2. The IPC greenhouse gas emissions projections in 2010 projected a sea level rise, relative to 2000, for the state to range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. State agencies may even use different sea level projections. Uncertainty is the key factor in these projections and it is best to adhere to the maximum impacts for the future, to avoid inundation.

3. Melting and ice sheet flows into the ocean are not adequately taken into account from the massive amounts of ice in Greenland and Antarctic ice. Ice sheets and land-based ice, displaced in the ocean will add a large significance to sea level rise. *A much greater rise in sea level is projected by many other organizations and scientists, due to forces of nature not even accounted for, as of yet.*

4. The National Academy of Sciences is also developing sea level rise evaluation.

5. *Again, in these conservative projections, ice sheets and land-based ice were not accounted for in the 2007 IPCC, that the city still sticks too in the old EIRs and*

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the Tuneup). I will add these projections, including the more ominous ones that are more likely, judging from the accelerating impact--since we aren't doing anything about it--only making it worse with the tar sands pollution contribution, fracking, deep water drilling , etc. You can see that most projections are conservative, for obvious reasons.

Miller-12 cont.

6. Other more ominous projections:

a. The National Atmospheric and Oceanic Administration's 2012 State of the Climate report, released earlier this month, showed global greenhouse gas emissions reached a new record high in 2011, and estimates suggest the record was broken again in 2012.

b. In 2013: The IPCC has moved in the right direction this time by at least trying to account for the key contribution to sea level rise from ***melting ice sheets,"*** director of Pennsylvania State University's Earth System Science Center Michael Mann told The Huffington Post in an emailed statement, explaining that it was ***ignored in the previous*** **IPCC report from 2007*.*** However, the projections they provide are ***still overly conservative, with an upper limit of roughly one meter by 2100, when there is published work that suggests the possibility of as much as two meters (six feet) sea level rise by 2100***," he added. **This fits a pattern of the IPCC tending to err on the side of conservative, in part--I believe---because of fear of being attacked by the climate change denial machine**.

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c. The IPCC even acknowledges governments influenced their projections, and they still persist. For example, a more current IPCC projection (September, 2013) only presents a 10-32-inch rise in sea level, which had to be upgraded from the prior 7-23 inches. The report predicts global temperatures could reach 0.5-8.6F, *leading to possible catastrophic changes to climate, and above all, to warming oceans*. The higher numbers are more likely, due to lack of agreements between governments: Only the lowest scenario, which was based on major cuts in CO2 emissions and is considered unlikely, came in below limit that countries have set as their target in the climate talks to avoid the worst impacts of warming (3.6F) before the industrial revolution. At this point, emissions keep rising mainly due to rapid growth in China and other emerging economies. But those nations say rich countries should take the lead on emissions cuts because they've pumped carbon into the atmosphere for longer."

Therefore, we have circular arguments of blame, and no government wants to put environment before economy, hence higher limits of sea level rise and climate temperatures are likely to occur. The IPCC still errs on the conservative and does not take into account other forces of climate change. IPCC projections become a moving target, as they are forced to consider the impact of the accelerating expansion of economics from the uncorrected growth of human population and lack of corrective action.

d. Describing the IPCC's projections, Climate Progress' Joe Romm wrote on Sunday, "Like every IPCC report, it is ***an*** **instantly out-of-date snapshot that lowballs future warming** ***because it continues to ignore large parts of the recent literature and omit what it can't model."*** (*Other scientific projections indicate that six feet in 2100 is insignificant if ice sheets slide off the terrain that supports them, into the ocean, leading to ocean water displacement--far greater than effect of melt on floating Arctic icebergs. The IPCC model does* ***not*** *take into account numerous other forces that are also coming into play, of course.*

Even the popular Scientific American and National Geographic (this month, Sept 2013 and this month, Oct. 2013) have been continuously publishing numerous, extensive maps and articles on the impact of global climate change and sea level rise).

Miller-13 cont.

For example:

e. As far back as 2008: Scientific American. The Unquiet Ice, Feb. 2008 (extensive article addressing many sources): "Loss of [land-based ice] of Antarctic and Greenland could add **200 ft of global sea level rise**—*has happened before with high C02 levels*. The National Geographic (www.climate.ngm.com) and the special issue as far back as June 2008: "The Science Is In", states "…ice sheet [collapse] in both Greenland and Antarctica would raise sea level **20 feet, inundating many coastlines**".

Note: The 20-foot rise represents "collapse" and the 200-foot level represents "loss of land-based ice", or a smaller change verses a major melt-down of sub-glacial ice, which from international studies looks ominous, either way, since we are passing the tipping point. And the world is too concerned about impact on economy to adjust, like Area 2 and 4 developments.

f. But then it is only a regional problem....(Cities and their vulnerable developments that deliberately put people and the environment into harm's way are excluded

from responsibilities associated with regional impacts, when they are even aware of the outcome???)

g. The *IPCC's* Fifth Assessment Report is set to be released in four parts between September 2013 and November 2014.

Miller-13 cont.

Therefore: *The City of Newark has presented The GP and DEIR as a vain attempt to an end-run "Tuneup", as of its release in August 2013, in order to circumvent the lack of prior compliance and adherence to those issues of serious concern expressed in previous comments, repeatedly, from the public and government agency sources.* ***If this Tuneup is considered current, then it must follow the more current updated rules, regulations and policies and to incorporate new projections for climate change, and, above all, sea level rise, added to the risk imposed on the exterior City developments of Area 4****. If the Tuneup also recognizes they must address the developments to 2035, what about the impact in 2100, as other cities have addressed? Why has the City avoided those updates in the current City plans, with only generic statements, and no acceptable specific plan of action or commitment? And why does the City plan persist in referencing outdated information such as 2007 IPCC (7-26 inches at end of century), ignoring current impacts?* ***Is not the plan for development long-term and should it not be realistic and current, as climate changes and sea level projections continue to rise.*** *Are you not considering that this plan places people in harm's way, with inadequate protections to accommodate future impacts?*

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LIFE OF PROJECT:

*The City must also consider that "**life of project**" is typically beyond their limited projections. Historically, everyone does not simply abandon their residents and move to higher ground when there even is a disaster. See [current] impacts of climate change and storm surge, i.e. Boulder Colorado (areas topped the 100 and 500-year flood plain), Hurricane Sandy inundation and seaboard flooding, and many others throughout the world.*

*Addressing **life of project**, or **lifespan**, with the shorter periods that were projected, does not allow for developments to continue with further improvements, but only an abrupt end, unlike most other projects that have continued for many years beyond. Worst case is likely--due to climate change and sea level rise that is increasing in magnitude and indeed may terminate these developments abruptly. The City must evaluate these for the worst case analysis, taking into account all forces of nature that can simultaneous occur.*

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BCDC: *GP page CS-10 and DEIR page 4.8-7:*

BCDC assumes that projects will at least last **50-90 years**.

But projections for climate change and sea level rise already defy the existence of such developments in Area 4, even with attempted mitigations. ***Sea level rise and tidal flooding can inundate the project, coupled with their effects on back-flooding of rivers, creeks, storm water discharge, storm surge flooding from above and from the sea, wave over-toping, subsequent erosion of the building pads, sewage backup, pump failure inundation, liquefaction, settling , and destruction of wildlife habitat and the protective value of wetlands and marshes, and other (yet unknown) hydrologic forces that are going to be brought forward to affect the Area 4 development.***

This is an example where the environment is also going to impact the development itself, from the effect of the development on the environment. You cannot separate this cause-and-effect relationship unless.

Why have you not adjusted appropriately for these changes, where potential hydrologic impacts and fill above your conservative projection will be inadequate? Why have you not at least considered the ***simultaneous impact*** *of flooding from storm surge, sea level rise and other hydrologic forces, in which the City itself has expressed concern? Historically, the Newark City tends to* ***treat these risks separately, not collectively****, and argues the proposed island type and/or peninsula developments in Area 4 will not be at risk with limited mitigations—which no one can guarantee. Can you deny that the proposed development Plan has been designated as being extremely vulnerable from all sides and from the impact of the variety of forces and environmental modifications as cited within the projects? Impacts are consistently significant and cannot by dependably mitigated with excess fill and unproven drainage technology in the face of the obstacles described.*

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FLOODING: GP pages EH-9-10 and CS-18. DEIR page 4.8.1, 4.8-15, 4.8-27

The FEMA flood plain maps are outdated and nonspecific to the actual impact on developments in Area 4. The maps are typically only used for flood insurance and should not be exclusively used to decide mitigations for proposed future risks. Besides, these maps are still in the process of being updated. And why have you not specifically addressed these impacts, with corrections, rather than generic mitigations that erroneously claim insignificance? "Collaborative work" and "need to address" as cited

Miller-17

*by the City to develop adaptation strategies do not address or commit anything specifically for now or the future. CEQA law, guidelines and checklists include issues and concerns beyond the limited citations in the DEIR of the City. Again, the **7 to 23-inch rise in sea level by end of century**, as cited by the City is far outdated, as well. In fact, the development assumes that mitigations proposed will be acceptable, but sea level rise and climate change must also be considered as it advances into the future.*

Miller-17 cont.

LEVEES: DEIR page 4.8-1, 4.8-17:

Existing levees in Area 4 are uncertified and in disrepair. No plans exist for economic commitment at a regional or local level. Many existing flood gates, tidal and otherwise, around the Bay are very old, not adequately maintained or repaired (due to economics, lack of attention or confusion of responsibility and ownership). Pumping to prevent flooding will also need to be continued in Area 4, even with building pad mitigations. Building pad elevation therefore becomes even more uncertain. Recent publications regarding the impact of sea level rise on Alameda City are ominous (look it up).

Miller-18

STRATEGIES FOR ADAPTATION:

The 2009 California Adaptation Strategy emphasizes the need for more serious adaptation, or even abandonment, if it is uneconomical and there is too much risk to remain. The 2009 California Climate Adaptation Strategy states: "Consider project alternatives that avoid significant new development in areas that cannot be adequately protected (planning, permitting, development, and building) from flooding, wildfire and erosion due to climate change. The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is to carefully consider new development within areas vulnerable to inundation and erosion. State agencies should generally **not** plan, develop, or build any **new significant structure** in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure. However, vulnerable shoreline areas containing **existing** development that have regionally significant economic, cultural, or social value may have to be protected, and in-fill development in these areas may be accommodated. State agencies should incorporate this policy into their decisions and other levels of government are also encouraged to do so. (CS-2; OCR-1 and 2; W-4 and 9; TEI -2 and 7)."

Areas 2 and 4 in Newark are undeveloped, do not have enough significant economic value in comparison to other alternatives, and development would not be infill but additional external sprawl that is considered new, adding to significant greenhouse gas emissions and climate change. Furthermore, additional expensive protections would be

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needed to avoid risk of storm surge, flooding and sea level rise. Why are you proposing to raise building pads up to a conservative level, when climate change and sea level rise are rapidly accelerating, as currently reported?

As previously stated, the existing levees of Area 4 are not maintained either and are not FEMA certified. There are no current FEMA updates to guarantee that the proposed City plan will be acceptable, now or in the future. More current sea level rise projections must be incorporated in new FEMA rules. There are no regional plans or reasons to protect at ***the tax payer's*** *expense, when structures are* ***knowingly placed in harm's way****, based on current data and future projections. Do you still expect to blame problems you knowingly create to be the responsibility shifted to a regional problem—as you need to be accountable for these decisions and to the tax payers?*

Miller-19 cont.

PUMPING AND SALTWATER INTRUSION: DEIR page 4.8-23

Saltwater Intrusion to Groundwater Aquifers Saltwater intrusion. (Edwards and Evans, 2002):

Saltwater intrusion into aquifers is a man-made problem in many places in California, resulting from over-pumping, but it will be accelerated and made worse by sea level rise. It occurs where saline water moves inland into a freshwater aquifer, contaminating it with salts and making it unsuitable for water supply or irrigation. Pumping coastal aquifers in excess of natural recharge rates draws down the surface of the aquifer. When the ocean has a higher "potentiometric surface," or water elevation, it causes the saltwater wedge to intrude further inland (Figure 35). Seawater intrusion is already problematic in California's coastal aquifers throughout Central and Southern California, including the Pajaro and Salinas Valleys and aquifers in Orange and Los Angeles Counties.

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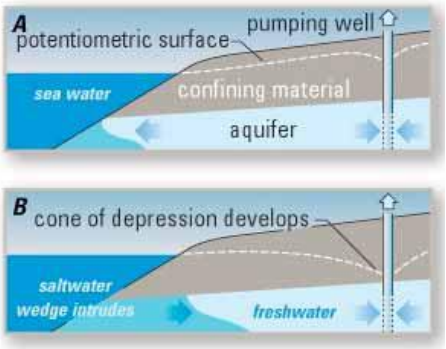

Figure 35. Saltwater intrusion. Source: Edwards and Evans 2002

GP pages CS-10:

An example in Area 4: Levees (uncertified), pumping of the wetlands and soil disruption to destroy vulnerable species of Area 4 has occurred since the 1980s. If left alone, Area 4 would be mostly, if not all wetlands, in an undeveloped and un-mitigatable flood zone, and would flourish as habitat for biological life to continue to proliferate. This is one example where the changes to Area 4 have added to a detrimental environmental impact in the area.

The GP refers to the Newark aquifer as being shallow at 40-140 ft. below the ground in most inland locations with a series of wells to intercept bay water before it reaches the aquifer, with a considerable amount of salt water that remains.

Reports have demonstrated that continued pumping will increase salt intrusion as wells continue to be pumped to provide water for the expanding population, as developments expand into the proposed Area 2 and 4 plan.

Miller-20 cont.

CONCLUSION:

Emphasizing my previous comments:

I still must ask: "What really is a GP DEIR Tuneup"—your very confusing conglomeration of generic regulations and uncommitted references to defer any action? After all, it was considered a tuneup—but was mostly a collection of citations of regulations, followed by the City's intentions to follow them by making nonspecific claims that avoid the issues that have been criticized in past reviews. Many members of the public claimed to be confused, due to the unprecedented proposals in these end-run tunups, which was obviously quickly created to circumvent faults in the prior EIRs. More appropriately the tuneup should be referenced as a "Tuneout".

Therefore, I can only conclude that this GP and DEIR "Tuneup" attempt has only generated ***more flaws,*** *while it even defers specific actions of commitment. The laws of CEQA, regulations and policies dictate that these Tuneups should to be totally scrapped or at least revised for more review and comment by the public.*

Wayne W. Miller

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Jana Sokale
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September 27, 2013

Sent via electronic mail to terrence.grindall@newark.org: No hardcopy to follow

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

Subject: Comment Letter on the Draft General Plan Tune Up Program EIR for the City of Newark, California

Dear Mr. Grindall,

I am writing as a Newark resident for over 20 years and member of the Citizens Committee to Complete the Refuge. As a member of the Newark community who has actively participated in the few opportunities provided for public involvement in shaping General Plan I must first express my great disappointment and displeasure at the very brief review period afforded the two documents currently out for public review. The Draft General Plan and Draft General Plan Tune Up Program EIR were released to the public almost simultaneously in August 2013. This affords the public very little time to review these two documents which total over 916 pages without appendices. In most cities a Draft General Plan is released and reviewed by the public long before the environmental document is circulated. This is the first time the public gets to review both documents. This does a disservice to the community by limiting the thoughtful comments that could be supplied by residents. **Sokale-1**

I was also astounded to learn at the September 24, 2013 Planning Commission meeting that the General Plan was essentially finalized with the exception of a small "addendum" to be prepared by the consultant. As if this was not enough information for me to come to the realization that Newark city officials are disinterested in the thoughts and opinions of residents, than the EIR schedule certainly communicated this fact. The Planning Commission was shown a slide that indicated:

- Draft Program EIR comment period closes on September 27, 2013
- Planning Commission to review Draft Program EIR on October 8, 2013
- City Council to review General Plan on October 10, 2013
- City Council to review and adopt the General Plan and certify Final Program EIR on October 24, 2013

I expressed my concern over how the City would find the time to prepare responses to comments, circulate comments and responses to elected officials and still certify the Final Program EIR by October 24. Did you plan this schedule to dissuade public comments? **Sokale-2**

Newark General Plan – Introduction

The Newark General Plan includes goals, policies and actions that "are intended to guide the City's actions during the life of the Plan (page I-4). The goals, policies and actions are the fundamental basis of the Plan. "In addition, the following words are used throughout the General Plan to indicate whether a particular provision is mandatory, advisory or permitted:

- *"Must", "shall," or "will" identify provisions which are mandatory. Verbs such as "require" reflect similar obligatory directives.*
- *"Should" identifies a provision that is advisory. Verbs such as "encourage" and "support" are also advisory. Stated directives using these words should be followed unless there are compelling, countervailing considerations. More flexibility is intended in the application of such policies than those which are mandatory.*
- *"May" indicates a permissive provision. This indicates a course of action is permitted, but not required. Considerable discretion can be used when applying such policies to specific issues."*

These goals, policies and action statements do not constitute mitigation measures that provide for a "self-mitigating" General Plan.

Sokale-3

Newark General Plan Tune Up Program EIR
A Cumbersome, Cobbling Together of Specific Plans

CEQA Guideline Sections 15140 to 15155 of the CEQA Guidelines describe the how an EIR is to be written to be accessible to the public and decision-makers.

> *Section 15140. WRITING*
> *EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents (Section 21083, Public Resources Code; Reference: Sections 21003 and 21100, Public Resources Code).*
>
> *Section 15141. PAGE LIMITS*
> *The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages (Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.).*

Sokale-4

The Newark General Plan Tune Up EIR is beyond lengthy (558 pages) and requires back checking of multiple documents to begin to piece together the intent of the environmental review Particularly frustrating are the references to mitigation measures in the Housing Element EIR, Dumbarton TOD Specific Plan EIR and Areas 3 and 4 Specific Plan EIR. The General Plan Tune Up EIR reader is supposed to cross-references multiple documents in hopes of gleaning the nature and extent of analysis for project-based mitigation measures that are intended to reduce the level of significance of impacts identified in the General Plan Tune Up Program EIR which covers the entire City not simply certain specific plan areas. The General Plan Tune Up Program EIR cobbles together the analyses from these specific plan documents and

Sokale-5

then tosses in a series of goals, policies and action statements, which the City of Newark appears to rely upon to mitigate all other vaguely defined impacts. Impacts are not clearly described and therefore mitigation measures lack objectives and measurable performance standards. Many of the goals, policies and action statements are advisory only, providing no guarantee of implementation. The goals, policies and action statements that are considered to be "required" fail to identify who, when, where and how these measures will be implemented. No consideration is provided for failure to achieve the desired reduction in impact levels. The document lacks focus and clarity unless the intent was simply to obfuscate. This nearly across the board scattershot approach makes this EIR particularly unapproachable to the resident wishing to add their voice to the future plans for the City of Newark.

Sokale-5 cont.

Sokale-6

The Draft Program EIR also misleads members of the public about the validity of Areas 3 and 4 Specific Plan. It makes numerous assertions and incorporates aspects of the Areas 3 and 4 Specific Plan into the Draft Program EIR even though the City of Newark knows that a legal challenge to the Areas 3 and 4 Specific Plan EIR is working its way through the court. The City of Newark has not properly adopted the Areas 3 and 4 Specific Plan nor properly certified the Areas 3 and 4 Specific Plan EIR. On November 20, 2012, the Alameda Superior Court issued its Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions. The Suspending Resolutions are intended "To ensure that the [Areas 3 and 4 Specific Plan] project does not proceed until the EIR is effective," the court ordered the City to "SUSPEND Resolution 9745 (Certifying the EIR) and Resolution 9746 (adopting the Newark Areas 3 and 4 Specific Plan Project and the related General Plan Amendment" pending resolution of the case or further order of the court. That suspension was in effect when this Draft General Plan Program EIR was released to the public and remains in effect at the time of this comment letter. Thus, the Areas 3 and 4 Specific Plan is not in effect, and it disingenuous for the City of Newark to represent it as approved and rely on its analysis in the Draft General Plan Program EIR. Reliance on this Areas 3 and 4 Specific Plan and the accompanying environmental document creates a false pretense and results in an incomplete analysis of General Plan impacts.

Sokale-7

The Draft Program EIR also defers the release of the Mitigation, Monitoring and Reporting Plan until release of the Final Program EIR. This deferral of information further reduces the public's ability to review and provide comment on this most important planning effort. I again am disappointed by the lack of timely information.

Sokale-8

The Planning Process – A Tune Up?

California Environmental Quality Act (CEQA) review documents should be prepared early enough in the planning process to enable environmental factors to influence project design. The City of Newark has a history of establishing a project vision and then assuming the environmental conditions will support the desired project. When environmental factors do not support the project concept Newark grants approvals and entitlements irrespective of the feasibility of development. The General Plan Tune Up EIR continues this modus operandi. The General Plan Tune Up should provide an opportunity for decision-makers to step back and evaluate environmental conditions and project realities and make appropriate course corrections. However, this potential use of the "Tune Up" is not apparent.

Sokale-9

A few examples where course corrections are needed include:

The feasibility of developing the Dumbarton Rail corridor appears to dim each day as ridership level projections are lowered and construction cost estimates escalate. The rail corridor competes with many regional projects that provide a far higher return on investment (ROI) per transportation dollar as determined by the Metropolitan Transportation Commission and has far less political support to garner state and federal monies than California High Speed Rail project. Instead of responding to this new information, Newark pushes ahead with high-density, transit-oriented development without the benefit of any transit infrastructure to support this intensity of development on the edge of the city. The development proposed in the General Plan Tune Up fills more wetlands and builds on the very edge of the city. The lack of a course correction at this location will create significant traffic issues for the entire community and contribute to the loss of bayfront lands and habitats that make Newark unique.

The feasibility of developing housing and a golf course in Area 4 grows slimmer each day as the legal challenge to the specific plan moves through the court system, projections for sea level rise mount and regional agencies with jurisdiction over wetlands, water quality and water infrastructure become more aware of the flaws in Newark's planning efforts. Newark's desire to fill historic tidal wetlands and the Bay edge are not actions that embrace the special landscape qualities of our community. Instead of taking the opportunity to adjust the vision for these lands, the City of Newark demonstrates the "Newark Way" by continuing to designate Whistling Wings and Pintail Duck Clubs lands for low-density residential land use. This outdated development proposal will also force further loss of wetlands in Newark and fails to acknowledge the impact this housing will have on wetlands in the future. The project will need sea level rise protection that will further impact the lands designated by Congress for inclusion into the Don Edwards San Francisco Bay National Wildlife Refuge. Filling these lands with homes and a golf course does not demonstrate the sustainable, long-term direction that Newark should be pursuing.

The environment should influence the planning such that the General Plan truly represents the physical qualities of the landscape that make Newark unique – its bayfront! I encourage you to rethink the feasibility, sustainability and long-term economic viability of these aspects of these planning efforts.

Sokale-10

Project Description Inconsistencies

Page 3-3 – The document states, "This Draft EIR compares the buildout potential for the proposed Plan with the existing baseline condition, described in detail in each section of the Chapter 4.0, Environmental Analysis." In fact, the document frequently assumes the baseline conditions of the suspended Areas 3 and 4 Specific Plan and associated EIR. As a result, this Draft General Plan Program EIR fails to identify and analyze the impacts and prevents full disclosure of the actual environmental impacts compared to existing conditions on the ground.

Sokale-11

Page 3-8 – Areas 3 and 4 Specific Plan description indicates "…however, Area 4 is one of the last undeveloped sectors of the city and is largely in agricultural use today. However, on Page 3-21 the document states, "The proposed Plan also includes policies intended to protect and enhance sensitive natural resources in the Southwest Newark Residential and Recreational focus area, including wetland and aquatic habitat, natural hydrological features and other biological resources." The description on Page 3-8 should be revised to more accurately reflect the character of the lands in Area 4 including the fact the nearly ½ of the site is delineated wetlands. **Sokale-12**

The General Plan Draft Program EIR lacks a basic discussion about the physical and biological properties of the Area 4 lands proposed for development. Thus, a reader does not immediately have a sense that the project is primarily located in the existing 100-year floodplain, includes 277 acres of wetlands, that Area 4 was historically tidal wetlands and experiences 20 commuter train trips plus freight traffic per day. It does not mention that the site is routinely disked and actively pumped to drain into Mowry Slough. These actions have changed the character of plant and animal communities and distribution across the site. These actions are not intended to result in a meaningful food crop, but simply to continuously disturb the site to prevent the land from returning to its former mosaic of wetlands and transitional upland habitats. The project description does not set the existing conditions context of the Area 4 site for the reader. **Sokale-13**

Page 3-12 – The document states, "At a program EIR level of detail, these uses have substantially similar impacts on the environment. Therefore regardless of whether the Area 3 and 4 EIR is upheld or not, the Program EIR fully addresses the environmental impacts of the proposed General Plan." Much of the analysis included in this Draft General Plan Program EIR relies upon the analyses of the flawed and suspended Areas 3 and 4 Specific Plan EIR. It is in error to rely on this previous work. **Sokale-14**

Environmental Analysis

Aesthetics
3. Substantially degrade the existing visual character or quality of the site and its surroundings.

Page 4.1-8 AES-3 – *The proposed plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review.* **Sokale-15**

The Draft General Plan Program EIR references other environmental review documents (currently suspended by Alameda Superior Court), but fails to assess the impacts of the overall General Plan. The General Plan includes actions regarding the development of several railroad grade-separations for roadways. These overpasses would significantly alter the character of the community and change the visual character of Newark. The soffit of the overpasses (bottom of the bridge) would need to

provide 26.5 feet of vertical clearance from the rail line. Thus, the overall bridge structures would be three to four stories tall when including the bridge deck and railings. The support columns would also change the appearance of the local areas. Grade separations are proposed in:

> *Action LU-7.B Railroad Overcrossing. Construct a Stevenson Boulevard or Mowry Avenue overpass across the Union Pacific Railroad, including dedicated bike lanes and sidewalk on one side.*
>
> *Action T-6.C Central Avenue Grade Separation. Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue. Pursue state and federal grant funding to carry out this project.*
>
> *Action T-6.D Dumbarton TOD Grade Separation. Add an overpass to move traffic over the rail lines between Filbert and Sycamore Streets in conjunction with the Dumbarton TOD development. Pursue state and federal grant funding to carry out this project.*
>
> *Action PR-5.D Cedar Boulevard Extension Linear Park. As funds allow, construct a linear park and trail on the Cedar Boulevard Extension. Crossing of the Union Pacific Railroad should be grade separated to minimize risk and noise.*

This impact has not been evaluated in the Draft General Plan Tune Up Program EIR. Please address this impact with regard to the potential to substantially degrade the existing visual character or quality of the community. Please indicate what measures will be taken to mitigate any potential impact to the visual character. Will the construction of these overpasses result in a cumulative impact to the community?

Sokale-15 cont.

Cultural Resources
Page 4.4-8 CULT-1 – *The Plan would not cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5.*

The historic resources discussion relies upon "a brief three-part document entitled Historic Preservation Program City of Newark dated November 30, 1989." This nearly 25 year old document is older than the former 1992 General Plan and other structures within the City of Newark may have historic significance. Reliance on this 1989 document does not support a full analysis of the potential impacts to historic structures. The Draft program EIR does not discuss the 129-year old historic schoolhouse Newark is currently attempting to sell and demolish (http://www.mercurynews.com/top-stories/ci_23258337/historic-newark-schoolhouse-decaying-at-ardenwood-farm-may).

Sokale-16

It does not address the potential significance of the Newark Community Center and Newark Library designed by Architect Aaron Green, a protégé of Frank Lloyd Wright (http://www.sfgate.com/bayarea/article/SIGNATURE-STYLE-Aaron-Green-Getting-it-Wright-2694208.php). Please develop appropriate baseline for this analysis.

Sokale-17

The goals, policies and action statements described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less than significant level. Newark's recent decisions regarding historic resources indicate a lack of commitment to preservation. The

Sokale-18

potential loss of historic structures has been determined by the courts to be an unavoidable significant impact. These policies do not prohibit such a loss therefore this impact remains significant and unavoidable. **Sokale-18 cont.**

Hazards and Hazardous Materials

4. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment.

Page 4.7-21: HAZ-2 – *The Plan would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.*

The Draft Program EIR states: *"The Plan would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. The proposed Plan would facilitate new development, including residential, mixed-use, commercial, parks, and recreational open spaces, within the City of Newark. Some of the new development could occur on properties that are likely contaminated. Construction of new buildings and improvements could have the potential to release potentially hazardous soil-based materials into the environment during site grading and excavation operations. Demolition of existing structures likewise could potentially result in the release hazardous building materials (e.g. asbestos, lead paint, etc.) into the environment.*

The Dumbarton TOD relies upon individual property owners to assess and mitigate the numerous toxic sites present in the area. This means some sites could be cleaned up quickly while others may not get under way for years. In the meantime, Newark is in the process of approving individual residential development projects under the General Plan without the benefit of a coordinated cleanup plan. Newark development approvals under the General Plan will allow residents to move into in this highly contaminated area prior to full cleanup. These new residents and adjacent neighbors have the potential to be exposed to significant hazards as a result of the General Plan. This approach to remediation in the Dumbarton TOD and carried forward in the General Plan may expose residents to the "*release (of) potentially hazardous soil-based materials into the environment during site grading and excavation operations*" at adjacent properties. **Sokale-19**

The Dumbarton TOD includes numerous remediation projects for a wide variety of toxic contaminants. Actions are underway or proposed for the FMC, Ashland Chemical, Foster Chemical, Jones-Hamilton Company, Honeywell International sites and others (See Department of Toxic Substances Control and San Francisco Bay Regional Water Control Board Clean-up Orders). In most cases the target contaminants are numerous volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs). Chemicals include acetone, ethylbenzene, toluene, xylenes, ethylene diclororide, trichloroethene (TCE) and many others. Many of these contaminates are highly volatile carcinogens which could easily spread to the nearby locations.

No meaningful analysis is provided to demonstrate how a piece meal cleanup effort by individual landowners will protect new residents from the adverse effect of hazardous materials. No standard of cleanup is established or if it has been established it is not explicity stated in the General Plan or in the General Plan Program EIR. Please provide an analysis of this issue. Please indicate the standard of cleanup necessary for home occupancy. Please describe how and when this cleanup is to be achieved. Please describe how permanently capped toxic sites in Newark including the Dumbarton TOD area will be treated in the future. What goals, policies and action statement are intended to guide these sites? Will these sites ever be reopened and further cleanup undertaken or will these sites remain off limits to development? **Sokale-19 cont.**

7. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

Page 4.7-26-28: HAZ-7 *The proposed Plan would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.*

The General Plan includes actions regarding the development of several railroad grade-separations for roadways.

> *Action T-6.C Central Avenue Grade Separation. Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue. Pursue state and federal grant funding to carry out this project.*
>
> *Action T-6.D Dumbarton TOD Grade Separation. Add an overpass to move traffic over the rail lines between Filbert and Sycamore Streets in conjunction with the Dumbarton TOD development. Pursue state and federal grant funding to carry out this project.*

Sokale-20

What is the trigger for development of these grade separation structures? If funding is not available for these structures how will emergency response to the Dumbarton TOD area be addressed? The primary routes to this area include Central, Willow and Enterprise. All three of these routes include at-grade rail lines, which could limit access and hinder emergency response to the proposed development. If these overpasses are not constructed I conjunction with this development this may result in a significant impact to an adopted emergency response plan or emergency evacuation plan. Please address this issue.

8. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.

Page 4.7-28-29: HAZ-8 *Implementation of the Plan would not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.* **Sokale-21**

The Draft EIR states, "As shown on Figure 4.7-2, the Plan Area is not designated as having high, very high, or extreme wildland fire threat to people, as determined by CAL FIRE's Wildlife Urban Interface Fire Threat data." Figure 4.7-2 on Page 4.7-18 does in fact indicate areas of high risk of wildlife in developed neighborhoods and

areas planned for development. The EIR fails to adequately assess the level of impact through failure to acknowledge the actual wildfire risks as indicated on the CAL FIRE Threat Map. Please correct this analysis. **Sokale-21 cont.**

This assessment also fails to acknowledge Newark's long-term support of the sale of fireworks, which place additional risk in these wildland interface areas. On the July 4th and throughout the year agencies with fire suppression resources are concerned about the heightened risk of fire in these areas which are subject daily to winds coming across the Bay that can quickly drive a wildland fire into residential neighborhoods. The General Plan supports residential growth that will include more people who will be able to purchase fireworks and further exacerbate the wildland fire threat. Please include this in the analysis. **Sokale-22**

Land Use and Planning

3. Conflict with any applicable habitat conservation plan or natural community conservation plan.

Page 4.9-8 LU-3 - *The proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan.*

<u>Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan</u>

The policies and action statements identified to minimize disturbances and support the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan (DESFBNWR CCP) are couched in terms "participate in cooperative efforts", "support", "encourage" and "coordinate with" do not require Newark to implement said policies and actions that are intended to support the DESFBNWR CCP. These General Plan policies and actions and past discretionary actions by Newark provide no indication the DESFBNWR CCP will be supported by Newark's land use decisions. In fact, the General Plan and associated Draft Program EIR do not indicate the DESFBNWR Expansion Boundary areas or the wetlands and waters within the community upon which to formulate decisions. In the past few years Newark adopted the Areas 3 and 4 Specific Plan (currently suspended by Alameda Superior Court) that allow for the filling of wetlands within both of these planning areas. The Land Use Element of the General Plan designates Whistling Wings and Pintail Duck Clubs lands in Area 4 (Sub Area E), various wetlands in Area 4 (Sub Areas B and C) for low density residential use even though these lands were designated by Congress in 1991 as within the expansion boundary of Don Edwards San Francisco Bay National Wildlife Refuge. How do these designations in the Land Use elements support implementation of DESFBNWR CCP? **Sokale-23**

The Draft General Plan Program EIR states, *"Under the proposed Plan, the land use designation and zoning applicable to the duck clubs would remain unchanged as Low Density Residential."* **Sokale-24**

How can the General Plan continue to extend Low Density Residential land use and zoning designations across Sub Area E of Area 4 if the policies and actions identified in the Draft General Plan are intended to support the goals of the CCP? This directly conflicts with the goals, policies and actions purported in the General Plan and as such must be considered a Significant Impact. If these lands are not "envisioned" for development then why are they identified in the plan for residential development? **Sokale-24 cont.**

San Francisco Bay Conservation and Development Commission
San Francisco Bay Plan

The General Plan Tune Up EIR states, "*As described in Section 4.3.1.1 above, the Bay Plan, implemented by BCDC, guides the future protection and use of San Francisco Bay, its shoreline, and its natural resources. BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands, to the extent they are present in the Plan Area. Managed wetlands are areas of historical tidal marshes, such as private waterfowl hunting clubs and publicly owned wildlife management areas, that have been diked off from the Bay and were maintained during the three years immediately preceding November 11, 1969, for wildlife preservation, agriculture, or as a game reserve.2 Bay Plan policies pertaining to managed wetlands encourage the continued operation and maintenance of managed wetlands for waterfowl hunting or for waterfowl food production. Where development of managed wetlands would occur, Bay Plan policies encourage retaining the maximum amounts of water surface area consistent with the project. The proposed Plan would conflict with the Bay Plan if it would result in conflicts with these policies.*

The proposed Plan does not specifically propose any development within Mowry Slough or Plummer Creek, including portions within the jurisdiction of BCDC, and compliance with the setback requirements contained in the City's Grading and Excavation Ordinance (Newark Municipal Code, Chapter 15.50) would ensure that future development under the Plan would not occur within the limits of either Mowry Slough or Plummer Creek. With respect to the potential presence of managed wetlands within the Plan Area, there are two former duck clubs located in the Southwest Newark Residential and Recreational Focus Area, as shown in Figure 4.3-2: the former Whistling Wings Duck Club, has been farmed for the last several decades, and the former Pintail Duck Club, which currently consists of a large pond surrounded by wetland plants. Neither the adopted Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs." **Sokale-25**

Figure LU-1 – Proposed General Land Uses of the General Plan designates Whistling Wings and Pintail Duck Clubs lands in Area 4 (Sub Area E), various wetlands in Area 4 (Sub Areas B and C) and Plummer Creek wetlands along Central Avenue (directly adjacent to the Plummer Creek Mitigation Lands) in the Dumbarton TOD Specific Plan for low-density residential land use. These land use designations conflict with Bay Plan policies. This impact is Significant.

4.9.4 CUMULATIVE LAND USE IMPACTS

Page 4.9-12 LU-4 *- The proposed Plan, in combination with past, present, and reasonably foreseeable development in the surrounding area, would result in less-than-significant-cumulative impacts with respect to land use and planning.* **Sokale-26**

"In the case of an area-wide planning document such as the proposed Plan, cumulative land use effects occur from development under the proposed Plan combined with effects of past, present, and reasonably foreseeable development on adjacent land. The geographic scope of this analysis is taken as the Plan Area and adjacent land in the City of Fremont."

"With respect to cumulative land use impacts from conflicts with applicable habitat conservation plans or natural community conservation plans, as discussed above, Plan-specific impacts related to conflicts with CCP and the Bay Plan would be less than significant, and would not be cumulatively considerable, when considered together with other past, present and reasonably foreseeable plans in the Plan Area and adjacent land in Fremont. Cumulative impacts related to conflicts with the Basin Plan would be less than significant, as discussed in detail in Chapter 4.3 of this Draft EIR."

The General Plan Tune Up EIR fails to identify past, present and reasonably foreseeable future development that conflicted with the DESFBNWR CCP and the refuge expansion boundaries and Bay Plan and therefore cannot claim a "Less than Significant" impact. Some of these projects include:

Sokale-26 cont.

<u>Past Projects:</u>
Newark Gateway – filled wetlands and expansion boundary lands in the Newark Coyote Tract.
Pacific Commons – filled wetlands and expansion boundary lands in south Fremont

<u>Present Projects:</u>
Newark General Plan Tune Up
Torian Site Residential Development – Part of Dumbarton TOD – application before USACE and RWQCB for fill of wetlands in Plummer Creek.
Trumark Residential Development – Part of Dumbarton TOD – application before SFPUC

<u>Future Projects:</u>
Patterson Ranch – proposes development with expansion boundary in north Fremont

Please provide a complete analysis of cumulative impacts that identifies all project within Newark and Fremont that conflict with DESFBNWR CCP and the Bay Plan.

Utilities and Service Systems
Page 4.14-13 UTIL-3 – *The Plan, in combination with past, present and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to water supply.*

The Draft Program EIR acknowledges that water supply in dry years would not be adequate to support the proposed buildout and finds this impact to be less than significant solely on the basis of goals, polices and actions that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence to support this conclusion. Please determine other measures or scale development to what is feasible and sustainable in the long-term.

Sokale-27

Page 4.14-14 Sanitary Wastewater
ACFCD has recently completed an analysis of facilities with regard to adapting to sea level rise. Please include the findings of this report in a revised analysis of the Plan's ability to be sustainable. **Sokale-28**

Alternatives

The alternatives analysis should include an alternative that protects the lands west of the Union Pacific railroad between Mowry Avenue and Stevenson Boulevard. None of the alternatives address this option, which has been sought by many community members over the past two decades. **Sokale-29**

Thank you for the opportunity to comment on Draft General Plan Tune Up Program EIR. Please place me on your mailing list for all future notifications regarding this project.

Sincerely,

Jana Sokale

Jana Sokale

cc: Mayor Nagy
Newark City Council
Newark Planning Commission
John Becker, City Manager
Anne Morkill, Project Leader, USFWS
Eric Mruz, Refuge Manager, USFWS
Cay Goude, Endangered Species Division, USFWS
Jane Hicks, Chief, Regulatory Branch, USACE
Mark D'Avignon, South Section Chief, USACE
Mike Monroe, Environmental Protection Agency
Carl Wilcox, Chief, Water Branch, CDFG
Bruce Wolfe, San Francisco Bay Regional Water Quality Control Board
San Francisco Bay Conservation and Development Commission
Native American Heritage Commission
Alameda County Flood Control District
Alameda Creek Alliance
California Native Plant Society
Citizens Committee to Complete the Refuge
Ohlone Audubon Society
Sierra Club

Sokale-30

5.1.3 MASTER RESPONSES

Master Response 1: Appropriate Baseline for Environmental Analysis

Many public comments state or suggest that the Draft EIR used an improper baseline for the environmental analysis. Comments generally reiterate the assertion put forward in a letter from Lippe Gaffney Wagner LLP, attorneys representing Citizens Committee to Complete the Refuge, that the Proposed General Plan and Draft EIR purportedly fail to use a proper environmental baseline by employing hypothetical conditions based on a "voided" Areas 3 and 4 Specific Plan. This master response has been developed to address those public comments, to clarify the baseline conditions used for the purpose of environmental analysis in the Draft EIR, and to correct misrepresentations made in the public comments.

Consistent with relevant case law, including *Environmental Planning Information Council v. County of El Dorado, supra, 131 Cal.App.3d at p. 358, 182 Cal.Rptr. 317*., the Draft EIR has consistently and correctly assessed the environmental impacts of the proposed Plan by comparing the proposed Plan with the actual, existing conditions in the area. Buildout projections were developed to quantify the future population, housing, and employment levels that could result from implementation of the proposed Plan through the horizon year of 2035 in order to allow for an evaluation of the "reasonably foreseeable" direct and indirect impacts of the proposed Plan. As described in the Draft EIR on page 3-23 through 3-27, these buildout projections used baseline population, housing, and employment data from the most current version of the Alameda County Transportation Commission Countywide Travel Demand Model (August 2011), reviewed and adjusted by City of Newark staff in order to ensure an accurate representation of existing conditions in 2012. Population, housing, and employment levels at buildout of the proposed Plan in 2035 were derived by forecasting the additional number of residents, housing units, and jobs likely to result from implementation of the proposed Plan and adding them to baseline data. The resulting buildout projections were used as the basis for the analysis of environmental impacts throughout the Draft EIR, including as the basis for the technical modeling done to assess impacts related to air quality, GHG emissions, noise, and transportation and traffic. Therefore, analysis of the environmental impacts of the proposed Plan in the Draft EIR is based on a comparison with existing conditions in Newark as required under CEQA.

Further, the City notes that public comments have mischaracterized the status of the Area 3 and 4 Specific Plan and EIR. As noted on page 3-12 of the Draft EIR, a lawsuit was filed challenging the adequacy of the Area 3 and 4 Specific Plan EIR (Alameda Co. Sup. Ct. # RG10-530015), and that subsequently an order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Area 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. As of October 21, 2013, no order invalidating the Specific Plan and EIR is in effect and the litigation is ongoing.

Additionally, the City notes that the land use changes proposed in the Specific Plan and assumed as part of the No Project Alternative described and analyzed on pages 6-1 through 6-10 of the Draft EIR, are consistent with the City's adopted Housing Element. Policy 2.2a of the Housing Element, adopted in 2008, calls for the development of "specific plans and zoning amendments for Areas 2, 3 and 4 to provide significant amounts of land for new residential development." Specifically, the Housing Element and its EIR anticipate a total of 1,260 housing units in Area 3 and 4, which is the same number of housing units envisioned in the Area 3 and 4 Specific Plan. Therefore, irrespective of whether the Area 3 and 4 Specific Plan is suspended or not, it is appropriate for the No Project

Alternative analyzed in the Draft EIR to have assumed substantial residential growth in the Southwest Newark Residential and Recreational Focus Area by 2035. It is reasonable to assume that under a No Project scenario the City would implement existing policies, including those contained in the adopted Housing Element, and that consequently, the No Project Alternative could result in up to 17,900 housing units and approximately 20,600 jobs in Newark by 2035, including residential and non-residential development in the Southwest Newark Residential and Recreational Focus Area.

Master Response 2: Treatment of Previous Environmental Review

Several comments suggest that the Draft EIR has improperly relied on the Area 3 and 4 Specific Plan EIR in view of the November 2012 Alameda County Superior Court order that suspended the City resolutions certifying the EIR and adopting the Area 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. Further, some commenters also state that the Draft EIR has attempted to "tier off" a voided Area 3 and 4 Specific Plan EIR in violation of CEQA. This master response has been prepared to clarify the treatment in the Draft EIR of previous environmental review conducted by the City of Newark.

As noted on page 2-2 and 2-3 of the Draft EIR, a number of documents, including the Area 3 and 4 Specific Plan EIR, the Dumbarton TOD Specific Plan EIR, and the City of Newark Housing Element EIR, are incorporated by reference pursuant to CEQA section 15150. These documents contain detailed analysis of environmental impacts prepared on the basis of technical studies. The EIRs received considerable public scrutiny and their conclusions were made on the basis of substantial evidence. The City notes that, according to CEQA Section 21167.3(a):

> *If an action or proceeding alleging that an environmental impact report or a negative declaration does not comply with the provisions of this division is commenced during the period described in subdivision (b) or (c) of Section 21167, and if an injunction or stay is issued prohibiting the project from being carried out or approved pending final determination of the issue of such compliance, <u>responsible agencies</u> shall assume that the environmental impact report or the negative declaration for the project does comply with the provisions of this division and shall issue a conditional approval or disapproval of such project according to the timetable for agency action in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. A conditional approval shall constitute permission to proceed with a project when and only when such action or proceeding results in a final determination that the environmental impact report or negative declaration does comply with the provisions of this division.*

As such, CEQA establishes that the fact of a legal challenge to the adequacy of an EIR and an order suspending a lead agency's resolutions that certify that EIR does not in itself invalidate or make void that EIR. Therefore, until such time as the Area 3 and 4 Specific Plan EIR is invalidated by court order, it is appropriate for the City to assume that it complies with CEQA, in addressing potential impacts and promoting mitigation measures to reduce impacts to less than significant levels.

Furthermore, the City notes that the impact discussion contained in each of Chapters 4.1 through 4.14 of the Draft EIR identifies potential impacts of implementation of the proposed Plan and first discusses the extent to which these impacts would be reduced by compliance with existing regulations and implementation of mitigation measures previously adopted by the City of Newark in the Dumbarton TOD Specific Plan EIR, the Area 3 and 4 Specific Plan EIR, and the Housing Element EIR. The impact discussion in the Draft EIR considers the extent to

which any residual impacts not sufficiently addresses by existing regulations and previously adopted mitigation measures would be reduced through implementation of goals, policies, and actions contained in the proposed Plan. Where significant impacts remain after the consideration of applicable regulations, previously adopted mitigation measures, and proposed goals, policies, and actions, additional mitigation measures for the proposed Plan are identified and discussed. Therefore, in making significance determinations, the Draft EIR has not relied solely on mitigation measures from previous EIRs, but rather has considered the substantial evidence included in those EIRs among several other factors with potential to reduce impacts.

With respect to the claim that the Draft EIR tiers off the Area 3 and 4 Specific Plan EIR, the City notes that CEQA Section 15152 defines tiering as the use of "the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects." The Draft EIR does not purport to tier off the Area 3 and 4 Specific Plan EIR or any of the documents incorporated by reference. On the contrary, the Draft EIR states clearly on pages 1-3 through 1-4 that it is a Program EIR, and as such, does not evaluate the impacts of specific projects that may be proposed under the Plan. Future development projects on specific sites, including sites in the Southwest Newark Residential and Recreational Focus Area and the Dumbarton TOD Focus Area, will be subject to CEQA and, to the extent required by law, separate project-level environmental review will be necessary in order to secure the necessary development permits. Given that the precise location, nature, and extent of future development are not known at this time, these specifics cannot meaningfully be evaluated at this point.

Master Response 3: Appropriacy of Alternatives

A number of public comments pertain to the alternatives analyzed in the Draft EIR. Most of these comments make a generalized request that the Draft EIR analyze an alternative that would "protect" Area 4 from development without offering more specifics about how that objective could be accomplished. Other comments suggest that an alternative which generally prohibits development in Area 4 but allows development on land on or adjacent to environmentally sensitive areas in the Dumbarton TOD Focus Area would be more appropriate for analysis in the Draft EIR. This master response has been prepared to provide clarification regarding the alternatives analyzed in the Draft EIR and their appropriacy.

As stated on page 6-1 of the Draft EIR, Section 15126.6 of the CEQA Guidelines states that:

An EIR shall describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.

Including the CEQA-mandated No Project Alternative, the Draft EIR analyzed three alternatives capable of avoiding or substantially reducing significant effects of the proposed Plan so as to foster informed decision-making and public participation. These included: a Reduced Residential Alternative, intended to potentially lessen traffic, air quality, noise, public services, and utilities and services systems-related impacts associated with the more intensive residential development that would be allowed under the proposed Plan; and a Restricted Growth Alternative designed to avoid significant impacts to aesthetics and cultural resources and to lessen adverse effects

on biological resources. The Draft EIR analyzed these alternatives and the No Project alternative on pages 6-1 through 6-28 of the Draft EIR. The Restricted Growth Alternative was found to be the environmentally superior alternative; however, because the Restricted Growth Alternative would not satisfy all the project objectives, because it would conflict with specific plans previously adopted by the City of Newark, and because it would not support development of the Dumbarton TOD PDA as envisioned in the SCS, the Restricted Growth Alternative was considered infeasible.

The commenters have not provided substantial evidence that the alternatives analysis in the Draft EIR is inadequate, and as noted above, the Restricted Growth Alternative considered an overall reduction in development, which would essentially remove development pressure on Area 4, which is the least developed planning area in the city and which contains wetland resources. Therefore, the conclusions on impacts to biological resources and in determining the Environmentally Superior Alternative reflect the scenario of not developing within the Area 4.

Master Response 4: Sea Level Rise

A large number of public comments on the Draft EIR expressed concern for the potential of flooding due to sea level rise. Many commenters suggested that potential impacts from sea level rise should be described and analyzed in the EIR or that omission of such discussion is inappropriate under CEQA. The Potential for Sea Level Rise is an import issues that affects the Bay Area and the world; however, the City notes that, as stated on page 4.8-20 of the Draft EIR, the purpose of this EIR is to identify the significant effects of the Plan (which is considered a Project under CEQA) on the environment, not the significant effects of the environment on the Plan. (*South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1614-1618; City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal.App.4th 889, 905.*) While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes. Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of the Draft EIR (see *Guidelines, § 15063, subd. (f)*). Nevertheless, a few of the questions on the checklist form concern the exposure of people or structures to environmental hazards and could be construed to refer to not only the Project's exacerbation of environmental hazards but also the effects on users of the Project and structures in the Project of preexisting environmental hazards. To the extent that such questions may encompass the latter effects, the questions do not relate to environmental impacts under CEQA and cannot support an argument that the effects of the environment on the Project must be analyzed in an EIR. (*Ballona Wetlands Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 473-474.*). Accordingly, a discussion of flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA.

That CEQA determination should not be construed as a statement that sea level rise is not an important issue for the Newark community. It is critically important issue to the Community and the Draft General Plan includes many policies and actions that address this issue, including the following:

- **Policy EH-3.1: Planning to Avoid Flood Hazards.** Identify Flood Prone Areas in Newark and utilize this data for Land use and transportation planning purposes. Flood resistant construction techniques and minimum building elevations shall be required to reduce flood hazards.
- **Policy EH-3.3: Residential Development in the Flood Plain.** Require that new residential development, including streets and other surface improvements be constructed above the 100-year flood elevation.
- **Policy EH-3.4: Non- Residential Development in the Flood Plain.** Require that new non-residential development, including commercial and industrial uses, be flood proofed or constructed on pads above the 100-year flood elevation.
- **Policy EH-3.8: Flood Control Improvements.** Work with the Alameda County Flood Control and Water Conservation District (AFCD&WCD) on Improvements to the storm drain, flood control channel, and levee system which ensure that these systems continue to protect Newark neighborhoods and business districts from flooding.
- **Policy EH-3.9: Sea Level Rise.** Consider the effects of rising sea level on the potential for flooding in low-lying areas and participate in regional adaptation efforts for these areas. Information on flood hazards related to sea level rise should be used to ensure that flood risk is reduced.
- **Policy CS-5: Planning for Sea Level Rise.** Require proposed development close to-in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones.
- **Action CS-5: Adaptation Planning.** Collaborate with surrounding cities, the Federal Emergency Management Agency (FEMA) and other appropriate regional, state and federal agencies to conduct a vulnerability assessment and strategic plan for long term climate change adaptation.

The policies and actions highlight the City's commitment to address the important issue of sea level rise. Adaptation to this global issue requires action on a regional or at least sub-regional level. The City of Newark is committed to partnering with agencies responsible for Flood Control in the Bay Region to address appropriate adaption to sea level rise.

Master Response 5: Clarifications Regarding Development Envisioned in the Area 3 and 4 Specific Plan

Area 4 is a designation used in the 1992 General plan to refer to the area in the Southwest part of Newark between Mowry Avenue, the Union Pacific railroad tracks and Stevenson Blvd. In the proposed General Plan update it is referred to as a part of the Southwest Newark Residential and Recreation Project. It is approximately 560 acres and is presently used for auto recycling, agriculture, and fallow land. A portion of the land is considered to be wetlands. The Development of Area 4 with a mixture of housing, a golf course (or other recreational use), and open space has long been envisioned. This vision was reflected in the 1992 General Plan, confirmed by Newark voters in 1999, and furthered in the Area 3 and 4 Specific Plan approved in 2010. The proposed General Plan carries this vision forward.

Although Area 4 General Plan land use designation was not changed as a part of the Specific Plan or in this General Plan update, the California Environmental Quality Act requires that the build out of the General Plan use

existing conditions as a "baseline"; therefore this environmental analysis addresses the development, at a program level, of Area 4 as well as all other planned development-even if they were long a part of the City's land use vision and if they had been analyzed in other environmental documents. The analysis is at a program level, meaning that further environmental review will be required when specific development projects are proposed.

As envisioned in the proposed General Plan, much of the high quality wetlands and habitat areas of the site would be conserved or restored and a recreational trail , (a potential Bay Trail segment) would be completed.

Comment letters received reflect a great deal of confusion and mischaracterization of both Area 4 and the envisioned development project.

- Area 4 land is not "Bay" it is almost a mile from the Bay. Portions may have once had tidal influence- but the Area 4 is not, and was not, open water. As such, there is **NO** Bay fill envisioned by the project.
- The referenced harbor seal pupping area is not adjacent to the site. It is more than a mile from area envisioned for development.
- Development of in the area would not be at risk for flooding. All residential development must be raised well above the flood levels and the development would not increase flood risk anywhere else in Newark.
- While a portion of Area 4 is located in the potential expansion boundary of the federal wildlife refuge, this expansion boundary only indicates areas that **COULD** be added to the refuge **IF** there is a willing seller and **IF** it is compatible with local land use planning.

Key General Plan Policies that relate to Development in Area 4/ Southwest Newark Residential and Recreation Project:

- **LU-7.1 Southwest Newark Residential and Recreation Project (Area 3 and 4) development.** Facilitate the Development of the 637 Acres formally known as the " The Area 3 and 4 project" consistent with previously approved Plans for this area . The residential holding capacity of this area shall be 1260 units.
- **LU-7.2 Wetland Enhancement.** Create or enhance wetland habitat areas within non-developed portions of the Southwest Newark Residential and Recreation project area to offset loss of wetland and aquatic habitat and provide additional habitat opportunities for rare plant and wildlife species.
- **LU-7.3 Biological Resource Protection**. Maintain, protect and enhance the natural biological resources of the Southwest Newark Residential and Recreation Project Areas, particularly sensitive habitats and associated rare plants and animals, while integrating development and human activity. Disturbance of wetland and aquatic habitat should be avoided to the maximum extent feasible.
- **LU-7.7 Maintaining Hydrologic Features**. Maintain the natural hydrologic features of the Southwest Newark Residential and Recreation project to the extent feasible and main or improve the current quality of water leaving the site.

As envisioned by the General Plan Update, the development of the Southwest Newark Residential and Recreational project (Area 4) represents a balanced approach between meeting housing needs, providing community amenities, and the preservation/restoration of habitat areas.

5.2 RECURRING COMMENT LETTERS

This section contains a single copy of the recurring letter, followed by a master response to the recurring comment letters.

5.2.1 SAMPLE RECURRING COMMENT LETTER

September 27, 2013

Terrence Grindall
Community Development Director, City of Newark

Dear Mr. Grindall,

I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay.

Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from development:

-The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

-The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise"

-Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem" and "critically important to waterfowl and shorebirds"

I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.

It's the sane thing to do.

Sincerely,

Jae Abel

5.2.2 RESPONSE TO RECURRING COMMENT LETTERS

This master response addresses the 1,830 nearly identical form letters submitted by email to the City of Newark during the public comment period on the Draft EIR. A sample of the recurring comment letter is reproduced above. The recurring comment letters are substantively similar and they express:

- Opposition to development of Area 4 in southwestern Newark;
- Opinions regarding the ecological and environmental value of Area 4; and
- Concern for the effects of flooding due to sea level rise.

These comments are noted; however, they do not pertain to the merits of the Draft EIR or the environmental analysis and therefore, no further response is required. Nevertheless, to the extent that the clarifications regarding sea level rise contained in Master Response 4 apply to the recurring comments, the City directs the commenters to Master Response 4 in Section 5.1 of this chapter. Additionally, to the extent the clarifications regarding development envisioned in the Area 3 and 4 Specific Plan contained in Master Response 5 apply, the City directs the commenters to Master Response 5 in Section 5.1 of this chapter.

The recurring comment letters also "encourage the City to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services." This comment does not pertain to the merits of the EIR or the environmental analysis; however, the City notes that the Restricted Growth Alternative, analyzed on pages 6-19 through 6-26 of the Draft EIR, would restrict future growth in environmentally sensitive areas along the western edge of Newark, including all of Area 4. As stated in the Draft EIR, under the Restricted Growth Alternative "the Dumbarton TOD Focus Area and the larger sector of the Southwest Newark Residential and Recreational Focus Area south of Cherry Street would be designated as Open Space." No further comment is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
Federal Agencies		
FWS-1	The U.S. Fish and Wildlife Service (Service), Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) appreciates the opportunity to comment on the Newark General Plan Tune Up Draft EIR for the City of Newark. The Service has previously commented on proposed plans for Areas 3 and 4 in letters dated June 5, 2007; December 18, 2008; and January 20, 2010. In each of these letters we have expressed our concerns with the proposed development. We reiterate our previous comments that Area 4 should not be developed as it provides wetland habitat that support endangered species and flood protection from ponds on the border of Area 4. This site is one of the few areas in the south bay immediately adjacent to a tidal slough that still has undeveloped uplands, and a mix of wetland types, including areas where the Salt Marsh Harvest Mouse (Reithrodontymys raviventris), a federally endangered species and California state fully protected species, has been trapped previously. The proposed development of Area 4 will only add to the cumulative losses of tidal wetlands in San Francisco Bay and endangered species that are dependent on that habitat.	The comment is noted. Please see Chapter 4.3, Biological Resources, for a discussion on the potential impacts resulting from the proposed Plan. Specifically, Table 4.3-2 on page 4.3-29 identifies the Salt-marsh harvest mouse as having a population viable to sustain for over 50 years in the event no changes occur, and at least 25 years in areas where minor disturbance could occur. In each instance, it was determined that disturbances would not be severe enough to impair the population. As indicated in impact analysis BIO-7 on pages 4.3-47 through 4.3-48, cumulative impacts would be less than significant as a result of inclusion of mitigation measures that were identified in previous environmental reviews conducted by the City. With regards to cumulative losses, Chapter 4.3, Biological Resources, of the Draft EIR describe throughout the chapter the potential impacts on habitat loss and/or potential impacts to wetlands. Such discussions can be found in impact analysis BIO-1, BIO-2, BIO-3, and BIO-5.
FWS-2	The Refuge also has concerns with the proposed development and its potential to attract nuisance and predator species (e.g., gulls, geese, invasive weeds) that effect native species and habitat, and threaten the recovery of endangered species.	Please see Chapter 4.3, Biological Resources, of the DEIR for a complete impact analysis related to the proposed Plan's effect on native species and habitat. As discussed in impact analysis BIO-1, starting on page 4.3-32 of the EIR, existing local, State, and federal laws and regulations would minimize potential impacts to native species and habitat as a result of buildout of the proposed Plan. Additionally, policies under the proposed Plan would aim to protect wildlife and habitat such as Policy CS-1 which calls for the preservation and protection of Newark's plant and animal species and habitat, including wetlands, salt marshes, creeks, and lakes. Subsequent projects resulting from implementation of the proposed Plan would also be subject to independent CEQA review in which project-specific impacts would be further identified along with appropriate mitigation measures. Additionally sinceno specific projects are being proposed with the General Plan, potential impacts caused by specific development were not analyzed at the time of the preparation of the DEIR. Accordingly, future development would be subject to separate CEQA review and therefore would identify project-specific impacts and mitigation measures at that time.
FWS-3	In addition, lighting and noise impacts created by residential and golf course developments produce ambient lighting that can have a negative effect on wildlife. These issues have also been addressed in our previous comments.	Please see impact analysis discussion AES-4 in Chapter 4.1, Aesthetics, of the DEIR for the analysis related to lighting. As discussed in the chapter, new development would be required to comply with Title 17 of the Municipal Code, which addresses lighting requirements. The proposed Plan also contains policies to minimize light and glare impacts and can also be found in impact analysis AES-4 on page 4.1-13. Chapter 4.10, Noise, addresses impacts related to noise. As discussed in impact analysis NOISE-1 in Chapter 4.10, subsequent projects would be subject to compliance with Newark Land Use Noise Compatibility Guidelines, and Action EH-7.A of the proposed Plan would require acoustical studies for all new development to ensure noise levels are within an acceptable level. Therefore, no further changes to the EIR are necessary.
FWS-4	Area 4 would be an extremely valuable addition to the Refuge as it could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas. We ask that the City of Newark implement the proposed Plan policies Action POS-l.A as stated in the Draft EIR: "Action POS-l.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay." (Page 4.1-14 of the DEIR) In 1990, the Service issued the Final Environmental Assessment, Potential Additions to the San Francisco Bay National Wildlife Refuge, Alameda, San Mateo, and Santa Clara Counties, California (Final EA). The preferred alternative in the Final EA included a map and a boundary in which the Refuge could expand to include the additional 20,000 acres authorized by PL 100-556. The map and boundary depicted in the 1990 Final EA identified 24,500 acres as "potential additions" and Area 4 lies within this approved acquisition boundary.	The comment is noted; however, it does pertain to the merits of the EIR. Please see Master Response 5 regarding Area 4 Description. No further response is necessary.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	These potential additions were again affirmed in the Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan, published in October 2012. Approval of an acquisition boundary does not grant the Service jurisdiction or control over lands that have been identified as potential additions, but it does provide the Service the authority to seek willing sellers to acquire and/or manage lands through acquisition of fee title, conservation easements, or other agreements, based upon planning and environmental compliance processes.	
FWS-5	Thank you for considering our comments. We recommend that you also contact the U.S. Fish and Wildlife Service, Endangered Species Division in Sacramento to discuss potential effects of the proposed development to listed species and their habitat. Please keep us informed of the EIR process, especially any future opportunities to provide comment. If you have questions regarding our comments, please contact Wildlife Refuge Specialist, Melisa Amato at 510-792-0222.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is necessary.
State Agencies		
DOT-1	Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the Newark General Plan Tune Up. The following comments are based on the Draft Environmental Impact Report. Regional Transportation Impact Fee Program. Under TRANS-1, the proposed plan will significantly impact Ardenwood Boulevard and State Route (SR-) 84 westbound ramps intersection during the AM Peak, and Newark Boulevard and SR-84 eastbound ramps intersection during the PM peak hour. Mitigation Measure TRANS-1a states that the impact is considered significant and unavoidable since the mitigation measure is under jurisdictions of Caltrans and the City of Fremont, and the implementation is outside the jurisdiction of the City of Newark (City). Per our comments to the traffic study scope of work, we had previously recommended the City develop a Regional Impact Fee Program (RIFP) to fund regional roadway improvements. The RIFP would collect fair-share funding from proposed projects that impact regional transportation facilities and use the funds collected to implement regional improvement at a future date. Caltrans strongly recommends the City develop a RIFP in lieu of evaluating the need for fair-share contribution on project by project basis. Should you have any questions regarding this letter, please call Yatman Kwan, AICP of my staff at (510) 622-1670.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is necessary.
PUC-1	The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings in California. The Commission Rail Crossings Engineering Section (RCES) is in receipt of the Draft Environmental Impact Report (DEIR) for the proposed City of Newark (City) General Plan Tune Up project. The project areas are located on both sides and within the vicinity of an active railroad track. RCES recommends that the City add language to the General Plan so that any future development adjacent to or near the railroad/light rail right-of-way (ROW) is 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 crossings. This includes considering pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act. Mitigation measures to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW. If you have any questions in this matter, please contact me at (213) 576-7076, ykc@cpuc.ca.gov.	Roadway safety is discussed on pages 4.13-38 through 4.13-39 of the Draft EIR. The Draft EIR references specific policies and actions which, among others, would promote safe vehicular, pedestrian, and bicycle circulation. The proposed Plan also includes Policy T-2.10, Policy T-6.5, and Policy T-6.6 that specifically address safety at at-grate railway crossings. These policies are hereby added to the Draft EIR. Please see chapter 3 of this Final EIR for details of this revision. This revision does not alter the Draft EIR's conclusion that compliance with existing regulations and standards as well as implementation of proposed Plan policies and actions would ensure that impacts associated with roadways safety resulting from buildout of the proposed Plan would be less than significant. The policies referenced in the Draft EIR, including Policy T-2.10, Policy T-6.5, and Policy T-6.6 hereby added, are appropriate for addressing potential roadway safety impacts in a programmatic EIR such as the Draft EIR. The City further notes that subsequent projects resulting from implementation of the proposed Plan would also be required to comply with CEQA and project-specific impacts will be identified and analyzed along with appropriate site-specific mitigation measures to the extent necessary to comply with CEQA.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
Regional/Local Agencies		
ACTC-1	Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Newark General Plan Tune Up. The Project is contained within the City of Newark boundaries. The Project is designed to update the policy framework and land use designations that will guide future development in Newark through 2035; to comprehensively incorporate recent planning efforts. including the completed and adopted Dumbarton Transit Oriented Development Specific Plan (2010), Area 3 and 4 Specific Plan (2009), 2009-2014 Housing Element (2010) and Climate Action Plan into the General Plan so as to ensure Citywide policy consistency; and to address and satisfy new State and regional regulations that have come into force since the General Plan was last updated including Assembly Bill (AB) 162, Senate Bill (SB) 5, the Complete Streets Act of 2008, and the greenhouse gas (GHG) reduction goals of AB 32 and SB 375. The General Plan Tune Up includes updates to the following State-mandated elements: Land Use, Transportation, Open Space and Conservation, and Safety and Noise. The State-mandated Housing Element continues to stand on its own as a separate document. Additionally, the optional Parks and Recreation Element is updated, and three new optional elements added: Economic Development, Sustainability, and Health. The Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments: On page 4.13-21, the description of the Countywide Bicycle Plan should be revised to differentiate between the countywide bicycle network and local bicycle routes. The map on the following page, depicts both local and countywide routes, for instance. Also, the countywide bicycle network and countywide pedestrian plan include major interjurisdictional trails, such as the Bay Trail in Newark.	The comment is noted. Please see Figure 4.13-4 of the Final EIR for clarifying revisions to the existing bicycle routes to differentiate the countywide bicycle network from the local routes. These revisions do not alter the conclusions of the Draft EIR.
ACTC-2	On page 4.13-23, the statement that "the City of Newark and the Alameda CTC have established vehicular LOS standards for intersection performance is inaccurate." The Alameda CTC has no intersection-based LOS standards, and LOS thresholds apply to roadway segments and to biennial LOS monitoring, not cumulative impact analysis of developments through the land use analysis program.	The first paragraph under TRANS-1 on page 4.13-23, continuing onto page 4.13-24, of the Draft EIR is hereby revised to clarify that Alameda CTC does not have established vehicular LOS standards for intersection performance. Please see chapter 3 of this Final EIR for details of this revision. This revision does not alter the conclusions of the Draft EIR.
ACTC-3	The mitigation measures presented in Table 4.13-5 at Ardenwood Boulevard and State Route 84 WB Ramps and at Newark Boulevard and State Route 84 EB Ramps, while primarily intended to improve auto circulation, should consider opportunities to include upgrades to facilities for other modes. The Alameda Countywide Bicycle Plan identifies improvements to this interchange as a major capital project need. As the City of Newark explores mitigation measure here in conjunction with Caltrans and the City of Fremont, opportunities to improve the bikeway along Newark Boulevard should be sought. Such coordination would be consistent with the Draft Plan's Policy T-1.3: Incorporating Complete Streets Elements in Transportation Projects which specifies that "Any construction, reconstruction, retrofit, maintenance, operations, alteration, or major repair of the street network should consider ways to make streets safer for an users."	The comment is noted.
ACTC-4	The Draft General Plan acknowledges on page T-37 that the City of Newark's intersection LOS D standard should be considered in a context sensitive fashion: "The City will determine the need for exceptions to its LOS standards on a case by case basis in the future." The Draft Plan specifically names the Old Town Newark commercial district as one such area where "maximizing vehicular flow through intersections may not be the highest priority" as "the City seeks to create a welcoming environment for pedestrians, bicyclists, and transit users with vibrant local businesses and an attractive streetscape." In this context, the DEIR should strong consider impacts to all users from the following mitigation measures proposed in Table 4.13-5 Cherry Street and Thornton Avenue: The DEIR proposes adding a through lane on Cherry Street. This intersection is within the Old Town Newark commercial district and is located near the Old Town Mixed Use Priority Development Area. The DEIR should consider options for	The comment is noted. As noted on pages 4.13-40 through 4.13-43 of the Draft EIR, the proposed Plan contains numerous goals, policies, and actions intended to accommodate all roadway users and support complete streets concepts. No further comment is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	accommodating all users.	
ACTC-5	Cherry Street and Mowry Avenue: The DEIR proposes widening Mowry Avenue. This intersection is close to a high school, a community college, and a park, and is located along a road with transit service that is also a Countywide Bicycle Route (component of the Bay Trail). The DEIR should consider options for accommodating all users. We appreciate the opportunity to comment on the DEIR. Please contact me at (510) 208-7405 or Matthew Bamberg of my staff at (510) 208-7444 if you have any questions.	The text describing the improvement needed at Cherry Street and Mowry Avenue in Table 4.13-5 on page 4.13-12 of the Draft EIR is hereby amended as follows: Adding a second left-turn lane on the westbound approach (Mowry Av) and realigning the intersection. Since this intersection is in relatively close proximity to a high school, community college, and park, and is located along a road with transit service that is also a Countywide Bicycle Route (component of the Bay Trail), opportunities for improving pedestrian access and bicycle access through this intersection should be considered in the context of mitigation. Options for accommodating all users should be considered. This revision does not alter the analysis or the conclusions of the Draft EIR.
ACWD-1	The District doesn't have any formal comments regarding the DEIR; however, there is one typo regarding the amount of groundwater used on page 4.8-14. The DEIR states that approximately 22% of the water supplied by ACWD is from groundwater wells. The percentage should be 40%, with 22% supplied by the wellfields and 18% supplied by the Newark Desalination Facility (page 8 of the Survey Report on Groundwater Conditions, February 2013).	This comment has been noted and the second paragraph on page 4.8-14 is hereby amended as follows: Approximately 40 percent of the water supplied by the ACWD is from groundwater wells with 22 percent supplied by wellfields and 18 percent supplied by the Newark Desalination Facility. This revision does not alter the analysis or the conclusions of the Draft EIR.
BCDC-1	As you are aware, by letter dated February 6, 2013, the staff of the BCDC provided comments on the City's NOP for an EIR for the Newark General Plan Tune Up. It has recently come to our attention that the City has issued a Draft Environment Impact Report (DEIR) for this planning effort and has established an associated comment period. This letter sets forth the comments of the staff of the BCDC, as distinguished from the Commission itself. The comments set forth below are based on the Commission's enabling legislation, the McAteer-Petris Act (MP A), Cal. Government Code § 66600 et seq., the regulations that the Commission has adopted to implement that law (Cal. Code of Regulations, Title 14, Div. 5), and relevant findings and policies of the Commission's San Francisco Bay Plan (Bay Plan). As a permitting authority along the San Francisco Bay shoreline, the BCDC is responsible for granting or denying permits for any proposed fill (earth or any other substance or material, including pilings or structures placed on pilings, and floating structures moored for extended periods), extraction of materials or change in use of any water, land or structure within the Commission's jurisdiction'. Jurisdiction and Authority. BCDC's jurisdiction over San Francisco Bay extends over Bay tidal areas up to the mean high tide level, including all sloughs, and in marshlands up to five feet above mean sea level; a shoreline band consisting of territory located between the shoreline of the Bay and 100 feet landward and parallel to the shoreline; salt ponds; managed wetlands (areas diked from the Bay and managed as duck clubs); and certain waterways tributary to the Bay, specifically as mentioned in MPA § 66610(e)(l), "Plummer Creek in Alameda County, to the eastern limits of the saltponds....". In addition to said MPA language staff has determined that the Commission's Bay jurisdiction within the area of the General Plan Tune Up includes "...on Mowry Slough [extending to] culvert at Mowry Avenue bridge crossing" (Inquiry File AL.AA.6516.1 File 5, Lacko, 2004) and "At bend in channel near Plummer Creek" (Inquiry File AL.HY.6801.1 FILE 3, Permit M81-14) The DEIR references the above language but could provide a more accurate characterization of BCDC's managed wetland jurisdiction over a portion of the project area in Focus Area 4, specifically the sites referred to as the Pintail and Whistling Wing Duck Clubs referenced in figure 4.3.1 ("Biological Resources") of the DEIR. Section 66610(d) of the MPA states, in part that "the area of jurisdiction of the San Francisco Bay Conservation and Development Commission includes ... Managed wetlands consisting of all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the	The comment is noted. BCDC jurisdiction is discussed in Chapters 4.3, 4.8, and 4.9 of the Draft EIR. Specifically, the potential for the former Whistling Wings Duck Club and Pintail Duck Club to be considered managed wetlands under the McAteer-Petris Act is discussed on pages 4.9-11 and 4.9-12 of the Draft EIR. The City is not in possession of evidence that the former duck clubs were "diked from the bay" or in active use as such during the three-year period in 1966 through 1969. Therefore, the City does not necessarily agree that these areas fall under the Commission's managed wetlands jurisdiction. Nevertheless, as noted on page 4.9-11 of the Draft EIR, neither the Area 3 and 4 Specific Plan nor the proposed Plan envisions development in the location of the former duck clubs. No change to the Draft EIR is required. If development of these areas is proposed in a future specific project, the BCDC would be consulted.

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	effective date of the amendment of this section during the 1969 Regular Session of the Legislature as a duck hunting preserve, game refuge or for agriculture." BCDC has considerable evidence gathered by the California Department of Fish and Wildlife that the Pintail and Whistling Wings duck clubs were actively used during the three-year period in 1966 through 1969 referred to in MPA §66610(d). Based on the information we have, we believe these areas fall under the Commission's managed wetlands jurisdiction.	
BCDC-2	This area is now delineated in page 193, figure CS-1 of the Draft General Plan by two dots, one for each club. Figures 4.3-1 and CS-1 of the DEIR should be revised to show the areas that comprise the two clubs and the status of these areas as "managed wetlands" under the MPA. Based on current information we are unable to determine whether portions of the areas currently delineated for housing use lie within the Commissions managed wetland jurisdiction.	Figure 3-4 in the Draft EIR shows the areas delineated for residential development as proposed in the Area 3 and 4 Specific Plan. Please also see Response to Comment BCDC-1 above.
BCDC-3	If a project is proposed within the Commission's managed wetlands jurisdiction, it must be authorized by the Commission pursuant to a Commission permit, and the Commission will use relevant provisions of the MP A as well as the managed wetlands policy, along with other relevant policies in the Bay Plan, to evaluate the project. The Commission can grant a permit for a project if it finds that the project is either (1) necessary to the health, safety or welfare of the public in the entire Bay Area, or (2) is consistent with the provisions of the MPA and the Bay Plan. The DEIR correctly states that projects "in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on safety of fills and shoreline protection." However, the MPA, at section 66605(d), also requires that the Commission find that the "nature, location, and extent of any fill" placed anywhere within the Commission's area of jurisdiction, including managed wetlands, "be such that it will minimize harmful effects to the bay area ... " Specifically with regard to "managed wetlands," section 66602.1 of the MPA provides that "it is in the public interest to encourage continued maintenance and operation of ... managed wetlands" and that "if development is proposed for these areas, dedication or public purchase of some of these lands should be encouraged in order to preserve water areas; [and] that if any such areas are authorized to be developed and used for other purposes, the development ... should retain the maximum amount of water surface area consistent with the project." Consistent with MPA § 66602.1, the Managed Wetland policy in the Bay Plan states, in Policy 2, that the purpose of public dedication or purchase shall be to "restore [the managed wetland] to tidal or subtidal habitat, or retain, enhance and manage these areas as diked wetland habitat for the benefit of multiple species" and, in Policy 4.a, that "water surface area retained can include a variety of subtidal and wetland habitat types including diked areas managed for wildlife or restoration of managed wetlands to tidal action." The MP A, at section 66605, also provides for fill in the Bay, such as those areas of the Bay noted above as being with the area of the General Plan Update, for water-oriented uses only where there is no alternative upland location, and requires that any fill that is placed in the Bay is the minimum that is necessary for the project. The MPA, at section 66602, also requires that proposed projects include the maximum feasible public access consistent with the project to the Bay and its shoreline.	The comment is noted. Please see Response to Comment BCDC-1. The City does not necessarily agree that these areas fall under the Commission's managed wetlands jurisdiction. Nevertheless, as noted on page 4.9-11 of the Draft EIR, neither the Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs. No change to the Draft EIR is required.
BCDC-4	Climate Change and Safety of Fills. It appears that some areas within the plan area and along the adjacent shoreline that are within the Commission's jurisdiction may be vulnerable to projected sea level rise. BCDC has conducted an assessment of the region's exposure to sea level rise that is based on a projected 16-inch sea level rise at mid century (2050) and 55-inch sea level rise at the end of the century (2100). The South Bay map in the BCDC report (attached) shows that part the area of the proposed project may be vulnerable to a 16-inch rise in sea level and a larger part of the area may be vulnerable to a 55-inch rise. Please note that the BCDC maps of vulnerable areas do not account for existing shoreline protection or creek levees, and do not describe the existing or future 100-year flood zones.	The comment is noted and the attachment has been reviewed. Please see Master Response 4 regarding sea level rise.

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BCDC-5	In addition to BCDC's assessment, various agencies have recently produced data and information, which can better characterize the plan area's vulnerability to sea level rise. Staff recommends that the latest data from the National Oceanic Atmospheric Administration Coastal Services Center on sea level rise vulnerability be used, and that the latest science-based sea level rise projections for the area be utilized when considering the vulnerability of the project areas. Though the DEIR references Policy CS-5.8 as Planning for Sea Level Rise, neither the Draft EIR nor the Draft General Plan have taken into account more recent estimates of sea level rise for the area and still reference 2007 IPCC estimates of 7 to 23 inches by the end of the century. The Draft EIR should evaluate future projects in light of more recent scientific data on sea level rise. The DEIR should discuss the potential for inundation and its impacts on land use, transportation, hydrology, water quality, hazards, infrastructure and utilities and public services.	The comment is noted and the attachment has been reviewed. Please see Master Response 4 regarding sea level rise.
BCDC-6	The Draft EIR should include an analysis of how an increase in sea level under multiple sea level rise scenarios could impact proposed projects, specific plans and resource categories that are within BCDC's jurisdiction. This should include information on (1) current elevations of the project sites and recent data, if available, documenting the vertical land motion (e.g., subsidence or uplift); (2) a risk assessment prepared by a qualified engineer based on the estimated 100- year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area (3) whether existing levee heights for any housing areas within managed wetlands within the project area that are necessary to protect adjacent property from flood tides are adequate for a period matching the likely duration of human habitation (4) how public access provided as a condition of development will remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project could be provided nearby. Finally, the policies state that, "To address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes." The Bay Plan policies on the safety of fills state that, "Adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project. "Additionally, the policies state that, "New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity .... "Projects in BCDC jurisdiction that involve Bay fill or fill within managed wetlands must be consistent with the Bay Plan policies on the safety of fills and shoreline protection and it is likely that many of the proposed structures within the Specific Plans would be expected to last until 2100. The Draft EIR could consider the use of open space as a flood zone buffer area.	The comment is noted. Please see Master Response 4 regarding sea level rise.
BCDC-7	Public Access. Section 66602 of the McAteer-Petris Act states, in part, that "existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Furthermore, the McAteer-Petris Act authorizes the placement of fill in the Bay only for water-oriented uses or minor fill for improving shoreline appearance or public access. The MPA, at section 66602.1, also requires that in managed wetlands "in any such areas are authorized to be developed and used for other purposes, the development should provide the maximum public access to the Bay, consistent with the project ... " Development policies for areas identified in the DEIR that are within BCDC's jurisdiction should be consistent with BCDC's public	Action PR-5.E has been added to the General Plan in response to this comment. The Action indicates: "Ensure that future land use and capital improvement decisions for areas within the jurisdiction of the Bay Conservation and Development Commission (BCDC) are consistent with BCDC's public access requirements and do not preclude maximum feasible access to and along the waterfront."

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	access requirements and not preclude, "maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline .... and maximum access, consistent with the project" in areas of managed wetlands approved for development.	
BCDC-8	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 .... "	The comment is noted. Please see Chapter 4.9, Land Use and Planning, of the DEIR for a discussion pertaining to consistency of the proposed Plan with the Bay Plan. Impact analysis LU-3 on page 4.9-11 through 4.9-12 addresses consistency with the Bay Plan. As mentioned in the impact discussion, Policy CS-1.3 of the proposed Plan encourages interagency cooperation amongst other agencies maintaining jurisdiction within the Plan Area. Therefore, no changes are necessary. Please also see Response to Comment BCDC-9.
BCDC-9	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 DEIR should include an analysis of the impacts 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. POS-5.7 & POS-5.8 as noted in the DEIR and General Plan Draft are an adequate start in this direction.	To the extent required under CEQA, the Draft EIR discusses impacts to parks and recreational facilities on page 4.12-15 through 4.12-25 of the Draft EIR. Consistency with the Bay Plan is discussed on pages 4.9-8 through 4.9-13 of the Draft EIR. The Draft EIR references specific policies and actions which, among others, are consistent with the objectives of the Bay Plan. The proposed Plan also includes Policy PR-5.7 and Policy PR-5.8, which are hereby added to the bulleted list on page 4.9-11 through 4.9-12. Please see chapter 3 of this Final EIR for details of the revision. This revision does not change the analysis or conclusions of the Draft EIR.
BCDC-10	Additionally, the DEIR should evaluate how the proposed projects would impact views to and of the Bay from public streets.	Please see the impact analysis discussion AES-1 starting on page 4.1-6 of the DEIR in the Aesthetics chapter for a discussion on potential impacts to scenic vistas. As discussed in AES-1, future development would be subject to local laws and policies and goals of the proposed Plan to protect scenic vistas in Newark. The City notes that this analysis is appropriate for a programmatic EIR such as the Draft EIR. No change is required.
BCDC-11	Finally, the DEIR should evaluate the potential impacts of the proposed public access on sensitive wildlife species and habitats.	Please see Chapter 4.3, Biological Resources, of the DEIR to see an impact analysis discussion related to biological resources, including wildlife, in the City of Newark.
BCDC-12	Bay Trail Connections. The City of Newark contains several miles of existing and planned Bay Trail alignment. The DEIR should discuss how these existing trails could be connected with the development of trails, parks and open space within the proposed project area. POS-5.1, POS 5.2 and POS-5.3 are suitable initiations of this discussion and we endorse continuing the refinement and enhancement of these policies.	Please see Response to Comments BCDC-8 and BCDC-9.
BCDC-13	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. The DEIR must evaluate any proposed fill in its scope in light of the Commission 's law.	The proposed Plan would not involve any fill in San Francisco Bay. As noted on page 4.9-11 of the Draft EIR, the proposed Plan does not specifically propose any development within Mowry Slough or Plummer Creek, including portions within the jurisdiction of BCDC, and compliance with the setback requirements contained in the City's Grading and Excavation Ordinance (Newark Municipal Code, Chapter 15.50) would ensure that future development under the Plan would not occur within the limits of either Mowry Slough or Plummer Creek. Additionally as noted on page 4.9-11 of the Draft EIR, to the extent that the former Whistling Wings Duck Club and the former Pintail Duck Club may be managed wetlands under the jurisdiction of BCDC, neither the Area 3 and 4 Specific Plan nor the proposed Plan envision development or fill in the location of the former duck clubs.
BCDC-14	Water Quality. The DEIR erroneously states in the Hydrology and Water Quality section (4.8-7) that "The California Coastal commission carries out its mandate locally through the San Francisco Bay Area Conservation and Development Commission (BCDC)." The California Coastal Commission is a separate state agency with its own jurisdiction, laws, policies and mandates. It does not carry out its mandate locally through BCDC. We would greatly appreciate the correction of said misstatement. 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 .... "	This comment has been noted and the third paragraph on page 4.8-7 is hereby amended to remove all references to the California Coastal Commission and reads as follows: The San Francisco Bay Area Conservation and Development Commission's (BCDC'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." This revision does not alter the analysis or the conclusions of the Draft EIR.
BCDC-15	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 storm water permits	This comment has been noted and a sentence has been added to the fourth paragraph on page 4.8-7 that reads as follows: *In addition, BCDC's policies to protect the Bay from the water quality impacts of nonpoint pollution state that*

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	and state and regional storm water 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 .... " Though the DEIR references BCDC's policies with regard to safety of fills and shoreline protection in the Hydrology and Water Quality section it should evaluate the potential impacts of the proposed projects to be included in the General Plan Tune Up on the water quality of the Bay and should propose best management practices and mitigation measures to minimize adverse impacts to water quality. Thank you for your careful consideration of the foregoing comments on the Draft Environmental Impact Report for the Newark General Plan Tune Up. If you have any questions please contact me directly at (415) 352-3667.	*new development should be sited and designed consistent with standards in municipal storm water permits and state and regional storm water management guidelines. To offset the impacts from increased impervious areas and 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.* Additional discussion regarding the use of Best Management Practices (BMPs) and mitigation measures to minimize adverse impacts to water quality are provided as part of the HYDRO-1 Impact Discussion on Water Quality (pp. 4.8-22 and 4.8-23). This revision does not alter the analysis or the conclusions of the Draft EIR.
RWQCB-A-1	Dear Mr. Grindall: Thank you for the opportunity to comment on the *General Plan Tune Up Draft Program EIR* (DEIR) for the City of Newark, dated August 13, 2013. The DEIR evaluates an updated policy framework and consolidated land use designations that are intended to guide future development and redevelopment in Newark, concentrated primarily in the following focus areas: ·Dumbarton Transit Oriented Development (TOD) ·Area 3 and 4 focus Area (renamed Southwest Newark Residential & Recreational Focus Area in the DEIR) ·Old Town ·Greater New Park Area As a responsible and reviewing agency under CEQA, staff of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) provided comments on the Notice of Preparation (NOP) for the DEIR on February 13, 2013. Based on our review of the DEIR, it appears that our comments were not consulted in the preparation of the DEIR. We are, therefore, submitting our original comments to the City of Newark (See the attachment to this letter) with the hope that the City will address these comments in the preparation of the Final EIR for the General Plan Tune Up.	The comment is noted.
RWQCB-A-2	As we noted in the cover letter for our February 13, 2013, comments on the NOP, we are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with General Plan Tune Up. The Watershed Division comments are presented as Attachment A to the February 13, 2013, comments. The Watershed Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code.	The comment is noted and the attachment was reviewed.
RWQCB-A-3	Toxics Cleanup Division (TCD) comments on the NOP are presented as Attachment B to our February 13, 2013, comments. TCD as the lead agency oversees the investigation and cleanup of contaminated sites (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution or nuisance. TCD also indirectly oversees the investigation and cleanup of approximately 80 other contaminated sites in the Project area, which are assigned to Alameda County Water District (ACWD) as lead oversight agency (see the State's GeoTracker database (https://geotracker.waterboards.ca.gov). TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites overseen by ACWD. The California Department of Toxic Substances Control (DTSC) also oversees the investigation and cleanup of sites in the Project area (see the State's Envirostor database (http://www.envirostor.dtsc.ca.gov/public/).	The attachment has been reviewed.

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RWQCB-A-4	We would also like to take this opportunity to point out that we disagree with the way in which the DEIR assesses conflicts with the Baylands Ecosystem Habitat Goals (Habitat Goals). Text on page 4.3-45 of the DEIR states: The Bay Plan recommends that the Baylands Ecosystem Habitat Goals (Habitat Goals) be used as guides for wetlands restoration in the vicinity of San Francisco Bay. The Habitat Goals envision the restoration of tidal marsh and similar habitat throughout the South Bay region, including the Plan Area, and contain recommendations for enlarging tidal marshes and protecting and enhancing marsh transition areas. However, the Habitat Goals are a set of recommendations that have not been adopted by any agency and therefore are not considered an approved local, regional, or State habitat conservation plan under CEQA. In our comments on the NOP, the Water Board provided the following guidance for using the Habitat Goals in developing the DEIR. The Project EIR should address conflicts that the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan have with the *Baylands Ecosystem Habitat Goals* (1999)(*Habitat Goals*). The Biological Resources discussion in the Project EIR should address Project compatibility with the *Habitat Goals* and its companion document *BaylandsEcosystem Species and Community Profiles* (2000)(*Profiles)*, which should be recognized as regional habitat conservation plans. The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM.Since the DEIR addresses conflicts with the Basin Plan and the Basin Plan acknowledges the Habitat Goals, the DEIR should have fully addressed conflicts with the Habitat Goals. Other EIRs for projects in Alameda County have addressed conflicts with the Habitat Goals. For example, the recent Draft EIR for the Alameda Point Project (SCH # 2013012043) makes the following assessment of the relevance of the Habitat Goals to CEQA review (page 4.E-43 of the Alameda Point DEIR). The Baylands Ecosystem Habitat Goals Project (Goals Project) was established in June 1995 to establish a long-term vision for a healthy and sustainable baylands ecosystem. The final report, published in 1999 (Goals Project, 1999) enumerated a series of recommendations for habitat protection and restoration. The Goals Project was recommended by the Governor's "California Wetlands Conservation Policy" and by the Comprehensive Conservation and Management Plan (CCMP) of the U.S. Environmental Protection Agency's San Francisco Estuary Project. It is also supported by most of the agencies and non-governmental groups with major planning, operational, or regulatory interests in Bay Area wetlands. We encourage the City of Newark to thoroughly address conflicts with the Habitat Goals in the Final EIR and to consult the Water Board's full comments on the Habitat Goals in our February 13, 2013, comments on the NOP.	Although the Habitat Goals are recommendations that have not been adopted and are not considered an approved local, regional, or State habitat conservation plan under CEQA, it was stated in the first sentence under BIO-6 on page 4.3-45 of the DEIR that there are no legal Habitat Conservation Plans (HCPs) as defined in the federal Endangered Species Act Section 10(a)(2)(A) that are applicable to the Plan Area. Further, under the Habitat Goals heading, the DEIR further asserts the Bay Plan "recommends" that the goals be used as guides for wetlands restoration, therefore, there is no assertion made to indicate that the Habitat Goals are in fact regulatory. With regard to addressing any conflicts that may or may not be of issue between the Habitat Goals and the DTOD Specific Plan and/or the Area 3 and 4 Specific Plan, that is not an issue of CEQA for purposes of this DEIR. Although, information was incorporated by reference using environmental review from both the DTOD EIR and the Area 3 and 4 EIR, such incorporation was done pursuant to CEQA Guidelines, which is discussed in Master Response 2. No changes are necessary.
RWQCB-A-5	We once again urge the City to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. Projects covered by the General Plan Tune Up could cause substantial impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any permit applications or plans it receives for proposed activities within the areas covered by the Project. We continue to disagree with the City of Newark's conclusions in the EIRs for the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan that conflicts with the Basin Plan can be mitigated to less than significant levels through the mitigation measures presented in those EIRs. Therefore, we also disagree with the DEIRs assertion that the General Plan Tune Up will not have significant impacts to jurisdictional waters. We welcome the opportunity to meet with you and other City staff to discuss these comments	Please see Master Response 2 regarding the treatment of previous environmental review.

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	and provide further information, as appropriate. We urge you to revisit our past correspondence (listed below) for the Areas 3 and 4 Specific Plans and the Dumbarton TOD Specific Plan. January 12, 2010, Letter to City of Newark, Watershed Division Comments on Draft EIR for Newark Areas 3 and 4 Specific Plans (included in Attachment A). April 30, 2010, Letter to City of Newark, TCD Comments on NOP for Dumbarton TOD Specific Plan. June 30, 2011, Email to City of Newark, TCD Comments on Draft EIR for Dumbarton TOD Specific Plan. July 27, 2011, Letter to City of Newark, TCD Comments on Dumbarton TOD Specific Plan Final EIR. February 13, 2013, Letter to City of Newark, Watershed Division and TCD Comments on the Newark General Plan Tune Up NOP March 8, 2013, Letter to City of Newark, TCD Comments for NOP for Dumbarton Transit Oriented Development (TOD) Trumark Residential Project. If you have any questions regarding our comments, please contact Brian Wines (bwines@waterboards.ca.gov) in our Watershed Division at (510) 622-2342 or Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.Sincerely, Shin-Roei Lee Division ChiefWatershed Division	
RWQCB-A-6	Subject: Comments on Newark General Plan Tune Up Notice of Preparation (NOP) dated January 2013 Dear Mr. Grindall: Thank you for the opportunity to comment on the Notice of Preparation (NOP) that we received January 17, 2013, for the Newark General Plan Tune Up Project (Project). The attached comments are intended to guide the City of Newark as it prepares an Environmental Impact Report (EIR) and other CEQA documents for the Project, which will result in an updated policy framework and consolidated land use designations intended to guide future development and redevelopment in Newark, concentrated primarily in the following focus areas: Dumbarton Transit Oriented Development (TOD), Area 3 and 4 focus Area, Old Town, Greater New Park Area. As a responsible and reviewing agency under CEQA, staff of the San Francisco Bay Regional Water Quality Control Board are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with this Project. The Watershed Division comments are presented as Attachment A. The Watershed Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code. Toxics Cleanup Division (TCD) comments are presented as Attachment B. TCD oversees the investigation and cleanup of six contaminated sites in the Dumbarton TOD (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution and nuisance. TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites. TCD also indirectly oversees the investigation and cleanup of approximately 80 other contaminated sites in the Project area, which are assigned to Alameda County Water District (ACWD) as a lead oversight agency (see the State's GeoTracker database (https://geotracker.waterboards.ca.gov). TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites overseen by ACWD. The Department of Toxic Substance Control (DTSC) also oversees the investigation and cleanup of sites in the Project area (see the State's Envirostor database (http://www.envirostor.dtsc.ca.gov/public/). We urge the City to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. The Project could cause substantial impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any permit applications or plans it receives for proposed activities within the areas covered by the Project. We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. We urge you to revisit our past correspondence (listed below) for the Areas 3 and 4 Specific Plans and the Dumbarton TOD Specific Plan. •January 12, 2010, Letter to City of	Attachment was received and has been reviewed. No response is necessary.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

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	Newark, Watershed Division Comments on Draft EIR for Newark Areas 3 and 4 Specific Plans (included in Attachment A). •April 30, 2010, Letter to City of Newark, TCD Comments on NOP for Dumbarton TOD Specific Plan. •June 30, 2011, Email to City of Newark, TCD Comments on Draft EIR for Dumbarton TOD Specific Plan. •July 27, 2011, Letter to City of Newark, TCD Comments on Dumbarton TOD Specific Plan Final EIR. If you have any questions regarding our comments, please contact Brian Wines (bwines@waterboards.ca.gov) in our Watershed Division at (510) 622-2342 or Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.Sincerely, Bruce Wolfe Executive Officer	
RWQCB-A-7	Attachment A Watershed Division Comments on the Newark General Plan Tune-Up Project 1. General Comments on Water Board Mandate, Authority, and Potential Future Permitting Requirements Proposed developments in areas covered by the Project would fill more than 100 acres of waters of the State and United States, many of them adjacent to tidal sloughs and marsh habitat. •Dumbarton Transit Oriented Development (TOD), which would include fill of an unknown number of acres of wetlands, on the order of at least 20 acres. •Area 3 and 4 Focus Area, which would include fill of up to 85.6 acres of wetland/marsh/aquatic habitat. The acres of impacts to waters of the State are unknown in the Dumbarton TOD, since wetland delineations have only been performed in the Torian parcel, which represents about one-fifth of the Dumbarton TOD Specific Plan land area. Based on Figure 4.3-1 in the EIR for the TOD Specific Plan, it appears that at least 20 acres of jurisdictional wetlands are likely to be present in the TOD Specific Plan area. The proposed amount of fill in the Dumbarton TOD and Areas 3 and 4 Specific Plans are unusually large for projects receiving approvals from the U.S. Army Corps of Engineers (Corps) and the Water Board. Fill of about 100 acres of wetlands will require significant review by the Water Board to consider any project-related applications for fill of waters of the State and United States, for discharges of wastewater and stormwater, and for related issues. As a part of CEQA review of the Environmental Impact Report (EIR) for the Newark General Plan Tune-Up Project, the Water Board will consider any project proposals to fill waters of the State and United States under the following: •The California Water Code, which requires persons proposing to discharge waste to waters of the State to submit a Report of Waste Discharge and receive appropriate approvals from the Water Board prior to discharge; •Section 401 of the federal Clean Water Act (CWA), which requires state certification that federal permits to fill waters of the United States meet state water quality standards; •The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) (Section 4.23). The Basin Plan is available at http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan. •The Basin Plan directs the Water Board to consider specific guidelines and requirements, including the following, as a part of its mandated duty to protect waters of the State: oThe California Wetlands Conservation Policy (Governor's Executive Order W-59-93 and Senate Concurrent Resolution No. 28), requiring no net loss and a long-term net gain in the quantity, quality, and permanence of wetlands in California, including the San Francisco Bay region. As noted in the Basin Plan, it is preferable to avoid wetland disturbance. When this is not possible, disturbance should be minimized. Mitigation for lost wetland acreage and functions through restoration or creation should only be considered after disturbance has been minimized. Thus, as we describe in more detail below, the City should evaluate in its CEQA documents project alternatives that avoid and minimize fill. This may include substantially smaller projects than those that are currently proposed in the Dumbarton TOD and Areas 3 and 4 Focus Area components of the Project. In addition to the State directives to protect wetlands, the Basin Plan also directs Water Board staff to use alternatives analyses prepared pursuant to federal guidelines—the U.S. Environmental Protection Agency's CWA Section 404(b)(1) guidelines—to determine circumstances under which the filling of wetlands may be permitted, and requires that attempts be made to avoid, minimize, and only	Chapter 6.0, Alternatives, of the Draft EIR does in fact include a Restricted Growth Alternative which would restrict future development in sensitive areas in the western portions of Newark and restrict future development to previously urbanized areas; however, that alternative was ultimately rejected because it did not meet several of the stated objectives as listed on page 6-26 of the DEIR. Please see Master Response 3 regarding the appropriacy of alternatives. Please see Master Response 2 regarding the treatment of previous environmental review. Please see Master Response 5 discussing Area 4.

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	lastly to mitigate for adverse impacts. As noted above, the Water Board's review of any applications to fill wetlands will include review of whether all or a portion of the Project could be located at an off-site location(s), whether the project design can be altered to reduce impacts, such as by increasing project densities, modifying project layout, and eliminating proposed project elements that are ancillary to the basic project purpose. Thus, it is important that CEQA documents recognize that components of the Project may be changed in scope and design, based on their relationship to the project purpose, their contribution to wetland fill, and their capacity to be accommodated via changes in project design and/or at an off-site location(s).The current EIRs for the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan, which are proposed for incorporation into the General Plan Tune Up Project, do not incorporate alternatives that provide for significant avoidance of fill of waters of the State (See comments 2, 3, and 4, below). Because of this, individual projects that are consistent with these specific plans are likely to result in 404(b) (1) alternatives analyses that are not acceptable to the Corps or the Water Board. For example, applications for authorization to fill jurisdictional waters in the Torian Parcel, consistent with the proposed fill in the TOD Specific Plan, were submitted to the Corps and the Water Board in November of 2011. As of February of 2013, the applications had not yet been accepted by the Corps, Water Board, or the U.S. EPA. Therefore, it appears that the Specific Plans for the Dumbarton TOD and Areas 3 and 4 are directing project proponents to develop project proposals that have very low likelihoods of being authorized by the Corps or the Water Board.Finally, California's jurisdiction to regulate its water resources is broader than that of the federal government. The Water Board's jurisdiction extends to "waters of the State," which is broadly defined as "any surface water or groundwater, including saline waters, within the boundaries of the State." This definition includes isolated wetlands, and any action that may impact isolated wetlands is subject to the Water Board's jurisdiction. Please note that the approvals the Project may require from the Water Board for fill of waters of the State and the United States include issuance of Waste Discharge Requirements and/or CWA Section 401 Water Quality Certification.	
RWQCB-A-8	2. Recommendations for Revising Specific Area Plans for the TOD and Areas 3 and 4, Prior to Incorporating them into the General Plan Tune Up Project In the interest of expediting the permitting process for future projects within these Specific Plan areas, the Water Board seriously urges the City of Newark to consider revising these Specific Plans to emphasize reduced fill alternatives. The City of Newark should more thoroughly evaluate reduced fill alternatives that would: •Reduce the area of wetlands and their surrounding upland buffers that would be converted to residential and commercial uses; and •Provide a wider buffer between new development and preserved and restored wetlands, and also reduce the length over which developed areas would be in contact with preserved and restored wetlands. This should include considering options such as massing development on a smaller portions of sites covered under the Project, reducing proposed amounts of total development (e.g., number of dwelling units and area of other uses), increasing densities for all land uses, and locating appurtenant land uses (e.g., office/commercial, playfields and upland parks, other civic uses such as libraries, schools, and places of worship) in already-developed portions of Newark or nearby cities. 3. Elements of the Dumbarton TOD Specific Pan EIR that will Hinder Permitting in the Specific Area. The General Plan Tune-Up will incorporate the Dumbarton Transit Oriented Development Specific Plan into the General Plan. Water Board staff have reviewed the *EIR for the Dumbarton Transit Oriented Development Specific Plan* and have identified the following problems that compromise the usefulness of this EIR in supporting permit applications for future development in the Dumbarton TOD. •The EIR has a low level of detail with respect to biological resources and jurisdictional waters.•The EIR has a low level of detail with respect to proposed mitigation measures for impacts to jurisdictional waters. •The EIR did not	The comment is noted; however, it does not pertain to the merits of the Draft EIR. No further response is required.

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	meaningfully assess opportunities for avoidance and minimization of impacts to jurisdictional waters.•The EIR piece-meals impacts to jurisdictional waters. •The EIR did not consider the impacts of new residential development on introducing new sources of predators into the adjacent marshes, including the Plummer Creek Restoration Site. •The EIR did not consider the impacts of residential development on isolating the Plummer Creek Restoration Site from other habitat. •The EIR did not consider the recommendations of the 1999 *Baylands Ecosystem Habitat Goals*.•The EIR did not evaluate specific options for anticipating sea level riseAt the time that the FEIR was certified, wetland delineations had only been performed on the Torian property, which consists of only 40 acres of the total 205-acre Dumbarton TOD Specific Plan area. While potential areas of wetlands were identified on the Cargill Tract and the potential existence of vernal pools on Parcel E was noted, the exact locations and extent of these jurisdictional habitats were not established through approved delineations. Because of this, the EIR does not do an adequate job of identifying all potential impacts to jurisdictional waters in the Specific Plan Area.The Dumbarton TOD EIR suggests that impacts to wetlands can be mitigated at offsite mitigation banks, but does not identify mitigation banks with available credits for seasonal wetlands, or mitigation banks with vernal pool credits, in the event that the presence of vernal pools is confirmed in the Specific Plan area. If mitigation banks are not available, the EIR suggests that mitigation may be created either onsite or at unspecified offsite mitigation locations. As the Port of Oakland discovered in its recent search for mitigation locations, it is difficult to find opportunities for mitigation of large acreages of wetlands in the South Bay. In order for the EIR to be adequate, the Dumbarton TOD EIR should have identified all jurisdictional waters that may be impacted and should have presented real opportunities to mitigate for those impacts. Without this level of detail, it is impossible for reviewers of the document to assess whether or not all impacts can be mitigated to less than significant levels. The Dumbarton TOD EIR also failed to explore opportunities for consolidated mitigation in the near marsh parcels in the Specific Plan area. Alternative 2: High Density Residential illustrated how most of the potential wetlands could be avoided. This alternative assumed that there would be a transfer of development rights for those properties that would provide additional open space and parks. However, the City of Newark does not appear to have pursued this alternative, which would have resulted in impacts avoidance for wetlands. The need to use a transfer of development rights to make Alternative 2 feasible also illustrates an internal inconsistency in the Dumbarton TOD Specific Plan EIR. Alternative 2 requires meaningful coordination between the City and property owners. But the preferred alternative appears to leave development decisions up to individual property owners. This has the effect of favoring private development proposals that rely on fill of all wetlands, since each property owner is left to maximize development potential on their own holdings. The U.S. Fish and Wildlife Service (USFWS) described the impact of predators associated with residential development in its comments on the Dumbarton TOD Specific Plan EIR. The USFWS noted that, "Nearby housing would likely increase disturbance and predation of migratory birds by nuisance species and house pets." USFWS also noted that the residential build out of the site would result in the, "increased presence of predators (e.g., Norway rates, California gulls, feral cats, red foxes, raccoons, and skunks) that prey on California clapper rails and salt marsh harvest mice." But impacts resulting from the introduction of predators associated with residential development were not acknowledged in the City's response to comments.The EIR also does not consider the recommendations of the 1999 *Baylands Ecosystem Habitat Goals*, which recommended exploring options to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper end of Plummer slough (Chapter 3, page 133).	
RWQCB-A-9	4. Elements of the Areas 3 and 4 Specific Plan EIR that will Hinder Permitting in the Specific Area. The General Plan Tune Up will incorporate the Areas 3 and 4 Specific Plan into the General Plan. The Water Board's January 11, 2010, comments on the *Draft Environmental Impact Report for the Newark*	The comment is noted; however, it does not pertain to the merits of the Draft EIR. No further response is required.

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	Areas 3 and 4 Specific Plan (SCH No.: 200705205) are included as an attachment to the Water Board's comments on the Newark General Plan Tune Up NOP. As we noted in our January 12, 2010, letter, the proposed mitigation quantities in the Areas 3 and 4 Specific Plan EIR appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. The EIR relies on a combination of onsite wetland creation/enhancement and offsite wetland preservation. Onsite mitigation, which is only proposed at a 1:1 ratio, will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. With respect to offsite mitigation, the EIR does not provide sufficient detail to demonstrate that feasible locations exist for offsite mitigation. While the City of Newark might disagree with the Water Board over the level of detail necessary for the discussion of proposed mitigation measures in the EIR for the Areas 3 and 4 Specific Plan, we would like to point out that the City itself set the parameters for offsite mitigation by requiring that "off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements", and "wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed." The EIR fails to demonstrate that the City of Newark can achieve its own objectives for offsite mitigation, using either mitigation banks or other private lands. At most, the EIR refers to a potential mitigation bank that may be capable of providing less than half of the mitigation necessary for proposed impacts to wetlands at Area 4. Recent projects in the South Bay have not been able to find even half of the acreage of mitigation that would be required to mitigate all of the impacts to waters of the State that are proposed in the Areas 3 and 4 Specific Plan.Also, as Water Board staff noted in our comment letter on the Areas 3 and 4 Specific Plan DEIR, any mitigation plan that relies exclusively, or heavily, on the preservation of wetlands, as is currently proposed in the EIR for offsite mitigation, would not be consistent with the State's "no net loss" policy. No net loss can only be achieved through avoidance of habitats or the successful creation of new habitats. Since preserved habitats are already in existence, the use of preservation results in a net loss of wetland habitat. Therefore, the Water Board comment on the EIR noted that the proposed ratio of 1.5:1 is far too low for a mitigation measure that relies on preservation. Finally, we would like to reiterate that the City should not assume that the resource agencies will allow the fill of the wetlands at Area 4. Large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the Bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to transgress (move up slope) in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), the Bay Conservation and Development Commission (BCDC), and the Water Board have all expressed strong reservations about the fill of wetlands in Area 4. While the City has not yet identified sufficient mitigation opportunities for impacts associated with the implementation of the Specific Plan, Area 4 itself presents significant opportunities for use as mitigation for other projects. Successful wetland mitigation sites require a unique combination of hydrology and topography, which Area 4 possesses. The Water Board encourages the City of Newark to consider the potential use of Area 4 as a mitigation bank. There are significantly fewer regulatory and physical barriers to creating a mitigation bank at Area 4 than there are to placing fill in Area 4 and seeking to create adequate mitigation for that fill.	
RWQCB-A-10	5. The General Plan Tune Up Project EIR Should Address the Impacts of Development on Adjacent Habitats. The EIR should evaluate both individually and cumulatively the impacts of individual projects that are authorized under the Project on the use of existing nearby waters and wetlands as wildlife habitat, including habitat for rare, threatened, and endangered species. Portions of the	As stated in Chapter 1.0 of the DEIR, the EIR was prepared at a program level under CEQA and therefore does not consider project-specific impacts. Future development under the proposed General Plan would be required to comply with CEQA and project-level impacts and mitigation measures will be identified to the extent necessary to comply with CEQA. Please see Master Response 2 regarding the treatment of previous environmental review.

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	Dumbarton TOD and Area 4 have the potential to be restored to habitat capable of supporting uses, including estuarine habitat, preservation of rare and endangered species, warm freshwater habitat, and wildlife habitat. The proximity of existing tidal marsh habitat in the nearby Plummer Creek Restoration Site and the Don Edwards National Wildlife Refuge (Refuge) would make such restored habitat especially valuable. Current proposals to develop lands in the Dumbarton TOD and Area 4 up to the borders with the preserved habitats are likely to significantly impact habitat values at the Plummer Creek Restoration Site and the Refuge. However, the analysis of impacts in the Dumbarton TOD and Areas 3 and 4 Specific Plan EIRs do not address the increased level of predation that is associated with placing residential development adjacent to habitats that support listed species. Residential neighborhoods have higher populations of domestic animals (e.g., cats and dogs), and also attract raccoons and corvids that feed on domestic refuse. Cats, raccoons, and corvids are predators of birds and rodents. Introducing residential neighborhoods adjacent to wetlands, such as the Plummer Creek Restoration Site and the Refuge, will increase the predation pressure on bird species and the salt marsh harvest mouse (SMHM). Domestic dogs may also flush birds from nesting habitat or cause migratory birds to expend energy in fleeing from dogs that enter foraging habitat. At other residential developments, predator barriers have been required between new residential neighborhoods and marsh habitat. However, the Dumbarton TOD and Areas 3 and 4 Specific Plan EIRs contain no mitigation measures for the increased population of predators that will be brought adjacent to marsh habitats when the specific plans are implemented. Therefore, the Project CEQA document should address this potential impact on species in adjacent marsh habitats.	
RWQCB-A-11	6. The General Plan Tune Up Project EIR Should Address Conflicts with the *BaylandsEcosystem Habitat Goals*. The Project EIR should address conflicts that the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan have with the *Baylands Ecosystem Habitat Goals* (1999) (*Habitat Goals*).The Biological Resources discussion in the Project EIR should address Project compatibility with the *Habitat Goals* and its companion document *Baylands Ecosystem Species and Community Profiles* (2000)(*Profiles)*, which should be recognized as regional habitat conservation plans. The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM.The*Habitat Goals Project* recommends exploring options to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper end of Plummer slough (Chapter 3, page 133), which includes lands covered by the Dumbarton TOD Specific Plan. This recommendation was not addressed in the Dumbarton TOD Specific Plan The*Habitat Goals Project* recommends that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4), and the BCDC has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. In addition, the Refuge has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation is demonstrably capable	Please see Master Response 2 regarding the reliance on previous environmental review. This DEIR is not required under CEQA to address conflicts that other plans may or may not have with Habitat Goals, but rather address impacts related to the proposed General Plan only. Please see response to RWQCB-A-7 regarding alternatives.

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	of providing equal habitat benefit for listed species. Therefore, at Area 4, the City should evaluate the environmental impacts of an alternative project that would consist solely of restoring tidal marshes and/or open water habitat at the site, consistent with the Habitat Goals. Evaluation of an alternative that would restore the site to tidal marsh should consider how the alternative could help retard, store, and filter floodwaters, and preserve sufficient upland area to serve as a buffer against sea level rise (i.e., to ensure that the area of restored marsh is not reduced, for example by being converted to open water, as a result of sea level rise) and storms.	
RWQCB-A-12	7. Recommendations for the Discussion of Post-Construction Stormwater Management in the EIR for General Plan Tune Up Project The EIR should describe how development or redevelopment in the areas covered by the General Plan should incorporate a combination of low impact development (LID) features to reduce discharge of pollutants to waterways. The EIR should cite the specific treatment standards required for these measures, including those required under Provision C.3. of Water Board Order No. R2-2009-0074, the Municipal Regional Stormwater Permit (MRP), under which the City of Newark is a co-permittee. The EIR should note that the LID approach encompasses a broad range of urban planning issues associated with new and re-development projects, including street and circulation designs, innovative approaches to parking, drainage designs, land use densities and structure locations, and similar issues. The EIR should indicate that future individual projects in the areas covered by the Project will be required to incorporate not simply treatment controls based on an LID approach, but the range of LID approaches, including implementing "skinny street" or "green street" designs, parking maxima, identifying opportunities to minimize impervious surfaces by implementing shared and/or structure parking, and the like.	To the extent that the Draft EIR addresses and/or mentions LID techniques, it is not required under CEQA to describe such techniques any further than what is needed to make a determination of significance. As noted in HYDRO-3 starting on page 4.8-25 of the Draft EIR, the analysis indicates that future development would be subject to C.3 requirements.
RWQCB-A-13	Attachment dated Jan 12, 2010	The attachment has been reviewed.
RWQCB-B-1	Thank you for the opportunity to comment on the General Plan Tune up Draft Program E/R DEIR) for the City of Newark dated August 13, 2013. Please include these additional comments from the Toxics Cleanup Division staff to supplement our agency letter dated September 26, 2013. These comments on the DEIR pertain to Section 4.7 Hazards and Hazardous Materials (pages 4.7-1 through 4.7-32) and Table 1-1, Summary of Impacts and Mitigation Measures, to ensure that the environmental documentation under the California Environmental Quality Act (CEQA) adequately addresses soil and groundwater pollution in the City of Newark and to protect human health and the environment. Regional Water Board (Toxics Cleanup Division) staff oversees the investigation and cleanup of numerous for numerous leaking underground fuel tanks (LUFT sites) and spills, leaks, and cleanup sites (SCP sites) in the proposed project areas, pursuant to California Water Code 13304, where hazardous substances have been discharged and deposited into Waters of the State and have created a condition of pollution and nuisance.	Please see Chapter 3 of the Final EIR for text revisions. The Draft EIR text will be revised to include: "The Regional Water Board (Toxics Cleanup Division) staff oversees the investigation and cleanup of numerous leaking underground fuel tanks (LUFT) sites and spills, and leaks, and cleanup (SCP) sites in the proposed project areas, pursuant to California Water Code 13304, where hazardous substances have been discharged and deposited into Waters of the State and have created a condition of pollution and nuisance."
RWQCB-B-2	Section 4.7 (Hazards and Hazardous Materials) does not accurately depict the extent and magnitude of existing soil and groundwater pollution in Newark areas,	The commenter does not identify a specific environmental concern. Table 4.7-1 in Section 4.7 identifies over 100 hazardous materials sites within the Plan Area that are listed on databases developed and maintained by the SWRCB and DTSC. The type, status, and address of each of these sites is included in the table. In addition, information from previous EIRs describing existing conditions within the Newark Areas 3 and 4 Specific Plan Area and the Dumbarton TOD Specific Plan Area, which are located within the Plan Area, has been included by reference and summarized in Section 4.7. Additionally, Figure 4.7-1 shows the location of Hazardous Materials Sites in Newark. This information collectively provides an acceptable depiction of existing hazards and hazardous conditions within the Plan Area for the purposes of a programmatic General Plan Tune Up DEIR. Subsequent projects resulting from implementation of the proposed Plan would also be required to comply with CEQA and project-specific impacts would be further identified and analyzed along with appropriate site-specific mitigation

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		measures to the extent necessary to comply with CEQA.
RWQCB-B-3	and does not appropriately evaluate potentially significant hazards to public health and the environment from harmful chemicals in the soil, soil vapor and groundwater and ongoing migration of pollutants in groundwater.	The comment does not pertain to the merits of the EIR. Please refer to the response to RWQCB-2. A comprehensive and cumulative evaluation of those properties identified in the SWRCB and DTSC databases, the EIRs for the Newark Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan, respectively, as well as possibly other heretofore unknown contaminated properties, and related potential impacts of these properties to public health and the environment is beyond the scope of a programmatic General Plan Tune Up DEIR. Subsequent projects resulting from implementation of the proposed Plan would be required to comply with CEQA and project-specific impacts of the project to public health and the environment would be identified and analyzed along with appropriate site-specific mitigation measures to the extent necessary to comply with CEQA. Further, the discussion in HAZ-1 and HAZ-2 in Chapter 4.7 of the DEIR states that compliance with law and the implementation of policies and actions under the proposed General Plan would adequately reduce the potential impacts to a level of less than significant.
RWQCB-B-4	Shallow groundwater pollution can pose significant threats to human health can be problematic for redevelopment, and can take decades to restore its beneficial uses.	The comment is noted. See response to comment RWQCB-B-3. The Draft EIR contains an adequate analysis of the risks of hazardous substances, including those found in water. That discussion can be found on under HYDRO-1 and HYDRO-5 in Chapter 4.8 of the Draft EIR.
RWQCB-B-5	The DEIR does not identify any mitigation measures for hazardous materials. Table 4.7-1, Hazardous Materials Sites in Newark, lists more than 100 hazardous material sites; however, in Table 1-1, Hazards and Hazardous Materials Impact Criteria (HAZ-1 through HAZ-9) were "less than significant (LTS)" before mitigation and Mitigation Measures were "not applicable (N/A)." We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. If you have any question or comments, please contact Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.	The comment is noted. Future development within the city of Newark would require compliance with federal, State, and local regulations with direct oversight and approval by responsible federal, State, and local regulatory agencies to ensure that potential contamination or exposure to hazardous materials is avoided or controlled to minimize the risk to the public or the environment on a case-by-case basis. The DEIR correctly notes that though contamination could pose a potential risk, those risks would be reduced to a level of less than significant through compliance with applicable environmental laws and proposed General Plan policies and actions. Compliance with law is a reasonable assumption and may support a conclusion that an impact is less than significant without the need for mitigation. Additionally, the proposed Plan goals, policies, and actions, as listed topically herein under HAZ-1 through HAZ-8 in the DEIR, would further ensure that future development in the City if Newark does not contribute to cumulative increase in risk to hazards or hazardous materials. Finally, subsequent projects resulting from implementation of the proposed Plan would be required to comply with CEQA and project-specific impacts would be further identified and analyzed along with appropriate mitigation measures to the extent necessary to comply with CEQA.
RWQCB-B-6	The following comments are provided to encourage the City to take an active role in ensuring hazardous materials sites are adequately remediated prior to development. 1. Past industrial activities such as chemical handling, manufacturing, and transporting in the vacant western portion of Newark have caused conditions of pollution and nuisance. Soil and groundwater are contaminated with chemicals that are known to cause cancer, birth defects, and internal and respiratory health problems. These chemicals include volatile and semi-volatile organic compounds including benzene, ethylene dibromide (EDB), 1 ,2-dichloroethane (1 ,2-DCA), trichloroethene (TCE) tetrachloroethene (PCE), pentachlorophenenol (PCP), various metals including arsenic; dioxins/furans and polychlorinated biphenols (PCBs), polyaromatics (PAHs), petroleum hydrocarbons.	The comment is noted. On pages 4.7-23 and 4.7-24 of the DEIR, goals, policies, and actions are listed, as excerpted from the proposed Plan, that recommend that a Phase I Environmental Site Assessment be required when a property is changed from an existing use to a more sensitive use (e.g., industrial to residential). The action further recommends that if potential hazardous materials issues are identified ensure that they are investigated and that properties are cleaned to responsible regulatory agency standards prior to development.
RWQCB-B-7	2. Cleanup actions implemented by dischargers to address the pollution and nuisance conditions, especially in western Newark in the Dumbarton TOO area (TOO), have not been entirely successful and will likely take years to restore groundwater beneficial uses.	The comment is noted; however, it does not address the adequacy of the Draft EIR under CEQA, therefore, no further response is required.
RWQCB-B-8	3. Human health risk assessments have been completed at many of the hazardous materials sites, and the results often find excessive exposure risks to human health, attributed from residual chemicals in soil, soil vapor, and groundwater.	The comment is noted. The cleanup actions referenced do not alter the Draft EIR's conclusion that compliance with law would result in a less than significant impact related to hazards to the public and the environment from contamination. See response to comments RWQCB-B-2 and RWQCB-B-3.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
RWQCB-B-9	4. Vapor barriers and underground venting systems (i.e., engineering controls) are being proposed some of the property owners in the TOD to mitigate vapor intrusion risks. The use of vapor barriers and active ventilation systems to mitigate possible vapor migration into new buildings is a risk management approach that is considered viable only for industrial and commercial sites with "modest" levels of contamination and only after aggressive remedial actions are first implemented to the fullest extent prior to occupancy. To be suitable for future residential use, the sites need to be remediated to a level that allows for unrestricted use (i.e., 1 x 1 o-6 for carcinogens and Hazard Index of 1 for noncarcinogens). Staff is generally reluctant to approve a risk management approach at residential sites, particularly single family residential, and would only do so if (1) the residual contamination were modest (e.g., between I x I o-s and 1 x 10-6 cancer risk); (2) the project design minimized potential exposure, and (3) a local agency (presumably the City of Newark) played an active role in tracking and enforcing risk management measures.	The comment is noted. The DEIR explicitly states throughout Section 4.7 that future development within the Plan Area would require compliance with federal, State, and local regulations, as well as with responsible regulatory agencies applicable policies and conditions of approval, to ensure that potential contamination or exposure to hazardous materials is avoided or controlled to minimize risk to the public or the environment on a case-by-case basis. Subsequent projects resulting from implementation of the proposed Plan would be required to comply with CEQA and project-specific impacts would be further identified and analyzed along with appropriate mitigation measures to the extent necessary to comply with CEQA. On page 4.7-5 of the DEIR, a discussion of local programs and regulations is provided, including identification of two local agencies (i.e., Alameda County Department of Environmental Health and the Alameda County Water District) currently engaged in hazardous materials programs in the city of Newark. The determination of appropriate technologies to address hazard risk of specific properties and specific proposed uses is inappropriate in a programmatic EIR for a general plan tune up project. Proposed General Plan Goal EH-4 and Policies EH-4.5 appropriately address hazards from development of potentially contaminated sites.
RWQCB-B-10	5. Cleanup of contaminated soil can pose potentially significant impacts to human health. At the Jones Hamilton hazardous materials site, an estimated 138,000 cubic yards of contaminated soil is proposed to be excavated and off-hauled by truckloads through residential neighborhoods and City streets. The final EIR should address hazardous materials cleanup projects that can exposure residents to harmful chemicals dusts, and vapors during excavation, loading, and transporting.	The comment is noted. A discussion of hazardous materials cleanup projects that could pose potential exposure to the public and the environment from harmful chemical dusts and vapors during excavation, loading, and transporting is provided on pages 4.7-20 through 4.7-24 of the DEIR. Included in that discussion are goals, policies, and actions that are contained in the proposed Plan, as well as applicable regulations, that speak to this concern. In addition, an NOP has been issued for an SEIR for the Jones Hamilton site. That document is the appropriate vehicle to analyze the proposed remediation of a specific parcel rather than this DEIR. See response to comment RWQCB-B-2.
RWQCB-B-11	6. Harmful chemicals and vapors that collect within utility corridors can pose potentially significant impacts to utility workers and service employees working in confined spaces within polluted public streets. These workers can also be exposed to' contaminated groundwater during dewatering.	The comment is noted. Cal OSHA is the responsible state-level agency for ensuring workplace safety. Cal OSHA assumes primary responsibility for the adoption and enforcement of standards regarding workplace safety and safety practices. In the event that utility workers and service employees are working within confined spaces within polluted public streets, a Site Safety Plan must be crafted and implemented to protect the safety of workers. Site Safety Plans establish policies, practices, and procedures to prevent the exposure of workers and members of the public to hazardous materials originating from the contaminated work area. The discussions in Chapter 4.7 of the Draft EIR also state that compliance with law would adequately mitigate the impacts associated with exposure to hazards. Please refer to the impact discussions of HAZ-1 and HAZ-2 of the DEIR.
RWQCB-B-12	7. The phasing and timing of the particular developments should to be managed appropriately by the City to prevent exposure to hazardous materials. Soil cleanups should be implemented in advance of developing new vacant properties in Newark, to prevent exposure to construction workers and occupant of new residences. Protective measures are needed to ensure that removal of cleanup actions take place prior to any new residents moving into the affected areas of Newark.	The comment is noted. A discussion of hazardous materials cleanup projects that could pose potential exposure to the public and the environment from harmful chemical dusts and vapors during excavation, loading, and transporting is provided on pages 4.7-20. Please also see Response to Comment RWQCB-B-9.
RWQCB-B-13	To address potentially significant impacts and hazards to the public or the environment, staff recommends the following actions: a. Include measures to ensure protection of human health from exposure to hazardous materials at contaminated properties. The Dumbarton TOD Specific Plan EIR addressed potentially significant impacts with mitigation measures 4.7-la through 4.7-le. b. Consider supplemental EIRs for developments overlying soil and shallow groundwater plumes to adequately evaluate the potential hazards to the public during cleanup of soil and groundwater pollution underlying sites. c. Consider development only at parcels where hazardous materials and residual pollution have been aggressively and successfully remediated to the fullest extent, particularly to ensure protection from potential vapor intrusion risks. d. Allow installation of engineering controls (i.e., vapor barriers and venting systems) only at commercial and industrial properties. Ensure that these engineering controls are appropriately effective by routine monitoring that takes place prior to permitting occupancy and continues long-term, as needed. e. Include post-construction mitigation measures to ensure that future	Comment is noted. As stated above in other responses, future development within the city of Newark would require compliance with federal, State, and local regulations with direct oversight and approval by responsible federal, State, and local regulatory agencies to ensure that potential contamination or exposure to hazardous materials is avoided or controlled to minimize the risk to the public or the environment on a case-by-case basis. The proposed Plan goals, policies, and actions, as listed topically herein under HAZ-1 through HAZ-8 in the DEIR, also would further ensure that future development in the City if Newark does not contribute to cumulative increase in risk to hazards or hazardous materials. Subsequent projects resulting from implementation of the proposed Plan would also be required to comply with CEQA review and project-specific impacts would be further identified and analyzed along with appropriate mitigation measures to the extent necessary to comply with CEQA. Finally, the proposed Plan and the DEIR are not intended in any way to undermine or usurp the responsibility and authority of the SF Bay RWQCB to protect ground and surface waters under its jurisdiction, or for that matter the responsibilities and authorities of any other State, federal, or local agencies.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	homeowners are protected from underlying residual pollution and financial responsibilities associated with any residual pollution. Mitigation measures should address the following: 1. Long-term risk management of pollution, long after the development is constructed; II. Inspection and monitoring of any engineered vapor mitigation systems to ensure the system are working effectively; iii. Long-term groundwater monitoring, sampling, and reporting until the cleanup goals are reached; iv. Proper abandonment of wells after the cleanup goals are reached; v. Periodic indoor air monitoring of buildings that are constructed over plumes with elevated levels of volatile organic compounds. f. Provide for community outreach, warnings and public notices to advise local residents and workers of the potential hazards with the cleanup, before work has started. g. Include measures to ensure protection of public utility corridors for abating hazardous vapors and for long-term treatment of contaminated groundwater, as appropriate. h. Create a system for community notification such as a website (see "www.Redfieldsite.org")	
Corporations and NGOs		
Ashland-1	Re: Ashland, Inc. Comments on: (i) General Plan Tune Up Draft Program EIR for the City of Newark, and (ii) Newark General Plan – Draft for Public Review Dear Mr. Grindall: On behalf of Ashland Inc. ("Ashland"), thank you for the opportunity to comment on the General Plan Tune Up Draft Program Environmental Impact Report for the City of Newark ("DEIR"), and (ii) Newark General Plan – Draft for Public Review dated August 2013 ("Draft General Plan"). Ashland has two comments regarding these documents for your consideration. First, in the Draft General Plan, which is incorporated by reference in the DEIR, many of the proposed land use designations are inconsistent with approved land use designations in the Dumbarton Transit Oriented Development Specific Plan ("Specific Plan"), which was approved by the City of Newark in September 2011. Specifically, among other inconsistencies, land which was approved for "Medium/High Density Residential" use in the Specific Plan, at an approved density of 16 to 60 units per acre, is mapped at Figure LU-1 of the Draft General Plan for "High Density Residential" use at an approved density of 30 to 60 units per acre. As you know, Ashland owns property within the Specific Plan which is approved for Medium/High Density Residential use. Placing the property in a High Density Residential use category would nearly double the required minimum density from 16 to 30 units per acre. The residential product which could be constructed at these two minimum densities is completely different, and Ashland never agreed to a minimum density of 30 units per acre for its property. There is no apparent intent by the City in the Draft General Plan to amend the approved Specific Plan. So we are assuming that the absence of any Medium/High Density Residential category at 16 to 60 units per acre, as approved in the Specific Plan, was an oversight. The Draft General Plan therefore needs to be revised to either create a new Medium/High Density Residential designation, at 16 to 60 units per acre, to apply to all properties within the Specific Plan area which are currently so designated. Alternatively, the Draft General Plan should expressly state that the land use designations and densities applicable to Specific Plan properties are as stated in the Specific Plan, and that the City-wide land use designations and densities created in the Draft General Plan do not apply to the Specific Plan area. Ashland also concurs in comments made by Cargill Incorporated regarding these points in a letter from Paul Shepherd dated September 27, 2013, to the City of Newark commenting on the Draft General Plan.	The comment is noted and the General Plan density ranges have been adjusted to address this issue. Please see impact analysis LU-2 on page 4.9-7 through page 4.9-8 in Chapter 4.9, Land Use and Planning, of the DEIR. As discussed in the analysis, and per State law, the General Plan is the primary document for the community. Although the proposed General Plan would replace the 1992 Newark General Plan, the Dumbarton TOD Area Specific Plan would remain effective; however, several policies contained in the proposed General Plan, found on page 4.9-8, would ensure consistency between the new General Plan and the existing Dumbarton TOD Area Specific Plan.
Ashland-2	Secondly, the DEIR at Page 4.7-7 states that the Ashland property (within the Specific Plan area) is, present tense, "one of three State Response sites that DTSC defines as confirmed release sites that are generally high-priority and high potential risk." For this statement, DEIR cites to the EnviroStor database maintained by DTSC for the Ashland property. The EnviroStor database contains no entries for the	The comment is noted and the attachment has been reviewed. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	Ashland property past 1984. The Ashland property is not a State Response site and is not under the active oversight of DTSC. Oversight of the property was transferred to the San Francisco Bay Regional Water Quality Control Board ("RWQCB") in 1984 and nearly 30 years ago. The only current, accurate and relevant information regarding the Ashland property may be found on the Geotracker website maintained by the RWQCB. The EnviroStor file is terribly outdated and any reference to it or to Ashland as a "State Response site" must be removed in order for the DEIR to convey accurate information to the public and to the City of Newark regarding the Ashland property. For your assistance, I have included a proposed redline of relevant excerpts from the DEIR making this correction at Attachment 1 to this letter. Thank you again for the opportunity to comment on the Draft General Plan and DEIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me. Very truly yours, Barry J. Shotts	
Ashland-3	Attachment 1 - Proposed Revisions to DEIR	The attachment has been reviewed
OAS-1	This letter is being written in response to Newark's Draft Impact Report for the General Plan Update. It is being written to protest the destructive plan to fill and develop Area 4 on the Newark marsh area. This is critical habitat in a number of ways. Even if it were not for the endangered species found there Newark would be unwise to build a golf course or any other development in such a fragile environment. The latest evidence for sea level rise indicates that the level will be quite a bit higher than previously thought. Golfers might have to wear wet suits when golfing within a few years. Another very important reason for keeping Area 4 intact as a marsh is that as such the marsh is able to absorb more water and slow some of the flooding that might otherwise occur as sea level rises or there is a heavy rainfall. Filling the nearly 400 acres of wetlands that fall within the expansion boundaries would deprive almost a dozen special status species of habitat in two ways. One is the naturally occurring habitat and the other is that there is the possibility of creating upland transition zone habitat for species as refugia in the event of high tides. The 1999 Baylands Ecosystem Habitat Goals Project also states that these two habitats are critical to the health of the Bay. The San Francisco Bay Regional Water Quality control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south central San Francisco Bay and that Area4 represents a rare opportunity to ...provide an area for tidal marsh species to move up slope in response to sea level rise. The California Department of Fish and Wildlife have noted that this wetland is an integral component of the San Francisco Bay ecosystem and of critical importance to waterfowl and shorebirds. Along with sensitive species there must be strong protection for the highly endangered Salt Marsh Harvest Mouse. There are other more suitable places to build houses, golf courses and other amenities of urban and suburban living. Newark would be well served to protect Area 4 in its entirety and focus its development efforts in a more plausible location.	Please see Master Response 4 regarding sea level rise, and Master Response 5 to clarify issues involving Area 4. Also, the Alternatives chapter contains a discussion on Restricted Growth as an alternative, which would protect certain areas on the western edge of Newark, however it was later discussed in the Alternatives chapter that it would not meet several of the stated objectives of the City and, therefore, was ultimately rejected. Please see Master Response 3 regarding the adequacy of alternatives.
CARGILL-1	Re: Cargill Comments on General Plan Tune Up Draft Program EIR for the City of Newark Dear Mr. Grindall: On behalf of Cargill, Incorporated ("Cargill"), thank you for the opportunity to comment on the General Plan Tune Up Draft Program EIR for the City of Newark, dated August 13, 2013 ("DEIR"). Cargill has enjoyed a long and close working relationship with the City and looks forward to continuing to play a role in Newark's future success. With that in mind, we request that the DEIR be revised to take into account the following comments to ensure factual accuracy in the City's planning and decision-making process and compliance with the California Environmental Quality Act ("CEQA"). [Under separate cover dated September 27, 2013, Cargill is also submitting comments today ("Cargill's Draft General Plan Comment Letter") on the Newark General Plan – Draft for Public Review dated August 2013 ("Draft	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	General Plan"). Given the inter-relationship between the Draft General Plan and the DEIR, and the fact that some of Cargill's proposed revisions to the Draft General Plan would necessitate corresponding revisions to the DEIR, Cargill incorporates its comments on the Draft General Plan herein by reference.] Cargill's Solar Salt Production System There are many instances in which the DEIR confuses Cargill Salt's operations within the City of Newark (the "Newark Plant Site") and its solar salt production system elsewhere. The following discussion is intended to clarify the nature of Cargill's operations. Operating Salt Ponds (Outside City of Newark) The Don Edwards San Francisco Bay National Wildlife Refuge ("Refuge") was established in 1974 through Cargill's conveyance of over 12,000 acres of operating salt ponds adjacent to the western boundary of the City of Newark. Cargill maintains perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system. Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators. The brines are then pumped or transferred by Cargill sequentially through a series of evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural evaporation. The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds ("BCDC Staff Report"), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[BCDC Staff Report at 6-7.] Cargill Newark Plant Site (Within City of Newark) After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities at its Newark Plant Site within the western portion of the City of Newark. Brines are placed within "crystallizers" at the Newark Plant Site, which are large, man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations within the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment. In short, Cargill's operations at its Newark Plant Site are very industrial in nature as the photographs illustrate at Attachment 1. Hence, while some of the salt evaporators within the Refuge (and outside the City of Newark) provide habitat for specific species of wildlife, the Newark Plant Site contains very limited or no vegetation or biological characteristics or habitat to support species use.[BCDC Staff Report at 27-28.] Enclosed as Attachment 2 is a letter prepared by Professional Wetland Scientist Michael Josselyn, PhD, of WRA Environmental Consultants, summarizing the corrections needed to ensure that the DEIR contains an accurate presentation of Cargill's operations.	
CARGILL-2	Comments and Necessary Revisions to Chapter 3 – Project Description Enclosed as Attachment 3 are proposed revisions to the text of the DEIR. The proposed revisions to Chapter 3 – Project Description are necessary: (i) to note that the Dumbarton TOD Specific Plan (the "Specific Plan") was approved by the City of Newark in 2011, and not 2010 (this is an error that is made throughout the Draft General Plan and DEIR),	Please see Chapter 3 of the FEIR for text revisions.
CARGILL-3	(ii) to make certain revisions to the residential land use designations and density ranges; currently, certain density ranges are inconsistent with the density ranges approved by the City in the Specific Plan in 2011 (see Cargill's Draft General Plan Comment Letter),	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-4	(iii) to clarify the nature of Cargill's operations at its Newark Plant Site as described above (salt refining and production, in addition to "salt harvesting").	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-5	Comments and Necessary Revisions to Chapter 4.1 – Aesthetics Revisions are necessary to Chapter 4.1 as set forth in Attachment 3 to correct or clarify the following matters. First, the City of Newark is not physically located on the "bayfront." We understand the City's desire to re-orient with San Francisco Bay and to celebrate and take advantage of its proximity to the Bay, but it is misleading to say that the City fronts the Bay when the City of Fremont and the Refuge lay directly between Newark and the Bay. So we have suggested some revisions to correct this while still promoting Newark's strategic and scenic location.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-6	Second, the San Francisco Bay Trail has already been completed through the City of Newark; it does not need to be "completed" as Policy PR 5.1 states. So we would suggest changing this Policy to say that the Bay Trail should be "realigned." And we have added that the Bay Trail should be realigned "where feasible." For instance, it would not be feasible, safe or legal to run the Bay Trail through the middle of Cargill's Newark Plant Site, as past City drawings have proposed.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-7	Finally, with respect to Action PR-1.A, we have added that the Refuge may be expanded by working with "willing" property owners. A willing property owner is a necessary condition precedent to Refuge expansion in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service, in addition to numerous other conditions.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-8	Comments and Necessary Revisions to Chapter 4.2 – Air Quality Minor revisions are necessary at Page 4.2-46 to clarify that Cargill does not operate salt ponds within the City of Newark at its Newark Plant Site, as opposed to within the Refuge, as noted in the Background discussion above.	The comment is noted. Please see Chapter 3 of the FEIR for text revisions.
CARGILL-9	Comments and Necessary Revisions to Chapter 4.3 – Biological Resources Cargill's Refuge Salt Ponds Versus Its Newark Plant Site More than any other chapter of the DEIR, Chapter 4.3 – Biological Resources confuses Cargill's solar salt evaporation ponds within the Refuge (within the City of Fremont) and its Newark Plant Site (within the City of Newark). For instance, both Figures 4.3-1 and 4.3-2 mislabel Cargill's Newark Plant Site and do not accurately reflect the conditions of the property.[The DEIR cites to a number of sources for its discussion centering on Figures 4.3-1 and 4.3-2, but none of these sources actually refers to or maps the Newark Plant Site. They all contain general descriptions of habitat types and refer to salt ponds well outside the Newark City limits.] In actuality, these areas consist of the harvesting, refining and production areas and should be labeled as set out in our comments attached at Attachment 3. As discussed above, in contrast with the Refuge salt evaporator ponds, the crystallizers of the Newark Plant Site are of "low foraging value" and "support virtually no aquatic life" because of the presence of hypersaline brines (8 times the salinity of sea water), precipitated salts and heavy equipment associated with Plant Site operations. BCDC Staff Report at 27. Dr. Josselyn's letter at Attachment 2 details this important distinction and confirms that the crystallizers at the Newark Plant Site do not support any wetland vegetation and are not considered as "wetlands." Therefore, Figures 4.3-1 and 4.3-2 must be revised to accurately depict Cargill's active salt making operations at its Newark Plant Site, as detailed in Attachment 3 and as illustrated in Attachment 4 to this letter. There are a number of other, similar textual revisions which are necessary in the Draft General Plan as detailed in Attachment 3, primarily at Page 4.3-11.	The comment is noted. Please see Figures 4.3-1 and 4.3-2 for edits.
CARGILL-10	Refuge Expansion Revisions are necessary, primarily at Page 4.3-3, of the DEIR's discussion of the potential expansion of the current Refuge boundaries. As made clear in the Final Environmental Assessment by the USFWS, areas considered by the USFWS are "Areas of Potential Additions," and may only be acquired from willing sellers.	The comment is noted. As stated on page 4.3-3, the potential areas of addition are indeed potential and it is stated that not all lands would be added to the Refuge, therefore, the suggested edits would not necessarily change the overall outcome of the subsequent analyses in Chapter 4.3. No changes are necessary.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-11	Other Necessary Revisions Other revisions to Chapter 4.3 of the DEIR are necessary as indicated in Attachment 3 to clarify the nature of Cargill's operations, to modify certain actions and policies pertaining to new development, and to clarify that the Refuge is mostly within the City of Fremont and managed by the USFWS.	The comment is noted. Attachment 3 has been reviewed. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-12	Comments and Necessary Revisions to Chapter 4.5 – Geology and Soils Cargill's Newark Plant Site was mislabeled at Figure 4.5-1 of Chapter 4.5. As discussed above, this area consists of crystallizers and other salt harvesting, refining and production areas and facilities. Revisions to Figure 4.5-1 are needed as indicated in Attachments 3 and 4.	The reviewer's comment contains a typographical error. Figure 4.5-1 depicts soil types that have been mapped in the Plan area -- Cargill's plant is not labeled on this figure. Table 4.7-1 and Figure 4.7-1 in Chapter 4.7 list and depict a "Cargill Salt" site at 7200 Central Avenue. The figure, and the indicated location of Cargill's Newark Plant, will be revised as suggested.
CARGILL-13	Comments and Necessary Revisions to Chapter 4.8 – Hydrology and Water Quality Revisions are necessary to Chapter 4.8 – Hydrology and Water Quality where indicated in Attachments 3 and 4 to: (i) clarify that any levees associated with salt production were not designed for flood protection purposes,	The comment is noted and revisions have been made to page 4.8-18 that states "*Levees associated with salt production were not designed for flood protection purposes and do not function as such*".
CARGILL-14	(ii) to clarify (at Figure 4.8-1) that the Newark Plant Site is a closed, engineered system for salt production, nothing is released or discharged to San Francisco Bay, and the Plant Site is not part of any of the watershed areas shown at Figure 4.8-1, and	Figure 4.8-1 has been modified to show the Newark Plant Site is not part of any watershed areas and a footnote has been added to the figure noting "*The Newark Plant Site is a closed, engineered system for salt production with no releases or discharges into San Francisco Bay*".
CARGILL-15	(iii) to make other clarifying revisions to flood protection measures and standards where indicated.	Other clarifications and edits have been made to the hydrology section of the EIR as per Cargill's comment letter.
CARGILL-16	Comments and Necessary Revisions to Chapter 4.9 – Land Use Policy CS-2.6 entitled "Salt Pond Management" encourages the management of the salt ponds and states that if "salt production ceases" a Specific Plan should be conducted "to explore a balance between development and preservation of important wildlife and open space resources." This once again confuses the salt ponds of the Refuge, which lie within the City of Fremont and which cannot be the subject of a Specific Plan created by City of Newark (not only because the salt ponds are in Fremont but also because the Refuge will not be the subject of future development) with Cargill's Newark Plant Site. Because Policy CS-2.6 refers to "wetlands and baylands," and, therefore, the salt ponds of the Refuge and not the Newark Plant Site, the reference to Cargill's Newark Plant Site within the Policy should be deleted.[At the same time, Cargill would support the inclusion of a policy or objective elsewhere in the DEIR concerning a possible, future Specific Plan concerning its Newark Plant Site, but this should be contained in a separate policy to avoid confusion with the Refuge.] Other revisions are necessary to Chapter 4.9 where indicated in Attachment 3 to clarify matters discussed above, including the nature of Cargill's operations, and the management and potential expansion of the Refuge.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-17	Comments and Necessary Revisions to Chapter 4.12 – Public Services and Recreation As noted above, the San Francisco Bay Trail has already been completed through the City of Newark; it does not need to be "completed" as Policy PR 5.1 states. So we would suggest changing this Policy as indicated in Attachment 3 to say that the Bay Trail should be "realigned." And we have added that the Bay Trail should be realigned "where feasible" for the reasons noted above.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-18	Comments on Chapter 6.0 – Alternatives Finally, the Alternatives analysis of the DEIR contains, as required by CEQA, a consideration of project alternatives to the proposed Draft General Plan and an analysis of the relative environmental impacts of each alternative. Cargill recognizes that the City of Newark is required to consider alternatives to the project proposed in the Draft General Plan to comply with CEQA, but has specific concerns regarding the "Restricted Growth Alternative" described at Page 6-2 of Chapter 6. According to the DEIR, under the Restricted Growth Alternative, "future growth in environmentally sensitive areas along the western edge of Newark would be restricted" and "[f]uture growth would occur entirely on previously developed land in the urbanized portion of the city." The DEIR goes on to say that: the Dumbarton TOD Focus Area …would be designated as Open Space. This alternative envisions restoration of key areas with potential for high habitat values; however, although these areas would be designated as Open Space, the underlying zoning would continue to permit economically viable uses such as agriculture. DEIR at 6-19. Cargill notes that the DEIR does not specify exactly where these "key areas with potential for high habitat values" are located or why it would be necessary or even lawful to declare them as "open space" without allowing any new development to occur. Property within the Dumbarton TOD Focus Area, including property owned by Cargill, is currently zoned for residential use in light of the City of Newark-approved Dumbarton TOD Specific Plan or, in the case of property owned by FMC Corporation, for commercial and high density residential and mixed use. Therefore, none of the properties within the Dumbarton TOD Specific Plan are zoned for or limited to agricultural use. Declaring these properties as "open space" and limiting them to agricultural use would amount to an unlawful taking of private property, which would subject the City of Newark to damages equal to the value of the highest and best use of these properties.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions. Additionally, please see Master Response 3 regarding appropriacy of Alternatives.
CARGILL-19	Cargill also notes that the Dumbarton TOD Specific Plan already requires mitigation measures which would reduce the impacts of Specific Plan projects to any sensitive biological resources to a level of insignificance, as the DEIR itself notes (DEIR at Page 6-20). Declaring these properties as open space would therefore offer no advantages over the proposed Draft General Plan in terms of impacts to biological resources.	The comment is noted. Please see Master Response 3 regarding appropriacy of Alternatives.
CARGILL-20	The DEIR ultimately rejects the Restricted Growth Alternative as being infeasible because it would fail to achieve important Project Objectives set out in the DEIR, would conflict with the Specific Plan and would not support development of the Dumbarton TOD Specific Plan area as a Priority Development Area. Cargill would add to this list the fact that the Restricted Growth Alternative would likely subject the City of Newark to significant damages arising from the condemnation or inverse condemnation of private property.	The comment is noted. Please see Chapter 6 of the Final EIR for text revisions.
CARGILL-21	Summary Cargill requests that the City revise the DEIR as discussed above and in Attachment 3 to ensure that the document is accurate, is based upon substantial evidence and serves the goal of informed decision-making by the public and the City as required by CEQA. To the extent any of the errors or inconsistencies discussed above or in Dr. Josselyn's letter are repeated in other sections of the DEIR, Cargill requests that these other sections be revised in accordance with these comments, so that all sections will be consistent, both internally and with respect to one another. Thank you again for the opportunity to comment on the DEIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me.	The comment is noted. Attachment 3 has been reviewed.
CARGILL-22	Attachment 1 - 4 Photographs of Newark Plant Site	The comment is noted. Attachment 1 has been reviewed.
CARGILL-23	Re: Comments on: (i) General Plan Tune Up Draft Program EIR for the City of Newark, and (ii) Newark General Plan – Draft for Public Review Dear Mr. Grindall: I am writing to providing comments on both the General Plan Tune Up Draft Program EIR for the City of Newark ("DEIR"), and (ii) Newark General Plan –	The comment is noted. The information has been taken into account. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	Draft for Public Review ("Draft General Plan") based on my professional experience and knowledge of the area covered by the DEIR and General Plan. I am a Professional Wetland Scientist with 35 years of experience working in the bay tidal wetlands as a Professor of Biology at San Francisco State University and more recently as a Principal with WRA, Inc, an environmental consulting firm based in San Rafael, CA. I am familiar with the area covered by the DEIR and Draft General Plan, including the salt evaporator ponds of the Don Edwards San Francisco Bay National Wildlife Refuge (the "Refuge") and the Cargill Salt facility for the harvesting, refining and production of salt within the City of Newark ("Newark Plant Site"). These comments are meant to provide clarification of the areas present, and the relative habitat value and their use by wildlife. It is important that the DEIR and Draft General Plan distinguish between the types of salt making areas that are present in the Refuge versus the Newark Plant Site. Salt production requires that bay water be brought into an initial evaporator pond where the salinity of the brines is increased over time as they are moved by gravity or pumps to sequential ponds in the process. [The classic description of the salt making process has been described by Ver Planck, 1958, Salt in California, 1 Bulletin 175, Divisions of Mines, San Francisco, CA at page 168.] The process of producing brines that are close to, but not at the critical threshold of precipitation, takes 5 to 7 years. This process occurs within salt evaporators, none of which are present at the Newark Plant Site. Salt evaporators, depending upon their salinity do support fish and wildlife and considerable study has been made on their use by migratory birds. These studies have shown that as the salinity of the brine increases, fish and wildlife use dramatically declines; however, within the intake ponds and in ponds of intermediate salinity, bird use continues. Eventually, when the brines are near saturation (very saline), they are transferred to a salt production facility such as Cargill's Newark Plant Site, where the sodium chlorides are precipitated and the resultant brines are stored as bittern. The complexes containing these brines are not evaporators, but are facilities designed to crystallize sodium chloride in a manner that results in a pure crystallized product and requires carefully controlled and manipulated brine transfers to assure a quality product. The transfer of brines from evaporators within the Refuge is through many miles of pipelines and other facilities. The crystallizers are specifically engineered for salt crystallization and the bottoms are compacted and flat to allow heavy equipment to be used to remove the final product. The distinction between evaporators and the salt production facilities is important because the extremely high salinities of the brines (8 to 10 times that of seawater) are inhospitable to life within the crystallizers, pickle ponds, and bittern ponds. This distinction between these types of "ponds" appears to not have been considered when preparing the Biological Resources chapter of the DEIR and the Conservation and Sustainability chapter of the Draft General Plan, as well as many other chapters in both documents. Therefore, the DEIR and Draft General Plan should clearly distinguish between those areas with salt evaporators (or former salt evaporators) and those where salt precipitation and production occurs (such as the Newark Plant Site operated by Cargill Salt). Within the Refuge, since these salt evaporator ponds have not been involved in the precipitation of salt, it is expected that they do have higher wildlife use. However, in my observations of the Cargill's Newark Plant Site, there is no native vegetation or other sensitive resources, including wetlands, within the facility and it would therefore be incorrect to classify it as such. The Newark Plant Site is more similar to other industrial areas in the Fremont and Newark area. When referring to Cargill's Newark Plant Site, the following corrections should be made: 1. The term "salt ponds" is not the proper nomenclature to describe this area. Salt crystallizers or simply crystallizers should be used.	

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-24	2. The salt crystallizers do not support any wetland vegetation and are not considered as "wetlands" under the Corps of Engineers definition. As noted above, it is more similar to other industrial facilities within the City of Newark. At the very least, they should be separated out from any discussion on wetlands and placed in a separate category as "salt production and harvesting facilities".	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-25	3. The salt crystallization brines are inhospitable to life. It is only during periods when precipitation reduces salinities that species such as microalgae and bacteria can grow. At times, brine flies and brine shrimp may be temporarily present, but these die out as salinities increase as a result of the salt making process and are not found in the crystallizers and other production facilities within the Newark Plant site.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-26	4. The DEIR states that a number of birds are associated with salt ponds (Page 4.3-11). However, it should be noted that salt crystallizers and other salt production facilities within the Newark Plant site do not support Wilson phalarope or American white pelican as the salinities are too high. The California clapper rail is not found in salt ponds, but only within vegetated salt marshes. Due to the absence of life within the crystallizers and salt production facilities at the Plant site, raptors are not regularly present. Other birds listed may be found roosting on levees, but are generally not found within the brines or using the brines and are more commonly found in the salt ponds within the Refuge outside of the City of Newark.	Table 3.5-3 of the Area 3 and 4 DEIR on page 127 [of the Area 3 and 4 DEIR] states that the American White Pelican could roost or forage in Area 4 and possibly along Mowry Slough, however the probability is low due to higher-quality habitat elsewhere. Additionally, Table 3.5-3 of the Area 3 and 4 DEIR states the California clapper rails habitat is salt marsh habitat dominated by common pickleweed and cordgrass. Thus, although the probability may be extremely low that a California clapper rail could be found in a salt pond, the mere possibility would render the statement in the DEIR true. Additionally, BCDC's 2005 Staff Report, as cited on page 4.3-11 indicates that California clapper rails could be found in salt ponds. BCDCs 2005 Staff Report also indicates that phalaropes are supported by high-salinity salt ponds. No changes are necessary.
CARGILL-27	5. I concur in the revisions Cargill has proposed to both the DEIR and General Plan in letters from Paul Shepard dated September 27, 2013, regarding the distinctions between the salt evaporator ponds of the Refuge and the salt crystallizers of the Newark Plant Site. I hope that these comments will assist the City in providing a clear description of biological resources associated with these facilities. Sincerely yours, Michael Josselyn, PhD Principal	The comment is noted; however, it does not raise any environmental concerns. No further response is required.
CARGILL-28	Attachment 3 to September 27, 2013 Cargill Comment Letter on Tune Up Draft Program EIR for the City of Newark dated August 13, 2013 Proposed Revisions to Chapter 3 – Project Description Page 3-12 Dumbarton TOD Area Specific Plan The Dumbarton TOD Area Specific Plan (TOD Plan), adopted by the City of Newark on September 8, 201~~0~~1, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark. A portion of the TOD Plan Area, previously referred to as Area 2, was identified as an area with significant potential for change in the 1992 General Plan. In conjunction with adoption of the TOD Plan, the City amended General Plan land use designations and zoning for this former industrial area to allow for development of 2,500 new homes, 195,000 square feet of professional office and other commercial uses, 35,000 square feet of new retail uses, and 16.3 acres of parkland, including a connection to the San Francisco Bay Trail. Key features of the TOD Plan, shown in Figure 3-5, include: - A neighborhood center near the planned transit station with retail to serve the daily needs of residents and transit users, high-density housing with an allowable density of between 25 and 60 du/acre, and 195,000 square feet of professional office and commercial uses; - Surrounding residential uses throughout the rest of the TOD Plan Area, with townhomes and medium to medium-high density housing within a ½-mile radius of the planned transit station, and single-family homes beyond that to the south;	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-29	Pages 3-14, -17 Proposed Land Use The proposed Plan includes a total of 17~~6~~ different land use designations applied to land within the City limit, as shown in Figure 3-6. This represents two~~three~~ fewer categories than in the existing General Plan, because the proposed Plan has consolidated some existing General Plan designations. The Commercial Mixed Use category has been consolidated from two designations into one, with the caveat that zoning will be used to distinguish limited mixed-use areas from other mixed-use areas.. The Specialty Commercial category has been eliminated since it had already been largely replaced by the two Commercial Mixed Use categories, which were not defined by the 1992 Plan.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-30	A recalibration of the residential categories is proposed, to better reflect existing and proposed housing densities in the city. The Low Density Residential category now includes neighborhoods developed from 1.0 to 8.5 units per net acre. The Medium Density category has been retitled Low Medium Density. The density range is ~~has not changed and continues to be 8.5 to~~ 15 units per net acre or less. The Low Medium category is intended for small lot subdivisions and zero lot line type development. The former High ~~d~~Density category has been retitled Medium Density. The density range ~~has not changed and continues to be~~ is from 1~~5~~4 to 30 units per net acre. A new Medium/High Density category has been added for housing in the 16 to 60 units per acre range, pertaining only to specific property within the Dumbarton TOD Specific Plan. A new ~~h~~High ~~d~~Density category has been added for housing in the 25~~30~~ to 60 units per acre range. Adjustments have been made to the land use map so that developed multi-family parcels have been placed in the category which best reflects their actual densities.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-31	The Plan also proposes a reorganization of agricultural and open space designations. The Agriculture/Resource Production designation is renamed Salt Harvesting, Refining and Production in order to more accurately reflect the nature of activities taking place on land to which it applies. This designation applies to approximately 3,000 acres of privately owned properties used for salt harvesting, refining and production, including the land holdings of the Cargill Salt Company on the western side of the city. The Public Parks and Open Space designation has also been renames and is now called Parks and Recreational Facilities. It establishes land primarily for active recreational activity, such as tennis courts, playgrounds, picnic areas, and sports fields. Buildings for recreation and community purposes are allowed under this designation. Finally, the Conservation – Open Space designation is maintained in the proposed Plan, intended to protect wildlife habitat and wetlands and is not intended for direct human habitation or work.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-32	Figure 3-6 [Figure 3-6 should be revised to designate as "Medium/High Density Residential" the land designated as Medium/High Density Residential on Figure 3-5 in connection with the Dumbarton TOD Specific Plan. In addition, "Salt Harvesting on Figure 3-6 should be re-labeled as "Salt Harvesting, Refining and Production."]	The comment is noted. Please see Figure 3-6 for revisions.
CARGILL-33	Table 3-4 [Table 3-4 should be revised as follows: (1) "Low-Medium Density Residential" should have a density range of "15 units per acre or less," (2) "Medium-Density Residential" should have a density range of "14 to 30 units per acre," (3) a "Medium/High Density-Residential" category should be added with a density range of "16 to 60 units per acre," (4) "High-Density Residential" should have a density range of "25 to 60 units per acre," (5) "Resource Production" and "Open Space" should split into different categories, with "Salt Harvesting" falling under "Resource Production" and "Parks and Recreational Facilities" and "Conservation Open Space" falling under "Open Space," (6) "Salt Harvesting" under "Resource Production" should be re-labeled as "Salt Harvesting, Refining and Production" and the "Development Intensity" description should read as follows: "A standard of development intensity does not apply, as buildings unrelated to salt production are generally not appropriate in these areas."]	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions that address this comment.
CARGILL-34	Page 3-20 Dumbarton Transit-Oriented Development Focus Area The boundaries of the Dumbarton TOD (DTOD) Focus Area articulated in the proposed Plan are the same as those of the new neighborhood envisioned in the TOD Plan. The vision for the DTOD Focus Area is also the same, and the proposed Plan incorporates the TOD Plan without proposing additional land use changes over and above those already incorporated into the existing General Plan at the time the TOD Plan was adopted by Newark City Council in 2011~~0~~.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-35	Page 3-25 Dumbarton Transit-Oriented Development Focus Area Growth projections from the Dumbarton TOD Specific Plan EIR were added to the base year totals to project 2035 buildout. The Dumbarton TOD Focus Area is located in TAZs 931 and 932 and growth projections from the TOD	Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	Specific Plan EIR were divided between these TAZs in accordance with the land use designations proposed in the proposed Plan. It was assumed that Medium Density Residential (MDR) would develop at an intensity of 22 du/acre, that Medium/High Density Residential (MHDR) would develop at an intensity of 30 du/acre and that High density Residential (HDR) would develop at an intensity of 45 du/acre. On this basis, 375 of the 2,5~~6~~00 total units that are likely to be built under the TOD Specific Plan were assigned to TAZ 931 and the balance was assigned to TAZ 932. Based on the proposed land use designations in TAZ 931, it was assumed that 135 of the 375 units would be multi-family units and 240 units would be single-family units. In TAZ 932, it was assumed that 1,530 of the 2,225 units would be multi-family and 695 units would be single-family, based on the proposed land use designations.	
CARGILL-36	Proposed Revisions to Chapter 4.1 – Aesthetics Page 4.1-7 4.1.3 Impact Discussion AES-1 The proposed Plan would not have a substantial adverse effect on a scenic vista. Policy LU-4.13. Proximity to San Francisco Bay~~front~~ ~~Identity~~. Reinforce Newark's proximity to San Francisco Bay ~~identity as a bayfront city~~ by orienting new development on the western and southern edges of the city toward the bay and shoreline areas. Future projects in these areas should enhance views to the water and wetlands and be compatible with the area's scenic and recreational qualities. The bay-orientation~~front~~ identity should be emphasized in gateways and public art as well.	Please see Table 3-1 for a list of text edits.
CARGILL-37	Page 4.1-9 Dumbarton Transit-Oriented District Focus Area The proposed Plan could affect the visual character and quality of the Dumbarton TOD, as it would allow development of up to 2,5~~6~~00 residential units, a neighborhood center containing retail shops, a grocery store and associated visitor-serving and residential uses, new infrastructure supportive of the new development, and parks on what is now primarily vacant land with few structures on it. At buildout, this development would transform the area from one with relatively low-slung, utilitarian buildings with little architectural detail and a minimal street network to a brand new neighborhood featuring a variety of primarily residential structures in a cohesive blend of architectural styles with additional streets, sidewalks, landscaping, and street lighting, and more buildings.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-38	Page 4.1-14, -15 4.1.4 Cumulative Impacts AES-5 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics. Policy PR-5.1 Bay Trail. Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay. Pursue trails that are separated from motor vehicle traffic and pursue pedestrian crossings of railroad rights of way to allow for connections to regional open spaces without conflicts with motorized vehicles.(new)	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-39	Action PR-1.A. Don Edwards National Wildlife Refuge Expansion. Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-40	Proposed Revisions to Chapter 4.2 – Air Quality Page 4.2-46 Site Receptors Proximate to Odor Sources Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2- 7. Additionally, sensitive receptors could be located in the vicinity of the salt harvesting, refining and production operations ~~ponds operated~~ by Cargill, Incorporated ~~Corporation~~, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be less then significant.	
CARGILL-41	Proposed Revisions to Chapter 4.3 – Biological Resources Page 4.3-3 Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan The San Francisco Bay National Wildlife Refuge was established by the United States Congress in 1972 for a total not to exceed 23,000 acres. The Refuge was one of the first urban National Wildlife Refuge established in the United States. The first lands were acquired for the Refuge in 1974. In 1988, the USFWS's acquisition authority was increased from 23,000 to 43,000 acres. Most of the existing Refuge lies within the City of Fremont. Cargill has the perpetual right within the Refuge (and outside the Newark city limits) to utilize evaporator ponds, commonly referred to as "salt ponds" or "evaporators" for its solar salt production system. In 1990, the USFWS issued the Final Environmental Assessment for the Refuge boundary expansion, which identified 24,500 acres as potential additions (Areas for Potential Additions) because not all lands would be added to the Refuge. The Areas for ~~p~~Potential ~~a~~Additions ~~areas~~ identified by the USFWS are recognized through USFWS policy as the approved acquisition boundary for the Refuge. The USFWS does not have jurisdiction over the Areas for Potential Additions ~~lands within the acquisition boundary~~, and these lands are not part of the Refuge unless they are purchased or placed under an agreement that provides for management under the Refuge System. In addition, USFW's acquisition plans do not preclude lawful, environmentally sound development, as determined by the local government in whose jurisdiction a potential addition area lies, and land within Areas for Potential Additions may only be acquired from willing sellers.[U.S. Fish and Wildlife Service, 2013, Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan, page 8.] In fact, to date, many lands within the approved 1990 acquisition boundary have already been converted to urban developments.[U.S. Fish and Wildlife Service, 2013, Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan, page 9.] In 1995, the Refuge was renamed as the Don Edwards San Francisco Bay National Wildlife Refuge in 1995 to honor Congressman Don Edwards' efforts to create the refuge. The Refuge was created with three main purposes: to preserve natural resources, including habitat for migratory birds, harbor seals, and threatened and endangered species; to provide environmental education and wildlife interpretation opportunities; and to preserve open space and wildlife-oriented recreation. The Refuge and Areas for Potential Additions approved acquisition boundary are shown in Figure 4.3-1. As of April 2013, the USFWS owned and/or managed approximately 30,000 acres under the approved acquisition boundary. As shown in Figure 4.3-1, none of the focus areas contain lands within the Refuge and most of the Refuge lies within the City of Fremont. However, Area 4 includes lands within the Areas for Potential Additions approved acquisition boundary.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-42	State Regulations The most relevant State laws regulating biological resources are the California Endangered Species Act, the California Fish and Game Code, the California Native Plant Protection Act, and the Marine Life Protection Act, each of which is described below. California Endangered Species Act The California Endangered Species Act (CESA) (California Fish and Game Code Section 2050 et seq.) establishes State policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. The CESA mandates that, if a development project would result in the "take" of a threatened or endangered species – defined as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" -- mitigation must be provided as part of an Incidental Take Permit issued by the California Department of Fish and Wildlife (CDFW).~~State agencies should not approve projects that jeopardize the continued existence of threatened or endangered species if reasonable and prudent~~	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	~~alternatives are available that would avoid jeopardy.~~ For projects that would affect a species that is on the federal and State lists, compliance with the FESA satisfies the CESA if the ~~California Department of Fish and Wildlife (~~CDFW~~)~~ determines that the federal incidental take authorization is consistent with the CESA under California Fish and Game Code Section 2080.1. For projects that would result in take of a species that is only State listed, the project proponent must apply for a take permit under Section 2081(b).	
CARGILL-43	Figure 4.3-1 [This figure contains a number of errors and is inconsistent with the CCP: (i) Figure 4.3-1 erroneously maps Cargill's Newark Plant Site as "Managed Wetlands/Salt Ponds" within active salt making facilities, as discussed in Cargill's Comment Letter, and should therefore be shaded solid (without dots) white and, if labeled at all, should be re-labeled as "Salt Harvesting, Refining and Production," and (ii) potential additions to the Refuge should be designated as "Areas of Potential Additions" or "Potential Additions" consistent with the language of the USFWS Final Assessment and CCP. Attached as Attachment 4 to Cargill's Comment Letter on the DEIR is a marked up copy of Figure 4.3-1 with these corrections.]	The comment is noted. Please see Figure 4.3-1 included in the Chapter 3 of the Final EIR for revisions.
CARGILL-44	Figure 4.3-2 [Figure 4.3-2 erroneously maps "saline emergent wetland" and "lacustrine" areas within active salt making facilities where no such wetlands exist. These labels and overlays should be removed from the Cargill Plant Site in this Figure as they do not accurately represent the conditions of the salt harvesting, refining, and production areas as described in Cargill's Comment letter. Attached as Attachment 4 to Cargill's Comment Letter on the DEIR is a marked up copy of Figure 4.3-2 with these corrections.]	Please see Figure 4.3-2 in Chapter 3 of the Final EIR for revisions.
CARGILL-45	Page 4.3-9 4.3.1.2 Existing Conditions This section discusses the wildlife and plant communities and special-status species that are known to occur or have potential to occur in the Plan Area. As described in chapter 3.0 of this Draft EIR, the majority of land in the Plan Area is urbanized and developed; however, a large area of land along the western perimeter of Newark is occupied by ~~the~~ Cargill for salt harvesting, refining and production~~Corporation~~ ~~salt evaporation ponds~~. Additionally, a portion of the Don Edwards San Francisco Bay National Wildlife Refuge is adjacent to the Plan Area outside the City limit. The Refuge ~~Both these areas~~ provides habitat for biological resources occurring or potentially occurring adjacent to ~~in~~ Newark.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-46	Vegetation, Habitat Types, and Wetlands Habitat types, as classified by the United State Department of Agriculture Forest Service, are shown in Figure 4.3-2. The distribution of habitat areas in Newark is closely associated with topography and hydrology, with habitat types associated with wetlands primarily located adjacent to the San Francisco Bay and grasslands and croplands located inland. Some wetland areas are scattered throughout the inland portion of Newark. The majority of inland Newark consists of urban lands. Each of these areas is described below: - Lacustrine habitats are the predominant non-urban habitat type in Newark ~~and include the salt ponds, which are described in further detail below.~~. These habitats are inland depressions or dammed riverine channels that contain standing water and vary from small ponds to large areas. Lacustrine habitats are used by several bird, mammal, reptile, and amphibian species for reproduction, food, water, and cover. Within Newark, approximately 2,500 acres are classified as lacustrine habitat.	As stated on page 4.3-9 in the Existing Conditions, the habitat types are classified by the US Department of Agriculture Forest Service, as shown in Figure 4.3-2. Therefore, no changes are necessary.
CARGILL-47	Page 4.3-11 Salt Ponds The commercial salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge, and adjacent to the Plan Area outside the City limit, are large, open ~~water~~ areas ranging in salinity from similar to sea water at 32 parts per million to 180 ~~135~~ parts per million, or more than five ~~four~~ times the salinity of ~~more salty than~~ sea water.[San Francisco Bay Conservation and Development Commission, 2005, Staff Report – Salt Ponds, page 27.] These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water. Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines	The comment is noted. As indicated on page 4.3-11, the reference in parts per million was indicated in the US Fish and Wildlife Service Notice of Intent to Prepare a Joint Environmental Impact Statement/EIR for the South Bay Salt Ponds Initial Stewardship Project. As such, the information was incorporated by reference; therefore, no changes are necessary.

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Comment ID	Comment	Response
	of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds within the Refuge for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt. Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin. Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.	
CARGILL-48	Cargill, which sold and donated 12,500 acres of salt ponds within the Refuge, has retained perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system and will continue its operations for the foreseeable future. Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators. The brines are then pumped or transferred by Cargill sequentially through a series of evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural evaporation. The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds, in connection with the San Francisco Bay Plan (Bay Plan), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[San Francisco Bay Conservation and Development Commission, San Francisco Bay Plan at 6-7 (Staff Report -October 2005).] After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities within the western portion of the City of Newark (the Newark Plant Site). Brines are placed within "crystallizers" at the Newark Plant Site, which are large, man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations within the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment. Hence, while some of the salt evaporators within the Refuge (and outside the city of Newark) provide habitat for specific species of wildlife, the Newark Plant site is industrial in nature and consists of hypersaline brines and /or precipitated salts that, in general, contain very limited or no vegetation or biological characteristics or habitat to support species use.[San Francisco Bay Conservation and Development Commission, San Francisco Bay Plan at 27-28 (Staff Report -October 2005).]	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
CARGILL-49	Page 4.3-34 4.3.3 Impact Discussion BIO-1. Buildout of the proposed Plan would result in less-than-significant impacts to special status plant and animal species in the Plan Area. Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-50	Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	~~San Francisco Bay.~~	
CARGILL-51	Page 4.3-39 BIO-3. Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the US in the Plan Area. Figure 4.3-3 shows areas of wetland vegetation in Newark, although it does not depict federally protected wetlands USACE jurisdictional waters. A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007. The USACE determination established approximately 242 acres of wetlands and 34.21 acres of "other waters" for a total of 277 acres. These areas include all aquatic, diked salt marsh, seasonal wetlands, muted tidal saltmarsh, freshwater marsh, brackish marsh, and tidal salt marsh. Jurisdictional determination has also been made for 7.2 acres of wetlands on the Torian property, located within the Dumbarton TOD Focus Area. Additionally, other portions of the Plan Area along the western perimeter of Newark may~~likely~~ support wetland vegetation, wetland hydrology, and wetland soils as shown on Figure 4.3-3, and therefore it is possible~~likely~~ that there are additional Waters of the US within these areas, although no formal delineation has been made by USACE.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
CARGILL-52	Page 4.3-41 BIO-3. Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the US in the Plan Area. Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-53	Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or revegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-54	Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-55	Page 4.3-42, -43 BIO-4 The proposed Plan would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. The proposed Plan would result in a significant impact if new development would interfere with species movement or involve barriers or threats within wildlife corridors. Given the highly urbanized context of the Plan Area and the extent of existing development, vehicular traffic, and human and pet presence in Newark, opportunities for wildlife movement in the urbanized portion of the city are minimal. Existing development, including buildings, fencing, flood control channels, major roadways, or other similar improvements, represent substantial barriers to wildlife movement. The best opportunities for wildlife migration exist along the western edge of the Plan Area, adjacent to the Don Edwards National Wildlife Refuge, but excluding Cargill's existing salt harvesting, refining and production operations as designated at Figure LU-1 of the proposed Plan..	The comment is noted; however, the proposed edit cannot be stated because there were no studies nor any reports used in the preparation of the DEIR to conclude that the salt harvesting, refining and production areas would not be suitable for migration. As such, no changes are necessary.
CARGILL-56	Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-57	Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or revegetate natural habitat areas or,	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	for areas that are not avoided, to provide appropriate mitigation compensation.	
CARGILL-58	Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-59	Page 4.3-45 BIO-6 The proposed Plan would result in less-than-significant impacts related to conflict with the Basin Plan and Habitat Goals. Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-60	Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or revegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-61	Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-62	Page 4.9-9 Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan Action CS-1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provide for any impacts to such areas.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-63	Proposed Revisions to Chapter 4.5 – Geology and Soils Figure 4.5-1 [Cargill's Newark Plant Site was mislabeled at Figure 4.5-1 of Chapter 4.5. As discussed in Cargill's Comment Letter and above, this area consists of crystallizers and other active salt harvesting, refining and production areas and facilities. Figure 4.5-1 should therefore be revised to accurately depict the Newark Plant Site.]	The comment is noted. Please see Figure 4.5-1 included in Chapter 3 of the Final EIR for revisions.
CARGILL-64	Proposed Revisions to Chapter 4.8 – Hydrology and Water Quality Figure 4.8-1 [Please re-label "Salt Production" as "Newark Plant Site" and add the following notation: "This is a closed, engineered system for salt production and nothing is released or discharged to San Francisco Bay." Shade the entire "Newark Plant Site" area in red, not just a portion, and separately from the watershed areas shown. A mark up illustrating these corrections is shown in a markup to Figure CS-1 of the Draft General Plan in Attachment 4.]	The comment is noted and revisions have been made to Figure 4.8-1, relabeling "Salt Production" as "Newark Plant Site" and a footnote has been added to the figure noting "*The Newark Plant Site is a closed, engineered system for salt production with no releases or discharges into San Francisco Bay*".
CARGILL-65	Page 4.8-14 Water Quality Most of the streams and creeks that originally flowed through the City of Newark have been replaced by a network of storm drains and channels that discharge urban runoff into Newark Slough, Plummer Creek Slough, and Mowry Slough. The surface water bodies that currently exist in the Plan Area include engineered channels maintained by the ACFC, Plummer Creek, Newark Slough, Mowry Slough, tidal marshes, tidal flats, ~~salt ponds~~, and small tidal estuaries.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-66	As mentioned earlier, the Plan Area consists of open space, ~~and~~ undeveloped and nonurbanized land near the bay shoreline and developed land further inland. Stormwater is transported through the ACFC's regional network of storm drains, underground culverts, or engineered drainage channels that eventually discharge into San Francisco Bay. There are sites in the Plan Area with known past groundwater contamination that have undergone remediation and are continuing to be monitored. This issue is discussed more fully in Chapter 4.7, Hazards and Hazardous Materials.	Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-67	Page 4.8-15, -16 Flooding The southern portion of the City of Newark is within the 100-year floodplain subject to tidal flooding from San Francisco Bay. Much of this area is open space, areas of salt harvesting, refining and production~~salt flats~~, and tidal marshes with no plan~~sned~~ for urbanized development. However, many of the planned future housing sites in the Dumbarton TOD and Southwest Newark Residential and Recreational Focus Areas, are within the 100-year floodplain. In addition, the areas immediately adjacent to the ACFC storm drain channels (Lines B, D, F, H, and I) are within the 100-year floodplain with some of the outlying areas mapped as being within the 500-year floodplain. The flood prone areas within the City of Newark are depicted on Figure 4.8-4.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-68	~~Although some locations within the City are protected from flooding by levees,~~ FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability. Although levees do exist at some locations within the City, ~~M~~most of these levees ~~within the City of Newark~~were not designed to provide flood protection and are not certified. Therefore, the areas next to these levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event.	The edits proposed by Cargill have been incorporated into the text on pages 4.8-16 and 4.8-17 and a sentence also have been added stating, "*Levees associated with salt production were not designed for flood protection purposes and do not function as such*".
CARGILL-69	Figure 4.8-4 [Please re-label the area designated as "Salt Harvesting Ponds" as "Salt Harvesting, Refining and Production."]	Please see Figure 4.8-4 included in Chapter 3 of the Final EIR for revisions.
CARGILL-70	Page 4.8-26 HYDRO-3. The proposed Plan would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation, or flooding on- or off-site.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
CARGILL-71	Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~.	Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-72	Page 4.8-28 HYDRO-4 The proposed Plan would not create or contribute runoff water, which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~.	Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-73	Page 4.8-33 HYDRO-8. The proposed Plan would not result in significant adverse effects related to inundation by seiche, tsunami, or mudflow. The protected portion of the San Francisco Bay near the City of Newark is not subject to potential flooding by seiches, since the several levees and long distance of shallow salt ponds~~water~~ associated with salt pond production within the Don Edwards San Francisco Bay National Wildlife Refuge~~and harvesting operations~~ between San Francisco Bay and the City of Newark would minimize waves generated by a seiche. In addition, the City of Newark is not located below any steeply sloped areas that would result in a mud or debris flow. The land within the City of Newark is relatively flat and is not within any identified earthquake induced rainfall-induced landslide areas, according to ABAG hazard maps. For these reasons, the City is not considered to be subject to significant risk from tsunamis, seiches, or mudflows.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-74	Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~.	Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-75	Proposed Revisions to Chapter 4.9 – Land Use Planning Page 4.9-2 The Dumbarton Transit-Oriented Development (TOD) Area Specific Plan, adopted by the City of Newark on September 8, 2011~~0~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark. In conjunction with adoption of the TOD Plan, the City amended General Plan land use designations and zoning for this former industrial area to allow for development of	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	2,500 new homes, 195,000 square feet of professional office and other commercial uses, 35,000 square feet of new retail uses, and 16.3 acres of parkland, including a connection to the San Francisco Bay Trail.	
CARGILL-76	Page 4.9-3 Distribution of Existing Land Uses The remaining 50 percent of Newark's land area consists of undeveloped or non-urbanized land. Of this total, approximately 960 acres is vacant and designated for development. The remaining 3,535 acres includes "conservation" open space (280 acres), agriculture (70 acres), public parkland and other "improved" open space (160 acres), and approximately 3,025 acres of land used for salt harvesting, refining and ~~evaporation ponds and ancillary facilities used for salt~~ production. Salt harvesting, refining and production represents approximately one-third of Newark's land area. It is the largest single land use in the city in terms of its geographic extent.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-77	Page 4.9-4 Table 4.9-1 DISTRIBUTION OF EXISTING LAND USES [Change "Salt Evaporation Ponds" in Table 4.9-1 to "Salt Harvesting, Refining and Production"]	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-78	Page 4.9-5 Undeveloped and Non-Urbanized Land Undeveloped and non-urbanized areas in Newark are principally located in the southern and western parts of the city. The Cargill salt harvesting, refining and production operations ~~evaporation ponds~~ constitute a majority of this area; however, approximately 960 acres of land in Newark is vacant and zoned for development. Most of this land is clustered in two areas: the Southwest Newark residential and Recreational Focus Area, west of Cherry Street between Mowry and Stevenson; and the Dumbarton TOD Focus Area. There are also several vacant tracts within the Pacific Research Center, in other industrial parks, and in the NewPark Mall vicinity.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-79	Page 4.9-9, -10 Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-80	Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-81	Policy CS-2.6. Salt Pond Management. Encourage the management of salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service to enhance their value for wildlife habitat and recreation, consistent with Cargill's perpetual rights to utilize the salt ponds as part of its solar salt production system. ~~In the event that salt production ceases , conduct a Specific Plan to explore a balance between development and preservation of important wildlifeand open space resources.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-82	Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or revegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-83	Action PR-1.A. Don Edwards National Wildlife Refuge Expansion. Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-84	Action POS-1.B: Environmental Review and Open Space. Use the environmental review process to encourage new development to designate areas with unique vegetation, wildlife habitat, or natural resources as open space or to provide adequate mitigation for impacts to such areas.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-85	Proposed Revisions to Chapter 4.12 – Public Services and Recreation Page 4.12-24 PS-10 The proposed Plan, in combination with past, present, and reasonably foreseeable growth, would result in less than significant cumulative impacts with respect to parks and recreational facilities.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is needed.
CARGILL-86	Policy PR-5.1 Bay Trail. Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay. Pursue trails that are separated from motor vehicle traffic and pursue pedestrian crossings of railroad rights of way to allow for connections to regional open spaces without conflicts with motorized vehicles.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-87	Attachment 4 - Revisions to Figures	The comment is noted. Attachment 4 has been reviewed.
DOW-1	On behalf of Defenders of Wildlife's more than 120,000 members and supporters in California, I am writing in response to the City of Newark's General Plan Tune Up Draft Program EIR. Defenders of Wildlife ("Defenders") is a national, non-profit, public interest conservation organization with more than one million members and supporters. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities, and has been involved for years in wetlands protection, San Francisco Bay conservation and restoration, and promoting the interests of national wildlife refuges, including the Don Edwards San Francisco Bay National Wildlife Refuge. Defenders of Wildlife joins Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing Newark's plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge. As Historic Bay wetlands with significant restoration potential, 550-acre Area 4 is simply an inappropriate place for development. Not only does Area 4 fall within the expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge, but it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary breeding ground for San Francisco Bay Harbor Seals. Development in Area 4 would fill nearly 100 acres of wetlands and aquatic habitat with an 18-hole golf course and nearly 500 single-family houses, exposing future Newark residents to significant flooding hazards, threatening the health of special status species populations, and preventing the restoration of a site uniquely suited for the preservation and recovery of rare and critical Bay habitat. Scientists and regulatory agencies agree that Area 4 offers a crucial opportunity to restore San Francisco Bay: The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise" Similarly, the California Department of Fish and Wildlife have stated that "this wetland is an integral component of the San Francisco Bay ecosystem," and "critically important to waterfowl and shorebirds." We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services. Thank you for the opportunity to comment on your General Plan Draft EIR. If you have any questions or comments, please do not hesitate to contact me at (916) 313-5800 ex. 108 or hstewart@defenders.org.	The comment is noted. Please see Chapter 4.3, Biological Resources, for a discussion on the potential impacts resulting from the proposed Plan. Specifically, Table 4.3-2 on page 4.3-29 identifies the Salt-marsh harvest mouse as having a population viable to sustain for over 50 years in the event no changes occur, and at least 25 years in areas where minor disturbance could occur. In each instance, it was determined that disturbances would not be severe enough to impair the population. In regards to alternatives, please see Master Response 3. To clarify issues involving Area 4, please see Master Response 5.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
EDLLC-1	On behalf of Enterprise Drive LLC, thank you for the opportunity to comment on the City of Newark's August 2013 Draft General Plan Update. Enterprise Drive LLC owns 2.14 acres (parcel number 092-0140-008) in the Dumbarton Transit Oriented Development (TOD). The Draft General Plan Update would set the minimum allowable density in Mediurn Density Residential districts at 15 dwelling units per gross developable acre. This new proposed minimum density is indicated, among other places, on page LU-12 of the Draft Update. As you know, in September 2011, the City of Newark approved the Dumbarton TOD Specific Plan. The City set the allowable minimum density for Medium Density Residential districts to 14 dwelling units per gross developable acre in the Dumbarton TOD. (Dumbarton TOD Environmental Impact Report, p. 3-25.) I write to request that the Dumbarton TOD Specific Plan be treated as an exemption to the Draft General Plan Update (for a comparison of residential densities in the Dumbarton TOD Specific Plan and the Draft General Plan Update, see the September 27, 2013 comment letter submitted by Cargill, Inc.). Enterprise Drive LLC has planned a development relying on this set minimum of 14 units per acre. The approval process has been ongoing for some time, with tentative map fees paid on October 10, 2012 and rezoning, architectural, and site plan fees paid on October 31, 2012. A change to 15 units per acre at this stage would adversely affect Enterprise Drive LLC's ability to complete the project. Enterprise Drive LLC thus requests the City treat the Dumbarton TOD Specific Plan as an exemption to the Draft General Plan Update, and that the established minimum density of 14 units per acre in Medium Density Residential districts in the Dumbarton TOD remain in effect. Thank you again for the opportunity to comment on the Draft General Plan Update for the City of Newark. Should you have any questions, please do not hesitate to contact me.	The comment is noted and the proposed General Plan has been amended to address this issue; however, it does not pertain to the merits of the DEIR and no further response is required.
GA-1	We join Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing the city's plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge. Numerous impacts of development in Area 4 are insufficiently addressed in the DEIR. Among them are the following: Habitat The 560-acres of diked baylands that comprise Area 4 contain a variety of wetland and upland habitat types. These habitats support numerous migratory waterfowl and several rare and endangered species, including the salt marsh harvest mouse, salt marsh wandering shrew, and burrowing owls. The area is identified as an important conservation priority in the 1999 Baylands Ecosystem Habitat Goals. Most of the area was included in the congressionally-approved USFWS Refuge Expansion Boundary Map of 1990. The area was identified in Greenbelt Alliance's 2012 At Risk report as "highly at risk." Flooding and Sea Level Rise Because Area 4 features tracts of uplands in proximity to tidal waters it provides a rare opportunity to maintain transitional habitat for tidal marsh species in the face of sea level rise. These same features make the land difficult and hazardous to develop. Since the entire area is within the 100-year flood plain, a large amount of would be required to support development. These measures may not be sufficient to address the impacts of sea level rise projected to occur during the next 100 years. Other public safety concerns include seismically unstable soils and limited emergency access.	The comment is noted. Please see Chapter 4.3, Biological Resources, for a discussion on the potential impacts resulting from the proposed Plan. Specifically, Table 4.3-2 on page 4.3-29 identifies the Salt-marsh harvest mouse as having a population viable to sustain for over 50 years in the event no changes occur, and at least 25 years in areas where minor disturbance could occur. In each instance, it was determined that disturbances would not be severe enough to impair the population. Chapter 4.8, Hydrology and Water Quality, discusses impacts related to water, including flooding, in the Plan Area. Impact Analysis HYDRO-3 on page 4.8-25 through 4.8-27 address potential impacts related to flooding; however, as explained further in Master Response 4 the documents discussion of sea level rise is consistent with CEQA. Please see Chapter 4.5, Geology and Soils, for a discussion on soils and seismic activity. Please see Chapter 4.12, Public Services and Recreation, for a discussion related to emergency access for fire and police protection. As discussed, compliance with the Municipal Code along with proposed policies, actions, and goals of the proposed Plan would ensure adequate emergency access is sufficient whenever new development is proposed. To clarify issues involving Area 4, please see Master Response 5.
GA-2	We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. As discussed, the Restricted Growth Altrernative would protect sensitive areas along the western edge of Newark, however this alternative did not meet many of the stated objectives found on page 6-26 of the Alternatives chapter. Please see Master Response 3 regarding the adequacy of alternatives.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
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NMW-1	On behalf of NMW Newark LLC, thank you for the opportunity to comment on the City of Newark's August 2013 Draft General Plan Update. NMW Newark LLC is the developer for the 21.27 acre Jones Hamilton property in the Dumbarton Transit Oriented Development (TOD). The Draft General Plan Update would set the minimum allowable density in Medium Density Residential districts at 15 dwelling units per gross developable acre. This new proposed minimum density is indicated, among other places, on page LU-12 of the Draft Update. As you know, in September 2011, the City of Newark approved the Dumbarton TOD Specific Plan. The City set the allowable minimum density for Medium Density Residential districts to 14 dwelling units per gross developable acre in the Dumbarton TOD. (Dumbarton TOD Environmental Impact Report, p. 3-25.) I write to request that the Dumbarton TOD Specific Plan be treated as an exemption to the Draft General Plan Update (for a comparison of residential densities in the Dumbarton TOD Specific Plan and the Draft General Plan Update, see the September 27, 2013 comment letter submitted by Cargill, Inc.). NMW Newark LLC has planned a development relying on this set minimum of 14 units per acre. The approval process has been ongoing for some time, with tentative map fees paid on October 31, 2012 and again on June 14, 2013. A change to 15 units per acre at this stage would adversely affect NMW Newark LLC's ability to complete the project. NMW Newark LLC thus requests the City treat the Dumbarton TOD Specific Plan as an exemption to the Draft General Plan Update, and that the established minimum density of 14 units per acre in Medium Density Residential districts in the Dumbarton TOD remain in effect. Thank you again for the opportunity to comment on the Draft General Plan Update for the City of Newark. Should you have any questions, please do not hesitate to contact me.	The comment is noted and the proposed General Plan has been amended to address this issue. however, it does not pertain to the merits of the DEIR and no formal response is required.
STB-1	Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Newark General Plan Tune Up. Representing 50,000 members and supporters throughout the Bay Area, including hundreds of residents of Newark, Save The Bay is concerned that the City's updated General Plan would extend urban sprawl into one of the largest expanses of undeveloped, restorable baylands in south San Francisco Bay. This is the type of development that the Bay Area has worked for 50 years to move away from, and it should not be encouraged or supported by the City of Newark. We request that the City make changes to the DEIR to rectify its significant deficiencies and ensure full compliance with the California Environmental Quality Act and other applicable laws and regulations, and we look forward to the City's detailed responses to our comments in advance of certification of any EIR. The 559-acre Area 4 is diked historic San Francisco Bay tidal marsh and an inappropriate place for development. Area 4 should be protected and restored for the benefit of the San Francisco Bay ecosystem, and for Newark and Bay Area residents alike. Area 4 falls within the Congressionally-approved expansion boundaries of the federal Don Edwards San Francisco Bay National Wildlife Refuge, and it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary pupping site for San Francisco Bay Harbor Seals. Area 4 has long been identified by scientists, environmental organizations, and state and federal regulatory agencies as a priority area for restoration: The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay (Baylands Ecosystem Goals, Segment Q: Mowry Slough Area, p.132-33). The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope	The comment is noted. Please see Chapter 4.11, Population and Housing, for a complete discussion on impacts with regards to housing and population. Additionally, Chapter 4.9, Land Use and Planning, analyzes impacts of land use as a result of implementation of the proposed General Plan. Please see Master Response 5 to clarify issues involving Area 4, and Master Response 4 regarding sea level rise. Also, please see Chapter 4.3, Biological Resources, for an impact discussion regarding wildlife and habitat.

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Comment ID	Comment	Response
	in response to sea level rise" (San Francisco Bay Regional Water Quality Control Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010, p.2) The U.S. Fish and Wildlife Service has been consistent in stating their interest in protecting and acquiring Area 4 for the Don Edwards San Francisco Bay National Wildlife Refuge, recently reiterating that, "the proposed development of Area 4 will only add to the cumulative loss of tidal wetlands in San Francisco Bay and endangered species that are dependent on that habitat," and "Area 4 would be an extremely valuable addition to the Refuge as it could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas" (US Fish and Wildlife Service letter to City of Newark in response to the General Plan DEIR, Sept. 19, 2013)	
STB-2	With the majority of Area 4 located within a 100 year flood zone behind levees that lack FEMA certification, and with significant opportunity for wetland restoration, Area 4 should be protected and restored in order to protect Newark and surrounding communities from flooding, rather than paved over, putting more people at risk.	The comment is noted. Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. For clarification of issues regarding Area 4, see Master Response 5.
STB-3	The City of Newark should develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. Please see Master Response 3 regarding the adequacy of alternatives.
STB-4	The General Plan Is Inconsistent with the BCDC Bay Plan, the US Fish and Wildlife Service Comprehensive Conservation Plan, and the Baylands Ecosystem Habitat Goals. Despite assurances that "the proposed Plan would not conflict with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect," (DEIR, Impact LU-2, 4.9-7) the City of Newark's proposed development of Area 4 conflicts with numerous federal, state and regional policies intended to protect San Francisco Bay, its habitats and wildlife.	Conflicts with the Bay Plan are discussed on pages 4.9-11 and 4.9-12 of the Draft EIR. The Bay Plan applies only to areas within the jurisdiction of BCDC. As discussed in the Draft EIR, the proposed Plan does not specifically propose any development within Mowry Slough or Plummer Creek, including portions within the jurisdiction of BCDC, and compliance with the setback requirements contained in the City's Grading and Excavation Ordinance (Newark Municipal Code, Chapter 15.50) would ensure that future development under the Plan would not occur within the limits of either Mowry Slough or Plummer Creek. Furthermore, no development is envisioned on the location of the duck clubs, nor could any development of these areas, to the extent they are managed wetlands as defined under the McAteer-Petris Act, occur without a permit from BCDC or any other agency with jurisdiction over these areas. Moreover, as BCDC policies do not explicitly prohibit development on these locations and as none is envisioned in the proposed Plan, conflicts with the Bay Plan would be less than significant.
STB-5	The San Francisco Bay Conservation and Development Commission (BCDC) Bay Plan. The DEIR acknowledges that "BCDC has jurisdiction…over managed wetlands in the Southwest Newark Residential and Recreational Focus Area" and that "projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection" (DEIR, 4.8-7). But it fails to acknowledge the Bay Plan policies that expressly discourage development in restorable areas like Area 4. BCDC has informed Newark "that the Commission has managed wetland jurisdiction over a portion of the project area in Focus Area 4, specifically the sites referred to as the Pintail and Whistling Wing Duck Clubs" and that "the Commission's San Francisco Bay Plan managed wetland policies state, in part that, 'The continued operation and maintenance of managed wetlands for waterfowl hunting, as game refuges, or for waterfowl food production should be encouraged... If the owner of any managed wetland withdraws any of the wetlands from their present use, the public should make every effort to buy these lands and restore them to tidal or subtidal habitat, or retain enhance and manage these areas as diked wetland habitat for the benefit of multiple species.'" (BCDC letter to City of Newark in response to the General Plan NOP, February 13, 2013, p. 2.) In addition, the DEIR fails to acknowledge BCDC's Bay Plan policy regarding undeveloped shoreline areas, such as Area 4, with restoration potential that are vulnerable to	The comment is noted. Please see page 4.9-11 through 4.9-12 for a discussion regarding consistency with the Bay Plan. As discussed, there is no proposed development as part of the proposed General Plan. As such, project-specific impacts are neither known at this time nor have any project-specific impacts been identified. Accordingly, as discussed, several policies under the proposed Plan would ensure consistency with the Bay Plan. For a list of such policies, see page 4.9-11 and 4.9-12. Additionally, Chapter 1.0 and 2.0 have stated that the DEIR was prepared as a program EIR and, therefore, project-specific impacts have not been considered provided there are no specific projects being proposed under the proposed General Plan.

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	sea level rise: To address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes. (BCDC Bay Plan, Climate Change Policy #4).	
STB-6	U.S. Fish and Wildlife Service, Don Edwards SF Bay National Wildlife Refuge Comprehensive Conservation Plan (CCP). The DEIR incorrectly asserts that "the proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan." (DEIR, Impact LU-3, 4.9-8.) In fact, the U.S. Fish and Wildlife Service for the Don Edwards San Francisco Bay National Wildlife Refuge recently reiterated its strong concerns to the City in a September 19, 2013, DEIR comment letter. As the CCP states, "the Refuge is particularly interested in acquiring unprotected high marsh, ecotonal, and upland habitats that will benefit migratory birds that are Refuge trust species… [and] acquiring those lands within the approved acquisition boundary that can address climate change efforts." (Don Edwards SF Bay NWR, CCP, p. 191.) Development of Area 4 would conflict with the CCP's goal to "conserve, restore, enhance, create and acquire habitats to support the diversity and abundance of migratory birds and other native flora and fauna that depend on Refuge lands." (Don Edwards SF Bay NWR, CCP, p. 180.) Area 4 is one of the largest remaining sites within the Refuge's acquisition boundary that can meet these specific needs, and therefore it is apparent that the General Plan has a significant conflict with the Comprehensive Conservation Plan. The Fish and Wildlife Service also has "concerns with the proposed development and its potential to attract nuisance and predator species (e.g., gulls, geese, invasive weeds) that affect native species and habitat, and threaten the recovery of endangered species," amongst other issues they have identified to the City in its previous comment letters (June 5, 2007; December 18, 2008; January 20, 2010).	Conflicts with the CCP are discussed on pages 4.9-8 through 4.9-11 of the Draft EIR. As discussed in the Draft EIR and acknowledged in the CCP, the Don Edwards San Francisco Bay National Wildlife Refuge is an urban refuge located in the highly developed context of the South Bay and therefore disturbances from adjacent commercial, industrial, and residential uses and activities are inevitable. The proposed Plan contains numerous policies and actions cited in the Draft EIR that would minimize disturbances to the maximum extent practicable, including policies and actions that call for coordination with federal, State, and local agencies in ecological protection and habitat restoration activities. Further, the proposed Plan does not preclude the Refuge from working with willing property owners to acquire land within the expansion boundary (see Action PR-1.A). Therefore the conclusion of the Draft EIR that conflicts with the CCP would be less than significant is valid and no change to the Draft EIR is required.
STB-7	Baylands Ecosystem Habitat Goals Project As stated by the Water Board, the SF Bay Ecosystem Habitat Goals Project and its companion document "should be recognized as regional habitat conservation plans." The General Plan's focus on developing Area 4 is in direct conflict with those regional habitat conservation plans: The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM... The Habitat Goals Project recommends that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4), and the BCDC has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. In addition, the Refuge has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge. (Water Board letter to City of Newark, General Plan NOP, February 13, 2013, Attachment A, p. 6-7).	As discussed in the Draft EIR on page 4.3-35, the Bay Plan recommends that the Baylands Ecosystem Habitat Goals (Habitat Goals) be used as guides for wetlands restoration in the vicinity of San Francisco Bay; however, the Habitat Goals are a set of recommendations that have not been adopted by any agency and therefore are not considered an approved local, regional, or State habitat conservation plan under CEQA. The analysis of the Draft EIR is valid and no change to the Draft EIR is required. With respect the future acquisition of land within the Refuge expansion area, please see Response to Comment STB-6 above.
STB-8	The DEIR Fails to Plan for, Avoid or Mitigate the Impacts of Sea Level Rise Sea level rise will have an incredible impact on coastal California, particularly cities located along the San Francisco Bay shoreline, like the City of Newark. It is therefore deeply troubling that the City is not meeting its responsibility to actually study, avoid or mitigate for sea level rise in its General Plan and DEIR. The Pacific Institute's July 2012 report, "The Impacts of Sea Level Rise on the San Francisco Bay," commissioned by the California Energy Commission, estimates that $62 billion worth of property	The comment is noted. Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. Please see

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	and infrastructure is at risk in the Bay Area, including $15 billion in Alameda County alone. (Pacific Institute, p. 20, Table 11.) There are 12,000 people already at risk from a 100-year flood in Alameda County, and that number is expected to rise to 66,000 people by 2100. Alameda County has the second highest exposure of all the nine Bay Area counties. (Pacific Institute, p. 7, Table 3.) Further, maps by BCDC demonstrate that significant portions of the Newark shoreline are expected to be inundated within the next 40 years if protective measures are not taken. (BCDC, "Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on the Shoreline," 2009.) This includes virtually all of Area 4, which is already mostly within a FEMA designated 100-year flood zone, as the General Plan illustrates in Figure EH-2, "Flood Hazard Areas." (Draft General Plan, EH-11.) The City's failure to address sea level rise in its General Plan would directly endanger its residents, their property, and the city's economy.	Master Response 4 regarding sea level rise.
STB-9	The DEIR fails to acknowledge the environmental impacts, as sea levels rise, of building up to 500 houses and an 18-hole golf course in an area with existing wetlands and significant wetland restoration potential.	Please see Master Response 4 regarding sea level rise and Master Response 5 for clarifications of proposed Area 4 development.
STB-10	Resources agencies have specifically identified Area 4 as a critical location where Bay wetlands, and the species that depend on this habitat, could migrate upland: Large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise (Water Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010, p.2.) By focusing future development along the shoreline in Area 4, the City of Newark is significantly inhibiting the potential for tidal marsh to migrate upland in this area, as well as creating potential future impacts due to the probable need to construct additional flood protection measures that would likely impact adjacent wetlands. This is a significant, avoidable impact on the Bay, Bay wetlands and special status species including but not limited to the endangered California Clapper Rail and the endangered Salt Marsh Harvest Mouse.	The comment is noted. Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. Please see Chapter 4.3, Biological Resources, for an impact discussion on wildlife and habitat, including reference to the Salt-marsh harvest mouse on page 4.3-29. Please see Master Response 4 regarding sea level rise.
STB-11	The DEIR's Analysis of Environmental Impacts Resulting from the Proposed Development of Area 4 is Inadequate. The DEIR fails to adequately evaluate and mitigate the environmental impacts that will result from the conversion of Area 4 to hundreds of housing units and an 18-hole golf course. According to the Draft General Plan, "the areas of greatest expected future land use change are in Southwest Newark and on the western edge of the city," and "this would likely represent an irreversible change" as it "would involve the transformation of undeveloped/open space to a suburban/urban environment." (Draft General Plan, LU-9 and 7-4.) Yet the environmental impacts from this change are either ignored or significantly downplayed in the DEIR.	As indicated in Chapter 2.0, Introduction, the DEIR is programmatic and therefore does not address project-specific impacts. As stated on page 4.9-10 in the Land Use and Planning chapter of the DEIR, the proposed Plan does not envision development in the immediate vicinity of the Refuge over and above that envisioned in the 1992 General Plan or Area 3 and 4 Specific Plan. Additionally, the precise location of future development is not known at this time, and is indicated the DEIR was prepared at the programmatic level and therefore does not consider project-specific impacts. The comment makes a generalized assertion and therefore requires only a generalized response. Please see Response to Comments CCCR-4, CCCR-6, and Master Response 2 regarding the treatment of previous environmental review. For clarifications regarding Area 4 please see Master Response 5.
STB-12	Potential environmental impacts that the DEIR fails to adequately document or mitigate include but are not limited to the effect that the loss of Area 4 wetlands will have on special status species known to occur onsite.	Please see Chapter 4.3, Biological Resources, for a discussion on impacts related to wildlife and habitat.
STB-13	The DEIR also fails to consider the impact of the loss or degradation of wetlands and other habitat characterized by the San Francisco Bay Regional Water Quality Control Board as "regionally significant" on other Bay wildlife species. (Water Board letter to City of Newark in response to the General Plan NOP, February 13, 2013, Attachment A, p. 7.)	The impacts to loss or degradation were discussed in the Area 3 and 4 Specific Plan EIR, as well as in this DEIR under the BIO-2 analysis starting on page 4.3-36. Please see Master Response 2 regarding the adequacy of previous environmental reviews.
STB-14	Additionally, the DEIR fails to adequately evaluate the alteration to wetland hydrology and impairment of water quality that may result from development-induced runoff pollution, including the use of pesticides associated with the proposed 18-hole golf course, and changes in runoff patterns associated with the	Impacts related to hydrology and water quality are addressed in Chapter 4.8 of the Draft EIR. Please also see Master Response 2 regarding treatment of previous enviornmental review.

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	filling of hundreds of acres of Baylands and nearly 100 acres of wetlands and other aquatic habitat	
STB-15	The DEIR also fails to include an adequate discussion of the reduction in habitat quality associated with locating development immediately adjacent to sensitive wildlife habitat.	Under CEQA, the extent of which a potential impact would occur is not necessarily considered, but rather if the potential is significant. Accordingly, and pursuant to CEQA Guidelines, it was determined that impacts to wetlands and habitat would be less than significant with the implementation of several policies as listed on page 4.3-37 to 4.3-39. Additionally, future development would be subject to project-level CEQA review which would identify further potential impacts and mitigation measures at the project-level of review. Therefore, the DEIR does adequately discuss potential impacts to habitat pursuant to CEQA Guidelines. No changes are necessary.
STB-16	The DEIR's treatment of existing biological conditions also fails to adequately characterize environmental conditions within Area 4. For example, the Vegetation and Habitat Types map included within the DEIR (Figure 4.3-2), only depicts a small portion of the jurisdictional wetlands that occur within Area 4, representing the majority of Area 4 as annual grassland instead. This is inconsistent with the figure "Existing Habitat" of the Areas 3 and 4 Specific Plan Draft EIR (Appendix E, Figure 4), which, corresponding to the Jurisdictional Determination completed by the Army Corps of Engineers in 2007 (USACE File #2006-400075S), illustrates that more than 200 acres of Area 4 is composed of various types of wetlands and aquatic habitat.	The comment is noted. Please see Figure 4.3-2b included in Chapter 3 of the Final EIR for more detail regarding Area 3 and 4 and its surrounding areas.
STB-17	Finally, discussions of impacts in the General Plan DEIR should not rely on conclusions or mitigation measures from the Areas 3 and 4 Specific Plan EIR that is currently the subject of legal challenge. Instead, the EIR should contain a *de novo* investigation of those issues, and the City should recirculate a revised DEIR containing this information for review and comment by the public, stakeholders and responsible agencies.	Please see Master Response 2 regarding reliance on previous environmental review.
STB-18	Existing conditions must be accurately represented in order for decision makers and the public to understand the environmental changes that will occur as a result of General Plan goals and policies, including the proposed development in Area 4.	Please see Response to Comment STB-16.
STB-19	Developing Area 4 Is Inconsistent With Numerous General Plan Policies, Actions and Goals Development within Area 4 conflicts with many Draft General Plan policies and actions that are listed within the DEIR as justification for the "less than significant before mitigation" determinations made for many of the environmental impacts discussed. For example, in concluding in Impact BIO-1 that "buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area," the DEIR claims that "the Proposed Plan includes policies and actions that would also protect special-status species and minimize impacts associated with future development under the Plan," listing policies CS-1.1, CS-1.2, CS-1.3, CS-2.1, CS-2.2, CS-2.3, CS-2.7 and others that are in fact inconsistent with the City's proposed development of Area 4. (DEIR, 4.3- 32-34.) The City may not assert that vague General Plan policies will ensure less than significant impacts to the environment, when the development of Area 4 would preclude implementation of those policies.	The proposed Plan policies and actions cited by the commenter would not preclude development in Area 4; rather they seek to guide future development throughout the City in a way that minimizes associated environmental impacts. Additionally, previous environmental review conducted by the City and incorporated by reference into the Draft EIR identified significant environmental impacts associated with development in Area 4 as well as mitigation measures to address those impacts; and on the basis of substantial evidence, the City determined that those measures would reduce those impacts to less-than-significant levels. Implementation of the proposed Plan policies cited by the commenter would further ensure that impacts associated with future development in the City, including development in Area 4, would be minimized to the maximum extent practicable.
STB-20	Additionally, the City many not rely on "compliance with applicable federal, state, and local regulations" in asserting that "impacts from the proposed Plan would be less-than-significant." As the lead agency under CEQA, it is not adequate for the City of Newark to rely on mitigation measures that have not been formulated. (Gentry v. City of Murrieta (1995) 36 Cal.App.4th at p. 1397.) The city may not assume that these agencies would necessarily "reduce potential impacts to wetlands, riparian habitat, and sensitive natural communities that could result from buildout of the proposed Plan to the maximum extent practicable." (DEIR, 4.3-39.)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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STB-21	The proposed General Plan Policies, Actions and Goals, that conflict with development of Area 4 include, but are not limited to: Policy CS-1.2: Conservation of Sensitive Areas. Support the conservation of environmentally sensitive areas and unique natural resources in the city. Policy CS-1.3: Interagency Cooperation. Participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas. Policy CS-2.1: Wildlife and Habitat Protection. Preserve and protect Newark's plant and animal species and habitats, including wetlands, salt marshes, creeks and lakes. Ensure that land use decisions consider potential impacts on wildlife habitat. Policy CS-2.2: Special Status Species. Ensure that adverse impacts on special status species, including those deemed rare, threatened, endangered or candidate species for protection, are avoided and mitigated to the greatest extent feasible as development takes place. Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. Policy CS-2.7: Coordination with State and Federal Agencies. Coordinate with the California Department of Fish and Game, the US Fish and Wildlife Service, surrounding cities, the Regional Water Quality Control Board and other appropriate agencies to protect wildlife species and habitat. Goal CS-2: Conserve Newark's wetlands and baylands Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay.	Please see response to Comment STB-16. The proposed Plan policies and actions cited by the commenter would not preclude development in Area 4; rather they seek to guide future development throughout the City in a way that minimizes associated environmental impacts. For clarifications regarding Area 4, please see Master Response 5.
STB-22	The City Should Develop a General Plan Alternative that Protects Area 4 from Development While an EIR "need not consider every conceivable alternative to a project… it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation." (CEQA Guidelines §15126.6(a).) Area residents, environmental organizations, and regulatory agencies have been consistent in their communications with the City on the need to protect and restore Area 4. In response to the General Plan Notice of Preparation, the San Francisco Bay Regional Water Quality Control Board requested that "the City should evaluate in its CEQA documents project alternatives that avoid and minimize fill." (Water Board, letter to City of Newark in response to the General Plan NOP, February 13, 2013, Attachment A, p. 1.) Carin High from the Citizens Committee to Complete the Refuge also requested "an alternative that retains Area 4 in its current condition." (Carin High email to City of Newark in response to the General Plan NOP, February 13, 2013, p. 1-2.) Including an alternative that would protect Area 4 from development by maintaining the existing agricultural zoning, while allowing development in other priority growth areas, would allow the City to meet all of the Project Objectives identified in the DEIR while significantly lessening the environmental impacts of the Plan. In fact, some of the Project Objectives meet with greater success under this proposed alternative, specifically the objective to "embrace Newark's bayfront location." Numerous General Plan policies, actions and goals could be better met with this proposed alternative. For example, in the General Plan the City aspires to build a "bayfront identity" (Policy LU-4.13, LU-45) and "stronger connections to San Francisco Bay" (LU-32), stating: Newark aspires to reorient itself to San Francisco Bay and establish itself as a bayfront city … Construction of the Bay Trail, restoration of wetlands … and establish stronger connections to the marshes and sloughs that define the city's western flank (ED-17) The General Plan also includes Policy ED-5.6: Bayfront Location. Promote the public image of Newark as a bayfront city, with shoreline amenities such as trails, bayfront open space, wildlife refuges, and bay vistas. The City's natural features and connections to San Francisco Bay are a "selling point" that should be leveraged to attract new employers (ED-30) The DEIR identifies the "Environmentally Superior Alternative" as the "Restricted	Please see Master Response 3 regarding selection of alternatives.

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	Growth Alternative" which would prohibit development in both Area 4 and the "Dumbarton Transit-Oriented Development Priority Development Area." In addition to the "Restricted Growth Alternative," the City should study a separate alternative that protects Area 4 by maintaining the existing Agricultural zoning, but allows the development of other priority development locations in the City, near transit, shops, and services. This is a feasible project alternative that would meet the all of the Project Objectives while "clearly lessen[ing] the environmental impacts of the project." (CEQA Guidelines §15088.5(a)(3).) Thank you for considering our comments and recommendations.	
SCVAS-1	Santa Clara Valley Audubon Society (SCVAS) joins Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing Newark's destructive plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. SCVAS has over 3500 members in the Bay Area, and our mission embraces open space, nature and birds as we offer field trips and education programs, and engage in conservation activities. We believe that Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge. Historic Bay wetlands with significant restoration potential, 550-acre Area 4 is simply an inappropriate place for development. Not only does Area 4 fall within the expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge, but it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary breeding ground for San Francisco Bay Harbor Seals. Development in Area 4 would fill nearly 100 acres of wetlands and aquatic habitat with an 18-hole golf course and nearly 500 single-family houses, exposing future Newark residents to significant flooding hazards, threatening the health of special status species populations, and preventing the restoration of a site uniquely suited for the preservation and recovery of rare and critical Bay habitat. Scientists and regulatory agencies agree that Area 4 offers a crucial opportunity to restore San Francisco Bay: The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay. The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise." Similarly, the California Department of Fish and Wildlife have stated that "this wetland is an integral component of the San Francisco Bay ecosystem," and "critically important to waterfowl and shorebirds."	The comment is noted. Please see Chapter 4.3 on page 4.3-29 for a discussion related to the Salt-marsh harvest mouse. Additionally, impact analysis BIO-2 in Chapter 4.3 addresses the impacts related to riparian habitat and sensitive natural communities, of which harbor seals are mentioned. Given, several policies and actions under the proposed Plan, and listed on page 4.3-37, the impacts were found to be less than significant and therefore no further changes in the EIR are necessary. To clarify issues involving Area 4, please see Master Response 5.
SCVAS-2	We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Response 3 regarding the adequacy of alternatives.
SFBK-1	Please accept the following comments on behalf of San Francisco Baykeeper ("Baykeeper") and our 2,500 members in our pursuit to protect and enhance the water quality of the San Francisco Bay and its tributaries. I. The Purpose and Scope of the "Project" are Unclear Baykeeper is unclear as to the purpose of this General Plan tune up, and recommends that this opportunity be seized as one to develop a sustainable infrastructure and pro-conservation approach to Newark's remaining habitat and open space. This overarching goal resonates with the DPEIR's stated Project objective to "Embrace Newark's bayfront location." (DPEIR 3-3.) Consistent with this objective, and as discussed further, below, the City should adequately prepare for rising sea levels along Newark's bayfront, revision the City's minimal stormwater pollution controls, and reconsider its proposed Area 4 development.	Please see page 1-3 through 1-4 in Chapter 1.0, Executive Summary, for description of the type and purpose of the DEIR. The stated purpose is aligned with Section 15121(a) of the CEQA Guidelines, which states that an EIRs purpose is to inform public agency decision makers and the public generally of the significant environmental effects of a project and identify ways to possibly minimize such effects. Further, the scope is to identify potential impacts of the proposed General Plan and was prepared as a program EIR, therefore, it is not project-specific. Additional information regarding scope and purpose can be found on page 2-1 through 2-5 in Chapter 2.0, Introduction. Please see Master Response 4 regarding sea level rise. No changes are necessary.

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SFBK-2	II. The DPEIR Fails to Consider Impacts Associated with Rising Sea Levels The DPEIR fails to apply its own threshold of significance as to whether "[t]he proposed Plan would not expose people or structures to a significant risk of loss, injury or death involving flooding." (DPEIR 4.8-31.) The DPEIR artificially segregates flooding as a result of existing environmental conditions, from any increased flooding that could be caused by future rising sea levels, as if even flood risks today could somehow be untwined from present rises in sea levels caused by global warming. It is simply internally inconsistent and incoherent to apply this threshold of significance to all flooding except flooding caused by sea level rise. Present and future increases in flooding caused by rising Bay levels must be part of this analysis. Notably, the legal theory on which the DPEIR rests its flawed assumption that impacts from sea level rise should not be considered under CEQA was recently rejected by the California Court of Appeal.1 Furthermore, the DPEIR acknowledges that its impact from greenhouse gas emissions will be significant and unavoidable, and admits that sea level rise is a direct result of increased greenhouse gas emissions. Therefore, the DPEIR is wrong to state that rising sea levels are a condition of the existing environment, but not an effect of the Project. The DPEIR must also evaluate the reasonably foreseeable adverse impacts from the Project to the environment. While the DPEIR asserts that rising sea levels are, in and of themselves, a condition of the existing environment, the DPEIR still must adhere to CEQA's fundamental purpose to evaluate any impacts that the Project itself will cause in conjunction with projected sea level rise. [1 See California Building Industry Assn. v. Bay Area Air Quality Management Dist., 218 Cal. App. 4th 1171, 1194-1196 (declining to follow Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455).]	The comment is noted. Please see Master Response 4 regarding sea level rise.
SFBK-3	For example, it is well documented that, if flooding or inundation occurs as a result of sea level rise, the Project's pollution loading to the Bay and its tributaries will likely increase.2 This increased pollutant load would come from the Project itself, not from the rising sea level, and must be evaluated in this DPEIR. Similarly, wastewater and stormwater infrastructure may be compromised by rising sea levels, with serious resulting consequences to water quality.3 [2 http://www.pacinst.org/wp-content/uploads/2013/02/report16.pdf (attachment 1), http://www.icleiusa.org/static/San_Diego_Bay_SLR_Adaptation_Strategy_Complete.pdf (attachment 2) 3 http://www.adaptingtorisingtides.org/vulnerability-and-risk-assessment-report/ (attachments 3 and 4)]	The comment is noted and acknowledged that stormwater infrastructure may be compromised by rising sea levels. However, it is unclear how the increased pollutant load would come from the project itself. The potential impact depends on the elevation and location of storm drain outfalls into the Bay. If the drain outfalls are under water, then storm water would back up in the pipes and cause inland flooding, but there does not appear to be a direct connection to increased pollutant load to the Bay. Improvements to the stormwater system would require interagency collaboration between municipalities and the ACFCWCD. Currently, there is no framework in place to make the decisions to improve the adaptive capacity of the stormwater infrastructure. However, new development will be required to implement BMPs and LID to minimize stormwater runoff, which will ultimately limit pollutant loads to the Bay. Please see Master Response 4 regarding sea level rise.
SFBK-4	The DPEIR identifies "the areas immediately adjacent to the ACFC storm drain channels" (DPEIR 4.8-15), but fails to discuss how the Project's contaminated stormwater could be managed if stormwater infrastructure is inundated by sea level rise.	The comment is noted; please see response to comment SFBK-3. Please see Master Response 4 regarding sea level rise.
SFBK-5	As a result of, and in conjunction with, foreseeable sea level rise, the Project Area will likely be required to implement further mitigation and/or adaptation measures to protect habitat, open space, and developed property from flooding by rising sea levels.	Please see Master Response 4 regarding sea level rise.
SFBK-6	The DPEIR must evaluate the extent to which such mitigation measures may be needed, and their resulting environmental impacts, as all such reasonably foreseeable mitigation and adaptation measures will be a consequence of the Project itself. For example, the construction of sea walls would cause further greenhouse gas impacts and erosion. What is the Project's plan for adapting to sea level rise?	As indicated in Chapter 1.0 and Chapter 2.0, the DEIR was prepared pursuant to CEQA Guidelines. Also, pursuant to Public Resources Code Section 21081.6, a mitigation monitoring or reporting program for any project for which it has made findings pursuant to Public Resources Code 21081 must be adopted by the lead agency. As stated on page 2-5, a mitigation monitoring or reporting program will be completed as part of the final EIR.
SFBK-7	Rising sea levels will also affect the greater loss of existing wetlands, projected to be permanently inundated by rising tides. This foreseeable change in the environment places a premium on undeveloped upland habitat that may be able to adapt to transition to future wetland areas as sea levels rise.4 The cumulative impact of wetland loss under the City's General Plan development must be considered in this light. Not only would near-term direct loss or degradation of wetland habitat be cumulatively considerable in conjunction with projected loss through sea level rise, but also any loss or degradation of upland	Please see Master Response 4 regarding sea level rise. Please see pages 4.3-47 through 4.3-38 for a discussion of cumulative impacts relating to wetlands, and other biological impacts. As stated in the cumulative impact analysis, previous environmental review has determined impacts to be less than significant and have identified mitigation measures to offset or minimize potential impacts.

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	habitat suitable for wetland transitional zones must be analyzed and avoided or mitigated where feasible. [4 http://www.adaptingtorisingtides.org/vulnerability-and-risk-assessment-report/ (attachment 5)]	
SFBK-8	Rather than evaluate whether the additional pollutant loading caused by the Project would threaten or impair the beneficial uses of area water bodies, the DPEIR simply asserts that compliance with the San Francisco Regional Municipal Stormwater Permit ("MRP") would necessarily render any impact associated with contaminated stormwater discharges to less than significant levels. Unfortunately, however, the MRP is no panacea, as significant pollution loading from stormwater runoff persists even under the permit. While the DPEIR states that "[n]o site-specific data regarding stormwater runoff from the Plan Area exists" (DPEIR 4.8-14), voluminous data on both stormwater generally, as well as recent and ongoing municipal performance under the existing MRP, is available and should have been considered by the DPEIR. For example, the MRP purports to lessen the onus on municipalities to reduce pesticide loading to area water bodies under the theory that pesticide regulation is solely a matter of statewide concern. Nevertheless, through its general plan process, the City could certainly consider and require land use patterns and design elements that would place land uses known for intensive pesticide use, such as golf courses or office parks, away from potentially affected water bodies, with intervening buffer areas. All urban creeks throughout the region are listed by the Regional Water Board as impaired for pesticide toxicity, and recent monitoring reports submitted under the MRP confirm that municipal stormwater continues to discharge pesticide-contaminated stormwater in toxic amounts. Yet the DPEIR fails to evaluate this significant threat to water quality.	The comment is noted and the statement on page 4.8-14 that "*no site-specific data regarding stormwater runoff from the Plan Area exists*" has been changed to read "*Under the Alameda County Urban Runoff Clean Water Program, stormwater within Alameda County has been characterized in terms of water quality and runoff pollutant loading*". It is acknowledged that all San Francisco Bay urban creeks have TMDLs because of diazinon and pesticide toxicity. The EIR does address the potential for pesticide, herbicide, and fertilizer usage to result in impaired stormwater quality, as discussed on page 4.8-15 and under Impact HYDRO-1. As stated under HYDRO-1, all new development and redevelopment projects within the Plan Area would implement storm water management measures, such as street sweeping and litter control, outreach regarding appropriate fertilizer and pesticide use practices, and managed disposal of hazardous wastes. Also, compliance with Newark's Green Building Ordinance, which includes adherence to Bay Friendly Landscape Practices, will minimize the use of pesticides. The General Plan also includes implementation of Policy CS-3.8: *Integrated Pest Management. Minimize the use of pesticides, herbicides, and other toxic materials in the maintenance of City parks, medians, and public spaces.*
SFBK-9	Moreover, the DPEIR fails to describe the beneficial uses of the impacted water bodies at all, rendering any evaluation of whether such beneficial uses may be impaired impossible.	There are no designated 303(d) impaired water bodies within the City of Newark. The nearest 303(d) impaired water bodies are Alameda Creek and South San Francisco Bay. Impacts of discharge to San Francisco Bay are discussed under Impact HYDRO-1. Compliance with the Alameda County Clean Water Program, which includes the C.3 provisions set by the San Francisco Bay RWQCB, will minimize the discharge of impacted stormwater to this water body.
SFBK-10	IV. The City should Reconsider Development of Area 4 In determining the land-use plan for Area 4, the City of Newark has the opportunity to distinguish itself as a leader in the arena of responsible planning. Area 4 is located within the 100-year floodplain and the majority of the site would be inundated by a one-meter sea-level rise according the mapping released by the San Francisco Bay Conservation and Development Commission (BCDC). This poses serious public safety issues including emergency response time and access, traffic ingress and egress, seismic and liquefaction issues, etc. With the opportunity to re-vision its general plan blueprint for future development, we sincerely urge the City of Newark to consider an alternative plan that will preserve and restore the lands within Area 4 rather than trying to force development that would be inconsistent with City and regional goals of preservation, conservation, and sensible development. Thank you for your careful consideration of these comments and concerns, and your good stewardship of these vital ecological resources. Sincerely, Jason Flanders program Director, San Francisco Baykeeper	The comment is noted. Please see Master Response 4 regarding sea level rise. Please see Chapter 6.0, Alternatives, page 6-2 for a description of a Restricted Growth Alternative, which would restrict growth in the Dumbarton TOD and the larger sector of the Southwest Newark Residential and Recreational Focus Areas.
SFBK-11	4 Attachments were received and reviewed	The attachments were reviewed.
CCCR-1	This responds to the Draft General Plan Tuneup (GPT) and GPT Draft Program environmental impact report (DEIR). The Citizens Committee to Complete the Refuge (CCCR) thanks you for the opportunity to review and provide comment. Based upon our review of the DEIR, we find that it contains serious omissions, inaccuracies, and flaws that must be rectified to comply with the California Environmental Quality Act (CEQA) requirements. For these reasons, as well as those articulated by our attorneys, Lippe Gaffney Wagner LLP, and Richard Grassetti of Grassetti Environmental Consulting, the DEIR must be corrected and re-circulated.	The commenter's opinion is noted.

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CCCR-2	Newark General Plan "Tuneup" The city held public workshops in late 2011 and early 2012, facilitated by graduate students from California Polytechinic State University San Luis Obispo. The City also held joint study sessions between the city council and planning commission, though these do not appear to have been widely advertised. Members of CCCR only found out about these joint workshops by perusing the planning commission and city council agendas. Public participation is a required component of the general plan process California Government Code §65351, and public participation can: • Educate the public about community issues. • Increase the public's ability and desire to participate in the community. • Enhance trust in government by strengthening the relationship between elected officials, government · staff, and the public. • Encourage working towards community consensus and creating a vision for the future. • Lay the groundwork for community revitalization and increased investment in the community. • Allow decision makers to obtain public input regarding plan policies and community issues and objectives. • Provide the public with opportunities to evaluate alternative plans and to participate in developing and choose a plan that works for their community. • Inform decision-makers about public opinion. The characterization of this general plan update as a "tuneup" conveys to the public that there is actually little need for the public to participate in the process. That the purpose of this "tuneup" is to merely tie up a few loose ends. This impression is solidified with the following text: The effort leading to the adoption of a new General Plan in 2013 was referred to as a General Plan "Tune Up" rather than a major revision. This is because the values represented by the 1992 Plan remained valid and appropriate at the time of Plan adoption. By 2011, however, the 1992 Plan's data and maps were becoming dated and the absence of a discussion of recent planning efforts was becoming more apparent. The 1992 Plan did not reference regional planning initiatives and legislative changes, nor did it address emerging issues such as climate change and sustainability. The intent of the "Tune-Up" was to update baseline data and projections, refresh the narrative text which describes planning issues, and move the planning horizon forward by 20 to 25 years. [emphasis added] And: The basic vision established by the 1992 Plan continues to guide this General Plan. This vision seeks to sustain Newark as a high quality community with attractive neighborhoods, great shopping, diverse workplaces, excellent public services and parks, and a healthy natural environment. Many of the areas identified for development by the 1992 Plan continue to be identified for development today—this General Plan provides greater detail on the types of uses and the issues to be addressed as such development takes place. [emphasis added]It has been over twenty years since the crafting of the existing general plan. The Draft GP acknowledges that it carries forward many of the concepts of 1992 GP, including development of the city's western edge. However, significant new information has come to light since the early 1990's. As the general plan update indicates, new policies and strategies have developed over the intervening years, with different visions of how we should interact with the landscape, especially in low lying areas close to the edges of the bay. The general plan update process is an appropriate time to re-evaluate the long-term sustainability of the existing general plan's vision of land use. As an example, the GPT carries forward the concept of a golf course and upscale housing on Area 4, the former Whistling Wings and Pintail duck clubs. A 2012 Wall Street Journal article1 reported the financial woes of golf communities, describing how private golf course communities are "repurposing" golf courses by reducing the number of holes from 18 to 9 and then	The commenter is expressing opinions regarding the process used to develop the proposed general plan and the economic viability of golf courses; however, it does not pertain to the merits of the EIR. No further response is required. For clarifications regarding Area 4 Please see Master Response 5. Please see Master Response 4 regarding sea level rise.

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	selling off the excess land. Property values in a number of golf course communities have plummeted. In South Carolina, lots that previously sold for $150,000, were on sale in 2012 for $1. In Florida, a lakefront home associated with an Arnold Palmer golf course sold for $795,000 in 2011, but had sold in 2007 for $1.6 million. In Bend, Oregon, a couple paid $500,000 for a lot in 2006. A similar-sized lot sold for $10,000 in early 2012. As of 2011, 2,000 golf courses of a total of 16,000 courses were in financial distress, and it was estimated an additional 4,000 to 5,000 would find themselves in a similar situation if their model of operation remained unchanged. Jonathan Lansner 2 of the Orange County Register reports, during the period between 2005-2011, golf as a sport, lost 4.3 million golfers, and there were 37 million fewer rounds of golf were played in the period from 2005-2011. Lansner writes: Today, golf is largely out as a housing theme because developers have learned that golf courses are an expensive and narrow way to keep a new housing community green. "Lakes, walking paths and central amenities are used by all residents, as opposed to only about 15 percent to 20 percent of residents" for golfing, Boud says. [1 Keates, Nancy. "Fore Sale." July 24, 2012. Wall Street Journal.] [2Lansner, Jonathan. "Golf courses hit rough economics." April 13, 2012. Orange County Register. http://www.ocregister.com/articles/golf-349198-says-courses.html Accessed 9-26-13] While builders could sell golf-course view homes at a steep premium, Boud says that "when costs are considered, open spaces and trails often overtake golf in terms of benefiting the master plan, and a lake -- which is relatively cheap and easy to maintain -- beats golf in view premiums. Though obviously, fewer homes tend to benefit from the view because a lake is generally much smaller than a course." Lastly, Alicia Robinson3 of the Press Enterprise exposes the difficulties the City of Riverside has encountered when operators who held contracts to run two of three golf courses in the city stopped paying their city leases. The 1992 general plan, was its vision of a golf course and upscale housing was developed during an unprecedented boom in the construction of high end golf courses. The period of the 1990's to early 2000 was a period of rapid growth for golf course construction. But as described above, there has been a sharp course correction as the popularity of the sport has decreased. The evidence above, suggests a golf course would be anything but an asset to the city. Why does the city continue to incorporate the vision of a golf course in Area 4? This is just one example of an instance where carrying forward the visions of the 1992 plan may be out of synch with reality, and an indication that more than a tuneup is warranted. Other more pressing issues, such as adaptive planning for sea level rise, have not adequately been incorporated into the vision of land use promoted by the draft general plan. [3 Robinson, Alicia. "Riverside: Cities rarely fare well in golf business." July 19, 2013. The Press Enterprise. http://www.pe.com/local-news/riverside-county/riverside/riverside-headlines-index/20130719-riverside-cities-rarely-fare-well-in-golf-business1.ece Accessed 9-26-13.].	
CCCR-3	The GPT and the GPT DEIR are not user friendly: The draft general plan and general plan DEIR are not user friendly, they do not encourage public participation in formulating a vision of growth for the city. Terms such as FAR (floor area ratio) have little meaning to the general public and housing unit densities are difficult to visualize. The Fremont general plan includes figures that help the reader visualize how the various housing densities or floor area ratios impact the landscape. Why can't the Newark GPT include similar figures?	The comment is noted. As stated in Chapter 2.0, Introduction, and pursuant to CEQA Guidelines Section 15105, the required public review comment period shall not be less than 45 days. Accordingly, the DEIR was available for public comment from August 14, 2013 through September 27, 2013, or 45 days. Additionally, Section 15083 of the CEQA Guidelines states that the Lead Agency may consult directly with any person or organization it believes will be concerned with the environmental effects of the project through a process referred to as scoping. As such, a scoping meeting was held on January 24, 2013, along with , and three joint study sessions, one Planning commission Study Session and one City Council study session, all of which provided opportunities for public participation. In addition there were two meeting of a blue ribbon panel of business experts to advise the City on the Economic Development Element.
CCCR-4	The DEIR is inconsistent in providing information necessary to evaluate the adequacy of impact identification, identification of indirect impacts, mitigation and monitoring measures, etc. Impact assessment and mitigation and monitoring requirements are spread amongst at least four different	As described on page 2-3 of the Draft EIR, a range of planning and environmental documents prepared previously by the City are incorporated by reference into the Draft EIR pursuant to CEQA Section 15150. Section 15150 states that "where an EIR or Negative Declaration uses incorporation by reference, the incorporated part of the

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	documents - this DEIR, the HEU EIR, the Area 2 EIR, and the Area 3 and 4 EIR (refer to earlier comment regarding the inclusion of the suspended EIR). Rather than providing the actual wording of the mitigation measures from these other documents, the GPT DEIR provides one sentence summaries of the mitigation measure(s) in question. p. 2-3 states: Whenever existing environmental documentation or previously-prepared documents and studies are used in the preparation of this Draft EIR, the information is summarized for the convenience of the reader and incorporated by reference. As an example: 4.3-33 - Additionally, previous environmental review conducted for the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified the following mitigation measures to address potential impacts to special-status plant and animal species. The Dumbarton TOD EIR identifies Impacts 4.3-1 through 4.3-5 associated with impacts to the salt marsh harvest mouse, nesting raptors, the western burrowing owl, the tricolored blackbird, saltmarsh common yellowthroat, and other nesting passerine birds, as well as special-status plant species. These impacts would be mitigated to less-than-significant levels through the implementation of various assessment, survey, avoidance, buffer, preservation, and protection, and replacement measures specified in Mitigation Measures 4.3-1 and 4.3-5 from the Dumbarton TOD Specific Plan EIR. The information contained in this summary is insufficient to determine what type of impacts are anticipated and whether the mitigation measures referred to are adequate to reduce the impacts to a level that is less-than-significant. Furthermore, the HEU DEIR doesn't appear to be online, making review of the severity of the impacts proposed by the GPT DEIR nearly impossible for anyone who doesn't have a copy of the document. The GPT DEIR incorporate all mitigation measures in one document, ensure the measures are consistent, and then re-circulate the information for public review and comment.	referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described." Therefore, it is appropriate that the Draft EIR has summarized previous mitigation measures and discussed their relation to the proposed Plan and its environmental effects. Further, on page 2-2 of the Draft EIR it is noted that the documents incorporated by reference are available for review at the City of Newark Community Development Department, in compliance with CEQA Section 15150(b). Therefore, the Draft EIR has adequately incorporated and referenced mitigation measures from previous environmental review conducted by the City. Please also see Master Response 2 regarding Reliance on Previous Environmental Review. No change to the Draft EIR is required to address this comment.
CCCR-5	The statement on p. 2-5 that "the Mitigation Monitoring Program for the proposed Plan will be completed as part of the FEIR and will be completed prior to consideration of the Plan by the Newark City Council." The typical comment period for an FEIR is 10 days. This delay in providing the MMP perpetuates the impression that the GPT and GPT DEIR are done deals and comments made by the public will not be considered seriously.	As noted in the Draft EIR on page 2-5, a Mitigation Monitoring and Response Program (MMRP) will be prepared for the proposed Plan. Pursuant to CEQA Section 15097, the MMRP is prepared after the comment period on the Draft EIR so as to allow for incorporation as warranted into the EIR of mitigation measures or project revisions proposed by reviewing agencies or the public. Further, as set forth in Section 15097, the lead agency must first make findings regarding the Final EIR, including findings regarding changes to the Draft EIR (see Section 15091(a)), before adopting "a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects." Therefore, it is appropriate that the MMRP for the proposed Plan be completed as part of the FEIR and be completed prior to consideration of the Plan by the Newark City Council.
CCCR-6	It is not possible to determine from the GPT DEIR the level of CEQA review or opportunities for public comment that will occur in the future. [Please refer to the letters of LGW and Richard Grassetti regarding why it is improper for the GPT DEIR to rely on conclusions, mitigation measures, etc. from the Area 3 and 4 DEIR and specific area plan. This statement should be inserted anywhere Area 3 and 4 is discussed henceforth.] The GPT has been described during public meetings as being "self-mitigating." Please explain what that means and the ramifications for future CEQA review and public comment opportunities. p. 1-3 of the DEIR states: ...this Draft EIR has been prepared as a Program EIR for the General Plan Tune Up project, pursuant to Section 15168 of the CEQA Guidelines. As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects. [emphasis added] However, if the Program EIR addresses the program's effects as specifically and comprehensively as possible, many subsequent activities could be found to be within the Program EIR scope and additional environmental documents may not be required (CEQA Guidelines Section 15168[c]). When a Program EIR is relied on for a	On the title page of the document, and throughout, it is identified as a "Program" document; as such future developments would be subject to CEQA review. Also please see Responses to Comments GECO-3, GECO-5, and GECO-6 above. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review. In regards to clarifications of Area 4, please see Master Response 5.

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	subsequent activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities (CEQA Guidelines Section 15168[c][3]). If a subsequent activity would have effects not within the scope of the Program EIR, the lead agency must prepare a new Initial Study leading to a Negative Declaration, Mitigated Negative Declaration, or an EIR. In this case, the Program EIR still serves a valuable purpose as the first-tier environmental analysis. [emphasis added] This is passage describes the process normal process of tiering following the preparation of a program EIR. The GPT DEIR is confusing however, because it states that it incorporates by reference the analyses and mitigation measure reporting programs of previously conducted EIRs. This makes it nearly impossible for the public to comprehend what will trigger future environmental review for the Area 2 (DTOD) and parcels covered by the HEU EIR (and Area 3 and 4 though that environmental review process is currently suspended).	
CCCR-7	As an example: p. 4.1-13: Furthermore, there are provisions in place to address light impacts from development located at the northwestern edge of the urbanized portion of Newark, where such impacts could potentially be most pronounced. Mitigation Measure 4.1-1 from the Newark Housing Element EIR requires that lighting plans containing specific measures to reduce the adverse impacts of additional light sources to less-than-significant levels for development in areas adjacent to the Don Edwards National Wildlife Refuge. Additionally, the proposed Plan incorporates a policy from the Dumbarton TOD Specific Plan requiring the incorporation of types of lighting and illumination that reduce glare and over-lighting impacts in the vicinity of the Dumbarton TOD Focus Area. [emphasis added] What if any, additional CEQA and public review of aesthetics can be expected within the sphere of the Newark Housing Element and the DTOD? Does the determination that the adverse impacts of additional light sources are reduced to a level that the city has determined to be less-than-significant for development in areas adjacent to the Refuge, mean that light impacts will not be reviewed further, even at the project level? What about other aesthetics impacts? If further environmental review will occur will there be any opportunity for public comment?	Please see Responses to Comments CCCR-6, GECO-3, GECO-5, and GECO-6 above. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review.
CCCR-8	What are the anticipated triggers and what elements of the statement the GPT DEIR has incorporated by reference previous EIRs for the Dumbarton Transit Oriented Development (DTOD), the Area 3 and 4, and the Housing Element Update. The incorporation of those EIRs and in particular, their mitigation measures into the existing baseline is improper.	Please see Responses to Comment CCCR-4 above. Please also see Master Response 1 regarding baseline for environmental review.
CCCR-9	Inconsistencies: Comparisons of the GPT and GPT DEIR are difficult because the two documents do not use consistent language. GPT CS-18 Newark does not allow development within the 100-year flood zone and requires development to be elevated at least 8 feet above mean high tide (11 feet for residential development). GPT DEIR p.4.8-32: Furthermore, any development within the Plan Area would be subject to the City's flood elevation standards for lands within Special Flood Hazard Areas (SFHAs), as defined by FEMA (Section 15.40.51 of the Newark Municipal Code). These standards require building pads of all residential structures to be a minimum of 11.25 feet elevation National Geodetic Vertical Datum (NGVD). In addition, the City requires the top of curb grades for residential streets to be no less than ten feet above mean sea level throughout the City (Section 16.08.06 of the Newark Municipal Code).	The General Plan text has been edited to reference 11.25 feet rather than the "rounded" statistic of 11 feet that had been cited previously. The two references are now consistent.
CCCR-10	Aesthetics: 4.1-4 - This section discusses visual character of Newark and includes the views of Coyote Hills, the east bay hills, and low-lying wetlands fronting San Francisco Bay, but does not mention the views of the hills across the bay. Shouldn't that view be part of the existing conditions?	The comment is noted. Although the Visual Character discussion on page 4.1-4 does not specifically mention views of the hills across the SF Bay, based on the Standards of Significance listed on page 4.1-6, every conceivable view from the Plan Area was not necessary to provide an adequate analysis to come to a determination of significance. As discussed in AES-1 on page 4.1-6, there are no officially designated scenic vistas or view corridors in Newark. Therefore, mention of the hills across the SF Bay would not have affected the final determination for AES-1. As discussed in AES-3, the overall visual character was determined to have a significant impact; therefore, the mention of the hills across the SF Bay would not have affected the overall determination, provided AES-3 was determined to

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		result in a significant impacts even without mention of the views of the hills. As such, no changes are necessary.
CCCR-11	4.1-6 - Shouldn't the views across the bay be mentioned under the discussion of Area 4?	The comment is noted. Although mention of the hills across the SF Bay is not mentioned, AES-1 on page 4.1-6 states that there are no officially designated scenic vistas or view corridors in Newark, therefore, mention of the hills would not necessarily affect the overall determination based on the Standard of Significance used in AES-1. Further, AES-1 discusses that future development under the proposed Plan would be subject to local laws and regulations that serve to protect scenic vistas in the Plan Area. Also, several policies in the proposed Plan, as listed on page 4.1-7, would aim to protect scenic resources. For that reason, no changes are necessary.
CCCR-12	AES-1 - The proposed Plan would not have a substantial adverse effect on a scenic vista. Once Area 3 is constructed, you will no longer be able to see across the bay while driving along Cherry. The sense of openness will also be lost as there will be medium density development on both sides of the street.	The comment is noted. As discussed in AES-1, there are no officially designated scenic vistas or view corridors in Newark, which would provide special consideration under CEQA. Additionally, provided there are were no projects proposed under in Area 3 at the time of the preparation of the DEIR, project-specific impacts cannot be considered. Also discussed in AES-1 are the policies under the proposed Plan that would seek to protect scenic vistas. No changes are necessary.
CCCR-13	Policy LU-4.13 - How is Newark's Bayfront Identity reinforced by building high density housing in Area 2 and importing 2.1 million cubic yards of fill into Area 4?	As discussed in Chapter 4.1, Aesthetics, impact analysis AES-1 discusses potential impacts related to scenic vistas. Page 4.1-7 lists policies that would serve to protect scenic vistas under the proposed Plan. Additionally, AES-1 states that future development would be subject to existing local laws and regulations with regards to protecting scenic vistas. Also, as mentioned in Chapter 1.0, Executive Summary, the DEIR was prepared as a program EIR and does not consider project-specific impacts, such as the building of high density housing in specific areas. Therefore, no changes are necessary.
CCCR-14	Policy LU-4.14- Views of the Peninsula Hills and San Francisco Bay will be obscured by development in Area 3 and 4 and in Area 2. One might have a view of the bay however, if one is perched in a high density housing unit?	As discussed in Chapter 4.1, Aesthetics, impact analysis AES-1 discusses potential impacts related to scenic vistas. Page 4.1-7 lists policies that would serve to protect scenic vistas under the proposed Plan. Additionally, AES-1 states that future development would be subject to existing local laws and regulations with regards to protecting scenic vistas. Also, as mentioned in Chapter 1.0, Executive Summary, the DEIR was prepared as a program EIR and does not consider project-specific impacts, such as the building of high density housing in specific areas. Therefore, no changes are necessary.
CCCR-15	AES-3 The proposed Plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review. We concur that the proposed plan will have a significant adverse impact on the visual character of Area 3 and 4.	The comment is noted. No further response is required.
CCCR-16	AES-4 States, "The Plan would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area." and rationalizes the conclusion with "future development under the proposed Plan would create new sources of light and glare; however, in the urbanized context of Newark this increase would not substantially and adversely affect daytime or nighttime views. Area 4 is isolated from development and in an area where there is no light at night. The introduction of lighting in this area will likely be visible from other parts of town.	As discussed in AES-4, although new sources of light and glare could result from future development, the discussion on page 4.1-12 mentions that Newark is in a highly urbanized area, therefore establishing context for the analysis. As such, although light and glare could result from future development, the analysis determined that such light and glare would not result in a "substantial" impact in the context of the existing light and glare. Additionally, policies under the proposed Plan would aim to reduce potential impact as listed on page 4.1-13. Therefore, no changes are necessary.
CCCR-17	AES-5 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics. How is it possible to reach this conclusion? High density housing is proposed in Area 2, a large area of existing open space will be built out in Area 3, 2.1 million cubic yards of fill will be imported into Area 4 raising the elevation 10'-14', taller buildings are proposed in the New Park Mall area, and high density housing is proposed at the site of the library and city hall. How can the Plan buildout not visually alter the character of Newark?	AES-3 on page 4.1-8 through 4.1-12 actually does make the determination of a significant impact with regard to visual character. However, in the context of cumulative impacts which considers a geographic scope of the entire Plan Area as described on page 4.1-13. As discussed in AES-5, cumulative impacts are considered within a larger geographic reason as explained on page 4.1-13 and 4.1-14, therefore in the context of the geographic scope, cumulative impacts were found to be less than significant based on the individual impact discussions in Chapter 4.1. In regards to visual character, although AES-3 resulted in a significant impact, the geographic scope was within the four focus areas analyzed in that impact discussion, whereas the cumulative impact analysis takes a broader and more expansive view of the region. As such, an impact considered significant in an individual impact analysis will not always result in the cumulative impact to be significant as well, depending on the geographic scope established.

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CCCR-18	Air Quality: p. 4.2-13 - Existing Ambient Air Quality - The DEIR states the air quality monitoring station closest to the City is the Hayward Monitoring Station. Why wasn't the monitoring station in Fremont on Chapel Way utilized? That station in air miles is only 3.32 miles away? The site is reported to have sensors for O3, PM2.5, PM10, CO, NOx, HC, and Tox.	The Fremont Chapel Way Monitoring Station closed on October 31, 2010 and was not operational in 2011 or 2012. Therefore, data from the next closest monitoring station was utilized to ensure that the most recent data was reported.
CCCR-19	p. 4.2-15 - The DEIR refers to recent case law and states: "...the Guidelines language in thresholds d and e (exposure of sensitive receptors to substantial pollutant concentrations and creation of objectionable odors), as they relate to the placement of sensitive receptors under the proposed plan, above are not examples of an environmental effect caused by the development, but instead is an example of an effect on the Project caused by the environment (and therefore according to bad case law, are not required to be analyzed under CEQA). From a public health and safety perspective, it would seem irresponsible not to analyze and mitigate these impacts.	The comment is noted. Public health and safety are planning issues and therefore addressed through municipal code regulations and conditions of approval. No further response is required.
CCCR-20	p. 4.2-18. - The City of Newark is already largely developed. Future growth under the proposed Plan would be accommodated in infill sites and redevelopment of existing sites. [emphasis added] This description of proposed development under the draft general plan is inaccurate as development is proposed on Area 4. The statement is inconsistent with other portions of the DEIR and GPT: page 3-8 - Area 4 is one of the last undeveloped sectors of the city and is largely in agricultural use today. Page 4.8-21 - However, future housing sites will be primarily located on underutilized land, infill sites, and along transit corridors, most of which (excepting Area 4) have already been developed and currently have a high percentage of impervious surfaces. Page 4.4-10: Additionally, the Southwest Newark Residential and Recreational Focus Area contains a large area of undeveloped land, some of which would be developed with buildout of the Plan. GP EH-31 - In particular, [...] residential development in Southwest Newark will result in a larger population in areas that are presently vacant. GPT LU- 23-26: This is the largest area proposed for future development in Newark, comprising 636 acres [emphasis added].	Although the language seems inconsistent, neither of the references alludes to an end all or exclusive statement. For example, the reference to page 4.2-18 states that is Newark is largely developed; however, that does not mean fully developed. Additionally, the statement about future growth being accommodated by infill sites and redevelopment of existing sites does not necessarily imply that all future growth would be strictly accommodated to infill or redevelop existing sites. The reference to page 4.8-21 refers to housing sites being located on underutilized land, infill sites, and transit corridors. Underutilized does not necessarily mean undeveloped, nor does the statement conclude that all housing sites would be located in either of those areas exclusively. As such, neither of the statements referenced in the comment are meant to convey exclusivity or absolute certainty of such development patterns. As discussed throughout the DEIR, future development would be subject to further project-specific CEQA review in which project-specific impacts and mitigation measures would be identified. Therefore, no changes are necessary.
CCCR-21	p. 4.2-35: BAAQMD's CEQA Air Quality Guidelines do not require an evaluation of emissions from program-level planning activities such as the proposed Plan. Given the programmatic nature of the proposed Plan, specific operational information individual projects that would operate under the Plan is not known, and furthermore, subsequent environmental review of development projects would be required to assess potential impacts under BAAQMD's project-level thresholds. Please clarify what additional environmental review would be required and would there be an opportunity to provide public comment?	Please see Responses to Comments CCCR-6, CCCR-7, GECO-3, GECO-5, and GECO-6 above. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review.
CCCR-22	p. 4.2-39 - States: Implementation of the above-listed policies would reduce operational emissions from development projects under the proposed Plan to the maximum extent practicable. Additionally, as noted above, future development projects under the proposed Plan would be subject to subsequent environmental review pursuant to CEQA and would be required to assess potential impacts under BAAQMD's project-level thresholds. Therefore, impacts associated with operational emissions of criteria air pollutant from the proposed Plan would be less than significant. It is not possible to reach a conclusion of a less-than-significant impact. The policies are predominately advisory and there is no assurance they will be implemented. How is it possible to state impacts will be less-than-significant merely based on the requirement of future environmental review? As an example, what if significant impacts are identified, but there is a determination of "significant" followed by statements of over-riding concern? How would the adverse impacts of the project be less-than-significant? This same problem pertains to most of the impacts and mitigation measures discussed under the Air Quality section, e.g. AIR-3. With respect to AIR-3, it is unclear how a determination of less-than-significant before mitigation can be reached when there has been non-attainment for some constituents in previous years.	Please see Responses to Comments GECO-31 through GECO-36.

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CCCR-23	Action HW-1.F - Why locate sensitive receptors in areas of known "major sources" of air pollution at all?	The comment is noted; however, it does pertain to the merits of the EIR. No further response is necessary.
CCCR-24	p. 4.2-44 - New land uses in the City of Newark that are permitted under the proposed Plan that use trucks, including trucks with TRUs, could generate an increase in DPM that would contribute to cancer and non-cancer health risk in the SFBAAB. As identified in Table 4.2-6, impacts could occur at facilities that permit 100 or more truck trips per day or 40 or more trucks with TRUs within 1,000 feet of a sensitive land use. These new land uses could be near existing sensitive receptors within and outside the City of Newark. In addition, trucks would travel on regional transportation routes through the SFBAAB contributing to near-roadway DPM concentrations. With implementation of Action EH-1.C, projects that would generate new sources of TACs would be required to reduce emissions to the BAAQMD's performance levels. Impacts would be less than significant. The proposed development of Area 4 and the commiserate need for transport of fill to the site would require up to 100 trucks per day and this impact was not analyzed, nor mitigation proposed in the Area 3 and 4 EIR.	A site specific evaluation was not conducted for the proposed General Plan Update. As identified in Chapter 4.2, Air Quality, impacts of the General Plan are evaluated at a "program" level and therefore the impact analysis follows BAAQMD's Plan-Level guidance. As identified in AIR-4, Action EH-1.C, would require that projects that generate new sources of TACs would be required to reduce emissions to the BAAQMD's performance levels for community risk and hazard impacts. Future discretionary review under CEQA would be required for project in Area 4 and Area 3. Per Action EH-1.C, project that generate truck trips would need to conduct a Health Risk Assessment to evaluate community risk and hazard impacts and identify mitigation that achieve BAAQMD's thresholds.
CCCR-25	Please describe Policy EH-1.6 and Action EH-1.C. They do not appear in the DEIR or the GPT.	The comment points out a typographical error on page 4.2-19 of the Draft EIR. The first full sentence on page 4.2-19 should reference Action HW-1.F. The text of the Draft EIR is hereby amended as follows: Implementation of proposed Plan goals, policies, and programs, including ~~Policy EH-1.6 and~~ Action HW-1.F ~~EH-1.C~~, described below, would ensure these impacts are less than significant This edit does not constitute significant new information or affect the conclusions of the environmental analysis.
CCCR-26	p. 4.2-45 - AIR-5 - "The Plan would not create or expose a substantial number of people to objectionable odors." "There are two types of odor impacts: 1) siting sensitive receptors near nuisance odors, and 2) siting new sources of nuisance odors near sensitive receptors." p. 4.2-46 - Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2-7. Additionally, sensitive receptors could be located in the vicinity of the salt ponds operated by Cargill Corporation, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be less then significant. [emphasis added] Please clarify how the impacts of locating housing units and recreational facilities in proximity to the Cargill salt ponds was determined to be less than significant. There is no classification for the odors generated by the salt ponds or appropriate distances to these sources on Table 4.2-7. Odors generated by the salt ponds can be particularly strong, but it is not clear how Cargill could be expected to abate the odor nuisance generated by the natural decay of algae, or by anaerobic mud. Additionally, wetlands can sometimes release the strong odor of rotten eggs due to the reducing conditions of the soils. There is nothing that can abate the smell, except for distance.	The comment is noted. As discussed in impact analysis AIR-5, starting on page 4.2-45, because existing sources of odors are required to comply with BAAQMD Regulation 7, Odorous Substances, impacts would be considered less than significant. Additionally, the standard of significance for AIR-5 states that the Plan would not create or expose a substantial number of people to objectionable odors. Although some people may or may not be exposed to such odors as a result of the proposed Plan, it was determined that a "substantial" number of people would not be exposed to objectionable odors. Accordingly, no changes are necessary. With regard to location of housing units, as indicated in Chapter 1.0 and 2.0, the DEIR was prepared as a program EIR, therefore, project-specific impacts were not analyzed. For that reason, and because there are no immediate plans for housing units to be placed in the vicinity of the Cargill Salt Ponds, those project-specific impacts cannot be considered in the absence of actual plans for development. Additionally, Table 4.2-7 reflects BAAQMD required screening distances of operations that must follow appropriate screening requirements, of which salt ponds have not been addressed and therefore are not included in Table 4.2-7. Further, pursuant to CEQA Guidelines, the DEIR need only to analyze impacts of a project on the environment, and not necessarily impacts of the environment on the project, for example odors. For that reason, no changes are necessary.
CCCR-27	Biological Resources: Figure 4.3-2 - Vegetation and Habitat Types - This figure grossly mischaracterizes the conditions on Area 3 and 4. Area 4 has a mosaic of uplands and wetlands across the site. Islands of uplands are surrounded by wetlands. To our knowledge the 78 undeveloped acres of Area 3 do not support wetlands habitat, yet nearly half the site is depicted as having wetlands. The area abutting the	Please see Figure 4.3-2b included in Chapter 3 of the Final EIR for more detail on Areas 3 and 4.

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	southeastern portion of Area 4, east of the railroad tracks is not cropland, but a vernal pool mitigation site, and should be depicted as a complex of grasslands and vernal pools. This figure needs to be amended to correctly reflect the habitats of Area 4.	
CCCR-28	p. 4.3-9 - Vegetation, Habitat Types, and Wetlands. This section significantly downplays the significance of the mosaic of wetlands, waters and uplands that occur on Area 4. The tremendous potential to preserve and restore ecological functions on this site is of great significance. The Bay Goals Project4 observed: Historically, moist grasslands existed in large expanses near Suisun Marsh, in the upper reaches of Sonoma Creek and the Petaluma River, and adjacent to much of the baylands in South Bay. Today, examples of large areas of this habitat exist near Fairfield and in the Petaluma River area. Smaller areas of moist grasslands with seasonal wetlands are in Marin at St. Vincent's/Silveira Ranch. In South Bay, development has destroyed most of the historical moist grasslands; notable exceptions exist east of Coyote Hills in the Ardenwood area and near the upper reach of Mowry Slough in Newark. [emphasis added] The Bay Goals Project had the following recommendation for Area 4, "Protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail duck club. Similar habitat can be protected and restored at the upper ends of Newark, Plummer, and Albrae sloughs." [4 Goals Project. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. U.S. Environmental Protection Agency, San Francisco, Calif./S.F. Bay Regional Water Quality Control Board, Oakland, CA]	Please see the response to comment CCCR-27.
CCCR-29	p. 4.3-10 - The DEIR states the Corps and CDFW generally exercise authority over the various wetland habitat types. The San Francisco Bay Regional Water Quality Control Board would also have authority over wetlands and waters of the state.	As stated in the Local Regulations section on page 4.3-7, the San Francisco Bay RWQCB is noted as having jurisdictional responsibilities and authority in all waters addressed in the SF Bay Basin Water Quality Control Plan, which includes wetlands in near the Plan Area.
CCCR-30	p. 4.3-11 - Salt Ponds The commercial salt ponds are large, open water areas ranging in salinity from similar to sea water at 32 parts per million to 135 parts per million, or more than four times more salty than sea water.22 These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water. Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt.23 Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin.24 Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.25 This description should be added to the description of salt ponds on page CS-6 of the GPT.	The comment is noted; however, it does not pertain to the merits of the EIR. Please also see Responses to Comments CARGIll1 through Cargill-87.
CCCR-31	Figure 4.3-3 Special Status Plant Species and Sensitive Natural Communities - The figure neglects to include Point Reyes bird's beak that occurs in the LaRiviere Marsh of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge).	The comment is noted; however, after conducting further research and checking the US Fish and Wildlife Service Plans List, there is no listing of the Point Reyes bird's beak in the Don Edwards SF Bay National Wildlife Refuge. Additionally, there is no evidence or citation provided from the commenter to support the claim that the bird's beak does exist in the Don Edwards Refuge. Therefore, no changes are necessary.
CCCR-32	Figure 4.3-4 Special Status Animal Species - · Burrowing owl have been reported to occur within Area 4. · Loggerhead shrike is listed as having been observed in Area 4 but does not appear on the map.	The Burrowing owl is discussed in Table 4.3-2 on page 4.3-25 and does acknowledge that the Burrowing owl could potentially nest in Areas 3 and 4. Additionally, the Loggerhead shrike is also mentioned and acknowledged to potentially be present in Areas 3 and 4 on page 4.3-26. No changes are necessary.

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CCCR-33	Table 4.3-1 Special Status Plant Species in the Newark Vicinity: · Contra Costa goldfields - amend the table - confirmed occurrence in Area 2, refer to EIR. · Point Reyes bird's-beak - amend the table - confirmed occurrence in the LaRiviere Marsh of the Refuge	The Contra Costa goldfield is discussed on page 4.3-33 and acknowledges that the plant is suspected to occur in and adjacent to the Old Town Focus Area and the Dumbarton TOD Focus Area. Please see the response to comment CCCR-31 regarding the Point Reyes bird's beak.
CCCR-34	Table 4.3-2 - Special Status Animal Species in the Newark Vicinity: · Snowy egret - amend the table this species has been observed numerous times on the mitigation pond just east of Area 4 within Area 3. observations entered one Bird (http://ebird.org/ebird/GuideMe?src=changeDate&getLocations=hotspots&hotspots=L827703&parentState=USCA&reportType=location&monthRadio=on&bMonth=01&eMonth=12&bYear=2000&eYear=2013&continue.x=69&continue.y=8&continue=Continue) · Western snowy plover - observed immediately adjacent to Area 2 (DTOD) (data from the Western Snowy Plover Pacific Coast Population Recovery Plan Volume 2 (Appendices) · white-tailed kite - several observations at the Stevenson Blvd mitigation pond. See eBird link above · salt marsh harvest mouse - has been trapped within Area 4 (letters provided in attachments). Many occurrences within Mayhews Landing close to Area 2. (map provided in attachments)	The Snowy egret is mentioned on page 4.3-27 in Table 4.3-2. As stated, it may be present in Charleston Slough. The Snowy plover is mentioned on page 4.3-28 in Table 4.3-2. The white-tailed kite is also mentioned on page 4.3-33 and has been acknowledged that it may be present in Area 4. Further, it is mentioned that the salt-harvest mouse is known or suspected to occur in portions of the Plan Area where development could occur under the proposed Plan; however, further independent CEQA review would be required for future development which would contain project-level review to identify impacts and mitigation measures. Therefore, no changes are necessary.
CCCR-35	p. 4.3-31 - Please explain why Congdon's tarplant is not expected to remain for another five years. Does it have anything to do with how the site is currently managed?	The Congdon tarplant was not expected to remain for another five years due to the urbanized setting and potential future development. Although that may be the case, the Dumbarton TOD Specific Plan EIR has stated that the Congdon tarplant does not have federal or state status. Additionally, several mitigation measures along with project-level CEQA review for future development would protect certain plant species prior to development. No changes are necessary.
CCCR-36	p. 4.3-31 - Wildlife Corridors - The DEIR fails to recognize that levees provide movement corridors.	Although levees could support wildlife movement, it would not change the conclusion within the overall analysis. For that reason, no changes are necessary.
CCCR-37	BIO-1 - Buildout of the proposed Plan would result in less-than-significant impacts to special status plant and animal species in the Plan Area. As was mentioned above, the mitigation and monitoring requirements need to be condensed into one stand alone document, rather than expecting decision makers and the public to hunt down all the mitigation measures, and the public needs to be given adequate time to review all of the detailed mitigation measures in their entirety.	Please see Response to Comments CCCR-4 and CCCR-5 above. No change to the Draft EIR is required to address this comment.
CCCR-38	Furthermore, the mitigation measures need to be reviewed holistically to ensure that while the individual impacts of the various focus areas may appear to be less-than-significant, adequate mitigation measures exist for the entirety of the "Project." The Policies listed under BIO-1 are inadequate to protect biological resources within the City of Newark and on lands adjacent to the City of Newark. ·	The commenter does not justify or substantiate the assertion that the policies referenced are inadequate to protect biological resources. Potential impacts to biological resources are discussed in Chapter 4.3 of the Draft EIR, together with the effect that goals, policies, and actions from the proposed Plan would have in reducing those impacts. The Draft EIR is adequate in this respect. No change to the Draft EIR is required to address this comment.
CCCR-39	Policy CS-1.1: Ensure that development minimizes its impacts on Newark's environment and natural resources through sound planning, design, and management. The proposal to fill up to 86 acres of wetlands that have been deemed by the Bay Goals Project, the Refuge Expansion Boundary, etc. is not an example of "minimizing" impacts on natural resources.	The comment is noted; however as it does not pertain to the merits of the Draft EIR no further response is required.
CCCR-40	Policy CS-1.2: Support the conservation of environmentally sensitive areas and unique natural resources in the city. Refer to the comments above and the excerpts from the Bay Goals Project cited above.	The comment is noted; however, it does not pertain to the adequacy of the Draft EIR. No further response is required.

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CCCR-41	Policy CS-2.1: Preserve and protect Newark's plant and animal species and habitats, including wetlands, salt marshes, creeks and lakes. Ensure that land use decisions consider potential impacts on wildlife habitat. It is one thing to "consider" potential impacts on wildlife habitat and an entirely different thing to "avoid" impacts to wildlife habitat. The City of Newark has taken the former approach and then approved filling of wetlands. How is approval of a development that will fill up to 86 acres of wetlands without knowing where mitigation for those losses might occur protective?	The comment is notes; however it does not pertain to the merits of the EIR. Please see Master Response 5 regarding clarifications Regarding Development Envisioned in the Area 3 and 4 Specific Plan.
CCCR-42	Policy CS2.2: Special status species - requiring mitigation "as development takes place" is not protective of special status species due to temporal losses of habitat and the uncertainty of whether the proposed mitigation will actually be successful. Requiring mitigation be completed prior to the initiation of impacts, is protective of special status species. Habitat is not lost before successful replacement habitat is provided.	The comment is noted. The DEIR was prepared as a program EIR and, therefore, does not consider project-level impacts. Accordingly, such project-level impacts and mitigation measures would be identified as future development is proposed. No further response is required.
CCCR-43	Policy CS-2.3: DESFBNWR - placing a transit center and medium density housing next to lands that might eventually become part of the Refuge (Hickory Street parcel, Plummer Creek parcel) is not protective of the Refuge.	Potential impacts to biological resources are discussed in Chapter 4.3 of the Draft EIR. As the comment is generalized in nature, a generalized response is sufficient. No further response is required.
CCCR-44	Policy CS-2.5: Development near wetlands - Placing housing and all the human disturbance factors including trash, invasive plants, nuisance species attracted to the housing, domestic pets, next to wetlands is not protective of wetlands. There are also concerns about accompanying changes to the wetland hydrological regime, siltation, etc.	The commenters opinion is noted. Potential impacts to biological resources are discussed in Chapter 4.3 of the Draft EIR. No further response is required.
CCCR-45	Policy CS-2.7: Coordination with agencies is already required. Coordination in advance of any proposed development so that the development can be designed to avoid or minimize impacts is a worthwhile effort.	The comment is noted; however, it does not pertain to the adequacy of the Draft EIR.
CCCR-46	Action CS1.A - Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation. This certainly sounds good on paper, would that it were actually taken to heart. This has not been the practice to date. How would the approval of filling up to 86 acres of wetlands be considered consistent with this Action?	The comment is noted; however, it does not pertain to the adequacy of the Draft EIR. Please also see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
CCCR-47	Action CS-2C - The Action should be explicit that coordination with regulatory and resource agencies is necessary to ensure any measures undertaken will be effective and sufficiently protective.	The comment is noted; however, it does not pertain to the merits of the EIR. As required by Government Code Section 65400, the Community Development Department will investigate and make recommendations to the City Council regarding implementation after the Plan is adopted (see P. 152 of the General Plan Guidelines). The City will address the implementation of General Plan actions in its annual progress report. Alternatives for the prioritization of General Plan actions will be considered, further evaluated, and discussed with the City Council following Plan adoption.
CCCR-48	The impacts of BIO-1 cannot be determined to be less than significant without comprehensive review of the mitigation measures the City plans to incorporate into the mitigation and monitoring program. Also, the policies and actions listed above are of no value unless they are actually implemented.	Please see Response to Comments CCCR-4 and CCCR-5 above. No change to the Draft EIR is required to address this comment.
CCCR-49	BIO-2 - Buildout of the proposed Plan would result in less than significant impacts to wetlands, riparian habitat, and sensitive natural communities in the Plan Area. BIO-2 as currently worded, does not adequately capture the significant and adverse impacts that will result from buildout of the Plan. As mentioned earlier, restoration scientists, resource agencies, and regulatory agencies, regard the tremendous opportunities for restoration of the wetland/upland mosaic of Area 4 as extremely rare along the edges of the San Francisco Bay ecosystem. This is a site of regional significance. The uplands and seasonal wetlands, though continually degraded by manipulation of the land, have incredible restoration potential.	As stated in Chapter 1.0 and Chapter 2.0 of the DEIR, the EIR was prepared at the programmatic level and therefore does not consider project-specific impacts. For that reason, future development would be subject to further independent CEQA review at the project-level to identify specific impacts and mitigation measures. Therefore, BIO-2 adequately analyzes impacts appropriately for a programmatic level CEQA review. Further, several mitigation measures contained in the Dumbarton TOD Specific Plan EIR, the Area 3 and 4 EIR, and this DEIR proposed mitigation measures that would adequately mitigate potential impacts to less than significant levels. No changes are necessary.
CCCR-50	In addition, the site is known to support the endangered salt marsh harvest mouse, burrowing owl, migratory and resident waterbirds, and birds that forage in uplands and seasonal wetlands. Not only will the filling of up to 86 acres of wetlands result in significant environmental harm, but the mitigations	Please see Chapter 4.3, Biological Resources, for a discussion pertaining to wildlife and habitat. As indicated in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared as a program EIR and, therefore, does not consider project-specific impacts. As stated throughout the DEIR, future development would be

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	necessary to stabilize and 2.1 million cubic yards of fill could irreparably alter the hydrologic regime of existing wetlands. The adjacent development will expose the remaining habitat to all the negative impacts associated with human disturbance, and the wetland mitigation required to offset the filling of wetlands may result in the conversion of any undeveloped uplands to wetland mitigation. 86 acres is an unprecedented amount of wetlands fill. The developer of Area 4 will need to demonstrate that wetlands cannot be avoided, or impacts cannot be minimized. The City of Newark would be doing its residents a disservice if off-site mitigation (outside the City's boundaries) occurs, as the functions and values that wetlands provide will benefit another community and not Newark residents.	subject to further CEQA review to identify project-specific impacts and mitigation measures. For clarification of issues involving Area 4, please see Master Response 5.
CCCR-51	Policy CS-4 - Wetlands Delineation. This policy sounds good on paper - the question is whether there are any other remaining large potentially developable properties with wetlands other than Area 4? Have wetland delineations yet to be done for any other area of Area 4 not currently proposed for development (i.e. besides sub areas, b, c, d, and e?)	Table 4.9-1, Distribution of Existing Land Uses, on page 4.9-4 depicts the distribution of existing land uses, including 960 acres of vacant land zoned for development. As described on page 4.9-5, undeveloped areas are principally located in the southern and western parts of the city, of which the Cargill salt evaporation ponds constitute a majority of that area. As mentioned, most of the 960 acres undeveloped and zoned for development include the Southwest Newark residential and Recreational Focus Area and the Dumbarton TOD Focus Area. Please see Figure 4.3-2 in Chapter 4.3, which shows the wetland areas and identifies Focus Areas.
CCCR-52	(4)(a) - The City should take into consideration that allowing the purchase of mitigation credits elsewhere (e.g. within 10 air miles of Newark) means that another community benefits from the functions and values wetlands provide, flood protection, erosion control, flood desynchronization, water quality aspects, groundwater recharge, etc. and not Newark residents.	The comment is noted.
CCCR-53	(5) - The length of required monitoring should be dependent upon the habitat being mitigated. Also, the City should include language that would provide for additional monitoring should contingency measures be required. Usually the extension for monitoring is at least two years beyond any human intervention and the requirement for monitoring ceases only after success criteria have been met.	As mentioned on page 2-5 of this DEIR, a mitigation monitoring or reporting program will be completed as part of the FEIR where it will identify the details of the monitoring required. Further, and as stated in the Areas 3 and 4 FEIR, response S-10 states that the lead agency, the City of Newark, is responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program. Also, please see Master Response 2 regarding the adequacy of previous environmental reviews incorporated as part of the DEIR.
CCCR-54	BIO-3 Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the U.S. in the Plan Area. How can this determination be reached??? How does the performance of a wetland delineation, and verification that wetlands exist, help reduce the impacts of buildout to less than significant? Delineating wetlands informs a property owner if they have a resource they need to deal with. However, he reduction of impacts occurs if wetland impacts are avoided or minimized to the maximum extent possible. Then, and only after an earnest attempt has been made to redesign a project to avoid and minimize impacts, should compensatory mitigation be considered.	As indicated in the BIO-3 analysis, previous environmental review for the Dumbarton TOD Specific Plan, Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified impacts and ultimately identified mitigation measures to reduce such impacts to less than significant levels. As such, with previously identified mitigation measures and policies of the proposed General Plan, as listed on page 4.3-41, impacts were determined to be less than significant. No changes are necessary.
CCCR-55	The mitigation measures described under BIO-2 will not and cannot reduce the adverse impacts of Plan buildout in Area 4 to a level that is less than significant!	The comment is noted; however, no mitigation measures were identified under BIO-2. Impact analysis BIO-2 resulted in less than significant impacts, as stated on page 4.3-39. Provided the determination of BIO-2 concluded that impacts would be less than significant, mitigation is not required.
CCCR-56	One of the mitigation measures for Area 4 MMBIO-1.2A is inconsistent with the stated and regionally documented need to preserve upland transition zones as retreat habitat for the recovery of listed species in the face of sea level rise. MMBIO-1.2A attempts to mitigate for the loss of filled wetlands by creating/enhancing wetlands out of other habitats of importance for survival of bay edge species. This measure would destroy the unique mosaic of habitats these lands currently host - a mosaic of wetlands and upland habitats that provide habitat resiliency and preserve regional biodiversity.	Please see Master Response 2 regarding the treatment of previous environmental reviews.
CCCR-57	A conceptual mitigation plan still does not exist that would indicate the locations of proposed mitigation areas and their relationship to the existing mosaic of wetlands and transitional uplands scattered across Area 4. No attempt was ever made to offer this level of detail or even indicate conceptually what areas would be considered impacted by the direct placement of fill, by the indirect impacts of the changed conditions resulting from the fill, and the direct and indirect impacts of mitigation measures placed on the remaining landscape.	Please see Master Response 2 regarding the treatment of previous environmental reviews.

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CCCR-58	MM BIO-1.2B indicates: Alternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. [emphasis added] This decision should certainly not be left to the discretion of the project developers. In addition, there is no indication of where such private lands might exist, no indication of how the lands would be acquired, and no conceptual plan of how mitigation will occur on the site. Acquisition and preservation does not equal "no net loss" as is the policy of the State.	Please see Master Response 2 regarding the treatment of previous environmental reviews.
CCCR-59	To date there is no way of knowing how this Area 4 will be developed, where mitigation will occur onsite and what it's proximity will or won't be to the development envelope. This is important with respect to indirect impacts of the development on the mitigation site and with respect to habitat continuity – patches of mitigation surrounded by the development envelope are unacceptable mitigation. Nor is it possible for the City to determine if the development project is feasible and/or would produce sufficient property tax revenues to offset public service liabilities associated with a development on the outskirts of the City.	Please see Master Response 2 regarding the treatment of previous environmental reviews.
CCCR-60	The focus on mere replacement of wetland acres may jeopardize the local populations of salt marsh harvest mouse and salt marsh wandering shrew. The mitigation proposed (aside from the puzzling master response above) has been focused in Sub Area E – converting the uplands in this area to wetlands, presumably by soil removal to lower the topographic position and allowing the former uplands to be inundated by rainfall or springs. This would remove higher elevation escape habitat for the salt marsh harvest mouse and salt marsh wandering shrew, leaving only the developed areas as less than desirable escape habitat that would further imperil these species.	The comment is noted. As indicated in the Area 3 and 4 Final EIR, which addresses a similar comment regarding the potential disturbance of the salt marsh harvest mouse and salt marsh wandering shrew, page 79 [of the Area 3 and 4 FEIR] states that "*Mitigation Measure BIO-8.4 acknowledges that salt marsh harvest mouse/wandering shrew habitat in close proximity to developed areas, including the golf course, will receive some indirect disturbances and requires a 2:1 habitat mitigation for all suitable habitat for these species located within 100 feet of residential and golf course development.*" Also mentioned in that FEIR was the fact that a combination of mitigation measures would ultimately reduce indirect effect of recreational activities on sensitive habitats.
CCCR-61	Goal CS-2 - Conserve Newark's wetlands and baylands. Well this sounds good on paper. Please explain how this is actually reflected in the GPT.	The comment is noted; however, it does pertain to the merits of the DEIR. No further response is required.
CCCR-62	Action CS-E - Support acquisition of wetlands and other environmentally sensitive areas by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no other conflicts with other General Plan goals and objectives. In general, we do not support the use of mitigation banks, particularly for waters of the U.S. as the wetlands functions and values are lost to the community in which the filling is occurring, and instead benefit some other community, often far from the impact site. Other than the Plummer Creek site, please explain where this policy is being implemented.	Action CS-E refers to future potential actions, the commenter is correct that the only active mitigation bank site is the Plummer Creek site. The commenter's opinion regarding the use of mitigation banks is noted. No further response is needed.
CCCR-63	There should be a (1)(a) inserted between the requirement of a wetland delineation and requiring authorization from the Corps or the RWQCB, that requires the land owner to avoid filling of the wetlands. If that is not completely possible, then wetland fill should be minimized. The 404 (b)(1) Guidelines require avoidance and minimization before compensatory mitigation is even considered.	The edit being requested is unclear; therefore, we are unable to evaluate the comment.
CCCR-64	BIO-4 - We do not concur that the Plan will not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. The Plan will in fact build to the edge of Newark's "bayfront" and could disrupt the movement of species along the western edges of the city. The Plan could discourage the use of the duck pond on that remains on Area 4 by resident, migratory and nesting birds due to human and domestic pet disturbance.	The commenter's opinion is noted. As discussed in BIO-4, the highly urbanized context of the Plan Area and the extent of the existing development, vehicular traffic, and human and pet presence render opportunities for wildlife movement in the urbanized areas to be minimal. Also as stated in BIO-4, the previous environmental review conducted for the Dumbarton TOD Specific Plan determined that future development in the Dumbarton TOD Focus Area and the Southwest Residential and Recreational Focus Areas would not result in significant impacts associated with wildlife movement because extensive areas along the western and southern sides of the Focus Areas would not be developed, therefore, wildlife would continue to be allowed to move through those areas. Additionally, policies and actions under the proposed Plan listed on page 4.3-13 would further minimize impacts related to wildlife migration. Therefore, no changes are necessary.
CCCR-65	BIO-5 - The proposed Plan would not conflict with the City of Newark tree preservation ordinance. It is impossible to determine if this if true or not as we do not know the footprint of the Plan buildout.	As stated in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared as a program EIR and therefore does not consider project-specific impacts. As such, provided there are no immediate

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	Therefore, the City cannot conclude that the impacts are less than significant.	plans to remove any trees within Newark under the proposed Plan, the impacts would therefore not conflict with the City of Newark tree preservation ordinance. Therefore, no changes are necessary.
CCCR-66	BIO -6 - The proposed Plan would result in significant impacts related to conflict with the Basin Plan and Habitat Goals. We have already described Bay Goals recommendation that the area at the head of Mowry Slough be preserved and restored. This area represents a unique opportunity at a regional level. The DEIR mentions the Bay Goals recommendations to protect and enhance marsh transition zones. Please note, there are exceedingly few locations along the edges of the bay where this could be accomplished so quickly and easily.	The commenter's opinion is noted.
CCCR-67	Regarding the Basin Plan - The SFBRWQCB responded to the Area 4 DEIR and FEIR. Their DEIR comments regarding the development proposal and Basin Plan: Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Page 134 The DEIR states that: Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use. The condition of these wetlands would be easily improved by discontinuing the agricultural disturbances in Area 4. The Basin Plan directs the Water Board to protect both existing and potential Beneficial Uses of waters of the State. In Area 4, the habitat value could be greatly enhanced by simply discontinuing agricultural disturbances. If these wetlands are filled under the proposed Specific Plan, then the potential for enhancing or restoring the wetlands will be lost. Mitigation for such an impact will require addressing the lost potential value of these wetlands. [emphasis added] And: The San Francisco Bay Area Wetlands Ecosystem Habitat Goals Project recommended that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4). In addition, the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge, and the Bay Conservation and Development Commission (BCDC) has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. The proposed mitigation quantities appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation was demonstrably capable of providing equal habitat benefit for listed species. The proposal to convert some areas of uplands in Area 4 to wetlands is also problematic, since a combination of wetlands and associated uplands are essential to high habitat value. At present, the DEIR does not demonstrate that adequate mitigation is available. Onsite mitigation will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. The DEIR does not identify any feasible locations for offsite mitigation. There are very few parcels of undeveloped land in private ownership that are available for use as mitigation wetlands, and are in proximity to protected lands that currently provide habitat for listed species. ... The current DEIR does not demonstrate that it is feasible to mitigate all of the potentially significant biological impacts of the Project to a less than significant level. In addition, the SFBRWQCB submitted comments to the FEIR: The FEIR, as written, does not demonstrate that impacts associated with the proposed fill of wetlands in	Chapter 6.0 of the Draft EIR considers a Restricted Growth Alternative which would generally restrict development to previously urbanized areas of Newark, thereby, restricting future development in sensitive areas in western Newark. However, this alternative was ultimately rejected because it would not meet several of the stated objectives listed in Chapter 6.0 on page 6-26 of the DEIR. Further, please see Master Response 3 regarding the adequacy of alternatives. In regards to adequate mitigation measures, the DEIR was prepared at a programmatic level, therefore mitigation measure reflect that of which is consistent with the level of analysis conducted. As stated throughout the DEIR, future development would be subject to independent CEQA review to identify impacts and mitigation measures at the project-level. Also, there are no immediate plans to fill Area 4, therefore, potential impacts cannot be considered as part of the DEIR. Please see Master Response 5 for clarifications on Area 4. Please see Master Response 2 regarding the reliance on previous environmental review.

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	Area 4 can be successfully mitigated to a less than significant level. The mitigation quantities proposed in the FEIR appear to be insufficient to compensate for the impacts associated with the proposed fill of wetlands in Area 4. The mitigation proposed in the FEIR relies on a combination of onsite wetland creation/enhancement and offsite wetland preservation. Onsite mitigation, which is only proposed at a 1:1 ratio, would be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. With respect to off-site mitigation, the FEIR does not provide sufficient detail to demonstrate that feasible locations exist for offsite mitigation. On page 12 of the FEIR, the following statement is made: The proposed mitigation measures for impacts to wetlands described in the Draft EIR treat wetlands as biological habitats and not State or Jurisdictional features. The City has determined based on extensive analysis by its biological experts that the mitigation requirements for wetland impacts (both in terms of amount and location of mitigation) described in the Draft EIR are more than adequate to mitigate the described impacts to a less than significant level. We would like to point out that the resource agencies have not concurred with this assessment. When the City of Newark teams with individual developers to implement the Specific Plan, the City and developers should be aware that mitigation as proposed in the FEIR would appear to be far short of the mitigation that will be necessary to secure permits from the resource agencies for the impacts proposed to wetlands in Area 4. Therefore, project-level CEQA documents will likely be necessary to support permitting of Specific Plan implementation projects. We would also like to reiterate that, by certifying the FEIR as written, the City should not assume that the Water Board or other resource agencies will allow the fill of the wetlands at Area 4 as proposed. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant, and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation is demonstrably capable of providing equal habitat benefit for listed species. The City should recognize that large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to transgress (move up slope) in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), the Bay Conservation and Development Commission (BCDC), and the Water Board have all expressed strong reservations about the potential fill of wetlands in Area 4. In summary, the FEIR as written does not demonstrate that impacts associated with the proposed fill of wetlands in Area 4 can be successfully mitigated to a less than significant level. Therefore, the FEIR is not likely to support the issuance of future permits from the Water Board for fill of waters of the State under the Specific Plan. [emphasis added]	
CCCR-68	Based on these comments it is unclear how the City thinks the significant adverse impacts of the Plan could be reduced to a level that is less than significant even with mitigation.	The commenter's opinion is noted.
CCCR-69	Bio-7 - The proposed Plan will not result in less-than-significant cumulative impacts related to biological resources. Please refer to all of the statements above. The GPT DEIR itself acknowledges: In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. But rather than heeding the strong language of the SFBRWQCB's comment letters, and those of the Refuge and CDFW, the DEIR erroneously concludes the mitigation it has proposed is sufficient to reduce the impacts of the Plan buildout.	The commenter's opinions are noted.

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CCCR-70	The DEIR also makes the interesting statement: "Additionally, future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas." Once again raising the question of what would trigger additional environmental review and will there be additional opportunities for public comment.	Please see Responses to Comments CCCR-6, CCCR-7, GECO-3, GECO-5, and GECO-6 above.
CCCR-71	Geology: According to California Geological Survey's 2003 seismic hazard report, the entire Plan Area has been mapped as a liquefaction hazard zone. Most of the soils that have been mapped within the Plan Area have a high shrink swell potential which can lead to heaving and cracking of concrete foundations or flatwork built on top of the soils. The western part of the Plan Area may contain unstable geologic units, which can lead to differential settlement. The DEIR once again references two recent court cases that hold CEQA analyzes the impacts of the project on the environment and not the environment on the project. Once again we state, that bad case law aside, if, a city approves development in an area prone to seismic hazard then it should do due diligence to ensure the public is not put in harm's way.	As mentioned in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared pursuant to CEQA Guidelines. Additionally, GEO-1, starting on page 4.5-10 explains that although the Plan Area is in a liquefaction hazard zone, State and local regulations and policies require the conduct of detailed, site-specific geotechnical evaluations prior to the approval of a project located in such a zone. Therefore, no changes are necessary.
CCCR-72	GEO-1 The proposed Plan would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving surface rupture along a known active fault; strong seismic ground shaking; seismic-related ground failure, including liquefaction; and landslides. Policy EH-1.1: Development Regulations and Code Requirements. Policy EH-1.2: Considering Hazards in Project Location and Design. Policy EH-1.2: Considering Hazards in Project Location and Design. Prohibit development in any area where it is determined that the potential risk from natural hazards cannot be mitigated to acceptable levels. Action EH-1.A: Development Review. Review all development applications to ensure their compliance with all relevant building and safety codes, including those related to fire, flooding, soil, and geologic hazards. Action EH-1.B: Code Updates. Goal EH-2: Reduce risks to life and property associated with geologic hazards. Policy EH-2.1: Earthquake Safety in New Construction. Policy EH-2.2: Seismic Retrofits. Encourage the retrofitting Policy EH-2.3: Earthquake Awareness. Inform Newark residents Policy EH-2.4: Infrastructure Resilience. Maintain standards Action EH-2.A: Geotechnical Studies. At the discretion of the Director of Public Works, require detailed investigations of ground shaking, liquefaction, soil stability, and other geologic hazards as specific development projects are proposed Action EH-2.B: Geotechnical Staff Assistance. As needed, retain outside consulting Action EH-2.C: Mandatory Seismic Upgrades. If feasible and appropriate Action EH-2.D: Homeowner Education on Earthquake Safety Action EH-2.E: Seismic Safety at Schools. Work with Action EH-2.F: Earthquake Hazard Maps. Periodically update maps With the exception of Policy EH-1.1, and Action EH-1.A and EH-1.2, there seems to be a lot of discretion in the degree to which these policies and action items are applied.	The commenter's opinions are noted.
CCCR-73	GEO-2 Implementation of the proposed Plan would not result in substantial soil erosion or the loss of topsoil. This section mentions methods of erosion control and discusses Newark's Municipal Code. Isn't a Construction Activities Stormwater General Permit from the SFBRWQCB required for sites where more than an acre of land is being graded?	The commenter is correct that any construction project disturbing one or more acres of land would be required to submit a Storm Water Pollution Prevention Plan (SWPPP), which includes an erosion control plan, prior to the start of construction. However, the authority for this program is under the State Water Resources Control Board's General Construction Permit and not the San Francisco RWQCB.
CCCR-74	GEO-3 Development under the proposed Plan would not result in a significant impact related to development on unstable geologic units and soils or result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse. · Action EH-2.A: Geotechnical Studies. At the discretion of the Director of Public Works, require detailed investigations of ground shaking, liquefaction, soil stability, and other geologic hazards as specific development projects are proposed. Such investigations shall be prepared by a qualified geologist or soils engineer, with appropriate mitigation measures identified and implemented. · Additionally, Mitigation Measure 4.5-1, from the Dumbarton TOD EIR, requires future developers within the Dumbarton TOD area to perform a design-level geotechnical engineering	As stated in GEO-1, starting on page 4.5-10 explains that although the Plan Area is in a liquefaction hazard zone, State and local regulations and policies require the conduct of detailed, site-specific geotechnical evaluations prior to the approval of a project located in such a zone. Further, policies and actions under the proposed Plan would minimize the potential of hazards related to liquefaction, as listed on page 4.5-11. Therefore, no changes are necessary. Please also see response to Comment CCCR-47.

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	investigation for their individual property or properties prior to development and as a condition for grading permit approval. Since Newark is in a liquefaction hazard zone, why is the requirement for detailed investigations of ground shaking, etc. Discretionary? Why isn't it mandatory for any development? How often are detailed investigations required? Are the detailed investigations of Action EH-2.A required prior to the issuance of a grading permit? One would certainly hope so. it should be so stated in the language of the Action.	
CCCR-75	Are detailed design-level studies required for Area 3 and 4? According to this DEIR Area 3 sits atop sand deposits that could be susceptible to liquefaction.	Please see response to Comment CCCR-74. Please also see response to Comment CCCR-47.
CCCR-76	GEO-4 Development under the proposed Plan would not create substantial risks to life or property as a result of its location on expansive soil, as defined in Table 18-1-b of the Uniform Building Code (1994). "Development within the Plan Area in almost all instances would be preceded by suitably detailed geotechnical evaluations, the scope of which would include tests to determine and quantify the presence of expansive soils. The need for such geotechnical evaluations are triggered by CGS-determined liquefaction hazard zones that embrace all of the Plan area, as well provisions of the CBC and related City of Newark building and grading permit requirements." What are the situations under which such plans would not be required? Why not require detailed geotechnical evaluations for all development in Newark since the entire city appears to be within a liquefaction hazard zone? And why are there no mitigation requirements for Area 3 and 4? Especially since a school site is proposed within Area 3?	In practical terms, geotechnical evaluations would be required for most significant new development projects in the Plan Area. Exceptions to this requirement might include small developments or remodeling projects for complexes containing three or fewer dwellings on a given housing site. With respect to potential future development on expansive soils, including proposed new schools, mitigation measures were not required in light of the safeguards afforded by existing City of Newark building and grading permit requirements, as well as City of Newark General Plan policies (e.g., Policies EH-1.1 and EH-1.2).
CCCR-77	GEO-6 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils. Once again the discussion mentions additional mitigation measures for the DTOD and HEU, but not Area 3 and 4. Why?	Cumulative impacts related to geology and soils are discussed on pages 4.5-17 through 4.5-19 of the Draft EIR. As stated, implementation of proposed Plan goals, policies, and actions together with compliance with applicable regulations and mitigation measures would result in less-than-significant impacts. The comment does not provide substantial evidence that the conclusions of the Draft EIR are inadequate. Further, the City notes that the Area 3 and 4 Specific Plan EIR and other previous environmental review conducted by the City of Newark have been incorporated by reference into the Draft EIR. Please also see Response to Comment SOKALE-6 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
CCCR-78	Also, the discussion of impacts and mitigation measures never touch on the types of soil stabilization techniques that might be utilized. This information is critical as the City should consider whether there could be any direct or indirect impacts to any of the other elements of the DEIR and GPT. For example, dynamic deep compaction could require mitigation measures for noise or vibration impacts to sensitive receptors. Could any of the GEO mitigation measures have adverse impacts to groundwater, mobilization of toxic groundwater plumes, dewatering of wetlands, adverse impacts to levees, adverse impacts to biological resources, etc.	The comment is noted. A detailed discussion of potentially necessary geotechnical mitigation measures such as deep dynamic compaction, vibro-compaction, deep soil mixing/stabilization, emplacement of pilings or piers, use of large-diameter auger drill rigs, etc., is beyond the scope and level of specificity required for a General Plan EIR. Such specific methods are typically selected and designed after a detailed, site-specific geotechnical investigation has been performed. More often than not, the potential adverse impacts of these geotechnical mitigation measures on geology/soils and hydrology are evaluated in a project-level EIR.
CCCR-79	Hydrology: The analysis of flood hazard is focused solely on the FEMA 100-year flood plain and the only means of addressing the risk of flooding is the requirement to construct new development atop building pads, requiring the import of millions of cubic yards of fill (Area 4).	The analysis of flood hazard is not focused solely on the FEMA 100-year floodplain but also includes flood hazard from levee failure, dam inundation, tsunamis, seiches, debris and mud flows. The comment on the import of fill for Area 4 is noted; however, the General Plan EIR is focused on programmatic issues that impact planning on a City-wide basis. Specific plan areas and individual projects are addressed in separate EIRs that focus on issues specific to those projects.
CCCR-80	page 4.8-17 states: Although some locations within the City are protected from flooding by levees, FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability.35 Most of the levees within the City of Newark are not certified. Therefore, the areas next to the levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event. [emphasis added] In other words, the majority of levees that currently provide some flood relief are not recognized as flood control levees. As an example, the levees on the bayward side of Area 4, are privately owned and maintained. The City is therefore, not relying on the existing levees to provide	The comment is noted and acknowledged. We agree that uncertified levees are not recognized as providing flood control. Therefore, the areas next to the levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event. In 2007, the ACFC began a process of evaluating all levees in Zone 5, which includes the City of Newark, to determine their condition and the scope of repairs that may be required to achieve FEMA certification. Until that process has been completed and the levees are certified, development within the areas of potential flooding from levee failure will be required to comply with the City's policies regarding construction in flood hazard areas (Municipal Code 15.40) and FEMA regulations for floodplains, as discussed in pages 4.8-16 and 4.8-17 and Hydro Impact HYDRO-7.

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	flood protection. Instead, the City has stated the requirement that new development be constructed atop building pads that are at minimum one foot above the 100-year flood elevation will be adequate to reduce potential flooding.	
CCCR-81	Conspicuously absent in the DEIR analysis of flood hazard, is any mention of the additive impacts of sea level rise on flood risk. Sea level rise inundation maps depict much of the Dumbarton TOD and Area 4 at risk of inundation with a 1 foot rise in sea level. See the attached map or visit http://www.csc.noaa.gov/slr/viewer/# to view inundation risk with just a 1-foot rise in sea level and under varying sea level rise scenarios. The DEIR avoids meaningful analysis of the additive risk sea level rise may have on new development permitted within the existing 100-year flood plain (low lying areas along Newark's bayfront) with the following explanation: The City notes that the purpose of this EIR is to identify the significant effects of the Plan (which is considered a Project under CEQA) on the environment, not the significant effects of the environment on the Plan. (South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1614-1618; City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal.App.4th 889, 905.) While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes.	The comment is noted. Please see Master Response 4 regarding sea level rise.
CCCR-82	Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of this Draft EIR (see Guidelines, § 15063, subd. (f)). However, a few of the questions on the form concern the exposure of people or structures to environmental hazards and could be construed to refer to not only the Project's exacerbation of environmental hazards but also the effects on users of the Project and structures in the Project of preexisting environmental hazards. To the extent that such questions may encompass the latter effects, the questions do not relate to environmental impacts under CEQA and cannot support an argument that the effects of the environment on the Project must be analyzed in a Draft EIR. (Ballona Wetlands Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 473-474.) Accordingly, a discussion of flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA. The DEIR references the issue of sea level rise, but goes no further.	The comment is noted. Please see Master Response 4 regarding sea level rise.
CCCR-83	The language of the draft policies requires assessments and consideration of possible impacts related to sea level rise, but is silent as to whether that information, once collected will be utilized to ensure flood risk is reduced. P. 4.2-28: - Policy CS-5.8: Planning for Sea Level Rise. Require developments below 10' above mean sea level to include an assessment of possible impacts related to sea level rise. - Policy S-3.9: Sea Level Rise. Consider the effects of rising sea level on the potential for flooding in low-lying areas, and participate in regional adaptation efforts for these areas. P. 4.8-28: Furthermore, City goals and policies under the proposed Plan would further reduce potential impacts to the existing storm drain infrastructure: - Policy CS-5.8: Planning for Sea Level Rise. Require proposed development close to the Newark bayfront or in low-lying areas to include an assessment of possible impacts related to sea level rise. P.4.8-33: - Policy EH-3.9: Sea Level Rise. Consider the effects of rising sea level on the potential for flooding in low-lying areas, and participate in regional adaptation efforts for these areas. - Policy CS-5.8: Planning for Sea Level Rise. Require proposed development close to the Newark bayfront or in low-lying areas to include an assessment of possible impacts related to sea level rise. P. 4.12-24: - Policy PR-5.7 Trail Sustainability. Consider long-term sustainability issues, such as projected sea level rise, surface durability, and the condition of levees, in the design of shoreline and wetland trail facilities. As stated	The comment is noted. Please see Master Response 4 regarding sea level rise.

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	above, while these policies give the impression that measures will be taken to reduce risk from sea level rise inundation, there is no language within the General Plan Goals, Policies, or Actions that require that such risk will be reduced. The rationale, is reliance on the court cases mentioned above, "flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA." This is irresponsible in terms of disclosure of impacts of a project and from a planning perspective a failure to incorporate meaningful analysis that could in fact lead to the permitting of projects that will impact the environment if sea level rise adaptation is not incorporated into the development design. As an example, if the only requirement to reduce flood risk is that new development is constructed at minimum, one foot above existing mean sea level (mean sea level at the time of permitting), and does not include sea level rise adaptation (not providing for estimates of sea level rise that could place the proposed development at risk of inundation), then the project may well have impacts to the environment that include the need for construction of flood protection levees, filling of adjacent wetlands to construct flood protection or from erosion of building pads, the need to re-engineer storm drain facilities, transportation facilities, etc.	
CCCR-84	The "State of California Sea-Level Rise Guidance Document"5states:SLR potentially will cause many harmful economic, ecological, physical and social impacts and incorporating SLR into agency decisions can help mitigate some of these potential impacts. For example, SLR will threaten water supplies, coastal development, and infrastructure, but early integration of projected SLR into project designs will lessen these potential impacts.[5 "State of California Sea-Level Rise Guidance Document." March 2013 Update. Developed by the Coastal and Ocean Working Group of the California Climate Action Team (CO-CAT) with science support provided by the Ocean Protection Council's Science Advisory Team and the California Ocean Science Trust.]	The comment is noted. Please see Master Response 4 regarding sea level rise.
CCCR-85	The Guidance also addresses the importance of incorporating sea level rise adaptation into project design: The consequences of failing to address SLR adequately for a particular project will depend on both adaptive capacity and the potential impacts of SLR to public health and safety, public investments, and the environment. Figure 1 in Appendix C illustrates how adaptive capacity and potential impacts combine to produce consequences. Adaptive capacity is the ability of a system to respond to climate change, to moderate potential damages, to take advantage of opportunities, and to cope with the consequences.6 In most situations, adaptive capacity must be front-loaded, or built into the initial project; it cannot be assumed that adaptive capacity can be developed when needed unless it has been planned for in advance. A project that has high adaptive capacity and/or low potential impacts will experience fewer consequences.	The comment is noted. Please see Master Response 4 regarding sea level rise.
CCCR-86	The DEIR mentions BCDC and its regulatory authority over portions of Plummer Creek, Mowry Slough and portions of Area 4: p.4.8-7: As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for any proposed fill, extraction of materials, or change is use of any water, land, or structure within the Commission's jurisdiction. The BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands in the Southwest Newark Residential and Recreational Focus Area. Projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection. These policies state that adequate flood protection should consider future relative sea level rise and all proposed development should be above the highest estimated tide level for the expected life of the project or sufficiently protected by levees. The DEIR should also note that BCDC's sea level rise policies, "Encourage preservation and habitat enhancement in undeveloped areas that are vulnerable to future flooding and contain significant habitats	The comment is noted. Please see Master Response 4 regarding sea level rise. Additionally, page 4.8-7 states that projects in the BCDC jurisdiction must be consistent with Bay Plan polices. Therefore, if sea level rise is addressed in Bay Plan policies, then projects, within BCDC jurisdiction would be subject to such policies.

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	or species, or are especially suitable for ecosystem enhancement."6 [6 New Sea Level Rise Policies Fact Sheet. San Francisco Bay Conservation and Development Commission. http://www.bcdc.ca.gov/planning/climate_change/SLRfactSheet.shtml Accessed 9-26-13.]	
CCCR-87	The 2009 California Climate Change Strategy7 states: p. 51 Wetland habitats from the Sacramento Valley southward to the Salton Sea and the tidal marshes of San Francisco Bay also provide essential wintering habitat for hundreds of thousands of birds as they migrate north and south along the Pacific Flyway. p. 52 Moreover, inland migration is frequently hindered by development such as bulkheads, seawalls, roads, and buildings. Continued growth and development in coastal areas will only increase the direct pressure on remaining habitats and make inland migration more difficult. Sea-level rise, especially at the increasing rates projected for the 21st century, may result in the loss of substantial areas of critical habitat for a variety of coastal species. p. 74 Habitat Protection – The state should identify priority conservation areas and recommend lands that should be considered for acquisition and preservation. The state should consider prohibiting projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones. The strategy should likewise encourage projects that protect critical habitats, fish, wildlife and other aquatic organisms and connections between coastal habitats. The state should pursue activities that can increase natural resiliency, such as restoring tidal wetlands, living shoreline, and related habitats; managing sediment for marsh accretion and natural flood protection; and maintaining upland buffer areas around tidal wetlands. For these priory conservation areas, impacts from nearby development should be minimized, such as secondary impacts from impaired water quality or hard protection devices.	As discussed in Chapter 4.3, Biological Resources, many of the impact discussions identify several policies and actions under the proposed Plan aimed at minimizing potential impacts to wildlife and habitat. Additionally, as mentioned throughout the document, future development would be subject to project-specific CEQA review to identify project-specific impacts and mitigation measures. No changes are necessary. Please see Master Response 4 regarding sea level rise.
CCCR-88	The public law, policy, and strategy listed above emphasize the importance of Area 4 from a regional perspective. The mixture of wetlands, aquatic, and other habitats including uplands are important for sustaining current populations of waterfowl and listed and sensitive plant and wildlife species, as well as providing a hedge for these species and habitats in the face of sea level rise. This is policy is pertinent to Area 4. The majority of Area 4 is within the Don Edwards San Francisco Bay National Wildlife Refuge expansion boundary. The site contains a rare mix of upland, seasonal wetland, muted tidal wetland, and a fresh water pond. The endangered salt marsh harvest mouse has been trapped on this site and the proposed development could fill up to 86 acres of seasonal wetlands.	Impacts to biological resources, including impacts related to sensitive habitats, wetlands, salt harvest mouse, and conflicts with the Basin Plan and Habitat goals are discussed in chapter 4.3 of the Draft EIR to the extent required under CEQA. Additionally, impacts associated with conflicts with the Bay Plan and CCP are discussed in Chapter 4.9 of the Draft EIR. No further response is required to address this comment.
CCCR-89	Traffic: Does the traffic analysis account for the 600 student elementary school proposed in Area 3 or the truck traffic that will be required to transport 2.1 million cubic yards of fill to Area 4?	As described on pages 4.13-1 through 4.13-45 and in Appendix D of the Draft EIR, the traffic analysis was prepared in accordance with the standards set forth by the City of Newark, and the Alameda County Congestion Management Agency (CMA). Impacts were analyzed on a cumulative basis in consideration of projected conditions at buildout of the proposed Plan in 2035. Analysis of short-term, construction-related impacts of specific projects that could be built within the planning horizon are not appropriate in a programmatic EIR such as the proposed Plan.
CCCR-90	Are the dates of studies listed in the footnote on page 4.13-23 correct?	The comment is noted. The Draft EIR is hereby amended to correct the dates of the studies referenced. See Chapter 3 of the Final EIR for details of text revisions.
CCCR-91	p. 4.13-24 states: The traffic analysis assumed that the transportation network, including roadways and intersection lane configurations, would be the same in 2035 as that described above in section 4.13.1.2, Existing Conditions, of this chapter. New development projected within the Plan Area at buildout of the proposed Plan, including net increases over 2012 baseline conditions of 16,580 residents, 6,208 housing units, and 2,882 jobs, was input to the Alameda County Transportation Commission (ACTC) model in order to generate 2035 traffic forecasts. The resulting traffic volumes are shown on Figures 4.13-5a and 4.13-5b.	The comment is noted.

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CCCR-92	TRANS-1 With buildout of the proposed Plan, three signalized study intersections would operate at unacceptable LOS in 2035. The analysis of TRANS-1 states: With implementation of Action T-5.J from the proposed Plan, all seven impacted intersections would operate at acceptable LOS in 2035; however, the Cherry Street/Boyce Road and Stevenson Boulevard intersection and the Ardenwood Boulevard and SR 84 WB Ramps intersection are located in the City of Fremont, and additionally the Ardenwood Boulevard and SR 84 WB Ramps and Newark Boulevard and SR 84 EB Ramps intersections are under the jurisdiction of Caltrans. Therefore, implementation of improvements at these three intersections is outside the jurisdiction of the City of Newark, and as there is no implementation plan in place for improvements at these three intersections, it is not reasonably foreseeable at this time that impacts would be reduced to less-than significant levels with buildout of the proposed Plan in 2035. Consequently, impacts at these three intersections in 2035 would be significant prior to mitigation: Cherry Street/Boyce Road and Stevenson Boulevard; Ardenwood Boulevard and SR 84 WB Ramps; Newark Boulevard and SR 84 EB Ramps. When will Newark begin coordinating with the City of Fremont and with Caltrans to implement the proposed mitigation measures at these three intersections?	The Mitigation Monitoring and Reporting Program, to be circulated with the Final EIR, would trigger coordination amongst appropriate agencies. Please also see Response to Comment CCCR-47.
CCCR-93	It appears most of the policies and actions proposed to alleviate or reduce traffic congestion are purely volunteer, that is that they are totally dependent upon Newark residents altering their choices regarding transit. How will Newark determine if these policies are having any benefit and what will Newark do, if they are not?	The comment is noted. Please see the response to comment Bradley2-86 regarding implementation of policies under the proposed General Plan.
CCCR-94	TRANS-4 The proposed Plan would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). Wouldn't pedestrian and bicycle at grade crossings be considered an incompatible use and why wasn't this issue analyzed under traffic? Especially since the traffic analysis includes a discussion of the Complete Streets Program?	Pedestrian and bicycle at grade crossings would not be considered an incompatible use. As discusses in TRANS-4, local codes would contain regulations pertaining to minimum design standards. Adherence to such codes, along with policies under the proposed Plan as identified on page 4.13-38 would ensure compatible and safe uses with respect to design features. No changes are necessary.
CCCR-95	Policy T-2.12: Trails Along Railroads and Utilities. Consider the use of railroad, flood control, and utility rights of way for jogging, biking, and walking trails, provided that safety and operational issues can be fully addressed. Does this policy pertain to abandoned railroad right of ways? If not, it is difficult to understand how this would be compatible with biking, jogging, or walking trails.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
CCCR-96	TRANS-7 Implementation of the proposed Plan, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable impacts. "Cumulative impacts to transportation and traffic resulting from implementation of the proposed Plan are addressed locally, through specific road improvements, as well as through implementation of the goals, policies, and actions of the proposed Plan itself. These policies seek to reduce existing vehicle trips, minimize the addition of new vehicle trips, and lower per capita VMT. Additionally, the potential cumulative impacts of the proposed Plan at the regional level are examined through analysis related to the Alameda CTC Congestion Management Program." It is difficult to imagine the policies proposed will result in an appreciable reduction in VMT. The proposal to build upscale housing in an area that has no shopping, medical, dining, or other amenities within easy walking distance would seem to only encourage the continued use of automobiles as a mode of transportation. What are the current plans for providing mass transit in the DTOD? It seems any realization of Dumbarton Rail will be in the distant future if ever at all. What are the plans to provide a public transportation system for an area that is proposed to have an additional 2500 housing units?	As noted in Policy LU-6.3, the City will advocate for high quality rapid bus service connecting the Dumbarton TOD area to major transit facilities as an interim measure until the Dumbarton Rail project is funded. Likewise Policy T-3.4 calls for rapid bus service as an interim measure before rail construction, while Action T-3.B call for a continued focus on funding for the rail project.
CCCR-97	Alternatives Analysis: The Alternatives Analysis Chapter is inconsistent with the requirements of CEQA. The DEIR correctly states: The following discussion is intended to inform the public and decision makers of the feasible alternatives that would avoid or substantially lessen any significant effects of the Plan, and	The commenter's opinion is noted; however, no justification to the comment has been offered, therefore, no further response is necessary.

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	to compare such alternatives to the proposed Plan. Section 15126.6 of the CEQA Guidelines states that: An EIR shall describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.	
CCCR-98	The DEIR provides an alternative, the Restricted Growth Alternative, that would preserve Area 4, but also restricts any development of the Dumbarton Transit Oriented Development. This is an alternative that has been structured to fail. The Area 2 (DTOD) has already been identified by the Association of Bay Area Governments as a Priority Development Area, so it would seem that in spite of the reduction in environmental impacts, an alternative that prohibits any development is unrealistic. The city must provide an alternative that preserves Area 4, facilitates clean-up of contaminated sites and provides for sustainable development in Area 2.	Please see Master Response 3 regarding the Appropriacy of Alternatives.
CCCR-99	Conclusion: The GPT DEIR has significant flaws as identified in the letters submitted by LGW LLP and Richard Grassetti. Therefore, the GPT DEIR will need to be revised and re-circulated. Please keep us advised of any time tables pertaining to this review process. Sincerely, Carin High CCCR Vice Chair Attachments to follow	The commenter's opinion is noted.
LGW-1	This office represents Citizens Committee to Complete the Refuge ("Citizens") and its members in regards to the City of Newark proposed revised General Plan and Draft EIR ("DEIR").Attached hereto please find detailed comments about the Draft EIR and the Project's compliance with CEQA. The DEIR violates CEQA, inter alia, through 1) the use of an improper baseline, 2) reliance on a void Specific Plan EIR for analysis of impacts and mitigations from the proposed General Plan, 3) failure to conduct adequate "project level" review where the General Plan includes the Specific Plan details, 4) a flawed cumulative impact analysis, and 5) a flawed alternatives analysis. Because the Draft EIR is fundamentally and basically inadequate, meaningful public review and comment are precluded. Once the Draft EIR is fixed it must be recirculated for public review and comment. Prior to the City Council's decision, if ever, that the EIR complies with CEQA and therefore may be certified, no action in furtherance of the Project should be permitted. Thank you for your attention to this matter. Sincerely, Brian Gaffney cc: Citizens Committee to Complete the Refuge Attachment: CD by Fed Ex delivery by September 27, 2013	Please see Master Response 1 regarding baseline for environmental review and Master Response 2 regarding reliance on previous environmental review. Please see Master Response 3 regarding the adequacy of alternatives. In regards to recirculation, Section 15088.5 of the CEQA Guidelines states that a lead agency is required to recirculate an EIR when significant new information is added to the EIR. Provided that no new significant information has been added, recirculation of this DEIR is not required under CEQA.
LGW-2	I. The Proposed General Plan and DEIR Fail to Use a Proper Environmental Baseline by Employing Hypothetical Conditions Based on a Void Areas 3 and 4 Specific Plan.	The baseline for measuring environmental impacts is existing conditions. Please see Master Response 1 regarding baseline for environmental review and Master Response 2 regarding reliance on previous environmental review
LGW-3	A. The Proposed General Plan Uses an Improper Baseline. The proposed General Plan falsely and improperly assumes that the Areas 3 and 4 Specific Plan has been adopted and is in effect.1 "A Specific Plan for the 636-acre [Areas 3 and 4] was adopted in 2010." (Proposed General Plan, pp. PF-14, PF-15, LU-21, LU 24.) The Areas 3 and 4 Specific Plan has "been formally adopted by the City of Newark, but [is] not part of the General Plan per se." (Proposed General Plan, I-4.) This error is also found in the Land Use Background Report. "Two major development projects were approved in 2010 and 2011, Areas 3 and 4, and Dumbarton Transit Oriented Development (TOD) Specific Plans." (Land Use Background Report, p. 4-6.) Under the heading "Existing Conditions," the Land Use Background Report states that "The [Areas 3 and 4] Specific Plan and final Environmental Impact Report, along with a statement of overriding considerations, Mitigation Monitoring Report, and map amendment to title 17 of the Newark Municipal Code (zoning) were adopted in 2010." (Land Use Background Report, p. 4-31.) These assertions in the General Plan are false and misleading to the public. The City of Newark has not properly adopted the Areas 3 and 4 Specific Plan nor properly certified the Areas 3 and 4 Specific Plan	See response to comment LGW-2. Please see Master Response 1 regarding baseline for environmental review and Master Response 2 regarding reliance on previous environmental review. Please see Master Response 3 regarding the adequacy of alternatives.

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	EIR. On November 20, 2012, the Alameda Superior Court issued its Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions. That Order is attached to these comments. "To ensure that the [Areas 3 and 4 Specific Plan] project does not proceed until the EIR is effective," the court ordered the City to "SUSPEND Resolution 9745 (Certifying the EIR) and Resolution 9746 (adopting the Newark Areas 3 and 4 Specific Plan Project and the related General Plan Amendment" pending resolution of the case or further order of the court. That suspension was in effect when this DEIR was released to the public, and is in effect at the time of filing these comments.2 [1 "Areas 3 and 4 Specific Plan" and the "Southwest Newark Residential and Recreational Project" are two names for the exact same project. (Proposed General Plan, p. I-4, fn. 1.)][2 Pursuant to Pub. Res. Code § 21168.9, the Areas 3 and 4 Specific Plan approvals and Areas 3 and 4 Specific Plan EIR certification must be considered void. Pub. Res. Code § 21168.9, subd. (a)(1) provides that if a court finds that any determination, finding, or decision of an agency has been made without CEQA compliance, the court shall enter an order that includes a mandate that the determination, finding, or decision be voided by the agency. Citizens has consistently maintained that under 21168.9 the approvals and certification must be set aside.]	
LGW-4	Moreover, as a matter of law the Areas 3 and 4 Specific Plan cannot be deemed "approved" in the absence of a valid certified EIR. "CEQA requires the completion of an EIR before a specific plan can become effective." (3570 East Foothill Blvd., Inc. v. City of Pasadena, 980 F.Supp. 329, 333 (C.D.Cal. 1997). Before approving a specific plan the decision makers must be informed of the intended impacts and if that impact is adverse how it will be addressed. (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412, 429 citing Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 206.) Thus, the Areas 3 and 4 Specific Plan is not in effect, and it was error for the proposed General Plan to represent it as approved. (Deltakeeper v. Oakdale Irrigation Dist. (2001)94 Cal.App.4th 1092, 1009 ["The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an [EIR] that does not provide the decision-makers, and the public, with the information about the project that is required by [CEQA]."].)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-5	B. The Draft General Plan EIR Uses an Improper Baseline. In addition, the Draft EIR, in describing the "Southwest Newark Residential and Recreational Focus Project" repeatedly asserts that the Areas 3 and 4 Specific Plan has been "adopted" by the City of Newark. (GP DEIR, pp. 3-20 to 3-21 (" The proposed Plan does not include any additional land use changes over and above those already incorporated into the existing General Plan at the time the Areas 3 and 4 Specific Plan was adopted by Newark City Council in 2010.) "In June 2010, the City of Newark adopted the Areas 3 and 4 Specific Plan ... ." (GP DEIR, p. 3-8.)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis
LGW-6	While the Draft EIR acknowledges that the Areas 3 and 4 Specific Plan is in litigation and that there is a stay on any further action with respect to the Areas 3 and 4 Specific Plan, the EIR relies on the Specific Plan and mitigation measures created for that plan as background conditions: After certification of the EIR, a lawsuit was filed challenging the adequacy of the EIR (Alameda Co. Sup. Ct. #RG10-530015). An order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Areas 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. As of August 12, 2013, that litigation remains pending and that suspension remains in effect, however, the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR. (GP DEIR, 3-11 (emphasis added).) It is entirely inappropriate for the City to discuss the Areas 3 and 4 Specific Plan as though it is approved and its mitigation measures are adopted and enforceable, and then treat them as "background conditions" for purposes of the 2013 General Plan EIR.	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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Comment ID	Comment	Response
LGW-7	Under CEQA, impacts must be measured against real conditions on the ground – not against what may potentially occur pursuant to a planning document. The Supreme Court's discussion in Communities for a Better Environment points out this DEIR's fundamental error: By comparing the proposed project to what could happen, rather than to what was actually happening, the [agency] set the baseline not according to "established levels of a particular use," but by "merely hypothetical conditions allowable" under the permits. (San Joaquin Raptor Rescue Center v. County of Merced, supra, 149 Cal.App.4th at p. 658, 57 Cal.Rptr.3d 663.) Like an EIR, an initial study or negative declaration "must focus on impacts to the existing environment, not hypothetical situations." (County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 955, 91 Cal.Rptr.2d 66.) An approach using hypothetical allowable conditions as the baseline results in "illusory" comparisons that "can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts," a result at direct odds with CEQA's intent. (Environmental Planning Information Council v. County of El Dorado, supra, 131 Cal.App.3d at p. 358, 182 Cal.Rptr. 317.) Communities For A Better Env't v. S. Coast Air Quality Mgmt. Dist., (2010) 48 Cal. 4th 310, 322.	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-8	Recently, the California Supreme Court affirmed that "the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the actually existing physical conditions rather than hypothetical conditions that could have existed under applicable permits or regulations. (Neighbors for Smart Rail v. Exposition Metro Line Const. Auth. (2013) 57 Cal. 4th 439, 448 (emphasis in original) citing Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 320–322.)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis.
LGW-9	So here, this DEIR uses the hypothetically approved Areas 3 and 4 Specific Plan as the background condition. The Areas 3 and 4 Specific "EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR." (GP DEIR, 3-11 to -12.) "This Draft EIR compares the buildout potential for the proposed Plan with the existing baseline condition." (GP DEIR, p. 3-3.) Because the Specific Plan adoption and EIR certification have been not been properly adopted and certified, this DEIR can only mislead the public as to the true General Plan impacts and subvert full consideration of the actual environmental impacts, contrary to CEQA's intent.	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-10	II. The DEIR Improperly Relies On the Areas 3 and 4 Specific Plan EIR for Analysis of the Proposed General Plan's Impacts and Mitigations. The DEIR improperly relies heavily on the Areas 3 and 4 Specific Plan EIR for its analysis of impacts and mitigations.3 For example, regarding riparian impacts, the DEIR states: The Areas 3 and 4 Specific Plan EIR identifies Impacts BIO-1 associated with impacts to riparian habitat. This impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measures BIO-1.1 through BIO-1.2B, which require wetland and habitat avoidance to the maximum extent feasible and either on-site wetland creation (at a ratio of 1:1) and enhancement (at a ratio of 0.5:1) or off-site mitigation banking at a ratio of 1.5:1. [3 The proposed General Plan likewise incorrectly states that the EIR for the Areas 3 and 4 Specific Plan is valid and assumes, based thereon, that the impacts of the Southwest Newark Project will be mitigated. For instance, it asserts that "future noise environment in Newark will be impacted not only by changes in traffic volumes, but also by changes in land use.... The environmental impact reports (EIRs) prepared for approved development in these areas included measures to mitigate potential noise impacts. Likewise, future EIRs will include such measures, as appropriate." (Proposed General Plan, EH-31 (emphasis added).)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-11	Additionally, Impact BIO-2, related to substantial adverse impacts on wetlands and associated species due to altered hydrology, and…	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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Comment ID	Comment	Response
	Impact BIO-3, regarding significant impacts to marsh habitat and associated special-status species due to an increase in freshwater flows, would be mitigated to less-than-significant levels with the implementation of mitigation measures MM BIO-2.1 through 2.5 from the Areas 3 and 4 Specific Plan EIR. Further, Impact BIO-10, regarding indirect impacts to waterbirds associated with the loss of wetlands, would be mitigated to less-than-significant levels with the implementation of Mitigation Measure BIO-10.1, requiring a mitigation plan for creation or enhancement of replacement wetlands. Previous environmental review has determined that impacts to wetlands, riparian habitat, and sensitive natural communities in the ...Southwest Newark Residential and Recreational Focus Area could be mitigated to less-than-significant levels with the implementation of the mitigation measures described above. The proposed Plan would incorporate the development envisioned in the ...Areas 3 and 4 Specific Plan ... and would not include any additional development in the ... Southwest Newark Residential and Recreational Focus Area over and above that which has already been analyzed in previous EIRs. As such, the implementation of the proposed Plan would not result in significant, new environmental impacts to wetlands, riparian habitat, and sensitive natural communities in the ... Southwest Newark Residential and Recreational Focus Area. (DEIR, pp. 4.3-36 to -37.) Regarding impacts to wetlands/ marsh/aquatic habitat, the DEIR states: The Areas 3 and 4 Specific Plan EIR concluded that Specific Plan implementation would result in the loss of up to 85.6 acres of wetland/marsh/aquatic habitat in the Southwest Newark Residential and Recreational Focus Area. Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use. It was determined that implementation of the following measures would reduce associated impacts to a less-than significant level: Mitigation Measure Bio-1.1 requiring grading plans designed to avoid permanent impacts to wetland and aquatic habitat; Mitigation Measure Bio-1.2A, requiring a detailed mitigation plan shall be developed by a qualified biologist and incorporating a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off-site; and Mitigation Measure Bio-1.2B, requiring, as an alternative to Measure Bio-1.2A, the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank or other private lands within 10 air miles of the affected area and along the eastern shore of south San Francisco Bay within the same geographic watershed. Previous environmental review has determined that impacts to waters of the US in the Dumbarton TOD Focus Area and in the Southwest Newark Residential and Recreational Focus Area could be mitigated to less-than significant levels with the implementation of the mitigation measures described above. The proposed Plan would incorporate the development envisioned in the Dumbarton TOD Specific Plan, the Areas 3 and 4 Specific Plan, and the 2009-2014 Housing Element and would not include any additional development in the Dumbarton TOD Focus Area or the Southwest Newark Residential and Recreational Focus Area over and above that which has already been analyzed in previous EIRs. As such, the implementation of the proposed Plan would not result in significant, new environmental impacts to waters of the US in the Dumbarton TOD Focus Area or the Southwest Newark Residential and Recreational Focus Area. (DEIR, p. 4.3-40.)	

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Comment ID	Comment	Response
	Regarding cumulative losses of seasonal wetland habitat, the DEIR states: The Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area are the largest remaining tracts of relatively undeveloped land in the Plan Area. In the absence of project-specific mitigation measures identified in previous environmental review conducted by the City of Newark, potentially significant impacts related to special-status plants and animal species, wetlands, riparian habitat, and sensitive natural communities would all contribute to cumulatively significant impacts in the South Bay. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. However, as determined in previous environmental review conducted by the City, the mitigation measures prescribed for all of these impacts would adequately mitigate the project's contribution to these cumulative impacts. Buildout of the proposed Plan would not include any additional development in these areas over and above that which has already been analyzed in previous EIRs." (DEIR, p. 4.3-48, emphasis added.) Regarding growth inducing impacts, the DEIR states "the extension of existing utility lines and the construction of new roadways would be required, and associated impacts have been analyzed and mitigated in previous EIRs prepared by the City of Newark for the respective specific plans." (DEIR, p. 7-6, emphasis added.) This approach of relying on a previous EIR which was not properly certified, as well as a Specific Plan whose adoption has been set aside, is clearly illegal.	
LGW-12	First, the Alameda Superior Court found that the Areas 3 and 4 Specific Plan EIR is materially deficient and that the "court cannot meaningfully evaluate whether the City's findings and conclusions in the EIR are supported by substantial evidence." (November 2012 Order at p. 19.)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-13	Second, to the extent that this DEIR is attempting to "tier" off the analysis of impacts and mitigations in the Areas 3 and 4 Specific Plan EIR, such tiering violates CEQA as the prior EIR's certification is void. (Pub. Res. Code § 21094, subd. (a)(1).) CEQA authorizes tiering only where the previous EIR was properly certified. (Friends of the Santa Clara River v. Castaic Lake Water Agency (2002) 95 Cal.App.4th 1373, 1384- 1387.) The instant General Plan DEIR should not be certified based on this CEQA violation alone. (California Oak Foundation v. City of Santa Clarita (2005) 133 Cal.App.4th 1219, 1229.)	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-14	Third, this DEIR does not state where a copy of the prior EIR may be examined (Pub. Res. Code § 21094, subd. (f)), and the General Plan Tune Up initial study - if one was even prepared - did not analyze whether the revise General Plan may cause significant impacts not examined in the prior EIR. (Pub. Res. Code § 21094, subd. (c).)4 For these reasons, the DEIR improperly relies on the analysis, conclusions, and mitigation measures of the invalid Areas 3 and 4 Specific Plan EIR. [4 It would also be improper for the City of Newark to incorporate by reference any Areas 3 and 4 Specific Plan statement of overriding considerations because the Areas 3 and 4 Specific Plan approvals and EIR are void (Pub. Res. Code § 21094, subd. (a)(2)) and because the prior EIR was certified more than three years ago. (Pub. Res. Code §§ 21094,subd. (a)(2)(D).)]	The DEIR states on page 2-2 of the DEIR that, consistent with Section 15150 of the State CEQA Guidelines, the documents used for incorporation by reference are available for review at the City of Newark Community Development Department. Please see Master Response 2 regarding treatment of previous environmental review.
LGW-15	In addition, by relying on the Areas 3 and 4 Specific Plan EIR, this DEIR necessarily incorporates many of the CEQA errors in that document. Citizens challenged the Areas 3 and 4 Specific Plan EIR for 1) use of improper "baseline" for CEQA analysis and mitigation, particularly regarding traffic, 2) failure to adequately disclose or analyze cumulative impacts, 3) improper deferral of mitigations of impacts to trees and also habitats and special status species, 4) failure to use or apply the Areas 3 and 4 Specific Plan EIR's thresholds of significance to cumulative land use impacts, cumulative biological resource impacts, and cumulative hydrology, water quality and water supply impact, and 5) the Areas 3 and 4 Specific Plan EIR is inadequate to serve as project level CEQA review. Citizens renews each of these objections in	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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	regards to the adequacy of the instant DEIR, particularly given that the DEIR's project description states that "the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR."5 (GP DEIR, p. 3-11.) [5 See also GP DEIR, p. 4.13-23, fn. 3 which states: "The sources for threshold of acceptable LOS in Newark are the ... Southwest Newark Residential and Recreational Focus Area Specific Plan (July 2011)." While CCCR is unaware of what document constitutes the "Southwest Newark Residential and Recreational Focus Area Specific Plan (July 2011)," to the extent the DEIR is referencing the Areas 3 and 4 Specific Plan EIR, CCCR objects for the reasons stated herein and in previous comments (attached on CD) about the Areas 3 and 4 Specific Plan EIR adequacy.]	
LGW-16	Citizens is submitting as part of these DEIR comments a CD that includes its pleadings and briefings challenging the Areas 3 and 4 Specific Plan EIR, as well as the administrative record in that prior litigation - which includes Citizens and others administrative comments on the Areas 3 and 4 Specific Plan EIR. Please include each of the documents on the attached CD as part of the administrative record for this General Plan Tune Up Program EIR.	The comment is noted; however, it does not pertain to the merits of this DEIR. No further response is required.
LGW-17	III. The DEIR Improperly Fails to Conduct Adequate "Project Level" Review Where the General Plan Includes the Specific Plan Details. The General Plan EIR erroneously states that " regardless of whether the Areas 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan." (GP DEIR, 3-11--12.) This statement is wrong for the reasons stated above, and further because the proposed General Plan does more than change the land use designation for a portion of [former] Area 3. As noted above, the proposed General Plan obligates the City to implement the Areas 3 and 4 Specific Plan.	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-18	Because the proposed General Plan incorporates and requires implementation of this Specific Plan, it is not a standard General Plan -- it includes the same level of detail (if not more, in some instances) as the Areas 3 and 4 Specific Plan as proposed in 2010. Therefore, under CEQA this DEIR must subject this portion of the proposed General Plan to project-level environmental review. Herein, we first note many of the specifics incorporated into the proposed General Plan, and thereafter the CEQA provisions requiring greater environmental review.	The commenter provides no evidence for the assertion the General Plan EIR "requires" implementation of the project envisioned in the Area 3 and 4 General Plan. Also, please see response to comment LGW-17 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-19	Numerous General Plan "Policies" require implementation consistent with the Areas 3 and 4 Specific Plan6: Policy LU-7.1 Southwest Newark Residential and Recreational Project (Area 3 and 4 Development). Facilitate the development of the 637 acres formerly known as "The Area 3 and 4 project" consistent with previously approved plans for this area. The residential holding capacity of this area shall be 1,260 units. Policy LU-7.6 The preferred open space use is an 18-hole golf course with clubhouse. Policy LU-7.9 address inclusionary housing requirements consistent with the Area 3 and 4 Development Agreement. Several proposed General Plan "actions" also direct the City to implement the Southwest Newark Project as proposed in the Areas 3 and 4 Specific Plan.7 For example, Action LU-7.D (Design Standards) specifies implementation of "the standards in previously approved plans for this area addressing lot size, height, setback, lot coverage, open space, patios, and balconies, and parking." Action LU-7.E (Grading and Fill) "require[s] grading and fill plans which ensure long-term mitigation of flood hazards, consistent with previously approved plans for the Southwest Newark Residential and Recreational Project area. Building pad and curb elevations shall conform to previously adopted standards." So also, Action LU-7 (A Street and Path Network) and Action LU-7.B (Railroad Overcrossing) requires actions consistent with previously approved plans. The Land Use Element of the proposed General Plan provides the following specificity regarding the Southwest Newark Residential and Recreational Project This is the largest area proposed for future development in Newark, comprising 636 acres in the area bordered by Mowry Avenue on the west, Stevenson Boulevard on the east, Cherry	The commenter is providing the description of the proposed project in the Southwest Newark Residential and Recreation project and incorrectly infers from the description that is provided that the General Plan is in some way entitling this project. The commenter provides no evidence for the assertion the Draft EIR "requires" implementation of the project envisioned in the Area 3 and 4 Specific Plan. Please also see response LGW-17 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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	Street on the north, and Mowry Slough on the south. The Union Pacific Railroad bisects the area. Previous General Plans for Newark referred to the land north of the railroad as "Area 3" and the land south of the Railroad as "Area 4." Area 3 was originally 298 acres, but 221 acres of this total has been committed to other land uses, including the Newark campus of Ohlone College, Sportsfield Park, and the Stevenson Point Technology Park. The remaining 77 acres, which is located along the south side of Cherry Street west of Stevenson Boulevard, was vacant as of 2013. A Specific Plan for the 636-acre area was adopted in 2010. The Plan calls for the development of up to 1,260 housing units, a major recreational facility such as an 18-hole golf course, and the dedication of conservation open space on some of the low-lying areas south of the railroad tracks. An area facing Cherry Street just east of Ohlone College has been set aside for a new 600-student elementary school and a new neighborhood park. The rest of former Area "3" has been designated for Low-Medium Density Residential uses on the General Plan Map. The Specific Plan envisions single-family lots ranging from 3,150 square feet to 4,800 square feet, although the flexibility exists to transfer the allowable density within this area to facilitate multi-family housing construction on a portion of the site. Development of single-family lots is planned south of the railroad tracks. Some of the area designated as "Low Density Residential" on the Map will be conserved as wetland habitat and some will be improved with recreational facilities. The Specific Plan divides the area south of the tracks into four lettered sub-areas (B, C, D, and E). Of these four areas, Area B (125 acres) is planned for housing, Area D (100 acres) may be used for a golf course or similar recreational amenity, Area E (244 acres) is to be conserved as open space, and Area C (90 acres) may be used for either recreation or housing. In the event a golf course is developed, it is envisioned as an 18-hole public course. A golf course could provide an amenity that is lacking in Newark today and would round out the range of recreational opportunities available to those who live and work in the city. It could also be an economic development asset that can attract businesses, executive housing, and higher quality retail uses nearby. Ancillary facilities such as a clubhouse, banquet facility, driving range, and maintenance buildings, could potentially complement such a facility. Construction of a golf course is contingent on its fiscal feasibility, market demand, and other factors. In the event a golf course is not developed, another citywide recreational amenity should be provided here. The Specific Plan includes residential street and intersection standards, along with plans for a railroad overpass at Stevenson Boulevard. The Stevenson Avenue Bridge should include a 12-foot travel lane in each direction, adjacent to 5-foot bike lanes. One side of the bridge will have a sidewalk for pedestrians. A pedestrian and bicycle bridge across the Alameda County Flood Control Channel is also planned, connecting the site to Ohlone College. A multi-use trail is also proposed across the southern part of the site, providing a component of the Bay Trail. A grading and fill plan for this area has been prepared. ... .Building pads of occupied structures will be at least 11.25 feet above mean sea level (msl), with the finished floor at least six inches above the building pad. The top of curb grades for residential streets will be no less than 10 feet above msl. Detailed grading and stockpile management plans will be required before construction is approved and stormwater management plans will be required to contain runoff. A new network of water, sewer, and storm drain lines will be constructed to serve the development, supplemented by related infrastructure such as pump stations. (Proposed General Plan, pp. LU-23 to LU-26.) Similarly, the Parks, Recreation, and Open Space section states: The Southwest Newark Residential and Recreational Development includes plans for a golf course or major public recreational facility. A golf course would likely be 120 acres or larger and could potentially double the City's total park acreage. The Specific Plan for Southwest Newark (formerly Areas 3 and 4) also includes an approximately 5-acre neighborhood park, to be co-located with an elementary school on the south side of Cherry Street east of Ohlone College. The park will not only serve new residents, it will remedy a park access deficiency in the residential area on the north side of Cherry	

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Comment ID	Comment	Response
	Street in this area. [6 "A policy expresses the City's commitment and intent on a topic area related to the goal." (Proposed General Plan, I-4.) "A goal is a general, overall and ultimate purpose, aim or end toward which the City will direct its efforts." (Ibid, underscore added.) The word "will" indicates that this provision is mandatory. (Proposed General Plan, I-5 ["'Must', 'shall,' or 'will' identify provisions which are mandatory. Verbs such as "require" reflect similar obligatory directives."].) This provides further evidence that the proposed General Plan will implement the specifics of the Areas 3 and 4 Specific Plan.][7 "An action is a specific program to be carried out in response to an adopted policy... ." (Proposed General Plan, I-4.)]	
LGW-20	Likewise, the Draft EIR provides specificity regarding the Southwest Newark Residential and Recreational Focus Project. This Draft EIR is unequivocal that "The proposed Plan would incorporate the development envisioned in the ...Areas 3 and 4 Specific Plan" (DEIR, pp. 4.3-36 to -37.). The EIR's project description (at DEIR, p. 3-11) lays out in specific detail that: The Area 3 and 4 Specific Plan amended 1992 General Plan Land Use designations to allow for development of up to 1,260 single- and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas. The Specific Plan envisions the preservation of approximately 200 acres of open space in Area 4 and the, retention of existing light industrial and institutional uses in most of Area 3, Key components of the Area 3 and 4 Specific Plan, shown in Figure 3-4, include: - A new 78-acre residential neighborhood in Subarea A composed of single-family detached homes and multifamily residential units, including up to 189 multi-family units at below market rate. (Note: Below-market-rate (BMR) housing units are priced to be affordable to households with moderate income or below.) - Single-family detached homes in Subarea B and C; - A new elementary school in Subarea A, capable of accommodating 600 students; - An 18-hole golf course in either Subarea C or D, configured to optimize habitat areas and limit disturbance to wildlife and wetlands to the extent feasible; - Improvements to the circulation network, including: - A public street extension of Stevenson Boulevard with a structural overpass providing vehicular and pedestrian access into Area 4 over the Union Pacific railroad tracks. Modifications to two Pacific Gas & Electric (PG&E) transmission towers to accommodate the overpass. - A new driveway providing access from Cherry Street into Subarea A. A new traffic signal and pedestrian crosswalk are planned at this intersection; - A new driveway providing access to Subarea A from Stevenson Boulevard, midway between Cherry Street and the existing industrial uses; - A paved trail and pedestrian bridge over the flood control channel in Area 3, providing connection between the new residential neighborhood, Ohlone College, and the George M. Silliman Recreation Complex; - A multi-use trail at Mowry Avenue in Area 4, providing east-west access for emergency vehicles, pedestrians, and cyclists; and - Utilities infrastructure, including a new public water distribution system within the residential streets of Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge wastewater generated by new uses in Area 4.	Please see response to LGW-19.
LGW-21	Further at DEIR, pp. 3-20--3-21, the project description states: The Southwest Newark Residential and Recreational Focus Area is made up of two non-contiguous sectors in the southwest of the city, as shown in Figure 3-7. Together, these two sectors cover an area of 637 acres. The boundaries of the larger of the two sectors correspond to the boundaries of Area 4, as delineated in the Areas 3 and 4 Specific Plan adopted by the City in 2010 and described earlier in this chapter. The boundaries of the smaller sector correspond to the vacant, undeveloped portion of Area 3, bounded by Ohlone College to the north, Cherry Street to the west, Stevenson Boulevard to the south, and the Stevenson Point Technology Park to the west. The vision for the Southwest Newark Residential and Recreational Focus Area contained in the proposed Plan is consistent with the vision outlined in the Areas 3 and 4 Specific Plan. The proposed Plan does not include any additional land use changes over and above those already incorporated into	Please see response to LGW-19.

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	the existing General Plan at the time the Areas 3 and 4 Specific Plan was adopted by Newark City Council in 2010. At the time the Specific Plan was adopted the land use designation in the 78-acre portion of the focus area formerly known as Area 3 was changed from Special Industrial to Medium Density Residential. The land use designation for the larger portion formerly known as Area 4 was already Low Density Residential in the 1992 General Plan and no changes were made at the time the Specific Plan was adopted.	
LGW-22	As described in the proposed Plan, the Southwest Newark Residential and Recreational Focus Area is envisioned as one of Silicon Valley's premier new neighborhoods, with executive housing and high quality recreational opportunities. Proposed Plan land use designations applicable to this Focus Area would allow for the development of 1,260 single and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas as envisioned in the Areas 3 and 4 Specific Plan. Additionally, the proposed Plan contains policies that support development envisioned in the Areas 3 and 4 Specific Plan, including the 1,260 housing units, the golf course, an interior street and path network, and an overpass crossing the Union Pacific Railroad tracks at Stevenson Boulevard. The proposed Plan also includes policies intended to protect and enhance sensitive natural resources in the Southwest Newark Residential and Recreational focus area, including wetland and aquatic habitat, natural hydrological features, and other biological resources.	Please see response to LGW-19.
LGW-23	CEQA requires that given the specifics involved in the proposed General Plan, that this DEIR correspondingly provide detailed analysis of potential impacts. “The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” (CEQA Guidelines 15146.)	The commenter is incorrect in asserting that the General Plan obligates the City to complete a particular project. A General Plan is a policy document providing the vision for the community including the general location and general intensity of future development. It does not create legal obligations to pursue a particular project. Individual developments when and if proposed would be receive further environmental review and are subject to future action by the City Council. The General Plan EIR is a program EIR- to does not include approval or “obligation” for any specific development project.
LGW-24	In addition, an EIR on a project such as the adoption or amendment of a general plan “should focus on the secondary effects that can be expected to follow from the adoption or amendment.” (CEQA Guidelines 15146, subd. (b).) The sufficiency of the information contained in an EIR is reviewed in light of what is reasonably feasible. (Guidelines, § 15151; Kings County Farm Bureau v. City of Hanford, supra, 221 Cal.App.3d at p. 733.) At minimum, an EIR ”must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.“ (Laurel Heights, supra, 47 Cal.3d at p. 405.) (Rio Vista Farm Bureau Ctr. v. Cnty. of Solano (1992) 5 Cal. App. 4th 351, 375.) Here, given the great specificity known about the “Southwest Newark Residential and Recreational Project,” this DEIR is required, but failed to, more detailed analysis. Simply calling it a program EIR will not suffice under CEQA given that is reasonably feasible to provide greater specificity.	Please see Master Response 2 regarding reliance on previous environmental review.
LGW-25	IV. The DEIR’s Cumulative Impacts Analysis Is Deeply Flawed. A. It Is Improper for the DEIR’s Cumulative Impacts Analysis to Rely on the Areas 3 and 4 Specific Plan and Areas 3 and 4 Specific Plan EIR CEQA provides that “[p]reviously approved land use documents, including ... specific plans ..., may be used in cumulative impact analysis.” (Pub. Res. Code § 21100, subd. (e) (emphasis added).) The CEQA Guidelines further provide that a “pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs.” (CEQA Guideline 15130, subd. (d) (emphasis added).) The Areas 3 and 4 Specific Plan has not been properly approved and the Areas 3 and 4 Specific Plan EIR has not been properly certified. As argued above, to the extent that this DEIR is attempting to “tier” off the analysis of impacts and mitigations in the Areas 3 and 4 Specific Plan EIR, such tiering violates CEQA as the prior EIR was not properly certified. (Pub. Res. Code § 21094, subd. (a)(1).)	Please see response to LGW-24.

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Comment ID	Comment	Response
LGW-26	It is also inappropriate to rely on the mitigation analysis in the Areas 3 and 4 Specific Plan EIR and any measures "adopted" as part of the Areas 3 and 4 Specific Plan. Areas 3 and 4 Specific Plan has not been properly approved and the Areas 3 and 4 Specific Plan EIR has not been properly certified. These approvals have been set aside by court order since November 2012, months before the Notice of Preparation for the General Plan Update Draft EIR was issued on January 18, 2013. Further, Citizens challenged the Areas 3 and 4 Specific Plan EIR for, inter alia, failure to adequately disclose or analyze cumulative impacts, and improper deferral of mitigations of impacts. Citizens renews each these objections in regards to the adequacy of the instant DEIR, particularly given that the DEIR's project description states that "the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR." (DEIR, p. 3-11.)	Please see response to LGW-24.
LGW-27	B. It Is Improper to Conclude That The General Plan Update's Cumulative Impacts Will Be Less Than Significant Based Simply On Mitigation Measures for Specific Plans or Other Projects. The DEIR violates CEQA by concluding that the General Plan's cumulative impacts will be less than significant simply because the impacts of an individual plan or project will be mitigated. Under CEQA, significant cumulative impacts may occur even if individual projects mitigate the impacts of that project to a level of insignificance.	Please see response to LGW-24.
LGW-28	The DEIR assumes, for many resource areas, that cumulative impacts will be less than significant simply because individual projects will be required to mitigate the impacts of that project to a level of insignificance. For instance, the DEIR concludes that the General Plan's cumulative biological impacts will be less than significant before mitigation as follows: This section analyzes potential impacts to biological resources that could result from a combination of the proposed Plan and other past, present, and reasonably foreseeable development in the South Bay. Such development includes infill development in the adjacent City of Fremont as well as the South Bay Salt Ponds restoration project, which will provide habitat for a number of tidal habitat-associated species, including the salt marsh harvest mouse, salt marsh wandering shrew, and will include enhancement of managed ponds specifically for use by waterbirds. The Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area are the largest remaining tracts of relatively undeveloped land in the Plan Area. In the absence of project-specific mitigation measures identified in previous environmental review conducted by the City of Newark, potentially significant impacts related to special-status plants and animal species, wetlands, riparian habitat, and sensitive natural communities would all contribute to cumulatively significant impacts in the South Bay. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. However, as determined in previous environmental review conducted by the City, the mitigation measures prescribed for all of these impacts would adequately mitigate the project's contribution to these cumulative impacts. Buildout of the proposed Plan would not include any additional development in these areas over and above that which has already been analyzed in previous EIRs. Proposed Plan policies and actions detailed above provide a framework that promotes context-sensitive development and seeks to minimize impacts on sensitive natural resources. Additionally, future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas. Therefore, with adherence to applicable federal, State, and local regulations and implementation of mitigation measures identified in previous environmental review and adopted by the City of Newark, the proposed Plan would result in less-than-significant cumulative impacts to biological resources in the	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR

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Comment ID	Comment	Response
	South Bay. (DEIR, p. 4.3-48.) This repeats the flaws in the Areas 3 and 4 Specific Plan EIR (which Citizens renews its prior objections to) and ignores the very purpose of cumulative impacts analyses. The biological impact mitigation measures for the Specific Plan will only "minimize" impacts, not eliminate them, and because these impacts are minimized, but not avoided, an EIR cannot avoid considering such impacts as part of its cumulative impacts analysis.8 The courts have long recognized that even individually "minimized" impacts can still be cumulatively significant when considered in connection with past, present and future projects. As explained in EPIC v. Johnson: CDF then stated that timber operations in general had to substantially lessen significant adverse impacts on the environment, and closed with this comment: "To address the cumulative effect issue the Department has taken the tact [sic] that if the adverse effects are minimized to the maximum on each individual operation, then the total effect in the surrounding area will also be minimized to an acceptable level." This statement is at odds with the concept of cumulative effect, which assesses cumulative damage as a whole greater than the sum of its parts. [8 For example, the Areas 3 and 4 Specific Plan EIR states that "Impact BIO-2" is significant because "Development within Area 4 would result in substantial adverse effects on federally protected wetlands (seasonal wetlands) and associated special status species due to altering the hydrology on the project site." (AR 466.) The Areas 3 and 4 Specific Plan EIR proposes Mitigation Measures BIO-2.1 through 2.5, which it finds will reduce this significant incremental impacts to less-than-significant. (AR 466-468.) One of these, Mitigation Measures BIO-2.4, provides that "[t]he following measures shall be implemented to minimize any perennial ponding within the existing seasonal wetlands.... Nuisance runoff from the proposed residential and golf course uses shall be minimized and controlled to reduce their input into the remaining natural habitat during the dry season." (AR 467 (emphasis added).) Similarly, the Areas 3 and 4 Specific Plan EIR states that "Impact BIO-8" is significant because "Project development would result in significant impacts due to the loss of federally and state listed endangered salt marsh harvest mouse and California species of special concern salt marsh wandering shrew individuals and habitat." (AR 480.) The Areas 3 and 4 Specific Plan EIR proposes Mitigation Measures BIO-8.1 through 8.4, which it finds will reduce this significant incremental impacts to less-than-significant. (AR 481-482.) Mitigation Measures BIO-8.1 provides: "Temporary disturbance to and permanent loss of salt marsh harvest mouse and salt marsh wandering shrew habitat shall be avoided to the maximum extent practicable." (AR 481 (emphasis added).) Mitigation Measures BIO-8.3 provides: "Mitigation Measure MM BIO-8.2 will minimize the probability of salt marsh harvest mice and salt marsh wandering shrews entering the site but in addition, any individuals already in the impact areas shall be salvaged and translocatedto the exterior of the construction exclusion area. Although detecting every individual on a site is not feasible due to these species' secretive habits ...." (AR 481 (emphasis added).) In other words, the measures in question acknowledge that these impacts will not or cannot be entirely avoided.]	
LGW-29	C. The DEIR Fails to Properly Consider The Cumulative Biological Impacts of Development. The DEIR states cumulative biological impacts could result from a "combination of the proposed Plan and other past, present, and reasonably foreseeable development in the South Bay." (2013 GP DEIR, 4.3-48.) Yet, the DEIR's cumulative impacts section only considers three "sources" of cumulative biological impacts: (1) the General Plan, (2) the Areas 3 and 4 Specific Plan, and (3) the Dumbarton TOD Specific Plan, and based on these three "projects" concludes that any cumulative biological impacts will be less than significant. The DEIR improperly omits any consideration of any South Bay development beyond these three sources, and specifically omits consideration of the well documented losses of seasonal wetlands and uplands in the South Bay.9 This omission is particularly egregious given that the DEIR itself acknowledges that "the cumulative losses of seasonal wetland habitat around the South Bay are	As a program level EIR, it is not required to analyze specific projects and therefore the analyses contained throughout the DEIR are adequate for a program level review.

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	significant." Despite this admission, the DEIR includes no discussion of the extent to which habitat will be lost due to other development, and no discussion of whether the cumulative impact will remain significant even if Newark's plans are mitigated. [9 The EPA/Regional Water Board's "Baylands Ecosystem Habitat Goals Report" (1999) by Monroe et al. states that "since the mid-19th century, 80 percent of original tidal marsh as well as large amounts of mudflats, seasonal wetlands, and upland habitats in the San Francisco Bay have been lost due to human development," that historically, moist grasslands existed in large expanses adjacent to much of the baylands in South Bay, and that in the South Bay "development has destroyed most of the historical moist grasslands" with notable exceptions including the "upper reach of Mowry Slough in Newark."]	
LGW-30	D. The Draft EIR Improperly Relies On Assumed Future Mitigation to Conclude that Cumulative Impacts Are Less Than Significant. Another premise supporting the DEIR's conclusion that cumulative biological impacts will be less than significant is that "future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas." (DEIR, p. 4.3-48.) Courts have found similar analysis inadequate. For example, a quantitative cumulative impact analysis for groundwater cannot be avoided by simply assuming that impacts of future projects would be mitigated through water conservation efforts. (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App. 3d 692, 729.) For these reasons, the DEIR's cumulative impacts analysis is flawed.	Please see response to LGW-24. Additionally, as a programmatic level EIR, there are no specific projects being proposed as part of the proposed General Plan and therefore project specific impacts cannot be analyzed. For that reason, the programmatic approach is appropriate under CEQA and, therefore, no changes are necessary.
LGW-31	V. The DEIR Improperly Analyzes Alternatives. The DEIR's analysis of alternatives improperly used a baseline where the Areas 3 and 4 Specific Plan is considered part of the "existing built environment." The Areas 3 and 4 Specific Plan is considered one of the "existing plans and policies" under the No Project Alternative (DEIR, p. 6- 1) and the Areas 3 and 4 Specific Plan "would continue to be implemented." (DEIR, p. 6-3.) The DEIR's improper approach skews its analysis of other alternatives, included the preferred alternative, by comparing the proposed Project to a baseline where the Areas 3 and 4 Specific Plan already exist. While analysis of the no project alternative must include a discussion of "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services" (CEQA Guideline 15126.6, subd. (e)(2)), here the set aside Areas 3 and 4 Specific Plan is not a current plan nor can it reasonably be expected to occur in the foreseeable future if the General Plan were not approved.	Please see Master Response 1 regarding the baseline for environmental review and Master Response 3 regarding the adequacy of alternatives. With regards to alternatives, pursuant to CEQA Guidelines Section 15126.6, an EIR shall describe a range of reasonable alternatives to the project. Accordingly, three alternatives were selected; including the CEQA required No Project Alternative.
LGW-32	VI. The EIR Will Need to Be Recirculated for Additional Responsible Agency and Public Comment Because significant new information will need to be is added to the EIR before certification, the City of Newark will be required to recirculate the DEIR. Such new information will include, inter alia, changes in the environmental setting, and additional specific information about the impacts and mitigations related to the Areas 3 and 4 specific plan. (CEQA Guideline 15088.5.) Recirculation will also be required because this draft EIR is so fundamentally and basically inadequate that meaningful public review and comment is precluded. (Mountain Lion Coalition v. Fish & Game Com.(1989) 214 Cal.App.3d 1043).	Please see response to LGW-1 regarding recirculation.
GECO-1	SUBJECT: REVIEW OF ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF NEWARK GENERAL PLAN TUNE UP DRAFT PROGRAM EIR Dear Mr. Grindall; Grassetti Environmental Consulting (GECo) has been retained by Citizens' Committee to Complete the Refuge (Citizens) to review the Draft Program Environmental Impact Report (EIR) on the City of Newark's General Plan Tune Up for compliance with the California Environmental Quality Act (CEQA) and its implementing Guidelines. This review was conducted by Richard Grassetti, the firm's principal, and is based on my 30+ years of experience in CEQA document preparation, review, and training. My review indicates that the CEQA documentation for the project is inadequate and incomplete, and that the EIR fails to meet CEQA Guidelines. The bases for these conclusions are detailed	The comment is noted. As indicated in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines.

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GECO-2	Vague and Unclear Project Description - What's a Tune Up? State planning law includes provisions for adopting General Plans, Specific Plans, Master Plans, Subdivision, Rezoning, and other planning and entitlement approvals. Nowhere among those various options is a "tune up". Therefore, neither the public nor the City decision makers are readily informed by the DEIR as to what the actual project (discretionary action and underlying activities) is. Reading the Executive Summary doesn't help – Section 1.3 refers to the Tune Up as an "updated policy framework", which is also not a discretionary act under CEQA. Similarly, on p. 2-1, Section 2.1, describing the Proposed Action, fails to inform the reader as to the City's proposed action. It is not until p. 3-23, that the EIR states that this is, in fact, a new General Plan, and then only peripherally, "As required by state law, the Public review Draft General Plan will be circulated for review…" This is the first mention of the actual discretionary action proposed by the City, and the first mention that the project is, in fact, an updated General Plan. Only on p. 3-28, a full 58 pages into the document, does the EIR finally mention (in a table), that the project for which the EIR is being prepared is "the proposed Plan", but even there, the DEIR does not tell the public that this is a new, updated, General Plan.	The type and purpose of the EIR is described on pages 1.3 through 1.4, page 2-1, and page 3-1 of the Draft EIR. The proposed action is described on page 2-1 and pages 3-14 through 3-29 of the Draft EIR. Approvals and discretionary and ministerial actions required for implementation of the proposed Plan are detailed on page 3-28 and 3-29 of the Draft EIR. The City further notes that the General Plan Tune Up is the working title of the proposed Plan.
GECO-3	Backwards Planning has Resulted in Backwards CEQA Tiering Land use planning in California is based on the concept of a General Plan being the blueprint for development within a city or county. Specific plans are adopted after adoption of a General Plan, with which the specific plans must be consistent. Newark has adopted specific plans that were not generally consistent with its General Plan, and is now attempting to rectify the inconsistencies by "Tuning Up" its General Plan to be consistent with its specific plans.	In 2008, the City amended its General Plan to include Policy 2.2a of the Housing Element which calls for the development of "specific plans and zoning amendments for Areas 2, 3 and 4 to provide significant amounts of land for new residential development." Pursuant to this policy, the City then prepared and adopted the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan in 2011. As described on pages 3-3 through 3-14 of the Draft EIR, the General Plan was amended with the adoption of the specific plans. Therefore, the comment is incorrect to assert that the City has undertaken "backwards planning" and incorrect to assert that the City is "now attempting to rectify the inconsistencies."
GECO-4	In addition to not complying with California's planning hierarchy, it also results in inconsistencies between this DEIR and the EIRs that were prepared for the Specific Plans and Area Plans.	The comment does not identify any specific instances of inconsistency. The City disagrees with this comment. No further response is required.
GECO-5	Further, this EIR fails to allow those EIRs to tier off of the General Plan EIR, but instead, appears to tier the general Plan EIR off of the Specific Plan/Area Plan EIRs. This DEIR acknowledges the correct environmental review sequence on the bottom of page 1-3, but fails to follow that sequence. As detailed in the tables below, this has resulted in conflicting and confusing EIR conclusions of significance, where the General Plan EIR concludes that impacts are less-than-significant impacts while the underlying specific plans/area plans have been determined to have potentially significant impacts.	As noted on page 2-2 and 2-3 of the Draft EIR, a number of documents, including the Area 3 and 4 Specific Plan EIR and the Dumbarton TOD Specific Plan EIR, are incorporated by reference pursuant to CEQA section 15150. The Draft EIR does not tier off the specific plans. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review.
GECO-6	Additionally, this General Plan EIR frequently defers impact analyses to future EIRs that, in reality, have already been done. This problem is compounded by the confusion, confirmed by a November, 2012 trial court order holding that the Area 3 and 4 EIR does not specify whether it provides program or project-level analysis of the Area 3 and 4 plan. Program EIRs based on other Program EIRs that defer analysis to never-to-be-required project EIRs does not constitute CEQA compliance.	Please see Responses to Comments GECO-3 and GECO-5 above. Previous environmental review conducted by the City is incorporated by reference into the Draft EIR. Additionally, as noted on pages 1-3 through 1-4, the Draft EIR is a Program EIR, and as such, it is not project-specific and does not evaluate the impacts of specific projects that may be proposed under the Plan. Future development projects on specific sites, including sites in the Southwest Newark Residential and Recreational Focus Area and the Dumbarton TOD Focus Area, will require separate project-level environmental review in order to secure the necessary development permits. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review.
GECO-7	Reliance on Past Environmental Impact Reports The DEIR relies in part on the Areas 3 and 4 EIR and a Housing Element EIR. The Areas 3 and 4 EIR has been suspended by the Alameda Superior Court as it was materially deficient. One of the primary issues in the case was whether the Area 3 and 4 EIR provided an adequate level of analysis to serve as a project-level EIR. For both these reasons, it is inappropriate for this DEIR to rely on the findings of that prior document. Further, the DEIR assumes that	Please see Master Response 2 regarding Reliance of Previous Environmental Review.

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	the Areas 3 and 4 General Plan Amendments have been approved – this is wrong, as the approvals have been suspended by the court.	
GECO-8	The Housing Element EIR relied on the environmental setting, impact analysis, and mitigation measures contained in two previous EIRs adopted by the City of Newark. Those EIRs covered the City's General Plan and a previous proposal for development of Area 2, and were prepared in 1992 and 1999, respectively. Given the age of those documents (17 and 9 years), the amount of new development in Newark and adjacent communities since their preparation, the abundance of more recent data on biological resources, traffic, and air quality, and regulatory changes since 1992 and 1999, their analyses of traffic, air quality, noise, hydrology, land use, and biological resources settings, impacts, and mitigation measures are obsolete and cannot be assumed to be adequate for the currently proposed project. Basing this EIR on those EIRs in any substantive way results in a shell game, where impacts of the "Tune Up" are never actually identified and compared to existing setting conditions.	Please see Master Response 1 regarding Baseline for Environmental Review.
GECO-9	CEQA Baseline and Sea Level Rise – Ignoring the Elephant in the Room This DEIR's environmental setting and impact analyses are entirely silent on the greatest environmental issue to affect some of the opportunity areas, namely sea-level rise [The DEIR identifies City policies regarding sea-level rise, but includes no information on the physical environmental setting, impacts, or mitigation measures, which are the focus of CEQA.]. The San Francisco Bay Conservation and Development Commission (BCDC), which has jurisdiction over shoreline areas of the City, recommends the following consideration of sea level rise (BCDC, San Francisco Bay Plan, http://www.bcdc.ca.gov/laws_plans/plans/sfbay_plan#38): Climate Change, findings: c. Global surface temperature increases are accelerating the rate of sea level rise worldwide through thermal expansion of ocean waters and melting of land-based ice (e.g., ice sheets and glaciers). Bay water level is likely to rise by a corresponding amount. In the last century, sea level in the Bay rose nearly eight inches. Current science-based projections of global sea level rise over the next century vary widely. Using the IPCC greenhouse gas emission scenarios, in 2010 the California Climate Action Team (CAT) developed sea level rise projections (relative to sea level in 2000) for the state that range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. The CAT has recognized that it may not be appropriate to set definitive sea level rise projections, and, based on a variety of factors, state agencies may use different sea level rise projections. Although the CAT values are generally recognized as the best science-based sea level rise projections for California, scientific uncertainty remains regarding the pace and amount of sea level rise. Moreover, melting of the Greenland and Antarctic ice sheet may not be reflected well in current sea level rise projections. As additional data are collected and analyzed, sea level rise projections will likely change over time. The National Academy of Sciences is in the process of developing a Sea Level Rise Assessment Report that will address the potential impacts of sea level rise on coastal areas throughout the United States, including California and the Bay Area.	The comment is noted. The BCDC is not an authority on flood danger or improvements needed to address flooding; It is a State Agency with authority to regulate fill of the Bay and other areas of its defined jurisdiction. Please see Master Response 4 regarding sea level rise.
GECO-10	BCDC also suggests that planning efforts address sea-level rise as follows: e. Shoreline areas currently vulnerable to a 100-year flood event may be subjected to inundation by high tides at mid-century. Much of the developed shoreline may require new or upgraded shoreline protection to reduce damage from flooding. Shoreline areas that have subsided are especially vulnerable to sea level rise and may require more extensive shoreline protection. The Commission, along with other agencies such as the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency, the United States Army Corps of Engineers, cities, counties, and flood control districts, is responsible for protecting the public and the Bay ecosystem from flood hazards. This can be best achieved by using a range of scientifically based scenarios, including projections, which correspond to higher rates of sea level rise. In planning and designing projects for the Bay shoreline, it is prudent to rely on the most current science-	Please see Master Response 4 regarding sea level rise.

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	based and regionally specific projections of future sea level rise, develop strategies and policies that can accommodate sea level rise over a specific planning horizon (i.e., adaptive management strategies), and thoroughly analyze new development to determine whether it can be adapted to sea level rise. o. Approaches for ensuring public safety in developed vulnerable shoreline areas through adaptive management strategies include but are not limited to: (1) protecting existing and planned appropriate infill development; (2) accommodating flooding by building or renovating structures or infrastructure systems that are resilient or adaptable over time; (3) discouraging permanent new development when adaptive management strategies cannot protect public safety; (4) allowing only new uses that can be removed or phased out if adaptive management strategies are not available as inundation threats increase; and (5) over time and where feasible and appropriate, removing existing development where public safety cannot otherwise be ensured. Determining the appropriate approach and financing structure requires the weighing of various policies and is best done through a collaborative approach that directly involves the affected communities and other governmental agencies with authority or jurisdiction. Some adaptive management strategies may require action and financing on the regional or subregional level across jurisdictions. w. The California Climate Adaptation Strategy recognizes that significant and valuable development has been built along the California coast for over a century. Some of the development is currently threatened by sea level rise or will be threatened in the near future. Similarly, the coastal zone is home to many threatened or endangered species and sensitive habitats. The strategy acknowledges that high financial, ecological, social and cultural costs of protecting everything may prove to be impossible; in the long run, protection of everything may both futile and environmentally destructive. The strategy recommends that decision guidance strategies frame cost-benefit analyses so that all public and private costs and benefits are appropriately considered. The strategy further recommends that state agencies should generally not plan, develop, or build any new significant structure in a place where that structure will require significant protection from sea-level rise, storm surges, or coastal erosion during the expected life of the structure (emphasis added0. However, the strategy also acknowledges that vulnerable shoreline areas containing existing development or proposed for new development that has or will have regionally significant economic, cultural, or social value may have to be protected, and infill development in these areas should be closely scrutinized and may be accommodated. The strategy recommends that state agencies should incorporate this policy into their decisions. If agencies plan, permit, develop or build any new structures in hazard zones, the California Climate Adaptation Strategy recommends that agencies employ or encourage innovative engineering and design solutions so that the structures are resilient to potential flood or erosion events, or can be easily relocated or removed to allow for progressive adaptation to sea level rise, flood and erosion.	
GECO-11	As discussed below, it is my professional opinion that the City's approach is in error. CEQA both permits and requires that the baseline used in an EIR to be adjusted to consider all potentially significant environmental impacts.	Please see Master Response 1 regarding baseline for environmental review and Master Response 4 regarding sea level rise
GECO-12	The DEIR uses existing conditions as its setting, which is normally the appropriate baseline for CEQA documents. However, as discussed in a recent California Supreme Court Decision, a future baseline condition may be substituted for existing conditions if using the existing conditions as a baseline "would be misleading or without informational value" [Neighbors for Smart Rail v. Exposition Metro Line Construction Authority and Los Angeles County Metropolitan Transportation Authority, August 5, 2013 (Smart Rail).]. Given that the scientifically accepted projections of sea-level rise would result in a far different setting scenario than under existing conditions, and given that the project's environmental impacts would be significant and more severe under those condition, a future baseline should be used for this issue, either in place of, or in addition to, the existing condition baseline.[3 Smart Rail at p. 448:	Please see Master Response 1 regarding baseline for environmental review and Master Response 4 regarding sea level rise

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	"existing conditions is the normal baseline under CEQA, but factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decision makers." Smart Rail at p. 449: "Communities for a Better Environment provides guidance here in its insistence that CEQA analysis employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts. (Communities for a Better Environment, supra, 48 Cal.4th at pp. 322.)" Smart Rail at p. 454: "nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project's significant adverse effects."] Under the likely future conditions (sea-level rise of 5 feet or more), portions of the City of Newark's sewage disposal, storm drainage, flood control, and roadway networks likely would not function adequately to serve the proposed development, which would result in impacts of the project on the environment (for example project-generated increases in flood flows, increase in sewage problems, unmet water supply demands, etc.). CEQA also requires that an EIR on a long-term project address long-term impacts of the project [Smart Rail at p. 454: "An EIR should consider "both direct and indirect effects and [give] due consideration to both the short-term and long-term effects of the project. (Cal.Code Regs., tit. 14, § 15126.2, subd. (a).)" Smart Rail at p. 455: "The CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades. That a project will have a long operational life, by itself, does not justify an agency's failing to assess its impacts on existing environmental conditions."]. Given CEQA's requirement that EIRs disclose a project's environmental impacts and the potential severity of impacts, a long-range, plan-level EIR that does not address the substantial long-range environmental impacts associated with sea-level rise is inadequate.	
GECO-13	Cumulative impacts associated with long-term sea level rise also must be addressed. The EIR should analyze how cumulative development proposed in the new Plan would affect infrastructure capacity and need to improve both utilities and flood protection infrastructure.[Smart Rail at p. 450 states, "In particular, the effects of the project under predicted future conditions, themselves projected in part on the assumption that other approved or planned projects will proceed, are appropriately considered in an EIR's analysis of cumulative impacts (see Cal.Code Regs., tit. 14, § 15130) or in a discussion comparing the project to the "no project alternative" (id., § 15126.6, subd. (e)). " and again at Smart Rail, p. 454: "As the Sunnyvale West court observed, a project's effects on future conditions are appropriately considered in an EIR's discussion of cumulative effects and in discussion of the no project alternative. (Sunnyvale West, supra, 190 Cal.App.4th at pp. 1381–1382.)]	The comment is noted. Please see Master Response 4 regarding sea level rise.
GECO-14	Finally, the EIR, in some cases, assumes that an approved Areas 3 and 4 Plan is the baseline and in other cases uses existing conditions. CEQA does not permit a Plan-to-Plan analysis absent a compelling reason to do so.	Please see Master Response 1 regarding baseline for environmental review.
GECO-15	Analytical Gaps The purpose of an EIR is to provide an evidence-based analysis of environmental impacts leading to a conclusion regarding potential significance of the impact, and to set forth and analyze mitigation measures for potentially significant impacts. In many cases this EIR provides a skeletal discussion of the existing conditions, then a list of policies in the proposed Plan and other documents, and then a conclusion of significance. What's missing is the analytical step of explaining how the EIR got from the list of policies to a finding of non-significance. Said another way, the EIR fails to include an analysis of impacts; instead in only includes a list of policies followed by conclusions of significance. In so doing, in many areas as identified in the Deficiencies in the Technical Analyses discussion below, the EIR lacks an analytical bridge between the environmental setting, proposed General Plan policies, and the determination of impacts significance. [It should be noted that cities may approve projects by that do not meet all of a Plan's policies, so that the mere adoption of policies does	The commenter's opinion is noted; however, the comment does not specifically raise any environmental concerns. No further response is required. This comment serves as an introduction to subsequent comments (GECO-16 to GECO-57). Responses to each of the comments on the technical areas are provided below. In addition, if the City is inclined to approve a future project that does not conform with one or more Plan policies, the City will either need to adopt a statement of overriding considerations in conjunction with site-specific review for the project or amend the Plan at that time, which will require additional environmental documentation to support that action.

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	not assure mitigation of impacts]	
GECO-16	For example: The EIR does not provide any analysis of cumulative aesthetic impacts, just a listing of policies and a conclusion. Further, the conclusion of no significant cumulative impacts because of implementation of policies that have been determined not to be effective for Areas 3 and 4 is contradictory and nonsensical.	Please see page 4.1-13 through 4.1-15 for a complete discussion on cumulative impacts related to aesthetics. Additionally, and as stated in Section 2.2.3, Incorporation By Reference, several existing documents were used throughout the DEIR pursuant to Section 15150 of the CEQA Guidelines. No changes are necessary.
GECO-17	The EIR's construction related air quality "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no supporting analyses.	As stated in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared as a program EIR and therefore does not consider project-specific impacts. As such, and in the absence of proposed projects under the proposed Plan, there are no project-specific air quality impacts to be analyzed as part of this EIR. Therefore, provided the policies and actions under the proposed Plan are adhered to, impacts would therefore be less than significant. No changes are necessary.
GECO-18	The air toxics "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis.	As described in Chapter 4.2, Air Quality, the evaluation of health risk for a General Plan is based on BAAQMD's recommended methodology for a Plan-Level analysis. In accordance with BAAQMD's recommendations, AIR-4 describes impacts from both siting new sources of toxic air contaminants and from placement of sensitive receptors proximate to existing sources of toxic air contaminants. As identified in AIR-4, Policy EH-1.6, would require that sensitive receptors placed proximate to major sources of air pollution would be required to mitigate to achieve BAAQMD's performance standards for community risk and hazard impacts and Action EH-1.C, would require that projects that generate new sources of TACs would be required to reduce emissions to the BAAQMD's performance levels for community risk and hazard impacts.
GECO-19	The Impact BIO-1, BIO-2, and BIO-3 "analyses" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis. Those impacts also rely on future CEQA review and mitigation to reduce impacts to less than significant, which apparently is not proposed by the City.	As stated in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared as a program EIR and therefore does not consider project-specific impacts. As such, and in the absence of proposed projects under the proposed Plan, there are no project-specific biological impacts to be analyzed as part of this EIR. No changes are necessary.
GECO-20	The Impact GEO-3 "analysis" (p. 4.5-15) does not assess any impacts associated with major hazards in proposed development areas, including lateral spreading, liquefaction, subsidence, or collapse. A list of policies followed by a conclusion is not an impact assessment.	On page 4.5-15, the referenced discussion is presented under a subheading entitled "Impact Discussion." With respect to Impact GEO-3, the potential for development under the proposed Plan to result in significant impacts related to on- or off-site land sliding, lateral spreading, subsidence, liquefaction, or collapse is discussed and considered, and appropriate and relevant regulatory requirements and policies are identified. The foregoing evaluation is consistent with current CEQA guidelines (CCR Title 14, Division 6, Chapter 3, Article 9, Section 15126 et seq.). Furthermore, the EIR evaluates the environmental impacts of the proposed General Plan, commensurate with the level of detail provided in the project description, an approach that is also consistent with CEQA Guidelines. The degree of specificity in an EIR should correspond to the degree of specificity in the activity described in the EIR. In this case, the activity described in the EIR is a General Plan, not a specific, narrowly-tailored construction project, where a greater degree of specificity would be expected.
GECO-21	In addition, the EIR (Impacts HYDRO-1, 3, 4, and 5) fail to include any analysis the project's potential impacts on stormwater quality, either during construction of postconstruction, beyond a listing of policies and a conclusion.	The EIR under Impacts HYDRO-1, 3, 4, and 5 does discuss and analyze in detail the potential impacts of the project on storm water quality, including construction and post-construction impacts. These discussions are provided in each section prior to the listing of policies and conclusions. Unlike project permitting, CEQA review of general plans looks at the big picture and therefore this is a program level EIR. Thus, the impact sections discuss how future development projects would be required to comply with Federal, State, and local regulations that would minimize potential impacts on storm water quality and these requirements are listed and discussed in detail.
GECO-22	Impact UTIL-8 includes no actual analysis, just a list of policies and a conclusion.	The EIR under Impact UTIL-8 does include a discussion and analysis regarding storm water facilities, which is provided in the paragraph prior to the list of policies and conclusions. Because this document is a program level EIR, a detailed discussion of specific projects is not appropriate. However, the section does discuss the requirements for future development projects to comply with C.3 stormwater provisions, which will minimize the amount of runoff and impact on storm water facilities.

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GECO-23	Inappropriate Use of CEQA Checklist Approach The DEIR fails to identify a number of impacts, as identified below, because of its inappropriate use of the CEQA Initial Study checklist questions as the only possible impacts. That checklist is intended as a preliminary screening mechanism, not a detailed listing of all possible impacts. Once it has been determined that an EIR is required, the EIR should focus on actual impacts that may result from a project, not just responding to CEQA checklist questions.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
GECO-24	Additionally, as noted below, there are a number of instances where the EIR employs an impact heading which states that the project would not result in a significant impact, while the discussion that follows the heading reaches the opposite conclusion, thereby confusing the reader.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
GECO-25	Project Objectives The objective of "Embrace Newark's bayfront location" (p.3-3) is unclear. "Embrace" is a vague term preventing any measure of whether the project's alternatives' will achieve such an objective. Why is the preservation of open space along the bayfront not "embracing" this location? This is important because the DEIR concludes that the restricted Development Alternative does not achieve this objective, while never actually defining the objective. Given BCDC's policies encouraging protection of these bayfront areas as habitat and open space, we suggest removing this objective or defining it in terms of compliance with the Bay Plan's objectives.	The objective to "embrace Newark's bayfront location" reflects an acknowledgment that the city's historic growth patterns were oriented toward Interstate 880 and SR 84, rather than to the natural resources and amenities on the City's western flank. The intent of this objective is best understood in the context of the policies it underpins, including Policy LU-4.13 (enhancing views to water and wetlands, incorporating bayfront identity in public art and gateway treatment, Policy ED-5.6 (providing shoreline amenities such as trails, wildlife refuges, and bay vistas), and Policy PR-5.3 (encouraging alignment of the Bay Trail near the shoreline). These policies are all consistent with the Bay Plan's objectives. It is important to note that the Bay Plan only applies to areas under BCDC jurisdiction and not the more expansive mandate that the commenter is implying.
GECO-26	Deficiencies in the Technical Analyses Aesthetics The aesthetics discussion for the Southwest Newark and Residential Recreational Focus Area (SNRRFN) goes into great detail about parking lots and fire station building details, but fails to portray the overall change, at a Plan level, of the proposed Plan change. This is not appropriate and fails to provide the reader with an overview of what aesthetics might be changed by the project.	Impacts to the visual character of the Southwest Newark Residential and Recreational Focus Area are discussed on pages 4.1-11 through 4.1-12. The discussion described existing conditions, as well as the type of development envisioned in the relevant specific plan for the focus area, and then analyzes potential impacts in light of the regulations and policies which would guide development in this focus area under the proposed Plan. The impact discussion is appropriate and adequate. No change to the Draft EIR is required.
GECO-27	Impact AES-1 lists General Plan policies and concludes, without analysis, that development of the Plan would not result in significant impacts, but fails to explain how it reached this conclusion.	As discussed in AES-1 on page 4.1-6 through 4.1-7, there are no officially designated scenic vistas or view corridors in Newark nor does the proposed General Plan identify specific vistas or views for special protection in the future. Additionally, AES-1 states several existing and proposed policies that, in combination, would protect the current views. The analysis also states that future development would also be subject to applicable local laws and regulations. Therefore, the conclusion was reached that implementation of the proposed Plan along with compliance with existing laws and regulations with regard to scenic vistas would result in less than significant impacts. No further changes are necessary.
GECO-28	Similarly, the discussion of Impact AES-3 just lists statutes and policies, and summarily concludes that development of the Plan would not result in significant impacts, but does not explain how it reached this conclusion. There is no analytical bridge between the statement of policies and the determination of significance of impacts.	As indicated in AES-3 on page 4.1-12, the impact was in fact determined to be significant. Indicated on page 4.1-16, there are no feasible mitigation measures, and therefore it was concluded that AES-3 would result in a significant and unavoidable impact. The less than significant determinations in AES-3 refer to the impacts to visual character as a result of implementation of each of the four focus areas independently analyzed, however, collectively the implementation of the proposed Plan in all four focus areas would result in a significant impact. No changes are necessary.
GECO-29	The conclusion of AES-3 identifying the impact as significant appears to conflict with the statement on p. 4.1-8 that this impact would be less than significant.	Please see response to comment GECO-28.
GECO-30	Air Quality: The DEIR indicates that the project would have a large jobs/housing imbalance, which would generate more vehicle miles traveled and, therefore, more emissions, than otherwise generated. Plan growth would exceed BAAQMD Plan Area projections. In addition, the DEIR acknowledges that project VMT (and associated emissions) would exceed proportional population growth. The DEIR acknowledges that these emissions would constitute a significant impact (p. 4.2-34). However, the DEIR also states that the project is consistent with the 2010 Bay Area Clean Air Plan (p. 4.2-19). The project cannot be consistent with the plan if it exceeds plan per-capita emissions and planned population growth.	On page 4.2-18, the Draft EIR states that "while the proposed Plan would support the primary goals of the 2010 Bay Area Clean Air Plan, buildout of the proposed Plan would not be consistent with the Clean Air Plan because the projected vehicle miles traveled (VMT) increase from buildout of the proposed Plan would be greater than the projected population increase." Further, on page 4.2-48, the Draft EIR finds that although "numerous goals, policies, and actions contained in the proposed Plan address future increase in VMT and criteria air pollutants under the Plan, the projected growth in VMT in the Plan Area would still exceed the rate of population growth. [As] there are no additional measures that would reduce this impact..." this impact would remain "significant and unavoidable." The significance finding of the Draft EIR is valid and appropriate. No associated change is required to the Draft EIR.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
GECO-31	The DEIR (p. 4.2-39) then concludes that, because future CEQA analyses would be required to analyze air pollution emissions, operational emissions of criteria air pollutants under the plan would be less than significance. There are three problems with this approach.	Please see Responses to Comments GECO-3, GECO-5, and GECO-6 above. As noted, the Draft EIR is a programmatic EIR. Future development projects on specific sites, including sites in the Southwest Newark Residential and Recreational Focus Area and the Dumbarton TOD Focus Area, will require separate project-level environmental review in order to secure the necessary development permits. Air quality analysis included in the Draft EIR was prepared in accordance with BAAQMD CEQA Guidelines (June 2010) which do not require an evaluation of emissions from program-level planning activities such as the proposed Plan. [See BAAQMD's CEQA Air Quality Guidelines Part III, Assessing & Mitigating Plan Level Impacts (pages 9-1 through 9-20)]. Subsequent project level environmental analysis for future development will be required to conduct air quality analysis pursuant to the BAAQMD CEQA Guidelines outlined on pages [See BAAQMD's CEQA Air Quality Guidelines Part II, Assessing & Mitigating Project Level Impacts (pages 3-1 through 8-9)]. As the details of future development proposals cannot be known at this time, further technical analysis of air quality impacts in accordance with BAAQMD Guidelines would be speculative and not required pursuant to CEQA Section 15145. Therefore, the approach to air quality analysis taken in the Draft EIR is consistent with BAAQMD CEQA Guidelines and is appropriate. No change to the Draft EIR is required to address this comment.
GECO-32	First, this EIR ignores that the EIRs for the changes in the Plan have already been completed, and future EIRs apparently are not contemplated.	As described on pages 1.3 through 1.4, page 2-1, and page 3-1, the Draft EIR is a Program EIR and as such it is not project-specific and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. Please also see Response to GECO-3, GECO-5, and GECO-6 above.
GECO-33	Second, this conclusion of non-significance directly conflicts with the actual analysis of plan emissions, which showed that it would exceed district assumptions and significance standards. This EIR's confusing and contradictory approach fails to provide the reader with consistent information needed to consider the project's impacts.	As identified in Impact AIR-1 (see conclusion on page 4.2-34), impacts for consistency with BAAQMD's Bay Area Clean Air Plan were identified as significant because the rate of VMT growth would outpace the rate of population and employment growth.
GECO-34	Third, impacts cannot become less than significant simply based on future analysis.	The significance findings of the Draft EIR are not based on future analysis. Please see Responses to Comments GECO-31 through GECO-33.
GECO-35	For example, this EIR considers construction related air quality impacts to be reduced to less than significant by future environmental review (p. 4.2-39). Yet, as discussed above, such a review is not even proposed by the City because the City apparently intends to rely on past environmental reviews for most of the entitlements in these areas.	Please see Response to Comment GECO -32. The analysis and significance findings of the Draft EIR are valid and no change is required to the Draft EIR.
GECO-36	Further, the construction emissions analyses in both this EIR and the Areas 3 and 4 EIR upon which this study relies, fail to account for transport and grading of millions of cubic yards of materials to form huge earthen platforms needed to raise portions of Areas 3 and 4 out of flood hazard zones and create the massive new levees required to protect those areas from effects of sea level rise.	Please see Response to Comments GECO-3, GECO-5, GECO-6, and GECO-31 above. BAAQMD's CEQA Air Quality Guidelines identifies methodology for evaluating both "Project-Level" and "Plan-Level" impacts. This is because at a Plan-Level, details regarding subsequent projects are not known at a sufficient enough detail to be handled quantitatively. As identified in Part III, Assessing & Mitigating Plan Level Impacts (pages 9-1 through 9-20), and plans are the appropriate place to establish requirements for new construction. However, it would be speculative to identify phasing of future development citywide, construction subphasing, preliminary equipment, and estimates of soil import/export at the General Plan level. Part II, Assessing & Mitigating Project Level Impacts (pages 3-1 through 8-9), identifies methodology for evaluating project level impacts. Future discretionary projects within the City of Newark would be required to utilize BAAQMD's CEQA Air Quality Guidelines. Quantification of construction-related air quality impacts, including assessment of impacts from transport of soil import/export would be required for large construction projections pursuant to BAAQMD's methodology.
GECO-37	The cumulative air quality impacts analysis (AIR-3) and odors analysis (AIR-6) also rely on future environmental review to identify and require mitigation, while the City apparently is not contemplating any such future reviews. The City and the public can not know if approval of the proposed General Plan	Please see Response to Comment GECO-31 and GECO-32. The air quality analysis in the Draft EIR was prepared in accordance with BAAQMD standards. The Draft EIR does not defer mitigation.

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Comment ID	Comment	Response
	"tune-up" will have significant impacts if, as here, the EIR improperly defers analysis of impacts and mitigation measures.	
GECO-38	Biological Resources: The biological resources discussion relies on mitigation measures in the Housing Element EIR and Areas 3 and 4 EIRs to reduce impacts to less than significant. As described below, those measures from other EIRs may not be effective or sufficient:	As indicated in Chapter 2.0, Introduction, in Section 2.2.3, Incorporation By Reference, CEQA Guidelines Section 15150 allows all or parts of other documents to be incorporated into the EIR. No changes are necessary.
GECO-39	Housing Element EIR Mitigation Measures: The biological resources setting Table 4.3-1 and the conclusions that there are no substantial wildlife migration corridors do not reference any supporting biologist or biological resources report. What is the evidence/source document supporting the assertions of species likelihood, as summarized in the table, or wildlife corridors, as claimed on p. 41?	Please see page 4.3-20 for a list of sources used in preparing Table 4.3-1.
GECO-40	Given that detailed biological resources assessments have been completed for some or all of Areas 2 and 4, please include that information in the EIR. For example, it is known that the federally –listed endangered salt marsh harvest mouse occurs on Area 4. Therefore, it is incumbent on this EIR to include and consider that known information.	Please see page 4.3-29 in the Biological Resources chapter for information pertaining the Salt-marsh harvest mouse.
GECO-41	Mitigation Measures 4.3-1 and 4.3-2 are inappropriate deferrals of analysis (in conflict with Sundstrom v. County of Mendocino) to future mitigation measures. At a minimum, this EIR should include prescriptive measures, similar to others approved by regulatory agencies for other projects in the area that would clearly mitigate the project's potential impacts to special status species.	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
GECO-42	Areas 3 and 4 EIR Mitigation Measures [As noted above, it is improper for this EIR to rely upon an EIR that has been suspended because it was materially deficient.] Eviction of burrowing owls as proposed in mitigation BIO-4.2 may result in those evicted owls being depredated at a higher rate than if not evicted, or otherwise suffer population losses as a result of this eviction. The comment notes that, if no such studies exist, impacts to owls should be considered significant and unavoidable. Please note that the document, "Status of Burrowing Owls in Southern California," published by the nonprofit Institute for Bird Populations, found that the owl population in western Riverside County continues to drop despite a sweeping habitat conservation plan that is supposed to protect the birds and 145 other species of animals and plants. As reported in the Riverside Press Enterprise, January 14, 2008: The study's authors found that one-fourth of the owl habitat in western Riverside County was destroyed in the first three years after the habitat plan went into effect. "As long as we treat the mitigation efforts the same, it is very likely burrowing owls will become extinct from the local area," said the study's lead author, Jeff Kidd, a wildlife biologist who lives in the Lake Mathews area of Riverside County. Developers in Riverside County most often use "passive relocation" when owls stand in the way of development. In passive relocation, one-way doors are installed at burrow entrances to keep the owls from re-entering and being killed when the land is graded, said Kidd, a licensed wildlife biologist. Kidd said he calls the process "active eviction." "They usually have no other home to go to, so they die. They get predated or they get hit by vehicles," he said.	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
GECO-43	Impacts BIO-5 and BIO-6 are examples of why the EIR should not have relied upon the Initial Study Checklist questions in its determination of impact topics – the CEQA physical environmental issues that should have been addressed in these impact discussions are loss of trees and impacts to SF Bay Refuge habitats and sensitive species. Instead, the EIR focuses on compliance with the City's tree ordinance and Basin Plan and Habitat Goals, which are not a physical environmental effect and are therefore peripheral to the CEQA analysis.	Impacts to biological resources, including to the extent required under CEQA impacts to sensitive species, natural habitats, and trees, are discussed and analyzed on pages 4.3-32 through 4.3-48. The analysis of the Draft EIR is adequate. No change to the Draft EIR is required to address this comment.
GECO-44	Cultural Resources The historic structures discussion relies on studies completed in 1989, nearly 25 years ago; it is likely that additional structures have become eligible for listing since that time. Please update this list.	As indicated on page 4.4-7, the St. Edward's Church and the James Graham residence were confirmed to be the only historic resources on the City's list of historic resources.

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Comment ID	Comment	Response
GECO-45	The policies described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less-than-significant level. Potential loss of historic structures has been determined by the courts to be an unavoidable significant impact (i.e. League for Protection of Oakland's Historic and Architectural Resources v. City of Oakland). These policies do not prohibit such a loss therefore this impact remains significant and unavoidable.	The comment is noted. As discussed in Chapter 4.4, Cultural Resources, page 4.4-7 indicates that there are no historic resources in Newark that have been placed on the National or California registers, which would require special considerations under CEQA.
GECO-46	Geologic Resources The erosion discussion (Impact GEO-2) fails to address potential erosion impacts associated with the grading and placement of millions of cubic yards of fill required to form earthen huge platforms needed to raise portions of Areas 3 and 4 and other low-lying areas out of flood hazard zones and future need to create the massive new levees required to protect those areas from effects of sea level rise.	In Section 4.5.3, the impact discussion pertaining to erosion (Impact GEO-2) does, in fact, consider the potential for substantial soil erosion or loss of topsoil that could arise from development-related grading, including the emplacement of engineered fill. The section identifies and considers relevant regulatory requirements for construction-related erosion control, such as the City's ordinances that govern grading and excavation (i.e., City of Newark Municipal Code Sections 15.50.020 and 15.50.042). Potential impacts associated with flooding lie outside the scope of this chapter; they are (appropriately) discussed in Chapter 4.8 of the EIR. As noted elsewhere in these responses, a discussion of flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development. Instead, it represents an effect on the Project caused by the environment. As such, it does not require consideration or discussion under CEQA.
GECO-47	In addition, reliance on seismic design requirements from the California Building Code (Impacts GEO-1, 2, and 3) will not reduce impacts to infrastructure, such as roadways and pipelines.	The impact discussions for GEO-1, GEO-2, GEO-3 do not assert that the CBC pertains to seismic risk to infrastructure such as streets or underground utilities. City of Newark General Plan policies, such as Policy EH-2.4 (Infrastructure Resilience), do address standards for roads and infrastructure which consider geologic hazards.
GECO-48	Hydrology and Water Quality As discussed earlier in this letter, this section fails entirely to address sea level rise. The only flood hazard discussion is based on the 2009 FEMA flood hazard maps, which do not include rise in sea level and are currently being revised. New tidal and flood hazard elevations are currently being developed by FEMA in conjunction with the Alameda County Flood Control District [San Francisco Bay Area Coastal Study, California Coastal Analysis and Mapping Project, September 2012.]. As described in the plan for that study: FEMA's coastal study and mapping efforts benefit from new technologies and coastal data, including the latest 2010 detailed topographic data collected as part of the California Coastal Mapping Program. The coastal flood hazard analyses use regional-scale storm surge and wave models of San Francisco Bay. These models produce time-series output of water levels, open ocean swells, and wind-driven waves at over eight thousand points along the complex San Francisco Bay shoreline. Input parameters to the regional-scale models include ocean tide levels, lower Sacramento River discharges, wind and pressure fields, and various river and creek discharges. The model output from the regional models is used to estimate wave runup and overtopping along the Bay's myriad of shoreline structures and steep shorelines, as well as overland wave propagation over beaches, marshes, and inland developed areas. These onshore analyses will form the basis for potential revisions to the Base Flood Elevations (BFEs) and Special Flood Hazard Areas (SFHAs) within the coastal areas of the nine Bay Area counties. Coastal High Hazard Areas (Zone VE) will be mapped when supported by flood hazard modeling results. Any long-term planning effort for bayfront areas should include the findings of this study.	Please see Master Response 4 regarding sea level rise. Please also see Response to Comment GECO-49. Please see Chapter 4.8, Hydrology and Water Quality, impact analysis HYDRO-3 for an impact discussion related to potential flooding. Existing City regulations prohibit construction in the flood zone. If the flood zone boundaries change as a result of the referenced study, the regulations would apply to the new defined areas.
GECO-49	The DEIR correctly notes that BCDC assumes projects will have a lifespan of at least 50-90 years. Therefore, the analysis of impacts (and the baseline) should consider projected reasonable worst-case tidal heights during that time period. Recent estimates of up to 69 inches of sea level rise during the lifetime of proposed project housing would, if they occur, result in the project contributing to large-scale flooding of many of the proposed sites. In addition, rising sea levels will result in rearward flooding of local creeks draining to the Bay. The EIR relies on mitigation measures provides no evidence that raising Area 4 and other low-lying areas outside of possible sea level rise flood levels is even feasible while allowing flood control channels to continue to function. In addition, such elevation increases could require	The comment is noted. Please see Master Response 1 regarding the baseline for environmental review. Please see Master Response 4 regarding sea level rise. For a discussion on the analysis in Chapter 4.8, Hydrology and Water Quality, of the Draft EIR address runoff and erosion in several analyses including the discussions in HYDRO-1, HYDRO-3, HYDRO-4, and HYDRO-5. In general, the impacts were determined to be less than significant resulting from compliance with several existing State, federal, and regional regulations and policies, as well as with the implementation of several policies and actions under the proposed General Plan.

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Comment ID	Comment	Response
	placement and grading of millions of cubic yards of material, which could result in significant erosion and associated water pollution not assessed in this document.	
GECO-50	Maps of both revised FEMA flood elevations and projected sea level rise inundation of portions of the site should be added to the EIR.	As noted on Figure 4.8-4, FEMA data from 2010 was used for the analysis in the Draft EIR. The comment does not indicate a specific, more recent data set to use, nor does it provide substantial evidence that the Draft EIR contain inadequate information. No revision to the Draft EIR is required. Please also see Master Response 4 regarding sea level rise.
GECO-51	Impacts HYDRO 6 and HYDRO-9 use the wrong baseline and therefore fail to consider impacts of a 50-90 year Plan, as recommended by BCDC. See also previous comment regarding adequacy of flooding and sea level rise issues.	Please see Master Response 1 regarding baseline for environmental analysis and Master Response 4 on sea level rise.
GECO-52	Public Services The Plan should identify potential locations and impacts associated with construction of a new police station, which would be required to serve the increased population as well as the reconstruction of City Hall and library necessitated by implementation of high-density housing on the current City Hall site.	Although the discussion under PS-3 starting on page 4.12-7, and related to police services indicated a potential significant impact in the analysis, policies in the proposed General Plan would ensure that such impacts were reduced to less than significant levels. As stated in Chapter 1.0 and Chapter 2.0, the DEIR was prepared as program EIR, therefore does not consider project-specific impacts. As such, there were no immediate plans to construct a new facility at the time of the preparation of the EIR and, therefore, those project-specific impacts are not considered. No changes are necessary.
GECO-53	Utilities Water: The water supply analysis uses adequacy of water supply normal rainfall years as its criteria of significance. The DEIR acknowledges that water supply in single- or multiple-dry years would not be adequate for the proposed increased buildout envisioned by the General Plan Tune Up (Table 4.14-3). Yet the DEIR finds this impact to be less than significant solely on the basis of Plan policies that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence upon which to base the conclusions of a less-than-significant impact in these dry years. Further, the assumption that other water supplies would be available in such years (bottom of p. 4.14-10) is unsupported, as no firm contracts have apparently been established by the City or ACWD for those sources, and multiple agencies will by vying for any such sources in those years.	The commenter is mistaken in stating that the water supply analysis only uses the adequacy of water supply during normal supply years as its criteria of significance. As noted on pages 4.14-10 and 4.14-12 as well as Table 4.14-3, the adequacy of water supply during single- and multiple-dry years is discussed. The Alameda County Water District (ACWD) also serves the Cities of Fremont and Union City, which report in their General Plans that there would be a deficiency during single- or multiple-dry years. However, the projected increase in water use for Newark under the General Plan Update for 2035 with additional housing and commercial development is only 557 acre-feet, which is a very small percentage of the ACWD's supply demand of 72,800 acre-feet. The ACWD would also implement their drought contingency plan during dry years, which contains measures that will reduce demands by up to 50 percent. Additional reductions in water usage that were not accounted for in the analysis include requirements for new development to comply with Newark's Green Ordinance and Newark's Bay Friendly Landscape Guide to reduce irrigating water. Development within the Plan area would include the latest technology in water efficient plumbing fixtures and irrigation systems, as specified in the 2010 California Plumbing Code and the ACWD's Water Efficiency Measures for New Residential and Commercial Development. In addition, new development within the City would use non-potable groundwater or recycled water for non-potable uses when supply becomes available. With adoption of these measures by ACWD and the City of Newark, water supply would be adequate even in dry years.
GECO-54	Wastewater and Stormwater Systems: Projected sea-level rise during the project lifetime (at least 50-90 years) will require massive changes to the City's wastewater and stormwater system. Project-generated increases in flows into the systems, development of low-lying areas or construction of large developments on raised platforms, and construction of new high levees to protect the new development will exacerbate these problems and expand the need for facility alterations. The Plan should address the potential need for new lift stations, pumping plants, drainage issues, and contingencies for the projected sea-level rise baseline. We suggest coordinating with the ACFCD in this analysis.	Please see Master Response 4 regarding sea level rise. Impact analysis HYDRO-1 and HYDRO-5 analyze the impacts related to water quality as a result of implementation of the proposed Plan. Also, as discussed throughout Chapter 4.8, future development would be subject to project-by-project review in which specific impacts and mitigation measures would be identified with regards to wastewater and stormwater systems. Also identified throughout Chapter 4.8 are several policies under the proposed Plan which would protect the City of Newark's water quality and water sources.
GECO-55	Alternatives: The benefits (reduced impacts compared to the proposed project) of the Restricted Growth Alternative are understated. Air pollution and GHG emissions would be further reduced by elimination of the need to construct huge levees and earthen platforms for flood protection of development in flood areas. Hydrologic and water quality impacts would be substantially reduced by eliminating much of the planned development in flood-prone areas and areas where flooding will worsen substantially with sea-level rise over the next 50-90 years.	The comment contains factual inaccuracies. First, the construction of levees and earthen platforms is not proposed as part of the Plan or its alternatives. It appears the commenter is speculating such construction will be necessary in the future. To the extent that the comment relates to sea level rise, please see Master Response 4. Second, as discussed on page 6-22 through 6-23, the proposed Plan would result in less-than-significant impacts with respect to hydrology and water quality. While a reduced area would be subject to the potential to affect drainage patterns, water quality, and water resources and the Restricted Growth Alternative would represent a

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		slight improvement over the proposed Plan in regards to hydrology and water quality. The determination of the Draft EIR is appropriate. No change to the Draft EIR is required.
GECO-56	The environmentally Superior Alternative discussion should be revised to eliminate or clarify the vague objective of "embracing Newark's bayfront location". Further, it is unclear why the Restricted Growth Alternative could not be designed to meet the objectives of facilitating cleanup of contaminated sites and foster TOD. Please revise the description of that alternative to meet those goals.	The comment is noted. See response to comment GECO-25.
GECO-57	Conclusion As described above, this DEIR has numerous substantive flaws that render it inadequate under CEQA. It is my professional recommendation that this EIR must be revised as indicated in this letter and recirculated for further public review and comment. Please feel free to contact me at 510 849-2354 if you have any questions regarding the comments herein.	The commenter's opinion is noted. As indicated in Chapter 1.0, Executive Summary, this DEIR was prepared in accordance with CEQA Guidelines.
General Public		
Bradley-1	For the record, I have attached the "written" version of the comments I made last night at the Planning Commission meeting. Thank you for the opportunity to address you regarding the GPT. First let me alert you to the opportunity which was lost to encourage citizens to read over the draft version of the new General Plan. Like you, I would like more citizens to become involved in its vision and formulation. I recently received the latest edition of Newark's official publication, the Newark News. Did I find notification of the Draft General Plan Tune Up and its Draft Environmental Impact Report? even a brief mention of the draft documents being out on the streets and on the City's website for public review? Unfortunately, no. I would like commissioners to consider using all the media at their disposal to encourage citizens to share their views regarding the proposed Plan. Second, I would like you to know that I think there are some very good policies and actions proposed in the latest draft of the General Plan. For example, I really like the fact that City policy does not allow development in 100-year floodplains. I have heard what flooding in the 1980's did to the community of Alviso, just south of us. I think that most folks would consider the policy very sound. The first of two messages I would like to share with you tonight is simply this: all the good policies in the world are only as good their implementation. The planning documents say that the City does not allow development in flood plains. Unfortunately, many if not most of the policies and actions in the new Plan were not drafted in the kind of language that would actually require much in the way of compliance with their intent. I would urge planning commissioners to remove from the draft General Plan most of the "should's", the "may's", the "encourage" or "promote" or "facilitate", and the "to the extent practical". Why? Because as long as the General Plan policies and actions remain conditional, indeterminate, vague and voluntary, the policies will rarely be implemented in the manner or the spirit for which they were created. By allowing developers proposing to build in flood plains to mitigate the risks by building structures which are situated 11 feet atop pads placed in the flood plain does not cut it. And my second message? It is a foreboding: I fear that most of the City's limited resources and well-intentioned efforts are going to be sucked up with implementing the Dumbarton TOD Plan Focus area and recently dubbed Southwestern Newark Residential and Recreation Focus Area. I fear that it will be another 20 years before the City finds the time to focus on what I believe the majority of Newark citizens would like to see addressed now, namely, the challenges of renewing and revitalizing our existing neighborhoods and our retail, commercial and industrial areas. How? Through many of the policies and actions which, for me stand out as the visionary policies and actions that are also in the draft Plan: the policies and actions which address in-fill, pedestrian and bicycle friendly streets and corridors, maintenance and needed rehabilitation of parks, library, and other public facilities, more convenient access to local, out-of-walking-distance destinations such as the regional BART station and medical centers. I believe that those of you who live in this community would really appreciate a General Plan	The commenter raises questions of policy and priorities regarding the General Plan; however, it does not pertain to the merits of the DEIR. No further response is necessary.

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	that puts real meat on the policy bones, and actions that will focus on the types of services we all know are needed now, not some 20 to 30 years down the line. If you allow the major targets of growth and development to focus on the Dumbarton TOD and Southwestern Newark Recreation and Residential projects, then those will be the priorities, and not the types of core development that we need now. I would urge commissioners not to recommend the draft General Plan as it stands today. I would urge commissioners to come up with a real update reflecting the tremendous changes in physical, socio-demographic and economic landscape that have occurred since 1992. You should not continue to make recommendations to the Council that result in "business as usual." The Plan, as it stands now, and as it was just described to you by the City's consultant, will largely result in creating more urban density, traffic congestion, over-priced residential housing, and a continuing deterioration of the quality of life in our existing community. Again, thank you for the opportunity to share my thoughts on this draft update of the City's General Plan. I would appreciate your sharing them with all the planning commissioners. Again, thanks, for the chance to comment.	
Bradley2-1	Dear Mr. Grindall, I appreciate the City's resources that make sending the subject comments (attachment) by email. It was a dreadfully long document to review, but obviously represents a great deal of work on the part your staff and consultants. I apologize for the line numbers in my letter, but I could not get my Microsoft Word program to insert page numbers. Would you acknowledge receipt of the attached comments. I want to assure that there are no problems with the attachment that would delay your review. I will be passing by the Newark Library later this afternoon and will drop a hard copy of my comments (if there's a drop box available). Sincerely, John	The comment is noted. The attachment has been reviewed.
Bradley2-2	Thank you for the opportunity to comment on the draft General Plan Tune Up (DGPT) and related Environmental Impact Report (DEIR). I ask that my comments be given careful consideration as it has taken a great deal of time and effort to review and try to understand the documents. If other persons besides yourselves are tasked with reviewing comments from the public and drafting responses to the comments, then I ask you to personally assure that their responses are appropriate and not merely form-type responses. First, let me comment on the fact that, as a resident and postal customer of the Newark community, I recently received in the mail a copy of the Newark News, an official publication of the City. As you know, it is a newsletter which the City officials share with the residents to keep them posted as to what's going on in the community. I was mildly surprised that I found no mention of the DGPT/DEIR which had been released for a minimal public comment period. I presume there were many reasons why no mention of these documents was made in the Newark News. Nevertheless, I was disappointed that there was no announcement of the General Plan Tune-Up nor a request, however brief, that residents take a look at it and letter City Council representatives know if the plan is in fact in tune with their thinking. After all, it is the plan, with all its well-meaning policies and action directives, that will provide the guidance and foundation on which you, our elected officials and City staff, will move forward in serving residents in so many vital elements of our community life. I do presume that the City fulfilled its minimal obligatory notifications (which is probably noted somewhere in the 568-page DEIR). However, the fact that I did not see notice of it in the Newark News, nor hear it openly discussed by officials in community forums such as neighborhood association meetings, causes me to wonder in what ways City Council Members and City staff persons might inspire residents to become more involved in the formulation of such an important and visionary plan.	The comment is noted. As indicated in Chapter 2.0, Introduction, Section 2.4.1 states that the DEIR will be available for a 45 day comment period. As such, the public review comment period was open from August 14, 2013 through September 27, 2013, or 45 days, as required by CEQA Guidelines Section 15105.
Bradley2-3	Second, I want you to know that I think there are numerous policies and tasks in the draft version of the new, updated General Plan. However, this letter will not focus on all the good points of the draft General Plan Tune-Up, but rather on what I find confusing or deficient or inconsistent about the draft and its	The comment is noted; however, it does pertain to the merits of the DEIR. No further response is required.

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	accompanying report on environmental impacts. I do very much appreciate for instance that the City does not allow development in 100-year flood plains. On the other hand, I think it very ingenuous to get around this policy by placing development on artificially created mounds in the 100-year flood plain. And this is exactly what the draft GPT suggests as a way to mitigate. First it states that it does not allow development in 100-year flood plain and then makes an exception to the policy by stating it will be okay if the developer places the residential units at least 11+ feet above mean high tide. The mitigation that is proposed in several policy and action items under different elements of the DGPT do not avoid or minimize impacts to our environment in any but the legally most minimal manner possible, and in many cases I do not see how they meet even legally minimal criteria. This is my concern: that the DGPT appears to go to considerable lengths to assert that future development proposals will not have significant impacts; or if there will be significant impacts, then they will be mitigated to a level of non-significance; or if the impacts cannot be reduced to a level of non-significance, then the project will be considered of such overwhelming public benefit that they will be approved notwithstanding the significant environmental impacts. The remainder of my letter is a compilation of my annotations made during my review of those parts of the DGPT that I was able to find time to read and reflect upon. I will try to lay them out in some order, following the outline of the DEIR. Some of my comments may appear trivial but I have tried to be observant and frank in my critical review of the DGPT/DEIR. I was struck by how much work must be involved in updating our General Plan every so often, and I agree with the need for periodically reassessing our progress and status because conditions do change that require readjustments. It is my hope that both the final EIR and final GP will serve in a real way as a vision and guide for City Council members, Planning Commissioners, City planners and other staff, and , last but not least, Newark residents.	
Bradley2-4	Page 1-1 The term "discretionary" appears to be used six times in the DEIR. The text states that it relates to "actions and approvals." However, I cannot find in the DEIR a detailed list of such discretionary actions and approvals. In an un-numbered table on page 3-28 of the DEIR it specifies such actions and approvals as recommendations from Planning Commission regarding GPT and DEIR or actions by the City Council addressing the adoption of the GPT and certification of the DEIR, as well as adoption of "ordinances, guidelines, programs, and other mechanisms for implementation of the [GPT]." If possible, I would like to see a list of all actions and approvals that associated with the GPT implementation.	As indicated in Chapter 1.0 and Chapter 2.0, the DEIR was prepared as a program EIR, therefore, there were no specific projects included as part of the proposed General Plan. As such, specific discretionary approvals are unknown until specific projects are proposed, in which further independent CEQA review would be required. However, page 3-28 in the Project Description indicates a list of agencies that could potentially have jurisdiction, and provide discretionary approvals, over projects in Newark. No changes are necessary.
Bradley2-5	Page 1-2 There appears to be a typographic error: "statuts" should probably be "statute." Please let me know as to which statute is the author(s) referring?	Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-6	Page 1-3 The GPT includes some non-mandated sections: Chapters 6, 10, and 11 of the General Plan are considered optional elements, since they are not explicitly required by state law. These elements address economic development, public health, and community services and facilities. The DEIR states that these elements have been included because of the importance of these issues to the future of Newark, and their integral relationship to the topics addressed elsewhere in the Plan. Am I correct in assuming that, once adopted, the optional elements will carry the same legal weight as the mandated elements?	Optional elements do carry the same legal weight as mandated options. Once a General Plan is legally adopted and deemed adequate, all elements [mandatory or optional] are considered equal.
Bradley2-7	The DEIR attempts to explain why it has been prepared as a "Program EIR". It states that "As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects." And yet the DEIR appears to deal with some very specific plans for development that were already approved but not compatible with the existing General Plan, namely, the Dumbarton TOD and Area 3 and 4 projects. At a later point in the DEIR it	The comment is noted. As stated, the DEIR was prepared as a programmatic EIR and therefore does not consider project-specific impacts, however, the Dumbarton TOD specific Plan and the Area 3 and 4 Specific Plan are plan level documents, and therefore not considered specific projects in and of themselves. For example, the Dumbarton TOD Specific Plan would have subsequent projects as part of the overall plan. This DEIR does not attempt to analyze those project-specific impacts associated with development under the greater DTOD Plan, but rather the impacts of the overall vision and buildout projected in the Dumbarton TOD Specific Plan. In regards to the previous specific plans (Dumbarton TOD and the Area 3 and 4), subsequent EIRs under the proposed General Plan would

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	states that the Specific Plans for these developments are incorporated by reference. The latter plans which are not consistent with the 1992 General Plan are being included anyhow. Will the Dumbarton TOD and Area 3 and 4 projects require EIRs subsequent to this General Plan Tune Up? I do not presume that the City is proposing to require new or supplemental EIRs for these projects. But is there any further review of those projects that required by CEQA? If so, what type(s) of review and approvals need to be addressed before the implementation of those projects? Will there be some "monitoring review" to assure citizens that those projects, before being implemented, are in accord with the updated General Plan?	not be required. Consequently, there are policies under the proposed General Plan to ensure consistency with those specific plans, as listed on page 4.9-7 of the DEIR. However, independent CEQA review will still be required for future development under either of the plans. Future development under the proposed General Plan, Area 3 and 4 Specific Plan, and the Dumbarton TOD Specific Plan would be subject to project-level CEQA review to identify impacts and mitigation measures specific to the proposed development. As discussed in Section 2.4.3 of the DEIR, a mitigation monitoring or reporting program will be completed as part of the Final EIR, at which time will be considered prior to consideration of the Plan by the Newark City Council.
Bradley2-8	Toward the end of this page, the DEIR states that when a Program EIR is relied on for a "subsequent" activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities. I ask the question how many of the mitigation measures documented in the Dumbarton TOD and Area 3 and 4 Specific Plans are incorporated within the DGPT? or the this "Program EIR"? Also I ask the question, are there any new mitigation measures and alternatives developed in the DGPT that are not reflected in the EIRs for those projects? If so, what are they?	References to mitigation measures from previous EIRs have been incorporated throughout the document. Although the comment does not specifically refer to a section or area of concern, areas throughout the document and analyses contained in each chapter specify when a mitigation measure is incorporated by reference. Please see Table 1-1 starting on page 1-8 for a summary of impacts and mitigation measures associated with the DEIR. No changes are necessary.
Bradley2-9	Page 1-4 In explaining CEQA requirements providing for "the analysis of a range of alternatives that could feasibly attain the objectives of the Plan," I question whether or not the "No Project" alternative would meet the apparent objectives of the Plan. Is this a simple matter of the "No Project" alternative not having to meet the objectives under CEQA? What exactly is the purpose of the "No Project" alternative? If one of the objectives of the draft GPT is to implement already approved specific plan developments which are not entirely consistent with the existing 1992 General Plan, how do the non-no-project alternatives meet that this objective? Am I correct in assuming that each of the alternatives analyzed in the DEIR are real and that they could be recommended by the Planning Commission to the City Council for adoption? The DEIR does not really make the options clear to me.	Please see Chapter 6.0, Alternatives, for a complete discussion and analysis of alternatives. As discussed on page 6-1, the alternatives were analyzed pursuant to Section 15126.6 of the CEQA Guidelines. As such, three alternatives were selected for consideration to which one was identified as the environmentally superior alternative, as described on page 6-27. As discussed, although the environmentally superior alternative would be the Restricted Growth Alternative, it would not meet all of the objectives listed on page 6-26. CEQA requires that the environmentally superior alternative be identified, however, that need not be the actual alternative selected if it does not meet most of the stated objectives. As stated in Section 15126.6(e) of the CEQA Guidelines, the purpose of the no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative is not a baseline for determining whether the proposed project's environmental impacts may be significant. Pursuant to Section 15126 of the CEQA Guidelines, the lead agency is responsible for selecting a range of reasonable alternatives.
Bradley2-10	There are many other elements in the draft GPT that are addressed in the DEIR, however, they do not appear to be given equal focus. Instead what I have read appears to focus on the impacts of urbanizing the last, relatively undeveloped, natural spaces remaining within the City limits. In the paragraph initiating section 1.4 - Summary of Alternatives to the Proposed Plan, it states that the DEIR will only address alternatives based on their potential ability to reduce or eliminate the following impacts determined to be significant and unavoidable for the proposed Plan: Aesthetics, Air Quality, Cultural Resources, and Greenhouse [sic] Gas Emissions. It appears then that addressing impacts of development on "open space" resources which have many significant values, including "ecosystem services," and other General Plan Elements will not be given much attention. That is not the most appropriate strategy by which to develop alternatives in my opinion. Apparently impacts to our open space resources (and many other elements) were not deemed significant nor unavoidable by planners. I do not see water supply, climate change, nor biology in this list of elements found to have significant and unavoidable impacts, although they are cited below on page 1-6 as controversial issues.	Section 1.4, Summary of Alternatives to the Proposed Plan, identifies and lists the sections of the DEIR [not the proposed General Plan] to which resulted in significant and unavoidable impacts in some part of the analysis. As such, impacts on open space are in fact addressed throughout various chapters of the DEIR; however, only the impacts determined to have a significant and unavoidable impact are listed under Section 1.4. Provided a specific impact to open space was not provided a specific section, page, or chapter cannot be referenced addressing concerns about open space.
Bradley2-11	I call your attention to a typographic error in the last bullet item on the page: "Greenhous" should be "Greenhouse."	Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-12	Pages 1-5 and 1-6 What is the "proposed Plan"? Is it one of the alternatives, or is it something else? Is not the "proposed project" usually one of the alternatives. What choice, if any, are City residents and City decision-makers being offered with respect to amending the current General Plan? Do planners and decision-makers actually have a choice in approving any one or combination of the alternatives?	Proposed Plan refers to the proposed General Plan Tune Up. In regards to alternatives, the alternative that is considered the environmentally superior alternative is identified; however, a combination of the stated alternatives cannot be approved. As such, the No-Project Alternative and Restricted Growth Alternative were determined to be infeasible, therefore, the proposed Plan is the alternative to which would achieve most, if not all, of the stated

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		objectives in Chapter 3.0, Project Description. For a discussion of the environmental review process, please see Section 2.4 starting on page 2-4.
Bradley2-13	The statement under the No Project Alternative that it " could result in up to 17,900 housing units in Newark by 2035, including approximately 10,950 single-family homes and 6,950 multifamily units, as well as approximately 20,600 jobs" appears at odds with what is stated below in the "reduced residential" alternative. It makes it sound as if even under the "no project" alternative, the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan would be implemented. Is it possible to proceed with development plans that are not entirely consistent with the General Plan? How are the proposed developments to be implemented without modifying the current General Plan? The statement does not appear to clearly reflect or convey the reality of the matter. Again, how is it possible that the No Project alternative could result in all the additional housing when Specific Plans are not compatible with the existing General Plan. Is this a case where project proponents desire developments that are neither envisioned nor condoned (if that's the appropriate word) by the existing General Plan and so they want to change it? If this is the case, then the Final EIR should make it more explicit. To many citizens, it makes more sense to change general plans first and then consider and approve more specific plans as they are proposed. I know that this is often the way the land use planning and decision-making process proceeds, by putting the proverbial cart before the horse, so as to accommodate every Tom-Dick-and-Harry-proposed variance and amendment, but it does not lead to implementing a vision which fosters a sense of sustainable place and community. I believe citizens have had enough of the growth-oriented, short-term profitable, quantity-over-quality kind of city planning and development. Am I correct in understanding the Restricted Growth Alternative that it focuses on filling in, improving our existing neighborhoods, retail/commercial and industrial areas, that is revitalizing what the Newark community currently has or could improve upon without having to urbanize the two remaining relatively undeveloped areas of open space in the southwest and western portions of the City? Both the latter areas current provide buffers between the Cargill Salt operations and continued space in Area 2 for job creation if needed, and greater, less costly insurance against sea level rise. In the description of each alternative, there is data regarding potential housing units and jobs: 17,900 and 20,600 under the No Project alternative; 16,280 and 24,800 under the Reduced Residential alternative; and 16,995 and 22,300 under the Restricted Growth alternative. It is not clear to me how these figures could be so similar to those given in the previous alternatives. Would you explain how the numbers were arrived at? If the numbers are correct, than am I correct in assuming that there could be almost 17,000 additional housing units and more than 22,000 job positions created under the Restricted Growth alternative? If the figures are correct, why would the draft GPT be including the urban development of the City's last remaining natural open spaces, particularly that in Area 4? The draft Plan does not appear to be very visionary with respect to natural open space resources nor at all in tune with the citizenry's increased awareness over the past 20 years of the valuable ecosystem and socio-cultural services such open space provides the our human populations. Indeed, there appears to be a very "business-as-usual" attitude underlying the proposed DGPT.	As stated on page 6-1 in the Alternatives chapter, under the No Project Alternative, existing plans such as the Dumbarton TOD and Area 3 and 4 Specific Plans would continue to be implemented. The No Project Alternative is intended to provide a scenario under which the proposed General Plan would not be adopted and the existing General Plan, and adopted Specific Plans and Area Plans would continue to be implemented. If a Specific Plan, or any other plan for that matter, is adopted through the appropriate adoption process, such as the Dumbarton TOD and Area 3 and 4 Specific Plans, then they are presumably consistent with the General Plan otherwise they could not have been adopted. Please see Chapter 4.0, Land Use and Planning, for discussions pertaining to consistency with the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan. The projections in the alternatives were extrapolated from various sources such as the Area 3 and 4 Specific Plan, the Dumbarton TOD Specific Plan, and the current Housing Element. Please see the description and summary of each alternative for further discussion. Also, as indicated in Chapter 1.0 and Chapter 2.0, the DEIR was prepared as a program EIR and therefore does not consider project-specific impacts. Accordingly, the housing units, population, and employment numbers are merely projections.
Bradley2-14	I see also on this single page of the DEIR, the sections summarizing the "issues to be resolved" and the "areas of controversy." I did note, by its absence from the list of issues to be resolved the idea of whether or not the draft GPT should be adopted "as is". I think that this is the most significant issue to be resolved, that is, whether or not the draft GPT represents a plan which will lead toward assuring a better place for the Newark community. As to the issues needing resolution that were stated I appreciated the summation, however brief. Because my time is so limited, I relied on word processing search tools to expedite my review of the DEIR; and when I searched the entire document for the "issues to be resolves" and "resolve" I could not find anywhere in the document where the City planners have described and	The Issues to be Resolved are determined based on the information gathered during the scoping process and subsequent public meetings. Accordingly, the issues identified in Section 1.5, Issues to be Resolved, are general in nature and therefore, collectively, the DEIR addresses some or all of the issues throughout various chapters and individual analysis contained within each chapter.

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	explained if or how these issues were resolved. I suggest that the final document include a brief description of how the issues were either resolved, or attempted to be resolved, or will be resolved. I appreciate the fact that there are sections of the DEIR that do address these issues in very concise, legalistic terms, but I hope there will be some text in the final document that clearly focuses on the resolution in layman terms.	
Bradley2-15	Page 1-9 Please clarify which "public actions can only be taken after a finding that the action is consistent with an adopted general plan" by providing in the final DEIR as relevant a list as possible of these public actions as they relate to the DTOD and Southwest Newark Residential and Recreation Focus Area projects. In order to better understand the full scope of the draft GPT, please also provide a listing of the actions in the draft GPT which "provide specific direction for how these implementing ordinances [covering zoning and subdivision regulations] should be revised to better achieve the Plan's goals."	All major land use actions and major infrastructure improvements must be consistent with the General Plan. The zoning code and other regulations must be consistent with the General Plan.
Bradley2-16	Page 2-1 The DEIR describes the proposed Plan as "a 'tune up' of the 1992 City of Newark General Plan." It states that "the vision for the growth and development of the community outlined in the 1992 General Plan remains a valid reflection of community values and priorities today." It further asserts that "the land use designations and policies of the 1992 General Plan provide a solid base on which to build." As long as the objective of the proposed plan is to concentrate future development primarily in four areas, namely, the Dumbarton TOD Focus Area, the Southwest Newark Recreational and Residential Focus Area, the Old Town Focus Area, and the Greater New Park Focus Area, then it will be difficult to develop any alternatives to the proposed Plan that achieve these objectives. For example, if the objective is to convert Area 4 into a residential/recreational development it seems nearly impossible to come up with a viable alternative that would result in the achievement of that objective in Area 4. City planners appear to be offering citizens a Plan that, at least in its draft form, can have no feasible options? Is this correct? If not, please clarify this confusion in the Final EIR. Even if these were the direction and intent of the General Plan adopted in 1992, the proposed Plan appears not to recognize that times, environmental conditions and individual attitudes have significantly changed. Citizens', including their children's awareness of such phenomena as aging demographic structure, long-term physical and mental well-being, economics of ecosystem services, a San Francisco Bay Area-wide natural resources-oriented Bay Plan, the adverse effects resulting from the disappearance of local open space, and sea level rise has increased greatly since 1992, even if City planners do not seem in their proposed tune-up to be tuned in to these watershed changes on the on the natural and demographic landscapes.	As stated in Chapter 6.0, Alternatives, the alternatives chosen were done so pursuant to Section 15126.6 of the CEQA Guidelines which states that a range of reasonable alternatives to the project be analyzed. As such, three alternatives were chosen to analyze that were found to be feasible in that they would seek to achieve some or all of the stated objectives listed in Chapter 3, and on page 6-26 of Chapter 6. Accordingly, the alternatives presented are sufficient and in compliance with CEQA Guidelines. Additionally, there is no stated objective explicitly focusing on converting Area 4 into residential/recreational development. For a list of objectives, please see page 6-26.
Bradley2-17	Page 2-5 I see toward the bottom of page 2-5 that "all responses to comments submitted on the Draft EIR by agencies will be provided to those agencies at least 10 days prior to final action on the Plan." Just above this it states that "All persons who commented on the Draft EIR will be notified of the availability of the FEIR and the date of the public hearing before the City." Is it possible for private residents such as myself to view responses to our comments prior to any final action on the Plan. I am not sure how public comment such as mine will be handled. I am aware that individual comments from letters (including letters from agencies) often are grouped together by subject matter and then responses by subject matter are drafted by staff. In any case, on the same page of the DEIR it states that "public input is encouraged at all public hearings before the City." I will be difficult for me to provide informed input to Council Members without first knowing how the comments in my letter have been responded to. I thank you ahead of time for your consideration and "encouragement" in this matter.	The comment is noted. All comments and responses will be published in the Final EIR, as indicated in Section 2.4.2, Final EIR, and pursuant to CEQA Guidelines. Accordingly, the FEIR will be presented to the City of Newark for potential certification as the environmental document for the proposed Plan. All persons who commented on the Draft EIR will be notified of the availability of the FEIR and the date of the public hearing before the City, as stated on page 2-5.
Bradley2-18	Will the required monitoring program described on Page 2-5 become available to the public for comment before the proposed final GPT is submitted to the City Council for consideration? I think it is important that the public has the opportunity to review the monitoring/reporting plan for its relevance,	The monitoring or reporting program will be circulated with the Final EIR prior to the public hearing.

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	completeness, and validity with respect to its intended purpose. This is a part of the planning process that sadly has been neglected in the past but, without it, citizens and decision-makers can have no assurance that plans are implemented and objectives achieved as intended. I would like the opportunity to review and have the chance to comment on it before it is presented to the City Council for adoption; perhaps it could be posted on the City's website.	
Bradley2-19	Page 3-1 On this page, City planners assert that "The vision for the growth and development of the community outlined in the 1992 Newark General Plan remains a valid reflection of community values and priorities today." The year 1992 was a long time ago and I'm wondering how the planners ascertained that the '92 plan continues to be a "valid reflection of community values and priorities" after some 20 years. Is this assessment based on any systematic collection survey results? Is this assertion more anecdotal in nature, not based on the results of any valid survey or research? To be forthright, I was not around the Bay Area in 1992. I became a Newark resident/homeowner in 2005. It would be helpful to see data documenting and identifying what the community values and priorities actually were in 1992. Can Newark City planners offer any data substantiating their characterization of the community's values in 1992 and their adequacy for today's population and the socio-cultural milieu of 2013? It is asserted in the DEIR that vision of the draft General Plan Tune Up promotes the same, strong sense of community and neighborhood familiarity that the 1992 General Plan apparently advocated for. But the same Tune Up espouses previously inconsistent decisions which allowed for residential neighborhood development on the outskirts of our community (albeit on a greener side of the railroad tracks as it urbanizes the last remaining natural open spaces. Please explain in the Final GPT how the proposed Plan is consistent with the timing and location of development given the projections for sea level rise and the majority of citizens not in favor of filling bay lands.	The commenter's opinions about the General Plan are noted; however, it does not pertain to the merits of the EIR Please see Master Response 4 regarding sea level rise.
Bradley2-20	One of the draft GPT's objectives is to "meet the regional need for housing, as defined in State Legislation and the Bay Area's Sustainable Community Strategy (SCS) and provide a wide range of housing opportunities for all housing types and income levels." Neither the draft GPT nor the DEIR adequately explain why it is incumbent on Newark to meet the region's additional housing needs. It seems to me that Newark has already done more than fair its share of filling up land with housing. Is there space for more? Sure, but it does not have to be located in the last remaining open space that Newark has. Instead the City's General Plan ought continue to plan for housing on vacant property in already developed areas. Instead continue to plan for increasing housing density as redevelopment opportunities arise. Nowhere can I find an explanation for why the City must endeavor to urbanize or industrialize every last parcel of unused, vacant, natural open space. What forces a community to urbanize their last remaining large parcels of natural open space? Why can't it be preserved as open space? Do flood plains need to be filled in order to meet regional housing needs. Can't this need for housing be met by using other lands besides flood plains and lands immediately adjacent to the Bay?	Please see the discussion on page 4.11-1 regarding the Regional Housing Needs Allocation (RHNA). As discussed, State law mandates that each jurisdiction provide sufficient land to accommodate a variety of housing opportunities for all economic segments of the community. The Association of Bay Area Governments is the regional planning agency that determines the RHNA for jurisdictions within Alameda County, including Newark. Please see Chapter 4.9, Land Use and Planning, for a discussion on impacts on land use and planning.
Bradley2-21	I would argue that over the past 20+ years, the attitudes of the majority of citizens in Newark have evolved. They are not in favor of allowing flood plains and baylands to be filled with more urbanization. Instead, citizens want to see flood plains and the bay lands conserved. Citizens want to see the integrity of the Bay estuary preserved. Citizens from all around the Bay, including the majority of citizens in Newark, expect to see the Bay protected from any further encroachment by urban and industrial development. I would argue that since the drafting of the 1992 Newark General Plan, we have "discovered" that the climate is warming up, the ocean's mean high tide is rising and subsequent risk of flooding increasing, the San Francisco estuary's natural indigenous communities are in serious decline, and the quality of fresh water aquifers in our watershed is becoming compromised. Our City's planners and decision-makers will miss the boat if they approve the proposal Plan as it is currently formulated.	The comment is noted. Potential impacts with regard to flood impacts can be found in Chapter 4.8, Hydrology and Water Quality, in impact discussions HYDRO-3, HYDRO-4, HYDRO-6, and HYDRO-7.

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	Doesn't all this newly found appreciation for leaving still undeveloped bay lands intact have any significant value?	
Bradley2-22	Page 3-11 It appears that "modifications to two Pacific Gas & Electric (PG&E) transmission towers" to accommodate the proposed structural overpass over the Union Pacific railroad tracks into Area 4. I have heard that the costs of such modifications are extremely expensive, as in the tens of millions of dollars. What are the estimated costs of implementing these modifications? Who is paying for the PG&E transmission tower modifications? The developers? the City? or the rate payers? " Utilities infrastructure, including a new public water distribution system within the residential streets of Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge wastewater generated by new uses in Area 4." From the California General Plan Guidelines: Capital facilities must be consistent with the general plan (Friends of B Street v. City of Hayward (1980) 106 Cal.App.3d 988). The network of publicly-owned facilities, such as streets, water and sewer facilities, public buildings, and parks form the framework of a community. Although capital facilities are built to accommodate present and anticipated needs, some (most notably water and sewer facilities and roads) play a major role in determining the location, intensity, and timing of development. For instance, the availability of sewer and water connections can have a profound impact upon the fea *[SIC]* Were the proposed capital facilities determined to be consistent with the 1992 General Plan? If not, were there amendments made to the General Plan prior to the proposed Plan?	The comment is noted; however, it does not pertain to the merits of the EIR Please see Master Response 5 for a discussion of the Area 4 project. It is Newark policy that developers pay the cost of infrastructure improvements and changes needed to facilitate their developments.
Bradley2-23	Page 3-12 The DEIR states that "Furthermore, the only land use designation change addressed in the Area 3 and 4 Specific Plan EIR was the change of 78 acres in Area 3 to Medium Density Residential from Special Industrial. At a program EIR level of detail, these uses have substantially similar impacts on the environment. (This is documented in section 6: Alternatives). Therefore, regardless of whether the Area 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan." If impacts are substantially similar, then are we really being presented with "alternatives"? The reasoning appears circular. It appears that the City's planners are admitting that if the Area 3 and 4 EIR is not upheld, they will rely on the associated mitigation measures as part of the background condition for purposes of analysis in the GP-T EIR and this results in DEIR assertion that "this Program EIR fully addresses the environmental impacts of the proposed General Plan."	As discussed on page 3-12, although the change addressed in the Area 3 and 4 Specific Plan EIR included the change of 78 acres to Residential from Special Industrial, the overall impacts in the context of a program EIR are similar in that neither the Area 3 and 4 Specific Plan, nor the DEIR for the proposed General Plan consider or analyze project-specific impacts, so while the change in designation occurred, there were no specific projects proposed under the Area 3 and 4 Specific Plan, nor are any specific projects being proposed under the proposed General Plan. As such, the impacts, at a programmatic level, would be similar, therefore, no changes are necessary. Even if the Area 3 and 4 Specific Plan EIR is not upheld, any background information used for the purposes of the DEIR would not necessarily render the analysis void or untrue. Please see Master Response 5 for a discussion of the Area 4 project.
Bradley2-24	Page 3-15 In Table 3-3, the DEIR states that the proposed Plan's State-mandated topic of conservation is to be combined with the topic of sustainability, thus creating a new Element. policies which keep Newark a business-friendly, economically competitive community. The Conservation Element addresses wetlands management, vegetation and wildlife, waterways and water quality, salt production, and urban forestry are addressed. The Sustainability Element includes strategies to curb nonrenewable resource consumption, reduce greenhouse gas emissions, encourage recycling, promote green building and renewable energy, and implement other measures which make Newark a more sustainable city. Unfortunately, this DEIR does not address this element very well. The DGPT fails to address sea level rise with the most current information. And the City's planners have opted not to address the issue of sea level in the DEIR because it is not necessary to analyze environmental impacts on the proposed Plan but only the proposed Plan's impacts on the environment. But not to discuss the reality of rising sea level in more detail appears irresponsible to me.	The comment is noted. Please see Master Response 4 regarding to sea level rise.
Bradley2-25	Page 3-28 Although the DEIR states that "no specific developments are proposed as part of the Plan," why are there so many pages in both the GPT and the DEIR devoted to the DTOD Project and the Area 3 and 4 Project (renamed the Southwestern Newark Recreational and Residential Focus Project)? The text of this paragraph does not point out that at least two Specific Plans had been previously approved and that those Plans were not entirely consistent with the original 1992 Plan. Did the adoption and	This comment is in incorrect. In 2008, the City amended its General Plan to include Policy 2.2a of the Housing Element which calls for the development of "specific plans and zoning amendments for Areas 2, 3 and 4 to provide significant amounts of land for new residential development." Pursuant to this policy, the City then prepared and adopted the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan in 2011. As described on pages 3-3 through 3-14 of the Draft EIR, the General Plan was amended with the adoption of the specific plans. Therefore,

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

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	certification of the two Specific Plans (DTOD and Area 3 and 4 Project) treat inconsistencies with 1992 GP as significant and otherwise mitigated to level of non-significance or given "overriding" consideration? What the text of the DEIR does not tell us is if there are any discretionary actions left regarding the implementation of the DTOD and the Area 3 and 4 Project. Are there? If there are, what are they? What becomes of those projects if the proposed GPT is not adopted or its DEIR is not certified?	the comment is incorrect to assert that the City has undertaken "backwards planning" and incorrect to assert that the City is "now attempting to rectify the inconsistencies."
Bradley2-26	I would like to see included in the Final EIR information that gives me an idea of what happens to future proposals which upon review are found not to be consistent with the General Plan. As it stands, the DEIR simply tells me that future development proposals will be reviewed for consistency and adequately reviewed per CEQA. Please include a brief discussion in both the final EIR and GPT what happens to proposals that do not pass GP and/or CEQA muster. If such projects are proposed in the future, does the City simply amend the GP to conform with the project and determine "overriding considerations" in the case of unavoidable significant environmental impacts? The DEIR reiterates on this page the fact that the [final] EIR will serve as the environmental document for all discretionary actions associated with development of the proposed Project. Please see and respond to my comments above regarding "discretionary." The DEIR is also intended to assist other responsible agencies in making approvals that may be required for development under the proposed Plan. Do these Federal, State, regional, and other regulatory agencies have any discretion in their determinations? If not discretion, do these agencies have ministerial authority that could preclude the implementation of the projects as referred to in the GPT?	The comment is noted; however, it does not pertain to the merits of this DEIR. In regards to the question about what happens to inconsistent plans or projects, that is a planning issue. In regards to the question about other agencies, depending on the project, some agencies may or may not have jurisdiction and therefore may or may not have the discretionary or ministerial authority. To the extent that the level of authority from federal, State, regional, and local agencies is identified would be discussed at the project level provided that they type and location of specific projects determines which agency or agencies would provide approvals. Accordingly, this DEIR identifies agencies that would be required to approve all or in part, programs under the proposed General Plan according to each agencies respective responsibilities and jurisdictional boundaries.
Bradley2-27	Page 3-29 The DEIR states that the proposed Plan would also require discretionary and ministerial actions by the three other agencies and that these actions would occasion the revisions of regional models related to growth and development projections. However, I have been under the impression that much of the project proposals and their prior adoption by City planning and council members relied on the existing model projections. Would you please clarify what models were used in the analyses underlying the DEIR and why they may require revision?	The comment is noted. To the extent that other agencies would be involved, such regional models related to growth would need to be modified to reflect implementation under the proposed General Plan. For example, if an increase to population in a specific area results in the need for updated or new streets, the Alameda County Transportation Commission may need to update their existing regional models to reflect such development projections. In short, other agencies would need to potentially update and modify their respective plans and projections to reflect the updates of the proposed General Plan. In regards to what models were used in the analyses underlying the DEIR, that question is too vague to provide a detailed response. As such, each chapter and analysis in the DEIR identify or cite to which sources were used for the discussion. See the Regulatory Setting of each chapter for a discussion of plans or models that may have been used for that chapter.
Bradley2-28	4.2-10 The DEIR states that one objective of the County-wide Transportation Plan (CWTP) is to "[e]encourage a pattern of major employment centers and employment in general with convenient transit access and nearby mixed use and residential areas." It seems that the City has approved and permitted the development of a number of office and light-to-moderate industrial facilities which lack convenient connection with BART as well as adequate arterial access to and from many facilities. The railroad infrastructure in Newark is another barrier to an enhanced, efficient mobility. The City already has several employment centers. Now the challenge is to make them convenient to residents and commuters. Our resources over the next 25 years should be directed toward these types of improvements, not toward creating residences near new, costly transit stations that will only serve to create more congestion. There is serious doubt about a rail station ever being built as envisioned in the Dumbarton TOD Project as its adverse impacts on the environment are to great and it is so very expensive; I have heard that rail transit is the most expensive, cost inefficient infrastructure to build and maintain. It is in my opinion unfortunate that City planners have not provided a discussion of the actual prospects for obtaining the funds necessary to implement the rail project. Toward the bottom of this page of the DEIR it states that "Projects in the 2012 CWTP are eligible to receive local, regional, and federal funding through 2040." Which of the PDAs and GOAs in Newark are projects in the 2012 CWTP? The paragraph above refers to the Alameda County Draft Land Use Scenario Concept (which title sounds very, very preliminary and imaginary). What generally does it mean that the Newark PDAs "are included	The commenter's opinions are noted; however, it does not pertain to the merits of the EIR The inclusion of Newark Projects in the Plan Bay Area means that these areas- Dumbarton TOD and Old Town are areas that the regional has identified and places to grow in a more sustainable way.

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	in MTC's Plan Bay Area?	
Bradley2-29	Page 4.2-15 In discussing CEQA thresholds, the DEIR states: "While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes." This is not clear to me. Perhaps you could illustrate the meaning with a brief example. What it seems to be saying is that pointing out a proposed project's vulnerability to an environmental hazard is consistent with CEQA, but explaining the effects of the environmental hazard, such as the results of an earthquake on the project's infrastructure, is not consistent with CEQA's purpose. The DEIR goes on to state: " Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of this Draft EIR (see Guidelines, § 15063, subd. (f))." I am not sure what the author(s) are trying to say. Please clarify this in the Final EIR.	In short, the statement clarifies the purpose of the DEIR in that it is looking at impacts of the project, in this case the proposed General Plan, and the potential effects of such on the environment, as required under CEQA. Consequently, CEQA does not require consideration of effects on the project (the proposed Plan). In the case of earthquakes, CEQA requires the consideration of a project related to disturbance of a known fault, of which could cause rupturing, to which could lead to impacts on the project or people. Although this seemingly appears to refer to an impact of the environment on the project, the thresholds of Geology and Soils actually analyze the impacts of a project on a known fault (the environment) to which the rupturing of such would then result in an impact on the project or people.
Bradley2-30	Also below, there appears to be a typographic error where "Bellona" should be "Ballona" as in most other references cited in the DEIR	Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-31	The DEIR states: "Accordingly, while the City provides the following informational analysis of thresholds taken from Appendix G of the CEQA Guidelines, that the Guidelines language in thresholds d and e, as they relate to the placement of sensitive receptors under the proposed Plan, above are not examples of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment." Again, the writing of this sentence is not very clear. I am understanding that some environmental condition like traffic noise is measured but, because they are not effects of a proposed development project, they will not get analyzed in an EIR? With all due respect, this doesn't make any common sense. Can you state or explain what you are intending to say in plainer English? I think is important. For instance, with respect to traffic noise in the background environment, there is a lot of proposed mitigation measures to make sure that folks will not be too adversely affected by the noise. (I live in an "orange" noise zone according to the City's maps, in a house that was built in the early 1970's. I sure wish the City's decision-makers back then would have required the developers to build more insulated homes so I would not be so exposed to the constant rumble of the nearby freeways.)	CEQA requires that the results from a project or plan be disclosed so that decision makers and the public can make an informed decision about the impacts of their decisionss. Issues such as existing noise levels are important issues that are considered when contemplating new development, however, they are result of existing conditions not the results of the General Plan. The fact the CEQA is focused on the impacts of the plan should not be construed to mean that the City does not consider existing conditions. Please see Chapter 4.10, Noise, Section 4.10.3, Impact Discussion, for a discussion on noise related impacts under the proposed Plan. Noise is in fact analyzed to the extent of the noise being related to impacts of buildout of the proposed Plan on the environment. In the example in the comment, traffic resulting from a project, which generates noise, is in fact an impact of the project on the environment. For that reason, the Noise chapter addresses such impacts.
Bradley2-32	Page 4.2-16 In using acronyms such as BAAQMD, please spell out acronyms the first time they are used, and additionally if there's lots of pages between usages. I presume there is a glossary of abbreviations used in this document, but I find it hard to navigate to when viewing and inserting comments electronically. I had to go back to a footnote several pages prior to the determine it stood for Bay Area Air Quality Management District. (Before retiring, I used to work in government and understand how pervasive acronyms have become. Guess I might understand them better if I practiced texting on a cell phone?)	The comment is noted. As stated on page 4.2-1 in the opening paragraph, BAAQMD is spelled out the first time it is used. Accordingly, BAAQMD stands for Bay Area Air Quality Management District.
Bradley2-33	The DEIR states that "A comparison that the project VMT or vehicle trip increase is less than or equal to the projected population" must be determined. I am not sure I understand this bullet. Please consider rewording it in the context of completing the phrase "but an analysis of the following:". Neither does the last bullet make much sense to me. It is not understandable in the context following the phrase "but an analysis of the following:" Instead it sounds like an excuse…or the analysis itself. If it is intended as an analysis, it probably should not be formatted as a bullet. In any case, could it be re-phrased in the Final EIR? I think such footnotes as number 19 appear overly pedantic and contribute to the general un-readability of a documents which is intended for review by "interested public" and decision-makers.	The bullet referred to in the comment means that, under BAAQMD, a plan-level review with respect to air pollutant emissions, must include a comparison that the project Vehicle Miles Traveled (VMT) or vehicle trip increase is less than or equal to the project population increase.

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Comment ID	Comment	Response
Bradley2-34	Page 4.2-17 The DEIR states that "The BAAQMD's significance thresholds for local community risk and hazard impacts apply to both the siting of a new source and to the siting of a new receptor" and notes that "the purpose of this EIR is to identify the significant effects of the Plan on the environment, not the significant effects of the environment on the Project." In this case, as a result of the proposed General Plan, there may be impacts in two respects: (1) a project resulting in new sources of pollution, and (2) those new sources possibly having impacts on current and future residents. The air quality resulting from the project implementation becomes a part of the human environment that affects humans in that modified environment. Does this make sense? or am I writing gibberish also?	As stated, the DEIR is a program EIR and does not analyze project-specific impacts, therefore in the absence of proposed projects, it cannot be determined where or to what extent sources of pollution would be placed.
Bradley2-35	The DEIR states that the "City of Newark is not in one of the six impacted communities identified in BAAQMD's CARE program." What is the CARE program? The DEIR states that "For a plan-level analysis, a project must also identify goals, policies, and objectives to minimize potential impacts and create overlay zones for sources of TACs and receptors." Please clarify what is the issue that the DEIR is attempting to address? What is the bottom line? Would you try and state this in plainer English. If you really think that the proverbial "man on the street" can comprehend this, then do not bother.	The Community Air Risk Evaluation (CARE) was initiated in 2004 by BAAQMD to evaluate and reduce health risks associated with exposures to outdoor toxic air contaminants in the Bay Area. The section on page 4.2-17, the subject of the comment, intends to lay the foundation for BAAQMD thresholds with regard to Community Risk and Hazards. As stated, provided the City of Newark is not within the CARE program, it therefore has less stringent requirements (thresholds) than a community that is considered impacted under the CARE program, or otherwise areas having higher levels of TACs. However, as discussed, certain measures must still be complied with such as creating overlay zones and identify goals and policies to reduce potential impacts.
Bradley2-36	Page 4.2-18 I think that the AIR-1 sentence "While the proposed Plan would support the primary goals of the 2010 Bay Area Clean Air Plan, buildout of the proposed Plan would not be consistent with the Clean Air Plan because the projected vehicle miles traveled (VMT) increase from buildout of the proposed Plan would be greater than the projected population increase" would be improved if stated thus: ....because the increase in projected vehicle miles traveled (VMT) would exceed the goal??? After reading it 5 times, I still do not understand exactly what the DEIR is attempting to say.	The AIR-1 sentence is a statement of finding based on thresholds of CEQA Guidelines. Accordingly, it states that the proposed Plan would support the goals of the 2010 Bay Area Plan, the Plan would be inconsistent with the Clean Air Plan due to the fact the projected VMT is greater than the increase of the projected population. As stated on page 4.2-34 the projected VMT would be above the threshold of the BAAQMD, therefore the impact would be significant, as determined.
Bradley2-37	Page 4.2-19 The DEIR states that "New policies would be introduced as part of the proposed Plan to minimize impacts. With the additional measures proposed in the City's CAP, impacts would be less than significant." Are these "additional measures" newly proposed in the proposed General Plan? or are they already part of the "prepared and approved" CAP?	The statement is saying that policies under the proposed General Plan, in addition to policies in the City's already CAP would reduce impacts to a less than significant level.
Bradley2-38	The sentence "Table 4.2-4 identifies the control measures included in the 2010 Bay Area Clean Air Plan, and, as shown, implementation of the proposed Plan goals, policies and actions in Table 4.2-4 would ensure that the proposed Plan would be consistent with the 2010 Bay Area Clean Air Plan and that the impacts due to inconsistency would be less than significant...." is poorly stated. In the first part of sentence the author states that the proposed Plan would be consistent with the 2010 Bay Area Clean Air Plan, and then in the second part of the sentence asserts that there would be inconsistencies (but not significant ones).	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required..
Bradley2-39	Under Regional Growth Projections for VMT and Population and Employment, the DEIR states that "As a result, BAAQMD's approach to evaluating impacts from criteria air pollutants generated by long-term growth associated with a plan is done in comparison to BAAQMD's AQMP rather than a comparison of emissions to project-level significance thresholds." Is noun "criteria" serving as an adjective to pollutants? I am not sure what the phrase "criteria air pollutants" refer to.	Page 4.4-2, under the heading Criteria Air Pollutants, provides an in depth description of what criteria air pollutants are. As stated, criteria air pollutants are pollutants emitted into the ambient air by stationary and mobile sources.
Bradley2-40	Page 4.2-20 With regard to the "stationary and area source control measures," does the City's General Plan have a policy and action that would assure that new and existing sources of stationary and area sources are complied with? Does the City's General Plan take on the responsibility of checking with the BAAQMD? or receiving from the responsible source evidence of its compliance? Will this be part of the Mitigation and Monitoring Report Plan?	The comment is noted; however, it does not pertain to the merits of the EIR. Please refer to the General Plan page HW-18 for Policies and actions in support of air quality goals.
Bradley2-41	With regard to the "mobile source control measures," does the proposed General Plan include policy and actions to assure that mobile sources and their owners, especially those associated with development,	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required. Please refer to the General Plan page HW-18 for policies and actions in support of air quality goals.

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	are CARB-compliant?	
Bradley2-42	Page 4.2-24 I am not in favor of the Action t-3B because I am not in favor of the Dumbarton Rail project due to the disturbance to wildlife and wildlife habitat that it will create both during its construction and operations and maintenance activities. I am guessing that the residential component of the project will only result in further congestion on Newark roadways.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required..
Bradley2-43	Page 4.2-39 I think there is a "non sequitur" in the sentence toward the bottom of this page that states: "Further, future development under the proposed Plan would be subject to separate environmental review pursuant to CEQA in order to identify and mitigate potential air quality impacts. As such impacts from construction emissions under the proposed Plan would be *less than significant*." Separate environmental review may identify air quality impacts that cannot be mitigated. The "less than significant" is not a slam-dunk simply based on review and identification of potential air quality issues. This is not necessarily "self-mitigating."	As stated, the DEIR is a program EIR and does not analyze project-specific impacts, therefore the determination of less than significant is based on the analysis of the proposed Plan, not necessarily any specific project. Therefore, the determination is not necessarily stating that all future development under the proposed Plan would result in less than significant impacts, but rather the subsequent project-specific CEQA review required for future development would be required to identify and mitigate those impacts accordingly on a project-by-project basis. For purposes of this DEIR and in the absence of specific projects, it was assumed that future development would adhere to applicable laws and regulations, therefore in the case of this DEIR, impacts were determined to be less than significant. No changes are necessary.
Bradley2-44	Page 4.2-40 In the sentence "The analysis under was based on 2035 traffic data in the Alameda County Travel Demand Forecast model, which incorporate cumulative development anticipated in the county and the region through 2035 as projected by ABAG" the DEIR does not explain "under" what or "under" where. I presume this is a typographical error.	"Under" is referring to the analysis following that specific statement.
Bradley2-45	The DEIR states that "cumulative impacts from the proposed Plan related to criteria air pollutant increases would be the same as the Plan-specific impacts discussed previously in this chapter." But this doesn't make sense. How does the Alameda County Travel Demand Forecast model incorporate "cumulative development"? Were any of the development projects in the proposed Plan actually incorporated into that model in any specific manner? If so, to which page of which document(s) can I go to verify this?	The Alameda County Travel Demand Forecast model does not specifically model individual developments. However, the Alameda County Travel Demand model does embody land use projections that are regionally accepted and have undergone environmental review. The traffic analysis is disclosing traffic impacts associated with implementing the City's proposed GP in comparison to the County's Plan. In that sense, the analysis reasonably satisfies the objective of the EIR (from a traffic perspective).
Bradley2-46	The DEIR asserts that the "implementation of the proposed Plan policies cited under AIR-2 would reduce operational emissions of criteria air pollutants from development projects under the proposed Plan to the maximum extent practicable. As such, impacts from construction and operational emissions of criteria air pollutants generated with buildout of the proposed Plan would be less than significant." This is confusing; it appears to be a repetition of the previous sentence.	The first part of the statement is merely stating that the proposed policies would reduce operational emissions of criteria air pollutants, whereas the second statement is making a final determination, or conclusion related to both operation and construction emissions.
Bradley2-47	Page 4.2-41 In the next to the last paragraph on this page the DEIR states: "Because these are screening distances, refined analysis of the effects from many of the high volume roadways would likely show much lower potential TAC exposure and smaller buffer zones." The DEIR does not explain what "screening distances" means? nor what "refined analysis" means in this context? nor who is responsible for carrying out such analysis? It would help if you provided these clarifications in the final EIR?	BAAQMD has provided conservative estimates of risk and hazard impacts from roadways for each county within the Bay Area based on the average annual daily traffic volumes and distance from the roadway. These are referenced to as the screening distances in Chapter 4.2, Air Quality. For projects that fall within these screening distances, a refined analysis is required to determine the actual level of risk. The refined analysis must follow BAAQMD's methodology for modeling local risk and hazards. Future discretionary projects that trigger this requirement would be required to prepare a health risk assessment following BAAQMD's methodology, which would be submitted and approved by the City.
Bradley2-48	Page 4.2-43,44 The DEIR states under Action HW-1.F: Health Risk Assessments that the City shall requires project development proponents to submit a Health Risk Assessment within 1,000 feet of the I-880 or SR 84 freeways. I would amend this to specify that the "1,000 feet" is from the edge of the CalTrans right-of-way closest to the proposed development. The overall action could be good if the BAAQMD guidelines are conservative. But I do not know what they. Does a HRA typically take into account prevailing winds? Also I do not know if the agencies have identified "acceptable" impact levels; have they? what are they? where can they be verified? Of course Newark has a few residential neighborhoods that are clearly within the 1000 feet "screening" area, one of which I live in. How does the Lake neighborhood deal with TACs from both SR-84 and I-880? Do assessment tools take these	The commenter is correct. The distance measured shall be the edge of the nearest lane of travel, pursuant to BAAQMD's methodology. BAAQMD's guidelines for evaluating community risk and hazards can be found on BAAQMD's website. All sources within 1,000 feet are considered (e.g., if new residential land uses are within 1,000 feet of SR-84 and I-880, both roadways would be included in the risk assessment). Health risk assessments take into account meteorology (e.g., wind direction by time of day), and BAAQMD's CEQA Guidelines identify thresholds for which impacts would be less than significant for both cancer (excess cancer risk > 10 in a million) and acute risk (increase of more than 0.3 ug/m^3 in annual average $PM_{2.5}$). It should be noted that many existing neighborhoods were constructed prior to the listing of diesel particulate matter as a toxic air contaminant (which was listed by CARB in 1999). While this EIR addresses impacts from new development, BAAQMD is implementing several

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	potential double whammies into account?	programs within the Bay Area to minimize existing community risk and hazards.
Bradley2-49	Page 4.2-48 The DEIR describes Mitigation Measure AIR-1: Numerous goals, policies, and actions contained in the proposed Plan address future increase in VMT and criteria air pollutants under the Plan; however, the projected growth in VMT in the Plan Area would still exceed the rate of population growth. There are no additional measures that would reduce this impact. Where in the document does it explain why increase in VMT will exceed rate of population growth? I would like to review and understand this conclusion. If impacts are significant and unavoidable, would this not be reasonable grounds for denying permits on a project? Just how are proposed project benefits measured against significant and unavoidable impacts? Am I correct in stating that the City Council members always have discretionary authority ignore significant and unavoidable impacts with the adoption of a statement of overriding considerations?	Although the EIR identifies that Impact AIR-1 is significant because the rate of growth in VMT would outpace the rate of growth in population and employment in the City, the difference is fairly small (2 percent). The rate of growth in vehicle miles traveled is based on the Alameda Congestion Transportation Commission (CTC) regional travel demand model. Growth in VMT is affected not only by land uses in the City but also destinations and origins (where people who live or work drive to in the region). Consequently, the City only has direct control over the one end of the trip for trips that travel outside of the City boundaries. As stated in BAAQMD's CEQA Guidelines, "Due to the SFBAAB's nonattainment status for ozone and PM, and the cumulative impacts of growth on air quality, [General Plans] almost always have significant, unavoidable adverse air quality impacts." The qualitative comparison of the growth in the General Plan to the growth identified by City-related VMT in Alameda CTC's regional transportation demand model identifies that the project would not meet BAAQMD's Plan Level criteria. Therefore, impacts are considered significant and unavoidable. Policies and implementation actions were identified in the General Plan to reduce impacts. However, no additional feasible measures were identified that would reduce impacts to a less than significant level. When a significant impact is identified in an EIR, a Statement of Overriding Considerations is required that identifies the specific reasons to support approval of the project despite having a significant impact. Pursuant to the CEQA Guidelines Section 15093, "CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable'."
Bradley2-50	Page 4.3-6 In the section covering local regulations the DEIR describes the role of the San Francisco Bay Conservation and Development Commission (BCDC). First off I would like to see a map in the final DEIR that delineates the BCDC's jurisdiction in the City of Newark. It would clarify where precisely "the ending at the culvert at the Mowry Avenue bridge crossing is located; it would also help to clarify where precisely the "the bend of the channel near Plummer Creek" is located. Unfortunately Figure 4.3-2 does not have the BCDC jurisdictional delineation. There is a typographical error in the phrase "or change is..."; it should read "or change in...".	Although Figure 4.3-2 does not depict BCDC's jurisdiction, it does depict vegetation and habitat types. The intent of Figure 4.3-2 is to identify vegetation and habitat types, not necessarily depict jurisdictional boundaries other than City limit. No changes are necessary.
Bradley2-51	Page 4.3-8 The following remarks pertain to Figure 4.3-2: The northern portion of The Lake should also be colored emergent freshwater green. I am not sure to which grassland area, between Newark Blvd and Cedar Blvd. the DEIR is referring? Would you please clarify in the Final EIR. The figure shows more grassland in the Mayhews Landing area than I think there actually is. There is the possibility that saltmarsh wetlands have become infested with invasive annual grasses and other weeds. To my knowledge, there is only a relatively narrow strip of grassland around the perimeter of the Mayhews Landing unit of the National Wildlife Refuge. There should be wetlands of some type delineated in the Dumbarton TOD Plan Focus Area. Sensitive resources in the area may show up in the subsequent Figure 3.3-3, but even this figure is difficult to interpret. Albeit fragmented and isolated, at least two parcels adjacent to the railroad track on the east side of Willow street support seasonal wetland vegetation. Every year there is saturated soil that holds water for days on end and support vernal pool-like ephemeral vegetation. Butterflies and other insects abound although I'm unaware of even presence-absence surveys being undertaken to see if there might be any Threatened and Endangered or otherwise sensitive plants and organisms exist. The San Francisco Public Utilities District may have	Please see Figure 4.3-2b included in Chapter 3 of the Final EIR for more detail regarding Area 3 and 4 and its surrounding areas. Additionally, Figure 4.3-2 was prepared with US Department of Agriculture Forest Service information. Further, the commenter provided no evidence or source to support the suggested locations of the wetlands. Additionally, vegetation and habitat types have been adequately identified through the Area 3 and 4 EIR and this DEIR to the extent of providing information needed for an adequate analysis under CEQA Guidelines. No changes are necessary.

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	performed some surveys in the area due to their maintenance work on the Hetch Hetchy Pipeline. The figure makes everything appear to be annual grassland in the vicinity of the Dumbarton TOD Plan Focus Area. It may be that the resolution of the figure is too coarse to indicate the location of a wetland mitigation parcel managed by Urban Wildlands in that area, but it is certainly worth taking note of and assessing potential impacts on this area resulting from proposed development. I am wondering if the US Fish and Wildlife Service's Wetland Inventory database for this region was used? If not, I would recommend requiring project proponents to take advantage of this information. It is a valuable adjunct to information provided by the Department of Agriculture. See the following link: http://www.fws.gov/wetlands/index.html.	
Bradley2-52	Page 4.3-11 Under salt pond habitat (and nearby grassland habitat also), I do not see Short-eared Owl, Golden Eagle or any swift, swallow or bat species mentioned? But on walks taken around salt ponds I have observed at least these avian creatures. I think the Final EIR should include the most comprehensive lists of critters that are currently available and that the proposed Plan should incorporate requirements that project proponents use the most current information available regarding biological resource data. I request that the biological resource data upon which this DEIR relies is not considered adequate for future proposed projects (as "programmatic" might imply). The biological data which is being presented or incorporated by reference in the DEIR is not used to automatically "tier off" of and relieve future project proponents of their responsibilities to investigate each project. I am very concerned that City planners will use the "programmatic" nature of the proposed Plan to expedite in an inappropriate manner the project planning process. I request assurance in the Final DEIR and General Plan Tune-up that this is not the City's intent. The DEIR refers to the Coyote Hills Regional Open Space. Is there distinction between Coyote Hills Regional Open Space and Coyote Hills Regional Park? I appreciate the City's efforts to review the California Natural Diversity Database (CNDDB) or to require project proponents to do so. There is in this database a wealth of useful information. Nevertheless, there are limitations of the CNDDB, and these should be stated clearly. For instance, sensitive plant species in the Dumbarton TOD may not be listed in the database. Review of data from CNDDB will never substitute for on-the-ground reconnaissance, survey, and "truthing". Again, when it comes to evaluating biological resources that may be affected directly or indirectly by project development, the CNDDB may provide a starting point but it should not be the "last" word. Even with non-biological resources, a utility pipeline for example, we would never rely solely on a utility facilities map or text description; instead we would require on-site visit and investigation before proceeding with project implementation.	As cited on Figure 4.3-4, the City of Newark's California Natural Diversity Database from 2012 was used to determine special status species in Newark. Additionally, Table 4.3-2 is a comprehensive list of special status animal species in the vicinity of Newark, as cited in numerous sources within the past 1-3 years, which can be found on page 4.3-30. Referencing the comment about the Coyote Hills Regional Open Space, the Coyote Hills Regional Park has an open space adjacent to the park and just out of city limits.
Bradley2-53	Page 4.3-12 There is a typographical error in the "legend" at the bottom of Figure 4.3-3: "Congdon's tarplan" should be "Congdon's tarplant."	Please see Figure 4.3-3 included in Chapter 3 of the Final EIR for revisions.
Bradley2-54	Page 4.3-13 The following remarks refer to Table 4.3-1: Referring to Alkali milk-vetch, I request that references to surveys need to be supported with citations/reference---which include who, what, where, when, why. These citations/references are especially important when City planners reach a conclusion appearing in column three --- "potential for occurrence [of a species]" --- that "further surveys for the area were deemed to be warranted for impact assessment." Actually, any time I see in the DEIR the statement "[was] deemed to be unwarranted," I would request that the conclusion be supported in the Final EIR by citations/references which include the "who, what, where, when, why" information. Referring to the Arcuate bush mallow, I would expect that where inadequate information exists to rank occurrence, then policy would require site surveys at plant-appropriate times of the year. Referring to Brittlescale, when were the surveys performed? What protocol was followed? I agree that there is suitable habitat. I think the plant has been observed and recorded on the Warm Springs unit of the DESFBNWR (Reynolds, S. 2005) which is located immediately southeast of Newark in city of Fremont. With respect to California	With regards to citations, citations are used appropriately in the form of footnotes and citations at the bottom of each table or figure. With respect to the other comments, the purpose of the DEIR is to analyze potential impacts at the programmatic level of the proposed General Plan, and not to scrutinize a difference of opinions and/or scrutinize varying biological sources. As such, the comments reflect more of a difference in opinion of sources cited and therefore needs no further response. The sources cited and used for purposes of the DEIR are commonly used and considered to be reputable sources of information and/or included information through incorporation by reference pursuant to CEQA Guidelines. No changes are necessary. As stated on page 4.3-31 of the DEIR, the Santa Cruz tarplant was acknowledged to be suspected or have known to occur in areas throughout Newark, however, it was also mentioned that the likelihood of the species occurring in Newark is low or is not able to be determined at this time. Accordingly, adherence to several policies under the proposed Plan would reduce the potential impacts of future development on special-status plant species, including Policy CS-1.2, Policy CS-2.2, and Action CS1.A.

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	sea-blite, and all other plants and animals, when further surveys are indicated, General Plan policy should require that project proponents follow protocols acceptable to the California Department of Fish and Wildlife, the California Native Plant Society, the US Fish and Wildlife Service or other regulatory agency. Referring to the Caper-fruited tropidocarpum, here is an example of the author recommending further surveys in development areas based on habitat type, viz., valley and foothill grassland. I do not understand why the author did not offer similar a recommendation for Congdon's tarplant. This appears to be inconsistent. Page 4.3-14 Continuation of remarks related to Figure 4.3-1: With respect to Chaparral harebell, I am not sure what is meant by "to rank the occurrence." This statement made in several instances in this table 4.3-1. It is my understanding that this species generally occurs in a higher elevation range (300-1250 meters). With respect to Congdon's tarplant, the table entry is confusing. I am not sure whether or further surveys are being recommended or not. The second sentence says they should be, at least in certain areas. As an amateur plant enthusiast, I personally am in favor of requiring further surveys because I think I have seen it in the Newark area and also given that suitable habitat, namely, "disturbed California annual grassland habitat (with alkaline substrates), particularly near seasonal wetland," is fairly abundant in the Newark vicinity. In addition, in the same tabular information related to Congdon's tarplant, I do not know what they mean by "pre-development surveys"? Would you please clarify in the final DEIR with respect to the timing of such surveys? With respect to California goldfields, what survey protocol did the City's consultants follow? Was the protocol acceptable to the regulatory agencies? Regarding its "confirmed absence from impact areas," does this refer to the proposed Plan area? Regarding Delta wooly-marbles, who says it only occurs in vernal pool areas? The next column, labeled "Habitat," shows several other types of habitat in which this plant may occur. Do grassland or ephemeral wetlands occur in Areas 2, 3 or 4? Why does an action statement like "surveys would only be required for those areas" appear under the heading Potential Occurrence? Regarding Santa Cruz manzanita, there appear to be several occurrences on record (much of it historical) of this plant, although it seems to be located in chaparral area of the east Oakland Hills. I request that the final Proposed Plan require that surveys by qualified personnel be conducted to confirm presence or absence of this species. Regarding Santa Cruz tarplant, since there is inadequate information I request that the final Proposed Plan require surveys to confirm the presence or absence of this plant. There are, as the City's consultants probably know, historic sightings of this species in the region. Page 4.3-19	
	Continuation of remarks related to Figure 4.3-1: With respect to Slender-leaved pondweed, although the DEIR states Newark "generally lacks appropriate habitat," I request that the final Proposed Plan require surveys to confirm the presence or absence of this species because it has been found "in the vicinity of Newark." Upon checking, I discovered that at least one place it's been located is the Alameda Creek area near or in the Patterson Ranch area, which is practically across the street from the City of Newark. Still, there are a few remaining areas where shallow freshwater habitat occurs in what is left of Newark's mostly urbanized landscape, especial in Areas 2 and 4, which may not be too unlike where it was previously identified. With respect to Uncommon jewelflower, although Calflora maps show many occurrences in Alameda County including at least one occurrence along east bay shoreline north of Newark. Page 4.3-20 Continuation of remarks related to Figure 4.3-1: Regarding Western leatherwood, as far as I know it has only been located in the west Bay Area, where there are number of known locations (Rancho San Antonio Open Space Preserve in Los Altos and Jasper Ridge Biological Preserve in Palo Alto), none near the shoreline. With respect to Wooly-headed lessingia, there are known occurrences of this plant in the Milpitas-San Jose area as well as Alameda County and therefore I would request that the final Proposed Plan require surveys by qualified personnel to determine its presence or absence from proposed project sites with habitat determined appropriate by a qualified professional. As	

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	both a citizen and member of the California Native Plant Society, I appreciate the fact that the City and its consultants are using the society's *Inventory of Rare and Endangered Plants*, as well as the California Natural Diversity Database as mentioned above. Page 4.3-21 Continuation of remarks related to Figure 4.3-1: With respect to the Monarch butterfly, I think the concern here is ability of species to persist in our immediate area, our town. If we (my wife and I) have to drive out of the City to enjoy observing them, then they are too far away in my opinion. Fortunately, we still have them occasionally in our front and back yard due we think to cultivation of native plants instead of traditional sod. Otherwise we can infrequently admire them floating across the National Wildlife Refuge salt marshes, or walk or bike over to some regional park like Coyote Hills or Quarry Lakes but these are outside the Newark City limits. It sure would be nice to have some accessible open space in Newark that boasted these charismatic insects and more proactive encouragement by the City for the creation of butterfly habitat in the residential parks and neighborhoods. With respect to Vernal Tadpole Shrimp, I would like the DEIR to provide citations/references to the subject surveys. What survey protocols were used? Who was it that made the determination of "absence"? When, where, how, and why? Were surveys conducted in potential site in the Dumbarton TOD Plan Focus area? Page 4.3-22 Continuation of remarks related to Figure 4.3-1: With respect to the California Tiger Salamander, I appreciate the slightly more detailed summary as to its potential occurrence. Still I request that the final DEIR include citation/reference to the mentioned surveys. Page 4.3-23 Continuation of remarks related to Figure 4.3-1: Regarding the Alameda Whipsnake, is there any evidence of occurrence or suitable habitat in the proposed development areas? I request that the City require in its final General Plan Tune-up appropriate surveys by qualified personnel to determine presence or absence of this species in all areas proposed for development. With respect to the Alameda Song Sparrow, I request a citation/reference in the final EIR to the information under the heading Potential Occurrence. Also I would like to know if the Alameda Song Sparrow has been heard or seen in the areas proposed for development, how many and where. As above in many instances, I request that the City include a policy/action in the final GPT which requires surveys by qualified personnel using appropriate protocols to determine presence or absence. Page 4.3-24 Continuation of remarks related to Figure 4.3-1: With respect to the Peregrine Falcon, I request that the annotation under habitat reflect the fact that the birds frequently find tall urban structures with ledge-like features, e.g. utility and bridge towers, suitable habitat for nesting. They often use the third-story ledges of the aLoft Hotel in Newark for refuge during rainy weather. With respect to American White Pelicans, this species use the freshwater storm runoff ponds in the Coyote Hills Regional Park and also the salt ponds of the south Bay. I have seen them foraging on the freshwater lake in Newark's Lake neighborhood, and also over in Quarry Lakes Regional Park and Lake Elizabeth in adjacent Fremont. With respect to Bryant's Savanna Sparrow, how do we know it does not use/nest in the Dumbarton TOD project area? There is certainly suitable habitat in vicinity. I request the City include in its final GPT requirements for presence/absence surveys by qualified personnel following professional protocol. Page 4.3-26 Continuation of remarks related to Figure 4.3-1 Regarding Black Rail, the bird definitely occurs in La Riviere Marsh on the National Wildlife Refuge, across Thornton Avenue from the Mayhews Landing unit. Refuge biologists can confirm occurrence based on vocalizations although their breeding status is still unknown. Regarding California Clapper Rail, have City planners checked with biologists at the National Wildlife Refuge as to the presence or absence of this species in Mowry and Newark Sloughs? I doubt that rails will persist for another 50 years at the southeast end of the Bay unless we can assure them the protection of higher elevation refugia during extreme high tide events. I request that the final DEIR include the citation/references regarding the summary information for this species. For your information, there potential habitat for this bird in portions of Plummer Creek. Regarding California Least	

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	Tern, this species may be making a modest comeback in the San Francisco estuary. Small, nesting colonies of the bird are being observed along the Hayward shoreline south of a prime colony at Alameda Point. When did anyone specifically look for it in the vicinity of Area 4? I would probably agree with conclusion "unlikely due to..." although I am not very familiar the shoreline in the City of Newark's purview. I know that red fox and feral and stray cats can wreak havoc with nesting colonies, as well as avian predators such as ravens and kestrels. I would request that policies and actions in the final GPT require final project designs to minimize the exposure of potential tern nesting colonies from potential urban predators. In this case, I am asking the City to do what it can to promote the full recovery of this species, a recovery that is seriously vulnerable to sea level rise. Regarding Great Blue Heron, I would point out that these birds can even establish themselves in urban park habitat. We have substantial colonies of nesting egrets and night-herons in the tree-topped islands of the Lake in the Lake neighborhood of Newark. Regarding Loggerhead Shrike, this is a California bird of special concern and population declines in Alameda County over past 3 decades are presumed to result from grassland, both natural and ruderal, habitat lost to urban developments. By continuing down the path of paving over every last bit of grassland remaining in natural open space areas, our City is contributing sadly to the problematic decline. Page 4.3-27 Continuation of remarks related to Figure 4.3-1 With respect to Common Yellowthroat, I know that there are Common Yellowthroat in freshwater marsh on edge of Lake Elizabeth in Fremont, and also along marsh edges of both Coyote Hills and Quarry Lakes Regional Parks in Fremont. Am not sure if they are same subspecies as ones found in salt marshes. I have also observed these birds in the Mayhews Landing unit of the DESFBNWR, not more than 1 mile from Area 2. As for the Western Burrowing Owl, I have observed individuals at the Warm Springs unit of the National Wildlife Refuge which is relatively close to proposed development areas in Newark. In the Breeding Bird Atlas for Alameda County, it remarks that "many undeveloped areas near the San Francisco Bay, (….) which formerly supported nesting pairs in the early to mid-1980's, have since been replaced by warehouses and other businesses." I request that the final GPT include policies and actions that would promote the recovery in this bird in our town. Page 4.3-28 Continuation of remarks related to Figure 4.3-1 As for the White-tailed Kite, in the Potential Occurrence column, "May be" is too soft an expression. They have been sighted in these areas by bird watchers. There is even some evidence in the *Alameda Breeding Bird Atlas* (2011) of possible nesting. As for the Willow Flycatcher, there appears to be a contradiction here. There may not be suitable nesting habitat, but obvious there's suitable foraging habitat. Please include in the final DEIR citations to support the conclusion of "absence." With respect to the Yellow Warbler, there also appears to be some confusion. There is the statement that there is no suitable nesting habitat, but obvious there probably is some suitable habitat (for foraging?) if migratory individuals are observed. Please clarify this in the final DEIR. Page 4.3-29 Continuation of remarks related to Figure 4.3-1 With respect to the American Badger, please include in the Final EIR a reference(e) to the who, what, where, when, how, and tabular information. With respect to the Harbor Seal, the phrase "May be" in the Potential Occurrence column is not accurate. They are there. A friend of mine, Norton Bell, has been collecting data on them for both Mowry and Newark Sloughs for at least the past decade. For example: Here are the abbreviations, names and coordinates of the Harbor Seal observation locations and most likely haulout locations. To see the sites, copy the coordinates and paste them into the search bar in Google Maps satellite view at http://maps.google.com/maps (Coordinates for a location in google maps can be found by clicking on "what's there".) SSP, Salt Pile (mound) observation location: 37.488548,-122.032056 SSP, Salt Pile (mound) haulout location: 37.484377,-122.033043 MSN, Mowry Slough North Bank observation location: 37.492703,-122.034631 MSN, Mowry Slough North Bank haulout location: 37.493213,-122.043257	

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	MSS, Mowry Slough South Bank observation location: 37.494269,-122.047462 MSS, Mowry Slough South Bank haulout location: 37.491647,-122.042989 NS, Newark Slough observation location: 37.506219,-122.083426 NS, Newark Slough haulout location: 37.491647,-122.042989 Please take such data into account in the Final EIR. I think Norton Bell can be reached through the biologists with the Don Edwards San Francisco Bay National Wildlife Refuge. With respect to the Pallid Bat, please include in the Final EIR reference(s) for the information. I am interested in when and how the observations were made? With respect to the Salt Marsh Harvest Mouse, I do not believe the assumption made for the statement in the Potential Occurrence column is a valid one, if no other reason but sea level rise and climate change. Please provide reference(s) in the Final EIR. Where did the authors get information relative to characterizing the population in northwest Newark as 'large and healthy…and [its] habitat in excellent condition. The Mayhews Marsh unit of the National Wildlife Refuge is a mess, with plenty of non-native house mice (and rats?), as well as non-native, invasive plant species. I would like to see some policy commitments and action made in the final version of the General Plan regarding the recovery of endangered and threatened species which occur within the City of Newark. This is especially critical in the future given sea level rise projections. There are certainly lands remaining in the City that could contribute toward assuring the persistence of the endangered Salt Marsh Harvest Mouse. A major document dealing with the recovery of endangered and threatened species in the San Francisco Bay tidal marsh is due to be published by the U.S. Fish and Wildlife Service in the very near future. I am not sure that it will be available in time to inform the proposed General Plan, but I request that the City do whatever is possible to contribute toward recovery efforts. If vegetation such as pickleweed, for instance, exists in or could be restored into Area 2 or Area 4, then paving over or otherwise drastically modifying such areas would not be contributing to the animal's recovery. Page 4.3-30 Continuation of remarks related to Figure 4.3-1 As pertains to the Salt Marsh Wandering Shrew, it is possible that biologists at the Don Edwards National Wildlife Refuge have documented the animal in the Mayhew Landing unit. If the City has not assured that their consultants actively pursued solicitation of information from the National Wildlife Refuge, I would request that this be done before the submitting to the City Council, the final draft of EIR for certification. As pertains to the Townsend's Big-eared Bat, I do not know much. If the City's biological consultants have not checked with Dr. ??? at San Jose State University, then I request that they try to confer with this bat research regarding the status and distribution of bats in the study area.	
Bradley2-55	Page 4.3-31 In discussing the data in Table 4.3-1, the DEIR states that a population of the sensitive Congdon's tarplant occurring in Newark "is not expected to remain for another five years"? Please include in the final EIR a reference to this conclusion. Who is making this assertion and on what assumptions is it based? Please provide this information in the final EIR. No matter if true, it appears to make short shrift of a very sensitive plant resource. It somehow attempts to justify a finding of "no real significance." I suggest that if we have a population of any sensitive biological resource and it is not projected into the plan horizon, this makes it very significant. I request that the final EIR give citizens and decision-makers an idea of what "sensitive natural community" designation entails and why such communities are important ecologically and on a local scale by including appropriate text.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-56	Page 4.3-32 By the time the DEIR gets into describing the Standards of Significance in the biological resource section, I still have not seen that the author(s) have addressed the "natural" ecosystem and the important and valuable landscape services it provides the human community. Section 4.3 appears to focus on the animal and plant communities. Perhaps a discussion of the impacts on the other component of the natural ecosystem, namely, that abiotic dimension is touched on under hydrology or air quality. I would ask that the author of the DEIR find a way to discuss the big picture ecosystem and the invaluable	The categories have been adequately analyzed under the CEQA Guidelines. Additionally, through the appropriate planning process and adoption of the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan, the City has presumably weighed and considered the pros and cons of each plan, such as ecosystem services. Please see Master Response 2 regarding the adequacy of previous environmental review. As such, no changes are necessary.

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	services it supplies the human population. The Final EIR would be seriously deficient if discussion of the ecosystem as a whole is omitted. And perhaps it is dealt with in a piecemeal fashion while discussing other elements like air quality, groundwater supply, flood control, and natural open space. But the biological dimension of each of these "non-living" resources is critical. The vegetation in salt marshes can be critical in mitigating storm surges at extreme high tides, the vegetation and soil bacteria significantly affect the quality of water that seeps in our groundwater supply. These are critical resources of the human environment that provide us much of economic value and impacts from developments can compromise the integrity of these ecosystem processes resulting in many environmental problems that we are still trying solve at tremendous expense in human health and wealth (e.g. air pollution, ground water contamination, toxic chemical dumps, land subsidence, flooding, etc.). In the first sentence after the heading Standards of Significance, the authors use the term "cultural." I wonder why the word "cultural" is being used as it generally related to a specific subset of resources in the human environment. In fact, I did not find the term "cultural" in Appendix G of CEQA in the context it is being used here. I this a typographical error? In the fifth standard, "Conflict with any local policies or ordinances protecting biological resources...", is the Bay Conservation and Development Commission's Bay Plan considered "local"? Does Alameda County have any local policies aimed at protecting biological resources which might be at odds with this proposed General Plan Tune-up? In the sixth standard, I ask the question: Can the Don Edwards San Francisco Bay National Wildlife Refuge's Comprehensive Conservation Plan be construed as an HCP? I have heard that a consortium of cities, agencies, and Santa Clara County have adopted a Habitat Conservation Plan. If so, is this HCP relevant? It is my understanding that the Pacific Gas & Electric Company is developing an HCP. If so, would this be relevant to this standard of significance?	
Bradley2-57	Under Section 4.3.3 Impact Discussion, the DEIR states in BIO-1 that the "Buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area." This is neither a discussion nor an analysis of impacts in the DEIR at this point. The statement in BIO-1 is a conclusion. By placing it in this position in the text, it makes the subsequent discussion/analysis appear to be a post-facto justification for the conclusion. I request that the statement in BIO-1 is positioned in the final EIR at the end of the discussion and analysis leading to its conclusion. I also request that the same reformatting of all of the "conclusions" related to the significance of impacts throughout the DEIR be placed after the discussion and analysis. The discussion and analysis of impacts in an EIR should be a straightforward, objective exposition exploring the potential effects the proposed action may have on the environment. The discussion and analysis should appear as an explanatory logic leading to a conclusion regarding significance of impacts. The discussion and analysis are filled with conditional modifiers. If I am reading it correctly, it appears to say that (1) Given that Newark is already a pretty urbanized place, no one considers it to have any real wildlife habitat value; and (2) Buildout of the Plan could potentially result in both direct and indirect adverse impacts to sensitive plant and wildlife species. These statements do not appear to complement each other.	In the example of BIO-1, each heading that has that format is a summary statement to easily see the determination of that specific threshold/analysis. The subsequent discussion below that statement is the analysis and discussion leading to that summary statement. In regards to the second half of the comment, stating that a plan would have both direct and indirect impacts is an accurate statement considering that the DEIR was prepared as a program EIR and therefore does not consider project-level or project-specific impacts. As such, stating that the plan would only have direct or indirect impacts would be incorrect in that one would imply that the other is not true. For example, if we had stated that the plan would have direct effects, it would imply that it may not have indirect effects, and vice versa. Additionally, stating that Newark is urbanized does not imply that wildlife is not important nor does it imply that it has no value. The purpose of such statement is to provide context and background. No changes are necessary.
Bradley2-58	Page 3.3-33 The DEIR states that "The federal, State, and local regulations described in Section 4.3.1.1 of this chapter would protect special-status species present or potentially present within the Plan Area and compliance with these regulations would minimize potential impacts." This is theoretically true, but who assures compliance? And although potential impacts might be minimized, who is saying they would be minimized to a level of non-significance? Also, I am concerned that the City seems to be more interested in meeting the bare minimal compliance. From a wildlife habitat perspective, our goal is protect the habitat, not just the sensitive animals. Converting open space areas into developed urban residential areas reduces the opportunities for assuring adequate space for plants and critters. By maximizing urban	As stated in Chapter 2.0, Introduction, a mitigation or reporting program report will be completed as part of the final EIR to ensure compliance with mitigation as identified under the DEIR. In regards to protecting habitat and wildlife, CEQA Guidelines require consideration of special status plant and animal species, as indicated in Appendix G of the CEQA Guidelines. For that reason, the DEIR has adequately met such obligations required by CEQA Guidelines, and no further changes are necessary. In response to conclusions of less than significant based on compliance with agencies' regulations, in the absence of specific projects being proposed under the General Plan, the DEIR cannot nor does it analyze project-specific impacts. Accordingly, assumed compliance with agency regulations are deemed to mitigate or result in impacts less than significant. Without any specific projects to

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	development we would be minimizing open space within the City and reducing opportunities for citizens to connect with nature via walking and bicycling to the natural spaces. We are making it impossible for our children not to be what the author Richard Louv refers to as the "last child in the woods." BIO-1 is one of innumerable instances in the DEIR where it is being concluded that impacts to biological resources are being reduced to a level of insignificance based on compliance with other agencies' regulatory jurisdiction. But this is I think very flawed thinking and it is a flawed approach which applies to most of the innumerable instances in the DEIR wherein the conclusion of "no significant impact" is being made.	analyze, it is impossible to analyze specific impacts to provide to that level of certainty, therefore, under a program EIR, certain assumptions such as adherence and proper compliance must be assumed in order to make any kind of determination. Therefore, no changes are necessary.
Bradley2-59	At a Planning Commission Work Session on September 24, 2013, the City's consultant was explaining to the planning commissioners the progress that had been made to date on updating the General Plan. He explained how the consultants (and I am not sure at whose direction) "cut and pasted" in a wholesale fashion all the mitigation measures from the Specific Plans for the Dumbarton TOD and the Areas 3 and 4 Projects directly into the policies and actions making up the latest draft version of the General Plan. He explained to the five or six members of the Planning Commission who were present for the Work Session that by doing the cut-and-paste job it was making the new proposed General Plan a "self-mitigating" Plan. The idea which pervades the entire DEIR that the General Plan is somehow self-mitigating because it has incorporated the mitigation measures from other project Specific Plans is simply false. Each development project is unique. Each development project will have its unique mitigation measures, sometimes incorporated into its project proposal or imposed upon it by a City or State or Regional State agency that has jurisdiction. The mitigation measures are specific to the project Specific Plans. They may be and sometime are measures found in other Specific Plans, but when a project is finally approved by a land use authority such as the City Council, the mitigation measures are not policies, not directives, not recommendations or best management practices, they are in fact legal requirements with which project proponents must comply with. To assert, as I think the City's consultant did, that the mitigation measures as expressed in General Plan policy terms result in some type of "self-mitigating" General Plan whereby almost any significant impact resulting from proposed projects can be reduced to a level of non-significance is specious and fallacious. Besides the uniqueness of each proposed project and whatever final mitigation measures it may entail, there is the flaw I think in assuming that "policy" equates to "requirement". I am not sure how this holds up in a court of law. But in everyday reality, exceptions to policy are commonplace. I think in land use planning they are referred to as "variances." It is my opinion, therefore, that if we have valid reasons to assume that exceptions to policy occur, then we cannot presume or conclude that exceptions will not occur to "self-mitigating" policy. We cannot in effect be assured that project impacts will be reduced to levels of non-significance simply because we boast "self-mitigating" policies. If this line of reasoning is incorrect, I would request that you provide me with an explanation of its defectiveness. If it is not, then I request that all of the conclusions regarding impacts being reduced to a level of non-significance based on the "self-mitigating" character of the proposed Plan be revised to either indicate they are or may be significant, or revised to state that there is simply not enough information to make a determination at the programmatic plan level as to the level of significance of impacts resulting from future proposed projects.	The concept of self-mitigating is for the policy measures that are needed to reduce impacts of the Plan would be included in the plan itself, rather than outside of the plan. All future development will receive environmental review and specific mitigation measures to the extent required under CEQA.
Bradley2-60	Page 3.3-34 In explaining mitigation measures associated with the City's Housing Element and the Dumbarton TOD Project, the DEIR states that preconstruction surveys and additional surveys would require avoidance and relocation measures. I would point out that avoidance of direct impacts often does not adequately offset adverse impacts but serves only to isolate the resource. Such "mitigation" often focuses on the minimal avoidance measures and does little or nothing to contribute to the long-term survival of the resource.	The commenter refers to page 3.3-34, however, the comment appears to be referring to page 4.3-34. Please see page 4.3-36 to 4.3-39 for a discussion related to direct and indirect impacts. Additionally, page 2-5 of the DEIR states that a mitigation monitoring or reporting plan will be prepared as part of the FEIR, at which time will be reviewed prior to adoption. Further implementation of mitigation measures and/or policies and actions are a planning issue and would be addressed by the City as applicable to future development. No changes are necessary.

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Bradley2-61	The DEIR identifies the Policy CS-1.3 in the draft proposed Plan related to interagency cooperation. It call for the City to "participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas." The DEIR does not discuss or reference to what extent the City of Newark has participated in cooperative efforts with the National Wildlife Refuge or the Fish and Wildlife Office of the U.S. Fish and Wildlife to encourage long-term preservation of the baylands for instance. The DEIR does not attempt to share with the public the extent to which this policy been implemented? Did the 1992 General Plan contain such a reasonable policy? The DEIR does not attempt to describe what "participate in cooperative efforts" means. The City, for instance, has a representative who sits on the Bay Conservation and Development Commission. Does this activity pass for "participate in cooperative efforts..."? Does participating in meetings with the proponents of the Dumbarton Rail Project, a project which could have numerous adverse impacts on biological resources of our baylands, agreeing to support the type of high density community which could facilitate the funding of the project, constitute participation in cooperative efforts to encourage long-term preservation of the baylands? I request that the City revise the DEIR to include better descriptions of what its policies mean in practical everyday language and some relevant examples. This should not prove too difficult if in fact the City has been implementing the General Plan policies.	The comment is noted.
Bradley2-62	The DEIR refers to Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. It appears that a number of citizens have been telling the City that much of the land in the proposed DTOD and Areas 3 and 4 Projects are very sensitive natural areas. Historic baylands in Area 4 are considered essential to the expansion of the area under the management of the National Wildlife Refuge. Conservation of both areas could contribute to assuring the long-term conservation of baylands especially given sea level rise.	The comment is noted. Please see Master Response 4 regarding sea level rise and Master Response 5 regarding Area 4.
Bradley2-63	Page 3.3-35 It appears that Action CS-2.B is missing. In the section of the DEIR describing Action CS-2.C: Impacts on Special Status Species, paragraph (3) states that "As appropriate based on the results of the preconstruction surveys, construction limits shall be clearly flagged as directed by the biologist to ensure that impacts to sensitive biological resources are avoided or minimized to the extent feasible." This reminds me of the inadequate measures being taken to protect the roosting and rookery areas of the islands in the manmade lake in the Lake neighborhood: One of the three island rookeries has been allowed to become connected to the shoreline making it accessible to mammalian predators. The construction crews have clearly flagged the limits of construction but have done nothing to protect the sensitive resources on one of the islands where a great many egrets and herons nest and roost. In the same section, under paragraph (4), the DEIR states that the City "shall require ...." I appreciate the use of the word "shall" in this case as it demonstrates the City's commitment to cooperating with these agencies. These are all excellent (and nowadays standard) mitigation/best management practices. Toward the bottom of this page the DEIR states that "Applicable federal, State, and local regulations, together with proposed Plan policies and actions listed above would reduce potential impacts to special-status species that could result from buildout of the Plan, compliance, and implementation to the maximum extent practicable. I think that the phrase "compliance, and implementation to the maximum extent practicable" is better placed before the action part of the sentence. Thus: "...and actions listed above, including compliance and implementation to the maximum extent practicable, would reduce…". I also request that the word "practicable" be revised to "feasible."	The list of policies and actions on page 3.3-35 only list policies related to the protection of special-status species. No changes are necessary.

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Bradley2-64	Page 3.3-36 With respect to BIO-2 in the DEIR, please see my remarks and requested revision above for BIO-1. These "headings" (which I pointed out above ought not to be "headings") should reflects the conditional nature of "self-mitigating policy/measures. Thus: ":…would result in less-than-significant……if mitigation policies and measures are fully implemented." In the third paragraph on this page, the DEIR states that "Previous environmental review for the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified impacts to riparian habitat and sensitive natural communities in the Dumbarton TOD Focus Area and in the Southwest Newark Residential and Recreational Focus Area, including mitigation measures to address those impacts." I request that the final EIR state whether or not these referenced mitigation measures received concurrence and approval from the relevant regulatory agencies. If not, then those measures may not be enough to reduce the impacts to a level of "no or less-than significant." To be transparent, again I request that all assertions of "no or less-than significant" impacts should clearly reflect their conditional status. In the fourth paragraph on the page the phrase "...was determined reduce the impacts" the word "to" should be inserted after "reduce." In the fourth paragraph, the DEIR states that "Under Mitigation Measure 4.3-6, wetland plant and animal populations shall be relocated from any impacted wetlands." Were the direct and indirect impacts of plant and animal relocation identified and discussed? If not, then I request that a discussion and analysis of this measure be included in the pertinent environmental documents. In the fifth paragraph, the DEIR states: "The Areas 3 and 4 Specific Plan EIR identifies Impacts BIO-1 associated with impacts to riparian habitat. This impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measures BIO-1.1 through BIO-1.2B, which require wetland and habitat avoidance to the maximum extent feasible and either on-site wetland creation (at a ratio of 1:1) and enhancement (at a ratio of 0.5:1) or off-site mitigation banking at a ratio of 1.5:1." I have never heard of a 1:1 ratio for wetland/riparian mitigation except perhaps in cases where the creation of replacement wetland/riparian areas has been successfully implemented before project construction begins. Usually wetland mitigation ratios between 3:1 and 5:1 are the case. As I stated previously in this letter, each proposed project is unique, each proposed project site is unique, and the determination of mitigation ratios usually hangs on the nature of the impacts, their direct and indirect effects, their permanent or temporal duration. Again, I request that the final EIR state whether or not these referenced mitigation measures received concurrence and approval from the relevant regulatory agencies. If not, then the measures described above may not be enough to reduce the impacts to a level of "no or less-than significance."	Please see response to Bradley2-58 regarding headings. In regards to referencing previous EIRs, CEQA Guidelines Section 15150 allows for an EIR to incorporate by reference all or portions of another document that is a matter of public record. Accordingly, it is not the intent of this DEIR to analyze or scrutinize the adequacy of previous environmental reviews. Provided the previous reviews are available to the public, and have not legally been vacated or deemed inadequate, they are considered adequate otherwise for purposes of incorporation by reference. Therefore, the determinations are adequate and need no further changes. Regarding the comment on direct and indirect impacts, as stated, the DEIR is programmatic and therefore does not consider project-specific impacts. Therefore, it cannot be determined at this time, in the absence of specific projects, any potential indirect or direct impacts to wetland plant and animal populations, therefore, the analysis is adequate and no changes are necessary.
Bradley2-65	Page 3.3-37 The DEIR states that "Impact BIO-10, regarding indirect impacts to waterbirds associated with the loss of wetlands, would be mitigated to less-than-significant levels with the implementation of Mitigation Measure BIO-10.1, requiring a mitigation plan for creation or enhancement of replacement wetlands." I would remark that a mitigation plan in and of itself is not adequate or suitable mitigation. It is the implementation of an appropriate and regulatory agency-acceptable plan that is paramount. Therefore, the measure in and of itself would not mitigate the referenced impacts. I request that the Final EIR be revised on this point to reflect the reality. Has this measure ever been implement in the history of the urbanization of the Newark area? Has it occurred in any manner for the proposed DTOD or Area 3 and 4 developments? With reference to Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation. To what extent was this accomplished by the City before the Dumbarton TOD or Area 3 and 4 proposed developments? I request that one or two examples be included in the final DEIR in order to give citizens like me an idea of open space that already has been set aside by the City and managed to ensure long-term conservation. There is a typographic mistake	The purpose of an EIR is identify and analyze potential impacts of a project, not to provide the extent to which mitigation measures would be enforced. Accordingly, implementation of mitigation measures is an enforcement issue, not a CEQA related issue. In regards to the level of accomplishment by the City regarding Action CS1.A, that is a planning issue, therefore, no response is required. Referring to the clarification of Policy CS-4, that does not raise any environmental concerns and not based on the merits of the DEIR, therefore no response is required. Please see Table 3-1 in the Final EIR for text edits. Please refer to Master Response 5 regarding Area 4.

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	above: "CS1.A" should be CS-1.A. Pertaining to "Policy CS-4: Wetlands Delineation. Encourage the owners of large potentially developable properties to enter into early discussions with appropriate agencies conduct wetland delineation studies. Such studies should be used to identify areas to be conserved as permanent open space, as well as appropriate mitigation measures to offset any wetland impacts." This is probably a good policy, but it does not actually require anything of development proponents. Who is considered an owner? What "large potentially developable properties" still remain in Newark? It is not clear in the policy just who ought to conduct the wetland delineation studies? The project proponents? the agencies? both? How "early" is early? I suggest that the policy be revised in the Final GPT to provide more specific guidance as to timing of such well intentioned discussions and ways they will pursue to determine if in fact the City "encouragement" is resulting in the desired objective. Have the proponents of the Dumbarton TOD and Area 3 and 4 Projects already begun such discussion with the "appropriate agencies"? Have they conducted wetland delineation studies yet? Pertaining to "Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas." I request that the policy be revised per my previous comment regarding specification of the timing of the action and how they City is to monitor the effectiveness of this policy. There is a typographic mistake: CS2.B should be CS-2.B.	
Bradley2-66	Page 3.3-38 Pertaining to "Policy CS-3.6: Abating Illegal Dumping. Prohibit and abate the dumping of debris and refuse in and near wetlands and waterways, and the illicit discharge of pollutants into the storm drain system." The City says it will do this, however, they appear not to have sufficient staff or on-call contractors to accomplish this. Another problem is that they will often "pawn" off the responsibility and work to some other potential accountable agency, such as Caltrans, Alameda County Water District, etc. This was the experience that staff at the National Wildlife Refuge often had in the matter of illegal dumping in the vicinity of the Mayhews Landing unit of the Refuge along Thornton Avenue. It was extremely difficult to get the City to go to dump sites in a timely fashion.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
Bradley2-67	Farther along on this page the DEIR states that "Once that map is "verified," the full extent of waters of the U.S./State would be known and the extent of impacts on regulated areas ascertained." The wetland delineation process and "verified map" are distinct from "ascertaining the extent of impacts". Please revise the DEIR (and proposed Plan, if appropriate) to reflect this fact.	The General Plan is a policy document and does not directly analyze detailed projects. When specific projects were proposed they would experience environmental review.
Bradley2-68	Page 3.3-39 There is a grammatical mistake, an incomplete sentence or "typo". Thus " A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007." should probably be "...was received from...". Toward the bottom of this page the DEIR states: "Significance Before Mitigation: Less than significant." This statement in facts occurs throughout the DEIR. What does this line mean? It appears to be wrong because it is concluded above (and in numerous places throughout the DEIR) that it is compliance with the mitigation policies and measures that would lead to meeting a "less than significant" threshold. Am I correct? The implementation of these policies and actions comes after, not before, the finding in the DEIR as to "meeting a 'less than significant' threshold." If this is the case, then please revise the "Before Mitigation" phrases in the Final EIR to read "After Mitigation". *Please do this for every such finding in the DEIR where this is the case.*	Please see Chapter 3 of the Final EIR for text revisions. The term "significance before mitigation" is meant to be a quick way to find out the level of significance of the impact of the particular analysis that proceeded it. For example, if you wanted to see the impact of BIO-3 without having to read the analysis, you could refer to page 4.3-32 and see that the analysis determined a level of significance of less than significant. Additionally, the heading "significant before mitigation" because mitigation measures, if there are any, are identified at the end of each chapter or section. Throughout the analysis, there may be references to policies being implemented to lead to a determination of less than significant, however, mentioning of implementation of policies or other regulatory measures do not constitute mitigation measures in and of themselves. That said, implementation of policies and regulatory measures may in fact mitigate impacts, however, they may not be the actual identified mitigation measure. No changes are necessary.
Bradley2-69	Page 3.3-40 The DEIR states that "It was found that this impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measure 4.3-6, which requires a wetland delineation to be conducted." It is difficult to see how merely the performance of wetland delineation would be adequate mitigation for impacts to waters of the U.S. unless of course the wetland delineation	The statement was referring to a conclusion reached in a previous environmental review, which has been incorporated by reference pursuant to CEQA Guidelines Section 15150. As such, in the context of the analysis and threshold which analyzes if buildout would result in significant impacts to as-yet undelineated waters, Mitigation Measure 4.3-6 would mitigate the potential impact to undelineated impacts by simply calling for the procedure to

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	shows that no impacts actually occur in the USACE's jurisdiction. Please clarify this matter in the final EIR.	conduct a wetland delineation to identify potential wetlands not otherwise delineated. The statement and reference is adequate in the overall context of the discussion. No changes are necessary.
Bradley2-70	The DEIR states that "... or if avoidance is not feasible, that a program be prepared and approved to create and enhance on-site wetlands or create suitable wetland resources off-site." It is difficult to conceive how the mere preparation of a program to create and enhance on-site wetlands... could achieve adequate mitigation. It would be the requirement of successfully implementing such a program that would result in real mitigation. And I would suggest that the City, if the regulatory agencies have not, insist that such mitigation programs are fully assured by bonding. Some developers walk away from unsuccessful implementation of mitigation measures/commitments and neither the City nor the agencies have the personnel to assure compliance. Financial bonding would accomplish such contingencies. It is difficult to understand how any permanent loss of wetlands situated so relatively close to the baylands could be adequately mitigated for by such measures. It may sound reasonable but it is likely not very practical.	As indicated in Section 2.4.3, Mitigation Monitoring, of the Introduction, pursuant to Public Resources Code Section 21081.6, a mitigation monitoring or reporting program for any project for which it has made findings pursuant to Public Resources Code 21091 must be adopted for the purposes of ensuring all mitigation measures adopted through the preparation of the EIR are implemented. The performance and implementation of the mitigation measures are an enforcement issue (not a CEQA issue), therefore, no further response is required with respect to the outcome or performance of mitigation measures.
Bradley2-71	The DEIR states that "...Mitigation Measure Bio-1.2B, requiring, as an alternative to Measure Bio-1.2A, the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank or other private lands within 10 air miles of the affected area and along the eastern shore of south San Francisco Bay within the same geographic watershed." I would point out that the fact of sea level rise poses another challenge in terms of any flat, undeveloped open space that is close to the existing Bay shore or salt ponds. The best use for such land may be to serve as buffer to protect existing urban infrastructure. At the bottom of the DEIR states that "Additionally, the proposed Plan includes the following goal, policies, and actions that address potential impacts to wetlands, including waters of the US:... It appears the following section (from this point forward to page 4.3-42) is redundant. It is repetition of policies and measures that already were enunciated. Hopefully it was not intentional but a case of inadvertent mis-copy-and-paste.	Please see Master Response 4 regarding sea level rise. Each analysis is drafted as its own focus, therefore, although some lists of policies and actions may be repeated, it is done so as they apply to one or more analysis. No changes are necessary.
Bradley2-72	Page 3.3-41 Pertaining to Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. Does this policy include those lands within the Refuge's "acquisition boundaries" which were identified over 20 years ago as lands worthy of consideration for inclusion within the boundaries of the National Wildlife Refuge at some future date? This is the last relevant open space within the Newark City limits. It will be too late to directly contribute to the National Wildlife Refuge if the City allows appropriate open space to be developed for other urban uses. This policy consequently seems specious. One wonders, given the fact that the acquisition boundaries have been known since 1989, why it is not a reasonable alternative to be considered. Certainly there are citizens in Newark who would support this general plan vision and land use alternative.	The acquisition boundary defines area that is potentially eligible for incision in the refuge. Such property could only be acquired from willing sellers. The acquisition boundary does not necessarily indicate that the property should or could be added to the refuge- only that it is eligible. Please see Master Response 3 regarding the Appropriacy of Alternatives.
Bradley2-73	Land Use Page 4.9-2 With regard to the Dumbarton TOD Specific Plan, I wonder to what extent the existing General Plan had any influence. What is the sense of having a General Plan if the City Council tends to amend it each time a new development proposed that is not compatible with the current Plan? The General Plan is intended to establish direction and principles to guide growth and sustainable, long-term development. I plead ignorance. Was the word "sustainable" used in the 1992 General Plan?	The comment is noted.
Bradley2-74	Page 4.9-5 Pertaining to the section of "Undeveloped Lands" in Newark, the salt evaporation ponds are only "undeveloped" in the sense that there are not buildings or paved streets. The ponds were built. The levees surrounding the ponds were built. They require a substantial amount of expensive, on-going maintenance.	The comment is noted.
Bradley2-75	Page 4.9-7 Regarding Land Use Action T-2.B: Cedar Boulevard Pedestrian and Bicycle Trail, I think this would be a great project, really contributing to the pedestrian/bicycle-friendly goal. This could also provide connectivity with the commercial facilities to the north of Jarvis and to the west of Thornton and	The comment regarding Action T-2.B is noted; however as it does not pertain to the merits of the EIR no further response is required. To the extent that the remainder of the comment relates to the treatment of previous environmental review in the Draft EIR, please see Master Response 2.

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	also access to the Dumbarton Bridge and the regional Bay Trail on the Don Edwards San Francisco Bay National Wildlife Refuge. The DEIR states under LU-2 that "The proposed Plan would not conflict with an applicable land use plan, policy, or regulations adopted for the purpose of avoiding or mitigating an environmental effect." The DEIR further states that "Per State law, the General Plan is the primary planning document for the community. Once adopted, the proposed Plan would replace the 1992 Newark General Plan. The Area 3 and 4 Specific Plan and the Dumbarton TOD Area Specific Plan would remain in force. Were these proposed developments actually consistent with the 1992 General Plan? or did they require major amendments to the General Plan and Zoning Ordinance? Again, I wonder if this General Plan Tune-up is not simply an bureaucratic exercise to bring what was the primary planning document for our community into conformity with inconsistent revisions and amendments previously recommended and adopted by the Planning Commission and City Council, respectively? Is there some truth in what I am saying?	
Bradley2-76	Page 4.9-8 With regard to Action LU-7.B: Street and Path Network, has there been an economic analysis done to indicate whether or not the City will have enough revenue to be responsible for the operation and maintenance of these public streets? How is all the residential development in this proposed project consistent with smart growth principles? Will we not be creating a relatively isolated residential community west of the railroad tracks with no locally available goods and services unless residents get into cars and travel? Further reading of this section indicates that the Zoning Ordinance will need to be updated to ensure consistency with the proposed Plan after adoption. So the Zoning Ordinance has not been amended yet to bring the Dumbarton TOD and Area 3 and 4 Projects into conformity with a General Plan. These are major changes. Why wasn't the General Plan updated before approvals were granted? There is a great deal of emphasis in the proposed Plan to revitalize our existing community. One would think that the City ought to be trying to discourage the development of new neighborhoods that will be more or less isolated (divided?) from the existing community. With respect to the section of the DEIR that begins on this page with "As described in Chapter 4.6, Greenhouse Gas Emissions, of this Draft EIR, the proposed plan would not conflict ... ", I am not sure why this paragraph is stated here. It appears out of context. Is it somehow meant to imply that the City's proposed land uses will be in compliance with regional GHG emissions reduction strategies? Building more pedestrian and bicycle-friendly infrastructure might advance such strategies, but the building of new medium density residential, relatively isolated from commercial/retail outlets and local transportation infrastructure will not. Buildout of the proposed Plan, as the DEIR shows, will certainly translate into more VMT and thus GHG emission. But then the City appears to put its collective head in the ground and proceed with unwarranted growth and development by adopting a resolution of "overriding consideration." When the DEIR claims that "Overall, implementation of the proposed Plan would not conflict with an applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect and associated impacts would be less than significant...", I'm not sure this is entirely accurate given the goals and policies of the BAAQMD and MTC/ABAG and the proposed residential development in parts of Area 4. There are, in fact, other more regionally and locally beneficial uses for Area 4 lands that would result in less traffic and consequently less VMT and greater offset of GHG. This is one of those ecosystem services, not discussed under Biological Resources that natural open space could provide. Could the 960+ acres of open space be translated into its beneficial contribution to achievement and maintenance of air quality? Here it is again, the statement that before any mitigation, the level of significance is "less-than-significant." This language is confusing when there is so much talk above about mitigation policies and actions. Again, the statement found on this page "Significance Before Mitigation: Less than significant" appears contrary. Should not the statement read "Significance After Mitigation"? Regarding	The analysis of LU-2 analyzes whether the proposed Plan conflicts with an applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Accordingly, the reference to Chapter 4.6 was referring to the consistency with the CARBs Scoping Plan. Please refer to Master Response 5 regarding Area 4.

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	the assertion that "Conflicts with the Habitat Goals and the Basin Plan are discussed in Chapter 4.3, Biological Resources, of this Draft EIR ...", conflicts with the Habitat Goals were not discussed in Chapter 4.3. They were not even identified. The only information in Chapter 4.3 regarding any conflicts was a sentence stating that no official agency had formally adopted the "habitat goals" plan or guidelines, and therefore presumably the City was not required to describe and discuss possible conflicts with the Habitat Goals? As a matter of fact, regulatory agencies such as the Bay Conservation and Development Commission do use the Habitat Goals document to guide their implementation of the Bay Plan. To me, this type of issue avoidance in the DEIR demonstrates the City's lack of sincerity in the realms of conservation and sustainability.	
Bradley2-77	Page 4.9-9 The DEIR enumerates some of the "numerous policies and actions [in the proposed Plan] intended to minimize such [inevitable] disturbances and support the goals of the [National Wildlife Refuge's Comprehensive Conservation Plan] CCP. But the DEIR does not appear to describe or analyze any of the "inevitable" conflicts that might result from the proposed Plan. It makes reference to "limitations on off-leash dogs" and the "avoidance of excessive night lighting," but gives the reader neither description nor analysis of how these might have adverse effects on the protection and conservation of wildlife. I could find no mention of "cats" in the DEIR although the depredation of wildlife resulting from house cats in urban areas is well known and researched. Although most of the policies and actions referred to on this and the next page appear to be very laudatory, they are not discussed in any detail. Nor do any of them address the impacts of urban land uses on the long-term protection and preservation of the baylands and other open space habitats within the current expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge.	The comment attempts to conclude the fact that inevitable disturbances may occur, which may or may not be true, however, in the absence of specific projects, such disturbances, if any, cannot be determined nor analyzed at the programmatic level such as this DEIR. As stated throughout the DEIR, future development would require separate project-level CEQA review which would identify "inevitable" disturbances at that time. Accordingly, the applicable policies are intended to be applied at the project-level, therefore in the absence of specific projects being analyzed in the DEIR, therefore, adherence to such policies and actions proposed under the General Plan can only be assumed to be adhered to and accordingly are analyzed correctly for a programmatic level analysis. No changes are necessary.
Bradley2-78	Page 4.9-10 One of the policies referred to in my previous comment is "Policy CS-2.6: Salt Pond Management. Encourage the management of salt ponds to enhance their value for wildlife habitat and recreation. In the event that salt production ceases, conduct a Specific Plan to explore a balance between development and preservation of important wildlife and open space resources cited in the DEIR." What exactly does this imply? Could the wording of this policy be revised to better reflect the refuge's goals in its CCP or even more broadly, given the limited planning horizon, its [the National Wildlife Refuge System's] mission statement? This policy also appears contradictory/inconsistent as the urban development of Area 4 does nothing in the way of encouraging long-term preservation of the baylands etc. Guess it's the difference between narrowly conforming with existing wetland protection laws and promoting landscape open space resource preservation. One of the CCP-supportive actions, Action CS-2.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives." This latter provision totally limits the scope of the City's future support, given that the City has been trying their utmost to incorporate into the Plan update the urbanization of the two largest remaining areas of open space. The City also cites as an action to support the Refuge's CCP the following: "Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay." But this an embarrassingly belated, practically irrelevant gesture of support since the City, over the past few years, has been advocating and promoting the residential and commercial development of the last remaining open spaces in the City.	The commenter’s opinions are noted. Please refer to the Master Response 5 regarding Area 4.

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Bradley2-79	Page 4.9-11 In the DEIR's conclusion (appearing at the top of this page) that the "overall, implementation of the proposed Plan would result in a less-than-significant impact with respect to conflicts with the CCP," would you please state in the final EIR if City planners or their consultants formally or informally consulted with Refuge personnel to seek concurrence on this important matter? With regard to the statement in the DEIR that "BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek ...", it is extremely difficult locate this jurisdictional landmark on the map provided in the DEIR. In the final EIR, would you please more clearly delineate the on the map for this reader. I don't see the bridge and I'm not sure if I'm looking at the referenced "bend in the Plummer Creek channel." The statement in the DEIR to the effect that "Neither the adopted Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs" is very good news indeed. Although I cannot distinguish in sufficient detail the boundaries of these historic duck clubs, I presume the hunting was carried out in wetlands and nearby uplands. Just how close to the duck clubs is the City anticipating development? With regard to the policy statement in the DEIR, namely, "Policy CS-1.2: Conservation of Sensitive Areas. Support the conservation of environmentally sensitive areas and unique natural resources in the city," I believe there is a strong case to support addressing Area 4 as "unique natural resources" in that it pretty much represents the last remaining intact natural open space area in the City of Newark and as such are valuable and unique de facto? All the open space west of the railroad tracks in Area 4 it has unique value as open space. There is Shoreline Lake and the Silliman Complex but these are dedicated to the preservation and conservation of natural open space. I urge the City Planning Commissioners to recommend dedicating as much of Area 4 as possible. Perhaps finding a way to implement the proposed "Policy CS-1.3: Interagency Cooperation. Participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas" before proceeding with or during the on-going development of the Areas 3 and 4 Project would achieve the preservation of this unique and valuable resource.	In regards to the comment about the level of collaboration with agencies and other organizations, that is a planning issue and therefore no further response is required. Although the BCDC jurisdiction is not depicted throughout the DEIR, the boundaries are described through text and therefore are sufficient enough to the extent the BCDCs jurisdictions were referred to in analyses. As such, a map of the jurisdictions of regulatory agencies may or may not be necessary. Regarding the BCDCs jurisdiction, a map was determined to be needed and, therefore, no further response is required. Regarding the dedication of Area 4 for preservation, that is a planning related issue, not CEQA, therefore, no further response is required; however please refer to Master Response 5 regarding Area 4. For information,. As such, please see the Restricted Growth Alternative on page 6-2 for a discussion which includes restricting growth in environmentally sensitive areas along the western edge of Newark. Although that alternative was found to be environmentally superior, it does not meet most of the stated objectives, also found in the Alternatives chapter and, therefore, was rejected as the preferred alternative, as discussed on page 6-27.
Bradley2-80	Page 4.9-12 It is on this page that the DEIR concludes that "Under the proposed Plan, the land use designation and zoning applicable to the duck clubs would remain unchanged as Low Density Residential. No development is envisioned on the location of the duck clubs, nor could any development of these areas, to the extent they are managed wetlands as defined under the McAteer-Petris Act, occur without a permit from BCDC or any other agency with jurisdiction over these areas. Further, as BCDC policies do not explicitly prohibit development on these locations and as none is envisioned in the proposed Plan, conflicts with the Bay Plan would be less than significant." In the finalization of the proposed Plan, I suggest that a policy directive be developed that would result in converting all those portions of Area 2 and Area 4 where development is not envisioned from the existing "low density residential" zoning to an "open space" designation. It just makes good sense; it the right thing to do. Why wait until it would require another round of amending the General Plan and Zoning Ordinance. I am still uncertain as to how the City can, in the proposed Land Use Planning element, come to a finding of "less than significant" before any required mitigation is determined. Who knows if impacts will be able to be mitigated to a level of "less than significance"?	As stated in Chapter in 1.0, and 2.0, the DEIR was prepared at the programmatic level and therefore does not analyze project-specific impacts. Therefore, determinations of less than significant assume that adherence and compliance with policies and regulations under the proposed General Plan along with local, State, and federal laws would result in less than significant impacts where indicated. Further, future development would be subject to independent CEQA review which would identify project-level impacts and mitigation measures. Please refer to Master Response 5 regarding Area 4.
Bradley2-81	Page 4.9-13 The DEIR states that "... buildout of the proposed Plan would not contribute to a cumulative impact associated with division of an existing community." No, but what is the rationale behind creating an isolated community? Cherry Avenue serves as a clear and formidable separation of residential neighborhoods from commercial/industrial, except in the southern portion of the Newark Old Town area. If dividing an existing community is not advocated, then why would we want to promote the creation of a divided Newark community? By locating residential units in Area 4, the City would actually be creating a	The discussion on page 4.9-13 discusses the potential of cumulative impacts that reflect cumulatively the independent analyses found in LU-1 through LU-3, of which are not required to address isolation of communities, but rather if development would divide existing communities. For that reason, no changes are necessary. The comment referring to promoting isolated communities is incorrect, and no such promotion is stated or otherwise implied in the DEIR. In response to locating residential units in Area 4, no specific projects are being proposed under the proposed General Plan, therefore, project-level CEQA review has not been conducted under this DEIR

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	fairly isolated residential enclave. This seems contrary to policies in the proposed Plan for improving and cultivating a greater sense of community. At the bottom of this page, the DEIR tersely states that "The Plan would not result in any significant Plan-specific or cumulative impacts related to land use and planning and therefore no mitigation measures are required." But would it not be more honest to state something to the effect that: Since all adverse impacts have been reduced to a level "less-than-significant" through policies and actions that avoid or minimize impacts to the maximum extent practical, no *additional* mitigation measures are required? Because throughout the DEIR there is reference made to compliance with whatever, yet-to-be-determined mitigation measures required by the numerous, non-City regulatory agencies, the statement regarding cumulative impacts of land use that "no mitigation measures are required" is very distressing and confusing to say the least.	and, therefore, did not analyze any specific housing development in Area 4, because no such development has been formally proposed. In response to the mitigation comment, stating that there are no mitigation measures is accurate given that implementation of proposed policies and previous mitigation measures identified in prior environmental review do not constitute formal mitigation measures on their own. That said, although policies and regulation may result in mitigating effects, they are not in and of themselves considered mitigation measures. As such, no changes are necessary.
Bradley2-82	Page 4.10-1 There is a typographical error: "beings" in line 2 should probably be "begins".	Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-83	Page 4.10-4 How exactly is one supposed to "read" There are several dBA figures that are not associated with any source. Please revise for the Final EIR. Page 4.10-9 Under Vibration Standards the DEIR that "For industrial uses, the City of Newark likewise requires that no vibrations be perceptible beyond the boundaries any particular site, with an exception for vibration caused by temporary construction." Should not even temporary construction noise be mitigated to the maximum extent practical because in many cases "temporary" construction can go on for days and weeks?	Table 4.10-2 does not present thresholds; it was included to illustrate how loud some indoor and outdoor noise events are relative of the dBA logarithmic scale. These events are presented to provide order of magnitudes, so the reader can have an idea of what a particular level represents. For example, a gas lawn mower at 3 feet away generates noise levels between 90 and 100 dBA. The City does not have noise thresholds to regulate construction noise, which is reduced by limiting it during the daytime hours.
Bradley2-84	Page 4.10-10 The DEIR states that "Figure 4.10-1 shows the existing 65 dBA CNEL train noise contours, along with those from motor vehicle traffic." I do not see any noise contours delineated. It displays noise monitoring point locations, not noise contours.	The discussion in page 4.10-10 should have referred to Figure 4.10-2, which shows the 60, 65 and 70 dBA CNEL noise level contours for existing and future conditions.
Bradley2-85	Page 4.10-22 The DEIR cites "Action EH-6.A: Noise Ordinance – Limits on Noise Levels. Draft and adopt a Noise Ordinance that establishes acceptable noise levels and standards, as well as provisions for enforcement and penalties in the event these levels are exceeded." As with many other "actions" referenced in the DEIR, it does not appear that the planners have recommended any target dates for completion of the recommended actions. Please consider including "target dates for completion" of all actions in the proposed Plan.	As required by Government Code Section 65400, the Community Development Department will investigate and make recommendations to the City Council regarding implementation after the Plan is adopted (see P. 152 of the General Plan Guidelines). The City will address the implementation of General Plan actions in its annual progress report. Alternatives for the prioritization of General Plan actions will be considered, further evaluated, and discussed with the City Council following Plan adoption.
Bradley2-86	Page 4.10-28 The DEIR cites "Policy EH-7.6: New Noise Sources. Require new developments that have the potential to create long-term noise increases to mitigate potential impact to off-site receptor properties." Will this policy apply to on-site open space resource receptors, that is, the wildlife and the folks who may be using the open space? If not, please include in the final Plan policy that would address receptors occupying open space. Page 4.10-35 In its conclusion regarding Noise Impacts, the DEIR states that Although the most effective mitigations such as soundwalls or earthen berms may theoretically be capable of reducing increases to ambient noise to levels below the above standards, such reductions cannot be guaranteed; and, in many cases, other considerations will prevent the use of these noise-attenuating features. Therefore, there are no additional measures available to reduce the associated impacts to a less-than-significant level....No feasible mitigation measures are available to reduce noise impacts to less than significant levels, impacts would remain significant and unavoidable." I am not sure that I understand what's being asserted. Cannot the noise-reducing mitigation measures be guaranteed? Many measures are proven to reduce noise impacts. Although they may not reach target levels, they are better than nothing. What other considerations? for example? might preclude the use of noise-attenuating features. The conclusion that there is "no feasible mitigation measures available to reduce noise impact to less than significant is sad, very sad. It is a difficult assertion to prove, especially given our discretion to regulate land use and setbacks, and so forth. I am suspect that when you attempt to meet the standards set by regulatory agencies, it will find that much the same, namely that it is not	Mitigation measures for noise are site-specific and are highly dependent on the geometry from the noise source to the receiver, and on the characteristics of the noise source. Several factors could deem a mitigation measure infeasible, such as cost, land ownership, space, soil conditions, etc. As this is a program-level analysis, it is not possible to guarantee that every new project would not be exposed to, or would not expose nearby sensitive uses to noise levels above thresholds. This will be analyzed in detail when projects are subject to environmental review, or tract map/building permit approval.

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	possible to mitigate every impact resulting from proposed development to a less than significant level.	
Bradley2-87	Page 4.12-5 The DEIR cites "Action CSF-4.F: Improving Fire Response Capacity. Ensure the provision of sufficient facilities and additional fire personnel, to respond to the demand created by new development." Of course this sounds like a responsible policy, however, in the discussion of Page 4.11-4, it claims that there will not be a need for new facilities, and it does not mention increases in fire personnel. It is hard to comprehend that the proposed increase in number of residents will not require additional personnel and equipment and probably facilities. How often do citizens hear statements to the effect that an agency "does not anticipate that this increase would require the construction or expansion of facilities," and then 10-15 years down the line hear from the same folks that such expansion is needed? or that a rehabilitation is needed and facilities will be expanded at the same time? It does not seem to make common sense that the increase in service population would be accommodated using existing stations? And how about personnel and equipment? Or does planning skip over those issues because CEQA may not require it? Farther down on this page, under the discussion regarding Cumulative Impacts, the phrase "modification of existing facilities" is introduced. I did not see that idea in the above discussion. Of course such modifications can be very expensive.	The comment is noted. The determination was based on the implementation of policies under the proposed Plan along with local and State regulations, such as impact fees to ensure adequate fire protection facilities. The impact analysis in Chapter 4.12, Public Services and Recreation, analyzes whether or not new facilities would be required as a result of the proposed Plan. As stated, the increase to service population would occur over span of 20 years, and as indicated through communication with the Fire Chief of the Alameda County Fire Department, new facilities would not be required. Therefore impacts were determined to be less than significant. It was discussed that additional staff and equipment would be needed as a result of an increase to service population, however, under CEQA the need for staffing and equipment alone is not considered an environmental impact, unless that staffing or equipment resulted in the need for new facilities, of which the construction of such facilities could result in environmental impacts.
Bradley2-88	Page 4.12-6 Under a discussion of Newark Capital Facilities Fees the DEIR states that the fees as they pertain to residential development need not be paid to the City until the issuance of the Certificate of Occupancy Why isn't the fee paid before construction in the case of residential development? It would appear that needs for law enforcement would arise (with occupants moving in, and before) and fees not being received until such time as would result in a lag before they could be used to construct or modify facilities and secure the personnel needed to address the protection of homes and residents?	The comment is noted; however as it does not pertain to the adequacy of the EIR, no further response is required.
Bradley2-89	Page 4.12-15 In section 4.12.4 PARKS AND RECREATION, the DEIR "describes the regulatory framework and existing conditions, and the potential for environmental impacts related to parks and recreation." There is no reference in this major heading to Open Space. However, above it was referred to as a mandatory element. There does not appear to be any acknowledgment of open space per se nor an impact analysis…. In its discussion of parks, the DEIR offers no analysis of space that would allow opportunities for unstructured play. Perhaps the planners are taking a minimally required perspective, namely, parks and school grounds, period. There is little if anything setting the background as to the value of open space, why it is a mandatory element, and so forth. Again, I would suggest that in as much as the proposed Plan could eliminate much of the remaining open space in the City and that much of that would be on lands adjacent to baylands that are fully capable of sustaining bay restoration. On Page 7 of the draft GPT it states that the City has expanded two of the state-mandated categories. The Open Space, it stated, was expanded to cover Parks and Recreation. So far in this DEIR, it appears that sodden parks and playing fields are the only kind of park land the DEIR is focusing on relative to this mandatory Open Space element. Reference is made under the DEIR description of Regional and State Park to the Don Edwards San Francisco Bay National Wildlife Refuge encompassing 30,000 acres. The reader should probably know that half of the 30,000 acres is located on the west side of the Bay, and that most of the remainder on the Newark side of the Bay is not accessible by citizens due to Cargill salt operations. I suggest in discussions of this sort that the DEIR consider addressing acreage in terms of available miles of accessible trails. Page 4.12-22 The DEIR states that "Additionally, continued implementation of the parkland dedication requirements established in the Municipal Code would ensure that existing parks or public facilities are well-maintained and improved as needed." Inspection of almost any park in Newark would show that policy and ordinances do not assure that existing parks or public facilities are well-maintained and improved when and as needed. For example, the exercise equipment	The comment is noted. The requirements under CEQA and requirements of State law pertaining to mandatory elements of a General Plan are independent of each other. Therefore, there is no requirement that Open Space be addressed as its own heading under CEQA Guidelines. Regarding the identification of opportunities for unstructured play, an EIR is not required to identify areas of play. Pursuant to CEQA Guidelines, each chapter looks at existing conditions, the proposed project (or Plan), and analyzes impacts accordingly. No changes are required.

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	in the Lakeshore park have needed replacement for several years. The paved trail providing accessibility has been in various stages of disrepair for several years, as has been the park irrigation system. The City is slowly, extremely slowly, addressing the huge backlog of maintenance repair and replacement needs it has. How can the City Council and City Planning Commissioners go on promoting new facilities when we do such an inadequate job of maintaining what we already have?	
Bradley2-90	Page 7-1 I do not think this is accurate. In fact the federal government owns much of this property in fee-title. Leslie Salt Co. and its successor Cargill Inc. have salt resource extraction rights in perpetuity. Nonetheless, the salt evaporation ponds function as significant migratory water bird and waterfowl habitat. The designation Salt Harvesting does perhaps more accurately reflect that nature of activities from a layman's perspective; however the designation Agriculture / Resource Production does help the layman understand why the land is eligible for Williamson Act benefits. I am not sure why the designation name change for this acreage. From another perspective it could be designated migratory bird habitat. This concludes my comments. Again, I urge you to consider carefully the suggestions I have made and address the questions I have raised. Sincerely, John R. Bradley	The comment is noted; however as it does not pertain to the adequacy of the EIR, no further response is required.
Burrows-1	I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay.	The comment is noted; however, it does not pertain to the merits of the DEIR and no further response is required. To clarify issues involving Area 4, please see Master Response 5
Burrows-2	I read the financial analysis of the various scenarios, and of course you are going with Area 4, which according to the analysis provides the biggest upside. Unfortunately, the key assumptions of your analysis did not seem to evaluate the environmental costs of filling in Bay wetlands, or the threat of sea level rise from global warming. Nor did it evaluate potential financial upsides of folding the properties into the Don Edwards National Wildlife Refuge. Seems a bit shortsighted. There was a golf course out in that general area in the past, which has disappeared into the wetlands of history - why do you want to repeat that failure? When this project goes upside down, your name will remain attached to it.	The comment is noted; however, it does not pertain to the merits of the DEIR and no further response is required. To clarify issues involving Area 4, please see Master Response 5.
Burrows-3	Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from development: -The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay -The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise" -Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem" and "critically important to waterfowl and shorebirds" I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Response 3 regarding the adequacy of alternatives. To clarify issues involving Area 4, please see Master Response 5.
Burrows-4	With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.	The comment is noted. Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. Please see Master Response 4 regarding sea level rise and to clarify issues involving Area 4, please see Master Response 5.

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Dorman-1	My family has lived in Newark since 1989, and I co-own a business located in Newark. I oppose the plans to fill Area 4. It's the wrong plan in the wrong area. I've heard all the arguments for development, including that the "developers will sue the city" if we don't dump 2 million cubic yards of fill into this wetland area. I don't find these arguments compelling. In the long run, the right thing to do is to protect Area 4. Please work to develop a General Plan EIR alternative that would accomplish this protection. Let's think about our kids and grand-kids, and let's not build housing stock that will be subject to flooding as sea levels rise. I know you care deeply about the city. We can do better than the current plan. Let's do the right thing.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Reponses 3 regarding the adequacy of alternatives and to clarify issues involving Area 4, please see Master Response 5.
Elkins-1	The plan to develop "Area 4" into residential housing and a golf course is clearly not forward thinking. With sea levels rising, you will literally and figuratively be bailing out any residents that live in this development within the next 50-100 years. I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay. This plan is rooted in thinking that is about a century too late.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Response 4 regarding sea level rise to clarify issues involving Area 4, please see Master Response 5.
Hooper-1	Clearly it makes no sense to endanger the Don Edwards National Wildlife Area with extensive development in Area 4. Moreover, do you know that King Tides will raise water levels nine feet within 25 years. Wetlands are one of the few things that will protect your community from climate change and rising seas. I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay. Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from development: -The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay -The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise" -Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem" and "critically important to waterfowl and shorebirds."	Please see Chapter 4.3, Biological Resources, of the DEIR to see an impact analysis discussion related to biological resources, including wildlife, in the City of Newark. Please see Master Response 4 regarding sea level rise and to clarify issues involving Area 4, please see Master Response 5.
Hooper-2	I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Response 3 regarding the adequacy of alternatives.
Hooper-3	With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.	Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. Please see Master Response 4 regarding sea level rise.
REA-1	Thanks for running a professional public meeting last night. Please allow me to elaborate on the remarks I made. You may recall that I emphasized the need for the Plan to articulate issues of quality of life in Newark, especially the need to create more opportunities for building a sense of shared community. One	There are Policies and actions in the proposed General Plan that address community gardens and other recreational issues raised by the commenter, however, these issues do not relate to the adequacy of the DEIR thus no further response in necessary. No further response is required.

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	of the means to do this, of course, is to promote public space for community gardens. Local Ecology and Agriculture Fremont (LEAF) is doing this with considerable success at several plots: http://www.leafcenter.org/ And public gardens with native plants are also well underway in the Quarry Lakes area, where native plants are now labeled. Why not Newark, too? We're hoping to make it happen not only at Lakeshore Park now more broadly. After working with Bob Costa for a couple years now, several of us citizen gardeners are calling for less lawns and more flower beds devoted to specific kinds of drought-resistant plants, such as succulents, California natives, and sunflowers representing various countries. Such well-tended, well-labeled plots could provide opportunities for educating the public—and particularly school children. Such endeavors might involve creating Newark versions of the San Jose Rose Garden, where residents from different areas or affiliations would commit to steward a project of their own conception. As in San Jose, these would not only provide esthetic interest and scientific information, but also great opportunities for community building—another challenge for Newark, which has the quietest PO I've ever known!	
REA-2	On the issue of sea-level rise, you may have seen the following story in today's paper: Plan on moving to Alameda Point someday? You might want to pack a swimsuit and snorkel. Much of the former Naval Air Station - site of a projected 1,425-home development - will be underwater by the end of the century due to sea level rise brought on by climate change, according to the city's draft environmental impact report on the project released this month. "For a lot of people, this is a very scary subject. We in the Bay Area have to come to grips with this not just at Alameda Point, but throughout the region," said Randy Rentschler, spokesman for the Metropolitan Transportation Commission, which is among the agencies studying the impacts of sea level rise in the Bay Area. (Chronicle Wed. 9/25/13). Clearly this issue of sea-level rise bears up the proposed developments here in Newark; the new General Plan needs to treat them more fully fairly, fully, and seriously.	The comment is noted. Please see Master Response 4 regarding sea level rise.
REA-3	Finally, I need to emphasize the need for much improved democratic process, which is a serious problem in many areas of Newark city government. The classic example occurred last April, when the president of the League of Women Voters scolded the Council for regularly violating the Brown Act—and then, just moments later, the Council ducked into closed session. In the case of the General Plan, it's clear that there was inadequate publicity for last night's public meeting/study session: nothing in the Newark News or Patch, no announcement via LARA or Island organizations, etc. And, as several citizens pointed out last night, allowing two days for public comment period is hardly sufficient. Finally, one might note how democratic process has declined since Barry Miller helped to author the original Plan back in 1992. At that time, city planner Charles Cashmark took the Plan around to several different neighbors, often getting impressive turnouts. Reversing this downward trend would seem to be an important issue for the New General Plan Few issues could be more important to the City's future. Thank you for your attention —	The comment is noted. The DEIR was prepared in accordance with CEQA Guidelines as indicated in Chapter 2.0, Introduction, of the DEIR.
LEWIS-1	Thank you for providing this marvelous work of science fiction. Where did the city find written in state government code that a city may provide a "tune-up" to replace a genuine general plan update. Does state law allow a half-baked EIR that relies on studies from more than twenty years ago and an outdated general plan and EIR? What is the time frame of this "tune-up"? It appears to be between 20 and 25 years thus giving the city a general plan that will be about 40 years old. This is worrisome	The comment is noted. The DEIR was prepared in accordance to CEQA Guidelines as indicated in Chapter 2.0, Introduction, of the DEIR. Also found in Chapter 2.0 on page 2-1, the horizon year for the proposed Plan is to 2035.
LEWIS-2	The DEIR is confusing as it appears to base itself from previous Specific Plan EIR's. It also relies on phantom master plans that will not come before public review until next year. NewPark Mall is one example. There are also no specifics for so-called Old Town and the city hall/library complex. A supplemental EIR for part of the Dumbo Rail TOD is not completed. Upon what is this "tune-up based?	The comment is noted. As indicated in Chapter 2.0, Introduction, of the DEIR, Section 15150 of the State CEQA Guidelines allows all or portions of another document to be incorporated by reference into subsequent EIRs. Although incorporating information from other documents, the General Plan EIR discloses and mitigates the impacts of the General Plan at a program level.

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LEWIS-3	The Executive Summary is shameful. It appears to have been written by a pre-school class. There is no explanation of what LTS means or the significance of N/A. It appears that LTS means Less than Significant (impacts) and in that case this summary is dead wrong.	Table 1-1 in the Executive Summary of the DEIR has been revised to include a key at the bottom of the table to denote the abbreviations used in the table. Please see Chapter 3 of the Final EIR for text revisions.
LEWIS-4	What studies were done to conclude these findings? The DEIR claims to be self-mitigating. What does that mean? Is it like do-it-yourself brain surgery?	The document is referred to as self-mitigating because, where possible, measures to reduce environmental impacts were included in the General Plan itself as Policies or Actions. These issues do not relate to the adequacy of the DEIR thus no further response in necessary.
LEWIS-5	What is "focused high-density housing" proposed for Dumbarton TOD? According to state guideline transit oriented developments are supposed to have housing, public transit and commercial within the development footprint. DTOD has none of this. There isn't even a train to nowhere; there is no train period. No bus no trolley no nothing. There are only a few nearby businesses such as a trucking company and chemical plant. There is nothing to indicate anything will be built anytime soon due to the need for soil and groundwater clean-up.	The comment is noted; These issues do not relate to the adequacy of the DEIR thus no further response in necessary. No further response is required.
LEWIS-6	Another strange use of the English language are the words "embrace Newark's bayfront location". What does that mean? Is this a CEQA term? Where is Newark's bayfront? Last time I looked at a map Newark was surrounded by Fremont, salt and bittern ponds and two sloughs. Newark does have wetlands so we could embrace them.	The comment is noted. The term "bayfront location" as it relates to the DEIR refers to the general regional location of Newark. As depicted in Figure 3-1 in Chapter 3.0, Project Description, Newark is located adjacent to the San Francisco Bay, and although not directly on the San Francisco Bay, in general it was considered to be "bayfront" due to its close proximity of its western boundary to the SF Bay.
LEWIS-7	The photo labeled seasonal wetlands in the DEIR is wrong. It is tidal. But you would not expect the pre-schoolers to know that.	Please see Chapter 3 of the Final EIR for text revisions.
LEWIS-8	Newark has seasonal wetlands in DTOD and proof has been sent to the city. There are also seasonal wetlands elsewhere in the city but this document leaves them out.	On pages 4.3-39 through 4.3-48, the Draft EIR discusses wetlands, including seasonal wetlands, to the extent required under CEQA. Figure 4.1-1b shows seasonal wetlands in the Southwest Newark Residential and Recreational Focus Area. Additionally, the Dumbarton TOD Specific Plan EIR, incorporated by reference into the Draft EIR describes the Plummer Creek wetland mitigation bank, an area of restored tidal and seasonal wetlands, adjacent to the Specific Plan Area's southwestern edge.
LEWIS-9	This DEIR is not based on the entire city. It concentrates on a few sites; NewPark Mall, part of Old Town, Areas 3 and 4 and Dumbarton TOD with slight mention of the city hall and library complex.	As described throughout the Draft EIR and specifically on pages 3.14 through 3.29, the proposed Plan includes policies and information intended to guide future development and redevelopment in all of Newark and its sphere of influence through the horizon year of 2035. The Draft EIR notes that as the developable area of Newark is largely built out today, it is anticipated that future development will occur primarily but not exclusively in four focus area: the Dumbarton TOD Focus Area, the Southwest Newark Residential and Recreational Focus Area, the Old Town Focus Area, and the Greater NewPark Focus Area. As discussed on pages 3.23 through 3.27, buildout forecasts that serve as the basis for the environmental analysis in the Draft EIR clearly articulate the level of growth anticipated throughout the City, including areas outside of the focus area. No change to the Draft EIR is required.
LEWIS-10	The mall master plan won't be available until sometime in 2014.	Action LU-9.A from the proposed Plan calls for the creation of an Master Plan for the Greater NewPark Area, but does not proscribe a timeline for its completion.
LEWIS-11	The section of Old Town comprises a few blocks on Thornton Avenue. It doesn't even include the deserted city fire station.	The comment is noted; however, as it does not pertain to the merits of the Draft EIR, no further comment is required.
LEWIS-12	Areas 3 and 4, (the Southwest Newark R and R) is in litigation and cannot be considered approved for use in this DEIR.	Please see Master Response 2 regarding reliance on previous environmental review.
LEWIS-13	Dumbarton TOD is derailed and environmental review has not been completed.	As discussed on pages 3-12 through 3-15 of the Draft EIR, an EIR was prepared for the Dumbarton TOD Specific Plan, identifying significant impacts and mitigation measures required to address them. That EIR was certified by Newark City Council and a Statement of Overriding Considerations was adopted in July 2011. Please also see Response to Comments RWQCB-B-2 and RWQCB-B-10.
LEWIS-14	A new city hall and library are not on the horizon. Where does that leave this DEIR? Dead in the water.	Action LU-1.E of the proposed Plan calls for the development of a Civic Center Concept Plan. However, as the comment does not pertain to the merits of the EIR, no further comment is required.
LEWIS-15	Speaking of water, the DEIR is remiss in discussing and disclosing the impacts of housing and	The comment is noted. Please see Chapter 4.11, Population and Housing, for a complete discussion on impacts

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	development on the "bayfront". The city has no policy or studies on sea level rise and instead points to state and/or federal agencies to take care of the problem. The city claims it will build on massive amounts of fill out of the flood zone and all will be well. Meanwhile Union Sanitary District who takes care of wastewater in Newark and Fremont is very concerned about their infrastructure. There are two pump stations; one on Cherry Street in Newark and the other one the Newark Pump Station located near Dumbarton TOD. In a recent study on their infrastructure, USD stated that all future infrastructure projects west of the Nimitz Freeway should incorporate future sea-level rise planning and include appropriate improvements if needed. There are also concerns about placing pipelines in filled areas as settlement could cause pipeline failure. The city can contact USD for a copy of the study. I could comment more on this flawed document but my brain has run out of bandwidth. After slogging for weeks trying to make sense of the DEIR and draft general plan I have decided it is nothing more than a bunch of bologna that makes no sense whatsoever. Did the youngsters at CalPoly submit their report to the city on the so-called meetings they held? Are their recommendations and studies part of this process? If so, where are those documents located? How much did this DEIR and draft general plan cost the city? Since it is pretty much worthless I hope the city gets a substantial refund and finds competent consultants to do the project right. And stop with the "tune-up" nonsense. It is insulting to our intelligence.	with regards to housing. Because the DEIR is programmatic, as discussed in Chapter 2.0, Introduction, it does not analyze project-specific environmental impacts, such as development on the "bayfront." As such, the analysis contained in Chapter 4.11 is adequate and no further changes are necessary. Please see Master Response 4 regarding sea level rise. The DEIR was prepared in accordance with CEQA Guidelines as indicated in Chapter 2.0, Introduction, of the DEIR.
MILLER-1	SUBJECT: GENERAL PLAN (GP) and EIR TUNEUPS: HYDROLOGY AND WATER QUALITY (my comments are in italics) SUMMARY My comments are a general critique of the tuneup documents of the City of Newark, and I reference some pages specifically. My comments primarily address Hydrology and Water Quality. What really is a GP DEIR tuneup—your very confusing conglomeration of regulations and uncommitted references to not take action? The general consensus of readers will find throughout the new tuneup plans that almost every nonspecific, generic claim by the City concludes insignificance, often even before nonspecific mitigations that have no details of action. Contradictions between different sections and lack of commitment makes one wonder who composed these confusing documents? Many members of the public claimed to be confused, due to the unprecedented proposals in these end-run tunups, which were obviously quickly created to circumvent faults in the prior EIRs. Timelines for public input were also very short. Specific corrective actions in the tuneups were not proposed to address prior faults. Many illogical and circular arguments, appeared to eventually contradict themselves.	As discussed in Chapter 2.0, Introduction, Section 2.4, Environmental Review Process, the DEIR was available in accordance with CEQA Guidelines. CEQA Guidelines Section 15105 states that draft EIRs be available for comment for no less than 45 days. The public review comment period lasted between August 14, 2013 through September 27, 2013, or 45 days as required by CEQA. As mentioned in Chapter 2.0, Section 2.2.3, Incorporation By Reference, states that the DEIR incorporated by reference several documents, listed on page 2-2 through 2-3, in accordance with CEQA Guidelines Section 15150, which permits information of some or all of previously adopted public documents. As such, some determinations of levels of significant may or may not refer to or reflect in part a determination made in an already existing document, such as the Area 3 and 4 Specific Plan EIR for example. The structure of the DEIR is such that the determination based on the analysis is always located at the end of an analysis and indicated by a bold heading titled "Significance Before Mitigation." Although some impact discussions may refer to or seemingly mention levels of significance within the discussion of a specific topic, that may or may not be consistent with the final determination at the end of the analysis, the final determination based on the analysis always comes after the bold heading "Significance Before Mitigation," and therefore is the actual determination.
MILLER-2	Frequent claims by the City lack committed actions. For example, attempts were cited "to do something, support, participate, work with them, address issues, consult with, provide some kind of guides and incentives, no future reviews by the City, defer analytical evaluations or mitigations into self-mitigations, etc." How could this even be considered a tuneup when the Plan does little or nothing to address the reality of the impact of these developments? The tuneup is more appropriately a "tuneout". The tuneup is only a means of quickly escaping proper creation and review of the prior EIRs and its flaws, and specifically circumventing needed corrections of the cited flaws. So why not appropriately rename the "Tuneup" a "Tuneout"?	As mentioned in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines. As such, the DEIR is programmatic and therefore does not analyze impacts related to specific projects. Future development would require further independent CEQA review on a project-by-project basis in which project-specific impacts and mitigation measures would be determined.
MILLER-3	As stated, numerous regulations, policies and recommendations in the General Plan Tuneup were cited, in detail, throughout many sections. Ironically, few if any have been adhered to in an acceptable or mitigatable manner to be less than significant, especially for CEQA requirements—also previously cited in comments from the public, numerous attorneys and agencies of interest. Explain why you have intentionally avoided the required specifics in implementing these regulations and policies with plans of timely implementation. These City plans need to reveal that the impacts are indeed significant and not adequately mitigatable in the development of Area 2 and 4, including the proposed unbuildable golf	The commenters opinions about past adherence to proposed polices, vibility of a golf course and significance are noted. The level of specificity is appropriate for a policy document.

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	course in environmentally undesirable sensitive areas. CEQA law requires environmental review of "discretionary" development projects. If significant impacts are found, an environmental impact report (EIR) is required, together with mitigation of significant impacts. Resources Code §21000, et seq., http://ceres.ca.gov/ceqa/stat.	
MILLER-4	Alternatives: Compare your existing Plan realistically to the alternative in developing a walkable and environmentally preferable and sustainable development in the old town and inner City infrastructure areas. These are quality of life concerns that many other cities have taken into consideration. The City needs to specifically address the true intentions and the monetary influence that many land owners and developers (Area 2 and 4 sprawl at edge of City) have had on the City for many years. You must consider that these development sprawls take resources and staff away from addressing the internal needs of the City, such as true infill and walkable towns that concentrate near inner City existing transportation and resources, or we will be saddled once again with lost opportunities.	Please see Master Response 3 regarding the Appropriacy of Alternatives.
MILLER-5	Added to depleting resources from population expansion, accelerating climate change, now and in the future, impacts of these large-scale new developments, ironically, also have been a significant contributing human cause of climate change and sea level rise. The environmental impacts of human developments, excessive consumption and associated pollution are creating environmental impacts that, in turn, are collectively and significantly affecting the projects themselves. Thus, logically, the science is requiring further assessments of the cumulative effects of all these projects on the environment and the effects of the changing environment on the projects themselves—as all are interrelated and inseparable. Project developments affect themselves through the self-created environmental changes they impose. The Area 2 and 4 development Plan simply exacerbates the circular environmental impacts on these developments that are coming back to haunt us—whether or not you attempt to degrade the application of CEQA law, regulations and policies, in order to put people into harm's way in Area 2 and 4, as well as the surrounding communities.	The comment is noted. Please see Master Response 4 regarding sea level rise. As indicated in the environmental analyses in Chapters 4.1 through 4.14, each environmental topic discusses cumulative impacts. As such, cumulative impact discussions take into consideration reasonably foreseeable projects and analyze those projects using a baseline that consists of current or existing conditions at the time of the preparation of the EIR to whatever the horizon year is for a given project, in this case to the year 2035.
MILLER-6	Alternative Plan for Restoration: The DEIR includes an alternative to restore and to preserve Area 4. However, the intended consequences are to connect the Area 4 development to the Dumbarton Transit Oriented Development (DTOD). The alternative has been designed to prevent restoration of Area 4. The DTOD has been included in the ABAG and is part of the Bay Plan. The city must preserve Area 4 and produce an alternative that is more viable, like focusing on the more important concerns within the inner city areas, as many areas have been reported to be available. The DTOD has been considered defunct, economically and for numerous other reasons.	The comment is noted. As indicated on page 6-1 of the Alternatives chapter, and pursuant to CEQA Guidelines Section 15126.6, *an EIR shall only describe a range of reasonable alternatives to the project which would feasibly attain most of the basic objectives of the project...* As such, three alternatives were selected to analyze which are discussed in detail in Chapter 6.0, Alternatives. While the chapter may or may not reflect every conceivable alternative, the Alternatives chapter was prepared in accordance with CEQA Guidelines nonetheless.
MILLER-7	The City needs to show that conversion of Area 2 and 4 to open space and restoration is the preferred alternative, as requested by the public and agency comments. Why does the City continually defer to development in the outer limits in the sprawl areas when it is not economical nor is it environmentally desirable? Do you realize that the City needs to become current by implementing a plan that utilizes [current climate change impacts, sea level rise and public needs] to adapt to changing environments? Do you ignore or argue around these illogically because of the influence of benefits to City staff from developers and certain land owners, while ignoring the needs of producing a plan that is actually beneficial to the citizens who live in Newark? I reiterate and emphasize: You must consider that these development sprawls take resources and staff away from addressing the internal needs of the City, such as true infill and walkable towns that concentrate near inner City existing transportation and resources.	The comment is noted. As indicated on page 6-27 of the Alternatives chapter, and pursuant to CEQA Guidelines, the environmentally superior alternative need only be identified; however, that does not necessarily require that it be the alternative to be implemented. As discussed in Section 6.6, Environmentally Superior Alternative, of the Alternatives chapter, the Restricted Growth Alternative was determined to be the environmentally superior alternative; however, that alternative fully meets only seven of the eleven objectives identified in Chapter 3.0, Project Description, and Chapter 6.0, Alternatives. The analysis further concluded that the Restricted Growth Alternative would conflict with the City's major planning initiatives including the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element.
MILLER-8	For example, Mt. View already has a plan to address sea level rise and climate change. Also look at other cities and Mt. View who developed the walkable, environmentally friendly and publically desirable inner city areas, which also impacted high marks for schools--in comparison to the degradation pattern of Newark's diversion to develop into areas vulnerable to sea level rise, even within the life of the project.	The comment is noted. Please see Master Response 4 regarding sea level rise.

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MILLER-9	WATER QUALITY AND AVAILABILITY: General Plan PAGE CS-5; DEIR page 4.8-14, 4.8-21+"Discharge into these waters is also regulated by the California Regional Water Quality Control Board (RWQCB). When development is proposed in areas where wetlands may be present, detailed on-site surveys are required and mitigation must be provided for any potential habitat impacts. If there will still be a possibility of impacts once a development is built, long-term agreements are required to ensure that wetlands are permanently protected". See Water Quality Control Board (RWQCB) letter of Feb 2013 to the City of Newark: The Newark Plan has not complied to address Water Board's comments and concerns nor does the Plan have a permanent and sustainable protection plan, only to defer or ignore the issues. If fact, the proposal is to cause destruction of certain wetland areas, which is also contrary to Newark's policies on protecting wetlands. Furthermore, if pumping is stopped, Area 4 would be nearly or all wetlands, as it has been prior to pumping. Therefore the land should be left to restoration, as suggested by the WQCB, EPA and numerous other historical comments throughout the years, which the City refuses to utilize as an alternative.	The comment is noted. As indicated on page 6-27 of the Alternatives chapter, and pursuant to CEQA Guidelines, the environmentally superior alternative need only be identified; however, that does not necessarily require that it be the alternative to be implemented. As discussed in Section 6.6, Environmentally Superior Alternative, of the Alternatives chapter, the Restricted Growth Alternative was determined to be the environmentally superior alternative; however, that alternative fully meets only seven of the eleven objectives identified in Chapter 3.0, Project Description, and Chapter 6.0, Alternatives. The analysis further concluded that the Restricted Growth Alternative would conflict with the City's major planning initiatives including the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element.
MILLER-10	HYDROLOGY AND WATER QUALITY, GP page CS-8: As stated in PCS-8: "Newark is under the jurisdiction of the San Francisco Bay RWQCB. In addition, the Department of Water Resources oversees water-related activities. Among the concerns expressed in its most recent Water Management Plan are drought, aging infrastructure, climate change, population growth, and sea level rise". The Feb. 2010 letter from RWQCB expressed numerous issues for Newark to address, but non-specific generic statements, and lack of direct and specific plans expressed by the Newark Tuneup and prior documents reveals noncompliance towards resolving the concerns. The concerns of the Water Management Plan that include drought, climate change, population growth and sea level rise have not been adequately addressed either, as they are all interrelated. My letter to the City on January 18, 2010 extensively criticized and begged answers regarding the Newark Areas 3 & 4 Specific Plan Project Draft Environmental Impact Report SCH No.: 200705205, due to the serious impacts of climate change and hydrology. So far, inadequate or no specific comments were provided by the City, mostly responding as "comments noted", "references to prior statements", or "already commented, or irrelevant". So we ask the question as to why the City has continued to ignore many of these issues, where many were brought up repeatedly, again and again, by numerous sources with hundreds of pages of logical questions? Reduction in water usage as required was only addressed in the GP with nonspecific intentions again. For example the GP stated the Newark will "work with" (nonspecific commitment) the ACWD to reduce water usage. In contrast, in Area 2 and 4, its proposed plan will increase usage as developments continue to sprawl, rather than conserve through restoration or through existing or inner City infill areas that have a history of exposure to drought years. Incentive programs and public education, as referenced, are counter to the proposed increase in population and housing that will increase its use of resources in the sprawl plan of Area 2 and 4 of the GP and EIR. How does the City expect that projected long-term drought conditions to not have a significant effect on water consumption in the new exterior significantly large and sprawling developments, even with conservation?	The comment is noted. Please see Master Response 2 regarding the reliance on previous environmental review. Please see Master Response 4 regarding sea level rise.
MILLER-11	CLIMATE CHANGE AND SEA LEVEL RISE: GP page CS-18; and DEIR page 4.8-19 to 20, 4.9-20 Climate change and sea level rise are large topics, all interrelated, and have been specifically discussed thoroughly, where arguments of science continuously reject developments in these vulnerable areas, both by government agencies, various assemblies and institutions throughout the world, and the public. Again, to emphasize, the action of human influence has affected our environment, through climate change and sea level rise, which, in turn, cannot be separated from the science that demonstrates that climate change is affecting and reacting to both new and existing developments. We are not realistically changing to adapt or rectify our influence, only making it worse by placing more vulnerable, energy	The comment is noted. Please see Master Response 4 regarding sea level rise.

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	intensive sprawl in external areas. Creation of climate disruption and sea level rise by humans has caused a reversal of consensus to also include the environmental effects on the very developments that are, in turn, influencing the need to mitigate or, in particular, even avoid developments in the environmentally vulnerable areas. The environment is having an effect on these developments and must be considered in the evaluation of all proposals, now and in the future. The semantic arguments to avoid this reality are contrary to the laws, regulations or policies that address the environmental impacts on the projects at this point.	
MILLER-12	PROGRESSIVE UPDATES (See GP, page CS-18): Current climate change and sea level rise projections demonstrate that prior studies were far too conservative, i.e. 2007 IPCC, as many of the forces of nature that are causing change are non-linear, accelerating and can exacerbate one-another. Do you not agree that current changes and disruptions are rapidly causing us to perform more scientific studies, with reassessment and upgrading--by not only the IPCC but also numerous domestic and international research activities that are being forced to address the truth? Greenhouse gas reductions are not effective in most areas, and temperatures and greenhouse gases (C02 and more damaging gases) are rising much faster than predicted, as of 2013. For sea level rise and the impact of accelerated climate disruption, the EIR(s) from the City tend to utilize the 2007 IPCC projections, but then there are current arguments that can discredit much of those [conservative] projections, including reports from other sources of national and international monitoring. For example, to bring current the proposed GP and DEIR Tuneup, some quotes are as follows (comments in prior City documents cite a considerable amount of updates that were also ignored): 1. Current projections will eventually be 4-30 cm for 2000-2030, 12 to 61 cm for 2000-2050, and 42 to 167 cm for 2000-2100 in http://hazardmitigation.calema.ca.gov/plan/state_multi-hazard_mitigation_plan_shmp_commenting_2013. 2. The IPC greenhouse gas emissions projections in 2010 projected a sea level rise, relative to 2000, for the state to range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. State agencies may even use different sea level projections. Uncertainty is the key factor in these projections and it is best to adhere to the maximum impacts for the future, to avoid inundation. 3. Melting and ice sheet flows into the ocean are not adequately taken into account from the massive amounts of ice in Greenland and Antarctic ice. Ice sheets and land-based ice, displaced in the ocean will add a large significance to sea level rise. A much greater rise in sea level is projected by many other organizations and scientists, due to forces of nature not even accounted for, as of yet. 4. The National Academy of Sciences is also developing sea level rise evaluation. 5. Again, in these conservative projections, ice sheets and land-based ice were not accounted for in the 2007 IPCC, that the city still sticks too in the old EIRs and the Tuneup). I will add these projections, including the more ominous ones that are more likely, judging from the accelerating impact--since we aren't doing anything about it--only making it worse with the tar sands pollution contribution, fracking, deep water drilling , etc. You can see that most projections are conservative, for obvious reasons.	Please see Master Response 4 regarding sea level rise.
MILLER-13	6. Other more ominous projections: a. The National Atmospheric and Oceanic Administration's 2012 State of the Climate report, released earlier this month, showed global greenhouse gas emissions reached a new record high in 2011, and estimates suggest the record was broken again in 2012. b. In 2013: The IPCC has moved in the right direction this time by at least trying to account for the key contribution to sea level rise from melting ice sheets," director of Pennsylvania State University's Earth System Science Center Michael Mann told The Huffington Post in an emailed statement, explaining that it was ignored in the previous IPCC report from 2007. However, the projections they provide are still overly conservative, with an upper limit of roughly one meter by 2100, when there is published work that suggests the possibility of as much as two meters (six feet) sea level rise by 2100," he added. This fits a	Please see Master Response 4 regarding sea level rise. Please see Chapter 4.6, Greenhouse Gas Emissions, for a discussion and analysis on greenhouse gas emissions. As stated in Section 4.6, the chapter was based on the methodology recommended by the Bay Area Quality Management District for plan-level review. Therefore, no changes are necessary.

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	pattern of the IPCC tending to err on the side of conservative, in part--I believe---because of fear of being attacked by the climate change denial machine. c. The IPCC even acknowledges governments influenced their projections, and they still persist. For example, a more current IPCC projection (September, 2013) only presents a 10-32-inch rise in sea level, which had to be upgraded from the prior 7-23 inches. The report predicts global temperatures could reach 0.5-8.6F, leading to possible catastrophic changes to climate, and above all, to warming oceans. The higher numbers are more likely, due to lack of agreements between governments: Only the lowest scenario, which was based on major cuts in CO2 emissions and is considered unlikely, came in below limit that countries have set as their target in the climate talks to avoid the worst impacts of warming (3.6F) before the industrial revolution. At this point, emissions keep rising mainly due to rapid growth in China and other emerging economies. But those nations say rich countries should take the lead on emissions cuts because they've pumped carbon into the atmosphere for longer." Therefore, we have circular arguments of blame, and no government wants to put environment before economy, hence higher limits of sea level rise and climate temperatures are likely to occur. The IPCC still errs on the conservative and does not take into account other forces of climate change. IPCC projections become a moving target, as they are forced to consider the impact of the accelerating expansion of economics from the uncorrected growth of human population and lack of corrective action. d. Describing the IPCC's projections, Climate Progress' Joe Romm wrote on Sunday, "Like every IPCC report, it is an instantly out-of-date snapshot that lowballs future warming because it continues to ignore large parts of the recent literature and omit what it can't model." (Other scientific projections indicate that six feet in 2100 is insignificant if ice sheets slide off the terrain that supports them, into the ocean, leading to ocean water displacement--far greater than effect of melt on floating Arctic icebergs. The IPCC model does not take into account numerous other forces that are also coming into play, of course. Even the popular Scientific American and National Geographic (this month, Sept 2013 and this month, Oct. 2013) have been continuously publishing numerous, extensive maps and articles on the impact of global climate change and sea level rise). For example: e. As far back as 2008: Scientific American. The Unquiet Ice, Feb. 2008 (extensive article addressing many sources): "Loss of [land-based ice] of Antarctic and Greenland could add 200 ft of global sea level rise—has happened before with high C02 levels. The National Geographic (www.climate.ngm.com) and the special issue as far back as June 2008: "The Science Is In", states "…ice sheet [collapse] in both Greenland and Antarctica would raise sea level 20 feet, inundating many coastlines". Note: The 20-foot rise represents "collapse" and the 200-foot level represents "loss of land-based ice", or a smaller change verses a major melt-down of sub-glacial ice, which from international studies looks ominous, either way, since we are passing the tipping point. And the world is too concerned about impact on economy to adjust, like Area 2 and 4 developments. f. But then it is only a regional problem....(Cities and their vulnerable developments that deliberately put people and the environment into harm's way are excluded from responsibilities associated with regional impacts, when they are even aware of the outcome???) g. The IPCC's Fifth Assessment Report is set to be released in four parts between September 2013 and November 2014.	
MILLER-14	Therefore: The City of Newark has presented The GP and DEIR as a vain attempt to an end-run "Tuneup", as of its release in August 2013, in order to circumvent the lack of prior compliance and adherence to those issues of serious concern expressed in previous comments, repeatedly, from the public and government agency sources. If this Tuneup is considered current, then it must follow the more current updated rules, regulations and policies and to incorporate new projections for climate change, and, above all, sea level rise, added to the risk imposed on the exterior City developments of	Please see Master Response 4 regarding sea level rise. Please see impact analysis HYDRO-3, HYDRO-4, and HYDRO-6 in Chapter 4.8, Hydrology and Water Quality, for discussions related to potential flooding impacts. As stated throughout the discussions, several policies contained in the proposed Plan, along with conformance to existing laws and regulations relating to flooding, would result in less than significant impacts. For example, the implementation of low impact development techniques and retention basins would alleviate large volumes of runoff thereby minimizing flood risk, as discussed on page 4.8-25.

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	Area 4. If the Tuneup also recognizes they must address the developments to 2035, what about the impact in 2100, as other cities have addressed? Why has the City avoided those updates in the current City plans, with only generic statements, and no acceptable specific plan of action or commitment? And why does the City plan persist in referencing outdated information such as 2007 IPCC (7-26 inches at end of century), ignoring current impacts? Is not the plan for development long-term and should it not be realistic and current, as climate changes and sea level projections continue to rise. Are you not considering that this plan places people in harm's way, with inadequate protections to accommodate future impacts?	
MILLER-15	LIFE OF PROJECT: The City must also consider that "life of project" is typically beyond their limited projections. Historically, everyone does not simply abandon their residents and move to higher ground when there even is a disaster. See [current] impacts of climate change and storm surge, i.e. Boulder Colorado (areas topped the 100 and 500-year flood plain), Hurricane Sandy inundation and seaboard flooding, and many others throughout the world. Addressing life of project, or lifespan, with the shorter periods that were projected, does not allow for developments to continue with further improvements, but only an abrupt end, unlike most other projects that have continued for many years beyond. Worst case is likely--due to climate change and sea level rise that is increasing in magnitude and indeed may terminate these developments abruptly. The City must evaluate these for the worst case analysis, taking into account all forces of nature that can simultaneous occur.	As stated in Section 2.1 of Chapter 2.0, Introduction, the proposed Plan has a horizon year of 2035 and, therefore, the DEIR need only reflect a discussion of impacts associated with the proposed Plan to 2035. Therefore, no changes are necessary. Please see Master Response 4 regarding sea level rise.
MILLER-16	BCDC: GP page CS-10 and DEIR page 4.8-7: BCDC assumes that projects will at least last 50-90 years. But projections for climate change and sea level rise already defy the existence of such developments in Area 4, even with attempted mitigations. Sea level rise and tidal flooding can inundate the project, coupled with their effects on back-flooding of rivers, creeks, storm water discharge, storm surge flooding from above and from the sea, wave over-toping, subsequent erosion of the building pads, sewage backup, pump failure inundation, liquefaction, settling , and destruction of wildlife habitat and the protective value of wetlands and marshes, and other (yet unknown) hydrologic forces that are going to be brought forward to affect the Area 4 development. This is an example where the environment is also going to impact the development itself, from the effect of the development on the environment. You cannot separate this cause-and-effect relationship unless. Why have you not adjusted appropriately for these changes, where potential hydrologic impacts and fill above your conservative projection will be inadequate? Why have you not at least considered the simultaneous impact of flooding from storm surge, sea level rise and other hydrologic forces, in which the City itself has expressed concern? Historically, the Newark City tends to treat these risks separately, not collectively, and argues the proposed island type and/or peninsula developments in Area 4 will not be at risk with limited mitigations—which no one can guarantee. Can you deny that the proposed development Plan has been designated as being extremely vulnerable from all sides and from the impact of the variety of forces and environmental modifications as cited within the projects? Impacts are consistently significant and cannot by dependably mitigated with excess fill and unproven drainage technology in the face of the obstacles described.	Please see Master Response 4 regarding sea level rise.
MILLER-17	FLOODING: GP pages EH-9-10 and CS-18. DEIR page 4.8.1, 4.8-15, 4.8-27 The FEMA flood plain maps are outdated and nonspecific to the actual impact on developments in Area 4. The maps are typically only used for flood insurance and should not be exclusively used to decide mitigations for proposed future risks. Besides, these maps are still in the process of being updated. And why have you not specifically addressed these impacts, with corrections, rather than generic mitigations that erroneously claim insignificance? "Collaborative work" and "need to address" as cited by the City to develop adaptation strategies do not address or commit anything specifically for now or the future.	Flood risks for all communities within the Bay Area and throughout California are identified by Flood Insurance Rate Maps (FIRMs) that are issued by FEMA. These maps are periodically updated and are the basis for determining which projects are governed by the City of Newark's Municipal Code 15.40, *Construction in Flood Hazard Areas.* All projects within the 100-year floodplain must also complete hydrology and hydraulic analyses that demonstrate that areas that are raised out of the floodplain will not result in increases in off-site flood levels or redirect flooding to other properties. Each project must comply with the building flood-proofing requirements of the City of Newark and also prove that a Letter of Map Revision (LOMR) has been obtained from FEMA prior to building occupancy.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

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	CEQA law, guidelines and checklists include issues and concerns beyond the limited citations in the DEIR of the City. Again, the 7 to 23-inch rise in sea level by end of century, as cited by the City is far outdated, as well. In fact, the development assumes that mitigations proposed will be acceptable, but sea level rise and climate change must also be considered as it advances into the future.	Please see Master Response 4 regarding sea level rise.
MILLER-18	LEVEES: DEIR page 4.8-1, 4.8-17: Existing levees in Area 4 are uncertified and in disrepair. No plans exist for economic commitment at a regional or local level. Many existing flood gates, tidal and otherwise, around the Bay are very old, not adequately maintained or repaired (due to economics, lack of attention or confusion of responsibility and ownership). Pumping to prevent flooding will also need to be continued in Area 4, even with building pad mitigations. Building pad elevation therefore becomes even more uncertain. Recent publications regarding the impact of sea level rise on Alameda City are ominous (look it up).	The comment is noted and there is agreement that levee failure poses a risk to life and property in areas where levees protect the surrounding property. FEMA's policy is to disregard the flood protection benefit provided by a levee unless it is certified. Since most of the levees within the City of Newark are not certified, then the land behind the levees is considered to be in a special flood hazard area or within a 100-year floodplain and building restrictions would apply. It also should be noted that this General Plan EIR addresses issues such as flooding on a programmatic level. Individual projects and specific plan areas are not only required to comply with Federal, State, and City of Newark flooding regulations, but are required to document this compliance with site-specific environmental analyses and mitigation measures. As with any area of the City, any building within Area 4 would need to meet these requirements. Please see Master Response 4 regarding sea level rise.
MILLER-19	STRATEGIES FOR ADAPTATION: The 2009 California Adaptation Strategy emphasizes the need for more serious adaptation, or even abandonment, if it is uneconomical and there is too much risk to remain. The 2009 California Climate Adaptation Strategy states: "Consider project alternatives that avoid significant new development in areas that cannot be adequately protected (planning, permitting, development, and building) from flooding, wildfire and erosion due to climate change. The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is to carefully consider new development within areas vulnerable to inundation and erosion. State agencies should generally not plan, develop, or build any new significant structure in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure. However, vulnerable shoreline areas containing existing development that have regionally significant economic, cultural, or social value may have to be protected, and in-fill development in these areas may be accommodated. State agencies should incorporate this policy into their decisions and other levels of government are also encouraged to do so. (CS-2; OCR-1 and 2; W-4 and 9; TEI -2 and 7)." Areas 2 and 4 in Newark are undeveloped, do not have enough significant economic value in comparison to other alternatives, and development would not be infill but additional external sprawl that is considered new, adding to significant greenhouse gas emissions and climate change. Furthermore, additional expensive protections would be needed to avoid risk of storm surge, flooding and sea level rise. Why are you proposing to raise building pads up to a conservative level, when climate change and sea level rise are rapidly accelerating, as currently reported? As previously stated, the existing levees of Area 4 are not maintained either and are not FEMA certified. There are no current FEMA updates to guarantee that the proposed City plan will be acceptable, now or in the future. More current sea level rise projections must be incorporated in new FEMA rules. There are no regional plans or reasons to protect at the tax payer's expense, when structures are knowingly placed in harm's way, based on current data and future projections. Do you still expect to blame problems you knowingly create to be the responsibility shifted to a regional problem—as you need to be accountable for these decisions and to the tax payers?	Please see Master Response 4 regarding sea level rise. Please see impact analysis HYDRO-3, HYDRO-4, and HYDRO-6 in Chapter 4.8, Hydrology and Water Quality, for discussions related to potential flooding and erosion impacts. As stated throughout the discussions, several policies contained in the proposed Plan, along with conformance to existing laws and regulations relating to flooding, would result in less than significant impacts. For example, the implementation of low impact development techniques and retention basins would alleviate large volumes of runoff thereby minimizing flood risk, as discussed on page 4.8-25.
MILLER-20	PUMPING AND SALTWATER INTRUSION: DEIR page 4.8-23 Saltwater Intrusion to Groundwater Aquifers Saltwater intrusion. (Edwards and Evans, 2002): Saltwater intrusion into aquifers is a man-made problem in many places in California, resulting from over-pumping, but it will be accelerated and made worse by sea level rise. It occurs where saline water moves inland into a freshwater aquifer, contaminating it with salts and making it unsuitable for water supply or irrigation. Pumping coastal aquifers in excess of natural recharge rates draws down the surface of the aquifer. When the ocean has	The potential for saltwater intrusion is discussed on page 4.8-15 of the hydrology section of the EIR. Please see Master Response 4 regarding sea level rise.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

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	a higher "potentiometric surface," or water elevation, it causes the saltwater wedge to intrude further inland (Figure 35). Seawater intrusion is already problematic in California's coastal aquifers throughout Central and Southern California, including the Pajaro and Salinas Valleys and aquifers in Orange and Los Angeles Counties. [Figure 35. Saltwater intrusion. Source: Edwards and Evans 2002] GP pages CS-10: An example in Area 4: Levees (uncertified), pumping of the wetlands and soil disruption to destroy vulnerable species of Area 4 has occurred since the 1980s. If left alone, Area 4 would be mostly, if not all wetlands, in an undeveloped and un-mitigatable flood zone, and would flourish as habitat for biological life to continue to proliferate. This is one example where the changes to Area 4 have added to a detrimental environmental impact in the area. The GP refers to the Newark aquifer as being shallow at 40-140 ft. below the ground in most inland locations with a series of wells to intercept bay water before it reaches the aquifer, with a considerable amount of salt water that remains. Reports have demonstrated that continued pumping will increase salt intrusion as wells continue to be pumped to provide water for the expanding population, as developments expand into the proposed Area 2 and 4 plan.	
MILLER-21	CONCLUSION: Emphasizing my previous comments: I still must ask: "What really is a GP DEIR Tuneup"—your very confusing conglomeration of generic regulations and uncommitted references to defer any action? After all, it was considered a tuneup—but was mostly a collection of citations of regulations, followed by the City's intentions to follow them by making nonspecific claims that avoid the issues that have been criticized in past reviews. Many members of the public claimed to be confused, due to the unprecedented proposals in these end-run tunups, which was obviously quickly created to circumvent faults in the prior EIRs. More appropriately the tuneup should be referenced as a "Tuneout". Therefore, I can only conclude that this GP and DEIR "Tuneup" attempt has only generated more flaws, while it even defers specific actions of commitment. The laws of CEQA, regulations and policies dictate that these Tuneups should to be totally scrapped or at least revised for more review and comment by the public.	Please see Chapter 1.0, Executive Summary, for an explanation of the DEIR. As stated, the DEIR addresses the environmental effects associated with the implementation of the proposed Newark General Plan. As stated on page 1-1, the DEIR was prepared pursuant to the CEQA Guidelines. As indicated in Chapter 2.0, Introduction, Section 2.4, Environmental Review Process, describes the process for public review, including statutory public review comment period timeframes. As discussed, the DEIR has a public comment period of 45 days as required by CEQA Guidelines Section 15105. Pursuant to Section 15105, the DEIR was available for public comment from August 14, 2013 through September 27, 2013.
SOKALE-1	Subject: Comment Letter on the Draft General Plan Tune Up Program EIR for the City of Newark, California Dear Mr. Grindall, I am writing as a Newark resident for over 20 years and member of the Citizens Committee to Complete the Refuge. As a member of the Newark community who has actively participated in the few opportunities provided for public involvement in shaping General Plan I must first express my great disappointment and displeasure at the very brief review period afforded the two documents currently out for public review. The Draft General Plan and Draft General Plan Tune Up Program EIR were released to the public almost simultaneously in August 2013. This affords the public very little time to review these two documents which total over 916 pages without appendices. In most cities a Draft General Plan is released and reviewed by the public long before the environmental document is circulated. This is the first time the public gets to review both documents. This does a disservice to the community by limiting the thoughtful comments that could be supplied by residents.	As indicated in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines. Accordingly, CEQA Guidelines Section 15105(a) states that the public review period for a draft EIR must not be for a period less than 45 days. In accordance with CEQA Guidelines, the public review draft EIR was open for commenting from August 14, 2013 through September 27, 2013, or 45 days as mandated by CEQA Guidelines. The General Plan update process took place over the course of more than a year, with three community meetings, 5 work sessions that were open to the public and at which public comment was invited.
SOKALE-2	I was also astounded to learn at the September 24, 2013 Planning Commission meeting that the General Plan was essentially finalized with the exception of a small "addendum" to be prepared by the consultant. As if this was not enough information for me to come to the realization that Newark city officials are disinterested in the thoughts and opinions of residents, than the EIR schedule certainly communicated this fact. The Planning Commission was shown a slide that indicated: Draft Program EIR comment period closes on September 27, 2013 Planning Commission to review Draft Program EIR on October 8, 2013 City Council to review General Plan on October 10, 2013 City Council to review and adopt the General Plan and certify Final Program EIR on October 24, 2013 I expressed my concern over how the City would find the time to prepare responses to comments, circulate comments and responses to elected officials and still certify the Final Program EIR by October 24. Did you plan this schedule to dissuade public	As indicated in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines. Accordingly, CEQA Guidelines Section 15105(a) states that the public review period for a draft EIR must not be for a period less than 45 days. In accordance with CEQA Guidelines, the public review draft EIR was open for commenting from August 14, 2013 through September 27, 2013, or 45 days as mandated by CEQA Guidelines.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	comments?	
SOKALE-3	Newark General Plan – Introduction The Newark General Plan includes goals, policies and actions that "are intended to guide the City's actions during the life of the Plan (page I-4). The goals, policies and actions are the fundamental basis of the Plan. "In addition, the following words are used throughout the General Plan to indicate whether a particular provision is mandatory, advisory or permitted: "Must", "shall," or "will" identify provisions which are mandatory. Verbs such as "require" reflect similar obligatory directives. "Should" identifies a provision that is advisory. Verbs such as "encourage" and "support" are also advisory. Stated directives using these words should be followed unless there are compelling, countervailing considerations. More flexibility is intended in the application of such policies than those which are mandatory. "May" indicates a permissive provision. This indicates a course of action is permitted, but not required. Considerable discretion can be used when applying such policies to specific issues." These goals, policies and action statements do not constitute mitigation measures that provide for a "self-mitigating" General Plan.	The comment is noted; however, it does not pertain to the merits of the DEIR. No further response is necessary.
SOKALE-4	Newark General Plan Tune Up Program EIR A Cumbersome, Cobbling Together of Specific Plans CEQA Guideline Sections 15140 to 15155 of the CEQA Guidelines describe the how an EIR is to be written to be accessible to the public and decision-makers. Section 15140. WRITING EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents (Section 21083, Public Resources Code; Reference: Sections 21003 and 21100, Public Resources Code). Section 15141. PAGE LIMITS The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages (Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.). The Newark General Plan Tune Up EIR is beyond lengthy (558 pages) and requires back checking of multiple documents to begin to piece together the intent of the environmental review Particularly frustrating are the references to mitigation measures in the Housing Element EIR, Dumbarton TOD Specific Plan EIR and Areas 3 and 4 Specific Plan EIR. The General Plan Tune Up EIR reader is supposed to cross-references multiple documents in hopes of gleaning the nature and extent of analysis for project-based mitigation measures that are intended to reduce the level of significance of impacts identified in the General Plan Tune Up Program EIR which covers the entire City not simply certain specific plan areas.	CEQA Sections 15140 and 15141 offer guidelines for consideration in the preparation of EIRs. These are guidelines, not mandatory requirements to be strictly observed. In order to provide a thorough analysis, EIRs often exceed the recommended page limits. Please also see Response to Comment SOKALE-6 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
SOKALE-5	The General Plan Tune Up Program EIR cobbles together the analyses from these specific plan documents and then tosses in a series of goals, policies and action statements, which the City of Newark appears to rely upon to mitigate all other vaguely defined impacts. Impacts are not clearly described and therefore mitigation measures lack objectives and measurable performance standards. Many of the goals, policies and action statements are advisory only, providing no guarantee of implementation. The goals, policies and action statements that are considered to be "required" fail to identify who, when, where and how these measures will be implemented. No consideration is provided for failure to achieve the desired reduction in impact levels.	The comment does not identify specific instances of inadequacy; however the City disagrees with this comment. Throughout the Draft EIR, impacts are clearly described and identified. With respect to implementation of goals, policies, and action in the proposed Plan, the City notes that future development under the proposed Plan will be evaluated for consistency with the proposed goals, policies, and actions through the City's permitting and approval process.
SOKALE-6	The document lacks focus and clarity unless the intent was simply to obfuscate. This nearly across the board scattershot approach makes this EIR particularly unapproachable to the resident wishing to add their voice to the future plans for the City of Newark.	The Draft EIR maintains a clear and consistent approach to the environmental analysis throughout. Each of Chapters 4.1 through 4.14 contains a description of applicable regulations, existing conditions, and thresholds of significance, together with an impact discussion. Each chapter's impact discussion identifies potential impacts of the proposed Plan and first discusses the extent to which these impacts would be reduced by existing regulations and mitigation measures previously adopted by the City of Newark. Then the impact discussion considers the extent to which any residual impacts not sufficiently addresses by existing regulations and previously adopted mitigation measures would be reduced through the implementation of goals, policies, and actions contained in the

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
		proposed Plan. Where significant impacts remain after the consideration of applicable regulations, previously adopted mitigation measures, and proposed goals, policies, and actions, mitigation measures for the proposed Plan are identified and discussed. The Draft EIR is adequate and no change is required to address this comment.
SOKALE-7	The Draft Program EIR also misleads members of the public about the validity of Areas 3 and 4 Specific Plan. It makes numerous assertions and incorporates aspects of the Areas 3 and 4 Specific Plan into the Draft Program EIR even though the City of Newark knows that a legal challenge to the Areas 3 and 4 Specific Plan EIR is working its way through the court. The City of Newark has not properly adopted the Areas 3 and 4 Specific Plan nor properly certified the Areas 3 and 4 Specific Plan EIR. On November 20, 2012, the Alameda Superior Court issued its Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions. The Suspending Resolutions are intended "To ensure that the [Areas 3 and 4 Specific Plan] project does not proceed until the EIR is effective," the court ordered the City to "SUSPEND Resolution 9745 (Certifying the EIR) and Resolution 9746 (adopting the Newark Areas 3 and 4 Specific Plan Project and the related General Plan Amendment" pending resolution of the case or further order of the court. That suspension was in effect when this Draft General Plan Program EIR was released to the public and remains in effect at the time of this comment letter. Thus, the Areas 3 and 4 Specific Plan is not in effect, and it disingenuous for the City of Newark to represent it as approved and rely on its analysis in the Draft General Plan Program EIR. Reliance on this Areas 3 and 4 Specific Plan and the accompanying environmental document creates a false pretense and results in an incomplete analysis of General Plan impacts.	On page 3-11, the Draft EIR notes that an Alameda County Superior Court order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Area 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. Therefore, the comment is incorrect to assert that the City has mislead members of the public. Additionally, the City notes that pursuant to CEQA Section 21167.3, "if an injunction or stay is issued prohibiting the project from being carried out or approved pending final determination of the issue of such compliance, responsible agencies shall assume that the environmental impact report or the negative declaration for the project does comply with the provisions of this division and shall issue a conditional approval or disapproval of such project." Therefore, the comment is incorrect to assert that the Draft EIR creates a false pretense by assuming the information and analysis in the Area 3 and 4 Specific Plan, EIR and associated mitigation measures as part of the background condition for purposes of the environmental analysis. Please also see Master Response 2 regarding reliance on previous environmental review.
SOKALE-8	The Draft Program EIR also defers the release of the Mitigation, Monitoring and Reporting Plan until release of the Final Program EIR. This deferral of information further reduces the public's ability to review and provide comment on this most important planning effort. I again am disappointed by the lack of timely information.	As indicated on page 2-5 in the Introduction of the DEIR, Public Resources Code Section 21081.6 requires that the lead agency adopt a monitoring or reporting program for any project for which it has made findings pursuant to Public Resources Code 21081. Such program is intended to ensure the implementation of all mitigation measures adopted through the preparation of an EIR. In accordance to the above Public Resource Codes, and Mitigation Monitoring or Reporting Plan cannot be adopted until the DEIR is adopted and certified and therefore cannot be released until such time.
SOKALE-9	The Planning Process – A Tune Up? California Environmental Quality Act (CEQA) review documents should be prepared early enough in the planning process to enable environmental factors to influence project design. The City of Newark has a history of establishing a project vision and then assuming the environmental conditions will support the desired project. When environmental factors do not support the project concept Newark grants approvals and entitlements irrespective of the feasibility of development. The General Plan Tune Up EIR continues this modus operandi. The General Plan Tune Up should provide an opportunity for decision-makers to step back and evaluate environmental conditions and project realities and make appropriate course corrections. However, this potential use of the "Tune Up" is not apparent.	The comment is noted. As indicated in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines. As discussed in the Introduction, the DEIR was prepared as a programmatic document in which it does not intended to analyze project specific impacts. As mentioned throughout the document, future development would be subject independent CEQA review on a project-by-project basis to identify project-specific impacts and mitigation measures.
SOKALE-10	A few examples where course corrections are needed include: The feasibility of developing the Dumbarton Rail corridor appears to dim each day as ridership level projections are lowered and construction cost estimates escalate. The rail corridor competes with many regional projects that provide a far higher return on investment (ROI) per transportation dollar as determined by the Metropolitan Transportation Commission and has far less political support to garner state and federal monies than California High Speed Rail project. Instead of responding to this new information, Newark pushes ahead with high-density, transit-oriented development without the benefit of any transit infrastructure to support this intensity of development on the edge of the city. The development proposed in the General Plan Tune Up fills more wetlands and builds on the very edge of the city. The lack of a course correction at	The commenter's opinions are noted; however, they do not pertain to the merits of the DEIR. For clarifications regarding Area 4, please see Master Response 5. No further response is necessary.

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	this location will create significant traffic issues for the entire community and contribute to the loss of bayfront lands and habitats that make Newark unique. The feasibility of developing housing and a golf course in Area 4 grows slimmer each day as the legal challenge to the specific plan moves through the court system, projections for sea level rise mount and regional agencies with jurisdiction over wetlands, water quality and water infrastructure become more aware of the flaws in Newark's planning efforts. Newark's desire to fill historic tidal wetlands and the Bay edge are not actions that embrace the special landscape qualities of our community. Instead of taking the opportunity to adjust the vision for these lands, the City of Newark demonstrates the "Newark Way" by continuing to designate Whistling Wings and Pintail Duck Clubs lands for low-density residential land use. This outdated development proposal will also force further loss of wetlands in Newark and fails to acknowledge the impact this housing will have on wetlands in the future. The project will need sea level rise protection that will further impact the lands designated by Congress for inclusion into the Don Edwards San Francisco Bay National Wildlife Refuge. Filling these lands with homes and a golf course does not demonstrate the sustainable, long-term direction that Newark should be pursuing. The environment should influence the planning such that the General Plan truly represents the physical qualities of the landscape that make Newark unique – its bayfront! I encourage you to rethink the feasibility, sustainability and long-term economic viability of these aspects of these planning efforts.	
SOKALE-11	Project Description Inconsistencies Page 3-3 – The document states, "This Draft EIR compares the buildout potential for the proposed Plan with the existing baseline condition, described in detail in each section of the Chapter 4.0, Environmental Analysis." In fact, the document frequently assumes the baseline conditions of the suspended Areas 3 and 4 Specific Plan and associated EIR. As a result, this Draft General Plan Program EIR fails to identify and analyze the impacts and prevents full disclosure of the actual environmental impacts compared to existing conditions on the ground.	Please see Master Response 1 regarding baseline for the environmental analysis. The Draft EIR is not inadequate in this respect.
SOKALE-12	Page 3-8 – Areas 3 and 4 Specific Plan description indicates "…however, Area 4 is one of the last undeveloped sectors of the city and is largely in agricultural use today. However, on Page 3-21 the document states, "The proposed Plan also includes policies intended to protect and enhance sensitive natural resources in the Southwest Newark Residential and Recreational focus area, including wetland and aquatic habitat, natural hydrological features and other biological resources." The description on Page 3-8 should be revised to more accurately reflect the character of the lands in Area 4 including the fact the nearly ½ of the site is delineated wetlands.	On pages 4.3-39 through 4.3-40, the Draft EIR describes the extent of USACE delineated jurisdictional wetlands and other waters. Page 3-8 of the Draft EIR will be updated to include this same information: "A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007. The USACE determination established approximately 242 acres of wetlands and 34.21 acres of "other waters" for a total of 277 acres. These areas include all aquatic, diked salt marsh, seasonal wetlands, muted tidal saltmarsh, freshwater marsh, brackish marsh, and tidal salt marsh." This revision does not constitute substantial new information and does not change the findings of the Draft EIR.
SOKALE-13	The General Plan Draft Program EIR lacks a basic discussion about the physical and biological properties of the Area 4 lands proposed for development. Thus, a reader does not immediately have a sense that the project is primarily located in the existing 100-year floodplain, includes 277 acres of wetlands, that Area 4 was historically tidal wetlands and experiences 20 commuter train trips plus freight traffic per day. It does not mention that the site is routinely disked and actively pumped to drain into Mowry Slough. These actions have changed the character of plant and animal communities and distribution across the site. These actions are not intended to result in a meaningful food crop, but simply to continuously disturb the site to prevent the land from returning to its former mosaic of wetlands and transitional upland habitats. The project description does not set the existing conditions context of the Area 4 site for the reader.	Biological conditions in Newark are described on pages 4.3-9 through 4.3-31 of the Draft EIR. Hydrological conditions in Newark are described on pages 4.8-8 through 4.8-19 of the Draft EIR. Further, the description of existing conditions contained in the Area 3 and 4 Specific Plan EIR and other previous environmental review documents conducted by the City of Newark are incorporated by reference into the Draft EIR. Please see also Response to Comments GECO-3, GECO-5, GECO-6 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
SOKALE-14	Page 3-12 – The document states, "At a program EIR level of detail, these uses have substantially similar impacts on the environment. Therefore regardless of whether the Area 3 and 4 EIR is upheld or not, the Program EIR fully addresses the environmental impacts of the proposed General Plan." Much of the analysis included in this Draft General Plan Program EIR relies upon the analyses of the flawed and suspended Areas 3 and 4 Specific Plan EIR. It is in error to rely on this previous work.	Please see Master Response 2 regarding Reliance of Previous Environmental Review.

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SOKALE-15	Environmental Analysis Aesthetics 3. Substantially degrade the existing visual character or quality of the site and its surroundings. Page 4.1-8 AES-3 – The proposed plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review. The Draft General Plan Program EIR references other environmental review documents (currently suspended by Alameda Superior Court), but fails to assess the impacts of the overall General Plan. The General Plan includes actions regarding the development of several railroad grade-separations for roadways. These overpasses would significantly alter the character of the community and change the visual character of Newark. The soffit of the overpasses (bottom of the bridge) would need to provide 26.5 feet of vertical clearance from the rail line. Thus, the overall bridge structures would be three to four stories tall when including the bridge deck and railings. The support columns would also change the appearance of the local areas. Grade separations are proposed in: Action LU-7.B Railroad Overcrossing. Construct a Stevenson Boulevard or Mowry Avenue overpass across the Union Pacific Railroad, including dedicated bike lanes and sidewalk on one side. Action T-6.C Central Avenue Grade Separation. Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue. Pursue state and federal grant funding to carry out this project. Action T-6.D Dumbarton TOD Grade Separation. Add an overpass to move traffic over the rail lines between Filbert and Sycamore Streets in conjunction with the Dumbarton TOD development. Pursue state and federal grant funding to carry out this project. Action PR-5.D Cedar Boulevard Extension Linear Park. As funds allow, construct a linear park and trail on the Cedar Boulevard Extension. Crossing of the Union Pacific Railroad should be grade separated to minimize risk and noise. This impact has not been evaluated in the Draft General Plan Tune Up Program EIR. Please address this impact with regard to the potential to substantially degrade the existing visual character or quality of the community. Please indicate what measures will be taken to mitigate any potential impact to the visual character. Will the construction of these overpasses result in a cumulative impact to the community?	The impact discussion for AES-3 discusses potential impacts in the four focus areas where development is likely to be concentrated under the proposed Plan. As such, AES-3 provides an analysis in regards to the four focus areas based on previous specific plans and associated EIRs, which have been incorporated by reference pursuant to CEQA Guidelines Section 15150, and as indicated in Chapter 2.0, Introduction. Also discussed in Chapter 2.0 is the scope of the EIR which states that it was prepared on a programmatic level and does not consider project specific impacts. As such, the overall impacts associated with implementation of the proposed General Plan have been considered throughout the document; however, as mentioned throughout the DEIR, further independent CEQA review would be required on future development on a project-by-project basis to identify project-specific impacts and mitigation measures.
SOKALE-16	Cultural Resources Page 4.4-8 CULT-1 – The Plan would not cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5. The historic resources discussion relies upon “a brief three-part document entitled Historic Preservation Program City of Newark dated November 30, 1989.” This nearly 25 year old document is older than the former 1992 General Plan and other structures within the City of Newark may have historic significance. Reliance on this 1989 document does not support a full analysis of the potential impacts to historic structures. The Draft program EIR does not discuss the 129-year old historic schoolhouse Newark is currently attempting to sell and demolish (http://www.mercurynews.com/top-stories/ci_23258337/historic-newarkschoolhouse-decaying-at-ardenwood-farm-may).	As indicated on page 4.4-7, the St. Edward’s Church and the James Graham residence were confirmed to be the only historic resources on the City's list of historic resources. Also as discussed on page 4.4-7, there are no historic resources in Newark that have been placed on the National or California registers, which would require special considerations under CEQA.
SOKALE-17	It does not address the potential significance of the Newark Community Center and Newark Library designed by Architect Aaron Green, a protégé of Frank Lloyd Wright (http://www.sfgate.com/bayarea/article/SIGNATURE-STYLE-Aaron-Green-Gettingit-Wright-2694208.php). Please develop appropriate baseline for this analysis.	As indicated in Chapter 2.0, Introduction, the DEIR was prepared at the programmatic level and therefore does not consider project-specific impacts. As indicated throughout the DEIR, future development would be subject to further independent CEQA review to identify project-specific impacts and mitigation measures.
SOKALE-18	The goals, policies and action statements described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less than significant level. Newark’s recent decisions regarding historic resources indicate a lack of commitment to preservation. The potential loss of historic structures has been determined by the courts to be an unavoidable significant impact. These policies do not prohibit such a loss therefore this impact remains significant and unavoidable.	As discussed on page 4.4-7, there are no historic resources in Newark that have been placed on the National or California registers, which would require special considerations under CEQA. Additionally, as discussed in Chapter 2.0, Introduction, there will be a mitigation monitoring plan or report published with the final EIR (FEIR) to ensure implementation of mitigation measures identified as part of the EIR.
SOKALE-19	Hazards and Hazardous Materials 4. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment. Page 4.7-21: HAZ-2 – The Plan would not create a	Future development within the city of Newark would require compliance with federal, State, and local regulations with oversight and approval from responsible federal, State, and local agencies to ensure that potential contamination or exposure to hazardous materials is avoided or controlled to minimize the risk to the public or the

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. The Draft Program EIR states: "The Plan would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. The proposed Plan would facilitate new development, including residential, mixed-use, commercial, parks, and recreational open spaces, within the City of Newark. Some of the new development could occur on properties that are likely contaminated. Construction of new buildings and improvements could have the potential to release potentially hazardous soil-based materials into the environment during site grading and excavation operations. Demolition of existing structures likewise could potentially result in the release hazardous building materials (e.g. asbestos, lead paint, etc.) into the environment. The Dumbarton TOD relies upon individual property owners to assess and mitigate the numerous toxic sites present in the area. This means some sites could be cleaned up quickly while others may not get under way for years. In the meantime, Newark is in the process of approving individual residential development projects under the General Plan without the benefit of a coordinated cleanup plan. Newark development approvals under the General Plan will allow residents to move into in this highly contaminated area prior to full cleanup. These new residents and adjacent neighbors have the potential to be exposed to significant hazards as a result of the General Plan. This approach to remediation in the Dumbarton TOD and carried forward in the General Plan may expose residents to the "release (of) potentially hazardous soil-based materials into the environment during site grading and excavation operations" at adjacent properties. The Dumbarton TOD includes numerous remediation projects for a wide variety of toxic contaminants. Actions are underway or proposed for the FMC, Ashland Chemical, Foster Chemical, Jones-Hamilton Company, Honeywell International sites and others (See Department of Toxic Substances Control and San Francisco Bay Regional Water Control Board Clean-up Orders). In most cases the target contaminants are numerous volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs). Chemicals include acetone, ethylbenzene, toluene, xylenes, ethylene diclororide, trichloroethene (TCE) and many others. Many of these contaminates are highly volatile carcinogens which could easily spread to the nearby locations. No meaningful analysis is provided to demonstrate how a piece meal cleanup effort by individual landowners will protect new residents from the adverse effect of hazardous materials. No standard of cleanup is established or if it has been established it is not explicitly stated in the General Plan or in the General Plan Program EIR. Please provide an analysis of this issue. Please indicate the standard of cleanup necessary for home occupancy. Please describe how and when this cleanup is to be achieved. Please describe how permanently capped toxic sites in Newark including the Dumbarton TOD area will be treated in the future. What goals, policies and action statement are intended to guide these sites? Will these sites ever be reopened and further cleanup undertaken or will these sites remain off limits to development?	environment on a case-by-case basis. Moreover, in DEIRs prepared for the Dumbarton TOD Specific Plan, the Areas 3 and 4 Specific Plan, and the 2010 Housing Element, future development in the Dumbarton TOD Focus Area, the Southwest Newark Residential and Recreational Focus Area, and on Housing Element opportunity sites has already been analyzed with regard to potential hazards and hazardous materials. The final EIRs identify mitigation measures that when implemented would reduce impacts to less than significant. These previously approved mitigation measures have been included herein as applicable regulations and conditions of approval. Additionally, the proposed Plan goals, policies, and actions, as listed topically herein under HAZ-1 through HAZ-8 in the DEIR, would further ensure that future development in the City if Newark does not contribute to cumulative increase in risk to hazards or hazardous materials. Finally, subsequent projects resulting from implementation of the proposed Plan would also be subject to independent CEQA review in which project-specific impacts would be further identified along with appropriate mitigation measures.
SOKALE-20	7. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. Page 4.7-26-28: HAZ-7 The proposed Plan would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. The General Plan includes actions regarding the development of several railroad grade-separations for roadways. Action T-6.C Central Avenue Grade Separation. Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue. Pursue state and federal grant funding to carry out this project. Action T-6.D Dumbarton TOD Grade Separation. Add an overpass to move traffic over the rail lines between Filbert and Sycamore Streets in conjunction with the Dumbarton TOD development. Pursue state and federal grant funding to carry out this project. What is the trigger for development of these grade separation structures? If funding is not available for these structures how will	Impacts related to emergency access are discussed on pages 4.7-36 through 4.7-28 of the Draft EIR. The City does not agree that railway overpasses are required to ensure adequate emergency access. No change to the Draft EIR is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	emergency response to the Dumbarton TOD area be addressed? The primary routes to this area include Central, Willow and Enterprise. All three of these routes include at-grade rail lines, which could limit access and hinder emergency response to the proposed development. If these overpasses are not constructed I conjunction with this development this may result in a significant impact to an adopted emergency response plan or emergency evacuation plan. Please address this issue.	
SOKALE-21	8. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands. Page 4.7-28-29: HAZ-8 Implementation of the Plan would not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands. The Draft EIR states, "As shown on Figure 4.7-2, the Plan Area is not designated as having high, very high, or extreme wildland fire threat to people, as determined by CAL FIRE's Wildlife Urban Interface Fire Threat data." Figure 4.7-2 on Page 4.7-18 does in fact indicate areas of high risk of wildlife in developed neighborhoods and areas planned for development. The EIR fails to adequately assess the level of impact through failure to acknowledge the actual wildfire risks as indicated on the CAL FIRE Threat Map. Please correct this analysis.	The Draft EIR text on page 4.7-30 is hereby amended as follows: *"As shown on Figure 4.7-2, the Plan Area does not include State Responsibility Areas of very high, high, or moderate risk from wildfire. The Plan Area does, however, include some Local Responsible Areas of high and moderate risk from wildfire, although the majority of the Plan Area is designated as non-wildland/non-urban and urban unzoned."*
SOKALE-22	This assessment also fails to acknowledge Newark's long-term support of the sale of fireworks, which place additional risk in these wildland interface areas. On the July 4th and throughout the year agencies with fire suppression resources are concerned about the heightened risk of fire in these areas which are subject daily to winds coming across the Bay that can quickly drive a wildland fire into residential neighborhoods. The General Plan supports residential growth that will include more people who will be able to purchase fireworks and further exacerbate the wildland fire threat. Please include this in the analysis.	Impacts associated with wildland fires are analyzed and discussed on pages 4.7-28 through 4.7-31 of the Draft EIR. As described, compliance with applicable regulations and conditions of approval and implementation of the proposed Plan goals, policies, and actions would ensure the risk of loss, injury, or death involving wildland fires is minimized to the maximum extent practicable. This is appropriate for a programmatic EIR such as the Draft EIR. No revision to the Draft EIR is required.
SOKALE-23	Land Use and Planning 3. Conflict with any applicable habitat conservation plan or natural community conservation plan. Page 4.9-8 LU-3 - The proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan. Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan The policies and action statements identified to minimize disturbances and support the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan (DESFBNWR CCP) are couched in terms "participate in cooperative efforts", "support", "encourage" and "coordinate with" do not require Newark to implement said policies and actions that are intended to support the DESFBNWR CCP. These General Plan policies and actions and past discretionary actions by Newark provide no indication the DESFBNWR CCP will be supported by Newark's land use decisions. In fact, the General Plan and associated Draft Program EIR do not indicate the DESFBNWR Expansion Boundary areas or the wetlands and waters within the community upon which to formulate decisions. In the past few years Newark adopted the Areas 3 and 4 Specific Plan (currently suspended by Alameda Superior Court) that allow for the filling of wetlands within both of these planning areas. The Land Use Element of the General Plan designates Whistling Wings and Pintail Duck Clubs lands in Area 4 (Sub Area E), various wetlands in Area 4 (Sub Areas B and C) for low density residential use even though these lands were designated by Congress in 1991 as within the expansion boundary of Don Edwards San Francisco Bay National Wildlife Refuge. How do these designations in the Land Use elements support implementation of DESFBNWR CCP?	As discussed in LU-3, there were no precise locations for future development at the time the DEIR was prepared, and therefore no conflicts are expressly evident. Further, several policies under the proposed Plan, listed on page 4.9-9 through 4.9-10 would minimize any disturbances and consequently support the goals of the CCP. Additionally, it was stated that separate project-level CEQA review would be required to further identify project-specific impacts and mitigation measures. Designation as part of the potential expansion area of the Refuge does to determine land use or define a land use conflict. The expansion area identifies where land could be acquired from willing sellers as a refuge addition. For those reasons, no changes are necessary.
SOKALE-24	The Draft General Plan Program EIR states, "Under the proposed Plan, the land use designation and zoning applicable to the duck clubs would remain unchanged as Low Density Residential." How can the General Plan continue to extend Low Density Residential land use and zoning designations across Sub Area E of Area 4 if the policies and actions identified in the Draft General Plan are intended to support	Potential conflicts with the CCP are discussed on pages 4.9-9 through 4.9-1 of the Draft EIR. The Plan does not propose development on any land subject to the CCP nor does it envision development in the immediate vicinity of the Refuge over and above that envisioned in the Dumbarton TOD Specific Plan or the Area 3 and 4 Specific Plan and analyzed in the respective specific plan EIRs, including Sub Area E of Area 4. Implementation of the proposed

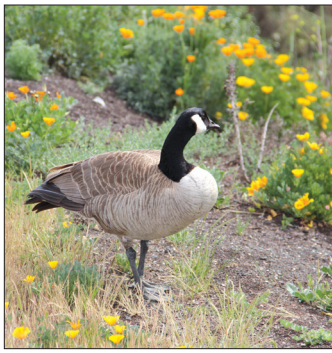
TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	the goals of the CCP? This directly conflicts with the goals, policies and actions purported in the General Plan and as such must be considered a Significant Impact. If these lands are not "envisioned" for development then why are they identified in the plan for residential development?	Plan policies and actions cited above would help ensure that subsequent projects give adequate consideration to buffers and other site planning factors. Therefore the conclusion of the Draft EIR that implementation of the proposed Plan would result in a less-than-significant impact with respect to conflicts with the CCP remains valid. Further, the City notes that the proposed Plan does not preclude the Refuge from acquiring land within its expansion boundaries from willing property owners. Please see Response to Comment STB-6. For clarifications of the Area 4 project, please see Mater Response 5.
SOKALE-25	San Francisco Bay Conservation and Development Commission San Francisco Bay Plan The General Plan Tune Up EIR states, "As described in Section 4.3.1.1 above, the Bay Plan, implemented by BCDC, guides the future protection and use of San Francisco Bay, its shoreline, and its natural resources. BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands, to the extent they are present in the Plan Area. Managed wetlands are areas of historical tidal marshes, such as private waterfowl hunting clubs and publicly owned wildlife management areas, that have been diked off from the Bay and were maintained during the three years immediately preceding November 11, 1969, for wildlife preservation, agriculture, or as a game reserve.2 Bay Plan policies pertaining to managed wetlands encourage the continued operation and maintenance of managed wetlands for waterfowl hunting or for waterfowl food production. Where development of managed wetlands would occur, Bay Plan policies encourage retaining the maximum amounts of water surface area consistent with the project. The proposed Plan would conflict with the Bay Plan if it would result in conflicts with these policies. The proposed Plan does not specifically propose any development within Mowry Slough or Plummer Creek, including portions within the jurisdiction of BCDC, and compliance with the setback requirements contained in the City's Grading and Excavation Ordinance (Newark Municipal Code, Chapter 15.50) would ensure that future development under the Plan would not occur within the limits of either Mowry Slough or Plummer Creek. With respect to the potential presence of managed wetlands within the Plan Area, there are two former duck clubs located in the Southwest Newark Residential and Recreational Focus Area, as shown in Figure 4.3-2: the former Whistling Wings Duck Club, has been farmed for the last several decades, and the former Pintail Duck Club, which currently consists of a large pond surrounded by wetland plants. Neither the adopted Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs." Figure LU-1 – Proposed General Land Uses of the General Plan designates Whistling Wings and Pintail Duck Clubs lands in Area 4 (Sub Area E), various wetlands in Area 4 (Sub Areas B and C) and Plummer Creek wetlands along Central Avenue (directly adjacent to the Plummer Creek Mitigation Lands) in the Dumbarton TOD Specific Plan for low-density residential land use. These land use designations conflict with Bay Plan policies. This impact is Significant.	See response to SOKALE-24.
SOKALE-26	4.9.4 CUMULATIVE LAND USE IMPACTS Page 4.9-12 LU-4 - The proposed Plan, in combination with past, present, and reasonably foreseeable development in the surrounding area, would result in less-than-significant cumulative impacts with respect to land use and planning. "In the case of an area-wide planning document such as the proposed Plan, cumulative land use effects occur from development under the proposed Plan combined with effects of past, present, and reasonably foreseeable development on adjacent land. The geographic scope of this analysis is taken as the Plan Area and adjacent land in the City of Fremont." "With respect to cumulative land use impacts from conflicts with applicable habitat conservation plans or natural community conservation plans, as discussed above, Plan-specific impacts related to conflicts with CCP and the Bay Plan would be less than significant, and would not be cumulatively considerable, when considered together with other past, present and	The Draft EIR discusses conflicts with the Bay Plan and the CCP on pages 4.9-8 through 4.9-13. The City notes that fill or development of lands within the Refuge expansion boundaries does not constitute a conflict with the CCP as land within the expansion boundary is not subject to the CCP. Further, the City notes that the proposed Plan does not preclude the Refuge from acquiring land within its expansion boundaries from willing property owners. Please see Response to Comment STB-6. The analysis and conclusions of the Draft EIR are adequate. No change to the Draft EIR is required to address this comment.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	reasonably foreseeable plans in the Plan Area and adjacent land in Fremont. Cumulative impacts related to conflicts with the Basin Plan would be less than significant, as discussed in detail in Chapter 4.3 of this Draft EIR." The General Plan Tune Up EIR fails to identify past, present and reasonably foreseeable future development that conflicted with the DESFBNWR CCP and the refuge expansion boundaries and Bay Plan and therefore cannot claim a "Less than Significant" impact. Some of these projects include: Past Projects: Newark Gateway – filled wetlands and expansion boundary lands in the Newark Coyote Tract. Pacific Commons – filled wetlands and expansion boundary lands in south Fremont Present Projects: Newark General Plan Tune Up Torian Site Residential Development – Part of Dumbarton TOD – application before USACE and RWQCB for fill of wetlands in Plummer Creek. Trumark Residential Development – Part of Dumbarton TOD – application before SFPUC Future Projects: Patterson Ranch – proposes development with expansion boundary in north Fremont Please provide a complete analysis of cumulative impacts that identifies all project within Newark and Fremont that conflict with DESFBNWR CCP and the Bay Plan.	
SOKALE-27	Utilities and Service Systems Page 4.14-13 UTIL-3 – The Plan, in combination with past, present and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to water supply. The Draft Program EIR acknowledges that water supply in dry years would not be adequate to support the proposed buildout and finds this impact to be less than significant solely on the basis of goals, policies and actions that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence to support this conclusion. Please determine other measures or scale development to what is feasible and sustainable in the long-term.	As stated in the previous response, the increase in water supply demand with implementation of the General Plan Update is only 557 acre-feet as compared to ACWD's supply demand for Newark, Fremont, and Union City of 72,800 acre-feet (<1%). Enforceable measures to ensure that water supply is sufficient during dry years are the ACWD's Drought Contingency Plan, which included mandatory measures for use restrictions, water rationing, and charges for excessive usage. Further reductions in water demand will result from implementation of Newark's Green Ordinance, 2010 California Plumbing Code, ACWD's Water Efficiency Measures for New Development (most of which are mandated by Federal and State requirements), and use of recycled water for non-potable uses. In addition, all large scale development projects are required to be assessed for water supply through the preparation of Water Supply Assessments (WSAs) and each project's CEQA review process as reviewed by the ACWD.
SOKALE-28	Page 4.14-14 Sanitary Wastewater ACFCD has recently completed an analysis of facilities with regard to adapting to sea level rise. Please include the findings of this report in a revised analysis of the Plan's ability to be sustainable.	Please see Master Response 4 regarding sea level rise.
SOKALE-29	Alternatives The alternatives analysis should include an alternative that protects the lands west of the Union Pacific railroad between Mowry Avenue and Stevenson Boulevard. None of the alternatives address this option, which has been sought by many community members over the past two decades.	As discussed in the Alternatives chapter on page 6-1, and pursuant to Section 15126.6 of the CEQA Guidelines, an EIR need only to describe a range of reasonable alternatives to the project. As such, three alternatives were analyzed in compliance with CEQA Guidelines. Please see Master Response 3 regarding the adequacy of alternatives. No further response is necessary.
SOKALE-30	Thank you for the opportunity to comment on Draft General Plan Tune Up Program EIR. Please place me on your mailing list for all future notifications regarding this project	The comment is noted.

NEWARK
California



General Plan Tune Up Final EIR

for the City of Newark

State Clearinghouse No. 2013012052

The Planning Center | DC&E

October 24, 2013

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Prepared by:

The Planning Center | DC&E

October 24, 2013

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1. *Executive Summary*

This ~~Draft~~ Environmental Impact Report (~~Draft~~ EIR) addresses the environmental effects associated with the implementation of the proposed Newark General Plan Tune Up (proposed Plan). The California Environmental Quality Act (CEQA) requires that local government agencies, prior to taking action on projects over which they have discretionary approval authority, consider the environmental consequences of such projects. An Environmental Impact Report is a public document designed to provide the public and local and state governmental agency decision-makers with an analysis of potential environmental consequences to support informed decision-making.

This ~~Draft~~ EIR has been prepared pursuant to the requirements of CEQA (California Public Resources Code, Division 13, Section 21000, et seq.) and the State CEQA Guidelines (Title 14 of the California Code of Regulations, Division 6, Chapter 3, Section 15000, et seq.) to determine if approval of the identified discretionary actions and related subsequent development could have a significant impact on the environment. The City of Newark, as the Lead Agency, has reviewed and revised as necessary all submitted drafts, technical studies, and reports to reflect its own independent judgment, including reliance on applicable City technical personnel and review of all technical subconsultant reports. Information for this ~~Draft~~ EIR was obtained from on-site field observations; discussions with affected agencies; analysis of adopted plans and policies; review of available studies, reports, data, and similar literature in the public domain; and specialized environmental assessments (e.g., air quality, hazards and hazardous materials, hydrology and water quality, noise, and transportation and traffic).

1.1 ENVIRONMENTAL PROCEDURES

This ~~Draft~~ EIR has been prepared pursuant to CEQA to assess the environmental effects associated with implementation of the proposed Plan, as well as anticipated future discretionary actions and approvals. The six main objectives of this document as established by CEQA are:

- To disclose to decision-makers and the public the significant environmental effects of proposed activities.
- To identify ways to avoid or reduce environmental damage.
- To prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures.
- To disclose to the public reasons for agency approval of projects with significant environmental effects.
- To foster interagency coordination in the review of projects.
- To enhance public participation in the planning process.

An EIR is the most comprehensive form of environmental documentation identified in the statutes and in the CEQA Guidelines. It provides the information needed to assess the environmental consequences of a proposed project, to the extent feasible. EIRs are intended to provide an objective, factually supported, full-disclosure analysis of the environmental consequences associated with a proposed project that has the potential to result in significant, adverse environmental impacts. An EIR is also one of various decision-making tools used by a lead agency to consider the merits and disadvantages of a project that is subject to its discretionary authority. Prior to approving a proposed project, the lead agency must consider the information contained in the EIR, determine whether the EIR was properly prepared in accordance with CEQA and the CEQA Guidelines, determine that it reflects the independent judgment of the lead agency, adopt findings concerning the project's significant environmental impacts and alternatives, and must adopt a Statement of Overriding Considerations if the proposed project would result in significant impacts that cannot be avoided.

REPORT ORGANIZATION

This document, together with the Draft EIR, will constitute the Final EIR if the City of Newark City Council certifies it as complete and adequate under the California Environmental Quality Act (CEQA).

The Draft EIR is organized into the following chapters:

- **Section 1. Executive Summary**: Summarizes the background and description of the proposed Plan, the format of this EIR, alternatives, any critical issues remaining to be resolved, and the potential environmental impacts and mitigation measures identified for the Plan. A Summary Table describing recommended mitigation measures and indicates the level of significance of environmental impacts before and after mitigation is also included for clarity.
- **Section 2. Introduction**. Provides a preface and overview describing both the intended use of the document and the review and certification process of both the proposed Plan and the EIR.
- **Section 3. Project Description**. Describes the Draft General Plan Tune Up in detail, including a summary of the chapters of the Plan and a listing of proposed land use designation changes.
- **Section 4. Environmental Assessment**. Organized into 15 chapters corresponding to the environmental resource categories identified in Appendix G of the CEQA Guidelines, this section provides a description of the physical environmental conditions in the vicinity of the project as they existed at the time the Notice of Preparation was published, from both a local and regional perspective, as well as an analysis of the potential environmental impacts of the proposed Plan and recommended mitigation measures, if required, to reduce their significance. The environmental setting included in each chapter provides baseline physical conditions from which the lead agency determines the significance of environmental impacts resulting from the proposed Plan. Each chapter also includes a description of the thresholds used to determine if a significant impact would occur; the methodology to identify and evaluate the potential impacts of the Plan; and the potential cumulative impacts associated with the proposed Plan and other existing, approved, and proposed development in the area.
- **Section 5. Significant Unavoidable Adverse Impacts**: Describes the significant unavoidable adverse impacts of the proposed Plan.

- **Section 6. Alternatives to the Proposed Plan**. Considers three alternatives to the proposed Plan, including the CEQA-required "No Project Alternative," the Reduced Residential Alternative, and the Restricted Growth Alternative.
- **Section 7. CEQA-Mandated Sections**. Discusses growth inducement, cumulative impacts, unavoidable significant effects and significant irreversible changes as a result of the proposed Plan. Additionally, this section identifies environmental issues scoped out pursuant to CEQA Guidelines Section 15128.
- **Section 8. Organizations and Persons Consulted**: Lists the people and organizations that were contacted during the preparation of this EIR for the proposed Plan.
- **Appendices**. The appendices for this document (presented in PDF format on a CD attached to the back cover) contain the following supporting documents:
  - Appendix A: Notice of Preparation Comment Letters
  - Appendix B: Air Quality and Greenhouse Gas Emissions Data and Calculation Sheets
  - Appendix C: Noise Monitoring and Calculation Sheets
  - Appendix D: City of Newark General Plan Tune Up Traffic Study, Hexagon Transportation Consultants, June 7, 2013.

The Final EIR is organized into the following chapters:

- **Chapter 1: Executive Summary.** This chapter is a summary of the findings of the Draft and the Final EIR. It has been reprinted from the Draft EIR with necessary changes made in this Final EIR.
- **Chapter 2: Introduction.** This chapter discusses the use and organization of this Final EIR.
- **Chapter 3: Revisions to the Draft EIR.** Corrections to the text and graphics of the Draft EIR are contained in this chapter. Underline text represents language that has been added to the EIR; text with ~~strike-through~~ has been deleted from the EIR.
- **Chapter 4: List of Commenters.** Names of agencies, organizations, and individuals who commented on the Draft EIR are included in this chapter.
- **Chapter 5: Comments and Responses.** This chapter contains reproductions of the letters received from agencies and the public on the Draft EIR. The responses are keyed to the comments which precede them.
- **Appendices. The appendices for this document (presented in PDF format on a CD attached to the back cover) contain the following supporting documents:**
  - **Appendix A: Contents of CD submitted with Comment Letter Lippe Gaffney Wagner**
  - **Appendix B: Contents of CD submitted with Comment Letter High**
  - **Appendix C: Recurring Comment Letters**

TYPE AND PURPOSE OF THIS DRAFT EIR

According to Section 15121(a) of the CEQA Guidelines, the purpose of an EIR is to:

> *Inform public agency decision makers and the public generally of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.*

Given the long-term horizon of the proposed Plan and the permitting, planning, and development actions that are related both geographically and as logical parts in the chain of contemplated actions for implementation, this ~~Draft~~ EIR has been prepared as a Program EIR for the General Plan Tune Up project, pursuant to Section 15168 of the CEQA Guidelines. As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects.

Once a Program EIR has been prepared, subsequent activities within the program must be evaluated to determine whether additional CEQA documentation needs to be prepared. However, if the Program EIR addresses the program's effects as specifically and comprehensively as possible, many subsequent activities could be found to be within the Program EIR scope and additional environmental documents may not be required (CEQA Guidelines Section 15168[c]). When a Program EIR is relied on for a subsequent activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities (CEQA Guidelines Section 15168[c][3]). If a subsequent activity would have effects not within the scope of the Program EIR, the lead agency must prepare a new Initial Study leading to a Negative Declaration, Mitigated Negative Declaration, or an EIR. In this case, the Program EIR still serves a valuable purpose as the first-tier environmental analysis.

1.2 LOCATION AND BOUNDARIES OF THE PLAN AREA

The City of Newark is located in southern Alameda County, between Interstate 880 (I-880) and San Francisco Bay, south of State Route 84, as shown on Figure 3-1. The City of Newark is an enclave, surrounded on all sides by land within the limit of the City of Fremont. The Don Edwards San Francisco Bay National Wildlife Refuge is located along the western perimeter of Newark on the shore of San Francisco Bay. The City's sphere of influence (SOI), the planning boundary set by the Alameda County Local Agency Formation Commission to designate the City's future service area, is coterminous with the Newark City limit.

1.3 PLAN SUMMARY

The proposed Plan is a "tune up" of the 1992 City of Newark General Plan. The vision for the growth and development of the community outlined in the 1992 General Plan remains a valid reflection of community values and priorities today, and the land use designations and policies of the 1992 General Plan provide a solid base on which to build. The Plan proposes an updated policy framework and consolidated land use designations intended

to guide future development and redevelopment in Newark. Future development would be concentrated primarily in the four focus areas: the Dumbarton Transit-Oriented Development (TOD) Focus Area, the Southwest Newark Residential and Recreational Focus Area, the Old Town Focus Area, and the Greater NewPark Focus Area. The proposed Plan is projected to result in approximately 60,510 residents, 19,699 housing units, and 22,609 jobs in Newark by 2035.

The proposed Plan has a long-term planning horizon, addressing a time frame extending to 2035, yet it brings deliberate, overall direction to the day-to-day decisions of the City Council, its commission, and City staff. The proposed Plan is described in more detail in Chapter 3 of this Draft EIR.

1.4 SUMMARY OF ALTERNATIVES TO THE PROPOSED PLAN

The CEQA Guidelines (Section 15126[a]) require the description and comparative analysis of a range of alternatives to the proposed Plan that could feasibly attain the objectives of the Plan, while avoiding or substantially lessening potential impacts. The alternatives were based on their potential ability to reduce or eliminate the following impacts determined to be significant and unavoidable for the proposed Plan:

- Aesthetics
- Air Quality
- Cultural Resources
- Greenhouse Gas Emissions
- Noise
- Transportation and Traffic

As described in Chapter 6 of the Draft EIR, three alternatives were identified and analyzed for relative impacts as compared to the proposed Plan:

- No Project Alternative;
- Reduced Residential Alternative;
- Restricted Growth Alternative.

Please refer to Chapter 6 of the Draft-EIR for a complete discussion of the relative impacts associated with each alternative. The following presents a summary of each of the alternatives analyzed in the ~~Draft~~ EIR.

- **No Project Alternative**. Under this alternative, the Newark General Plan Tune Up would not be adopted and future development in Newark would occur under the goals, policies, programs, and land use designations set forth in the existing General Plan. Existing plans and policies, including Dumbarton Transit-Oriented Development (TOD) Specific Plan, the Area 3 and 4 Specific Plan, the 2009-2014 Housing Element, and the Climate Action Plan would continue to be implemented. The No Project Alternative could result in up to 17,900 housing units in Newark by 2035, including approximately 10,950 single-family homes and 6,950 multi-family units, as well as approximately 20,600 jobs.
- **Reduced Residential Alternative**. Under the Reduced Residential Alternative, the Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area would not be developed as

envisioned in the respective specific plans for those sectors of the city and instead the 1992 General Plan land use designations would apply. Consequently, residential development would not be permitted in the Dumbarton TOD Focus Area and that area would allow general industrial uses through 2035. In the Southwest Newark Residential and Recreational Focus Area, low density housing at between 4 and 8 units per acre would be permitted in the larger sector formerly known as Area 4 as under the 1992 General Plan; however, residential development would not be permitted in Area 3, which would allow special industrial business park uses. Additionally, under this scenario, the land use designations in the vicinity of NewPark Mall would remain as under the 1992 General Plan and the diversification and intensification of uses in this area envisioned in the proposed Plan would not occur. Development in the Old Town Focus Area would occur as under the proposed Plan. The goals, policies, and actions contained in the proposed Plan would apply under this alternative as well, with the exception of goals, policies, and actions specific to the Dumbarton TOD Focus Area and the smaller noncontiguous sector of the Southwest Newark Residential and Recreational Focus Area that would not be developed as under the Plan. The Reduced Residential Alternative could result in up to 16,280 housing units by 2035, including 11,981 single-family homes and 4,299 multi-family homes. This alternative could result in up to 24,800, jobs in Newark, concentrated largely in the northwestern part of the city and in existing industrial areas along its western edge.

- **Restricted Growth Alternative**. Under this alternative, future growth in environmentally sensitive areas along the western edge of Newark would be restricted. Future growth would occur entirely on previously developed land in the urbanized portion of the city. Development in the Old Town Focus Area and the Greater NewPark Focus Area would take place as under the proposed Plan; however, the Dumbarton TOD Focus Area and the larger sector of the Southwest Newark Residential and Recreational Focus Area south of the Union Pacific Railway Line would be designated as Open Space. The smaller sector formerly known as Area 3 would be developed with two- and three-story residential structures at an intensity of 18 dwelling units per acre, as well as an elementary school. Overall, this alternative could result in up to 16,995 housing units in Newark by 2035, including 9,635 single-family homes and 7,360 multi-family units, as well as up to 22,300 jobs. The goals, policies, and actions contained in the proposed Plan would apply under this alternative as well, with the exception of goals, policies, and actions specific to the Dumbarton TOD Focus Area and the smaller non-contiguous sector of the Southwest Newark Residential and Recreational Focus Area that would not be developed as under the proposed Plan.

1.5 ISSUES TO BE RESOLVED

Section 15123(b)(3) of the CEQA Guidelines requires that an EIR identify issues to be resolved, including the choice among alternatives and whether or how to mitigate significant impacts. With regard to the proposed Plan, the major issues to be resolved include decisions by the City of Newark, as lead agency, related to:

- Whether this ~~Draft~~ EIR adequately describes the environmental impacts of the Plan.
- Whether the benefits of the Plan override those environmental impacts that cannot be feasibly avoided or mitigated to a level of insignificance.
- Whether the proposed land use changes are compatible with the character of the existing area.

- Whether the identified goals, policies, or mitigation measures should be adopted or modified.
- Whether there are other mitigation measures that should be applied to the Plan besides those Mitigation Measures identified in the Draft EIR.
- Whether there are any alternatives to the Plan that would substantially lessen any of the significant impacts of the proposed Plan and achieve most of the basic objectives.

1.6 AREAS OF CONTROVERSY

The City of Newark issued a Notice of Preparation of an EIR on January 15, 2013 and held a scoping meeting on January 24, 2013. The scoping period for this EIR ran from January 15 through February 13, 2013, during which time responsible agencies and interested members of the public were invited to submit comments as to the scope and content of the EIR. The comments received focused primarily on the following issues:

- Water and Groundwater Quality
- Clean Up of Contaminated Sites
- Sea Level Rise
- Conflicts with the San Francisco Bay Conservation and Development Commission's San Francisco Bay Plan
- Flood Hazards
- Fill of Jurisdictional Wetlands
- Biological Resources
- Vehicular Circulation

To the extent that these issues have environmental impacts and to the extent that analysis is required under CEQA, they are addressed in Sections 4 through 7 of the Draft EIR.

1.7 SIGNIFICANT IMPACTS AND MITIGATION MEASURES

Table 1-1 summarizes the conclusions of the environmental analysis contained in the ~~Draft~~ EIR and presents a summary of impacts and mitigation measures identified. It is organized to correspond with the environmental issues discussed in Section 4, Chapter 4.0 through 4.14 of the Draft EIR. The table is arranged in four columns: 1) environmental impacts; 2) significance prior to mitigation; 3) mitigation measures; and 4) significance after mitigation. For a complete description of potential impacts, please refer to the specific discussions in Section 4, Chapter 4.0 through 4.14.

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
AESTHETICS			
AES-1: The proposed Plan would not have a substantial adverse effect on a scenic vista.	LTS	N/A	LTS
AES-2: The proposed Plan would not substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings, within a State scenic highway.	LTS	N/A	LTS
AES-3: The proposed Plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review.	S	AES-3: There is no feasible mitigation which would reduce impacts to a less-than-significant level.	SU
AES-4: The Plan would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.	LTS	N/A	LTS
AES-5: The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics.	LTS	N/A	LTS
AIR QUALITY			
AIR-1: While the proposed Plan would support the primary goals of the 2010 Bay Area Clean Air Plan, buildout of the proposed Plan would not be consistent with the Clean Air Plan because the projected vehicle miles traveled (VMT) increase from buildout of the proposed Plan would be greater than the projected population increase.	S	AIR-1: Numerous goals, policies, and actions contained in the proposed Plan address future increase in VMT and criteria air pollutants under the Plan; however, the projected growth in VMT in the Plan Area would still exceed the rate of population growth. There are no additional measures that would reduce this impact.	SU

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
AIR-2: The Plan would not violate any air quality standard or contribute substantially to an existing or projected air quality violation.	LTS	N/A	LTS
AIR-3: The proposed Plan would not result in a cumulatively considerable contribution related to an increase in criteria pollutants for which the San Francisco Bay Area Air Basin is designated a non-attainment area.	LTS	N/A	LTS
AIR-4: The proposed Plan would result in less-than-significant impacts with respect to the placement of sensitive receptors proximate to major sources of air pollution or the siting of new sources of air pollution proximate to sensitive receptors in the City.	LTS	N/A	LTS
AIR-5: The Plan would not create or expose a substantial number of people to objectionable odors.	LTS	N/A	LTS
BIOLOGICAL RESOURCES			
BIO-1: Buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area.	LTS	N/A	LTS
BIO-2: Buildout of the proposed Plan would result in less-than-significant impact to wetlands, riparian habitat, and sensitive natural communities in the Plan Area.	LTS	N/A	LTS
BIO-3: Buildout of the proposed Plan would result in less-than-significant impact to as-yet undelineated waters of the US in the Plan Area.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
BIO-4: The proposed Plan would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.	LTS	N/A	LTS
BIO-5: The proposed Plan would not conflict with the City of Newark tree preservation ordinance.	LTS	N/A	LTS
BIO-6: The proposed Plan would result in less-than-significant impacts related to conflicts with the Basin Plan and the Habitat Goals.	LTS	N/A	LTS
BIO-7: The proposed Plan would result in less-than-significant cumulative impacts related to biological resources.	LTS	N/A	LTS
CULTURAL RESOURCES			
CULT-1: The Plan would not cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5.	LTS	N/A	LTS
CULT-2: Construction activities associated with buildout of the proposed Plan could cause a significant impact to archaeological resources in the Southwest Newark Residential and Recreational Focus Area by potentially damaging or disturbing as yet undiscovered archaeological deposits through the placement of fill and soil compression.	S	CULT-2: Regulatory compliance and implementation of proposed Plan policies would reduce but not eliminate the potential for damage or disturbance. No additional feasible mitigation exists to further reduce this impact.	SU
CULT-3: The Plan would not directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
CULT-4: Construction activities associated with buildout of the proposed Plan could cause a significant impact to a significant impact to Native American human remains in the Southwest Newark Residential and Recreational Focus Area by potentially damaging or disturbing as yet undiscovered Native American human remains through the placement of fill and soil compression.	S	CULT-4: While compliance with the provisions of SB18, California Health and Safety Code Section 7052 and 7050.5, and California Public Resources Code Section 5097 and 15064.5 together with implementation Mitigation Measure 4.4-1 from the 2009-2104 Housing Element EIR, and Mitigation Measures CUL-2.1 through CUL-2.4 from the Area 3 and 4 Specific Plan EIR, described above, would reduce the potential for accidental damage or disturbance of human remains during construction activities associated with buildout of the proposed Plan, damage or disturbance of human remains through the placement of fill and soil compression could still result during construction activities associated with buildout. No additional feasible mitigation exists to further reduce this impact.	SU
CULT-5: The Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to cultural resources.	LTS	N/A	LTS
GEOLOGY, SOILS, AND SEISMICITY			
GEO-1: The proposed Plan would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving surface rupture along a known active fault; strong seismic ground shaking; seismic-related ground failure, including liquefaction; and landslides.	LTS	N/A	LTS
GEO-2: Implementation of the proposed Plan would not result in substantial soil erosion or the loss of topsoil.	LTS	N/A	LTS
GEO-3: Development under the proposed Plan would not result in a significant impact related to development on unstable geologic units and soils or result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
GEO-4: Development under the proposed Plan would not create substantial risks to life or property as a result of its location on expansive soil, as defined in Table 18-1-b of the Uniform Building Code (1994).	LTS	NA	LTS
GEO-5: Implementation of the proposed Plan would not result in impacts associated with the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater.	No Impact	N/A	No impact
GEO-6: The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils.	LTS	N/A	LTS
GREENHOUSE GAS EMISSIONS			
GHG-1: The proposed Plan would generate substantial GHG emissions in excess of the long-term 2050 GHG reduction target interpolated from Executive Order S-03-05.	S	GHG-1: To further reduce 2035 GHG emissions resulting from future development under the proposed Plan, the City shall require the following Uniformly Applicable Development Standards for new developments: ▪ Pedestrian and Bicycle Friendly Design/Bicycle Parking. Site plans submitted shall identify pedestrian and bicycle facilities on-site, including bicycle parking. ▪ Pedestrian and Bicycle Provisions within New Development. Circulation plans submitted shall identify pedestrian and bicycle routes. ▪ Source Reduction and Diversion for New Construction. Major new non-residential developments shall submit a plan that identifies solid waste source reduction and diversion measures (e.g. location of recycling bins on-site). ▪ Sustainable Design/Tree Planting in New Development/Minimizing Impervious Surface Coverage. Landscape plans submitted shall minimize impervious surfaces and identify features to reduce the heat island effect (e.g. tree coverage, permeable pavement, cool pavement).	SU

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
		However, it should be noted that while CARB is currently updating the Scoping Plan to identify additional measures to achieve the long-term GHG reduction targets, at this time, there is no plan past 2020 that achieves the long-term GHG reduction goal established under Executive Order S-03-05. As identified by the California Council on Science and Technology, the State cannot meet the 2050 goal without major advancements in technology.	
GHG-2: The proposed plan would not conflict with an applicable plan, policy, or regulation for the purpose of reducing the emissions of GHGs.	LTS	N/A	LTS
HAZARDS AND HAZARDOUS MATERIALS			
HAZ-1: The Plan would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.	LTS	N/A	LTS
HAZ-2: The Plan would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.	LTS	N/A	LTS
HAZ-3: The proposed Plan would not result in significant impacts associated with hazardous emissions or handling of hazardous or acutely hazardous materials, substances, or waste within ¼-mile of an existing or proposed school.	LTS	N/A	LTS
HAZ-4: Implementation of the Plan would not create a significant hazard to the public or the environment as a result of development on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
HAZ-5: Implementation of the Plan would not result in a safety hazard for people residing or working in the Plan Area due to development within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport.	No Impact	N/A	No impact
HAZ-6: Implementation of the Plan would not result in a safety hazard for people residing or working in the Plan Area due to development in the vicinity of a private airstrip.	No Impact	N/A	No impact
HAZ-7: The proposed Plan would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.	LTS	N/A	LTS
HAZ-8: Implementation of the Plan would not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.	LTS	N/A	LTS
HAZ-9: The Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to hazards and hazardous materials.	LTS	N/A	LTS
HYDROLOGY AND WATER QUALITY			
HYDRO-1: The proposed Plan would not violate any water quality standards or waste discharge requirements.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
HYDRO-2: The proposed Plan would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.	LTS	N/A	LTS
HYDRO-3: The proposed Plan would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation, or flooding on- or off-site.	LTS	N/A	LTS
HYDRO-4: The proposed Plan would not create or contribute runoff water, which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.	LTS	N/A	LTS
HYDRO-5: The proposed Plan would not otherwise substantially degrade water quality.	LTS	N/A	LTS
HYDRO-6: The proposed Plan would not result in a significant impact with respect to the placement of housing or structures, which would impede or redirect flood flows within a 100-year flood hazard area as	LTS	N/A	LTS
mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map.			
HYDRO-7: The proposed Plan would not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
HYDRO-8: The proposed Plan would not result in significant adverse effects related to inundation by seiche, tsunami, or mudflow.	LTS	N/A	LTS
HYDRO-9: The proposed Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to hydrology and water quality.	LTS	N/A	LTS
LAND USE AND PLANNING			
LU-1: The proposed Plan would not physically divide an established community.	LTS	N/A	LTS
LU-2: The proposed Plan would not conflict with an applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.	LTS	N/A	LTS
LU-3: The proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan.	LTS	N/A	LTS
LU-4: The proposed Plan, in combination with past, present, and reasonably foreseeable development in the surrounding area, would result in less-than-significant-cumulative impacts with respect to land use and planning.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
NOISE			
NOISE-1: The proposed Plan would not expose people to or generate noise levels in excess of standards established in the General Plan or the Municipal Code, and/or the applicable standards of other agencies.	LTS	N/A	LTS
NOISE-2: The proposed Plan would not expose people to or generate excessive groundborne vibration or groundborne noise levels.	LTS	N/A	LTS
NOISE-3: Implementation of the proposed Plan would result in a substantial permanent increase in ambient noise levels in the Plan Area above levels existing without Plan implementation.	S	NOISE-3: Increases in vehicular traffic resulting from implementation of the proposed Plan in conjunction with regional growth would result in permanent increases to ambient noise levels that would exceed applicable standards along ten major roadway segments in the Plan Area. Proposed Plan policies and actions, including Policy EH-7.4, Action EH-6.D, Action EH-6.E, Action EH-6.H, and Action EH-7.B, described above, would reduce associated impacts; however, increases in noise in excess of the applicable standards could still occur. Although the most effective mitigations such as soundwalls or earthern berms may theoretically be capable of reducing increases to ambient noise to levels below the above standards, such reductions cannot be guaranteed; and, in many cases, other considerations will prevent the use of these noise-attenuating features. Therefore, there are no additional measures available to reduce the associated impacts to a less-than-significant level.	SU
NOISE-4: Construction activities associated with buildout of the proposed Plan would not result in substantial temporary or periodic increases in ambient noise levels in the Plan Area above existing levels.	LTS	N/A	LTS
NOISE-5: The proposed Plan would not result in exposure of people residing or working in the vicinity of the plan area to excessive aircraft noise levels, for a project located within an airport land use plan, or where such a plan has not been adopted, within 2 miles of a public airport or public use airport.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
NOISE-6: The proposed Plan would not result in exposure of people residing or working in the project area to excessive noise levels, for a project within the vicinity of a private airstrip.	LTS	N/A	LTS
NOISE-7: Implementation of the proposed Plan, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable noise, or groundborne noise and vibration impacts.	LTS	N/A	LTS
POPULATION AND HOUSING			
POP-1: The Plan would not induce substantial unexpected population growth, or growth for which inadequate planning has occurred, either directly or indirectly.	LTS	N/A	LTS
POP-2: The Plan would not displace substantial numbers of existing housing units, necessitating the construction of replacement housing elsewhere.	LTS	N/A	LTS
POP-3: The Plan would not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.	LTS	N/A	LTS
POP-4: The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to population and housing.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
PUBLIC SERVICES AND RECREATION			
PS-1: The proposed Plan would not result in the provision of or need for new or physically altered fire protection facilities, the construction or operation of which could cause significant environmental impacts.	LTS	N/A	LTS
PS-2: The proposed Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to fire protection service.	LTS	N/A	LTS
PS-3: The proposed Plan would not result in a significant impact related to the construction or expansion of police facilities.	LTS	N/A	LTS
PS-4: The proposed Plan, in combination with past, present, and reasonably foreseeable growth, would result in less than significant cumulative impacts with respect to law enforcement services.	LTS	N/A	LTS
PS-5: The proposed Plan would not result in the provision of or need for new or physically altered school facilities, the construction or operation of which could cause significant environmental impacts.	LTS	N/A	LTS
PS-6: The proposed Plan, in combination with past, present, and reasonably foreseeable growth in the NUSD service area, would result in less than significant cumulative impacts with respect to schools.	LTS	N/A	LTS
PS-7: The proposed Plan would not result in substantial adverse physical impacts associated with the provision of new or physically altered parks and recreational facilities in order to maintain the City's adopted ratio of parkland per thousand residents.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
PS-8: The proposed Plan would not increase the use of existing neighborhood and regional parks or other recreational facilities, such that substantial physical deterioration of the facility would occur, or be accelerated.	LTS	N/A	LTS
PS-9: The proposed Plan would not include or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.	LTS	N/A	LTS
PS-10: The proposed Plan, in combination with past, present, and reasonably foreseeable growth, would result in less than significant cumulative impacts with respect to parks and recreational facilities.	LTS	N/A	LTS
PS-11: The proposed Plan would not result in the need for new or physically altered library facilities.	LTS	N/A	LTS
PS-12: The proposed Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to libraries.	LTS	N/A	LTS
TRANSPORTATION AND TRAFFIC			
TRANS-1: Implementation of the proposed Plan would cause intersection operation to degrade to unacceptable LOS F at the a) Ardenwood Boulevard and SR 84 westbound ramps intersection during the AM peak hour in 2035, b) the Newark Boulevard and SR 84 eastbound ramps intersection during the PM peak hour in 2035, and c) the Cherry Street/Boyce Road and Stevenson Boulevard intersection during the PM peak hour in 2035.	S	TRANS-1a: To mitigate this impact, the Ardenwood Boulevard and SR 84 westbound ramps intersection would require converting a through lane to a second left-turn lane on Ardenwood Boulevard, south of the Highway 84 westbound ramps. Re-striping of the northbound approach (i.e., Ardenwood Boulevard) would be necessary. LOS calculations show that with implementation of these improvements, the intersection would operate at an acceptable LOS C under proposed Plan conditions in 2035. However, because this mitigation measure is for an intersection under the jurisdiction of Caltrans and located in the City of Fremont, implementation is outside the jurisdiction of the City of Newark. The City of Newark will work with Caltrans and the City of Fremont to implement the mitigation measure and contribute on a fair-share	SU

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
		basis; however until such time as there is an implementation plan in place and funding is secured, this impact is considered significant and unavoidable.	
		TRANS-1b: To mitigate this impact, the Newark Boulevard and SR 84 eastbound ramps intersection would require adding a right turn lane in addition to the shared through-right lane on the Highway 84 eastbound off-ramp at Newark Boulevard. There is sufficient roadway right-of-way for this improvement, therefore the improvement could be implemented with re-striping of the off-ramp and roadway widening would not be necessary. LOS calculations show that with implementation of these improvements, the intersection would operate at an acceptable LOS D during the PM peak-hour under proposed Plan conditions in 2035. However, because this mitigation measure is for an intersection under the jurisdiction of Caltrans, implementation is outside the jurisdiction of the City of Newark. The City of Newark will work with Caltrans to implement the mitigation measure and contribute on a fair-share basis; however until such time as there is an implementation plan in place and funding is secured, this impact is considered significant and unavoidable.	
		TRANS-1c: To mitigate this impact, the Cherry Street/Boyce Road and Stevenson Boulevard intersection would require an additional through lane on the northbound approach (Boyce Road/Cherry Street is considered the north-south street for this intersection). There is potentially sufficient roadway right-of-way on Boyce Road/Cherry Street for this improvement; therefore, the improvement could be implemented with re-striping of Cherry Street. The northbound approach (e.g., south leg) of the intersection is located in Fremont. It would also require that the intersection be re-aligned. On the north side of Stevenson Boulevard, Cherry Street would need to be re-striped for approximately 800 feet. The implementation of these improvements would improve intersection LOS to an acceptable LOS D during the PM peak hour under proposed Plan conditions in 2035. Implementation of the above measure would improve conditions at the intersection to LOS D during the PM peak hour, which would be acceptable. However, because this mitigation measure is for an intersection located partly in the City of Fremont, full implementation is outside the jurisdiction of the City of Newark. The City of Newark will work with the City of Fremont to implement the mitigation measure and contribute on a fair-share basis; however until such time as	SU

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
		there is an implementation plan in place and funding is secured, this impact is considered significant and unavoidable.	
TRANS-2: The proposed Plan would not conflict with the 2011 Alameda CTC Congestion Management Program.	LTS	N/A	LTS
TRANS-3: The proposed Plan would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.	LTS	N/A	LTS
TRANS-4: The proposed Plan would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).	LTS	N/A	LTS
TRANS-5: Implementation of the proposed Plan would not result in inadequate emergency access.	LTS	N/A	LTS
TRANS-6: Implementation of the proposed Plan would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.	LTS	N/A	LTS
TRANS-7: Implementation of the proposed Plan, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable impacts.	LTS	N/A	LTS
UTILITIES AND SERVICE SYSTEMS			
UTIL-1: Implementation of the proposed Plan would increase Water Demand, however, sufficient water supplies are available to serve the project from existing entitlements and resources.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
UTIL-2: The proposed Plan would not require or result in the construction of new water facilities or expansion of existing facilities, the construction of which would cause significant environmental effects.	LTS	N/A	LTS
UTIL-3: The Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to water supply.	LTS	N/A	LTS
UTIL-4: The proposed Plan would not exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board (RWQCB).	LTS	N/A	LTS
UTIL-5: The proposed Plan would not require or result in the construction of new wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.	LTS	N/A	LTS
UTIL-6: The proposed Plan would not result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.	LTS	N/A	LTS
UTIL-7: The Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to wastewater.	LTS	N/A	LTS

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Impact Criteria	Significance Before Mitigation	Mitigation Measures	Significance With Mitigation
UTIL-8: The proposed Plan would not require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.	LTS	N/A	LTS
UTIL-9: The Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to stormwater facilities.	LTS	N/A	LTS
UTIL-10: The proposed Plan would be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs.	LTS	N/A	LTS
UTIL-11: The proposed Plan would comply with federal, State, and local statues and regulations related to solid waste.	LTS	N/A	LTS
UTIL-12: The Plan, in combination with past, present, and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to solid waste.	LTS	N/A	LTS

Note: The abbreviations used in Table 1-1 are as follows: LTS = Less than significant; SU = Significant and Unavoidable; N/A = Not applicable; S = Significant

2. *Introduction*

2.1 PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

This document provides responses to comments received on the Draft Environmental Impact Report (Draft EIR) for the proposed General Plan Tune Up for the City of Newark and it includes revisions to the text and analysis in the Draft EIR made in response to comments. The Draft EIR identified significant impacts associated with the proposed Plan, and examined alternatives and recommended mitigation measures that could avoid or reduce potential impacts.

This document, together with the Draft EIR, will constitute the Final EIR if the City of Newark City Council certifies it as complete and adequate under the California Environmental Quality Act (CEQA).

2.2 ENVIRONMENTAL REVIEW PROCESS

The City of Newark is the lead agency for this EIR. This EIR has been prepared in compliance with CEQA. This EIR uses CEQA significance thresholds as listed in Appendix G of the CEQA Guidelines.

According to CEQA, lead agencies are required to consult with public agencies having jurisdiction over a proposed project, and to provide the general public and project applicant with an opportunity to comment on the Draft EIR. This Final EIR has been prepared to respond to comments received on the Draft EIR and to clarify any errors, omissions, or misinterpretations of discussions of findings in the Draft EIR.

The Draft EIR was made available for public review on August 14, 2013. The Draft EIR was distributed to local and State responsible and trustee agencies and the general public was advised of the availability of the Draft EIR through public notice. Copies of all written comments received on the Draft EIR are contained in this document.

2.3 DOCUMENT ORGANIZATION

This document is organized into the following chapters:

- **Chapter 1: Executive Summary.** This chapter is a summary of the findings of the Draft and the Final EIR. It has been reprinted from the Draft EIR with necessary changes made in this Final EIR.
- **Chapter 2: Introduction.** This chapter discusses the use and organization of this Final EIR.

- **Chapter 3: Revisions to the Draft EIR.** Corrections to the text and graphics of the Draft EIR are contained in this chapter. Underline text represents language that has been added to the EIR; text with ~~strike-through~~ has been deleted from the EIR.
- **Chapter 4: List of Commenters.** Names of agencies, organizations, and individuals who commented on the Draft EIR are included in this chapter.
- **Chapter 5: Comments and Responses.** This chapter contains reproductions of the letters received from agencies and the public on the Draft EIR. The responses are keyed to the comments which precede them.
- **Appendices.**The appendices for this document (presented in PDF format on a CD attached to the back cover) contain the following supporting documents:
    - **Appendix A:** Contents of CD submitted with Comment Letter Lippe Gaffney Wagner
    - **Appendix B:** Contents of CD submitted with Comment Letter High
    - **Appendix C:** Recurring Comment Letters

3. *Revisions to the Draft EIR*

This chapter presents specific changes to the text, tables, or figures of the Draft EIR that are being made in response to comments made by the public and/or reviewing agencies. In each case, the revised page and location on the page is set forth, followed by the textual, tabular, or graphical revision. These changes clarify and amplify the discussion in the Draft EIR. They do not indicate that any new or substantially more severe impacts would occur or result in any significant new information added to the EIR. Thus, the Draft EIR does not need to be re-circulated.

3.1 CHANGES TO THE TEXT OF THE DRAFT EIR

Additions to the text are shown in double underline and deletions are shown in ~~strikethrough~~. All changes to Chapter 1, Executive Summary of the Draft EIR, including changes to the Summary of Impacts and Mitigation Measures for the proposed Plan, are included in Chapter 1 of this Final EIR. Additionally, minor changes to the language of goals, policies, and actions in the Draft General Plan that are being made in response to public comments on that document are summarized in Table 3-1 below. To the extent the goals, policies, and actions being clarified are referenced in the Draft EIR, that language is hereby amended.

TABLE 3-1 REVISIONS TO POLICIES AND ACTIONS TO THE NEWARK GENERAL PLAN TUNE UP

Policy/Action No.	Policy/Action
Land Use Element	
Action LU-2.D	When development occurs within 100 feet of ~~adjacent to~~ wetlands or other ecologically sensitive areas, require mitigation programs which preserve ecological integrity.
Action LU-4.A	Develop special design standards and improvement plans for entry points and gateways into the City, including Thornton Avenue, ~~Mowry Avenue,~~ Newark Boulevard, and Cherry Street, and the existing gateways at Mowry Avenue and Stevenson Boulevard.
Action LU-9.A	Complete an ~~Area~~ Master Plan for the Greater New Park Mall Area that explores maintaining its regional retail focus while transforming the area into a dynamic urban center. ~~After the Area Master Plan's completion, undertake a Specific Plan or adjust the zoning regulations to implement the Plan's recommendations.~~ NewPark should be a contemporary, sustainable, and exciting destination for the entire Bay Area.
Transportation Element	
Action T-2.A	Adopt the Draft Newark Pedestrian and Bicycle Master Plan, consistent with the alignments shown on Figure T-2 and in the Bay Trail Feasibility Study, and proceed with implementation of its priority projects. Periodically update the list of projects…

TABLE 3-1 REVISIONS TO POLICIES AND ACTIONS TO THE NEWARK GENERAL PLAN TUNE UP

Policy/Action No.	Policy/Action
NEW Action T-5.K	Managing Regional Cut-Through Traffic. Consider signage and other measures to reduce the volume of regional traffic using Newark's arterials and collectors as bypass routes to Interstate 880 and SR 84, particularly along Cherry Street/Newark Boulevard.
Action T-6.C	Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue between Filbert and Sycamore Streets with a contribution of funding from the Dumbarton TOD project. Pursue state and federal grant funding to carry out this project.
Delete/Renumber	*Delete Action T-6.D and re-label Action T-6.E and T-6.F as T-6.D and T-6.E.*
Economic Development Element	
Action ED-4.B	When development occurs within 100 feet of ~~adjacent to~~ wetlands or other ecologically sensitive areas, require mitigation programs which preserve ecological integrity.
Policy ED-5.6	Promote the image of Newark as a bayfront city, with ~~shoreline~~ amenities such as trails to the shoreline, ~~bayfront~~ open space, wildlife refuges, and bay vistas.
Action ED-5.B	Periodically evaluate the City's regulations applicable to businesses to identify if there are opportunities to make regulations more consistent and transparent, to expedite plan checking and permitting procedures, or to reduce or eliminate restrictions.
Conservation and Sustainability Element	
Action CS-1.A	Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas.
Policy CS-2.1	Ensure that land use decisions ~~consider~~ avoid and mitigate potential impacts on wildlife to the extent feasible.
Policy CS-2.3	~~Preserve and maintain~~ Encourage the preservation and maintenance of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~
Policy CS-2.6	Encourage the management of salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service to enhance their value for wildlife habitat and recreation. Such activities should be consistent with Cargill's perpetual rights to utilize the salt ponds as part of its solar salt production system. ~~In the event that salt production ceases, conduct a Specific Plan to explore a balance between development and preservation of important wildlife and open space resources.~~
Action CS-2.C	Undertake a series of measures, as annotated in the text below, to address the potential impacts of proposed development in areas where special status plant and animal species may occur. Coordination with regulatory and resource agencies shall be required as appropriate to ensure any measures undertaken will be effective and sufficiently protective.
Action CS-2.E	Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.
Policy CS-4.1	Maintain and improve City programs for protecting and preserving trees.

TABLE 3-1 REVISIONS TO POLICIES AND ACTIONS TO THE NEWARK GENERAL PLAN TUNE UP

Policy/Action No.	Policy/Action
Action CS-4.B	Tree Planting and Maintenance Criteria. Periodically review the City's street tree planting criteria, maintenance practices, and street tree list to ensure that they are achieving the city's goal of sustaining a healthy urban forest. Modify tree trimming and management practices if it is found that they do not support this goal. Encourage tree trimming on private property to use practices which ensure long-term tree health. ~~reflect revisions to City policies and changing horticultural practices~~.
Policy CS-5.8	Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise.~~
Parks and Recreation Element	
Action PR-1.A	Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay. Future restoration activities should be consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service.
Action PR-1.B	Use the environmental review process to encourage new development to designate areas with unique vegetation, wildlife habitat, or natural resources as open space or to provide adequate mitigation for impacts to such areas.
Policy 5.1	Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay.
NEW	*Action PR-5.E: Public Access Requirements. Ensure that future land use and capital improvement decisions for areas within the jurisdiction of the Bay Conservation and Development Commission (BCDC) are consistent with BCDC's public access requirements and do not preclude maximum feasible access to and along the waterfront."*
Environmental Hazards Element	
Policy EH-3.9	Consider the effects of rising sea level on the potential for flooding in low-lying areas and participate in regional adaptation efforts for these areas. Information on flood hazards related to sea level rise should be used to ensure that flood risk is reduced.

Note: *Italics* refers to new or deleted actions/policies.

Chapter 3.0, Project Description, Revisions

Under the Dumbarton TOD heading on page 3-12 of the Draft EIR, the first sentence is hereby revised as follows:

The Dumbarton TOD Area Specific Plan (TOD Plan), adopted by the City of Newark in 2011 ~~on September 8, 2010~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark.

The second bullet point under the Dumbarton TOD Area Specific Plan heading on page 3-12 of the Draft EIR is hereby revised as follows:

Surrounding residential uses throughout the rest of the TOD Plan Area, with townhomes and medium to medium-high density housing within a ½-mile radius of the planned transit station, and single-family homes beyond that to the south;

The last paragraph on page 3-14 and continuing on page 3-15 of the Draft EIR is hereby revised as follows:

A recalibration of the residential categories is proposed, to better reflect existing and proposed housing densities in the city. The Low Density Residential category now includes neighborhoods developed at densities less than 8.7 ~~from 1.0 to 8.5~~ units per net acre. The Medium Density category has been retitled Low Medium Density. The density range is ~~has not changed and continues to be~~ 8.5 to 15 units per net acre ~~or less~~. The Low Medium category is intended for small lot subdivisions and zero lot line type development. The former High Density category has been retitled Medium Density. The density range is from ~~has not changed and continues to be 15~~ 14 to 30 units per net acre. A new High Density category has been added for housing in the ~~30~~ 25 to 60 units per acre range. Adjustments have been made to the land use map so that developed multi-family parcels have been placed in the category which best reflects their actual densities. Within the Dumbarton TOD area, the Land Use Map reflects the "best fit" designations using these categories, but the text acknowledges that slightly different density ranges may apply, as prescribed by the adopted Specific Plan.

Figure 3-6 of the Draft EIR is hereby replaced with Figure 3-6 as shown overleaf:

The last full paragraph on page 3-17 of the Draft EIR is hereby revised as follows:

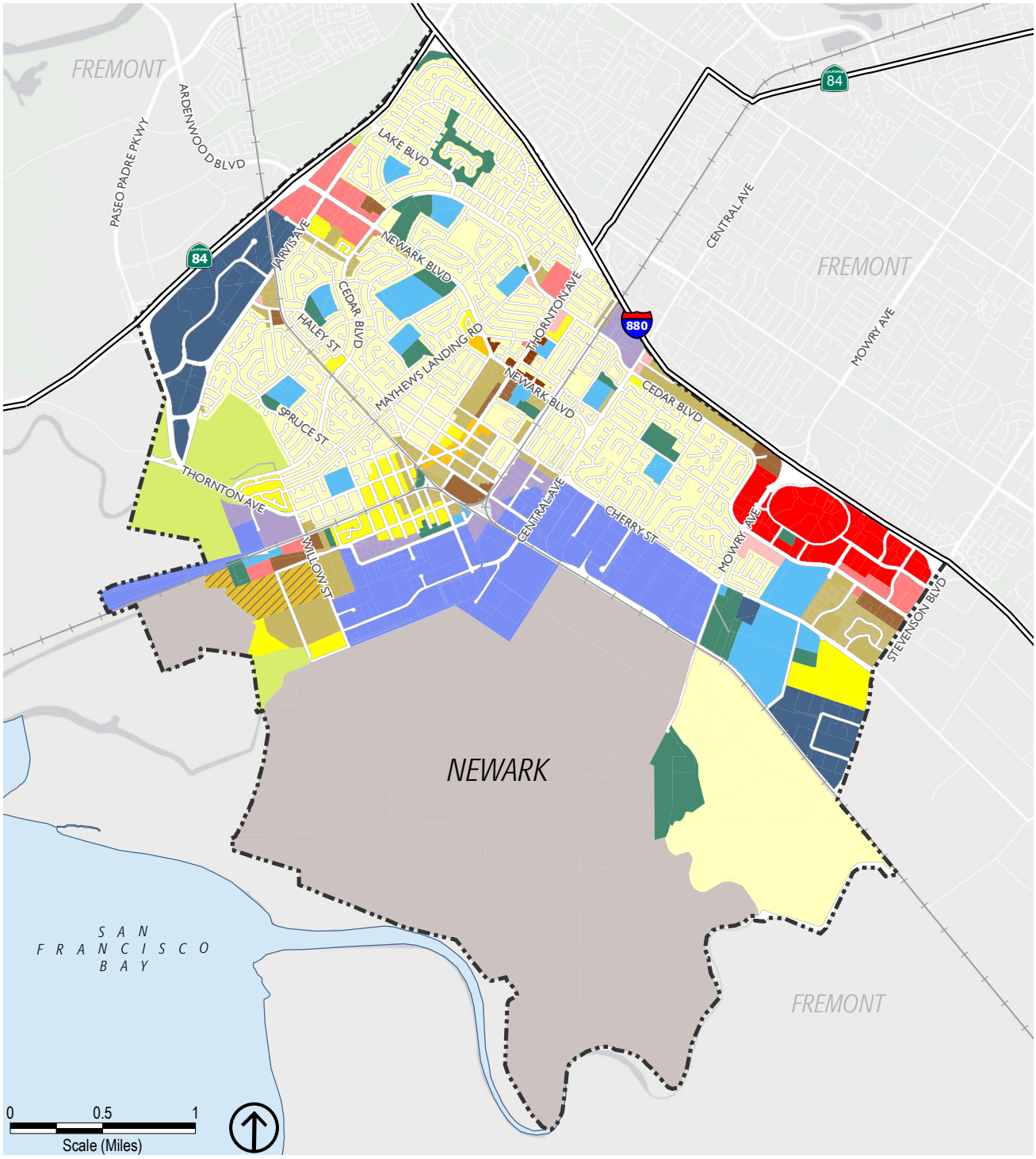
The Plan also proposes a reorganization of agricultural and open space designations. The Agriculture/Resource Production designation is renamed Salt Harvesting, Refining and Production in order to more accurately reflect the nature of activities taking place on land to which it applies. This designation applies to approximately 3,000 acres of privately owned properties used for salt harvesting, refining and production, including the land holdings of the Cargill Salt Company on the western side of the city.

Under the Dumbarton Transit-Oriented Development Focus Area on page 3-20 of the Draft EIR the paragraph is hereby revised as follows:

The vision for the DTOD Focus Area is also the same, and the proposed Plan incorporates the TOD Plan without proposing additional land use changes over and above those already incorporated into the existing General Plan at the time the TOD Plan was adopted by Newark City Council in 2011 ~~2010~~.

The paragraph under the Buildout Projections heading on page 3-23 of the Draft EIR is hereby revised as follows:

This section provides a quantification of the future population, housing units, and jobs that could result from buildout of the proposed Plan. Buildout projections have been developed in order to allow for an evaluation of the "reasonably foreseeable" direct and indirect impacts of the proposed Plan, as required under CEQA. This



Source Data: City of Newark, 2012; The Planning Center | DC&E, 2013; Tiger Roads 2010; ESRI, 2010; FTC, 2010.

Open Space Designations
- *Parks and Recreational Facilities*
- *Conservation - Open Space*

Industrial Designations
- *Limited Industrial*
- *Special Industrial*
- *General Industrial*

Residential Designations
- *Low Density Residential*
- *Low-Medium Density Residentail*
- *Medium Density Residentail*
- *Medium-High-Density Residential*
- *High-Density Residential*

Public - Institutional Designations
- *Public-Institutional*

Commercial Designations
- *Neighborhood Commercial*
- *Community Commerical*
- *Commercial Mixed Use*
- *Regional Commercial*
- *Office Commercial*

Resource Production Designations
- *Salt Harvesting, Refining and Production*

- *City Limits*

THE PLANNING CENTER | DC&E

Figure 3-6

Proposed General Plan Land Uses

section includes a discussion of baseline data, and horizon year buildout projections, ~~and maximum theoretical buildout of~~ for the proposed Plan.

The first paragraph on page 3-25 of the Draft EIR is hereby revised as follows:

Growth projections from the Dumbarton TOD Specific Plan EIR were added to the base year totals to project 2035 buildout. The Dumbarton TOD Focus Area is located in TAZs 931 and 932 and growth projections from the TOD Specific Plan EIR were divided between these TAZs in accordance with the land use designations proposed in the proposed Plan. It was assumed that Medium Density Residential (MDR) would develop at an intensity of 22 du/acre that Medium/High Density Residential (MHDR) would develop at an intensity of 30 du/acre and that High density Residential (HDR) would develop at an intensity of 45 du/acre. On this basis, 375 of the ~~2,600~~ 2,500 total units that are likely to be built under the TOD Specific Plan were assigned to TAZ 931 and the balance was assigned to TAZ 932. Based on the proposed land use designations in TAZ 931, it was assumed that 135 of the 375 units would be multi-family units and 240 units would be single-family units. In TAZ 932, it was assumed that 1,530 of the 2,225 units would be multi-family and 695 units would be single-family, based on the proposed land use designations.

Chapter 4.0, Environmental Analysis, Revisions

The first sentence on page 4.1-9 of the Draft EIR is hereby revised as follows:

The proposed Plan could affect the visual character and quality of the Dumbarton TOD, as it would allow development of up to ~~2,600~~ 2,500 residential units, a neighborhood center containing retail shops, a grocery store and associated visitor-serving and residential uses, new infrastructure supportive of the new development, and parks on what is now primarily vacant land with few structures on it.

Chapter 4.2, Air Quality, Revisions

The first full sentence at the top of page 4.2-19 of the Draft EIR is hereby revised as follows:

Implementation of proposed Plan goals, policies, and programs, including ~~Policy EH-1.6~~ and Action HW-1F ~~EH-1.C~~, described below, would ensure these impacts are less than significant.

The paragraph under the Siting Receptors Proximate to Odor Sources heading on page 4.2-46 of the Draft EIR is hereby revised as follows:

Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2-7. Additionally, sensitive receptors could be located in the vicinity of the salt harvesting, refining, and production operations ~~ponds operated~~ by Cargill, Incorporated, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by

an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be *less than significant*.

Chapter 4.3, Biological Resources, Revisions

The discussion of the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan beginning towards the bottom of page 4.3-2 and continuing on page 4.3-3 of the Draft EIR is hereby revised as follows:

The San Francisco Bay National Wildlife Refuge was established by the United States Congress in 1972 for a total not to exceed 23,000 acres.[1] The Refuge was one of the first urban National Wildlife Refuge established in the United States. The first lands were acquired for the Refuge in 1974. In 1988, the USFWS's acquisition authority was increased from 23,000 to 43,000 acres. Most of the existing refuge lies within the City of Fremont. Cargill has the perpetual right within the refuge (and outside Newark city limits) to utilize evaporator ponds, commonly referred to as "salt ponds" or "evaporators" for its solar salt production system.

In 1990, the USFWS issued the Final Environmental Assessment for the Refuge boundary expansion, which identified 24,500 acres as potential additions (Areas for Potential Additions) because not all lands would be added to the Refuge. The Areas for Potential Additions ~~areas~~ identified by the USFWS are recognized through USFWS policy as the approved acquisition boundary for the Refuge. The USFWS does not have jurisdiction over the Areas for Potential Additions ~~lands within the acquisition boundary~~, and these lands are not part of the Refuge unless they are purchased or placed under an agreement that provides for management under the Refuge System.[2] In addition, USFW's acquisition plans do not preclude lawful, environmentally sound development, as determined by the local government in whose jurisdiction a potential addition area lies, and land within Areas for Potential Additions may only be acquired from willing sellers.[3] In fact, to date, many lands within the approved 1990 acquisition boundary have already been converted to urban developments.[4]

In 1995, the Refuge was renamed as the Don Edwards San Francisco Bay National Wildlife Refuge in 1995 to honor Congressman Don Edwards' efforts to create the refuge.[~~3~~5] The Refuge was created with three main purposes: to preserve natural resources, including habitat for migratory birds, harbor seals, and threatened and endangered species; to provide environmental education and wildlife interpretation opportunities; and to preserve open space and wildlife-oriented recreation.[~~4~~6]

The Refuge and Areas for Potential Additions ~~approved acquisition boundary~~ are shown in Figure 4.3-1. As of April 2013, the USFWS owned and/or managed approximately 30,000 acres. ~~under the approved acquisition boundary.[5]~~ As shown in Figure 4.3-1, none of the focus areas contain lands within the Refuge and most of the Refuge lies within the City of Fremont. However, Area 4 includes lands within the Areas for Potential Additions ~~approved acquisition boundary~~.

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[3] U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 8.

[4] U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 9.

~~5 U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 10.~~

The last paragraph on page 4.3-3 of the Draft EIR is hereby revised as follows:

The California Endangered Species Act (CESA) (California Fish and Game Code Section 2050 *et seq.*) establishes State policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. The CESA mandates, if a development project would result in the "take" of a threatened or endangered species – defined as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" – mitigation must be provided as part of an Incidental Take Permit issued by the California Department of Fish and Wildlife (CDFW). ~~that State agencies should not approve projects that jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy.~~ For projects that would affect a species that is on the federal and State lists, compliance with the FESA satisfies the CESA if the ~~California Department of Fish and Wildlife (~~CDFW~~)~~ determines that the federal incidental take authorization is consistent with the CESA under California Fish and Game Code Section 2080.1. For projects that would result in take of a species that is only State listed, the project proponent must apply for a take permit under Section 2081(b).

Figure 4.3-1 of the Draft EIR is hereby replaced with Figure 4.3-1 as shown overleaf:

Figure 4.3-2 of the Draft EIR is hereby replaced with Figure 4.3-2A shown overleaf:

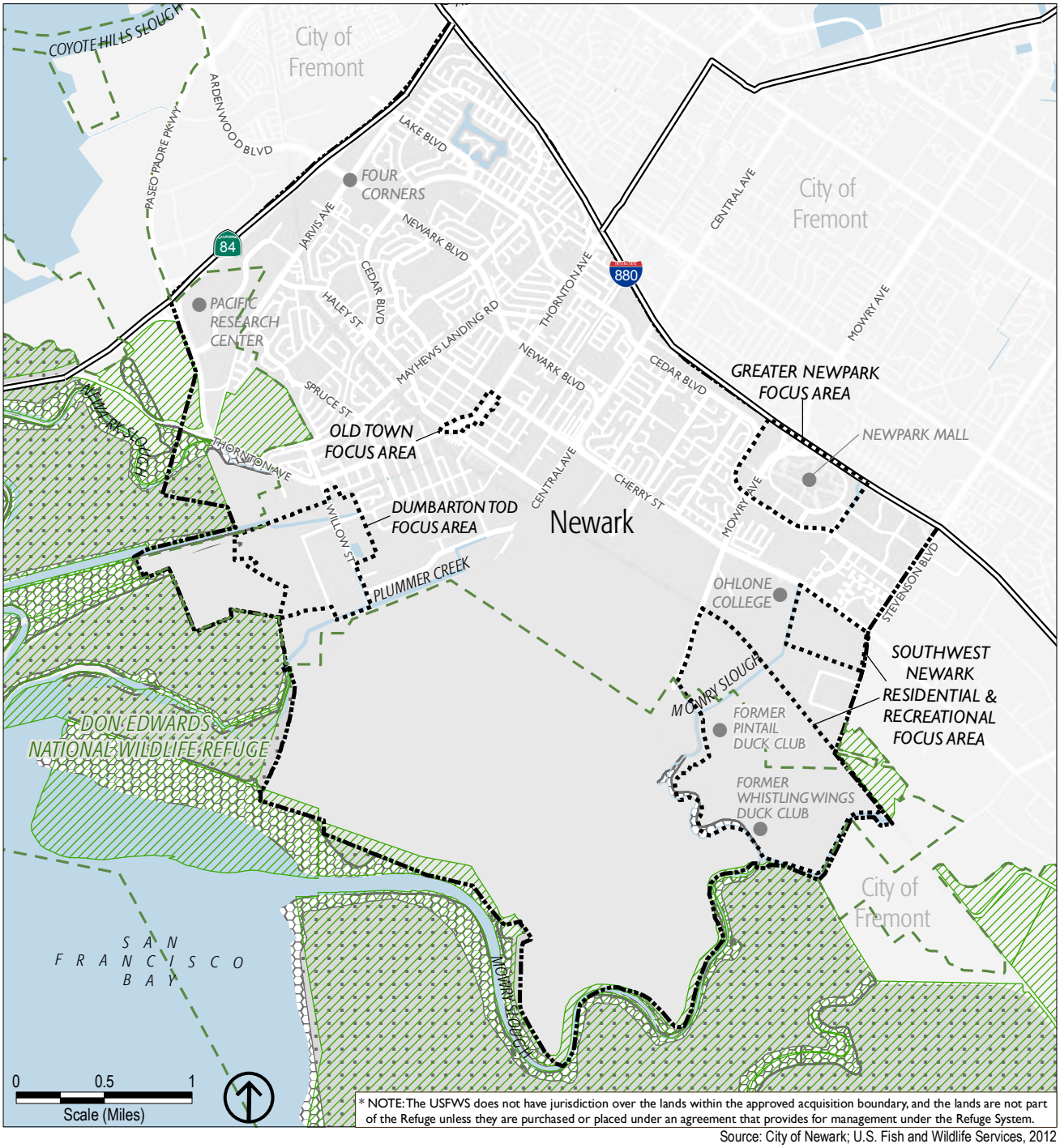
Figure 4.3-2B is now added as shown overleaf:

The first paragraph on page 4.3-9 of the Draft EIR is hereby revised as follows:

This section discusses the wildlife and plant communities and special-status species that are known to occur or have potential to occur in the Plan Area. As described in chapter 3.0 of this Draft EIR, the majority of land in the Plan Area is urbanized and developed; however, a large area of land along the western perimeter of Newark is occupied by ~~the~~ Cargill for salt harvesting, refining and production ~~Corporation salt evaporation ponds~~. Additionally, a portion of the Don Edwards San Francisco Bay National Wildlife Refuge is adjacent to the Plan Area outside the City limit. The Refuge ~~Both these areas~~ provides habitat for biological resources occurring or potentially occurring adjacent to ~~in~~ Newark.

Under the description of the Lacustrine habitat type on page 4.3-9 of the Draft EIR, the language is hereby is revised as follows:

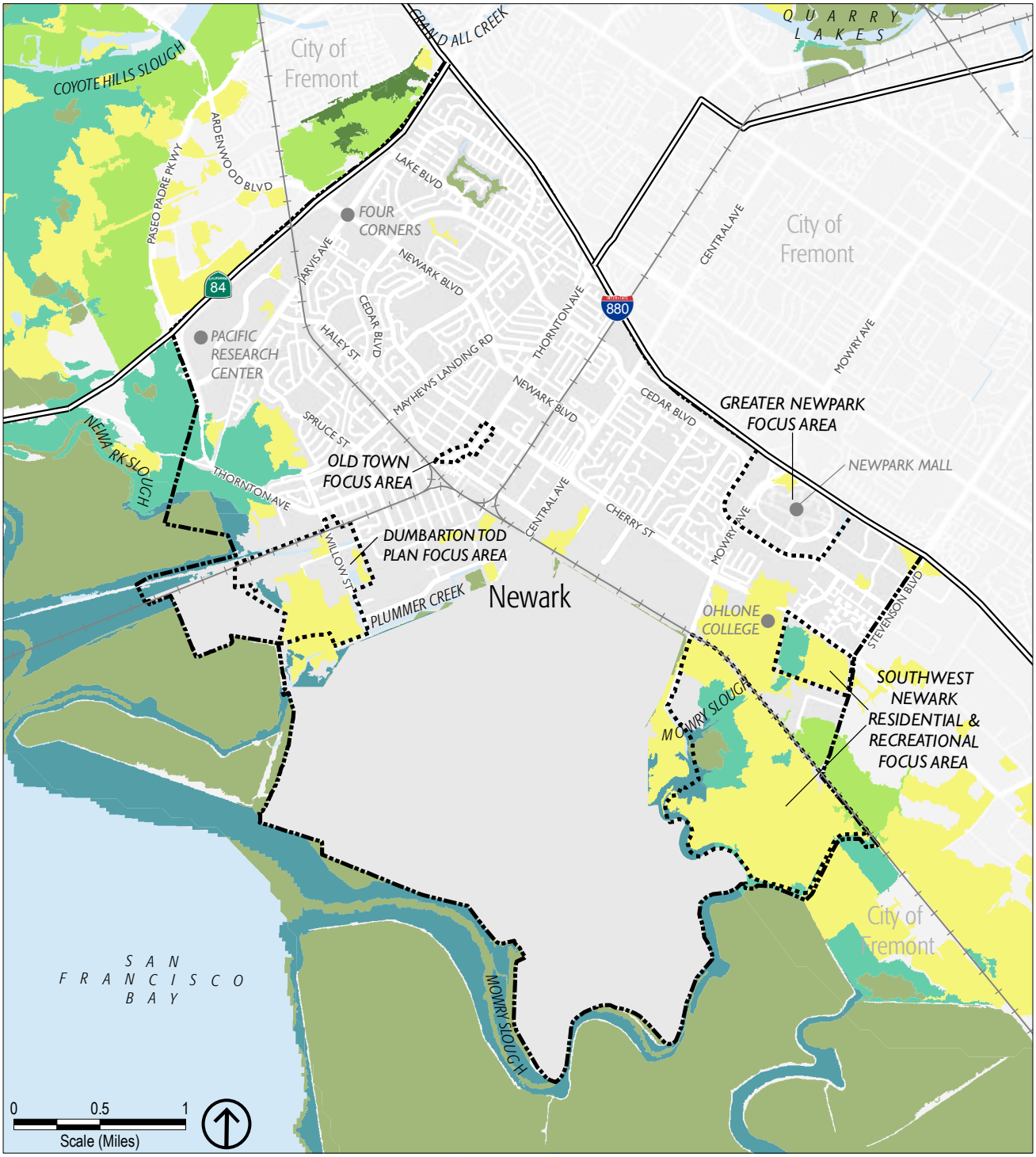
Lacustrine habitats are the predominant non-urban habitat type in Newark ~~and include the salt ponds, which are described in further detail below~~.



Source: City of Newark; U.S. Fish and Wildlife Services, 2012

City Limit
Railroads
Landmarks
Don Edwards San Francisco Bay National Wildlife Refuge
Don Edwards San Francisco Bay National Wildlife Refuge Potential Addition*
Focus Area
Tidal Marsh
Managed Wetlands

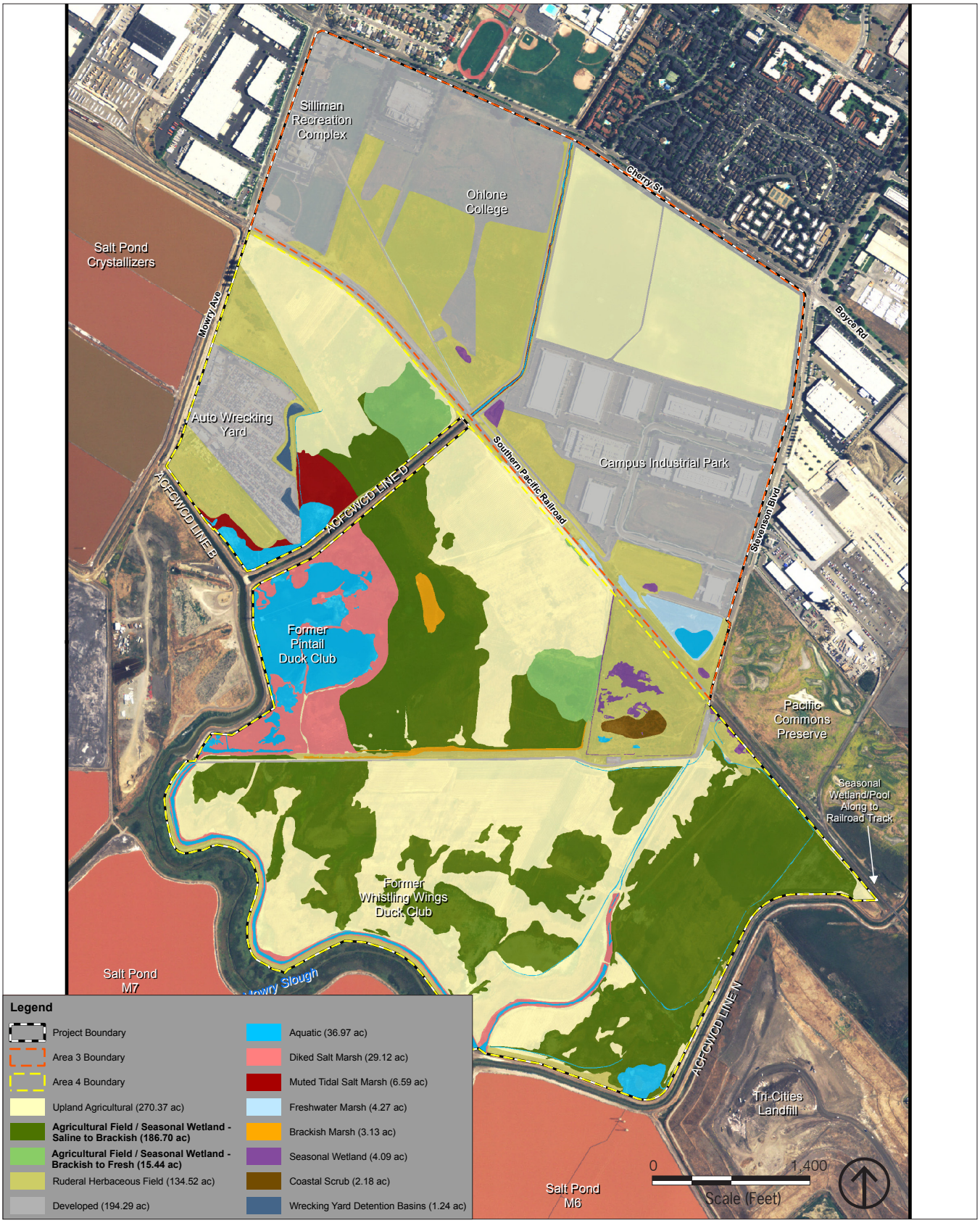
Figure 4.3-1
Don Edwards SF Bay National Wildlife Refuge and Areas for Potential Addition



Source: City of Newark, 2012; U.S. Department of Agriculture Forest Service, 2007.

City Limit
Landmarks
Railroads
Focus Area
Annual Grass
Cropland
Valley Oak Woodland
Lacustrine
Fresh Emergent Wetland
Saline Emergent Wetland

Figure 4.3-2A
Vegetation and Habitat Types



Source: H.T. Harvey & Associates.

Figure 4.3-2b
Vegetation and Habitat Types Areas 3 and 4

The description under the Salt Ponds heading on page 4.3-11 of the Draft EIR is hereby revised as follows:

The commercial salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge, and adjacent to the Plan Area outside the City limit, are large, open ~~water~~ areas ranging in salinity from similar to sea water at 32 parts per million to ~~135~~180 parts per million, or more than ~~four~~ five times the salinity of ~~more salty than~~ sea water.[22] These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water.

Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds within the Refuge for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt.[23] Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin.[24]

Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.[25]

Cargill, which sold and donated 12,500 acres of salt ponds within the Refuge, has retained perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system and will continue its operations for the foreseeable future. Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural evaporation. The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds, in connection with the San Francisco Bay Plan (Bay Plan), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[26]

After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities within the western portion of the City of Newark (the Newark Plant Site). Brines are placed within "crystallizers" at the Newark Plant Site, which are large man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations with the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment.

Hence, while some of the salt evaporators with the Refuge (and outside the city of Newark) provide habitat for specific species of wildlife, the Newark Plant site is industrial in nature and consists of hypersaline brines and/or

precipitated salts that, in general, contain very limited or no vegetation or biological characteristics or habitat to support special use.[27]

[26] San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 6-7 (Staff Report - October 2005).
27 San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 27-28 (Staff Report October 2005).

Figure 4.3-3 of the Draft EIR is hereby revised as follows to correct a typographical error in the Congdon tarplant name as shown overleaf:

The second paragraph under BIO-3 on page 4.3-39 of the Draft EIR is hereby revised as follows:

A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area was received from the USACE in October 2007. The USACE determination established approximately 242 acres of wetlands and 34.21 acres of "other waters" for a total of 277 acres. These areas include all aquatic, diked salt marsh, seasonal wetlands, muted tidal saltmarsh, freshwater marsh, brackish marsh, and tidal salt marsh. Jurisdictional determination has also been made for 7.2 acres of wetlands on the Torian property, located within the Dumbarton TOD Focus Area. Additionally, other portions of the Plan Area along the western perimeter of Newark may ~~likely~~ support wetland vegetation, wetland hydrology, and wetland soils as shown on Figure 4.3-3, and therefore it is possible ~~likely~~ that there are additional Waters of the US within these areas, although no formal delineation has been made by USACE.

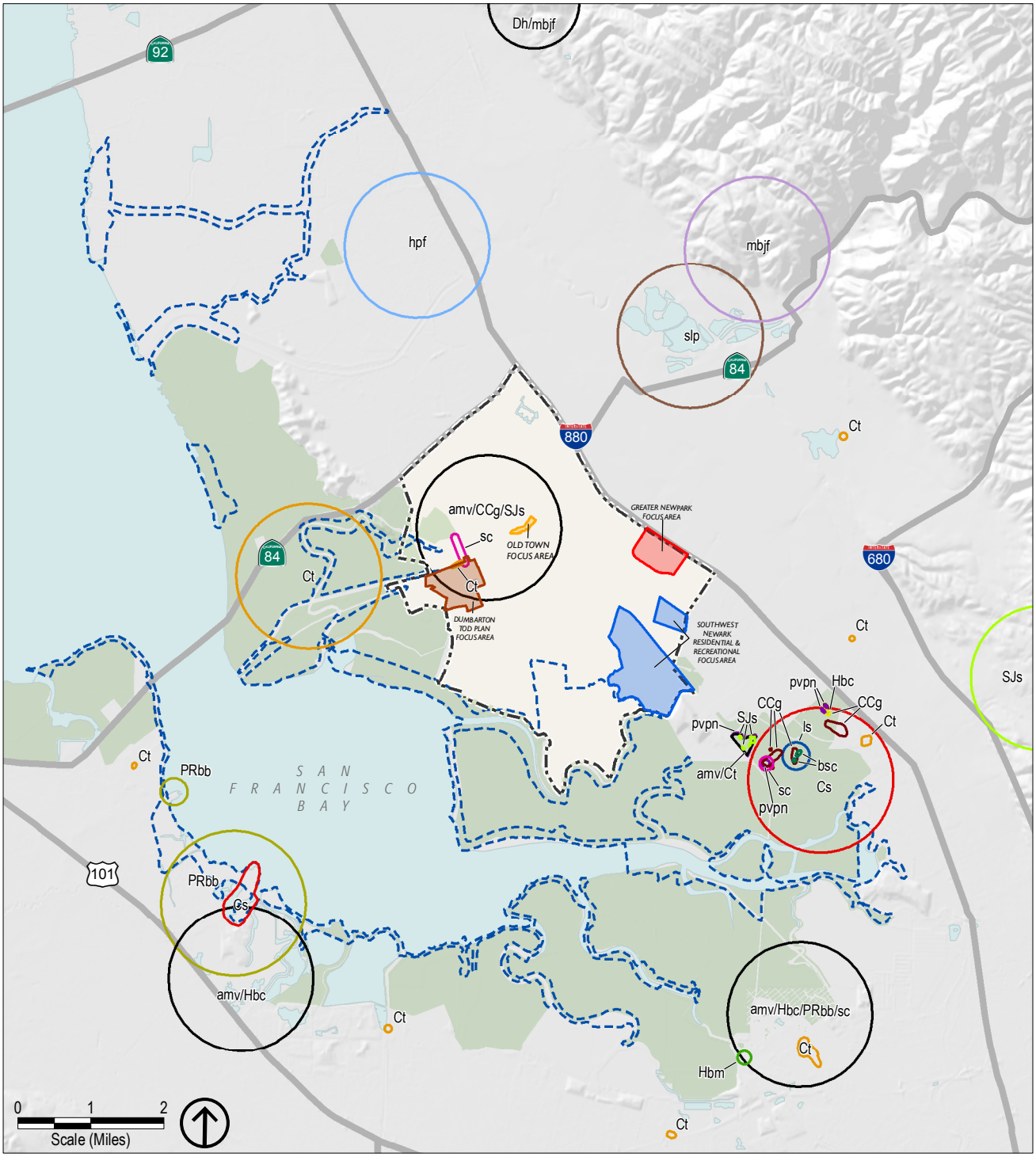
The first paragraph under BIO-4 on page 4.3-42 of the Draft EIR is hereby revised as follows:

The proposed Plan would result in a significant impact if new development would interfere with species movement or involve barriers or threats within wildlife corridors. Given the highly urbanized context of the Plan Area and the extent of existing development, vehicular traffic, and human and pet presence in Newark, opportunities for wildlife movement in the urbanized portion of the city are minimal. Existing development, including buildings, fencing, flood control channels, major roadways, or other similar improvements, represent substantial barriers to wildlife movement. The best opportunities for wildlife migration exist along the western edge of the Plan Area, adjacent to the Don Edwards National Wildlife Refuge, but excluding Cargill's existing salt harvesting, refining and production operations as designated in Figure LU-1 of the proposed Plan.

Chapter 4.7, Hazards and Hazardous Materials, Revisions

The beginning of page 4.7-2 of the Draft EIR is hereby revised as follows:

California Health and Safety Code Chapter 6.95, ~~and~~ Title 19 California Code of Regulations Section 2729, and Title 22, Division 4.5, of the California Code of Regulations set out the minimum requirements for business emergency plans and chemical inventory reporting. These regulations require businesses to provide emergency response plans and procedures, training program information, and a hazardous material chemical inventory



Source: City of Newark, California Natural Diversity Database, 2012.

- CCg - Contra Costa goldfields
- Cs - California seablite
- Ct - Congdon's tarplant
- Hbc- Hoover's button-celery
- Hbm - Hall's bush-mallow
- PRbb - Point Reyes bird's-beak
- SJs - San Joanquin spearscale
- bsc - brittlescale
- hpf - hairless popcorn-flower
- ls - lesser saltscale
- mbjf - most beautiful jewel-flower
- pvpn - prostrate vernal pool navarretia
- sc - saline clover
- slp - slender-leaved pondweed
- Multiple occurences
  - amv - alkali milk-veetch
  - Dh - Diablo helianthella
  - SJs - San Joaquin spearscale
- Northern Coastal Salt Marsh Terrestrial Community
- Don Edwards SF Bay National Wildlife Refuge

Figure 4.3-3
Special Status Plant Species and Sensitive Natural Communities

disclosing hazardous materials stored, used, or handled on site. A business which uses hazardous materials or a mixture containing hazardous materials must establish and implement a business plan if the hazardous material is handled in certain quantities.

The addition of a second paragraph under the State Water Resources Control Board heading has been added on page 4.7-4 of the Draft EIR and hereby revised as follows:

The RWQCBs Toxics Cleanup Division staff oversees the investigation and cleanup of leaking underground fuel tanks (LUFT) sites and spills, and leaks, and cleanup (SCP) sites, pursuant to California Water Code 13304, where hazardous substances have been discharged and deposited into Waters of the State and have created a condition of pollution and nuisance.

The bullet on the last page of 4.7-7 and a portion of Table 4.7-1 on page 4.7-8 and 4.7-10 of the Draft EIR is hereby revised as follows:

~~Ashland Chemical, located at 8600 Enterprise Drive, Newark, was a packaging and distribution center involving a variety of chemicals. Contaminants that have been detected and removed from the soil are toluene, xylene, ethylbenzene, PCE, and TCE. Ongoing efforts to extract and treat groundwater are supervised by the RWQCB.~~[14]

[14] ~~San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 27-28 (Staff Report October 2005).~~

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK

NO.	NAME	ADDRESS	CITY	TYPE	STATUS	DATABASE
1	A & S Enterprises	7275 Thornton Ave	Newark	LUST Cleanup Site	Open – Remediation	GeoTracker
2	Abe Oil, Inc.	8130 Enterprise Drive	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
3	Ac Transit-Newark Facility	37650 Sycamore Street	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
4	Agilent Technologies	39201 Cherry Street	Newark	Tiered Permit	Inactive – Needs Evaluation	EnviroStor
5	Alcan Plastic Packaging Plant	6590 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
6	American National Can	6590 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
~~7~~	~~Ashland Chemical~~	~~8600 Enterprise Drive~~	~~Newark~~	~~State Response~~	~~Refer: RWQCB~~	~~EnviroStor; GeoTracker~~
8	Ashland Chemical	8610 Enterprise Drive	Newark	Tiered Permit; Other Cleanup Site	Refer: RWQCB; Open – Verification Monitoring	EnviroStor; GeoTracker
~~9~~	~~Ashland Specialty Chemical Co~~	~~8600 Enterprise Ave~~	~~Newark~~	~~Corrective Action~~	~~Refer: RWQCB~~	~~EnviroStor; GeoTracker~~

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK

NO.	NAME	ADDRESS	CITY	TYPE	STATUS	DATABASE
~~10~~	~~Ashland Specialty Chemical Co~~	~~8600 Enterprise Ave~~	~~Newark~~	~~Non-Operating~~	~~RCRA~~	~~EnviroStor; GeoTracker~~
….						
45	Honeywell International, Inc.	8333 Enterprise Drive	Newark	Corrective Action	~~Completed~~ Ongoing	Envirostor; Geotracker

Under Applicable Regulations on page 4.7-21 of the Draft EIR, the following bullet point was added:

- California Code of Regulations (Title 22)

The applicable regulations on pages 4.7-23, 4.7-26, and 4.7-30 of the Draft EIR is hereby revised as follows to reflect the addition of California Code of Regulations (Title 22):

- California Code of Regulations (Title 22) ~~DTSC (2011-2016 Strategic Plan)~~

The first paragraph under HAZ-8 on page 4.7-28 of the Draft EIR is hereby revised as follows:

The Plan Area is surrounded on all sides by land within the limits of the City of Fremont. The Don Edwards San Francisco Bay National Wildlife Refuge is located along the western perimeter of the Plan Area on the shore of San Francisco Bay. As shown on Figure 4.7-2, the Plan Area does not include State Responsibility Areas of very high, high, or moderate risk from wildfire. The Plan Area does, however, include some Local Responsible Areas of high and moderate risk from wildfire, although the majority of the Plan Area is designated as non-wildland/non-urban and urban unzoned.

Chapter 4.8, Hydrology and Water Quality, Revisions

The first paragraph under the San Francisco Bay Conservation and Development Commission heading on page 4.8-7 of the Draft EIR is hereby revised as follows:

~~The California Coastal commission carries out its mandate locally through~~ The San Francisco Bay Area Conservation and Development Commission's (BCDC'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." BCDC's jurisdiction for San Francisco Bay includes all sloughs, marshlands between mean high tide and 5 feet above mean sea levels, tidelands, submerged lands, and land within 100 feet of the Bay shoreline. The precise boundaries are determined by BCDC upon request. For planning purposes, BCDC assumes that projects have a lifespan of at least 50 to 90 years.[1]

[1] Bay Area Conservation and Development Commission (BCDC), 2011, *San Francisco Bay Plan,* http://www.bcdc.ca.gov/laws_plans/plans/sfbay_plan.shtml accessed on March 25, 2013.

The second paragraph under the San Francisco Bay Conservation and Development Commission heading on page 4.8-7 of the Draft EIR is hereby revised as follows:

As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for any proposed fill, extraction of materials, or change is use of any water, land, or structure within the Commission's jurisdiction. The BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands in the Southwest Newark Residential and Recreational Focus Area. Projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection. These policies state that adequate flood protection should consider future relative sea level rise and all proposed development should be above the highest estimated tide level for the expected life of the project or sufficiently protected by levees. In addition, BCDC's policies to protect the Bay from the water quality impacts of nonpoint pollution state that new development should be sited and designed consistent with standards in municipal storm water permits and state and regional storm water management guidelines. To offset the impacts from increased impervious areas and 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.

Figure 4.8-1 of the Draft EIR is hereby replaced with Figure 4.8-1 shown overleaf:

The second paragraph on page 4.8-14 of the Draft EIR is hereby revised as follows:

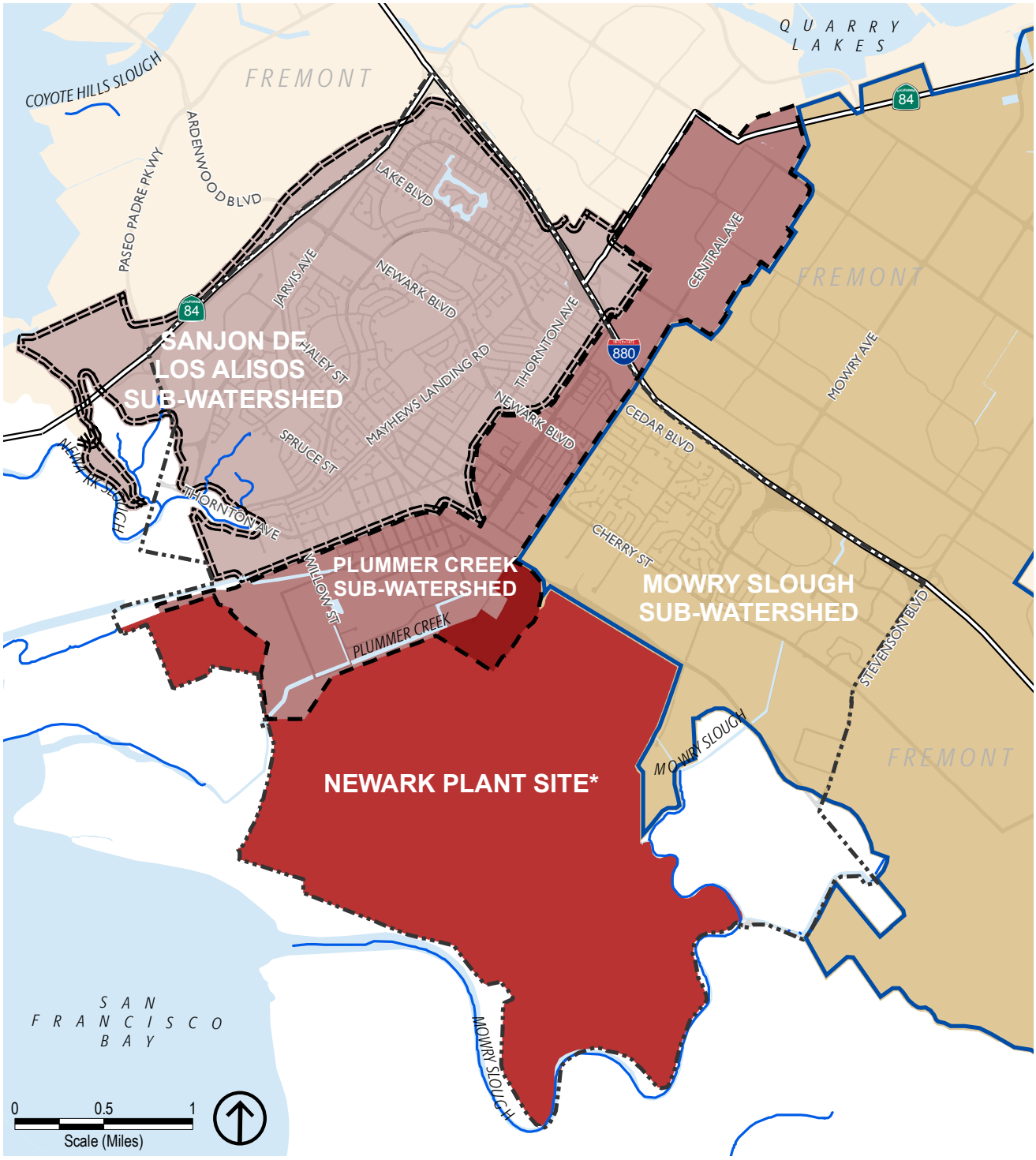
~~Approximately 22 percent of the water supplied by the ACWD is from groundwater wells.[2]~~ Approximately 40 percent of the water supplied by the ACWD is from groundwater wells with 22 percent supplied by well fields and 18 percent supplied by the Newark Desalination Facility. The groundwater level in the Newark Aquifer ranges from 2.2 to 8.5 feet bgs. When water levels in the Newark Aquifer fall below sea level, saline water from the Bay and salt evaporation ponds will flow inward, causing saltwater intrusion. The Newark Aquifer water levels are presently above sea level and are forecast to remain above sea level through at least June 2013.[3]

The last sentence of the first paragraph under the Water Quality heading on page 4.8-14 of the Draft EIR is hereby revised as follows:

The surface water bodies that currently exist in the Plan Area include engineered channels maintained by the ACFC, Plummer Creek, Newark Slough, Mowry Slough, tidal marshes, tidal flats, ~~salt ponds~~, and small tidal estuaries.

~~[2] Alameda County Water District, 2013, *Survey Report on Groundwater Conditions,* February.~~

[3] Alameda County Water District, 2013, *Survey Report on Groundwater Conditions,* February.



Source: City of Newark, 2012; Santa Clara County, 2012; The Planning Center | DC&E, 2012; ESRI, 2010; FTC, 2010; Fugro William Lettis & Associates, Inc., 2010.

City Boundary
Creek
Newark Plant Site*
*This is a closed, engineered system, for salt production and nothing is released or discharged to San Francisco Bay.

Watersheds
Mowrey Slough Sub-Watershed
Sanjon de los Alisos Sub-Watershed
Plummer Creek Sub-Watershed
Other Lower Alameda Creek Watersheds

Figure 4.8-1
Watersheds in the Vicinity of the Plan Area

The first sentence of the second paragraph under the Water Quality heading on page 4.8-14 is hereby revised as follows:

Under the Alameda County Urban Runoff Clean Water Program, stormwater within Alameda County has been characterized in terms of water quality and runoff pollutant loading. ~~No site-specific data regarding stormwater runoff from the Plan Area exists.~~

The first sentence of the last paragraph on page 4.8-14 of the Draft EIR is hereby revised as follows:

As mentioned earlier, the Plan Area consists of open space, ~~and~~ undeveloped and non-urbanized land near the bay shoreline and developed land further inland.

The third and fourth paragraph on page 4.8-15 continuing on page 4.8-16 of the Draft EIR is hereby revised as follows:

Much of this area is open space, areas if salt harvesting, refining and production ~~salt flats~~, and tidal marshes with no plans~~ned~~ for urbanized development. However, many of the planned future housing sites in the Dumbarton TOD and Southwest Newark Residential and Recreational Focus Areas, are within the 100-year floodplain. In addition, the areas immediately adjacent to the ACFC storm drain channels (Lines B, D, F, H, and I) are within the 100-year floodplain with some of the outlying areas mapped as being within the 500-year floodplain. The flood prone areas within the City of Newark are depicted on Figure 4.8-4.

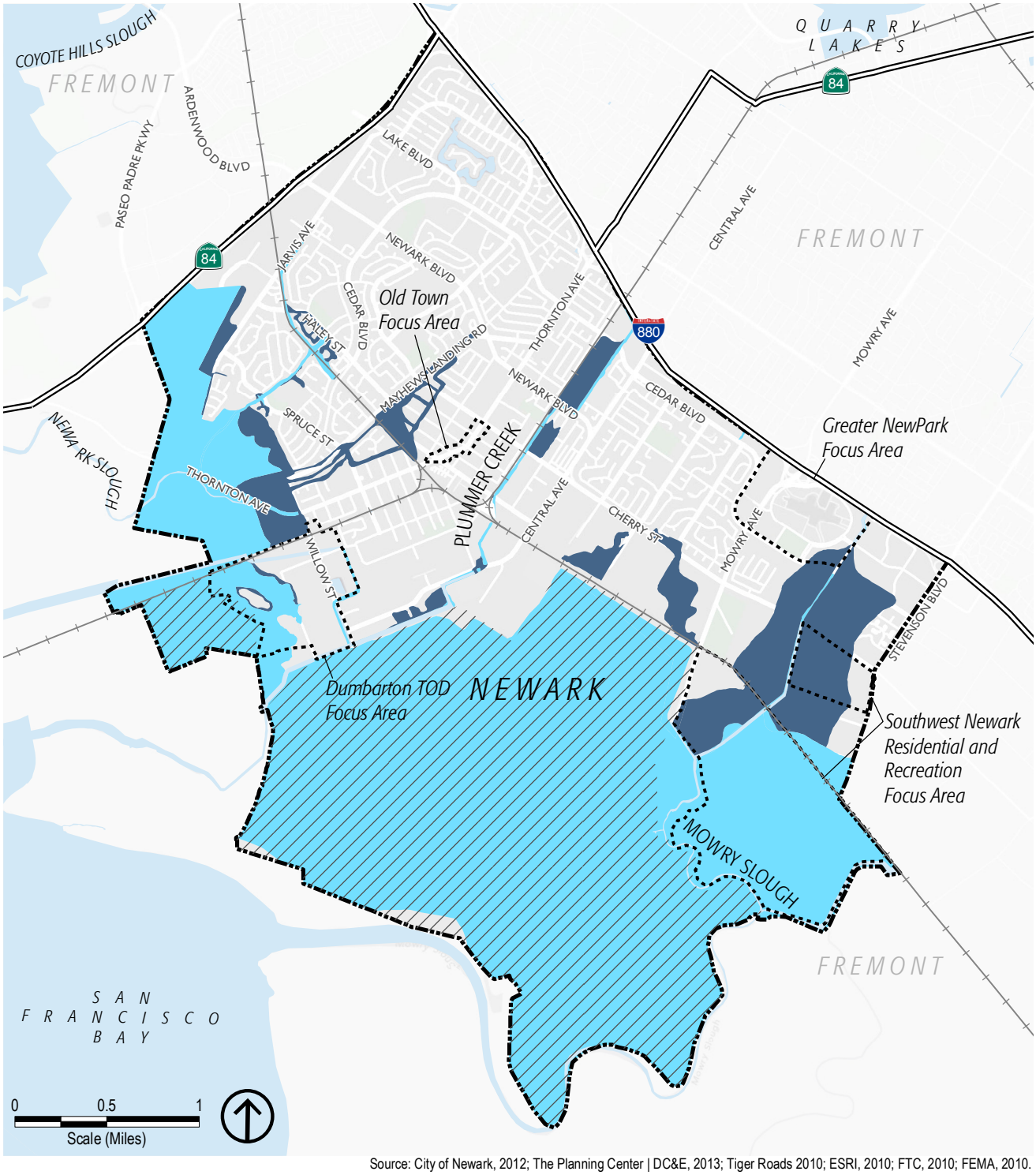
~~Although some locations within the City are protected from flooding by levees,~~ FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability.[4] Although levees do exist at some locations within the City, ~~M~~most of these levees ~~within the City of Newark~~ were not designed to provide flood protection and are not certified. Therefore, the areas next to these levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event.

Figure 4.8-4 of the Draft EIR is hereby replaced with Figure 4.8-4 as shown overleaf:

The first paragraph on page 4.8-33 of the Draft EIR is hereby revised as follows:

The protected portion of the San Francisco Bay near the City of Newark is not subject to potential flooding by seiches, since the several levees and long distance of shallow salt ponds ~~water~~ associated with salt pond production within the Don Edwards San Francisco Bay National Wildlife Refuge ~~and harvesting operations~~ between San Francisco Bay and the City of Newark would minimize waves generated by a seiche. In addition, the City of Newark is not located below any steeply sloped areas that would result in a mud or debris flow. The land within the City of Newark is relatively flat and is not within any identified earthquake-induced rainfall-induced landslide areas, according to ABAG hazard maps. For these reasons, the City is not considered to be subject to significant risk from tsunamis, seiches, or mudflows.

[4] FEMA, 2013, *Levee Certification vs. Levee Accreditation*. http://www.fema.gov/library/viewRecord.do?id=4828m accessed March 19, 2013.



Source: City of Newark, 2012; The Planning Center | DC&E, 2013; Tiger Roads 2010; ESRI, 2010; FTC, 2010; FEMA, 2010.

City Limit

Salt Harvesting, Refining and Production

100-Year Flood Zone

500-Year Flood Zone

Figure 4.8-4
FEMA Flood Zones

Chapter 4.9, Land Use and Planning, Revisions

The first sentence under the Dumbarton Transit-Oriented Development Area Specific Plan on page 4.9-2 is hereby revised as follows:

The Dumbarton Transit-Oriented Development (TOD) Area Specific Plan, adopted by the City of Newark in ~~on September 8,~~ 2011 ~~2010~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark.

The second paragraph under the Distribution of Existing Land Uses heading on page 4.9-3 of the Draft EIR is hereby revised as follows:

The remaining 50 percent of Newark's land area consists of undeveloped or non-urbanized land. Of this total, approximately 960 acres is vacant and zoned for development, with 280 acres of "conservation" open space, 70 acres of agriculture, 160 acres of public parkland and other "improved" open space, and approximately 3,025 acres of land used for salt harvesting, refining and production. ~~evaporation ponds and ancillary facilities used for salt production.~~

Page 4.9-5 of the Draft EIR is hereby revised as follows:

Undeveloped and Non-Urbanized Land

Undeveloped and non-urbanized areas in Newark are principally located in the southern and western parts of the city. The Cargill salt harvesting, refining and production operations ~~evaporation ponds~~ constitute a majority of this area; however, approximately 960 acres of land in Newark is vacant and zoned for development. Most of this land is clustered in two areas: the Southwest Newark residential and Recreational Focus Area, west of Cherry Street between Mowry and Stevenson; and the Dumbarton TOD Focus Area. There are also several vacant tracts within the Pacific Research Center, in other industrial parks, and in the NewPark Mall vicinity.

The bulleted list on page 4.9-11 through 4.9-12 of the Draft EIR is hereby revised to include the following two policies at the end of the list:

- Policy PR-5.7: Trail Sustainability. Consider long-term sustainability issues, such as projected sea level rise, surface durability, and the condition of levees, in the design of shoreline and wetland trail facilities.

- Policy PR-5.8: Trail Design and the Environment. Design trails and public access features to minimize impacts on wetlands and other sensitive habitats, including habitat fragmentation. If necessary, identify secondary alignments in the event a trail must be seasonally closed for habitat protection purposes.

Chapter 4.10, Noise, Revisions

The second sentence on page 4.10-1 of the Draft EIR is hereby revised as follows:

The chapter ~~beings~~ begins with a discussion of the fundamentals of sound and vibration, and an examination of relevant federal, State, and local guidelines, policies, and standards regarding noise and vibration.

Chapter 4.13, Transportation and Traffic, Revisions

The first paragraph under State Regulations on page 4.13-2 of the Draft EIR is hereby revised as follows:

California Transportation Commission and California Department of Transportation

At the State level, California Transportation Commission (CTC) set transportation priorities and prepares the State Transportation Improvement Program (STIP), a multi-year capital improvement program. The California Department of Transportation (Caltrans) ~~is the primary State agency responsible for transportation issues~~ manages the ~~One of its duties is the construction and maintenance of the~~ State highway system, consisting of 45,000 miles of freeway and highway lanes and works with local agencies to manage local transportation projects. ~~Caltrans approves~~ This management includes the planning, design, and construction of improvements for all State-controlled facilities including I-880, State Route (SR) 84, and the associated interchanges for these facilities located in the Plan Area. Caltrans has established standards for roadway traffic flow and developed procedures to determine if State-controlled facilities require improvements. For projects that may physically affect facilities under its administration, Caltrans requires encroachment permits before any construction work may be undertaken. For projects that would not physically affect facilities, but may influence traffic flow and levels of services at such facilities, Caltrans may recommend measures to mitigate the traffic impacts of such projects.

The last paragraph under the Alameda County Congestion Management Program headings on page 4.13-4 of the Draft EIR is hereby revised as follows:

There are two roadways in Newark that are part of the CMP roadway system: SR-84 from Thornton Avenue ~~the San Mateo County line~~ to I-880 and I-880 as it runs along the eastern perimeter of Newark. Additionally, Thornton Avenue and Newark Boulevard are MTS routes.

The second sentence of the paragraph under the Chapter 16.12 – Streets and Lots heading on page 4.13-5 of the Draft EIR is hereby revised as follows:

The Code contains a table indicating required widths for various public roadway types, and specifies that these standards shall apply unless superseded by future General Plan amendments or other City resolutions.

The paragraph on under the Newark Traffic Calming Program heading on page 4.13-5 of the Draft EIR is hereby revised as follows:

The City of Newark has adopted a ~~brief~~ list of potential traffic calming measures in order to reduce traffic and speeding-vehicle impacts in residential areas and along collector streets. The City offers six potential traffic-calming measures, listed in descending order of preference: (1) resident education and selective speed limit enforcement, (2) street centerline striping, (3) stop signs, (4) chicanes, (5) center islands/medians, and (6) speed bumps. The City of Newark considers speed bumps to be a measure of "last resort." For items 1, 2, and 3, such actions may be initiated by citizen complaints, subject to evaluation by and coordination with the City Engineer based on the appropriateness for a specific street. Generally, in order for measures ~~items~~ further down the list to be considered, it must be ascertained that more preferred measures ~~items~~ failed to have the desired traffic-calming effect. Physical alternations for traffic calming must be initiated through a petition submitted to the City Engineer. In order to

prompt action, the petition must be signed by residents of the street or street segment being considered for physical treatments, only one signature per household will be counted, and a minimum of two-thirds of the residents on a street or street segment must be signatories of the petition. In all cases, the implementation of traffic calming measures shall be subject to the evaluation of the City Engineer and noticing of residents for selected measures is required. As part of this evaluation, the City Engineer will ~~shall~~ perform traffic studies to determine traffic volumes and speeds and to collaborate with residents to determine the most appropriate physical traffic calming approaches. Prior to the implementation of traffic calming measures, the City Engineer will ~~must~~ submit an informational report to the City Council regarding the recommended measures.

Portions of the text under the Newark Complete Streets Policy heading on page 4.13-6 of the Draft EIR are hereby revised as follows:

Serving all users and modes, including pedestrians, bicyclists, persons with disabilities, motorists, movers of commercial goods and freight, transit riders and operators, emergency responders, seniors, children, youth, and families.

Responding to context, such that considered roadway features and amenities are reflective of the surrounding area and working with ~~meet the expectations of~~ key stakeholders;

Addressing complete streets as part of routine procedure for all City ~~city~~ departments; and

The first sentence of the last paragraph on page 4.13-6 of the Draft EIR is hereby revised as follows:

The local street network in the Plan Area is composed of arterials, collector streets, and local streets. I-880 runs along the eastern edge of the Plan Area and roadways in Newark that generally run ~~running~~ parallel to it are referred to in this Draft EIR as having a north-south orientation.

Several bullet points have been revised on page 4.13-7 and continuing to page 4.13-8 of the Draft EIR and revised as follows:

- *Stevenson Boulevard* is an east-west arterial street ~~roadway~~ located on the city's southern boundary with the city of Fremont. Between I-880 and Cedar Boulevard, Stevenson Boulevard features six travel lanes, raised medians, and turn lanes at major intersections. At Cedar Boulevard, the roadway narrows to four travel lanes, and this configuration extends west through Cherry Street/Boyce Road. Stevenson Boulevard provides access to commercial and light-industrial areas and also extends east over I-880 into Fremont.
- *Mowry Avenue* is an east-west arterial street ~~roadway~~ located north of Stevenson Boulevard. Between I-880 and Cedar Boulevard, Mowry Avenue features six travel lanes, raised medians, and turn lanes at major intersections. At Cedar Boulevard, the roadway narrows to four travel lanes, which continue to Cherry Street. West of Cherry Street, the roadway has two westbound travel lanes and one eastbound travel lane, with a two-way left-turn lane. At the Union Pacific railroad tracks, the roadway has an at-grade crossing and narrows to two travel lanes. Mowry Avenue provides access to commercial-retail, residential, and light-industrial areas, and also extends east over I-880 into Fremont.
- *Cherry Street* is generally a four-lane, north-south arterial street ~~roadway~~ located between Thornton Avenue and Stevenson Boulevard. Between Thornton Avenue and Mowry Avenue, Cherry Street has a combination of

raised medians and two-way left-turn lanes and provides access to commercial, residential, and industrial areas. South of Mowry Avenue, Cherry Street has raised concrete medians and provides access to light-industrial and residential areas. South of Stevenson Boulevard, at the city of Fremont boundary, Cherry Street becomes Boyce Road.

- *Boyce Road* is the continuation of Cherry Street as it continues south of Stevenson Boulevard, where it becomes a four-lane, north-south roadway that extends to Auto Mall Parkway. Located entirely in the city of Fremont, Boyce Road has raised concrete medians and provides access to light-industrial and commercial areas.
- *Central Avenue* is primarily a four-lane, east-west arterial street ~~roadway~~ that extends from Willow Street in Newark to Fremont Boulevard in Fremont. It is a two-lane arterial with raised medians between Willow Street and Filbert Street. East of Filbert Street, Central Avenue widens to a four-lane arterial street with a combination of raised medians and two-way turn lanes, continuing across ~~through~~ I-880, until it terminates at Fremont Boulevard. Central Avenue provides access to light-industrial and retail areas between Willow Street and Cherry Street. East of Cherry Street, the roadway provides access to both commercial and residential areas in Newark.
- *Thornton Avenue* is a two- or four-lane arterial street that aligns mostly southwest-northeast through the City of Newark between SR 84 and I-880, and extending into the city of Fremont. North of SR 84 and outside the City ~~city~~ of Newark, Thornton Avenue becomes Paseo Padre Parkway. From SR 84, Thornton Avenue extends in a southeasterly direction as a two- or four-lane arterial roadway to Willow Street. Just before Willow Street, Thornton Avenue turns northward, assuming a west-southwest to east-northeast orientation. Between Willow Street and Sycamore Street, Thornton Avenue has two travel lanes and a two-way left-turn lane. East of Sycamore Street, Thornton Avenue widens to three travel lanes (one lane westbound and two lanes eastbound), to Cherry Street. Between Sycamore and Cherry streets, Thornton turns more northward, assuming the southwest-northeast orientation that continues through the remainder of Newark. East of Cherry Street, Thornton Avenue widens to a four-lane roadway continuing across ~~through~~ I-880 and into the City ~~city~~ of Fremont. Thornton Avenue provides access to residential, light-industrial, and commercial areas in the northern and eastern areas of Newark.
- *Newark Boulevard* is a four-lane, north-south arterial street ~~roadway~~ that extends from Central Avenue to SR 84, where it becomes Ardenwood Boulevard in the city of Fremont. Thornton Avenue provides access to residential and commercial-retail areas, as well as public buildings such as the City Administration Building, the Newark Library, the Newark Community Center, and the Alameda County Health Center.
- *Jarvis Avenue* is an east-west arterial that extends between Gateway Boulevard and Lake Boulevard. Jarvis Avenue provides access to residential, commercial, and light-industrial areas, and has four ~~two~~ travel lanes between Gateway Boulevard and Cardiff Street ~~Haley Street~~ with a combination of raised medians and two-way left turn lanes. The roadway is reduced to two ~~expands to four~~ travel lanes as it extends east to Lake Boulevard.
- *Gateway Boulevard* is classified as an arterial street segment for the four-lane portion between Jarvis Avenue and Thornton Avenue. North of Jarvis Avenue, Gateway Boulevard is a multi-directional two-lane collector with some raised medians that extends to Fircrest Street.

- *Sycamore Street* is a north-south roadway extending between Mayhews Landing Road and Central Avenue. Sycamore Street provides access mainly to residential areas in the center of the city and has two travel lanes and a two-way left-turn lane.
- *Willow Street* is a north-south roadway that extends between Central Avenue and Thornton Avenue. Willow Street is four lanes between Central Avenue and Enterprise Drive, and provides access to light-industrial and warehouse uses. North of Thornton Avenue, Willow Street narrows to two travel lanes and provides access to residential areas.
- *Enterprise Drive* is an east-west, four-lane roadway that extends between Hickory Street and Filbert Street and provides access to light-industrial and commercial uses.
- *Lafayette Avenue* is an east-west, two-lane residential collector street located south of Jarvis Avenue. Lafayette Avenue extends between Cherry Street and Cedar Boulevard, and provides access to residential and institutional (school) uses.
- *Mayhews Landing Road* is an east-west, two-lane collector street located south of Lafayette Avenue. Mayhews Landing Road extends between Thornton Avenue and Sycamore Street, and provides access to residential and commercial areas.
- *Cedar Boulevard* is a major cross-town roadway that arterial street ~~extends~~ through most of Newark. Cedar Boulevard begins at Haley Street and extends north and east past Newark Boulevard before turning southeastward at Lake Boulevard. It then continues past Lafayette Avenue ~~Newark Boulevard~~ in a generally southeasterly direction past Thornton, Central, and Mowry Avenues before terminating at Stevenson Boulevard. Cedar Boulevard is a two-lane roadway between Haley Street and Lido Boulevard, and widens to a four-lane roadway south of Lido Boulevard. Cedar Boulevard provides access to commercial, light-industrial, and residential areas throughout Newark.
- *Smith Avenue* is an east-west, two-lane residential collector street that extends from west of Cherry Street to Cedar Boulevard. Smith Avenue provides access to residential and institutional (mainly school) uses.
- *Alpenrose Court/NewPark Mall Road* extends north-south across Mowry Avenue to provide access to the large retail areas south of Mowry Avenue, including NewPark Mall.
- *Balentine Drive/Albrae Street* is a north-south, multi-directional four-lane roadway that extends east-west from Cedar Boulevard and north-south between ~~of~~ NewPark Mall and ~~just past~~ Stevenson Boulevard. South of Stevenson Boulevard, in the city of Fremont, Balentine Drive becomes Albrae Street. Balentine Drive/Albrae Street provide access to retail-commercial and light-industrial areas.

The first paragraph under the Existing Traffic Operations heading on page 4.13-9 of the Draft EIR is hereby revised as follows:

To establish baseline traffic conditions in the Plan Area, Hexagon Transportation Consultants conducted an analysis of 30 signalized intersections and 7 ~~seven~~ unsignalized intersections in Newark and the surrounding area. These intersections, shown on Figure 4.13-1 and listed below, represent the main intersections that would provide access for future traffic under the proposed Plan.

Number 33 of the list on page 4.13-9 of the Draft EIR has been revised as follows:

Wells Ave ~~Dr~~ and Enterprise Dr

The paragraph under Signal Warrants on page 4.13-11 of the Draft EIR is hereby revised as follows:

The level of service analysis at unsignalized intersections is supplemented with an assessment of the need for signalization of each intersection. This assessment is made on the basis of signal warrant criteria adopted by Caltrans. For this Draft EIR, the need for signalization is assessed on the basis of the peak-hour traffic signal warrant, Warrant #3 described in the 2012 ~~2006~~ California Manual on Uniform Traffic Control Devices (CAMUTCD). This method provides an indication of whether traffic conditions and peak-hour traffic levels are, or would be, sufficient to justify installation of a traffic signal.

The paragraph under Existing Transit Service on page 4.13-13 of the Draft EIR is hereby revised as follows:

Existing local and regional transit service in the Plan Area and vicinity are provided by Alameda-Contra Costa Transit (AC Transit), Bay Area Rapid Transit (BART), Amtrak's Capital Corridor, and the Altamont Commuter Express (ACE). Newark is served directly by eleven AC Transit bus routes, and indirectly by nearby BART, commuter rail, and regional rail stations located in Fremont and Union City. The existing services are described below and existing transit services in the immediate Newark area are shown in Figure 4.13-3.

The last paragraph on page 4.13-20 of the Draft EIR is hereby revised as follows:

ACE provides service between San Jose and Stockton, with stops in Santa Clara, Fremont, Pleasanton, Livermore (two stops), Tracy, and Lathrop-Manteca. On weekdays, ACE offers four afternoon/evening eastbound trains from Fremont to Stockton, making stops in Pleasanton, Livermore (two stops), Tracy, and Lathrop-Manteca, and four morning westbound trains from Fremont to San Jose, making two stops in Santa Clara. ACE does not currently offer weekend or holiday service.

The first and second paragraph on page 4.13-21 of the Draft EIR is hereby revised as follows:

Pedestrian facilities in Newark consist primarily of sidewalks along the City ~~city~~ streets. Sidewalks and crosswalks are found along virtually all previously described local roadways in the ~~city~~ City.

According to the latest Alameda Countywide Bicycle Plan that was adopted on October 25, 2012, bicycle facilities are located on Thornton Avenue ~~Paseo Padre Parkway,~~ Newark Boulevard, Haley Street, Cherry Street, and Ardenwood Boulevard. These facilities are classified as Class I, Class II, and Class III facilities that are described below. Figure 4.13-4 illustrates the existing bicycle facilities in the City of Newark.

The first sentence under the Aviation Activity heading on page 4.13-21 of the Draft EIR is hereby revised as follows:

There are multiple airports and airfields in the region surrounding the City ~~city~~ of Newark; however, all of these facilities are approximately four or more miles from the Plan Area, and no area of Newark falls within the airport planning area for any of these facilities.

Figure 4.13-4 of the Draft EIR is hereby replaced with Figure 4.13-4 shown overleaf:

The first full sentence on page 4.13-23 under Definition of Significant Intersection Impacts is hereby revised as follows:

For this analysis, the set of relevant criteria for impacts on intersections is based on LOS standards established for the City of Newark ~~and for the Alameda County Transportation Commission (Alameda CTC)~~.

The first paragraph under TRANS-1 on page 4.13-23, continuing onto page 4.13-24, of the Draft EIR is hereby revised as follows:

As described above, the City of Newark has ~~and the Alameda CTC have~~ established vehicular LOS standards for intersection performance. Hexagon Transportation Consultants modeled future traffic conditions under the proposed Plan in 2035 in order to evaluate impacts with respect to established standards. Impacts to MTS roadways segments are discussed below under TRANS-2.

The footnote on the bottom of page 4.13-23 of the Draft EIR is hereby revised as follows:

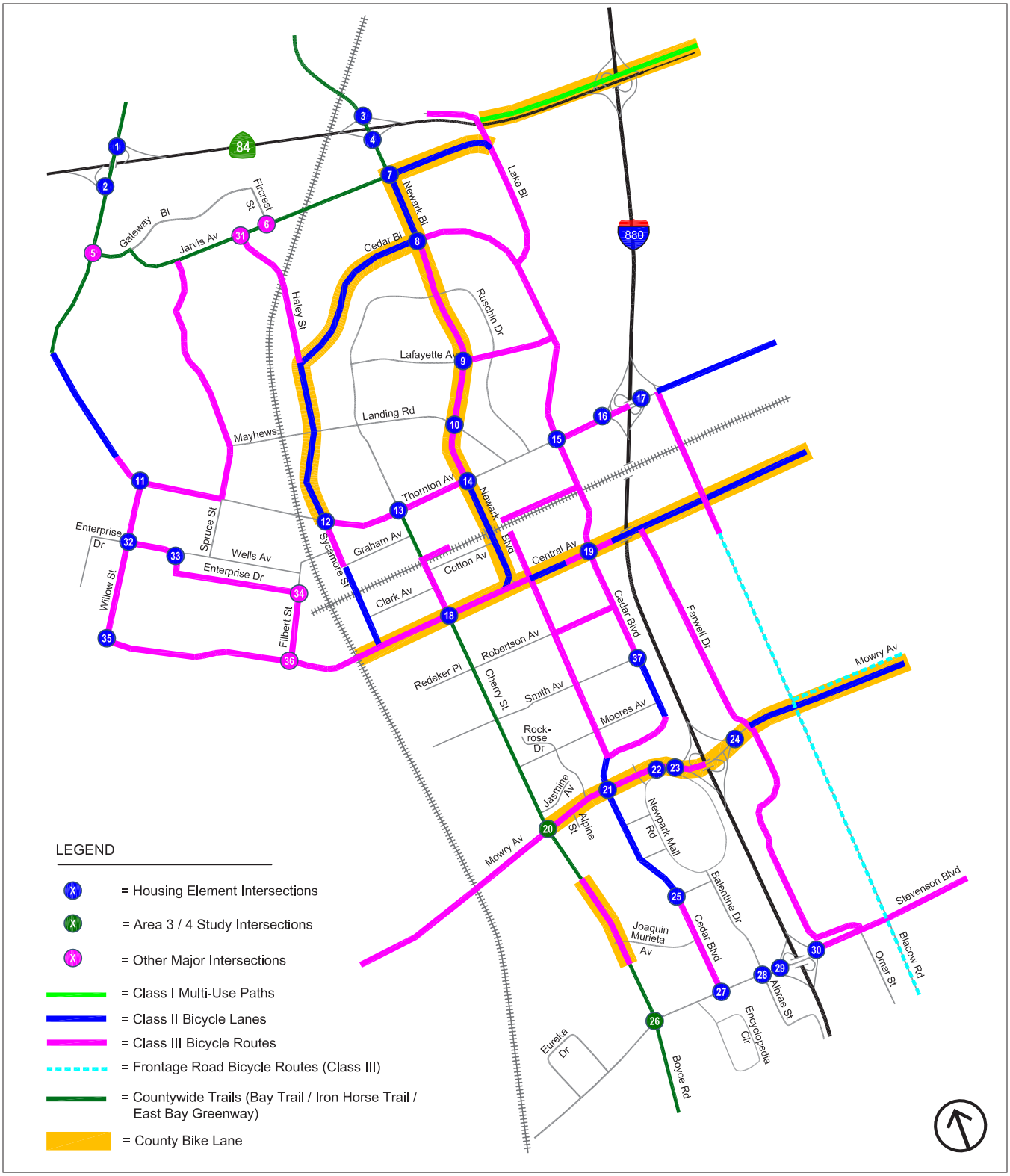
The sources for threshold of acceptable LOS in Newark are the Dumbarton TOD Specific Plan (~~September 2009~~ 2010) and the ~~Southwest Newark Residential and Recreational Focus~~ Area 3 and 4 Specific Plan (July 2011).

The text in Table 4.13-5 on page 4.13-32 pertaining to Cherry Street and Mowry Venue is hereby revised as follows:

Adding a second left-turn lane on the westbound approach (Mowry Av) and realigning the intersection. Since this intersection is in relatively close proximity to a high school, community college, and park, and is located along a road with transit service that is also a Countywide Bicycle Route (component of the Bay Trail), opportunities for improving pedestrian access and bicycle access through this intersection should be considered in the context of mitigation. Options for accommodating all users should be considered.

The bullet point list on page 4.13-39 of the Draft EIR is hereby revised as follows:

- Policy T-1.6: Traffic Calming. Use traffic design features and traffic calming techniques to improve safety and maintain the quality of life in Newark neighborhoods. Traffic calming should be incorporated into urban design and streetscape plans so that a safer environment is provided for all users.



Source: Hexagon Transportation Consultants, Inc., 2013.

Figure 4.13-4
Existing Bicycle Facilities

- Action T-1.B: Best Practices in Street Design. Follow the City's adopted standards for the design of streets. As appropriate, update the City's street classification and engineering design standards to ensure that the roadway system accommodates all users.

- Policy T-2.7: Pedestrian and Bicycle Safety. Improve actual and perceived pedestrian and bicycle safety. Make use of the latest technologies available to provide increased safety measures. Special attention should be given to facilitating the safety of children walking or bicycling to school.

- Policy T-2.8: Safety Awareness and Health Benefits. Encourage bicycle and pedestrian safety training in schools and through City recreation programs. Such programs should aim to reduce the rate of bicycle and pedestrian accidents while increasing awareness of available facilities and the health benefits of bicycling and walking.

- Policy T-2.10: Railroad Crossings. Ensure that any future grade separated railroad crossings include sidewalks and designated lanes for bicycles.

- Policy T-5.11: Hazardous Street Conditions. Identify and correct any hazardous street conditions, including obstructed sight lines, on a regular basis.

- Policy T-6.5: Freight Rail Service. Work with the Union Pacific Railroad to ensure the continued viability of freight rail service through Newark, and the availability of rail spurs and sidings to serve Newark's industrial users. Work with the Union Pacific Railroad to assure compliance with adopted standards regarding blocking of roadways. The City supports efforts by the Union Pacific Railroad to improve maintenance, upgrade equipment, and improve the safety of existing railroad grade crossings.

- Policy T-6.6: Grade Separations. Reduce the number of at-grade rail crossings in Newark. Grade separations are strongly supported as a way to facilitate emergency vehicle response, improve safety, reduce delays, and improve aesthetics.

Chapter 6.0, Alternatives, Revisions

The third paragraph under Section 6.6, Environmentally Superior Alternative, on page 6-27, of the Draft EIR is hereby revised as follows:

Additionally, the Restricted Growth Alternative would conflict with the City's recent major planning initiatives, including the recently adopted Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element. Also, the Restricted Growth Alternative would likely subject the City of Newark to significant damages arising from the condemnation or inverse condemnation of private property. Further, as this alternative would not involve development in the Dumbarton TOD Focus Area, it would not promote the development of compact, walkable neighborhood in this sector of the city, which is identified as a priority development area (PDA) in the SCS. Development in PDAs is integral to the land use concept plan for the region articulated in the SCS. The SCS allocates well over two-thirds of all regional growth in the Bay Area through 2040 within PDAs, and PDAs are expected to accommodate 80 percent (or over 525,570 units) of new housing and 66 percent (or

744,230) of new jobs in the region over that same time frame. Consequently, because the Restricted Growth Alternative would not satisfy all the project objectives, because it would conflict with specific plans previously adopted by the City of Newark, and because it would not support development of the Dumbarton TOD PDA as envisioned in the SCS, the Restricted Growth Alternative is considered infeasible.

4. List of Commenters on the Draft EIR

This chapter identifies and lists the agencies, organizations, and individuals who submitted written comments on the Draft EIR. Commenters are listed by category first, and then alphabetically within each category.

Additionally, this chapter lists the individuals who submitted an almost identical recurring comment letter by email.

Federal Agencies

- United States Department of the Interior

State Agencies

- California Department of Transportation

Regional/Local Agencies

- Alameda County Transportation Commission
- Alameda County Water District
- San Francisco Bay Conservation and Development Commission
- San Francisco Regional Water Quality Control Board

Corporations and NGOs

- Ashland (Barry J. Shotts, Attorney at Law)
- Audubon Society
- Cargill Salt Company
- Defenders of Wildlife
- Enterprise Drive LLC
- Greenbelt Alliance
- NMW Newark LLC
- Save the Bay
- Santa Clara Valley Audubon Society
- San Francisco Baykeeper

- Citizens Committee to Complete the Refuge
- Lippe Gaffney Wagner LLP on behalf of Citizens to Complete the Refuge
- Grassetti Environmental Consulting on behalf of Citizens Committee to Complete the Refuge

General Public

- Bradley, John and Becky
- Burrows, Matt
- Dorman, Michael
- Elkins, David
- Hooper, Molly
- Rea, Paul
- Lewis, Margaret
- Miller, Wayne
- Sokale, Jana

Recurring Comments from the Public

Last Name	First Name	Address
a'Becket	Suzanne	Cupertino, CA
Abel	Jae	Palo Alto, CA
Ablin	Arthur	San Rafael, CA
Abraham	Julie	Redwood City, CA
Acosta	Elise	Sausalito, CA
Adam	Sondra Gail	Walnut Creek, CA
Adams	A	Cupertino, CA
Adams	Chris	Oakland, CA
Adams	Laura	Sebastopol, CA
Adolph	Barbara	San Ramon, CA
Agnew	Michele	San Francisco, CA
Ague	Kate	Menlo Park, CA
Aiken	Edwin	Sunnyvale, CA
Alejandro	Patricia	Covina, CA

Last Name	First Name	Address
Alexander	Carrie	Lake Forest, CA
Alexander	June	Rohnert Park, CA
Allen	Dennis	Santa Barbara, CA
Allen	John	Lafayette, CA
Alleyne-Chin	Donna	Montara, CA
Althouse	Sherrie	Rio Nido, CA
Amador	Robert	Berkeley, CA
Amato	Julie	Mountain View, CA
Ammini	Krishna	Mountain View, CA
Anania	Dale	Berkeley, CA
Andersen	Kristen	Palo Alto, CA
Anderson	Clark	Hopland, CA
Anderson	Darcy	Redwood City, CA
Anderson	Gary	San Carlos, CA
Anderson	Gene	Oakland, CA
Anderson	Timothy	Mer Rouge, LA
Andrade	Michele	Novato, CA
Andreas	Leticia	El Cerrito, CA
Andrus	M	Calimesa, CA
Angelos	Christina	Oakland, CA
Anjo	Hal	Boulder Creek, CA
Anton	Colby	Orinda, CA
ap Rees	Caroline	Danville, CA
Applebaum	Robert	San Jose, CA
Arbuckle	Nancy	Redwood City, CA
Arcadi	Larry	Fremont, CA
Arcure	Anthony	Fresno, CA
Armitage	Tami	Studio City, CA
Armstrong	Marsha	Los Gatos, CA
Arnold	Jack	Berkeley, CA
Aroner	Ai	Redwood City, CA
Aronson	Allen	Torrance, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Aronson	Gregg	Fremont, CA
Aronson	Reevyn	Redwood City, CA
Arteaga	Siria	Modesto, CA
Atkinson	Jay	El Sobrante, CA
Atkinson	Julia	Redwood City, CA
Auston	Nora	Oakland, CA
Axelrod	Andrew	San Francisco, CA
Aylward	David	Mountain View, CA
Babst	Christa	W. Hollywood, CA
Baca	Gilda	Dublin, CA
Backus	Jon	Berkeley, CA
Bailey	Brenda	Oakland, CA
Bailey	Kathy	San Francisco, CA
Baker	Kelsey	Novato, CA
Baldwin	Deborah	Oakland, CA
Baldwin	Ryan	San Francisco, CA
Ball	Janet	Saratoga, CA
Ballator	Nada	Redwood City, CA
Bambo	Gregg	Richmond, CA
Bangert	Marybeth	Santa Ana, CA
Bankovitch	Walter	Berkeley, CA
Barany	Bill	San Francisco, CA
Barberini	Bernadette	Alameda, CA
Barger	Michael	Livermore, CA
Barkley	Jim	San Rafael, CA
Barnard	Kathryn	Redwood City, CA
Barnby	Nancy	Menlo Park, CA
Barnes	Linda	Daly City, CA
Barnett	Melanie	Sunnyvale, CA
Barney	Bryan	San Jose, CA
Barney	Lisa	San Jose, CA
Barresi	Bruna	San Francisco, CA

Last Name	First Name	Address
Barrett	Steven	Walnut Creek, CA
Barrington	Vanessa	San Francisco, CA
Bartens	Deborah	Palo Alto, CA
Bartlett	Stephen	San Francisco, CA
Bartlett	Stephen	San Francisco, CA
Bartley	Eddie	San Francisco, CA
Bartoldus	Rainer	Menlo Park, CA
Basile	Matthew	Sunnyvale, CA
Basye	John	Burlingame, CA
Bates	Abigail	Los Angeles, CA
Batten	Candace	Los Angeles, CA
Batten	Carol	Silver Springs, FL
Bauer	Wendy	San Francisco, CA
Baum	Kay	Foster City, CA
Baum	Rhona	Saratoga, CA
Bayer	John	Washougal, WA
Beacom	Maureen	Campbell, CA
Beardsley	Patricia	San Francisco, CA
Bechmann	Elisabeth	Pasadena, MD
Beebe	Adam	San Francisco, CA
Beeck	Nicole	San Jose, CA
Begin	Claudette	Union City, CA
Belef	Michael	Santa Clara, CA
Belknap	Lidia	San Rafael, CA
Bell	Dee	Point Richmond, CA
Bellak	Nina	Bolinas, CA
Belloso-Curiel	Jorge	Richmond, CA
Bellrose	Cheryl	Rio Vista, CA
Belmessieri	Claudia	Newark, CA
Bender	Emily	Fairfax, CA
Benioff	Jeanne	Redwood City, CA
Benjamin	Allison	Redwood City, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Benner	Emily	Berkeley, CA
Bennett	Allen	San Francisco, CA
Bennett	Ian	Berkeley, CA
Benvenutto	Pia	Alameda, CA
Bergsma	Debi	Fontana, CA
Berkheimer	James	Fremont, CA
Berkowitz	Judith	San Francisco, CA
Bertea	Christina	Oakland, CA
Berwaldt	Cathy	Palo Alto, CA
Betts	Ardith	Alameda, CA
Beyaert	Bruce	Richmond, CA
Beyeler	Arturo	San Francisco, CA
Bey-McCurdy	Rozane	Santa Clara, CA
Bier	Aline	Burlingame, CA
Billigmeier	Melanie	Redwood City, CA
Binckley	Charles	Point Richmond, CA
Binkley	Peter	Los Gatos, CA
Black	Michelle	San Francisco, CA
Black	Patricia	San Jose, CA
Blacketer	Linda	San Francisco, CA
Blake	Ann	Alameda, CA
Blalack	Russell	Cupertino, CA
Blesi	Donald	Redwood City, CA
Blevins	Patricia	San Jose, CA
Bloom	Richard	Cotati, CA
Bloxham	Mary	Lafayette, CA
Blum	Jan	San Francisco, CA
Bly	Joe	San Francisco, CA
Blythe	Frances	Dixon, CA
Bochte	Sara	Antioch, CA
Bodiford	Loretta	Soulsbyville, CA
Boeck	Elisabeth	Novato, CA

Last Name	First Name	Address
Boehme	Robert	Santa Clara, CA
Bogart	David	Menlo Park, CA
Boggs	Larry	San Rafael, CA
Bogin	Ronald	El Cerrito, CA
Bogios	Constantine	Walnut Creek, CA
Bogisich	Allison	Newark, CA
Bohn	Willard	Kensington, CA
Bohnert	Allen	Davis, CA
Boken	Eileen	San Francisco, CA
Boland	Donna	San Rafael, CA
Bolesta	Murray	Green Valley, AZ
Bollman	Brian	Windsor, CA
Bolman	Diane	Novato, CA
Bonacci	James	Pleasanton, CA
Bondoc	Jose Ricardo	San Francisco, CA
Bone	Kathleen	San Francisco, CA
Bonilla	Neryza	Newark, CA
Bonvouloir	A	Sunnyvale, CA
Borden	Robert	San Francisco, CA
Borgonovo	Roberta	San Francisco, CA
Bosch	Milton	Napa, CA
Bouboussis	Nayiri	Berkeley, CA
Bouissou	Adrien	Palo Alto, CA
Bouissou	Patricia	Palo Alto, CA
Bouissou	Philippe	Palo Alto, CA
Bourgeault	Lisa	Los Altos, CA
Bournellis	Cynthia	San Jose, CA
Bowles	Carmi	San Francisco, CA
Bowling	Earl	Oakland, CA
Boyce	Nancy	San Rafael, CA
Boyd	Abby	Palo Alto, CA
Boyle	Henry	Berkeley, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Boyle	Robert	Alameda, CA
Bozzo	Patricia	Coulterville, CA
Bradley	Mark	Concord, CA
Bragman	Larry	Fairfax, CA
Brandt	Adrian	Redwood City, CA
Brannan	Thomas	San Francisco, CA
Bratberg-Shastri	Rania	Palo Alto, CA
Bray	Ilona	Oakland, CA
Breckenridge	Bonnie	San Diego, CA
Bremner	Ayden	Richmond, CA
Brengle	Marshall	San Jose, CA
Brennan	Jennifer	Martinez, CA
Brenner	Summer	Berkeley, CA
Brett	Patricia	San Jose, CA
Brewer	Kris	Mill Valley, CA
Briant	Cicily	Martinez, CA
Briggs	Janet	Portola Valley, CA
Brigham	Paul	Fairfax, CA
Broderson	Donald	Crockett, CA
Brommer	Linda	Fremont, CA
Bronson	Wanda	Berkeley, CA
Brooks	Eric	San Francisco, CA
Brooks	Jonica	San Francisco, CA
Brotze	Wayne	Oakland, CA
Brown	Emma	Albany, CA
Brown	Irene	Los Altos, CA
Brown	Julia	Menlo Park, CA
Brown	Kathleen	San Francisco, CA
Brown	Letitia	San Francisco, CA
Brown	Richard	Oakland, CA
Brown	Shepherd	Belmont, CA
Brown	Stephen	Berkeley, CA

Last Name	First Name	Address
Brown	Vera	Redwood City, CA
Browning	Craig	Alameda, CA
Brunetti	Nina	Castro Valley, CA
Brustman	Thomas	Walnut Creek, CA
Buensuceso	Jill	San Jose, CA
Buhowsky	Joseph	San Ramon, CA
Bulger	Paul	Santa Rosa, CA
Bull	Barbara	Berkeley, CA
Bull	Grace	Lodi, CA
Bull	Henrik	Berkeley, CA
Bullock	Ken	Berkeley, CA
Bump	Cathy	San Mateo, CA
Bungarz	Kathleen	Walnut Creek, CA
Burke	Julia	Piedmont, CA
Burns	Kelly	Capitola, CA
Burns	Susan	San Mateo, CA
Burt	Robert	Castro Valley, CA
Bustamante	Maria	Albany, CA
Butler	Marianne	Fairfield, CA
Byas	Barbara	San Lorenzo, CA
Byers	Andrea	Oakland, CA
Cacciatore	Edith	Novato, CA
Cahill	Dorothy	Berkeley, CA
Caidoy	Kristal	Milpitas, CA
Caldwell	Wendel	Berkeley, CA
Calhau	Eugene	American Canyon, CA
Calhoun	Charles	San Francisco, CA
Callahan	Patricia	San Francisco, CA
Calvinperez	Martha	Redwood City, CA
Camaraota	Richard M	Novato, CA
Cameron	Meghan	Napa, CA
Campbell	Mary	Saratoga, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Campbell	Norma	Campbell, CA
Campi	Rosemary	San Jose, CA
Canfield-Lenfest	Monica	Oakland, CA
Canter	M	Tiburon, CA
Cappella	Mike	Redwood City, CA
Cappels	Amy	Redwood City, CA
Cappels	Jimmy	Redwood City, CA
Card	Junko	Exeter, CA
Card-Derr	Geraldine	Exeter, CA
Cargill	Anne	Healdsburg, CA
Carlson	Chad	Cupertino, CA
Carpenter	Benjamin	Oakland, CA
Carpenter	Gary	Pacifica, CA
Carpenter	Victoria	Oakland, CA
Carr	Donna	Encinitas, CA
Carrillo	Dan	San Bruno, CA
Carroux	Charles	Belmont, CA
Carter	Patricia	San Jose, CA
Cass	Mike	Novato, CA
Caswell	Gail	San Francisco, CA
Catskill	Clover	Pinole, CA
Caughman	Erin	San Francisco, CA
Cavanaugh	Alice	Newark, CA
Chalmers Herbst	Nancie	Tuscon, AZ
Chambers	Christopher	Sunnyvale, CA
Chambers	Derrell	Kensington, CA
Chan	Lincy	Fremont, CA
Chan	Peter	Fremont, CA
Chan	Sampson	San Francisco, CA
Chapek	S	San Francisco, CA
Chapman	Justin	Concord, CA
Chartier	Bruno	Oakland, CA

Last Name	First Name	Address
Chase	Kate	Berkeley, CA
Chastain	Peter	San Jose, CA
Chaudoin	Ambre	San Jose, CA
Chavez	Anne	San Leandro, CA
Chen	Allan	Alameda, CA
Cherbowsky	Ariel	Berkeley, CA
Chestnut	Paul	Palo Alto, CA
Childs	Elena	Oakland, CA
Childs	Peter	Rancho Mirage, CA
Chinn	Karen	Cloverdale, CA
Chiu	Albert	Oakland, CA
Chou	Ana	Palo Alto, CA
Chourre	Martin	Fairfax, CA
Chowenhill	C	Redwood City, CA
Ciani	Lisa	Pacific Grove, CA
Clapp	Angela	Oakland, CA
Clark	Alan	Walnut Creek, CA
Clark	Andrew	Palo Alto, CA
Clebsch	Carolyn	Menlo Park, CA
Clements Owens	Carly	Alamo, CA
Clifford	Ruth	San Jose, CA
Club	Sierra	Southern Alameda County Group
Clyde	J	Portland, OR
Clymo	Jerry	Union City, CA
Coates	Portland	San Francisco, CA
Cochran	J.C.	San Francisco, CA
Cockshott	Shiela	Belmont, CA
Cody	William	Benicia, CA
Cohen	Eleanor	Oakland, CA
Cohen	Robert	Berkeley, CA
Colburn	Pat	Alameda, CA
Cole	Maureen	Redwood City, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Cole	Stephen	Oakland, CA
Coleman	Donald	Berkeley, CA
Collins	Evan	Healdsburg, CA
Collins	Lex	Alameda, CA
Columbia	James	Bakersfield, CA
Conner	Kristen	San Pablo, CA
Cooley	Trisha	Santa Clara, CA
Cooluris	Helen	San Francisco, CA
Cooper	Lynne	Santa Cruz, CA
Copp	May Lou	Mountain View, CA
Corah	Janet	San Rafael, CA
Corbelli	Karen	Berkeley, CA
Corbett	A	Oakland, CA
Cordova	Ute	San Francisco, CA
Corey	Norma	Redwood City, CA
Corio	Joe	San Francisco, CA
Cornell	George	Pleasanton, CA
Cornette	J Simon	Santa Clara, CA
Cornwell	Yulia	Fairfax, CA
Correia	Edmund	Los Altos Hills, CA
Cossins	Sue	Burlingame, CA
Coston	Joan	Sunnyvale, CA
Cowan	Leticia	San Jose, CA
Cowans	Heather	Redwood City, CA
Cox	Adele	Redwood City, CA
Crabb	Aric	Castro Valley, CA
Crag	Aaron	San Francisco, CA
Craig	Alex	Toledo, OH
Crane	Mark	Los Angeles, CA
Cresseveur	Jessica	New Albany, IN
Crisafulli	Alexandra	Berkeley, CA
Crocker	Sharon	San Jose, CA

Last Name	First Name	Address
Cross	Melanie	Palo Alto, CA
Crumo	Kasondra	Yuba City, CA
Cruz	Marian	Hollister, CA
Cuciz	Holly	Milpitas, CA
Cwynar	Judith	Oakland, CA
Daebel	Ulrike	San Jose, CA
Dahlen	Beverly	San Francisco, CA
Dalition	Mitch	San Francisco, CA
Dallas	Polly	Carmichael, CA
DalPino	Ida Jane	Corte Madera, CA
Dambowic	Judith	Oakland, CA
Dark	Stephanie	Walnut Creek, CA
Datz	Alison	San Francisco, CA
David	Joseph	San Francisco, CA
Davies	Lynne	San Francisco, CA
Davis	Carla	Corte Madera, CA
Davis	Karen	Redwood City, CA
Davis	Paul	San Jose, CA
Davis	Phapha	Sonoma, CA
Dayton	Susan	Palo Alto, CA
de Forest	John	San Francisco, CA
De Giuli	Marta	Los Altos, CA
De Goff	Victoria	Berkeley, CA
Dean	Willow	San Francisco, CA
DeAngelo	Vic	San Francisco, CA
Dearborn	Lisa	San Jose, CA
Debasitis	Brian	San Jose, CA
Deely	Jacqueline	San Jose, CA
Del Villar	Christina	Newark, CA
Delgado	Lenore	Palo Alto, CA
Delman	Jamie	San Francisco, CA
DeMeo	Edgar	Palo Alto, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Demers	Melanie	Mountain View, CA
Dempsey	Vicki	Palo Alto, CA
Dennis	Gudrun	Gainesville, FL
Denton	Paul	San Mateo, CA
Deppong	Genevieve	Los Altos, CA
DeProspero	DJ	Sunnyvale, CA
Desfor	Paul	Berkeley, CA
Detzer	Christopher	Oakland, CA
Devine	Connie	San Jose, CA
deVries	Joyce	Berkeley, CA
Diamond	Mitchell	Sunnyvale, CA
Diamond	Stephen	South Lake Tahoe, CA
Dickason	Carol	Sonoma, CA
Dickemann	Jeffrey	Richmond, CA
Dickens	Aaron	Spring Valley, CA
DiGiulio	Sandra	Mountain View, CA
Dileanis	Sue	San Jose, CA
Dill	Alana	Alameda, CA
Dillard	Terry	Belmont, CA
DiLuzio	Patricia	San Anselmo, CA
Dimatteo	Richard	San Diego, CA
Dipboye	Loretta	San Francisco, CA
Dippel	Carolyn	Fremont, CA
Docker	Fumiko	San Francisco, CA
Dodge	Dana	Newark, CA
Dodge	Donald	San Francisco, CA
Dolan	Sabrina	San Rafael, CA
Domnitser	Leonid	San Jose, CA
Donaghue	Tabitha	Portland, OR
Donaldson	Christa	Albany, CA
Donaldson	John	Fresno, CA
Donofrio	Tristan	San Jose, CA

Last Name	First Name	Address
Donohue	Gloria	San Francisco, CA
Dorer	Michael	Fremont, CA
Doublet_Weislak	Yvette	Morgan Hill, CA
Dougherty	Dennis	San Rafael, CA
Douglas	Patrick	San Francisco, CA
Dowdy	Michael	Fremont, CA
Dragavon	Linda	San Francisco, CA
Drain	Rick	Alameda, CA
Dresser	David	Berkeley, CA
Drukman_Feldstein	Sophie	San Francisco, CA
Drum	Dave	Berkeley, CA
Drutz	Kimberly	Brisbane, CA
Du Bois	Julie	West Hills, CA
DuBois	Andrew	Alameda, CA
duBois	Marilyn	San Rafael, CA
DuClaud	Monica	San Francisco, CA
Duffin	PK	San Leandro, CA
Dugery	John	Redwood City, CA
Durkin	Samuel	Faifield, CA
Duval	Maranda	Redwood City, CA
DuVal	Trenton	Berkeley, CA
Duvall	Lori	Redwood City, CA
Dyer	Joan	Cupertino, CA
Dykema	Cornelius	Castro Valley, CA
Eastwood	Kerry	Bellingham, WA
Eble	Anita	Berkeley, CA
Eddie	Gloria	Atherton, CA
Eddie	Gloria	Menlo Park, CA
Edgerly-Rooks	Janice	San Jose, CA
Edgren	Margery	Woodside, CA
Edwards	Amy	Santa Clara, CA
Edwards	Bita	Woodacre, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Edwards	Rita	Newark, CA
Edwards	Robert	Richmond, CA
Eielson	Olivia	Oakland, CA
Elder	Lauren	Oakland, CA
Elder	Linda	Tomales, CA
Ellingham	Lewis	San Francisco, CA
Elliott	Ed	Ben Lomond, CA
Elliott	Vince	San Bruno, CA
Ellis	Robert	Oakland, CA
Elsbury	Jennifer	San Francisco, CA
Ely	Ernest	San Francisco, CA
Emerich	Barbara	Los Altos, CA
Engel	Dara	San Francisco, CA
England	Jenny	San Carlos, CA
Erickson	Karen	San Jose, CA
Erickson	Lisa	Watsonville, CA
Erway	Ricky	Redwood City, CA
Esajian	Nancy	Emeryville, CA
Espana	Lizette	San Francisco, CA
Estes	Douglas	San Francisco, CA
Etzion	Tami	Oakland, CA
Euser	Hannah	Sonoma, CA
Evans	Christopher	Berkeley, CA
Evans	Dick	Alameda, CA
Evans	Keisha	East Palo Alto, CA
Evans	Keith	Bolinas, CA
Evans	Lynn	San Jose, CA
Evans	Michael W	Los Angeles, CA
Everett	Rob	El Cerrito, CA
Fabiano	Donna	Forestville, CA
Fabing	Keith	Seattle, WA
Fahlgren	Vivian	Paradise, CA

Last Name	First Name	Address
Falcon	Sylvia	El Cerrito, CA
Falzone	Stephanie	Alameda, CA
Farnum	Benjamin	San Jose, CA
Farrell	Kelleen	Placerville, CA
Farwell	David	San Jose, CA
Fawkes	Nathan	Oakland, CA
Fazeli	Renee	Newark, CA
Fechner	Krista	San Rafael, CA
Feichtl	James	Belmont, CA
Fellner	David	San Leandro, CA
Fenwick	Janet	Los Altos, CA
Fenwick	Valerie	Mountain View, CA
Ferea	Curtis	San Jose, CA
Fernandez	Magaly	San Francisco, CA
Ferreira	Christine	Hayward, CA
Fiandaca	Anastasia	San Francisco, CA
Fierer	Joan	Oakland, CA
Figge	Donald	Fresno, CA
Figueroa	Cynthia	Apple Valley, CA
Filipelli	Deborah	The Sea Ranch, CA
Fillin	Amy	Berkeley, CA
Finegold	Mary	Wallingford, PA
Fink	Christine	Stockton, CA
Fischer	Kayte	Oakland, CA
Fischer	Rani	Sunnyvale, CA
Fisher	Abigail	San Francisco, CA
Fisher	Ellen	El Cerrito, CA
Fisher	Jim	Kensington, CA
Fisk	James	Alameda, CA
Fitzgerald	Jennifer	Redwood City, CA
Fitzgerald	Steven	Oakland, CA
Flannery	Marcia	Oakland, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Fletcher	Jude	Oakland, CA
Flewitt	Claire	Hayward, CA
Flye	S.	San Francisco, CA
Foerster	Grant	Albany, CA
Fogarty	Dan	Santa Rosa, CA
Foord	Miriam	Concord, CA
Ford	Lauren	Venice, CA
Ford	Michael C.	Watsonville, CA
Forkish	Jo	Sunnyvale, CA
Formoso	Jennifer	Oakland, CA
Forrest	Elizabeth	Berkeley, CA
Forrest	Natalie	Hayward, CA
Foti	Mike	San Francisco, CA
Fouche	Suzanne	Redwood City, CA
Fournier	Andrea	Oakland, CA
Francisco	Eddy	Berkeley, CA
Frasieur	Forest	Benicia, CA
Frazer	James	Orinda, CA
Fredrick	Barbara	Palo Alto, CA
Freedman	Paula	San Rafael, CA
Freeman	Lena	Santa Rosa, CA
Freeman	Susan	Saratoga, CA
Freemire	Ron	San Francisco, CA
Freid	Jocelyn	San Rafael, CA
Frey	Rebecca	Santa Rosa, CA
Freytag	John	Benicia, CA
Fricano	Marian	San Jose, CA
Friedman	Leslie	Mountain View, CA
Friedman	Martin B	Berkeley, CA
Friedman	Michael	El Sobrante, CA
Fritsch	Sharon	Chico, CA
Frizzell	Julianne	Palo Alto, CA

Last Name	First Name	Address
Froiland	J	Rohnert Park, CA
Froiland	Karen	Rohnert Park, CA
Fry	Kent	Redwood City, CA
Fryman	Colleen	Fremont, CA
Fryman	Margit	Fremont, CA
Fryman	Megan	Fremont, CA
Fudali	Karen	San Pedro, CA
Fuenzalida	Patricia	Burlingame, CA
Fuller	Robert	San Francisco, CA
G	June	Belmont, CA
Galdo	Querido	Oakland, CA
Gale	Michael	Vallejo, CA
Gallagher	Sarah	Crockett, CA
Gallegos	Geoffrey	San Francisco, CA
Galyen	Nathalie	Kensington, CA
Ganesan	Venkat	Fremont, CA
Gangadharappa	Kiran	Cupertino, CA
Gannon	Patricia	Alameda, CA
Garcia	Rosandrea	Richmond, CA
Garrecht	Jamila	Petaluma, CA
Garrity	Michael	Nevada City, CA
Garsull	J	San Rafael, CA
Garza	Mickey	San Francisco, CA
Gatto	Gina	Castro Valley, CA
Gawthrop	Janet	Oakland, CA
Gearhart	Susan	Fremont, CA
Geis	Tanja	Berkeley, CA
Geller	Phil	Palo Alto, CA
Geluz	Gemma	Fairfield, CA
Gendvil	Derek	Las Vegas, NV
Gentes	Mija	Saratoga, CA
George	Carolyn	Palo Alto, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Georgetti	Dianne	Redwood City, CA
Germain	William	Denver, CO
Gernand	Jim	Redwood City, CA
Gerwein	Joel	Berkeley, CA
Getz	Melissa	El Cerrito, CA
Gewecke	Tom	San Jose, CA
Ghini	Elle	Alameda, CA
Giedt	Jean	Mariposa, CA
Giese-Zimmer	Astrid	Berkeley, CA
Gigliotti	Carol	San Francisco, CA
Gil	Karyn	Sacramento, CA
Gilbert	Tracy	Fremont, CA
Gillis	Craig	Moss Beach, CA
Ginnebaugh	Diana	Belmont, CA
Girma	Yohana	San Leandro, CA
Givens	Louise Blue	Santa Rosa, CA
Gjersand	Tasha	Oakland, CA
Glanville	Mary	Mendocino, CA
Glatfelter-Jones	Ed	Santa Cruz, CA
Glieden	Todd	Castro Valley, CA
Gloe	Janice	Oakland, CA
Glon	Hervé	San Rafael, CA
Goldman	Jane	Half Moon Bay, CA
Golembiewski	Mark	Pacifica, CA
Golinveaux	Joseph	Berkeley, CA
Gong	Cynthia	San Jose, CA
Gonsalves	Carole	San Jose, CA
Gonsman	James	Occidental, CA
Gonzales	Marina	San Jose, CA
Gonzales	Ron	San Jose, CA
Gonzalez	Veronica	San Mateo, CA
Good	N	San Francisco, CA

Last Name	First Name	Address
Goodale	Margaret	Pacifica, CA
Goodyear	David	San Francisco, CA
Gordon	Kit	Los Altos Hills, CA
Gordon	Marc	Sunnyvale, CA
Gordon	Sharon	Newark, CA
Gorringe	Richard	Portland, OR
Gosai	Praneel	San Leandro, CA
Gottesman	Judith	San Rafael, CA
Gower	Douglas	San Francisco, CA
Graly	Thomas	Berkeley, CA
Grant	Jill	Half Moon Bay, CA
Grant	Nancy	Studio City, CA
Granucci	Paula	San Francisco, CA
Gray	David	El Cerrito, CA
Green	Don	Oakland, CA
Green	Ed	Fremont, CA
Greene	Becci	Petaluma, CA
Greenwood	Anne	San Pablo, CA
Greenwood	Eugene	San Jose, CA
Gregory	Probyn	Tujunga, CA
Gregory	Shirley	Moraga, CA
Grey	Dara	Oakland, CA
Grieco	Joe	Fresno, CA
Grieco	Mercy	Fresno, CA
Griffin	Kate	Menlo Park, CA
Griffiths	David	San Mateo, CA
Griffiths	Diane	San Ramon, CA
Grimes	Bruce	Santa Rosa, CA
Grimm	Arlynn	Livermore, CA
Grindle	Russell	Fairfield, CA
Grissom	Sue	San Francisco, CA
Groll	Amber	Marysville, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Groome	Malcolm	Topanga, CA
Gross	Herbert	San Jose, CA
Grossman	Aaron	Mountain View, CA
Grossman	Bonnie	Novato, CA
Grubb	Jacqueline	San Francisco, CA
Grush	Marilyn	Pleasanton, CA
Grush	Melissa	Union City, CA
Gubelman	Joyce	San Francisco, CA
Guilarte	Eduardo	Palo Alto, CA
Gurdin	J. Barry	San Francisco, CA
Gurney	Chris	Oakland, CA
Gutfleisch	Ellen	Sussex, WI
Haas	Steve	Menlo Park, CA
Haberly	Brian	Santa Clara, CA
Hacker	Carolyn M	San Rafael, CA
Haffner	Rick	Cupertino, CA
Hagen	Kai	Thurmont, MD
Hagg	Cigdem	Richmond, CA
Haggard	Alan	San Diego, CA
Hahn	Virginia	Fremont, CA
Haldenwang	Christina	Albany, CA
Halko	Laura	Camas, WA
Hall	Adriana	Pacifica, CA
Hall	Diana	Mountain View, CA
Hall	Jonathan	San Carlos, CA
Hall	Robert	San Francisco, CA
Hall	Sally	Rocklin, CA
Hallgarth	Catherine	Alameda, CA
Halpern	Alicia	Alameda, CA
Hamilton	Alison	Alameda, CA
Hamilton	Christine	Redwood City, CA
Hamilton	Healy	Fairfax, CA

Last Name	First Name	Address
Hamilton	Kerri	San Jose, CA
Hamilton	Lisa	San Francisco, CA
Hamilton	Robert	San Jose, CA
Hammermeister	Lisa	Grananda Hills, CA
Hampton	Susan	El Cerrito, CA
Hanavan	Richard	Los Altos, CA
Hancock	Emily	Berkeley, CA
Handel	Joshua	Mountain View, CA
Hanley	Mark	Oakland, CA
Hannibal	Roberta	Oakland, CA
Hansen	Joseph	San Carlos, CA
Hansen	Lisa	Pleasanton, CA
Hansen	Mary Lynn	Oakland, CA
Hardin	Joseph	Santa Monica, CA
Harkins	Lynne	Cambria, CA
Harpe	Barbara	Lomita, CA
Harper	Renee	San Leandro, CA
Harrell	Roger	Hermosa Beach, CA
Harris	Charles	San Rafael, CA
Harris	Lois	Claremont, CA
Harris	Susan	Oakland, CA
Harris	William	Oakland, CA
Harrison	Jennifer	San Francisco, CA
Hartman	Chris	San Jose, CA
Harvey	Brit	Berkeley, CA
Haseleu	Rebecca	Burlingame, CA
Hasselgren	Joan	San Francisco, CA
Hattisburg	Brenda	Hayward, CA
Hattorimanabe	Dave	San Jose, CA
Hawman	Shael	San Jose, CA
Hayes	Tim	El Cajon, CA
Heckman	Brad	Walnut Creek, CA

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Last Name	First Name	Address
Heinold	Christian	Oakland, CA
Heintz	Michael	Livermore, CA
Hellmuth	Cynthia	Benicia, CA
Hemingway-Proia	GA	Oakland, CA
Henderson	Almalee	Berkeley, CA
Henderson	Kathleen	Hollister, CA
Henley	Charlene	San Jose, CA
Hennen	H	San Mateo, CA
Henry	Devin	Nichols, NY
Hensley	Jon	Roseville, CA
Hepner	Jean	Redwood City, CA
Hermann	Birgit	San Francisco, CA
Hermann	Genevieve	Berkeley, CA
Herndon	Laura	Burbank, CA
Herr	Sarah	Berkeley, CA
Herrera	Ana	San Francisco, CA
Herzog	Jan	Berkeley, CA
Hester	J	Morgan Hill, CA
Hetherington	Kylie	Pinole, CA
Hettenbach	Gerri	San Jose, CA
Hewitt	Barbara	Burlingame, CA
Hibshman	Steven	Foster City, CA
Hickson	Nick	Phoenix, AZ
Hilberman	Dan	Menlo Park, CA
Hildebrandt	Joel	Berkeley, CA
Hilles	Ryan	Redwood City, CA
Hilliard	Llewellyn	Berkeley, CA
Hills	Michelle	Half Moon Bay, CA
Hingel	Richard	San Francisco, CA
Hitchcock	Brian	Union City, CA
Hixon	Ananya	San Anselmo, CA
Ho	Ivy	San Francisco, CA

Last Name	First Name	Address
Hodges	Jeff	Redwood City, CA
Hoemberg	Joanne	Fremont, CA
Hoernschemeyer	Don	Aptos, CA
Hoff	Anne	Martinez, CA
Hoffman	Jeff	Berkeley, CA
Hofland	Freda	Los Altos, CA
Hofrichter	Patricia	Santa Clara, CA
Hogan	Tim	Denver, CO
Holland	Brett	Los Angeles, CA
Hollis	Chris	Kentfield, CA
Hollis-Franklyn	Candace	Tiburon, CA
Holmes	Daniela	Mercede, NY
Holmes	Melissa	Fremont, CA
Holmquist	Kirsten	Sunnyvale, CA
Holt	William	Pleasanton, CA
Holter	Norbert	San Francisco, CA
Holtzclaw	John	San Francisco, CA
Holtzman	Jed	San Francisco, CA
Hooson	Clare	Belmont, CA
Hopkins	David	El Cerrito, CA
Hopkins	Dotty	Napa, CA
Hopkins	Miles	Redwood City, CA
Hopper	Lisa	Oakland, CA
Horwitz	Martin	San Francisco, CA
Howlett	Julia	San Jose, CA
Howlett	Sally	Berkeley, CA
Hrabosky	Dan	San Francisco, CA
Hsu	Suzie	Sunnyvale, CA
Hudak	Lesley	Orinda, CA
Huddleston	Molly	Santa Rosa, CA
Hudson	Andrew	Santa Rosa, CA
Huerta	Sandra	Manhattan, KS

LIST OF COMMENTERS

Last Name	First Name	Address
Huey	Clinton	San Leandro, CA
Hughes	Bettina	Forest Knolls, CA
Hughes	Bonnie	Berkeley, CA
Humphrey	Vernon	San Francisco, CA
Humrich	Gilia	Forestville, CA
Hunter	Shannon	San Jose, CA
Hutton	Edyth	Incline Village, NV
Iimura	Wallace	Cupertino, CA
Illick	Joseph	San Francisco, CA
Ingalls	Libby	San Francisco, CA
Ingenthron	Karen	Oakland, CA
Inguanzo	Segifredo	Newark, CA
Irwin	Yvette	Martinez, CA
Ito	Brad	Redwood City, CA
Ja	Tia	San Jose, CA
Jackman	Jean	Davis, CA
Jacob	Ron	San Jose, CA
Jacobs	Suzanne	Palo Alto, CA
Jacoby	David	Belmont, CA
Jacques	Karen	Sacramento, CA
Jailer	Todd	Berkeley, CA
Jaime	Brenda	San Jose, CA
James	Wilson	Napa, CA
Janakiraman	Anna	Los Altos, CA
Javrotsky	Julie	San Rafael, CA
Jay	Nalani	Hillsborough, CA
Jayapandian	Magesh	San Jose, CA
Jeffery	Brian	Sunnyvale, CA
Jensen	Abby	Santa Rosa, CA
Jensen	Cheriel	Saratoga, CA
Jepsen	Richard	Alameda, CA
Jewett	Nancy	Turlock, CA

Last Name	First Name	Address
Jimenez	Heather	San Francisco, CA
Job	Isaias	Fremont, CA
Johl	Corey	Gilroy, CA
Johnsen	John	Richmond, CA
Johnson	Asali	Cupertino, CA
Johnson	Jeffrey	Castro Valley, CA
Johnson	Linn	Redwood City, CA
Johnson	Peggy	San Rafael, CA
Johnson	Thomas	Woodside, CA
Johnson	Wayne	San Francisco, CA
Johnston	Catherine	El Cerrito, CA
Jones	Jill	Oakland, CA
Jones	Karen	Venice, CA
Jonson	Suzanne	San Francisco, CA
Jordan	Cynthia	San Anselmo, CA
Joscelyn	Miriam	Richmond, CA
Josephson	Stephen	Berkeley, CA
Juarez	Francisco	San Francisco, CA
Jurich	Bernadette	Hayward, CA
K	Charlie	San Francisco, CA
Kahn	Jeffery	Oakland, CA
Kantmann	Hillary	Oakland, CA
Kasuya	Tauny	San Rafael, CA
Katz	Michael	Lafayette, CA
Kaufman	Jon	Alameda, CA
Kayan	Helmut	San Francisco, CA
Kean	Andrea	Berkeley, CA
Keats	Adam	San Francisco, CA
Keay	Andrew	San Francisco, CA
Keefe	Marie	Burbank, CA
Keenan	Margaret	San Jose, CA
Keith	Sheery	Berkeley, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Keller	Emily	Berkeley, CA
Kelley	Mary	San Francisco, CA
Kelly	Colleen	Redwood City, CA
Kelly	Gaye	Alameda, CA
Kelly	Kathy	Larkspur, CA
Kelly	Paul	Davis, CA
Kelsberg	Jane	Antioch, CA
Kennedy	William	Redwood City, CA
Kennelly	Martha	Castro Valley, CA
Kenney	Michael	El Cerrito, CA
Kerhin	Michael	Redwood City, CA
Kerr	Heather	San Jose, CA
Kersten	Tom	Hayward, CA
Kessler	Robert	Oakland, CA
Khufu	Sita	San Anselmo, CA
Kiernan	Barbara	Plumas Lake, CA
Kiernan	Frank	Olivehurst, CA
Kimball	Aubrey	Newark, CA
Kimball	Carrie	Newark, CA
King	Barbara	Los Angeles, CA
King	Jan	Glendora, CA
King	Jean	Livermore, CA
King	Julie	Redwood City, CA
King	Richard	Glendora, CA
King	Susan	Concord, CA
Kiplinger	Allysyn	Oakland, CA
Kirk	John	Redwood City, CA
Kirk	Judith	Redwood City, CA
Kissee	Sherry	Henderson, NV
Kleber	Tracey	Los Angeles, CA
Klein	Anne & Joseph	Benicia, CA
Klein	Karen	San Ramon, CA

Last Name	First Name	Address
Klein	V. Joseph	Benicia, CA
Klingner	Christian	Sunnyvale, CA
Kloberdanz	Ron	South San Francisco, CA
Klosterman	Pete	New York, NY
Klovstad	Kathy	Mill Valley, CA
Knapper	Karl	San Francisco, CA
Knickerbocker	Al	Mountain View, CA
Knight	Linda	Kenwood, CA
Knight	Marla	San Francisco, CA
Knoll	Heather	Sebastopol, CA
Ko-Dial	June	Oakland, CA
Koivisto	Ellen	San Francisco, CA
Kolarik	John	Vallejo, CA
Konno	June	San Mateo, CA
Kopisch	Manfred	Menlo Park, CA
Korelich	Greg	Santa Rosa, CA
Korpos	Michele	Concord, CA
Koss	James	Point Richmond, CA
Kossy	Barbara	Moss Beach, CA
Kracht	Pattie	Redwood City, CA
Kralovansky	Caryn	El Dorado Hills, CA
Kramer	Julie	San Francisco, CA
Kramer-Rolls	Dana	Richmond, CA
Kraus	Janine	Berkeley, CA
Krauss	Sabrina	Santa Rosa, CA
Krauss	Vanessa	Livermore, CA
Krausz	Lisa	Tiburon, CA
Krigbaum	Jessika	Newark, CA
Krikourian	Robert	El Dorado Hills, CA
Krouse	Tom	Novato, CA
Krupinski	K	Los Angeles, CA
Kubota	Ria Tanz	El Sobrante, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Kuelper	Carol	Oakland, CA
Kumar	Hema	Fremont, CA
Kwek	Leng	Fremont, CA
LaBrecque	Cheryl	San Francisco, CA
Lacy	Sharon	Sebastopol, CA
LaFollette	Anita	Petaluma, CA
LaFrance	Roberta	San Leandro, CA
Lagarde	Mark	San Jose, CA
Lahren	Missy	San Francisco, CA
Lamanno	Ray	Danville, CA
Lamarche	Nicole	San Jose, CA
Lamont	Juliet	Berkeley, CA
Land	Martha	Concord, CA
Landau	Beryl	San Francisco, CA
Lane	Apryl	Fremont, CA
Lane	David	Los Gatos, CA
Lane	Rochelle	Sherman Oaks, CA
LaNew	Maryann	San Clemente, CA
Lang	Roger	Concord, CA
Lang	Sue	Concord, CA
Lange	Christopher	San Mateo, CA
Langlitz	Seretha	Alameda, CA
Langmaid	Daniel	Oakland, CA
Lantz	Jamie	San Francisco, CA
Lanum	Glenn	Menlo Park, CA
Lapin	Ellis	Larkspur, CA
Lareau	Audrey	Redwood City, CA
Larsen	Ady	Brisbane, CA
Larsen	Denise	Woodside, CA
Larson	Fran	Pacifica, CA
Larson	Janet	Atherton, CA
Larstein	Francine	Watsonville, CA

Last Name	First Name	Address
Lasahn	J	El Cerrito, CA
Laslett	Lawrence	Sacramento, CA
Latimer	Matthew	Union City, CA
LaTourette	Jeff	San Jose, CA
LaTourette	Peter	Los Altos, CA
Lauritsen	Dana	San Jose, CA
Lavalli	Timothy	Berkeley, CA
Lawson	Jennifer	Corte Madera, CA
Le Doux	Linaia	Newark, CA
Leaf	Peter	San Francisco, CA
Leahy	Andrew	San Francisco, CA
Leddy	Matthew	Redwood City, CA
Lee	Ed	Santa Clara, CA
Lee	James	Orinda, CA
Lee	Phillip	Redwood City, CA
Leeder	Cynthia	San Jose, CA
Legaroff	Kyra	Richmond, CA
Leikam	Bill	Palo Alto, CA
Leinwand	Allen	San Jose, CA
Leiva	E	Concord, CA
LeMay	Mitch	San Francisco, CA
Lemons	Robert	San Francisco, CA
Lent	Kelli	Alameda, CA
Lenz	Stinson	Berkeley, CA
Leonelli	Lorraine	Sunnyvale, CA
Lester	George	San Pablo, CA
Leung	Lily	Alameda, CA
Levendos	Mary	San Jose, CA
Levensaler	Kurt	Danville, CA
Levine	Noemi	Berkeley, CA
Lewis	Ashley	San Francisco, CA
Lewis	Cheryl	San Francisco, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Lewis	Don	Richmond, CA
Lewis	Donna	Van Nuys, CA
Lewis	Katherine	Walnut Creek, CA
Lidicker	Naomi	Kensington, CA
Lieb	James	Santa Cruz, CA
Lillie	Krist	Mountain View, CA
Lim	Ken	Saratoga, CA
Lim	Olivia	Fremont, CA
Lim	Sarah	Hayward, CA
Lin	Jessie	San Jose, CA
Lintott	David	San Mateo, CA
Lipkind	Lawrence	San Francisco, CA
Lipman	Kate	Fremont, CA
Lippert	Amy	Martinez, CA
Lish	Christopher	Olema, CA
Little	James	Palo Alto, CA
Little	Timothy	Pleasanton, CA
Litzinger	Faye	Oakland, CA
Liu	Melanie	Palo Alto, CA
Livingston	John	Redding, CA
Livingstone	Betsy	Forestville, CA
Locks	Renee	Mill Valley, CA
Loewer	Vera	Pacifica, CA
Longley	Toni	Eureka, CA
Lopez	Ruben	Newark, CA
Lorraine	Hilary	Kensington, CA
Lotz	Elizabeth	Santa Rosa, CA
Louie	Denise	San Francisco, CA
Louie	Vincent	San Francisco, CA
Lowry	Marsha	El Sobrante, CA
Lubitz	Iris	Mountain View, CA
Lucas	Janie	San Francisco, CA

Last Name	First Name	Address
Luckman	Paul	Oakland, CA
Lugo	Joseph	Gilroy, CA
Lukas	Robert	Fremont, CA
Lukaszewski	Aggie	Oakland, CA
Lumpkin	Kirk	El Cerrito, CA
Lumpkin	Susan	Fremont, CA
Luther	Carol	San Anselmo, CA
Lutman	Robert	San Jose, CA
M.D.	Warren	Mill Valley, CA
MacDermott	Gordy	San Rafael, CA
Mack	Amelia	Berkeley, CA
Mackay	Leslie	San Francisco, CA
MacKenzie	Michelle	San Carlos, CA
MacKenzie	Susan	Kentfield, CA
Mackey	Claudia	Stockton, CA
Mackey	Suzanne	San Rafael, CA
Mackowski	Marty	Redwood City, CA
Madding	jess	San Francisco, CA
Maddison	Ian	San Francisco, CA
Maghakian	Mike	Hercules, CA
Magill	Catherine	Palo Alto, CA
Maher	Mary Lou	Antioch, CA
Maldonado	Gloria Linda	Redwood City, CA
Malmuth	Sonja	Santa Ynez, CA
Manrique	Sonia	Berkeley, CA
Manske	Kent	Redwood City, CA
Manwaring	Pamela	Fairfax, CA
Mara	Leo	Livermore, CA
Marcellini	Marcia	Lafayette, CA
Marks	Jim	San Francisco, CA
Marks	Richard B.	Watsonville, CA
Markus	Mary	Garden Grove, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Marlin	Anita	Belmont, CA
Marsh	Sherry	Oceanside, CA
Marsh	Theresa	San Mateo, CA
Marsullo	Lenore	Newark, CA
Martin	Ben	Mountain View, CA
Martin	Drew	Lake Worth, FL
Martin	Mary	Mountain View, CA
Martin	Susan	Oakland, CA
Martin	Susan	Oakland, CA
Martin	William	Cupertino, CA
Martinez	Casey	San Francisco, CA
Masek	M	Danville, CA
Maselbas	June	Larkspur, CA
Maslin	Cheryl	Alameda, CA
Mason	Ann	Palo Alto, CA
Matlock	KL	San Jose, CA
Matthews	Laurie	Hayward, CA
Matz	Tamara	Los Angeles, CA
May	Andrew	San Jose, CA
Mayhew	Sarah	Davis, CA
mc Guire	William	San Francisco, CA
McBirney	John	Los Altos, CA
McBirney	Madeline	Los Altos, CA
McCallister	Janet	Paradise, CA
McCallister	Linda	Vacaville, CA
McCarthy	Setsurin	San Francisco, CA
McCarthy	Sharon	San Rafael, CA
McCarty	Ingrid	San Mateo, CA
McComas	Barney	Berkeley, CA
McConachie	Wendy	La Honda, CA
McCullough	Denali	San Jose, CA
McDermott	Paul	Los Angeles, CA

Last Name	First Name	Address
McDonald	Kathryn	Fremont, CA
McDonough	Rebecca	Menlo Park, CA
McDowell	Judi	Fremont, CA
McFadden	Clara	El Cerrito, CA
McFarland	James	Redwood City, CA
McFarlane	Sadie	San Francisco, CA
McGowan	Michael	Orinda, CA
McGowan	Richard	San Jose, CA
McHenry	Steve	San Jose, CA
McIntyre	Rene	San Francisco, CA
McKay	Anne	Brooklyn, NY
Mckenna	Caephren	Piedmont, CA
McKinney	Mary	Concord, CA
McKinsey	Garry	Redwood City, CA
McMullen	Marilyn	Vallejo, CA
McRae	Carol	Fairfax, CA
Means	Robert	Milpitas, CA
Medal	Tomasita	San Francisco, CA
Mehrkens	Patricia	San Jose, CA
Mehta	Purvi	Belmont, CA
Melchior	Karen	Los Altos, CA
Mello	Annette	Boulder Creek, CA
Mellon	Ronald	El Cerrito, CA
Melnick	Andrew	Los Gatos, CA
Menasco	Jamie	Martinez, CA
Mendelson	Debbie	Woodside, CA
Mendez	David	Milpitas, CA
Mendez	Molly	Oakley, CA
Merrill	Rodney	Berkeley, CA
Mestas	Rebecca	Newark, CA
Meyer	Alexander	Redwood City, CA
Meza	Joel	San Francisco, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Mezai	Lisa	Mountain View, CA
Michael	Joseph	Berkeley, CA
Middleton	Jim	Sacramento, CA
Mikich	Tripp	Diamond Springs, CA
Mikkelsen	Erik	Santa Cruz, CA
Mikulic	Barbara	San Mateo, CA
Miles	Janice	Redwood City, CA
Miljanich	George	Redwood City, CA
Miller	Alan	El Cerrito, CA
Miller	Charly	Whittier, CA
Miller	Daniel	Fremont, CA
Miller	Joshua	Alameda, CA
Miller	Julie	San Francisco, CA
Miller	Stephanie	Santa Rosa, CA
Milligan	Susan	Concord, CA
Mills	Melissa	Menlo Park, CA
Mills	Russell	San Francisco, CA
Milrod	Lara-Miya	San Jose, CA
Mimeau	Patricia	San Francisco, CA
Mischel	David	San Francisco, CA
Mitchell	William	Oakland, CA
Mitcheltree	Cody	San Francisco, CA
Mitsuda	Michael	Fremont, CA
Mixon	Thea	Alameda, CA
Mock	Carol	Fremont, CA
Moldovan	Lori	Miami, FL
Molina	Ron	San Francisco, CA
Monroe	Dianne	Santa Rosa, CA
Monroe	James	Concord, CA
Monson	Mike	El Cerrito, CA
Montapert	Anthony	Ventura, CA
Mont-Eton	Elaine	San Rafael, CA

Last Name	First Name	Address
Montgomery	Kris	San Rafael, CA
Montgomery	Melodye	Alameda, CA
Montoya	Lynn	Redwood, CA
Moore	Andrea	San Francisco, CA
Moore	Elizabeth	Sunnyvale, CA
Moose	Mary Etta	San Francisco, CA
Moresi	Mary	Oakland, CA
Moretti	Vicente	Mountain View, CA
Morgan	Beverly	Oakland, CA
Morgan	Jill	Menlo Park, CA
Morris	Cynthia	Fremont, CA
Morris	Keith	Los Angeles, CA
Morris	Megan	Sacramento, CA
Morrison	Anastasia	Redwood City, CA
Morrison	Fred	Hayward, CA
Moser	Anne	Menlo Park, CA
Moser	Kaitlyn	Newark, CA
Mueller	Gretchen	San Francisco, CA
Mugglestone	Lindsay	Berkeley, CA
Muldaur	Maria	Mill Valley, CA
Mullan	John	Stockton, CA
Mulvey	Lori	Comstock Park, MI
Munoz	Angela	Oakland, CA
Munoz	Jeanne	San Francisco, CA
Murphy	Denise	Watsonville, CA
Murray	Gwyn	Menlo Park, CA
Murray	Hayden	San Francisco, CA
Murray	Margaret	Pinole, CA
Myers	Jean	Gilroy, CA
Mykytyn	Anita	Danville, CA
Nadir	Kelly	Los Altos, CA
Naifeh	Karen	San Mateo, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Najia	Rose	Los Gatos, CA
Narciso	Elizabeth	Newark, CA
Nascimento	Antoinette	Alameda, CA
Naumann	Robert	El Cerrito, CA
Naylor	Katharine	
Neklason	Karen	Fremont, CA
Nelson	Bill	Santa Rosa, CA
Nelson	Dency	Hermosa Beach, CA
Nelson	Michael	Redwood City, CA
Nelson	Scott	Bethel Island, CA
Nelson	Tom	Orinda, CA
Nemechek	Krista	Piedmont, CA
Newman	Roberta E.	Mill Valley, CA
Newsham	Brad	Oakland, CA
Newton	Alice	Menlo Park, CA
Nicholas	Julie	Mill Valley, CA
Nickle	Donna	Fremont, CA
Nielsen	Randi	Richmond, CA
Nill-Snow	Kristine	San Leandro, CA
Nohmberg	Adelina	Sunnyvale, CA
Nolan	Fiona	San Rafael, CA
Nolan	Heather	Mill Valley, CA
Nolan	Katherine	Cupertino, CA
Noori	Laila	San Jose, CA
Norcz	Judith	Redwood City, CA
Noriega	Tessa	San Carlos, CA
Norr	Carolyn	Oakland, CA
Norwood	Darlene	Fairfield, CA
Norwood	Katherine	Redwood City, CA
Nothern	Marjorie	Danville, CA
Novak	Lindy	Orinda, CA
Obrien	Cecille	San Jose, CA

Last Name	First Name	Address
O'Brien	Bettina	Santa Rosa, CA
Ochoa	Victor	Oakland, CA
Oda	John	San Francisco, CA
Ogle	Annie	San Francisco, CA
O'Hare	Kevin	Oakland, CA
Oldershaw	Susan	Oakland, CA
Olson	Carol	Mountain View, CA
Olson	D	Palo Alto, CA
Olson	James	Foster City, CA
Olson	M	Sunnyvale, CA
Olson	Sarah	Forestville, CA
O'Meara Dietrich	Chris	San Jose, CA
Omodt	Winnie	San Bruno, CA
Ondrasek	Dan	San Jose, CA
Opperman	Erin	Sebastopol, CA
O'Reilly	Brain	Los Angeles, CA
Orellana	Marisa	Burlingame, CA
Orlove	Hannah	New York, NY
Oroz	Michelle	Morgan Hill, CA
Orozco	Angela	San Francisco, CA
Osborn	Oliver	Corte Madera, CA
Osborn-Gagen	Vicki	Redwood City, CA
Oseguera	Laura	Redwood City, CA
Oser	Wendy	Berkeley, CA
Ostwald	David	Portola Valley, CA
Owen	Linda	Santa Monica, CA
Owens	Lois	Foster City, CA
Padelford	Grace	Los Angeles, CA
Padilla	Andrew	San Francisco, CA
Padmanabhan	Urmila	Fremont, CA
Pagano	Adriana	San Francisco, CA
Page	Charles	Novato, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Page	Garril	San Anselmo, CA
Pajuelo	Melissa	Newark, CA
Palacio	Diane	San Francisco, CA
Panigada	Allison	Hayward, CA
Pardini	Jennifer	Fremont, CA
Parisi	Nicole	San Francisco, CA
Park	Richard	Novato, CA
Park	Robert	Sunnyvale, CA
Parker	Nancy	Berkeley, CA
Parmeley	Tish	Hood River, OR
Parrent	David	Redwood City, CA
Parris	Ann	San Francisco, CA
Parrish	Joan	Santa Cruz, CA
Parsons	Amy	Redwood City, CA
Parzen	Elinor	Oakland, CA
Parzygnot	Jeanne	San Jose, CA
Paski	Brandon	Redwood City, CA
Patenaude	Richard	Hayward, CA
Patrick	Cyndy	Fremont, CA
Patterson	Kim	Benicia, CA
Patterson	Virgil	Newark, CA
Patton	Carol	Kensington, CA
Patton	Lois	Larkspur, CA
Peakes	William	Hayward, CA
Pearson	Enid	Palo Alto, CA
Pedroni	Aaron	El Cerrito, CA
Pedroza	Donna	Alameda, CA
Pell	Jill	Millbrae, CA
Pelton	Janet	Grass Valley, CA
Perkins	Robert	Newark, CA
Perlman	Janet	Berkeley, CA
Perron	Maureen	Half Moon Bay, CA

Last Name	First Name	Address
Perry	Cyrle	Orinda, CA
Perry	David	Palo Alto, CA
Perry	David	San Francisco, CA
Pesenson	Igor	Berkeley, CA
Peters	Richard	Sonoma, CA
Petersen	John	Oak View, CA
Peterson	Ellen	Berkeley, CA
Peterson	Michael	San Francisco, CA
Peterson	Nancy	Scotts Valley, CA
Petranto	Nancy	Novato, CA
Pettersson	Bernt	Lafayette, CA
Pham	Tee	San Jose, CA
Pharazyn	Jonathan	Mountain View, CA
Phelps	Walter	Vacaville, CA
Phillips Michel	Barbara	Danville, CA
Phipps	Nicole	San Francisco, CA
Pierce	Arden	Palo Alto, CA
Pierce	Morgan	Sausalito, CA
Pillsbury	Lesley	Petaluma, CA
Piotrowsky	Nancy	Vallejo, CA
Pitts	Jeanne	Redwood City, CA
Pleva	Anthony	Campbell, CA
Polchow	Greg	San Francisco, CA
Polick	Melissa	Mill Valley, CA
Polk	Gabe	San Francisco, CA
Pomies	Jackie	San Francisco, CA
Potter	Bridgette	San Francisco, CA
Potts	Catherine	San Jose, CA
Pound	Laura	Mariposa, CA
Powell	Jolena	Sonoma, CA
Powers	Matt	Hayward, CA
Prak	Karen	Menlo Park, CA

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Last Name	First Name	Address
Preisser	Jonelle	Palo Alto, CA
Prendergast	Angela	Danville, CA
Price	C	Palo Alto, CA
Price	Tammy	Concord, CA
Prihode	Sarah	Newark, CA
Primrose	Candace	Sacramento, CA
Pringle	M	San Francisco, CA
Proia	Martina	Oakland, CA
Pryor	Lois	Alameda, CA
Przybylowicz	Donna	Berkeley, CA
Puaoi	Richard	Novato, CA
Purwar	Anuj	Fremont, CA
Quadrini	Philip	Sausalito, CA
Quadros	John	Fremont, CA
Quenelle	Leah	Morgan Hill, CA
R	Miranda	Novato, CA
Raag	Reeta	Orinda, CA
Rahman	Sabera	San Jose, CA
Raines	Eric	Fremont, CA
Rainey	Terryll	San Francisco, CA
Raman	Suresh	Santa Clara, CA
Ramtrom	Eric	Redding, CA
Rand	Christopher	Richmond, CA
Randolph	Katherine	Mill Valley, CA
Rasler	Ken	Fremont, CA
Rausis	Maria	Mountain View, CA
Ray	Carol	Fontana, CA
Ray	Rebecca	San Jose, CA
Ray	Rita	Mountain View, CA
Rayhill	Kevin	Berkeley, CA
Raymond	Sheila	Los Gatos, CA
Rayton	Linden	Berkeley, CA

Last Name	First Name	Address
Rea	Paul	Newark, CA
Read	Michael	Burlingame, CA
Reback	Mark	Los Angeles, CA
Recine	Barb	Mountain View, CA
Redden	Nancy	San Leandro, CA
Redish	Maryellen	Palm Springs, CA
Redwitz	Jenny	Oakland, CA
Reed	Robert	Lake Elsinore, CA
Reeder	Joyce	San Carlos, CA
Reel	Joseph	Pacific Grove, CA
Regalado	Geoff	Burbank, CA
Reid	Jena	Temecula, CA
Reid	Rebecca	Fresno, CA
Reinholz	Donald	Union City, CA
Reis	Alvaro	Santa Clara, CA
Reom	Carol	Piedmont, CA
Reyering	Nancy	Woodside, CA
Reynolds	Judy	San Jose, CA
Reynolds	Robert	Fremont, CA
Reynolds	Sharon	Napa, CA
Rhoades	Michael	San Jose, CA
Riccitiello	Kim	San Jose, CA
Rice	Jay	Novato, CA
Richaardson	Katherine	Pleasant Hill, CA
Richman	Dan	San Francisco, CA
Rickard	Rick	Oakland, CA
Rickers	Frederick	Lincoln, NE
Rickman	Roz	Castro Valley, CA
Ridder	Lynette	Concord, CA
Riech	Laurie	Orinda, CA
Riehart	Dale	San Francisco, CA
Rinaldo	Arlene	San Jose, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Rinne	Freda	San Francisco, CA
Risseeuw	William	Redwood City, CA
Ritter	Rebecca	Healdsburg, CA
Rivera	Joe	Redwood City, CA
Rivera	Mara	San Francisco, CA
Roat	Jess	Burlingame, CA
Robbins	John	Greenbrae, CA
Roberts	Katherine	San Francisco, CA
Robertson	Lynne	Mill Valley, CA
Robie	Lisa	San Lorenzo, CA
Robinson	Elaine	San Jose, CA
Robinson	Julianna	Venice, CA
Robinson	Larry	San Francisco, CA
Robinson	Merrily	Redwood City, CA
Robinson	Rebecca	San Pablo, CA
Robinson	Richard	Manhattan Beach, CA
Robles	Sidney	Napa, CA
Roby	Marsha	Greenville, CA
Rocha	Candace	Los Angeles, CA
Rocha	Candy	Los Angeles, CA
Roche	Carol	Napa, CA
Rocke	Janice	Monterey, CA
Rodgers	Mary	Menlo Park, CA
Rodrigues	Amanda	Manteca, CA
Rodrigues	S	Fremont, CA
Rodriguez	Anna	Newark, CA
Rodriguez	Magdalena	Alta Loma, CA
Roe	Barbara	Alameda, CA
Roe	Geraldine	Palo Alto, CA
Rogers	Karen	Lancaster, CA
Rogers	Suzanne	Burlingame, CA
Rohlfs	Kelly	Mountain View, CA

Last Name	First Name	Address
Rollison	Sheri	Novato, CA
Romero	Jana	Oakland, CA
Roome	Benjamin	San Francisco, CA
Rosas	Greg	Castro Valley, CA
Rose	Beth	Novato, CA
Rose	Michael	Oakland, CA
Rose	Nancy	Oakland, CA
Rosenberg	Bob	Kentfield, CA
Rosenbloom	Margaret	Palo Alto, CA
Rosenblum	Stephen	Palo Alto, CA
Rosenfeld	Henry	Riverside, CA
Rosenfeld	Zachary	Riverside, CA
Ross	Sally	San Francisco, CA
Row	Margaret	Palo Alto, CA
Royer	Allen	San Jose, CA
Rubel	Scott	Los Angeles, CA
Ruff	Bryan	San Jose, CA
Ruffolo	Marc	San Francisco, CA
Rufo	Maggie	Novato, CA
Ruiz	Linda	Chesapeake, VA
Rummel	Thomas	Los Angeles, CA
Runyan	Renee	Fremont, CA
Ruppel	Kathleen	Stanford, CA
Rusay	Suzanne	Lafayette, CA
Rush	Brian	Redwood City, CA
Rusiniak	Karen	Berkeley, CA
Ruskin	Susan	Mill Valley, CA
Russell	Kat	Mill Valley, CA
Russell	Steven	Redwood City, CA
Russell	Susan	El Cerrito, CA
Ruth	Lucymarie	Richmond, CA
Rutherdale	Jay	Sacramento, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Ryan	Paul	Napa, CA
Ryon	Richard	Livermore, CA
Sailor	Dan	Redwood City, CA
Saiu	Joanne	San Jose, CA
Salama	Moktar	Fountain Valley, CA
Salazar	Lisa	Foster City, CA
Salcido	John	Belmont, CA
Sallee	Lara	Alameda, CA
Salyers	Helen	Mill Valley, CA
Sames	John	San Rafael, CA
Samson	Alyson	Fairfield, CA
Samson	Lars	San Jose, CA
Samuels	Michele	Mill Valley, CA
Samuels	Mike	San Rafael, CA
Sanchez	Jessica	Fremont, CA
Sanchez	Ralph	Santa Cruz, CA
Sanchez	Rebecca	Portlandville, NY
Sanderell	Richard	San Francisco, CA
Sanders	Brenda	Danville, CA
Sansone	V R	Vallejo, CA
Santos	Crystina	Fremont, CA
Sarris	Dorian	Craftsbury, VT
Sasaoka	Julie	Concord, CA
Savage	Patricia	Mammoth Lakes, CA
Sawicki	Benjamin	Emeryville, CA
Schader	Kevin	Walnut Creek, CA
Schafer	Judy	Greenbrae, CA
Schamach	Michelle	Petaluma, CA
Schardt	Lynn	Garden Valley, CA
Scheifler	Donna	Redwood City, CA
Schiffman	Lauren	Richmond, CA
Schildgen	Bob	Berkeley, CA

Last Name	First Name	Address
Schink	Margaret	Portola Valley, CA
Schlansker	Jana	Los Altos, CA
Schlecker	Rose	South San Francisco, CA
Schmeder	Nadya	Napa, CA
Schmidt	Debbie	Alameda, CA
Schnabel	Erik	San Francisco, CA
Schneider	Mary	Pleasanton, CA
Schoene	William	Santa Monica, CA
Schoenstein	Andrew	Half Moon Bay, CA
Schongut	Emanuel	San Francisco, CA
Schram	Theodore	Redwood City, CA
Schuler	Jeanette	San Leandro, CA
Schulz	Jean	Santa Rosa, CA
Schupp	Norma	Sacramento, CA
Schwartz	Jake	Petaluma, CA
Schwindt	Vila	Oakland, CA
Scott	Greg	Newark, CA
Scott	Sally	Kentfield, CA
Scott	Susanne	Sequim, WA
Scullion	Clive	Oakland, CA
Sea	Kevin	Claremont, CA
Seaborg	Dave	Walnut Creek, CA
Seeley	Marsha	San Francisco, CA
Selan	Ruth	San Jose, CA
Sellge	Hans	Redwood City, CA
Settel	Elizabeth	Mill Valley, CA
Sham	Rjaat	Palo Alto, CA
Shane	Jeremy	Richmond, VA
Shankle	Susan	San Mateo, CA
Sharpe	Regina	San Jose, CA
Shea	Monette	Newark, CA
Sheinfeld	Susan	San Francisco, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Shek	Mei-Ling	Sunnyvale, CA
Sheldon	Sher	Novato, CA
Shenk	Mary	Menlo Park, CA
Sherman	Richard	Berkeley, CA
Sherwood	Marta	Gilroy, CA
Sherzer	Teresa	San Francisco, CA
Shiba	Laurel	San Francisco, CA
Shoemaker	Victoria	Oakland, CA
Shubert	Lois	Camarillo, CA
Shuman	Carolyn	San Francisco, CA
Shuman	Derek	Berkeley, CA
Silver	Jon	Portola Valley, CA
Silverman	Marc	Los Angeles, CA
Simon	Philip	San Rafael, CA
Simons	Lori	Fremont, CA
Simons	Sandra	Richmond, CA
Simpson	Frank	San Mateo, CA
Sims	Katherine	San Leandro, CA
Singer	D	Oakland, CA
Sisneros	Susan	Livermore, CA
Sivesind	Torunn	Lafayette, CA
Skeels	Wade	Middletown, CA
Skoczek	Christianna	Kittery Point, ME
Sloan	Robin	Novato, CA
Smalley	Brian	Oakland, CA
Smith	Ann	Pleasant Hill, CA
Smith	Benita	Berkeley, CA
Smith	Charles	San Jose, CA
Smith	Clark	Berkeley, CA
Smith	Don	Livermore, CA
Smith	Elinor	Fremont, CA
Smith	Gaye	Los Angeles, CA

Last Name	First Name	Address
Smith	Gwyneth	Escondido, CA
Smith	Jill	Alviso, CA
Smith	Judith	Oakland, CA
Smith	Karen	Berkeley, CA
Smith	Leslie	Oakland, CA
Smith	Lynn	Rohnert Park, CA
Smith	Marilynn	San Jose, CA
Smith	RL	Redwood City, CA
Smith	Scott	Berkeley, CA
Smith	Winnafred	Fremont, CA
Smythe	Fiona	San Francisco, CA
Snyder	Todd	San Francisco, CA
Sobel	Ceevah	Menlo Park, CA
Solomon	Shelby	Piedmont, CA
Somers	John	Sonoma, CA
SongerNelson	Liesl	Orinda, CA
Soong	Daniel	Minneapolis, MN
Soto	Carol	San Francisco, CA
Sowell	Catherine	Santa Rosa, CA
Sowisdrzal	John	Newark, CA
Spence	Kathryn	San Francisco, CA
Spencer	Gayle	Menlo Park, CA
Spencer	Jeremy	Pacifica, CA
Spickler	Julie	Menlo Park, CA
Spillane	Nicki	Kensington, CA
Spindler	Rebecca	Union City, CA
Spittler	Nancy	San Lorenzo, CA
Spitzer	Daniel	Berkeley, CA
Spivak	Lawrence	San Jose, CA
Springmeyer	Erin	Santa Clara, CA
St. John	Rick	San Francisco, CA
St. Louis	Emily	Milpitas, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Stanojevic	Erica	Santa Cruz, CA
States	Jack	Oakland, CA
Stebbings	Barrie	Stinson Beach, CA
Steele	Lisa	Roseville, CA
Steelman	Brent	Redwood City, CA
Steelman	Katryn	Redwood City, CA
Steere	John	Berkeley, CA
Steffen	Eric	Richmond, CA
Stein	Jasper	Newark, CA
Steinhart	Peter	Palo Alto, CA
Stelzer	Samantha	San Mateo, CA
Stephenson	Bryan	Alviso, CA
Steponaitis	John	San Francisco, CA
Stern	Robert	San Rafael, CA
Stern	Robert	San Rafael, CA
Sternberg	Laura	San Jose, CA
Stevenson	Douglas	Fremont, CA
Stevick	Susan	Atherton, CA
Stewart	Christine	Escondido, CA
Stewart	John	Redway, CA
Stowell	Robert	Redwood City, CA
Strailey	Faith	Quincy, CA
Strand	Brenda	Fremont, CA
Stratman	Gerald	Glen Ellen, CA
Straub	Carolyn	San Jose, CA
Strauss-White	Terry	Mill Valley, CA
Stuart	Arlene	Hayward, CA
Sturges	Dale	San Francisco, CA
Sullivan	Giselle	Simi Valley, CA
Sultar	Joanne	Berkeley, CA
Sundell	Carol	San Francisco, CA
Surdam	Herschel	San Mateo, CA

Last Name	First Name	Address
Surovik	Margo	Davis, CA
Susman	Neilda	Portola Valley, CA
Sutherland	Mark	Gazelle, CA
Swanson	Margaret	Sunnyvale, CA
Sweeny	Joy	Mountain View, CA
Sweet	L	Vallejo, CA
Swenning	C	Richmond, CA
Swiss	Sue	Hopatcong, NJ
Swoiskin	Mark	Mill Valley, CA
Syrett	Edward	Menlo Park, CA
Syrett	Suzan	Menlo Park, CA
Szymanski	Ron	Hathaway Pines, CA
Szymanski	Val	El Sobrante, CA
Taggart	Carol	Menlo Park, CA
Tamm	Ryan	Redwood City, CA
Tamm	Sharon Ryals	Berkeley, CA
Tang	Henry	Fremont, CA
Tanke	Carrie	Moorpark, CA
Tapley	Dennis	Sebastopol, CA
Tarras	Gail	Mill Valley, CA
Tash	Deborah	San Francisco, CA
Taylor	Deborah	San Jose, CA
Templeton	Sara	San Francisco, CA
Teply	Michael	Chico, CA
Ternahan	Patricia	Oakland, CA
Terranova	N	Redwood City, CA
Thein	Van	Emerald Hills, CA
Theis	Mary	Los Altos, CA
Thibodeau	Barbara	Pacifica, CA
Thies	John	San Rafael, CA
Thole	Timothy	San Francisco, CA
Thomas	Joe	Newark, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Thomas	Karen	Oakland, CA
Thomas	Michelle	Highlands Ranch, CO
Thomas	Vicki	Oakland, CA
Thomason	Anita	Culver City, CA
Thompson	Dana	Los Gatos, CA
Thompson	Lawrence	Livermore, CA
Thompson	Stephanie	Novato, CA
Thompson	Susan	East Falmouth, MA
Thompson	Teagan	San Francisco, CA
Thomson	Rebecca	San Mateo, CA
Thresher	Catherine	San Francisco, CA
Thwaite	Whitney	Menlo Park, CA
Tilden	Margaret	San Rafael, CA
Tinney	Douglas	Fremont, CA
Toews	Margret	Menlo Park, CA
Tolbert	Tim	Los Gatos, CA
Tom	Julia	Berkeley, CA
Tomczyszyn	Michael	San Francisco, CA
Toner	Sheila	Auburn, CA
Torres	Maegan Leslie	Redwood City, CA
Townsend	Alan	San Francisco, CA
Travis	Annabelle	El Sobrante, CA
Trivisonno	Susan	San Jose, CA
Troisi	Mary	Redwood City, CA
Trueblood	Sharon	San Jose, CA
Truitt	Roberta	Mill Valley, CA
Truro	Heather	Pleasanton, CA
Tsia	Kristen	Half Moon Bay, CA
Tu	LeBinh	South San Francisco, CA
Tuazon	Monica	Union City, CA
Turner	Cheryl	Sunnyvale, CA
Turner	Tom	Los Altos Hills, CA

Last Name	First Name	Address
Twigg	Brian	Newark, CA
Twigg	Janet	Newark, CA
Uchida	Greydon	San Leandro, CA
Ucovich	Claire	San Francisco, CA
Udovch	Shelagh	Piedmont, CA
Underwodd	Ashley	Oakley, CA
Ungar	Ruth	Oakland, CA
Uselton	Elizabeth	Fremont, CA
Valencia	Pamela	South San Francisco, CA
Valencia	Richard	Pasadena, CA
Valkova	Jitka	San Francisco, CA
Van den Bogaerde	Jack	Oakland, CA
Vanderleelie	Roy	Joshua Tree, CA
VanTassell	Robin	San Rafael, CA
Varon	Martin	Mountain View, CA
Vasquez	Henry James	Colton, CA
Vaught	Jasmine	Capitola, CA
Verpeet	Karen	Oakland, CA
Vetrano	Pamela	Sonoma, CA
Vickers	Margaret	San Francisco, CA
Vie	Phoenix	Berkeley, CA
Viken	Barbara	San Francisco, CA
Vincent	David	Richmond, CA
Vogel	Nathan	City of your first elemantary school?
Vogel	Randy	Oakland, CA
Volk	S	Castro Valley, CA
Volpi	Cynthia	Oakland, CA
Von Feldt	Alexandra	Portola Valley, CA
von Sacher-Masoch	Michael	Everett, WA
Wachter	Andrea	San Francisco, CA
Waetermans	Hygi	Windsor, CA
Waggoner	Gene	Pinon Hills, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Waldhauer	Ruth	La Honda, CA
Walker	R.A.	Berkeley, CA
Wallace	David	San Francisco, CA
Wallace	Ronald	Orinda, CA
Walter	Marilyn	Portola Valley, CA
Wandro	Cathy	San Carlos, CA
Wang	Moses	Fremont, CA
Wang	Nancy	San Francisco, CA
Wark	Dana	Concord, CA
Wartenberg	Mark	Redwood City, CA
Warwick	Scott	Monrovia, CA
Wasgatt	Ann	Roseville, CA
Waters	Brian	Orinda, CA
Waters	Michelle	Los Gatos, CA
Watkins	Anita	Oakland, CA
Watrous	Ann	Lafayette, CA
Watson	Claire	Pleasant Hill, CA
Watt	Julie	Mountain View, CA
Watterson	Sylvia	Soulsbyville, CA
Watts	Susan	Riverside, CA
Watts-Penny	Kristen	San Mateo, CA
Weaver	Madeline	Hayward, CA
Webster	D L	Concord, CA
Wechsler	Steve	Brisbane, CA
Wedel	Eric	Mountain View, CA
Weed	Sally	Walnut Creek, CA
Weeden	Noreen	San Francisco, CA
Wehman	Angela	Citrus Heights, CA
Wehrman	Karen	Castro Valley, CA
Wehrman	Karen	Castro Valley, CA
Weiden	Laura	Los Altos, CA
Weigel	Alice	Watsonville, CA

Last Name	First Name	Address
Weills	Anne	Oakland, CA
Weimer	Mo	San Mateo, CA
Weinberger	Mark	San Francisco, CA
Weinert	Denise	Windsor, CA
Weininger	Gail	Alameda, CA
Weiss	Julie	San Carlos, CA
Weiss	Lenore	Oakland, CA
Weissburg	Robert	Belmont, CA
Weisz	Russell	Santa Cruz, CA
Wells	Bonnie	Walnut Creek, CA
Wenger	Benedicte	San Carlos, CA
Wernert	Tony	Lincoln City, OR
Werning	Karla	Castro Valley, CA
Westman	Betty	Nevada City, CA
Wheaton	Joyce	Willits, CA
Whisenand	Gretchen	Santa Rosa, CA
Whitacre	Susan	Honolulu, HI
White	Jusef	Fremont, CA
White	Mary	Berkeley, CA
White	Santa Maria	San Jose, CA
Whitley	C	San Jose, CA
Whitley	Linda	San Mateo, CA
Whitnah	Carol	Inverness, CA
Whitney	Searle	Berkeley, CA
Whitson	Helene	Berkeley, CA
Whyle	Amanda	Dublin, CA
Wice	Lisa	San Francisco, CA
Wiesner	John	Castro Valley, CA
Wilder	Jenny	Apple Valley, CA
Willcox	Cathryn	Cool, CA
Williams	Jayna	Pomona, CA
Williams	Jennifer	San Francisco, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Williams	Penny	San Carlos, CA
Williams	Priscilla	Santa Cruz, CA
Williamson	Arlene	Hayward, CA
Williamson	Barbara	Albany, CA
Willis	Cathy	San Francisco, CA
Willis	Jennifer	San Francisco, CA
Willis	Nancy	Emeryville, CA
Willoughby	Laura	El Cerrito, CA
Wilson	Amelia	Orinda, CA
Wilson	Eric	Santa Monica, CA
Wilson	James	San Francisco, CA
Wilson	John	Redwood City, CA
Wilson	Ken	Santa Rosa, CA
Wilson	Lois	Novato, CA
Windrum	Ken	Los Angeles, CA
Winston	Hathily	Pleasanton, CA
Wishinsky	BJ	Mountain View, CA
Wittenstein	Andreas	Woodacre, CA
Wolcott	James	Evansville, IN
Wolf	Josh	_, CA
Wolf	Maya	Oakland, CA
Wolf	Rachel	Santa Cruz, CA
Wolfe	Elizabeth	San Jose, CA
Wolfson	Toni	Felton, CA
Wolter	Manuela	St. Cruz, IA
Wong	Kathleen	El Cerrito, CA
Wong	Liana	Millbrae, CA
Wong	Melanie	Oakland, CA
Wong	Melanie	Oakland, CA
Wong	Rebecca	Castro Valley, CA
Woodford	Laura	Alameda, CA
Woolery	Alex	San Rafael, CA

Last Name	First Name	Address
Worden	Susan	Rio Vista, CA
Workman	Kim	San Francisco, CA
Wornum	Claudia	Oakland, CA
Worrell	Jasmine	Oakland, CA
Wright	Harriet	Oakland, CA
Wu	Blake	Lafayette, CA
Wu	Dennis	San Jose, CA
Wurzburg	Beth	Oakland, CA
Wyatt	Donna	Alameda, CA
Yam	Jane	San Francisco, CA
Yee	Michael	Fremont, CA
Yellis	Stefanie	Oakland, CA
Yiu	Faustine	Pinole, CA
Yuan	Ping	Palo Alto, CA
Yurman	Rich	San Francisco, CA
Yusavage	Marianne	San Francisco, CA
Zamenes	Andy	Redwood City, CA
Zanajni	Ana	Walnut Creek, CA
Zavattero	Elisabeth	Petaluma, CA
Zaveri	Ameet	Pleasanton, CA
Zeigler	A. Lee	San Francisco, CA
Zeigler	Margaret S.	San Francisco, CA
Zelaya	Mario	Berkeley, CA
Zemke	Mark	Mountain View, CA
Zhang	Hong	Fremont, CA
Ziauddin	Mohamed	Pleasanton, CA
Zierikzee	R	San Francisco, CA
Ziff	Linda	Los Altos, CA
Zimmer	Arlene	Rancho Palos Verdes, CA
Zimmermann	Cindy	Imperial Beach, CA
Zlotoff	Mary	San Jose, CA
Zolotar	Jeff	Mountain View, CA

LIST OF COMMENTERS

Last Name	First Name	Address
Zon	Christine	Oakland, CA
Zornoza	Elvis	Pleasanton, CA
Zubkousky-White	Vanessa	Richmond, CA

5. Comments and Responses

This chapter includes a reproduction of, and responses to, letters received during the public review period. In total, 1,861 comment letters were received, including 31 comment letters containing comments on environmental issues and 1,830 nearly identical recurring comment letters submitted by email.

Letters containing comments on environmental issues are reproduced in their entirety, in the same order listed in Chapter 4 of this Final EIR. The CD delivered with the Lippe Gaffney Wagner letter is included on CD as Appendix A to this Final EIR. The CD delivered with the letter from Carin High is included on CD as Appendix B to this Final EIR. The letters containing comments on environmental issues are grouped by category as follows:

- Federal Agencies
- State Agencies
- Regional Agencies
- Local Agencies
- Corporations and Non-Governmental Organizations
- Members of the General Public

Each comment is labeled with a reference number in the margin.

Responses to comments on environmental issues are presented in a matrix. The reference number and text of the comments are presented alongside the response for ease of reference. Where the same comment has been made more than once, a response may direct the reader to another numbered comment and response. Where a response requires revisions to the Draft EIR, these revisions are explained and shown in Chapter 3 of this Final EIR document.

Additionally, the following five master responses have been prepared to allow for a more detailed response to environmental issues of particular concern to the public:

- Master Response 1: Appropriate Baseline for Environmental Review
- Master Response 2: Treatment of Previous Environmental Review
- Master Response 3: Appropriacy of Alternatives
- Master Response 4: Sea Level Rise
- Master Response 5: Clarifications Regarding Development Envisioned in the Area 3 and 4 Specific Plan

Responses in the matrix direct the reader to the master responses as appropriate. The master responses are included before the response to comment matrix in Section 5.1 of this chapter.

Recurring comment letters are included on CD, organized alphabetically, as Appendix C to this Final EIR. A single copy of the recurring letter is reproduced below in Section 5.2 of this Final EIR, followed by a master response to the recurring comment letters.

5.1 COMMENT LETTERS ON ENVIRONMENTAL ISSUES

This section contains comment letters on environmental issues, master responses, and the response to comments matrix. Below is a list of commenters, ID attached to the comment as referenced in the matrix, and the date the comment was submitted. The comment and response matrix is addressed in the same order as the list below.

Federal Agencies

- United States Department of the Interior (Fish and Wildlife Service), FWS, September 19, 2013

State Agencies

- California Department of Transportation, DOT, September 25, 2013
- California Public Utilities Commission, PUC, August 29, 2013

Regional/Local Agencies

- Alameda County Transportation Commission, ACTC, September 26, 2013
- Alameda County Water District, ACWD, September 26, 2013
- San Francisco Bay Conservation and Development Commission, BCDC, September 27, 2013.
- San Francisco Regional Water Quality Control Board, RWQCB-A, September 26, 2013
- San Francisco Regional Water Quality Control Board, RWQCB-B, September 27, 2013

Corporations and NGOs

- Ashland (Barry J. Shotts, Attorney at Law), Ashland, September 27, 2013
- Ohlone Audubon Society, OAS, September 29, 2013
- Cargill Salt Company, Cargill, September 27, 2013
- Defenders of Wildlife, DOW, September 19, 2013
- Enterprise Drive LLC, EDLLC, September 27, 2013
- Greenbelt Alliance, GA, September 27, 2013
- NMW Newark LLC, NMW, September 27, 2013
- Save the Bay, STB, September 27, 2013
- Santa Clara Valley Audubon Society, SCVAS, September 24, 2013
- San Francisco Baykeeper, SFBK, September 27, 2013
- Citizens Committee to Complete the Refuge, CCCR, September 27, 2013
- Lippe Gaffney Wagner LLP on behalf of Citizens to Complete the Refuge, LGW, September 26, 2013

- Grassetti Environmental Consulting on behalf of Citizens Committee to Complete the Refuge, GECO, September 26, 2013

General Public

- Bradley, John and Becky, Bradley-1, September 25, 2013
- Bradley, John and Becky, Bradley-2, September 27, 2013
- Burrows, Matt, Burrows, September 26, 2013
- Dorman, Michael, Dorman, September 17, 2013
- Elkins, David, Elkins, September 13, 2013
- Hooper, Molly, Hooper, September 26, 2013
- Rea, Paul, REA, September 25, 2013
- Lewis, Margaret, Lewis, September 27, 2013
- Miller, Wayne, Miller, September 27, 2013
- Sokale, Jana, Sokale, September 27, 2013

5.1.2 COMMENT LETTERS

The following comment letters address environmental issues and are presented in the same order as the list above. In each comment letter there is a comment ID and number which corresponds to the comment and response matrix, which can be found after the comments themselves.

COMMENT LETTER # FWS

United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay National Wildlife Refuge Complex
1 Marshlands Road
Fremont, California 94555

September 19, 2013

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

SUBJECT: Comments regarding the Newark General Plan Tune Up Draft EIR for the City of Newark

Dear Mr. Grindall:

The U.S. Fish and Wildlife Service (Service), Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) appreciates the opportunity to comment on the Newark General Plan Tune Up Draft EIR for the City of Newark. The Service has previously commented on proposed plans for Areas 3 and 4 in letters dated June 5, 2007; December 18, 2008; and January 20, 2010. In each of these letters we have expressed our concerns with the proposed development. We reiterate our previous comments that Area 4 should not be developed as it provides wetland habitat that support endangered species and flood protection from ponds on the border of Area 4. This site is one of the few areas in the south bay immediately adjacent to a tidal slough that still has undeveloped uplands, and a mix of wetland types, including areas where the Salt Marsh Harvest Mouse (*Reithrodontymys raviventris*), a federally endangered species and California state fully protected species, has been trapped previously. The proposed development of Area 4 will only add to the cumulative losses of tidal wetlands in San Francisco Bay and endangered species that are dependent on that habitat. **FWS-1**

The Refuge also has concerns with the proposed development and its potential to attract nuisance and predator species (e.g., gulls, geese, invasive weeds) that effect native species and habitat, and threaten the recovery of endangered species. In addition, lighting and noise impacts created by residential and golf course developments produce ambient lighting that can have a negative effect on wildlife. These issues have also been addressed in our previous comments. **FWS-2** **FWS-3**

Area 4 would be an extremely valuable addition to the Refuge as it could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas. We ask that the City of Newark implement the proposed Plan policies Action POS-1.A as stated in the Draft EIR: **FWS-4**

TAKE PRIDE® IN AMERICA

"Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay." (Page 4.1-14 of the DEIR)

In 1990, the Service issued the Final Environmental Assessment, Potential Additions to the San Francisco Bay National Wildlife Refuge, Alameda, San Mateo, and Santa Clara Counties, California (Final EA). The preferred alternative in the Final EA included a map and a boundary in which the Refuge could expand to include the additional 20,000 acres authorized by PL 100-556. The map and boundary depicted in the 1990 Final EA identified 24,500 acres as "potential additions" and Area 4 lies within this approved acquisition boundary. These potential additions were again affirmed in the Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan, published in October 2012. Approval of an acquisition boundary does not grant the Service jurisdiction or control over lands that have been identified as potential additions, but it does provide the Service the authority to seek willing sellers to acquire and/or manage lands through acquisition of fee title, conservation easements, or other agreements, based upon planning and environmental compliance processes. **FWS-4 cont.**

Thank you for considering our comments. We recommend that you also contact the U.S. Fish and Wildlife Service, Endangered Species Division in Sacramento to discuss potential effects of the proposed development to listed species and their habitat. Please keep us informed of the EIR process, especially any future opportunities to provide comment. If you have questions regarding our comments, please contact Wildlife Refuge Specialist, Melisa Amato at 510-792-0222. **FWS-5**

Sincerely,

Anne Morkill
Project Leader

cc:
Eric Mruz, Don Edwards San Francisco Bay National Wildlife Refuge (email)
Margaret Lewis, Citizens Committee to Complete the Refuge (email)
Carin High, Citizens Committee to Complete the Refuge (email)
Brian Wines, San Francisco Bay Regional Water Quality Control Board (email)
Cay Goude, USFWS Endangered Species Division (email)

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-6053
FAX (510) 286-5559
TTY 711

Flex your power!
Be energy efficient!

September 25, 2013

ALAGEN256
SCH#2013012052

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

Dear Mr. Grindall:

Newark General Plan Tune Up – Draft Environmental Impact Report

Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the Newark General Plan Tune Up. The following comments are based on the Draft Environmental Impact Report.

Regional Transportation Impact Fee Program
Under TRANS-1, the proposed plan will significantly impact Ardenwood Boulevard and State Route (SR-) 84 westbound ramps intersection during the AM Peak, and Newark Boulevard and SR-84 eastbound ramps intersection during the PM peak hour. Mitigation Measure TRANS-1a states that the impact is considered significant and unavoidable since the mitigation measure is under jurisdictions of Caltrans and the City of Fremont, and the implementation is outside the jurisdiction of the City of Newark (City). Per our comments to the traffic study scope of work, we had previously recommended the City develop a Regional Impact Fee Program (RIFP) to fund regional roadway improvements. The RIFP would collect fair-share funding from proposed projects that impact regional transportation facilities and use the funds collected to implement regional improvement at a future date. Caltrans strongly recommends the City develop a RIFP in lieu of evaluating the need for fair-share contribution on project by project basis. DOT-1

Should you have any questions regarding this letter, please call Yatman Kwan, AICP of my staff at (510) 622-1670.

Sincerely,

ERIK ALM, AICP
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse

COMMENT LETTER # PUC

STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
320 WEST 4TH STREET, SUITE 500
LOS ANGELES, CA 90013
(213) 576-7083

August 29, 2013

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

Dear Terrence:

Re: SCH 2013012052 Newark General Plan Tune Up DEIR

The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings in California. The Commission Rail Crossings Engineering Section (RCES) is in receipt of the Draft *Environmental Impact Report (DEIR)* for the proposed City of Newark (City) General Plan Tune Up project.

The project areas are located on both sides and within the vicinity of an active railroad track. RCES recommends that the City add language to the General Plan so that any future development adjacent to or near the railroad/light rail right-of-way (ROW) is 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 crossings. This includes considering pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act. Mitigation measures to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW. **PUC-1**

If you have any questions in this matter, please contact me at (213) 576-7076, ykc@cpuc.ca.gov.

Sincerely,

Ken Chiang, P.E.
Utilities Engineer
Rail Crossings Engineering Section
Safety and Enforcement Division

C: State Clearinghouse

ALAMEDA
County Transportation Commission

1111 Broadway, Suite 800, Oakland, CA 94607 • 510.208.7400 • www.AlamedaCTC.org

September 26, 2013

Terrence Grindall
Community Development Director
City of Newark
Community Development Department
37101 Newark Blvd
Newark, CA 94560

SUBJECT: Comments on the Draft Environmental Impact Report for the Newark General Plan Tune Up Project

Dear Mr. Grindall,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Newark General Plan Tune Up.

The Project is contained within the City of Newark boundaries. The Project is designed to update the policy framework and land use designations that will guide future development in Newark through 2035; to comprehensively incorporate recent planning efforts, including the completed and adopted Dumbarton Transit Oriented Development Specific Plan (2010), Area 3 and 4 Specific Plan (2009), 2009-2014 Housing Element (2010) and Climate Action Plan into the General Plan so as to ensure Citywide policy consistency; and to address and satisfy new State and regional regulations that have come into force since the General Plan was last updated including Assembly Bill (AB) 162, Senate Bill (SB) 5, the Complete Streets Act of 2008, and the greenhouse gas (GHG) reduction goals of AB 32 and SB 375. The General Plan Tune Up includes updates to the following State-mandated elements: Land Use, Transportation, Open Space and Conservation, and Safety and Noise. The State-mandated Housing Element continues to stand on its own as a separate document. Additionally, the optional Parks and Recreation Element is updated, and three new optional elements added: Economic Development, Sustainability, and Health.

The Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments:

- On page 4.13-21, the description of the Countywide Bicycle Plan should be revised to differentiate between the countywide bicycle network and local bicycle routes. The map on the following page, depicts both local and countywide routes, for instance. Also, the countywide bicycle network and countywide pedestrian plan include major interjurisdictional trails, such as the Bay Trail in Newark. ACTC-1

- On page 4.13-23, the statement that "the City of Newark and the Alameda CTC have established vehicular LOS standards for intersection performance is inaccurate." The Alameda CTC has no intersection-based LOS standards, and LOS thresholds apply to roadway segments and to ACTC-2

biennial LOS monitoring, not cumulative impact analysis of developments through the land use analysis program. **ACTC-2 cont.**

- The mitigation measures presented in Table 4.13-5 at Ardenwood Boulevard and State Route 84 WB Ramps and at Newark Boulevard and State Route 84 EB Ramps, while primarily intended to improve auto circulation, should consider opportunities to include upgrades to facilities for other modes. The Alameda Countywide Bicycle Plan identifies improvements to this interchange as a major capital project need. As the City of Newark explores mitigation measure here in conjunction with Caltrans and the City of Fremont, opportunities to improve the bikeway along Newark Boulevard should be sought. Such coordination would be consistent with the Draft Plan's Policy T-1.3: Incorporating Complete Streets Elements in Transportation Projects which specifies that "Any construction, reconstruction, retrofit, maintenance, operations, alteration, or major repair of the street network should consider ways to make streets safer for all users." **ACTC-3**

- The Draft General Plan acknowledges on page T-37 that the City of Newark's intersection LOS D standard should be considered in a context sensitive fashion: "The City will determine the need for exceptions to its LOS standards on a case by case basis in the future." The Draft Plan specifically names the Old Town Newark commercial district as one such area where "maximizing vehicular flow through intersections may not be the highest priority" as "the City seeks to create a welcoming environment for pedestrians, bicyclists, and transit users with vibrant local businesses and an attractive streetscape." In this context, the DEIR should strong consider impacts to all users from the following mitigation measures proposed in Table 4.13-5
    - Cherry Street and Thornton Avenue: the DEIR proposes adding a through lane on Cherry Street. This intersection is within the Old Town Newark commercial district and is located near the Old Town Mixed Use Priority Development Area. The DEIR should consider options for accommodating all users. **ACTC-4**
    - Cherry Street and Mowry Avenue: the DEIR proposes widening Mowry Avenue. This intersection is close to a high school, a community college, and a park, and is located along a road with transit service that is also a Countywide Bicycle Route (component of the Bay Trail). The DEIR should consider options for accommodating all users.

We appreciate the opportunity to comment on thie DEIR. Please contact me at (510) 208-7405 or Matthew Bomberg of my staff at (510) 208-7444 if you have any questions.

Sincerely,

Beth Walukas
Deputy Director of Planning

cc: Matthew Bomberg, Assistant Transportation Planner
Tess Lengyel, Deputy Director of Policy, Public Affairs, and Legislation

COMMENT LETTER # ACWD

Terrence Grindall
Community Development Director
510-578-4208

Begin forwarded message:

From: Michelle Myers <Michelle.Myers@acwd.com>
Date: September 26, 2013, 17:21:20 PDT
To: "terrence.grindall@newark.org" <terrence.grindall@newark.org>
Cc: Steven Inn <Steven.Inn@acwd.com>
Subject: Newark General Plan Tune Up DEIR

Hi Terrence,
The District doesn't have any formal comments regarding the DEIR; however, there is one typo regarding the amount of groundwater used on page 4.8-14.

The DEIR states that approximately 22% of the water supplied by ACWD is from groundwater wells. The percentage should be 40%, with 22% supplied by the wellfields and 18% supplied by the Newark Desalination Facility (page 8 of the Survey Report on Groundwater Conditions, February 2013).

Thanks!

Michelle A. Myers
Well Ordinance Supervisor

Alameda County Water District
43885 South Grimmer Boulevard
Fremont, CA 94538

Phone: (510) 668-4454
Fax: (510) 651-1760
E-mail: michelle.myers@acwd.com

ACWD-1

COMMENT LETTER # BCDC

Making San Francisco Bay Better

September, 27th 2013

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

Via Email: terrence.grindall@newark.org

Subject: Newark General Plan Tune Up, BCDC Inquiry File No. AL.FT.7025.1

Dear Mr. Grindall:

As you are aware, by letter dated February 6, 2013, the staff of the BCDC provided comments on the City's NOP for an EIR for the *Newark General Plan Tune Up*. It has recently come to our attention that the City has issued a Draft Environment Impact Report (DEIR) for this planning effort and has established an associated comment period.

This letter sets forth the comments of the staff of the BCDC, as distinguished from the Commission itself. The comments set forth below are based on the Commission's enabling legislation, the *McAteer-Petris Act* (MPA), Cal. Government Code § 66600 *et seq.*, the regulations that the Commission has adopted to implement that law (Cal. Code of Regulations, Title 14, Div. 5), and relevant findings and policies of the Commission's *San Francisco Bay Plan* (Bay Plan). As a permitting authority along the San Francisco Bay shoreline, the BCDC is responsible for granting or denying permits for any proposed fill (earth or any other substance or material, including pilings or structures placed on pilings, and floating structures moored for extended periods), extraction of materials or change in use of any water, land or structure within the Commission's jurisdiction*.

Jurisdiction and Authority. BCDC's jurisdiction over San Francisco Bay extends over Bay tidal areas up to the mean high tide level, including all sloughs, and in marshlands up to five feet above mean sea level; a shoreline band consisting of territory located between the shoreline of the Bay and 100 feet landward and parallel to the shoreline; salt ponds; managed wetlands (areas diked from the Bay and managed as duck clubs); and certain waterways tributary to the Bay, specifically as mentioned in MPA § 66610(e)(1), "Plummer Creek in Alameda County, to the eastern limits of the saltponds....". In addition to said MPA language staff has determined that the Commission's Bay jurisdiction within the area of the General Plan Tune Up includes "... on Mowry Slough [extending to] culvert at Mowry Avenue bridge crossing" (Inquiry File AL.AA.6516.1 File 5, Lacko, 2004) and "At bend in channel near Plummer Creek" (Inquiry File AL.HY.6801.1 FILE 3, Permit M81-14) **BCDC-1**

The DEIR references the above language but could provide a more accurate characterization of BCDC's managed wetland jurisdiction over a portion of the project area in Focus Area 4, specifically the sites referred to as the Pintail and Whistling Wing Duck Clubs referenced in figure 4.3.1 ("Biological Resources") of the DEIR. Section 66610(d) of the MPA states, in part that "the area of jurisdiction of the San Francisco Bay Conservation and Development Commission

* Please see note about jurisdiction and responsibilities in Water Quality section

includes… Managed wetlands consisting of all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature as a duck hunting preserve, game refuge or for agriculture." BCDC has considerable evidence gathered by the California Department of Fish and Wildlife that the Pintail and Whistling Wings duck clubs were actively used during the three-year period in 1966 through 1969 referred to in MPA § 66610(d). Based on the information we have, we believe these areas fall under the Commission's managed wetlands jurisdiction. This area is now delineated in page 193, figure CS-1 of the Draft General Plan by two dots, one for each club. Figures 4.3-1 and CS-1 of the DEIR should be revised to show the areas that comprise the two clubs and the status of these areas as "managed wetlands" under the MPA. Based on current information we are unable to determine whether portions of the areas currently delineated for housing use lie within the Commissions managed wetland jurisdiction.

BCDC-1 cont.

BCDC-2

If a project is proposed within the Commission's managed wetlands jurisdiction, it must be authorized by the Commission pursuant to a Commission permit, and the Commission will use relevant provisions of the MPA as well as the managed wetlands policy, along with other relevant policies in the Bay Plan, to evaluate the project. The Commission can grant a permit for a project if it finds that the project is either (1) necessary to the health, safety or welfare of the public in the entire Bay Area, or (2) is consistent with the provisions of the MPA and the Bay Plan. The DEIR correctly states that projects "in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on safety of fills and shoreline protection." However, the MPA, at section 66605(d), also requires that the Commission find that the "nature, location, and extent of any fill" placed anywhere within the Commission's area of jurisdiction, including managed wetlands, "be such that it will minimize harmful effects to the bay area…" Specifically with regard to "managed wetlands," section 66602.1 of the MPA provides that "it is in the public interest to encourage continued maintenance and operation of …managed wetlands" and that "if development is proposed for these areas, dedication or public purchase of some of these lands should be encouraged in order to preserve water areas; [and] that if any such areas are authorized to be developed and used for other purposes, the development…should retain the maximum amount of water surface area consistent with the project." Consistent with MPA § 66602.1, the Managed Wetland policy in the Bay Plan states, in Policy 2, that the purpose of public dedication or purchase shall be to "restore [the managed wetland] to tidal or subtidal habitat, or retain, enhance and manage these areas as diked wetland habitat for the benefit of multiple species" and, in Policy 4.a, that "water surface area retained can include a variety of subtidal and wetland habitat types including diked areas managed for wildlife or restoration of managed wetlands to tidal action."

BCDC-3

The MPA, at section 66605, also provides for fill in the Bay, such as those areas of the Bay noted above as being with the area of the General Plan Update, for water-oriented uses only where there is no alternative upland location, and requires that any fill that is placed in the Bay is the minimum that is necessary for the project. The MPA, at section 66602, also requires that proposed projects include the maximum feasible public access consistent with the project to the Bay and its shoreline.

Climate Change and Safety of Fills. It appears that some areas within the plan area and along the adjacent shoreline that are within the Commission's jurisdiction may be vulnerable to projected sea level rise. BCDC has conducted an assessment of the region's exposure to sea level rise that is based on a projected 16-inch sea level rise at mid century (2050) and 55-inch sea level rise at the end of the century (2100). The South Bay map in the BCDC report (attached) shows that part the area of the proposed project may be vulnerable to a 16-inch rise in sea level and a larger part of the area may be vulnerable to a 55-inch rise. Please note that the BCDC maps of vulnerable areas do not account for existing shoreline protection or creek levees, and do not describe the existing or future 100-year flood zones. In addition to BCDC's assessment, various agencies have recently produced data and information, which can better characterize the plan

BCDC-4

BCDC-5

area's vulnerability to sea level rise. Staff recommends that the latest data from the National Oceanic Atmospheric Administration Coastal Services Center on sea level rise vulnerability be used, and that the latest science-based sea level rise projections for the area be utilized when considering the vulnerability of the project areas. Though the DEIR references Policy CS-5.8 as Planning for Sea Level Rise, neither the Draft EIR nor the Draft General Plan have taken into account more recent estimates of sea level rise for the area and still reference 2007 IPCC estimates of 7 to 23 inches by the end of the century. The Draft EIR should evaluate future projects in light of more recent scientific data on sea level rise. The DEIR should discuss the potential for inundation and its impacts on land use, transportation, hydrology, water quality, hazards, infrastructure and utilities and public services. **BCDC-5 cont.**

The Draft EIR should include an analysis of how an increase in sea level under multiple sea level rise scenarios could impact proposed projects, specific plans and resource categories that are within BCDC's jurisdiction. This should include information on (1) current elevations of the project sites and recent data, if available, documenting the vertical land motion (e.g., subsidence or uplift); (2) a risk assessment prepared by a qualified engineer based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area (3) whether existing levee heights for any housing areas within managed wetlands within the project area that are necessary to protect adjacent property from flood tides are adequate for a period matching the likely duration of human habitation (4) how public access provided as a condition of development will remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project could be provided nearby. Finally, the policies state that, "To address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes." **BCDC-6**

The Bay Plan policies on the safety of fills state that, "Adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project. " Additionally, the policies state that, "New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity.... " Projects in BCDC jurisdiction that involve Bay fill or fill within managed wetlands must be consistent with the Bay Plan policies on the safety of fills and shoreline protection and it is likely that many of the proposed structures within the Specific Plans would be expected to last until 2100. The Draft EIR could consider the use of open space as a flood zone buffer area.

Public Access. Section 66602 of the McAteer-Petris Act states, in part, that "existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Furthermore, the McAteer-Petris Act authorizes the placement of fill in the Bay only for water-oriented uses or minor fill for improving shoreline appearance or public access. The MPA, at section 66602.1, also requires that in managed wetlands "in any such areas are authorized to be developed and used for other purposes, the development should provide the maximum public access to the Bay, consistent with the project..." **BCDC-7**

Development policies for areas identified in the DEIR that are within BCDC's jurisdiction should be consistent with BCDC's public access requirements and not preclude, "maximum feasible access to and along the waterfront and on any permitted fills should be provided in and

through every new development in the Bay or on the shoreline….and maximum access, consistent with the project" in areas of managed wetlands approved for development. BCDC-7 cont.

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 DEIR should include an analysis of the impacts 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. POS-5.7 & POS-5.8 as noted in the DEIR and General Plan Draft are an adequate start in this direction. Additionally, the DEIR should evaluate how the proposed projects would impact views to and of the Bay from public streets. Finally, the DEIR should evaluate the potential impacts of the proposed public access on sensitive wildlife species and habitats. BCDC-8 BCDC-9 BCDC-10 BCDC-11

Bay Trail Connections. The City of Newark contains several miles of existing and planned Bay Trail alignment. The DEIR should discuss how these existing trails could be connected with the development of trails, parks and open space within the proposed project area. POS-5.1, POS 5.2 and POS-5.3 are suitable initiations of this discussion and we endorse continuing the refinement and enhancement of these policies. BCDC-12

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. The DEIR must evaluate any proposed fill in its scope in light of the Commission's law. BCDC-13

Water Quality The DEIR erroneously states in the Hydrology and Water Quality section (4.8-7) that "The California Coastal commission carries out its mandate locally through the San Francisco Bay Area Conservation and Development Commission (BCDC)." The California Coastal Commission is a separate state agency with its own jurisdiction, laws, policies and mandates. It does not carry out its mandate locally through BCDC. We would greatly appreciate the correction of said misstatement. 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 storm water permits and state and regional storm water 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 .... " Though the DEIR references BCDC's policies with regard to safety of fills and shoreline protection in the Hydrology and Water Quality section it should evaluate the potential impacts of the proposed projects to be included in the General Plan Tune Up on the water quality of the Bay and should propose best management practices and mitigation measures to minimize adverse impacts to water quality. BCDC-14 BCDC-15

Thank you for your careful consideration of the foregoing comments on the Draft Environmental Impact Report for the *Newark General Plan Tune Up*. If you have any questions please contact me directly at (415) 352-3667.

BCDC-15 cont.

Sincerely,

Javier del Castillo
Coastal Planner

cc: Ana Apodaca

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

September 26, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, CA, 94560

Subject: **Comments on the *General Plan Tune Up, Draft Program Environmental Impact Report (DEIR) for the City of Newark* dated August 13, 2013**
State Clearinghouse Number (SCH #) 2013012052

Dear Mr. Grindall:

Thank you for the opportunity to comment on the *General Plan Tune Up Draft Program EIR* (DEIR) for the City of Newark, dated August 13, 2013. The DEIR evaluates an updated policy framework and consolidated land use designations that are intended to guide future development and redevelopment in Newark, concentrated primarily in the following focus areas:

- Dumbarton Transit Oriented Development (TOD)
- Area 3 and 4 focus Area (renamed Southwest Newark Residential & Recreational Focus Area in the DEIR)
- Old Town
- Greater New Park Area

As a responsible and reviewing agency under CEQA, staff of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) provided comments on the Notice of Preparation (NOP) for the DEIR on February 13, 2013. Based on our review of the DEIR, it appears that our comments were not consulted in the preparation of the DEIR. We are, therefore, submitting our original comments to the City of Newark (See the attachment to this letter) with the hope that the City will address these comments in the preparation of the Final EIR for the General Plan Tune Up. **RWQCB-A-1**

As we noted in the cover letter for our February 13, 2013, comments on the NOP, we are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with General Plan Tune Up. The Watershed Division comments are presented as Attachment A to the February 13, 2013, comments. The Watershed Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code. **RWQCB-A-2**

Toxics Cleanup Division (TCD) comments on the NOP are presented as Attachment B to our February 13, 2013, comments. TCD as the lead agency oversees the investigation and cleanup of contaminated sites (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution or nuisance. TCD also indirectly oversees the investigation and cleanup of approximately 80 other contaminated sites in the Project area, which are assigned to Alameda County Water District (ACWD) as lead oversight agency (see the State's GeoTracker database (https://geotracker.waterboards.ca.gov). TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites overseen by ACWD. The California Department of Toxic Substances Control (DTSC) also oversees the investigation and cleanup of sites in the Project area (see the State's Envirostor database (http://www.envirostor.dtsc.ca.gov/public/). **RWQCB-A-3**

We would also like to take this opportunity to point out that we disagree with the way in which the DEIR assesses conflicts with the Baylands Ecosystem Habitat Goals (Habitat Goals). Text on page 4.3-45 of the DEIR states:

> The Bay Plan recommends that the Baylands Ecosystem Habitat Goals (Habitat Goals) be used as guides for wetlands restoration in the vicinity of San Francisco Bay. The Habitat Goals envision the restoration of tidal marsh and similar habitat throughout the South Bay region, including the Plan Area, and contain recommendations for enlarging tidal marshes and protecting and enhancing marsh transition areas. However, the Habitat Goals are a set of recommendations that have not been adopted by any agency and therefore are not considered an approved local, regional, or State habitat conservation plan under CEQA.

In our comments on the NOP, the Water Board provided the following guidance for using the Habitat Goals in developing the DEIR.

> The Project EIR should address conflicts that the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan have with the *Baylands Ecosystem Habitat Goals* (1999) (*Habitat Goals*). The Biological Resources discussion in the Project EIR should address Project compatibility with the *Habitat Goals* and its companion document *Baylands Ecosystem Species and Community Profiles* (2000)(*Profiles)*, which should be recognized as regional habitat conservation plans. The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM. **RWQCB-A-4**

Since the DEIR addresses conflicts with the Basin Plan and the Basin Plan acknowledges the Habitat Goals, the DEIR should have fully addressed conflicts with the Habitat Goals. Other EIRs for projects in Alameda County have addressed conflicts with the Habitat Goals. For example, the recent Draft EIR for the Alameda Point Project (SCH # 2013012043) makes the

following assessment of the relevance of the Habitat Goals to CEQA review (page 4.E-43 of the Alameda Point DEIR).

> The Baylands Ecosystem Habitat Goals Project (Goals Project) was established in June 1995 to establish a long-term vision for a healthy and sustainable baylands ecosystem. The final report, published in 1999 (Goals Project, 1999) enumerated a series of recommendations for habitat protection and restoration. . . . The Goals Project was recommended by the Governor's "California Wetlands Conservation Policy" and by the Comprehensive Conservation and Management Plan (CCMP) of the U.S. Environmental Protection Agency's San Francisco Estuary Project. It is also supported by most of the agencies and non-governmental groups with major planning, operational, or regulatory interests in Bay Area wetlands.

We encourage the City of Newark to thoroughly address conflicts with the Habitat Goals in the Final EIR and to consult the Water Board's full comments on the Habitat Goals in our February 13, 2013, comments on the NOP.

RWQCB-A-4 cont.

We once again urge the City to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. Projects covered by the General Plan Tune Up could cause substantial impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any permit applications or plans it receives for proposed activities within the areas covered by the Project. We continue to disagree with the City of Newark's conclusions in the EIRs for the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan that conflicts with the Basin Plan can be mitigated to less than significant levels through the mitigation measures presented in those EIRs. Therefore, we also disagree with the DEIRs assertion that the General Plan Tune Up will not have significant impacts to jurisdictional waters.

We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. We urge you to revisit our past correspondence (listed below) for the Areas 3 and 4 Specific Plans and the Dumbarton TOD Specific Plan.

RWQCB-A-5

- January 12, 2010, Letter to City of Newark, Watershed Division Comments on Draft EIR for Newark Areas 3 and 4 Specific Plans (included in Attachment A).
- April 30, 2010, Letter to City of Newark, TCD Comments on NOP for Dumbarton TOD Specific Plan.
- June 30, 2011, Email to City of Newark, TCD Comments on Draft EIR for Dumbarton TOD Specific Plan.
- July 27, 2011, Letter to City of Newark, TCD Comments on Dumbarton TOD Specific Plan Final EIR.
- February 13, 2013, Letter to City of Newark, Watershed Division and TCD Comments on the Newark General Plan Tune Up NOP
- March 8, 2013, Letter to City of Newark, TCD Comments for NOP for Dumbarton Transit Oriented Development (TOD) Trumark Residential Project

RWQCB-A-5 cont.

If you have any questions regarding our comments, please contact Brian Wines (bwines@waterboards.ca.gov) in our Watershed Division at (510) 622-2342 or Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.

Sincerely,

Shin-Roei Lee

Digitally signed by Shin-Roei Lee
Date: 2013.09.26 16:03:47 -07'00'

Shin-Roei Lee
Division Chief
Watershed Division

Attachment:
February 13, 2013, Water Board comments on the NOP for the General Plan Tune Up

cc w/attach: Mailing List

Alameda County Water District, Attn Steven Inn (steven.inn@acwd.com)
Ashland, Inc., Attn: Michael Dever (mbdever@ashland.com)
SHH LLC, Attn: Peter Schneider (pds5000@aol.com)
FMC Corporation, Attn: James Bodamer (jbodamer@fmc.com)
Cargill, Inc., Attn Penny Streff (penny_streff@cargill.com)
Jones-Hamilton Co., Attn: Gerry Danes (gdanes@jones-hamilton.com)
Trumark Commerical, Attn: Veronica Vargas (vvargas@trumark-co.com)
Honeywell International Inc., Attn: Benny DeHigh (benny.dehghi@honeywell.com)
Integral Communities, Attn: Glenn Brown (gbrown@integralcommunities.com)

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GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

Date: February 13, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, CA, 94560

Subject: Comments on Newark General Plan Tune Up Notice of Preparation (NOP) dated January 2013

Dear Mr. Grindall:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) that we received January 17, 2013, for the Newark General Plan Tune Up Project (Project). The attached comments are intended to guide the City of Newark as it prepares an Environmental Impact Report (EIR) and other CEQA documents for the Project, which will result in an updated policy framework and consolidated land use designations intended to guide future development and redevelopment in Newark, concentrated primarily in the following focus areas:

- Dumbarton Transit Oriented Development (TOD)
- Area 3 and 4 focus Area
- Old Town
- Greater New Park Area

As a responsible and reviewing agency under CEQA, staff of the San Francisco Bay Regional Water Quality Control Board are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with this Project. The Watershed Division comments are presented as Attachment A. The Watershed Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code.

RWQCB-A-6

Toxics Cleanup Division (TCD) comments are presented as Attachment B. TCD oversees the investigation and cleanup of six contaminated sites in the Dumbarton TOD (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution and nuisance. TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites. TCD also indirectly oversees the investigation and cleanup of

approximately 80 other contaminated sites in the Project area, which are assigned to Alameda County Water District (ACWD) as lead oversight agency (see the State's GeoTracker database (https://geotracker.waterboards.ca.gov). TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites overseen by ACWD. The Department of Toxic Substance Control (DTSC) also oversees the investigation and cleanup of sites in the Project area (see the State's Envirostor database (http://www.envirostor.dtsc.ca.gov/public/).

We urge the City to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. The Project could cause substantial impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any permit applications or plans it receives for proposed activities within the areas covered by the Project.

We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. We urge you to revisit our past correspondence (listed below) for the Areas 3 and 4 Specific Plans and the Dumbarton TOD Specific Plan.

RWQCB-A-6 cont.

- January 12, 2010, Letter to City of Newark, Watershed Division Comments on Draft EIR for Newark Areas 3 and 4 Specific Plans (included in Attachment A).
- April 30, 2010, Letter to City of Newark, TCD Comments on NOP for Dumbarton TOD Specific Plan.
- June 30, 2011, Email to City of Newark, TCD Comments on Draft EIR for Dumbarton TOD Specific Plan.
- July 27, 2011, Letter to City of Newark, TCD Comments on Dumbarton TOD Specific Plan Final EIR.

If you have any questions regarding our comments, please contact Brian Wines (bwines@waterboards.ca.gov) in our Watershed Division at (510) 622-2342 or Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.

Sincerely,

Shin-Roei Lee acting for

Shin-Roei Lee
2013.02.13
16:30:29 -08'00'

Bruce Wolfe
Executive Officer

Attachments:

Attachment A – Watershed Division Comments
Attachment B – Toxics Cleanup Division Comments

cc w/attach: Mailing List

Alameda County Water District, Attn Steven Inn (steven.inn@acwd.com)
Ashland, Inc., Attn: Michael Dever (mbdever@ashland.com)
SHH LLC, Attn: Peter Schneider (pds5000@aol.com)
FMC Corporation, Attn: James Bodamer (jbodamer@fmc.com)
Cargill, Inc., Attn Penny Streff (penny_streff@cargill.com)
Jones-Hamilton Co., Attn: Gerry Danes (gdanes@jones-hamilton.com)
Trumark Commerical, Attn: Jessica Roseman (jrose@trumark-co.com)
Honeywell International Inc., Attn: Benny DeHigh (benny.dehghi@honeywell.com)
Integral Communities, Attn: Glenn Brown (gbrown@integralcommunities.com)

Attachment A

Watershed Division Comments on the Newark General Plan Tune-Up Project

1. General Comments on Water Board Mandate, Authority, and Potential Future Permitting Requirements

Proposed developments in areas covered by the Project would fill more than 100 acres of waters of the State and United States, many of them adjacent to tidal sloughs and marsh habitat.

- Dumbarton Transit Oriented Development (TOD), which would include fill of an unknown number of acres of wetlands, on the order of at least 20 acres.
- Area 3 and 4 Focus Area, which would include fill of up to 85.6 acres of wetland/marsh/aquatic habitat.

The acres of impacts to waters of the State are unknown in the Dumbarton TOD, since wetland delineations have only been performed in the Torian parcel, which represents about one-fifth of the Dumbarton TOD Specific Plan land area. Based on Figure 4.3-1 in the EIR for the TOD Specific Plan, it appears that at least 20 acres of jurisdictional wetlands are likely to be present in the TOD Specific Plan area.

The proposed amount of fill in the Dumbarton TOD and Areas 3 and 4 Specific Plans are unusually large for projects receiving approvals from the U.S. Army Corps of Engineers (Corps) and the Water Board. Fill of about 100 acres of wetlands will require significant review by the Water Board to consider any project-related applications for fill of waters of the State and United States, for discharges of wastewater and stormwater, and for related issues.

RWQCB-A-7

As a part of CEQA review of the Environmental Impact Report (EIR) for the Newark General Plan Tune-Up Project, the Water Board will consider any project proposals to fill waters of the State and United States under the following:

- The California Water Code, which requires persons proposing to discharge waste to waters of the State to submit a Report of Waste Discharge and receive appropriate approvals from the Water Board prior to discharge;
- Section 401 of the federal Clean Water Act (CWA), which requires state certification that federal permits to fill waters of the United States meet state water quality standards;
- The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) (Section 4.23). The Basin Plan is available at http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan.
- The Basin Plan directs the Water Board to consider specific guidelines and requirements, including the following, as a part of its mandated duty to protect waters of the State:
    - The California Wetlands Conservation Policy (Governor's Executive Order W-59-93 and Senate Concurrent Resolution No. 28), requiring no net loss and a long-term net gain in the quantity, quality, and permanence of wetlands in California, including the San Francisco Bay region.

As noted in the Basin Plan, it is preferable to avoid wetland disturbance. When this is not possible, disturbance should be minimized. Mitigation for lost wetland acreage and functions through restoration or creation should only be considered after disturbance has been minimized. Thus, as we describe in more detail below, the City should evaluate in its CEQA documents project alternatives that avoid and minimize fill. This may include substantially smaller projects

than those that are currently proposed in the Dumbarton TOD and Areas 3 and 4 Focus Area components of the Project.

In addition to the State directives to protect wetlands, the Basin Plan also directs Water Board staff to use alternatives analyses prepared pursuant to federal guidelines—the U.S. Environmental Protection Agency's CWA Section 404(b)(1) guidelines—to determine circumstances under which the filling of wetlands may be permitted, and requires that attempts be made to avoid, minimize, and only lastly to mitigate for adverse impacts. As noted above, the Water Board's review of any applications to fill wetlands will include review of whether all or a portion of the Project could be located at an off-site location(s), whether the project design can be altered to reduce impacts, such as by increasing project densities, modifying project layout, and eliminating proposed project elements that are ancillary to the basic project purpose. Thus, it is important that CEQA documents recognize that components of the Project may be changed in scope and design, based on their relationship to the project purpose, their contribution to wetland fill, and their capacity to be accommodated via changes in project design and/or at an off-site location(s).

The current EIRs for the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan, which are proposed for incorporation into the General Plan Tune Up Project, do not incorporate alternatives that provide for significant avoidance of fill of waters of the State (See comments 2, 3, and 4, below). Because of this, individual projects that are consistent with these specific plans are likely to result in 404(b) (1) alternatives analyses that are not acceptable to the Corps or the Water Board. For example, applications for authorization to fill jurisdictional waters in the Torian Parcel, consistent with the proposed fill in the TOD Specific Plan, were submitted to the Corps and the Water Board in November of 2011. As of February of 2013, the applications had not yet been accepted by the Corps, Water Board, or the U.S. EPA. Therefore, it appears that the Specific Plans for the Dumbarton TOD and Areas 3 and 4 are directing project proponents to develop project proposals that have very low likelihoods of being authorized by the Corps or the Water Board.

RWQCB-A-7 cont.

Finally, California's jurisdiction to regulate its water resources is broader than that of the federal government. The Water Board's jurisdiction extends to "waters of the State," which is broadly defined as "any surface water or groundwater, including saline waters, within the boundaries of the State." This definition includes isolated wetlands, and any action that may impact isolated wetlands is subject to the Water Board's jurisdiction. Please note that the approvals the Project may require from the Water Board for fill of waters of the State and the United States include issuance of Waste Discharge Requirements and/or CWA Section 401 Water Quality Certification.

2. Recommendations for Revising Specific Area Plans for the TOD and Areas 3 and 4, Prior to Incorporating them into the General Plan Tune Up Project

In the interest of expediting the permitting process for future projects within these Specific Plan areas, the Water Board seriously urges the City of Newark to consider revising these Specific Plans to emphasize reduced fill alternatives. The City of Newark should more thoroughly evaluate reduced fill alternatives that would:

RWQCB-A-8

- Reduce the area of wetlands and their surrounding upland buffers that would be converted to residential and commercial uses; and

- Provide a wider buffer between new development and preserved and restored wetlands, and also reduce the length over which developed areas would be in contact with preserved and restored wetlands. This should include considering options such as massing development on a smaller portions of sites covered under the Project, reducing proposed amounts of total development (e.g., number of dwelling units and area of other uses), increasing densities for all land uses, and locating appurtenant land uses (e.g., office/commercial, playfields and upland parks, other civic uses such as libraries, schools, and places of worship) in already-developed portions of Newark or nearby cities.

3. Elements of the Dumbarton TOD Specific Pan EIR that will Hinder Permitting in the Specific Area.

The General Plan Tune-Up will incorporate the Dumbarton Transit Oriented Development Specific Plan into the General Plan. Water Board staff have reviewed the *EIR for the Dumbarton Transit Oriented Development Specific Plan* and have identified the following problems that compromise the usefulness of this EIR in supporting permit applications for future development in the Dumbarton TOD.

- The EIR has a low level of detail with respect to biological resources and jurisdictional waters.
- The EIR has a low level of detail with respect to proposed mitigation measures for impacts to jurisdictional waters.
- The EIR did not meaningfully assess opportunities for avoidance and minimization of impacts to jurisdictional waters.
- The EIR piece-meals impacts to jurisdictional waters.
- The EIR did not consider the impacts of new residential development on introducing new sources of predators into the adjacent marshes, including the Plummer Creek Restoration Site.
- The EIR did not consider the impacts of residential development on isolating the Plummer Creek Restoration Site from other habitat.
- The EIR did not consider the recommendations of the 1999 *Baylands Ecosystem Habitat Goals*.
- The EIR did not evaluate specific options for anticipating sea level rise

At the time that the FEIR was certified, wetland delineations had only been performed on the Torian property, which consists of only 40 acres of the total 205-acre Dumbarton TOD Specific Plan area. While potential areas of wetlands were identified on the Cargill Tract and the potential existence of vernal pools on Parcel E was noted, the exact locations and extent of these jurisdictional habitats were not established through approved delineations. Because of this, the EIR does not do an adequate job of identifying all potential impacts to jurisdictional waters in the Specific Plan Area.

The Dumbarton TOD EIR suggests that impacts to wetlands can be mitigated at offsite mitigation banks, but does not identify mitigation banks with available credits for seasonal wetlands, or mitigation banks with vernal pool credits, in the event that the presence of vernal

RWQCB-A-8 cont.

pools is confirmed in the Specific Plan area. If mitigation banks are not available, the EIR suggests that mitigation may be created either onsite or at unspecified offsite mitigation locations. As the Port of Oakland discovered in its recent search for mitigation locations, it is difficult to find opportunities for mitigation of large acreages of wetlands in the South Bay. In order for the EIR to be adequate, the Dumbarton TOD EIR should have identified all jurisdictional waters that may be impacted and should have presented real opportunities to mitigate for those impacts. Without this level of detail, it is impossible for reviewers of the document to assess whether or not all impacts can be mitigated to less than significant levels.

The Dumbarton TOD EIR also failed to explore opportunities for consolidated mitigation in the near marsh parcels in the Specific Plan area. Alternative 2: High Density Residential illustrated how most of the potential wetlands could be avoided. This alternative assumed that there would be a transfer of development rights for those properties that would provide additional open space and parks. However, the City of Newark does not appear to have pursued this alternative, which would have resulted in impacts avoidance for wetlands. The need to use a transfer of development rights to make Alternative 2 feasible also illustrates an internal inconsistency in the Dumbarton TOD Specific Plan EIR. Alternative 2 requires meaningful coordination between the City and property owners. But the preferred alternative appears to leave development decisions up to individual property owners. This has the effect of favoring private development proposals that rely on fill of all wetlands, since each property owner is left to maximize development potential on their own holdings.

RWQCB-A-8 cont.

The U.S. Fish and Wildlife Service (USFWS) described the impact of predators associated with residential development in its comments on the Dumbarton TOD Specific Plan EIR. The USFWS noted that, "Nearby housing would likely increase disturbance and predation of migratory birds by nuisance species and house pets." USFWS also noted that the residential build out of the site would result in the, "increased presence of predators (e.g., Norway rates, California gulls, feral cats, red foxes, raccoons, and skunks) that prey on California clapper rails and salt marsh harvest mice." But impacts resulting from the introduction of predators associated with residential development were not acknowledged in the City's response to comments.

The EIR also does not consider the recommendations of the 1999 *Baylands Ecosystem Habitat Goals*, which recommended exploring options to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper end of Plummer slough (Chapter 3, page 133).

4. Elements of the Areas 3 and 4 Specific Plan EIR that will Hinder Permitting in the Specific Area.

The General Plan Tune Up will incorporate the Areas 3 and 4 Specific Plan into the General Plan. The Water Board's January 11, 2010, comments on the *Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan* (SCH No.: 200705205) are included as an attachment to the Water Board's comments on the Newark General Plan Tune Up NOP. As we noted in our January 12, 2010, letter, the proposed mitigation quantities in the Areas 3 and 4

RWQCB-A-9

Specific Plan EIR appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. The EIR relies on a combination of onsite wetland creation/enhancement and offsite wetland preservation. Onsite mitigation, which is only proposed at a 1:1 ratio, will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. With respect to offsite mitigation, the EIR does not provide sufficient detail to demonstrate that feasible locations exist for offsite mitigation.

While the City of Newark might disagree with the Water Board over the level of detail necessary for the discussion of proposed mitigation measures in the EIR for the Areas 3 and 4 Specific Plan, we would like to point out that the City itself set the parameters for offsite mitigation by requiring that "off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements", and "wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed." The EIR fails to demonstrate that the City of Newark can achieve its own objectives for offsite mitigation, using either mitigation banks or other private lands. At most, the EIR refers to a potential mitigation bank that may be capable of providing less than half of the mitigation necessary for proposed impacts to wetlands at Area 4. Recent projects in the South Bay have not been able to find even half of the acreage of mitigation that would be required to mitigate all of the impacts to waters of the State that are proposed in the Areas 3 and 4 Specific Plan.

Also, as Water Board staff noted in our comment letter on the Areas 3 and 4 Specific Plan DEIR, any mitigation plan that relies exclusively, or heavily, on the preservation of wetlands, as is currently proposed in the EIR for offsite mitigation, would not be consistent with the State's "no net loss" policy. No net loss can only be achieved through avoidance of habitats or the successful creation of new habitats. Since preserved habitats are already in existence, the use of preservation results in a net loss of wetland habitat. Therefore, the Water Board comment on the EIR noted that the proposed ratio of 1.5:1 is far too low for a mitigation measure that relies on preservation.

RWQCB-A-9 cont.

Finally, we would like to reiterate that the City should not assume that the resource agencies will allow the fill of the wetlands at Area 4. Large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the Bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to transgress (move up slope) in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), the Bay Conservation and Development Commission (BCDC), and the Water Board have all expressed strong reservations about the fill of wetlands in Area 4. While the City has not yet identified sufficient mitigation opportunities for impacts associated with the implementation of the Specific Plan, Area 4 itself presents significant opportunities for use as mitigation for other projects. Successful wetland mitigation sites require a unique combination of hydrology and topography, which Area 4 possesses. The Water Board encourages the City of Newark to consider the potential use of Area 4 as a mitigation bank. There are significantly fewer regulatory and physical barriers to creating a

mitigation bank at Area 4 than there are to placing fill in Area 4 and seeking to create adequate mitigation for that fill. RWQCB-A-9 cont.

5. The General Plan Tune Up Project EIR Should Address the Impacts of Development on Adjacent Habitats.

The EIR should evaluate both individually and cumulatively the impacts of individual projects that are authorized under the Project on the use of existing nearby waters and wetlands as wildlife habitat, including habitat for rare, threatened, and endangered species. Portions of the Dumbarton TOD and Area 4 have the potential to be restored to habitat capable of supporting uses, including estuarine habitat, preservation of rare and endangered species, warm freshwater habitat, and wildlife habitat. The proximity of existing tidal marsh habitat in the nearby Plummer Creek Restoration Site and the Don Edwards National Wildlife Refuge (Refuge) would make such restored habitat especially valuable.

Current proposals to develop lands in the Dumbarton TOD and Area 4 up to the borders with the preserved habitats are likely to significantly impact habitat values at the Plummer Creek Restoration Site and the Refuge. However, the analysis of impacts in the Dumbarton TOD and Areas 3 and 4 Specific Plan EIRs do not address the increased level of predation that is associated with placing residential development adjacent to habitats that support listed species. Residential neighborhoods have higher populations of domestic animals (e.g., cats and dogs), and also attract raccoons and corvids that feed on domestic refuse. Cats, raccoons, and corvids are predators of birds and rodents. Introducing residential neighborhoods adjacent to wetlands, such as the Plummer Creek Restoration Site and the Refuge, will increase the predation pressure on bird species and the salt marsh harvest mouse (SMHM). Domestic dogs may also flush birds from nesting habitat or cause migratory birds to expend energy in fleeing from dogs that enter foraging habitat. At other residential developments, predator barriers have been required between new residential neighborhoods and marsh habitat. However, the Dumbarton TOD and Areas 3 and 4 Specific Plan EIRs contain no mitigation measures for the increased population of predators that will be brought adjacent to marsh habitats when the specific plans are implemented. Therefore, the Project CEQA document should address this potential impact on species in adjacent marsh habitats. RWQCB-A-10

6. The General Plan Tune Up Project EIR Should Address Conflicts with the *Baylands Ecosystem Habitat Goals*.

The Project EIR should address conflicts that the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan have with the *Baylands Ecosystem Habitat Goals* (1999) (*Habitat Goals*). The Biological Resources discussion in the Project EIR should address Project compatibility with the *Habitat Goals* and its companion document *Baylands Ecosystem Species and Community Profiles* (2000)(*Profiles)*, which should be recognized as regional habitat conservation plans. The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM. RWQCB-A-11

The *Habitat Goals Project* recommends exploring options to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper end of Plummer slough

(Chapter 3, page 133), which includes lands covered by the Dumbarton TOD Specific Plan. This recommendation was not addressed in the Dumbarton TOD Specific Plan

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

Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation is demonstrably capable of providing equal habitat benefit for listed species. Therefore, at Area 4, the City should evaluate the environmental impacts of an alternative project that would consist solely of restoring tidal marshes and/or open water habitat at the site, consistent with the Habitat Goals. Evaluation of an alternative that would restore the site to tidal marsh should consider how the alternative could help retard, store, and filter floodwaters, and preserve sufficient upland area to serve as a buffer against sea level rise (i.e., to ensure that the area of restored marsh is not reduced, for example by being converted to open water, as a result of sea level rise) and storms. **RWQCB-A-11 cont.**

7. Recommendations for the Discussion of Post-Construction Stormwater Management in the EIR for General Plan Tune Up Project

The EIR should describe how development or redevelopment in the areas covered by the General Plan should incorporate a combination of low impact development (LID) features to reduce discharge of pollutants to waterways. The EIR should cite the specific treatment standards required for these measures, including those required under Provision C.3. of Water Board Order No. R2-2009-0074, the Municipal Regional Stormwater Permit (MRP), under which the City of Newark is a co-permittee.

The EIR should note that the LID approach encompasses a broad range of urban planning issues associated with new and re-development projects, including street and circulation designs, innovative approaches to parking, drainage designs, land use densities and structure locations, and similar issues. The EIR should indicate that future individual projects in the areas covered by the Project will be required to incorporate not simply treatment controls based on an LID approach, but the range of LID approaches, including implementing “skinny street” or “green street” designs, parking maxima, identifying opportunities to minimize impervious surfaces by implementing shared and/or structure parking, and the like. **RWQCB-A-12**

California Regional Water Quality Control Board
San Francisco Bay Region

Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

January 12, 2010
CIWQS Place ID No. 748275

Sent via electronic mail: No hardcopy to follow

City of Newark
37101 Newark Boulevard
Newark, CA 94519]

Attn: Terrence Grindall (Terrence.Grindall@newark.org)

Re: Comments on the Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan
SCH No.: 200705205

Dear Mr. Grindall:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciate the opportunity to review the December 2009 *Draft Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan* (DEIR). The City of Newark is proposing a Specific Plan for Areas 3 and 4 in southwestern Newark, which is bound generally by Mowry Avenue, Cherry Street, Stevenson Boulevard, and the Mowry Slough. The proposed Areas 3 and 4 Specific Plan allows for development of up to 1,260 housing units of various densities, an up to 600-student elementary school, a golf course, and open space areas, as well as retention of existing light industrial and institutional (e.g., Ohlone College, City fire station, park, and community activity center) uses. Water Board staff have the following comments on aspects of the Specific Plan, as presented in the DEIR, which may impact waters of the State.

RWQCB-A-13

Comment 1
Section 3.5, Biological Resources, 3.5.2.4, Jurisdictional Waters of the U.S./Waters of the State, Page 124
The discussion of jurisdictional waters does not include a discussion of the State's Porter-Cologne Water Quality Act (Water Code Section 13000 et seq.). Water Board staff recommend including the following text as a discussion of Porter-Cologne authority in the revised EIR:

> The Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in combination with permits issued by the Army Corps of Engineers (ACOE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements (WDRs) for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that

are outside of the jurisdiction of the ACOE (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of ACOE jurisdiction may require the issuance of either individual or general WDRs from the Water Board.

Under the authority of the Porter-Cologne Water Quality Act, the Water Board has developed, and implements, the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan), which defines the Beneficial Uses of waters of the State within the San Francisco Bay Region.

Because habitats in Newark Area 4 are hydrologically connected to San Francisco Bay, the following beneficial uses of San Francisco Bay are also likely to apply to waters and wetlands in Area 4: estuarine habitat; preservation of rare and endangered species; contact water recreation; non-contact water recreation; shellfish harvesting; fish spawning; and wildlife habitat. Implementation of the proposed Specific Plan may impact Beneficial Uses of waters of the State in Area 4. In particular, Beneficial Uses related to habitat for rare and endangered species may be impacted by the Specific Plan.

Comment 2
Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Page 134
The DEIR states that:

RWQCB-A-13 cont.

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

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

Comment 3
Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Pages 135 and 136.
Implementation of the Specific Plan would result in the loss of up to 85.6 acres of wetland/march/aquatic habitat, including 7.65 acres of salt marsh harvest mouse/salt marsh wandering shrew habitat. As mitigation for this significant impact the DEIR offers Mitigation Measure BIO-1.2A.

To offset impacts to the wetland and aquatic habitat on the site, the future project proponent(s) will utilize a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off site. The on-site component of the mitigation shall include creation of wetland and aquatic habitat within upland habitat that is currently disked and graded within Area 4 and will enhance portions of the remaining areas of agricultural field/seasonal wetland habitat within Area 4, as described below.

Compensatory mitigation for impacts to these habitats shall consist of two parts: (1) creation of high quality wetland and aquatic habitat within Area 4 within upland habitat at an acreage ratio of 1:1 (habitat created/enhanced:habitat impacted) to prevent any net loss of habitat functions or values, and (2) enhancement of existing seasonal wetland habitat that is currently within agricultural production (mapped as agricultural field/seasonal wetland habitat) at an acreage ratio of 0.5:1 (such enhancement will include cessation of farming activities, seeding with appropriate seasonal wetland plant seeds, and may include minor earth moving activities). In summary, any impacts to seasonal wetlands, freshwater marsh, brackish marsh, detention basin, and aquatic habitat will be mitigated at a total acreage ratio of 1.5:1 (habitat created and enhanced: habitat impacted).

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

RWQCB-A-13 cont.

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

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

available for use as mitigation wetlands, and are in proximity to protected lands that currently provide habitat for listed species.

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

RWQCB-A-13 cont.

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

The conceptual mitigation plan(s) should contain sufficient detail to demonstrate that proposed mitigation project(s) are hydrologically feasible and accessible to impacted wildlife species.

Mitigation should also be "in kind" as much as is feasible. When mitigation is not "in-kind", then the amount of mitigation must be increased to compensate for the disparity.

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

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

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

RWQCB-A-13 cont.

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

Comment 5
Section 3.5, Biological Resources, Mitigation Measure BIO-8.4, Pages 153.
This mitigation measure for Salt Marsh Harvest Mouse states:

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

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

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

RWQCB-A-13 cont.

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

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

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

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

If you have any questions, please contact me at (510) 622-5680, or via e-mail at bwines@waterboards.ca.gov.

Sincerely,

Dale Bowyer
Senior Water Resources Control Engineer
South and East Bay Watershed Section

RWQCB-A-13 cont.

cc: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (by fax: 916-323-3018)
USACE, San Francisco District, Attn: Regulatory Branch, 1455 Market Street, San Francisco, CA 94103–1398 (cameron.l.johnson@usace.army.mil, jane.m.hicks@usace.army.mil)
CDFG, Central Coast Region, Attn: Marcia Grefsrud, P.O. Box 47, Yountville CA 94599 (mgrefsrud@dfg.ca.gov, sbrunson@dfg.ca.gov)
United States Department of the Interior, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825-1846 (Ryan_Olah@fws.gov, cay_goude@fws.gov, Winnie_chan@fws.gov, joseph_terry@fws.gov, james_browning@fws.gov)

Attachment B
San Francisco Bay Regional Water Quality Control Board
Toxics Cleanup Division Comments
NOP for the Newark General Plan Tune Up EIR

We are commenting on the Notice of Preparation (NOP) that we received on January17, 2013. As a Resource Agency, the San Francisco Bay Regional Water Quality Control Board is submitting comments for the Newark General Plan Tune Up project (Project) Environmental Impact Report (EIR). This attachment (B) includes comments by staff of the Toxics Cleanup Division, intended to ensure that the environmental documentation under the California Environmental Quality Act (CEQA) adequately addresses the soil and groundwater pollution, and to ensure that appropriate mitigation measures pertaining to releases of hazardous substances at the Project are implemented.

Toxics Cleanup Division staff are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with this Project. Our comments address hazardous materials and water quality, and touch upon the elements of air quality and utilities that are impacts associated with the presence of hazardous materials and groundwater pollution.

Project Description
The City of Newark is undertaking a "Tune Up" of its 1992 General Plan. The purpose of the General Plan Tune Up is threefold:

- to update the policy framework and land use designations that will guide future development in Newark through 2035;
- to comprehensively incorporate recent planning efforts, including the completed and adopted Dumbarton Transit Oriented Development Specific Plan (2010), Area 3 and 4 Specific Plan (2009), 2009-2014 Housing Element (2010), and Climate Action Plan, into the General Plan so as to ensure Citywide policy consistency; and
- to address and satisfy new State and regional regulations that have come into force since the General Plan was last updated, including Assembly Bill (AB) 162, Senate Bill (SB) 5, the Complete Streets Acts of 2008, and the greenhouse gas (GHG) reduction goals of AB 32 and SB 375.

Pursuant to the CEQA Act Section 15063, the City has determined that an EIR is required and an Initial Study has not been prepared. The City of Newark will be the Lead Agency and will prepare an EIR for the Project. The NOP invites comments in writing as to the scope and content of the EIR. The City needs to know the views of the Responsible and Trustee Agencies as to the scope and content of the environmental information that is germane to each agency's statutory responsibility in connection with the proposed Project. Responsible Agencies will need to use the EIR prepared by the City when considering their permit or other approval for the Project.

RWQCB-A-13 cont.

Staff Recommendations for the EIR
As explained below, Regional Water Board staff recommends that the EIR address the following:

- Cleanup and mitigation measures to remove polluted shallow soil and groundwater in private properties and public right-of-ways in the Project prior to development.
- Exposure to chemicals and assessment of risk to human health and the environment.
- Potential for further migration of pollutants and adverse impacts to water quality.
- Evaluation and, if necessary, appropriate mitigation for potential vapor intrusion of pollutants to indoor air.
- Compliance with cleanup orders, existing land use covenants, etc.
- Management of contaminated soil and groundwater during grading, construction, dewatering actions.
- Health and Safety planning for construction workers, utility workers, etc.
- Risk Management and Construction planning prior to, during and after development.
- Monitoring and ongoing cleanup after the project is built out.
- Institutional constraints and who will enforce them.
- Environmental deed restrictions/notices where significant pollution is left in-place.
- Placement of underground structures and utility corridors in areas of soil and groundwater pollution.
- Community outreach, public notification and participation.
- Assurance that permits to grade, build, or construct will not be issued by the City until the appropriate Overseeing Agencies have signed-off on cleanup and mitigation measures needed to protect human health and the environment.

RWQCB-A-13 cont.

The Regional Water Board Toxics Cleanup Division staff has been working with the City of Newark and other stakeholders to address the existing soil and groundwater pollution in the Dumbarton Transit Oriented Development (TOD) area of the Project, and have submitted comments dated April 30, 2010, June 30, 2011, and July 27, 2011, to assist in moving the redevelopment project forward. Some of our comments have been incorporated into the TOD Specific Plan Final EIR, Hazardous Materials Section 4.7 (page 4.7-30) Mitigation Measures as follows.

4.7a Prior to issuance of gradient or building permit for an individual property within the Specific Plan area with known, suspected or potential residual environmental contamination. that the ***property owner shall*** *to the extent such activities have not been performed by the property owner pursuant to the requirements of the Regional Water Quality Control Board (RWQCB) or other overseeing agency under applicable environmental laws (Oversight Agency) do all of the following:*

1) *summarize available data regarding the extent and magnitude of soil and groundwater contamination at the subject property;*
2) *perform a data gap analysis;*
3) *based on the results of the data gap analysis determine whether additional investigation is needed to fill data gaps and if so, propose and perform such investigation with the approval of the Oversight Agency;*

4) *provide either a health risk assessment (HRA) or Feasibility Study (FS) containing a health risk assessment to summarize potential risks to human health and the environment posed by the contamination with respect to the proposed development;*
5) *based on the HRA or as set forth in the FS, develop remedial actions to address the identified risks based upon the proposed development, which remedial option may include engineering and institutional controls, and tentatively select the most appropriate remedial option to ensure that the proposed development will not present an unacceptable risk to human health and environment as required by applicable environmental laws, as well as procedures for proper management of contaminated soil and groundwater that may be encountered during development; and*
6) *submit a report to the Oversight Agency for review and regulatory approval of the proposed remedial plan, including engineering and/or institutional controls, under applicable environmental laws.*

General Comments

While the Regional Water Board does not approve or disapprove specific development projects, we are often asked if a proposed future use is compatible with residual site contamination. Based upon the known residual concentrations remaining at these sites in the TOD, we recommend the following:

1. Environmental risk assessment for human health and ecological risks for the entire project area, conducted prior to development.

2. Additional data gap investigations: To be suitable for residential use, the sites must be thoroughly assessed for the presence and absence of contamination. A higher level of effort is needed to demonstrate the data gaps have been filled. The data is needed to perform a comprehensive human health risk assessment and to develop cleanup standards to support residential development.

3. Additional remediation for future sensitive land uses such as residential should be determined based on the results of the environmental risk assessment and proposed future uses. Any properties proposed for residential use must be cleaned up to a level protective of residential use. The cleanup can be based on the San Francisco Bay Regional Water Board Environmental Screening Levels for Residential Use, or to a level protective of human health and safety based on a site-specific human health risk assessment. To be suitable for future residential use, the property needs (1) remediation to a level that allows unrestricted use or (2) risk management to assure that the future residents will not be exposed to unhealthy levels of contamination. Regarding the second option, we are generally reluctant to approve a risk management approach at residential sites, particularly single-family residential, and would only do so if the residual contamination was modest, the project design minimized potential exposure, and the local agency (City of Newark) played an active role in tracking and enforcing risk management measures.

4. Site-specific risk management plans may also be required to manage any significant residual pollution. Possible elements of a risk management plan include: a deed restriction prohibiting supply wells or sensitive site uses (e.g. residential use),

RWQCB-A-13 cont.

requirement for vapor barriers and passive ventilation systems to mitigate possible vapor migration into new buildings (generally not allowed for residential use), and a health and safety plan for construction workers who will be doing subsurface work at the site.

5. Regional risk management plan (similar to Mission Bay in San Francisco) may also be required for consistent area-wide plume management for City right-of-ways, utility corridors, groundwater management and dewatering projects by municipalities that may not be aware of the residual soil and groundwater contamination.

6. Capped Areas: Currently, there are three capped areas in the Dumbarton TOD. Two capped areas exist at FMC's property: the elemental phosphorous pit area in Parcel A, and the ethylene dibromide and 1,2-dichloroethane (1,2-DCA) area in Parcels B and I. Neither area is suitable for development at this time. Active source removal should be seriously considered. Additionally, a capped area exists at the former Jones-Hamilton site that contains elevated pentachlorophenol, 1,2-DCA, and dioxins and furans. A cleanup plan, dated December 18, 2012, has been submitted for cap removal, soil excavation (138,000 yd^3) to a depth of ten feet below grade, and groundwater pumping to remove a 1,2-DCA hot spots. This work plan is currently under review.

7. Protection of Groundwater: Residual pollution left in place must be adequately managed to ensure that the impacted groundwater does not further deteriorate. The proposed project must incorporate mitigation measures to prevent further migration of pollutants from soil to groundwater and also prevent further migration to deeper aquifers in the project area.

RWQCB-A-13 cont.

8. Protection from Vapor Intrusion: Volatile organic compounds left in place at concentrations exceeding residential standards may pose unacceptable vapor intrusion risks.

9. Amended SCR Orders: The Water Board will likely amend the SCR orders for long-term risk management of residual pollution for the individual sites. Alternatively, the Water Board may adopt one comprehensive SCR to enforce a region-wide risk management plan that addresses the entire TOD area, to ensure long-term management of residual pollution, including but not limited to institutional constraints, soil vapor monitoring, groundwater monitoring and remediation, vapor barriers, sub-slab venting systems, etc.

Environmental Conditions and Regulatory Oversight of Cleanup Sites in the TOD
Soil and groundwater pollution exists in the Dumbarton TOD area and poses a threat to human health and safety under a variety of scenarios, including residential receptors, commercial workers, construction workers, and utility workers, etc. The pollution results from decades of processing and manufacturing chemicals and hazardous waste facility operations. A large portion of the TOD area is contaminated with a variety of chemicals, including organic and inorganic compounds, petroleum hydrocarbons, metals, elemental phosphorous, pesticides and herbicides. The most prevalent pollutants include TCE, PCE, 1,2-DCA and EDB; pentchlorophenol; benzene, toluene, ethylbenzene and xylenes; arsenic, chromium, lead, dioxins and furans. These

chemicals constitute hazardous materials as that term is defined in the Health and Safety Code Section 25260.

The Regional Water Board, Toxics Cleanup Division currently oversees the investigation and cleanup of six contaminated sites (listed below) in the TOD (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution and nuisance.

- FMC Corporation, 8787 Enterprise Drive, SCR Order R2-2002-0060
- Ashland Inc., 8610 Enterprise Drive, SCR Order R2-2005-0038
- SHH, LLC, 37445 Willow Street, SCR Order R2-2008-0081
- Jones-Hamilton, 8400 Enterprise Drive, SCR Order R2-2001-0054
- Former Baron-Blakeslee, 8333 Enterprise, SCR Order R2-2005-0004
- Torian Properties, 37555 Willow Street

Investigation and cleanup of these sites have been conducted independently by individual property owners rather than a collaborated joint effort. The Water Board adopted individual cleanup orders to those responsible for the cleanup (dischargers) which included FMC, Ashland, Jones-Hamilton, Honeywell, and SHH. The Orders required that the pollution be defined, that contamination sources be removed, and that water quality be restored, consistent with the Clean Water Act, and in *accordance with State* Board *Resolution* 68-16: "Statement of Policy with Respect to Maintaining High Quality of Waters in California" *(referred to as* the Antidegradation Policy). **The Site Cleanup Requirements (SCR) Orders adopted soil and groundwater cleanup standards to support continued industrial/ commercial land, and not residential use.** **RWQCB-A-13 cont.**

Prior to the Regional Board's regulatory oversight, the Department of Toxic Substances Control (DTSC) was the lead agency for several Resource Conservation and Recovery Act (RCRA) Permitted facilities in the TOD area. Accordingly, DTSC case files contain relevant information on the location of historic operations, spills, violations and sources areas of contamination. DTSC files containing inspection photographs and notes will be helpful in locating buried ponds, pits, tanks, sumps and other buried obstacles that were closed under DTSC's oversight. In addition to DTSC, the Newark Fire Department has inventory records, emergency response records, notices of violations and other key information that should be consulted to ensure that the cleanup of contaminated sites in the Project are adequately assessed.

Various cleanup technologies have been implemented over the years and the cleanup actions implemented to date have not been entirely successful however. Given the nature and extent of the impacts to soil and groundwater in the TOD area, cleanup efforts in the past have largely focused on continued industrial or commercial land use. Accordingly, the previous site conceptual models, cleanup goals, cleanup actions, and cleanup standards that were developed to meet industrial and commercial land uses are no longer appropriate and a higher level of characterization and cleanup is needed to support residential reuse. Additionally, the "duration of time" needed to reduce the pollution to safe levels to prevent vapor intrusion risks may exceed the scheduled construction at a particular parcel.

The Dumbarton TOD EIR and Final EIR did not evaluate environmental impacts from soil and groundwater impacts. The lateral and vertical extent of soil, soil gas, and groundwater contamination in the Project area needs to be thoroughly, characterized and defined. Once the contamination in soil, soil gas and groundwater has been thoroughly assessed, characterized and defined, a human health and ecological risk assessment that evaluates all exposure pathways is needed, along with a feasibility study which determines the most cost and time-efficient clean up alternative that results in removal of soil contamination (sources, gross contamination, nuisance and residual levels of contamination to a level that ensures short-term and long-term protection of human health and the environment for decades to come.

The Newark General Plan Tune Up needs to thoroughly assess the pollution impacts with respect to the human health and safety of future site receptors (new residents/homeowners), the development timetable, and the long-term responsibility of managing the residual pollution. If the pollution underlying properties planned for residential use cannot be reduced to risk levels protective of $1x10^{-6}$ (one in a million cancer risk), we will require engineering controls be incorporated into the design such as active and passive sub-slab venting systems, monitoring devices to ensure the systems are working properly, and long-term groundwater monitoring and sampling of shallow zone and Newark Aquifer wells. If needed, long-term groundwater extraction and treatment systems will also be needed in the TOD area to control migration of the groundwater plume.

If any residual contamination is left in place within the public right-of -ways is a concern, engineering controls and other mitigation measures must be implemented. Air monitoring will be important for utility workers that may be exposed to unsafe levels of chemicals when entering confined spaces. Special precautions must also be incorporated into the design of utility corridors to ensure the workers are adequately protected as well.

RWQCB-A-13 cont.

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

September 27, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Boulevard
Newark, CA 94560

Subject: Regional Water Quality Control Board (Toxics Cleanup Division) Supplemental Comments on the *General Plan Tune Up, Draft Program Environmental Impact Report (DEIR) for the City of Newark* dated August 13, 2013

Dear Mr. Grindall:

Thank you for the opportunity to comment on the *General Plan Tune up Draft Program EIR (DEIR)* for the City of Newark dated August 13, 2013. Please include these additional comments from the Toxics Cleanup Division staff to supplement our agency letter dated September 26, 2013.

These comments on the DEIR pertain to Section 4.7 Hazards and Hazardous Materials (pages 4.7-1 through 4.7-32) and Table 1-1, Summary of Impacts and Mitigation Measures, to ensure that the environmental documentation under the California Environmental Quality Act (CEQA) adequately addresses soil and groundwater pollution in the City of Newark and to protect human health and the environment. RWQCB-B-1

Regional Water Board (Toxics Cleanup Division) staff oversees the investigation and cleanup of numerous for numerous leaking underground fuel tanks (LUFT sites) and spills, leaks, and cleanup sites (SCP sites) in the proposed project areas, pursuant to California Water Code 13304, where hazardous substances have been discharged and deposited into Waters of the State and have created a condition of pollution and nuisance.

Section 4.7 (Hazards and Hazardous Materials) does not accurately depict the extent and magnitude of existing soil and groundwater pollution in Newark areas, and does not appropriately evaluate potentially significant hazards to public health and the environment from RWQCB-B-2 RWQCB-B-3

harmful chemicals in the soil, soil vapor and groundwater and ongoing migration of pollutants in groundwater. Shallow groundwater pollution can pose significant threats to human health can be problematic for redevelopment, and can take decades to restore its beneficial uses. RWQCB-B-3 cont. RWQCB-B-4

The DEIR does not identify any mitigation measures for hazardous materials. Table 4.7-1, Hazardous Materials Sites in Newark, lists more than 100 hazardous material sites; however, in Table 1-1, Hazards and Hazardous Materials Impact Criteria (HAZ-1 through HAZ-9) were "less than significant (LTS)" before mitigation and Mitigation Measures were "not applicable (N/A)."

We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. RWQCB-B-5

If you have any question or comments, please contact Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.

Sincerely,

Mary Rose Cassa for

Digitally signed by Mary Rose Cassa
Date: 2013.09.27
16:18:19 -07'00'

Bruce H. Wolfe
Executive Officer

Attachment
cc: w attachment
Alameda County Water District, Attn Steven Inn (steven.inn@acwd.com)
Ashland, Inc., Attn: Michael Dever (mbdever@ashland.com)
SHH LLC, Attn: Peter Schneider (pds5000@aol.com)
FMC Corporation, Attn: James Bodamer (jbodamer@fmc.com)
Cargill, Inc., Attn Penny Streff (penny_streff@cargill.com)
Jones-Hamilton Co., Attn: Gerry Danes (gdanes@jones-hamilton.com)
Trumark Commerical, Attn: Veronica Vargas (vvargas@trumark-co.com)
Honeywell International Inc., Attn: Benny DeHigh (benny.dehghi@honeywell.com)
Integral Communities, Attn: Glenn Brown (gbrown@integralcommunities.com)
William Lyon Homes, Inc., Attn: Eric Keller (eric.keller@lyonhomes.com)

Attachment

Regional Water Quality Control Board (Toxics Cleanup Division) Staff - Supplemental Comments on the *General Plan Tune Up, Draft Program Environmental Impact Report (DEIR) for the City of Newark* dated August 13, 2013

The following comments are provided to encourage the City to take an active role in ensuring hazardous materials sites are adequately remediated prior to development.

1. Past industrial activities such as chemical handling, manufacturing, and transporting in the vacant western portion of Newark have caused conditions of pollution and nuisance. Soil and groundwater are contaminated with chemicals that are known to cause cancer, birth defects, and internal and respiratory health problems. These chemicals include volatile and semi-volatile organic compounds including benzene, ethylene dibromide (EDB), 1,2-dichloroethane (1,2-DCA), trichloroethene (TCE) tetrachloroethene (PCE), pentachlorophenenol (PCP), various metals including arsenic; dioxins/furans and polychlorinated biphenols (PCBs), polyaromatics (PAHs), petroleum hydrocarbons. **RWQCB-B-6**
2. Cleanup actions implemented by dischargers to address the pollution and nuisance conditions, especially in western Newark in the Dumbarton TOD area (TOD), have not been entirely successful and will likely take years to restore groundwater beneficial uses. **RWQCB-B-7**
3. Human health risk assessments have been completed at many of the hazardous materials sites, and the results often find excessive exposure risks to human health, attributed from residual chemicals in soil, soil vapor, and groundwater. **RWQCB-B-8**
4. Vapor barriers and underground venting systems (i.e., engineering controls) are being proposed some of the property owners in the TOD to mitigate vapor intrusion risks. The use of vapor barriers and active ventilation systems to mitigate possible vapor migration into new buildings is a risk management approach that is considered viable only for industrial and commercial sites with "modest" levels of contamination and only after aggressive remedial actions are first implemented to the fullest extent prior to occupancy. To be suitable for future residential use, the sites need to be remediated to a level that allows for unrestricted use (i.e., 1×10^{-6} for carcinogens and Hazard Index of 1 for noncarcinogens). Staff is generally reluctant to approve a risk management approach at residential sites, particularly single family residential, and would only do so if (1) the residual contamination were modest (e.g., between1×10^{-5} and 1×10^{-6} cancer risk); (2) the project design minimized potential exposure, and (3) a local agency (presumably the City of Newark) played an active role in tracking and enforcing risk management measures. **RWQCB-B-9**
5. Cleanup of contaminated soil can pose potentially significant impacts to human health. At the Jones Hamilton hazardous materials site, an estimated 138,000 cubic **RWQCB-B-10**

yards of contaminated soil is proposed to be excavated and off-hauled by truckloads through residential neighborhoods and City streets. The final EIR should address hazardous materials cleanup projects that can exposure residents to harmful chemicals dusts, and vapors during excavation, loading, and transporting. **RWQCB-B-10 cont.**

6. Harmful chemicals and vapors that collect within utility corridors can pose potentially significant impacts to utility workers and service employees working in confined spaces within polluted public streets. These workers can also be exposed to contaminated groundwater during dewatering. **RWQCB-B-11**

7. The phasing and timing of the particular developments should to be managed appropriately by the City to prevent exposure to hazardous materials. Soil cleanups should be implemented in advance of developing new vacant properties in Newark, to prevent exposure to construction workers and occupant of new residences. Protective measures are needed to ensure that removal of cleanup actions take place prior to any new residents moving into the affected areas of Newark. **RWQCB-B-12**

To address potentially significant impacts and hazards to the public or the environment, staff recommends the following actions:

a. Include measures to ensure protection of human health from exposure to hazardous materials at contaminated properties. The Dumbarton TOD Specific Plan EIR addressed potentially significant impacts with mitigation measures 4.7-1a through 4.7-1e.
b. Consider supplemental EIRs for developments overlying soil and shallow groundwater plumes to adequately evaluate the potential hazards to the public during cleanup of soil and groundwater pollution underlying sites.
c. Consider development only at parcels where hazardous materials and residual pollution have been aggressively and successfully remediated to the fullest extent, particularly to ensure protection from potential vapor intrusion risks. **RWQCB-B-13**
d. Allow installation of engineering controls (i.e., vapor barriers and venting systems) only at commercial and industrial properties. Ensure that these engineering controls are appropriately effective by routine monitoring that takes place prior to permitting occupancy and continues long-term, as needed.
e. Include post-construction mitigation measures to ensure that future homeowners are protected from underlying residual pollution and financial responsibilities associated with any residual pollution. Mitigation measures should address the following:
    i. Long-term risk management of pollution, long after the development is constructed;
    ii. Inspection and monitoring of any engineered vapor mitigation systems to ensure the system are working effectively;

iii. Long-term groundwater monitoring, sampling, and reporting until the cleanup goals are reached;
iv. Proper abandonment of wells after the cleanup goals are reached;
v. Periodic indoor air monitoring of buildings that are constructed over plumes with elevated levels of volatile organic compounds.

f. Provide for community outreach, warnings and public notices to advise local residents and workers of the potential hazards with the cleanup, before work has started.

g. Include measures to ensure protection of public utility corridors for abating hazardous vapors and for long-term treatment of contaminated groundwater, as appropriate.

h. Create a system for community notification such as a website (see "www.Redfieldsite.org")

RWQCB-B-13 cont.

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COMMENT LETTER # Ashland

September 27, 2013

VIA EMAIL

Mr. Terrance Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, California 94560

Re: Ashland, Inc. Comments on: (i) General Plan Tune Up Draft Program EIR for the City of Newark, and (ii) Newark General Plan – Draft for Public Review

Dear Mr. Grindall:

On behalf of Ashland Inc. ("Ashland"), thank you for the opportunity to comment on the General Plan Tune Up Draft Program Environmental Impact Report for the City of Newark ("DEIR"), and (ii) Newark General Plan – Draft for Public Review dated August 2013 ("Draft General Plan"). Ashland has two comments regarding these documents for your consideration.

First, in the Draft General Plan, which is incorporated by reference in the DEIR, many of the proposed land use designations are inconsistent with approved land use designations in the Dumbarton Transit Oriented Development Specific Plan ("Specific Plan"), which was approved by the City of Newark in September 2011. Specifically, among other inconsistencies, land which was approved for "Medium/High Density Residential" use in the Specific Plan, at an approved density of 16 to 60 units per acre, is mapped at Figure LU-1 of the Draft General Plan for "High Density Residential" use at an approved density of 30 to 60 units per acre.

Ashland-1

As you know, Ashland owns property within the Specific Plan which is approved for Medium/High Density Residential use. Placing the property in a High Density Residential use category would nearly double the required minimum density from 16 to 30 units per acre. The residential product which could be constructed at these two minimum densities is completely different, and Ashland never agreed to a minimum density of 30 units per acre for its property.

There is no apparent intent by the City in the Draft General Plan to amend the approved Specific Plan. So we are assuming that the absence of any Medium/High Density Residential category at 16 to 60 units per acre, as approved in the Specific Plan, was an oversight. The Draft General Plan therefore needs to be revised to either create a new Medium/High Density Residential designation, at 16 to 60 units per acre, to apply to all properties within the Specific Plan area which are currently so designated. Alternatively, the Draft General Plan should

expressly state that the land use designations and densities applicable to Specific Plan properties are as stated in the Specific Plan, and that the City-wide land use designations and densities created in the Draft General Plan do not apply to the Specific Plan area. Ashland also concurs in comments made by Cargill Incorporated regarding these points in a letter from Paul Shepherd dated September 27, 2013, to the City of Newark commenting on the Draft General Plan.

Ashland-1 cont.

Secondly, the DEIR at Page 4.7-7 states that the Ashland property (within the Specific Plan area) is, present tense, "one of three State Response sites that DTSC defines as confirmed release sites that are generally high-priority and high potential risk." For this statement, DEIR cites to the EnviroStor database maintained by DTSC for the Ashland property. The EnviroStor database contains no entries for the Ashland property past 1984.

The Ashland property is not a State Response site and is not under the active oversight of DTSC. Oversight of the property was transferred to the San Francisco Bay Regional Water Quality Control Board ("RWQCB") in 1984 and nearly 30 years ago. The only current, accurate and relevant information regarding the Ashland property may be found on the Geotracker website maintained by the RWQCB. The EnviroStor file is terribly outdated and any reference to it or to Ashland as a "State Response site" must be removed in order for the DEIR to convey accurate information to the public and to the City of Newark regarding the Ashland property. For your assistance, I have included a proposed redline of relevant excerpts from the DEIR making this correction at Attachment 1 to this letter.

Thank you again for the opportunity to comment on the Draft General Plan and DEIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me.

Ashland-2

Very truly yours,

Barry J. Shotts

Attachment

cc: Kimberly Humphrey Czirr
Michael Dever
Kristina Woods

Attachment 1
Proposed Revisions to DEIR
(attached)

Known Hazardous Materials Sites

Regional Water Quality Control Board (GeoTracker Database)

The GeoTracker database is the RWQCB's data management system for managing sites that impact groundwater, especially those that require groundwater cleanup (Underground Storage Tanks (USTs), Department of Defense, Site Cleanup Program) as well as permitted facilities such as operating USTs and land disposal sites. GeoTracker contains well, tank, and pipeline data in California. A database search, conducted on June 18, 2013, revealed a total of 110 listings in or near the Plan Area.[11] Of these, 10 are permitted underground storage tank (UST) facilities, 37 are leaking underground storage tank (LUST) cleanup sites (16 of which are closed), and 45 are other cleanup sites (22 of which are closed). The locations of these sites are shown on Figure 4.7-1 and information about each of these sites is provided in Table 4.7-1, Hazardous Materials Sites.

Department of Toxic Substances Control

The DTSC's EnviroStor database is an online search tool for identifying sites that were contaminated or are potentially contaminated and in need of further investigation. The EnviroStor database also identifies facilities that are authorized to treat, store, dispose of, and/or transfer hazardous waste. The EnviroStor database includes lists of the following site types: federal Superfund sites; State Response, including Military Facilities and Federal Superfund; Voluntary Cleanup; and School sites. EnviroStor provides the site name, site type, status, address, any restricted use and/or recorded deed restrictions, past use(s) that caused contamination, potential contaminants of concern, site history and planned and completed activities. Sites in the EnviroStor database may also be included in the GeoTracker database and vice versa.

Ashland-3

As of June 18, 2013, there are 22 regulatory properties within the immediate Plan Area that require DTSC action or evaluation reported via the EnviroStor database search and five which require no further action.[12] The locations of these sites are shown on Figure 4.7-1 and information about each of these sites is provided in Table 4.7-1, Hazardous Materials Sites.

There are no federal Superfund sites in the Plan Area. However, there are three State Response sites that DTSC defines as confirmed release sites that are generally high-priority and high potential risk.[13] The State Response sites are:

- Ashland Chemical, located at 8600 Enterprise Drive, Newark, was a packaging and distribution center involving a variety of chemicals. Contaminants that have been detected and removed from the soil are

[11] California State Water Resources Control Board, GeoTracker, http://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=Newark%2C+CA, accessed on February 1, 2013.

[12] California Department of Toxic Substances (DTSC), EnviroStor Database www.envirostor.dtsc.ca.gov, accessed on February 1, 2013.

[13] California Department of Toxic Substances (DTSC), EnviroStor Database Glossary, http://www.envirostor.dtsc.ca.gov/public/EnviroStor%20Glossary.pdf, accessed on February 1, 2013.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
1	A & S Enterprises	7275 Thornton Ave	Newark	LUST Cleanup Site	Open – Remediation	GeoTracker
2	Abe Oil, Inc.	8130 Enterprise Drive	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
3	Ac Transit-Newark Facility	37650 Sycamore Street	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
4	Agilent Technologies	39201 Cherry Street	Newark	Tiered Permit	Inactive – Needs Evaluation	EnviroStor
5	Alcan Plastic Packaging Plant	6590 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
6	American National Can	6590 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
7	Ashland Chemical	8600 Enterprise Drive	Newark	State Response	Refer: RWQCB	EnviroStor; GeoTracker
8	Ashland Chemical	8610 Enterprise Drive	Newark	Tiered Permit; Other Cleanup Site	Refer: RWQCB; Open – Verification Monitoring	EnviroStor; GeoTracker
9	Ashland Specialty Chemical Co	8600 Enterprise Ave	Newark	Corrective Action	Refer: RWQCB	EnviroStor; GeoTracker
10	Ashland Specialty Chemical Co	8600 Enterprise Ave	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
11	Baron-Blakeslee	8333 Enterprise Drive	Newark	Closed Other Cleanup Site	Open – Remediation	GeoTracker
12	Bay Mirror, Inc.	6756 Central Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
13	Bay Mirror, Inc.	6792 Central Avenue	Newark	Tiered Permit; Other Cleanup	Inactive – Needs Evaluation; Completed – Case Closed	EnviroStor; GeoTracker
14	BP Oil Gas Station (Former Mobil Station)	35425 Newark Boulevard	Newark	Permitted SUT Site; LUST Cleanup Site	Open – Site Assessment	GeoTracker
15	Cargill Salt	7200 Central Avenue	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
16	Cellco Partnership	37555 Sycamore Street	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
17	Cerro Metal Products Company	6707 Mowry Avenue	Newark	Evaluation	Refer: RWQCB	EnviroStor
18	City of Newark Service Station	37440 Filbert Street	Newark	Permitted UST Site		GeoTracker
19	Cherry Properties	37409 Cherry	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
20	Chevron #9-3751	5502 Thornton Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
21	Columbus Coated Fabrics	38083 Cherry St	Newark	Evaluation	No Action Required	EnviroStor; GeoTracker
22	Consolidated Freightways Corp.	8130 Enterprise Drive	Newark	Other Cleanup Site	Open – Remediation	GeoTracker
23	Country Club Cleaning	35233 Newark Boulevard	Newark	Other Cleanup Program Site	Open – Site Assessment	GeoTracker
24	Desert Petroleum	36589 Newark Blvd	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
25	Dodge Property	5625 Robertson Avenue	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
26	Dutra Art Stone Facility	8175 Wells Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
27	Earl Automotive	6953 Jarvis Avenue	Newark	LUST Cleanup Site	Case Closed	GeoTracker
28	Edwards Enterprises	8455 Cabot Court	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
29	European Auto Wrecking	7324 Wells Avenue	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
30	Evergreen Oil Inc.	6880 Smith Ave	Newark	Corrective Action	Active	EnviroStor; GeoTracker
31	Evergreen Oil Inc.	6880 Smith Ave	Newark	Operating	RCRA	EnviroStor
32	Exxon No. 7-7116 (Thornton Avenue)	5835 Thornton Ave	Newark	Permitted UST Site; LUST Cleanup Site	Open – Remediation	GeoTracker
33	FERMA Corporation	6655 Smith Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
34	FMC Corporation	8787 Enterprise Dr	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
35	FMC Corporation	8787 Enterprise Dr	Newark	Corrective Action; Other Cleanup Site	Refer: RWQCB; Open – Remediation	EnviroStor; GeoTracker
36	Freitas Property	7721 Sunset Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
37	Freemont Paving	38370 Cedar Boulevard	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
38	Full Bloom Baking Company	6500 Overlake Place	Newark	Other Cleanup Program Site	Case Closed	GeoTracker
39	Georgia-Pacific – Former Peterbilt Motor Co	38811 Cherry Street	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
40	Grace Construction Products	6851 Smith Ave	Newark	LUST Cleanup Site	Open – Remediation	GeoTracker
41	Grand Auto Store	35382 Newark Blvd	Newark	Other Cleanup Program Site	Case Closed	GeoTracker
42	H.B. Fuller Co.	6925 Central Ave	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
43	Holland Oil	8130 Enterprise Drive	Newark	State Response	Certified	EnviroStor; GeoTracker
44	Honeywell International, Inc.	8333 Enterprise Drive	Newark	Post Closure	RCRA	EnviroStor
45	Honeywell International, Inc.	8333 Enterprise Drive	Newark	Corrective Action	Completed	EnviroStor; GeoTracker
46	Hulbert Lumber	37500 Cedar Blvd	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
47	Inland Paperboard & Packaging, Inc.	37333 Cedar Blvd	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
48	International Paper Company	38083 Cherry St	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
49	J&M Concrete	38288 Cedar Blvd	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
50	Jarvis Avenue Shell	6005 Jarvis Avenue	Newark	Permitted UST Site; LUST Cleanup Site	Open – Remediation	GeoTracker
51	JC Cleaners	39253 Cedar Blvd	Newark	Other Cleanup Program Site	Open – Site Assessment	GeoTracker
52	Jones-Hamilton Co.	8400 Enterprise Dr	Newark	Tiered Permit; Other Cleanup Site	Refer: RWQCB; Open – Site Assessment	EnviroStor; GeoTracker
53	Kim's Classic Cleaners (Former)	6259 Jarvis Ave	Newark	Other Cleanup Program Site	Open – Verification Monitoring	GeoTracker
54	Lafleur Machinery	8025 Enterprise Dr	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
55	Leslie Salt Company	7200 Central Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
56	Leslie Salt/FMC Magnesia Waste Pile	West of Enterprise Dr	Newark	State Response	Certified	EnviroStor; GeoTracker
57	Lewis Property	7969 Enterprise Dr	Newark	Other Cleanup Site	Open – Inactive	GeoTracker
58	Lido Chevron Station	6104 Jarvis Ave	Newark	Permitted UST Site		GeoTracker
59	LTD Ceramics, Inc.	7411 Central Ave	Newark	Tiered Permit	Inactive – Needs Evaluation	EnviroStor

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
60	Matheson Tri-Gas, Inc.	6775 Central Ave	Newark	Non-Operating; Other Cleanup Site	Open – Site Assessment	Envirostor; GeoTracker
61	MCI Worldcom Network Service	398 Eureka Dr	Newark	Other Cleanup Program Site	Open – Verification Monitoring	GeoTracker
62	Newark Landfill	8100 Mowry Ave	Newark	Land Disposal Site	Open	GeoTracker
63	Newark Printers	7679 Thornton Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
64	Newark Pump Station	8700 Thornton Ave	Newark	Permitted UST Site		GeoTracker
65	Newark Sportsman Club		Newark	Other Cleanup Site	Open – Inactive	GeoTracker
66	Newark Sportsman's Club	37447 Willow St	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
67	Newark Unified School District	37370 Birch St	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
68	Nordstrom	37599 Filbert St	Newark	Permitted UST Site		GeoTracker
69	Nortrax West	38600 Cedar Blvd	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
70	Oatey Company	6600 Smith Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
71	Ohlone Community College District Site	Cherry St Near Mowry	Newark	Voluntary Cleanup	Certified/Operation & Maintenance	EnviroStor
72	Oliveira Vincent Shell Station	6714 Thornton Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
73	Pabco Gypsum	37851 Cherry St	Newark	LUST Cleanup Site	Open – Verification Monitoring	GeoTracker
74	Paccar, Inc.	38801 Cherry St	Newark	Non-Operating	RCRA	EnviroStor; GeoTracker
75	Paccar, Inc.	38801 Cherry St	Newark	Corrective Action	Refer: RWQCB	EnviroStor; GeoTracker
76	Paccar/Lincoln	38505 Cherry St	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
77	Pacific Coast Transportation Services	37853 Cherry St	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
78	Private Residence	Private Residence	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
79	Quikrete	6950 Stevenson Blvd	Newark	Permitted UST Site		GeoTracker

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
80	Redwood Lumber	7091 Central Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
81	Redwood Lumber Company	7091 Central Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
82	Regal Station (Now Exxon)	6788 Thornton Ave	Newark	Permitted UST Site; LUST Cleanup Site	Open – Remediation	GeoTracker
83	Romic Environmental Technologies Corp.	37445 Willow St	Newark	Hazardous Waste	Case Closed	EnviroStor; GeoTracker
84	Romic Environmental Technologies Corp.	37445 Willow St	Newark	Corrective Action; Other Cleanup Site	Refer: RWQCB; Open – Remediation	EnviroStor; GeoTracker
85	Shell Station – 5489 Thornton Avenue	5489 Thornton Ave	Newark	LUST Cleanup Site	Open – Remediation	GeoTracker
86	Silvey – Liquid Air Property	8175 Wells Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
87	Silvey Transportation	8175 Wells Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
88	Smith (A.O.) Water Products	37171 Sycamore St	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
89	S.P. Dumbarton Branch R.O.W.	8785 Enterprise Dr	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
90	Standard Dry Wall Products	38403 Cherry St	Newark	Non-Operating		EnviroStor; GeoTracker
91	Standard Dry Wall Products	38403 Cherry St	Newark	Corrective Action	No Further Action	EnviroStor; GeoTracker
92	Steffensen Property – Wells Avenue	8040 Wells Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
93	Steffensen Property – Enterprise Drive	8140 Enterprise D	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker
94	Stevenson Tire	6110 Jarvis Ave	Newark	LUST Cleanup Site	Case Closed	GeoTracker
95	Super Kmart	5401 Thornton Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
96	Summerhill Commons	36840 Cherry St	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
97	Sun Microsystems	39001 Cherry St	Newark	Other Cleanup Program Site	Case Closed	GeoTracker
98	Thornton Business Center	8500 Thornton Willow	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
99	Thoro System Products	38403 Cherry St	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker

Ashland-3 cont.

TABLE 4.7-1 HAZARDOUS MATERIALS SITES IN NEWARK.

No.	Name	Address	City	Type	Status	Database
100	TNT Incorporated	38201 Cherry St	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
101	Tolbertson Property	Terminus of Mowry Ave	Newark	Other Cleanup Program Site	Open – Verification Monitoring	GeoTracker
102	Torian Holdings	37555 Willow St	Newark	Other Cleanup Site	Open – Site Assessment	GeoTracker
103	Track 7004	SW Corner I-880/ Hwy 84	Newark	Other Cleanup Program Site	Case Closed	GeoTracker
104	Two Count Company	37590 Sycamore St	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
105	Unocal	5799 Mowry Ave	Newark	LUST Cleanup Site	Open – Site Assessment	GeoTracker
106	Unocal Chemicals	6800 Robertson Ave	Newark	Closed Other Cleanup Site	Completed – Case Closed	GeoTracker
107	Union Sanitary District, Newark Stp.	8700 Thornton Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
108	Ups Freight – Newark Terminal	6700 Smith Ave	Newark	Closed LUST Cleanup Site	Completed – Case Closed	GeoTracker
109	Villa Cleaners	36565 Newark Blvd	Newark	Other Cleanup Site	Open – Verification Monitoring	GeoTracker

Ashland-3 cont.

toluene, xylene, ethylbenzene, PCE, and TCE. Ongoing efforts to extract and treat groundwater are supervised by the RWQCB.[14]

- Holland Oil, located at 8130 Enterprise Drive, Newark, once contained six aboveground waste oil tanks and has also been used as a trucking terminal. The potential contaminants of concern are benzene, TPH-Diesel, and TPH-Gas. The potential media affected include groundwater (not used for drinking water) and soil.[15]
- Leslie Salt/FMC Magnesia Waste Pile, located west of Enterprise Drive, Newark, was a disposal site for process wastes including: off-grade magnesia, dolomite, general rubbish, phosphorus sludges, gypsum, and excess catalysts (containing mercury). All material has been certified as removed from the site.[16]

[14] California Department of Toxic Substances (DTSC), Ashland Chemical, http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=01280046, accessed on February 1, 2013.

[15] California Department of Toxic Substances (DTSC), Holland Oil, http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=01290019, accessed on February 1, 2013.

[16] California Department of Toxic Substances (DTSC), Leslie Salt/FMC Magnesia Waste Pile, http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=01280072, accessed on February 1, 2013.

COMMENT LETTER # OAS

Ohlone Audubon Society, Inc.
A chapter of the National Audubon Society
Serving Southern Alameda County, CA

RECEIVED
OCT 10 2013
COMMUNITY DEVELOPMENT

Terrance Grindall

September 29, 2013

City of Newark

37101 Newark Boulevard

Newark, CA 945560

Re: Comments on Draft Environmental Impact Report for the Newark General Plan Update

Dear Mr. Grindall,

This letter is being written in response to Newark's Draft Impact Report for the General Plan Update. It is being written to protest the destructive plan to fill and develop Area 4 on the Newark marsh area. This is critical habitat in a number of ways. Even if it were not for the endangered species found there Newark would be unwise to build a golf course or any other development in such a fragile environment. The latest evidence for sea level rise indicates that the level will be quite a bit higher than previously thought. Golfers might have to wear wet suits when golfing within a few years.

Another very important reason for keeping Area 4 intact as a marsh is that as such the marsh is able to absorb more water and slow some of the flooding that might otherwise occur as sea level rises or there is a heavy rainfall.

Filling the nearly 400 acres of wetlands that fall within the expansion boundaries would deprive almost a dozen special status species of habitat in two ways. One is the naturally occurring habitat and the other is that there is the possibility of creating upland transition zone habitat for species as refugia in the event of high tides. The 1999 Baylands Ecosystem Habitat Goals Project also states that these two habitats are critical to the health of the Bay. OAS-1

The San Francisco Bay Regional Water Quality control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south central San Francisco Bay and that Area4 represents a rare opportunity to ...provide an area for tidal marsh species to move up slope in response to sea level rise.

The California Department of Fish and Wildlife have noted that this wetland is an integral component of the San Francisco Bay ecosystem and of critical importance to waterfowl and shorebirds.

Along with sensitive species there must be strong protection for the highly endangered Salt Marsh Harvest Mouse. There are other more suitable places to build houses, golf courses and other amenities

of urban and suburban living. Newark would be well served to protect Area 4 in its entirety and focus its development efforts in a more plausible location.

OAS-1 cont.

Yours truly,

Evelyn M. Cormier, President

Ohlone Audubon Society

31020 Carroll Avenue

Hayward, CA 94544

September 27, 2013

VIA EMAIL

Mr. Terrance Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, California 94560

Re: Cargill Comments on General Plan Tune Up Draft Program EIR for the City of Newark

Dear Mr. Grindall:

On behalf of Cargill, Incorporated ("Cargill"), thank you for the opportunity to comment on the General Plan Tune Up Draft Program EIR for the City of Newark, dated August 13, 2013 ("DEIR"). Cargill has enjoyed a long and close working relationship with the City and looks forward to continuing to play a role in Newark's future success. With that in mind, we request that the DEIR be revised to take into account the following comments to ensure factual accuracy in the City's planning and decision-making process and compliance with the California Environmental Quality Act ("CEQA").[1]

Cargill's Solar Salt Production System

There are many instances in which the DEIR confuses Cargill Salt's operations within the City of Newark (the "Newark Plant Site") and its solar salt production system elsewhere. The following discussion is intended to clarify the nature of Cargill's operations.

Cargill-1

Operating Salt Ponds (Outside City of Newark)

The Don Edwards San Francisco Bay National Wildlife Refuge ("Refuge") was established in 1974 through Cargill's conveyance of over 12,000 acres of operating salt ponds adjacent to the western boundary of the City of Newark. Cargill maintains perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system.

[1] Under separate cover dated September 27, 2013, Cargill is also submitting comments today ("Cargill's Draft General Plan Comment Letter") on the Newark General Plan – Draft for Public Review dated August 2013 ("Draft General Plan"). Given the inter-relationship between the Draft General Plan and the DEIR, and the fact that some of Cargill's proposed revisions to the Draft General Plan would necessitate corresponding revisions to the DEIR, Cargill incorporates its comments on the Draft General Plan herein by reference.

7220 Central Avenue
Newark, CA 94560-4205

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Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators. The brines are then pumped or transferred by Cargill sequentially through a series of evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural evaporation.

The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds ("BCDC Staff Report"), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[2]

Cargill Newark Plant Site (Within City of Newark)

After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities at its Newark Plant Site within the western portion of the City of Newark. Brines are placed within "crystallizers" at the Newark Plant Site, which are large, man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations within the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment. In short, Cargill's operations at its Newark Plant Site are very industrial in nature as the photographs illustrate at Attachment 1.

Hence, while some of the salt evaporators within the Refuge (and outside the City of Newark) provide habitat for specific species of wildlife, the Newark Plant Site contains very limited or no vegetation or biological characteristics or habitat to support species use.[3] Enclosed as Attachment 2 is a letter prepared by Professional Wetland Scientist Michael Josselyn, PhD, of WRA Environmental Consultants, summarizing the corrections needed to ensure that the DEIR contains an accurate presentation of Cargill's operations.

Cargill-1 cont.

Comments and Necessary Revisions to Chapter 3 – Project Description

Enclosed as Attachment 3 are proposed revisions to the text of the DEIR.

Cargill-2

The proposed revisions to Chapter 3 – Project Description are necessary: (i) to note that the Dumbarton TOD Specific Plan (the "Specific Plan") was approved by the City of Newark in 2011, and not 2010 (this is an error that is made throughout the Draft General Plan and DEIR), (ii) to make certain revisions to the residential land use designations and density ranges;

Cargill-3

[2] BCDC Staff Report at 6-7.
[3] BCDC Staff Report at 27-28.

currently, certain density ranges are inconsistent with the density ranges approved by the City in the Specific Plan in 2011 (see Cargill's Draft General Plan Comment Letter), (iii) to clarify the nature of Cargill's operations at its Newark Plant Site as described above (salt refining and production, in addition to "salt harvesting"). Cargill-3 cont. Cargill-4

Comments and Necessary Revisions to Chapter 4.1 – Aesthetics

Revisions are necessary to Chapter 4.1 as set forth in Attachment 3 to correct or clarify the following matters. First, the City of Newark is not physically located on the "bayfront." We understand the City's desire to re-orient with San Francisco Bay and to celebrate and take advantage of its proximity to the Bay, but it is misleading to say that the City fronts the Bay when the City of Fremont and the Refuge lay directly between Newark and the Bay. So we have suggested some revisions to correct this while still promoting Newark's strategic and scenic location. Cargill-5

Second, the San Francisco Bay Trail has already been completed through the City of Newark; it does not need to be "completed" as Policy PR 5.1 states. So we would suggest changing this Policy to say that the Bay Trail should be "realigned." And we have added that the Bay Trail should be realigned "where feasible." For instance, it would not be feasible, safe or legal to run the Bay Trail through the middle of Cargill's Newark Plant Site, as past City drawings have proposed. Cargill-6

Finally, with respect to Action PR-1.A, we have added that the Refuge may be expanded by working with "willing" property owners. A willing property owner is a necessary condition precedent to Refuge expansion in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service, in addition to numerous other conditions. Cargill-7

Comments and Necessary Revisions to Chapter 4.2 – Air Quality

Minor revisions are necessary at Page 4.2-46 to clarify that Cargill does not operate salt ponds within the City of Newark at its Newark Plant Site, as opposed to within the Refuge, as noted in the Background discussion above. Cargill-8

Comments and Necessary Revisions to Chapter 4.3 – Biological Resources

Cargill's Refuge Salt Ponds Versus Its Newark Plant Site

More than any other chapter of the DEIR, Chapter 4.3 – Biological Resources confuses Cargill's solar salt evaporation ponds within the Refuge (within the City of Fremont) and its Newark Plant Site (within the City of Newark). Cargill-9

For instance, both Figures 4.3-1 and 4.3-2 mislabel Cargill's Newark Plant Site and do not accurately reflect the conditions of the property.[4] In actuality, these areas consist of the harvesting, refining and production areas and should be labeled as set out in our comments attached at Attachment 3.

As discussed above, in contrast with the Refuge salt evaporator ponds, the crystallizers of the Newark Plant Site are of "low foraging value" and "support virtually no aquatic life" because of the presence of hypersaline brines (8 times the salinity of sea water), precipitated salts and heavy equipment associated with Plant Site operations. BCDC Staff Report at 27. Dr. Josselyn's letter at Attachment 2 details this important distinction and confirms that the crystallizers at the Newark Plant Site do not support any wetland vegetation and are not considered as "wetlands." **Cargill-9 cont.**

Therefore, Figures 4.3-1 and 4.3-2 must be revised to accurately depict Cargill's active salt making operations at its Newark Plant Site, as detailed in Attachment 3 and as illustrated in Attachment 4 to this letter. There are a number of other, similar textual revisions which are necessary in the Draft General Plan as detailed in Attachment 3, primarily at Page 4.3-11.

Refuge Expansion

Revisions are necessary, primarily at Page 4.3-3, of the DEIR's discussion of the potential expansion of the current Refuge boundaries. As made clear in the Final Environmental Assessment by the USFWS, areas considered by the USFWS are "Areas of Potential Additions," and may only be acquired from willing sellers. **Cargill-10**

Other Necessary Revisions

Other revisions to Chapter 4.3 of the DEIR are necessary as indicated in Attachment 3 to clarify the nature of Cargill's operations, to modify certain actions and policies pertaining to new development, and to clarify that the Refuge is mostly within the City of Fremont and managed by the USFWS. **Cargill-11**

Comments and Necessary Revisions to Chapter 4.5 – Geology and Soils

Cargill's Newark Plant Site was mislabeled at Figure 4.5-1 of Chapter 4.5. As discussed above, this area consists of crystallizers and other salt harvesting, refining and production areas and facilities. Revisions to Figure 4.5-1 are needed as indicated in Attachments 3 and 4. **Cargill-12**

Comments and Necessary Revisions to Chapter 4.8 – Hydrology and Water Quality

Revisions are necessary to Chapter 4.8 – Hydrology and Water Quality where indicated in Attachments 3 and 4 to: (i) clarify that any levees associated with salt production were not designed for flood protection purposes, (ii) to clarify (at Figure 4.8-1) that the Newark Plant **Cargill-13** **Cargill-14**

[4] The DEIR cites to a number of sources for its discussion centering on Figures 4.3-1 and 4.3-2, but none of these sources actually refers to or maps the Newark Plant Site. They all contain general descriptions of habitat types and refer to salt ponds well outside the Newark City limits.

Site is a closed, engineered system for salt production, nothing is released or discharged to San Francisco Bay, and the Plant Site is not part of any of the watershed areas shown at Figure 4.8-1, and (iii) to make other clarifying revisions to flood protection measures and standards where indicated. Cargill-14 cont. Cargill-15

Comments and Necessary Revisions to Chapter 4.9 – Land Use

Policy CS-2.6 entitled "Salt Pond Management" encourages the management of the salt ponds and states that if "salt production ceases" a Specific Plan should be conducted "to explore a balance between development and preservation of important wildlife and open space resources." This once again confuses the salt ponds of the Refuge, which lie within the City of Fremont and which cannot be the subject of a Specific Plan created by City of Newark (not only because the salt ponds are in Fremont but also because the Refuge will not be the subject of future development) with Cargill's Newark Plant Site. Because Policy CS-2.6 refers to "wetlands and baylands," and, therefore, the salt ponds of the Refuge and not the Newark Plant Site, the reference to Cargill's Newark Plant Site within the Policy should be deleted.[5] Cargill-16

Other revisions are necessary to Chapter 4.9 where indicated in Attachment 3 to clarify matters discussed above, including the nature of Cargill's operations, and the management and potential expansion of the Refuge.

Comments and Necessary Revisions to Chapter 4.12 – Public Services and Recreation

As noted above, the San Francisco Bay Trail has already been completed through the City of Newark; it does not need to be "completed" as Policy PR 5.1 states. So we would suggest changing this Policy as indicated in Attachment 3 to say that the Bay Trail should be "realigned." And we have added that the Bay Trail should be realigned "where feasible" for the reasons noted above. Cargill-17

Comments on Chapter 6.0 – Alternatives

Finally, the Alternatives analysis of the DEIR contains, as required by CEQA, a consideration of project alternatives to the proposed Draft General Plan and an analysis of the relative environmental impacts of each alternative.

Cargill recognizes that the City of Newark is required to consider alternatives to the project proposed in the Draft General Plan to comply with CEQA, but has specific concerns regarding the "Restricted Growth Alternative" described at Page 6-2 of Chapter 6. According to the DEIR, under the Restricted Growth Alternative, "future growth in environmentally sensitive areas along the western edge of Newark would be restricted" and "[f]uture growth would occur entirely on previously developed land in the urbanized portion of the city." Cargill-18

[5] At the same time, Cargill would support the inclusion of a policy or objective elsewhere in the DEIR concerning a possible, future Specific Plan concerning its Newark Plant Site, but this should be contained in a separate policy to avoid confusion with the Refuge.

The DEIR goes on to say that:

> the Dumbarton TOD Focus Area …would be designated as Open Space. This alternative envisions restoration of key areas with potential for high habitat values; however, although these areas would be designated as Open Space, the underlying zoning would continue to permit economically viable uses such as agriculture.

DEIR at 6-19.

Cargill notes that the DEIR does not specify exactly where these "key areas with potential for high habitat values" are located or why it would be necessary or even lawful to declare them as "open space" without allowing any new development to occur. Property within the Dumbarton TOD Focus Area, including property owned by Cargill, is currently zoned for residential use in light of the City of Newark-approved Dumbarton TOD Specific Plan or, in the case of property owned by FMC Corporation, for commercial and high density residential and mixed use. Therefore, none of the properties within the Dumbarton TOD Specific Plan are zoned for or limited to agricultural use. Declaring these properties as "open space" and limiting them to agricultural use would amount to an unlawful taking of private property, which would subject the City of Newark to damages equal to the value of the highest and best use of these properties. **Cargill-18 cont.**

Cargill also notes that the Dumbarton TOD Specific Plan already requires mitigation measures which would reduce the impacts of Specific Plan projects to any sensitive biological resources to a level of insignificance, as the DEIR itself notes (DEIR at Page 6-20). Declaring these properties as open space would therefore offer no advantages over the proposed Draft General Plan in terms of impacts to biological resources. **Cargill-19**

The DEIR ultimately rejects the Restricted Growth Alternative as being infeasible because it would fail to achieve important Project Objectives set out in the DEIR, would conflict with the Specific Plan and would not support development of the Dumbarton TOD Specific Plan area as a Priority Development Area. Cargill would add to this list the fact that the Restricted Growth Alternative would likely subject the City of Newark to significant damages arising from the condemnation or inverse condemnation of private property. **Cargill-20**

***

Summary

Cargill requests that the City revise the DEIR as discussed above and in Attachment 3 to ensure that the document is accurate, is based upon substantial evidence and serves the goal of informed decision-making by the public and the City as required by CEQA. To the extent any of the errors or inconsistencies discussed above or in Dr. Josselyn's letter are repeated in other sections of the DEIR, Cargill requests that these other sections be revised in accordance with these comments, so that all sections will be consistent, both internally and with respect to one another **Cargill-21**

Thank you again for the opportunity to comment on the DEIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me.

Cargill-21 cont.

Sincerely

Paul Shepherd
Cargill, Incorporated

Attachments

Attachment 1

Photographs of Newark Plant Site

Cargill-22

Cargill-22
cont.

Cargill-22 cont.

Cargill-22 cont.

Cargill-22 cont.

Attachment 2

Letter from Michael Josselyn, PhD, of
WRA Environmental Consultants

ENVIRONMENTAL CONSULTANTS

VIA EMAIL (terrence.grindall@newark.org)

September 27, 2013

Mr. Terrance Grindall
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, California 94560

Re: Comments on: (i) General Plan Tune Up Draft Program EIR for the City of Newark, and (ii) Newark General Plan – Draft for Public Review

Dear Mr. Grindall:

I am writing to providing comments on both the General Plan Tune Up Draft Program EIR for the City of Newark ("DEIR"), and (ii) Newark General Plan – Draft for Public Review ("Draft General Plan") based on my professional experience and knowledge of the area covered by the DEIR and General Plan. I am a Professional Wetland Scientist with 35 years of experience working in the bay tidal wetlands as a Professor of Biology at San Francisco State University and more recently as a Principal with WRA, Inc, an environmental consulting firm based in San Rafael, CA.

I am familiar with the area covered by the DEIR and Draft General Plan, including the salt evaporator ponds of the Don Edwards San Francisco Bay National Wildlife Refuge (the "Refuge") and the Cargill Salt facility for the harvesting, refining and production of salt within the City of Newark ("Newark Plant Site"). These comments are meant to provide clarification of the areas present, and the relative habitat value and their use by wildlife.

Cargill-23

It is important that the DEIR and Draft General Plan distinguish between the types of salt making areas that are present in the Refuge versus the Newark Plant Site. Salt production requires that bay water be brought into an initial evaporator pond where the salinity of the brines is increased over time as they are moved by gravity or pumps to sequential ponds in the process.[1] The process of producing brines that are close to, but not at the critical threshold of precipitation, takes 5 to 7 years. This process occurs within salt evaporators, none of which are present at the Newark Plant Site. Salt evaporators, depending upon their salinity do support fish and wildlife and considerable study has been made on their use by migratory birds.

[1] The classic description of the salt making process has been described by Ver Planck, 1958, Salt in California, 1 Bulletin 175, Divisions of Mines, San Francisco, CA at page 168.

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These studies have shown that as the salinity of the brine increases, fish and wildlife use dramatically declines; however, within the intake ponds and in ponds of intermediate salinity, bird use continues.

Eventually, when the brines are near saturation (very saline), they are transferred to a salt production facility such as Cargill's Newark Plant Site, where the sodium chlorides are precipitated and the resultant brines are stored as bittern. The complexes containing these brines are not evaporators, but are facilities designed to crystallize sodium chloride in a manner that results in a pure crystallized product and requires carefully controlled and manipulated brine transfers to assure a quality product. The transfer of brines from evaporators within the Refuge is through many miles of pipelines and other facilities. The crystallizers are specifically engineered for salt crystallization and the bottoms are compacted and flat to allow heavy equipment to be used to remove the final product.

The distinction between evaporators and the salt production facilities is important because the extremely high salinities of the brines (8 to 10 times that of seawater) are inhospitable to life within the crystallizers, pickle ponds, and bittern ponds. This distinction between these types of "ponds" appears to not have been considered when preparing the Biological Resources chapter of the DEIR and the Conservation and Sustainability chapter of the Draft General Plan, as well as many other chapters in both documents. **Cargill-23 cont.**

Therefore, the DEIR and Draft General Plan should clearly distinguish between those areas with salt evaporators (or former salt evaporators) and those where salt precipitation and production occurs (such as the Newark Plant Site operated by Cargill Salt). Within the Refuge, since these salt evaporator ponds have not been involved in the precipitation of salt, it is expected that they do have higher wildlife use. However, in my observations of the Cargill's Newark Plant Site, there is no native vegetation or other sensitive resources, including wetlands, within the facility and it would therefore be incorrect to classify it as such. The Newark Plant Site is more similar to other industrial areas in the Fremont and Newark area.

When referring to Cargill's Newark Plant Site, the following corrections should be made:

1. The term "salt <u>ponds</u>" is not the proper nomenclature to describe this area. Salt crystallizers or simply crystallizers should be used.

2. The salt crystallizers do not support any wetland vegetation and are not considered as "wetlands" under the Corps of Engineers definition. As noted above, it is more similar to other industrial facilities within the City of Newark. At the very least, they should be separated out from any discussion on wetlands and placed in a separate category as "salt production and harvesting facilities". **Cargill-24**

3. The salt crystallization brines are inhospitable to life. It is only during periods when precipitation reduces salinities that species such as microalgae and bacteria can grow. At times, brine flies and brine shrimp may be temporarily present, but these die out as salinities increase as a result of the salt making process and are not found in the crystallizers and other production facilities within the Newark Plant site. **Cargill-25**

4. The DEIR states that a number of birds are associated with salt ponds (Page 4.3-11). However, it should be noted that salt crystallizers and other salt production facilities within the Newark Plant site **Cargill-26**

do not support Wilson phalarope or American white pelican as the salinities are too high. The California clapper rail is not found in salt ponds, but only within vegetated salt marshes. Due to the absence of life within the crystallizers and salt production facilities at the Plant site, raptors are not regularly present. Other birds listed may be found roosting on levees, but are generally not found within the brines or using the brines and are more commonly found in the salt ponds within the Refuge outside of the City of Newark.

Cargill-26 cont.

5. I concur in the revisions Cargill has proposed to both the DEIR and General Plan in letters from Paul Shepard dated September 27, 2013, regarding the distinctions between the salt evaporator ponds of the Refuge and the salt crystallizers of the Newark Plant Site.

I hope that these comments will assist the City in providing a clear description of biological resources associated with these facilities.

Cargill-27

Sincerely yours,

Michael Josselyn, PhD
Principal

Attachment 3

Cargill Proposed Revisions to DEIR

Cargill-28

Attachment 3 to September 27, 2013 Cargill Comment Letter on Tune Up Draft Program EIR for the City of Newark dated August 13, 2013

Proposed Revisions to Chapter 3 – Project Description

Page 3-12

Dumbarton TOD Area Specific Plan

The Dumbarton TOD Area Specific Plan (TOD Plan), adopted by the City of Newark on September 8, 2011~~0~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark. A portion of the TOD Plan Area, previously referred to as Area 2, was identified as an area with significant potential for change in the 1992 General Plan. In conjunction with adoption of the TOD Plan, the City amended General Plan land use designations and zoning for this former industrial area to allow for development of 2,500 new homes, 195,000 square feet of professional office and other commercial uses, 35,000 square feet of new retail uses, and 16.3 acres of parkland, including a connection to the San Francisco Bay Trail.

Key features of the TOD Plan, shown in Figure 3-5, include:

- A neighborhood center near the planned transit station with retail to serve the daily needs of residents and transit users, high-density housing with an allowable density of between 25 and 60 du/acre, and 195,000 square feet of professional office and commercial uses;

- Surrounding residential uses throughout the rest of the TOD Plan Area, with townhomes and medium to medium-high density housing within a ½-mile radius of the planned transit station, and single-family homes beyond that to the south;

Cargill-28 cont.

Pages 3-14, -17

Proposed Land Use

The proposed Plan includes a total of 17~~6~~ different land use designations applied to land within the City limit, as shown in Figure 3-6. This represents two~~three~~ fewer categories than in the existing General Plan, because the proposed Plan has consolidated some existing General Plan designations. The Commercial Mixed Use category has been consolidated from two designations into one, with the caveat that zoning will be used to distinguish limited mixed-use areas from other mixed-use areas.. The Specialty Commercial category has been eliminated since it had already been largely replaced by the two Commercial Mixed Use categories, which were not defined by the 1992 Plan.

Cargill-29

A recalibration of the residential categories is proposed, to better reflect existing and proposed housing densities in the city. The Low Density Residential category now includes neighborhoods developed from 1.0 to 8.5 units per net acre. The Medium Density category has been retitled Low Medium Density. The density range is ~~has not changed and continues to be 8.5 to~~ 15 units per net acre or less. The Low Medium category is intended for small lot subdivisions and zero lot line type development. The former High ~~d~~Density category has been retitled Medium Density. The density range ~~has not changed and continues to be~~ is from 1~~5~~4 to 30 units per net acre. A

Cargill-30

new Medium/High Density category has been added for housing in the 16 to 60 units per acre range, pertaining only to specific property within the Dumbarton TOD Specific Plan. A new ~~h~~High ~~d~~Density category has been added for housing in the 25~~30~~ to 60 units per acre range. Adjustments have been made to the land use map so that developed multi-family parcels have been placed in the category which best reflects their actual densities.

Cargill-30 cont.

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The Plan also proposes a reorganization of agricultural and open space designations. The Agriculture/Resource Production designation is renamed Salt Harvesting, Refining and Production in order to more accurately reflect the nature of activities taking place on land to which it applies. This designation applies to approximately 3,000 acres of privately owned properties used for salt harvesting, refining and production, including the land holdings of the Cargill Salt Company on the western side of the city. The Public Parks and Open Space designation has also been renames and is now called Parks and Recreational Facilities. It establishes land primarily for active recreational activity, such as tennis courts, playgrounds, picnic areas, and sports fields. Buildings for recreation and community purposes are allowed under this designation. Finally, the Conservation – Open Space designation is maintained in the proposed Plan, intended to protect wildlife habitat and wetlands and is not intended for direct human habitation or work.

Cargill-31

Figure 3-6

[Figure 3-6 should be revised to designate as "Medium/High Density Residential" the land designated as Medium/High Density Residential on Figure 3-5 in connection with the Dumbarton TOD Specific Plan. In addition, "Salt Harvesting on Figure 3-6 should be re-labeled as "Salt Harvesting, Refining and Production."]

Cargill-32

Table 3-4

[Table 3-4 should be revised as follows: (1) "Low-Medium Density Residential" should have a density range of "15 units per acre or less," (2) "Medium-Density Residential" should have a density range of "14 to 30 units per acre," (3) a "Medium/High Density-Residential" category should be added with a density range of "16 to 60 units per acre," (4) "High-Density Residential" should have a density range of "25 to 60 units per acre," (5) "Resource Production" and "Open Space" should split into different categories, with "Salt Harvesting" falling under "Resource Production" and "Parks and Recreational Facilities" and "Conservation Open Space" falling under "Open Space," (6) "Salt Harvesting" under "Resource Production" should be re-labeled as "Salt Harvesting, Refining and Production" and the "Development Intensity" description should read as follows: "A standard of development intensity does not apply, as buildings unrelated to salt production are generally not appropriate in these areas."]

Cargill-33

Page 3-20

Dumbarton Transit-Oriented Development Focus Area

The boundaries of the Dumbarton TOD (DTOD) Focus Area articulated in the proposed Plan are the same as those of the new neighborhood envisioned in the TOD Plan. The vision for the DTOD Focus Area is also the same, and the proposed Plan incorporates the TOD Plan without proposing additional land use changes over and above those already incorporated into the existing General Plan at the time the TOD Plan was adopted by Newark City Council in 2011~~0~~.

Cargill-34

Page 3-25

Dumbarton Transit-Oriented Development Focus Area

Growth projections from the Dumbarton TOD Specific Plan EIR were added to the base year totals to project 2035 buildout. The Dumbarton TOD Focus Area is located in TAZs 931 and 932 and growth projections from the TOD Specific Plan EIR were divided between these TAZs in accordance with the land use designations proposed in the proposed Plan. It was assumed that Medium Density Residential (MDR) would develop at an intensity of 22 du/acre, that Medium/High Density Residential (MHDR) would develop at an intensity of 30 du/acre and that High density Residential (HDR) would develop at an intensity of 45 du/acre. On this basis, 375 of the 2,5~~6~~00 total units that are likely to be built under the TOD Specific Plan were assigned to TAZ 931 and the balance was assigned to TAZ 932. Based on the proposed land use designations in TAZ 931, it was assumed that 135 of the 375 units would be multi-family units and 240 units would be single-family units. In TAZ 932, it was assumed that 1,530 of the 2,225 units would be multi-family and 695 units would be single-family, based on the proposed land use designations.

Cargill-35

Proposed Revisions to Chapter 4.1 – Aesthetics

Page 4.1-7

4.1.3 Impact Discussion

AES-1 The proposed Plan would not have a substantial adverse effect on a scenic vista.

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Policy LU-4.13. Proximity to San Francisco Bay~~front Identity~~. Reinforce Newark's proximity to San Francisco Bay ~~identity as a bayfront city~~ by orienting new development on the western and southern edges of the city toward the bay and shoreline areas. Future projects in these areas should enhance views to the water and wetlands and be compatible with the area's scenic and recreational qualities. The bay-orientation~~front~~ identity should be emphasized in gateways and public art as well.

Cargill-36

Page 4.1-9

Dumbarton Transit-Oriented District Focus Area

The proposed Plan could affect the visual character and quality of the Dumbarton TOD, as it would allow development of up to 2,5~~6~~00 residential units, a neighborhood center containing retail shops, a grocery store and associated visitor-serving and residential uses, new infrastructure supportive of the new development, and parks on what is now primarily vacant land with few structures on it. At buildout, this development would transform the area from one with relatively low-slung, utilitarian buildings with little architectural detail and a minimal street network to a brand new neighborhood featuring a variety of primarily residential structures in a cohesive blend of architectural styles with additional streets, sidewalks, landscaping, and street lighting, and more buildings.

Cargill-37

Page 4.1-14, -15

4.1.4 Cumulative Impacts

AES-5 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics.

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Policy PR-5.1 Bay Trail. Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay. Pursue trails that are separated from motor vehicle traffic and pursue pedestrian crossings of railroad rights of way to allow for connections to regional open spaces without conflicts with motorized vehicles.(new)

Cargill-38

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Action PR-1.A. Don Edwards National Wildlife Refuge Expansion. Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and

Cargill-39

the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service.

Cargill-39 cont.

Proposed Revisions to Chapter 4.2 – Air Quality

Page 4.2-46

Site Receptors Proximate to Odor Sources

Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2-7. Additionally, sensitive receptors could be located in the vicinity of the salt harvesting, refining and production operations ponds operated by Cargill, Incorporated Corporation, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be *less then significant*.

Cargill-40

Proposed Revisions to Chapter 4.3 – Biological Resources

Page 4.3-3

Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan

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The San Francisco Bay National Wildlife Refuge was established by the United States Congress in 1972 for a total not to exceed 23,000 acres. The Refuge was one of the first urban National Wildlife Refuge established in the United States. The first lands were acquired for the Refuge in 1974. In 1988, the USFWS's acquisition authority was increased from 23,000 to 43,000 acres. Most of the existing Refuge lies within the City of Fremont. Cargill has the perpetual right within the Refuge (and outside the Newark city limits) to utilize evaporator ponds, commonly referred to as "salt ponds" or "evaporators" for its solar salt production system.

In 1990, the USFWS issued the Final Environmental Assessment for the Refuge boundary expansion, which identified 24,500 acres as potential additions (Areas for Potential Additions) because not all lands would be added to the Refuge. The Areas for ~~p~~Potential ~~a~~Additions ~~areas~~ identified by the USFWS are recognized through USFWS policy as the approved acquisition boundary for the Refuge. The USFWS does not have jurisdiction over the Areas for Potential Additions~~lands within the acquisition boundary~~, and these lands are not part of the Refuge unless they are purchased or placed under an agreement that provides for management under the Refuge System. In addition, USFW's acquisition plans do not preclude lawful, environmentally sound development, as determined by the local government in whose jurisdiction a potential addition area lies, and land within Areas for Potential Additions may only be acquired from willing sellers.[1] In fact, to date, many lands within the approved 1990 acquisition boundary have already been converted to urban developments.[2]

Cargill-41

In 1995, the Refuge was renamed as the Don Edwards San Francisco Bay National Wildlife Refuge in 1995 to honor Congressman Don Edwards' efforts to create the refuge. The Refuge was created with three main purposes: to preserve natural resources, including habitat for migratory birds, harbor seals, and threatened and endangered species; to provide environmental education and wildlife interpretation opportunities; and to preserve open space and wildlife-oriented recreation.

The Refuge and Areas for Potential Additions ~~approved acquisition boundary~~ are shown in Figure 4.3-1. As of April 2013, the USFWS owned and/or managed approximately 30,000 acres ~~under the approved acquisition boundary~~. As shown in Figure 4.3-1, none of the focus areas contain lands within the Refuge and most of the Refuge lies within the City of Fremont. However, Area 4 includes lands within the Areas for Potential Additions~~approved acquisition boundary~~.

[1] U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 8.

[2] U.S. Fish and Wildlife Service, 2013, *Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan*, page 9.

State Regulations

The most relevant State laws regulating biological resources are the California Endangered Species Act, the California Fish and Game Code, the California Native Plant Protection Act, and the Marine Life Protection Act, each of which is described below.
California Endangered Species Act

The California Endangered Species Act (CESA) (California Fish and Game Code Section 2050 *et seq.*) establishes State policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. The CESA mandates that, if a development project would result in the "take" of a threatened or endangered species – defined as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" -- mitigation must be provided as part of an Incidental Take Permit issued by the California Department of Fish and Wildlife (CDFW).~~State agencies should not approve projects that jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy.~~ For projects that would affect a species that is on the federal and State lists, compliance with the FESA satisfies the CESA if the ~~California Department of Fish and Wildlife (~~CDFW~~)~~ determines that the federal incidental take authorization is consistent with the CESA under California Fish and Game Code Section 2080.1. For projects that would result in take of a species that is only State listed, the project proponent must apply for a take permit under Section 2081(b).

Cargill-42

Figure 4.3-1

[This figure contains a number of errors and is inconsistent with the CCP: (i) Figure 4.3-1 erroneously maps Cargill's Newark Plant Site as "Managed Wetlands/Salt Ponds" within active salt making facilities, as discussed in Cargill's Comment Letter, and should therefore be shaded solid (without dots) white and, if labeled at all, should be re-labeled as "Salt Harvesting, Refining and Production," and (ii) potential additions to the Refuge should be designated as "Areas of Potential Additions" or "Potential Additions" consistent with the language of the USFWS Final Assessment and CCP. Attached as Attachment 4 to Cargill's Comment Letter on the DEIR is a marked up copy of Figure 4.3-1 with these corrections.]

Cargill-43

Figure 4.3-2

[Figure 4.3-2 erroneously maps "saline emergent wetland" and "lacustrine" areas within active salt making facilities where no such wetlands exist. These labels and overlays should be removed from the Cargill Plant Site in this Figure as they do not accurately represent the conditions of the salt harvesting, refining, and production areas as described in Cargill's Comment letter. Attached as Attachment 4 to Cargill's Comment Letter on the DEIR is a marked up copy of Figure 4.3-2 with these corrections.]

Cargill-44

Page 4.3-9

4.3.1.2 Existing Conditions

This section discusses the wildlife and plant communities and special-status species that are known to occur or have potential to occur in the Plan Area. As described in chapter 3.0 of this Draft EIR, the majority of land in the Plan Area is urbanized and developed; however, a large area of land along the western perimeter of Newark is occupied by ~~the~~ Cargill for salt harvesting, refining and production~~Corporation salt evaporation ponds~~. Additionally, a portion of

Cargill-45

the Don Edwards San Francisco Bay National Wildlife Refuge is adjacent to the Plan Area outside the City limit. The Refuge ~~Both these areas~~ provides habitat for biological resources occurring or potentially occurring adjacent to~~in~~ Newark.

Cargill-45 cont.

Vegetation, Habitat Types, and Wetlands

Habitat types, as classified by the United State Department of Agriculture Forest Service, are shown in Figure 4.3-2. The distribution of habitat areas in Newark is closely associated with topography and hydrology, with habitat types associated with wetlands primarily located adjacent to the San Francisco Bay and grasslands and croplands located inland. Some wetland areas are scattered throughout the inland portion of Newark. The majority of inland Newark consists of urban lands. Each of these areas is described below:

- **Lacustrine** habitats are the predominant non-urban habitat type in Newark~~ and include the salt ponds, which are described in further detail below~~. These habitats are inland depressions or dammed riverine channels that contain standing water and vary from small ponds to large areas. Lacustrine habitats are used by several bird, mammal, reptile, and amphibian species for reproduction, food, water, and cover. Within Newark, approximately 2,500 acres are classified as lacustrine habitat.

Cargill-46

Page 4.3-11

Salt Ponds

The commercial salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge, and adjacent to the Plan Area outside the City limit, are large, open ~~water~~ areas ranging in salinity from similar to sea water at 32 parts per million to 180~~135~~ parts per million, or more than five~~four~~ times the salinity of ~~more salty than~~ sea water.[3] These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water. Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds within the Refuge for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt. Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin. Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.

Cargill-47

Cargill, which sold and donated 12,500 acres of salt ponds within the Refuge, has retained perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system and will continue its operations for the foreseeable future. Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators. The brines are then pumped or transferred by Cargill sequentially through a series of evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural

Cargill-48

[3] San Francisco Bay Conservation and Development Commission, 2005, Staff Report – Salt Ponds, page 27.

evaporation. The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds, in connection with the *San Francisco Bay Plan* (Bay Plan), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[4]

After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities within the western portion of the City of Newark (the Newark Plant Site). Brines are placed within "crystallizers" at the Newark Plant Site, which are large, man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations within the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment.

Hence, while some of the salt evaporators within the Refuge (and outside the city of Newark) provide habitat for specific species of wildlife, the Newark Plant site is industrial in nature and consists of hypersaline brines and /or precipitated salts that, in general, contain very limited or no vegetation or biological characteristics or habitat to support species use.[5]

Cargill-48 cont.

Page 4.3-34

4.3.3 Impact Discussion

BIO-1. Buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area.

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Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas.

Cargill-49

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Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~

Cargill-50

[4] San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 6-7 (Staff Report - October 2005).
[5] San Francisco Bay Conservation and Development Commission, *San Francisco Bay Plan* at 27-28 (Staff Report - October 2005).

Page 4.3-39

BIO-3. Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the US in the Plan Area.

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Figure 4.3-3 shows areas of wetland vegetation in Newark, although it does not depict federally protected wetlands USACE jurisdictional waters. A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007. The USACE determination established approximately 242 acres of wetlands and 34.21 acres of "other waters" for a total of 277 acres. These areas include all aquatic, diked salt marsh, seasonal wetlands, muted tidal saltmarsh, freshwater marsh, brackish marsh, and tidal salt marsh. Jurisdictional determination has also been made for 7.2 acres of wetlands on the Torian property, located within the Dumbarton TOD Focus Area. Additionally, other portions of the Plan Area along the western perimeter of Newark may~~likely~~ support wetland vegetation, wetland hydrology, and wetland soils as shown on Figure 4.3-3, and therefore it is possible~~likely~~ that there are additional Waters of the US within these areas, although no formal delineation has been made by USACE.

Cargill-51

Page 4.3-41

BIO-3. Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the US in the Plan Area.

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Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~

Cargill-52

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Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.

Cargill-53

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Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.

Cargill-54

Page 4.3-42, -43

BIO-4 The proposed Plan would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

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The proposed Plan would result in a significant impact if new development would interfere with species movement or involve barriers or threats within wildlife corridors. Given the highly urbanized context of the Plan Area and the extent of existing development, vehicular traffic, and human and pet presence in Newark, opportunities for wildlife movement in the urbanized portion of the city are minimal. Existing development, including buildings, fencing, flood control channels, major roadways, or other similar improvements, represent substantial barriers to wildlife movement. The best opportunities for wildlife migration exist along the western edge of the Plan Area, adjacent to the Don Edwards National Wildlife Refuge, but excluding Cargill's existing salt harvesting, refining and production operations as designated at Figure LU-1 of the proposed Plan..

Cargill-55

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Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~

Cargill-56

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Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.

Cargill-57

Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.

Cargill-58

Page 4.3-45

BIO-6 The proposed Plan would result in less-than-significant impacts related to conflict with the Basin Plan and Habitat Goals.

Cargill-59

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Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~

Cargill-59 cont.

***

Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.

Cargill-60

***

Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.

Cargill-61

Page 4.9-9

Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan

***

Action CS-1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provide for any impacts to such areas.

Cargill-62

Proposed Revisions to Chapter 4.5 – Geology and Soils

Figure 4.5-1

[Cargill's Newark Plant Site was mislabeled at Figure 4.5-1 of Chapter 4.5. As discussed in Cargill's Comment Letter and above, this area consists of crystallizers and other active salt harvesting, refining and production areas and facilities. Figure 4.5-1 should therefore be revised to accurately depict the Newark Plant Site.]

Cargill-63

Proposed Revisions to Chapter 4.8 – Hydrology and Water Quality

Figure 4.8-1

[Please re-label "Salt Production" as "Newark Plant Site" and add the following notation: "This is a closed, engineered system for salt production and nothing is released or discharged to San Francisco Bay." Shade the entire "Newark Plant Site" area in red, not just a portion, and separately from the watershed areas shown. A mark up illustrating these corrections is shown in a markup to Figure CS-1 of the Draft General Plan in Attachment 4.] **Cargill-64**

Page 4.8-14

Water Quality

Most of the streams and creeks that originally flowed through the City of Newark have been replaced by a network of storm drains and channels that discharge urban runoff into Newark Slough, Plummer Creek Slough, and Mowry Slough. The surface water bodies that currently exist in the Plan Area include engineered channels maintained by the ACFC, Plummer Creek, Newark Slough, Mowry Slough, tidal marshes, tidal flats~~, salt ponds~~, and small tidal estuaries. **Cargill-65**

***

As mentioned earlier, the Plan Area consists of open space, ~~and~~ undeveloped and non-urbanized land near the bay shoreline and developed land further inland. Stormwater is transported through the ACFC's regional network of storm drains, underground culverts, or engineered drainage channels that eventually discharge into San Francisco Bay. There are sites in the Plan Area with known past groundwater contamination that have undergone remediation and are continuing to be monitored. This issue is discussed more fully in Chapter 4.7, Hazards and Hazardous Materials. **Cargill-66**

Page 4.8-15, -16

Flooding

***

The southern portion of the City of Newark is within the 100-year floodplain subject to tidal flooding from San Francisco Bay. Much of this area is open space, areas of salt harvesting, refining and production~~salt flats~~, and tidal marshes with no plans~~ned~~ for urbanized development. However, many of the planned future housing sites in the Dumbarton TOD and Southwest Newark Residential and Recreational Focus Areas, are within the 100-year floodplain. In addition, the areas immediately adjacent to the ACFC storm drain channels (Lines B, D, F, H, and I) are within the 100-year floodplain with some of the outlying areas mapped as being within the 500-year floodplain. The flood prone areas within the City of Newark are depicted on Figure 4.8-4. **Cargill-67**

~~Although some locations within the City are protected from flooding by levees,~~ FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability. Although levees do exist at some locations within the City, ~~M~~most of these levees ~~within the City of Newark~~were not designed to provide flood protection and are not certified. **Cargill-68**

Therefore, the areas next to these levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event. **Cargill-68 cont.**

Figure 4.8-4

[Please re-label the area designated as "Salt Harvesting Ponds" as "Salt Harvesting, Refining and Production."] **Cargill-69**

Page 4.8-26

HYDRO-3. The proposed Plan would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation, or flooding on- or off-site. **Cargill-70**

***

Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~. **Cargill-71**

Page 4.8-28

HYDRO-4 The proposed Plan would not create or contribute runoff water, which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.

***

Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~. **Cargill-72**

Page 4.8-33

HYDRO-8. The proposed Plan would not result in significant adverse effects related to inundation by seiche, tsunami, or mudflow.

***

The protected portion of the San Francisco Bay near the City of Newark is not subject to potential flooding by seiches, since the several levees and long distance of shallow salt ponds~~water~~ associated with salt pond production within the Don Edwards San Francisco Bay National Wildlife Refuge~~and harvesting operations~~ between San Francisco Bay and the City of Newark would minimize waves generated by a seiche. In addition, the City of Newark is not located below any steeply sloped areas that would result in a mud or debris flow. The land within the City of Newark is relatively flat and is not within any identified earthquake induced rainfall-induced landslide areas, according to ABAG hazard maps. For these reasons, the City is not considered to be subject to significant risk from tsunamis, seiches, or mudflows. **Cargill-73**

***

Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~.

Cargill-74

Proposed Revisions to Chapter 4.9 – Land Use Planning

Page 4.9-2

The Dumbarton Transit-Oriented Development (TOD) Area Specific Plan, adopted by the City of Newark on September 8, 2011~~0~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark. In conjunction with adoption of the TOD Plan, the City amended General Plan land use designations and zoning for this former industrial area to allow for development of 2,500 new homes, 195,000 square feet of professional office and other commercial uses, 35,000 square feet of new retail uses, and 16.3 acres of parkland, including a connection to the San Francisco Bay Trail.

Cargill-75

Page 4.9-3

Distribution of Existing Land Uses

***

The remaining 50 percent of Newark's land area consists of undeveloped or non-urbanized land. Of this total, approximately 960 acres is vacant and designated for development. The remaining 3,535 acres includes "conservation" open space (280 acres), agriculture (70 acres), public parkland and other "improved" open space (160 acres), and approximately 3,025 acres of land used for salt harvesting, refining and ~~evaporation ponds and ancillary facilities used for salt~~ production. Salt harvesting, refining and production represents approximately one-third of Newark's land area. It is the largest single land use in the city in terms of its geographic extent.

Cargill-76

Page 4.9-4

Table 4.9-1 DISTRIBUTION OF EXISTING LAND USES

[Change "Salt Evaporation Ponds" in Table 4.9-1 to "Salt Harvesting, Refining and Production"]

Cargill-77

Page 4.9-5

Undeveloped and Non-Urbanized Land

Undeveloped and non-urbanized areas in Newark are principally located in the southern and western parts of the city. The Cargill salt harvesting, refining and production operations ~~evaporation ponds~~ constitute a majority of this area; however, approximately 960 acres of land in Newark is vacant and zoned for development. Most of this land is clustered in two areas: the Southwest Newark residential and Recreational Focus Area, west of Cherry Street between Mowry and Stevenson; and the Dumbarton TOD Focus Area. There are also several vacant tracts within the Pacific Research Center, in other industrial parks, and in the NewPark Mall vicinity.

Cargill-78

Page 4.9-9, -10

Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan

***

Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas. **Cargill-79**

***

Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~ **Cargill-80**

***

Policy CS-2.6. Salt Pond Management. Encourage the management of salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service to enhance their value for wildlife habitat and recreation, consistent with Cargill's perpetual rights to utilize the salt ponds as part of its solar salt production system. ~~In the event that salt production ceases , conduct a Specific Plan to explore a balance between development and preservation of important wildlifeand open space resources.~~ **Cargill-81**

***

Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation. **Cargill-82**

***

Action PR-1.A. Don Edwards National Wildlife Refuge Expansion. Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service. **Cargill-83**

Action POS-1.B: Environmental Review and Open Space. Use the environmental review process to encourage new development to designate areas with unique vegetation, wildlife habitat, or natural resources as open space or to provide adequate mitigation for impacts to such areas. **Cargill-84**

Proposed Revisions to Chapter 4.12 – Public Services and Recreation

Page 4.12-24

PS-10 The proposed Plan, in combination with past, present, and reasonably foreseeable growth, would result in less than significant cumulative impacts with respect to parks and recreational facilities.

Cargill-85

***

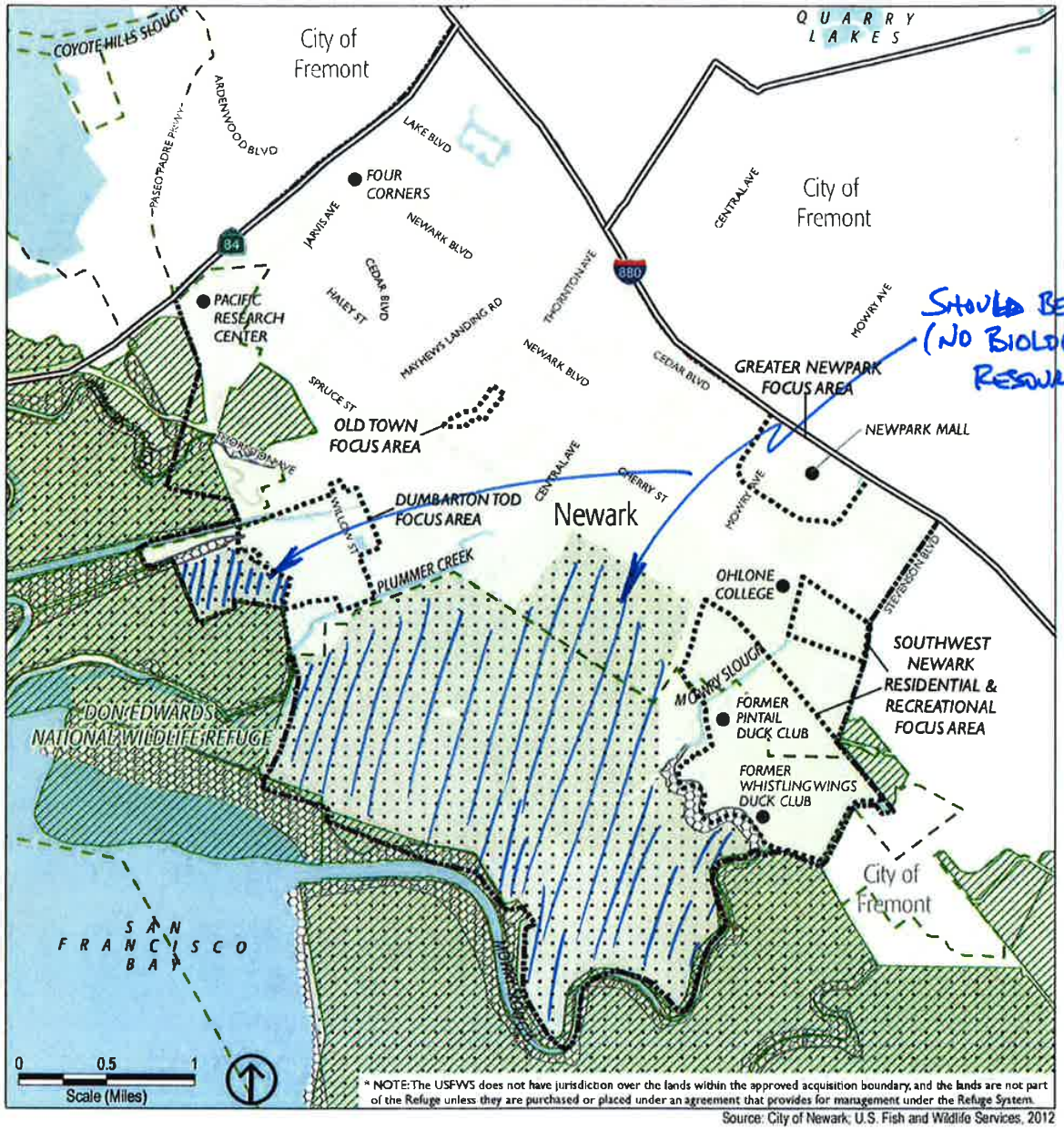
Policy PR-5.1 Bay Trail. Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay. Pursue trails that are separated from motor vehicle traffic and pursue pedestrian crossings of railroad rights of way to allow for connections to regional open spaces without conflicts with motorized vehicles.

Cargill-86

Attachment 4

Revisions to Figures

Cargill-87



SHOULD BE WHITE (NO BIOLOGICAL RESOURCE)

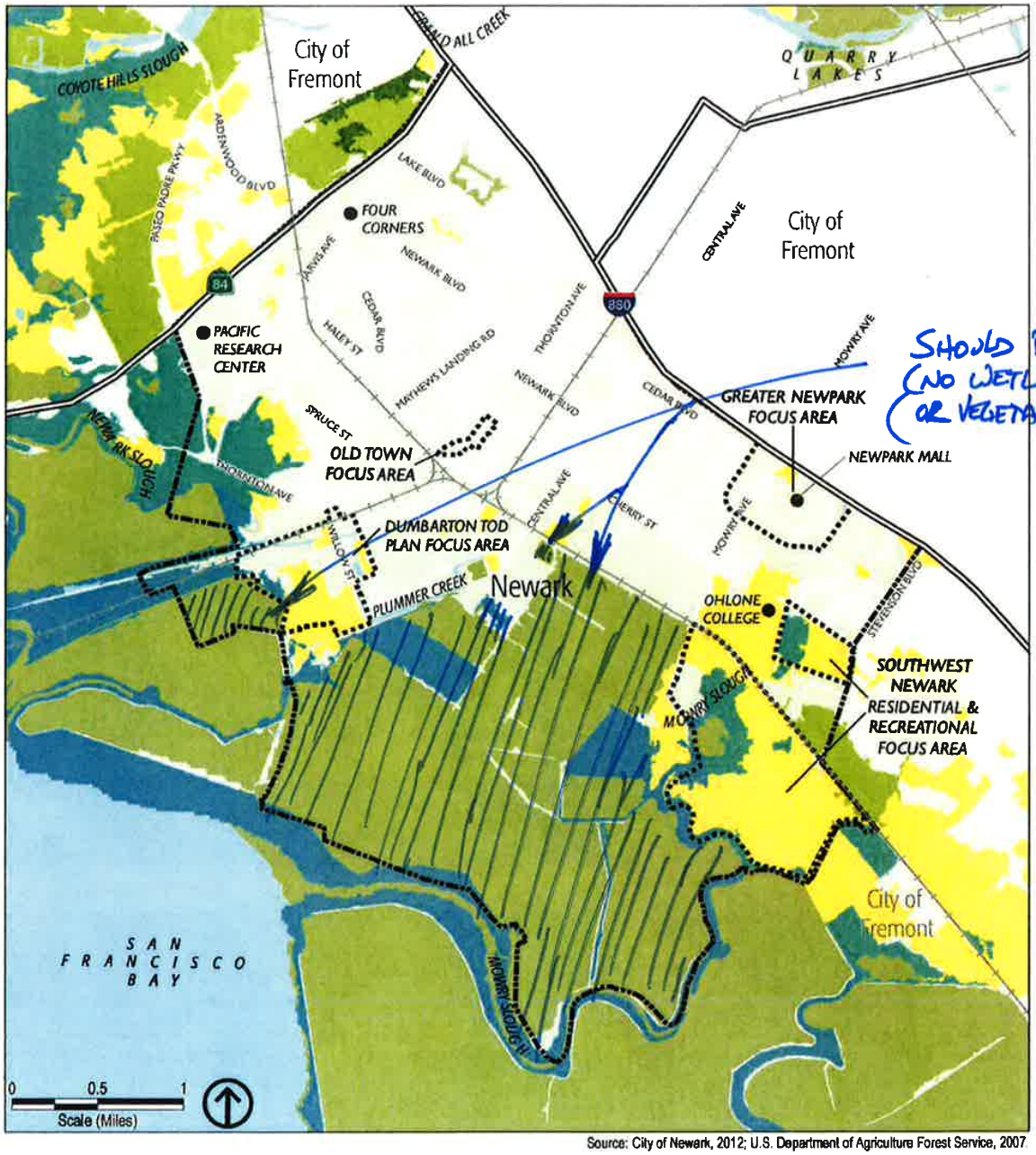
Source: City of Newark; U.S. Fish and Wildlife Services, 2012

City Limit
Landmarks
Railroads
Don Edwards San Francisco Bay National Wildlife Refuge
Don Edwards San Francisco Bay National Wildlife Refuge ~~Approved Acquisition Boundary*~~
Focus Area
Tidal Marsh
~~Managed Wetlands~~/Salt Pond

POTENTIAL ADDITION

Figure 4.3-1
Don Edwards SF Bay National Wildlife Refuge and Managed Wetlands in Newark

Cargill-87



SHOULD BE WHITE (NO WETLANDS) (OR VEGETATION)

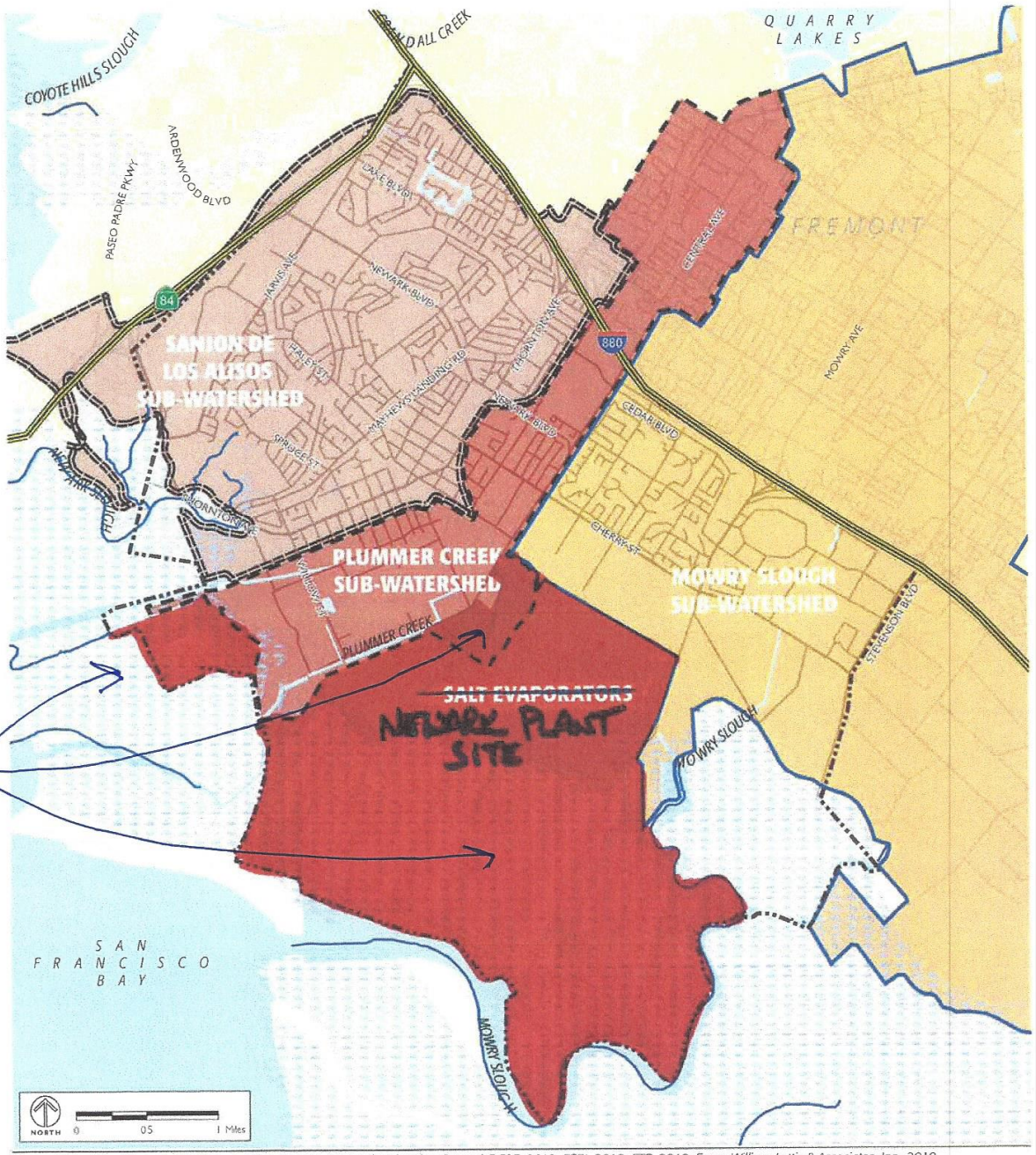
Source: City of Newark, 2012; U.S. Department of Agriculture Forest Service, 2007

City Limit
Landmarks
Railroads
Focus Area
Annual Grass
Cropland
Valley Oak Woodland
Lacustrine
Fresh Emergent Wetland
Saline Emergent Wetland

Figure 4.3-2
Vegetation and Habitat Types

Cargill-87

Note - This is also a mark up for Figure 4.8-1 of DEIR



Added Red

Source Data: City of Newark, 2012; Santa Clara County, 2012; The Planning Center | DC&E, 2012; ESRI, 2010; FTC, 2010; Fugro William Lettis & Associates, Inc., 2010.

City Boundary
Creek
Tidal or Fresh Water Marsh and Ponds
~~Salt Evaporators~~

Watersheds
Mowrey Slough Sub-Watershed
Sanjon de los Alisos Sub-Watershed
Plummer Creek Sub-Watershed
Other Lower Alameda Creek Watersheds

FIGURE CS-1
LOCAL HYDROLOGY/ WATERSHEDS

Newark Plant Site *

* This is a closed, engineered system for salt production and nothing is released or discharged to San Francisco Bay.

Cargill-87

COMMENT LETTER # DOW

September 19, 2013

Via Electronic Mail

Terrence Grindall
City of Newark
37101 Newark Boulevard
Newark, CA 94560
terrence.grindall@newark.org

Re: Comments on Draft Environmental Impact Report for the Newark General Plan Update

Dear Mr. Grindall,

On behalf of Defenders of Wildlife's more than 120,000 members and supporters in California, I am writing in response to the City of Newark's General Plan Tune Up Draft Program EIR. Defenders of Wildlife ("Defenders") is a national, non-profit, public interest conservation organization with more than one million members and supporters. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities, and has been involved for years in wetlands protection, San Francisco Bay conservation and restoration, and promoting the interests of national wildlife refuges, including the Don Edwards San Francisco Bay National Wildlife Refuge.

Defenders of Wildlife joins Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing Newark's plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge.

As Historic Bay wetlands with significant restoration potential, 550-acre Area 4 is simply an inappropriate place for development. Not only does Area 4 fall within the expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge, but it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary breeding ground for San Francisco Bay Harbor Seals.

DOW-1

California Program Office
926 J Street, Suite 522
Sacramento, CA 95814
Telephone 916-313-5800
Fax 916-313-5812
www.defenders.org

National Headquarters
1130 17th Street NW
Washington, DC 20036
Telephone 202-682-9400
Fax 202-682-1331
www.defenders.org

Development in Area 4 would fill nearly 100 acres of wetlands and aquatic habitat with an 18-hole golf course and nearly 500 single-family houses, exposing future Newark residents to significant flooding hazards, threatening the health of special status species populations, and preventing the restoration of a site uniquely suited for the preservation and recovery of rare and critical Bay habitat.
Scientists and regulatory agencies agree that Area 4 offers a crucial opportunity to restore San Francisco Bay:

- The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

- The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise"

- Similarly, the California Department of Fish and Wildlife have stated that "this wetland is an integral component of the San Francisco Bay ecosystem," and "critically important to waterfowl and shorebirds."

We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

Thank you for the opportunity to comment on your General Plan Draft EIR. If you have any questions or comments, please do not hesitate to contact me at (916) 313-5800 ex. 108 or hstewart@defenders.org.

Sincerely,

Haley Stewart
California Program Associate

DOW-1 cont.

COX CASTLE NICHOLSON

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555 California Street, 10th Floor
San Francisco, California 94104-1513
P 415.392.4200 F 415.392.4250

R. Clark Morrison
415.262.5113
cmorrison@coxcastle.com

File No. 68293

VIA EMAIL AND U.S. MAIL

September 27, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd
Newark, CA 94560

Re: Enterprise Drive LLC's Comments on Draft General Plan Update

Dear Mr. Grindall:

On behalf of Enterprise Drive LLC, thank you for the opportunity to comment on the City of Newark's August 2013 Draft General Plan Update. Enterprise Drive LLC owns 2.14 acres (parcel number 092-0140-008) in the Dumbarton Transit Oriented Development (TOD).

EDLLC-1

The Draft General Plan Update would set the minimum allowable density in Medium Density Residential districts at 15 dwelling units per gross developable acre. This new proposed minimum density is indicated, among other places, on page LU-12 of the Draft Update. As you know, in September 2011, the City of Newark approved the Dumbarton TOD Specific Plan. The City set the allowable minimum density for Medium Density Residential districts to 14 dwelling units per gross developable acre in the Dumbarton TOD. (Dumbarton TOD Environmental Impact Report, p. 3-25.) I write to request that the Dumbarton TOD Specific Plan be treated as an exemption to the Draft General Plan Update (for a comparison of residential densities in the Dumbarton TOD Specific Plan and the Draft General Plan Update, see the September 27, 2013 comment letter submitted by Cargill, Inc.).

Enterprise Drive LLC has planned a development relying on this set minimum of 14 units per acre. The approval process has been ongoing for some time, with tentative map fees paid on October 10, 2012 and rezoning, architectural, and site plan fees paid on October 31, 2012. A change to 15 units per acre at this stage would adversely affect Enterprise Drive LLC's ability to complete the project.

Enterprise Drive LLC thus requests the City treat the Dumbarton TOD Specific Plan as an exemption to the Draft General Plan Update, and that the established minimum density of 14 units per acre in Medium Density Residential districts in the Dumbarton TOD remain in effect. Thank you again for the opportunity to comment on the Draft General Plan Update for the City of Newark. Should you have any questions, please do not hesitate to contact me.

EDLLC-1 cont.

Sincerely,

/DKK

R. Clark Morrison

cc: Veronica Vargas (vvargas@trumarkco.com)
Ron Winter (rwinter@trumarkco.com)

COMMENT LETTER # GA

SAN FRANCISCO SAN JOSE SANTA ROSA WALNUT CREEK

GREENBELT ALLIANCE

Walnut Creek Office
1601 N. Main St., Suite 105
Walnut Creek, CA 94596
(925) 932-7776

September 27, 2013

City of Newark
Attn: Terrence Grindall
37101 Newark Boulevard
Newark, CA 94560
terrence.grindall@newark.org

Dear Mr. Grindall:

RE: Draft Environmental Impact Report for the Newark General Plan Update

We join Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing the city's plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge. GA-1

Numerous impacts of development in Area 4 are insufficiently addressed in the DEIR. Among them are the following:

Habitat

The 560-acres of diked baylands that comprise Area 4 contain a variety of wetland and upland habitat types. These habitats support numerous migratory waterfowl and several rare and endangered species, including the salt marsh harvest mouse, salt marsh wandering shrew, and burrowing owls. The area is identified as an important conservation priority in the 1999 Baylands Ecosystem Habitat Goals. Most of the area was included in the congressionally-approved USFWS Refuge Expansion Boundary Map of 1990. The area was identified in Greenbelt Alliance's 2012 At Risk report as "highly at risk."

Flooding and Sea Level Rise

Because Area 4 features tracts of uplands in proximity to tidal waters it provides a rare opportunity to maintain transitional habitat for tidal marsh species in the face of sea level rise. These same features make the land difficult and hazardous to develop. Since the entire area is within the 100-year flood plain, a large amount of would be required to support development. These measures may not be sufficient to address the impacts of sea level rise projected to occur during the next 100 years. Other public safety concerns include seismically unstable soils and limited emergency access. **GA-1 cont.**

We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services. **GA-2**

Sincerely,

Matt Vander Sluis
Senior Field Representative
Greenbelt Alliance
925-932-7776
MVanderSluis@greenbelt.org

COXCASTLENICHOLSON

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R. Clark Morrison
415.262.5113
cmorrison@coxcastle.com

File No. 68293

VIA EMAIL AND U.S. MAIL

September 27, 2013

Terrence Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd
Newark, CA 94560

Re: NMW Newark LLC's Comments on Draft General Plan Update

Dear Mr. Grindall:

On behalf of NMW Newark LLC, thank you for the opportunity to comment on the City of Newark's August 2013 Draft General Plan Update. NMW Newark LLC is the developer for the 21.27 acre Jones Hamilton property in the Dumbarton Transit Oriented Development (TOD).

NMW-1

The Draft General Plan Update would set the minimum allowable density in Medium Density Residential districts at 15 dwelling units per gross developable acre. This new proposed minimum density is indicated, among other places, on page LU-12 of the Draft Update. As you know, in September 2011, the City of Newark approved the Dumbarton TOD Specific Plan. The City set the allowable minimum density for Medium Density Residential districts to 14 dwelling units per gross developable acre in the Dumbarton TOD. (Dumbarton TOD Environmental Impact Report, p. 3-25.) I write to request that the Dumbarton TOD Specific Plan be treated as an exemption to the Draft General Plan Update (for a comparison of residential densities in the Dumbarton TOD Specific Plan and the Draft General Plan Update, see the September 27, 2013 comment letter submitted by Cargill, Inc.).

NMW Newark LLC has planned a development relying on this set minimum of 14 units per acre. The approval process has been ongoing for some time, with tentative map fees paid on October 31, 2012 and again on June 14, 2013. A change to 15 units per acre at this stage would adversely affect NMW Newark LLC's ability to complete the project.

NMW Newark LLC thus requests the City treat the Dumbarton TOD Specific Plan as an exemption to the Draft General Plan Update, and that the established minimum density of 14 units per acre in Medium Density Residential districts in the Dumbarton TOD remain in effect. Thank you again for the opportunity to comment on the Draft General Plan Update for the City of Newark. Should you have any questions, please do not hesitate to contact me.

NMW-1 cont.

Sincerely,

R. Clark Morrison

cc: Veronica Vargas (vvargas@trumarkco.com)
Ron Winter (rwinter@trumarkco.com)

COMMENT LETTER # STB

September 27, 2013

via electronic mail

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

Re: Draft Environmental Impact Report (DEIR) for the Newark General Plan Update

Dear Mr. Grindall,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Newark General Plan Tune Up. Representing 50,000 members and supporters throughout the Bay Area, including hundreds of residents of Newark, Save The Bay is concerned that the City's updated General Plan would extend urban sprawl into one of the largest expanses of undeveloped, restorable baylands in south San Francisco Bay. This is the type of development that the Bay Area has worked for 50 years to move away from, and it should not be encouraged or supported by the City of Newark.

We request that the City make changes to the DEIR to rectify its significant deficiencies and ensure full compliance with the California Environmental Quality Act and other applicable laws and regulations, and we look forward to the City's detailed responses to our comments in advance of certification of any EIR.

The 559-acre Area 4 is diked historic San Francisco Bay tidal marsh and an inappropriate place for development. Area 4 should be protected and restored for the benefit of the San Francisco Bay ecosystem, and for Newark and Bay Area residents alike. Area 4 falls within the Congressionally-approved expansion boundaries of the federal Don Edwards San Francisco Bay National Wildlife Refuge, and it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary pupping site for San Francisco Bay Harbor Seals. **STB-1**

Area 4 has long been identified by scientists, environmental organizations, and state and federal regulatory agencies as a priority area for restoration:

- The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay (Baylands Ecosystem Goals, Segment Q: Mowry Slough Area, p.132-33)

- The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4

represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise" (San Francisco Bay Regional Water Quality Control Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010, p.2)

- The U.S. Fish and Wildlife Service has been consistent in stating their interest in protecting and acquiring Area 4 for the Don Edwards San Francisco Bay National Wildlife Refuge, recently reiterating that, "the proposed development of Area 4 will only add to the cumulative loss of tidal wetlands in San Francisco Bay and endangered species that are dependent on that habitat," and "Area 4 would be an extremely valuable addition to the Refuge as it could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas" (US Fish and Wildlife Service letter to City of Newark in response to the General Plan DEIR, Sept. 19, 2013)

STB-1 cont.

With the majority of Area 4 located within a 100 year flood zone behind levees that lack FEMA certification, and with significant opportunity for wetland restoration, Area 4 should be protected and restored in order to protect Newark and surrounding communities from flooding, rather than paved over, putting more people at risk.

STB-2

<u>The City of Newark should develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.</u>

STB-3

The General Plan Is Inconsistent with the BCDC Bay Plan, the US Fish and Wildlife Service Comprehensive Conservation Plan, and the Baylands Ecosystem Habitat Goals

Despite assurances that "the proposed Plan would not conflict with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect," (DEIR, Impact LU-2, 4.9-7) the City of Newark's proposed development of Area 4 conflicts with numerous federal, state and regional policies intended to protect San Francisco Bay, its habitats and wildlife.

STB-4

The San Francisco Bay Conservation and Development Commission (BCDC) Bay Plan

The DEIR acknowledges that "BCDC has jurisdiction…over managed wetlands in the Southwest Newark Residential and Recreational Focus Area" and that "projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection" (DEIR, 4.8-7). But it fails to acknowledge the Bay Plan policies that expressly discourage development in restorable areas like Area 4.

BCDC has informed Newark "that the Commission has managed wetland jurisdiction over a portion of the project area in Focus Area 4, specifically the sites referred to as the Pintail and Whistling Wing Duck Clubs" and that "the Commission's San Francisco Bay Plan managed wetland policies state, in part that, 'The continued operation and maintenance of managed wetlands for waterfowl hunting, as game refuges, or for waterfowl food production should be encouraged... If the owner of any managed wetland withdraws any of the wetlands from their present use, the public should make every effort to buy these lands and

STB-5

restore them to tidal or subtidal habitat, or retain enhance and manage these areas as diked wetland habitat for the benefit of multiple species.'" (BCDC letter to City of Newark in response to the General Plan NOP, February 13, 2013, p. 2.)

In addition, the DEIR fails to acknowledge BCDC's Bay Plan policy regarding undeveloped shoreline areas, such as Area 4, with restoration potential that are vulnerable to sea level rise:

> *To address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes.*
>
> (BCDC Bay Plan, Climate Change Policy #4.)

STB-5 cont.

U.S. Fish and Wildlife Service, Don Edwards SF Bay National Wildlife Refuge Comprehensive Conservation Plan (CCP)

The DEIR incorrectly asserts that "the proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan." (DEIR, Impact LU-3, 4.9-8.)

In fact, the U.S. Fish and Wildlife Service for the Don Edwards San Francisco Bay National Wildlife Refuge recently reiterated its strong concerns to the City in a September 19, 2013, DEIR comment letter.

As the CCP states, "the Refuge is particularly interested in acquiring unprotected high marsh, ecotonal, and upland habitats that will benefit migratory birds that are Refuge trust species… [and] acquiring those lands within the approved acquisition boundary that can address climate change efforts." (Don Edwards SF Bay NWR, CCP, p. 191.) Development of Area 4 would conflict with the CCP's goal to "conserve, restore, enhance, create and acquire habitats to support the diversity and abundance of migratory birds and other native flora and fauna that depend on Refuge lands." (Don Edwards SF Bay NWR, CCP, p. 180.) Area 4 is one of the largest remaining sites within the Refuge's acquisition boundary that can meet these specific needs, and therefore it is apparent that the General Plan has a significant conflict with the Comprehensive Conservation Plan.

The Fish and Wildlife Service also has "concerns with the proposed development and its potential to attract nuisance and predator species (e.g., gulls, geese, invasive weeds) that affect native species and habitat, and threaten the recovery of endangered species," amongst other issues they have identified to the City in its previous comment letters (June 5, 2007; December 18, 2008; January 20, 2010).

STB-6

Baylands Ecosystem Habitat Goals Project

As stated by the Water Board, the SF Bay Ecosystem Habitat Goals Project and its companion document "should be recognized as regional habitat conservation plans." The

STB-7

General Plan's focus on developing Area 4 is in direct conflict with those regional habitat conservation plans:

> *The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM...*
>
> *The Habitat Goals Project recommends that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4), and the BCDC has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. In addition, the Refuge has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge.*
>
> (Water Board letter to City of Newark, General Plan NOP, February 13, 2013, Attachment A, p. 6-7.)

STB-7 cont.

The DEIR Fails to Plan for, Avoid or Mitigate the Impacts of Sea Level Rise

Sea level rise will have an incredible impact on coastal California, particularly cities located along the San Francisco Bay shoreline, like the City of Newark. It is therefore deeply troubling that the City is not meeting its responsibility to actually study, avoid or mitigate for sea level rise in its General Plan and DEIR.

The Pacific Institute's July 2012 report, "The Impacts of Sea Level Rise on the San Francisco Bay," commissioned by the California Energy Commission, estimates that $62 billion worth of property and infrastructure is at risk in the Bay Area, including $15 billion in Alameda County alone. (Pacific Institute, p. 20, Table 11.) There are 12,000 people already at risk from a 100-year flood in Alameda County, and that number is expected to rise to 66,000 people by 2100. Alameda County has the second highest exposure of all the nine Bay Area counties. (Pacific Institute, p. 7, Table 3.)

STB-8

Further, maps by BCDC demonstrate that significant portions of the Newark shoreline are expected to be inundated within the next 40 years if protective measures are not taken. (BCDC, "Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on the Shoreline," 2009.) This includes virtually all of Area 4, which is already mostly within a FEMA-designated 100-year flood zone, as the General Plan illustrates in Figure EH-2, "Flood Hazard Areas." (Draft General Plan, EH-11.)

The City's failure to address sea level rise in its General Plan would directly endanger its residents, their property, and the city's economy.

The DEIR fails to acknowledge the environmental impacts, as sea levels rise, of building up to 500 houses and an 18-hole golf course in an area with existing wetlands and significant wetland restoration potential. Resources agencies have specifically identified Area 4 as a

STB-9

STB-10

critical location where Bay wetlands, and the species that depend on this habitat, could migrate upland:

> *Large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise*
> (Water Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010, p.2.)

By focusing future development along the shoreline in Area 4, the City of Newark is significantly inhibiting the potential for tidal marsh to migrate upland in this area, as well as creating potential future impacts due to the probable need to construct additional flood protection measures that would likely impact adjacent wetlands. This is a significant, avoidable impact on the Bay, Bay wetlands and special status species including but not limited to the endangered California Clapper Rail and the endangered Salt Marsh Harvest Mouse. **STB-10 cont.**

The DEIR's Analysis of Environmental Impacts Resulting from the Proposed Development of Area 4 is Inadequate

The DEIR fails to adequately evaluate and mitigate the environmental impacts that will result from the conversion of Area 4 to hundreds of housing units and an 18-hole golf course. According to the Draft General Plan, "the areas of greatest expected future land use change are in Southwest Newark and on the western edge of the city," and "this would likely represent an irreversible change" as it "would involve the transformation of undeveloped/open space to a suburban/urban environment." (Draft General Plan, LU-9 and 7-4.) Yet the environmental impacts from this change are either ignored or significantly downplayed in the DEIR. **STB-11**

Potential environmental impacts that the DEIR fails to adequately document or mitigate include but are not limited to the effect that the loss of Area 4 wetlands will have on special status species known to occur onsite. The DEIR also fails to consider the impact of the loss or degradation of wetlands and other habitat characterized by the San Francisco Bay Regional Water Quality Control Board as "regionally significant" on other Bay wildlife species. (Water Board letter to City of Newark in response to the General Plan NOP, February 13, 2013, Attachment A, p. 7.) **STB-12** **STB-13**

Additionally, the DEIR fails to adequately evaluate the alteration to wetland hydrology and impairment of water quality that may result from development-induced runoff pollution, including the use of pesticides associated with the proposed 18-hole golf course, and changes in runoff patterns associated with the filling of hundreds of acres of Baylands and nearly 100 acres of wetlands and other aquatic habitat. The DEIR also fails to include an adequate discussion of the reduction in habitat quality associated with locating development immediately adjacent to sensitive wildlife habitat. **STB-14** **STB-15**

The DEIR's treatment of existing biological conditions also fails to adequately characterize environmental conditions within Area 4. For example, the Vegetation and Habitat Types map included within the DEIR (Figure 4.3-2), only depicts a small portion of the jurisdictional wetlands that occur within Area 4, representing the majority of Area 4 as annual grassland instead. This is inconsistent with the figure "Existing Habitat" of the Areas 3 and 4 Specific Plan Draft EIR (Appendix E, Figure 4), which, corresponding to the **STB-16**

Jurisdictional Determination completed by the Army Corps of Engineers in 2007 (USACE File #2006-400075S), illustrates that more than 200 acres of Area 4 is composed of various types of wetlands and aquatic habitat. **STB-16 cont.**

Finally, discussions of impacts in the General Plan DEIR should not rely on conclusions or mitigation measures from the Areas 3 and 4 Specific Plan EIR that is currently the subject of legal challenge. Instead, the EIR should contain a *de novo* investigation of those issues, and the City should recirculate a revised DEIR containing this information for review and comment by the public, stakeholders and responsible agencies. **STB-17**

Existing conditions must be accurately represented in order for decision makers and the public to understand the environmental changes that will occur as a result of General Plan goals and policies, including the proposed development in Area 4. **STB-18**

Developing Area 4 Is Inconsistent With Numerous General Plan Policies, Actions and Goals

Development within Area 4 conflicts with many Draft General Plan policies and actions that are listed within the DEIR as justification for the "less than significant before mitigation" determinations made for many of the environmental impacts discussed.

For example, in concluding in Impact BIO-1 that "buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area," the DEIR claims that "the Proposed Plan includes policies and actions that would also protect special-status species and minimize impacts associated with future development under the Plan," listing policies CS-1.1, CS-1.2, CS-1.3, CS-2.1, CS-2.2, CS-2.3, CS-2.7 and others that are in fact inconsistent with the City's proposed development of Area 4. (DEIR, 4.3- 32-34.) **STB-19**

The City may not assert that vague General Plan policies will ensure less than significant impacts to the environment, when the development of Area 4 would preclude implementation of those policies. Additionally, the City many not rely on "compliance with applicable federal, state, and local regulations" in asserting that "impacts from the proposed Plan would be less-than-significant." As the lead agency under CEQA, it is not adequate for the City of Newark to rely on mitigation measures that have not been formulated. *(Gentry v. City of Murrieta (1995) 36 Cal.App.4th at p. 1397.)* The city may not assume that these agencies would necessarily "reduce potential impacts to wetlands, riparian habitat, and sensitive natural communities that could result from buildout of the proposed Plan to the maximum extent practicable." (DEIR, 4.3-39.) **STB-20**

The proposed General Plan Policies, Actions and Goals, that conflict with development of Area 4 include, but are not limited to:

- *Policy CS-1.2: Conservation of Sensitive Areas. Support the conservation of environmentally sensitive areas and unique natural resources in the city.*
- *Policy CS-1.3: Interagency Cooperation. Participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas.*

STB-21

- *Policy CS-2.1: Wildlife and Habitat Protection. Preserve and protect Newark's plant and animal species and habitats, including wetlands, salt marshes, creeks and lakes. Ensure that land use decisions consider potential impacts on wildlife habitat.*
- *Policy CS-2.2: Special Status Species. Ensure that adverse impacts on special status species, including those deemed rare, threatened, endangered or candidate species for protection, are avoided and mitigated to the greatest extent feasible as development takes place.*
- *Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay.*
- *Policy CS-2.7: Coordination with State and Federal Agencies. Coordinate with the California Department of Fish and Game, the US Fish and Wildlife Service, surrounding cities, the Regional Water Quality Control Board and other appropriate agencies to protect wildlife species and habitat.*
- *Goal CS-2: Conserve Newark's wetlands and baylands*
- *Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay.*

STB-21 cont.

The City Should Develop a General Plan Alternative that Protects Area 4 from Development

While an EIR "need not consider every conceivable alternative to a project… it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation." (CEQA Guidelines §15126.6(a).) Area residents, environmental organizations, and regulatory agencies have been consistent in their communications with the City on the need to protect and restore Area 4.

In response to the General Plan Notice of Preparation, the San Francisco Bay Regional Water Quality Control Board requested that "the City should evaluate in its CEQA documents project alternatives that avoid and minimize fill." (Water Board, letter to City of Newark in response to the General Plan NOP, February 13, 2013, Attachment A, p. 1.) Carin High from the Citizens Committee to Complete the Refuge also requested "an alternative that retains Area 4 in its current condition." (Carin High email to City of Newark in response to the General Plan NOP, February 13, 2013, p. 1-2.)

STB-22

Including an alternative that would protect Area 4 from development by maintaining the existing agricultural zoning, while allowing development in other priority growth areas, would allow the City to meet all of the Project Objectives identified in the DEIR while significantly lessening the environmental impacts of the Plan. In fact, some of the Project Objectives meet with greater success under this proposed alternative, specifically the objective to "embrace Newark's bayfront location."

Numerous General Plan policies, actions and goals could be better met with this proposed alternative. For example, in the General Plan the City aspires to build a "bayfront identity" (Policy LU-4.13, LU-45) and "stronger connections to San Francisco Bay" (LU-32), stating:

> *Newark aspires to reorient itself to San Francisco Bay and establish itself as a bayfront city … Construction of the Bay Trail, restoration of wetlands … and establish stronger connections to the marshes and sloughs that define the city's western flank* (ED-17)

The General Plan also includes Policy ED-5.6:

> *Bayfront Location. Promote the public image of Newark as a bayfront city, with shoreline amenities such as trails, bayfront open space, wildlife refuges, and bay vistas. The City's natural features and connections to San Francisco Bay are a "selling point" that should be leveraged to attract new employers* (ED-30)

The DEIR identifies the "Environmentally Superior Alternative" as the "Restricted Growth Alternative" which would prohibit development in ***both*** Area 4 and the "Dumbarton Transit-Oriented Development Priority Development Area." In addition to the "Restricted Growth Alternative," the City should study a separate alternative that protects Area 4 by maintaining the existing Agricultural zoning, but allows the development of other priority development locations in the City, near transit, shops, and services. This is a feasible project alternative that would meet the all of the Project Objectives while "clearly lessen[ing] the environmental impacts of the project." (CEQA Guidelines §15088.5(a)(3).) **STB-22 cont.**

Thank you for considering our comments and recommendations.

Sincerely,

David Lewis
Executive Director

Enclosures

Attachments:

1. Don Edwards San Francisco Bay National Wildlife Refuge Expansion Boundaries – Regional View
2. Don Edwards San Francisco Bay National Wildlife Refuge Expansion Boundaries – Local View
3. Historic Baylands – Regional View
4. Historic Baylands – Local View
5. Areas 3 and 4 Existing Habitat, Newark Areas 3 and 4 Specific Plan Draft EIR, Appendix E, Figure 4
6. Projected Inundation Areas from Sea Level Rise – U.S. Geological Service
7. Projected Inundation Areas from Sea Level Rise – Bay Conservation and Development Commission
8. The Pacific Institute, “The Impacts of Sea Level Rise on the San Francisco Bay,” July 2012
9. Baylands Ecosystem Habitat Goals Report - Segment Q- Mowry Slough Area
10. San Francisco Bay Regional Water Quality Control Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010
11. San Francisco Bay Regional Water Quality Control Board letter to City of Newark in response to the General Plan NOP, February 13, 2013
12. Bay Conservation and Development Commission letter to City of Newark in response to the General Plan NOP, February 13, 2013
13. Carin High letter to the City of Newark in response to the General Plan NOP, February 13, 2013

Santa Clara Valley
Audubon Society

September 24th, 2013 *via email*

Terrence Grindall
City of Newark
37101 Newark Boulevard
Newark, CA 94560
terrence.grindall@newark.org

Re: Comments on Draft Environmental Impact Report for the Newark General Plan Update

Dear Mr. Grindall,

Santa Clara Valley Audubon Society (SCVAS) joins Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing Newark's destructive plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. SCVAS has over 3500 members in the Bay Area, and our mission embraces open space, nature and birds as we offer field trips and education programs, and engage in conservation activities. We believe that Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge.

SCVAS-1

Historic Bay wetlands with significant restoration potential, 550-acre Area 4 is simply an inappropriate place for development. Not only does Area 4 fall within the expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge, but it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary breeding ground for San Francisco Bay Harbor Seals.

22221 McClellan Road, Cupertino, CA 95014 Phone: (408) 252-3748 * Fax: (408) 252-2850
email: scvas@scvas.org * www.scvas.org

Development in Area 4 would fill nearly 100 acres of wetlands and aquatic habitat with an 18-hole golf course and nearly 500 single-family houses, exposing future Newark residents to significant flooding hazards, threatening the health of special status species populations, and preventing the restoration of a site uniquely suited for the preservation and recovery of rare and critical Bay habitat.

Scientists and regulatory agencies agree that Area 4 offers a crucial opportunity to restore San Francisco Bay:

- The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

- The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise"

- Similarly, the California Department of Fish and Wildlife have stated that "this wetland is an integral component of the San Francisco Bay ecosystem," and "critically important to waterfowl and shorebirds."

SCVAS-1 cont.

We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

SCVAS-2

Thank you,

Shani Kleinhaus, Environmental Advocate

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COMMENT LETTER # SFBK

SAN FRANCISCO BAYKEEPER

Mr. Terrence Grindall
Community Development Director
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Tel. (510) 578-4208
Email: terrence.grindall@newark.org

Re: City of Newark, General Plan Tune Up Draft Program Environmental Impact Report, SCH No. 2013012052 ("DPEIR")

Dear Mr. Grindall:

Please accept the following comments on behalf of San Francisco Baykeeper ("Baykeeper") and our 2,500 members in our pursuit to protect and enhance the water quality of the San Francisco Bay and its tributaries.

I. The Purpose and Scope of the "Project" are Unclear

Baykeeper is unclear as to the purpose of this General Plan tune up, and recommends that this opportunity be seized as one to develop a sustainable infrastructure and pro-conservation approach to Newark's remaining habitat and open space. This overarching goal resonates with the DPEIR's stated Project objective to "Embrace Newark's bayfront location." (DPEIR 3-3.) Consistent with this objective, and as discussed further, below, the City should adequately prepare for rising sea levels along Newark's bayfront, revision the City's minimal stormwater pollution controls, and reconsider its proposed Area 4 development.

SFBK-1

II. The DPEIR Fails to Consider Impacts Associated with Rising Sea Levels

The DPEIR fails to apply its own threshold of significance as to whether "[t]he proposed Plan would not expose people or structures to a significant risk of loss, injury or death involving flooding." (DPEIR 4.8-31.) The DPEIR artificially segregates flooding as a result of existing environmental conditions, from any increased flooding that could be caused by future rising sea levels, as if even flood risks today could somehow be untwined from present rises in sea levels caused by global warming. It is simply internally inconsistent and incoherent to apply this threshold of significance to all flooding *except flooding caused by sea level rise*. Present and future increases in flooding caused by rising Bay levels must be part of this analysis.

Notably, the legal theory on which the DPEIR rests its flawed assumption that impacts from sea level rise should not be considered under CEQA was recently rejected by the California Court of Appeal.[1] Furthermore, the DPEIR acknowledges that its impact from greenhouse gas emissions will be significant and unavoidable, and admits that sea level rise is a direct result of increased greenhouse gas emissions. Therefore, the DPEIR is wrong to state that rising sea levels are a condition of the existing environment, but not an effect of the Project.

SFBK-2

[1] See *California Building Industry Assn. v. Bay Area Air Quality Management Dist.*, 218 Cal. App. 4th 1171, 1194-1196 (declining to follow *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455).

The DPEIR must also evaluate the reasonably foreseeable adverse impacts from the Project to the environment. While the DPEIR asserts that rising sea levels are, in and of themselves, a condition of the existing environment, the DPEIR still must adhere to CEQA's fundamental purpose to evaluate any impacts that the Project *itself* will cause in conjunction with projected sea level rise. For example, it is well documented that, if flooding or inundation occurs as a result of sea level rise, the Project's pollution loading to the Bay and its tributaries will likely increase.[2] This increased pollutant load would come from the Project itself, not from the rising sea level, and must be evaluated in this DPEIR. Similarly, wastewater and stormwater infrastructure may be compromised by rising sea levels, with serious resulting consequences to water quality.[3] The DPEIR identifies "the areas immediately adjacent to the ACFC storm drain channels" (DPEIR 4.8-15), but fails to discuss how the Project's contaminated stormwater could be managed if stormwater infrastructure is inundated by sea level rise.

SFBK-2 cont.

SFBK-3

SFBK-4

As a result of, and in conjunction with, foreseeable sea level rise, the Project Area will likely be required to implement further mitigation and/or adaptation measures to protect habitat, open space, and developed property from flooding by rising sea levels. The DPEIR must evaluate the extent to which such mitigation measures may be needed, and their resulting environmental impacts, as all such reasonably foreseeable mitigation and adaptation measures will be a consequence of the Project itself. For example, the construction of sea walls would cause further greenhouse gas impacts and erosion. What is the Project's plan for adapting to sea level rise?

SFBK-5

SFBK-6

Rising sea levels will also affect the greater loss of existing wetlands, projected to be permanently inundated by rising tides. This foreseeable change in the environment places a premium on undeveloped upland habitat that may be able to adapt to transition to future wetland areas as sea levels rise.[4] The cumulative impact of wetland loss under the City's General Plan development must be considered in this light. Not only would near-term direct loss or degradation of wetland habitat be cumulatively considerable in conjunction with projected loss through sea level rise, but also any loss or degradation of upland habitat suitable for wetland transitional zones must be analyzed and avoided or mitigated where feasible.

SFBK-7

III. The DPEIR Fails to Consider the Project's Impacts on Stormwater and Receiving Water Quality

Rather than evaluate whether the additional pollutant loading caused by the Project would threaten or impair the beneficial uses of area water bodies, the DPEIR simply asserts that compliance with the San Francisco Regional Municipal Stormwater Permit ("MRP") would necessarily render any impact associated with contaminated stormwater discharges to less than significant levels. Unfortunately, however, the MRP is no panacea, as significant pollution loading from stormwater runoff persists even under the permit. While the DPEIR states that "[n]o site-specific data regarding stormwater runoff from the Plan Area exists" (DPEIR 4.8-14), voluminous data on both stormwater generally, as well as recent and ongoing municipal performance under the existing MRP, is available and should have been considered by the DPEIR.

SFBK-8

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[2] http://www.pacinst.org/wp-content/uploads/2013/02/report16.pdf (attachment 1), http://www.icleiusa.org/static/San_Diego_Bay_SLR_Adaptation_Strategy_Complete.pdf (attachment 2)
[3] http://www.adaptingtorisingtides.org/vulnerability-and-risk-assessment-report/ (attachments 3 and 4)
[4] http://www.adaptingtorisingtides.org/vulnerability-and-risk-assessment-report/ (attachment 5)

For example, the MRP purports to lessen the onus on municipalities to reduce pesticide loading to area water bodies under the theory that pesticide regulation is solely a matter of statewide concern. Nevertheless, through its general plan process, the City could certainly consider and require land use patterns and design elements that would place land uses known for intensive pesticide use, such as golf courses or office parks, away from potentially affected water bodies, with intervening buffer areas. All urban creeks throughout the region are listed by the Regional Water Board as impaired for pesticide toxicity, and recent monitoring reports submitted under the MRP confirm that municipal stormwater continues to discharge pesticide-contaminated stormwater in toxic amounts. Yet the DPEIR fails to evaluate this significant threat to water quality. **SFBK-8 cont.**

Moreover, the DPEIR fails to describe the beneficial uses of the impacted water bodies at all, rendering any evaluation of whether such beneficial uses may be impaired impossible. **SFBK-9**

IV. The City should Reconsider Development of Area 4

In determining the land-use plan for Area 4, the City of Newark has the opportunity to distinguish itself as a leader in the arena of responsible planning. Area 4 is located within the 100-year floodplain and the majority of the site would be inundated by a one-meter sea-level rise according the mapping released by the San Francisco Bay Conservation and Development Commission (BCDC). This poses serious public safety issues including emergency response time and access, traffic ingress and egress, seismic and liquefaction issues, etc. With the opportunity to re-vision its general plan blueprint for future development, we sincerely urge the City of Newark to consider an alternative plan that will preserve and restore the lands within Area 4 rather than trying to force development that would be inconsistent with City and regional goals of preservation, conservation, and sensible development. **SFBK-10**

Thank you for your careful consideration of these comments and concerns, and your good stewardship of these vital ecological resources.

Sincerely,

Jason Flanders
Program Director, San Francisco Baykeeper

CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto, CA 94306 Tel: 650-493-5540 www.bayrefuge.org cccrrefuge@gmail.com

Via Email September 27, 2013

Mr. Terrence Grindall
Community Development Director
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Terrence.Grindall@newark.org

Re: Draft General Plan Tuneup (GPT) and GPT DEIR

Dear Mr. Grindall,

This responds to the Draft General Plan Tuneup (GPT) and GPT Draft Program environmental impact report (DEIR). The Citizens Committee to Complete the Refuge (CCCR) thanks you for the opportunity to review and provide comment. Based upon our review of the DEIR, we find that it contains serious omissions, inaccuracies, and flaws that must be rectified to comply with the California Environmental Quality Act (CEQA) requirements. For these reasons, as well as those articulated by our attorneys, Lippe Gaffney Wagner LLP, and Richard Grassetti of Grassetti Environmental Consulting, the DEIR must be corrected and re-circulated. CCCR-1

Newark General Plan "Tuneup"

The city held public workshops in late 2011 and early 2012, facilitated by graduate students from California Polytechinic State University San Luis Obispo. The City also held joint study sessions between the city council and planning commission, though these do not appear to have been widely advertised. Members of CCCR only found out about these joint workshops by perusing the planning commission and city council agendas.

Public participation is a required component of the general plan process California Government Code §65351, and public participation can:

- Educate the public about community issues.
- Increase the public's ability and desire to participate in the community.
- Enhance trust in government by strengthening the relationship between elected officials, government
- staff, and the public.
- Encourage working towards community consensus and creating a vision for the future.
- Lay the groundwork for community revitalization and increased investment in the community.
- Allow decision makers to obtain public input regarding plan policies and community issues and objectives.
- Provide the public with opportunities to evaluate alternative plans and to participate in developing
- and choose a plan that works for their community.
- Inform decision-makers about public opinion.

The characterization of this general plan update as a "tuneup" conveys to the public that there is actually little need for the public to participate in the process. That the purpose of this "tuneup" is to merely tie up a few loose ends. This impression is solidified with the following text: CCCR-2

> The effort leading to the adoption of a new General Plan in 2013 was referred to as a General Plan "Tune Up" rather than a major revision. This is because the values represented by the 1992 Plan remained valid and appropriate at the time of Plan adoption. By 2011, however, the 1992 Plan's data and maps were becoming dated and the absence of a discussion of recent planning efforts was becoming more apparent. The 1992 Plan did not reference regional planning initiatives and legislative changes, nor did it address emerging issues such as climate change and sustainability. The intent of the "Tune-Up" was to update baseline data and projections, refresh the narrative text which describes planning issues, and move the planning horizon forward by 20 to 25 years. [emphasis added]

And:

> The basic vision established by the 1992 Plan continues to guide this General Plan. This vision seeks to sustain Newark as a high quality community with attractive neighborhoods, great shopping, diverse workplaces, excellent public services and parks, and a healthy natural environment. Many of the areas identified for development by the 1992 Plan continue to be identified for development today—this General Plan provides greater detail on the types of uses and the issues to be addressed as such development takes place. [emphasis added]

It has been over twenty years since the crafting of the existing general plan. The Draft GP acknowledges that it carries forward many of the concepts of 1992 GP, including development of the city's western edge. However, significant new information has come to light since the early 1990's. As the general plan update indicates, new policies and strategies have developed over the intervening years, with different visions of how we should interact with the landscape, especially in low lying areas close to the edges of the bay. The general plan update process is an appropriate time to re-evaluate the long-term sustainability of the existing general plan's vision of land use.

CCCR-2 cont.

As an example, the GPT carries forward the concept of a golf course and upscale housing on Area 4, the former Whistling Wings and Pintail duck clubs. A 2012 Wall Street Journal article[1] reported the financial woes of golf communities, describing how private golf course communities are "repurposing" golf courses by reducing the number of holes from 18 to 9 and then selling off the excess land. Property values in a number of golf course communities have plummeted. In South Carolina, lots that previously sold for $150,000, were on sale in 2012 for $1. In Florida, a lakefront home associated with an Arnold Palmer golf course sold for $795,000 in 2011, but had sold in 2007 for $1.6 million. In Bend, Oregon, a couple paid $500,000 for a lot in 2006. A similar-sized lot sold for $10,000 in early 2012. As of 2011, 2,000 golf courses of a total of 16,000 courses were in financial distress, and it was estimated an additional 4,000 to 5,000 would find themselves in a similar situation if their model of operation remained unchanged.

Jonathan Lansner [2] of the Orange County Register reports, during the period between 2005-2011, golf as a sport, lost 4.3 million golfers, and there were 37 million fewer rounds of golf were played in the period from 2005-2011. Lansner writes:

> Today, golf is largely out as a housing theme because developers have learned that golf courses are an expensive and narrow way to keep a new housing community green.
>
> "Lakes, walking paths and central amenities are used by all residents, as opposed to only about 15 percent to 20 percent of residents" for golfing, Boud says.

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[1] Keates, Nancy. "Fore Sale." July 24, 2012. Wall Street Journal.

[2] Lansner, Jonathan. "Golf courses hit rough economics." April 13, 2012. Orange County Register. http://www.ocregister.com/articles/golf-349198-says-courses.html Accessed 9-26-13

> While builders could sell golf-course view homes at a steep premium, Boud says that "when costs are considered, open spaces and trails often overtake golf in terms of benefiting the master plan, and a lake -- which is relatively cheap and easy to maintain -- beats golf in view premiums. Though obviously, fewer homes tend to benefit from the view because a lake is generally much smaller than a course."

Lastly, Alicia Robinson[3] of the Press Enterprise exposes the difficulties the City of Riverside has encountered when operators who held contracts to run two of three golf courses in the city stopped paying their city leases.

The 1992 general plan, was its vision of a golf course and upscale housing was developed during an unprecedented boom in the construction of high end golf courses. The period of the 1990's to early 2000 was a period of rapid growth for golf course construction. But as described above, there has been a sharp course correction as the popularity of the sport has decreased. The evidence above, suggests a golf course would be anything but an asset to the city. Why does the city continue to incorporate the vision of a golf course in Area 4?

This is just one example of an instance where carrying forward the visions of the 1992 plan may be out of synch with reality, and an indication that more than a tuneup is warranted. Other more pressing issues, such as adaptive planning for sea level rise, have not adequately been incorporated into the vision of land use promoted by the draft general plan.

CCCR-2 cont.

The GPT and the GPT DEIR are not user friendly:

The draft general plan and general plan DEIR are not user friendly, they do not encourage public participation in formulating a vision of growth for the city. Terms such as FAR (floor area ratio) have little meaning to the general public and housing unit densities are difficult to visualize. The Fremont general plan includes figures that help the reader visualize how the various housing densities or floor area ratios impact the landscape. Why can't the Newark GPT include similar figures?

CCCR-3

The DEIR is inconsistent in providing information necessary to evaluate the adequacy of impact identification, identification of indirect impacts, mitigation and monitoring measures, etc. Impact assessment and mitigation and monitoring requirements are spread amongst at least four different documents - this DEIR, the HEU EIR, the Area 2 EIR, and the Area 3 and 4 EIR (refer to earlier comment regarding the inclusion of the suspended EIR). Rather than providing the actual wording of the mitigation measures from these other documents, the GPT DEIR provides one sentence summaries of the mitigation measure(s) in question.

p. 2-3 states: Whenever existing environmental documentation or previously-prepared documents and studies are used in the preparation of this Draft EIR, the information is summarized for the convenience of the reader and incorporated by reference.

As an example:

4.3-33 -

> Additionally, previous environmental review conducted for the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified the following mitigation measures to address potential impacts to special-status plant and animal species. The Dumbarton TOD EIR identifies Impacts 4.3-1

CCCR-4

[3] Robinson, Alicia. "Riverside: Cities rarely fare well in golf business." July 19, 2013. The Press Enterprise. http://www.pe.com/local-news/riverside-county/riverside/riverside-headlines-index/20130719-riverside-cities-rarely-fare-well-in-golf-business1.ece Accessed 9-26-13.

> through 4.3-5 associated with impacts to the salt marsh harvest mouse, nesting raptors, the western burrowing owl, the tricolored blackbird, saltmarsh common yellowthroat, and other nesting passerine birds, as well as special-status plant species. These impacts would be mitigated to less-than-significant levels through the implementation of various assessment, survey, avoidance, buffer, preservation, and protection, and replacement measures specified in Mitigation Measures 4.3-1 and 4.3-5 from the Dumbarton TOD Specific Plan EIR.

CCCR-4 cont.

The information contained in this summary is insufficient to determine what type of impacts are anticipated and whether the mitigation measures referred to are adequate to reduce the impacts to a level that is less-than-significant. Furthermore, the HEU DEIR doesn't appear to be online, making review of the severity of the impacts proposed by the GPT DEIR nearly impossible for anyone who doesn't have a copy of the document.

The GPT DEIR incorporate all mitigation measures in one document, ensure the measures are consistent, and then re-circulate the information for public review and comment.

CCCR-5

The statement on p. 2-5 that "the Mitigation Monitoring Program for the proposed Plan <u>will be completed as part of the FEIR</u> and will be completed prior to consideration of the Plan by the Newark City Council." The typical comment period for an FEIR is 10 days. This delay in providing the MMP perpetuates the impression that the GPT and GPT DEIR are done deals and comments made by the public will not be considered seriously.

CCCR-6

It is not possible to determine from the GPT DEIR the level of CEQA review or opportunities for public comment that will occur in the future.

[Please refer to the letters of LGW and Richard Grassetti regarding why it is improper for the GPT DEIR to rely on conclusions, mitigation measures, etc. from the Area 3 and 4 DEIR and specific area plan. This statement should be inserted anywhere Area 3 and 4 is discussed henceforth.]

The GPT has been described during public meetings as being "self-mitigating." Please explain what that means and the ramifications for future CEQA review and public comment opportunities.

p. 1-3 of the DEIR states:

> ...this Draft EIR has been prepared as a Program EIR for the General Plan Tune Up project, pursuant to Section 15168 of the CEQA Guidelines. As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. <u>Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects</u>. [emphasis added]
>
> However<u>, if the Program EIR addresses the program's effects as specifically and comprehensively as possible, many subsequent activities could be found to be within the Program EIR scope and additional environmental documents may not be required (CEQA Guidelines Section 15168[c])</u>. When a Program EIR is relied on for a subsequent activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities (CEQA Guidelines Section 15168[c][3]). If a subsequent activity would have effects not within the scope of the Program EIR, the lead agency must prepare a new Initial Study leading to a Negative Declaration, Mitigated Negative Declaration, or an EIR. In this case, the Program EIR still serves a valuable purpose as the first-tier environmental analysis. [emphasis added]

This is passage describes the process normal process of tiering following the preparation of a program EIR. The GPT DEIR is confusing however, because it states that it incorporates by reference the analyses and mitigation measure

reporting programs of previously conducted EIRs. This makes it nearly impossible for the public to comprehend what will trigger future environmental review for the Area 2 (DTOD) and parcels covered by the HEU EIR (and Area 3 and 4 though that environmental review process is currently suspended). As an example: **CCCR-6 cont.**

p. 4.1-13:

> Furthermore, there are provisions in place to address light impacts from development located at the northwestern edge of the urbanized portion of Newark, where such impacts could potentially be most pronounced. Mitigation Measure 4.1-1 from the Newark Housing Element EIR requires that lighting plans containing specific measures to reduce the adverse impacts of additional light sources to less-than-significant levels for development in areas adjacent to the Don Edwards National Wildlife Refuge. Additionally, the proposed Plan incorporates a policy from the Dumbarton TOD Specific Plan requiring the incorporation of types of lighting and illumination that reduce glare and over-lighting impacts in the vicinity of the Dumbarton TOD Focus Area. [emphasis added]

CCCR-7

What if any, additional CEQA and public review of aesthetics can be expected within the sphere of the Newark Housing Element and the DTOD? Does the determination that the adverse impacts of additional light sources are reduced to a level that the city has determined to be less-than-significant for development in areas adjacent to the Refuge, mean that light impacts will not be reviewed further, even at the project level? What about other aesthetics impacts? If further environmental review will occur will there be any opportunity for public comment?

What are the anticipated triggers and what elements of the statement the GPT DEIR has incorporated by reference previous EIRs for the Dumbarton Transit Oriented Development (DTOD), the Area 3 and 4, and the Housing Element Update. **CCCR-8**

The incorporation of those EIRs and in particular, their mitigation measures into the existing baseline is improper.

Inconsistencies:

Comparisons of the GPT and GPT DEIR are difficult because the two documents do not use consistent language.
GPT CS-18 Newark does not allow development within the 100-year flood zone and *requires development to be elevated at least 8 feet above mean high tide (11 feet for residential development).*
GPT DEIR p.4.8-32: Furthermore, any development within the Plan Area would be subject to the City's flood elevation standards for lands within Special Flood Hazard Areas (SFHAs), as defined by FEMA (Section 15.40.51 of the Newark Municipal Code). These standards require building pads of all residential structures to be a minimum of 11.25 feet elevation *National Geodetic Vertical Datum (NGVD*). In addition, *the City requires the top of curb grades for residential streets to be no less than ten feet above mean sea level throughout the City* (Section 16.08.06 of the Newark Municipal Code). **CCCR-9**

Aesthetics:

4.1-4 - This section discusses visual character of Newark and includes the views of Coyote Hills, the east bay hills, and low-lying wetlands fronting San Francisco Bay, but does not mention the views of the hills across the bay. Shouldn't that view be part of the existing conditions? **CCCR-10**
4.1-6 - Shouldn't the views across the bay be mentioned under the discussion of Area 4? **CCCR-11**
AES-1 - The proposed Plan would not have a substantial adverse effect on a scenic vista. Once Area 3 is constructed, you will no longer be able to see across the bay while driving along Cherry. The sense of openness will also be lost as there will be medium density development on both sides of the street. **CCCR-12**
Policy LU-4.13 - How is Newark's Bayfront Identity reinforced by building high density housing in Area 2 and importing 2.1 million cubic yards of fill into Area 4? **CCCR-13**
Policy LU-4.14- Views of the Peninsula Hills and San Francisco Bay will be obscured by development in Area 3 and 4 and in Area 2. One might have a view of the bay however, if one is perched in a high density housing unit? **CCCR-14**

AES-3 The proposed Plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review. We concur that the proposed plan will have a significant adverse impact on the visual character of Area 3 and 4. **CCCR-15**

AES-4 States, "The Plan would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area." and rationalizes the conclusion with "future development under the proposed Plan would create new sources of light and glare; however, in the urbanized context of Newark this increase would not substantially and adversely affect daytime or nighttime views. Area 4 is isolated from development and in an area where there is no light at night. The introduction of lighting in this area will likely be visible from other parts of town. **CCCR-16**

AES-5 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics.
How is it possible to reach this conclusion? High density housing is proposed in Area 2, a large area of existing open space will be built out in Area 3, 2.1 million cubic yards of fill will be imported into Area 4 raising the elevation 10'-14', taller buildings are proposed in the New Park Mall area, and high density housing is proposed at the site of the library and city hall. How can the Plan buildout not visually alter the character of Newark? **CCCR-17**

Air Quality:
p. 4.2-13 - Existing Ambient Air Quality - The DEIR states the air quality monitoring station closest to the City is the Hayward Monitoring Station. Why wasn't the monitoring station in Fremont on Chapel Way utilized? That station in air miles is only 3.32 miles away? The site is reported to have sensors for O3, PM2.5, PM10, CO, NOx, HC, and Tox. **CCCR-18**

p. 4.2-15 - The DEIR refers to recent case law and states: "...the Guidelines language in thresholds d and e (exposure of sensitive receptors to substantial pollutant concentrations and creation of objectionable odors), as they relate to the placement of sensitive receptors under the proposed plan, above are not examples of an environmental effect caused by the development, but instead is an example of an effect on the Project caused by the environment (and therefore according to bad case law, are not required to be analyzed under CEQA). From a public health and safety perspective, it would seem irresponsible not to analyze and mitigate these impacts. **CCCR-19**

p. 4.2-18. - The City of Newark is already largely developed. <u>Future growth under the proposed Plan would be accommodated in infill sites and redevelopment of existing sites</u>. [emphasis added] This description of proposed development under the draft general plan is inaccurate as development is proposed on Area 4. The statement is inconsistent with other portions of the DEIR and GPT:

> page 3-8 - Area 4 is one of the last undeveloped sectors of the city and is <u>largely in agricultural use today</u>.
> Page 4.8-21 - However, future housing sites will be primarily located on underutilized land, infill sites, and along transit corridors, <u>most of which (excepting Area 4) have already been developed and currently have a high percentage of impervious surfaces</u>.
> Page 4.4-10: Additionally, <u>the Southwest Newark Residential and Recreational Focus Area contains a large area of undeveloped land</u>, some of which would be developed with buildout of the Plan.
> GP EH-31 - In particular, [...] <u>residential development in Southwest Newark will result in a larger population in areas that are presently vacant</u>.
> GPT LU- 23-26: This <u>is the largest area proposed for future development in Newark, comprising 636 acres</u> [emphasis added]

CCCR-20

p. 4.2-35: BAAQMD's CEQA Air Quality Guidelines do not require an evaluation of emissions from program-level planning activities such as the proposed Plan. Given the programmatic nature of the proposed Plan, <u>specific operational information individual projects that would operate under the Plan is not known</u>, <u>and furthermore, subsequent environmental review of development projects would be required to assess potential impacts under BAAQMD's</u> **CCCR-21**

project-level thresholds. Please clarify what additional environmental review would be required and would there be an opportunity to provide public comment? **CCCR-21 cont.**

p. 4.2-39 - States: Implementation of the above-listed policies would reduce operational emissions from development projects under the proposed Plan to the maximum extent practicable. Additionally, as noted above, future development projects under the proposed Plan would be subject to subsequent environmental review pursuant to CEQA and would be required to assess potential impacts under BAAQMD's project-level thresholds. Therefore, impacts associated with operational emissions of criteria air pollutant from the proposed Plan would be less than significant.

It is not possible to reach a conclusion of a less-than-significant impact. The policies are predominately advisory and there is no assurance they will be implemented. How is it possible to state impacts will be less-than-significant merely based on the requirement of future environmental review? As an example, what if significant impacts are identified, but there is a determination of "significant" followed by statements of over-riding concern? How would the adverse impacts of the project be less-than-significant? This same problem pertains to most of the impacts and mitigation measures discussed under the Air Quality section, e.g. AIR-3. With respect to AIR-3, it is unclear how a determination of less-than-significant before mitigation can be reached when there has been non-attainment for some constituents in previous years. **CCCR-22**

Action HW-1.F - Why locate sensitive receptors in areas of known "major sources" of air pollution at all? **CCCR-23**

p. 4.2-44 - New land uses in the City of Newark that are permitted under the proposed Plan that use trucks, including trucks with TRUs, could generate an increase in DPM that would contribute to cancer and non-cancer health risk in the SFBAAB. As identified in Table 4.2-6, impacts could occur at facilities that permit 100 or more truck trips per day or 40 or more trucks with TRUs within 1,000 feet of a sensitive land use. These new land uses could be near existing sensitive receptors within and outside the City of Newark. In addition, trucks would travel on regional transportation routes through the SFBAAB contributing to near-roadway DPM concentrations.
With implementation of Action EH-1.C, projects that would generate new sources of TACs would be required to reduce emissions to the BAAQMD's performance levels. Impacts would be less than significant. **CCCR-24**

The proposed development of Area 4 and the commiserate need for transport of fill to the site would require up to 100 trucks per day and this impact was not analyzed, nor mitigation proposed in the Area 3 and 4 EIR.

Please describe Policy EH-1.6 and Action EH-1.C. They do not appear in the DEIR or the GPT. **CCCR-25**

p. 4.2-45 - AIR-5 - "The Plan would not create or expose a substantial number of people to objectionable odors."
"There are two types of odor impacts: 1) siting sensitive receptors near nuisance odors, and 2) siting new sources of nuisance odors near sensitive receptors."
p. 4.2-46 -

> Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2-7. Additionally, sensitive receptors could be located in the vicinity of the salt ponds operated by Cargill Corporation, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be *less then significant*. [emphasis added]

Please clarify how the impacts of locating housing units and recreational facilities in proximity to the Cargill salt ponds was determined to be less than significant. There is no classification for the odors generated by the salt ponds or **CCCR-26**

appropriate distances to these sources on Table 4.2-7. Odors generated by the salt ponds can be particularly strong, but it is not clear how Cargill could be expected to abate the odor nuisance generated by the natural decay of algae, or by anaerobic mud. Additionally, wetlands can sometimes release the strong odor of rotten eggs due to the reducing conditions of the soils. There is nothing that can abate the smell, except for distance. **CCCR-26 cont.**

Biological Resources:
Figure 4.3-2 - Vegetation and Habitat Types - This figure grossly mischaracterizes the conditions on Area 3 and 4. Area 4 has a mosaic of uplands and wetlands across the site. Islands of uplands are surrounded by wetlands. To our knowledge the 78 undeveloped acres of Area 3 do not support wetlands habitat, yet nearly half the site is depicted as having wetlands. The area abutting the southeastern portion of Area 4, east of the railroad tracks is not cropland, but a vernal pool mitigation site, and should be depicted as a complex of grasslands and vernal pools. This figure needs to be amended to correctly reflect the habitats of Area 4. **CCCR-27**

p. 4.3-9 - Vegetation, Habitat Types, and Wetlands.
This section significantly downplays the significance of the mosaic of wetlands, waters and uplands that occur on Area 4. The tremendous potential to preserve and restore ecological functions on this site is of great significance. The Bay Goals Project[4] observed:

> Historically, moist grasslands existed in large expanses near Suisun Marsh, in the upper reaches of Sonoma Creek and the Petaluma River, and adjacent to much of the baylands in South Bay. Today, examples of large areas of this habitat exist near Fairfield and in the Petaluma River area. Smaller areas of moist grasslands with seasonal wetlands are in Marin at St. Vincent's/Silveira Ranch. <u>In South Bay, development has destroyed most of the historical moist grasslands; notable exceptions exist east of Coyote Hills in the Ardenwood area and near the upper reach of Mowry Slough in Newark.</u> [emphasis added]

The Bay Goals Project had the following recommendation for Area 4, "Protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail duck club. Similar habitat can be protected and restored at the upper ends of Newark, Plummer, and Albrae sloughs." **CCCR-28**

p. 4.3-10 - The DEIR states the Corps and CDFW generally exercise authority over the various wetland habitat types. The San Francisco Bay Regional Water Quality Control Board would also have authority over wetlands and waters of the state. **CCCR-29**

p. 4.3-11 -

> *Salt Ponds*
> The commercial salt ponds are large, open water areas ranging in salinity from similar to sea water at 32 parts per million to 135 parts per million, or more than four times more salty than sea water.22 These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water.
> Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt.23 Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin.24 Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.25

CCCR-30

[4] Goals Project. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. U.S. Environmental Protection Agency, San Francisco, Calif./S.F. Bay Regional Water Quality Control Board, Oakland, CA

This description should be added to the description of salt ponds on page CS-6 of the GPT. CCCR-30 cont.

Figure 4.3-3 Special Status Plant Species and Sensitive Natural Communities - The figure neglects to include Point Reyes bird's beak that occurs in the LaRiviere Marsh of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge). CCCR-31

Figure 4.3-4 Special Status Animal Species - CCCR-32

- Burrowing owl have been reported to occur within Area 4.
- Loggerhead shrike is listed as having been observed in Area 4 but does not appear on the map.

Table 4.3-1 Special Status Plant Species in the Newark Vicinity: CCCR-33

- Contra Costa goldfields - amend the table - confirmed occurrence in Area 2, refer to EIR.
- Point Reyes bird's-beak - amend the table - confirmed occurrence in the LaRiviere Marsh of the Refuge

Table 4.3-2 - Special Status Animal Species in the Newark Vicinity: CCCR-34

- Snowy egret - amend the table this species has been observed numerous times on the mitigation pond just east of Area 4 within Area 3. observations entered on eBird - (http://ebird.org/ebird/GuideMe?src=changeDate&getLocations=hotspots&hotspots=L827703&parentState=US-CA&reportType=location&monthRadio=on&bMonth=01&eMonth=12&bYear=2000&eYear=2013&continue.x=69&continue.y=8&continue=Continue)
- Western snowy plover - observed immediately adjacent to Area 2 (DTOD) (data from the Western Snowy Plover Pacific Coast Population Recovery Plan Volume 2 (Appendices)
- white-tailed kite - several observations at the Stevenson Blvd mitigation pond. See eBird link above
- salt marsh harvest mouse - has been trapped within Area 4 (letters provided in attachments). Many occurrences within Mayhews Landing close to Area 2. (map provided in attachments)

p. 4.3-31 - Please explain why Congdon's tarplant is not expected to remain for another five years. Does it have anything to do with how the site is currently managed? CCCR-35

p. 4.3-31 - Wildlife Corridors - The DEIR fails to recognize that levees provide movement corridors. CCCR-36

BIO-1 - Buildout of the proposed Plan would result in less-than-significant impacts to special status plant and animal species in the Plan Area. CCCR-37

As was mentioned above, the mitigation and monitoring requirements need to be condensed into one stand alone document, rather than expecting decision makers and the public to hunt down all the mitigation measures, and the public needs to be given adequate time to review all of the detailed mitigation measures in their entirety. Furthermore, the mitigation measures need to be reviewed holistically to ensure that while the individual impacts of the various focus areas may appear to be less-than-significant, adequate mitigation measures exist for the entirety of the "Project." CCCR-38

The Policies listed under BIO-1 are inadequate to protect biological resources within the City of Newark and on lands adjacent to the City of Newark.

- Policy CS-1.1: Ensure that development minimizes its impacts on Newark's environment and natural resources through sound planning, design, and management. The proposal to fill up to 86 acres of wetlands that have been deemed by the Bay Goals Project, the Refuge Expansion Boundary, etc. is not an example of "minimizing" impacts on natural resources. CCCR-39
- Policy CS-1.2: Support the conservation of environmentally sensitive areas and unique natural resources in the city. Refer to the comments above and the excerpts from the Bay Goals Project cited above. CCCR-40

- Policy CS-2.1: Preserve and protect Newark's plant and animal species and habitats, including wetlands, salt marshes, creeks and lakes. Ensure that land use decisions consider potential impacts on wildlife habitat. It is one thing to "consider" potential impacts on wildlife habitat and an entirely different thing to "avoid" impacts to wildlife habitat. The City of Newark has taken the former approach and then approved filling of wetlands. How is approval of a development that will fill up to 86 acres of wetlands without knowing where mitigation for those losses might occur protective? **CCCR-41**
- Policy CS2.2: Special status species - requiring mitigation "as development takes place" is not protective of special status species due to temporal losses of habitat and the uncertainty of whether the proposed mitigation will actually be successful. Requiring mitigation be completed prior to the initiation of impacts, is protective of special status species. Habitat is not lost before successful replacement habitat is provided. **CCCR-42**
- Policy CS-2.3: DESFBNWR - placing a transit center and medium density housing next to lands that might eventually become part of the Refuge (Hickory Street parcel, Plummer Creek parcel) is not protective of the Refuge. **CCCR-43**
- Policy CS-2.5: Development near wetlands - Placing housing and all the human disturbance factors including trash, invasive plants, nuisance species attracted to the housing, domestic pets, next to wetlands is not protective of wetlands. There are also concerns about accompanying changes to the wetland hydrological regime, siltation, etc. **CCCR-44**
- Policy CS-2.7: Coordination with agencies is already required. Coordination in advance of any proposed development so that the development can be designed to avoid or minimize impacts is a worthwhile effort. **CCCR-45**
- Action CS1.A - Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation. This certainly sounds good on paper, would that it were actually taken to heart. This has not been the practice to date. How would the approval of filling up to 86 acres of wetlands be considered consistent with this Action? **CCCR-46**
- Action CS-2C - The Action should be explicit that coordination with regulatory and resource agencies is necessary to ensure any measures undertaken will be effective and sufficiently protective. **CCCR-47**

The impacts of BIO-1 cannot be determined to be less than significant without comprehensive review of the mitigation measures the City plans to incorporate into the mitigation and monitoring program. Also, the policies and actions listed above are of no value unless they are actually implemented. **CCCR-48**

BIO-2 - Buildout of the proposed Plan would result in less than significant impacts to wetlands, riparian habitat, and sensitive natural communities in the Plan Area.

BIO-2 as currently worded, does not adequately capture the significant and adverse impacts that will result from buildout of the Plan. As mentioned earlier, restoration scientists, resource agencies, and regulatory agencies, regard the tremendous opportunities for restoration of the wetland/upland mosaic of Area 4 as extremely rare along the edges of the San Francisco Bay ecosystem. This is a site of regional significance. The uplands and seasonal wetlands, though continually degraded by manipulation of the land, have incredible restoration potential. In addition, the site is known to support the endangered salt marsh harvest mouse, burrowing owl, migratory and resident waterbirds, and birds that forage in uplands and seasonal wetlands. Not only will the filling of up to 86 acres of wetlands result in significant environmental harm, but the mitigations necessary to stabilize and 2.1 million cubic yards of fill could irreparably alter the hydrologic regime of existing wetlands. The adjacent development will expose the remaining habitat to all the negative impacts associated with human disturbance, and the wetland mitigation required to offset the filling of wetlands may result in the conversion of any undeveloped uplands to wetland mitigation. **CCCR-49** **CCCR-50**

86 acres is an unprecedented amount of wetlands fill. The developer of Area 4 will need to demonstrate that wetlands cannot be avoided, or impacts cannot be minimized. The City of Newark would be doing its residents a disservice if off-site mitigation (outside the City's boundaries) occurs, as the functions and values that wetlands provide will benefit another community and not Newark residents.

Policy CS-4 - Wetlands Delineation. This policy sounds good on paper - the question is whether there are any other remaining large potentially developable properties with wetlands other than Area 4? Have wetland delineations yet to be done for any other area of Area 4 not currently proposed for development (i.e. besides sub areas, b, c, d, and e?) **CCCR-51**

(4)(a) - The City should take into consideration that allowing the purchase of mitigation credits elsewhere (e.g. within 10 air miles of Newark) means that another community benefits from the functions and values wetlands provide, flood protection, erosion control, flood desynchronization, water quality aspects, groundwater recharge, etc. and not Newark residents. **CCCR-52**

(5) - The length of required monitoring should be dependent upon the habitat being mitigated. Also, the City should include language that would provide for additional monitoring should contingency measures be required. Usually the extension for monitoring is at least two years beyond any human intervention and the requirement for monitoring ceases only after success criteria have been met. **CCCR-53**

BIO-3 Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the U.S. in the Plan Area.

How can this determination be reached??? How does the performance of a wetland delineation, and verification that wetlands exist, help reduce the impacts of buildout to less than significant?
Delineating wetlands informs a property owner if they have a resource they need to deal with. However, he reduction of impacts occurs if wetland impacts are avoided or minimized to the maximum extent possible. Then, and only after an earnest attempt has been made to redesign a project to avoid and minimize impacts, should compensatory mitigation be considered. **CCCR-54**

The mitigation measures described under BIO-2 <u>will not and cannot reduce the adverse impacts of Plan buildout in Area 4 to a level that is less than significant!</u> **CCCR-55**

One of the mitigation measures for Area 4 MMBIO-1.2A is inconsistent with the stated and regionally documented need to preserve upland transition zones as retreat habitat for the recovery of listed species in the face of sea level rise. MMBIO-1.2A attempts to mitigate for the loss of filled wetlands by creating/enhancing wetlands out of other habitats of importance for survival of bay edge species. This measure would destroy the unique mosaic of habitats these lands currently host - a mosaic of wetlands and upland habitats that provide habitat resiliency and preserve regional biodiversity. **CCCR-56**

A conceptual mitigation plan still does not exist that would indicate the locations of proposed mitigation areas and their relationship to the existing mosaic of wetlands and transitional uplands scattered across Area 4. No attempt was ever made to offer this level of detail or even indicate conceptually what areas would be considered impacted by the direct placement of fill, by the indirect impacts of the changed conditions resulting from the fill, and the direct and indirect impacts of mitigation measures placed on the remaining landscape. **CCCR-57**

MM BIO-1.2B indicates**:** Alternatively, <u>at the discretion of the project developer(s), and as approved by the City of Newark</u>, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. [emphasis added] **CCCR-58**

This decision should certainly not be left to the discretion of the project developers. In addition, there is no indication of where such private lands might exist, no indication of how the lands would be acquired, and no conceptual plan of how mitigation will occur on the site. Acquisition and preservation does not equal “no net loss” as is the policy of the State. **CCCR-58 cont.**

To date there is no way of knowing how this Area 4 will be developed, where mitigation will occur onsite and what it’s proximity will or won’t be to the development envelope. This is important with respect to indirect impacts of the development on the mitigation site and with respect to habitat continuity – patches of mitigation surrounded by the development envelope are unacceptable mitigation. Nor is it possible for the City to determine if the development project is feasible and/or would produce sufficient property tax revenues to offset public service liabilities associated with a development on the outskirts of the City. **CCCR-59**

The focus on mere replacement of wetland acres may jeopardize the local populations of salt marsh harvest mouse and salt marsh wandering shrew. The mitigation proposed (aside from the puzzling master response above) has been focused in Sub Area E – converting the uplands in this area to wetlands, presumably by soil removal to lower the topographic position and allowing the former uplands to be inundated by rainfall or springs. This would remove higher elevation escape habitat for the salt marsh harvest mouse and salt marsh wandering shrew, leaving only the developed areas as less than desirable escape habitat that would further imperil these species. **CCCR-60**

Goal CS-2 - Conserve Newark's wetlands and baylands. Well this sounds good on paper. Please explain how this is actually reflected in the GPT. **CCCR-61**

Action CS-E - Support acquisition of wetlands and other environmentally sensitive areas by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no other conflicts with other General Plan goals and objectives.

In general, we do not support the use of mitigation banks, particularly for waters of the U.S. as the wetlands functions and values are lost to the community in which the filling is occurring, and instead benefit some other community, often far from the impact site. Other than the Plummer Creek site, please explain where this policy is being implemented. **CCCR-62**

There should be a (1)(a) inserted between the requirement of a wetland delineation and requiring authorization from the Corps or the RWQCB, that requires the land owner to avoid filling of the wetlands. If that is not completely possible, then wetland fill should be minimized. The 404 (b)(1) Guidelines require avoidance and minimization before compensatory mitigation is even considered. **CCCR-63**

BIO-4 - We do not concur that the Plan will not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. The Plan will in fact build to the edge of Newark's "bayfront" and could disrupt the movement of species along the western edges of the city. The Plan could discourage the use of the duck pond on that remains on Area 4 by resident, migratory and nesting birds due to human and domestic pet disturbance. **CCCR-64**

BIO-5 - The proposed Plan would not conflict with the City of Newark tree preservation ordinance. It is impossible to determine if this if true or not as we do not know the footprint of the Plan buildout. Therefore, the City cannot conclude that the impacts are less than significant. **CCCR-65**

BIO -6 - The proposed Plan would result in significant impacts related to conflict with the Basin Plan and Habitat Goals. We have already described Bay Goals recommendation that the area at the head of Mowry Slough be preserved and restored. This area represents a unique opportunity at a regional level. The DEIR mentions the Bay Goals recommendations to protect and enhance marsh transition zones. Please note, there are exceedingly few locations along the edges of the bay where this could be accomplished so quickly and easily. **CCCR-66**

Regarding the Basin Plan - The SFBRWQCB responded to the Area 4 DEIR and FEIR. Their DEIR comments regarding the development proposal and Basin Plan:

> Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Page 134 The DEIR states that:
> Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use.
>
> The condition of these wetlands would be easily improved by discontinuing the agricultural disturbances in Area 4. The Basin Plan directs the Water Board to protect both existing and potential Beneficial Uses of waters of the State. In Area 4, the habitat value could be greatly enhanced by simply discontinuing agricultural disturbances. If these wetlands are filled under the proposed Specific Plan, then the potential for enhancing or restoring the wetlands will be lost. Mitigation for such an impact will require addressing the lost potential value of these wetlands. [emphasis added]

And:

> The *San Francisco Bay Area Wetlands Ecosystem Habitat Goals Project* recommended that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4). In addition, the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge, and the Bay Conservation and Development Commission (BCDC) has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. **CCCR-67**
>
> The proposed mitigation quantities appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation was demonstrably capable of providing equal habitat benefit for listed species. The proposal to convert some areas of uplands in Area 4 to wetlands is also problematic, since a combination of wetlands and associated uplands are essential to high habitat value.
>
> At present, the DEIR does not demonstrate that adequate mitigation is available. Onsite mitigation will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. The DEIR does not identify any feasible locations for offsite mitigation. There are very few parcels of undeveloped land in private ownership that are available for use as mitigation wetlands, and are in proximity to protected lands that currently provide habitat for listed species.

... The current DEIR does not demonstrate that it is feasible to mitigate all of the potentially significant biological impacts of the Project to a less than significant level.

In addition, the SFBRWQCB submitted comments to the FEIR:

The FEIR, as written, does not demonstrate that impacts associated with the proposed fill of wetlands in Area 4 can be successfully mitigated to a less than significant level. The mitigation quantities proposed in the FEIR appear to be insufficient to compensate for the impacts associated with the proposed fill of wetlands in Area 4. The mitigation proposed in the FEIR relies on a combination of onsite wetland creation/enhancement and offsite wetland preservation. Onsite mitigation, which is only proposed at a 1:1 ratio, would be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. With respect to off-site mitigation, the FEIR does not provide sufficient detail to demonstrate that feasible locations exist for offsite mitigation.

On page 12 of the FEIR, the following statement is made:
The proposed mitigation measures for impacts to wetlands described in the Draft EIR treat wetlands as biological habitats and not State or Jurisdictional features. The City has determined based on extensive analysis by its biological experts that the mitigation requirements for wetland impacts (both in terms of amount and location of mitigation) described in the Draft EIR are more than adequate to mitigate the described impacts to a less than significant level.

We would like to point out that the resource agencies have not concurred with this assessment. When the City of Newark teams with individual developers to implement the Specific Plan, the City and developers should be aware that mitigation as proposed in the FEIR would appear to be far short of the mitigation that will be necessary to secure permits from the resource agencies for the impacts proposed to wetlands in Area 4. Therefore, project-level CEQA documents will likely be necessary to support permitting of Specific Plan implementation projects.

We would also like to reiterate that, by certifying the FEIR as written, the City should not assume that the Water Board or other resource agencies will allow the fill of the wetlands at Area 4 as proposed. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant, and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation is demonstrably capable of providing equal habitat benefit for listed species.

The City should recognize that large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to transgress (move up slope) in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), the Bay Conservation and Development Commission (BCDC), and the Water Board have all expressed strong reservations about the potential fill of wetlands in Area 4.

In summary, the FEIR as written does not demonstrate that impacts associated with the proposed fill of wetlands in Area 4 can be successfully mitigated to a less than significant level. Therefore, the FEIR is not likely to support the issuance of future permits from the Water Board for fill of waters of the State under the Specific Plan. [emphasis added]

CCCR-67 cont.

Based on these comments it is unclear how the City thinks the significant adverse impacts of the Plan could be reduced to a level that is less than significant even with mitigation. **CCCR-68**

Bio-7 - The proposed Plan will not result in less-than-significant cumulative impacts related to biological resources. Please refer to all of the statements above.

The GPT DEIR itself acknowledges:

> In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation.

But rather than heeding the strong language of the SFBRWQCB's comment letters, and those of the Refuge and CDFW, the DEIR erroneously concludes the mitigation it has proposed is sufficient to reduce the impacts of the Plan buildout. **CCCR-69**

The DEIR also makes the interesting statement: "Additionally, future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas." Once again raising the question of what would trigger additional environmental review and will there be additional opportunities for public comment. **CCCR-70**

Geology:
According to California Geological Survey's 2003 seismic hazard report, the entire Plan Area has been mapped as a liquefaction hazard zone. Most of the soils that have been mapped within the Plan Area have a high shrink swell potential which can lead to heaving and cracking of concrete foundations or flatwork built on top of the soils. The western part of the Plan Area may contain unstable geologic units, which can lead to differential settlement.

The DEIR once again references two recent court cases that hold CEQA analyzes the impacts of the project on the environment and not the environment on the project. Once again we state, that bad case law aside, if, a city approves development in an area prone to seismic hazard then it should do due diligence to ensure the public is not put in harm's way. **CCCR-71**

GEO-1 The proposed Plan would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving surface rupture along a known active fault; strong seismic ground shaking; seismic-related ground failure, including liquefaction; and landslides.

> Policy EH-1.1: Development Regulations and Code Requirements.
> Policy EH-1.2: Considering Hazards in Project Location and Design. Policy EH-1.2: Considering Hazards in Project Location and Design. Prohibit development in any area where
> it is determined that the potential risk from natural hazards cannot be mitigated to acceptable levels.
> Action EH-1.A: Development Review. Review all development applications to ensure their compliance with all relevant building and safety codes, including those related to fire, flooding, soil, and geologic hazards.
> Action EH-1.B: Code Updates.
> Goal EH-2: Reduce risks to life and property associated with geologic hazards.
> Policy EH-2.1: Earthquake Safety in New Construction.
> Policy EH-2.2: Seismic Retrofits. Encourage the retrofitting
> Policy EH-2.3: Earthquake Awareness. Inform Newark residents
> Policy EH-2.4: Infrastructure Resilience. Maintain standards

CCCR-72

Action EH-2.A: Geotechnical Studies. At the discretion of the Director of Public Works, require detailed investigations of ground shaking, liquefaction, soil stability, and other geologic hazards as specific development projects are proposed
Action EH-2.B: Geotechnical Staff Assistance. As needed, retain outside consulting
Action EH-2.C: Mandatory Seismic Upgrades. If feasible and appropriate
Action EH-2.D: Homeowner Education on Earthquake Safety
Action EH-2.E: Seismic Safety at Schools. Work with
Action EH-2.F: Earthquake Hazard Maps. Periodically update maps

With the exception of Policy EH-1.1, and Action EH-1.A and EH-1.2, there seems to be a lot of discretion in the degree to which these policies and action items are applied.

CCCR-72 cont.

GEO-2 Implementation of the proposed Plan would not result in substantial soil erosion or the loss of topsoil.

This section mentions methods of erosion control and discusses Newark's Municipal Code. Isn't a Construction Activities Stormwater General Permit from the SFBRWQCB required for sites where more than an acre of land is being graded?

CCCR-73

GEO-3 Development under the proposed Plan would not result in a significant impact related to development on unstable geologic units and soils or result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.

- Action EH-2.A: Geotechnical Studies. <u>At the discretion of the Director of Public Works</u>, require detailed investigations of ground shaking, liquefaction, soil stability, and other geologic hazards as specific development projects are proposed. Such investigations shall be prepared by a qualified geologist or soils engineer, with appropriate mitigation measures identified and implemented.
- Additionally, Mitigation Measure 4.5-1, from the Dumbarton TOD EIR, requires <u>future developers within the Dumbarton TOD area to perform a design-level geotechnical engineering investigation for their individual property or properties prior to development and as a condition for grading permit approval.</u>

Since Newark is in a liquefaction hazard zone, why is the requirement for detailed investigations of ground shaking, etc. discretionary? Why isn't it mandatory for any development? How often are detailed investigations required? Are the detailed investigations of Action EH-2.A required prior to the issuance of a grading permit? One would certainly hope so. it should be so stated in the language of the Action.

CCCR-74

Are detailed design-level studies required for Area 3 and 4? According to this DEIR Area 3 sits atop sand deposits that could be susceptible to liquefaction.

CCCR-75

GEO-4 Development under the proposed Plan would not create substantial risks to life or property as a result of its location on expansive soil, as defined in Table 18-1-b of the Uniform Building Code (1994).
"Development within the Plan Area in almost all instances would be preceded by suitably detailed geotechnical evaluations, the scope of which would include tests to determine and quantify the presence of expansive soils. The need for such geotechnical evaluations are triggered by CGS-determined liquefaction hazard zones that embrace all of the Plan area, as well provisions of the CBC and related City of Newark building and grading permit requirements."
What are the situations under which such plans would not be required? Why not require detailed geotechnical evaluations for all development in Newark since the entire city appears to be within a liquefaction hazard zone?
And why are there no mitigation requirements for Area 3 and 4? Especially since a school site is proposed within Area 3?

CCCR-76

GEO-6 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils.

Once again the discussion mentions additional mitigation measures for the DTOD and HEU, but not Area 3 and 4. Why?

CCCR-77

Also, the discussion of impacts and mitigation measures never touch on the types of soil stabilization techniques that might be utilized. This information is critical as the City should consider whether there could be any direct or indirect impacts to any of the other elements of the DEIR and GPT. For example, dynamic deep compaction could require mitigation measures for noise or vibration impacts to sensitive receptors. Could any of the GEO mitigation measures have adverse impacts to groundwater, mobilization of toxic groundwater plumes, dewatering of wetlands, adverse impacts to levees, adverse impacts to biological resources, etc.

CCCR-78

Hydrology:

The analysis of flood hazard is focused solely on the FEMA 100-year flood plain and the only means of addressing the risk of flooding is the requirement to construct new development atop building pads, requiring the import of millions of cubic yards of fill (Area 4).

CCCR-79

page 4.8-17 states:

> Although some locations within the City are protected from flooding by levees, FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability.35 Most of the levees within the City of Newark are not certified. Therefore, the areas next to the levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event. [emphasis added]

In other words, the majority of levees that currently provide some flood relief are not recognized as flood control levees. As an example, the levees on the bayward side of Area 4, are privately owned and maintained. The City is therefore, not relying on the existing levees to provide flood protection. Instead, the City has stated the requirement that new development be constructed atop building pads that are at minimum one foot above the 100-year flood elevation will be adequate to reduce potential flooding.

CCCR-80

Conspicuously absent in the DEIR analysis of flood hazard, is any mention of the additive impacts of sea level rise on flood risk. Sea level rise inundation maps depict much of the Dumbarton TOD and Area 4 at risk of inundation with a 1 foot rise in sea level. See the attached map or visit http://www.csc.noaa.gov/slr/viewer/# to view inundation risk with just a 1-foot rise in sea level and under varying sea level rise scenarios.

The DEIR avoids meaningful analysis of the additive risk sea level rise may have on new development permitted within the existing 100-year flood plain (low lying areas along Newark's bayfront) with the following explanation:

> **The City notes that the purpose of this EIR is to identify the significant effects of the Plan (which is considered a Project under CEQA) on the environment, not the significant effects of the environment on the Plan.** (*South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1614-1618; City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal.App.4th 889, 905.*) While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes.

CCCR-81

> Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of this Draft EIR (see *Guidelines, § 15063, subd. (f)*). However, a few of the questions on the form concern the exposure of people or structures to environmental hazards and could be construed to refer to not only the Project's exacerbation of environmental hazards but also the effects on users of

CCCR-82

the Project and structures in the Project of preexisting environmental hazards. **To the extent that such questions may encompass the latter effects, the questions do not relate to environmental impacts under CEQA and cannot support an argument that the effects of the environment on the Project must be analyzed in a Draft EIR.** (*Ballona Wetlands Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 473-474.*) **Accordingly, a discussion of flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA.**

CCCR-82 cont.

The DEIR references the issue of sea level rise, but goes no further. The language of the draft policies requires assessments and consideration of possible impacts related to sea level rise, but is silent as to whether that information, once collected will be utilized to ensure flood risk is reduced.

P. 4.2-28:

- Policy CS-5.8: Planning for Sea Level Rise. Require developments below 10' above mean sea level to include an assessment of possible impacts related to sea level rise.
- Policy S-3.9: Sea Level Rise. Consider the effects of rising sea level on the potential for flooding in low-lying areas, and participate in regional adaptation efforts for these areas.

P. 4.8-28:

Furthermore, City goals and policies under the proposed Plan would further reduce potential impacts to the existing storm drain infrastructure:

- Policy CS-5.8: Planning for Sea Level Rise. Require proposed development close to the Newark bayfront or in low-lying areas to include an assessment of possible impacts related to sea level rise.

P.4.8-33:

- Policy EH-3.9: Sea Level Rise. Consider the effects of rising sea level on the potential for flooding in low-lying areas, and participate in regional adaptation efforts for these areas.
- Policy CS-5.8: Planning for Sea Level Rise. Require proposed development close to the Newark bayfront or in low-lying areas to include an assessment of possible impacts related to sea level rise.

P. 4.12-24:

- Policy PR-5.7 Trail Sustainability. Consider long-term sustainability issues, such as projected sea level rise, surface durability, and the condition of levees, in the design of shoreline and wetland trail facilities.

CCCR-83

As stated above, while these policies give the impression that measures will be taken to reduce risk from sea level rise inundation, there is no language within the General Plan Goals, Policies, or Actions that require that such risk will be reduced. The rationale, is reliance on the court cases mentioned above, "flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA." This is irresponsible in terms of disclosure of impacts of a project and from a planning perspective a failure to incorporate meaningful analysis that could in fact lead to the permitting of projects that will impact the environment if sea level rise adaptation is not incorporated into the development design. As an example, if the only requirement to reduce flood risk is that new development is constructed at minimum, one foot above existing mean sea level (mean sea level at the time of permitting), and does not include sea level rise adaptation (not providing for estimates of sea level rise that could place the proposed development at risk of inundation), then the project may well have impacts to the environment that include the need for construction of flood protection levees, filling of adjacent wetlands to construct flood protection or from erosion of building pads, the need to re-engineer storm drain facilities, transportation facilities, etc.

The "State of California Sea-Level Rise Guidance Document"[5]states:

CCCR-84

[5] "State of California Sea-Level Rise Guidance Document." March 2013 Update. Developed by the Coastal and Ocean Working Group of the California Climate Action Team (CO-CAT) with science support provided by the Ocean Protection Council's Science Advisory Team and the California Ocean Science Trust.

SLR potentially will cause many harmful economic, ecological, physical and social impacts and incorporating SLR into agency decisions can help mitigate some of these potential impacts. For example, SLR will threaten water supplies, coastal development, and infrastructure, but early integration of projected SLR into project designs will lessen these potential impacts.

CCCR-84 cont.

The Guidance also addresses the importance of incorporating sea level rise adaptation into project design:

The consequences of failing to address SLR adequately for a particular project will depend on both adaptive capacity and the *potential* impacts of SLR to public health and safety, public investments, and the environment. Figure 1 in Appendix C illustrates how adaptive capacity and potential impacts combine to produce consequences.

Adaptive capacity is the ability of a system to respond to climate change, to moderate potential damages, to take advantage of opportunities, and to cope with the consequences.6 In most situations, adaptive capacity must be front-loaded, or built into the initial project; it cannot be assumed that adaptive capacity can be developed when needed unless it has been planned for in advance. A project that has high adaptive capacity and/or low potential impacts will experience fewer consequences.

CCCR-85

The DEIR mentions BCDC and its regulatory authority over portions of Plummer Creek, Mowry Slough and portions of Area 4:

p.4.8-7:
As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for any proposed fill, extraction of materials, or change is use of any water, land, or structure within the Commission's jurisdiction. The BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands in the Southwest Newark Residential and Recreational Focus Area. Projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection. These policies state that adequate flood protection should consider future relative sea level rise and all proposed development should be above the highest estimated tide level for the expected life of the project or sufficiently protected by levees.

The DEIR should also note that BCDC's sea level rise policies, "Encourage preservation and habitat enhancement in undeveloped areas that are vulnerable to future flooding and contain significant habitats or species, or are especially suitable for ecosystem enhancement."[6]

CCCR-86

The 2009 California Climate Change Strategy[7] states:

p. 51 Wetland habitats from the Sacramento Valley southward to the Salton Sea and the tidal marshes of San Francisco Bay also provide essential wintering habitat for hundreds of thousands of birds as they migrate north and south along the Pacific Flyway.
p. 52 Moreover, inland migration is frequently hindered by development such as bulkheads, seawalls, roads, and buildings. Continued growth and development in coastal areas will only increase the direct pressure on remaining habitats and make inland migration more difficult. Sea-level rise, especially at the increasing rates projected for the 21st century, may result in the loss of substantial areas of critical habitat for a variety of coastal species.

CCCR-87

[6] New Sea Level Rise Policies Fact Sheet. San Francisco Bay Conservation and Development Commission. http://www.bcdc.ca.gov/planning/climate_change/SLRfactSheet.shtml Accessed 9-26-13.
[7]

p. 74 Habitat Protection – The state should identify priority conservation areas and recommend lands that should be considered for acquisition and preservation. The state should consider prohibiting projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones.
The strategy should likewise encourage projects that protect critical habitats, fish, wildlife and other aquatic organisms and connections between coastal habitats. The state should pursue activities that can increase natural resiliency, such as restoring tidal wetlands, living shoreline, and related habitats; managing sediment for marsh accretion and natural flood protection; and maintaining upland buffer areas around tidal wetlands. For these priory conservation areas, impacts from nearby development should be minimized, such as secondary impacts from impaired water quality or hard protection devices.

CCCR-87 cont.

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

This is policy is pertinent to Area 4. The majority of Area 4 is within the Don Edwards San Francisco Bay National Wildlife Refuge expansion boundary. The site contains a rare mix of upland, seasonal wetland, muted tidal wetland, and a fresh water pond. The endangered salt marsh harvest mouse has been trapped on this site and the proposed development could fill up to 86 acres of seasonal wetlands.

CCCR-88

Traffic:

Does the traffic analysis for account for the 600 student elementary school proposed in Area 3 or the truck traffic that will be required to transport 2.1 million cubic yards of fill to Area 4?

CCCR-89

Are the dates of studies listed in the footnote on page 4.13-23 correct?

CCCR-90

p. 4.13-24 states:

The traffic analysis assumed that the transportation network, including roadways and intersection lane configurations, would be the same in 2035 as that described above in section 4.13.1.2, Existing Conditions, of this chapter. New development projected within the Plan Area at buildout of the proposed Plan, including net increases over 2012 baseline conditions of 16,580 residents, 6,208 housing units, and 2,882 jobs, was input to the Alameda County Transportation Commission (ACTC) model in order to generate 2035 traffic forecasts. The resulting traffic volumes are shown on Figures 4.13-5a and 4.13-5b.

CCCR-91

TRANS-1 With buildout of the proposed Plan, three signalized study intersections would operate at unacceptable LOS in 2035.
The analysis of TRANS-1 states:

With implementation of Action T-5.J from the proposed Plan, all seven impacted intersections would operate at acceptable LOS in 2035; however, the Cherry Street/Boyce Road and Stevenson Boulevard intersection and the Ardenwood Boulevard and SR 84 WB Ramps intersection are located in the City of Fremont, and additionally the Ardenwood Boulevard and SR 84 WB Ramps and Newark Boulevard and SR 84 EB Ramps intersections are under the jurisdiction of Caltrans. Therefore, implementation of improvements at these three intersections is outside the jurisdiction of the City of Newark, and as there is no implementation plan in place for improvements at these three intersections, it is not reasonably foreseeable at this time that impacts would be reduced to less-than significant levels with buildout of the proposed Plan in 2035. Consequently, impacts at these three intersections in 2035 would be significant prior to mitigation: Cherry Street/Boyce Road and Stevenson Boulevard; Ardenwood Boulevard and SR 84 WB Ramps; Newark Boulevard and SR 84 EB Ramps.

CCCR-92

When will Newark begin coordinating with the City of Fremont and with Caltrans to implement the proposed mitigation measures at these three intersections? **CCCR-92 cont.**

It appears most of the policies and actions proposed to alleviate or reduce traffic congestion are purely volunteer, that is that they are totally dependent upon Newark residents altering their choices regarding transit. How will Newark determine if these policies are having any benefit and what will Newark do, if they are not? **CCCR-93**

TRANS-4 The proposed Plan would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).

Wouldn't pedestrian and bicycle at grade crossings be considered an incompatible use and why wasn't this issue analyzed under traffic? Especially since the traffic analysis includes a discussion of the Complete Streets Program? **CCCR-94**

Policy T-2.12: Trails Along Railroads and Utilities. Consider the use of railroad, flood control, and utility rights of way for jogging, biking, and walking trails, provided that safety and operational issues can be fully addressed.

Does this policy pertain to abandoned railroad right of ways? If not, it is difficult to understand how this would be compatible with biking, jogging, or walking trails. **CCCR-95**

TRANS-7 Implementation of the proposed Plan, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable impacts.

> "Cumulative impacts to transportation and traffic resulting from implementation of the proposed Plan are addressed locally, through specific road improvements, as well as through implementation of the goals, policies, and actions of the proposed Plan itself. These policies seek to reduce existing vehicle trips, minimize the addition of new vehicle trips, and lower per capita VMT. Additionally, the potential cumulative impacts of the proposed Plan at the regional level are examined through analysis related to the Alameda CTC Congestion Management Program."

It is difficult to imagine the policies proposed will result in an appreciable reduction in VMT.
The proposal to build upscale housing in an area that has no shopping, medical, dining, or other amenities within easy walking distance would seem to only encourage the continued use of automobiles as a mode of transportation.
What are the current plans for providing mass transit in the DTOD? It seems any realization of Dumbarton Rail will be in the distant future if ever at all. What are the plans to provide a public transportation system for an area that is proposed to have an additional 2500 housing units? **CCCR-96**

Alternatives Analysis:

The Alternatives Analysis Chapter is inconsistent with the requirements of CEQA. The DEIR correctly states:

> The following discussion is intended to inform the public and decision makers of the feasible alternatives that would avoid or substantially lessen any significant effects of the Plan, and to compare such alternatives to the proposed Plan. Section 15126.6 of the CEQA Guidelines states that:
> <u>An EIR shall describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.</u>

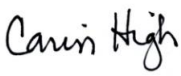
CCCR-97

The DEIR provides an alternative, the Restricted Growth Alternative, that would preserve Area 4, but also restricts any development of the Dumbarton Transit Oriented Development. This is an alternative that has been structured to fail. The Area 2 (DTOD) has already been identified by the Association of Bay Area Governments as a Priority Development Area, so it would seem that in spite of the reduction in environmental impacts, an alternative that prohibits any development is unrealistic. The city must provide an alternative that preserves Area 4, facilitates clean-up of contaminated sites and provides for sustainable development in Area 2. **CCCR-98**

Conclusion:

The GPT DEIR has significant flaws as identified in the letters submitted by LGW LLP and Richard Grassetti. Therefore, the GPT DEIR will need to be revised and re-circulated. Please keep us advised of any time tables pertaining to this review process.

Sincerely,



Carin High
CCCR Vice Chair

Attachments to follow

cc: Mayor Nagy
Newark City Council
Newark Planning Commission
John Becker, City Manager
Anne Morkill, Project Leader, USFWS
Eric Mruz, Refuge Manager, USFWS
Cay Goude, Endangered Species Division, USFWS
Jane Hicks, Chief, Regulatory Branch, USACE
Cameron Johnson, South Section Chief, USACE
Jason Brush, Environmental Protection Agency
Marcia Grefsrud, CDFW
Bruce Wolfe, San Francisco Bay Regional Water Quality Control Board
San Francisco Bay Conservation and Development Commission
Brian Gaffney
Richard Grassetti
Florence LaRiviere
SF Baykeeper
Save the Bay
Ohlone Audubon Society
Sierra Club

CCCR-99

COMMENT LETTER # LGW

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Thomas N. Lippe
Brian Gaffney
Keith G. Wagner
Kelly A. Franger
Henry Steinberg

September 26, 2013

Via Email and Fed Ex

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560
Terrence.grindall@newark.org

RE: Draft General Plan Tune Up Program EIR

Dear Mr. Grindall;

This office represents Citizens Committee to Complete the Refuge ("Citizens") and its members in regards to the City of Newark proposed revised General Plan and Draft EIR ("DEIR"). Attached hereto please find detailed comments about the Draft EIR and the Project's compliance with CEQA. The DEIR violates CEQA, *inter alia*, through 1) the use of an improper baseline, 2) reliance on a void Specific Plan EIR for analysis of impacts and mitigations from the proposed General Plan, 3) failure to conduct adequate "project level" review where the General Plan includes the Specific Plan details, 4) a flawed cumulative impact analysis, and 5) a flawed alternatives analysis. **LGW-1**

Because the Draft EIR is fundamentally and basically inadequate, meaningful public review and comment are precluded. Once the Draft EIR is fixed it must be recirculated for public review and comment. Prior to the City Council's decision, if ever, that the EIR complies with CEQA and therefore may be certified, no action in furtherance of the Project should be permitted.

Thank you for your attention to this matter.

Sincerely,

Brian Gaffney

Brian Gaffney

cc: Citizens Committee to Complete the Refuge

Attachment: CD by Fed Ex delivery by September 27, 2013

I. The Proposed General Plan and DEIR Fail to Use a Proper Environmental Baseline by Employing Hypothetical Conditions Based on a Void Areas 3 and 4 Specific Plan.

LGW-2

A. The Proposed General Plan Uses an Improper Baseline.

The proposed General Plan falsely and improperly assumes that the Areas 3 and 4 Specific Plan has been adopted and is in effect.[1] "A Specific Plan for the 636-acre [Areas 3 and 4] was adopted in 2010." (Proposed General Plan, pp. PF-14, PF-15, LU-21, LU 24.) The Areas 3 and 4 Specific Plan has "been formally adopted by the City of Newark, but [is] not part of the General Plan per se." (Proposed General Plan, I-4.)

This error is also found in the Land Use Background Report. "Two major development projects were approved in 2010 and 2011, Areas 3 and 4, and Dumbarton Transit Oriented Development (TOD) Specific Plans." (Land Use Background Report, p. 4-6.) Under the heading "Existing Conditions," the Land Use Background Report states that "The [Areas 3 and 4] Specific Plan and final Environmental Impact Report, along with a statement of overriding considerations, Mitigation Monitoring Report, and map amendment to title 17 of the Newark Municipal Code (zoning) were adopted in 2010." (Land Use Background Report, p. 4-31.)

LGW-3

These assertions in the General Plan are false and misleading to the public. The City of Newark has not properly adopted the Areas 3 and 4 Specific Plan nor properly certified the Areas 3 and 4 Specific Plan EIR. On November 20, 2012, the Alameda Superior Court issued its Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions. That Order is attached to these comments. "To ensure that the [Areas 3 and 4 Specific Plan] project does not proceed until the EIR is effective," the court ordered the City to "SUSPEND Resolution 9745 (Certifying the EIR) and Resolution 9746 (adopting the Newark Areas 3 and 4 Specific Plan Project and the related General Plan Amendment" pending resolution of the case or further order of the court. That suspension was in effect when this DEIR was released to the public, and is in effect at the time of filing these comments.[2]

Moreover, as a matter of law the Areas 3 and 4 Specific Plan cannot be deemed "approved" in the absence of a valid certified EIR. "CEQA requires the completion of an EIR before a specific plan can become effective." (*3570 East Foothill Blvd., Inc. v. City of Pasadena*, 980 F.Supp. 329, 333 (C.D.Cal. 1997). Before approving a specific plan the decision makers must be informed of the intended impacts and if that impact is adverse how it will be addressed. (*Vineyard Area Citizens for*

LGW-4

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[1] "Areas 3 and 4 Specific Plan" and the "Southwest Newark Residential and Recreational Project" are two names for the exact same project. (Proposed General Plan, p. I-4, fn. 1.)

[2] Pursuant to Pub. Res. Code § 21168.9, the Areas 3 and 4 Specific Plan approvals and Areas 3 and 4 Specific Plan EIR certification must be considered void. Pub. Res. Code § 21168.9, subd. (a)(1) provides that if a court finds that any determination, finding, or decision of an agency has been made without CEQA compliance, the court shall enter an order that includes a mandate that the determination, finding, or decision be voided by the agency. Citizens has consistently maintained that under 21168.9 the approvals and certification must be set aside.

Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412, 429 citing *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206.) Thus, the Areas 3 and 4 Specific Plan is not in effect, and it was error for the proposed General Plan to represent it as approved. (*Deltakeeper v. Oakdale Irrigation Dist*. (2001)94 Cal.App.4th 1092, 1009 ["The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an [EIR] that does not provide the decision-makers, and the public, with the information about the project that is required by [CEQA]."].) **LGW-4 cont.**

B. <u>The Draft General Plan EIR Uses an Improper Baseline</u>.

In addition, the Draft EIR, in describing the "Southwest Newark Residential and Recreational Focus Project" repeatedly asserts that the Areas 3 and 4 Specific Plan has been "adopted" by the City of Newark. (GP DEIR, pp. 3-20 to 3-21 (" The proposed Plan does not include any additional land use changes over and above those already incorporated into the existing General Plan at the time the Areas 3 and 4 Specific Plan was adopted by Newark City Council in 2010.) "In June 2010, the City of Newark adopted the Areas 3 and 4 Specific Plan ... ." (GP DEIR, p. 3-8.) **LGW-5**

While the Draft EIR acknowledges that the Areas 3 and 4 Specific Plan is in litigation and that there is a stay on any further action with respect to the Areas 3 and 4 Specific Plan, the EIR relies on the Specific Plan and mitigation measures created for that plan as background conditions:

> After certification of the EIR, a lawsuit was filed challenging the adequacy of the EIR (Alameda Co. Sup. Ct. #RG10-530015). An order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Areas 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. As of August 12, 2013, that litigation remains pending and that suspension remains in effect, however, the information and analysis in the Areas 3 and 4 Specific Plan, **EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR.**

(GP DEIR, 3-11 (emphasis added).) It is entirely inappropriate for the City to discuss the Areas 3 and 4 Specific Plan as though it is approved and its mitigation measures are adopted and enforceable, and then treat them as "background conditions" for purposes of the 2013 General Plan EIR. **LGW-6**

Under CEQA, impacts must be measured against real conditions on the ground – not against what may potentially occur pursuant to a planning document. The Supreme Court's discussion in *Communities for a Better Environment* points out this DEIR's fundamental error:

> By comparing the proposed project to what could happen, rather than to what was actually happening, the [agency] set the baseline not according to "established levels of a particular use," but by "merely hypothetical conditions allowable" under the permits. *(San Joaquin Raptor Rescue Center v. County of Merced, supra*, 149 Cal.App.4th at p. 658, 57 Cal.Rptr.3d 663.) Like **an EIR**, an initial study or negative declaration **"must focus on impacts to the existing environment, not hypothetical situations**." *(County of Amador v. El Dorado* **LGW-7**

> *County Water Agency, supra*, 76 Cal.App.4th at p. 955, 91 Cal.Rptr.2d 66.) **An approach using hypothetical allowable conditions as the baseline results in "illusory" comparisons that "can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts," a result at direct odds with CEQA's intent**. (*Environmental Planning Information Council v. County of El Dorado*, supra, 131 Cal.App.3d at p. 358, 182 Cal.Rptr. 317.)

Communities For A Better Env't v. S. Coast Air Quality Mgmt. Dist., (2010) 48 Cal. 4th 310, 322. **LGW-7 cont.**

Recently, the California Supreme Court affirmed that "the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Auth*. (2013) 57 Cal. 4th 439, 448 (emphasis in original) citing *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320–322.) **LGW-8**

So here, this DEIR uses the hypothetically approved Areas 3 and 4 Specific Plan as the background condition. The Areas 3 and 4 Specific "EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR." (GP DEIR, 3-11 to -12.) "This Draft EIR compares the buildout potential for the proposed Plan with the existing baseline condition." (GP DEIR, p. 3-3.) Because the Specific Plan adoption and EIR certification have been not been properly adopted and certified, this DEIR can only mislead the public as to the true General Plan impacts and subvert full consideration of the actual environmental impacts, contrary to CEQA's intent. **LGW-9**

II. The DEIR Improperly Relies On the Areas 3 and 4 Specific Plan EIR for Analysis of the Proposed General Plan's Impacts and Mitigations.

The DEIR improperly relies heavily on the Areas 3 and 4 Specific Plan EIR for its analysis of impacts and mitigations.[3] For example, regarding riparian impacts, the DEIR states: **LGW-10**

> The Areas 3 and 4 Specific Plan EIR identifies Impacts BIO-1 associated with impacts to riparian habitat. This impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measures BIO-1.1 through BIO-1.2B, which require wetland and habitat avoidance to the maximum extent feasible and either on-site wetland creation (at a ratio of 1:1) and enhancement (at a ratio of 0.5:1) or off-site mitigation banking at a ratio of 1.5:1. Additionally, Impact BIO-2, related to substantial adverse impacts on wetlands and associated species due to altered

---

[3] The proposed General Plan likewise incorrectly states that the EIR for the Areas 3 and 4 Specific Plan is valid and assumes, based thereon, that the impacts of the Southwest Newark Project will be mitigated. For instance, it asserts that "future noise environment in Newark will be impacted not only by changes in traffic volumes, but also by changes in land use.... The <u>environmental impact reports (EIRs) prepared for approved development in these areas included measures to mitigate potential noise impacts</u>. Likewise, future EIRs will include such measures, as appropriate." (Proposed General Plan, EH-31 (emphasis added).) **LGW-11**

> hydrology, and Impact BIO-3, regarding significant impacts to marsh habitat and associated special-status species due to an increase in freshwater flows, would be mitigated to less-than-significant levels with the implementation of mitigation measures MM BIO-2.1 through 2.5 from the Areas 3 and 4 Specific Plan EIR. Further, Impact BIO-10, regarding indirect impacts to waterbirds associated with the loss of wetlands, would be mitigated to less-than-significant levels with the implementation of Mitigation Measure BIO-10.1, requiring a mitigation plan for creation or enhancement of replacement wetlands.
>
> Previous environmental review has determined that impacts to wetlands, riparian habitat, and sensitive natural communities in the ...Southwest Newark Residential and Recreational Focus Area could be mitigated to less-than-significant levels with the implementation of the mitigation measures described above. The proposed Plan would incorporate the development envisioned in the ...Areas 3 and 4 Specific Plan ... and would not include any additional development in the ... Southwest Newark Residential and Recreational Focus Area over and above that which has already been analyzed in previous EIRs. As such, the implementation of the proposed Plan would not result in significant, new environmental impacts to wetlands, riparian habitat, and sensitive natural communities in the ... Southwest Newark Residential and Recreational Focus Area.

(DEIR, pp. 4.3-36 to -37.)

Regarding impacts to wetlands/ marsh/aquatic habitat, the DEIR states:

> The Areas 3 and 4 Specific Plan EIR concluded that Specific Plan implementation would result in the loss of up to 85.6 acres of wetland/marsh/aquatic habitat in the Southwest Newark Residential and Recreational Focus Area. Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use. It was determined that implementation of the following measures would reduce associated impacts to a less-thansignificant level: Mitigation Measure Bio-1.1 requiring grading plans designed to avoid permanent impacts to wetland and aquatic habitat; Mitigation Measure Bio-1.2A, requiring a detailed mitigation plan shall be developed by a qualified biologist and incorporating a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off-site; and Mitigation Measure Bio-1.2B, requiring, as an alternative to Measure Bio-1.2A, the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank or other private lands within 10 air miles of the affected area and along the eastern shore of south San Francisco Bay within the same geographic watershed.
>
> Previous environmental review has determined that impacts to waters of the US in the Dumbarton TOD Focus Area and in the Southwest Newark Residential and Recreational Focus Area could be mitigated to less-thansignificant levels with the implementation of the mitigation measures described above. The proposed Plan

LGW-11 cont.

> would incorporate the development envisioned in the Dumbarton TOD Specific Plan, the Areas 3 and 4 Specific Plan, and the 2009-2014 Housing Element and would not include any additional development in the Dumbarton TOD Focus Area or the Southwest Newark Residential and Recreational Focus Area over and above that which has already been analyzed in previous EIRs. As such, the implementation of the proposed Plan would not result in significant, new environmental impacts to waters of the US in the Dumbarton TOD Focus Area or the Southwest Newark Residential and Recreational Focus Area.

(DEIR, p. 4.3-40.)

Regarding cumulative losses of seasonal wetland habitat, the DEIR states:

> The Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area are the largest remaining tracts of relatively undeveloped land in the Plan Area. In the absence of project-specific mitigation measures identified in previous environmental review conducted by the City of Newark, potentially significant impacts related to special-status plants and animal species, wetlands, riparian habitat, and sensitive natural communities would all contribute to cumulatively significant impacts in the South Bay. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. **However, as determined in previous environmental review conducted by the City, the mitigation measures prescribed for all of these impacts would adequately mitigate the project's contribution to these cumulative impacts. Buildout of the proposed Plan would not include any additional development in these areas over and above that which has already been analyzed in previous EIRs**." (DEIR, p. 4.3-48, emphasis added.)

Regarding growth inducing impacts, the DEIR states "the extension of existing utility lines and the construction of new roadways would be required, **and associated impacts have been analyzed and mitigated in previous EIRs prepared by the City of Newark for the respective specific plans**." (DEIR, p. 7-6, emphasis added.)

LGW-11 cont.

This approach of relying on a previous EIR which was not properly certified, as well as a Specific Plan whose adoption has been set aside, is clearly illegal. First, the Alameda Superior Court found that the Areas 3 and 4 Specific Plan EIR is materially deficient and that the "court cannot meaningfully evaluate whether the City's findings and conclusions in the EIR are supported by substantial evidence." (November 2012 Order at p. 19.) Second, to the extent that this DEIR is attempting to "tier" off the analysis of impacts and mitigations in the Areas 3 and 4 Specific Plan EIR, such tiering violates CEQA as the prior EIR's certification is void. (Pub. Res. Code § 21094, subd. (a)(1).) CEQA authorizes tiering only where the previous EIR was properly certified. (*Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1384-1387.) The instant General Plan DEIR should not be certified based on this CEQA violation alone. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1229.) Third, this DEIR does not state where a copy of the prior EIR may be examined (Pub. Res. Code § 21094, subd. (f)), and the General Plan Tune Up initial study - if one was even prepared - did not analyze

LGW-12

LGW-13

LGW-14

whether the revise General Plan may cause significant impacts not examined in the prior EIR. (Pub. Res. Code § 21094, subd. (c).)[4] For these reasons, the DEIR improperly relies on the analysis, conclusions, and mitigation measures of the invalid Areas 3 and 4 Specific Plan EIR. **LGW-14 cont.**

In addition, by relying on the Areas 3 and 4 Specific Plan EIR, this DEIR necessarily incorporates many of the CEQA errors in that document. Citizens challenged the Areas 3 and 4 Specific Plan EIR for 1) use of improper "baseline" for CEQA analysis and mitigation, particularly regarding traffic, 2) failure to adequately disclose or analyze cumulative impacts, 3) improper deferral of mitigations of impacts to trees and also habitats and special status species, 4) failure to use or apply the Areas 3 and 4 Specific Plan EIR's thresholds of significance to cumulative land use impacts, cumulative biological resource impacts, and cumulative hydrology, water quality and water supply impact, and 5) the Areas 3 and 4 Specific Plan EIR is inadequate to serve as project level CEQA review. Citizens renews each of these objections in regards to the adequacy of the instant DEIR, particularly given that the DEIR's project description states that "the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR."[5] (GP DEIR, p. 3-11.) **LGW-15**

Citizens is submitting as part of these DEIR comments a CD that includes its pleadings and briefings challenging the Areas 3 and 4 Specific Plan EIR, as well as the administrative record in that prior litigation - which includes Citizens and others administrative comments on the Areas 3 and 4 Specific Plan EIR. Please include each of the documents on the attached CD as part of the administrative record for this General Plan Tune Up Program EIR. **LGW-16**

III. The DEIR Improperly Fails to Conduct Adequate "Project Level" Review Where the General Plan Includes the Specific Plan Details.

The General Plan EIR erroneously states that " regardless of whether the Areas 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan." (GP DEIR, 3-11--12.) **LGW-17**

This statement is wrong for the reasons stated above, and further because the proposed General Plan does more than change the land use designation for a portion of [former] Area 3. As noted above, the proposed General Plan obligates the City to implement the Areas 3 and 4 Specific

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[4] It would also be improper for the City of Newark to incorporate by reference any Areas 3 and 4 Specific Plan statement of overriding considerations because the Areas 3 and 4 Specific Plan approvals and EIR are void (Pub. Res. Code § 21094, subd. (a)(2)) and because the prior EIR was certified more than three years ago. (Pub. Res. Code §§ 21094,subd. (a)(2)(D).)

[5] *See also* GP DEIR, p. 4.13-23, fn. 3 which states: "The sources for threshold of acceptable LOS in Newark are the ... Southwest Newark Residential and Recreational Focus Area Specific Plan (July 2011)." While CCCR is unaware of what document constitutes the "Southwest Newark Residential and Recreational Focus Area Specific Plan (July 2011)," to the extent the DEIR is referencing the Areas 3 and 4 Specific Plan EIR, CCCR objects for the reasons stated herein and in previous comments (attached on CD) about the Areas 3 and 4 Specific Plan EIR adequacy.

Plan. LGW-17 cont.

Because the proposed General Plan incorporates and requires implementation of this Specific Plan, it is not a standard General Plan -- it includes the same level of detail (if not more, in some instances) as the Areas 3 and 4 Specific Plan as proposed in 2010. Therefore, under CEQA this DEIR must subject this portion of the proposed General Plan to project-level environmental review. Herein, we first note many of the specifics incorporated into the proposed General Plan, and thereafter the CEQA provisions requiring greater environmental review. LGW-18

Numerous General Plan "Policies" require implementation consistent with the Areas 3 and 4 Specific Plan[6]:

Policy LU-7.1 Southwest Newark Residential and Recreational Project (Area 3 and 4 Development). Facilitate the development of the 637 acres formerly known as "The Area 3 and 4 project" consistent with previously approved plans for this area. The residential holding capacity of this area shall be 1,260 units.

Policy LU-7.6 The preferred open space use is an 18-hole golf course with clubhouse.

Policy LU-7.9 Address inclusionary housing requirements consistent with the Area 3 and 4 Development Agreement.

Several proposed General Plan "actions" also direct the City to implement the Southwest Newark Project as proposed in the Areas 3 and 4 Specific Plan.[7] For example, Action LU-7.D (Design Standards) specifies implementation of "the standards in previously approved plans for this area addressing lot size, height, setback, lot coverage, open space, patios, and balconies, and parking." Action LU-7.E (Grading and Fill) "require[s] grading and fill plans which ensure long-term mitigation of flood hazards, consistent with previously approved plans for the Southwest Newark Residential and Recreational Project area. Building pad and curb elevations shall conform to previously adopted standards." So also, Action LU-7 (A Street and Path Network) and Action LU-7.B (Railroad Overcrossing) requires actions consistent with previously approved plans. LGW-19

The Land Use Element of the proposed General Plan provides the following specificity regarding the Southwest Newark Residential and Recreational Project

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[6] "A policy expresses the City's commitment and intent on a topic area related to the goal." (Proposed General Plan, I-4.) "A goal is a general, overall and ultimate purpose, aim or end toward which the City will direct its efforts." (*Ibid*, underscore added.) The word "will" indicates that this provision is mandatory. (Proposed General Plan, I-5 ["'Must', 'shall,' or 'will' identify provisions which are mandatory. Verbs such as "require" reflect similar obligatory directives."].) This provides further evidence that the proposed General Plan will implement the specifics of the Areas 3 and 4 Specific Plan.

[7] "An action is a specific program to be carried out in response to an adopted policy... ." (Proposed General Plan, I-4.)

This is the largest area proposed for future development in Newark, comprising 636 acres in the area bordered by Mowry Avenue on the west, Stevenson Boulevard on the east, Cherry Street on the north, and Mowry Slough on the south. The Union Pacific Railroad bisects the area.

Previous General Plans for Newark referred to the land north of the railroad as "Area 3" and the land south of the Railroad as "Area 4." Area 3 was originally 298 acres, but 221 acres of this total has been committed to other land uses, including the Newark campus of Ohlone College, Sportsfield Park, and the Stevenson Point Technology Park. The remaining 77 acres, which is located along the south side of Cherry Street west of Stevenson Boulevard, was vacant as of 2013.

A Specific Plan for the 636-acre area was adopted in 2010. The Plan calls for the development of up to 1,260 housing units, a major recreational facility such as an 18-hole golf course, and the dedication of conservation open space on some of the low-lying areas south of the railroad tracks. An area facing Cherry Street just east of Ohlone College has been set aside for a new 600-student elementary school and a new neighborhood park. The rest of former Area "3" has been designated for Low-Medium Density Residential uses on the General Plan Map. The Specific Plan envisions single-family lots ranging from 3,150 square feet to 4,800 square feet, although the flexibility exists to transfer the allowable density within this area to facilitate multi-family housing construction on a portion of the site.

Development of single-family lots is planned south of the railroad tracks. Some of the area designated as "Low Density Residential" on the Map will be conserved as wetland habitat and some will be improved with recreational facilities. The Specific Plan divides the area south of the tracks into four lettered sub-areas (B, C, D, and E). Of these four areas, Area B (125 acres) is planned for housing, Area D (100 acres) may be used for a golf course or similar recreational amenity, Area E (244 acres) is to be conserved as open space, and Area C (90 acres) may be used for either recreation or housing.

LGW-19 cont.

In the event a golf course is developed, it is envisioned as an 18-hole public course. A golf course could provide an amenity that is lacking in Newark today and would round out the range of recreational opportunities available to those who live and work in the city. It could also be an economic development asset that can attract businesses, executive housing, and higher quality retail uses nearby. Ancillary facilities such as a clubhouse, banquet facility, driving range, and maintenance buildings, could potentially complement such a facility. Construction of a golf course is contingent on its fiscal feasibility, market demand, and other factors. In the event a golf course is not developed, another citywide recreational amenity should be provided here.

The Specific Plan includes residential street and intersection standards, along with plans for a railroad overpass at Stevenson Boulevard. The Stevenson Avenue Bridge should include a 12-foot travel lane in each direction, adjacent to 5-foot bike lanes. One side of the bridge will have a sidewalk for pedestrians. A pedestrian and bicycle bridge across the Alameda County Flood Control Channel is also planned, connecting the site to Ohlone College. A multi-use trail is also proposed across the southern part of the site, providing a component of the Bay Trail.

A grading and fill plan for this area has been prepared. ... .Building pads of occupied structures will be at least 11.25 feet above mean sea level (msl), with the finished floor at least six inches above the building pad. The top of curb grades for residential streets will be

no less than 10 feet above msl. Detailed grading and stockpile management plans will be required before construction is approved and stormwater management plans will be required to contain runoff. A new network of water, sewer, and storm drain lines will be constructed to serve the development, supplemented by related infrastructure such as pump stations.

(Proposed General Plan, pp. LU-23 to LU-26.)

Similarly, the Parks, Recreation, and Open Space section states:

The Southwest Newark Residential and Recreational Development includes plans for a golf course or major public recreational facility. A golf course would likely be 120 acres or larger and could potentially double the City's total park acreage. The Specific Plan for Southwest Newark (formerly Areas 3 and 4) also includes an approximately 5-acre neighborhood park, to be co-located with an elementary school on the south side of Cherry Street east of Ohlone College. The park will not only serve new residents, it will remedy a park access deficiency in the residential area on the north side of Cherry Street in this area.

LGW-19 cont.

(Proposed General Plan, p. PR-11.)

Likewise, the Draft EIR provides specificity regarding the Southwest Newark Residential and Recreational Focus Project. This Draft EIR is unequivocal that "The proposed Plan would incorporate the development envisioned in the ...Areas 3 and 4 Specific Plan" (DEIR, pp. 4.3-36 to -37.). The EIR's project description (at DEIR, p. 3-11) lays out in specific detail that:

The Area 3 and 4 Specific Plan amended 1992 General Plan Land Use designations to allow for development of up to 1,260 single- and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas. The Specific Plan envisions the preservation of approximately 200 acres of open space in Area 4 and the, retention of existing light industrial and institutional uses in most of Area 3, Key components of the Area 3 and 4 Specific Plan, shown in Figure 3-4, include:

- A new 78-acre residential neighborhood in Subarea A composed of single-family detached homes and multifamily residential units, including up to 189 multi-family units at below market rate. (Note: Below-market-rate (BMR) housing units are priced to be affordable to households with moderate income or below.)
- Single-family detached homes in Subarea B and C;
- A new elementary school in Subarea A, capable of accommodating 600 students;
- An 18-hole golf course in either Subarea C or D, configured to optimize habitat areas and limit disturbance to wildlife and wetlands to the extent feasible;
- Improvements to the circulation network, including:
- A public street extension of Stevenson Boulevard with a structural overpass providing vehicular and pedestrian access into Area 4 over the Union Pacific railroad tracks. Modifications to two Pacific Gas & Electric (PG&E) transmission towers to accommodate the overpass.
- A new driveway providing access from Cherry Street into Subarea A. A new traffic signal and pedestrian crosswalk are planned at this intersection;

LGW-20

- A new driveway providing access to Subarea A from Stevenson Boulevard, midway between Cherry Street and the existing industrial uses;
- A paved trail and pedestrian bridge over the flood control channel in Area 3, providing connection between the new residential neighborhood, Ohlone College, and the George M. Silliman Recreation Complex;
- A multi-use trail at Mowry Avenue in Area 4, providing east-west access for emergency vehicles, pedestrians, and cyclists; and
- Utilities infrastructure, including a new public water distribution system within the residential streets of Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge wastewater generated by new uses in Area 4.

LGW-20 cont.

Further at DEIR, pp. 3-20--3-21, the project description states:

> The Southwest Newark Residential and Recreational Focus Area is made up of two non-contiguous sectors in the southwest of the city, as shown in Figure 3-7. Together, these two sectors cover an area of 637 acres. The boundaries of the larger of the two sectors correspond to the boundaries of Area 4, as delineated in the Areas 3 and 4 Specific Plan adopted by the City in 2010 and described earlier in this chapter. The boundaries of the smaller sector correspond to the vacant, undeveloped portion of Area 3, bounded by Ohlone College to the north, Cherry Street to the west, Stevenson Boulevard to the south, and the Stevenson Point Technology Park to the west. The vision for the Southwest Newark Residential and Recreational Focus Area contained in the proposed Plan is consistent with the vision outlined in the Areas 3 and 4 Specific Plan. The proposed Plan does not include any additional land use changes over and above those already incorporated into the existing General Plan at the time the Areas 3 and 4 Specific Plan was adopted by Newark City Council in 2010. At the time the Specific Plan was adopted the land use designation in the 78-acre portion of the focus area formerly known as Area 3 was changed from Special Industrial to Medium Density Residential. The land use designation for the larger portion formerly known as Area 4 was already Low Density Residential in the 1992 General Plan and no changes were made at the time the Specific Plan was adopted.

LGW-21

> As described in the proposed Plan, the Southwest Newark Residential and Recreational Focus Area is envisioned as one of Silicon Valley's premier new neighborhoods, with executive housing and high quality recreational opportunities. Proposed Plan land use designations applicable to this Focus Area would allow for the development of 1,260 single and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas as envisioned in the Areas 3 and 4 Specific Plan. Additionally, the proposed Plan contains policies that support development envisioned in the Areas 3 and 4 Specific Plan, including the 1,260 housing units, the golf course, an interior street and path network, and an overpass crossing the Union Pacific Railroad tracks at Stevenson Boulevard. The proposed Plan also includes policies intended to protect and enhance sensitive natural resources in the Southwest Newark Residential and Recreational focus area, including wetland and aquatic habitat, natural hydrological features, and other biological resources.

LGW-22

CEQA requires that given the specifics involved in the proposed General Plan, that this

LGW-23

LGW-23 cont.

DEIR correspondingly provide detailed analysis of potential impacts. "The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." (CEQA Guidelines 15146.) In addition, an EIR on a project such as the adoption or amendment of a general plan "should focus on the secondary effects that can be expected to follow from the adoption or amendment." (CEQA Guidelines 15146, subd. (b).)

> The sufficiency of the information contained in an EIR is reviewed in light of what is reasonably feasible. (Guidelines, § 15151; Kings County Farm Bureau v. City of Hanford, supra, 221 Cal.App.3d at p. 733.) At minimum, an EIR "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (Laurel Heights, supra, 47 Cal.3d at p. 405.)

LGW-24

(*Rio Vista Farm Bureau Ctr. v. Cnty. of Solano* (1992) 5 Cal. App. 4th 351, 375.) Here, given the great specificity known about the "Southwest Newark Residential and Recreational Project," this DEIR is required, but failed to, more detailed analysis. Simply calling it a program EIR will not suffice under CEQA given that is reasonably feasible to provide greater specificity.

IV. The DEIR's Cumulative Impacts Analysis Is Deeply Flawed.

A. It Is Improper for the DEIR's Cumulative Impacts Analysis to Rely on the Areas 3 and 4 Specific Plan and Areas 3 and 4 Specific Plan EIR

LGW-25

CEQA provides that "[p]reviously approved land use documents, including ... specific plans ..., may be used in cumulative impact analysis." (Pub. Res. Code § 21100, subd. (e) (emphasis added).) The CEQA Guidelines further provide that a "pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs." (CEQA Guideline 15130, subd. (d) (emphasis added).) The Areas 3 and 4 Specific Plan has not been properly approved and the Areas 3 and 4 Specific Plan EIR has not been properly certified. As argued above, to the extent that this DEIR is attempting to "tier" off the analysis of impacts and mitigations in the Areas 3 and 4 Specific Plan EIR, such tiering violates CEQA as the prior EIR was not properly certified. (Pub. Res. Code § 21094, subd. (a)(1).)

LGW-26

It is also inappropriate to rely on the mitigation analysis in the Areas 3 and 4 Specific Plan EIR and any measures "adopted" as part of the Areas 3 and 4 Specific Plan. Areas 3 and 4 Specific Plan has not been properly approved and the Areas 3 and 4 Specific Plan EIR has not been properly certified. These approvals have been set aside by court order since November 2012, months before the Notice of Preparation for the General Plan Update Draft EIR was issued on January 18, 2013. Further, Citizens challenged the Areas 3 and 4 Specific Plan EIR for, *inter alia*, failure to adequately disclose or analyze cumulative impacts, and improper deferral of mitigations of impacts. Citizens renews each these objections in regards to the adequacy of the instant DEIR, particularly given that the DEIR's project description states that "the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR." (DEIR, p. 3-11.)

B. It Is Improper to Conclude That The General Plan Update's Cumulative

LGW-27

Impacts Will Be Less Than Significant Based Simply On Mitigation Measures for Specific Plans or Other Projects.

LGW-27 cont.

The DEIR violates CEQA by concluding that the General Plan's cumulative impacts will be less than significant simply because the impacts of an individual plan or project will be mitigated. Under CEQA, significant cumulative impacts may occur even if individual projects mitigate the impacts of that project to a level of insignificance.

The DEIR assumes, for many resource areas, that cumulative impacts will be less than significant simply because individual projects will be required to mitigate the impacts of that project to a level of insignificance. For instance, the DEIR concludes that the General Plan's cumulative biological impacts will be less than significant before mitigation as follows:

> This section analyzes potential impacts to biological resources that could result from a combination of the proposed Plan and other past, present, and reasonably foreseeable development in the South Bay. Such development includes infill development in the adjacent City of Fremont as well as the South Bay Salt Ponds restoration project, which will provide habitat for a number of tidal habitat-associated species, including the salt marsh harvest mouse, salt marsh wandering shrew, and will include enhancement of managed ponds specifically for use by waterbirds.
>
> The Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area are the largest remaining tracts of relatively undeveloped land in the Plan Area. In the absence of project-specific mitigation measures identified in previous environmental review conducted by the City of Newark, potentially significant impacts related to special-status plants and animal species, wetlands, riparian habitat, and sensitive natural communities would all contribute to cumulatively significant impacts in the South Bay. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. However, as determined in previous environmental review conducted by the City, the mitigation measures prescribed for all of these impacts would adequately mitigate the project's contribution to these cumulative impacts. Buildout of the proposed Plan would not include any additional development in these areas over and above that which has already been analyzed in previous EIRs. Proposed Plan policies and actions detailed above provide a framework that promotes context-sensitive development and seeks to minimize impacts on sensitive natural resources. Additionally, future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas. Therefore, with adherence to applicable federal, State, and local regulations and implementation of mitigation measures identified in previous environmental review and adopted by the City of Newark, the proposed Plan would result in less-than-significant cumulative impacts to biological resources in the South Bay.

LGW-28

(DEIR, p. 4.3-48.)

This repeats the flaws in the Areas 3 and 4 Specific Plan EIR (which Citizens renews its prior objections to) and ignores the very purpose of cumulative impacts analyses. The biological impact mitigation measures for the Specific Plan will only "minimize" impacts, not eliminate them, and because these impacts are minimized, but not avoided, an EIR can not avoid considering such impacts as part of its cumulative impacts analysis.[8]

The courts have long recognized that even individually "minimized" impacts can still be cumulatively significant when considered in connection with past, present and future projects. As explained in *EPIC v. Johnson*:

> CDF then stated that timber operations in general had to substantially lessen significant adverse impacts on the environment, and closed with this comment: "To address the cumulative effect issue the Department has taken the tact [sic] that if the adverse effects are minimized to the maximum on each individual operation, then the total effect in the surrounding area will also be minimized to an acceptable level." This statement is at odds with the concept of cumulative effect, which assesses cumulative damage as a whole greater than the sum of its parts.

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[8] For example, the Areas 3 and 4 Specific Plan EIR states that "Impact BIO-2" is significant because "Development within Area 4 would result in substantial adverse effects on federally protected wetlands (seasonal wetlands) and associated special status species due to altering the hydrology on the project site." (AR 466.) The Areas 3 and 4 Specific Plan EIR proposes Mitigation Measures BIO-2.1 through 2.5, which it finds will reduce this significant incremental impacts to less-than-significant. (AR 466-468.) One of these, Mitigation Measures BIO-2.4, provides that "[t]he following measures shall be implemented to <u>minimize</u> any perennial ponding within the existing seasonal wetlands.... Nuisance runoff from the proposed residential and golf course uses <u>shall be minimized</u> and controlled to <u>reduce</u> their input into the remaining natural habitat during the dry season." (AR 467 (emphasis added).) Similarly, the Areas 3 and 4 Specific Plan EIR states that "Impact BIO-8" is significant because "Project development would result in significant impacts due to the loss of federally and state listed endangered salt marsh harvest mouse and California species of special concern salt marsh wandering shrew individuals and habitat." (AR 480.) The Areas 3 and 4 Specific Plan EIR proposes Mitigation Measures BIO-8.1 through 8.4, which it finds will reduce this significant incremental impacts to less-than-significant. (AR 481-482.) Mitigation Measures BIO-8.1 provides: "Temporary disturbance to and permanent loss of salt marsh harvest mouse and salt marsh wandering shrew habitat <u>shall be avoided to the maximum extent practicable</u>." (AR 481 (emphasis added).) Mitigation Measures BIO-8.3 provides: "Mitigation Measure MM BIO-8.2 will <u>minimize</u> the probability of salt marsh harvest mice and salt marsh wandering shrews entering the site but in addition, any individuals already in the impact areas shall be salvaged and translocated to the exterior of the construction exclusion area. Although detecting every individual on a site <u>is not feasible</u> due to these species' secretive habits ...." (AR 481 (emphasis added).) In other words, the measures in question acknowledge that these impacts will not or cannot be <u>entirely</u> avoided.

LGW-28 cont.

(*Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 624-625 (emphasis added).)

Put simply: individual, incremental impacts that are "minimized" are still not reduced to zero; and, therefore, CEQA's independent, cumulative analysis procedures require that such minimized impacts must be considered in the context of similarly "minimized" impacts of "other closely related past, present, and reasonably foreseeable probable future projects" in order to assess whether the aggregated cumulative "change in the environment" may be significant. (CEQA Guideline 15355(b).) Again, the case law is clear: for purposes of determining the significance of a project's cumulative impacts, it is not enough to find that the project's individual, incremental contributions are "minimized" (*EPIC v. Johnson, supra,* 170 Cal.App.3d at pp. 624-625), less-than-significant (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App. 3d 692, 729) or de minimis (i.e., negligible) (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 117-119.).

> Proper cumulative impact analysis is vital "because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.'" (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114, 126 Cal.Rptr.2d 441, fns. omitted; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025, 68 Cal.Rptr.2d 367.) "[C]onsideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." (*Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306, 223 Cal.Rptr. 18.)

(*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214-1215.)

LGW-28 cont.

C. The DEIR Fails to Properly Consider The Cumulative Biological Impacts of Development.

The DEIR states cumulative biological impacts could result from a "combination of the proposed Plan and other past, present, and reasonably foreseeable development in the South Bay." (2013 GP DEIR, 4.3-48.) Yet, the DEIR's cumulative impacts section only considers three "sources" of cumulative biological impacts: (1) the General Plan, (2) the Areas 3 and 4 Specific Plan, and (3) the Dumbarton TOD Specific Plan, and based on these three "projects" concludes that any cumulative biological impacts will be less than significant.

LGW-29

The DEIR improperly omits any consideration of any South Bay development beyond these three sources, and specifically omits consideration of the well documented losses of seasonal wetlands and uplands in the South Bay.[9] This omission is particularly egregious given that the DEIR itself acknowledges that "the cumulative losses of seasonal wetland habitat around the South Bay are significant." Despite this admission, the DEIR includes no discussion of the extent to which habitat will be lost due to other development, and no discussion of whether the cumulative impact will remain significant even if Newark's plans are mitigated. **LGW-29 cont.**

D. The Draft EIR Improperly Relies On Assumed Future Mitigation to Conclude that Cumulative Impacts Are Less Than Significant.

Another premise supporting the DEIR's conclusion that cumulative biological impacts will be less than significant is that "future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas." (DEIR, p. 4.3-48.) Courts have found similar analysis inadequate. For example, a quantitative cumulative impact analysis for groundwater cannot be avoided by simply assuming that impacts of future projects would be mitigated through water conservation efforts. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App. 3d 692, 729.) **LGW-30**

For these reasons, the DEIR's cumulative impacts analysis is flawed.

V. The DEIR Improperly Analyzes Alternatives.

The DEIR's analysis of alternatives improperly used a baseline where the Areas 3 and 4 Specific Plan is considered part of the "existing built environment." The Areas 3 and 4 Specific Plan is considered one of the "existing plans and policies" under the No Project Alternative (DEIR, p. 6-1) and the Areas 3 and 4 Specific Plan "would continue to be implemented." (DEIR, p. 6-3.) The DEIR's improper approach skews its analysis of other alternatives, included the preferred alternative, by comparing the proposed Project to a baseline where the Areas 3 and 4 Specific Plan already exist. **LGW-31**

While analysis of the no project alternative must include a discussion of "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services" (CEQA Guideline 15126.6, subd. (e)(2)), here the set aside Areas 3 and 4 Specific Plan is not a current plan nor can it reasonably be expected to occur in the foreseeable future if the General Plan were not approved.

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[9] The EPA/Regional Water Board's "Baylands Ecosystem Habitat Goals Report" (1999) by Monroe et al. states that "since the mid-19th century, 80 percent of original tidal marsh as well as large amounts of mudflats, seasonal wetlands, and upland habitats in the San Francisco Bay have been lost due to human development," that historically, moist grasslands existed in large expanses adjacent to much of the baylands in South Bay, and that in the South Bay "development has destroyed most of the historical moist grasslands" with notable exceptions including the "upper reach of Mowry Slough in Newark."

VI. The EIR Will Need to Be Recirculated for Additional Responsible Agency and Public Comment

Because significant new information will need to be is added to the EIR before certification, the City of Newark will be required to recirculate the DEIR. Such new information will include, *inter alia*, changes in the environmental setting, and additional specific information about the impacts and mitigations related to the Areas 3 and 4 specific plan. (CEQA Guideline 15088.5.) Recirculation will also be required because this draft EIR is so fundamentally and basically inadequate that meaningful public review and comment is precluded. (*Mountain Lion Coalition v. Fish & Game Com*.(1989) 214 Cal.App.3d 1043). LGW-32

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

September 26, 2013

SUBJECT: REVIEW OF ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF NEWARK GENERAL PLAN TUNE UP DRAFT PROGRAM EIR

Dear Mr. Grindall;

Grassetti Environmental Consulting (GECo) has been retained by Citizens' Committee to Complete the Refuge (Citizens) to review the Draft Program Environmental Impact Report (EIR) on the City of Newark's General Plan Tune Up for compliance with the California Environmental Quality Act (CEQA) and its implementing Guidelines. This review was conducted by Richard Grassetti, the firm's principal, and is based on my 30+ years of experience in CEQA document preparation, review, and training. GECO-1

My review indicates that the CEQA documentation for the project is inadequate and incomplete, and that the EIR fails to meet CEQA Guidelines. The bases for these conclusions are detailed below.

Vague and Unclear Project Description - What's a Tune Up?

State planning law includes provisions for adopting General Plans, Specific Plans, Master Plans, Subdivision, Rezoning, and other planning and entitlement approvals. Nowhere among those various options is a "tune up". Therefore, neither the public nor the City decision makers are readily informed by the DEIR as to what the actual project (discretionary action and underlying activities) is. Reading the Executive Summary doesn't help – Section 1.3 refers to the Tune Up as an "updated policy framework", which is also not a discretionary act under CEQA. Similarly, on p. 2-1, Section 2.1, describing the Proposed Action, fails to inform the reader as to the City's proposed action. It is not until p. 3-23, that the EIR states that this is, in fact, a new General Plan, and then only peripherally, "As required by state law, the Public review Draft General Plan will be circulated for review…" This is the first mention of the actual discretionary action proposed by the City, and the first mention that the project is, in fact, an updated General Plan. Only on p. 3-28, a full 58 pages into the document, does the EIR finally mention (in a table), that the project for which the EIR is being prepared is "the proposed Plan", but even there, the DEIR does not tell the public that this is a new, updated, General Plan. GECO-2

Backwards Planning has Resulted in Backwards CEQA Tiering

Land use planning in California is based on the concept of a General Plan being the blueprint for development within a city or county. Specific plans are adopted after adoption of a General Plan, with which the specific plans must be consistent. Newark has adopted specific plans that were not generally consistent with its General Plan, and is now attempting to rectify the inconsistencies by "Tuning Up" its General Plan to be consistent with its specific plans. In addition to not complying with California's planning hierarchy, it also results in inconsistencies between this DEIR and the EIRs that were prepared for the Specific Plans and Area Plans. Further, this EIR fails to allow those EIRs to tier off of the General Plan EIR, but instead, appears to tier the general Plan EIR off of the Specific Plan/Area Plan EIRs. This DEIR acknowledges the correct environmental review sequence on the bottom of page 1-3, but fails to follow that sequence. As detailed in the tables below, this has resulted in conflicting and confusing EIR conclusions of significance, where the General Plan EIR concludes that impacts are less-than-significant impacts while the underlying specific plans/area plans have been determined to have potentially significant impacts. Additionally, this General Plan EIR frequently defers impact analyses to future EIRs that, in reality, have already been done.

GECO-3

GECO-4

GECO-5

This problem is compounded by the confusion, confirmed by a November, 2012 trial court order holding that the Area 3 and 4 EIR does not specify whether it provides program or project-level analysis of the Area 3 and 4 plan. Program EIRs based on other Program EIRs that defer analysis to never-to-be-required project EIRs does not constitute CEQA compliance.

GECO-6

Reliance on Past Environmental Impact Reports

The DEIR relies in part on the Areas 3 and 4 EIR and a Housing Element EIR. The Areas 3 and 4 EIR has been suspended by the Alameda Superior Court as it was materially deficient. One of the primary issues in the case was whether the Area 3 and 4 EIR provided an adequate level of analysis to serve as a project-level EIR. For both these reasons, it is inappropriate for this DEIR to rely on the findings of that prior document. Further, the DEIR assumes that the Areas 3 and 4 General Plan Amendments have been approved – this is wrong, as the approvals have been suspended by the court.

GECO-7

The Housing Element EIR relied on the environmental setting, impact analysis, and mitigation measures contained in two previous EIRs adopted by the City of Newark. Those EIRs covered the City's General Plan and a previous proposal for development of Area 2, and were prepared in 1992 and 1999, respectively. Given the age of those documents (17 and 9 years), the amount of new development in Newark and adjacent communities since their preparation, the abundance of more recent data on biological resources, traffic, and air quality, and regulatory changes since 1992 and 1999, their analyses of traffic, air quality, noise, hydrology, land use, and biological resources settings, impacts, and mitigation measures are obsolete and cannot be assumed to be adequate for the currently proposed project. Basing this EIR on those EIRs in any substantive

GECO-8

way results in a shell game, where impacts of the "Tune Up" are never actually identified and compared to existing setting conditions. **GECO-8 cont.**

CEQA Baseline and Sea Level Rise – Ignoring the Elephant in the Room

This DEIR's environmental setting and impact analyses are entirely silent on the greatest environmental issue to affect some of the opportunity areas, namely sea-level rise[1]. The San Francisco Bay Conservation and Development Commission (BCDC), which has jurisdiction over shoreline areas of the City, recommends the following consideration of sea level rise (BCDC, San Francisco Bay Plan, http://www.bcdc.ca.gov/laws_plans/plans/sfbay_plan#38):

Climate Change, findings:

> c. Global surface temperature increases are accelerating the rate of sea level rise worldwide through thermal expansion of ocean waters and melting of land-based ice (e.g., ice sheets and glaciers). Bay water level is likely to rise by a corresponding amount. In the last century, sea level in the Bay rose nearly eight inches. Current science-based projections of global sea level rise over the next century vary widely. Using the IPCC greenhouse gas emission scenarios, in 2010 the California Climate Action Team (CAT) developed sea level rise projections (relative to sea level in 2000) for the state that range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. The CAT has recognized that it may not be appropriate to set definitive sea level rise projections, and, based on a variety of factors, state agencies may use different sea level rise projections. Although the CAT values are generally recognized as the best science-based sea level rise projections for California, scientific uncertainty remains regarding the pace and amount of sea level rise. Moreover, melting of the Greenland and Antarctic ice sheet may not be reflected well in current sea level rise projections. As additional data are collected and analyzed, sea level rise projections will likely change over time. The National Academy of Sciences is in the process of developing a Sea Level Rise Assessment Report that will address the potential impacts of sea level rise on coastal areas throughout the United States, including California and the Bay Area. **GECO-9**

BCDC also suggests that planning efforts address sea-level rise as follows:

> e. Shoreline areas currently vulnerable to a 100-year flood event may be subjected to inundation by high tides at mid-century. Much of the developed shoreline may require new or upgraded shoreline protection to reduce damage from flooding. Shoreline areas that have subsided are especially vulnerable to sea level rise and may require more extensive shoreline protection. The Commission, along with other agencies such as the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency, the United States Army Corps of Engineers, cities, counties, and flood control districts, is responsible for protecting the public and the Bay ecosystem from flood hazards. This can be best achieved by using a range of scientifically based scenarios, including projections, which correspond to higher rates of sea level rise. In planning and designing projects for the Bay shoreline, it is prudent to rely on the most current science-based and regionally specific projections of future sea level rise, develop strategies and policies that can accommodate sea level rise over a specific planning horizon **GECO-10**

[1] The DEIR identifies City policies regarding sea-level rise, but includes no information on the physical environmental setting, impacts, or mitigation measures, which are the focus of CEQA.

(i.e., adaptive management strategies), and thoroughly analyze new development to determine whether it can be adapted to sea level rise.

o. Approaches for ensuring public safety in developed vulnerable shoreline areas through adaptive management strategies include but are not limited to: (1) protecting existing and planned appropriate infill development; (2) accommodating flooding by building or renovating structures or infrastructure systems that are resilient or adaptable over time; (3) discouraging permanent new development when adaptive management strategies cannot protect public safety; (4) allowing only new uses that can be removed or phased out if adaptive management strategies are not available as inundation threats increase; and (5) over time and where feasible and appropriate, removing existing development where public safety cannot otherwise be ensured. Determining the appropriate approach and financing structure requires the weighing of various policies and is best done through a collaborative approach that directly involves the affected communities and other governmental agencies with authority or jurisdiction. Some adaptive management strategies may require action and financing on the regional or sub-regional level across jurisdictions.

w. The California Climate Adaptation Strategy recognizes that significant and valuable development has been built along the California coast for over a century. Some of the development is currently threatened by sea level rise or will be threatened in the near future. Similarly, the coastal zone is home to many threatened or endangered species and sensitive habitats. The strategy acknowledges that the high financial, ecological, social and cultural costs of protecting everything may prove to be impossible; in the long run, protection of everything may be both futile and environmentally destructive. The strategy recommends that decision guidance strategies frame cost-benefit analyses so that all public and private costs and benefits are appropriately considered.

The strategy further recommends that state agencies should generally not plan, develop, or build any new significant structure in a place where that structure will require significant protection from sea-level rise, storm surges, or coastal erosion during the expected life of the structure [emphasis added]. However, the strategy also acknowledges that vulnerable shoreline areas containing existing development or proposed for new development that has or will have regionally significant economic, cultural, or social value may have to be protected, and infill development in these areas should be closely scrutinized and may be accommodated. The strategy recommends that state agencies should incorporate this policy into their decisions. If agencies plan, permit, develop or build any new structures in hazard zones, the California Climate Adaptation Strategy recommends that agencies employ or encourage innovative engineering and design solutions so that the structures are resilient to potential flood or erosion events, or can be easily relocated or removed to allow for progressive adaptation to sea level rise, flood and erosion.

GECO-10 cont.

The City cannot rely on the Area 3 and 4 EIR as it severely understated the potential impacts of sea level rise. The current DEIR apparently takes the position that, due to the Ballona Wetlands decision, it need not address this issue at all. As discussed below, it is my professional opinion that the City's approach is in error.

GECO-11

CEQA both permits and requires that the baseline used in an EIR to be adjusted to consider all potentially significant environmental impacts. The DEIR uses existing conditions as its setting, which is normally the appropriate baseline for CEQA documents. However, as discussed in a

GECO-12

recent California Supreme Court decision, a future baseline condition may be substituted for existing conditions if using the existing conditions as a baseline "would be misleading or without informational value"[2]. Given that the scientifically accepted projections of sea-level rise would result in a far different setting scenario than under existing conditions, and given that the project's environmental impacts would be significant and more severe under those condition, a future baseline should be used for this issue, either in place of, or in addition to, the existing condition baseline.[3] Under the likely future conditions (sea-level rise of 5 feet or more), portions of the City of Newark's sewage disposal, storm drainage, flood control, and roadway networks likely would not function adequately to serve the proposed development, which would result in impacts of the project on the environment (for example project-generated increases in flood flows, increase in sewage problems, unmet water supply demands, etc.). CEQA also requires that an EIR on a long-term project address long-term impacts of the project[4]. Given CEQA's requirement that EIRs disclose a project's environmental impacts and the potential severity of impacts, a long-range, plan-level EIR that does not address the substantial long-range environmental impacts associated with sea-level rise is inadequate.

GECO-12 cont.

Cumulative impacts associated with long-term sea level rise also must be addressed. The EIR should analyze how cumulative development proposed in the new Plan would affect infrastructure capacity and need to improve both utilities and flood protection infrastructure.[5]

GECO-13

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[2] Neighbors for Smart Rail v. Exposition Metro Line Construction Authority and Los Angeles County Metropolitan Transportation Authority, August 5, 2013 (*Smart Rail*).

[3] *Smart Rail* at p. 448: "existing conditions is the normal baseline under CEQA, but factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decision makers."

Smart Rail at p. 449: "Communities for a Better Environment provides guidance here in its insistence that CEQA analysis employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts. (Communities for a Better Environment, supra, 48 Cal.4th at pp. 322.)"

Smart Rail at p. 454: "nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project's significant adverse effects."

[4] Smart Rail at p. 454: "An EIR should consider "both direct and indirect effects and [give] due consideration to both the short-term and long-term effectsof the project. (Cal.Code Regs., tit. 14, § 15126.2, subd. (a).)"

Smart Rail at p. 455: "The CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades. That a project will have a long operational life, by itself, does not justify an agency's failing to assess its impacts on existing environmental conditions."

footnote for GECO-12

[5] Smart Rail at p. 450 states, "In particular, the effects of the project under predicted future conditions, themselves projected in part on the assumption that other approved or planned projects will proceed, are appropriately considered in an EIR's analysis of cumulative impacts (see Cal.Code Regs., tit. 14, § 15130) or in a discussion comparing the project to the "no project alternative" (id., § 15126.6, subd. (e)). "

footnote for GECO-13

Finally, the EIR, in some cases, assumes that an approved Areas 3 and 4 Plan is the baseline and in other cases uses existing conditions. CEQA does not permit a Plan-to-Plan analysis absent a compelling reason to do so. **GECO-14**

Analytical Gaps

The purpose of an EIR is to provide an evidence-based analysis of environmental impacts leading to a conclusion regarding potential significance of the impact, and to set forth and analyze mitigation measures for potentially significant impacts. In many cases this EIR provides a skeletal discussion of the existing conditions, then a list of policies in the proposed Plan and other documents, and then a conclusion of significance. What's missing is the analytical step of explaining how the EIR got from the list of policies to a finding of non-significance. Said another way, the EIR fails to include an analysis of impacts; instead in only includes a list of policies followed by conclusions of significance. In so doing, in many areas as identified in the Deficiencies in the Technical Analyses discussion below, the EIR lacks an analytical bridge between the environmental setting, proposed General Plan policies, and the determination of impacts significance[6]. **GECO-15**

For example:

- The EIR does not provide any analysis of cumulative aesthetic impacts, just a listing of policies and a conclusion. Further, the conclusion of no significant cumulative impacts because of implementation of policies that have been determined not to be effective for Areas 3 and 4 is contradictory and nonsensical. **GECO-16**
- The EIR's construction related air quality "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no supporting analyses. **GECO-17**
- The air toxics "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis. **GECO-18**
- The Impact BIO-1, BIO-2, and BIO-3 "analyses" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis. Those impacts also rely on future CEQA review and mitigation to reduce impacts to less than significant, which apparently is not proposed by the City. **GECO-19**
- The Impact GEO-3 "analysis" (p. 4.5-15) does not assess any impacts associated with **GECO-20**

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and again at Smart Rail, p. 454: "As the Sunnyvale West court observed, a project's effects on future conditions are appropriately considered in an EIR's discussion of cumulative effects and in discussion of the no project alternative. (Sunnyvale West, supra, 190 Cal.App.4th at pp. 1381–1382.)

[6] It should be noted that cities may approve projects by that do not meet all of a Plan's policies, so that the mere adoption of policies does not assure mitigation of impacts. **footnote for GECO-15**

major hazards in proposed development areas, including lateral spreading, liquefaction, subsidence, or collapse. A list of policies followed by a conclusion is not an impact assessment. **GECO-20 cont.**

- In addition, the EIR (Impacts HYDRO-1, 3, 4, and 5) fail to include any analysis the project's potential impacts on stormwater quality, either during construction of post-construction, beyond a listing of policies and a conclusion. **GECO-21**

- Impact UTIL-8 includes no actual analysis, just a list of policies and a conclusion. **GECO-22**

Inappropriate Use of CEQA Checklist Approach

The DEIR fails to identify a number of impacts, as identified below, because of its inappropriate use of the CEQA Initial Study checklist questions as the only possible impacts. That checklist is intended as a preliminary screening mechanism, not a detailed listing of all possible impacts. Once it has been determined that an EIR is required, the EIR should focus on actual impacts that may result from a project, not just responding to CEQA checklist questions. Additionally, as noted below, there are a number of instances where the EIR employs an impact heading which states that the project would not result in a significant impact, while the discussion that follows the heading reaches the opposite conclusion, thereby confusing the reader. **GECO-23** **GECO-24**

Project Objectives
The objective of "Embrace Newark's bayfront location" (p.3-3) is unclear. "Embrace" is a vague term preventing any measure of whether the project's alternatives' will achieve such an objective. Why is the preservation of open space along the bayfront not "embracing" this location? This is important because the DEIR concludes that the restricted Development Alternative does not achieve this objective, while never actually defining the objective. Given BCDC's policies encouraging protection of these bayfront areas as habitat and open space, we suggest removing this objective or defining it in terms of compliance with the Bay Plan's objectives. **GECO-25**

Deficiencies in the Technical Analyses

Aesthetics
The aesthetics discussion for the Southwest Newark and Residential Recreational Focus Area (SNRRFN) goes into great detail about parking lots and fire station building details, but fails to portray the overall change, at a Plan level, of the proposed Plan change. This is not appropriate and fails to provide the reader with an overview of what aesthetics might be changed by the project. **GECO-26**

Impact AES-1 lists General Plan policies and concludes, without analysis, that development of the Plan would not result in significant impacts, but fails to explain how it reached this conclusion. **GECO-27**

Similarly, the discussion of Impact AES-3 just lists statutes and policies, and summarily concludes that development of the Plan would not result in significant impacts, but does not explain how it reached this conclusion. There is no analytical bridge between the statement of policies and the determination of significance of impacts. **GECO-28**

The conclusion of AES-3 identifying the impact as significant appears to conflict with the statement on p. 4.1-8 that this impact would be less than significant. **GECO-29**

Air Quality: The DEIR indicates that the project would have a large jobs/housing imbalance, which would generate more vehicle miles traveled and, therefore, more emissions, than otherwise generated. Plan growth would exceed BAAQMD Plan Area projections. In addition, the DEIR acknowledges that project VMT (and associated emissions) would exceed proportional population growth. The DEIR acknowledges that these emissions would constitute a significant impact (p. 4.2-34). However, the DEIR also states that the project is consistent with the 2010 Bay Area Clean Air Plan (p. 4.2-19). The project cannot be consistent with the plan if it exceeds plan per-capita emissions and planned population growth. **GECO-30**

The DEIR (p. 4.2-39) then concludes that, because future CEQA analyses would be required to analyze air pollution emissions, operational emissions of criteria air pollutants under the plan would be less than significance. There are three problems with this approach. First, this EIR ignores that the EIRs for the changes in the Plan have already been completed, and future EIRs apparently are not contemplated. Second, this conclusion of non-significance directly conflicts with the actual analysis of plan emissions, which showed that it would exceed district assumptions and significance standards. This EIR's confusing and contradictory approach fails to provide the reader with consistent information needed to consider the project's impacts. **GECO-31** **GECO-32** **GECO-33**

Third, impacts cannot become less than significant simply based on future analysis. For example, this EIR considers construction related air quality impacts to be reduced to less than significant by future environmental review (p. 4.2-39). Yet, as discussed above, such a review is not even proposed by the City because the City apparently intends to rely on past environmental reviews for most of the entitlements in these areas. Further, the construction emissions analyses in both this EIR and the Areas 3 and 4 EIR upon which this study relies, fail to account for transport and grading of millions of cubic yards of materials to form huge earthen platforms needed to raise portions of Areas 3 and 4 out of flood hazard zones and create the massive new levees required to protect those areas from effects of sea level rise. **GECO-34** **GECO-35** **GECO-36**

The cumulative air quality impacts analysis (AIR-3) and odors analysis (AIR-6) also rely on future environmental review to identify and require mitigation, while the City apparently is not contemplating any such future reviews. The City and the public can not know if approval of the proposed General Plan "tune-up" will have significant impacts if, as here, the EIR improperly defers analysis of impacts and mitigation measures. **GECO-37**

Biological Resources: The biological resources discussion relies on mitigation measures in the Housing Element EIR and Areas 3 and 4 EIRs to reduce impacts to less than significant. As **GECO-38**

described below, those measures from other EIRs may not be effective or sufficient: **GECO-38 cont.**

Housing Element EIR Mitigation Measures:

- The biological resources setting Table 4.3-1 and the conclusions that there are no substantial wildlife migration corridors do not reference any supporting biologist or biological resources report. What is the evidence/source document supporting the assertions of species likelihood, as summarized in the table, or wildlife corridors, as claimed on p. 41? **GECO-39**

- Given that detailed biological resources assessments have been completed for some or all of Areas 2 and 4, please include that information in the EIR. For example, it is *known* that the federally –listed endangered salt marsh harvest mouse occurs on Area 4. Therefore, it is incumbent on this EIR to include and consider that known information. **GECO-40**

- Mitigation Measures 4.3-1 and 4.3-2 are inappropriate deferrals of analysis (in conflict with Sundstrom v. County of Mendocino) to future mitigation measures. At a minimum, this EIR should include prescriptive measures, similar to others approved by regulatory agencies for other projects in the area that would clearly mitigate the project's potential impacts to special status species. **GECO-41**

Areas 3 and 4 EIR Mitigation Measures[7]

- Eviction of burrowing owls as proposed in mitigation BIO-4.2 may result in those evicted owls being depredated at a higher rate than if not evicted, or otherwise suffer population losses as a result of this eviction. The comment notes that, if no such studies exist, impacts to owls should be considered significant and unavoidable.

  Please note that the document, "Status of Burrowing Owls in Southern California," published by the nonprofit Institute for Bird Populations, found that the owl population in western Riverside County continues to drop despite a sweeping habitat conservation plan that is supposed to protect the birds and 145 other species of animals and plants. As reported in the Riverside Press Enterprise, January 14, 2008: **GECO-42**

  > The study's authors found that one-fourth of the owl habitat in western Riverside County was destroyed in the first three years after the habitat plan went into effect. "As long as we treat the mitigation efforts the same, it is very likely burrowing owls will become extinct from the local area," said the study's lead author, Jeff Kidd, a wildlife biologist who lives in the Lake Mathews area of Riverside County. Developers in Riverside County most often use "passive relocation" when owls stand in the way of development. In passive relocation,

[7] As noted above, it is improper for this EIR to rely upon an EIR that has been suspended because it was materially deficient.

> one-way doors are installed at burrow entrances to keep the owls from re-entering and being killed when the land is graded, said Kidd, a licensed wildlife biologist. Kidd said he calls the process "active eviction." "They usually have no other home to go to, so they die. They get predated or they get hit by vehicles," he said.

GECO-42 cont.

Impacts BIO-5 and BIO-6 are examples of why the EIR should not have relied upon the Initial Study Checklist questions in its determination of impact topics – the CEQA physical environmental issues that should have been addressed in these impact discussions are loss of trees and impacts to SF Bay Refuge habitats and sensitive species. Instead, the EIR focuses on compliance with the City's tree ordinance and Basin Plan and Habitat Goals, which are not a physical environmental effect and are therefore peripheral to the CEQA analysis.

GECO-43

Cultural Resources

The historic structures discussion relies on studies completed in 1989, nearly 25 years ago; it is likely that additional structures have become eligible for listing since that time. Please update this list.

GECO-44

The policies described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less-than-significant level. Potential loss of historic structures has been determined by the courts to be an unavoidable significant impact (i.e. League for Protection of Oakland's Historic and Architectural Resources v. City of Oakland). These policies do not prohibit such a loss therefore this impact remains significant and unavoidable.

GECO-45

Geologic Resources

The erosion discussion (Impact GEO-2) fails to address potential erosion impacts associated with the grading and placement of millions of cubic yards of fill required to form earthen huge platforms needed to raise portions of Areas 3 and 4 and other low-lying areas out of flood hazard zones and future need to create the massive new levees required to protect those areas from effects of sea level rise.

GECO-46

In addition, reliance on seismic design requirements from the California Building Code (Impacts GEO-1, 2, and 3) will not reduce impacts to infrastructure, such as roadways and pipelines.

GECO-47

Hydrology and Water Quality

As discussed earlier in this letter, this section fails entirely to address sea level rise. The only flood hazard discussion is based on the 2009 FEMA flood hazard maps, which do not include rise in sea level and are currently being revised. New tidal and flood hazard elevations are currently being developed by FEMA in conjunction with the Alameda County Flood Control District[8]. As described in the plan for that study:

GECO-48

> FEMA's coastal study and mapping efforts benefit from new technologies and coastal data, including the latest 2010 detailed

[8] San Francisco Bay Area Coastal Study, California Coastal Analysis and Mapping Project, September 2012.

> topographic data collected as part of the California Coastal Mapping Program. The coastal flood hazard analyses use regional-scale storm surge and wave models of San Francisco Bay. These models produce time-series output of water levels, open ocean swells, and wind-driven waves at over eight thousand points along the complex San Francisco Bay shoreline. Input parameters to the regional-scale models include ocean tide levels, lower Sacramento River discharges, wind and pressure fields, and various river and creek discharges.
>
> The model output from the regional models is used to estimate wave runup and overtopping along the Bay's myriad of shoreline structures and steep shorelines, as well as overland wave propagation over beaches, marshes, and inland developed areas. These onshore analyses will form the basis for potential revisions to the Base Flood Elevations (BFEs) and Special Flood Hazard Areas (SFHAs) within the coastal areas of the nine Bay Area counties. Coastal High Hazard Areas (Zone VE) will be mapped when supported by flood hazard modeling results.

Any long-term planning effort for bayfront areas should include the findings of this study. **GECO-48 cont.**

The DEIR correctly notes that BCDC assumes projects will have a lifespan of at least 50-90 years. Therefore, the analysis of impacts (and the baseline) should consider projected reasonable worst-case tidal heights during that time period. Recent estimates of up to 69 inches of sea level rise during the lifetime of proposed project housing would, if they occur, result in the project contributing to large-scale flooding of many of the proposed sites. In addition, rising sea levels will result in rearward flooding of local creeks draining to the Bay. The EIR relies on mitigation measures provides no evidence that raising Area 4 and other low-lying areas outside of possible sea level rise flood levels is even feasible while allowing flood control channels to continue to function. In addition, such elevation increases could require placement and grading of millions of cubic yards of material, which could result in significant erosion and associated water pollution not assessed in this document. **GECO-49**

Maps of both revised FEMA flood elevations and projected sea level rise inundation of portions of the site should be added to the EIR. **GECO-50**

Impacts HYDRO 6 and HYDRO-9 use the wrong baseline and therefore fail to consider impacts of a 50-90 year Plan, as recommended by BCDC. See also previous comment regarding adequacy of flooding and sea level rise issues. **GECO-51**

Public Services

The Plan should identify potential locations and impacts associated with construction of a new police station, which would be required to serve the increased population as well as the reconstruction of City Hall and library necessitated by implementation of high-density housing on the current City Hall site. **GECO-52**

Utilities

Water: The water supply analysis uses adequacy of water supply normal rainfall years as its criteria of significance. The DEIR acknowledges that water supply in single- or multiple-dry years would not be adequate for the proposed increased buildout envisioned by the General Plan Tune Up (Table 4.14-3). Yet the DEIR finds this impact to be less than significant solely on the basis of Plan policies that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence upon which to base the conclusions of a less-than-significant impact in these dry years. Further, the assumption that other water supplies would be available in such years (bottom of p. 4.14-10) is unsupported, as no firm contracts have apparently been established by the City or ACWD for those sources, and multiple agencies will by vying for any such sources in those years. **GECO-53**

Wastewater and Stormwater Systems: Projected sea-level rise during the project lifetime (at least 50-90 years) will require massive changes to the City's wastewater and stormwater system. Project-generated increases in flows into the systems, development of low-lying areas or construction of large developments on raised platforms, and construction of new high levees to protect the new development will exacerbate these problems and expand the need for facility alterations. The Plan should address the potential need for new lift stations, pumping plants, drainage issues, and contingencies for the projected sea-level rise baseline. We suggest coordinating with the ACFCD in this analysis. **GECO-54**

Alternatives: The benefits (reduced impacts compared to the proposed project) of the Restricted Growth Alternative are understated. Air pollution and GHG emissions would be further reduced by elimination of the need to construct huge levees and earthen platforms for flood protection of development in flood areas. Hydrologic and water quality impacts would be substantially reduced by eliminating much of the planned development in flood-prone areas and areas where flooding will worsen substantially with sea-level rise over the next 50-90 years. **GECO-55**

The environmentally Superior Alternative discussion should be revised to eliminate or clarify the vague objective of "embracing Newark's bayfront location". Further, it is unclear why the Restricted Growth Alternative could not be designed to meet the objectives of facilitating clean-up of contaminated sites and foster TOD. Please revise the description of that alternative to meet those goals. **GECO-56**

Conclusion

As described above, this DEIR has numerous substantive flaws that render it inadequate under CEQA. It is my professional recommendation that this EIR must be revised as indicated in this letter and recirculated for further public review and comment. Please feel free to contact me at 510 849-2354 if you have any questions regarding the comments herein. **GECO-57**

Sincerely

Richard Grassetti
Principal
Grassetti Environmental Consulting

GECO-57 cont.

COMMENT LETTER # Bradley-1

Terrence Grindall
Community Development Director
City of Newark
510-578-4208
510-673-5837

From: John and Becky Bradley [mailto:jandbbradley@sbcglobal.net]
Sent: Wednesday, September 25, 2013 16:28
To: TERRENCE GRINDALL
Cc: 'C/H High'
Subject: My Remarks on the City of Newark's Draft General Plan Addressed to the City of Newark's Planning Commission on September 24, 2013
Importance: High

Bradley-1-1

Dear Mr. Grindall:

For the record, I have attached the "written" version of the comments I made last night at the Planning Commission meeting.
I would appreciate your sharing them with all the planning commissioners. Again, thanks, for the chance to comment.
Sincerely, John Bradley, 4958 Bosworth Court, Newark, CA 94560 Tel: 510-744-1062.

Newark Planning Commission Remarks 9/24/2013

- My name is John Bradley. I live at 4958 Bosworth Ct. in Newark (since 2005).
- Thank you for the opportunity to address you regarding the GPT.
- First let me alert you to the opportunity which was lost to encourage citizens to read over the draft version of the new General Plan. Like you, I would like more citizens to become involved in its vision and formulation. I recently received the latest edition of Newark's official publication, the *Newark News*. Did I find notification of the Draft General Plan Tune Up and its Draft Environmental Impact Report? even a brief mention of the draft documents being out on the streets and on the City's website for public review? Unfortunately, no. I would like commissioners to consider using all the media at their disposal to encourage citizens to share their views regarding the proposed Plan.
- Second, I would like you to know that I think there are some very good policies and actions proposed in the latest draft of the General Plan. For example, I really like the fact that City policy does not allow development in 100-year floodplains. I have heard what flooding in the 1980's did to the community of Alviso, just south of us. I think that most folks would consider the policy very sound.
- The first of two messages I would like to share with you tonight is simply this: all the good policies in the world are only as good their implementation. The planning documents say that the City does not allow development in flood plains. Unfortunately, many if not most of the policies and actions in the new Plan were not drafted in the kind of language that would actually require much in the way of compliance with their intent. I would urge planning commissioners to remove from the draft General Plan most of the "should's", the "may's", the "encourage" or "promote" or "facilitate", and the "to the extent practical". Why? Because as long as the General Plan policies and actions remain conditional, indeterminate, vague and voluntary, the policies will rarely be implemented in the manner or the spirit for which they were created. By allowing developers proposing to build in flood plains to mitigate the risks by building structures which are situated 11 feet atop pads placed in the flood plain does not cut it.
- And my second message? It is a foreboding: I fear that most of the City's limited resources and well-intentioned efforts are going to be sucked up with implementing the Dumbarton TOD Plan Focus area and recently dubbed Southwestern Newark Residential and Recreation Focus Area. I fear that it will be another 20 years before the City finds the time to focus on what I believe the majority of Newark citizens would like to see addressed now, namely, the challenges of renewing and revitalizing our existing neighborhoods and our retail, commercial and industrial areas. How? Through many of the policies and actions

Bradley-1-1 cont.

which, for me stand out as the visionary policies and actions that are also in the draft Plan: the policies and actions which address in-fill, pedestrian and bicycle friendly streets and corridors, maintenance and needed rehabilitation of parks, library, and other public facilities, more convenient access to local, out-of-walking-distance destinations such as the regional BART station and medical centers.

- I believe that those of you who live in this community would really appreciate a General Plan that puts real meat on the policy bones, and actions that will focus on the types of services we all know are needed now, not some 20 to 30 years down the line. If you allow the major targets of growth and development to focus on the Dumbarton TOD and Southwestern Newark Recreation and Residential projects, then those will be the priorities, and not the types of core development that we need now. I would urge commissioners not to recommend the draft General Plan as it stands today. I would urge commissioners to come up with a real update reflecting the tremendous changes in physical, socio-demographic and economic landscape that have occurred since 1992. You should not continue to make recommendations to the Council that result in "business as usual." The Plan, as it stands now, and as it was just described to you by the City's consultant, will largely result in creating more urban density, traffic congestion, over-priced residential housing, and a continuing deterioration of the quality of life in our existing community.
- Again, thank you for the opportunity to share my thoughts on this draft update of the City's General Plan.

Bradley-1-1 cont.

Janet Drews
Term expires: 12/2014

Theresa Ballard Dias
Term expires: 12/2014

Debbie Otterstetter
Term expires: 12/2015

Karen Bridges
Term expires: 12/2016

William Fitts, Chairperson
Term expires: 12/2015

Bernie Nillo, Vice-Chairperson
Term expires: 12/2013

Michael Hannon
Term expires: 12/2016

COMMENT LETTER # Bradley-2

Terrence Grindall
Community Development Director
510-578-4208

Begin forwarded message:

From: "John and Becky Bradley" <jandbbradley@sbcglobal.net>
Date: September 27, 2013, 14:19:56 PDT
To: <terrence.grindall@newark.org>
Subject: Public Comment on the DEIR for the Draft General Plan Tune Up

Dear Mr. Grindall, I appreciate the City's resources that make sending the subject comments (attachment) by email. It was a dreadfully long document to review, but obviously represents a great deal of work on the part your staff and consultants. I apologize for the line numbers in my letter, but I could not get my Microsoft Word program to insert page numbers. Would you acknowledge receipt of the attached comments. I want to assure that there are no problems with the attachment that would delay your review. I will be passing by the Newark Library later this afternoon and will drop a hard copy of my comments (if there's a drop box available). Sincerely, John

Bradley-2-1

4958 Bosworth Court
Newark, CA 94560
September 27, 2013

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

Re: Letter Responding to Newark's Draft Environmental Impact Report (DEIR) Addressing the Draft General Plan Tune Up (DGPT)

Thank you for the opportunity to comment on the draft General Plan Tune Up (DGPT) and related Environmental Impact Report (DEIR). I ask that my comments be given careful consideration as it has taken a great deal of time and effort to review and try to understand the documents. If other persons besides yourselves are tasked with reviewing comments from the public and drafting responses to the comments, then I ask you to personally assure that their responses are appropriate and not merely form-type responses.

First, let me comment on the fact that, as a resident and postal customer of the Newark community, I recently received in the mail a copy of the *Newark News*, an official publication of the City. As you know, it is a newsletter which the City officials share with the residents to keep them posted as to what's going on in the community. I was mildly surprised that I found no mention of the DGPT/DEIR which had been released for a minimal public comment period. I presume there were many reasons why no mention of these documents was made in the *Newark News*. Nevertheless, I was disappointed that there was no announcement of the General Plan Tune-Up nor a request, however brief, that residents take a look at it and letter City Council representatives know if the plan is in fact in tune with their thinking. After all, it is the plan, with all its well-meaning policies and action directives, that will provide the guidance and foundation on which you, our elected officials and City staff, will move forward in serving residents in so many vital elements of our community life. I do presume that the City fulfilled its minimal obligatory notifications (which is probably noted somewhere in the 568-page DEIR). However, the fact that I did not see notice of it in the *Newark News*, nor hear it openly discussed by officials in community forums such as neighborhood association meetings, causes me to wonder in what ways City Council Members and City staff persons might inspire residents to become more involved in the formulation of such an important and visionary plan.

Bradley-2-2

Second, I want you to know that I think there are numerous policies and tasks in the draft version of the new, updated General Plan. However, this letter will not focus on all the good points of the draft General Plan Tune-Up, but rather on what I find confusing or deficient or inconsistent about the draft and its accompanying report on environmental impacts. I do very much appreciate for instance that the City does not allow development in 100-year flood plains. On the

Bradley-2-3

other hand, I think it very ingenuous to get around this policy by placing development on artificially created mounds in the 100-year flood plain. And this is exactly what the draft GPT suggests as a way to mitigate. First it states that it does not allow development in 100-year flood plain and then makes an exception to the policy by stating it will be okay if the developer places the residential units at least 11+ feet above mean high tide. The mitigation that is proposed in several policy and action items under different elements of the DGPT do not avoid or minimize impacts to our environment in any but the legally most minimal manner possible, and in many cases I do not see how they meet even legally minimal criteria. This is my concern: that the DGPT appears to go to considerable lengths to assert that future development proposals will not have significant impacts; or if there will be significant impacts, then they will be mitigated to a level of non-significance; or if the impacts cannot be reduced to a level of non-significance, then the project will be considered of such overwhelming public benefit that they will be approved notwithstanding the significant environmental impacts.

The remainder of my letter is a compilation of my annotations made during my review of those parts of the DGPT that I was able to find time to read and reflect upon. I will try to lay them out in some order, following the outline of the DEIR. Some of my comments may appear trivial but I have tried to be observant and frank in my critical review of the DGPT/DEIR. I was struck by how much work must be involved in updating our General Plan every so often, and I agree with the need for periodically reassessing our progress and status because conditions do change that require readjustments. It is my hope that both the final EIR and final GP will serve in a real way as a vision and guide for City Council members, Planning Commissioners, City planners and other staff, and , last but not least, Newark residents.

Bradley-2-3 cont.

Page 1-1

The term "discretionary" appears to be used six times in the DEIR. The text states that it relates to "actions and approvals." However, I cannot find in the DEIR a detailed list of such discretionary actions and approvals. In an un-numbered table on page 3-28 of the DEIR it specifies such actions and approvals as recommendations from Planning Commission regarding GPT and DEIR or actions by the City Council addressing the adoption of the GPT and certification of the DEIR, as well as adoption of "ordinances, guidelines, programs, and other mechanisms for implementation of the [GPT]." If possible, I would like to see a list of all actions and approvals that associated with the GPT implementation.

Bradley-2-4

Page 1-2

There appears to be a typographic error: "statuts" should probably be "statute." Please let me know as to which statute is the author(s) referring?

Bradley-2-5

Page 1-3

The GPT includes some non-mandated sections: Chapters 6, 10, and 11 of the General Plan are considered optional elements, since they are not explicitly required by state law. These elements address economic development, public health, and community services and facilities. The DEIR states that these elements have been included because of the importance of these issues to the future of Newark, and their integral relationship to the topics addressed elsewhere in the Plan. Am I correct in assuming that, once adopted, the optional elements will carry the same legal weight as the mandated elements? **Bradley-2-6**

The DEIR attempts to explain why it has been prepared as a "Program EIR". It states that "As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects." And yet the DEIR appears to deal with some very specific plans for development that were already approved but not compatible with the existing General Plan, namely, the Dumbarton TOD and Area 3 and 4 projects. At a later point in the DEIR it states that the Specific Plans for these developments are incorporated by reference. The latter plans which are not consistent with the 1992 General Plan are being included anyhow. Will the Dumbarton TOD and Area 3 and 4 projects require EIRs subsequent to this General Plan Tune Up? I do not presume that the City is proposing to require new or supplemental EIRs for these projects. But is there any further review of those projects that required by CEQA? If so, what type(s) of review and approvals need to be addressed before the implementation of those projects? Will there be some "monitoring review" to assure citizens that those projects, before being implemented, are in accord with the updated General Plan? **Bradley-2-7**

Toward the end of this page, the DEIR states that when a Program EIR is relied on for a "subsequent" activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities. I ask the question how many of the mitigation measures documented in the Dumbarton TOD and Area 3 and 4 Specific Plans are incorporated within the DGPT? or the this "Program EIR"? Also I ask the question, are there any new mitigation measures and alternatives developed in the DGPT that are not reflected in the EIRs for those projects? If so, what are they? **Bradley-2-8**

Page 1-4

In explaining CEQA requirements providing for "the analysis of a range of alternatives that could feasibly attain the objectives of the Plan," I question whether or not the "No Project" alternative would meet the apparent objectives of the Plan. Is this a simple matter of the "No Project" alternative not having to meet the objectives under CEQA? What exactly is the purpose of the "No Project" alternative? If one of the objectives of the draft GPT is to implement already approved specific plan developments which are not entirely consistent with the existing 1992 General Plan, how do the non-no-project alternatives meet that this objective? Am I correct in assuming that each of the alternatives analyzed in the DEIR are real and that they could be **Bradley-2-9**

recommended by the Planning Commission to the City Council for adoption? The DEIR does not really make the options clear to me. **Bradley-2-9 cont.**

There are many other elements in the draft GPT that are addressed in the DEIR, however, they do not appear to be given equal focus. Instead what I have read appears to focus on the impacts of urbanizing the last, relatively undeveloped, natural spaces remaining within the City limits.

In the paragraph initiating section 1.4 - Summary of Alternatives to the Proposed Plan, it states that the DEIR will only address alternatives based on their potential ability to reduce or eliminate the following impacts determined to be significant and unavoidable for the proposed Plan: Aesthetics, Air Quality, Cultural Resources, and Greenhous [sic] Gas Emissions. It appears then that addressing impacts of development on "open space" resources which have many significant values, including "ecosystem services," and other General Plan Elements will not be given much attention. That is not the most appropriate strategy by which to develop alternatives in my opinion. Apparently impacts to our open space resources (and many other elements) were not deemed significant nor unavoidable by planners. I do not see water supply, climate change, nor biology in this list of elements found to have significant and unavoidable impacts, although they are cited below on page 1-6 as controversial issues. **Bradley-2-10**

I call your attention to a typographic error in the last bullet item on the page: "Greenhous" should be "Greenhouse." **Bradley-2-11**

Pages 1-5 and 1-6

What is the "proposed Plan"? Is it one of the alternatives, or is it something else? Is not the "proposed project" usually one of the alternatives. What choice, if any, are City residents and City decision-makers being offered with respect to amending the current General Plan? Do planners and decision-makers actually have a choice in approving any one or combination of the alternatives? **Bradley-2-12**

The statement under the No Project Alternative that it " could result in up to 17,900 housing units in Newark by 2035, including approximately 10,950 single-family homes and 6,950 multifamily units, as well as approximately 20,600 jobs" appears at odds with what is stated below in the "reduced residential" alternative. It makes it sound as if even under the "no project" alternative, the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan would be implemented. Is it possible to proceed with development plans that are not entirely consistent with the General Plan? How are the proposed developments to be implemented without modifying the current General Plan? The statement does not appear to clearly reflect or convey the reality of the matter. Again, how is it possible that the No Project alternative could result in all the additional housing when Specific Plans are not compatible with the existing General Plan. Is this a case where project proponents desire developments that are neither envisioned nor condoned (if that's the appropriate word) by the existing General Plan and so they want to change it? If this is the case, then the Final EIR should make it more explicit. To many citizens, it makes more sense to change general plans first and then consider and approve more specific plans as they are proposed. I know that this is often the way the land use planning and decision-making process proceeds, by putting the proverbial cart before the horse, so as to accommodate **Bradley-2-13**

every Tom-Dick-and-Harry-proposed variance and amendment, but it does not lead to implementing a vision which fosters a sense of sustainable place and community. I believe citizens have had enough of the growth-oriented, short-term profitable, quantity-over-quality kind of city planning and development.

Am I correct in understanding the Restricted Growth Alternative that it focuses on filling in, improving our existing neighborhoods, retail/commercial and industrial areas, that is revitalizing what the Newark community currently has or could improve upon without having to urbanize the two remaining relatively undeveloped areas of open space in the southwest and western portions of the City? Both the latter areas current provide buffers between the Cargill Salt operations and continued space in Area 2 for job creation if needed, and greater, less costly insurance against sea level rise.

In the description of each alternative, there is data regarding potential housing units and jobs: 17,900 and 20,600 under the No Project alternative; 16,280 and 24,800 under the Reduced Residential alternative; and 16,995 and 22,300 under the Restricted Growth alternative. It is not clear to me how these figures could be so similar to those given in the previous alternatives. Would you explain how the numbers were arrived at? If the numbers are correct, than am I correct in assuming that there could be almost 17,000 additional housing units and more than 22,000 job positions created under the Restricted Growth alternative? If the figures are correct, why would the draft GPT be including the urban development of the City's last remaining natural open spaces, particularly that in Area 4? The draft Plan does not appear to be very visionary with respect to natural open space resources nor at all in tune with the citizenry's increased awareness over the past 20 years of the valuable ecosystem and socio-cultural services such open space provides the our human populations. Indeed, there appears to be a very "business-as-usual" attitude underlying the proposed DGPT.

Bradley-2-13 cont.

I see also on this single page of the DEIR, the sections summarizing the "issues to be resolved" and the "areas of controversy." I did note, by its absence from the list of issues to be resolved the idea of whether or not the draft GPT should be adopted "as is". I think that this is the most significant issue to be resolved, that is, whether or not the draft GPT represents a plan which will lead toward assuring a better place for the Newark community.

As to the issues needing resolution that were stated I appreciated the summation, however brief. Because my time is so limited, I relied on word processing search tools to expedite my review of the DEIR; and when I searched the entire document for the "issues to be resolves" and "resolve" I could not find anywhere in the document where the City planners have described and explained if or how these issues were resolved. I suggest that the final document include a brief description of how the issues were either resolved, or attempted to be resolved, or will be resolved. I appreciate the fact that there are sections of the DEIR that do address these issues in very concise, legalistic terms, but I hope there will be some text in the final document that clearly focuses on the resolution in layman terms.

Bradley-2-14

Page 1-9

Please clarify which "public actions can only be taken after a finding that the action is consistent with an adopted general plan" by providing in the final DEIR as relevant a list as possible of these public actions as they relate to the DTOD and Southwest Newark Residential and Recreation Focus Area projects. In order to better understand the full scope of the draft GPT, please also provide a listing of the actions in the draft GPT which "provide specific direction for how these implementing ordinances [covering zoning and subdivision regulations] should be revised to better achieve the Plan's goals."

Bradley-2-15

Page 2-1

The DEIR describes the proposed Plan as "a 'tune up' of the 1992 City of Newark General Plan." It states that "the vision for the growth and development of the community outlined in the 1992 General Plan remains a valid reflection of community values and priorities today." It further asserts that "the land use designations and policies of the 1992 General Plan provide a solid base on which to build." As long as the objective of the proposed plan is to concentrate future development primarily in four areas, namely, the Dumbarton TOD Focus Area, the Southwest Newark Recreational and Residential Focus Area, the Old Town Focus Area, and the Greater New Park Focus Area, then it will be difficult to develop any alternatives to the proposed Plan that achieve these objectives. For example, if the objective is to convert Area 4 into a residential/recreational development it seems nearly impossible to come up with a viable alternative that would result in the achievement of that objective in Area 4. City planners appear to be offering citizens a Plan that, at least in its draft form, can have no feasible options? Is this correct? If not, please clarify this confusion in the Final EIR.

Even if these were the direction and intent of the General Plan adopted in 1992, the proposed Plan appears not to recognize that times, environmental conditions and individual attitudes have significantly changed. Citizens', including their children's awareness of such phenomena as aging demographic structure, long-term physical and mental well-being, economics of ecosystem services, a San Francisco Bay Area-wide natural resources-oriented Bay Plan, the adverse effects resulting from the disappearance of local open space, and sea level rise has increased greatly since 1992, even if City planners do not seem in their proposed tune-up to be tuned in to these watershed changes on the on the natural and demographic landscapes.

Bradley-2-16

Page 2-5

I see toward the bottom of page 2-5 that "all responses to comments submitted on the Draft EIR by agencies will be provided to those agencies at least 10 days prior to final action on the Plan." Just above this it states that "All persons who commented on the Draft EIR will be notified of the availability of the FEIR and the date of the public hearing before the City." Is it possible for private residents such as myself to view responses to our comments prior to any final action on the Plan. I am not sure how public comment such as mine will be handled. I am aware that individual comments from letters (including letters from agencies) often are grouped together by subject matter and then responses by subject matter are drafted by staff. In any case, on the same page of the DEIR it states that "public input is encouraged at all public hearings before the City."

Bradley-2-17

I will be difficult for me to provide informed input to Council Members without first knowing how the comments in my letter have been responded to. I thank you ahead of time for your consideration and "encouragement" in this matter.

Bradley-2-17 cont.

Will the required monitoring program described on Page 2-5 become available to the public for comment before the proposed final GPT is submitted to the City Council for consideration? I think it is important that the public has the opportunity to review the monitoring/reporting plan for its relevance, completeness, and validity with respect to its intended purpose. This is a part of the planning process that sadly has been neglected in the past but, without it, citizens and decision-makers can have no assurance that plans are implemented and objectives achieved as intended. I would like the opportunity to review and have the chance to comment on it before it is presented to the City Council for adoption; perhaps it could be posted on the City's website.

Bradley-2-18

Page 3-1

On this page, City planners assert that "The vision for the growth and development of the community outlined in the 1992 Newark General Plan remains a valid reflection of community values and priorities today." The year 1992 was a long time ago and I'm wondering how the planners ascertained that the '92 plan continues to be a "valid reflection of community values and priorities" after some 20 years. Is this assessment based on any systematic collection survey results? Is this assertion more anecdotal in nature, not based on the results of any valid survey or research? To be forthright, I was not around the Bay Area in 1992. I became a Newark resident/homeowner in 2005. It would be helpful to see data documenting and identifying what the community values and priorities actually were in 1992. Can Newark City planners offer any data substantiating their characterization of the community's values in 1992 and their adequacy for today's population and the socio-cultural milieu of 2013?

It is asserted in the DEIR that vision of the draft General Plan Tune Up promotes the same, strong sense of community and neighborhood familiarity that the 1992 General Plan apparently advocated for. But the same Tune Up espouses previously inconsistent decisions which allowed for residential neighborhood development on the outskirts of our community (albeit on a greener side of the railroad tracks as it urbanizes the last remaining natural open spaces. Please explain in the Final GPT how the proposed Plan is consistent with the timing and location of development given the projections for sea level rise and the majority of citizens not in favor of filling bay lands.

Bradley-2-19

One of the draft GPT's objectives is to "meet the regional need for housing, as defined in State Legislation and the Bay Area's Sustainable Community Strategy (SCS) and provide a wide range of housing opportunities for all housing types and income levels." Neither the draft GPT nor the DEIR adequately explain why it is incumbent on Newark to meet the region's additional housing needs. It seems to me that Newark has already done more than fair its share of filling up land with housing. Is there space for more? Sure, but it does not have to be located in the last remaining open space that Newark has. Instead the City's General Plan ought continue to plan for housing on vacant property in already developed areas. Instead continue to plan for

Bradley-2-20

increasing housing density as redevelopment opportunities arise. Nowhere can I find an explanation for why the City must endeavor to urbanize or industrialize every last parcel of unused, vacant, natural open space. What forces a community to urbanize their last remaining large parcels of natural open space? Why can't it be preserved as open space? Do flood plains need to be filled in order to meet regional housing needs. Can't this need for housing be met by using other lands besides flood plains and lands immediately adjacent to the Bay?

Bradley-2-20 cont.

I would argue that over the past 20+ years, the attitudes of the majority of citizens in Newark have evolved. They are not in favor of allowing flood plains and baylands to be filled with more urbanization. Instead, citizens want to see flood plains and the bay lands conserved. Citizens want to see the integrity of the Bay estuary preserved. Citizens from all around the Bay, including the majority of citizens in Newark, expect to see the Bay protected from any further encroachment by urban and industrial development. I would argue that since the drafting of the 1992 Newark General Plan, we have "discovered" that the climate is warming up, the ocean's mean high tide is rising and subsequent risk of flooding increasing, the San Francisco estuary's natural indigenous communities are in serious decline, and the quality of fresh water aquifers in our watershed is becoming compromised. Our City's planners and decision-makers will miss the boat if they approve the proposal Plan as it is currently formulated. Doesn't all this newly found appreciation for leaving still undeveloped bay lands intact have any significant value?

Bradley-2-21

Page 3-11

It appears that "modifications to two Pacific Gas & Electric (PG&E) transmission towers" to accommodate the proposed structural overpass over the Union Pacific railroad tracks into Area 4. I have heard that the costs of such modifications are extremely expensive, as in the tens of millions of dollars. What are the estimated costs of implementing these modifications? Who is paying for the PG&E transmission tower modifications? The developers? the City? or the rate payers?

" Utilities infrastructure, including a new public water distribution system within the residential streets of
Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge
wastewater generated by new uses in Area 4." From the California General Plan Guidelines:

> Capital facilities must be consistent with the general plan (Friends of B Street v. City of Hayward (1980) 106 Cal.App.3d 988). The network of publicly-owned facilities, such as streets, water and sewer facilities, public buildings, and parks form the framework of a community. Although capital facilities are built to accommodate present and anticipated needs, some (most notably water and sewer facilities and roads) play a major role in determining the location, intensity, and timing of development.

Bradley-2-22

For instance, the availability of sewer and water
connections can have a profound impact upon the fea

Were the proposed capital facilities determined to be consistent with the 1992 General Plan? If not, were there amendments made to the General Plan prior to the proposed Plan?

Bradley-2-22 cont.

Page 3-12

The DEIR states that "Furthermore, the only land use designation change addressed in the Area 3 and 4 Specific Plan EIR was the change of 78 acres in Area 3 to Medium Density Residential from Special Industrial. At a program EIR level of detail, these uses have substantially similar impacts on the environment. (This is documented in section 6: Alternatives). Therefore, regardless of whether the Area 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan." If impacts are substantially similar, then are we really being presented with "alternatives"? The reasoning appears circular. It appears that the City's planners are admitting that if the Area 3 and 4 EIR is <u>not</u> upheld, they will rely on the associated mitigation measures as part of the background condition for purposes of analysis in the GP-T EIR and this results in DEIR assertion that "this Program EIR fully addresses the environmental impacts of the proposed General Plan."

Bradley-2-23

Page 3-15

In Table 3-3, the DEIR states that the proposed Plan's State-mandated topic of conservation is to be combined with the topic of sustainability, thus creating a new Element. policies which keep Newark a business-friendly, economically competitive community. The Conservation Element addresses wetlands management, vegetation and wildlife, waterways and water quality, salt production, and urban forestry are addressed. The Sustainability Element includes strategies to curb nonrenewable resource consumption, reduce greenhouse gas emissions, encourage recycling, promote green building and renewable energy, and implement other measures which make Newark a more sustainable city. Unfortunately, this DEIR does not address this element very well.

The DGPT fails to address sea level rise with the most current information. And the City's planners have opted not to address the issue of sea level in the DEIR because it is not necessary to analyze environmental impacts on the proposed Plan but only the proposed Plan's impacts on the environment. But not to discuss the reality of rising sea level in more detail appears irresponsible to me.

Bradley-2-24

Page 3-28

Although the DEIR states that "no specific developments are proposed as part of the Plan," why are there so many pages in both the GPT and the DEIR devoted to the DTOD Project and the Area 3 and 4 Project (renamed the Southwestern Newark Recreational and Residential Focus Project)? The text of this paragraph does not point out that at least two Specific Plans had been previously approved and that those Plans were not entirely consistent with the original 1992

Bradley-2-25

Plan. Did the adoption and certification of the two Specific Plans (DTOD and Area 3 and 4 Project) treat inconsistencies with 1992 GP as significant and otherwise mitigated to level of non-significance or given "overriding" consideration? What the text of the DEIR does not tell us is if there are any discretionary actions left regarding the implementation of the DTOD and the Area 3 and 4 Project. Are there? If there are, what are they? What becomes of those projects if the proposed GPT is not adopted or its DEIR is not certified?

Bradley-2-25 cont.

I would like to see included in the Final EIR information that gives me an idea of what happens to future proposals which upon review are found not to be consistent with the General Plan. As it stands, the DEIR simply tells me that future development proposals will be reviewed for consistency and adequately reviewed per CEQA. Please include a brief discussion in both the final EIR and GPT what happens to proposals that do not pass GP and/or CEQA muster. If such projects are proposed in the future, does the City simply amend the GP to conform with the project and determine "overriding considerations" in the case of unavoidable significant environmental impacts?

The DEIR reiterates on this page the fact that the [final] EIR will serve as the environmental document for all discretionary actions associated with development of the proposed Project. Please see and respond to my comments above regarding "discretionary." The DEIR is also intended to assist other responsible agencies in making approvals that may be required for development under the proposed Plan. Do these Federal, State, regional, and other regulatory agencies have any discretion in their determinations? If not discretion, do these agencies have ministerial authority that could preclude the implementation of the projects as referred to in the GPT?

Bradley-2-26

Page 3-29

The DEIR states that the proposed Plan would also require discretionary and ministerial actions by the three other agencies and that these actions would occasion the revisions of regional models related to growth and development projections. However, I have been under the impression that much of the project proposals and their prior adoption by City planning and council members relied on the existing model projections. Would you please clarify what models were used in the analyses underlying the DEIR and why they may require revision?

Bradley-2-27

4.2-10

The DEIR states that one objective of the County-wide Transportation Plan (CWTP) is to "[e]encourage a pattern of major employment centers and employment in general with convenient transit access and nearby mixed use and residential areas." It seems that the City has approved and permitted the development of a number of office and light-to-moderate industrial facilities which lack *convenient* connection with BART as well as adequate arterial access to and from many facilities. The railroad infrastructure in Newark is another barrier to an enhanced, efficient mobility. The City already has several employment centers. Now the challenge is to make them convenient to residents and commuters. Our resources over the next 25 years should be directed toward these types of improvements, not toward creating residences near new, costly transit stations that will only serve to create more congestion. There is serious doubt about a rail

Bradley-2-28

station ever being built as envisioned in the Dumbarton TOD Project as its adverse impacts on the environment are to great and it is so very expensive; I have heard that rail transit is the most expensive, cost inefficient infrastructure to build and maintain. It is in my opinion unfortunate that City planners have not provided a discussion of the actual prospects for obtaining the funds necessary to implement the rail project.

Toward the bottom of this page of the DEIR it states that "Projects in the 2012 CWTP are eligible to receive local, regional, and federal funding through 2040." Which of the PDAs and GOAs in Newark are projects in the 2012 CWTP? The paragraph above refers to the Alameda County Draft Land Use Scenario Concept (which title sounds very, very preliminary and imaginary). What generally does it mean that the Newark PDAs "are included in MTC's Plan Bay Area?

Bradley-2-28 cont.

Page 4.2-15

In discussing CEQA thresholds, the DEIR states: "While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes." This is not clear to me. Perhaps you could illustrate the meaning with a brief example. What it seems to be saying is that pointing out a proposed project's vulnerability to an environmental hazard is consistent with CEQA, but explaining the effects of the environmental hazard, such as the results of an earthquake on the project's infrastructure, is not consistent with CEQA's purpose.

The DEIR goes on to state: " Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of this Draft EIR (see *Guidelines, § 15063, subd. (f)*)." I am not sure what the author(s) are trying to say. Please clarify this in the Final EIR.

Bradley-2-29

Also below, there appears to be a typographic error where "*Bellona*" should be "*Ballona*" as in most other references cited in the DEIR?

Bradley-2-30

The DEIR states: "Accordingly, while the City provides the following informational analysis of threshold d taken from Appendix G of the CEQA Guidelines, that the Guidelines language in thresholds d and e, as they relate to the placement of sensitive receptors under the proposed Plan, above are not examples of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment." Again, the writing of this sentence is not very clear. I am understanding that some environmental condition like traffic noise is measured but, because they are not effects of a proposed development project, they will not get analyzed in an EIR? With all due respect, this doesn't make any common sense. Can you state or explain what you are intending to say in plainer English? I think is important. For instance, with respect to traffic noise in the background environment, there is a lot of proposed mitigation measures to make sure that folks will not be too adversely affected by the noise. (I live in an "orange" noise zone according to the City's maps, in a house that was built in the early 1970's. I sure wish the City's decision-makers back then would have required the developers to

Bradley-2-31

build more insulated homes so I would not be so exposed to the constant rumble of the nearby freeways.)

Bradley-2-31 cont.

Page 4.2-16

In using acronyms such as BAAQMD, please spell out acronyms the first time they are used, and additionally if there's lots of pages between usages. I presume there is a glossary of abbreviations used in this document, but I find it hard to navigate to when viewing and inserting comments electronically. I had to go back to a footnote several pages prior to the determine it stood for Bay Area Air Quality Management District. (Before retiring, I used to work in government and understand how pervasive acronyms have become. Guess I might understand them better if I practiced texting on a cell phone?)

Bradley-2-32

The DEIR states that "A comparison that the project VMT or vehicle trip increase is less than or equal to the projected population" must be determined. I am not sure I understand this bullet. Please consider rewording it in the context of completing the phrase "but an analysis of the following:".

Neither does the last bullet make much sense to me. It is not understandable in the context following the phrase "but an analysis of the following:" Instead it sounds like an excuse…or the analysis itself. If it is intended as an analysis, it probably should not be formatted as a bullet. In any case, could it be re-phrased in the Final EIR?

I think such footnotes as number 19 appear overly pedantic and contribute to the general un-readability of a documents which is intended for review by "interested public" and decision-makers.

Bradley-2-33

Page 4.2-17

The DEIR states that "The BAAQMD's significance thresholds for local community risk and hazard impacts apply to both the siting of a new source and to the siting of a new receptor" and notes that "the purpose of this EIR is to identify the significant effects of the Plan on the environment, not the significant effects of the environment on the Project." In this case, as a result of the proposed General Plan, there may be impacts in two respects: (1) a project resulting in new sources of pollution, and (2) those new sources possibly having impacts on current and future residents. The air quality resulting from the project implementation becomes a part of the human environment that affects humans in that modified environment. Does this make sense? or am I writing gibberish also?

Bradley-2-34

The DEIR states that the "City of Newark is not in one of the six impacted communities identified in BAAQMD's CARE program." What is the CARE program?

The DEIR states that "For a plan-level analysis, a project must also identify goals, policies, and objectives to minimize potential impacts and create overlay zones for sources of TACs and receptors." Please clarify what is the issue that the DEIR is attempting to address? What is the

Bradley-2-35

522 bottom line? Would you try and state this in plainer English. If you really think that the
523 proverbial "man on the street" can comprehend this, then do not bother.
524
525 **Page 4.2-18**
526
527 I think that the AIR-1 sentence "While the proposed Plan would support the primary goals of the
528 2010 Bay Area Clean Air Plan, buildout of the proposed Plan would not be consistent with the
529 Clean Air Plan because the projected vehicle miles traveled (VMT) increase from buildout of the
530 proposed Plan would be greater than the projected population increase" would be improved if
531 stated thus: ….because the increase in projected vehicle miles traveled (VMT) would exceed the
532 goal??? After reading it 5 times, I still do not understand exactly what the DEIR is attempting to
533 say.
534
535 **Page 4.2-19**
536
537 The DEIR states that "New policies would be introduced as part of the proposed Plan to
538 minimize impacts. With the additional measures proposed in the City's CAP, impacts would be
539 less than significant." Are these "additional measures" newly proposed in the proposed General
540 Plan? or are they already part of the "prepared and approved" CAP?
541
542 The sentence "Table 4.2-4 identifies the control measures included in the 2010 Bay Area Clean
543 Air Plan, and, as shown, implementation of the proposed Plan goals, policies and actions in
544 Table 4.2-4 would ensure that the proposed Plan would be consistent with the 2010 Bay Area
545 Clean Air Plan and that the impacts due to inconsistency would be less than significant...." is
546 poorly stated. In the first part of sentence the author states that the proposed Plan would be
547 consistent with the 2010 Bay Area Clean Air Plan, and then in the second part of the sentence
548 asserts that there would be inconsistencies (but not significant ones).
549
550 Under Regional Growth Projections for VMT and Population and Employment, the DEIR states
551 that "As a result, BAAQMD's approach to evaluating impacts from criteria air pollutants
552 generated by long-term growth associated with a plan is done in comparison to BAAQMD's
553 AQMP rather than a comparison of emissions to project-level significance thresholds." Is noun
554 "criteria" serving as an adjective to pollutants? I am not sure what the phrase "criteria air
555 pollutants" refer to.
556
557 **Page 4.2-20**
558
559 With regard to the "stationary and area source control measures," does the City's General Plan
560 have a policy and action that would assure that new and existing sources of stationary and area
561 sources are complied with? Does the City's General Plan take on the responsibility of checking
562 with the BAAQMD? or receiving from the responsible source evidence of its compliance? Will
563 this be part of the Mitigation and Monitoring Report Plan?
564
565 With regard to the "mobile source control measures," does the proposed General Plan include
566 policy and actions to assure that mobile sources and their owners, especially those associated
567 with development, are CARB-compliant?

Bradley-2-35 cont.

Bradley-2-36

Bradley-2-37

Bradley-2-38

Bradley-2-39

Bradley-2-40

Bradley-2-41

Page 4.2-24

I am not in favor of the Action t-3B because I am not in favor of the Dumbarton Rail project due to the disturbance to wildlife and wildlife habitat that it will create both during its construction and operations and maintenance activities. I am guessing that the residential component of the project will only result in further congestion on Newark roadways. **Bradley-2-42**

Page 4.2-39

I think there is a "non sequitur" in the sentence toward the bottom of this page that states: "Further, future development under the proposed Plan would be subject to separate environmental review pursuant to CEQA in order to identify and mitigate potential air quality impacts. As such impacts from construction emissions under the proposed Plan would be *less than significant*." Separate environmental review may identify air quality impacts that cannot be mitigated. The "less than significant" is not a slam-dunk simply based on review and identification of potential air quality issues. This is not necessarily "self-mitigating." **Bradley-2-43**

Page 4.2-40

In the sentence "The analysis under was based on 2035 traffic data in the Alameda County Travel Demand Forecast model, which incorporate cumulative development anticipated in the county and the region through 2035 as projected by ABAG" the DEIR does not explain "under" what or "under" where. I presume this is a typographical error. **Bradley-2-44**

The DEIR states that "cumulative impacts from the proposed Plan related to criteria air pollutant increases would be the same as the Plan-specific impacts discussed previously in this chapter." But this doesn't make sense. How does the Alameda County Travel Demand Forecast model incorporate "cumulative development"? Were any of the development projects in the proposed Plan actually incorporated into that model in any specific manner? If so, to which page of which document(s) can I go to verify this? **Bradley-2-45**

The DEIR asserts that the "implementation of the proposed Plan policies cited under AIR-2 would reduce operational emissions of criteria air pollutants from development projects under the proposed Plan to the maximum extent practicable. As such, impacts from construction and operational emissions of criteria air pollutants generated with buildout of the proposed Plan would be less than significant." This is confusing; it appears to be a repetition of the previous sentence. **Bradley-2-46**

Page 4.2-41

In the next to the last paragraph on this page the DEIR states: "Because these are screening distances, refined analysis of the effects from many of the high volume roadways would likely show much lower potential TAC exposure and smaller buffer zones." The DEIR does not explain what "screening distances" means? nor what "refined analysis" means in this context? nor who **Bradley-2-47**

is responsible for carrying out such analysis? It would help if you provided these clarifications in the final EIR?

Bradley-2-47 cont.

Page 4.2-43,44

The DEIR states under Action HW-1.F: Health Risk Assessments that the City shall requires project development proponents to submit a Health Risk Assessment within 1,000 feet of the I-880 or SR 84 freeways. I would amend this to specify that the "1,000 feet" is from the edge of the CalTrans right-of-way closest to the proposed development. The overall action could be good if the BAAQMD guidelines are conservative. But I do not know what they. Does a HRA typically take into account prevailing winds? Also I do not know if the agencies have identified "acceptable" impact levels; have they? what are they? where can they be verified? Of course Newark has a few residential neighborhoods that are clearly within the 1000 feet "screening" area, one of which I live in. How does the Lake neighborhood deal with TACs from both SR-84 and I-880? Do assessment tools take these potential double whammies into account?

Bradley-2-48

Page 4.2-48

The DEIR describes Mitigation Measure AIR-1: Numerous goals, policies, and actions contained in the proposed Plan address future increase in VMT and criteria air pollutants under the Plan; however, the projected growth in VMT in the Plan Area would still exceed the rate of population growth. There are no additional measures that would reduce this impact. Where in the document does it explain why increase in VMT will exceed rate of population growth? I would like to review and understand this conclusion. If impacts are significant and unavoidable, would this not be reasonable grounds for denying permits on a project? Just how are proposed project benefits measured against significant and unavoidable impacts? Am I correct in stating that the City Council members always have discretionary authority ignore significant and unavoidable impacts with the adoption of a statement of overriding considerations?

Bradley-2-49

Page 4.3-6

In the section covering local regulations the DEIR describes the role of the San Francisco Bay Conservation and Development Commission (BCDC). First off I would like to see a map in the final DEIR that delineates the BCDC's jurisdiction in the City of Newark. It would clarify where precisely "the ending at the culvert at the Mowry Avenue bridge crossing is located; it would also help to clarify where precisely the "the bend of the channel near Plummer Creek" is located. Unfortunately Figure 4.3-2 does not have the BCDC jurisdictional delineation.

There is a typographical error in the phrase "or change is..."; it should read "or change in...".

Bradley-2-50

Page 4.3-8

The following remarks pertain to Figure 4.3-2:

The northern portion of The Lake should also be colored emergent freshwater green.

Bradley-2-51

I am not sure to which grassland area, between Newark Blvd and Cedar Blvd. the DEIR is referring? Would you please clarify in the Final EIR.

The figure shows more grassland in the Mayhews Landing area than I think there actually is. There is the possibility that saltmarsh wetlands have become infested with invasive annual grasses and other weeds. To my knowledge, there is only a relatively narrow strip of grassland around the perimeter of the Mayhews Landing unit of the National Wildlife Refuge.

There should be wetlands of some type delineated in the Dumbarton TOD Plan Focus Area. Sensitive resources in the area may show up in the subsequent Figure 3.3-3, but even this figure is difficult to interpret. Albeit fragmented and isolated, at least two parcels adjacent to the railroad track on the east side of Willow street support seasonal wetland vegetation. Every year there is saturated soil that holds water for days on end and support vernal pool-like ephemeral vegetation. Butterflies and other insects abound although I'm unaware of even presence-absence surveys being undertaken to see if there might be any Threatened and Endangered or otherwise sensitive plants and organisms exist. The San Francisco Public Utilities District may have performed some surveys in the area due to their maintenance work on the Hetch Hetchy Pipeline.

The figure makes everything appear to be annual grassland in the vicinity of the Dumbarton TOD Plan Focus Area. It may be that the resolution of the figure is too coarse to indicate the location of a wetland mitigation parcel managed by Urban Wildlands in that area, but it is certainly worth taking note of and assessing potential impacts on this area resulting from proposed development.

I am wondering if the US Fish and Wildlife Service's Wetland Inventory database for this region was used? If not, I would recommend requiring project proponents to take advantage of this information. It is a valuable adjunct to information provided by the Department of Agriculture. See the following link: http://www.fws.gov/wetlands/index.html.

Bradley-2-51 cont.

Page 4.3-11

Under salt pond habitat (and nearby grassland habitat also), I do not see Short-eared Owl, Golden Eagle or any swift, swallow or bat species mentioned? But on walks taken around salt ponds I have observed at least these avian creatures. I think the Final EIR should include the most comprehensive lists of critters that are currently available and that the proposed Plan should incorporate requirements that project proponents use the most current information available regarding biological resource data. I request that the biological resource data upon which this DEIR relies is not considered adequate for future proposed projects (as "programmatic" might imply). The biological data which is being presented or incorporated by reference in the DEIR is not used to automatically "tier off" of and relieve future project proponents of their responsibilities to investigate each project. I am very concerned that City planners will use the "programmatic" nature of the proposed Plan to expedite in an inappropriate manner the project planning process. I request assurance in the Final DEIR and General Plan Tune-up that this is not the City's intent.

Bradley-2-52

The DEIR refers to the Coyote Hills Regional Open Space. Is there distinction between Coyote Hills Regional Open Space and Coyote Hills Regional Park?

I appreciate the City's efforts to review the California Natural Diversity Database (CNDDB) or to require project proponents to do so. There is in this database a wealth of useful information. Nevertheless, there are limitations of the CNDDB, and these should be stated clearly. For instance, sensitive plant species in the Dumbarton TOD may not be listed in the database. Review of data from CNDDB will never substitute for on-the-ground reconnaissance, survey, and "truthing". Again, when it comes to evaluating biological resources that may be affected directly or indirectly by project development, the CNDDB may provide a starting point but it should not be the "last" word. Even with non-biological resources, a utility pipeline for example, we would never rely solely on a utility facilities map or text description; instead we would require on-site visit and investigation before proceeding with project implementation.

Bradley-2-52 cont.

Page 4.3-12

There is a typographical error in the "legend" at the bottom of Figure 4.3-3: "Congdon's tarplan" should be "Congdon's tarplant."

Bradley-2-53

Page 4.3-13

The following remarks refer to Table 4.3-1:

Referring to Alkali milk-vetch, I request that references to surveys need to be supported with citations/reference---which include who, what, where, when, why. These citations/references are especially important when City planners reach a conclusion appearing in column three --- "potential for occurrence [of a species]" --- that "further surveys for the area were deemed to be warranted for impact assessment."

Actually, any time I see in the DEIR the statement "[was] deemed to be unwarranted," I would request that the conclusion be supported in the Final EIR by citations/references which include the "who, what, where, when, why" information.

Referring to the Arcuate bush mallow, I would expect that where inadequate information exists to rank occurrence, then policy would require site surveys at plant-appropriate times of the year.

Referring to Brittlescale, when were the surveys performed? What protocol was followed? I agree that there is suitable habitat. I think the plant has been observed and recorded on the Warm Springs unit of the DESFBNWR (Reynolds, S. 2005) which is located immediately southeast of Newark in city of Fremont.

With respect to California sea-blite, and all other plants and animals, when further surveys are indicated, General Plan policy should require that project proponents follow protocols acceptable to the California Department of Fish and Wildlife, the California Native Plant Society, the US Fish and Wildlife Service or other regulatory agency.

Bradley-2-54

748 Referring to the Caper-fruited tropidocarpum, here is an example of the author recommending
749 further surveys in development areas based on habitat type, viz., valley and foothill grassland. I
750 do not understand why the author did not offer similar a recommendation for Congdon's tarplant.
751 This appears to be inconsistent.
752
753 **Page 4.3-14**
754 Continuation of remarks related to Figure 4.3-1:
755
756 With respect to Chaparral harebell, I am not sure what is meant by "to rank the occurrence."
757 This statement made in several instances in this table 4.3-1. It is my understanding that this
758 species generally
759 occurs in a higher elevation range (300-1250 meters).
760
761 With respect to Congdon's tarplant, the table entry is confusing. I am not sure whether or further
762 surveys are being recommended or not. The second sentence says they should be, at least in
763 certain areas. As an amateur plant enthusiast, I personally am in favor of requiring further
764 surveys because I think I have seen it in the Newark area and also given that suitable habitat,
765 namely, "disturbed California annual grassland habitat (with alkaline substrates), particularly
766 near seasonal wetland," is fairly abundant in the Newark vicinity. In addition, in the same tabular
767 information related to Congdon's tarplant, I do not know what they mean by "pre-development
768 surveys"? Would you please clarify in the final DEIR with respect to the timing of such surveys?
769
770 With respect to California goldfields, what survey protocol did the City's consultants follow?
771 Was the protocol acceptable to the regulatory agencies? Regarding its "confirmed absence from
772 impact areas," does this refer to the proposed Plan area?
773
774 Regarding Delta wooly-marbles, who says it only occurs in vernal pool areas? The next column,
775 labeled "Habitat," shows several other types of habitat in which this plant may occur. Do
776 grassland or ephemeral wetlands occur in Areas 2, 3 or 4? Why does an action statement like
777 "surveys would only be required for those areas" appear under the heading Potential Occurrence?
778
779 Regarding Santa Cruz manzanita, there appear to be several occurrences on record (much of it
780 historical) of this plant, although it seems to be located in chaparral area of the east Oakland
781 Hills. I request that the final Proposed Plan require that surveys by qualified personnel be
782 conducted to confirm presence or absence of this species.
783
784 Regarding Santa Cruz tarplant, since there is inadequate information I request that the final
785 Proposed Plan require surveys to confirm the presence or absence of this plant. There are, as the
786 City's consultants probably know, historic sightings of this species in the region.
787
788 **Page 4.3-19**
789 Continuation of remarks related to Figure 4.3-1:
790
791 With respect to Slender-leaved pondweed, although the DEIR states Newark "generally lacks
792 appropriate habitat," I request that the final Proposed Plan require surveys to confirm the
793 presence or absence of this species because it has been found "in the vicinity of Newark." Upon

Bradley-2-54 cont.

checking, I discovered that at least one place it's been located is the Alameda Creek area near or in the Patterson Ranch area, which is practically across the street from the City of Newark. Still, there are a few remaining areas where shallow freshwater habitat occurs in what is left of Newark's mostly urbanized landscape, especial in Areas 2 and 4, which may not be too unlike where it was previously identified.

With respect to Uncommon jewelflower, although Calflora maps show many occurrences in Alameda County including at least one occurrence along east bay shoreline north of Newark.

Page 4.3-20
Continuation of remarks related to Figure 4.3-1:

Regarding Western leatherwood, as far as I know it has only been located in the west Bay Area, where there are number of known locations (Rancho San Antonio Open Space Preserve in Los Altos and Jasper Ridge Biological Preserve in Palo Alto), none near the shoreline.

With respect to Wooly-headed lessingia, there are known occurrences of this plant in the Milpitas-San Jose area as well as Alameda County and therefore I would request that the final Proposed Plan require surveys by qualified personnel to determine its presence or absence from proposed project sites with habitat determined appropriate by a qualified professional.

As both a citizen and member of the California Native Plant Society, I appreciate the fact that the City and its consultants are using the society's *Inventory of Rare and Endangered Plants*, as well as the California Natural Diversity Database as mentioned above.

Bradley-2-54 cont.

Page 4.3-21
Continuation of remarks related to Figure 4.3-1:

With respect to the Monarch butterfly, I think the concern here is ability of species to persist in our immediate area, our town. If we (my wife and I) have to drive out of the City to enjoy observing them, then they are too far away in my opinion. Fortunately, we still have them occasionally in our front and back yard due we think to cultivation of native plants instead of traditional sod. Otherwise we can infrequently admire them floating across the National Wildlife Refuge salt marshes, or walk or bike over to some regional park like Coyote Hills or Quarry Lakes but these are outside the Newark City limits. It sure would be nice to have some accessible open space in Newark that boasted these charismatic insects and more proactive encouragement by the City for the creation of butterfly habitat in the residential parks and neighborhoods.

With respect to Vernal Tadpole Shrimp, I would like the DEIR to provide citations/references to the subject surveys. What survey protocols were used? Who was it that made the determination of "absence"? When, where, how, and why? Were surveys conducted in potential site in the Dumbarton TOD Plan Focus area?

Page 4.3-22
Continuation of remarks related to Figure 4.3-1:

With respect to the California Tiger Salamander, I appreciate the slightly more detailed summary as to its potential occurrence. Still I request that the final DEIR include citation/reference to the mentioned surveys.

Page 4.3-23
Continuation of remarks related to Figure 4.3-1:

Regarding the Alameda Whipsnake, is there any evidence of occurrence or suitable habitat in the proposed development areas? I request that the City require in its final General Plan Tune-up appropriate surveys by qualified personnel to determine presence or absence of this species in all areas proposed for development.

With respect to the Alameda Song Sparrow, I request a citation/reference in the final EIR to the information under the heading Potential Occurrence. Also I would like to know if the Alameda Song Sparrow has been heard or seen in the areas proposed for development, how many and where. As above in many instances, I request that the City include a policy/action in the final GPT which requires surveys by qualified personnel using appropriate protocols to determine presence or absence.

Page 4.3-24
Continuation of remarks related to Figure 4.3-1:

With respect to the Peregrine Falcon, I request that the annotation under habitat reflect the fact that the birds frequently find tall urban structures with ledge-like features, e.g. utility and bridge towers, suitable habitat for nesting. They often use the third-story ledges of the aLoft Hotel in Newark for refuge during rainy weather.

With respect to American White Pelicans, this species use the freshwater storm runoff ponds in the Coyote Hills Regional Park and also the salt ponds of the south Bay. I have seen them foraging on the freshwater lake in Newark's Lake neighborhood, and also over in Quarry Lakes Regional Park and Lake Elizabeth in adjacent Fremont.

With respect to Bryant's Savanna Sparrow, how do we know it does not use/nest in the Dumbarton TOD project area? There is certainly suitable habitat in vicinity. I request the City include in its final GPT requirements for presence/absence surveys by qualified personnel following professional protocol.

Page 4.3-26
Continuation of remarks related to Figure 4.3-1

Regarding Black Rail, the bird definitely occurs in La Riviere Marsh on the National Wildlife Refuge, across Thornton Avenue from the Mayhews Landing unit. Refuge biologists can confirm occurrence based on vocalizations although their breeding status is still unknown.

Regarding California Clapper Rail, have City planners checked with biologists at the National Wildlife Refuge as to the presence or absence of this species in Mowry and Newark Sloughs? I

Bradley-2-54 cont.

886 doubt that rails will persist for another 50 years at the southeast end of the Bay unless we can
887 assure them the protection of higher elevation refugia during extreme high tide events. I request
888 that the final DEIR include the citation/references regarding the summary information for this
889 species. For your information, there potential habitat for this bird in portions of Plummer Creek.
890
891 Regarding California Least Tern, this species may be making a modest comeback in the San
892 Francisco estuary. Small, nesting colonies of the bird are being observed along the Hayward
893 shoreline south of a prime colony at Alameda Point. When did anyone specifically look for it in
894 the vicinity of Area 4? I would probably agree with conclusion "unlikely due to..." although I am
895 not very familiar the shoreline in the City of Newark's purview. I know that red fox and feral and
896 stray cats can wreak havoc with nesting colonies, as well as avian predators such as ravens and
897 kestrels. I would request that policies and actions in the final GPT require final project designs
898 to minimize the exposure of potential tern nesting colonies from potential urban predators. In
899 this case, I am asking the City to do what it can to promote the full recovery of this species, a
900 recovery that is seriously vulnerable to sea level rise.
901
902 Regarding Great Blue Heron, I would point out that these birds can even establish themselves in
903 urban park habitat. We have substantial colonies of nesting egrets and night-herons in the tree-
904 topped islands of the Lake in the Lake neighborhood of Newark.
905
906 Regarding Loggerhead Shrike, this is a California bird of special concern and population
907 declines in Alameda County over past 3 decades are presumed to result from grassland, both
908 natural and ruderal, habitat lost to urban developments. By continuing down the path of paving
909 over every last bit of grassland remaining in natural open space areas, our City is contributing
910 sadly to the problematic decline.
911
912 **Page 4.3-27**
913 Continuation of remarks related to Figure 4.3-1
914
915 With respect to Common Yellowthroat, I know that there are Common Yellowthroat in
916 freshwater marsh on edge of Lake Elizabeth in Fremont, and also along marsh edges of both
917 Coyote Hills and Quarry Lakes Regional Parks in Fremont. Am not sure if they are same
918 subspecies as ones found in salt marshes. I have also observed these birds in the Mayhews
919 Landing unit of the DESFBNWR, not more than 1 mile from Area 2.
920
921 As for the Western Burrowing Owl, I have observed individuals at the Warm Springs unit of the
922 National Wildlife Refuge which is relatively close to proposed development areas in Newark. In
923 the Breeding Bird Atlas for Alameda County, it remarks that "many undeveloped areas near the
924 San Francisco Bay, (….) which formerly supported nesting pairs in the early to mid-1980's, have
925 since been replaced by warehouses and other businesses." I request that the final GPT include
926 policies and actions that would promote the recovery in this bird in our town.
927
928 **Page 4.3-28**
929 Continuation of remarks related to Figure 4.3-1
930

Bradley-2-54 cont.

As for the White-tailed Kite, in the Potential Occurrence column, "May be" is too soft an expression. They have been sighted in these areas by bird watchers. There is even some evidence in the *Alameda Breeding Bird Atlas* (2011) of possible nesting.

As for the Willow Flycatcher, there appears to be a contradiction here. There may not be suitable nesting habitat, but obvious there's suitable foraging habitat. Please include in the final DEIR citations to support the conclusion of "absence."

With respect to the Yellow Warbler, there also appears to be some confusion. There is the statement that there is no suitable nesting habitat, but obvious there probably is some suitable habitat (for foraging?) if migratory individuals are observed. Please clarify this in the final DEIR.

Page 4.3-29
Continuation of remarks related to Figure 4.3-1

With respect to the American Badger, please include in the Final EIR a reference(e) to the who, what, where, when, how, and tabular information.

With respect to the Harbor Seal, the phrase "May be" in the Potential Occurrence column is not accurate. They are there. A friend of mine, Norton Bell, has been collecting data on them for both Mowry and Newark Sloughs for at least the past decade. For example:

Bradley-2-54 cont.

> Here are the abbreviations, names and coordinates of the Harbor Seal observation locations and most likely haulout locations. To see the sites, copy the coordinates and paste them into the search bar in Google Maps satellite view at http://maps.google.com/maps (Coordinates for a location in google maps can be found by clicking on "what's there".)
>
> SSP, Salt Pile (mound) observation location: 37.488548,-122.032056
> SSP, Salt Pile (mound) haulout location: 37.484377,-122.033043
>
> MSN, Mowry Slough North Bank observation location: 37.492703,-122.034631
> MSN, Mowry Slough North Bank haulout location: 37.493213,-122.043257
>
> MSS, Mowry Slough South Bank observation location: 37.494269,-122.047462
> MSS, Mowry Slough South Bank haulout location: 37.491647,-122.042989
>
> NS, Newark Slough observation location: 37.506219,-122.083426
> NS, Newark Slough haulout location: 37.491647,-122.042989

Please take such data into account in the Final EIR. I think Norton Bell can be reached through the biologists with the Don Edwards San Francisco Bay National Wildlife Refuge.

With respect to the Pallid Bat, please include in the Final EIR reference(s) for the information. I am interested in when and how the observations were made?

With respect to the Salt Marsh Harvest Mouse, I do not believe the assumption made for the statement in the Potential Occurrence column is a valid one, if no other reason but sea level rise and climate change. Please provide reference(s) in the Final EIR. Where did the authors get information relative to characterizing the population in northwest Newark as 'large and healthy…and [its] habitat in excellent condition. The Mayhews Marsh unit of the National Wildlife Refuge is a mess, with plenty of non-native house mice (and rats?), as well as non-native, invasive plant species. I would like to see some policy commitments and action made in the final version of the General Plan regarding the recovery of endangered and threatened species which occur within the City of Newark. This is especially critical in the future given sea level rise projections. There are certainly lands remaining in the City that could contribute toward assuring the persistence of the endangered Salt Marsh Harvest Mouse. A major document dealing with the recovery of endangered and threatened species in the San Francisco Bay tidal marsh is due to be published by the U.S. Fish and Wildlife Service in the very near future. I am not sure that it will be available in time to inform the proposed General Plan, but I request that the City do whatever is possible to contribute toward recovery efforts. If vegetation such as pickleweed, for instance, exists in or could be restored into Area 2 or Area 4, then paving over or otherwise drastically modifying such areas would not be contributing to the animal's recovery.

Bradley-2-54 cont.

Page 4.3-30

Continuation of remarks related to Figure 4.3-1

As pertains to the Salt Marsh Wandering Shrew, it is possible that biologists at the Don Edwards National Wildlife Refuge have documented the animal in the Mayhew Landing unit. If the City has not assured that their consultants actively pursued solicitation of information from the National Wildlife Refuge, I would request that this be done before the submitting to the City Council, the final draft of EIR for certification.

As pertains to the Townsend's Big-eared Bat, I do not know much. If the City's biological consultants have not checked with Dr. ??? at San Jose State University, then I request that they try to confer with this bat research regarding the status and distribution of bats in the study area.

Page 4.3-31

In discussing the data in Table 4.3-1, the DEIR states that a population of the sensitive Congdon's tarplant occurring in Newark "is not expected to remain for another five years"? Please include in the final EIR a reference to this conclusion. Who is making this assertion and on what assumptions is it based? Please provide this information in the final EIR. No matter if true, it appears to make short shrift of a very sensitive plant resource. It somehow attempts to justify a finding of "no real significance." I suggest that if we have a population of any sensitive biological resource and it is not projected into the plan horizon, this makes it very significant.

Bradley-2-55

I request that the final EIR give citizens and decision-makers an idea of what "sensitive natural community" designation entails and why such communities are important ecologically and on a local scale by including appropriate text.

Page 4.3-32

By the time the DEIR gets into describing the Standards of Significance in the biological resource section, I still have not seen that the author(s) have addressed the "natural" ecosystem and the important and valuable landscape services it provides the human community. Section 4.3 appears to focus on the animal and plant communities. Perhaps a discussion of the impacts on the other component of the natural ecosystem, namely, that abiotic dimension is touched on under hydrology or air quality. I would ask that the author of the DEIR find a way to discuss the big picture ecosystem and the invaluable services it supplies the human population. The Final EIR would be seriously deficient if discussion of the ecosystem as a whole is omitted. And perhaps it is dealt with in a piecemeal fashion while discussing other elements like air quality, groundwater supply, flood control, and natural open space. But the biological dimension of each of these "non-living" resources is critical. The vegetation in salt marshes can be critical in mitigating storm surges at extreme high tides, the vegetation and soil bacteria significantly affect the quality of water that seeps in our groundwater supply. These are critical resources of the human environment that provide us much of economic value and impacts from developments can compromise the integrity of these ecosystem processes resulting in many environmental problems that we are still trying solve at tremendous expense in human health and wealth (e.g. air pollution, ground water contamination, toxic chemical dumps, land subsidence, flooding, etc.).

Bradley-2-56

In the first sentence after the heading Standards of Significance, the authors use the term "cultural." I wonder why the word "cultural" is being used as it generally related to a specific subset of resources in the human environment. In fact, I did not find the term "cultural" in Appendix G of CEQA in the context it is being used here. I this a typographical error?

In the fifth standard, "Conflict with any local policies or ordinances protecting biological resources...", is the Bay Conservation and Development Commission's Bay Plan considered "local"? Does Alameda County have any local policies aimed at protecting biological resources which might be at odds with this proposed General Plan Tune-up?

In the sixth standard, I ask the question: Can the Don Edwards San Francisco Bay National Wildlife Refuge's Comprehensive Conservation Plan be construed as an HCP? I have heard that a consortium of cities, agencies, and Santa Clara County have adopted a Habitat Conservation Plan. If so, is this HCP relevant? It is my understanding that the Pacific Gas & Electric Company is developing an HCP. If so, would this be relevant to this standard of significance?

Under Section 4.3.3 Impact Discussion, the DEIR states in BIO-1 that the "Buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area." This is neither a discussion nor an analysis of impacts in the DEIR at this point. The statement in BIO-1 is a conclusion. By placing it in this position in the text, it makes the subsequent discussion/analysis appear to be a post-facto justification for the conclusion. I request that the statement in BIO-1 is positioned in the final EIR at the end of the discussion and analysis leading to its conclusion. I also request that the same reformatting of all of the "conclusions" related to the significance of impacts throughout the DEIR be placed **afte**r the discussion and analysis. The discussion and analysis of impacts in an EIR should be a

Bradley-2-57

straightforward, objective exposition exploring the potential effects the proposed action may have on the environment. The discussion and analysis should appear as an explanatory logic leading to a conclusion regarding significance of impacts.

The discussion and analysis are filled with conditional modifiers. If I am reading it correctly, it appears to say that (1) Given that Newark is already a pretty urbanized place, no one considers it to have any real wildlife habitat value; and (2) Buildout of the Plan could potentially result in both direct and indirect adverse impacts to sensitive plant and wildlife species. These statements do not appear to complement each other.

Bradley-2-57 cont.

Page 3.3-33

The DEIR states that "The federal, State, and local regulations described in Section 4.3.1.1 of this chapter would protect special-status species present or potentially present within the Plan Area and compliance with these regulations would minimize potential impacts." This is theoretically true, but who assures compliance? And although potential impacts might be minimized, who is saying they would be minimized to a level of non-significance? Also, I am concerned that the City seems to be more interested in meeting the bare minimal compliance. From a wildlife habitat perspective, our goal is protect the habitat, not just the sensitive animals. Converting open space areas into developed urban residential areas reduces the opportunities for assuring adequate space for plants and critters. By maximizing urban development we would be minimizing open space within the City and reducing opportunities for citizens to connect with nature via walking and bicycling to the natural spaces. We are making it impossible for our children not to be what the author Richard Louv refers to as the "last child in the woods."

BIO-1 is one of innumerable instances in the DEIR where it is being concluded that impacts to biological resources are being reduced to a level of insignificance based on compliance with other agencies' regulatory jurisdiction. But this is I think very flawed thinking and it is a flawed approach which applies to most of the innumerable instances in the DEIR wherein the conclusion of "no significant impact" is being made.

Bradley-2-58

At a Planning Commission Work Session on September 24, 2013, the City's consultant was explaining to the planning commissioners the progress that had been made to date on updating the General Plan. He explained how the consultants (and I am not sure at whose direction) "cut and pasted" in a wholesale fashion all the mitigation measures from the Specific Plans for the Dumbarton TOD and the Areas 3 and 4 Projects directly into the policies and actions making up the latest draft version of the General Plan. He explained to the five or six members of the Planning Commission who were present for the Work Session that by doing the cut-and-paste job it was making the new proposed General Plan a "self-mitigating" Plan. The idea which pervades the entire DEIR that the General Plan is somehow self-mitigating because it has incorporated the mitigation measures from other project Specific Plans is simply false. Each development project is unique. Each development project will have its unique mitigation measures, sometimes incorporated into its project proposal or imposed upon it by a City or State or Regional State agency that has jurisdiction. The mitigation measures are specific to the project Specific Plans. They may be and sometime are measures found in other Specific Plans, but when a project is finally approved by a land use authority such as the City Council, the mitigation

Bradley-2-59

measures are not policies, not directives, not recommendations or best management practices, they are in fact legal **requirements** with which project proponents must comply with. To assert, as I think the City's consultant did, that the mitigation measures as expressed in General Plan policy terms result in some type of "self-mitigating" General Plan whereby almost any significant impact resulting from proposed projects can be reduced to a level of non-significance is specious and fallacious.

Besides the uniqueness of each proposed project and whatever final mitigation measures it may entail, there is the flaw I think in assuming that "policy" equates to "requirement". I am not sure how this holds up in a court of law. But in everyday reality, exceptions to policy are commonplace. I think in land use planning they are referred to as "variances." It is my opinion, therefore, that if we have valid reasons to assume that exceptions to policy occur, then we cannot presume or conclude that exceptions will not occur to "self-mitigating" policy. We cannot in effect be assured that project impacts will be reduced to levels of non-significance simply because we boast "self-mitigating" policies. If this line of reasoning is incorrect, I would request that you provide me with an explanation of its defectiveness. If it is not, then I request that all of the conclusions regarding impacts being reduced to a level of non-significance based on the "self-mitigating" character of the proposed Plan be revised to either indicate they are or may be significant, or revised to state that there is simply not enough information to make a determination at the programmatic plan level as to the level of significance of impacts resulting from future proposed projects.

Bradley-2-59 cont.

Page 3.3-34

In explaining mitigation measures associated with the City's Housing Element and the Dumbarton TOD Project, the DEIR states that preconstruction surveys and additional surveys would require avoidance and relocation measures. I would point out that avoidance of direct impacts often does not adequately offset adverse impacts but serves only to isolate the resource. Such "mitigation" often focuses on the minimal avoidance measures and does little or nothing to contribute to the long-term survival of the resource.

Bradley-2-60

The DEIR identifies the Policy CS-1.3 in the draft proposed Plan related to interagency cooperation. It call for the City to "participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas." The DEIR does not discuss or reference to what extent the City of Newark has participated in cooperative efforts with the National Wildlife Refuge or the Fish and Wildlife Office of the U.S. Fish and Wildlife to encourage long-term preservation of the baylands for instance. The DEIR does not attempt to share with the public the extent to which this policy been implemented? Did the 1992 General Plan contain such a reasonable policy? The DEIR does not attempt to describe what "participate in cooperative efforts" means. The City, for instance, has a representative who sits on the Bay Conservation and Development Commission. Does this activity pass for "participate in cooperative efforts..."? Does participating in meetings with the proponents of the Dumbarton Rail Project, a project which could have numerous adverse impacts on biological resources of our baylands, agreeing to support the type of high density community which could facilitate the funding of the project, constitute participation in cooperative efforts to encourage long-term preservation of the

Bradley-2-61

baylands? I request that the City revise the DEIR to include better descriptions of what its policies mean in practical everyday language and some relevant examples. This should not prove too difficult if in fact the City has been implementing the General Plan policies. **Bradley-2-61 cont.**

The DEIR refers to Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. It appears that a number of citizens have been telling the City that much of the land in the proposed DTOD and Areas 3 and 4 Projects are very sensitive natural areas. Historic baylands in Area 4 are considered essential to the expansion of the area under the management of the National Wildlife Refuge. Conservation of both areas could contribute to assuring the long-term conservation of baylands especially given sea level rise. **Bradley-2-62**

Page 3.3-35

It appears that Action CS-2.B is missing.

In the section of the DEIR describing Action CS-2.C: Impacts on Special Status Species, paragraph (3)
states that "As appropriate based on the results of the preconstruction surveys, construction limits shall be clearly flagged as directed by the biologist to ensure that impacts to sensitive biological resources are avoided or minimized to the extent feasible." This reminds me of the inadequate measures being taken to protect the roosting and rookery areas of the islands in the manmade lake in the Lake neighborhood: One of the three island rookeries has been allowed to become connected to the shoreline making it accessible to mammalian predators. The construction crews have clearly flagged the limits of construction but have done nothing to protect the sensitive resources on one of the islands where a great many egrets and herons nest and roost.

In the same section, under paragraph (4), the DEIR states that the City "shall require ...." I appreciate the use of the word "shall" in this case as it demonstrates the City's commitment to cooperating with these agencies. These are all excellent (and nowadays standard) mitigation/best management practices. **Bradley-2-63**

Toward the bottom of this page the DEIR states that "Applicable federal, State, and local regulations, together with proposed Plan policies and actions listed above would reduce potential impacts to special-status species that could result from buildout of the Plan, compliance, and implementation to the maximum extent practicable. I think that the phrase "compliance, and implementation to the maximum extent practicable" is better placed before the action part of the sentence. Thus: "...and actions listed above, including compliance and implementation to the maximum extent practicable, would reduce…".
I also request that the word "practicable" be revised to "feasible."

Page 3.3-36

With respect to BIO-2 in the DEIR, please see my remarks and requested revision above for BIO-1. These "headings" (which I pointed out above ought not to be "headings") should reflects **Bradley-2-64**

the conditional nature of "self-mitigating policy/measures. Thus: ":…would result in less-than-significant……**if** mitigation policies and measures are fully implemented."

In the third paragraph on this page, the DEIR states that "Previous environmental review for the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified impacts to riparian habitat and sensitive natural communities in the Dumbarton TOD Focus Area and in the Southwest Newark Residential and Recreational Focus Area, including mitigation measures to address those impacts." I request that the final EIR state whether or not these referenced mitigation measures received concurrence and approval from the relevant regulatory agencies. If not, then those measures may not be enough to reduce the impacts to a level of "no or less-than significant." To be transparent, again I request that all assertions of "no or less-than significant" impacts should clearly reflect their conditional status.

In the fourth paragraph on the page the phrase "...was determined reduce the impacts" the word "to" should be inserted after "reduce."

In the fourth paragraph, the DEIR states that "Under Mitigation Measure 4.3-6, wetland plant and animal populations shall be relocated from any impacted wetlands." Were the direct and indirect impacts of plant and animal relocation identified and discussed? If not, then I request that a discussion and analysis of this measure be included in the pertinent environmental documents.

Bradley-2-64 cont.

In the fifth paragraph, the DEIR states: "The Areas 3 and 4 Specific Plan EIR identifies Impacts BIO-1 associated with impacts to riparian habitat. This impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measures BIO-1.1 through BIO-1.2B, which require wetland and habitat avoidance to the maximum extent feasible and either on-site wetland creation (at a ratio of 1:1) and enhancement (at a ratio of 0.5:1) or off-site mitigation banking at a ratio of 1.5:1." I have never heard of a 1:1 ratio for wetland/riparian mitigation except perhaps in cases where the creation of replacement wetland/riparian areas has been successfully implemented before project construction begins. Usually wetland mitigation ratios between 3:1 and 5:1 are the case. As I stated previously in this letter, each proposed project is unique, each proposed project site is unique, and the determination of mitigation ratios usually hangs on the nature of the impacts, their direct and indirect effects, their permanent or temporal duration. Again, I request that the final EIR state whether or not these referenced mitigation measures received concurrence and approval from the relevant regulatory agencies. If not, then the measures described above may not be enough to reduce the impacts to a level of "no or less-than significance."

Page 3.3-37

The DEIR states that "Impact BIO-10, regarding indirect impacts to waterbirds associated with the loss of wetlands, would be mitigated to less-than-significant levels with the implementation of Mitigation Measure BIO-10.1, requiring a mitigation plan for creation or enhancement of replacement wetlands." I would remark that a mitigation plan in and of itself is not adequate or suitable mitigation. It is the implementation of an appropriate and regulatory agency-acceptable

Bradley-2-65

plan that is paramount. Therefore, the measure in and of itself would not mitigate the referenced impacts. I request that the Final EIR be revised on this point to reflect the reality.

Has this measure ever been implement in the history of the urbanization of the Newark area? Has it occurred in any manner for the proposed DTOD or Area 3 and 4 developments?

With reference to Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation. To what extent was this accomplished by the City before the Dumbarton TOD or Area 3 and 4 proposed developments? I request that one or two examples be included in the final DEIR in order to give citizens like me an idea of open space that already has been set aside by the City and managed to ensure long-term conservation.

There is a typographic mistake above: "CS1.A" should be CS-1.A.

Pertaining to "Policy CS-4: Wetlands Delineation. Encourage the owners of large potentially developable properties to enter into early discussions with appropriate agencies conduct wetland delineation studies. Such studies should be used to identify areas to be conserved as permanent open space, as well as appropriate mitigation measures to offset any wetland impacts." This is probably a good policy, but it does not actually require anything of development proponents. Who is considered an owner? What "large potentially developable properties" still remain in Newark? It is not clear in the policy just who ought to conduct the wetland delineation studies? The project proponents? the agencies? both? How "early" is early? I suggest that the policy be revised in the Final GPT to provide more specific guidance as to timing of such well intentioned discussions and ways they will pursue to determine if in fact the City "encouragement" is resulting in the desired objective. Have the proponents of the Dumbarton TOD and Area 3 and 4 Projects already begun such discussion with the "appropriate agencies"? Have they conducted wetland delineation studies yet?

Pertaining to "Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas." I request that the policy be revised per my previous comment regarding specification of the timing of the action and how they City is to monitor the effectiveness of this policy.

Bradley-2-65 cont.

There is a typographic mistake: CS2.B should be CS-2.B.

Page 3.3-38

Pertaining to "Policy CS-3.6: Abating Illegal Dumping. Prohibit and abate the dumping of debris and refuse in and near wetlands and waterways, and the illicit discharge of pollutants into the storm drain system." The City says it will do this, however, they appear not to have sufficient staff or on-call contractors to accomplish this. Another problem is that they will often "pawn" off the responsibility and work to some other potential accountable agency, such as Caltrans, Alameda County Water District, etc. This was the experience that staff at the National Wildlife

Bradley-2-66

Refuge often had in the matter of illegal dumping in the vicinity of the Mayhews Landing unit of the Refuge along Thornton Avenue. It was extremely difficult to get the City to go to dump sites in a timely fashion. **Bradley-2-66 cont.**

Farther along on this page the DEIR states that "Once that map is "verified," the full extent of waters of the U.S./State would be known and the extent of impacts on regulated areas ascertained." The wetland delineation process and "verified map" are distinct from "ascertaining the extent of impacts". Please revise the DEIR (and proposed Plan, if appropriate) to reflect this fact. **Bradley-2-67**

Page 3.3-39

There is a grammatical mistake, an incomplete sentence or "typo". Thus " A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007." should probably be "...was received from...".

Toward the bottom of this page the DEIR states**: "**Significance Before Mitigation: Less than significant." This statement in facts occurs throughout the DEIR. What does this line mean? It appears to be wrong because it is concluded above (and in numerous places throughout the DEIR) that it is compliance with the **mitigation policies and measures** that would lead to meeting a "less than significant" threshold. Am I correct? The implementation of these policies and actions comes **after**, not before, the finding in the DEIR as to "meeting a 'less than significant' threshold." If this is the case, then please revise the "Before Mitigation" phrases in the Final EIR to read "After Mitigation". *Please do this for every such finding in the DEIR where this is the case.* **Bradley-2-68**

Page 3.3-40

The DEIR states that "It was found that this impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measure 4.3-6, which requires a wetland delineation to be conducted." It is difficult to see how merely the performance of wetland delineation would be adequate mitigation for impacts to waters of the U.S. unless of course the wetland delineation shows that no impacts actually occur in the USACE's jurisdiction. Please clarify this matter in the final EIR. **Bradley-2-69**

The DEIR states that "... or if avoidance is not feasible, that a program be prepared and approved to create and enhance on-site wetlands or create suitable wetland resources off-site." It is difficult to conceive how the mere preparation of a program to create and enhance on-site wetlands... could achieve adequate mitigation. It would be the requirement of successfully implementing such a program that would result in real mitigation. And I would suggest that the City, if the regulatory agencies have not, insist that such mitigation programs are fully assured by bonding. Some developers walk away from unsuccessful implementation of mitigation measures/commitments and neither the City nor the agencies have the personnel to assure compliance. Financial bonding would accomplish such contingencies. **Bradley-2-70**

It is difficult to understand how any permanent loss of wetlands situated so relatively close to the baylands could be adequately mitigated for by such measures. It may sound reasonable but it is likely not very practical. **Bradley-2-70 cont.**

The DEIR states that "...Mitigation Measure Bio-1.2B, requiring, as an alternative to Measure Bio-1.2A, the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank or other private lands within 10 air miles of the affected area and along the eastern shore of south San Francisco Bay within the same geographic watershed." I would point out that the fact of sea level rise poses another challenge in terms of any flat, undeveloped open space that is close to the existing Bay shore or salt ponds. The best use for such land may be to serve as buffer to protect existing urban infrastructure. **Bradley-2-71**

At the bottom of the DEIR states that "Additionally, the proposed Plan includes the following goal, policies, and actions that address potential impacts to wetlands, including waters of the US:... It appears the following section (from this point forward to page 4.3-42) is redundant. It is repetition of policies and measures that already were enunciated. Hopefully it was not intentional but a case of inadvertent mis-copy-and-paste.

Page 3.3-41

Pertaining to Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. Does this policy include those lands within the Refuge's "acquisition boundaries" which were identified over 20 years ago as lands worthy of consideration for inclusion within the boundaries of the National Wildlife Refuge at some future date? This is the last relevant open space within the Newark City limits. It will be too late to directly contribute to the National Wildlife Refuge if the City allows appropriate open space to be developed for other urban uses. This policy consequently seems specious. One wonders, given the fact that the acquisition boundaries have been known since 1989, why it is not a reasonable alternative to be considered. Certainly there are citizens in Newark who would support this general plan vision and land use alternative. **Bradley-2-72**

Land Use

Page 4.9-2

With regard to the Dumbarton TOD Specific Plan, I wonder to what extent the existing General Plan had any influence. What is the sense of having a General Plan if the City Council tends to amend it each time a new development proposed that is not compatible with the current Plan? The General Plan is intended to establish direction and principles to guide growth and sustainable, long-term development. I plead ignorance. Was the word "sustainable" used in the 1992 General Plan? **Bradley-2-73**

Page 4.9-5 **Bradley-2-74**

Pertaining to the section of "Undeveloped Lands" in Newark, the salt evaporation ponds are only "undeveloped" in the sense that there are not buildings or paved streets. The ponds were built. The levees surrounding the ponds were built. They require a substantial amount of expensive, on-going maintenance.

Bradley-2-74 cont.

Page 4.9-7

Regarding Land Use Action T-2.B: Cedar Boulevard Pedestrian and Bicycle Trail, I think this would be a great project, really contributing to the pedestrian/bicycle-friendly goal. This could also provide connectivity with the commercial facilities to the north of Jarvis and to the west of Thornton and also access to the Dumbarton Bridge and the regional Bay Trail on the Don Edwards San Francisco Bay National Wildlife Refuge.

The DEIR states under LU-2 that "The proposed Plan would not conflict with an applicable land use plan, policy, or regulations adopted for the purpose of avoiding or mitigating an environmental effect." The DEIR further states that "Per State law, the General Plan is the primary planning document for the community. Once adopted, the proposed Plan would replace the 1992 Newark General Plan. The Area 3 and 4 Specific Plan and the Dumbarton TOD Area Specific Plan would remain in force. Were these proposed developments actually consistent with the 1992 General Plan? or did they require major amendments to the General Plan and Zoning Ordinance? Again, I wonder if this General Plan Tune-up is not simply an bureaucratic exercise to bring what was the primary planning document for our community into conformity with inconsistent revisions and amendments previously recommended and adopted by the Planning Commission and City Council, respectively? Is there some truth in what I am saying?

Bradley-2-75

Page 4.9-8

With regard to Action LU-7.B: Street and Path Network, has there been an economic analysis done to indicate whether or not the City will have enough revenue to be responsible for the operation and maintenance of these public streets? How is all the residential development in this proposed project consistent with smart growth principles? Will we not be creating a relatively isolated residential community west of the railroad tracks with no locally available goods and services unless residents get into cars and travel?

Further reading of this section indicates that the Zoning Ordinance will need to be updated to ensure consistency with the proposed Plan after adoption. So the Zoning Ordinance has not been amended yet to bring the Dumbarton TOD and Area 3 and 4 Projects into conformity with a General Plan. These are major changes. Why wasn't the General Plan updated before approvals were granted? There is a great deal of emphasis in the proposed Plan to revitalize our existing community. One would think that the City ought to be trying to discourage the development of new neighborhoods that will be more or less isolated (divided?) from the existing community.

With respect to the section of the DEIR that begins on this page with "As described in Chapter 4.6, Greenhouse Gas Emissions, of this Draft EIR, the proposed plan would not conflict ... ", I am not sure why this paragraph is stated here. It appears out of context. Is it somehow meant to imply that the City's proposed land uses will be in compliance with regional GHG emissions

Bradley-2-76

reduction strategies? Building more pedestrian and bicycle-friendly infrastructure might advance such strategies, but the building of new medium density residential, relatively isolated from commercial/retail outlets and local transportation infrastructure will not. Buildout of the proposed Plan, as the DEIR shows, will certainly translate into more VMT and thus GHG emission. But then the City appears to put its collective head in the ground and proceed with unwarranted growth and development by adopting a resolution of "overriding consideration."

When the DEIR claims that "Overall, implementation of the proposed Plan would not conflict with an applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect and associated impacts would be less than significant...", I'm not sure this is entirely accurate given the goals and policies of the BAAQMD and MTC/ABAG and the proposed residential development in parts of Area 4. There are, in fact, other more regionally and locally beneficial uses for Area 4 lands that would result in less traffic and consequently less VMT and greater offset of GHG. This is one of those ecosystem services, not discussed under Biological Resources that natural open space could provide. Could the 960+ acres of open space be translated into its beneficial contribution to achievement and maintenance of air quality?

Here it is again, the statement that before any mitigation, the level of significance is "less-than-significant." This language is confusing when there is so much talk above about mitigation policies and actions.

Again, the statement found on this page "Significance Before Mitigation**:** Less than significant" appears contrary. Should not the statement read "Significance **After** Mitigation"?

Regarding the assertion that "Conflicts with the Habitat Goals and the Basin Plan are discussed in Chapter 4.3, Biological Resources, of this Draft EIR ...", conflicts with the Habitat Goals were not discussed in Chapter 4.3. They were not even identified. The only information in Chapter 4.3 regarding any conflicts was a sentence stating that no official agency had formally adopted the "habitat goals" plan or guidelines, and therefore presumably the City was not required to describe and discuss possible conflicts with the Habitat Goals? As a matter of fact, regulatory agencies such as the Bay Conservation and Development Commission do use the Habitat Goals document to guide their implementation of the Bay Plan. To me, this type of issue avoidance in the DEIR demonstrates the City's lack of sincerity in the realms of conservation and sustainability.

Bradley-2-76 cont.

Page 4.9-9

The DEIR enumerates some of the "numerous policies and actions [in the proposed Plan] intended to minimize such [inevitable] disturbances and support the goals of the [National Wildlife Refuge's Comprehensive Conservation Plan] CCP. But the DEIR does not appear to describe or analyze any of the "inevitable" conflicts that might result from the proposed Plan. It makes reference to "limitations on off-leash dogs" and the "avoidance of excessive night lighting," but gives the reader neither description nor analysis of how these might have adverse effects on the protection and conservation of wildlife. I could find no mention of "cats" in the DEIR although the depredation of wildlife resulting from house cats in urban areas is well known and researched. Although most of the policies and actions referred to on this and the next

Bradley-2-77

page appear to be very laudatory, they are not discussed in any detail. Nor do any of them address the impacts of urban land uses on the long-term protection and preservation of the baylands and other open space habitats within the current expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge.

Bradley-2-77 cont.

Page 4.9-10

One of the policies referred to in my previous comment is "Policy CS-2.6: Salt Pond Management. Encourage the management of salt ponds to enhance their value for wildlife habitat and recreation. In the event that salt production ceases, conduct a Specific Plan to explore a balance between development and preservation of important wildlife and open space resources cited in the DEIR." What exactly does this imply? Could the wording of this policy be revised to better reflect the refuge's goals in its CCP or even more broadly, given the limited planning horizon, its [the National Wildlife Refuge System's] mission statement?

This policy also appears contradictory/inconsistent as the urban development of Area 4 does nothing in the way of encouraging long-term preservation of the baylands etc. Guess it's the difference between narrowly conforming with existing wetland protection laws and promoting landscape open space resource preservation.

One of the CCP-supportive actions, Action CS-2.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives." This latter provision totally limits the scope of the City's future support, given that the City has been trying their utmost to incorporate into the Plan update the urbanization of the two largest remaining areas of open space.

Bradley-2-78

The City also cites as an action to support the Refuge's CCP the following: "Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay." But this an embarrassingly belated, practically irrelevant gesture of support since the City, over the past few years, has been advocating and promoting the residential and commercial development of the last remaining open spaces in the City.

Page 4.9-11

In the DEIR's conclusion (appearing at the top of this page) that the "overall, implementation of the proposed Plan would result in a less-than-significant impact with respect to conflicts with the CCP," would you please state in the final EIR if City planners or their consultants formally or informally consulted with Refuge personnel to seek concurrence on this important matter?

Bradley-2-79

With regard to the statement in the DEIR that "BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer

Creek ...", it is extremely difficult locate this jurisdictional landmark on the map provided in the DEIR. In the final EIR, would you please more clearly delineate the on the map for this reader. I don't see the bridge and I'm not sure if I'm looking at the referenced "bend in the Plummer Creek channel."

The statement in the DEIR to the effect that "Neither the adopted Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs" is very good news indeed. Although I cannot distinguish in sufficient detail the boundaries of these historic duck clubs, I presume the hunting was carried out in wetlands and nearby uplands. Just how close to the duck clubs is the City anticipating development?

With regard to the policy statement in the DEIR, namely, "Policy CS-1.2: Conservation of Sensitive Areas. Support the conservation of environmentally sensitive areas and unique natural resources in the city," I believe there is a strong case to support addressing Area 4 as "unique natural resources" in that it pretty much represents the last remaining intact natural open space area in the City of Newark and as such are valuable and unique de facto? All the open space west of the railroad tracks in Area 4 it has unique value as open space. There is Shoreline Lake and the Silliman Complex but these are dedicated to the preservation and conservation of natural open space. I urge the City Planning Commissioners to recommend dedicating as much of Area 4 as possible.

Perhaps finding a way to implement the proposed "Policy CS-1.3: Interagency Cooperation. Participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas" before proceeding with or during the on-going development of the Areas 3 and 4 Project would achieve the preservation of this unique and valuable resource.

Bradley-2-79 cont.

Page 4.9-12

It is on this page that the DEIR concludes that "Under the proposed Plan, the land use designation and zoning applicable to the duck clubs would remain unchanged as Low Density Residential. No development is envisioned on the location of the duck clubs, nor could any development of these areas, to the extent they are managed wetlands as defined under the McAteer-Petris Act, occur without a permit from BCDC or any other agency with jurisdiction over these areas. Further, as BCDC policies do not explicitly prohibit development on these locations and as none is envisioned in the proposed Plan, conflicts with the Bay Plan would be less than significant." In the finalization of the proposed Plan, I suggest that a policy directive be developed that would result in converting all those portions of Area 2 and Area 4 where development is not envisioned from the existing "low density residential" zoning to an "open space" designation. It just makes good sense; it the right thing to do. Why wait until it would require another round of amending the General Plan and Zoning Ordinance.

I am still uncertain as to how the City can, in the proposed Land Use Planning element, come to a finding of "less than significant" **before** any required mitigation is determined. Who knows if impacts will be able to be mitigated to a level of "less than significance"?

Bradley-2-80

Page 4.9-13

The DEIR states that "... buildout of the proposed Plan would not contribute to a cumulative impact associated with division of an existing community." No, but what is the rationale behind creating an isolated community? Cherry Avenue serves as a clear and formidable separation of residential neighborhoods from commercial/industrial, except in the southern portion of the Newark Old Town area. If dividing an existing community is not advocated, then why would we want to promote the creation of a divided Newark community? By locating residential units in Area 4, the City would actually be creating a fairly isolated residential enclave. This seems contrary to policies in the proposed Plan for improving and cultivating a greater sense of community.

At the bottom of this page, the DEIR tersely states that "The Plan would not result in any significant Plan-specific or cumulative impacts related to land use and planning and therefore no mitigation measures are required." But would it not be more honest to state something to the effect that: Since all adverse impacts have been reduced to a level "less-than-significant" through policies and actions that avoid or minimize impacts to the maximum extent practical, no *additional* mitigation measures are required? Because throughout the DEIR there is reference made to compliance with whatever, yet-to-be-determined mitigation measures required by the numerous, non-City regulatory agencies, the statement regarding cumulative impacts of land use that "no mitigation measures are required" is very distressing and confusing to say the least.

Bradley-2-81

Page 4.10-1

There is a typographical error: "beings" in line 2 should probably be "begins".

Bradley-2-82

Page 4.10-4

How exactly is one supposed to "read" Table 4.10-2? The numbers do not match any text in several instances. There are several dBA figures that are not associated with any source. Please revise for the Final EIR.

Page 4.10-9

Under Vibration Standards the DEIR that "For industrial uses, the City of Newark likewise requires that no vibrations be perceptible beyond the boundaries any particular site, *with an exception for vibration caused by temporary construction*." Should not even temporary construction noise be mitigated to the maximum extent practical because in many cases "temporary" construction can go on for days and weeks?

Bradley-2-83

Page 4.10-10

The DEIR states that "Figure 4.10-1 shows the existing 65 dBA CNEL train noise contours, along with those from motor vehicle traffic." I do not see any noise contours delineated. It displays noise monitoring point locations, not noise contours.

Bradley-2-84

Page 4.10-22

The DEIR cites "Action EH-6.A: Noise Ordinance – Limits on Noise Levels. Draft and adopt a Noise Ordinance that establishes acceptable noise levels and standards, as well as provisions for enforcement and penalties in the event these levels are exceeded." As with many other "actions" referenced in the DEIR, it does not appear that the planners have recommended any target dates for completion of the recommended actions. Please consider including "target dates for completion" of all actions in the proposed Plan.

Bradley-2-85

Page 4.10-28

The DEIR cites "Policy EH-7.6: New Noise Sources. Require new developments that have the potential to create long-term noise increases to mitigate potential impact to off-site receptor properties." Will this policy apply to on-site open space resource receptors, that is, the wildlife and the folks who may be using the open space? If not, please include in the final Plan policy that would address receptors occupying open space.

Page 4.10-35

In its conclusion regarding Noise Impacts, the DEIR states that Although the most effective mitigations such as soundwalls or earthen berms may theoretically be capable of reducing increases to ambient noise to levels below the above standards, such reductions cannot be guaranteed; and, in many cases, other considerations will prevent the use of these noise-attenuating features. Therefore, there are no additional measures available to reduce the associated impacts to a less-than-significant level....No feasible mitigation measures are available to reduce noise impacts to less than significant levels, impacts would remain significant and unavoidable." I am not sure that I understand what's being asserted. Cannot the noise-reducing mitigation measures be guaranteed? Many measures are proven to reduce noise impacts. Although they may not reach target levels, they are better than nothing. What other considerations? for example? might preclude the use of noise-attenuating features. The conclusion that there is "no feasible mitigation measures available to reduce noise impact to less than significant is sad, very sad. It is a difficult assertion to prove, especially given our discretion to regulate land use and setbacks, and so forth. I am suspect that when you attempt to meet the standards set by regulatory agencies, it will find that much the same, namely that it is not possible to mitigate every impact resulting from proposed development to a less than significant level.

Bradley-2-86

Page 4.12-5

The DEIR cites "Action CSF-4.F: Improving Fire Response Capacity. Ensure the provision of sufficient facilities and additional fire personnel, to respond to the demand created by new development." Of course this sounds like a responsible policy, however, in the discussion of Page 4.11-4, it claims that there will not be a need for new facilities, and it does not mention increases in fire personnel. It is hard to comprehend that the proposed increase in number of residents will not require additional personnel and equipment and probably facilities. How often do citizens hear statements to the effect that an agency "does not anticipate that this increase

Bradley-2-87

would require the construction or expansion of facilities," and then 10-15 years down the line hear from the same folks that such expansion is needed? or that a rehabilitation is needed and facilities will be expanded at the same time? It does not seem to make common sense that the increase in service population would be accommodated using existing stations? And how about personnel and equipment? Or does planning skip over those issues because CEQA may not require it? Farther down on this page, under the discussion regarding Cumulative Impacts, the phrase "modification of existing facilities" is introduced. I did not see that idea in the above discussion. Of course such modifications can be very expensive.

Bradley-2-87 cont.

Page 4.12-6

Under a discussion of Newark Capital Facilities Fees the DEIR states that the fees as they pertain to residential development need not be paid to the City until the issuance of the Certificate of Occupancy Why isn't the fee paid before construction in the case of residential development? It would appear that needs for law enforcement would arise (with occupants moving in, and before) and fees not being received until such time as would result in a lag before they could be used to construct or modify facilities and secure the personnel needed to address the protection of homes and residents?

Bradley-2-88

Page 4.12-15

In section 4.12.4 PARKS AND RECREATION, the DEIR "describes the regulatory framework and existing conditions, and the potential for environmental impacts related to parks and recreation." There is no reference in this major heading to Open Space. However, above it was referred to as a mandatory element. There does not appear to be any acknowledgment of open space per se nor an impact analysis…. In its discussion of parks, the DEIR offers no analysis of space that would allow opportunities for unstructured play. Perhaps the planners are taking a minimally required perspective, namely, parks and school grounds, period. There is little if anything setting the background as to the value of open space, why it is a mandatory element, and so forth. Again, I would suggest that in as much as the proposed Plan could eliminate much of the remaining open space in the City and that much of that would be on lands adjacent to baylands that are fully capable of sustaining bay restoration.

On Page 7 of the draft GPT it states that the City has expanded two of the state-mandated categories. The Open Space, it stated, was expanded to cover Parks and Recreation. So far in this DEIR, it appears that sodden parks and playing fields are the only kind of park land the DEIR is focusing on relative to this mandatory Open Space element.

Reference is made under the DEIR description of Regional and State Park to the Don Edwards San Francisco Bay National Wildlife Refuge encompassing 30,000 acres. The reader should probably know that half of the 30,000 acres is located on the west side of the Bay, and that most of the remainder on the Newark side of the Bay is not accessible by citizens due to Cargill salt operations. I suggest in discussions of this sort that the DEIR consider addressing acreage in terms of available miles of accessible trails.

Bradley-2-89

Page 4.12-22

The DEIR states that "Additionally, continued implementation of the parkland dedication requirements established in the Municipal Code would ensure that existing parks or public facilities are well-maintained and improved as needed." Inspection of almost any park in Newark would show that policy and ordinances do not assure that existing parks or public facilities are well-maintained and improved when and as needed. For example, the exercise equipment in the Lakeshore park have needed replacement for several years. The paved trail providing accessibility has been in various stages of disrepair for several years, as has been the park irrigation system. The City is slowly, extremely slowly, addressing the huge backlog of maintenance repair and replacement needs it has. How can the City Council and City Planning Commissioners go on promoting new facilities when we do such an inadequate job of maintaining what we already have? **Bradley-2-89 cont.**

Page 7-1

I do not think this is accurate. In fact the federal government owns much of this property in fee-title. Leslie Salt Co. and its successor Cargill Inc. have salt resource extraction rights in perpetuity. Nonetheless, the salt evaporation ponds function as significant migratory water bird and waterfowl habitat. The designation Salt Harvesting does perhaps more accurately reflect that nature of activities from a layman's perspective; however the designation Agriculture / Resource Production does help the layman understand why the land is eligible for Williamson Act benefits. I am not sure why the designation name change for this acreage. From another perspective it could be designated migratory bird habitat. **Bradley-2-90**

This concludes my comments. Again, I urge you to consider carefully the suggestions I have made and address the questions I have raised.

Sincerely,

John R. Bradley

COMMENT LETTER # Burrows

Terrence Grindall
Community Development Director
City of Newark
510-578-4208
510-673-5837

-----Original Message-----
From: mattman41@hotmail.com [mailto:mattman41@hotmail.com]
Sent: Thursday, September 26, 2013 11:44
To: TERRENCE GRINDALL
Subject: Please protect Area 4 from development - another failed golf course project?

MattM Burrows
3364 La Mesa Drive, #11
San Carlos, CA 94070-4211

September 26, 2013

Terrence Grindall
Community Development Director, City of Newark

Dear Terrence Grindall:

Dear Mr. Grindall,

I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay. **Burrows-1**

I read the financial analysis of the various scenarios, and of course you are going with Area 4, which accoriding to the analysis provides the bigges upside. Unfortunately, he key assumptions of your analysis did not seem to evaluate the environmental costs of filling in Bay wetlands, or the threat of sea level rise from global warming. Nor did it evaluate potential financial upsides of folding the properties into the Don Edwards National Wildlife Refuge. Seems a bit shortsighted. There was a golf course out in that general area in the past, which has disappeared into the wetlands of history - why do you want to repeat that failure? When this project goes upside down, your name will remain attached to it. **Burrows-2**

Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from
development:

-The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

-The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise"

-Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem"
and "critically important to waterfowl and shorebirds"

I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

Burrows-3

With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.

Sincerely,

Matt Burrows

Burrows-4

COMMENT LETTER # Dorman

Terrence Grindall
Community Development Director
510-578-4208

Begin forwarded message:

From: Michael Dorman <michael@mosaic-industries.com>
Date: September 17, 2013, 16:20:00 PDT
To: terrence.grindall@newark.org
Subject: Protect Area 4 from development

Dear Mr. Grindall,

My family has lived in Newark since 1989, and I co-own a business located in Newark. I oppose the plans to fill Area 4. It's the wrong plan in the wrong area. I've heard all the arguments for development, including that the "developers will sue the city" if we don't dump 2 million cubic yards of fill into this wetland area. I don't find these arguments compelling.

In the long run, the right thing to do is to protect Area 4. Please work to develop a General Plan EIR alternative that would accomplish this protection. Let's think about our kids and grand-kids, and let's not build housing stock that will be subject to flooding as sea levels rise.

I know you care deeply about the city. We can do better than the current plan. Let's do the right thing.

Michael Dorman
36551 Mulberry St
Newark, CA 94560

Dorman-1

COMMENT LETTER # Elkins

Terrence Grindall
Community Development Director
City of Newark
510-578-4208
510-673-5837

-----Original Message-----
From: elkinseye@yahoo.com [mailto:elkinseye@yahoo.com]
Sent: Friday, September 13, 2013 08:17
To: TERRENCE GRINDALL
Subject: Do Not Develop Area 4

David Elkins
1664 Everett Ave
San Jose, CA 95125-3815

September 13, 2013

Terrence Grindall
Community Development Director, City of Newark

Dear Terrence Grindall:

Dear Mr. Grindall,

The plan to develop "Area 4" into residential housing and a golf course is clearly not forward thinking. With seal levels rising, you will literally and figuratively be bailing out any residents that live in this development within the next 50-100 years.

I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay.

This plan is rooted in thinking that is about a century too late.

Elkins-1

Sincerely,

David Elkins

COMMENT LETTER # Hooper

Terrence Grindall
Community Development Director
City of Newark
510-578-4208
510-673-5837

-----Original Message-----
From: mollyhoo@aol.com [mailto:mollyhoo@aol.com]
Sent: Thursday, September 26, 2013 11:54
To: TERRENCE GRINDALL
Subject: Please protect Area 4 from development. Clearly it makes no sense to endanger the Don Edwards National Wildlife Area. Moreover, do you know that King Tides will raise water levels nine feet within 25 years. Wetlands are one of the few things that sta

Molly Hooper
201 Buena vista East
san francisco, CA 94117-4103

September 26, 2013

Terrence Grindall
Community Development Director, City of Newark

Hooper-1

Dear Terrence Grindall:

Dear Mr. Grindall,

Clearly it makes no sense to endanger the Don Edwards National Wildlife Area with extensive development in Area 4. Moreover, do you know that King Tides will raise water levels nine feet within 25 years. Wetlands are one of the few things that will protect your community from climate change and rising seas.

I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included

in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay.

Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from
development:

-The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

-The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise"

-Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem"
and "critically important to waterfowl and shorebirds"

Hooper-1 cont.

I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

Hooper-2

With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.

Sincerely, Molly Hooper

Hooper-3

Molly Hooper
4155528144

COMMENT LETTER # REA

Terrence Grindall
Community Development Director
510-578-4208

Begin forwarded message:

From: "Paul W. Rea" <paulrea@sbcglobal.net>
Date: September 25, 2013, 11:03:51 PDT
To: terrence.grindall@newark.org
Cc: Wayne Miller <wmcats@aol.com>, John Bradley <jandbbradley@sbcglobal.net>, John Raidl <johnraidl@aol.com>, "Sandy L. Cashmark" <redheadsteachbest@yahoo.com>, Danny Radcliff <dannyradcliff@prodigy.net>, Debbie Raidl <debiraidl@aol.com>
Subject: One Citizen's Input on the "Tuned-Up" General Plan

Mr. Terrence Grindall,
Community Development Director
City of Newark, Ca.

One Citizen's Input on the "Tuned-Up" General Plan 9/25/13

Dear Mr. Grindall:

Thanks for running a professional public meeting last night. Please allow me to elaborate on the remarks I made.

You may recall that I emphasized the need for the Plan to articulate i**ssues of quality of life** in Newark, especially the need to create more opportunities for **building a sense of shared community**.

One of the means to do this, of course, is to promote public space for **community gardens**. Local Ecology and Agriculture Fremont (LEAF) is doing this with considerable success at several plots: http://www.leafcenter.org/ And public gardens with native plants are also well underway in the Quarry Lakes area, where native plants are now labeled. Why not Newark, too?

REA-1

We're hoping to make it happen not only at Lakeshore Park now more broadly. After working with Bob Costa for a couple years now, several of us citizen gardeners are calling for less lawns and more flower beds devoted to specific kinds of drought-resistant plants, such as succulents, California natives, and sunflowers representing various countries. Such well-tended, well-labeled plots could provide opportunities for educating the public—and particularly school children.

Such endeavors might involve creating Newark versions of the San Jose Rose Garden, where residents from different areas or affiliations would commit to steward a project of their own conception. As in San Jose, these would not only provide esthetic interest and scientific information, but also great opportunities for community building—another challenge for Newark, which has the quietest PO I've ever known!

REA-1 cont.

On the issue of sea-level rise, you may have seen the following story in today's paper:

Plan on moving to Alameda Point someday? You might want to pack a swimsuit and snorkel.

Much of the former Naval Air Station - site of a projected 1,425-home development - will be underwater by the end of the century due to sea level rise brought on by climate change, according to the city's draft environmental impact report on the project released this month.

"For a lot of people, this is a very scary subject. We in the Bay Area have to come to grips with this not just at Alameda Point, but throughout the region," said Randy Rentschler, spokesman for the Metropolitan Transportation Commission, which is among the agencies studying the impacts of sea level rise in the Bay Area. (*Chronicle* Wed. 9/25/13).

Clearly this issue of sea-level rise bears up the proposed developments here in Newark; the new General Plan needs to treat them more fully fairly, fully, and seriously.

REA-2

Finally, I need to emphasize **the need for much improved democratic process**, which is a serious problem in many areas of Newark city government. The classic example occurred last April, when the president of the League of Women Voters scolded the Council for regularly violating the Brown Act—and then, just moments later, the Council ducked into closed session.

In the case of the General Plan, it's clear that there was inadequate publicity for last night's public meeting/study session: nothing in the Newark News or Patch, no announcement via LARA or Island organizations, etc. And, as several citizens pointed out last night, allowing two days for public comment period is hardly sufficient.

Finally, one might note how democratic process has declined since Barry Miller helped to author the original Plan back in 1992. At that time, city planner Charles Cashmark took the Plan around to several different neighbors, often getting impressive turnouts. Reversing this downward trend would seem to be an important issue for the New General Plan Few issues could be more important to the City's future.

Thank you for your attention —

REA-3

Paul W. Rea

--

Paul W. Rea, Ph.D.

35376 Newcastle Ct.

Newark, CA 94560

[510] 818-1202

COMMENT LETTER # Lewis

September 27, 2013

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

RE: City of Newark Draft General Plan "Tune-Up" DEIR

Dear Mr. Grindall;

Thank you for providing this marvelous work of science fiction. Where did the city find written in state government code that a city may provide a "tune-up" to replace a genuine general plan update. Does state law allow a half-baked EIR that relies on studies from more than twenty years ago and an outdated general plan and EIR? What is the time frame of this "tune-up"? It appears to be between 20 and 25 years thus giving the city a general plan that will be about 40 years old. This is worrisome. **Lewis-1**

The DEIR is confusing as it appears to base itself from previous Specific Plan EIR's. It also relies on phantom master plans that will not come before public review until next year. NewPark Mall is one example. There are also no specifics for so-called Old Town and the city hall/library complex. A supplemental EIR for part of the Dumbo Rail TOD is not completed. Upon what is this "tune-up based? **Lewis-2**

The Executive Summary is shameful. It appears to have been written by a pre-school class. There is no explanation of what LTS means or the significance of N/A. It appears that LTS means Less than Significant (impacts) and in that case this summary is dead wrong. What studies were done to conclude these findings? **Lewis-3**
The DEIR claims to be self-mitigating. What does that mean? Is it like do-it-yourself brain surgery? **Lewis-4**

What is "focused high-density housing" proposed for Dumbarton TOD? According to state guideline transit oriented developments are supposed to have housing, public transit and commercial within the development footprint. DTOD has none of this. There isn't even a train to nowhere; there is no train period. No bus no trolley no nothing. There are only a few nearby businesses such as a trucking company and chemical plant. There is nothing to indicate anything will be built anytime soon due to the need for soil and groundwater clean-up. **Lewis-5**

Another strange use of the English language are the words "embrace Newark's bayfront location". What does that mean? Is this a CEQA term? Where is Newark's bayfront? Last time I looked at a map Newark was surrounded by Fremont, salt and bittern ponds and two sloughs. Newark does have wetlands so we could embrace them. The photo labeled seasonal wetlands in the DEIR is wrong. It is tidal. But you would not expect the pre-schoolers to know that. Newark has seasonal wetlands in DTOD and proof has been sent to the city. There are also seasonal wetlands elsewhere in the city but this document leaves them out. **Lewis-6** **Lewis-7** **Lewis-8**

This DEIR is not based on the entire city. It concentrates on a few sites; NewPark Mall, part of Old Town, Areas 3 and 4 and Dumbarton TOD with slight mention of the city hall and library complex. The mall master plan won't be available until sometime in 2014. The section of Old Town comprises a few blocks on **Lewis-9** **Lewis-10** **Lewis-11**

Thornton Avenue. It doesn't even include the deserted city fire station. Areas 3 and 4, (the Southwest Newark R and R) is in litigation and cannot be considered approved for use in this DEIR. Dumbarton TOD is derailed and environmental review has not been completed. A new city hall and library are not on the horizon. Where does that leave this DEIR? Dead in the water. Lewis-11 cont Lewis-12 Lewis-13 Lewis-14

Speaking of water, the DEIR is remiss in discussing and disclosing the impacts of housing and development on the "bayfront". The city has no policy or studies on sea level rise and instead points to state and/or federal agencies to take care of the problem. The city claims it will build on massive amounts of fill out of the flood zone and all will be well.

Meanwhile Union Sanitary District who takes care of wastewater in Newark and Fremont is very concerned about their infrastructure. There are two pump stations; one on Cherry Street in Newark and the other one the Newark Pump Station located near Dumbarton TOD. In a recent study on their infrastructure, USD stated that all future infrastructure projects west of the Nimitz Freeway should incorporate future sea-level rise planning and include appropriate improvements if needed. There are also concerns about placing pipelines in filled areas as settlement could cause pipeline failure. The city can contact USD for a copy of the study. Lewis-15

I could comment more on this flawed document but my brain has run out of bandwidth. After slogging for weeks trying to make sense of the DEIR and draft general plan I have decided it is nothing more than a bunch of bologna that makes no sense whatsoever. Did the youngsters at CalPoly submit their report to the city on the so-called meetings they held? Are their recommendations and studies part of this process? If so, where are those documents located? How much did this DEIR and draft general plan cost the city? Since it is pretty much worthless I hope the city gets a substantial refund and finds competent consultants to do the project right. And stop with the "tune-up" nonsense. It is insulting to our intelligence.

Margaret Lewis
36102 Spruce Street
Newark, CA 94560

Wayne W. Miller
36505 Bridgepointe Dr.
Newark, CA 94560
September 27,2013

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

SUBJECT: GENERAL PLAN (GP) and EIR TUNEUPS: HYDROLOGY AND WATER QUALITY *(my comments are in italics)*

SUMMARY

My comments are a general critique of the tuneup documents of the City of Newark, and I reference some pages specifically. My comments primarily address Hydrology and Water Quality.

What really is a GP DEIR tuneup—your very confusing conglomeration of regulations and uncommitted references to not take action? The general consensus of readers will find throughout the new tuneup plans that almost every nonspecific, generic claim by the City concludes insignificance, often even before nonspecific mitigations that have no details of action. Contradictions between different sections and lack of commitment makes one wonder who composed these confusing documents? Many members of the public claimed to be confused, due to the unprecedented proposals in these end-run tunups, which were obviously quickly created to circumvent faults in the prior EIRs. Timelines for public input were also very short. Specific corrective actions in the tuneups were not proposed to address prior faults. Many illogical and circular arguments, appeared to eventually contradict themselves. **Miller-1**

Frequent claims by the City lack committed actions. For example, attempts were cited "to do something, support, participate, work with them, address issues, consult with, provide some kind of guides and incentives, no future reviews by the City, defer analytical evaluations or mitigations into self-mitigations, etc." How could this even be considered a tuneup when the Plan does little or nothing to address the reality of the impact of these developments? The tuneup is more appropriately a "tuneout". The tuneup is only a means of quickly escaping proper creation and review of the prior EIRs **Miller-2**

and its flaws, and specifically circumventing needed corrections of the cited flaws. So why not appropriately rename the "Tuneup" a "Tuneout"? **Miller-2 cont.**

As stated, numerous regulations, policies and recommendations in the General Plan Tuneup were cited, in detail, throughout many sections. Ironically, few if any have been adhered to in an acceptable or mitigatable manner to be less than significant, especially for CEQA requirements—also previously cited in comments from the public, numerous attorneys and agencies of interest. Explain why you have intentionally avoided the required specifics in implementing these regulations and policies with plans of timely implementation. These City plans need to reveal that the impacts are indeed ***significant*** *and not adequately mitigatable in the development of Area 2 and 4, including the proposed unbuildable golf course in environmentally undesirable sensitive areas.* CEQA law requires environmental review of "discretionary" development projects. If **significant** impacts are found, an environmental impact report (EIR) is required, together with mitigation of **significant i**mpacts. Resources Code §21000, et seq., http://ceres.ca.gov/ceqa/stat. **Miller-3**

Alternatives:

Compare your existing Plan realistically to the alternative in developing a walkable and environmentally preferable and sustainable development in the old town and inner City infrastructure areas. These are ***quality of life*** *concerns that many other cities have taken into consideration.*

The City needs to specifically address the true intentions and the monetary influence that many land owners and developers (Area 2 and 4 sprawl at edge of City) have had on the City for many years. You must consider that these development sprawls take resources and staff away from addressing the internal needs of the City, such as true infill and walkable towns that concentrate near inner City existing transportation and resources, or we will be saddled once again with lost opportunities. **Miller-4**

Added to depleting resources from population expansion, accelerating climate change, now and in the future, impacts of these large-scale new developments, ironically, also have been a significant contributing human cause of climate change and sea level rise. The environmental impacts of human developments, excessive consumption and associated pollution are creating environmental impacts that, in turn, are collectively and significantly affecting the projects themselves. Thus, logically, the science is requiring further assessments of the cumulative effects of all these projects on the environment and the effects of the changing environment on the projects themselves—as all are interrelated and **Miller-5**

inseparable. Project developments affect themselves through the self-created environmental changes they impose. The Area 2 and 4 development Plan simply exacerbates the circular environmental impacts on these developments that are coming back to haunt us—whether or not you attempt to degrade the application of CEQA law, regulations and policies, in order to put people into harm's way in Area 2 and 4, as well as the surrounding communities.

Miller-5 cont.

Alternative Plan for Restoration:

The DEIR includes an alternative to restore and to preserve Area 4. However, the intended consequences are to connect the Area 4 development to the Dumbarton Transit Oriented Development (DTOD). The alternative has been designed to prevent restoration of Area 4. The DTOD has been included in the ABAG and is part of the Bay Plan. The city must preserve Area 4 and produce an alternative that is more viable, like focusing on the more important concerns within the inner city areas, as many areas have been reported to be available. The DTOD has been considered defunct, economically and for numerous other reasons.

Miller-6

The City needs to show that conversion of Area 2 and 4 to open space and restoration is the preferred alternative, as requested by the public and agency comments. Why does the City continually defer to development in the outer limits in the sprawl areas when it is not economical nor is it environmentally desirable? Do you realize that the City needs to become current by implementing a plan that utilizes ***[current climate change impacts, sea level rise and public needs]*** *to adapt to changing environments? Do you ignore or argue around these illogically because of the influence of benefits to City staff from developers and certain land owners, while ignoring the needs of producing a plan that is actually beneficial to the citizens who live in Newark? I reiterate and emphasize: You must consider that these development sprawls take resources and staff away from addressing the internal needs of the City, such as true infill and walkable towns that concentrate near inner City existing transportation and resources.*

Miller-7

For example, Mt. View already has a plan to address sea level rise and climate change. Also look at other cities and Mt. View who developed the walkable, environmentally friendly and publically desirable inner city areas, which also impacted high marks for schools--in comparison to the degradation pattern of Newark's diversion to develop into areas vulnerable to sea level rise, even within the life of the project.

Miller-8

WATER QUALITY AND AVAILABILITY:
General Plan PAGE CS-5; DEIR page 4.8-14, 4.8-21+

"Discharge into these waters is also regulated by the California Regional Water Quality Control Board (RWQCB). When development is proposed in areas where wetlands may be present, detailed on-site surveys are required and mitigation must be provided for any potential habitat impacts. If there will still be a possibility of impacts once a development is built, long-term agreements are required to ensure that wetlands are permanently protected".

Miller-9

See **Water Quality Control Board (RWQCB) letter of Feb 2013 to the City of Newark**: *The Newark Plan has not complied to address Water Board's comments and concerns nor does the Plan have a permanent and sustainable protection plan, only to defer or ignore the issues. If fact, the proposal is to cause destruction of certain wetland areas, which is also contrary to Newark's policies on protecting wetlands. Furthermore, if pumping is stopped, Area 4 would be nearly or all wetlands, as it has been prior to pumping. Therefore the land should be left to restoration, as suggested by the WQCB, EPA and numerous other historical comments throughout the years, which the City refuses to utilize as an alternative.*

HYDROLOGY AND WATER QUALITY, GP page CS-8:

As stated in PCS-8: "Newark is under the jurisdiction of the San Francisco Bay RWQCB. In addition, the Department of Water Resources oversees water-related activities. Among the concerns expressed in its **most recent Water Management Plan are drought, aging infrastructure, climate change, population growth, and sea level rise**".

Miller-10

*The **Feb. 2010 letter from RWQCB** expressed numerous issues for Newark to address, but non-specific generic statements, and lack of direct and specific plans expressed by the Newark Tuneup and prior documents reveals noncompliance towards resolving the concerns. The concerns of the Water Management Plan that include **drought, climate change, population growth and sea level rise** have not been adequately addressed either, as they are all interrelated.*

My letter to the City on January 18, 2010 extensively criticized and begged answers regarding the Newark Areas 3 & 4 Specific Plan Project Draft Environmental Impact Report SCH No.: 200705205, due to the serious impacts of climate change and hydrology. So far, inadequate or no specific comments were provided by the City, mostly responding as "comments noted", "references to prior statements", or "already commented, or irrelevant". So we ask the question as to why the City has continued to

ignore many of these issues, where many were brought up repeatedly, again and again, by numerous sources with hundreds of pages of logical questions?

Reduction in water usage as required was only addressed in the GP with nonspecific intentions again. For example the GP stated the Newark will "work with" (nonspecific commitment) the ACWD to reduce water usage. In contrast, in Area 2 and 4, its proposed plan will increase usage as developments continue to sprawl, rather than conserve through restoration or through existing or inner City infill areas that have a history of exposure to drought years. Incentive programs and public education, as referenced, are counter to the proposed increase in population and housing that will increase its use of resources in the sprawl plan of Area 2 and 4 of the GP and EIR. How does the City expect that projected long-term drought conditions to not have a significant effect on water consumption in the new exterior significantly large and sprawling developments, even with conservation?

Miller-10 cont.

CLIMATE CHANGE AND SEA LEVEL RISE: GP page CS-18; and DEIR page 4.8-19 to 20, 4.9-20

Climate change and sea level rise *are large topics, all interrelated, and have been specifically discussed thoroughly, where arguments of science continuously reject developments in these vulnerable areas, both by government agencies, various assemblies and institutions throughout the world, and the public.*

Again, to emphasize, the ***action*** *of human influence has affected our environment, through climate change and sea level rise, which, in turn, cannot be separated from the science that demonstrates that climate change is affecting and reacting to both new and existing developments. We are not realistically changing to adapt or rectify our influence, only making it worse by placing more vulnerable, energy intensive sprawl in external areas.*

Creation of climate disruption and sea level rise by humans has caused a reversal of consensus to also include the environmental effects on the very developments that are, in turn, influencing the need to mitigate or, in particular, even avoid developments in the environmentally vulnerable areas. The environment is having an effect on these developments and must be considered in the evaluation of all proposals, now and in the future. The semantic arguments to avoid this reality are contrary to the laws, regulations or policies that address the environmental impacts ***on*** *the projects at this point.*

Miller-11

PROGRESSIVE UPDATES (See GP, page CS-18):

Current climate change and sea level rise projections demonstrate that prior studies were far too conservative, i.e. ***2007 IPCC****, as many of the forces of nature that are causing change are non-linear, accelerating and can exacerbate one-another. Do you not agree that current changes and disruptions are rapidly causing us to perform more scientific studies, with reassessment and upgrading--by not only the IPCC but also numerous domestic and international research activities that are being forced to address the truth? Greenhouse gas reductions are not effective in most areas, and temperatures and greenhouse gases (C02 and more damaging gases) are rising much faster than predicted, as of 2013.*

For sea level rise and the impact of accelerated climate disruption, the EIR(s) from the City tend to utilize the 2007 IPCC projections, but then there are current arguments that can discredit much of those [conservative] projections, including reports from other sources of national and international monitoring. For example, to bring current the proposed GP and DEIR Tuneup, some quotes are as follows (comments in prior City documents cite a considerable amount of updates that were also ignored):

1. Current projections will eventually be 4-30 cm for 2000-2030, 12 to 61 cm for 2000-2050, and 42 to 167 cm for 2000-2100 in http://hazardmitigation.calema.ca.gov/plan/state_multi-hazard_mitigation_plan_shmp_commenting_2013.

2. The IPC greenhouse gas emissions projections in 2010 projected a sea level rise, relative to 2000, for the state to range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. State agencies may even use different sea level projections. Uncertainty is the key factor in these projections and it is best to adhere to the maximum impacts for the future, to avoid inundation.

3. Melting and ice sheet flows into the ocean are not adequately taken into account from the massive amounts of ice in Greenland and Antarctic ice. Ice sheets and land-based ice, displaced in the ocean will add a large significance to sea level rise. *A much greater rise in sea level is projected by many other organizations and scientists, due to forces of nature not even accounted for, as of yet.*

4. The National Academy of Sciences is also developing sea level rise evaluation.

5. *Again, in these conservative projections, ice sheets and land-based ice were not accounted for in the 2007 IPCC, that the city still sticks too in the old EIRs and*

Miller-12

the Tuneup). I will add these projections, including the more ominous ones that are more likely, judging from the accelerating impact--since we aren't doing anything about it--only making it worse with the tar sands pollution contribution, fracking, deep water drilling , etc. You can see that most projections are conservative, for obvious reasons.

Miller-12 cont.

6. Other more ominous projections:

a. The National Atmospheric and Oceanic Administration's 2012 State of the Climate report, released earlier this month, showed global greenhouse gas emissions reached a new record high in 2011, and estimates suggest the record was broken again in 2012.

b. In 2013: The IPCC has moved in the right direction this time by at least trying to account for the key contribution to sea level rise from ***melting ice sheets,"*** director of Pennsylvania State University's Earth System Science Center Michael Mann told The Huffington Post in an emailed statement, explaining that it was ***ignored in the previous*** **IPCC report from 2007*.*** However, the projections they provide are ***still overly conservative, with an upper limit of roughly one meter by 2100, when there is published work that suggests the possibility of as much as two meters (six feet) sea level rise by 2100***," he added. **This fits a pattern of the IPCC tending to err on the side of conservative, in part--I believe---because of fear of being attacked by the climate change denial machine**.

Miller-13

c. The IPCC even acknowledges governments influenced their projections, and they still persist. For example, a more current IPCC projection (September, 2013) only presents a 10-32-inch rise in sea level, which had to be upgraded from the prior 7-23 inches. The report predicts global temperatures could reach 0.5-8.6F, *leading to possible catastrophic changes to climate, and above all, to warming oceans*. The higher numbers are more likely, due to lack of agreements between governments: Only the lowest scenario, which was based on major cuts in CO2 emissions and is considered unlikely, came in below limit that countries have set as their target in the climate talks to avoid the worst impacts of warming (3.6F) before the industrial revolution. At this point, emissions keep rising mainly due to rapid growth in China and other emerging economies. But those nations say rich countries should take the lead on emissions cuts because they've pumped carbon into the atmosphere for longer."

Therefore, we have circular arguments of blame, and no government wants to put environment before economy, hence higher limits of sea level rise and climate temperatures are likely to occur. The IPCC still errs on the conservative and does not take into account other forces of climate change. IPCC projections become a moving target, as they are forced to consider the impact of the accelerating expansion of economics from the uncorrected growth of human population and lack of corrective action.

d. Describing the IPCC's projections, Climate Progress' Joe Romm wrote on Sunday, "Like every IPCC report, it is ***an*** **instantly out-of-date snapshot that lowballs future warming** ***because it continues to ignore large parts of the recent literature and omit what it can't model."*** (*Other scientific projections indicate that six feet in 2100 is insignificant if ice sheets slide off the terrain that supports them, into the ocean, leading to ocean water displacement--far greater than effect of melt on floating Arctic icebergs. The IPCC model does* ***not*** *take into account numerous other forces that are also coming into play, of course.*

Even the popular Scientific American and National Geographic (this month, Sept 2013 and this month, Oct. 2013) have been continuously publishing numerous, extensive maps and articles on the impact of global climate change and sea level rise).

Miller-13 cont.

For example:

e. As far back as 2008: Scientific American. The Unquiet Ice, Feb. 2008 (extensive article addressing many sources): "Loss of [land-based ice] of Antarctic and Greenland could add **200 ft of global sea level rise**—*has happened before with high C02 levels*. The National Geographic (www.climate.ngm.com) and the special issue as far back as June 2008: "The Science Is In", states "…ice sheet [collapse] in both Greenland and Antarctica would raise sea level **20 feet, inundating many coastlines**".

Note: The 20-foot rise represents "collapse" and the 200-foot level represents "loss of land-based ice", or a smaller change verses a major melt-down of sub-glacial ice, which from international studies looks ominous, either way, since we are passing the tipping point. And the world is too concerned about impact on economy to adjust, like Area 2 and 4 developments.

f. But then it is only a regional problem....(Cities and their vulnerable developments that deliberately put people and the environment into harm's way are excluded

from responsibilities associated with regional impacts, when they are even aware of the outcome???)

g. The *IPCC's* Fifth Assessment Report is set to be released in four parts between September 2013 and November 2014.

Miller-13 cont.

Therefore: *The City of Newark has presented The GP and DEIR as a vain attempt to an end-run "Tuneup", as of its release in August 2013, in order to circumvent the lack of prior compliance and adherence to those issues of serious concern expressed in previous comments, repeatedly, from the public and government agency sources.* ***If this Tuneup is considered current, then it must follow the more current updated rules, regulations and policies and to incorporate new projections for climate change, and, above all, sea level rise, added to the risk imposed on the exterior City developments of Area 4****. If the Tuneup also recognizes they must address the developments to 2035, what about the impact in 2100, as other cities have addressed? Why has the City avoided those updates in the current City plans, with only generic statements, and no acceptable specific plan of action or commitment? And why does the City plan persist in referencing outdated information such as 2007 IPCC (7-26 inches at end of century), ignoring current impacts?* ***Is not the plan for development long-term and should it not be realistic and current, as climate changes and sea level projections continue to rise.*** *Are you not considering that this plan places people in harm's way, with inadequate protections to accommodate future impacts?*

Miller-14

LIFE OF PROJECT:

*The City must also consider that "**life of project**" is typically beyond their limited projections. Historically, everyone does not simply abandon their residents and move to higher ground when there even is a disaster. See [current] impacts of climate change and storm surge, i.e. Boulder Colorado (areas topped the 100 and 500-year flood plain), Hurricane Sandy inundation and seaboard flooding, and many others throughout the world.*

*Addressing **life of project**, or **lifespan**, with the shorter periods that were projected, does not allow for developments to continue with further improvements, but only an abrupt end, unlike most other projects that have continued for many years beyond. Worst case is likely--due to climate change and sea level rise that is increasing in magnitude and indeed may terminate these developments abruptly. The City must evaluate these for the worst case analysis, taking into account all forces of nature that can simultaneous occur.*

Miller-15

BCDC: *GP page CS-10 and DEIR page 4.8-7:*

BCDC assumes that projects will at least last **50-90 years**.

But projections for climate change and sea level rise already defy the existence of such developments in Area 4, even with attempted mitigations. ***Sea level rise and tidal flooding can inundate the project, coupled with their effects on back-flooding of rivers, creeks, storm water discharge, storm surge flooding from above and from the sea, wave over-toping, subsequent erosion of the building pads, sewage backup, pump failure inundation, liquefaction, settling , and destruction of wildlife habitat and the protective value of wetlands and marshes, and other (yet unknown) hydrologic forces that are going to be brought forward to affect the Area 4 development.***

This is an example where the environment is also going to impact the development itself, from the effect of the development on the environment. You cannot separate this cause-and-effect relationship unless.

Why have you not adjusted appropriately for these changes, where potential hydrologic impacts and fill above your conservative projection will be inadequate? Why have you not at least considered the ***simultaneous impact*** *of flooding from storm surge, sea level rise and other hydrologic forces, in which the City itself has expressed concern? Historically, the Newark City tends to* ***treat these risks separately, not collectively****, and argues the proposed island type and/or peninsula developments in Area 4 will not be at risk with limited mitigations—which no one can guarantee. Can you deny that the proposed development Plan has been designated as being extremely vulnerable from all sides and from the impact of the variety of forces and environmental modifications as cited within the projects? Impacts are consistently significant and cannot by dependably mitigated with excess fill and unproven drainage technology in the face of the obstacles described.*

Miller-16

FLOODING: GP pages EH-9-10 and CS-18. DEIR page 4.8.1, 4.8-15, 4.8-27

The FEMA flood plain maps are outdated and nonspecific to the actual impact on developments in Area 4. The maps are typically only used for flood insurance and should not be exclusively used to decide mitigations for proposed future risks. Besides, these maps are still in the process of being updated. And why have you not specifically addressed these impacts, with corrections, rather than generic mitigations that erroneously claim insignificance? "Collaborative work" and "need to address" as cited

Miller-17

*by the City to develop adaptation strategies do not address or commit anything specifically for now or the future. CEQA law, guidelines and checklists include issues and concerns beyond the limited citations in the DEIR of the City. Again, the **7 to 23-inch rise in sea level by end of century**, as cited by the City is far outdated, as well. In fact, the development assumes that mitigations proposed will be acceptable, but sea level rise and climate change must also be considered as it advances into the future.*

Miller-17 cont.

LEVEES: DEIR page 4.8-1, 4.8-17:

Existing levees in Area 4 are uncertified and in disrepair. No plans exist for economic commitment at a regional or local level. Many existing flood gates, tidal and otherwise, around the Bay are very old, not adequately maintained or repaired (due to economics, lack of attention or confusion of responsibility and ownership). Pumping to prevent flooding will also need to be continued in Area 4, even with building pad mitigations. Building pad elevation therefore becomes even more uncertain. Recent publications regarding the impact of sea level rise on Alameda City are ominous (look it up).

Miller-18

STRATEGIES FOR ADAPTATION:

The 2009 California Adaptation Strategy emphasizes the need for more serious adaptation, or even abandonment, if it is uneconomical and there is too much risk to remain. The 2009 California Climate Adaptation Strategy states: "Consider project alternatives that avoid significant new development in areas that cannot be adequately protected (planning, permitting, development, and building) from flooding, wildfire and erosion due to climate change. The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is to carefully consider new development within areas vulnerable to inundation and erosion. State agencies should generally **not** plan, develop, or build any **new significant structure** in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure. However, vulnerable shoreline areas containing **existing** development that have regionally significant economic, cultural, or social value may have to be protected, and in-fill development in these areas may be accommodated. State agencies should incorporate this policy into their decisions and other levels of government are also encouraged to do so. (CS-2; OCR-1 and 2; W-4 and 9; TEI -2 and 7)."

Areas 2 and 4 in Newark are undeveloped, do not have enough significant economic value in comparison to other alternatives, and development would not be infill but additional external sprawl that is considered new, adding to significant greenhouse gas emissions and climate change. Furthermore, additional expensive protections would be

Miller-19

needed to avoid risk of storm surge, flooding and sea level rise. Why are you proposing to raise building pads up to a conservative level, when climate change and sea level rise are rapidly accelerating, as currently reported?

As previously stated, the existing levees of Area 4 are not maintained either and are not FEMA certified. There are no current FEMA updates to guarantee that the proposed City plan will be acceptable, now or in the future. More current sea level rise projections must be incorporated in new FEMA rules. There are no regional plans or reasons to protect at ***the tax payer's*** *expense, when structures are* ***knowingly placed in harm's way****, based on current data and future projections. Do you still expect to blame problems you knowingly create to be the responsibility shifted to a regional problem—as you need to be accountable for these decisions and to the tax payers?*

Miller-19 cont.

PUMPING AND SALTWATER INTRUSION: DEIR page 4.8-23

Saltwater Intrusion to Groundwater Aquifers Saltwater intrusion. (Edwards and Evans, 2002):

Saltwater intrusion into aquifers is a man-made problem in many places in California, resulting from over-pumping, but it will be accelerated and made worse by sea level rise. It occurs where saline water moves inland into a freshwater aquifer, contaminating it with salts and making it unsuitable for water supply or irrigation. Pumping coastal aquifers in excess of natural recharge rates draws down the surface of the aquifer. When the ocean has a higher "potentiometric surface," or water elevation, it causes the saltwater wedge to intrude further inland (Figure 35). Seawater intrusion is already problematic in California's coastal aquifers throughout Central and Southern California, including the Pajaro and Salinas Valleys and aquifers in Orange and Los Angeles Counties.

Miller-20

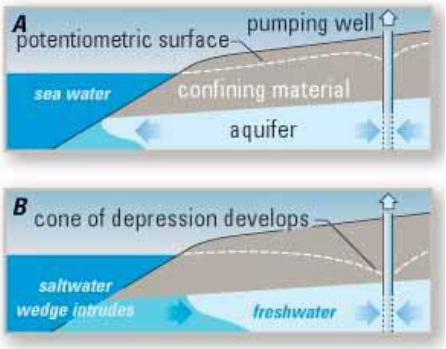

Figure 35. Saltwater intrusion. Source: Edwards and Evans 2002

GP pages CS-10:

An example in Area 4: Levees (uncertified), pumping of the wetlands and soil disruption to destroy vulnerable species of Area 4 has occurred since the 1980s. If left alone, Area 4 would be mostly, if not all wetlands, in an undeveloped and un-mitigatable flood zone, and would flourish as habitat for biological life to continue to proliferate. This is one example where the changes to Area 4 have added to a detrimental environmental impact in the area.

The GP refers to the Newark aquifer as being shallow at 40-140 ft. below the ground in most inland locations with a series of wells to intercept bay water before it reaches the aquifer, with a considerable amount of salt water that remains.

Reports have demonstrated that continued pumping will increase salt intrusion as wells continue to be pumped to provide water for the expanding population, as developments expand into the proposed Area 2 and 4 plan.

Miller-20 cont.

CONCLUSION:

Emphasizing my previous comments:

I still must ask: "What really is a GP DEIR Tuneup"—your very confusing conglomeration of generic regulations and uncommitted references to defer any action? After all, it was considered a tuneup—but was mostly a collection of citations of regulations, followed by the City's intentions to follow them by making nonspecific claims that avoid the issues that have been criticized in past reviews. Many members of the public claimed to be confused, due to the unprecedented proposals in these end-run tunups, which was obviously quickly created to circumvent faults in the prior EIRs. More appropriately the tuneup should be referenced as a "Tuneout".

Therefore, I can only conclude that this GP and DEIR "Tuneup" attempt has only generated ***more flaws,*** *while it even defers specific actions of commitment. The laws of CEQA, regulations and policies dictate that these Tuneups should to be totally scrapped or at least revised for more review and comment by the public.*

Wayne W. Miller

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Jana Sokale
7788 Hazelnut Drive
Newark, California 94560

September 27, 2013

Sent via electronic mail to terrence.grindall@newark.org: No hardcopy to follow

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

Subject: Comment Letter on the Draft General Plan Tune Up Program EIR for the City of Newark, California

Dear Mr. Grindall,

I am writing as a Newark resident for over 20 years and member of the Citizens Committee to Complete the Refuge. As a member of the Newark community who has actively participated in the few opportunities provided for public involvement in shaping General Plan I must first express my great disappointment and displeasure at the very brief review period afforded the two documents currently out for public review. The Draft General Plan and Draft General Plan Tune Up Program EIR were released to the public almost simultaneously in August 2013. This affords the public very little time to review these two documents which total over 916 pages without appendices. In most cities a Draft General Plan is released and reviewed by the public long before the environmental document is circulated. This is the first time the public gets to review both documents. This does a disservice to the community by limiting the thoughtful comments that could be supplied by residents. **Sokale-1**

I was also astounded to learn at the September 24, 2013 Planning Commission meeting that the General Plan was essentially finalized with the exception of a small "addendum" to be prepared by the consultant. As if this was not enough information for me to come to the realization that Newark city officials are disinterested in the thoughts and opinions of residents, than the EIR schedule certainly communicated this fact. The Planning Commission was shown a slide that indicated:

- Draft Program EIR comment period closes on September 27, 2013
- Planning Commission to review Draft Program EIR on October 8, 2013
- City Council to review General Plan on October 10, 2013
- City Council to review and adopt the General Plan and certify Final Program EIR on October 24, 2013

I expressed my concern over how the City would find the time to prepare responses to comments, circulate comments and responses to elected officials and still certify the Final Program EIR by October 24. Did you plan this schedule to dissuade public comments? **Sokale-2**

Newark General Plan – Introduction

The Newark General Plan includes goals, policies and actions that "are intended to guide the City's actions during the life of the Plan (page I-4). The goals, policies and actions are the fundamental basis of the Plan. "In addition, the following words are used throughout the General Plan to indicate whether a particular provision is mandatory, advisory or permitted:

- *"Must", "shall," or "will" identify provisions which are mandatory. Verbs such as "require" reflect similar obligatory directives.*
- *"Should" identifies a provision that is advisory. Verbs such as "encourage" and "support" are also advisory. Stated directives using these words should be followed unless there are compelling, countervailing considerations. More flexibility is intended in the application of such policies than those which are mandatory.*
- *"May" indicates a permissive provision. This indicates a course of action is permitted, but not required. Considerable discretion can be used when applying such policies to specific issues."*

These goals, policies and action statements do not constitute mitigation measures that provide for a "self-mitigating" General Plan.

Sokale-3

Newark General Plan Tune Up Program EIR
A Cumbersome, Cobbling Together of Specific Plans

CEQA Guideline Sections 15140 to 15155 of the CEQA Guidelines describe the how an EIR is to be written to be accessible to the public and decision-makers.

> *Section 15140. WRITING*
> *EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents (Section 21083, Public Resources Code; Reference: Sections 21003 and 21100, Public Resources Code).*
>
> *Section 15141. PAGE LIMITS*
> *The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages (Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.).*

Sokale-4

The Newark General Plan Tune Up EIR is beyond lengthy (558 pages) and requires back checking of multiple documents to begin to piece together the intent of the environmental review Particularly frustrating are the references to mitigation measures in the Housing Element EIR, Dumbarton TOD Specific Plan EIR and Areas 3 and 4 Specific Plan EIR. The General Plan Tune Up EIR reader is supposed to cross-references multiple documents in hopes of gleaning the nature and extent of analysis for project-based mitigation measures that are intended to reduce the level of significance of impacts identified in the General Plan Tune Up Program EIR which covers the entire City not simply certain specific plan areas. The General Plan Tune Up Program EIR cobbles together the analyses from these specific plan documents and

Sokale-5

then tosses in a series of goals, policies and action statements, which the City of Newark appears to rely upon to mitigate all other vaguely defined impacts. Impacts are not clearly described and therefore mitigation measures lack objectives and measurable performance standards. Many of the goals, policies and action statements are advisory only, providing no guarantee of implementation. The goals, policies and action statements that are considered to be "required" fail to identify who, when, where and how these measures will be implemented. No consideration is provided for failure to achieve the desired reduction in impact levels. The document lacks focus and clarity unless the intent was simply to obfuscate. This nearly across the board scattershot approach makes this EIR particularly unapproachable to the resident wishing to add their voice to the future plans for the City of Newark.

Sokale-5 cont.

Sokale-6

The Draft Program EIR also misleads members of the public about the validity of Areas 3 and 4 Specific Plan. It makes numerous assertions and incorporates aspects of the Areas 3 and 4 Specific Plan into the Draft Program EIR even though the City of Newark knows that a legal challenge to the Areas 3 and 4 Specific Plan EIR is working its way through the court. The City of Newark has not properly adopted the Areas 3 and 4 Specific Plan nor properly certified the Areas 3 and 4 Specific Plan EIR. On November 20, 2012, the Alameda Superior Court issued its Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions. The Suspending Resolutions are intended "To ensure that the [Areas 3 and 4 Specific Plan] project does not proceed until the EIR is effective," the court ordered the City to "SUSPEND Resolution 9745 (Certifying the EIR) and Resolution 9746 (adopting the Newark Areas 3 and 4 Specific Plan Project and the related General Plan Amendment" pending resolution of the case or further order of the court. That suspension was in effect when this Draft General Plan Program EIR was released to the public and remains in effect at the time of this comment letter. Thus, the Areas 3 and 4 Specific Plan is not in effect, and it disingenuous for the City of Newark to represent it as approved and rely on its analysis in the Draft General Plan Program EIR. Reliance on this Areas 3 and 4 Specific Plan and the accompanying environmental document creates a false pretense and results in an incomplete analysis of General Plan impacts.

Sokale-7

The Draft Program EIR also defers the release of the Mitigation, Monitoring and Reporting Plan until release of the Final Program EIR. This deferral of information further reduces the public's ability to review and provide comment on this most important planning effort. I again am disappointed by the lack of timely information.

Sokale-8

The Planning Process – A Tune Up?

California Environmental Quality Act (CEQA) review documents should be prepared early enough in the planning process to enable environmental factors to influence project design. The City of Newark has a history of establishing a project vision and then assuming the environmental conditions will support the desired project. When environmental factors do not support the project concept Newark grants approvals and entitlements irrespective of the feasibility of development. The General Plan Tune Up EIR continues this modus operandi. The General Plan Tune Up should provide an opportunity for decision-makers to step back and evaluate environmental conditions and project realities and make appropriate course corrections. However, this potential use of the "Tune Up" is not apparent.

Sokale-9

A few examples where course corrections are needed include:

The feasibility of developing the Dumbarton Rail corridor appears to dim each day as ridership level projections are lowered and construction cost estimates escalate. The rail corridor competes with many regional projects that provide a far higher return on investment (ROI) per transportation dollar as determined by the Metropolitan Transportation Commission and has far less political support to garner state and federal monies than California High Speed Rail project. Instead of responding to this new information, Newark pushes ahead with high-density, transit-oriented development without the benefit of any transit infrastructure to support this intensity of development on the edge of the city. The development proposed in the General Plan Tune Up fills more wetlands and builds on the very edge of the city. The lack of a course correction at this location will create significant traffic issues for the entire community and contribute to the loss of bayfront lands and habitats that make Newark unique.

The feasibility of developing housing and a golf course in Area 4 grows slimmer each day as the legal challenge to the specific plan moves through the court system, projections for sea level rise mount and regional agencies with jurisdiction over wetlands, water quality and water infrastructure become more aware of the flaws in Newark's planning efforts. Newark's desire to fill historic tidal wetlands and the Bay edge are not actions that embrace the special landscape qualities of our community. Instead of taking the opportunity to adjust the vision for these lands, the City of Newark demonstrates the "Newark Way" by continuing to designate Whistling Wings and Pintail Duck Clubs lands for low-density residential land use. This outdated development proposal will also force further loss of wetlands in Newark and fails to acknowledge the impact this housing will have on wetlands in the future. The project will need sea level rise protection that will further impact the lands designated by Congress for inclusion into the Don Edwards San Francisco Bay National Wildlife Refuge. Filling these lands with homes and a golf course does not demonstrate the sustainable, long-term direction that Newark should be pursuing.

The environment should influence the planning such that the General Plan truly represents the physical qualities of the landscape that make Newark unique – its bayfront! I encourage you to rethink the feasibility, sustainability and long-term economic viability of these aspects of these planning efforts.

Sokale-10

Project Description Inconsistencies

Page 3-3 – The document states, "This Draft EIR compares the buildout potential for the proposed Plan with the existing baseline condition, described in detail in each section of the Chapter 4.0, Environmental Analysis." In fact, the document frequently assumes the baseline conditions of the suspended Areas 3 and 4 Specific Plan and associated EIR. As a result, this Draft General Plan Program EIR fails to identify and analyze the impacts and prevents full disclosure of the actual environmental impacts compared to existing conditions on the ground.

Sokale-11

Page 3-8 – Areas 3 and 4 Specific Plan description indicates "…however, Area 4 is one of the last undeveloped sectors of the city and is largely in agricultural use today. However, on Page 3-21 the document states, "The proposed Plan also includes policies intended to protect and enhance sensitive natural resources in the Southwest Newark Residential and Recreational focus area, including wetland and aquatic habitat, natural hydrological features and other biological resources." The description on Page 3-8 should be revised to more accurately reflect the character of the lands in Area 4 including the fact the nearly ½ of the site is delineated wetlands. **Sokale-12**

The General Plan Draft Program EIR lacks a basic discussion about the physical and biological properties of the Area 4 lands proposed for development. Thus, a reader does not immediately have a sense that the project is primarily located in the existing 100-year floodplain, includes 277 acres of wetlands, that Area 4 was historically tidal wetlands and experiences 20 commuter train trips plus freight traffic per day. It does not mention that the site is routinely disked and actively pumped to drain into Mowry Slough. These actions have changed the character of plant and animal communities and distribution across the site. These actions are not intended to result in a meaningful food crop, but simply to continuously disturb the site to prevent the land from returning to its former mosaic of wetlands and transitional upland habitats. The project description does not set the existing conditions context of the Area 4 site for the reader. **Sokale-13**

Page 3-12 – The document states, "At a program EIR level of detail, these uses have substantially similar impacts on the environment. Therefore regardless of whether the Area 3 and 4 EIR is upheld or not, the Program EIR fully addresses the environmental impacts of the proposed General Plan." Much of the analysis included in this Draft General Plan Program EIR relies upon the analyses of the flawed and suspended Areas 3 and 4 Specific Plan EIR. It is in error to rely on this previous work. **Sokale-14**

Environmental Analysis

Aesthetics
3. Substantially degrade the existing visual character or quality of the site and its surroundings.

Page 4.1-8 AES-3 – *The proposed plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review.* **Sokale-15**

The Draft General Plan Program EIR references other environmental review documents (currently suspended by Alameda Superior Court), but fails to assess the impacts of the overall General Plan. The General Plan includes actions regarding the development of several railroad grade-separations for roadways. These overpasses would significantly alter the character of the community and change the visual character of Newark. The soffit of the overpasses (bottom of the bridge) would need to

provide 26.5 feet of vertical clearance from the rail line. Thus, the overall bridge structures would be three to four stories tall when including the bridge deck and railings. The support columns would also change the appearance of the local areas. Grade separations are proposed in:

> *Action LU-7.B Railroad Overcrossing. Construct a Stevenson Boulevard or Mowry Avenue overpass across the Union Pacific Railroad, including dedicated bike lanes and sidewalk on one side.*
>
> *Action T-6.C Central Avenue Grade Separation. Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue. Pursue state and federal grant funding to carry out this project.*
>
> *Action T-6.D Dumbarton TOD Grade Separation. Add an overpass to move traffic over the rail lines between Filbert and Sycamore Streets in conjunction with the Dumbarton TOD development. Pursue state and federal grant funding to carry out this project.*
>
> *Action PR-5.D Cedar Boulevard Extension Linear Park. As funds allow, construct a linear park and trail on the Cedar Boulevard Extension. Crossing of the Union Pacific Railroad should be grade separated to minimize risk and noise.*

This impact has not been evaluated in the Draft General Plan Tune Up Program EIR. Please address this impact with regard to the potential to substantially degrade the existing visual character or quality of the community. Please indicate what measures will be taken to mitigate any potential impact to the visual character. Will the construction of these overpasses result in a cumulative impact to the community?

Sokale-15 cont.

Cultural Resources
Page 4.4-8 CULT-1 – *The Plan would not cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5.*

The historic resources discussion relies upon "a brief three-part document entitled Historic Preservation Program City of Newark dated November 30, 1989." This nearly 25 year old document is older than the former 1992 General Plan and other structures within the City of Newark may have historic significance. Reliance on this 1989 document does not support a full analysis of the potential impacts to historic structures. The Draft program EIR does not discuss the 129-year old historic schoolhouse Newark is currently attempting to sell and demolish (http://www.mercurynews.com/top-stories/ci_23258337/historic-newark-schoolhouse-decaying-at-ardenwood-farm-may).

Sokale-16

It does not address the potential significance of the Newark Community Center and Newark Library designed by Architect Aaron Green, a protégé of Frank Lloyd Wright (http://www.sfgate.com/bayarea/article/SIGNATURE-STYLE-Aaron-Green-Getting-it-Wright-2694208.php). Please develop appropriate baseline for this analysis.

Sokale-17

The goals, policies and action statements described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less than significant level. Newark's recent decisions regarding historic resources indicate a lack of commitment to preservation. The

Sokale-18

potential loss of historic structures has been determined by the courts to be an unavoidable significant impact. These policies do not prohibit such a loss therefore this impact remains significant and unavoidable. **Sokale-18 cont.**

Hazards and Hazardous Materials

4. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment.

Page 4.7-21: HAZ-2 – *The Plan would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.*

The Draft Program EIR states: *"The Plan would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. The proposed Plan would facilitate new development, including residential, mixed-use, commercial, parks, and recreational open spaces, within the City of Newark. Some of the new development could occur on properties that are likely contaminated. Construction of new buildings and improvements could have the potential to release potentially hazardous soil-based materials into the environment during site grading and excavation operations. Demolition of existing structures likewise could potentially result in the release hazardous building materials (e.g. asbestos, lead paint, etc.) into the environment.*

The Dumbarton TOD relies upon individual property owners to assess and mitigate the numerous toxic sites present in the area. This means some sites could be cleaned up quickly while others may not get under way for years. In the meantime, Newark is in the process of approving individual residential development projects under the General Plan without the benefit of a coordinated cleanup plan. Newark development approvals under the General Plan will allow residents to move into in this highly contaminated area prior to full cleanup. These new residents and adjacent neighbors have the potential to be exposed to significant hazards as a result of the General Plan. This approach to remediation in the Dumbarton TOD and carried forward in the General Plan may expose residents to the "*release (of) potentially hazardous soil-based materials into the environment during site grading and excavation operations*" at adjacent properties. **Sokale-19**

The Dumbarton TOD includes numerous remediation projects for a wide variety of toxic contaminants. Actions are underway or proposed for the FMC, Ashland Chemical, Foster Chemical, Jones-Hamilton Company, Honeywell International sites and others (See Department of Toxic Substances Control and San Francisco Bay Regional Water Control Board Clean-up Orders). In most cases the target contaminants are numerous volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs). Chemicals include acetone, ethylbenzene, toluene, xylenes, ethylene diclororide, trichloroethene (TCE) and many others. Many of these contaminates are highly volatile carcinogens which could easily spread to the nearby locations.

No meaningful analysis is provided to demonstrate how a piece meal cleanup effort by individual landowners will protect new residents from the adverse effect of hazardous materials. No standard of cleanup is established or if it has been established it is not explicity stated in the General Plan or in the General Plan Program EIR. Please provide an analysis of this issue. Please indicate the standard of cleanup necessary for home occupancy. Please describe how and when this cleanup is to be achieved. Please describe how permanently capped toxic sites in Newark including the Dumbarton TOD area will be treated in the future. What goals, policies and action statement are intended to guide these sites? Will these sites ever be reopened and further cleanup undertaken or will these sites remain off limits to development? **Sokale-19 cont.**

7. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

Page 4.7-26-28: HAZ-7 *The proposed Plan would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.*

The General Plan includes actions regarding the development of several railroad grade-separations for roadways.

> *Action T-6.C Central Avenue Grade Separation. Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue. Pursue state and federal grant funding to carry out this project.*
>
> *Action T-6.D Dumbarton TOD Grade Separation. Add an overpass to move traffic over the rail lines between Filbert and Sycamore Streets in conjunction with the Dumbarton TOD development. Pursue state and federal grant funding to carry out this project.*

Sokale-20

What is the trigger for development of these grade separation structures? If funding is not available for these structures how will emergency response to the Dumbarton TOD area be addressed? The primary routes to this area include Central, Willow and Enterprise. All three of these routes include at-grade rail lines, which could limit access and hinder emergency response to the proposed development. If these overpasses are not constructed I conjunction with this development this may result in a significant impact to an adopted emergency response plan or emergency evacuation plan. Please address this issue.

8. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.

Page 4.7-28-29: HAZ-8 *Implementation of the Plan would not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.* **Sokale-21**

The Draft EIR states, "As shown on Figure 4.7-2, the Plan Area is not designated as having high, very high, or extreme wildland fire threat to people, as determined by CAL FIRE's Wildlife Urban Interface Fire Threat data." Figure 4.7-2 on Page 4.7-18 does in fact indicate areas of high risk of wildlife in developed neighborhoods and

areas planned for development. The EIR fails to adequately assess the level of impact through failure to acknowledge the actual wildfire risks as indicated on the CAL FIRE Threat Map. Please correct this analysis. **Sokale-21 cont.**

This assessment also fails to acknowledge Newark's long-term support of the sale of fireworks, which place additional risk in these wildland interface areas. On the July 4th and throughout the year agencies with fire suppression resources are concerned about the heightened risk of fire in these areas which are subject daily to winds coming across the Bay that can quickly drive a wildland fire into residential neighborhoods. The General Plan supports residential growth that will include more people who will be able to purchase fireworks and further exacerbate the wildland fire threat. Please include this in the analysis. **Sokale-22**

Land Use and Planning

3. Conflict with any applicable habitat conservation plan or natural community conservation plan.

Page 4.9-8 LU-3 - *The proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan.*

<u>Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan</u>

The policies and action statements identified to minimize disturbances and support the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan (DESFBNWR CCP) are couched in terms "participate in cooperative efforts", "support", "encourage" and "coordinate with" do not require Newark to implement said policies and actions that are intended to support the DESFBNWR CCP. These General Plan policies and actions and past discretionary actions by Newark provide no indication the DESFBNWR CCP will be supported by Newark's land use decisions. In fact, the General Plan and associated Draft Program EIR do not indicate the DESFBNWR Expansion Boundary areas or the wetlands and waters within the community upon which to formulate decisions. In the past few years Newark adopted the Areas 3 and 4 Specific Plan (currently suspended by Alameda Superior Court) that allow for the filling of wetlands within both of these planning areas. The Land Use Element of the General Plan designates Whistling Wings and Pintail Duck Clubs lands in Area 4 (Sub Area E), various wetlands in Area 4 (Sub Areas B and C) for low density residential use even though these lands were designated by Congress in 1991 as within the expansion boundary of Don Edwards San Francisco Bay National Wildlife Refuge. How do these designations in the Land Use elements support implementation of DESFBNWR CCP? **Sokale-23**

The Draft General Plan Program EIR states, *"Under the proposed Plan, the land use designation and zoning applicable to the duck clubs would remain unchanged as Low Density Residential."* **Sokale-24**

How can the General Plan continue to extend Low Density Residential land use and zoning designations across Sub Area E of Area 4 if the policies and actions identified in the Draft General Plan are intended to support the goals of the CCP? This directly conflicts with the goals, policies and actions purported in the General Plan and as such must be considered a Significant Impact. If these lands are not "envisioned" for development then why are they identified in the plan for residential development? **Sokale-24 cont.**

San Francisco Bay Conservation and Development Commission
San Francisco Bay Plan

The General Plan Tune Up EIR states, "*As described in Section 4.3.1.1 above, the Bay Plan, implemented by BCDC, guides the future protection and use of San Francisco Bay, its shoreline, and its natural resources. BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands, to the extent they are present in the Plan Area. Managed wetlands are areas of historical tidal marshes, such as private waterfowl hunting clubs and publicly owned wildlife management areas, that have been diked off from the Bay and were maintained during the three years immediately preceding November 11, 1969, for wildlife preservation, agriculture, or as a game reserve.2 Bay Plan policies pertaining to managed wetlands encourage the continued operation and maintenance of managed wetlands for waterfowl hunting or for waterfowl food production. Where development of managed wetlands would occur, Bay Plan policies encourage retaining the maximum amounts of water surface area consistent with the project. The proposed Plan would conflict with the Bay Plan if it would result in conflicts with these policies.*

The proposed Plan does not specifically propose any development within Mowry Slough or Plummer Creek, including portions within the jurisdiction of BCDC, and compliance with the setback requirements contained in the City's Grading and Excavation Ordinance (Newark Municipal Code, Chapter 15.50) would ensure that future development under the Plan would not occur within the limits of either Mowry Slough or Plummer Creek. With respect to the potential presence of managed wetlands within the Plan Area, there are two former duck clubs located in the Southwest Newark Residential and Recreational Focus Area, as shown in Figure 4.3-2: the former Whistling Wings Duck Club, has been farmed for the last several decades, and the former Pintail Duck Club, which currently consists of a large pond surrounded by wetland plants. Neither the adopted Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs." **Sokale-25**

Figure LU-1 – Proposed General Land Uses of the General Plan designates Whistling Wings and Pintail Duck Clubs lands in Area 4 (Sub Area E), various wetlands in Area 4 (Sub Areas B and C) and Plummer Creek wetlands along Central Avenue (directly adjacent to the Plummer Creek Mitigation Lands) in the Dumbarton TOD Specific Plan for low-density residential land use. These land use designations conflict with Bay Plan policies. This impact is Significant.

4.9.4 CUMULATIVE LAND USE IMPACTS

Page 4.9-12 LU-4 *- The proposed Plan, in combination with past, present, and reasonably foreseeable development in the surrounding area, would result in less-than-significant-cumulative impacts with respect to land use and planning.* **Sokale-26**

"In the case of an area-wide planning document such as the proposed Plan, cumulative land use effects occur from development under the proposed Plan combined with effects of past, present, and reasonably foreseeable development on adjacent land. The geographic scope of this analysis is taken as the Plan Area and adjacent land in the City of Fremont."

"With respect to cumulative land use impacts from conflicts with applicable habitat conservation plans or natural community conservation plans, as discussed above, Plan-specific impacts related to conflicts with CCP and the Bay Plan would be less than significant, and would not be cumulatively considerable, when considered together with other past, present and reasonably foreseeable plans in the Plan Area and adjacent land in Fremont. Cumulative impacts related to conflicts with the Basin Plan would be less than significant, as discussed in detail in Chapter 4.3 of this Draft EIR."

The General Plan Tune Up EIR fails to identify past, present and reasonably foreseeable future development that conflicted with the DESFBNWR CCP and the refuge expansion boundaries and Bay Plan and therefore cannot claim a "Less than Significant" impact. Some of these projects include:

Sokale-26 cont.

<u>Past Projects:</u>
Newark Gateway – filled wetlands and expansion boundary lands in the Newark Coyote Tract.
Pacific Commons – filled wetlands and expansion boundary lands in south Fremont

<u>Present Projects:</u>
Newark General Plan Tune Up
Torian Site Residential Development – Part of Dumbarton TOD – application before USACE and RWQCB for fill of wetlands in Plummer Creek.
Trumark Residential Development – Part of Dumbarton TOD – application before SFPUC

<u>Future Projects:</u>
Patterson Ranch – proposes development with expansion boundary in north Fremont

Please provide a complete analysis of cumulative impacts that identifies all project within Newark and Fremont that conflict with DESFBNWR CCP and the Bay Plan.

Utilities and Service Systems
Page 4.14-13 UTIL-3 – *The Plan, in combination with past, present and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to water supply.*

The Draft Program EIR acknowledges that water supply in dry years would not be adequate to support the proposed buildout and finds this impact to be less than significant solely on the basis of goals, polices and actions that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence to support this conclusion. Please determine other measures or scale development to what is feasible and sustainable in the long-term.

Sokale-27

Page 4.14-14 Sanitary Wastewater
ACFCD has recently completed an analysis of facilities with regard to adapting to sea level rise. Please include the findings of this report in a revised analysis of the Plan's ability to be sustainable. **Sokale-28**

Alternatives

The alternatives analysis should include an alternative that protects the lands west of the Union Pacific railroad between Mowry Avenue and Stevenson Boulevard. None of the alternatives address this option, which has been sought by many community members over the past two decades. **Sokale-29**

Thank you for the opportunity to comment on Draft General Plan Tune Up Program EIR. Please place me on your mailing list for all future notifications regarding this project.

Sincerely,

Jana Sokale

Jana Sokale

cc: Mayor Nagy
Newark City Council
Newark Planning Commission
John Becker, City Manager
Anne Morkill, Project Leader, USFWS
Eric Mruz, Refuge Manager, USFWS
Cay Goude, Endangered Species Division, USFWS
Jane Hicks, Chief, Regulatory Branch, USACE
Mark D'Avignon, South Section Chief, USACE
Mike Monroe, Environmental Protection Agency
Carl Wilcox, Chief, Water Branch, CDFG
Bruce Wolfe, San Francisco Bay Regional Water Quality Control Board
San Francisco Bay Conservation and Development Commission
Native American Heritage Commission
Alameda County Flood Control District
Alameda Creek Alliance
California Native Plant Society
Citizens Committee to Complete the Refuge
Ohlone Audubon Society
Sierra Club

Sokale-30

5.1.3 MASTER RESPONSES

Master Response 1: Appropriate Baseline for Environmental Analysis

Many public comments state or suggest that the Draft EIR used an improper baseline for the environmental analysis. Comments generally reiterate the assertion put forward in a letter from Lippe Gaffney Wagner LLP, attorneys representing Citizens Committee to Complete the Refuge, that the Proposed General Plan and Draft EIR purportedly fail to use a proper environmental baseline by employing hypothetical conditions based on a "voided" Areas 3 and 4 Specific Plan. This master response has been developed to address those public comments, to clarify the baseline conditions used for the purpose of environmental analysis in the Draft EIR, and to correct misrepresentations made in the public comments.

Consistent with relevant case law, including *Environmental Planning Information Council v. County of El Dorado, supra, 131 Cal.App.3d at p. 358, 182 Cal.Rptr. 317*., the Draft EIR has consistently and correctly assessed the environmental impacts of the proposed Plan by comparing the proposed Plan with the actual, existing conditions in the area. Buildout projections were developed to quantify the future population, housing, and employment levels that could result from implementation of the proposed Plan through the horizon year of 2035 in order to allow for an evaluation of the "reasonably foreseeable" direct and indirect impacts of the proposed Plan. As described in the Draft EIR on page 3-23 through 3-27, these buildout projections used baseline population, housing, and employment data from the most current version of the Alameda County Transportation Commission Countywide Travel Demand Model (August 2011), reviewed and adjusted by City of Newark staff in order to ensure an accurate representation of existing conditions in 2012. Population, housing, and employment levels at buildout of the proposed Plan in 2035 were derived by forecasting the additional number of residents, housing units, and jobs likely to result from implementation of the proposed Plan and adding them to baseline data. The resulting buildout projections were used as the basis for the analysis of environmental impacts throughout the Draft EIR, including as the basis for the technical modeling done to assess impacts related to air quality, GHG emissions, noise, and transportation and traffic. Therefore, analysis of the environmental impacts of the proposed Plan in the Draft EIR is based on a comparison with existing conditions in Newark as required under CEQA.

Further, the City notes that public comments have mischaracterized the status of the Area 3 and 4 Specific Plan and EIR. As noted on page 3-12 of the Draft EIR, a lawsuit was filed challenging the adequacy of the Area 3 and 4 Specific Plan EIR (Alameda Co. Sup. Ct. # RG10-530015), and that subsequently an order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Area 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. As of October 21, 2013, no order invalidating the Specific Plan and EIR is in effect and the litigation is ongoing.

Additionally, the City notes that the land use changes proposed in the Specific Plan and assumed as part of the No Project Alternative described and analyzed on pages 6-1 through 6-10 of the Draft EIR, are consistent with the City's adopted Housing Element. Policy 2.2a of the Housing Element, adopted in 2008, calls for the development of "specific plans and zoning amendments for Areas 2, 3 and 4 to provide significant amounts of land for new residential development." Specifically, the Housing Element and its EIR anticipate a total of 1,260 housing units in Area 3 and 4, which is the same number of housing units envisioned in the Area 3 and 4 Specific Plan. Therefore, irrespective of whether the Area 3 and 4 Specific Plan is suspended or not, it is appropriate for the No Project

Alternative analyzed in the Draft EIR to have assumed substantial residential growth in the Southwest Newark Residential and Recreational Focus Area by 2035. It is reasonable to assume that under a No Project scenario the City would implement existing policies, including those contained in the adopted Housing Element, and that consequently, the No Project Alternative could result in up to 17,900 housing units and approximately 20,600 jobs in Newark by 2035, including residential and non-residential development in the Southwest Newark Residential and Recreational Focus Area.

Master Response 2: Treatment of Previous Environmental Review

Several comments suggest that the Draft EIR has improperly relied on the Area 3 and 4 Specific Plan EIR in view of the November 2012 Alameda County Superior Court order that suspended the City resolutions certifying the EIR and adopting the Area 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. Further, some commenters also state that the Draft EIR has attempted to "tier off" a voided Area 3 and 4 Specific Plan EIR in violation of CEQA. This master response has been prepared to clarify the treatment in the Draft EIR of previous environmental review conducted by the City of Newark.

As noted on page 2-2 and 2-3 of the Draft EIR, a number of documents, including the Area 3 and 4 Specific Plan EIR, the Dumbarton TOD Specific Plan EIR, and the City of Newark Housing Element EIR, are incorporated by reference pursuant to CEQA section 15150. These documents contain detailed analysis of environmental impacts prepared on the basis of technical studies. The EIRs received considerable public scrutiny and their conclusions were made on the basis of substantial evidence. The City notes that, according to CEQA Section 21167.3(a):

> *If an action or proceeding alleging that an environmental impact report or a negative declaration does not comply with the provisions of this division is commenced during the period described in subdivision (b) or (c) of Section 21167, and if an injunction or stay is issued prohibiting the project from being carried out or approved pending final determination of the issue of such compliance, <u>responsible agencies</u> shall assume that the environmental impact report or the negative declaration for the project does comply with the provisions of this division and shall issue a conditional approval or disapproval of such project according to the timetable for agency action in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. A conditional approval shall constitute permission to proceed with a project when and only when such action or proceeding results in a final determination that the environmental impact report or negative declaration does comply with the provisions of this division.*

As such, CEQA establishes that the fact of a legal challenge to the adequacy of an EIR and an order suspending a lead agency's resolutions that certify that EIR does not in itself invalidate or make void that EIR. Therefore, until such time as the Area 3 and 4 Specific Plan EIR is invalidated by court order, it is appropriate for the City to assume that it complies with CEQA, in addressing potential impacts and promoting mitigation measures to reduce impacts to less than significant levels.

Furthermore, the City notes that the impact discussion contained in each of Chapters 4.1 through 4.14 of the Draft EIR identifies potential impacts of implementation of the proposed Plan and first discusses the extent to which these impacts would be reduced by compliance with existing regulations and implementation of mitigation measures previously adopted by the City of Newark in the Dumbarton TOD Specific Plan EIR, the Area 3 and 4 Specific Plan EIR, and the Housing Element EIR. The impact discussion in the Draft EIR considers the extent to

which any residual impacts not sufficiently addresses by existing regulations and previously adopted mitigation measures would be reduced through implementation of goals, policies, and actions contained in the proposed Plan. Where significant impacts remain after the consideration of applicable regulations, previously adopted mitigation measures, and proposed goals, policies, and actions, additional mitigation measures for the proposed Plan are identified and discussed. Therefore, in making significance determinations, the Draft EIR has not relied solely on mitigation measures from previous EIRs, but rather has considered the substantial evidence included in those EIRs among several other factors with potential to reduce impacts.

With respect to the claim that the Draft EIR tiers off the Area 3 and 4 Specific Plan EIR, the City notes that CEQA Section 15152 defines tiering as the use of "the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects." The Draft EIR does not purport to tier off the Area 3 and 4 Specific Plan EIR or any of the documents incorporated by reference. On the contrary, the Draft EIR states clearly on pages 1-3 through 1-4 that it is a Program EIR, and as such, does not evaluate the impacts of specific projects that may be proposed under the Plan. Future development projects on specific sites, including sites in the Southwest Newark Residential and Recreational Focus Area and the Dumbarton TOD Focus Area, will be subject to CEQA and, to the extent required by law, separate project-level environmental review will be necessary in order to secure the necessary development permits. Given that the precise location, nature, and extent of future development are not known at this time, these specifics cannot meaningfully be evaluated at this point.

Master Response 3: Appropriacy of Alternatives

A number of public comments pertain to the alternatives analyzed in the Draft EIR. Most of these comments make a generalized request that the Draft EIR analyze an alternative that would "protect" Area 4 from development without offering more specifics about how that objective could be accomplished. Other comments suggest that an alternative which generally prohibits development in Area 4 but allows development on land on or adjacent to environmentally sensitive areas in the Dumbarton TOD Focus Area would be more appropriate for analysis in the Draft EIR. This master response has been prepared to provide clarification regarding the alternatives analyzed in the Draft EIR and their appropriacy.

As stated on page 6-1 of the Draft EIR, Section 15126.6 of the CEQA Guidelines states that:

An EIR shall describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.

Including the CEQA-mandated No Project Alternative, the Draft EIR analyzed three alternatives capable of avoiding or substantially reducing significant effects of the proposed Plan so as to foster informed decision-making and public participation. These included: a Reduced Residential Alternative, intended to potentially lessen traffic, air quality, noise, public services, and utilities and services systems-related impacts associated with the more intensive residential development that would be allowed under the proposed Plan; and a Restricted Growth Alternative designed to avoid significant impacts to aesthetics and cultural resources and to lessen adverse effects

on biological resources. The Draft EIR analyzed these alternatives and the No Project alternative on pages 6-1 through 6-28 of the Draft EIR. The Restricted Growth Alternative was found to be the environmentally superior alternative; however, because the Restricted Growth Alternative would not satisfy all the project objectives, because it would conflict with specific plans previously adopted by the City of Newark, and because it would not support development of the Dumbarton TOD PDA as envisioned in the SCS, the Restricted Growth Alternative was considered infeasible.

The commenters have not provided substantial evidence that the alternatives analysis in the Draft EIR is inadequate, and as noted above, the Restricted Growth Alternative considered an overall reduction in development, which would essentially remove development pressure on Area 4, which is the least developed planning area in the city and which contains wetland resources. Therefore, the conclusions on impacts to biological resources and in determining the Environmentally Superior Alternative reflect the scenario of not developing within the Area 4.

Master Response 4: Sea Level Rise

A large number of public comments on the Draft EIR expressed concern for the potential of flooding due to sea level rise. Many commenters suggested that potential impacts from sea level rise should be described and analyzed in the EIR or that omission of such discussion is inappropriate under CEQA. The Potential for Sea Level Rise is an import issues that affects the Bay Area and the world; however, the City notes that, as stated on page 4.8-20 of the Draft EIR, the purpose of this EIR is to identify the significant effects of the Plan (which is considered a Project under CEQA) on the environment, not the significant effects of the environment on the Plan. (*South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1614-1618; City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal.App.4th 889, 905.*) While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes. Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of the Draft EIR (see *Guidelines, § 15063, subd. (f)*). Nevertheless, a few of the questions on the checklist form concern the exposure of people or structures to environmental hazards and could be construed to refer to not only the Project's exacerbation of environmental hazards but also the effects on users of the Project and structures in the Project of preexisting environmental hazards. To the extent that such questions may encompass the latter effects, the questions do not relate to environmental impacts under CEQA and cannot support an argument that the effects of the environment on the Project must be analyzed in an EIR. (*Ballona Wetlands Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 473-474.*). Accordingly, a discussion of flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA.

That CEQA determination should not be construed as a statement that sea level rise is not an important issue for the Newark community. It is critically important issue to the Community and the Draft General Plan includes many policies and actions that address this issue, including the following:

- **Policy EH-3.1: Planning to Avoid Flood Hazards.** Identify Flood Prone Areas in Newark and utilize this data for Land use and transportation planning purposes. Flood resistant construction techniques and minimum building elevations shall be required to reduce flood hazards.
- **Policy EH-3.3: Residential Development in the Flood Plain.** Require that new residential development, including streets and other surface improvements be constructed above the 100-year flood elevation.
- **Policy EH-3.4: Non- Residential Development in the Flood Plain.** Require that new non-residential development, including commercial and industrial uses, be flood proofed or constructed on pads above the 100-year flood elevation.
- **Policy EH-3.8: Flood Control Improvements.** Work with the Alameda County Flood Control and Water Conservation District (AFCD&WCD) on Improvements to the storm drain, flood control channel, and levee system which ensure that these systems continue to protect Newark neighborhoods and business districts from flooding.
- **Policy EH-3.9: Sea Level Rise.** Consider the effects of rising sea level on the potential for flooding in low-lying areas and participate in regional adaptation efforts for these areas. Information on flood hazards related to sea level rise should be used to ensure that flood risk is reduced.
- **Policy CS-5: Planning for Sea Level Rise.** Require proposed development close to-in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones.
- **Action CS-5: Adaptation Planning.** Collaborate with surrounding cities, the Federal Emergency Management Agency (FEMA) and other appropriate regional, state and federal agencies to conduct a vulnerability assessment and strategic plan for long term climate change adaptation.

The policies and actions highlight the City's commitment to address the important issue of sea level rise. Adaptation to this global issue requires action on a regional or at least sub-regional level. The City of Newark is committed to partnering with agencies responsible for Flood Control in the Bay Region to address appropriate adaption to sea level rise.

Master Response 5: Clarifications Regarding Development Envisioned in the Area 3 and 4 Specific Plan

Area 4 is a designation used in the 1992 General plan to refer to the area in the Southwest part of Newark between Mowry Avenue, the Union Pacific railroad tracks and Stevenson Blvd. In the proposed General Plan update it is referred to as a part of the Southwest Newark Residential and Recreation Project. It is approximately 560 acres and is presently used for auto recycling, agriculture, and fallow land. A portion of the land is considered to be wetlands. The Development of Area 4 with a mixture of housing, a golf course (or other recreational use), and open space has long been envisioned. This vision was reflected in the 1992 General Plan, confirmed by Newark voters in 1999, and furthered in the Area 3 and 4 Specific Plan approved in 2010. The proposed General Plan carries this vision forward.

Although Area 4 General Plan land use designation was not changed as a part of the Specific Plan or in this General Plan update, the California Environmental Quality Act requires that the build out of the General Plan use

existing conditions as a "baseline"; therefore this environmental analysis addresses the development, at a program level, of Area 4 as well as all other planned development-even if they were long a part of the City's land use vision and if they had been analyzed in other environmental documents. The analysis is at a program level, meaning that further environmental review will be required when specific development projects are proposed.

As envisioned in the proposed General Plan, much of the high quality wetlands and habitat areas of the site would be conserved or restored and a recreational trail , (a potential Bay Trail segment) would be completed.

Comment letters received reflect a great deal of confusion and mischaracterization of both Area 4 and the envisioned development project.

- Area 4 land is not "Bay" it is almost a mile from the Bay. Portions may have once had tidal influence- but the Area 4 is not, and was not, open water. As such, there is **NO** Bay fill envisioned by the project.
- The referenced harbor seal pupping area is not adjacent to the site. It is more than a mile from area envisioned for development.
- Development of in the area would not be at risk for flooding. All residential development must be raised well above the flood levels and the development would not increase flood risk anywhere else in Newark.
- While a portion of Area 4 is located in the potential expansion boundary of the federal wildlife refuge, this expansion boundary only indicates areas that **COULD** be added to the refuge **IF** there is a willing seller and **IF** it is compatible with local land use planning.

Key General Plan Policies that relate to Development in Area 4/ Southwest Newark Residential and Recreation Project:

- **LU-7.1 Southwest Newark Residential and Recreation Project (Area 3 and 4) development.** Facilitate the Development of the 637 Acres formally known as the " The Area 3 and 4 project" consistent with previously approved Plans for this area . The residential holding capacity of this area shall be 1260 units.
- **LU-7.2 Wetland Enhancement.** Create or enhance wetland habitat areas within non-developed portions of the Southwest Newark Residential and Recreation project area to offset loss of wetland and aquatic habitat and provide additional habitat opportunities for rare plant and wildlife species.
- **LU-7.3 Biological Resource Protection**. Maintain, protect and enhance the natural biological resources of the Southwest Newark Residential and Recreation Project Areas, particularly sensitive habitats and associated rare plants and animals, while integrating development and human activity. Disturbance of wetland and aquatic habitat should be avoided to the maximum extent feasible.
- **LU-7.7 Maintaining Hydrologic Features**. Maintain the natural hydrologic features of the Southwest Newark Residential and Recreation project to the extent feasible and main or improve the current quality of water leaving the site.

As envisioned by the General Plan Update, the development of the Southwest Newark Residential and Recreational project (Area 4) represents a balanced approach between meeting housing needs, providing community amenities, and the preservation/restoration of habitat areas.

5.2 RECURRING COMMENT LETTERS

This section contains a single copy of the recurring letter, followed by a master response to the recurring comment letters.

5.2.1 SAMPLE RECURRING COMMENT LETTER

September 27, 2013

Terrence Grindall
Community Development Director, City of Newark

Dear Mr. Grindall,

I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay.

Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from development:

-The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay

-The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise"

-Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem" and "critically important to waterfowl and shorebirds"

I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.

With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.

It's the sane thing to do.

Sincerely,

Jae Abel

5.2.2 RESPONSE TO RECURRING COMMENT LETTERS

This master response addresses the 1,830 nearly identical form letters submitted by email to the City of Newark during the public comment period on the Draft EIR. A sample of the recurring comment letter is reproduced above. The recurring comment letters are substantively similar and they express:

- Opposition to development of Area 4 in southwestern Newark;
- Opinions regarding the ecological and environmental value of Area 4; and
- Concern for the effects of flooding due to sea level rise.

These comments are noted; however, they do not pertain to the merits of the Draft EIR or the environmental analysis and therefore, no further response is required. Nevertheless, to the extent that the clarifications regarding sea level rise contained in Master Response 4 apply to the recurring comments, the City directs the commenters to Master Response 4 in Section 5.1 of this chapter. Additionally, to the extent the clarifications regarding development envisioned in the Area 3 and 4 Specific Plan contained in Master Response 5 apply, the City directs the commenters to Master Response 5 in Section 5.1 of this chapter.

The recurring comment letters also "encourage the City to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services." This comment does not pertain to the merits of the EIR or the environmental analysis; however, the City notes that the Restricted Growth Alternative, analyzed on pages 6-19 through 6-26 of the Draft EIR, would restrict future growth in environmentally sensitive areas along the western edge of Newark, including all of Area 4. As stated in the Draft EIR, under the Restricted Growth Alternative "the Dumbarton TOD Focus Area and the larger sector of the Southwest Newark Residential and Recreational Focus Area south of Cherry Street would be designated as Open Space." No further comment is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
Federal Agencies		
FWS-1	The U.S. Fish and Wildlife Service (Service), Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) appreciates the opportunity to comment on the Newark General Plan Tune Up Draft EIR for the City of Newark. The Service has previously commented on proposed plans for Areas 3 and 4 in letters dated June 5, 2007; December 18, 2008; and January 20, 2010. In each of these letters we have expressed our concerns with the proposed development. We reiterate our previous comments that Area 4 should not be developed as it provides wetland habitat that support endangered species and flood protection from ponds on the border of Area 4. This site is one of the few areas in the south bay immediately adjacent to a tidal slough that still has undeveloped uplands, and a mix of wetland types, including areas where the Salt Marsh Harvest Mouse (Reithrodontymys raviventris), a federally endangered species and California state fully protected species, has been trapped previously. The proposed development of Area 4 will only add to the cumulative losses of tidal wetlands in San Francisco Bay and endangered species that are dependent on that habitat.	The comment is noted. Please see Chapter 4.3, Biological Resources, for a discussion on the potential impacts resulting from the proposed Plan. Specifically, Table 4.3-2 on page 4.3-29 identifies the Salt-marsh harvest mouse as having a population viable to sustain for over 50 years in the event no changes occur, and at least 25 years in areas where minor disturbance could occur. In each instance, it was determined that disturbances would not be severe enough to impair the population. As indicated in impact analysis BIO-7 on pages 4.3-47 through 4.3-48, cumulative impacts would be less than significant as a result of inclusion of mitigation measures that were identified in previous environmental reviews conducted by the City. With regards to cumulative losses, Chapter 4.3, Biological Resources, of the Draft EIR describe throughout the chapter the potential impacts on habitat loss and/or potential impacts to wetlands. Such discussions can be found in impact analysis BIO-1, BIO-2, BIO-3, and BIO-5.
FWS-2	The Refuge also has concerns with the proposed development and its potential to attract nuisance and predator species (e.g., gulls, geese, invasive weeds) that effect native species and habitat, and threaten the recovery of endangered species.	Please see Chapter 4.3, Biological Resources, of the DEIR for a complete impact analysis related to the proposed Plan's effect on native species and habitat. As discussed in impact analysis BIO-1, starting on page 4.3-32 of the EIR, existing local, State, and federal laws and regulations would minimize potential impacts to native species and habitat as a result of buildout of the proposed Plan. Additionally, policies under the proposed Plan would aim to protect wildlife and habitat such as Policy CS-1 which calls for the preservation and protection of Newark's plant and animal species and habitat, including wetlands, salt marshes, creeks, and lakes. Subsequent projects resulting from implementation of the proposed Plan would also be subject to independent CEQA review in which project-specific impacts would be further identified along with appropriate mitigation measures. Additionally sinceno specific projects are being proposed with the General Plan, potential impacts caused by specific development were not analyzed at the time of the preparation of the DEIR. Accordingly, future development would be subject to separate CEQA review and therefore would identify project-specific impacts and mitigation measures at that time.
FWS-3	In addition, lighting and noise impacts created by residential and golf course developments produce ambient lighting that can have a negative effect on wildlife. These issues have also been addressed in our previous comments.	Please see impact analysis discussion AES-4 in Chapter 4.1, Aesthetics, of the DEIR for the analysis related to lighting. As discussed in the chapter, new development would be required to comply with Title 17 of the Municipal Code, which addresses lighting requirements. The proposed Plan also contains policies to minimize light and glare impacts and can also be found in impact analysis AES-4 on page 4.1-13. Chapter 4.10, Noise, addresses impacts related to noise. As discussed in impact analysis NOISE-1 in Chapter 4.10, subsequent projects would be subject to compliance with Newark Land Use Noise Compatibility Guidelines, and Action EH-7.A of the proposed Plan would require acoustical studies for all new development to ensure noise levels are within an acceptable level. Therefore, no further changes to the EIR are necessary.
FWS-4	Area 4 would be an extremely valuable addition to the Refuge as it could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas. We ask that the City of Newark implement the proposed Plan policies Action POS-l.A as stated in the Draft EIR: "Action POS-l.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay." (Page 4.1-14 of the DEIR) In 1990, the Service issued the Final Environmental Assessment, Potential Additions to the San Francisco Bay National Wildlife Refuge, Alameda, San Mateo, and Santa Clara Counties, California (Final EA). The preferred alternative in the Final EA included a map and a boundary in which the Refuge could expand to include the additional 20,000 acres authorized by PL 100-556. The map and boundary depicted in the 1990 Final EA identified 24,500 acres as "potential additions" and Area 4 lies within this approved acquisition boundary.	The comment is noted; however, it does pertain to the merits of the EIR. Please see Master Response 5 regarding Area 4 Description. No further response is necessary.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	These potential additions were again affirmed in the Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan, published in October 2012. Approval of an acquisition boundary does not grant the Service jurisdiction or control over lands that have been identified as potential additions, but it does provide the Service the authority to seek willing sellers to acquire and/or manage lands through acquisition of fee title, conservation easements, or other agreements, based upon planning and environmental compliance processes.	
FWS-5	Thank you for considering our comments. We recommend that you also contact the U.S. Fish and Wildlife Service, Endangered Species Division in Sacramento to discuss potential effects of the proposed development to listed species and their habitat. Please keep us informed of the EIR process, especially any future opportunities to provide comment. If you have questions regarding our comments, please contact Wildlife Refuge Specialist, Melisa Amato at 510-792-0222.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is necessary.
State Agencies		
DOT-1	Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the Newark General Plan Tune Up. The following comments are based on the Draft Environmental Impact Report. Regional Transportation Impact Fee Program. Under TRANS-1, the proposed plan will significantly impact Ardenwood Boulevard and State Route (SR-) 84 westbound ramps intersection during the AM Peak, and Newark Boulevard and SR-84 eastbound ramps intersection during the PM peak hour. Mitigation Measure TRANS-1a states that the impact is considered significant and unavoidable since the mitigation measure is under jurisdictions of Caltrans and the City of Fremont, and the implementation is outside the jurisdiction of the City of Newark (City). Per our comments to the traffic study scope of work, we had previously recommended the City develop a Regional Impact Fee Program (RIFP) to fund regional roadway improvements. The RIFP would collect fair-share funding from proposed projects that impact regional transportation facilities and use the funds collected to implement regional improvement at a future date. Caltrans strongly recommends the City develop a RIFP in lieu of evaluating the need for fair-share contribution on project by project basis. Should you have any questions regarding this letter, please call Yatman Kwan, AICP of my staff at (510) 622-1670.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is necessary.
PUC-1	The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings in California. The Commission Rail Crossings Engineering Section (RCES) is in receipt of the Draft Environmental Impact Report (DEIR) for the proposed City of Newark (City) General Plan Tune Up project. The project areas are located on both sides and within the vicinity of an active railroad track. RCES recommends that the City add language to the General Plan so that any future development adjacent to or near the railroad/light rail right-of-way (ROW) is 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 crossings. This includes considering pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act. Mitigation measures to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade crossings due to increase in traffic volumes and continuous vandal resistant fencing or other appropriate barriers to limit the access of trespassers onto the railroad ROW. If you have any questions in this matter, please contact me at (213) 576-7076, ykc@cpuc.ca.gov.	Roadway safety is discussed on pages 4.13-38 through 4.13-39 of the Draft EIR. The Draft EIR references specific policies and actions which, among others, would promote safe vehicular, pedestrian, and bicycle circulation. The proposed Plan also includes Policy T-2.10, Policy T-6.5, and Policy T-6.6 that specifically address safety at at-grate railway crossings. These policies are hereby added to the Draft EIR. Please see chapter 3 of this Final EIR for details of this revision. This revision does not alter the Draft EIR's conclusion that compliance with existing regulations and standards as well as implementation of proposed Plan policies and actions would ensure that impacts associated with roadways safety resulting from buildout of the proposed Plan would be less than significant. The policies referenced in the Draft EIR, including Policy T-2.10, Policy T-6.5, and Policy T-6.6 hereby added, are appropriate for addressing potential roadway safety impacts in a programmatic EIR such as the Draft EIR. The City further notes that subsequent projects resulting from implementation of the proposed Plan would also be required to comply with CEQA and project-specific impacts will be identified and analyzed along with appropriate site-specific mitigation measures to the extent necessary to comply with CEQA.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
Regional/Local Agencies		
ACTC-1	Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Newark General Plan Tune Up. The Project is contained within the City of Newark boundaries. The Project is designed to update the policy framework and land use designations that will guide future development in Newark through 2035; to comprehensively incorporate recent planning efforts. including the completed and adopted Dumbarton Transit Oriented Development Specific Plan (2010), Area 3 and 4 Specific Plan (2009), 2009-2014 Housing Element (2010) and Climate Action Plan into the General Plan so as to ensure Citywide policy consistency; and to address and satisfy new State and regional regulations that have come into force since the General Plan was last updated including Assembly Bill (AB) 162, Senate Bill (SB) 5, the Complete Streets Act of 2008, and the greenhouse gas (GHG) reduction goals of AB 32 and SB 375. The General Plan Tune Up includes updates to the following State-mandated elements: Land Use, Transportation, Open Space and Conservation, and Safety and Noise. The State-mandated Housing Element continues to stand on its own as a separate document. Additionally, the optional Parks and Recreation Element is updated, and three new optional elements added: Economic Development, Sustainability, and Health. The Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments: On page 4.13-21, the description of the Countywide Bicycle Plan should be revised to differentiate between the countywide bicycle network and local bicycle routes. The map on the following page, depicts both local and countywide routes, for instance. Also, the countywide bicycle network and countywide pedestrian plan include major interjurisdictional trails, such as the Bay Trail in Newark.	The comment is noted. Please see Figure 4.13-4 of the Final EIR for clarifying revisions to the existing bicycle routes to differentiate the countywide bicycle network from the local routes. These revisions do not alter the conclusions of the Draft EIR.
ACTC-2	On page 4.13-23, the statement that "the City of Newark and the Alameda CTC have established vehicular LOS standards for intersection performance is inaccurate." The Alameda CTC has no intersection-based LOS standards, and LOS thresholds apply to roadway segments and to biennial LOS monitoring, not cumulative impact analysis of developments through the land use analysis program.	The first paragraph under TRANS-1 on page 4.13-23, continuing onto page 4.13-24, of the Draft EIR is hereby revised to clarify that Alameda CTC does not have established vehicular LOS standards for intersection performance. Please see chapter 3 of this Final EIR for details of this revision. This revision does not alter the conclusions of the Draft EIR.
ACTC-3	The mitigation measures presented in Table 4.13-5 at Ardenwood Boulevard and State Route 84 WB Ramps and at Newark Boulevard and State Route 84 EB Ramps, while primarily intended to improve auto circulation, should consider opportunities to include upgrades to facilities for other modes. The Alameda Countywide Bicycle Plan identifies improvements to this interchange as a major capital project need. As the City of Newark explores mitigation measure here in conjunction with Caltrans and the City of Fremont, opportunities to improve the bikeway along Newark Boulevard should be sought. Such coordination would be consistent with the Draft Plan's Policy T-1.3: Incorporating Complete Streets Elements in Transportation Projects which specifies that "Any construction, reconstruction, retrofit, maintenance, operations, alteration, or major repair of the street network should consider ways to make streets safer for an users."	The comment is noted.
ACTC-4	The Draft General Plan acknowledges on page T-37 that the City of Newark's intersection LOS D standard should be considered in a context sensitive fashion: "The City will determine the need for exceptions to its LOS standards on a case by case basis in the future." The Draft Plan specifically names the Old Town Newark commercial district as one such area where "maximizing vehicular flow through intersections may not be the highest priority" as "the City seeks to create a welcoming environment for pedestrians, bicyclists, and transit users with vibrant local businesses and an attractive streetscape." In this context, the DEIR should strong consider impacts to all users from the following mitigation measures proposed in Table 4.13-5 Cherry Street and Thornton Avenue: The DEIR proposes adding a through lane on Cherry Street. This intersection is within the Old Town Newark commercial district and is located near the Old Town Mixed Use Priority Development Area. The DEIR should consider options for	The comment is noted. As noted on pages 4.13-40 through 4.13-43 of the Draft EIR, the proposed Plan contains numerous goals, policies, and actions intended to accommodate all roadway users and support complete streets concepts. No further comment is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	accommodating all users.	
ACTC-5	Cherry Street and Mowry Avenue: The DEIR proposes widening Mowry Avenue. This intersection is close to a high school, a community college, and a park, and is located along a road with transit service that is also a Countywide Bicycle Route (component of the Bay Trail). The DEIR should consider options for accommodating all users. We appreciate the opportunity to comment on the DEIR. Please contact me at (510) 208-7405 or Matthew Bamberg of my staff at (510) 208-7444 if you have any questions.	The text describing the improvement needed at Cherry Street and Mowry Avenue in Table 4.13-5 on page 4.13-12 of the Draft EIR is hereby amended as follows: Adding a second left-turn lane on the westbound approach (Mowry Av) and realigning the intersection. Since this intersection is in relatively close proximity to a high school, community college, and park, and is located along a road with transit service that is also a Countywide Bicycle Route (component of the Bay Trail), opportunities for improving pedestrian access and bicycle access through this intersection should be considered in the context of mitigation. Options for accommodating all users should be considered. This revision does not alter the analysis or the conclusions of the Draft EIR.
ACWD-1	The District doesn't have any formal comments regarding the DEIR; however, there is one typo regarding the amount of groundwater used on page 4.8-14. The DEIR states that approximately 22% of the water supplied by ACWD is from groundwater wells. The percentage should be 40%, with 22% supplied by the wellfields and 18% supplied by the Newark Desalination Facility (page 8 of the Survey Report on Groundwater Conditions, February 2013).	This comment has been noted and the second paragraph on page 4.8-14 is hereby amended as follows: Approximately 40 percent of the water supplied by the ACWD is from groundwater wells with 22 percent supplied by wellfields and 18 percent supplied by the Newark Desalination Facility. This revision does not alter the analysis or the conclusions of the Draft EIR.
BCDC-1	As you are aware, by letter dated February 6, 2013, the staff of the BCDC provided comments on the City's NOP for an EIR for the Newark General Plan Tune Up. It has recently come to our attention that the City has issued a Draft Environment Impact Report (DEIR) for this planning effort and has established an associated comment period. This letter sets forth the comments of the staff of the BCDC, as distinguished from the Commission itself. The comments set forth below are based on the Commission's enabling legislation, the McAteer-Petris Act (MP A), Cal. Government Code § 66600 et seq., the regulations that the Commission has adopted to implement that law (Cal. Code of Regulations, Title 14, Div. 5), and relevant findings and policies of the Commission's San Francisco Bay Plan (Bay Plan). As a permitting authority along the San Francisco Bay shoreline, the BCDC is responsible for granting or denying permits for any proposed fill (earth or any other substance or material, including pilings or structures placed on pilings, and floating structures moored for extended periods), extraction of materials or change in use of any water, land or structure within the Commission's jurisdiction'. Jurisdiction and Authority. BCDC's jurisdiction over San Francisco Bay extends over Bay tidal areas up to the mean high tide level, including all sloughs, and in marshlands up to five feet above mean sea level; a shoreline band consisting of territory located between the shoreline of the Bay and 100 feet landward and parallel to the shoreline; salt ponds; managed wetlands (areas diked from the Bay and managed as duck clubs); and certain waterways tributary to the Bay, specifically as mentioned in MPA § 66610(e)(l), "Plummer Creek in Alameda County, to the eastern limits of the saltponds....". In addition to said MPA language staff has determined that the Commission's Bay jurisdiction within the area of the General Plan Tune Up includes "...on Mowry Slough [extending to] culvert at Mowry Avenue bridge crossing" (Inquiry File AL.AA.6516.1 File 5, Lacko, 2004) and "At bend in channel near Plummer Creek" (Inquiry File AL.HY.6801.1 FILE 3, Permit M81-14) The DEIR references the above language but could provide a more accurate characterization of BCDC's managed wetland jurisdiction over a portion of the project area in Focus Area 4, specifically the sites referred to as the Pintail and Whistling Wing Duck Clubs referenced in figure 4.3.1 ("Biological Resources") of the DEIR. Section 66610(d) of the MPA states, in part that "the area of jurisdiction of the San Francisco Bay Conservation and Development Commission includes ... Managed wetlands consisting of all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the	The comment is noted. BCDC jurisdiction is discussed in Chapters 4.3, 4.8, and 4.9 of the Draft EIR. Specifically, the potential for the former Whistling Wings Duck Club and Pintail Duck Club to be considered managed wetlands under the McAteer-Petris Act is discussed on pages 4.9-11 and 4.9-12 of the Draft EIR. The City is not in possession of evidence that the former duck clubs were "diked from the bay" or in active use as such during the three-year period in 1966 through 1969. Therefore, the City does not necessarily agree that these areas fall under the Commission's managed wetlands jurisdiction. Nevertheless, as noted on page 4.9-11 of the Draft EIR, neither the Area 3 and 4 Specific Plan nor the proposed Plan envisions development in the location of the former duck clubs. No change to the Draft EIR is required. If development of these areas is proposed in a future specific project, the BCDC would be consulted.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	effective date of the amendment of this section during the 1969 Regular Session of the Legislature as a duck hunting preserve, game refuge or for agriculture." BCDC has considerable evidence gathered by the California Department of Fish and Wildlife that the Pintail and Whistling Wings duck clubs were actively used during the three-year period in 1966 through 1969 referred to in MPA §66610(d). Based on the information we have, we believe these areas fall under the Commission's managed wetlands jurisdiction.	
BCDC-2	This area is now delineated in page 193, figure CS-1 of the Draft General Plan by two dots, one for each club. Figures 4.3-1 and CS-1 of the DEIR should be revised to show the areas that comprise the two clubs and the status of these areas as "managed wetlands" under the MPA. Based on current information we are unable to determine whether portions of the areas currently delineated for housing use lie within the Commissions managed wetland jurisdiction.	Figure 3-4 in the Draft EIR shows the areas delineated for residential development as proposed in the Area 3 and 4 Specific Plan. Please also see Response to Comment BCDC-1 above.
BCDC-3	If a project is proposed within the Commission's managed wetlands jurisdiction, it must be authorized by the Commission pursuant to a Commission permit, and the Commission will use relevant provisions of the MP A as well as the managed wetlands policy, along with other relevant policies in the Bay Plan, to evaluate the project. The Commission can grant a permit for a project if it finds that the project is either (1) necessary to the health, safety or welfare of the public in the entire Bay Area, or (2) is consistent with the provisions of the MPA and the Bay Plan. The DEIR correctly states that projects "in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on safety of fills and shoreline protection." However, the MPA, at section 66605(d), also requires that the Commission find that the "nature, location, and extent of any fill" placed anywhere within the Commission's area of jurisdiction, including managed wetlands, "be such that it will minimize harmful effects to the bay area ... " Specifically with regard to "managed wetlands," section 66602.1 of the MPA provides that "it is in the public interest to encourage continued maintenance and operation of ... managed wetlands" and that "if development is proposed for these areas, dedication or public purchase of some of these lands should be encouraged in order to preserve water areas; [and] that if any such areas are authorized to be developed and used for other purposes, the development ... should retain the maximum amount of water surface area consistent with the project." Consistent with MPA § 66602.1, the Managed Wetland policy in the Bay Plan states, in Policy 2, that the purpose of public dedication or purchase shall be to "restore [the managed wetland] to tidal or subtidal habitat, or retain, enhance and manage these areas as diked wetland habitat for the benefit of multiple species" and, in Policy 4.a, that "water surface area retained can include a variety of subtidal and wetland habitat types including diked areas managed for wildlife or restoration of managed wetlands to tidal action." The MP A, at section 66605, also provides for fill in the Bay, such as those areas of the Bay noted above as being with the area of the General Plan Update, for water-oriented uses only where there is no alternative upland location, and requires that any fill that is placed in the Bay is the minimum that is necessary for the project. The MPA, at section 66602, also requires that proposed projects include the maximum feasible public access consistent with the project to the Bay and its shoreline.	The comment is noted. Please see Response to Comment BCDC-1. The City does not necessarily agree that these areas fall under the Commission's managed wetlands jurisdiction. Nevertheless, as noted on page 4.9-11 of the Draft EIR, neither the Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs. No change to the Draft EIR is required.
BCDC-4	Climate Change and Safety of Fills. It appears that some areas within the plan area and along the adjacent shoreline that are within the Commission's jurisdiction may be vulnerable to projected sea level rise. BCDC has conducted an assessment of the region's exposure to sea level rise that is based on a projected 16-inch sea level rise at mid century (2050) and 55-inch sea level rise at the end of the century (2100). The South Bay map in the BCDC report (attached) shows that part the area of the proposed project may be vulnerable to a 16-inch rise in sea level and a larger part of the area may be vulnerable to a 55-inch rise. Please note that the BCDC maps of vulnerable areas do not account for existing shoreline protection or creek levees, and do not describe the existing or future 100-year flood zones.	The comment is noted and the attachment has been reviewed. Please see Master Response 4 regarding sea level rise.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
BCDC-5	In addition to BCDC's assessment, various agencies have recently produced data and information, which can better characterize the plan area's vulnerability to sea level rise. Staff recommends that the latest data from the National Oceanic Atmospheric Administration Coastal Services Center on sea level rise vulnerability be used, and that the latest science-based sea level rise projections for the area be utilized when considering the vulnerability of the project areas. Though the DEIR references Policy CS-5.8 as Planning for Sea Level Rise, neither the Draft EIR nor the Draft General Plan have taken into account more recent estimates of sea level rise for the area and still reference 2007 IPCC estimates of 7 to 23 inches by the end of the century. The Draft EIR should evaluate future projects in light of more recent scientific data on sea level rise. The DEIR should discuss the potential for inundation and its impacts on land use, transportation, hydrology, water quality, hazards, infrastructure and utilities and public services.	The comment is noted and the attachment has been reviewed. Please see Master Response 4 regarding sea level rise.
BCDC-6	The Draft EIR should include an analysis of how an increase in sea level under multiple sea level rise scenarios could impact proposed projects, specific plans and resource categories that are within BCDC's jurisdiction. This should include information on (1) current elevations of the project sites and recent data, if available, documenting the vertical land motion (e.g., subsidence or uplift); (2) a risk assessment prepared by a qualified engineer based on the estimated 100- year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area (3) whether existing levee heights for any housing areas within managed wetlands within the project area that are necessary to protect adjacent property from flood tides are adequate for a period matching the likely duration of human habitation (4) how public access provided as a condition of development will remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project could be provided nearby. Finally, the policies state that, "To address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes." The Bay Plan policies on the safety of fills state that, "Adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project. "Additionally, the policies state that, "New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity .... "Projects in BCDC jurisdiction that involve Bay fill or fill within managed wetlands must be consistent with the Bay Plan policies on the safety of fills and shoreline protection and it is likely that many of the proposed structures within the Specific Plans would be expected to last until 2100. The Draft EIR could consider the use of open space as a flood zone buffer area.	The comment is noted. Please see Master Response 4 regarding sea level rise.
BCDC-7	Public Access. Section 66602 of the McAteer-Petris Act states, in part, that "existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Furthermore, the McAteer-Petris Act authorizes the placement of fill in the Bay only for water-oriented uses or minor fill for improving shoreline appearance or public access. The MPA, at section 66602.1, also requires that in managed wetlands "in any such areas are authorized to be developed and used for other purposes, the development should provide the maximum public access to the Bay, consistent with the project ... " Development policies for areas identified in the DEIR that are within BCDC's jurisdiction should be consistent with BCDC's public	Action PR-5.E has been added to the General Plan in response to this comment. The Action indicates: "Ensure that future land use and capital improvement decisions for areas within the jurisdiction of the Bay Conservation and Development Commission (BCDC) are consistent with BCDC's public access requirements and do not preclude maximum feasible access to and along the waterfront."

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	access requirements and not preclude, "maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline .... and maximum access, consistent with the project" in areas of managed wetlands approved for development.	
BCDC-8	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 .... "	The comment is noted. Please see Chapter 4.9, Land Use and Planning, of the DEIR for a discussion pertaining to consistency of the proposed Plan with the Bay Plan. Impact analysis LU-3 on page 4.9-11 through 4.9-12 addresses consistency with the Bay Plan. As mentioned in the impact discussion, Policy CS-1.3 of the proposed Plan encourages interagency cooperation amongst other agencies maintaining jurisdiction within the Plan Area. Therefore, no changes are necessary. Please also see Response to Comment BCDC-9.
BCDC-9	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 DEIR should include an analysis of the impacts 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. POS-5.7 & POS-5.8 as noted in the DEIR and General Plan Draft are an adequate start in this direction.	To the extent required under CEQA, the Draft EIR discusses impacts to parks and recreational facilities on page 4.12-15 through 4.12-25 of the Draft EIR. Consistency with the Bay Plan is discussed on pages 4.9-8 through 4.9-13 of the Draft EIR. The Draft EIR references specific policies and actions which, among others, are consistent with the objectives of the Bay Plan. The proposed Plan also includes Policy PR-5.7 and Policy PR-5.8, which are hereby added to the bulleted list on page 4.9-11 through 4.9-12. Please see chapter 3 of this Final EIR for details of the revision. This revision does not change the analysis or conclusions of the Draft EIR.
BCDC-10	Additionally, the DEIR should evaluate how the proposed projects would impact views to and of the Bay from public streets.	Please see the impact analysis discussion AES-1 starting on page 4.1-6 of the DEIR in the Aesthetics chapter for a discussion on potential impacts to scenic vistas. As discussed in AES-1, future development would be subject to local laws and policies and goals of the proposed Plan to protect scenic vistas in Newark. The City notes that this analysis is appropriate for a programmatic EIR such as the Draft EIR. No change is required.
BCDC-11	Finally, the DEIR should evaluate the potential impacts of the proposed public access on sensitive wildlife species and habitats.	Please see Chapter 4.3, Biological Resources, of the DEIR to see an impact analysis discussion related to biological resources, including wildlife, in the City of Newark.
BCDC-12	Bay Trail Connections. The City of Newark contains several miles of existing and planned Bay Trail alignment. The DEIR should discuss how these existing trails could be connected with the development of trails, parks and open space within the proposed project area. POS-5.1, POS 5.2 and POS-5.3 are suitable initiations of this discussion and we endorse continuing the refinement and enhancement of these policies.	Please see Response to Comments BCDC-8 and BCDC-9.
BCDC-13	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. The DEIR must evaluate any proposed fill in its scope in light of the Commission 's law.	The proposed Plan would not involve any fill in San Francisco Bay. As noted on page 4.9-11 of the Draft EIR, the proposed Plan does not specifically propose any development within Mowry Slough or Plummer Creek, including portions within the jurisdiction of BCDC, and compliance with the setback requirements contained in the City's Grading and Excavation Ordinance (Newark Municipal Code, Chapter 15.50) would ensure that future development under the Plan would not occur within the limits of either Mowry Slough or Plummer Creek. Additionally as noted on page 4.9-11 of the Draft EIR, to the extent that the former Whistling Wings Duck Club and the former Pintail Duck Club may be managed wetlands under the jurisdiction of BCDC, neither the Area 3 and 4 Specific Plan nor the proposed Plan envision development or fill in the location of the former duck clubs.
BCDC-14	Water Quality. The DEIR erroneously states in the Hydrology and Water Quality section (4.8-7) that "The California Coastal commission carries out its mandate locally through the San Francisco Bay Area Conservation and Development Commission (BCDC)." The California Coastal Commission is a separate state agency with its own jurisdiction, laws, policies and mandates. It does not carry out its mandate locally through BCDC. We would greatly appreciate the correction of said misstatement. 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 .... "	This comment has been noted and the third paragraph on page 4.8-7 is hereby amended to remove all references to the California Coastal Commission and reads as follows: The San Francisco Bay Area Conservation and Development Commission's (BCDC'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." This revision does not alter the analysis or the conclusions of the Draft EIR.
BCDC-15	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 storm water permits	This comment has been noted and a sentence has been added to the fourth paragraph on page 4.8-7 that reads as follows: *In addition, BCDC's policies to protect the Bay from the water quality impacts of nonpoint pollution state that*

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	and state and regional storm water 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 .... " Though the DEIR references BCDC's policies with regard to safety of fills and shoreline protection in the Hydrology and Water Quality section it should evaluate the potential impacts of the proposed projects to be included in the General Plan Tune Up on the water quality of the Bay and should propose best management practices and mitigation measures to minimize adverse impacts to water quality. Thank you for your careful consideration of the foregoing comments on the Draft Environmental Impact Report for the Newark General Plan Tune Up. If you have any questions please contact me directly at (415) 352-3667.	*new development should be sited and designed consistent with standards in municipal storm water permits and state and regional storm water management guidelines. To offset the impacts from increased impervious areas and 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.* Additional discussion regarding the use of Best Management Practices (BMPs) and mitigation measures to minimize adverse impacts to water quality are provided as part of the HYDRO-1 Impact Discussion on Water Quality (pp. 4.8-22 and 4.8-23). This revision does not alter the analysis or the conclusions of the Draft EIR.
RWQCB-A-1	Dear Mr. Grindall: Thank you for the opportunity to comment on the *General Plan Tune Up Draft Program EIR* (DEIR) for the City of Newark, dated August 13, 2013. The DEIR evaluates an updated policy framework and consolidated land use designations that are intended to guide future development and redevelopment in Newark, concentrated primarily in the following focus areas: ·Dumbarton Transit Oriented Development (TOD) ·Area 3 and 4 focus Area (renamed Southwest Newark Residential & Recreational Focus Area in the DEIR) ·Old Town ·Greater New Park Area As a responsible and reviewing agency under CEQA, staff of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) provided comments on the Notice of Preparation (NOP) for the DEIR on February 13, 2013. Based on our review of the DEIR, it appears that our comments were not consulted in the preparation of the DEIR. We are, therefore, submitting our original comments to the City of Newark (See the attachment to this letter) with the hope that the City will address these comments in the preparation of the Final EIR for the General Plan Tune Up.	The comment is noted.
RWQCB-A-2	As we noted in the cover letter for our February 13, 2013, comments on the NOP, we are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with General Plan Tune Up. The Watershed Division comments are presented as Attachment A to the February 13, 2013, comments. The Watershed Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code.	The comment is noted and the attachment was reviewed.
RWQCB-A-3	Toxics Cleanup Division (TCD) comments on the NOP are presented as Attachment B to our February 13, 2013, comments. TCD as the lead agency oversees the investigation and cleanup of contaminated sites (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution or nuisance. TCD also indirectly oversees the investigation and cleanup of approximately 80 other contaminated sites in the Project area, which are assigned to Alameda County Water District (ACWD) as lead oversight agency (see the State's GeoTracker database (https://geotracker.waterboards.ca.gov). TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites overseen by ACWD. The California Department of Toxic Substances Control (DTSC) also oversees the investigation and cleanup of sites in the Project area (see the State's Envirostor database (http://www.envirostor.dtsc.ca.gov/public/).	The attachment has been reviewed.

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RWQCB-A-4	We would also like to take this opportunity to point out that we disagree with the way in which the DEIR assesses conflicts with the Baylands Ecosystem Habitat Goals (Habitat Goals). Text on page 4.3-45 of the DEIR states: The Bay Plan recommends that the Baylands Ecosystem Habitat Goals (Habitat Goals) be used as guides for wetlands restoration in the vicinity of San Francisco Bay. The Habitat Goals envision the restoration of tidal marsh and similar habitat throughout the South Bay region, including the Plan Area, and contain recommendations for enlarging tidal marshes and protecting and enhancing marsh transition areas. However, the Habitat Goals are a set of recommendations that have not been adopted by any agency and therefore are not considered an approved local, regional, or State habitat conservation plan under CEQA. In our comments on the NOP, the Water Board provided the following guidance for using the Habitat Goals in developing the DEIR. The Project EIR should address conflicts that the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan have with the *Baylands Ecosystem Habitat Goals* (1999)(*Habitat Goals*). The Biological Resources discussion in the Project EIR should address Project compatibility with the *Habitat Goals* and its companion document *BaylandsEcosystem Species and Community Profiles* (2000)(*Profiles)*, which should be recognized as regional habitat conservation plans. The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM.Since the DEIR addresses conflicts with the Basin Plan and the Basin Plan acknowledges the Habitat Goals, the DEIR should have fully addressed conflicts with the Habitat Goals. Other EIRs for projects in Alameda County have addressed conflicts with the Habitat Goals. For example, the recent Draft EIR for the Alameda Point Project (SCH # 2013012043) makes the following assessment of the relevance of the Habitat Goals to CEQA review (page 4.E-43 of the Alameda Point DEIR). The Baylands Ecosystem Habitat Goals Project (Goals Project) was established in June 1995 to establish a long-term vision for a healthy and sustainable baylands ecosystem. The final report, published in 1999 (Goals Project, 1999) enumerated a series of recommendations for habitat protection and restoration. The Goals Project was recommended by the Governor's "California Wetlands Conservation Policy" and by the Comprehensive Conservation and Management Plan (CCMP) of the U.S. Environmental Protection Agency's San Francisco Estuary Project. It is also supported by most of the agencies and non-governmental groups with major planning, operational, or regulatory interests in Bay Area wetlands. We encourage the City of Newark to thoroughly address conflicts with the Habitat Goals in the Final EIR and to consult the Water Board's full comments on the Habitat Goals in our February 13, 2013, comments on the NOP.	Although the Habitat Goals are recommendations that have not been adopted and are not considered an approved local, regional, or State habitat conservation plan under CEQA, it was stated in the first sentence under BIO-6 on page 4.3-45 of the DEIR that there are no legal Habitat Conservation Plans (HCPs) as defined in the federal Endangered Species Act Section 10(a)(2)(A) that are applicable to the Plan Area. Further, under the Habitat Goals heading, the DEIR further asserts the Bay Plan "recommends" that the goals be used as guides for wetlands restoration, therefore, there is no assertion made to indicate that the Habitat Goals are in fact regulatory. With regard to addressing any conflicts that may or may not be of issue between the Habitat Goals and the DTOD Specific Plan and/or the Area 3 and 4 Specific Plan, that is not an issue of CEQA for purposes of this DEIR. Although, information was incorporated by reference using environmental review from both the DTOD EIR and the Area 3 and 4 EIR, such incorporation was done pursuant to CEQA Guidelines, which is discussed in Master Response 2. No changes are necessary.
RWQCB-A-5	We once again urge the City to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. Projects covered by the General Plan Tune Up could cause substantial impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any permit applications or plans it receives for proposed activities within the areas covered by the Project. We continue to disagree with the City of Newark's conclusions in the EIRs for the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan that conflicts with the Basin Plan can be mitigated to less than significant levels through the mitigation measures presented in those EIRs. Therefore, we also disagree with the DEIRs assertion that the General Plan Tune Up will not have significant impacts to jurisdictional waters. We welcome the opportunity to meet with you and other City staff to discuss these comments	Please see Master Response 2 regarding the treatment of previous environmental review.

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	and provide further information, as appropriate. We urge you to revisit our past correspondence (listed below) for the Areas 3 and 4 Specific Plans and the Dumbarton TOD Specific Plan. January 12, 2010, Letter to City of Newark, Watershed Division Comments on Draft EIR for Newark Areas 3 and 4 Specific Plans (included in Attachment A). April 30, 2010, Letter to City of Newark, TCD Comments on NOP for Dumbarton TOD Specific Plan. June 30, 2011, Email to City of Newark, TCD Comments on Draft EIR for Dumbarton TOD Specific Plan. July 27, 2011, Letter to City of Newark, TCD Comments on Dumbarton TOD Specific Plan Final EIR. February 13, 2013, Letter to City of Newark, Watershed Division and TCD Comments on the Newark General Plan Tune Up NOP March 8, 2013, Letter to City of Newark, TCD Comments for NOP for Dumbarton Transit Oriented Development (TOD) Trumark Residential Project. If you have any questions regarding our comments, please contact Brian Wines (bwines@waterboards.ca.gov) in our Watershed Division at (510) 622-2342 or Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.Sincerely, Shin-Roei Lee Division ChiefWatershed Division	
RWQCB-A-6	Subject: Comments on Newark General Plan Tune Up Notice of Preparation (NOP) dated January 2013 Dear Mr. Grindall: Thank you for the opportunity to comment on the Notice of Preparation (NOP) that we received January 17, 2013, for the Newark General Plan Tune Up Project (Project). The attached comments are intended to guide the City of Newark as it prepares an Environmental Impact Report (EIR) and other CEQA documents for the Project, which will result in an updated policy framework and consolidated land use designations intended to guide future development and redevelopment in Newark, concentrated primarily in the following focus areas: Dumbarton Transit Oriented Development (TOD), Area 3 and 4 focus Area, Old Town, Greater New Park Area. As a responsible and reviewing agency under CEQA, staff of the San Francisco Bay Regional Water Quality Control Board are commenting on only those categories that are germane to our agency's statutory responsibilities in connection with this Project. The Watershed Division comments are presented as Attachment A. The Watershed Division considers any proposals to fill jurisdictional wetlands or any waters of the State and United States, under the California Water Code. Toxics Cleanup Division (TCD) comments are presented as Attachment B. TCD oversees the investigation and cleanup of six contaminated sites in the Dumbarton TOD (pursuant to California Water Code 13304), where hazardous substances have been discharged and deposited into the waters of the State and have created a condition of pollution and nuisance. TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites. TCD also indirectly oversees the investigation and cleanup of approximately 80 other contaminated sites in the Project area, which are assigned to Alameda County Water District (ACWD) as a lead oversight agency (see the State's GeoTracker database (https://geotracker.waterboards.ca.gov). TCD considers and approves all proposals for Case Closure/No Further Action upon successful remediation of sites overseen by ACWD. The Department of Toxic Substance Control (DTSC) also oversees the investigation and cleanup of sites in the Project area (see the State's Envirostor database (http://www.envirostor.dtsc.ca.gov/public/). We urge the City to take a thorough and thoughtful approach to the project's California Environmental Quality Act (CEQA) environmental review. The Project could cause substantial impacts to jurisdictional waters that the Regional Water Board is charged with protecting pursuant to State and federal laws and regulations. As such, the Regional Water Board will rely on the City's CEQA documents to help evaluate project impacts when considering any permit applications or plans it receives for proposed activities within the areas covered by the Project. We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. We urge you to revisit our past correspondence (listed below) for the Areas 3 and 4 Specific Plans and the Dumbarton TOD Specific Plan. •January 12, 2010, Letter to City of	Attachment was received and has been reviewed. No response is necessary.

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	Newark, Watershed Division Comments on Draft EIR for Newark Areas 3 and 4 Specific Plans (included in Attachment A). •April 30, 2010, Letter to City of Newark, TCD Comments on NOP for Dumbarton TOD Specific Plan. •June 30, 2011, Email to City of Newark, TCD Comments on Draft EIR for Dumbarton TOD Specific Plan. •July 27, 2011, Letter to City of Newark, TCD Comments on Dumbarton TOD Specific Plan Final EIR. If you have any questions regarding our comments, please contact Brian Wines (bwines@waterboards.ca.gov) in our Watershed Division at (510) 622-2342 or Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.Sincerely, Bruce Wolfe Executive Officer	
RWQCB-A-7	Attachment A Watershed Division Comments on the Newark General Plan Tune-Up Project 1. General Comments on Water Board Mandate, Authority, and Potential Future Permitting Requirements Proposed developments in areas covered by the Project would fill more than 100 acres of waters of the State and United States, many of them adjacent to tidal sloughs and marsh habitat. •Dumbarton Transit Oriented Development (TOD), which would include fill of an unknown number of acres of wetlands, on the order of at least 20 acres. •Area 3 and 4 Focus Area, which would include fill of up to 85.6 acres of wetland/marsh/aquatic habitat. The acres of impacts to waters of the State are unknown in the Dumbarton TOD, since wetland delineations have only been performed in the Torian parcel, which represents about one-fifth of the Dumbarton TOD Specific Plan land area. Based on Figure 4.3-1 in the EIR for the TOD Specific Plan, it appears that at least 20 acres of jurisdictional wetlands are likely to be present in the TOD Specific Plan area. The proposed amount of fill in the Dumbarton TOD and Areas 3 and 4 Specific Plans are unusually large for projects receiving approvals from the U.S. Army Corps of Engineers (Corps) and the Water Board. Fill of about 100 acres of wetlands will require significant review by the Water Board to consider any project-related applications for fill of waters of the State and United States, for discharges of wastewater and stormwater, and for related issues. As a part of CEQA review of the Environmental Impact Report (EIR) for the Newark General Plan Tune-Up Project, the Water Board will consider any project proposals to fill waters of the State and United States under the following: •The California Water Code, which requires persons proposing to discharge waste to waters of the State to submit a Report of Waste Discharge and receive appropriate approvals from the Water Board prior to discharge; •Section 401 of the federal Clean Water Act (CWA), which requires state certification that federal permits to fill waters of the United States meet state water quality standards; •The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) (Section 4.23). The Basin Plan is available at http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan. •The Basin Plan directs the Water Board to consider specific guidelines and requirements, including the following, as a part of its mandated duty to protect waters of the State: oThe California Wetlands Conservation Policy (Governor's Executive Order W-59-93 and Senate Concurrent Resolution No. 28), requiring no net loss and a long-term net gain in the quantity, quality, and permanence of wetlands in California, including the San Francisco Bay region. As noted in the Basin Plan, it is preferable to avoid wetland disturbance. When this is not possible, disturbance should be minimized. Mitigation for lost wetland acreage and functions through restoration or creation should only be considered after disturbance has been minimized. Thus, as we describe in more detail below, the City should evaluate in its CEQA documents project alternatives that avoid and minimize fill. This may include substantially smaller projects than those that are currently proposed in the Dumbarton TOD and Areas 3 and 4 Focus Area components of the Project. In addition to the State directives to protect wetlands, the Basin Plan also directs Water Board staff to use alternatives analyses prepared pursuant to federal guidelines—the U.S. Environmental Protection Agency's CWA Section 404(b)(1) guidelines—to determine circumstances under which the filling of wetlands may be permitted, and requires that attempts be made to avoid, minimize, and only	Chapter 6.0, Alternatives, of the Draft EIR does in fact include a Restricted Growth Alternative which would restrict future development in sensitive areas in the western portions of Newark and restrict future development to previously urbanized areas; however, that alternative was ultimately rejected because it did not meet several of the stated objectives as listed on page 6-26 of the DEIR. Please see Master Response 3 regarding the appropriacy of alternatives. Please see Master Response 2 regarding the treatment of previous environmental review. Please see Master Response 5 discussing Area 4.

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	lastly to mitigate for adverse impacts. As noted above, the Water Board's review of any applications to fill wetlands will include review of whether all or a portion of the Project could be located at an off-site location(s), whether the project design can be altered to reduce impacts, such as by increasing project densities, modifying project layout, and eliminating proposed project elements that are ancillary to the basic project purpose. Thus, it is important that CEQA documents recognize that components of the Project may be changed in scope and design, based on their relationship to the project purpose, their contribution to wetland fill, and their capacity to be accommodated via changes in project design and/or at an off-site location(s).The current EIRs for the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan, which are proposed for incorporation into the General Plan Tune Up Project, do not incorporate alternatives that provide for significant avoidance of fill of waters of the State (See comments 2, 3, and 4, below). Because of this, individual projects that are consistent with these specific plans are likely to result in 404(b) (1) alternatives analyses that are not acceptable to the Corps or the Water Board. For example, applications for authorization to fill jurisdictional waters in the Torian Parcel, consistent with the proposed fill in the TOD Specific Plan, were submitted to the Corps and the Water Board in November of 2011. As of February of 2013, the applications had not yet been accepted by the Corps, Water Board, or the U.S. EPA. Therefore, it appears that the Specific Plans for the Dumbarton TOD and Areas 3 and 4 are directing project proponents to develop project proposals that have very low likelihoods of being authorized by the Corps or the Water Board.Finally, California's jurisdiction to regulate its water resources is broader than that of the federal government. The Water Board's jurisdiction extends to "waters of the State," which is broadly defined as "any surface water or groundwater, including saline waters, within the boundaries of the State." This definition includes isolated wetlands, and any action that may impact isolated wetlands is subject to the Water Board's jurisdiction. Please note that the approvals the Project may require from the Water Board for fill of waters of the State and the United States include issuance of Waste Discharge Requirements and/or CWA Section 401 Water Quality Certification.	
RWQCB-A-8	2. Recommendations for Revising Specific Area Plans for the TOD and Areas 3 and 4, Prior to Incorporating them into the General Plan Tune Up Project In the interest of expediting the permitting process for future projects within these Specific Plan areas, the Water Board seriously urges the City of Newark to consider revising these Specific Plans to emphasize reduced fill alternatives. The City of Newark should more thoroughly evaluate reduced fill alternatives that would: •Reduce the area of wetlands and their surrounding upland buffers that would be converted to residential and commercial uses; and •Provide a wider buffer between new development and preserved and restored wetlands, and also reduce the length over which developed areas would be in contact with preserved and restored wetlands. This should include considering options such as massing development on a smaller portions of sites covered under the Project, reducing proposed amounts of total development (e.g., number of dwelling units and area of other uses), increasing densities for all land uses, and locating appurtenant land uses (e.g., office/commercial, playfields and upland parks, other civic uses such as libraries, schools, and places of worship) in already-developed portions of Newark or nearby cities. 3. Elements of the Dumbarton TOD Specific Pan EIR that will Hinder Permitting in the Specific Area. The General Plan Tune-Up will incorporate the Dumbarton Transit Oriented Development Specific Plan into the General Plan. Water Board staff have reviewed the *EIR for the Dumbarton Transit Oriented Development Specific Plan* and have identified the following problems that compromise the usefulness of this EIR in supporting permit applications for future development in the Dumbarton TOD. •The EIR has a low level of detail with respect to biological resources and jurisdictional waters.•The EIR has a low level of detail with respect to proposed mitigation measures for impacts to jurisdictional waters. •The EIR did not	The comment is noted; however, it does not pertain to the merits of the Draft EIR. No further response is required.

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	meaningfully assess opportunities for avoidance and minimization of impacts to jurisdictional waters.•The EIR piece-meals impacts to jurisdictional waters. •The EIR did not consider the impacts of new residential development on introducing new sources of predators into the adjacent marshes, including the Plummer Creek Restoration Site. •The EIR did not consider the impacts of residential development on isolating the Plummer Creek Restoration Site from other habitat. •The EIR did not consider the recommendations of the 1999 *Baylands Ecosystem Habitat Goals*.•The EIR did not evaluate specific options for anticipating sea level riseAt the time that the FEIR was certified, wetland delineations had only been performed on the Torian property, which consists of only 40 acres of the total 205-acre Dumbarton TOD Specific Plan area. While potential areas of wetlands were identified on the Cargill Tract and the potential existence of vernal pools on Parcel E was noted, the exact locations and extent of these jurisdictional habitats were not established through approved delineations. Because of this, the EIR does not do an adequate job of identifying all potential impacts to jurisdictional waters in the Specific Plan Area.The Dumbarton TOD EIR suggests that impacts to wetlands can be mitigated at offsite mitigation banks, but does not identify mitigation banks with available credits for seasonal wetlands, or mitigation banks with vernal pool credits, in the event that the presence of vernal pools is confirmed in the Specific Plan area. If mitigation banks are not available, the EIR suggests that mitigation may be created either onsite or at unspecified offsite mitigation locations. As the Port of Oakland discovered in its recent search for mitigation locations, it is difficult to find opportunities for mitigation of large acreages of wetlands in the South Bay. In order for the EIR to be adequate, the Dumbarton TOD EIR should have identified all jurisdictional waters that may be impacted and should have presented real opportunities to mitigate for those impacts. Without this level of detail, it is impossible for reviewers of the document to assess whether or not all impacts can be mitigated to less than significant levels. The Dumbarton TOD EIR also failed to explore opportunities for consolidated mitigation in the near marsh parcels in the Specific Plan area. Alternative 2: High Density Residential illustrated how most of the potential wetlands could be avoided. This alternative assumed that there would be a transfer of development rights for those properties that would provide additional open space and parks. However, the City of Newark does not appear to have pursued this alternative, which would have resulted in impacts avoidance for wetlands. The need to use a transfer of development rights to make Alternative 2 feasible also illustrates an internal inconsistency in the Dumbarton TOD Specific Plan EIR. Alternative 2 requires meaningful coordination between the City and property owners. But the preferred alternative appears to leave development decisions up to individual property owners. This has the effect of favoring private development proposals that rely on fill of all wetlands, since each property owner is left to maximize development potential on their own holdings. The U.S. Fish and Wildlife Service (USFWS) described the impact of predators associated with residential development in its comments on the Dumbarton TOD Specific Plan EIR. The USFWS noted that, "Nearby housing would likely increase disturbance and predation of migratory birds by nuisance species and house pets." USFWS also noted that the residential build out of the site would result in the, "increased presence of predators (e.g., Norway rates, California gulls, feral cats, red foxes, raccoons, and skunks) that prey on California clapper rails and salt marsh harvest mice." But impacts resulting from the introduction of predators associated with residential development were not acknowledged in the City's response to comments.The EIR also does not consider the recommendations of the 1999 *Baylands Ecosystem Habitat Goals*, which recommended exploring options to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper end of Plummer slough (Chapter 3, page 133).	
RWQCB-A-9	4. Elements of the Areas 3 and 4 Specific Plan EIR that will Hinder Permitting in the Specific Area. The General Plan Tune Up will incorporate the Areas 3 and 4 Specific Plan into the General Plan. The Water Board's January 11, 2010, comments on the *Draft Environmental Impact Report for the Newark*	The comment is noted; however, it does not pertain to the merits of the Draft EIR. No further response is required.

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	Areas 3 and 4 Specific Plan (SCH No.: 200705205) are included as an attachment to the Water Board's comments on the Newark General Plan Tune Up NOP. As we noted in our January 12, 2010, letter, the proposed mitigation quantities in the Areas 3 and 4 Specific Plan EIR appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. The EIR relies on a combination of onsite wetland creation/enhancement and offsite wetland preservation. Onsite mitigation, which is only proposed at a 1:1 ratio, will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. With respect to offsite mitigation, the EIR does not provide sufficient detail to demonstrate that feasible locations exist for offsite mitigation. While the City of Newark might disagree with the Water Board over the level of detail necessary for the discussion of proposed mitigation measures in the EIR for the Areas 3 and 4 Specific Plan, we would like to point out that the City itself set the parameters for offsite mitigation by requiring that "off-site locations shall currently support wetlands of sufficient quantity and quality to satisfy mitigation requirements", and "wetland mitigation shall occur on lands located within 10 air miles of the current project site and shall be located along the eastern shore of south San Francisco Bay within the same geographic watershed." The EIR fails to demonstrate that the City of Newark can achieve its own objectives for offsite mitigation, using either mitigation banks or other private lands. At most, the EIR refers to a potential mitigation bank that may be capable of providing less than half of the mitigation necessary for proposed impacts to wetlands at Area 4. Recent projects in the South Bay have not been able to find even half of the acreage of mitigation that would be required to mitigate all of the impacts to waters of the State that are proposed in the Areas 3 and 4 Specific Plan.Also, as Water Board staff noted in our comment letter on the Areas 3 and 4 Specific Plan DEIR, any mitigation plan that relies exclusively, or heavily, on the preservation of wetlands, as is currently proposed in the EIR for offsite mitigation, would not be consistent with the State's "no net loss" policy. No net loss can only be achieved through avoidance of habitats or the successful creation of new habitats. Since preserved habitats are already in existence, the use of preservation results in a net loss of wetland habitat. Therefore, the Water Board comment on the EIR noted that the proposed ratio of 1.5:1 is far too low for a mitigation measure that relies on preservation. Finally, we would like to reiterate that the City should not assume that the resource agencies will allow the fill of the wetlands at Area 4. Large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the Bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to transgress (move up slope) in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), the Bay Conservation and Development Commission (BCDC), and the Water Board have all expressed strong reservations about the fill of wetlands in Area 4. While the City has not yet identified sufficient mitigation opportunities for impacts associated with the implementation of the Specific Plan, Area 4 itself presents significant opportunities for use as mitigation for other projects. Successful wetland mitigation sites require a unique combination of hydrology and topography, which Area 4 possesses. The Water Board encourages the City of Newark to consider the potential use of Area 4 as a mitigation bank. There are significantly fewer regulatory and physical barriers to creating a mitigation bank at Area 4 than there are to placing fill in Area 4 and seeking to create adequate mitigation for that fill.	
RWQCB-A-10	5. The General Plan Tune Up Project EIR Should Address the Impacts of Development on Adjacent Habitats. The EIR should evaluate both individually and cumulatively the impacts of individual projects that are authorized under the Project on the use of existing nearby waters and wetlands as wildlife habitat, including habitat for rare, threatened, and endangered species. Portions of the	As stated in Chapter 1.0 of the DEIR, the EIR was prepared at a program level under CEQA and therefore does not consider project-specific impacts. Future development under the proposed General Plan would be required to comply with CEQA and project-level impacts and mitigation measures will be identified to the extent necessary to comply with CEQA. Please see Master Response 2 regarding the treatment of previous environmental review.

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	Dumbarton TOD and Area 4 have the potential to be restored to habitat capable of supporting uses, including estuarine habitat, preservation of rare and endangered species, warm freshwater habitat, and wildlife habitat. The proximity of existing tidal marsh habitat in the nearby Plummer Creek Restoration Site and the Don Edwards National Wildlife Refuge (Refuge) would make such restored habitat especially valuable. Current proposals to develop lands in the Dumbarton TOD and Area 4 up to the borders with the preserved habitats are likely to significantly impact habitat values at the Plummer Creek Restoration Site and the Refuge. However, the analysis of impacts in the Dumbarton TOD and Areas 3 and 4 Specific Plan EIRs do not address the increased level of predation that is associated with placing residential development adjacent to habitats that support listed species. Residential neighborhoods have higher populations of domestic animals (e.g., cats and dogs), and also attract raccoons and corvids that feed on domestic refuse. Cats, raccoons, and corvids are predators of birds and rodents. Introducing residential neighborhoods adjacent to wetlands, such as the Plummer Creek Restoration Site and the Refuge, will increase the predation pressure on bird species and the salt marsh harvest mouse (SMHM). Domestic dogs may also flush birds from nesting habitat or cause migratory birds to expend energy in fleeing from dogs that enter foraging habitat. At other residential developments, predator barriers have been required between new residential neighborhoods and marsh habitat. However, the Dumbarton TOD and Areas 3 and 4 Specific Plan EIRs contain no mitigation measures for the increased population of predators that will be brought adjacent to marsh habitats when the specific plans are implemented. Therefore, the Project CEQA document should address this potential impact on species in adjacent marsh habitats.	
RWQCB-A-11	6. The General Plan Tune Up Project EIR Should Address Conflicts with the *BaylandsEcosystem Habitat Goals*. The Project EIR should address conflicts that the Dumbarton TOD Specific Plan and the Areas 3 and 4 Specific Plan have with the *Baylands Ecosystem Habitat Goals* (1999) (*Habitat Goals*).The Biological Resources discussion in the Project EIR should address Project compatibility with the *Habitat Goals* and its companion document *Baylands Ecosystem Species and Community Profiles* (2000)(*Profiles)*, which should be recognized as regional habitat conservation plans. The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM.The*Habitat Goals Project* recommends exploring options to restore historic tidal marsh/upland transitional habitat and associated vernal pool habitat at the upper end of Plummer slough (Chapter 3, page 133), which includes lands covered by the Dumbarton TOD Specific Plan. This recommendation was not addressed in the Dumbarton TOD Specific Plan The*Habitat Goals Project* recommends that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4), and the BCDC has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. In addition, the Refuge has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation is demonstrably capable	Please see Master Response 2 regarding the reliance on previous environmental review. This DEIR is not required under CEQA to address conflicts that other plans may or may not have with Habitat Goals, but rather address impacts related to the proposed General Plan only. Please see response to RWQCB-A-7 regarding alternatives.

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	of providing equal habitat benefit for listed species. Therefore, at Area 4, the City should evaluate the environmental impacts of an alternative project that would consist solely of restoring tidal marshes and/or open water habitat at the site, consistent with the Habitat Goals. Evaluation of an alternative that would restore the site to tidal marsh should consider how the alternative could help retard, store, and filter floodwaters, and preserve sufficient upland area to serve as a buffer against sea level rise (i.e., to ensure that the area of restored marsh is not reduced, for example by being converted to open water, as a result of sea level rise) and storms.	
RWQCB-A-12	7. Recommendations for the Discussion of Post-Construction Stormwater Management in the EIR for General Plan Tune Up Project The EIR should describe how development or redevelopment in the areas covered by the General Plan should incorporate a combination of low impact development (LID) features to reduce discharge of pollutants to waterways. The EIR should cite the specific treatment standards required for these measures, including those required under Provision C.3. of Water Board Order No. R2-2009-0074, the Municipal Regional Stormwater Permit (MRP), under which the City of Newark is a co-permittee. The EIR should note that the LID approach encompasses a broad range of urban planning issues associated with new and re-development projects, including street and circulation designs, innovative approaches to parking, drainage designs, land use densities and structure locations, and similar issues. The EIR should indicate that future individual projects in the areas covered by the Project will be required to incorporate not simply treatment controls based on an LID approach, but the range of LID approaches, including implementing "skinny street" or "green street" designs, parking maxima, identifying opportunities to minimize impervious surfaces by implementing shared and/or structure parking, and the like.	To the extent that the Draft EIR addresses and/or mentions LID techniques, it is not required under CEQA to describe such techniques any further than what is needed to make a determination of significance. As noted in HYDRO-3 starting on page 4.8-25 of the Draft EIR, the analysis indicates that future development would be subject to C.3 requirements.
RWQCB-A-13	Attachment dated Jan 12, 2010	The attachment has been reviewed.
RWQCB-B-1	Thank you for the opportunity to comment on the General Plan Tune up Draft Program E/R DEIR) for the City of Newark dated August 13, 2013. Please include these additional comments from the Toxics Cleanup Division staff to supplement our agency letter dated September 26, 2013. These comments on the DEIR pertain to Section 4.7 Hazards and Hazardous Materials (pages 4.7-1 through 4.7-32) and Table 1-1, Summary of Impacts and Mitigation Measures, to ensure that the environmental documentation under the California Environmental Quality Act (CEQA) adequately addresses soil and groundwater pollution in the City of Newark and to protect human health and the environment. Regional Water Board (Toxics Cleanup Division) staff oversees the investigation and cleanup of numerous for numerous leaking underground fuel tanks (LUFT sites) and spills, leaks, and cleanup sites (SCP sites) in the proposed project areas, pursuant to California Water Code 13304, where hazardous substances have been discharged and deposited into Waters of the State and have created a condition of pollution and nuisance.	Please see Chapter 3 of the Final EIR for text revisions. The Draft EIR text will be revised to include: "The Regional Water Board (Toxics Cleanup Division) staff oversees the investigation and cleanup of numerous leaking underground fuel tanks (LUFT) sites and spills, and leaks, and cleanup (SCP) sites in the proposed project areas, pursuant to California Water Code 13304, where hazardous substances have been discharged and deposited into Waters of the State and have created a condition of pollution and nuisance."
RWQCB-B-2	Section 4.7 (Hazards and Hazardous Materials) does not accurately depict the extent and magnitude of existing soil and groundwater pollution in Newark areas,	The commenter does not identify a specific environmental concern. Table 4.7-1 in Section 4.7 identifies over 100 hazardous materials sites within the Plan Area that are listed on databases developed and maintained by the SWRCB and DTSC. The type, status, and address of each of these sites is included in the table. In addition, information from previous EIRs describing existing conditions within the Newark Areas 3 and 4 Specific Plan Area and the Dumbarton TOD Specific Plan Area, which are located within the Plan Area, has been included by reference and summarized in Section 4.7. Additionally, Figure 4.7-1 shows the location of Hazardous Materials Sites in Newark. This information collectively provides an acceptable depiction of existing hazards and hazardous conditions within the Plan Area for the purposes of a programmatic General Plan Tune Up DEIR. Subsequent projects resulting from implementation of the proposed Plan would also be required to comply with CEQA and project-specific impacts would be further identified and analyzed along with appropriate site-specific mitigation

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		measures to the extent necessary to comply with CEQA.
RWQCB-B-3	and does not appropriately evaluate potentially significant hazards to public health and the environment from harmful chemicals in the soil, soil vapor and groundwater and ongoing migration of pollutants in groundwater.	The comment does not pertain to the merits of the EIR. Please refer to the response to RWQCB-2. A comprehensive and cumulative evaluation of those properties identified in the SWRCB and DTSC databases, the EIRs for the Newark Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan, respectively, as well as possibly other heretofore unknown contaminated properties, and related potential impacts of these properties to public health and the environment is beyond the scope of a programmatic General Plan Tune Up DEIR. Subsequent projects resulting from implementation of the proposed Plan would be required to comply with CEQA and project-specific impacts of the project to public health and the environment would be identified and analyzed along with appropriate site-specific mitigation measures to the extent necessary to comply with CEQA. Further, the discussion in HAZ-1 and HAZ-2 in Chapter 4.7 of the DEIR states that compliance with law and the implementation of policies and actions under the proposed General Plan would adequately reduce the potential impacts to a level of less than significant.
RWQCB-B-4	Shallow groundwater pollution can pose significant threats to human health can be problematic for redevelopment, and can take decades to restore its beneficial uses.	The comment is noted. See response to comment RWQCB-B-3. The Draft EIR contains an adequate analysis of the risks of hazardous substances, including those found in water. That discussion can be found on under HYDRO-1 and HYDRO-5 in Chapter 4.8 of the Draft EIR.
RWQCB-B-5	The DEIR does not identify any mitigation measures for hazardous materials. Table 4.7-1, Hazardous Materials Sites in Newark, lists more than 100 hazardous material sites; however, in Table 1-1, Hazards and Hazardous Materials Impact Criteria (HAZ-1 through HAZ-9) were "less than significant (LTS)" before mitigation and Mitigation Measures were "not applicable (N/A)." We welcome the opportunity to meet with you and other City staff to discuss these comments and provide further information, as appropriate. If you have any question or comments, please contact Cherie McCaulou (cmccaulou@waterboards.ca.gov) in our Toxics Cleanup Division at (510) 622-2342.	The comment is noted. Future development within the city of Newark would require compliance with federal, State, and local regulations with direct oversight and approval by responsible federal, State, and local regulatory agencies to ensure that potential contamination or exposure to hazardous materials is avoided or controlled to minimize the risk to the public or the environment on a case-by-case basis. The DEIR correctly notes that though contamination could pose a potential risk, those risks would be reduced to a level of less than significant through compliance with applicable environmental laws and proposed General Plan policies and actions. Compliance with law is a reasonable assumption and may support a conclusion that an impact is less than significant without the need for mitigation. Additionally, the proposed Plan goals, policies, and actions, as listed topically herein under HAZ-1 through HAZ-8 in the DEIR, would further ensure that future development in the City if Newark does not contribute to cumulative increase in risk to hazards or hazardous materials. Finally, subsequent projects resulting from implementation of the proposed Plan would be required to comply with CEQA and project-specific impacts would be further identified and analyzed along with appropriate mitigation measures to the extent necessary to comply with CEQA.
RWQCB-B-6	The following comments are provided to encourage the City to take an active role in ensuring hazardous materials sites are adequately remediated prior to development. 1. Past industrial activities such as chemical handling, manufacturing, and transporting in the vacant western portion of Newark have caused conditions of pollution and nuisance. Soil and groundwater are contaminated with chemicals that are known to cause cancer, birth defects, and internal and respiratory health problems. These chemicals include volatile and semi-volatile organic compounds including benzene, ethylene dibromide (EDB), 1 ,2-dichloroethane (1 ,2-DCA), trichloroethene (TCE) tetrachloroethene (PCE), pentachlorophenenol (PCP), various metals including arsenic; dioxins/furans and polychlorinated biphenols (PCBs), polyaromatics (PAHs), petroleum hydrocarbons.	The comment is noted. On pages 4.7-23 and 4.7-24 of the DEIR, goals, policies, and actions are listed, as excerpted from the proposed Plan, that recommend that a Phase I Environmental Site Assessment be required when a property is changed from an existing use to a more sensitive use (e.g., industrial to residential). The action further recommends that if potential hazardous materials issues are identified ensure that they are investigated and that properties are cleaned to responsible regulatory agency standards prior to development.
RWQCB-B-7	2. Cleanup actions implemented by dischargers to address the pollution and nuisance conditions, especially in western Newark in the Dumbarton TOO area (TOO), have not been entirely successful and will likely take years to restore groundwater beneficial uses.	The comment is noted; however, it does not address the adequacy of the Draft EIR under CEQA, therefore, no further response is required.
RWQCB-B-8	3. Human health risk assessments have been completed at many of the hazardous materials sites, and the results often find excessive exposure risks to human health, attributed from residual chemicals in soil, soil vapor, and groundwater.	The comment is noted. The cleanup actions referenced do not alter the Draft EIR's conclusion that compliance with law would result in a less than significant impact related to hazards to the public and the environment from contamination. See response to comments RWQCB-B-2 and RWQCB-B-3.

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RWQCB-B-9	4. Vapor barriers and underground venting systems (i.e., engineering controls) are being proposed some of the property owners in the TOD to mitigate vapor intrusion risks. The use of vapor barriers and active ventilation systems to mitigate possible vapor migration into new buildings is a risk management approach that is considered viable only for industrial and commercial sites with "modest" levels of contamination and only after aggressive remedial actions are first implemented to the fullest extent prior to occupancy. To be suitable for future residential use, the sites need to be remediated to a level that allows for unrestricted use (i.e., 1 x 1 o-6 for carcinogens and Hazard Index of 1 for noncarcinogens). Staff is generally reluctant to approve a risk management approach at residential sites, particularly single family residential, and would only do so if (1) the residual contamination were modest (e.g., between I x I o-s and 1 x 10-6 cancer risk); (2) the project design minimized potential exposure, and (3) a local agency (presumably the City of Newark) played an active role in tracking and enforcing risk management measures.	The comment is noted. The DEIR explicitly states throughout Section 4.7 that future development within the Plan Area would require compliance with federal, State, and local regulations, as well as with responsible regulatory agencies applicable policies and conditions of approval, to ensure that potential contamination or exposure to hazardous materials is avoided or controlled to minimize risk to the public or the environment on a case-by-case basis. Subsequent projects resulting from implementation of the proposed Plan would be required to comply with CEQA and project-specific impacts would be further identified and analyzed along with appropriate mitigation measures to the extent necessary to comply with CEQA. On page 4.7-5 of the DEIR, a discussion of local programs and regulations is provided, including identification of two local agencies (i.e., Alameda County Department of Environmental Health and the Alameda County Water District) currently engaged in hazardous materials programs in the city of Newark. The determination of appropriate technologies to address hazard risk of specific properties and specific proposed uses is inappropriate in a programmatic EIR for a general plan tune up project. Proposed General Plan Goal EH-4 and Policies EH-4.5 appropriately address hazards from development of potentially contaminated sites.
RWQCB-B-10	5. Cleanup of contaminated soil can pose potentially significant impacts to human health. At the Jones Hamilton hazardous materials site, an estimated 138,000 cubic yards of contaminated soil is proposed to be excavated and off-hauled by truckloads through residential neighborhoods and City streets. The final EIR should address hazardous materials cleanup projects that can exposure residents to harmful chemicals dusts, and vapors during excavation, loading, and transporting.	The comment is noted. A discussion of hazardous materials cleanup projects that could pose potential exposure to the public and the environment from harmful chemical dusts and vapors during excavation, loading, and transporting is provided on pages 4.7-20 through 4.7-24 of the DEIR. Included in that discussion are goals, policies, and actions that are contained in the proposed Plan, as well as applicable regulations, that speak to this concern. In addition, an NOP has been issued for an SEIR for the Jones Hamilton site. That document is the appropriate vehicle to analyze the proposed remediation of a specific parcel rather than this DEIR. See response to comment RWQCB-B-2.
RWQCB-B-11	6. Harmful chemicals and vapors that collect within utility corridors can pose potentially significant impacts to utility workers and service employees working in confined spaces within polluted public streets. These workers can also be exposed to' contaminated groundwater during dewatering.	The comment is noted. Cal OSHA is the responsible state-level agency for ensuring workplace safety. Cal OSHA assumes primary responsibility for the adoption and enforcement of standards regarding workplace safety and safety practices. In the event that utility workers and service employees are working within confined spaces within polluted public streets, a Site Safety Plan must be crafted and implemented to protect the safety of workers. Site Safety Plans establish policies, practices, and procedures to prevent the exposure of workers and members of the public to hazardous materials originating from the contaminated work area. The discussions in Chapter 4.7 of the Draft EIR also state that compliance with law would adequately mitigate the impacts associated with exposure to hazards. Please refer to the impact discussions of HAZ-1 and HAZ-2 of the DEIR.
RWQCB-B-12	7. The phasing and timing of the particular developments should to be managed appropriately by the City to prevent exposure to hazardous materials. Soil cleanups should be implemented in advance of developing new vacant properties in Newark, to prevent exposure to construction workers and occupant of new residences. Protective measures are needed to ensure that removal of cleanup actions take place prior to any new residents moving into the affected areas of Newark.	The comment is noted. A discussion of hazardous materials cleanup projects that could pose potential exposure to the public and the environment from harmful chemical dusts and vapors during excavation, loading, and transporting is provided on pages 4.7-20. Please also see Response to Comment RWQCB-B-9.
RWQCB-B-13	To address potentially significant impacts and hazards to the public or the environment, staff recommends the following actions: a. Include measures to ensure protection of human health from exposure to hazardous materials at contaminated properties. The Dumbarton TOD Specific Plan EIR addressed potentially significant impacts with mitigation measures 4.7-la through 4.7-le. b. Consider supplemental EIRs for developments overlying soil and shallow groundwater plumes to adequately evaluate the potential hazards to the public during cleanup of soil and groundwater pollution underlying sites. c. Consider development only at parcels where hazardous materials and residual pollution have been aggressively and successfully remediated to the fullest extent, particularly to ensure protection from potential vapor intrusion risks. d. Allow installation of engineering controls (i.e., vapor barriers and venting systems) only at commercial and industrial properties. Ensure that these engineering controls are appropriately effective by routine monitoring that takes place prior to permitting occupancy and continues long-term, as needed. e. Include post-construction mitigation measures to ensure that future	Comment is noted. As stated above in other responses, future development within the city of Newark would require compliance with federal, State, and local regulations with direct oversight and approval by responsible federal, State, and local regulatory agencies to ensure that potential contamination or exposure to hazardous materials is avoided or controlled to minimize the risk to the public or the environment on a case-by-case basis. The proposed Plan goals, policies, and actions, as listed topically herein under HAZ-1 through HAZ-8 in the DEIR, also would further ensure that future development in the City if Newark does not contribute to cumulative increase in risk to hazards or hazardous materials. Subsequent projects resulting from implementation of the proposed Plan would also be required to comply with CEQA review and project-specific impacts would be further identified and analyzed along with appropriate mitigation measures to the extent necessary to comply with CEQA. Finally, the proposed Plan and the DEIR are not intended in any way to undermine or usurp the responsibility and authority of the SF Bay RWQCB to protect ground and surface waters under its jurisdiction, or for that matter the responsibilities and authorities of any other State, federal, or local agencies.

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	homeowners are protected from underlying residual pollution and financial responsibilities associated with any residual pollution. Mitigation measures should address the following: 1. Long-term risk management of pollution, long after the development is constructed; II. Inspection and monitoring of any engineered vapor mitigation systems to ensure the system are working effectively; iii. Long-term groundwater monitoring, sampling, and reporting until the cleanup goals are reached; iv. Proper abandonment of wells after the cleanup goals are reached; v. Periodic indoor air monitoring of buildings that are constructed over plumes with elevated levels of volatile organic compounds. f. Provide for community outreach, warnings and public notices to advise local residents and workers of the potential hazards with the cleanup, before work has started. g. Include measures to ensure protection of public utility corridors for abating hazardous vapors and for long-term treatment of contaminated groundwater, as appropriate. h. Create a system for community notification such as a website (see "www.Redfieldsite.org")	
Corporations and NGOs		
Ashland-1	Re: Ashland, Inc. Comments on: (i) General Plan Tune Up Draft Program EIR for the City of Newark, and (ii) Newark General Plan – Draft for Public Review Dear Mr. Grindall: On behalf of Ashland Inc. ("Ashland"), thank you for the opportunity to comment on the General Plan Tune Up Draft Program Environmental Impact Report for the City of Newark ("DEIR"), and (ii) Newark General Plan – Draft for Public Review dated August 2013 ("Draft General Plan"). Ashland has two comments regarding these documents for your consideration. First, in the Draft General Plan, which is incorporated by reference in the DEIR, many of the proposed land use designations are inconsistent with approved land use designations in the Dumbarton Transit Oriented Development Specific Plan ("Specific Plan"), which was approved by the City of Newark in September 2011. Specifically, among other inconsistencies, land which was approved for "Medium/High Density Residential" use in the Specific Plan, at an approved density of 16 to 60 units per acre, is mapped at Figure LU-1 of the Draft General Plan for "High Density Residential" use at an approved density of 30 to 60 units per acre. As you know, Ashland owns property within the Specific Plan which is approved for Medium/High Density Residential use. Placing the property in a High Density Residential use category would nearly double the required minimum density from 16 to 30 units per acre. The residential product which could be constructed at these two minimum densities is completely different, and Ashland never agreed to a minimum density of 30 units per acre for its property. There is no apparent intent by the City in the Draft General Plan to amend the approved Specific Plan. So we are assuming that the absence of any Medium/High Density Residential category at 16 to 60 units per acre, as approved in the Specific Plan, was an oversight. The Draft General Plan therefore needs to be revised to either create a new Medium/High Density Residential designation, at 16 to 60 units per acre, to apply to all properties within the Specific Plan area which are currently so designated. Alternatively, the Draft General Plan should expressly state that the land use designations and densities applicable to Specific Plan properties are as stated in the Specific Plan, and that the City-wide land use designations and densities created in the Draft General Plan do not apply to the Specific Plan area. Ashland also concurs in comments made by Cargill Incorporated regarding these points in a letter from Paul Shepherd dated September 27, 2013, to the City of Newark commenting on the Draft General Plan.	The comment is noted and the General Plan density ranges have been adjusted to address this issue. Please see impact analysis LU-2 on page 4.9-7 through page 4.9-8 in Chapter 4.9, Land Use and Planning, of the DEIR. As discussed in the analysis, and per State law, the General Plan is the primary document for the community. Although the proposed General Plan would replace the 1992 Newark General Plan, the Dumbarton TOD Area Specific Plan would remain effective; however, several policies contained in the proposed General Plan, found on page 4.9-8, would ensure consistency between the new General Plan and the existing Dumbarton TOD Area Specific Plan.
Ashland-2	Secondly, the DEIR at Page 4.7-7 states that the Ashland property (within the Specific Plan area) is, present tense, "one of three State Response sites that DTSC defines as confirmed release sites that are generally high-priority and high potential risk." For this statement, DEIR cites to the EnviroStor database maintained by DTSC for the Ashland property. The EnviroStor database contains no entries for the	The comment is noted and the attachment has been reviewed. Please see Chapter 3 of the Final EIR for text revisions.

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	Ashland property past 1984. The Ashland property is not a State Response site and is not under the active oversight of DTSC. Oversight of the property was transferred to the San Francisco Bay Regional Water Quality Control Board ("RWQCB") in 1984 and nearly 30 years ago. The only current, accurate and relevant information regarding the Ashland property may be found on the Geotracker website maintained by the RWQCB. The EnviroStor file is terribly outdated and any reference to it or to Ashland as a "State Response site" must be removed in order for the DEIR to convey accurate information to the public and to the City of Newark regarding the Ashland property. For your assistance, I have included a proposed redline of relevant excerpts from the DEIR making this correction at Attachment 1 to this letter. Thank you again for the opportunity to comment on the Draft General Plan and DEIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me. Very truly yours, Barry J. Shotts	
Ashland-3	Attachment 1 - Proposed Revisions to DEIR	The attachment has been reviewed
OAS-1	This letter is being written in response to Newark's Draft Impact Report for the General Plan Update. It is being written to protest the destructive plan to fill and develop Area 4 on the Newark marsh area. This is critical habitat in a number of ways. Even if it were not for the endangered species found there Newark would be unwise to build a golf course or any other development in such a fragile environment. The latest evidence for sea level rise indicates that the level will be quite a bit higher than previously thought. Golfers might have to wear wet suits when golfing within a few years. Another very important reason for keeping Area 4 intact as a marsh is that as such the marsh is able to absorb more water and slow some of the flooding that might otherwise occur as sea level rises or there is a heavy rainfall. Filling the nearly 400 acres of wetlands that fall within the expansion boundaries would deprive almost a dozen special status species of habitat in two ways. One is the naturally occurring habitat and the other is that there is the possibility of creating upland transition zone habitat for species as refugia in the event of high tides. The 1999 Baylands Ecosystem Habitat Goals Project also states that these two habitats are critical to the health of the Bay. The San Francisco Bay Regional Water Quality control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south central San Francisco Bay and that Area4 represents a rare opportunity to ...provide an area for tidal marsh species to move up slope in response to sea level rise. The California Department of Fish and Wildlife have noted that this wetland is an integral component of the San Francisco Bay ecosystem and of critical importance to waterfowl and shorebirds. Along with sensitive species there must be strong protection for the highly endangered Salt Marsh Harvest Mouse. There are other more suitable places to build houses, golf courses and other amenities of urban and suburban living. Newark would be well served to protect Area 4 in its entirety and focus its development efforts in a more plausible location.	Please see Master Response 4 regarding sea level rise, and Master Response 5 to clarify issues involving Area 4. Also, the Alternatives chapter contains a discussion on Restricted Growth as an alternative, which would protect certain areas on the western edge of Newark, however it was later discussed in the Alternatives chapter that it would not meet several of the stated objectives of the City and, therefore, was ultimately rejected. Please see Master Response 3 regarding the adequacy of alternatives.
CARGILL-1	Re: Cargill Comments on General Plan Tune Up Draft Program EIR for the City of Newark Dear Mr. Grindall: On behalf of Cargill, Incorporated ("Cargill"), thank you for the opportunity to comment on the General Plan Tune Up Draft Program EIR for the City of Newark, dated August 13, 2013 ("DEIR"). Cargill has enjoyed a long and close working relationship with the City and looks forward to continuing to play a role in Newark's future success. With that in mind, we request that the DEIR be revised to take into account the following comments to ensure factual accuracy in the City's planning and decision-making process and compliance with the California Environmental Quality Act ("CEQA"). [Under separate cover dated September 27, 2013, Cargill is also submitting comments today ("Cargill's Draft General Plan Comment Letter") on the Newark General Plan – Draft for Public Review dated August 2013 ("Draft	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	General Plan"). Given the inter-relationship between the Draft General Plan and the DEIR, and the fact that some of Cargill's proposed revisions to the Draft General Plan would necessitate corresponding revisions to the DEIR, Cargill incorporates its comments on the Draft General Plan herein by reference.] Cargill's Solar Salt Production System There are many instances in which the DEIR confuses Cargill Salt's operations within the City of Newark (the "Newark Plant Site") and its solar salt production system elsewhere. The following discussion is intended to clarify the nature of Cargill's operations. Operating Salt Ponds (Outside City of Newark) The Don Edwards San Francisco Bay National Wildlife Refuge ("Refuge") was established in 1974 through Cargill's conveyance of over 12,000 acres of operating salt ponds adjacent to the western boundary of the City of Newark. Cargill maintains perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system. Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators. The brines are then pumped or transferred by Cargill sequentially through a series of evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural evaporation. The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds ("BCDC Staff Report"), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[BCDC Staff Report at 6-7.] Cargill Newark Plant Site (Within City of Newark) After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities at its Newark Plant Site within the western portion of the City of Newark. Brines are placed within "crystallizers" at the Newark Plant Site, which are large, man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations within the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment. In short, Cargill's operations at its Newark Plant Site are very industrial in nature as the photographs illustrate at Attachment 1. Hence, while some of the salt evaporators within the Refuge (and outside the City of Newark) provide habitat for specific species of wildlife, the Newark Plant Site contains very limited or no vegetation or biological characteristics or habitat to support species use.[BCDC Staff Report at 27-28.] Enclosed as Attachment 2 is a letter prepared by Professional Wetland Scientist Michael Josselyn, PhD, of WRA Environmental Consultants, summarizing the corrections needed to ensure that the DEIR contains an accurate presentation of Cargill's operations.	
CARGILL-2	Comments and Necessary Revisions to Chapter 3 – Project Description Enclosed as Attachment 3 are proposed revisions to the text of the DEIR. The proposed revisions to Chapter 3 – Project Description are necessary: (i) to note that the Dumbarton TOD Specific Plan (the "Specific Plan") was approved by the City of Newark in 2011, and not 2010 (this is an error that is made throughout the Draft General Plan and DEIR),	Please see Chapter 3 of the FEIR for text revisions.
CARGILL-3	(ii) to make certain revisions to the residential land use designations and density ranges; currently, certain density ranges are inconsistent with the density ranges approved by the City in the Specific Plan in 2011 (see Cargill's Draft General Plan Comment Letter),	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-4	(iii) to clarify the nature of Cargill's operations at its Newark Plant Site as described above (salt refining and production, in addition to "salt harvesting").	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-5	Comments and Necessary Revisions to Chapter 4.1 – Aesthetics Revisions are necessary to Chapter 4.1 as set forth in Attachment 3 to correct or clarify the following matters. First, the City of Newark is not physically located on the "bayfront." We understand the City's desire to re-orient with San Francisco Bay and to celebrate and take advantage of its proximity to the Bay, but it is misleading to say that the City fronts the Bay when the City of Fremont and the Refuge lay directly between Newark and the Bay. So we have suggested some revisions to correct this while still promoting Newark's strategic and scenic location.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-6	Second, the San Francisco Bay Trail has already been completed through the City of Newark; it does not need to be "completed" as Policy PR 5.1 states. So we would suggest changing this Policy to say that the Bay Trail should be "realigned." And we have added that the Bay Trail should be realigned "where feasible." For instance, it would not be feasible, safe or legal to run the Bay Trail through the middle of Cargill's Newark Plant Site, as past City drawings have proposed.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-7	Finally, with respect to Action PR-1.A, we have added that the Refuge may be expanded by working with "willing" property owners. A willing property owner is a necessary condition precedent to Refuge expansion in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service, in addition to numerous other conditions.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-8	Comments and Necessary Revisions to Chapter 4.2 – Air Quality Minor revisions are necessary at Page 4.2-46 to clarify that Cargill does not operate salt ponds within the City of Newark at its Newark Plant Site, as opposed to within the Refuge, as noted in the Background discussion above.	The comment is noted. Please see Chapter 3 of the FEIR for text revisions.
CARGILL-9	Comments and Necessary Revisions to Chapter 4.3 – Biological Resources Cargill's Refuge Salt Ponds Versus Its Newark Plant Site More than any other chapter of the DEIR, Chapter 4.3 – Biological Resources confuses Cargill's solar salt evaporation ponds within the Refuge (within the City of Fremont) and its Newark Plant Site (within the City of Newark). For instance, both Figures 4.3-1 and 4.3-2 mislabel Cargill's Newark Plant Site and do not accurately reflect the conditions of the property.[The DEIR cites to a number of sources for its discussion centering on Figures 4.3-1 and 4.3-2, but none of these sources actually refers to or maps the Newark Plant Site. They all contain general descriptions of habitat types and refer to salt ponds well outside the Newark City limits.] In actuality, these areas consist of the harvesting, refining and production areas and should be labeled as set out in our comments attached at Attachment 3. As discussed above, in contrast with the Refuge salt evaporator ponds, the crystallizers of the Newark Plant Site are of "low foraging value" and "support virtually no aquatic life" because of the presence of hypersaline brines (8 times the salinity of sea water), precipitated salts and heavy equipment associated with Plant Site operations. BCDC Staff Report at 27. Dr. Josselyn's letter at Attachment 2 details this important distinction and confirms that the crystallizers at the Newark Plant Site do not support any wetland vegetation and are not considered as "wetlands." Therefore, Figures 4.3-1 and 4.3-2 must be revised to accurately depict Cargill's active salt making operations at its Newark Plant Site, as detailed in Attachment 3 and as illustrated in Attachment 4 to this letter. There are a number of other, similar textual revisions which are necessary in the Draft General Plan as detailed in Attachment 3, primarily at Page 4.3-11.	The comment is noted. Please see Figures 4.3-1 and 4.3-2 for edits.
CARGILL-10	Refuge Expansion Revisions are necessary, primarily at Page 4.3-3, of the DEIR's discussion of the potential expansion of the current Refuge boundaries. As made clear in the Final Environmental Assessment by the USFWS, areas considered by the USFWS are "Areas of Potential Additions," and may only be acquired from willing sellers.	The comment is noted. As stated on page 4.3-3, the potential areas of addition are indeed potential and it is stated that not all lands would be added to the Refuge, therefore, the suggested edits would not necessarily change the overall outcome of the subsequent analyses in Chapter 4.3. No changes are necessary.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-11	Other Necessary Revisions Other revisions to Chapter 4.3 of the DEIR are necessary as indicated in Attachment 3 to clarify the nature of Cargill's operations, to modify certain actions and policies pertaining to new development, and to clarify that the Refuge is mostly within the City of Fremont and managed by the USFWS.	The comment is noted. Attachment 3 has been reviewed. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-12	Comments and Necessary Revisions to Chapter 4.5 – Geology and Soils Cargill's Newark Plant Site was mislabeled at Figure 4.5-1 of Chapter 4.5. As discussed above, this area consists of crystallizers and other salt harvesting, refining and production areas and facilities. Revisions to Figure 4.5-1 are needed as indicated in Attachments 3 and 4.	The reviewer's comment contains a typographical error. Figure 4.5-1 depicts soil types that have been mapped in the Plan area -- Cargill's plant is not labeled on this figure. Table 4.7-1 and Figure 4.7-1 in Chapter 4.7 list and depict a "Cargill Salt" site at 7200 Central Avenue. The figure, and the indicated location of Cargill's Newark Plant, will be revised as suggested.
CARGILL-13	Comments and Necessary Revisions to Chapter 4.8 – Hydrology and Water Quality Revisions are necessary to Chapter 4.8 – Hydrology and Water Quality where indicated in Attachments 3 and 4 to: (i) clarify that any levees associated with salt production were not designed for flood protection purposes,	The comment is noted and revisions have been made to page 4.8-18 that states "*Levees associated with salt production were not designed for flood protection purposes and do not function as such*".
CARGILL-14	(ii) to clarify (at Figure 4.8-1) that the Newark Plant Site is a closed, engineered system for salt production, nothing is released or discharged to San Francisco Bay, and the Plant Site is not part of any of the watershed areas shown at Figure 4.8-1, and	Figure 4.8-1 has been modified to show the Newark Plant Site is not part of any watershed areas and a footnote has been added to the figure noting "*The Newark Plant Site is a closed, engineered system for salt production with no releases or discharges into San Francisco Bay*".
CARGILL-15	(iii) to make other clarifying revisions to flood protection measures and standards where indicated.	Other clarifications and edits have been made to the hydrology section of the EIR as per Cargill's comment letter.
CARGILL-16	Comments and Necessary Revisions to Chapter 4.9 – Land Use Policy CS-2.6 entitled "Salt Pond Management" encourages the management of the salt ponds and states that if "salt production ceases" a Specific Plan should be conducted "to explore a balance between development and preservation of important wildlife and open space resources." This once again confuses the salt ponds of the Refuge, which lie within the City of Fremont and which cannot be the subject of a Specific Plan created by City of Newark (not only because the salt ponds are in Fremont but also because the Refuge will not be the subject of future development) with Cargill's Newark Plant Site. Because Policy CS-2.6 refers to "wetlands and baylands," and, therefore, the salt ponds of the Refuge and not the Newark Plant Site, the reference to Cargill's Newark Plant Site within the Policy should be deleted.[At the same time, Cargill would support the inclusion of a policy or objective elsewhere in the DEIR concerning a possible, future Specific Plan concerning its Newark Plant Site, but this should be contained in a separate policy to avoid confusion with the Refuge.] Other revisions are necessary to Chapter 4.9 where indicated in Attachment 3 to clarify matters discussed above, including the nature of Cargill's operations, and the management and potential expansion of the Refuge.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-17	Comments and Necessary Revisions to Chapter 4.12 – Public Services and Recreation As noted above, the San Francisco Bay Trail has already been completed through the City of Newark; it does not need to be "completed" as Policy PR 5.1 states. So we would suggest changing this Policy as indicated in Attachment 3 to say that the Bay Trail should be "realigned." And we have added that the Bay Trail should be realigned "where feasible" for the reasons noted above.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-18	Comments on Chapter 6.0 – Alternatives Finally, the Alternatives analysis of the DEIR contains, as required by CEQA, a consideration of project alternatives to the proposed Draft General Plan and an analysis of the relative environmental impacts of each alternative. Cargill recognizes that the City of Newark is required to consider alternatives to the project proposed in the Draft General Plan to comply with CEQA, but has specific concerns regarding the "Restricted Growth Alternative" described at Page 6-2 of Chapter 6. According to the DEIR, under the Restricted Growth Alternative, "future growth in environmentally sensitive areas along the western edge of Newark would be restricted" and "[f]uture growth would occur entirely on previously developed land in the urbanized portion of the city." The DEIR goes on to say that: the Dumbarton TOD Focus Area …would be designated as Open Space. This alternative envisions restoration of key areas with potential for high habitat values; however, although these areas would be designated as Open Space, the underlying zoning would continue to permit economically viable uses such as agriculture. DEIR at 6-19. Cargill notes that the DEIR does not specify exactly where these "key areas with potential for high habitat values" are located or why it would be necessary or even lawful to declare them as "open space" without allowing any new development to occur. Property within the Dumbarton TOD Focus Area, including property owned by Cargill, is currently zoned for residential use in light of the City of Newark-approved Dumbarton TOD Specific Plan or, in the case of property owned by FMC Corporation, for commercial and high density residential and mixed use. Therefore, none of the properties within the Dumbarton TOD Specific Plan are zoned for or limited to agricultural use. Declaring these properties as "open space" and limiting them to agricultural use would amount to an unlawful taking of private property, which would subject the City of Newark to damages equal to the value of the highest and best use of these properties.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions. Additionally, please see Master Response 3 regarding appropriacy of Alternatives.
CARGILL-19	Cargill also notes that the Dumbarton TOD Specific Plan already requires mitigation measures which would reduce the impacts of Specific Plan projects to any sensitive biological resources to a level of insignificance, as the DEIR itself notes (DEIR at Page 6-20). Declaring these properties as open space would therefore offer no advantages over the proposed Draft General Plan in terms of impacts to biological resources.	The comment is noted. Please see Master Response 3 regarding appropriacy of Alternatives.
CARGILL-20	The DEIR ultimately rejects the Restricted Growth Alternative as being infeasible because it would fail to achieve important Project Objectives set out in the DEIR, would conflict with the Specific Plan and would not support development of the Dumbarton TOD Specific Plan area as a Priority Development Area. Cargill would add to this list the fact that the Restricted Growth Alternative would likely subject the City of Newark to significant damages arising from the condemnation or inverse condemnation of private property.	The comment is noted. Please see Chapter 6 of the Final EIR for text revisions.
CARGILL-21	Summary Cargill requests that the City revise the DEIR as discussed above and in Attachment 3 to ensure that the document is accurate, is based upon substantial evidence and serves the goal of informed decision-making by the public and the City as required by CEQA. To the extent any of the errors or inconsistencies discussed above or in Dr. Josselyn's letter are repeated in other sections of the DEIR, Cargill requests that these other sections be revised in accordance with these comments, so that all sections will be consistent, both internally and with respect to one another. Thank you again for the opportunity to comment on the DEIR. Should you have any questions regarding any of the comments contained in this letter, please do not hesitate to contact me.	The comment is noted. Attachment 3 has been reviewed.
CARGILL-22	Attachment 1 - 4 Photographs of Newark Plant Site	The comment is noted. Attachment 1 has been reviewed.
CARGILL-23	Re: Comments on: (i) General Plan Tune Up Draft Program EIR for the City of Newark, and (ii) Newark General Plan – Draft for Public Review Dear Mr. Grindall: I am writing to providing comments on both the General Plan Tune Up Draft Program EIR for the City of Newark ("DEIR"), and (ii) Newark General Plan –	The comment is noted. The information has been taken into account. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	Draft for Public Review ("Draft General Plan") based on my professional experience and knowledge of the area covered by the DEIR and General Plan. I am a Professional Wetland Scientist with 35 years of experience working in the bay tidal wetlands as a Professor of Biology at San Francisco State University and more recently as a Principal with WRA, Inc, an environmental consulting firm based in San Rafael, CA. I am familiar with the area covered by the DEIR and Draft General Plan, including the salt evaporator ponds of the Don Edwards San Francisco Bay National Wildlife Refuge (the "Refuge") and the Cargill Salt facility for the harvesting, refining and production of salt within the City of Newark ("Newark Plant Site"). These comments are meant to provide clarification of the areas present, and the relative habitat value and their use by wildlife. It is important that the DEIR and Draft General Plan distinguish between the types of salt making areas that are present in the Refuge versus the Newark Plant Site. Salt production requires that bay water be brought into an initial evaporator pond where the salinity of the brines is increased over time as they are moved by gravity or pumps to sequential ponds in the process. [The classic description of the salt making process has been described by Ver Planck, 1958, Salt in California, 1 Bulletin 175, Divisions of Mines, San Francisco, CA at page 168.] The process of producing brines that are close to, but not at the critical threshold of precipitation, takes 5 to 7 years. This process occurs within salt evaporators, none of which are present at the Newark Plant Site. Salt evaporators, depending upon their salinity do support fish and wildlife and considerable study has been made on their use by migratory birds. These studies have shown that as the salinity of the brine increases, fish and wildlife use dramatically declines; however, within the intake ponds and in ponds of intermediate salinity, bird use continues. Eventually, when the brines are near saturation (very saline), they are transferred to a salt production facility such as Cargill's Newark Plant Site, where the sodium chlorides are precipitated and the resultant brines are stored as bittern. The complexes containing these brines are not evaporators, but are facilities designed to crystallize sodium chloride in a manner that results in a pure crystallized product and requires carefully controlled and manipulated brine transfers to assure a quality product. The transfer of brines from evaporators within the Refuge is through many miles of pipelines and other facilities. The crystallizers are specifically engineered for salt crystallization and the bottoms are compacted and flat to allow heavy equipment to be used to remove the final product. The distinction between evaporators and the salt production facilities is important because the extremely high salinities of the brines (8 to 10 times that of seawater) are inhospitable to life within the crystallizers, pickle ponds, and bittern ponds. This distinction between these types of "ponds" appears to not have been considered when preparing the Biological Resources chapter of the DEIR and the Conservation and Sustainability chapter of the Draft General Plan, as well as many other chapters in both documents. Therefore, the DEIR and Draft General Plan should clearly distinguish between those areas with salt evaporators (or former salt evaporators) and those where salt precipitation and production occurs (such as the Newark Plant Site operated by Cargill Salt). Within the Refuge, since these salt evaporator ponds have not been involved in the precipitation of salt, it is expected that they do have higher wildlife use. However, in my observations of the Cargill's Newark Plant Site, there is no native vegetation or other sensitive resources, including wetlands, within the facility and it would therefore be incorrect to classify it as such. The Newark Plant Site is more similar to other industrial areas in the Fremont and Newark area. When referring to Cargill's Newark Plant Site, the following corrections should be made: 1. The term "salt ponds" is not the proper nomenclature to describe this area. Salt crystallizers or simply crystallizers should be used.	

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-24	2. The salt crystallizers do not support any wetland vegetation and are not considered as "wetlands" under the Corps of Engineers definition. As noted above, it is more similar to other industrial facilities within the City of Newark. At the very least, they should be separated out from any discussion on wetlands and placed in a separate category as "salt production and harvesting facilities".	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-25	3. The salt crystallization brines are inhospitable to life. It is only during periods when precipitation reduces salinities that species such as microalgae and bacteria can grow. At times, brine flies and brine shrimp may be temporarily present, but these die out as salinities increase as a result of the salt making process and are not found in the crystallizers and other production facilities within the Newark Plant site.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-26	4. The DEIR states that a number of birds are associated with salt ponds (Page 4.3-11). However, it should be noted that salt crystallizers and other salt production facilities within the Newark Plant site do not support Wilson phalarope or American white pelican as the salinities are too high. The California clapper rail is not found in salt ponds, but only within vegetated salt marshes. Due to the absence of life within the crystallizers and salt production facilities at the Plant site, raptors are not regularly present. Other birds listed may be found roosting on levees, but are generally not found within the brines or using the brines and are more commonly found in the salt ponds within the Refuge outside of the City of Newark.	Table 3.5-3 of the Area 3 and 4 DEIR on page 127 [of the Area 3 and 4 DEIR] states that the American White Pelican could roost or forage in Area 4 and possibly along Mowry Slough, however the probability is low due to higher-quality habitat elsewhere. Additionally, Table 3.5-3 of the Area 3 and 4 DEIR states the California clapper rails habitat is salt marsh habitat dominated by common pickleweed and cordgrass. Thus, although the probability may be extremely low that a California clapper rail could be found in a salt pond, the mere possibility would render the statement in the DEIR true. Additionally, BCDC's 2005 Staff Report, as cited on page 4.3-11 indicates that California clapper rails could be found in salt ponds. BCDCs 2005 Staff Report also indicates that phalaropes are supported by high-salinity salt ponds. No changes are necessary.
CARGILL-27	5. I concur in the revisions Cargill has proposed to both the DEIR and General Plan in letters from Paul Shepard dated September 27, 2013, regarding the distinctions between the salt evaporator ponds of the Refuge and the salt crystallizers of the Newark Plant Site. I hope that these comments will assist the City in providing a clear description of biological resources associated with these facilities. Sincerely yours, Michael Josselyn, PhD Principal	The comment is noted; however, it does not raise any environmental concerns. No further response is required.
CARGILL-28	Attachment 3 to September 27, 2013 Cargill Comment Letter on Tune Up Draft Program EIR for the City of Newark dated August 13, 2013 Proposed Revisions to Chapter 3 – Project Description Page 3-12 Dumbarton TOD Area Specific Plan The Dumbarton TOD Area Specific Plan (TOD Plan), adopted by the City of Newark on September 8, 201~~0~~1, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark. A portion of the TOD Plan Area, previously referred to as Area 2, was identified as an area with significant potential for change in the 1992 General Plan. In conjunction with adoption of the TOD Plan, the City amended General Plan land use designations and zoning for this former industrial area to allow for development of 2,500 new homes, 195,000 square feet of professional office and other commercial uses, 35,000 square feet of new retail uses, and 16.3 acres of parkland, including a connection to the San Francisco Bay Trail. Key features of the TOD Plan, shown in Figure 3-5, include: - A neighborhood center near the planned transit station with retail to serve the daily needs of residents and transit users, high-density housing with an allowable density of between 25 and 60 du/acre, and 195,000 square feet of professional office and commercial uses; - Surrounding residential uses throughout the rest of the TOD Plan Area, with townhomes and medium to medium-high density housing within a ½-mile radius of the planned transit station, and single-family homes beyond that to the south;	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-29	Pages 3-14, -17 Proposed Land Use The proposed Plan includes a total of 17~~6~~ different land use designations applied to land within the City limit, as shown in Figure 3-6. This represents two~~three~~ fewer categories than in the existing General Plan, because the proposed Plan has consolidated some existing General Plan designations. The Commercial Mixed Use category has been consolidated from two designations into one, with the caveat that zoning will be used to distinguish limited mixed-use areas from other mixed-use areas.. The Specialty Commercial category has been eliminated since it had already been largely replaced by the two Commercial Mixed Use categories, which were not defined by the 1992 Plan.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-30	A recalibration of the residential categories is proposed, to better reflect existing and proposed housing densities in the city. The Low Density Residential category now includes neighborhoods developed from 1.0 to 8.5 units per net acre. The Medium Density category has been retitled Low Medium Density. The density range is ~~has not changed and continues to be 8.5 to~~ 15 units per net acre or less. The Low Medium category is intended for small lot subdivisions and zero lot line type development. The former High ~~d~~Density category has been retitled Medium Density. The density range ~~has not changed and continues to be~~ is from 1~~5~~4 to 30 units per net acre. A new Medium/High Density category has been added for housing in the 16 to 60 units per acre range, pertaining only to specific property within the Dumbarton TOD Specific Plan. A new ~~h~~High ~~d~~Density category has been added for housing in the 25~~30~~ to 60 units per acre range. Adjustments have been made to the land use map so that developed multi-family parcels have been placed in the category which best reflects their actual densities.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-31	The Plan also proposes a reorganization of agricultural and open space designations. The Agriculture/Resource Production designation is renamed Salt Harvesting, Refining and Production in order to more accurately reflect the nature of activities taking place on land to which it applies. This designation applies to approximately 3,000 acres of privately owned properties used for salt harvesting, refining and production, including the land holdings of the Cargill Salt Company on the western side of the city. The Public Parks and Open Space designation has also been renames and is now called Parks and Recreational Facilities. It establishes land primarily for active recreational activity, such as tennis courts, playgrounds, picnic areas, and sports fields. Buildings for recreation and community purposes are allowed under this designation. Finally, the Conservation – Open Space designation is maintained in the proposed Plan, intended to protect wildlife habitat and wetlands and is not intended for direct human habitation or work.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-32	Figure 3-6 [Figure 3-6 should be revised to designate as "Medium/High Density Residential" the land designated as Medium/High Density Residential on Figure 3-5 in connection with the Dumbarton TOD Specific Plan. In addition, "Salt Harvesting on Figure 3-6 should be re-labeled as "Salt Harvesting, Refining and Production."]	The comment is noted. Please see Figure 3-6 for revisions.
CARGILL-33	Table 3-4 [Table 3-4 should be revised as follows: (1) "Low-Medium Density Residential" should have a density range of "15 units per acre or less," (2) "Medium-Density Residential" should have a density range of "14 to 30 units per acre," (3) a "Medium/High Density-Residential" category should be added with a density range of "16 to 60 units per acre," (4) "High-Density Residential" should have a density range of "25 to 60 units per acre," (5) "Resource Production" and "Open Space" should split into different categories, with "Salt Harvesting" falling under "Resource Production" and "Parks and Recreational Facilities" and "Conservation Open Space" falling under "Open Space," (6) "Salt Harvesting" under "Resource Production" should be re-labeled as "Salt Harvesting, Refining and Production" and the "Development Intensity" description should read as follows: "A standard of development intensity does not apply, as buildings unrelated to salt production are generally not appropriate in these areas."]	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions that address this comment.
CARGILL-34	Page 3-20 Dumbarton Transit-Oriented Development Focus Area The boundaries of the Dumbarton TOD (DTOD) Focus Area articulated in the proposed Plan are the same as those of the new neighborhood envisioned in the TOD Plan. The vision for the DTOD Focus Area is also the same, and the proposed Plan incorporates the TOD Plan without proposing additional land use changes over and above those already incorporated into the existing General Plan at the time the TOD Plan was adopted by Newark City Council in 2011~~0~~.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-35	Page 3-25 Dumbarton Transit-Oriented Development Focus Area Growth projections from the Dumbarton TOD Specific Plan EIR were added to the base year totals to project 2035 buildout. The Dumbarton TOD Focus Area is located in TAZs 931 and 932 and growth projections from the TOD	Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	Specific Plan EIR were divided between these TAZs in accordance with the land use designations proposed in the proposed Plan. It was assumed that Medium Density Residential (MDR) would develop at an intensity of 22 du/acre, that Medium/High Density Residential (MHDR) would develop at an intensity of 30 du/acre and that High density Residential (HDR) would develop at an intensity of 45 du/acre. On this basis, 375 of the 2,5~~6~~00 total units that are likely to be built under the TOD Specific Plan were assigned to TAZ 931 and the balance was assigned to TAZ 932. Based on the proposed land use designations in TAZ 931, it was assumed that 135 of the 375 units would be multi-family units and 240 units would be single-family units. In TAZ 932, it was assumed that 1,530 of the 2,225 units would be multi-family and 695 units would be single-family, based on the proposed land use designations.	
CARGILL-36	Proposed Revisions to Chapter 4.1 – Aesthetics Page 4.1-7 4.1.3 Impact Discussion AES-1 The proposed Plan would not have a substantial adverse effect on a scenic vista. Policy LU-4.13. Proximity to San Francisco Bay~~front~~ ~~Identity~~. Reinforce Newark's proximity to San Francisco Bay ~~identity as a bayfront city~~ by orienting new development on the western and southern edges of the city toward the bay and shoreline areas. Future projects in these areas should enhance views to the water and wetlands and be compatible with the area's scenic and recreational qualities. The bay-orientation~~front~~ identity should be emphasized in gateways and public art as well.	Please see Table 3-1 for a list of text edits.
CARGILL-37	Page 4.1-9 Dumbarton Transit-Oriented District Focus Area The proposed Plan could affect the visual character and quality of the Dumbarton TOD, as it would allow development of up to 2,5~~6~~00 residential units, a neighborhood center containing retail shops, a grocery store and associated visitor-serving and residential uses, new infrastructure supportive of the new development, and parks on what is now primarily vacant land with few structures on it. At buildout, this development would transform the area from one with relatively low-slung, utilitarian buildings with little architectural detail and a minimal street network to a brand new neighborhood featuring a variety of primarily residential structures in a cohesive blend of architectural styles with additional streets, sidewalks, landscaping, and street lighting, and more buildings.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-38	Page 4.1-14, -15 4.1.4 Cumulative Impacts AES-5 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics. Policy PR-5.1 Bay Trail. Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay. Pursue trails that are separated from motor vehicle traffic and pursue pedestrian crossings of railroad rights of way to allow for connections to regional open spaces without conflicts with motorized vehicles.(new)	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-39	Action PR-1.A. Don Edwards National Wildlife Refuge Expansion. Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-40	Proposed Revisions to Chapter 4.2 – Air Quality Page 4.2-46 Site Receptors Proximate to Odor Sources Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2- 7. Additionally, sensitive receptors could be located in the vicinity of the salt harvesting, refining and production operations ~~ponds operated~~ by Cargill, Incorporated ~~Corporation~~, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

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	incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be less then significant.	
CARGILL-41	Proposed Revisions to Chapter 4.3 – Biological Resources Page 4.3-3 Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan The San Francisco Bay National Wildlife Refuge was established by the United States Congress in 1972 for a total not to exceed 23,000 acres. The Refuge was one of the first urban National Wildlife Refuge established in the United States. The first lands were acquired for the Refuge in 1974. In 1988, the USFWS's acquisition authority was increased from 23,000 to 43,000 acres. Most of the existing Refuge lies within the City of Fremont. Cargill has the perpetual right within the Refuge (and outside the Newark city limits) to utilize evaporator ponds, commonly referred to as "salt ponds" or "evaporators" for its solar salt production system. In 1990, the USFWS issued the Final Environmental Assessment for the Refuge boundary expansion, which identified 24,500 acres as potential additions (Areas for Potential Additions) because not all lands would be added to the Refuge. The Areas for ~~p~~Potential ~~a~~Additions ~~areas~~ identified by the USFWS are recognized through USFWS policy as the approved acquisition boundary for the Refuge. The USFWS does not have jurisdiction over the Areas for Potential Additions ~~lands within the acquisition boundary~~, and these lands are not part of the Refuge unless they are purchased or placed under an agreement that provides for management under the Refuge System. In addition, USFW's acquisition plans do not preclude lawful, environmentally sound development, as determined by the local government in whose jurisdiction a potential addition area lies, and land within Areas for Potential Additions may only be acquired from willing sellers.[U.S. Fish and Wildlife Service, 2013, Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan, page 8.] In fact, to date, many lands within the approved 1990 acquisition boundary have already been converted to urban developments.[U.S. Fish and Wildlife Service, 2013, Don Edwards San Francisco Bay National Wildlife Refuge Final Comprehensive Conservation Plan, page 9.] In 1995, the Refuge was renamed as the Don Edwards San Francisco Bay National Wildlife Refuge in 1995 to honor Congressman Don Edwards' efforts to create the refuge. The Refuge was created with three main purposes: to preserve natural resources, including habitat for migratory birds, harbor seals, and threatened and endangered species; to provide environmental education and wildlife interpretation opportunities; and to preserve open space and wildlife-oriented recreation. The Refuge and Areas for Potential Additions approved acquisition boundary are shown in Figure 4.3-1. As of April 2013, the USFWS owned and/or managed approximately 30,000 acres under the approved acquisition boundary. As shown in Figure 4.3-1, none of the focus areas contain lands within the Refuge and most of the Refuge lies within the City of Fremont. However, Area 4 includes lands within the Areas for Potential Additions approved acquisition boundary.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-42	State Regulations The most relevant State laws regulating biological resources are the California Endangered Species Act, the California Fish and Game Code, the California Native Plant Protection Act, and the Marine Life Protection Act, each of which is described below. California Endangered Species Act The California Endangered Species Act (CESA) (California Fish and Game Code Section 2050 et seq.) establishes State policy to conserve, protect, restore, and enhance threatened or endangered species and their habitats. The CESA mandates that, if a development project would result in the "take" of a threatened or endangered species – defined as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" -- mitigation must be provided as part of an Incidental Take Permit issued by the California Department of Fish and Wildlife (CDFW).~~State agencies should not approve projects that jeopardize the continued existence of threatened or endangered species if reasonable and prudent~~	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	~~alternatives are available that would avoid jeopardy.~~ For projects that would affect a species that is on the federal and State lists, compliance with the FESA satisfies the CESA if the ~~California Department of Fish and Wildlife (~~CDFW~~)~~ determines that the federal incidental take authorization is consistent with the CESA under California Fish and Game Code Section 2080.1. For projects that would result in take of a species that is only State listed, the project proponent must apply for a take permit under Section 2081(b).	
CARGILL-43	Figure 4.3-1 [This figure contains a number of errors and is inconsistent with the CCP: (i) Figure 4.3-1 erroneously maps Cargill's Newark Plant Site as "Managed Wetlands/Salt Ponds" within active salt making facilities, as discussed in Cargill's Comment Letter, and should therefore be shaded solid (without dots) white and, if labeled at all, should be re-labeled as "Salt Harvesting, Refining and Production," and (ii) potential additions to the Refuge should be designated as "Areas of Potential Additions" or "Potential Additions" consistent with the language of the USFWS Final Assessment and CCP. Attached as Attachment 4 to Cargill's Comment Letter on the DEIR is a marked up copy of Figure 4.3-1 with these corrections.]	The comment is noted. Please see Figure 4.3-1 included in the Chapter 3 of the Final EIR for revisions.
CARGILL-44	Figure 4.3-2 [Figure 4.3-2 erroneously maps "saline emergent wetland" and "lacustrine" areas within active salt making facilities where no such wetlands exist. These labels and overlays should be removed from the Cargill Plant Site in this Figure as they do not accurately represent the conditions of the salt harvesting, refining, and production areas as described in Cargill's Comment letter. Attached as Attachment 4 to Cargill's Comment Letter on the DEIR is a marked up copy of Figure 4.3-2 with these corrections.]	Please see Figure 4.3-2 in Chapter 3 of the Final EIR for revisions.
CARGILL-45	Page 4.3-9 4.3.1.2 Existing Conditions This section discusses the wildlife and plant communities and special-status species that are known to occur or have potential to occur in the Plan Area. As described in chapter 3.0 of this Draft EIR, the majority of land in the Plan Area is urbanized and developed; however, a large area of land along the western perimeter of Newark is occupied by ~~the~~ Cargill for salt harvesting, refining and production~~Corporation~~ ~~salt evaporation ponds~~. Additionally, a portion of the Don Edwards San Francisco Bay National Wildlife Refuge is adjacent to the Plan Area outside the City limit. The Refuge ~~Both these areas~~ provides habitat for biological resources occurring or potentially occurring adjacent to ~~in~~ Newark.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-46	Vegetation, Habitat Types, and Wetlands Habitat types, as classified by the United State Department of Agriculture Forest Service, are shown in Figure 4.3-2. The distribution of habitat areas in Newark is closely associated with topography and hydrology, with habitat types associated with wetlands primarily located adjacent to the San Francisco Bay and grasslands and croplands located inland. Some wetland areas are scattered throughout the inland portion of Newark. The majority of inland Newark consists of urban lands. Each of these areas is described below: - Lacustrine habitats are the predominant non-urban habitat type in Newark ~~and include the salt ponds, which are described in further detail below.~~. These habitats are inland depressions or dammed riverine channels that contain standing water and vary from small ponds to large areas. Lacustrine habitats are used by several bird, mammal, reptile, and amphibian species for reproduction, food, water, and cover. Within Newark, approximately 2,500 acres are classified as lacustrine habitat.	As stated on page 4.3-9 in the Existing Conditions, the habitat types are classified by the US Department of Agriculture Forest Service, as shown in Figure 4.3-2. Therefore, no changes are necessary.
CARGILL-47	Page 4.3-11 Salt Ponds The commercial salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge, and adjacent to the Plan Area outside the City limit, are large, open ~~water~~ areas ranging in salinity from similar to sea water at 32 parts per million to 180 ~~135~~ parts per million, or more than five ~~four~~ times the salinity of ~~more salty than~~ sea water.[San Francisco Bay Conservation and Development Commission, 2005, Staff Report – Salt Ponds, page 27.] These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water. Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines	The comment is noted. As indicated on page 4.3-11, the reference in parts per million was indicated in the US Fish and Wildlife Service Notice of Intent to Prepare a Joint Environmental Impact Statement/EIR for the South Bay Salt Ponds Initial Stewardship Project. As such, the information was incorporated by reference; therefore, no changes are necessary.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds within the Refuge for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt. Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin. Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.	
CARGILL-48	Cargill, which sold and donated 12,500 acres of salt ponds within the Refuge, has retained perpetual rights to utilize the salt ponds within the Refuge (and outside the City of Newark) for its solar salt production system and will continue its operations for the foreseeable future. Within the Refuge, Cargill's solar salt operation consists of a series of evaporator ponds (also referred to as "salt ponds" or "evaporators") where bay water is introduced. Solar evaporation increases the salinity of the brines in these evaporators. The brines are then pumped or transferred by Cargill sequentially through a series of evaporators over a period of years. Each subsequent evaporation pond is more saline due to the closed nature of the system and natural evaporation. The Refuge's mission to protect natural resources co-exists well with Cargill's solar salt system. As noted by the San Francisco Bay Conservation and Development Commission in its October 2005 Staff Report on Salt Ponds, in connection with the San Francisco Bay Plan (Bay Plan), "[s]alt ponds [within the Refuge] provide a variety of aesthetic, economic and biological values," and "the Bay Plan salt pond policies should support ongoing salt production in San Francisco Bay by recognizing the values to the Bay provided by salt production."[San Francisco Bay Conservation and Development Commission, San Francisco Bay Plan at 6-7 (Staff Report -October 2005).] After about five years, the resulting hypersaline brines from the salt evaporators within the Refuge (within the City of Fremont) are pumped or transferred to Cargill's salt harvesting, refining and production facilities within the western portion of the City of Newark (the Newark Plant Site). Brines are placed within "crystallizers" at the Newark Plant Site, which are large, man-made, engineered beds. Salt is precipitated within the crystallizers, where it is mechanically harvested by Cargill using heavy equipment and sent to an on-site processing facility. In contrast to the low salinity salt ponds within the Refuge, the crystallizers are inhospitable to vegetation and wildlife due to the high salinity of brines transferred into the crystallizers and the mechanized harvesting process. Operations within the Newark Plant Site are also completely closed to the public, due to the high salinity of the crystallizers and the presence of heavy machinery and equipment. Hence, while some of the salt evaporators within the Refuge (and outside the city of Newark) provide habitat for specific species of wildlife, the Newark Plant site is industrial in nature and consists of hypersaline brines and /or precipitated salts that, in general, contain very limited or no vegetation or biological characteristics or habitat to support species use.[San Francisco Bay Conservation and Development Commission, San Francisco Bay Plan at 27-28 (Staff Report -October 2005).]	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
CARGILL-49	Page 4.3-34 4.3.3 Impact Discussion BIO-1. Buildout of the proposed Plan would result in less-than-significant impacts to special status plant and animal species in the Plan Area. Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-50	Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	~~San Francisco Bay.~~	
CARGILL-51	Page 4.3-39 BIO-3. Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the US in the Plan Area. Figure 4.3-3 shows areas of wetland vegetation in Newark, although it does not depict federally protected wetlands USACE jurisdictional waters. A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007. The USACE determination established approximately 242 acres of wetlands and 34.21 acres of "other waters" for a total of 277 acres. These areas include all aquatic, diked salt marsh, seasonal wetlands, muted tidal saltmarsh, freshwater marsh, brackish marsh, and tidal salt marsh. Jurisdictional determination has also been made for 7.2 acres of wetlands on the Torian property, located within the Dumbarton TOD Focus Area. Additionally, other portions of the Plan Area along the western perimeter of Newark may~~likely~~ support wetland vegetation, wetland hydrology, and wetland soils as shown on Figure 4.3-3, and therefore it is possible~~likely~~ that there are additional Waters of the US within these areas, although no formal delineation has been made by USACE.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
CARGILL-52	Page 4.3-41 BIO-3. Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the US in the Plan Area. Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-53	Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or revegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-54	Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-55	Page 4.3-42, -43 BIO-4 The proposed Plan would not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. The proposed Plan would result in a significant impact if new development would interfere with species movement or involve barriers or threats within wildlife corridors. Given the highly urbanized context of the Plan Area and the extent of existing development, vehicular traffic, and human and pet presence in Newark, opportunities for wildlife movement in the urbanized portion of the city are minimal. Existing development, including buildings, fencing, flood control channels, major roadways, or other similar improvements, represent substantial barriers to wildlife movement. The best opportunities for wildlife migration exist along the western edge of the Plan Area, adjacent to the Don Edwards National Wildlife Refuge, but excluding Cargill's existing salt harvesting, refining and production operations as designated at Figure LU-1 of the proposed Plan..	The comment is noted; however, the proposed edit cannot be stated because there were no studies nor any reports used in the preparation of the DEIR to conclude that the salt harvesting, refining and production areas would not be suitable for migration. As such, no changes are necessary.
CARGILL-56	Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-57	Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or revegetate natural habitat areas or,	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	for areas that are not avoided, to provide appropriate mitigation compensation.	
CARGILL-58	Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-59	Page 4.3-45 BIO-6 The proposed Plan would result in less-than-significant impacts related to conflict with the Basin Plan and Habitat Goals. Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-60	Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or revegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-61	Action CS.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas from willing sellers by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-62	Page 4.9-9 Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan Action CS-1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provide for any impacts to such areas.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-63	Proposed Revisions to Chapter 4.5 – Geology and Soils Figure 4.5-1 [Cargill's Newark Plant Site was mislabeled at Figure 4.5-1 of Chapter 4.5. As discussed in Cargill's Comment Letter and above, this area consists of crystallizers and other active salt harvesting, refining and production areas and facilities. Figure 4.5-1 should therefore be revised to accurately depict the Newark Plant Site.]	The comment is noted. Please see Figure 4.5-1 included in Chapter 3 of the Final EIR for revisions.
CARGILL-64	Proposed Revisions to Chapter 4.8 – Hydrology and Water Quality Figure 4.8-1 [Please re-label "Salt Production" as "Newark Plant Site" and add the following notation: "This is a closed, engineered system for salt production and nothing is released or discharged to San Francisco Bay." Shade the entire "Newark Plant Site" area in red, not just a portion, and separately from the watershed areas shown. A mark up illustrating these corrections is shown in a markup to Figure CS-1 of the Draft General Plan in Attachment 4.]	The comment is noted and revisions have been made to Figure 4.8-1, relabeling "Salt Production" as "Newark Plant Site" and a footnote has been added to the figure noting "*The Newark Plant Site is a closed, engineered system for salt production with no releases or discharges into San Francisco Bay*".
CARGILL-65	Page 4.8-14 Water Quality Most of the streams and creeks that originally flowed through the City of Newark have been replaced by a network of storm drains and channels that discharge urban runoff into Newark Slough, Plummer Creek Slough, and Mowry Slough. The surface water bodies that currently exist in the Plan Area include engineered channels maintained by the ACFC, Plummer Creek, Newark Slough, Mowry Slough, tidal marshes, tidal flats, ~~salt ponds~~, and small tidal estuaries.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-66	As mentioned earlier, the Plan Area consists of open space, ~~and~~ undeveloped and nonurbanized land near the bay shoreline and developed land further inland. Stormwater is transported through the ACFC's regional network of storm drains, underground culverts, or engineered drainage channels that eventually discharge into San Francisco Bay. There are sites in the Plan Area with known past groundwater contamination that have undergone remediation and are continuing to be monitored. This issue is discussed more fully in Chapter 4.7, Hazards and Hazardous Materials.	Please see Chapter 3 of the Final EIR for text revisions.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-67	Page 4.8-15, -16 Flooding The southern portion of the City of Newark is within the 100-year floodplain subject to tidal flooding from San Francisco Bay. Much of this area is open space, areas of salt harvesting, refining and production~~salt flats~~, and tidal marshes with no plan~~sned~~ for urbanized development. However, many of the planned future housing sites in the Dumbarton TOD and Southwest Newark Residential and Recreational Focus Areas, are within the 100-year floodplain. In addition, the areas immediately adjacent to the ACFC storm drain channels (Lines B, D, F, H, and I) are within the 100-year floodplain with some of the outlying areas mapped as being within the 500-year floodplain. The flood prone areas within the City of Newark are depicted on Figure 4.8-4.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-68	~~Although some locations within the City are protected from flooding by levees,~~ FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability. Although levees do exist at some locations within the City, ~~M~~most of these levees ~~within the City of Newark~~were not designed to provide flood protection and are not certified. Therefore, the areas next to these levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event.	The edits proposed by Cargill have been incorporated into the text on pages 4.8-16 and 4.8-17 and a sentence also have been added stating, "*Levees associated with salt production were not designed for flood protection purposes and do not function as such*".
CARGILL-69	Figure 4.8-4 [Please re-label the area designated as "Salt Harvesting Ponds" as "Salt Harvesting, Refining and Production."]	Please see Figure 4.8-4 included in Chapter 3 of the Final EIR for revisions.
CARGILL-70	Page 4.8-26 HYDRO-3. The proposed Plan would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion, siltation, or flooding on- or off-site.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
CARGILL-71	Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~.	Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-72	Page 4.8-28 HYDRO-4 The proposed Plan would not create or contribute runoff water, which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~.	Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-73	Page 4.8-33 HYDRO-8. The proposed Plan would not result in significant adverse effects related to inundation by seiche, tsunami, or mudflow. The protected portion of the San Francisco Bay near the City of Newark is not subject to potential flooding by seiches, since the several levees and long distance of shallow salt ponds~~water~~ associated with salt pond production within the Don Edwards San Francisco Bay National Wildlife Refuge~~and harvesting operations~~ between San Francisco Bay and the City of Newark would minimize waves generated by a seiche. In addition, the City of Newark is not located below any steeply sloped areas that would result in a mud or debris flow. The land within the City of Newark is relatively flat and is not within any identified earthquake induced rainfall-induced landslide areas, according to ABAG hazard maps. For these reasons, the City is not considered to be subject to significant risk from tsunamis, seiches, or mudflows.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-74	Policy CS-5.8: Planning for Sea Level Rise. Require proposed development ~~close to the Newark bayfront or~~ in low-lying areas to comply with applicable City of Newark standards for construction in flood hazard zones~~include an assessment of possible impacts related to sea level rise~~.	Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-75	Proposed Revisions to Chapter 4.9 – Land Use Planning Page 4.9-2 The Dumbarton Transit-Oriented Development (TOD) Area Specific Plan, adopted by the City of Newark on September 8, 2011~~0~~, lays out a vision for a contemporary, walkable new neighborhood on a 205-acre site adjacent to a planned commuter rail station in western Newark. In conjunction with adoption of the TOD Plan, the City amended General Plan land use designations and zoning for this former industrial area to allow for development of	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.

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	2,500 new homes, 195,000 square feet of professional office and other commercial uses, 35,000 square feet of new retail uses, and 16.3 acres of parkland, including a connection to the San Francisco Bay Trail.	
CARGILL-76	Page 4.9-3 Distribution of Existing Land Uses The remaining 50 percent of Newark's land area consists of undeveloped or non-urbanized land. Of this total, approximately 960 acres is vacant and designated for development. The remaining 3,535 acres includes "conservation" open space (280 acres), agriculture (70 acres), public parkland and other "improved" open space (160 acres), and approximately 3,025 acres of land used for salt harvesting, refining and ~~evaporation ponds and ancillary facilities used for salt~~ production. Salt harvesting, refining and production represents approximately one-third of Newark's land area. It is the largest single land use in the city in terms of its geographic extent.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-77	Page 4.9-4 Table 4.9-1 DISTRIBUTION OF EXISTING LAND USES [Change "Salt Evaporation Ponds" in Table 4.9-1 to "Salt Harvesting, Refining and Production"]	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-78	Page 4.9-5 Undeveloped and Non-Urbanized Land Undeveloped and non-urbanized areas in Newark are principally located in the southern and western parts of the city. The Cargill salt harvesting, refining and production operations ~~evaporation ponds~~ constitute a majority of this area; however, approximately 960 acres of land in Newark is vacant and zoned for development. Most of this land is clustered in two areas: the Southwest Newark residential and Recreational Focus Area, west of Cherry Street between Mowry and Stevenson; and the Dumbarton TOD Focus Area. There are also several vacant tracts within the Pacific Research Center, in other industrial parks, and in the NewPark Mall vicinity.	Please see Chapter 3 of the Final EIR for text revisions.
CARGILL-79	Page 4.9-9, -10 Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation or that adequate mitigation is provided for any impacts to such areas.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-80	Policy CS-2.3. National Wildlife Refuge. Encourage the ~~P~~preservation~~e~~ and maintenance~~ain~~ of the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service, including the management of salt ponds to enhance their value for wildlife habitat. ~~and the surrounding wetlands along San Francisco Bay.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-81	Policy CS-2.6. Salt Pond Management. Encourage the management of salt ponds within the Don Edwards San Francisco Bay National Wildlife Refuge by the U.S. Fish & Wildlife Service to enhance their value for wildlife habitat and recreation, consistent with Cargill's perpetual rights to utilize the salt ponds as part of its solar salt production system. ~~In the event that salt production ceases , conduct a Specific Plan to explore a balance between development and preservation of important wildlifeand open space resources.~~	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-82	Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or revegetate natural habitat areas or, for areas that are not avoided, to provide appropriate mitigation compensation.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-83	Action PR-1.A. Don Edwards National Wildlife Refuge Expansion. Work with willing property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay consistent with the terms set forth in the Final Environmental Assessment – Potential Additions to San Francisco Bay National Wildlife Refuge prepared by the U.S. Fish and Wildlife Service.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-84	Action POS-1.B: Environmental Review and Open Space. Use the environmental review process to encourage new development to designate areas with unique vegetation, wildlife habitat, or natural resources as open space or to provide adequate mitigation for impacts to such areas.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
CARGILL-85	Proposed Revisions to Chapter 4.12 – Public Services and Recreation Page 4.12-24 PS-10 The proposed Plan, in combination with past, present, and reasonably foreseeable growth, would result in less than significant cumulative impacts with respect to parks and recreational facilities.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is needed.
CARGILL-86	Policy PR-5.1 Bay Trail. Encourage the realignment ~~completion~~ of the Bay Trail along the Newark shoreline where feasible, in support of the long-term vision of creating a continuous shoreline trail around San Francisco Bay. Pursue trails that are separated from motor vehicle traffic and pursue pedestrian crossings of railroad rights of way to allow for connections to regional open spaces without conflicts with motorized vehicles.	The comment is noted. Please see Table 3-1 of the Final EIR for a list of text edits.
CARGILL-87	Attachment 4 - Revisions to Figures	The comment is noted. Attachment 4 has been reviewed.
DOW-1	On behalf of Defenders of Wildlife's more than 120,000 members and supporters in California, I am writing in response to the City of Newark's General Plan Tune Up Draft Program EIR. Defenders of Wildlife ("Defenders") is a national, non-profit, public interest conservation organization with more than one million members and supporters. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities, and has been involved for years in wetlands protection, San Francisco Bay conservation and restoration, and promoting the interests of national wildlife refuges, including the Don Edwards San Francisco Bay National Wildlife Refuge. Defenders of Wildlife joins Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing Newark's plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge. As Historic Bay wetlands with significant restoration potential, 550-acre Area 4 is simply an inappropriate place for development. Not only does Area 4 fall within the expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge, but it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary breeding ground for San Francisco Bay Harbor Seals. Development in Area 4 would fill nearly 100 acres of wetlands and aquatic habitat with an 18-hole golf course and nearly 500 single-family houses, exposing future Newark residents to significant flooding hazards, threatening the health of special status species populations, and preventing the restoration of a site uniquely suited for the preservation and recovery of rare and critical Bay habitat. Scientists and regulatory agencies agree that Area 4 offers a crucial opportunity to restore San Francisco Bay: The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise" Similarly, the California Department of Fish and Wildlife have stated that "this wetland is an integral component of the San Francisco Bay ecosystem," and "critically important to waterfowl and shorebirds." We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services. Thank you for the opportunity to comment on your General Plan Draft EIR. If you have any questions or comments, please do not hesitate to contact me at (916) 313-5800 ex. 108 or hstewart@defenders.org.	The comment is noted. Please see Chapter 4.3, Biological Resources, for a discussion on the potential impacts resulting from the proposed Plan. Specifically, Table 4.3-2 on page 4.3-29 identifies the Salt-marsh harvest mouse as having a population viable to sustain for over 50 years in the event no changes occur, and at least 25 years in areas where minor disturbance could occur. In each instance, it was determined that disturbances would not be severe enough to impair the population. In regards to alternatives, please see Master Response 3. To clarify issues involving Area 4, please see Master Response 5.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
EDLLC-1	On behalf of Enterprise Drive LLC, thank you for the opportunity to comment on the City of Newark's August 2013 Draft General Plan Update. Enterprise Drive LLC owns 2.14 acres (parcel number 092-0140-008) in the Dumbarton Transit Oriented Development (TOD). The Draft General Plan Update would set the minimum allowable density in Mediurn Density Residential districts at 15 dwelling units per gross developable acre. This new proposed minimum density is indicated, among other places, on page LU-12 of the Draft Update. As you know, in September 2011, the City of Newark approved the Dumbarton TOD Specific Plan. The City set the allowable minimum density for Medium Density Residential districts to 14 dwelling units per gross developable acre in the Dumbarton TOD. (Dumbarton TOD Environmental Impact Report, p. 3-25.) I write to request that the Dumbarton TOD Specific Plan be treated as an exemption to the Draft General Plan Update (for a comparison of residential densities in the Dumbarton TOD Specific Plan and the Draft General Plan Update, see the September 27, 2013 comment letter submitted by Cargill, Inc.). Enterprise Drive LLC has planned a development relying on this set minimum of 14 units per acre. The approval process has been ongoing for some time, with tentative map fees paid on October 10, 2012 and rezoning, architectural, and site plan fees paid on October 31, 2012. A change to 15 units per acre at this stage would adversely affect Enterprise Drive LLC's ability to complete the project. Enterprise Drive LLC thus requests the City treat the Dumbarton TOD Specific Plan as an exemption to the Draft General Plan Update, and that the established minimum density of 14 units per acre in Medium Density Residential districts in the Dumbarton TOD remain in effect. Thank you again for the opportunity to comment on the Draft General Plan Update for the City of Newark. Should you have any questions, please do not hesitate to contact me.	The comment is noted and the proposed General Plan has been amended to address this issue; however, it does not pertain to the merits of the DEIR and no further response is required.
GA-1	We join Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing the city's plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge. Numerous impacts of development in Area 4 are insufficiently addressed in the DEIR. Among them are the following: Habitat The 560-acres of diked baylands that comprise Area 4 contain a variety of wetland and upland habitat types. These habitats support numerous migratory waterfowl and several rare and endangered species, including the salt marsh harvest mouse, salt marsh wandering shrew, and burrowing owls. The area is identified as an important conservation priority in the 1999 Baylands Ecosystem Habitat Goals. Most of the area was included in the congressionally-approved USFWS Refuge Expansion Boundary Map of 1990. The area was identified in Greenbelt Alliance's 2012 At Risk report as "highly at risk." Flooding and Sea Level Rise Because Area 4 features tracts of uplands in proximity to tidal waters it provides a rare opportunity to maintain transitional habitat for tidal marsh species in the face of sea level rise. These same features make the land difficult and hazardous to develop. Since the entire area is within the 100-year flood plain, a large amount of would be required to support development. These measures may not be sufficient to address the impacts of sea level rise projected to occur during the next 100 years. Other public safety concerns include seismically unstable soils and limited emergency access.	The comment is noted. Please see Chapter 4.3, Biological Resources, for a discussion on the potential impacts resulting from the proposed Plan. Specifically, Table 4.3-2 on page 4.3-29 identifies the Salt-marsh harvest mouse as having a population viable to sustain for over 50 years in the event no changes occur, and at least 25 years in areas where minor disturbance could occur. In each instance, it was determined that disturbances would not be severe enough to impair the population. Chapter 4.8, Hydrology and Water Quality, discusses impacts related to water, including flooding, in the Plan Area. Impact Analysis HYDRO-3 on page 4.8-25 through 4.8-27 address potential impacts related to flooding; however, as explained further in Master Response 4 the documents discussion of sea level rise is consistent with CEQA. Please see Chapter 4.5, Geology and Soils, for a discussion on soils and seismic activity. Please see Chapter 4.12, Public Services and Recreation, for a discussion related to emergency access for fire and police protection. As discussed, compliance with the Municipal Code along with proposed policies, actions, and goals of the proposed Plan would ensure adequate emergency access is sufficient whenever new development is proposed. To clarify issues involving Area 4, please see Master Response 5.
GA-2	We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. As discussed, the Restricted Growth Altrernative would protect sensitive areas along the western edge of Newark, however this alternative did not meet many of the stated objectives found on page 6-26 of the Alternatives chapter. Please see Master Response 3 regarding the adequacy of alternatives.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
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NMW-1	On behalf of NMW Newark LLC, thank you for the opportunity to comment on the City of Newark's August 2013 Draft General Plan Update. NMW Newark LLC is the developer for the 21.27 acre Jones Hamilton property in the Dumbarton Transit Oriented Development (TOD). The Draft General Plan Update would set the minimum allowable density in Medium Density Residential districts at 15 dwelling units per gross developable acre. This new proposed minimum density is indicated, among other places, on page LU-12 of the Draft Update. As you know, in September 2011, the City of Newark approved the Dumbarton TOD Specific Plan. The City set the allowable minimum density for Medium Density Residential districts to 14 dwelling units per gross developable acre in the Dumbarton TOD. (Dumbarton TOD Environmental Impact Report, p. 3-25.) I write to request that the Dumbarton TOD Specific Plan be treated as an exemption to the Draft General Plan Update (for a comparison of residential densities in the Dumbarton TOD Specific Plan and the Draft General Plan Update, see the September 27, 2013 comment letter submitted by Cargill, Inc.). NMW Newark LLC has planned a development relying on this set minimum of 14 units per acre. The approval process has been ongoing for some time, with tentative map fees paid on October 31, 2012 and again on June 14, 2013. A change to 15 units per acre at this stage would adversely affect NMW Newark LLC's ability to complete the project. NMW Newark LLC thus requests the City treat the Dumbarton TOD Specific Plan as an exemption to the Draft General Plan Update, and that the established minimum density of 14 units per acre in Medium Density Residential districts in the Dumbarton TOD remain in effect. Thank you again for the opportunity to comment on the Draft General Plan Update for the City of Newark. Should you have any questions, please do not hesitate to contact me.	The comment is noted and the proposed General Plan has been amended to address this issue. however, it does not pertain to the merits of the DEIR and no formal response is required.
STB-1	Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Newark General Plan Tune Up. Representing 50,000 members and supporters throughout the Bay Area, including hundreds of residents of Newark, Save The Bay is concerned that the City's updated General Plan would extend urban sprawl into one of the largest expanses of undeveloped, restorable baylands in south San Francisco Bay. This is the type of development that the Bay Area has worked for 50 years to move away from, and it should not be encouraged or supported by the City of Newark. We request that the City make changes to the DEIR to rectify its significant deficiencies and ensure full compliance with the California Environmental Quality Act and other applicable laws and regulations, and we look forward to the City's detailed responses to our comments in advance of certification of any EIR. The 559-acre Area 4 is diked historic San Francisco Bay tidal marsh and an inappropriate place for development. Area 4 should be protected and restored for the benefit of the San Francisco Bay ecosystem, and for Newark and Bay Area residents alike. Area 4 falls within the Congressionally-approved expansion boundaries of the federal Don Edwards San Francisco Bay National Wildlife Refuge, and it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary pupping site for San Francisco Bay Harbor Seals. Area 4 has long been identified by scientists, environmental organizations, and state and federal regulatory agencies as a priority area for restoration: The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay (Baylands Ecosystem Goals, Segment Q: Mowry Slough Area, p.132-33). The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope	The comment is noted. Please see Chapter 4.11, Population and Housing, for a complete discussion on impacts with regards to housing and population. Additionally, Chapter 4.9, Land Use and Planning, analyzes impacts of land use as a result of implementation of the proposed General Plan. Please see Master Response 5 to clarify issues involving Area 4, and Master Response 4 regarding sea level rise. Also, please see Chapter 4.3, Biological Resources, for an impact discussion regarding wildlife and habitat.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	in response to sea level rise" (San Francisco Bay Regional Water Quality Control Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010, p.2) The U.S. Fish and Wildlife Service has been consistent in stating their interest in protecting and acquiring Area 4 for the Don Edwards San Francisco Bay National Wildlife Refuge, recently reiterating that, "the proposed development of Area 4 will only add to the cumulative loss of tidal wetlands in San Francisco Bay and endangered species that are dependent on that habitat," and "Area 4 would be an extremely valuable addition to the Refuge as it could provide valuable ecotonal habitat transitioning from restored wetlands to upland areas" (US Fish and Wildlife Service letter to City of Newark in response to the General Plan DEIR, Sept. 19, 2013)	
STB-2	With the majority of Area 4 located within a 100 year flood zone behind levees that lack FEMA certification, and with significant opportunity for wetland restoration, Area 4 should be protected and restored in order to protect Newark and surrounding communities from flooding, rather than paved over, putting more people at risk.	The comment is noted. Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. For clarification of issues regarding Area 4, see Master Response 5.
STB-3	The City of Newark should develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. Please see Master Response 3 regarding the adequacy of alternatives.
STB-4	The General Plan Is Inconsistent with the BCDC Bay Plan, the US Fish and Wildlife Service Comprehensive Conservation Plan, and the Baylands Ecosystem Habitat Goals. Despite assurances that "the proposed Plan would not conflict with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect," (DEIR, Impact LU-2, 4.9-7) the City of Newark's proposed development of Area 4 conflicts with numerous federal, state and regional policies intended to protect San Francisco Bay, its habitats and wildlife.	Conflicts with the Bay Plan are discussed on pages 4.9-11 and 4.9-12 of the Draft EIR. The Bay Plan applies only to areas within the jurisdiction of BCDC. As discussed in the Draft EIR, the proposed Plan does not specifically propose any development within Mowry Slough or Plummer Creek, including portions within the jurisdiction of BCDC, and compliance with the setback requirements contained in the City's Grading and Excavation Ordinance (Newark Municipal Code, Chapter 15.50) would ensure that future development under the Plan would not occur within the limits of either Mowry Slough or Plummer Creek. Furthermore, no development is envisioned on the location of the duck clubs, nor could any development of these areas, to the extent they are managed wetlands as defined under the McAteer-Petris Act, occur without a permit from BCDC or any other agency with jurisdiction over these areas. Moreover, as BCDC policies do not explicitly prohibit development on these locations and as none is envisioned in the proposed Plan, conflicts with the Bay Plan would be less than significant.
STB-5	The San Francisco Bay Conservation and Development Commission (BCDC) Bay Plan. The DEIR acknowledges that "BCDC has jurisdiction…over managed wetlands in the Southwest Newark Residential and Recreational Focus Area" and that "projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection" (DEIR, 4.8-7). But it fails to acknowledge the Bay Plan policies that expressly discourage development in restorable areas like Area 4. BCDC has informed Newark "that the Commission has managed wetland jurisdiction over a portion of the project area in Focus Area 4, specifically the sites referred to as the Pintail and Whistling Wing Duck Clubs" and that "the Commission's San Francisco Bay Plan managed wetland policies state, in part that, 'The continued operation and maintenance of managed wetlands for waterfowl hunting, as game refuges, or for waterfowl food production should be encouraged... If the owner of any managed wetland withdraws any of the wetlands from their present use, the public should make every effort to buy these lands and restore them to tidal or subtidal habitat, or retain enhance and manage these areas as diked wetland habitat for the benefit of multiple species.'" (BCDC letter to City of Newark in response to the General Plan NOP, February 13, 2013, p. 2.) In addition, the DEIR fails to acknowledge BCDC's Bay Plan policy regarding undeveloped shoreline areas, such as Area 4, with restoration potential that are vulnerable to	The comment is noted. Please see page 4.9-11 through 4.9-12 for a discussion regarding consistency with the Bay Plan. As discussed, there is no proposed development as part of the proposed General Plan. As such, project-specific impacts are neither known at this time nor have any project-specific impacts been identified. Accordingly, as discussed, several policies under the proposed Plan would ensure consistency with the Bay Plan. For a list of such policies, see page 4.9-11 and 4.9-12. Additionally, Chapter 1.0 and 2.0 have stated that the DEIR was prepared as a program EIR and, therefore, project-specific impacts have not been considered provided there are no specific projects being proposed under the proposed General Plan.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	sea level rise: To address the regional adverse impacts of climate change, undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species, or possess conditions that make the areas especially suitable for ecosystem enhancement, should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes. (BCDC Bay Plan, Climate Change Policy #4).	
STB-6	U.S. Fish and Wildlife Service, Don Edwards SF Bay National Wildlife Refuge Comprehensive Conservation Plan (CCP). The DEIR incorrectly asserts that "the proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan." (DEIR, Impact LU-3, 4.9-8.) In fact, the U.S. Fish and Wildlife Service for the Don Edwards San Francisco Bay National Wildlife Refuge recently reiterated its strong concerns to the City in a September 19, 2013, DEIR comment letter. As the CCP states, "the Refuge is particularly interested in acquiring unprotected high marsh, ecotonal, and upland habitats that will benefit migratory birds that are Refuge trust species… [and] acquiring those lands within the approved acquisition boundary that can address climate change efforts." (Don Edwards SF Bay NWR, CCP, p. 191.) Development of Area 4 would conflict with the CCP's goal to "conserve, restore, enhance, create and acquire habitats to support the diversity and abundance of migratory birds and other native flora and fauna that depend on Refuge lands." (Don Edwards SF Bay NWR, CCP, p. 180.) Area 4 is one of the largest remaining sites within the Refuge's acquisition boundary that can meet these specific needs, and therefore it is apparent that the General Plan has a significant conflict with the Comprehensive Conservation Plan. The Fish and Wildlife Service also has "concerns with the proposed development and its potential to attract nuisance and predator species (e.g., gulls, geese, invasive weeds) that affect native species and habitat, and threaten the recovery of endangered species," amongst other issues they have identified to the City in its previous comment letters (June 5, 2007; December 18, 2008; January 20, 2010).	Conflicts with the CCP are discussed on pages 4.9-8 through 4.9-11 of the Draft EIR. As discussed in the Draft EIR and acknowledged in the CCP, the Don Edwards San Francisco Bay National Wildlife Refuge is an urban refuge located in the highly developed context of the South Bay and therefore disturbances from adjacent commercial, industrial, and residential uses and activities are inevitable. The proposed Plan contains numerous policies and actions cited in the Draft EIR that would minimize disturbances to the maximum extent practicable, including policies and actions that call for coordination with federal, State, and local agencies in ecological protection and habitat restoration activities. Further, the proposed Plan does not preclude the Refuge from working with willing property owners to acquire land within the expansion boundary (see Action PR-1.A). Therefore the conclusion of the Draft EIR that conflicts with the CCP would be less than significant is valid and no change to the Draft EIR is required.
STB-7	Baylands Ecosystem Habitat Goals Project As stated by the Water Board, the SF Bay Ecosystem Habitat Goals Project and its companion document "should be recognized as regional habitat conservation plans." The General Plan's focus on developing Area 4 is in direct conflict with those regional habitat conservation plans: The Basin Plan recommends that these two plans, written by over 100 local scientists and resource managers, be used as guides for wetland restoration to protect beneficial uses of waters in San Francisco Bay, not only for species but also to purify and store State waters. Use of these two habitat conservation plans will help assure that developments in the Project area are implemented in a manner that benefits tidal species, migratory and resident shorebirds, waterfowl, and the SMHM... The Habitat Goals Project recommends that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4), and the BCDC has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. In addition, the Refuge has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge. (Water Board letter to City of Newark, General Plan NOP, February 13, 2013, Attachment A, p. 6-7).	As discussed in the Draft EIR on page 4.3-35, the Bay Plan recommends that the Baylands Ecosystem Habitat Goals (Habitat Goals) be used as guides for wetlands restoration in the vicinity of San Francisco Bay; however, the Habitat Goals are a set of recommendations that have not been adopted by any agency and therefore are not considered an approved local, regional, or State habitat conservation plan under CEQA. The analysis of the Draft EIR is valid and no change to the Draft EIR is required. With respect the future acquisition of land within the Refuge expansion area, please see Response to Comment STB-6 above.
STB-8	The DEIR Fails to Plan for, Avoid or Mitigate the Impacts of Sea Level Rise Sea level rise will have an incredible impact on coastal California, particularly cities located along the San Francisco Bay shoreline, like the City of Newark. It is therefore deeply troubling that the City is not meeting its responsibility to actually study, avoid or mitigate for sea level rise in its General Plan and DEIR. The Pacific Institute's July 2012 report, "The Impacts of Sea Level Rise on the San Francisco Bay," commissioned by the California Energy Commission, estimates that $62 billion worth of property	The comment is noted. Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. Please see

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	and infrastructure is at risk in the Bay Area, including $15 billion in Alameda County alone. (Pacific Institute, p. 20, Table 11.) There are 12,000 people already at risk from a 100-year flood in Alameda County, and that number is expected to rise to 66,000 people by 2100. Alameda County has the second highest exposure of all the nine Bay Area counties. (Pacific Institute, p. 7, Table 3.) Further, maps by BCDC demonstrate that significant portions of the Newark shoreline are expected to be inundated within the next 40 years if protective measures are not taken. (BCDC, "Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on the Shoreline," 2009.) This includes virtually all of Area 4, which is already mostly within a FEMA designated 100-year flood zone, as the General Plan illustrates in Figure EH-2, "Flood Hazard Areas." (Draft General Plan, EH-11.) The City's failure to address sea level rise in its General Plan would directly endanger its residents, their property, and the city's economy.	Master Response 4 regarding sea level rise.
STB-9	The DEIR fails to acknowledge the environmental impacts, as sea levels rise, of building up to 500 houses and an 18-hole golf course in an area with existing wetlands and significant wetland restoration potential.	Please see Master Response 4 regarding sea level rise and Master Response 5 for clarifications of proposed Area 4 development.
STB-10	Resources agencies have specifically identified Area 4 as a critical location where Bay wetlands, and the species that depend on this habitat, could migrate upland: Large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise (Water Board letter to City of Newark in response to Areas 3 and 4 Specific Plan FEIR, June 23, 2010, p.2.) By focusing future development along the shoreline in Area 4, the City of Newark is significantly inhibiting the potential for tidal marsh to migrate upland in this area, as well as creating potential future impacts due to the probable need to construct additional flood protection measures that would likely impact adjacent wetlands. This is a significant, avoidable impact on the Bay, Bay wetlands and special status species including but not limited to the endangered California Clapper Rail and the endangered Salt Marsh Harvest Mouse.	The comment is noted. Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. Please see Chapter 4.3, Biological Resources, for an impact discussion on wildlife and habitat, including reference to the Salt-marsh harvest mouse on page 4.3-29. Please see Master Response 4 regarding sea level rise.
STB-11	The DEIR's Analysis of Environmental Impacts Resulting from the Proposed Development of Area 4 is Inadequate. The DEIR fails to adequately evaluate and mitigate the environmental impacts that will result from the conversion of Area 4 to hundreds of housing units and an 18-hole golf course. According to the Draft General Plan, "the areas of greatest expected future land use change are in Southwest Newark and on the western edge of the city," and "this would likely represent an irreversible change" as it "would involve the transformation of undeveloped/open space to a suburban/urban environment." (Draft General Plan, LU-9 and 7-4.) Yet the environmental impacts from this change are either ignored or significantly downplayed in the DEIR.	As indicated in Chapter 2.0, Introduction, the DEIR is programmatic and therefore does not address project-specific impacts. As stated on page 4.9-10 in the Land Use and Planning chapter of the DEIR, the proposed Plan does not envision development in the immediate vicinity of the Refuge over and above that envisioned in the 1992 General Plan or Area 3 and 4 Specific Plan. Additionally, the precise location of future development is not known at this time, and is indicated the DEIR was prepared at the programmatic level and therefore does not consider project-specific impacts. The comment makes a generalized assertion and therefore requires only a generalized response. Please see Response to Comments CCCR-4, CCCR-6, and Master Response 2 regarding the treatment of previous environmental review. For clarifications regarding Area 4 please see Master Response 5.
STB-12	Potential environmental impacts that the DEIR fails to adequately document or mitigate include but are not limited to the effect that the loss of Area 4 wetlands will have on special status species known to occur onsite.	Please see Chapter 4.3, Biological Resources, for a discussion on impacts related to wildlife and habitat.
STB-13	The DEIR also fails to consider the impact of the loss or degradation of wetlands and other habitat characterized by the San Francisco Bay Regional Water Quality Control Board as "regionally significant" on other Bay wildlife species. (Water Board letter to City of Newark in response to the General Plan NOP, February 13, 2013, Attachment A, p. 7.)	The impacts to loss or degradation were discussed in the Area 3 and 4 Specific Plan EIR, as well as in this DEIR under the BIO-2 analysis starting on page 4.3-36. Please see Master Response 2 regarding the adequacy of previous environmental reviews.
STB-14	Additionally, the DEIR fails to adequately evaluate the alteration to wetland hydrology and impairment of water quality that may result from development-induced runoff pollution, including the use of pesticides associated with the proposed 18-hole golf course, and changes in runoff patterns associated with the	Impacts related to hydrology and water quality are addressed in Chapter 4.8 of the Draft EIR. Please also see Master Response 2 regarding treatment of previous enviornmental review.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	filling of hundreds of acres of Baylands and nearly 100 acres of wetlands and other aquatic habitat	
STB-15	The DEIR also fails to include an adequate discussion of the reduction in habitat quality associated with locating development immediately adjacent to sensitive wildlife habitat.	Under CEQA, the extent of which a potential impact would occur is not necessarily considered, but rather if the potential is significant. Accordingly, and pursuant to CEQA Guidelines, it was determined that impacts to wetlands and habitat would be less than significant with the implementation of several policies as listed on page 4.3-37 to 4.3-39. Additionally, future development would be subject to project-level CEQA review which would identify further potential impacts and mitigation measures at the project-level of review. Therefore, the DEIR does adequately discuss potential impacts to habitat pursuant to CEQA Guidelines. No changes are necessary.
STB-16	The DEIR's treatment of existing biological conditions also fails to adequately characterize environmental conditions within Area 4. For example, the Vegetation and Habitat Types map included within the DEIR (Figure 4.3-2), only depicts a small portion of the jurisdictional wetlands that occur within Area 4, representing the majority of Area 4 as annual grassland instead. This is inconsistent with the figure "Existing Habitat" of the Areas 3 and 4 Specific Plan Draft EIR (Appendix E, Figure 4), which, corresponding to the Jurisdictional Determination completed by the Army Corps of Engineers in 2007 (USACE File #2006-400075S), illustrates that more than 200 acres of Area 4 is composed of various types of wetlands and aquatic habitat.	The comment is noted. Please see Figure 4.3-2b included in Chapter 3 of the Final EIR for more detail regarding Area 3 and 4 and its surrounding areas.
STB-17	Finally, discussions of impacts in the General Plan DEIR should not rely on conclusions or mitigation measures from the Areas 3 and 4 Specific Plan EIR that is currently the subject of legal challenge. Instead, the EIR should contain a *de novo* investigation of those issues, and the City should recirculate a revised DEIR containing this information for review and comment by the public, stakeholders and responsible agencies.	Please see Master Response 2 regarding reliance on previous environmental review.
STB-18	Existing conditions must be accurately represented in order for decision makers and the public to understand the environmental changes that will occur as a result of General Plan goals and policies, including the proposed development in Area 4.	Please see Response to Comment STB-16.
STB-19	Developing Area 4 Is Inconsistent With Numerous General Plan Policies, Actions and Goals Development within Area 4 conflicts with many Draft General Plan policies and actions that are listed within the DEIR as justification for the "less than significant before mitigation" determinations made for many of the environmental impacts discussed. For example, in concluding in Impact BIO-1 that "buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area," the DEIR claims that "the Proposed Plan includes policies and actions that would also protect special-status species and minimize impacts associated with future development under the Plan," listing policies CS-1.1, CS-1.2, CS-1.3, CS-2.1, CS-2.2, CS-2.3, CS-2.7 and others that are in fact inconsistent with the City's proposed development of Area 4. (DEIR, 4.3- 32-34.) The City may not assert that vague General Plan policies will ensure less than significant impacts to the environment, when the development of Area 4 would preclude implementation of those policies.	The proposed Plan policies and actions cited by the commenter would not preclude development in Area 4; rather they seek to guide future development throughout the City in a way that minimizes associated environmental impacts. Additionally, previous environmental review conducted by the City and incorporated by reference into the Draft EIR identified significant environmental impacts associated with development in Area 4 as well as mitigation measures to address those impacts; and on the basis of substantial evidence, the City determined that those measures would reduce those impacts to less-than-significant levels. Implementation of the proposed Plan policies cited by the commenter would further ensure that impacts associated with future development in the City, including development in Area 4, would be minimized to the maximum extent practicable.
STB-20	Additionally, the City many not rely on "compliance with applicable federal, state, and local regulations" in asserting that "impacts from the proposed Plan would be less-than-significant." As the lead agency under CEQA, it is not adequate for the City of Newark to rely on mitigation measures that have not been formulated. (Gentry v. City of Murrieta (1995) 36 Cal.App.4th at p. 1397.) The city may not assume that these agencies would necessarily "reduce potential impacts to wetlands, riparian habitat, and sensitive natural communities that could result from buildout of the proposed Plan to the maximum extent practicable." (DEIR, 4.3-39.)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
STB-21	The proposed General Plan Policies, Actions and Goals, that conflict with development of Area 4 include, but are not limited to: Policy CS-1.2: Conservation of Sensitive Areas. Support the conservation of environmentally sensitive areas and unique natural resources in the city. Policy CS-1.3: Interagency Cooperation. Participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas. Policy CS-2.1: Wildlife and Habitat Protection. Preserve and protect Newark's plant and animal species and habitats, including wetlands, salt marshes, creeks and lakes. Ensure that land use decisions consider potential impacts on wildlife habitat. Policy CS-2.2: Special Status Species. Ensure that adverse impacts on special status species, including those deemed rare, threatened, endangered or candidate species for protection, are avoided and mitigated to the greatest extent feasible as development takes place. Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. Policy CS-2.7: Coordination with State and Federal Agencies. Coordinate with the California Department of Fish and Game, the US Fish and Wildlife Service, surrounding cities, the Regional Water Quality Control Board and other appropriate agencies to protect wildlife species and habitat. Goal CS-2: Conserve Newark's wetlands and baylands Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay.	Please see response to Comment STB-16. The proposed Plan policies and actions cited by the commenter would not preclude development in Area 4; rather they seek to guide future development throughout the City in a way that minimizes associated environmental impacts. For clarifications regarding Area 4, please see Master Response 5.
STB-22	The City Should Develop a General Plan Alternative that Protects Area 4 from Development While an EIR "need not consider every conceivable alternative to a project… it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation." (CEQA Guidelines §15126.6(a).) Area residents, environmental organizations, and regulatory agencies have been consistent in their communications with the City on the need to protect and restore Area 4. In response to the General Plan Notice of Preparation, the San Francisco Bay Regional Water Quality Control Board requested that "the City should evaluate in its CEQA documents project alternatives that avoid and minimize fill." (Water Board, letter to City of Newark in response to the General Plan NOP, February 13, 2013, Attachment A, p. 1.) Carin High from the Citizens Committee to Complete the Refuge also requested "an alternative that retains Area 4 in its current condition." (Carin High email to City of Newark in response to the General Plan NOP, February 13, 2013, p. 1-2.) Including an alternative that would protect Area 4 from development by maintaining the existing agricultural zoning, while allowing development in other priority growth areas, would allow the City to meet all of the Project Objectives identified in the DEIR while significantly lessening the environmental impacts of the Plan. In fact, some of the Project Objectives meet with greater success under this proposed alternative, specifically the objective to "embrace Newark's bayfront location." Numerous General Plan policies, actions and goals could be better met with this proposed alternative. For example, in the General Plan the City aspires to build a "bayfront identity" (Policy LU-4.13, LU-45) and "stronger connections to San Francisco Bay" (LU-32), stating: Newark aspires to reorient itself to San Francisco Bay and establish itself as a bayfront city … Construction of the Bay Trail, restoration of wetlands … and establish stronger connections to the marshes and sloughs that define the city's western flank (ED-17) The General Plan also includes Policy ED-5.6: Bayfront Location. Promote the public image of Newark as a bayfront city, with shoreline amenities such as trails, bayfront open space, wildlife refuges, and bay vistas. The City's natural features and connections to San Francisco Bay are a "selling point" that should be leveraged to attract new employers (ED-30) The DEIR identifies the "Environmentally Superior Alternative" as the "Restricted	Please see Master Response 3 regarding selection of alternatives.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	Growth Alternative" which would prohibit development in both Area 4 and the "Dumbarton Transit-Oriented Development Priority Development Area." In addition to the "Restricted Growth Alternative," the City should study a separate alternative that protects Area 4 by maintaining the existing Agricultural zoning, but allows the development of other priority development locations in the City, near transit, shops, and services. This is a feasible project alternative that would meet the all of the Project Objectives while "clearly lessen[ing] the environmental impacts of the project." (CEQA Guidelines §15088.5(a)(3).) Thank you for considering our comments and recommendations.	
SCVAS-1	Santa Clara Valley Audubon Society (SCVAS) joins Save The Bay, the Sierra Club, Ohlone Audubon Society, Citizens Committee to Complete the Refuge, San Francisco Baykeeper, and others in opposing Newark's destructive plans to fill and develop Area 4 — one of the largest tracts of restorable, undeveloped baylands in the South San Francisco Bay. SCVAS has over 3500 members in the Bay Area, and our mission embraces open space, nature and birds as we offer field trips and education programs, and engage in conservation activities. We believe that Area 4 should be protected from development, restored and included in the Don Edwards San Francisco Bay National Wildlife Refuge. Historic Bay wetlands with significant restoration potential, 550-acre Area 4 is simply an inappropriate place for development. Not only does Area 4 fall within the expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge, but it supports nearly a dozen special status species including the endangered Salt Marsh Harvest Mouse. Area 4 is also directly adjacent to Mowry Slough, a primary breeding ground for San Francisco Bay Harbor Seals. Development in Area 4 would fill nearly 100 acres of wetlands and aquatic habitat with an 18-hole golf course and nearly 500 single-family houses, exposing future Newark residents to significant flooding hazards, threatening the health of special status species populations, and preventing the restoration of a site uniquely suited for the preservation and recovery of rare and critical Bay habitat. Scientists and regulatory agencies agree that Area 4 offers a crucial opportunity to restore San Francisco Bay: The 1999 Baylands Ecosystem Habitat Goals Project, the scientific roadmap for the restoration of the Bay shoreline, identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay. The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to … provide an area for tidal marsh species to move up slope in response to sea level rise." Similarly, the California Department of Fish and Wildlife have stated that "this wetland is an integral component of the San Francisco Bay ecosystem," and "critically important to waterfowl and shorebirds."	The comment is noted. Please see Chapter 4.3 on page 4.3-29 for a discussion related to the Salt-marsh harvest mouse. Additionally, impact analysis BIO-2 in Chapter 4.3 addresses the impacts related to riparian habitat and sensitive natural communities, of which harbor seals are mentioned. Given, several policies and actions under the proposed Plan, and listed on page 4.3-37, the impacts were found to be less than significant and therefore no further changes in the EIR are necessary. To clarify issues involving Area 4, please see Master Response 5.
SCVAS-2	We strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Response 3 regarding the adequacy of alternatives.
SFBK-1	Please accept the following comments on behalf of San Francisco Baykeeper ("Baykeeper") and our 2,500 members in our pursuit to protect and enhance the water quality of the San Francisco Bay and its tributaries. I. The Purpose and Scope of the "Project" are Unclear Baykeeper is unclear as to the purpose of this General Plan tune up, and recommends that this opportunity be seized as one to develop a sustainable infrastructure and pro-conservation approach to Newark's remaining habitat and open space. This overarching goal resonates with the DPEIR's stated Project objective to "Embrace Newark's bayfront location." (DPEIR 3-3.) Consistent with this objective, and as discussed further, below, the City should adequately prepare for rising sea levels along Newark's bayfront, revision the City's minimal stormwater pollution controls, and reconsider its proposed Area 4 development.	Please see page 1-3 through 1-4 in Chapter 1.0, Executive Summary, for description of the type and purpose of the DEIR. The stated purpose is aligned with Section 15121(a) of the CEQA Guidelines, which states that an EIRs purpose is to inform public agency decision makers and the public generally of the significant environmental effects of a project and identify ways to possibly minimize such effects. Further, the scope is to identify potential impacts of the proposed General Plan and was prepared as a program EIR, therefore, it is not project-specific. Additional information regarding scope and purpose can be found on page 2-1 through 2-5 in Chapter 2.0, Introduction. Please see Master Response 4 regarding sea level rise. No changes are necessary.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
SFBK-2	II. The DPEIR Fails to Consider Impacts Associated with Rising Sea Levels The DPEIR fails to apply its own threshold of significance as to whether "[t]he proposed Plan would not expose people or structures to a significant risk of loss, injury or death involving flooding." (DPEIR 4.8-31.) The DPEIR artificially segregates flooding as a result of existing environmental conditions, from any increased flooding that could be caused by future rising sea levels, as if even flood risks today could somehow be untwined from present rises in sea levels caused by global warming. It is simply internally inconsistent and incoherent to apply this threshold of significance to all flooding except flooding caused by sea level rise. Present and future increases in flooding caused by rising Bay levels must be part of this analysis. Notably, the legal theory on which the DPEIR rests its flawed assumption that impacts from sea level rise should not be considered under CEQA was recently rejected by the California Court of Appeal.1 Furthermore, the DPEIR acknowledges that its impact from greenhouse gas emissions will be significant and unavoidable, and admits that sea level rise is a direct result of increased greenhouse gas emissions. Therefore, the DPEIR is wrong to state that rising sea levels are a condition of the existing environment, but not an effect of the Project. The DPEIR must also evaluate the reasonably foreseeable adverse impacts from the Project to the environment. While the DPEIR asserts that rising sea levels are, in and of themselves, a condition of the existing environment, the DPEIR still must adhere to CEQA's fundamental purpose to evaluate any impacts that the Project itself will cause in conjunction with projected sea level rise. [1 See California Building Industry Assn. v. Bay Area Air Quality Management Dist., 218 Cal. App. 4th 1171, 1194-1196 (declining to follow Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455).]	The comment is noted. Please see Master Response 4 regarding sea level rise.
SFBK-3	For example, it is well documented that, if flooding or inundation occurs as a result of sea level rise, the Project's pollution loading to the Bay and its tributaries will likely increase.2 This increased pollutant load would come from the Project itself, not from the rising sea level, and must be evaluated in this DPEIR. Similarly, wastewater and stormwater infrastructure may be compromised by rising sea levels, with serious resulting consequences to water quality.3 [2 http://www.pacinst.org/wp-content/uploads/2013/02/report16.pdf (attachment 1), http://www.icleiusa.org/static/San_Diego_Bay_SLR_Adaptation_Strategy_Complete.pdf (attachment 2) 3 http://www.adaptingtorisingtides.org/vulnerability-and-risk-assessment-report/ (attachments 3 and 4)]	The comment is noted and acknowledged that stormwater infrastructure may be compromised by rising sea levels. However, it is unclear how the increased pollutant load would come from the project itself. The potential impact depends on the elevation and location of storm drain outfalls into the Bay. If the drain outfalls are under water, then storm water would back up in the pipes and cause inland flooding, but there does not appear to be a direct connection to increased pollutant load to the Bay. Improvements to the stormwater system would require interagency collaboration between municipalities and the ACFCWCD. Currently, there is no framework in place to make the decisions to improve the adaptive capacity of the stormwater infrastructure. However, new development will be required to implement BMPs and LID to minimize stormwater runoff, which will ultimately limit pollutant loads to the Bay. Please see Master Response 4 regarding sea level rise.
SFBK-4	The DPEIR identifies "the areas immediately adjacent to the ACFC storm drain channels" (DPEIR 4.8-15), but fails to discuss how the Project's contaminated stormwater could be managed if stormwater infrastructure is inundated by sea level rise.	The comment is noted; please see response to comment SFBK-3. Please see Master Response 4 regarding sea level rise.
SFBK-5	As a result of, and in conjunction with, foreseeable sea level rise, the Project Area will likely be required to implement further mitigation and/or adaptation measures to protect habitat, open space, and developed property from flooding by rising sea levels.	Please see Master Response 4 regarding sea level rise.
SFBK-6	The DPEIR must evaluate the extent to which such mitigation measures may be needed, and their resulting environmental impacts, as all such reasonably foreseeable mitigation and adaptation measures will be a consequence of the Project itself. For example, the construction of sea walls would cause further greenhouse gas impacts and erosion. What is the Project's plan for adapting to sea level rise?	As indicated in Chapter 1.0 and Chapter 2.0, the DEIR was prepared pursuant to CEQA Guidelines. Also, pursuant to Public Resources Code Section 21081.6, a mitigation monitoring or reporting program for any project for which it has made findings pursuant to Public Resources Code 21081 must be adopted by the lead agency. As stated on page 2-5, a mitigation monitoring or reporting program will be completed as part of the final EIR.
SFBK-7	Rising sea levels will also affect the greater loss of existing wetlands, projected to be permanently inundated by rising tides. This foreseeable change in the environment places a premium on undeveloped upland habitat that may be able to adapt to transition to future wetland areas as sea levels rise.4 The cumulative impact of wetland loss under the City's General Plan development must be considered in this light. Not only would near-term direct loss or degradation of wetland habitat be cumulatively considerable in conjunction with projected loss through sea level rise, but also any loss or degradation of upland	Please see Master Response 4 regarding sea level rise. Please see pages 4.3-47 through 4.3-38 for a discussion of cumulative impacts relating to wetlands, and other biological impacts. As stated in the cumulative impact analysis, previous environmental review has determined impacts to be less than significant and have identified mitigation measures to offset or minimize potential impacts.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	habitat suitable for wetland transitional zones must be analyzed and avoided or mitigated where feasible. [4 http://www.adaptingtorisingtides.org/vulnerability-and-risk-assessment-report/ (attachment 5)]	
SFBK-8	Rather than evaluate whether the additional pollutant loading caused by the Project would threaten or impair the beneficial uses of area water bodies, the DPEIR simply asserts that compliance with the San Francisco Regional Municipal Stormwater Permit ("MRP") would necessarily render any impact associated with contaminated stormwater discharges to less than significant levels. Unfortunately, however, the MRP is no panacea, as significant pollution loading from stormwater runoff persists even under the permit. While the DPEIR states that "[n]o site-specific data regarding stormwater runoff from the Plan Area exists" (DPEIR 4.8-14), voluminous data on both stormwater generally, as well as recent and ongoing municipal performance under the existing MRP, is available and should have been considered by the DPEIR. For example, the MRP purports to lessen the onus on municipalities to reduce pesticide loading to area water bodies under the theory that pesticide regulation is solely a matter of statewide concern. Nevertheless, through its general plan process, the City could certainly consider and require land use patterns and design elements that would place land uses known for intensive pesticide use, such as golf courses or office parks, away from potentially affected water bodies, with intervening buffer areas. All urban creeks throughout the region are listed by the Regional Water Board as impaired for pesticide toxicity, and recent monitoring reports submitted under the MRP confirm that municipal stormwater continues to discharge pesticide-contaminated stormwater in toxic amounts. Yet the DPEIR fails to evaluate this significant threat to water quality.	The comment is noted and the statement on page 4.8-14 that "*no site-specific data regarding stormwater runoff from the Plan Area exists*" has been changed to read "*Under the Alameda County Urban Runoff Clean Water Program, stormwater within Alameda County has been characterized in terms of water quality and runoff pollutant loading*". It is acknowledged that all San Francisco Bay urban creeks have TMDLs because of diazinon and pesticide toxicity. The EIR does address the potential for pesticide, herbicide, and fertilizer usage to result in impaired stormwater quality, as discussed on page 4.8-15 and under Impact HYDRO-1. As stated under HYDRO-1, all new development and redevelopment projects within the Plan Area would implement storm water management measures, such as street sweeping and litter control, outreach regarding appropriate fertilizer and pesticide use practices, and managed disposal of hazardous wastes. Also, compliance with Newark's Green Building Ordinance, which includes adherence to Bay Friendly Landscape Practices, will minimize the use of pesticides. The General Plan also includes implementation of Policy CS-3.8: *Integrated Pest Management. Minimize the use of pesticides, herbicides, and other toxic materials in the maintenance of City parks, medians, and public spaces.*
SFBK-9	Moreover, the DPEIR fails to describe the beneficial uses of the impacted water bodies at all, rendering any evaluation of whether such beneficial uses may be impaired impossible.	There are no designated 303(d) impaired water bodies within the City of Newark. The nearest 303(d) impaired water bodies are Alameda Creek and South San Francisco Bay. Impacts of discharge to San Francisco Bay are discussed under Impact HYDRO-1. Compliance with the Alameda County Clean Water Program, which includes the C.3 provisions set by the San Francisco Bay RWQCB, will minimize the discharge of impacted stormwater to this water body.
SFBK-10	IV. The City should Reconsider Development of Area 4 In determining the land-use plan for Area 4, the City of Newark has the opportunity to distinguish itself as a leader in the arena of responsible planning. Area 4 is located within the 100-year floodplain and the majority of the site would be inundated by a one-meter sea-level rise according the mapping released by the San Francisco Bay Conservation and Development Commission (BCDC). This poses serious public safety issues including emergency response time and access, traffic ingress and egress, seismic and liquefaction issues, etc. With the opportunity to re-vision its general plan blueprint for future development, we sincerely urge the City of Newark to consider an alternative plan that will preserve and restore the lands within Area 4 rather than trying to force development that would be inconsistent with City and regional goals of preservation, conservation, and sensible development. Thank you for your careful consideration of these comments and concerns, and your good stewardship of these vital ecological resources. Sincerely, Jason Flanders program Director, San Francisco Baykeeper	The comment is noted. Please see Master Response 4 regarding sea level rise. Please see Chapter 6.0, Alternatives, page 6-2 for a description of a Restricted Growth Alternative, which would restrict growth in the Dumbarton TOD and the larger sector of the Southwest Newark Residential and Recreational Focus Areas.
SFBK-11	4 Attachments were received and reviewed	The attachments were reviewed.
CCCR-1	This responds to the Draft General Plan Tuneup (GPT) and GPT Draft Program environmental impact report (DEIR). The Citizens Committee to Complete the Refuge (CCCR) thanks you for the opportunity to review and provide comment. Based upon our review of the DEIR, we find that it contains serious omissions, inaccuracies, and flaws that must be rectified to comply with the California Environmental Quality Act (CEQA) requirements. For these reasons, as well as those articulated by our attorneys, Lippe Gaffney Wagner LLP, and Richard Grassetti of Grassetti Environmental Consulting, the DEIR must be corrected and re-circulated.	The commenter's opinion is noted.

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Comment ID	Comment	Response
CCCR-2	Newark General Plan "Tuneup" The city held public workshops in late 2011 and early 2012, facilitated by graduate students from California Polytechinic State University San Luis Obispo. The City also held joint study sessions between the city council and planning commission, though these do not appear to have been widely advertised. Members of CCCR only found out about these joint workshops by perusing the planning commission and city council agendas. Public participation is a required component of the general plan process California Government Code §65351, and public participation can: • Educate the public about community issues. • Increase the public's ability and desire to participate in the community. • Enhance trust in government by strengthening the relationship between elected officials, government · staff, and the public. • Encourage working towards community consensus and creating a vision for the future. • Lay the groundwork for community revitalization and increased investment in the community. • Allow decision makers to obtain public input regarding plan policies and community issues and objectives. • Provide the public with opportunities to evaluate alternative plans and to participate in developing and choose a plan that works for their community. • Inform decision-makers about public opinion. The characterization of this general plan update as a "tuneup" conveys to the public that there is actually little need for the public to participate in the process. That the purpose of this "tuneup" is to merely tie up a few loose ends. This impression is solidified with the following text: The effort leading to the adoption of a new General Plan in 2013 was referred to as a General Plan "Tune Up" rather than a major revision. This is because the values represented by the 1992 Plan remained valid and appropriate at the time of Plan adoption. By 2011, however, the 1992 Plan's data and maps were becoming dated and the absence of a discussion of recent planning efforts was becoming more apparent. The 1992 Plan did not reference regional planning initiatives and legislative changes, nor did it address emerging issues such as climate change and sustainability. The intent of the "Tune-Up" was to update baseline data and projections, refresh the narrative text which describes planning issues, and move the planning horizon forward by 20 to 25 years. [emphasis added] And: The basic vision established by the 1992 Plan continues to guide this General Plan. This vision seeks to sustain Newark as a high quality community with attractive neighborhoods, great shopping, diverse workplaces, excellent public services and parks, and a healthy natural environment. Many of the areas identified for development by the 1992 Plan continue to be identified for development today—this General Plan provides greater detail on the types of uses and the issues to be addressed as such development takes place. [emphasis added]It has been over twenty years since the crafting of the existing general plan. The Draft GP acknowledges that it carries forward many of the concepts of 1992 GP, including development of the city's western edge. However, significant new information has come to light since the early 1990's. As the general plan update indicates, new policies and strategies have developed over the intervening years, with different visions of how we should interact with the landscape, especially in low lying areas close to the edges of the bay. The general plan update process is an appropriate time to re-evaluate the long-term sustainability of the existing general plan's vision of land use. As an example, the GPT carries forward the concept of a golf course and upscale housing on Area 4, the former Whistling Wings and Pintail duck clubs. A 2012 Wall Street Journal article1 reported the financial woes of golf communities, describing how private golf course communities are "repurposing" golf courses by reducing the number of holes from 18 to 9 and then	The commenter is expressing opinions regarding the process used to develop the proposed general plan and the economic viability of golf courses; however, it does not pertain to the merits of the EIR. No further response is required. For clarifications regarding Area 4 Please see Master Response 5. Please see Master Response 4 regarding sea level rise.

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	selling off the excess land. Property values in a number of golf course communities have plummeted. In South Carolina, lots that previously sold for $150,000, were on sale in 2012 for $1. In Florida, a lakefront home associated with an Arnold Palmer golf course sold for $795,000 in 2011, but had sold in 2007 for $1.6 million. In Bend, Oregon, a couple paid $500,000 for a lot in 2006. A similar-sized lot sold for $10,000 in early 2012. As of 2011, 2,000 golf courses of a total of 16,000 courses were in financial distress, and it was estimated an additional 4,000 to 5,000 would find themselves in a similar situation if their model of operation remained unchanged. Jonathan Lansner 2 of the Orange County Register reports, during the period between 2005-2011, golf as a sport, lost 4.3 million golfers, and there were 37 million fewer rounds of golf were played in the period from 2005-2011. Lansner writes: Today, golf is largely out as a housing theme because developers have learned that golf courses are an expensive and narrow way to keep a new housing community green. "Lakes, walking paths and central amenities are used by all residents, as opposed to only about 15 percent to 20 percent of residents" for golfing, Boud says. [1 Keates, Nancy. "Fore Sale." July 24, 2012. Wall Street Journal.] [2Lansner, Jonathan. "Golf courses hit rough economics." April 13, 2012. Orange County Register. http://www.ocregister.com/articles/golf-349198-says-courses.html Accessed 9-26-13] While builders could sell golf-course view homes at a steep premium, Boud says that "when costs are considered, open spaces and trails often overtake golf in terms of benefiting the master plan, and a lake -- which is relatively cheap and easy to maintain -- beats golf in view premiums. Though obviously, fewer homes tend to benefit from the view because a lake is generally much smaller than a course." Lastly, Alicia Robinson3 of the Press Enterprise exposes the difficulties the City of Riverside has encountered when operators who held contracts to run two of three golf courses in the city stopped paying their city leases. The 1992 general plan, was its vision of a golf course and upscale housing was developed during an unprecedented boom in the construction of high end golf courses. The period of the 1990's to early 2000 was a period of rapid growth for golf course construction. But as described above, there has been a sharp course correction as the popularity of the sport has decreased. The evidence above, suggests a golf course would be anything but an asset to the city. Why does the city continue to incorporate the vision of a golf course in Area 4? This is just one example of an instance where carrying forward the visions of the 1992 plan may be out of synch with reality, and an indication that more than a tuneup is warranted. Other more pressing issues, such as adaptive planning for sea level rise, have not adequately been incorporated into the vision of land use promoted by the draft general plan. [3 Robinson, Alicia. "Riverside: Cities rarely fare well in golf business." July 19, 2013. The Press Enterprise. http://www.pe.com/local-news/riverside-county/riverside/riverside-headlines-index/20130719-riverside-cities-rarely-fare-well-in-golf-business1.ece Accessed 9-26-13.].	
CCCR-3	The GPT and the GPT DEIR are not user friendly: The draft general plan and general plan DEIR are not user friendly, they do not encourage public participation in formulating a vision of growth for the city. Terms such as FAR (floor area ratio) have little meaning to the general public and housing unit densities are difficult to visualize. The Fremont general plan includes figures that help the reader visualize how the various housing densities or floor area ratios impact the landscape. Why can't the Newark GPT include similar figures?	The comment is noted. As stated in Chapter 2.0, Introduction, and pursuant to CEQA Guidelines Section 15105, the required public review comment period shall not be less than 45 days. Accordingly, the DEIR was available for public comment from August 14, 2013 through September 27, 2013, or 45 days. Additionally, Section 15083 of the CEQA Guidelines states that the Lead Agency may consult directly with any person or organization it believes will be concerned with the environmental effects of the project through a process referred to as scoping. As such, a scoping meeting was held on January 24, 2013, along with , and three joint study sessions, one Planning commission Study Session and one City Council study session, all of which provided opportunities for public participation. In addition there were two meeting of a blue ribbon panel of business experts to advise the City on the Economic Development Element.
CCCR-4	The DEIR is inconsistent in providing information necessary to evaluate the adequacy of impact identification, identification of indirect impacts, mitigation and monitoring measures, etc. Impact assessment and mitigation and monitoring requirements are spread amongst at least four different	As described on page 2-3 of the Draft EIR, a range of planning and environmental documents prepared previously by the City are incorporated by reference into the Draft EIR pursuant to CEQA Section 15150. Section 15150 states that "where an EIR or Negative Declaration uses incorporation by reference, the incorporated part of the

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	documents - this DEIR, the HEU EIR, the Area 2 EIR, and the Area 3 and 4 EIR (refer to earlier comment regarding the inclusion of the suspended EIR). Rather than providing the actual wording of the mitigation measures from these other documents, the GPT DEIR provides one sentence summaries of the mitigation measure(s) in question. p. 2-3 states: Whenever existing environmental documentation or previously-prepared documents and studies are used in the preparation of this Draft EIR, the information is summarized for the convenience of the reader and incorporated by reference. As an example: 4.3-33 - Additionally, previous environmental review conducted for the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified the following mitigation measures to address potential impacts to special-status plant and animal species. The Dumbarton TOD EIR identifies Impacts 4.3-1 through 4.3-5 associated with impacts to the salt marsh harvest mouse, nesting raptors, the western burrowing owl, the tricolored blackbird, saltmarsh common yellowthroat, and other nesting passerine birds, as well as special-status plant species. These impacts would be mitigated to less-than-significant levels through the implementation of various assessment, survey, avoidance, buffer, preservation, and protection, and replacement measures specified in Mitigation Measures 4.3-1 and 4.3-5 from the Dumbarton TOD Specific Plan EIR. The information contained in this summary is insufficient to determine what type of impacts are anticipated and whether the mitigation measures referred to are adequate to reduce the impacts to a level that is less-than-significant. Furthermore, the HEU DEIR doesn't appear to be online, making review of the severity of the impacts proposed by the GPT DEIR nearly impossible for anyone who doesn't have a copy of the document. The GPT DEIR incorporate all mitigation measures in one document, ensure the measures are consistent, and then re-circulate the information for public review and comment.	referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described." Therefore, it is appropriate that the Draft EIR has summarized previous mitigation measures and discussed their relation to the proposed Plan and its environmental effects. Further, on page 2-2 of the Draft EIR it is noted that the documents incorporated by reference are available for review at the City of Newark Community Development Department, in compliance with CEQA Section 15150(b). Therefore, the Draft EIR has adequately incorporated and referenced mitigation measures from previous environmental review conducted by the City. Please also see Master Response 2 regarding Reliance on Previous Environmental Review. No change to the Draft EIR is required to address this comment.
CCCR-5	The statement on p. 2-5 that "the Mitigation Monitoring Program for the proposed Plan will be completed as part of the FEIR and will be completed prior to consideration of the Plan by the Newark City Council." The typical comment period for an FEIR is 10 days. This delay in providing the MMP perpetuates the impression that the GPT and GPT DEIR are done deals and comments made by the public will not be considered seriously.	As noted in the Draft EIR on page 2-5, a Mitigation Monitoring and Response Program (MMRP) will be prepared for the proposed Plan. Pursuant to CEQA Section 15097, the MMRP is prepared after the comment period on the Draft EIR so as to allow for incorporation as warranted into the EIR of mitigation measures or project revisions proposed by reviewing agencies or the public. Further, as set forth in Section 15097, the lead agency must first make findings regarding the Final EIR, including findings regarding changes to the Draft EIR (see Section 15091(a)), before adopting "a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects." Therefore, it is appropriate that the MMRP for the proposed Plan be completed as part of the FEIR and be completed prior to consideration of the Plan by the Newark City Council.
CCCR-6	It is not possible to determine from the GPT DEIR the level of CEQA review or opportunities for public comment that will occur in the future. [Please refer to the letters of LGW and Richard Grassetti regarding why it is improper for the GPT DEIR to rely on conclusions, mitigation measures, etc. from the Area 3 and 4 DEIR and specific area plan. This statement should be inserted anywhere Area 3 and 4 is discussed henceforth.] The GPT has been described during public meetings as being "self-mitigating." Please explain what that means and the ramifications for future CEQA review and public comment opportunities. p. 1-3 of the DEIR states: ...this Draft EIR has been prepared as a Program EIR for the General Plan Tune Up project, pursuant to Section 15168 of the CEQA Guidelines. As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects. [emphasis added] However, if the Program EIR addresses the program's effects as specifically and comprehensively as possible, many subsequent activities could be found to be within the Program EIR scope and additional environmental documents may not be required (CEQA Guidelines Section 15168[c]). When a Program EIR is relied on for a	On the title page of the document, and throughout, it is identified as a "Program" document; as such future developments would be subject to CEQA review. Also please see Responses to Comments GECO-3, GECO-5, and GECO-6 above. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review. In regards to clarifications of Area 4, please see Master Response 5.

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	subsequent activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities (CEQA Guidelines Section 15168[c][3]). If a subsequent activity would have effects not within the scope of the Program EIR, the lead agency must prepare a new Initial Study leading to a Negative Declaration, Mitigated Negative Declaration, or an EIR. In this case, the Program EIR still serves a valuable purpose as the first-tier environmental analysis. [emphasis added] This is passage describes the process normal process of tiering following the preparation of a program EIR. The GPT DEIR is confusing however, because it states that it incorporates by reference the analyses and mitigation measure reporting programs of previously conducted EIRs. This makes it nearly impossible for the public to comprehend what will trigger future environmental review for the Area 2 (DTOD) and parcels covered by the HEU EIR (and Area 3 and 4 though that environmental review process is currently suspended).	
CCCR-7	As an example: p. 4.1-13: Furthermore, there are provisions in place to address light impacts from development located at the northwestern edge of the urbanized portion of Newark, where such impacts could potentially be most pronounced. Mitigation Measure 4.1-1 from the Newark Housing Element EIR requires that lighting plans containing specific measures to reduce the adverse impacts of additional light sources to less-than-significant levels for development in areas adjacent to the Don Edwards National Wildlife Refuge. Additionally, the proposed Plan incorporates a policy from the Dumbarton TOD Specific Plan requiring the incorporation of types of lighting and illumination that reduce glare and over-lighting impacts in the vicinity of the Dumbarton TOD Focus Area. [emphasis added] What if any, additional CEQA and public review of aesthetics can be expected within the sphere of the Newark Housing Element and the DTOD? Does the determination that the adverse impacts of additional light sources are reduced to a level that the city has determined to be less-than-significant for development in areas adjacent to the Refuge, mean that light impacts will not be reviewed further, even at the project level? What about other aesthetics impacts? If further environmental review will occur will there be any opportunity for public comment?	Please see Responses to Comments CCCR-6, GECO-3, GECO-5, and GECO-6 above. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review.
CCCR-8	What are the anticipated triggers and what elements of the statement the GPT DEIR has incorporated by reference previous EIRs for the Dumbarton Transit Oriented Development (DTOD), the Area 3 and 4, and the Housing Element Update. The incorporation of those EIRs and in particular, their mitigation measures into the existing baseline is improper.	Please see Responses to Comment CCCR-4 above. Please also see Master Response 1 regarding baseline for environmental review.
CCCR-9	Inconsistencies: Comparisons of the GPT and GPT DEIR are difficult because the two documents do not use consistent language. GPT CS-18 Newark does not allow development within the 100-year flood zone and requires development to be elevated at least 8 feet above mean high tide (11 feet for residential development). GPT DEIR p.4.8-32: Furthermore, any development within the Plan Area would be subject to the City's flood elevation standards for lands within Special Flood Hazard Areas (SFHAs), as defined by FEMA (Section 15.40.51 of the Newark Municipal Code). These standards require building pads of all residential structures to be a minimum of 11.25 feet elevation National Geodetic Vertical Datum (NGVD). In addition, the City requires the top of curb grades for residential streets to be no less than ten feet above mean sea level throughout the City (Section 16.08.06 of the Newark Municipal Code).	The General Plan text has been edited to reference 11.25 feet rather than the "rounded" statistic of 11 feet that had been cited previously. The two references are now consistent.
CCCR-10	Aesthetics: 4.1-4 - This section discusses visual character of Newark and includes the views of Coyote Hills, the east bay hills, and low-lying wetlands fronting San Francisco Bay, but does not mention the views of the hills across the bay. Shouldn't that view be part of the existing conditions?	The comment is noted. Although the Visual Character discussion on page 4.1-4 does not specifically mention views of the hills across the SF Bay, based on the Standards of Significance listed on page 4.1-6, every conceivable view from the Plan Area was not necessary to provide an adequate analysis to come to a determination of significance. As discussed in AES-1 on page 4.1-6, there are no officially designated scenic vistas or view corridors in Newark. Therefore, mention of the hills across the SF Bay would not have affected the final determination for AES-1. As discussed in AES-3, the overall visual character was determined to have a significant impact; therefore, the mention of the hills across the SF Bay would not have affected the overall determination, provided AES-3 was determined to

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		result in a significant impacts even without mention of the views of the hills. As such, no changes are necessary.
CCCR-11	4.1-6 - Shouldn't the views across the bay be mentioned under the discussion of Area 4?	The comment is noted. Although mention of the hills across the SF Bay is not mentioned, AES-1 on page 4.1-6 states that there are no officially designated scenic vistas or view corridors in Newark, therefore, mention of the hills would not necessarily affect the overall determination based on the Standard of Significance used in AES-1. Further, AES-1 discusses that future development under the proposed Plan would be subject to local laws and regulations that serve to protect scenic vistas in the Plan Area. Also, several policies in the proposed Plan, as listed on page 4.1-7, would aim to protect scenic resources. For that reason, no changes are necessary.
CCCR-12	AES-1 - The proposed Plan would not have a substantial adverse effect on a scenic vista. Once Area 3 is constructed, you will no longer be able to see across the bay while driving along Cherry. The sense of openness will also be lost as there will be medium density development on both sides of the street.	The comment is noted. As discussed in AES-1, there are no officially designated scenic vistas or view corridors in Newark, which would provide special consideration under CEQA. Additionally, provided there are were no projects proposed under in Area 3 at the time of the preparation of the DEIR, project-specific impacts cannot be considered. Also discussed in AES-1 are the policies under the proposed Plan that would seek to protect scenic vistas. No changes are necessary.
CCCR-13	Policy LU-4.13 - How is Newark's Bayfront Identity reinforced by building high density housing in Area 2 and importing 2.1 million cubic yards of fill into Area 4?	As discussed in Chapter 4.1, Aesthetics, impact analysis AES-1 discusses potential impacts related to scenic vistas. Page 4.1-7 lists policies that would serve to protect scenic vistas under the proposed Plan. Additionally, AES-1 states that future development would be subject to existing local laws and regulations with regards to protecting scenic vistas. Also, as mentioned in Chapter 1.0, Executive Summary, the DEIR was prepared as a program EIR and does not consider project-specific impacts, such as the building of high density housing in specific areas. Therefore, no changes are necessary.
CCCR-14	Policy LU-4.14- Views of the Peninsula Hills and San Francisco Bay will be obscured by development in Area 3 and 4 and in Area 2. One might have a view of the bay however, if one is perched in a high density housing unit?	As discussed in Chapter 4.1, Aesthetics, impact analysis AES-1 discusses potential impacts related to scenic vistas. Page 4.1-7 lists policies that would serve to protect scenic vistas under the proposed Plan. Additionally, AES-1 states that future development would be subject to existing local laws and regulations with regards to protecting scenic vistas. Also, as mentioned in Chapter 1.0, Executive Summary, the DEIR was prepared as a program EIR and does not consider project-specific impacts, such as the building of high density housing in specific areas. Therefore, no changes are necessary.
CCCR-15	AES-3 The proposed Plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review. We concur that the proposed plan will have a significant adverse impact on the visual character of Area 3 and 4.	The comment is noted. No further response is required.
CCCR-16	AES-4 States, "The Plan would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area." and rationalizes the conclusion with "future development under the proposed Plan would create new sources of light and glare; however, in the urbanized context of Newark this increase would not substantially and adversely affect daytime or nighttime views. Area 4 is isolated from development and in an area where there is no light at night. The introduction of lighting in this area will likely be visible from other parts of town.	As discussed in AES-4, although new sources of light and glare could result from future development, the discussion on page 4.1-12 mentions that Newark is in a highly urbanized area, therefore establishing context for the analysis. As such, although light and glare could result from future development, the analysis determined that such light and glare would not result in a "substantial" impact in the context of the existing light and glare. Additionally, policies under the proposed Plan would aim to reduce potential impact as listed on page 4.1-13. Therefore, no changes are necessary.
CCCR-17	AES-5 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to aesthetics. How is it possible to reach this conclusion? High density housing is proposed in Area 2, a large area of existing open space will be built out in Area 3, 2.1 million cubic yards of fill will be imported into Area 4 raising the elevation 10'-14', taller buildings are proposed in the New Park Mall area, and high density housing is proposed at the site of the library and city hall. How can the Plan buildout not visually alter the character of Newark?	AES-3 on page 4.1-8 through 4.1-12 actually does make the determination of a significant impact with regard to visual character. However, in the context of cumulative impacts which considers a geographic scope of the entire Plan Area as described on page 4.1-13. As discussed in AES-5, cumulative impacts are considered within a larger geographic reason as explained on page 4.1-13 and 4.1-14, therefore in the context of the geographic scope, cumulative impacts were found to be less than significant based on the individual impact discussions in Chapter 4.1. In regards to visual character, although AES-3 resulted in a significant impact, the geographic scope was within the four focus areas analyzed in that impact discussion, whereas the cumulative impact analysis takes a broader and more expansive view of the region. As such, an impact considered significant in an individual impact analysis will not always result in the cumulative impact to be significant as well, depending on the geographic scope established.

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CCCR-18	Air Quality: p. 4.2-13 - Existing Ambient Air Quality - The DEIR states the air quality monitoring station closest to the City is the Hayward Monitoring Station. Why wasn't the monitoring station in Fremont on Chapel Way utilized? That station in air miles is only 3.32 miles away? The site is reported to have sensors for O3, PM2.5, PM10, CO, NOx, HC, and Tox.	The Fremont Chapel Way Monitoring Station closed on October 31, 2010 and was not operational in 2011 or 2012. Therefore, data from the next closest monitoring station was utilized to ensure that the most recent data was reported.
CCCR-19	p. 4.2-15 - The DEIR refers to recent case law and states: "...the Guidelines language in thresholds d and e (exposure of sensitive receptors to substantial pollutant concentrations and creation of objectionable odors), as they relate to the placement of sensitive receptors under the proposed plan, above are not examples of an environmental effect caused by the development, but instead is an example of an effect on the Project caused by the environment (and therefore according to bad case law, are not required to be analyzed under CEQA). From a public health and safety perspective, it would seem irresponsible not to analyze and mitigate these impacts.	The comment is noted. Public health and safety are planning issues and therefore addressed through municipal code regulations and conditions of approval. No further response is required.
CCCR-20	p. 4.2-18. - The City of Newark is already largely developed. Future growth under the proposed Plan would be accommodated in infill sites and redevelopment of existing sites. [emphasis added] This description of proposed development under the draft general plan is inaccurate as development is proposed on Area 4. The statement is inconsistent with other portions of the DEIR and GPT: page 3-8 - Area 4 is one of the last undeveloped sectors of the city and is largely in agricultural use today. Page 4.8-21 - However, future housing sites will be primarily located on underutilized land, infill sites, and along transit corridors, most of which (excepting Area 4) have already been developed and currently have a high percentage of impervious surfaces. Page 4.4-10: Additionally, the Southwest Newark Residential and Recreational Focus Area contains a large area of undeveloped land, some of which would be developed with buildout of the Plan. GP EH-31 - In particular, [...] residential development in Southwest Newark will result in a larger population in areas that are presently vacant. GPT LU- 23-26: This is the largest area proposed for future development in Newark, comprising 636 acres [emphasis added].	Although the language seems inconsistent, neither of the references alludes to an end all or exclusive statement. For example, the reference to page 4.2-18 states that is Newark is largely developed; however, that does not mean fully developed. Additionally, the statement about future growth being accommodated by infill sites and redevelopment of existing sites does not necessarily imply that all future growth would be strictly accommodated to infill or redevelop existing sites. The reference to page 4.8-21 refers to housing sites being located on underutilized land, infill sites, and transit corridors. Underutilized does not necessarily mean undeveloped, nor does the statement conclude that all housing sites would be located in either of those areas exclusively. As such, neither of the statements referenced in the comment are meant to convey exclusivity or absolute certainty of such development patterns. As discussed throughout the DEIR, future development would be subject to further project-specific CEQA review in which project-specific impacts and mitigation measures would be identified. Therefore, no changes are necessary.
CCCR-21	p. 4.2-35: BAAQMD's CEQA Air Quality Guidelines do not require an evaluation of emissions from program-level planning activities such as the proposed Plan. Given the programmatic nature of the proposed Plan, specific operational information individual projects that would operate under the Plan is not known, and furthermore, subsequent environmental review of development projects would be required to assess potential impacts under BAAQMD's project-level thresholds. Please clarify what additional environmental review would be required and would there be an opportunity to provide public comment?	Please see Responses to Comments CCCR-6, CCCR-7, GECO-3, GECO-5, and GECO-6 above. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review.
CCCR-22	p. 4.2-39 - States: Implementation of the above-listed policies would reduce operational emissions from development projects under the proposed Plan to the maximum extent practicable. Additionally, as noted above, future development projects under the proposed Plan would be subject to subsequent environmental review pursuant to CEQA and would be required to assess potential impacts under BAAQMD's project-level thresholds. Therefore, impacts associated with operational emissions of criteria air pollutant from the proposed Plan would be less than significant. It is not possible to reach a conclusion of a less-than-significant impact. The policies are predominately advisory and there is no assurance they will be implemented. How is it possible to state impacts will be less-than-significant merely based on the requirement of future environmental review? As an example, what if significant impacts are identified, but there is a determination of "significant" followed by statements of over-riding concern? How would the adverse impacts of the project be less-than-significant? This same problem pertains to most of the impacts and mitigation measures discussed under the Air Quality section, e.g. AIR-3. With respect to AIR-3, it is unclear how a determination of less-than-significant before mitigation can be reached when there has been non-attainment for some constituents in previous years.	Please see Responses to Comments GECO-31 through GECO-36.

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CCCR-23	Action HW-1.F - Why locate sensitive receptors in areas of known "major sources" of air pollution at all?	The comment is noted; however, it does pertain to the merits of the EIR. No further response is necessary.
CCCR-24	p. 4.2-44 - New land uses in the City of Newark that are permitted under the proposed Plan that use trucks, including trucks with TRUs, could generate an increase in DPM that would contribute to cancer and non-cancer health risk in the SFBAAB. As identified in Table 4.2-6, impacts could occur at facilities that permit 100 or more truck trips per day or 40 or more trucks with TRUs within 1,000 feet of a sensitive land use. These new land uses could be near existing sensitive receptors within and outside the City of Newark. In addition, trucks would travel on regional transportation routes through the SFBAAB contributing to near-roadway DPM concentrations. With implementation of Action EH-1.C, projects that would generate new sources of TACs would be required to reduce emissions to the BAAQMD's performance levels. Impacts would be less than significant. The proposed development of Area 4 and the commiserate need for transport of fill to the site would require up to 100 trucks per day and this impact was not analyzed, nor mitigation proposed in the Area 3 and 4 EIR.	A site specific evaluation was not conducted for the proposed General Plan Update. As identified in Chapter 4.2, Air Quality, impacts of the General Plan are evaluated at a "program" level and therefore the impact analysis follows BAAQMD's Plan-Level guidance. As identified in AIR-4, Action EH-1.C, would require that projects that generate new sources of TACs would be required to reduce emissions to the BAAQMD's performance levels for community risk and hazard impacts. Future discretionary review under CEQA would be required for project in Area 4 and Area 3. Per Action EH-1.C, project that generate truck trips would need to conduct a Health Risk Assessment to evaluate community risk and hazard impacts and identify mitigation that achieve BAAQMD's thresholds.
CCCR-25	Please describe Policy EH-1.6 and Action EH-1.C. They do not appear in the DEIR or the GPT.	The comment points out a typographical error on page 4.2-19 of the Draft EIR. The first full sentence on page 4.2-19 should reference Action HW-1.F. The text of the Draft EIR is hereby amended as follows: Implementation of proposed Plan goals, policies, and programs, including ~~Policy EH-1.6 and~~ Action HW-1.F ~~EH-1.C~~, described below, would ensure these impacts are less than significant This edit does not constitute significant new information or affect the conclusions of the environmental analysis.
CCCR-26	p. 4.2-45 - AIR-5 - "The Plan would not create or expose a substantial number of people to objectionable odors." "There are two types of odor impacts: 1) siting sensitive receptors near nuisance odors, and 2) siting new sources of nuisance odors near sensitive receptors." p. 4.2-46 - Sensitive receptors, such as the residential uses associated with planned development under the Proposed Plan, may be placed within the distances to these sources specified in Table 4.2-7. Additionally, sensitive receptors could be located in the vicinity of the salt ponds operated by Cargill Corporation, which produce odors due to the natural decay of organic matter such as algae that they contain. In general, the City's land use plan designates residential areas and commercial/industrial areas of the City to prevent potential mixing of incompatible land use types, with the exception of mixed-use areas that combine commercial with residential. BAAQMD Regulation 7, Odorous Substances, requires abatement of any nuisance generated by an odor complaint. Because existing sources of odors are required to comply with BAAQMD Regulation 7, impacts to siting of new sensitive land uses would be less then significant. [emphasis added] Please clarify how the impacts of locating housing units and recreational facilities in proximity to the Cargill salt ponds was determined to be less than significant. There is no classification for the odors generated by the salt ponds or appropriate distances to these sources on Table 4.2-7. Odors generated by the salt ponds can be particularly strong, but it is not clear how Cargill could be expected to abate the odor nuisance generated by the natural decay of algae, or by anaerobic mud. Additionally, wetlands can sometimes release the strong odor of rotten eggs due to the reducing conditions of the soils. There is nothing that can abate the smell, except for distance.	The comment is noted. As discussed in impact analysis AIR-5, starting on page 4.2-45, because existing sources of odors are required to comply with BAAQMD Regulation 7, Odorous Substances, impacts would be considered less than significant. Additionally, the standard of significance for AIR-5 states that the Plan would not create or expose a substantial number of people to objectionable odors. Although some people may or may not be exposed to such odors as a result of the proposed Plan, it was determined that a "substantial" number of people would not be exposed to objectionable odors. Accordingly, no changes are necessary. With regard to location of housing units, as indicated in Chapter 1.0 and 2.0, the DEIR was prepared as a program EIR, therefore, project-specific impacts were not analyzed. For that reason, and because there are no immediate plans for housing units to be placed in the vicinity of the Cargill Salt Ponds, those project-specific impacts cannot be considered in the absence of actual plans for development. Additionally, Table 4.2-7 reflects BAAQMD required screening distances of operations that must follow appropriate screening requirements, of which salt ponds have not been addressed and therefore are not included in Table 4.2-7. Further, pursuant to CEQA Guidelines, the DEIR need only to analyze impacts of a project on the environment, and not necessarily impacts of the environment on the project, for example odors. For that reason, no changes are necessary.
CCCR-27	Biological Resources: Figure 4.3-2 - Vegetation and Habitat Types - This figure grossly mischaracterizes the conditions on Area 3 and 4. Area 4 has a mosaic of uplands and wetlands across the site. Islands of uplands are surrounded by wetlands. To our knowledge the 78 undeveloped acres of Area 3 do not support wetlands habitat, yet nearly half the site is depicted as having wetlands. The area abutting the	Please see Figure 4.3-2b included in Chapter 3 of the Final EIR for more detail on Areas 3 and 4.

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	southeastern portion of Area 4, east of the railroad tracks is not cropland, but a vernal pool mitigation site, and should be depicted as a complex of grasslands and vernal pools. This figure needs to be amended to correctly reflect the habitats of Area 4.	
CCCR-28	p. 4.3-9 - Vegetation, Habitat Types, and Wetlands. This section significantly downplays the significance of the mosaic of wetlands, waters and uplands that occur on Area 4. The tremendous potential to preserve and restore ecological functions on this site is of great significance. The Bay Goals Project4 observed: Historically, moist grasslands existed in large expanses near Suisun Marsh, in the upper reaches of Sonoma Creek and the Petaluma River, and adjacent to much of the baylands in South Bay. Today, examples of large areas of this habitat exist near Fairfield and in the Petaluma River area. Smaller areas of moist grasslands with seasonal wetlands are in Marin at St. Vincent's/Silveira Ranch. In South Bay, development has destroyed most of the historical moist grasslands; notable exceptions exist east of Coyote Hills in the Ardenwood area and near the upper reach of Mowry Slough in Newark. [emphasis added] The Bay Goals Project had the following recommendation for Area 4, "Protect and enhance the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail duck club. Similar habitat can be protected and restored at the upper ends of Newark, Plummer, and Albrae sloughs." [4 Goals Project. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. U.S. Environmental Protection Agency, San Francisco, Calif./S.F. Bay Regional Water Quality Control Board, Oakland, CA]	Please see the response to comment CCCR-27.
CCCR-29	p. 4.3-10 - The DEIR states the Corps and CDFW generally exercise authority over the various wetland habitat types. The San Francisco Bay Regional Water Quality Control Board would also have authority over wetlands and waters of the state.	As stated in the Local Regulations section on page 4.3-7, the San Francisco Bay RWQCB is noted as having jurisdictional responsibilities and authority in all waters addressed in the SF Bay Basin Water Quality Control Plan, which includes wetlands in near the Plan Area.
CCCR-30	p. 4.3-11 - Salt Ponds The commercial salt ponds are large, open water areas ranging in salinity from similar to sea water at 32 parts per million to 135 parts per million, or more than four times more salty than sea water.22 These ranges of salinities allow for certain macro- and micro-organisms to thrive, resulting in brightly colored water. Salt ponds provide important habitat for a wide variety of bird species. Much of this use occurs as foraging habitat along the shorelines of ponds, but there is particularly high value of nesting and roosting habitat provided by remote or undisturbed locations along dikes between ponds and on islands. At least 19 different species of shorebirds use the Bay's commercial salt ponds for feeding, roosting, and breeding. These include long-billed curlew, Wilson's phalarope, American avocet, and black-necked stilt.23 Additionally, the area provides perches for raptors, which have special status, including peregrine falcon, northern harrier, and merlin.24 Threatened and endangered species using salt ponds include sites include the federally threatened snowy plover, federally endangered California clapper rail, and federally endangered California least tern.25 This description should be added to the description of salt ponds on page CS-6 of the GPT.	The comment is noted; however, it does not pertain to the merits of the EIR. Please also see Responses to Comments CARGIll1 through Cargill-87.
CCCR-31	Figure 4.3-3 Special Status Plant Species and Sensitive Natural Communities - The figure neglects to include Point Reyes bird's beak that occurs in the LaRiviere Marsh of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge).	The comment is noted; however, after conducting further research and checking the US Fish and Wildlife Service Plans List, there is no listing of the Point Reyes bird's beak in the Don Edwards SF Bay National Wildlife Refuge. Additionally, there is no evidence or citation provided from the commenter to support the claim that the bird's beak does exist in the Don Edwards Refuge. Therefore, no changes are necessary.
CCCR-32	Figure 4.3-4 Special Status Animal Species - · Burrowing owl have been reported to occur within Area 4. · Loggerhead shrike is listed as having been observed in Area 4 but does not appear on the map.	The Burrowing owl is discussed in Table 4.3-2 on page 4.3-25 and does acknowledge that the Burrowing owl could potentially nest in Areas 3 and 4. Additionally, the Loggerhead shrike is also mentioned and acknowledged to potentially be present in Areas 3 and 4 on page 4.3-26. No changes are necessary.

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CCCR-33	Table 4.3-1 Special Status Plant Species in the Newark Vicinity: · Contra Costa goldfields - amend the table - confirmed occurrence in Area 2, refer to EIR. · Point Reyes bird's-beak - amend the table - confirmed occurrence in the LaRiviere Marsh of the Refuge	The Contra Costa goldfield is discussed on page 4.3-33 and acknowledges that the plant is suspected to occur in and adjacent to the Old Town Focus Area and the Dumbarton TOD Focus Area. Please see the response to comment CCCR-31 regarding the Point Reyes bird's beak.
CCCR-34	Table 4.3-2 - Special Status Animal Species in the Newark Vicinity: · Snowy egret - amend the table this species has been observed numerous times on the mitigation pond just east of Area 4 within Area 3. observations entered one Bird (http://ebird.org/ebird/GuideMe?src=changeDate&getLocations=hotspots&hotspots=L827703&parentState=USCA&reportType=location&monthRadio=on&bMonth=01&eMonth=12&bYear=2000&eYear=2013&continue.x=69&continue.y=8&continue=Continue) · Western snowy plover - observed immediately adjacent to Area 2 (DTOD) (data from the Western Snowy Plover Pacific Coast Population Recovery Plan Volume 2 (Appendices) · white-tailed kite - several observations at the Stevenson Blvd mitigation pond. See eBird link above · salt marsh harvest mouse - has been trapped within Area 4 (letters provided in attachments). Many occurrences within Mayhews Landing close to Area 2. (map provided in attachments)	The Snowy egret is mentioned on page 4.3-27 in Table 4.3-2. As stated, it may be present in Charleston Slough. The Snowy plover is mentioned on page 4.3-28 in Table 4.3-2. The white-tailed kite is also mentioned on page 4.3-33 and has been acknowledged that it may be present in Area 4. Further, it is mentioned that the salt-harvest mouse is known or suspected to occur in portions of the Plan Area where development could occur under the proposed Plan; however, further independent CEQA review would be required for future development which would contain project-level review to identify impacts and mitigation measures. Therefore, no changes are necessary.
CCCR-35	p. 4.3-31 - Please explain why Congdon's tarplant is not expected to remain for another five years. Does it have anything to do with how the site is currently managed?	The Congdon tarplant was not expected to remain for another five years due to the urbanized setting and potential future development. Although that may be the case, the Dumbarton TOD Specific Plan EIR has stated that the Congdon tarplant does not have federal or state status. Additionally, several mitigation measures along with project-level CEQA review for future development would protect certain plant species prior to development. No changes are necessary.
CCCR-36	p. 4.3-31 - Wildlife Corridors - The DEIR fails to recognize that levees provide movement corridors.	Although levees could support wildlife movement, it would not change the conclusion within the overall analysis. For that reason, no changes are necessary.
CCCR-37	BIO-1 - Buildout of the proposed Plan would result in less-than-significant impacts to special status plant and animal species in the Plan Area. As was mentioned above, the mitigation and monitoring requirements need to be condensed into one stand alone document, rather than expecting decision makers and the public to hunt down all the mitigation measures, and the public needs to be given adequate time to review all of the detailed mitigation measures in their entirety.	Please see Response to Comments CCCR-4 and CCCR-5 above. No change to the Draft EIR is required to address this comment.
CCCR-38	Furthermore, the mitigation measures need to be reviewed holistically to ensure that while the individual impacts of the various focus areas may appear to be less-than-significant, adequate mitigation measures exist for the entirety of the "Project." The Policies listed under BIO-1 are inadequate to protect biological resources within the City of Newark and on lands adjacent to the City of Newark. ·	The commenter does not justify or substantiate the assertion that the policies referenced are inadequate to protect biological resources. Potential impacts to biological resources are discussed in Chapter 4.3 of the Draft EIR, together with the effect that goals, policies, and actions from the proposed Plan would have in reducing those impacts. The Draft EIR is adequate in this respect. No change to the Draft EIR is required to address this comment.
CCCR-39	Policy CS-1.1: Ensure that development minimizes its impacts on Newark's environment and natural resources through sound planning, design, and management. The proposal to fill up to 86 acres of wetlands that have been deemed by the Bay Goals Project, the Refuge Expansion Boundary, etc. is not an example of "minimizing" impacts on natural resources.	The comment is noted; however as it does not pertain to the merits of the Draft EIR no further response is required.
CCCR-40	Policy CS-1.2: Support the conservation of environmentally sensitive areas and unique natural resources in the city. Refer to the comments above and the excerpts from the Bay Goals Project cited above.	The comment is noted; however, it does not pertain to the adequacy of the Draft EIR. No further response is required.

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CCCR-41	Policy CS-2.1: Preserve and protect Newark's plant and animal species and habitats, including wetlands, salt marshes, creeks and lakes. Ensure that land use decisions consider potential impacts on wildlife habitat. It is one thing to "consider" potential impacts on wildlife habitat and an entirely different thing to "avoid" impacts to wildlife habitat. The City of Newark has taken the former approach and then approved filling of wetlands. How is approval of a development that will fill up to 86 acres of wetlands without knowing where mitigation for those losses might occur protective?	The comment is notes; however it does not pertain to the merits of the EIR. Please see Master Response 5 regarding clarifications Regarding Development Envisioned in the Area 3 and 4 Specific Plan.
CCCR-42	Policy CS2.2: Special status species - requiring mitigation "as development takes place" is not protective of special status species due to temporal losses of habitat and the uncertainty of whether the proposed mitigation will actually be successful. Requiring mitigation be completed prior to the initiation of impacts, is protective of special status species. Habitat is not lost before successful replacement habitat is provided.	The comment is noted. The DEIR was prepared as a program EIR and, therefore, does not consider project-level impacts. Accordingly, such project-level impacts and mitigation measures would be identified as future development is proposed. No further response is required.
CCCR-43	Policy CS-2.3: DESFBNWR - placing a transit center and medium density housing next to lands that might eventually become part of the Refuge (Hickory Street parcel, Plummer Creek parcel) is not protective of the Refuge.	Potential impacts to biological resources are discussed in Chapter 4.3 of the Draft EIR. As the comment is generalized in nature, a generalized response is sufficient. No further response is required.
CCCR-44	Policy CS-2.5: Development near wetlands - Placing housing and all the human disturbance factors including trash, invasive plants, nuisance species attracted to the housing, domestic pets, next to wetlands is not protective of wetlands. There are also concerns about accompanying changes to the wetland hydrological regime, siltation, etc.	The commenters opinion is noted. Potential impacts to biological resources are discussed in Chapter 4.3 of the Draft EIR. No further response is required.
CCCR-45	Policy CS-2.7: Coordination with agencies is already required. Coordination in advance of any proposed development so that the development can be designed to avoid or minimize impacts is a worthwhile effort.	The comment is noted; however, it does not pertain to the adequacy of the Draft EIR.
CCCR-46	Action CS1.A - Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation. This certainly sounds good on paper, would that it were actually taken to heart. This has not been the practice to date. How would the approval of filling up to 86 acres of wetlands be considered consistent with this Action?	The comment is noted; however, it does not pertain to the adequacy of the Draft EIR. Please also see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
CCCR-47	Action CS-2C - The Action should be explicit that coordination with regulatory and resource agencies is necessary to ensure any measures undertaken will be effective and sufficiently protective.	The comment is noted; however, it does not pertain to the merits of the EIR. As required by Government Code Section 65400, the Community Development Department will investigate and make recommendations to the City Council regarding implementation after the Plan is adopted (see P. 152 of the General Plan Guidelines). The City will address the implementation of General Plan actions in its annual progress report. Alternatives for the prioritization of General Plan actions will be considered, further evaluated, and discussed with the City Council following Plan adoption.
CCCR-48	The impacts of BIO-1 cannot be determined to be less than significant without comprehensive review of the mitigation measures the City plans to incorporate into the mitigation and monitoring program. Also, the policies and actions listed above are of no value unless they are actually implemented.	Please see Response to Comments CCCR-4 and CCCR-5 above. No change to the Draft EIR is required to address this comment.
CCCR-49	BIO-2 - Buildout of the proposed Plan would result in less than significant impacts to wetlands, riparian habitat, and sensitive natural communities in the Plan Area. BIO-2 as currently worded, does not adequately capture the significant and adverse impacts that will result from buildout of the Plan. As mentioned earlier, restoration scientists, resource agencies, and regulatory agencies, regard the tremendous opportunities for restoration of the wetland/upland mosaic of Area 4 as extremely rare along the edges of the San Francisco Bay ecosystem. This is a site of regional significance. The uplands and seasonal wetlands, though continually degraded by manipulation of the land, have incredible restoration potential.	As stated in Chapter 1.0 and Chapter 2.0 of the DEIR, the EIR was prepared at the programmatic level and therefore does not consider project-specific impacts. For that reason, future development would be subject to further independent CEQA review at the project-level to identify specific impacts and mitigation measures. Therefore, BIO-2 adequately analyzes impacts appropriately for a programmatic level CEQA review. Further, several mitigation measures contained in the Dumbarton TOD Specific Plan EIR, the Area 3 and 4 EIR, and this DEIR proposed mitigation measures that would adequately mitigate potential impacts to less than significant levels. No changes are necessary.
CCCR-50	In addition, the site is known to support the endangered salt marsh harvest mouse, burrowing owl, migratory and resident waterbirds, and birds that forage in uplands and seasonal wetlands. Not only will the filling of up to 86 acres of wetlands result in significant environmental harm, but the mitigations	Please see Chapter 4.3, Biological Resources, for a discussion pertaining to wildlife and habitat. As indicated in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared as a program EIR and, therefore, does not consider project-specific impacts. As stated throughout the DEIR, future development would be

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	necessary to stabilize and 2.1 million cubic yards of fill could irreparably alter the hydrologic regime of existing wetlands. The adjacent development will expose the remaining habitat to all the negative impacts associated with human disturbance, and the wetland mitigation required to offset the filling of wetlands may result in the conversion of any undeveloped uplands to wetland mitigation. 86 acres is an unprecedented amount of wetlands fill. The developer of Area 4 will need to demonstrate that wetlands cannot be avoided, or impacts cannot be minimized. The City of Newark would be doing its residents a disservice if off-site mitigation (outside the City's boundaries) occurs, as the functions and values that wetlands provide will benefit another community and not Newark residents.	subject to further CEQA review to identify project-specific impacts and mitigation measures. For clarification of issues involving Area 4, please see Master Response 5.
CCCR-51	Policy CS-4 - Wetlands Delineation. This policy sounds good on paper - the question is whether there are any other remaining large potentially developable properties with wetlands other than Area 4? Have wetland delineations yet to be done for any other area of Area 4 not currently proposed for development (i.e. besides sub areas, b, c, d, and e?)	Table 4.9-1, Distribution of Existing Land Uses, on page 4.9-4 depicts the distribution of existing land uses, including 960 acres of vacant land zoned for development. As described on page 4.9-5, undeveloped areas are principally located in the southern and western parts of the city, of which the Cargill salt evaporation ponds constitute a majority of that area. As mentioned, most of the 960 acres undeveloped and zoned for development include the Southwest Newark residential and Recreational Focus Area and the Dumbarton TOD Focus Area. Please see Figure 4.3-2 in Chapter 4.3, which shows the wetland areas and identifies Focus Areas.
CCCR-52	(4)(a) - The City should take into consideration that allowing the purchase of mitigation credits elsewhere (e.g. within 10 air miles of Newark) means that another community benefits from the functions and values wetlands provide, flood protection, erosion control, flood desynchronization, water quality aspects, groundwater recharge, etc. and not Newark residents.	The comment is noted.
CCCR-53	(5) - The length of required monitoring should be dependent upon the habitat being mitigated. Also, the City should include language that would provide for additional monitoring should contingency measures be required. Usually the extension for monitoring is at least two years beyond any human intervention and the requirement for monitoring ceases only after success criteria have been met.	As mentioned on page 2-5 of this DEIR, a mitigation monitoring or reporting program will be completed as part of the FEIR where it will identify the details of the monitoring required. Further, and as stated in the Areas 3 and 4 FEIR, response S-10 states that the lead agency, the City of Newark, is responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program. Also, please see Master Response 2 regarding the adequacy of previous environmental reviews incorporated as part of the DEIR.
CCCR-54	BIO-3 Buildout of the proposed Plan would result in less-than-significant impacts to as-yet undelineated waters of the U.S. in the Plan Area. How can this determination be reached??? How does the performance of a wetland delineation, and verification that wetlands exist, help reduce the impacts of buildout to less than significant? Delineating wetlands informs a property owner if they have a resource they need to deal with. However, he reduction of impacts occurs if wetland impacts are avoided or minimized to the maximum extent possible. Then, and only after an earnest attempt has been made to redesign a project to avoid and minimize impacts, should compensatory mitigation be considered.	As indicated in the BIO-3 analysis, previous environmental review for the Dumbarton TOD Specific Plan, Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified impacts and ultimately identified mitigation measures to reduce such impacts to less than significant levels. As such, with previously identified mitigation measures and policies of the proposed General Plan, as listed on page 4.3-41, impacts were determined to be less than significant. No changes are necessary.
CCCR-55	The mitigation measures described under BIO-2 will not and cannot reduce the adverse impacts of Plan buildout in Area 4 to a level that is less than significant!	The comment is noted; however, no mitigation measures were identified under BIO-2. Impact analysis BIO-2 resulted in less than significant impacts, as stated on page 4.3-39. Provided the determination of BIO-2 concluded that impacts would be less than significant, mitigation is not required.
CCCR-56	One of the mitigation measures for Area 4 MMBIO-1.2A is inconsistent with the stated and regionally documented need to preserve upland transition zones as retreat habitat for the recovery of listed species in the face of sea level rise. MMBIO-1.2A attempts to mitigate for the loss of filled wetlands by creating/enhancing wetlands out of other habitats of importance for survival of bay edge species. This measure would destroy the unique mosaic of habitats these lands currently host - a mosaic of wetlands and upland habitats that provide habitat resiliency and preserve regional biodiversity.	Please see Master Response 2 regarding the treatment of previous environmental reviews.
CCCR-57	A conceptual mitigation plan still does not exist that would indicate the locations of proposed mitigation areas and their relationship to the existing mosaic of wetlands and transitional uplands scattered across Area 4. No attempt was ever made to offer this level of detail or even indicate conceptually what areas would be considered impacted by the direct placement of fill, by the indirect impacts of the changed conditions resulting from the fill, and the direct and indirect impacts of mitigation measures placed on the remaining landscape.	Please see Master Response 2 regarding the treatment of previous environmental reviews.

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CCCR-58	MM BIO-1.2B indicates: Alternatively, at the discretion of the project developer(s), and as approved by the City of Newark, all or a portion of the mitigation requirements for impacts to seasonal wetland habitats, may be satisfied through the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank (i.e. off site) or other private lands. [emphasis added] This decision should certainly not be left to the discretion of the project developers. In addition, there is no indication of where such private lands might exist, no indication of how the lands would be acquired, and no conceptual plan of how mitigation will occur on the site. Acquisition and preservation does not equal "no net loss" as is the policy of the State.	Please see Master Response 2 regarding the treatment of previous environmental reviews.
CCCR-59	To date there is no way of knowing how this Area 4 will be developed, where mitigation will occur onsite and what it's proximity will or won't be to the development envelope. This is important with respect to indirect impacts of the development on the mitigation site and with respect to habitat continuity – patches of mitigation surrounded by the development envelope are unacceptable mitigation. Nor is it possible for the City to determine if the development project is feasible and/or would produce sufficient property tax revenues to offset public service liabilities associated with a development on the outskirts of the City.	Please see Master Response 2 regarding the treatment of previous environmental reviews.
CCCR-60	The focus on mere replacement of wetland acres may jeopardize the local populations of salt marsh harvest mouse and salt marsh wandering shrew. The mitigation proposed (aside from the puzzling master response above) has been focused in Sub Area E – converting the uplands in this area to wetlands, presumably by soil removal to lower the topographic position and allowing the former uplands to be inundated by rainfall or springs. This would remove higher elevation escape habitat for the salt marsh harvest mouse and salt marsh wandering shrew, leaving only the developed areas as less than desirable escape habitat that would further imperil these species.	The comment is noted. As indicated in the Area 3 and 4 Final EIR, which addresses a similar comment regarding the potential disturbance of the salt marsh harvest mouse and salt marsh wandering shrew, page 79 [of the Area 3 and 4 FEIR] states that "*Mitigation Measure BIO-8.4 acknowledges that salt marsh harvest mouse/wandering shrew habitat in close proximity to developed areas, including the golf course, will receive some indirect disturbances and requires a 2:1 habitat mitigation for all suitable habitat for these species located within 100 feet of residential and golf course development.*" Also mentioned in that FEIR was the fact that a combination of mitigation measures would ultimately reduce indirect effect of recreational activities on sensitive habitats.
CCCR-61	Goal CS-2 - Conserve Newark's wetlands and baylands. Well this sounds good on paper. Please explain how this is actually reflected in the GPT.	The comment is noted; however, it does pertain to the merits of the DEIR. No further response is required.
CCCR-62	Action CS-E - Support acquisition of wetlands and other environmentally sensitive areas by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no other conflicts with other General Plan goals and objectives. In general, we do not support the use of mitigation banks, particularly for waters of the U.S. as the wetlands functions and values are lost to the community in which the filling is occurring, and instead benefit some other community, often far from the impact site. Other than the Plummer Creek site, please explain where this policy is being implemented.	Action CS-E refers to future potential actions, the commenter is correct that the only active mitigation bank site is the Plummer Creek site. The commenter's opinion regarding the use of mitigation banks is noted. No further response is needed.
CCCR-63	There should be a (1)(a) inserted between the requirement of a wetland delineation and requiring authorization from the Corps or the RWQCB, that requires the land owner to avoid filling of the wetlands. If that is not completely possible, then wetland fill should be minimized. The 404 (b)(1) Guidelines require avoidance and minimization before compensatory mitigation is even considered.	The edit being requested is unclear; therefore, we are unable to evaluate the comment.
CCCR-64	BIO-4 - We do not concur that the Plan will not interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. The Plan will in fact build to the edge of Newark's "bayfront" and could disrupt the movement of species along the western edges of the city. The Plan could discourage the use of the duck pond on that remains on Area 4 by resident, migratory and nesting birds due to human and domestic pet disturbance.	The commenter's opinion is noted. As discussed in BIO-4, the highly urbanized context of the Plan Area and the extent of the existing development, vehicular traffic, and human and pet presence render opportunities for wildlife movement in the urbanized areas to be minimal. Also as stated in BIO-4, the previous environmental review conducted for the Dumbarton TOD Specific Plan determined that future development in the Dumbarton TOD Focus Area and the Southwest Residential and Recreational Focus Areas would not result in significant impacts associated with wildlife movement because extensive areas along the western and southern sides of the Focus Areas would not be developed, therefore, wildlife would continue to be allowed to move through those areas. Additionally, policies and actions under the proposed Plan listed on page 4.3-13 would further minimize impacts related to wildlife migration. Therefore, no changes are necessary.
CCCR-65	BIO-5 - The proposed Plan would not conflict with the City of Newark tree preservation ordinance. It is impossible to determine if this if true or not as we do not know the footprint of the Plan buildout.	As stated in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared as a program EIR and therefore does not consider project-specific impacts. As such, provided there are no immediate

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	Therefore, the City cannot conclude that the impacts are less than significant.	plans to remove any trees within Newark under the proposed Plan, the impacts would therefore not conflict with the City of Newark tree preservation ordinance. Therefore, no changes are necessary.
CCCR-66	BIO -6 - The proposed Plan would result in significant impacts related to conflict with the Basin Plan and Habitat Goals. We have already described Bay Goals recommendation that the area at the head of Mowry Slough be preserved and restored. This area represents a unique opportunity at a regional level. The DEIR mentions the Bay Goals recommendations to protect and enhance marsh transition zones. Please note, there are exceedingly few locations along the edges of the bay where this could be accomplished so quickly and easily.	The commenter's opinion is noted.
CCCR-67	Regarding the Basin Plan - The SFBRWQCB responded to the Area 4 DEIR and FEIR. Their DEIR comments regarding the development proposal and Basin Plan: Section 3.5, Biological Resources, 3.5.3.2, Impacts and Mitigation Measures for Biological Impacts, Page 134 The DEIR states that: Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use. The condition of these wetlands would be easily improved by discontinuing the agricultural disturbances in Area 4. The Basin Plan directs the Water Board to protect both existing and potential Beneficial Uses of waters of the State. In Area 4, the habitat value could be greatly enhanced by simply discontinuing agricultural disturbances. If these wetlands are filled under the proposed Specific Plan, then the potential for enhancing or restoring the wetlands will be lost. Mitigation for such an impact will require addressing the lost potential value of these wetlands. [emphasis added] And: The San Francisco Bay Area Wetlands Ecosystem Habitat Goals Project recommended that the tidal marsh/upland transition zone of Area 4 be protected and enhanced, including the tidal marsh/upland transition at the upper end of Mowry Slough and in the area of the Pintail Duck Club (all located in Area 4). In addition, the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) has expressed strong interest in acquiring Area 4, because of its significance as habitat for endangered species and location adjacent to the Refuge, and the Bay Conservation and Development Commission (BCDC) has expressed interest in restoring the diked historic baylands in Area 4 to tidal action and enhancing the wildlife values of the onsite wetlands. The proposed mitigation quantities appear to be insufficient to compensate for the impacts associated with the fill of wetlands in Area 4. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation was demonstrably capable of providing equal habitat benefit for listed species. The proposal to convert some areas of uplands in Area 4 to wetlands is also problematic, since a combination of wetlands and associated uplands are essential to high habitat value. At present, the DEIR does not demonstrate that adequate mitigation is available. Onsite mitigation will be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. The DEIR does not identify any feasible locations for offsite mitigation. There are very few parcels of undeveloped land in private ownership that are available for use as mitigation wetlands, and are in proximity to protected lands that currently provide habitat for listed species. ... The current DEIR does not demonstrate that it is feasible to mitigate all of the potentially significant biological impacts of the Project to a less than significant level. In addition, the SFBRWQCB submitted comments to the FEIR: The FEIR, as written, does not demonstrate that impacts associated with the proposed fill of wetlands in	Chapter 6.0 of the Draft EIR considers a Restricted Growth Alternative which would generally restrict development to previously urbanized areas of Newark, thereby, restricting future development in sensitive areas in western Newark. However, this alternative was ultimately rejected because it would not meet several of the stated objectives listed in Chapter 6.0 on page 6-26 of the DEIR. Further, please see Master Response 3 regarding the adequacy of alternatives. In regards to adequate mitigation measures, the DEIR was prepared at a programmatic level, therefore mitigation measure reflect that of which is consistent with the level of analysis conducted. As stated throughout the DEIR, future development would be subject to independent CEQA review to identify impacts and mitigation measures at the project-level. Also, there are no immediate plans to fill Area 4, therefore, potential impacts cannot be considered as part of the DEIR. Please see Master Response 5 for clarifications on Area 4. Please see Master Response 2 regarding the reliance on previous environmental review.

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	Area 4 can be successfully mitigated to a less than significant level. The mitigation quantities proposed in the FEIR appear to be insufficient to compensate for the impacts associated with the proposed fill of wetlands in Area 4. The mitigation proposed in the FEIR relies on a combination of onsite wetland creation/enhancement and offsite wetland preservation. Onsite mitigation, which is only proposed at a 1:1 ratio, would be compromised by its proximity to the development envelope of the site, which will introduce noise pollution, light pollution, and domestic animals into the vicinity of preserved or enhanced habitats. With respect to off-site mitigation, the FEIR does not provide sufficient detail to demonstrate that feasible locations exist for offsite mitigation. On page 12 of the FEIR, the following statement is made: The proposed mitigation measures for impacts to wetlands described in the Draft EIR treat wetlands as biological habitats and not State or Jurisdictional features. The City has determined based on extensive analysis by its biological experts that the mitigation requirements for wetland impacts (both in terms of amount and location of mitigation) described in the Draft EIR are more than adequate to mitigate the described impacts to a less than significant level. We would like to point out that the resource agencies have not concurred with this assessment. When the City of Newark teams with individual developers to implement the Specific Plan, the City and developers should be aware that mitigation as proposed in the FEIR would appear to be far short of the mitigation that will be necessary to secure permits from the resource agencies for the impacts proposed to wetlands in Area 4. Therefore, project-level CEQA documents will likely be necessary to support permitting of Specific Plan implementation projects. We would also like to reiterate that, by certifying the FEIR as written, the City should not assume that the Water Board or other resource agencies will allow the fill of the wetlands at Area 4 as proposed. Since Area 4 is one of the largest remaining areas of open space along the baylands, provides habitat for endangered species, and is adjacent to the Refuge, impacts to Area 4 will be regionally significant, and mitigation for any impacts that are allowed to occur at Area 4 should reflect the significance of the lost habitat. In order to protect the Beneficial Uses of preservation of rare and endangered species and wildlife habitat, the Water Board is not likely to authorize fill of wetlands at Area 4, unless mitigation is demonstrably capable of providing equal habitat benefit for listed species. The City should recognize that large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay. Area 4 represents a rare opportunity to restore this complex of habitats in continuum with the bay, provide connectivity with the Refuge, and provide an area for tidal marsh species to transgress (move up slope) in response to sea level rise. The U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), the Bay Conservation and Development Commission (BCDC), and the Water Board have all expressed strong reservations about the potential fill of wetlands in Area 4. In summary, the FEIR as written does not demonstrate that impacts associated with the proposed fill of wetlands in Area 4 can be successfully mitigated to a less than significant level. Therefore, the FEIR is not likely to support the issuance of future permits from the Water Board for fill of waters of the State under the Specific Plan. [emphasis added]	
CCCR-68	Based on these comments it is unclear how the City thinks the significant adverse impacts of the Plan could be reduced to a level that is less than significant even with mitigation.	The commenter's opinion is noted.
CCCR-69	Bio-7 - The proposed Plan will not result in less-than-significant cumulative impacts related to biological resources. Please refer to all of the statements above. The GPT DEIR itself acknowledges: In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. But rather than heeding the strong language of the SFBRWQCB's comment letters, and those of the Refuge and CDFW, the DEIR erroneously concludes the mitigation it has proposed is sufficient to reduce the impacts of the Plan buildout.	The commenter's opinions are noted.

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CCCR-70	The DEIR also makes the interesting statement: "Additionally, future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas." Once again raising the question of what would trigger additional environmental review and will there be additional opportunities for public comment.	Please see Responses to Comments CCCR-6, CCCR-7, GECO-3, GECO-5, and GECO-6 above.
CCCR-71	Geology: According to California Geological Survey's 2003 seismic hazard report, the entire Plan Area has been mapped as a liquefaction hazard zone. Most of the soils that have been mapped within the Plan Area have a high shrink swell potential which can lead to heaving and cracking of concrete foundations or flatwork built on top of the soils. The western part of the Plan Area may contain unstable geologic units, which can lead to differential settlement. The DEIR once again references two recent court cases that hold CEQA analyzes the impacts of the project on the environment and not the environment on the project. Once again we state, that bad case law aside, if, a city approves development in an area prone to seismic hazard then it should do due diligence to ensure the public is not put in harm's way.	As mentioned in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared pursuant to CEQA Guidelines. Additionally, GEO-1, starting on page 4.5-10 explains that although the Plan Area is in a liquefaction hazard zone, State and local regulations and policies require the conduct of detailed, site-specific geotechnical evaluations prior to the approval of a project located in such a zone. Therefore, no changes are necessary.
CCCR-72	GEO-1 The proposed Plan would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving surface rupture along a known active fault; strong seismic ground shaking; seismic-related ground failure, including liquefaction; and landslides. Policy EH-1.1: Development Regulations and Code Requirements. Policy EH-1.2: Considering Hazards in Project Location and Design. Policy EH-1.2: Considering Hazards in Project Location and Design. Prohibit development in any area where it is determined that the potential risk from natural hazards cannot be mitigated to acceptable levels. Action EH-1.A: Development Review. Review all development applications to ensure their compliance with all relevant building and safety codes, including those related to fire, flooding, soil, and geologic hazards. Action EH-1.B: Code Updates. Goal EH-2: Reduce risks to life and property associated with geologic hazards. Policy EH-2.1: Earthquake Safety in New Construction. Policy EH-2.2: Seismic Retrofits. Encourage the retrofitting Policy EH-2.3: Earthquake Awareness. Inform Newark residents Policy EH-2.4: Infrastructure Resilience. Maintain standards Action EH-2.A: Geotechnical Studies. At the discretion of the Director of Public Works, require detailed investigations of ground shaking, liquefaction, soil stability, and other geologic hazards as specific development projects are proposed Action EH-2.B: Geotechnical Staff Assistance. As needed, retain outside consulting Action EH-2.C: Mandatory Seismic Upgrades. If feasible and appropriate Action EH-2.D: Homeowner Education on Earthquake Safety Action EH-2.E: Seismic Safety at Schools. Work with Action EH-2.F: Earthquake Hazard Maps. Periodically update maps With the exception of Policy EH-1.1, and Action EH-1.A and EH-1.2, there seems to be a lot of discretion in the degree to which these policies and action items are applied.	The commenter's opinions are noted.
CCCR-73	GEO-2 Implementation of the proposed Plan would not result in substantial soil erosion or the loss of topsoil. This section mentions methods of erosion control and discusses Newark's Municipal Code. Isn't a Construction Activities Stormwater General Permit from the SFBRWQCB required for sites where more than an acre of land is being graded?	The commenter is correct that any construction project disturbing one or more acres of land would be required to submit a Storm Water Pollution Prevention Plan (SWPPP), which includes an erosion control plan, prior to the start of construction. However, the authority for this program is under the State Water Resources Control Board's General Construction Permit and not the San Francisco RWQCB.
CCCR-74	GEO-3 Development under the proposed Plan would not result in a significant impact related to development on unstable geologic units and soils or result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse. · Action EH-2.A: Geotechnical Studies. At the discretion of the Director of Public Works, require detailed investigations of ground shaking, liquefaction, soil stability, and other geologic hazards as specific development projects are proposed. Such investigations shall be prepared by a qualified geologist or soils engineer, with appropriate mitigation measures identified and implemented. · Additionally, Mitigation Measure 4.5-1, from the Dumbarton TOD EIR, requires future developers within the Dumbarton TOD area to perform a design-level geotechnical engineering	As stated in GEO-1, starting on page 4.5-10 explains that although the Plan Area is in a liquefaction hazard zone, State and local regulations and policies require the conduct of detailed, site-specific geotechnical evaluations prior to the approval of a project located in such a zone. Further, policies and actions under the proposed Plan would minimize the potential of hazards related to liquefaction, as listed on page 4.5-11. Therefore, no changes are necessary. Please also see response to Comment CCCR-47.

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	investigation for their individual property or properties prior to development and as a condition for grading permit approval. Since Newark is in a liquefaction hazard zone, why is the requirement for detailed investigations of ground shaking, etc. Discretionary? Why isn't it mandatory for any development? How often are detailed investigations required? Are the detailed investigations of Action EH-2.A required prior to the issuance of a grading permit? One would certainly hope so. it should be so stated in the language of the Action.	
CCCR-75	Are detailed design-level studies required for Area 3 and 4? According to this DEIR Area 3 sits atop sand deposits that could be susceptible to liquefaction.	Please see response to Comment CCCR-74. Please also see response to Comment CCCR-47.
CCCR-76	GEO-4 Development under the proposed Plan would not create substantial risks to life or property as a result of its location on expansive soil, as defined in Table 18-1-b of the Uniform Building Code (1994). "Development within the Plan Area in almost all instances would be preceded by suitably detailed geotechnical evaluations, the scope of which would include tests to determine and quantify the presence of expansive soils. The need for such geotechnical evaluations are triggered by CGS-determined liquefaction hazard zones that embrace all of the Plan area, as well provisions of the CBC and related City of Newark building and grading permit requirements." What are the situations under which such plans would not be required? Why not require detailed geotechnical evaluations for all development in Newark since the entire city appears to be within a liquefaction hazard zone? And why are there no mitigation requirements for Area 3 and 4? Especially since a school site is proposed within Area 3?	In practical terms, geotechnical evaluations would be required for most significant new development projects in the Plan Area. Exceptions to this requirement might include small developments or remodeling projects for complexes containing three or fewer dwellings on a given housing site. With respect to potential future development on expansive soils, including proposed new schools, mitigation measures were not required in light of the safeguards afforded by existing City of Newark building and grading permit requirements, as well as City of Newark General Plan policies (e.g., Policies EH-1.1 and EH-1.2).
CCCR-77	GEO-6 The proposed Plan, in combination with past, present, and reasonably foreseeable projects, would result in less than significant cumulative impacts with respect to geology and soils. Once again the discussion mentions additional mitigation measures for the DTOD and HEU, but not Area 3 and 4. Why?	Cumulative impacts related to geology and soils are discussed on pages 4.5-17 through 4.5-19 of the Draft EIR. As stated, implementation of proposed Plan goals, policies, and actions together with compliance with applicable regulations and mitigation measures would result in less-than-significant impacts. The comment does not provide substantial evidence that the conclusions of the Draft EIR are inadequate. Further, the City notes that the Area 3 and 4 Specific Plan EIR and other previous environmental review conducted by the City of Newark have been incorporated by reference into the Draft EIR. Please also see Response to Comment SOKALE-6 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
CCCR-78	Also, the discussion of impacts and mitigation measures never touch on the types of soil stabilization techniques that might be utilized. This information is critical as the City should consider whether there could be any direct or indirect impacts to any of the other elements of the DEIR and GPT. For example, dynamic deep compaction could require mitigation measures for noise or vibration impacts to sensitive receptors. Could any of the GEO mitigation measures have adverse impacts to groundwater, mobilization of toxic groundwater plumes, dewatering of wetlands, adverse impacts to levees, adverse impacts to biological resources, etc.	The comment is noted. A detailed discussion of potentially necessary geotechnical mitigation measures such as deep dynamic compaction, vibro-compaction, deep soil mixing/stabilization, emplacement of pilings or piers, use of large-diameter auger drill rigs, etc., is beyond the scope and level of specificity required for a General Plan EIR. Such specific methods are typically selected and designed after a detailed, site-specific geotechnical investigation has been performed. More often than not, the potential adverse impacts of these geotechnical mitigation measures on geology/soils and hydrology are evaluated in a project-level EIR.
CCCR-79	Hydrology: The analysis of flood hazard is focused solely on the FEMA 100-year flood plain and the only means of addressing the risk of flooding is the requirement to construct new development atop building pads, requiring the import of millions of cubic yards of fill (Area 4).	The analysis of flood hazard is not focused solely on the FEMA 100-year floodplain but also includes flood hazard from levee failure, dam inundation, tsunamis, seiches, debris and mud flows. The comment on the import of fill for Area 4 is noted; however, the General Plan EIR is focused on programmatic issues that impact planning on a City-wide basis. Specific plan areas and individual projects are addressed in separate EIRs that focus on issues specific to those projects.
CCCR-80	page 4.8-17 states: Although some locations within the City are protected from flooding by levees, FEMA's policy is to disregard any flood protection benefit provided by a levee if that levee is not certified as meeting National Flood Insurance Program (NFIP) standards for freeboard and geotechnical stability.35 Most of the levees within the City of Newark are not certified. Therefore, the areas next to the levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event. [emphasis added] In other words, the majority of levees that currently provide some flood relief are not recognized as flood control levees. As an example, the levees on the bayward side of Area 4, are privately owned and maintained. The City is therefore, not relying on the existing levees to provide	The comment is noted and acknowledged. We agree that uncertified levees are not recognized as providing flood control. Therefore, the areas next to the levees are assumed to be subject to flooding should any of the levees fail during a large storm or high tide event. In 2007, the ACFC began a process of evaluating all levees in Zone 5, which includes the City of Newark, to determine their condition and the scope of repairs that may be required to achieve FEMA certification. Until that process has been completed and the levees are certified, development within the areas of potential flooding from levee failure will be required to comply with the City's policies regarding construction in flood hazard areas (Municipal Code 15.40) and FEMA regulations for floodplains, as discussed in pages 4.8-16 and 4.8-17 and Hydro Impact HYDRO-7.

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	flood protection. Instead, the City has stated the requirement that new development be constructed atop building pads that are at minimum one foot above the 100-year flood elevation will be adequate to reduce potential flooding.	
CCCR-81	Conspicuously absent in the DEIR analysis of flood hazard, is any mention of the additive impacts of sea level rise on flood risk. Sea level rise inundation maps depict much of the Dumbarton TOD and Area 4 at risk of inundation with a 1 foot rise in sea level. See the attached map or visit http://www.csc.noaa.gov/slr/viewer/# to view inundation risk with just a 1-foot rise in sea level and under varying sea level rise scenarios. The DEIR avoids meaningful analysis of the additive risk sea level rise may have on new development permitted within the existing 100-year flood plain (low lying areas along Newark's bayfront) with the following explanation: The City notes that the purpose of this EIR is to identify the significant effects of the Plan (which is considered a Project under CEQA) on the environment, not the significant effects of the environment on the Plan. (South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1614-1618; City of Long Beach v. Los Angeles Unified School Dist. (2009) 176 Cal.App.4th 889, 905.) While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes.	The comment is noted. Please see Master Response 4 regarding sea level rise.
CCCR-82	Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of this Draft EIR (see Guidelines, § 15063, subd. (f)). However, a few of the questions on the form concern the exposure of people or structures to environmental hazards and could be construed to refer to not only the Project's exacerbation of environmental hazards but also the effects on users of the Project and structures in the Project of preexisting environmental hazards. To the extent that such questions may encompass the latter effects, the questions do not relate to environmental impacts under CEQA and cannot support an argument that the effects of the environment on the Project must be analyzed in a Draft EIR. (Ballona Wetlands Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455, 473-474.) Accordingly, a discussion of flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA. The DEIR references the issue of sea level rise, but goes no further.	The comment is noted. Please see Master Response 4 regarding sea level rise.
CCCR-83	The language of the draft policies requires assessments and consideration of possible impacts related to sea level rise, but is silent as to whether that information, once collected will be utilized to ensure flood risk is reduced. P. 4.2-28: - Policy CS-5.8: Planning for Sea Level Rise. Require developments below 10' above mean sea level to include an assessment of possible impacts related to sea level rise. - Policy S-3.9: Sea Level Rise. Consider the effects of rising sea level on the potential for flooding in low-lying areas, and participate in regional adaptation efforts for these areas. P. 4.8-28: Furthermore, City goals and policies under the proposed Plan would further reduce potential impacts to the existing storm drain infrastructure: - Policy CS-5.8: Planning for Sea Level Rise. Require proposed development close to the Newark bayfront or in low-lying areas to include an assessment of possible impacts related to sea level rise. P.4.8-33: - Policy EH-3.9: Sea Level Rise. Consider the effects of rising sea level on the potential for flooding in low-lying areas, and participate in regional adaptation efforts for these areas. - Policy CS-5.8: Planning for Sea Level Rise. Require proposed development close to the Newark bayfront or in low-lying areas to include an assessment of possible impacts related to sea level rise. P. 4.12-24: - Policy PR-5.7 Trail Sustainability. Consider long-term sustainability issues, such as projected sea level rise, surface durability, and the condition of levees, in the design of shoreline and wetland trail facilities. As stated	The comment is noted. Please see Master Response 4 regarding sea level rise.

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	above, while these policies give the impression that measures will be taken to reduce risk from sea level rise inundation, there is no language within the General Plan Goals, Policies, or Actions that require that such risk will be reduced. The rationale, is reliance on the court cases mentioned above, "flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment and is not required under CEQA." This is irresponsible in terms of disclosure of impacts of a project and from a planning perspective a failure to incorporate meaningful analysis that could in fact lead to the permitting of projects that will impact the environment if sea level rise adaptation is not incorporated into the development design. As an example, if the only requirement to reduce flood risk is that new development is constructed at minimum, one foot above existing mean sea level (mean sea level at the time of permitting), and does not include sea level rise adaptation (not providing for estimates of sea level rise that could place the proposed development at risk of inundation), then the project may well have impacts to the environment that include the need for construction of flood protection levees, filling of adjacent wetlands to construct flood protection or from erosion of building pads, the need to re-engineer storm drain facilities, transportation facilities, etc.	
CCCR-84	The "State of California Sea-Level Rise Guidance Document"5states:SLR potentially will cause many harmful economic, ecological, physical and social impacts and incorporating SLR into agency decisions can help mitigate some of these potential impacts. For example, SLR will threaten water supplies, coastal development, and infrastructure, but early integration of projected SLR into project designs will lessen these potential impacts.[5 "State of California Sea-Level Rise Guidance Document." March 2013 Update. Developed by the Coastal and Ocean Working Group of the California Climate Action Team (CO-CAT) with science support provided by the Ocean Protection Council's Science Advisory Team and the California Ocean Science Trust.]	The comment is noted. Please see Master Response 4 regarding sea level rise.
CCCR-85	The Guidance also addresses the importance of incorporating sea level rise adaptation into project design: The consequences of failing to address SLR adequately for a particular project will depend on both adaptive capacity and the potential impacts of SLR to public health and safety, public investments, and the environment. Figure 1 in Appendix C illustrates how adaptive capacity and potential impacts combine to produce consequences. Adaptive capacity is the ability of a system to respond to climate change, to moderate potential damages, to take advantage of opportunities, and to cope with the consequences.6 In most situations, adaptive capacity must be front-loaded, or built into the initial project; it cannot be assumed that adaptive capacity can be developed when needed unless it has been planned for in advance. A project that has high adaptive capacity and/or low potential impacts will experience fewer consequences.	The comment is noted. Please see Master Response 4 regarding sea level rise.
CCCR-86	The DEIR mentions BCDC and its regulatory authority over portions of Plummer Creek, Mowry Slough and portions of Area 4: p.4.8-7: As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for any proposed fill, extraction of materials, or change is use of any water, land, or structure within the Commission's jurisdiction. The BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands in the Southwest Newark Residential and Recreational Focus Area. Projects in BCDC jurisdiction that involve Bay fill must be consistent with the Bay Plan policies on the safety of fills and shoreline protection. These policies state that adequate flood protection should consider future relative sea level rise and all proposed development should be above the highest estimated tide level for the expected life of the project or sufficiently protected by levees. The DEIR should also note that BCDC's sea level rise policies, "Encourage preservation and habitat enhancement in undeveloped areas that are vulnerable to future flooding and contain significant habitats	The comment is noted. Please see Master Response 4 regarding sea level rise. Additionally, page 4.8-7 states that projects in the BCDC jurisdiction must be consistent with Bay Plan polices. Therefore, if sea level rise is addressed in Bay Plan policies, then projects, within BCDC jurisdiction would be subject to such policies.

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	or species, or are especially suitable for ecosystem enhancement."6 [6 New Sea Level Rise Policies Fact Sheet. San Francisco Bay Conservation and Development Commission. http://www.bcdc.ca.gov/planning/climate_change/SLRfactSheet.shtml Accessed 9-26-13.]	
CCCR-87	The 2009 California Climate Change Strategy7 states: p. 51 Wetland habitats from the Sacramento Valley southward to the Salton Sea and the tidal marshes of San Francisco Bay also provide essential wintering habitat for hundreds of thousands of birds as they migrate north and south along the Pacific Flyway. p. 52 Moreover, inland migration is frequently hindered by development such as bulkheads, seawalls, roads, and buildings. Continued growth and development in coastal areas will only increase the direct pressure on remaining habitats and make inland migration more difficult. Sea-level rise, especially at the increasing rates projected for the 21st century, may result in the loss of substantial areas of critical habitat for a variety of coastal species. p. 74 Habitat Protection – The state should identify priority conservation areas and recommend lands that should be considered for acquisition and preservation. The state should consider prohibiting projects that would place development in undeveloped areas already containing critical habitat, and those containing opportunities for tidal wetland restoration, habitat migration, or buffer zones. The strategy should likewise encourage projects that protect critical habitats, fish, wildlife and other aquatic organisms and connections between coastal habitats. The state should pursue activities that can increase natural resiliency, such as restoring tidal wetlands, living shoreline, and related habitats; managing sediment for marsh accretion and natural flood protection; and maintaining upland buffer areas around tidal wetlands. For these priory conservation areas, impacts from nearby development should be minimized, such as secondary impacts from impaired water quality or hard protection devices.	As discussed in Chapter 4.3, Biological Resources, many of the impact discussions identify several policies and actions under the proposed Plan aimed at minimizing potential impacts to wildlife and habitat. Additionally, as mentioned throughout the document, future development would be subject to project-specific CEQA review to identify project-specific impacts and mitigation measures. No changes are necessary. Please see Master Response 4 regarding sea level rise.
CCCR-88	The public law, policy, and strategy listed above emphasize the importance of Area 4 from a regional perspective. The mixture of wetlands, aquatic, and other habitats including uplands are important for sustaining current populations of waterfowl and listed and sensitive plant and wildlife species, as well as providing a hedge for these species and habitats in the face of sea level rise. This is policy is pertinent to Area 4. The majority of Area 4 is within the Don Edwards San Francisco Bay National Wildlife Refuge expansion boundary. The site contains a rare mix of upland, seasonal wetland, muted tidal wetland, and a fresh water pond. The endangered salt marsh harvest mouse has been trapped on this site and the proposed development could fill up to 86 acres of seasonal wetlands.	Impacts to biological resources, including impacts related to sensitive habitats, wetlands, salt harvest mouse, and conflicts with the Basin Plan and Habitat goals are discussed in chapter 4.3 of the Draft EIR to the extent required under CEQA. Additionally, impacts associated with conflicts with the Bay Plan and CCP are discussed in Chapter 4.9 of the Draft EIR. No further response is required to address this comment.
CCCR-89	Traffic: Does the traffic analysis account for the 600 student elementary school proposed in Area 3 or the truck traffic that will be required to transport 2.1 million cubic yards of fill to Area 4?	As described on pages 4.13-1 through 4.13-45 and in Appendix D of the Draft EIR, the traffic analysis was prepared in accordance with the standards set forth by the City of Newark, and the Alameda County Congestion Management Agency (CMA). Impacts were analyzed on a cumulative basis in consideration of projected conditions at buildout of the proposed Plan in 2035. Analysis of short-term, construction-related impacts of specific projects that could be built within the planning horizon are not appropriate in a programmatic EIR such as the proposed Plan.
CCCR-90	Are the dates of studies listed in the footnote on page 4.13-23 correct?	The comment is noted. The Draft EIR is hereby amended to correct the dates of the studies referenced. See Chapter 3 of the Final EIR for details of text revisions.
CCCR-91	p. 4.13-24 states: The traffic analysis assumed that the transportation network, including roadways and intersection lane configurations, would be the same in 2035 as that described above in section 4.13.1.2, Existing Conditions, of this chapter. New development projected within the Plan Area at buildout of the proposed Plan, including net increases over 2012 baseline conditions of 16,580 residents, 6,208 housing units, and 2,882 jobs, was input to the Alameda County Transportation Commission (ACTC) model in order to generate 2035 traffic forecasts. The resulting traffic volumes are shown on Figures 4.13-5a and 4.13-5b.	The comment is noted.

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CCCR-92	TRANS-1 With buildout of the proposed Plan, three signalized study intersections would operate at unacceptable LOS in 2035. The analysis of TRANS-1 states: With implementation of Action T-5.J from the proposed Plan, all seven impacted intersections would operate at acceptable LOS in 2035; however, the Cherry Street/Boyce Road and Stevenson Boulevard intersection and the Ardenwood Boulevard and SR 84 WB Ramps intersection are located in the City of Fremont, and additionally the Ardenwood Boulevard and SR 84 WB Ramps and Newark Boulevard and SR 84 EB Ramps intersections are under the jurisdiction of Caltrans. Therefore, implementation of improvements at these three intersections is outside the jurisdiction of the City of Newark, and as there is no implementation plan in place for improvements at these three intersections, it is not reasonably foreseeable at this time that impacts would be reduced to less-than significant levels with buildout of the proposed Plan in 2035. Consequently, impacts at these three intersections in 2035 would be significant prior to mitigation: Cherry Street/Boyce Road and Stevenson Boulevard; Ardenwood Boulevard and SR 84 WB Ramps; Newark Boulevard and SR 84 EB Ramps. When will Newark begin coordinating with the City of Fremont and with Caltrans to implement the proposed mitigation measures at these three intersections?	The Mitigation Monitoring and Reporting Program, to be circulated with the Final EIR, would trigger coordination amongst appropriate agencies. Please also see Response to Comment CCCR-47.
CCCR-93	It appears most of the policies and actions proposed to alleviate or reduce traffic congestion are purely volunteer, that is that they are totally dependent upon Newark residents altering their choices regarding transit. How will Newark determine if these policies are having any benefit and what will Newark do, if they are not?	The comment is noted. Please see the response to comment Bradley2-86 regarding implementation of policies under the proposed General Plan.
CCCR-94	TRANS-4 The proposed Plan would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). Wouldn't pedestrian and bicycle at grade crossings be considered an incompatible use and why wasn't this issue analyzed under traffic? Especially since the traffic analysis includes a discussion of the Complete Streets Program?	Pedestrian and bicycle at grade crossings would not be considered an incompatible use. As discusses in TRANS-4, local codes would contain regulations pertaining to minimum design standards. Adherence to such codes, along with policies under the proposed Plan as identified on page 4.13-38 would ensure compatible and safe uses with respect to design features. No changes are necessary.
CCCR-95	Policy T-2.12: Trails Along Railroads and Utilities. Consider the use of railroad, flood control, and utility rights of way for jogging, biking, and walking trails, provided that safety and operational issues can be fully addressed. Does this policy pertain to abandoned railroad right of ways? If not, it is difficult to understand how this would be compatible with biking, jogging, or walking trails.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
CCCR-96	TRANS-7 Implementation of the proposed Plan, in combination with past, present, and reasonably foreseeable projects, would not result in additional cumulatively considerable impacts. "Cumulative impacts to transportation and traffic resulting from implementation of the proposed Plan are addressed locally, through specific road improvements, as well as through implementation of the goals, policies, and actions of the proposed Plan itself. These policies seek to reduce existing vehicle trips, minimize the addition of new vehicle trips, and lower per capita VMT. Additionally, the potential cumulative impacts of the proposed Plan at the regional level are examined through analysis related to the Alameda CTC Congestion Management Program." It is difficult to imagine the policies proposed will result in an appreciable reduction in VMT. The proposal to build upscale housing in an area that has no shopping, medical, dining, or other amenities within easy walking distance would seem to only encourage the continued use of automobiles as a mode of transportation. What are the current plans for providing mass transit in the DTOD? It seems any realization of Dumbarton Rail will be in the distant future if ever at all. What are the plans to provide a public transportation system for an area that is proposed to have an additional 2500 housing units?	As noted in Policy LU-6.3, the City will advocate for high quality rapid bus service connecting the Dumbarton TOD area to major transit facilities as an interim measure until the Dumbarton Rail project is funded. Likewise Policy T-3.4 calls for rapid bus service as an interim measure before rail construction, while Action T-3.B call for a continued focus on funding for the rail project.
CCCR-97	Alternatives Analysis: The Alternatives Analysis Chapter is inconsistent with the requirements of CEQA. The DEIR correctly states: The following discussion is intended to inform the public and decision makers of the feasible alternatives that would avoid or substantially lessen any significant effects of the Plan, and	The commenter's opinion is noted; however, no justification to the comment has been offered, therefore, no further response is necessary.

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	to compare such alternatives to the proposed Plan. Section 15126.6 of the CEQA Guidelines states that: An EIR shall describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.	
CCCR-98	The DEIR provides an alternative, the Restricted Growth Alternative, that would preserve Area 4, but also restricts any development of the Dumbarton Transit Oriented Development. This is an alternative that has been structured to fail. The Area 2 (DTOD) has already been identified by the Association of Bay Area Governments as a Priority Development Area, so it would seem that in spite of the reduction in environmental impacts, an alternative that prohibits any development is unrealistic. The city must provide an alternative that preserves Area 4, facilitates clean-up of contaminated sites and provides for sustainable development in Area 2.	Please see Master Response 3 regarding the Appropriacy of Alternatives.
CCCR-99	Conclusion: The GPT DEIR has significant flaws as identified in the letters submitted by LGW LLP and Richard Grassetti. Therefore, the GPT DEIR will need to be revised and re-circulated. Please keep us advised of any time tables pertaining to this review process. Sincerely, Carin High CCCR Vice Chair Attachments to follow	The commenter's opinion is noted.
LGW-1	This office represents Citizens Committee to Complete the Refuge ("Citizens") and its members in regards to the City of Newark proposed revised General Plan and Draft EIR ("DEIR").Attached hereto please find detailed comments about the Draft EIR and the Project's compliance with CEQA. The DEIR violates CEQA, inter alia, through 1) the use of an improper baseline, 2) reliance on a void Specific Plan EIR for analysis of impacts and mitigations from the proposed General Plan, 3) failure to conduct adequate "project level" review where the General Plan includes the Specific Plan details, 4) a flawed cumulative impact analysis, and 5) a flawed alternatives analysis. Because the Draft EIR is fundamentally and basically inadequate, meaningful public review and comment are precluded. Once the Draft EIR is fixed it must be recirculated for public review and comment. Prior to the City Council's decision, if ever, that the EIR complies with CEQA and therefore may be certified, no action in furtherance of the Project should be permitted. Thank you for your attention to this matter. Sincerely, Brian Gaffney cc: Citizens Committee to Complete the Refuge Attachment: CD by Fed Ex delivery by September 27, 2013	Please see Master Response 1 regarding baseline for environmental review and Master Response 2 regarding reliance on previous environmental review. Please see Master Response 3 regarding the adequacy of alternatives. In regards to recirculation, Section 15088.5 of the CEQA Guidelines states that a lead agency is required to recirculate an EIR when significant new information is added to the EIR. Provided that no new significant information has been added, recirculation of this DEIR is not required under CEQA.
LGW-2	I. The Proposed General Plan and DEIR Fail to Use a Proper Environmental Baseline by Employing Hypothetical Conditions Based on a Void Areas 3 and 4 Specific Plan.	The baseline for measuring environmental impacts is existing conditions. Please see Master Response 1 regarding baseline for environmental review and Master Response 2 regarding reliance on previous environmental review
LGW-3	A. The Proposed General Plan Uses an Improper Baseline. The proposed General Plan falsely and improperly assumes that the Areas 3 and 4 Specific Plan has been adopted and is in effect.1 "A Specific Plan for the 636-acre [Areas 3 and 4] was adopted in 2010." (Proposed General Plan, pp. PF-14, PF-15, LU-21, LU 24.) The Areas 3 and 4 Specific Plan has "been formally adopted by the City of Newark, but [is] not part of the General Plan per se." (Proposed General Plan, I-4.) This error is also found in the Land Use Background Report. "Two major development projects were approved in 2010 and 2011, Areas 3 and 4, and Dumbarton Transit Oriented Development (TOD) Specific Plans." (Land Use Background Report, p. 4-6.) Under the heading "Existing Conditions," the Land Use Background Report states that "The [Areas 3 and 4] Specific Plan and final Environmental Impact Report, along with a statement of overriding considerations, Mitigation Monitoring Report, and map amendment to title 17 of the Newark Municipal Code (zoning) were adopted in 2010." (Land Use Background Report, p. 4-31.) These assertions in the General Plan are false and misleading to the public. The City of Newark has not properly adopted the Areas 3 and 4 Specific Plan nor properly certified the Areas 3 and 4 Specific Plan	See response to comment LGW-2. Please see Master Response 1 regarding baseline for environmental review and Master Response 2 regarding reliance on previous environmental review. Please see Master Response 3 regarding the adequacy of alternatives.

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	EIR. On November 20, 2012, the Alameda Superior Court issued its Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions. That Order is attached to these comments. "To ensure that the [Areas 3 and 4 Specific Plan] project does not proceed until the EIR is effective," the court ordered the City to "SUSPEND Resolution 9745 (Certifying the EIR) and Resolution 9746 (adopting the Newark Areas 3 and 4 Specific Plan Project and the related General Plan Amendment" pending resolution of the case or further order of the court. That suspension was in effect when this DEIR was released to the public, and is in effect at the time of filing these comments.2 [1 "Areas 3 and 4 Specific Plan" and the "Southwest Newark Residential and Recreational Project" are two names for the exact same project. (Proposed General Plan, p. I-4, fn. 1.)][2 Pursuant to Pub. Res. Code § 21168.9, the Areas 3 and 4 Specific Plan approvals and Areas 3 and 4 Specific Plan EIR certification must be considered void. Pub. Res. Code § 21168.9, subd. (a)(1) provides that if a court finds that any determination, finding, or decision of an agency has been made without CEQA compliance, the court shall enter an order that includes a mandate that the determination, finding, or decision be voided by the agency. Citizens has consistently maintained that under 21168.9 the approvals and certification must be set aside.]	
LGW-4	Moreover, as a matter of law the Areas 3 and 4 Specific Plan cannot be deemed "approved" in the absence of a valid certified EIR. "CEQA requires the completion of an EIR before a specific plan can become effective." (3570 East Foothill Blvd., Inc. v. City of Pasadena, 980 F.Supp. 329, 333 (C.D.Cal. 1997). Before approving a specific plan the decision makers must be informed of the intended impacts and if that impact is adverse how it will be addressed. (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412, 429 citing Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 206.) Thus, the Areas 3 and 4 Specific Plan is not in effect, and it was error for the proposed General Plan to represent it as approved. (Deltakeeper v. Oakdale Irrigation Dist. (2001)94 Cal.App.4th 1092, 1009 ["The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an [EIR] that does not provide the decision-makers, and the public, with the information about the project that is required by [CEQA]."].)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-5	B. The Draft General Plan EIR Uses an Improper Baseline. In addition, the Draft EIR, in describing the "Southwest Newark Residential and Recreational Focus Project" repeatedly asserts that the Areas 3 and 4 Specific Plan has been "adopted" by the City of Newark. (GP DEIR, pp. 3-20 to 3-21 (" The proposed Plan does not include any additional land use changes over and above those already incorporated into the existing General Plan at the time the Areas 3 and 4 Specific Plan was adopted by Newark City Council in 2010.) "In June 2010, the City of Newark adopted the Areas 3 and 4 Specific Plan ... ." (GP DEIR, p. 3-8.)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis
LGW-6	While the Draft EIR acknowledges that the Areas 3 and 4 Specific Plan is in litigation and that there is a stay on any further action with respect to the Areas 3 and 4 Specific Plan, the EIR relies on the Specific Plan and mitigation measures created for that plan as background conditions: After certification of the EIR, a lawsuit was filed challenging the adequacy of the EIR (Alameda Co. Sup. Ct. #RG10-530015). An order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Areas 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. As of August 12, 2013, that litigation remains pending and that suspension remains in effect, however, the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR. (GP DEIR, 3-11 (emphasis added).) It is entirely inappropriate for the City to discuss the Areas 3 and 4 Specific Plan as though it is approved and its mitigation measures are adopted and enforceable, and then treat them as "background conditions" for purposes of the 2013 General Plan EIR.	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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LGW-7	Under CEQA, impacts must be measured against real conditions on the ground – not against what may potentially occur pursuant to a planning document. The Supreme Court's discussion in Communities for a Better Environment points out this DEIR's fundamental error: By comparing the proposed project to what could happen, rather than to what was actually happening, the [agency] set the baseline not according to "established levels of a particular use," but by "merely hypothetical conditions allowable" under the permits. (San Joaquin Raptor Rescue Center v. County of Merced, supra, 149 Cal.App.4th at p. 658, 57 Cal.Rptr.3d 663.) Like an EIR, an initial study or negative declaration "must focus on impacts to the existing environment, not hypothetical situations." (County of Amador v. El Dorado County Water Agency, supra, 76 Cal.App.4th at p. 955, 91 Cal.Rptr.2d 66.) An approach using hypothetical allowable conditions as the baseline results in "illusory" comparisons that "can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts," a result at direct odds with CEQA's intent. (Environmental Planning Information Council v. County of El Dorado, supra, 131 Cal.App.3d at p. 358, 182 Cal.Rptr. 317.) Communities For A Better Env't v. S. Coast Air Quality Mgmt. Dist., (2010) 48 Cal. 4th 310, 322.	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-8	Recently, the California Supreme Court affirmed that "the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the actually existing physical conditions rather than hypothetical conditions that could have existed under applicable permits or regulations. (Neighbors for Smart Rail v. Exposition Metro Line Const. Auth. (2013) 57 Cal. 4th 439, 448 (emphasis in original) citing Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 320–322.)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis.
LGW-9	So here, this DEIR uses the hypothetically approved Areas 3 and 4 Specific Plan as the background condition. The Areas 3 and 4 Specific "EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR." (GP DEIR, 3-11 to -12.) "This Draft EIR compares the buildout potential for the proposed Plan with the existing baseline condition." (GP DEIR, p. 3-3.) Because the Specific Plan adoption and EIR certification have been not been properly adopted and certified, this DEIR can only mislead the public as to the true General Plan impacts and subvert full consideration of the actual environmental impacts, contrary to CEQA's intent.	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-10	II. The DEIR Improperly Relies On the Areas 3 and 4 Specific Plan EIR for Analysis of the Proposed General Plan's Impacts and Mitigations. The DEIR improperly relies heavily on the Areas 3 and 4 Specific Plan EIR for its analysis of impacts and mitigations.3 For example, regarding riparian impacts, the DEIR states: The Areas 3 and 4 Specific Plan EIR identifies Impacts BIO-1 associated with impacts to riparian habitat. This impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measures BIO-1.1 through BIO-1.2B, which require wetland and habitat avoidance to the maximum extent feasible and either on-site wetland creation (at a ratio of 1:1) and enhancement (at a ratio of 0.5:1) or off-site mitigation banking at a ratio of 1.5:1. [3 The proposed General Plan likewise incorrectly states that the EIR for the Areas 3 and 4 Specific Plan is valid and assumes, based thereon, that the impacts of the Southwest Newark Project will be mitigated. For instance, it asserts that "future noise environment in Newark will be impacted not only by changes in traffic volumes, but also by changes in land use.... The environmental impact reports (EIRs) prepared for approved development in these areas included measures to mitigate potential noise impacts. Likewise, future EIRs will include such measures, as appropriate." (Proposed General Plan, EH-31 (emphasis added).)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-11	Additionally, Impact BIO-2, related to substantial adverse impacts on wetlands and associated species due to altered hydrology, and…	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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	Impact BIO-3, regarding significant impacts to marsh habitat and associated special-status species due to an increase in freshwater flows, would be mitigated to less-than-significant levels with the implementation of mitigation measures MM BIO-2.1 through 2.5 from the Areas 3 and 4 Specific Plan EIR. Further, Impact BIO-10, regarding indirect impacts to waterbirds associated with the loss of wetlands, would be mitigated to less-than-significant levels with the implementation of Mitigation Measure BIO-10.1, requiring a mitigation plan for creation or enhancement of replacement wetlands. Previous environmental review has determined that impacts to wetlands, riparian habitat, and sensitive natural communities in the ...Southwest Newark Residential and Recreational Focus Area could be mitigated to less-than-significant levels with the implementation of the mitigation measures described above. The proposed Plan would incorporate the development envisioned in the ...Areas 3 and 4 Specific Plan ... and would not include any additional development in the ... Southwest Newark Residential and Recreational Focus Area over and above that which has already been analyzed in previous EIRs. As such, the implementation of the proposed Plan would not result in significant, new environmental impacts to wetlands, riparian habitat, and sensitive natural communities in the ... Southwest Newark Residential and Recreational Focus Area. (DEIR, pp. 4.3-36 to -37.) Regarding impacts to wetlands/ marsh/aquatic habitat, the DEIR states: The Areas 3 and 4 Specific Plan EIR concluded that Specific Plan implementation would result in the loss of up to 85.6 acres of wetland/marsh/aquatic habitat in the Southwest Newark Residential and Recreational Focus Area. Most of the seasonal wetlands, aquatic habitats, and muted tidal salt marsh that would be directly filled by the implementation of the Specific Plan were determined to be of poor or marginal quality, primarily due to intensive and ongoing agricultural disturbance and the resulting effects on plant communities and wildlife use. It was determined that implementation of the following measures would reduce associated impacts to a less-than significant level: Mitigation Measure Bio-1.1 requiring grading plans designed to avoid permanent impacts to wetland and aquatic habitat; Mitigation Measure Bio-1.2A, requiring a detailed mitigation plan shall be developed by a qualified biologist and incorporating a combination of on-site wetland creation and enhancement, and/or acquisition of existing wetlands located off-site; and Mitigation Measure Bio-1.2B, requiring, as an alternative to Measure Bio-1.2A, the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank or other private lands within 10 air miles of the affected area and along the eastern shore of south San Francisco Bay within the same geographic watershed. Previous environmental review has determined that impacts to waters of the US in the Dumbarton TOD Focus Area and in the Southwest Newark Residential and Recreational Focus Area could be mitigated to less-than significant levels with the implementation of the mitigation measures described above. The proposed Plan would incorporate the development envisioned in the Dumbarton TOD Specific Plan, the Areas 3 and 4 Specific Plan, and the 2009-2014 Housing Element and would not include any additional development in the Dumbarton TOD Focus Area or the Southwest Newark Residential and Recreational Focus Area over and above that which has already been analyzed in previous EIRs. As such, the implementation of the proposed Plan would not result in significant, new environmental impacts to waters of the US in the Dumbarton TOD Focus Area or the Southwest Newark Residential and Recreational Focus Area. (DEIR, p. 4.3-40.)	

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	Regarding cumulative losses of seasonal wetland habitat, the DEIR states: The Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area are the largest remaining tracts of relatively undeveloped land in the Plan Area. In the absence of project-specific mitigation measures identified in previous environmental review conducted by the City of Newark, potentially significant impacts related to special-status plants and animal species, wetlands, riparian habitat, and sensitive natural communities would all contribute to cumulatively significant impacts in the South Bay. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. However, as determined in previous environmental review conducted by the City, the mitigation measures prescribed for all of these impacts would adequately mitigate the project's contribution to these cumulative impacts. Buildout of the proposed Plan would not include any additional development in these areas over and above that which has already been analyzed in previous EIRs." (DEIR, p. 4.3-48, emphasis added.) Regarding growth inducing impacts, the DEIR states "the extension of existing utility lines and the construction of new roadways would be required, and associated impacts have been analyzed and mitigated in previous EIRs prepared by the City of Newark for the respective specific plans." (DEIR, p. 7-6, emphasis added.) This approach of relying on a previous EIR which was not properly certified, as well as a Specific Plan whose adoption has been set aside, is clearly illegal.	
LGW-12	First, the Alameda Superior Court found that the Areas 3 and 4 Specific Plan EIR is materially deficient and that the "court cannot meaningfully evaluate whether the City's findings and conclusions in the EIR are supported by substantial evidence." (November 2012 Order at p. 19.)	Please see Master Response 1 regarding Appropriate Baseline for Environmental Analysis and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-13	Second, to the extent that this DEIR is attempting to "tier" off the analysis of impacts and mitigations in the Areas 3 and 4 Specific Plan EIR, such tiering violates CEQA as the prior EIR's certification is void. (Pub. Res. Code § 21094, subd. (a)(1).) CEQA authorizes tiering only where the previous EIR was properly certified. (Friends of the Santa Clara River v. Castaic Lake Water Agency (2002) 95 Cal.App.4th 1373, 1384- 1387.) The instant General Plan DEIR should not be certified based on this CEQA violation alone. (California Oak Foundation v. City of Santa Clarita (2005) 133 Cal.App.4th 1219, 1229.)	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-14	Third, this DEIR does not state where a copy of the prior EIR may be examined (Pub. Res. Code § 21094, subd. (f)), and the General Plan Tune Up initial study - if one was even prepared - did not analyze whether the revise General Plan may cause significant impacts not examined in the prior EIR. (Pub. Res. Code § 21094, subd. (c).)4 For these reasons, the DEIR improperly relies on the analysis, conclusions, and mitigation measures of the invalid Areas 3 and 4 Specific Plan EIR. [4 It would also be improper for the City of Newark to incorporate by reference any Areas 3 and 4 Specific Plan statement of overriding considerations because the Areas 3 and 4 Specific Plan approvals and EIR are void (Pub. Res. Code § 21094, subd. (a)(2)) and because the prior EIR was certified more than three years ago. (Pub. Res. Code §§ 21094,subd. (a)(2)(D).)]	The DEIR states on page 2-2 of the DEIR that, consistent with Section 15150 of the State CEQA Guidelines, the documents used for incorporation by reference are available for review at the City of Newark Community Development Department. Please see Master Response 2 regarding treatment of previous environmental review.
LGW-15	In addition, by relying on the Areas 3 and 4 Specific Plan EIR, this DEIR necessarily incorporates many of the CEQA errors in that document. Citizens challenged the Areas 3 and 4 Specific Plan EIR for 1) use of improper "baseline" for CEQA analysis and mitigation, particularly regarding traffic, 2) failure to adequately disclose or analyze cumulative impacts, 3) improper deferral of mitigations of impacts to trees and also habitats and special status species, 4) failure to use or apply the Areas 3 and 4 Specific Plan EIR's thresholds of significance to cumulative land use impacts, cumulative biological resource impacts, and cumulative hydrology, water quality and water supply impact, and 5) the Areas 3 and 4 Specific Plan EIR is inadequate to serve as project level CEQA review. Citizens renews each of these objections in	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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	regards to the adequacy of the instant DEIR, particularly given that the DEIR's project description states that "the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR."5 (GP DEIR, p. 3-11.) [5 See also GP DEIR, p. 4.13-23, fn. 3 which states: "The sources for threshold of acceptable LOS in Newark are the ... Southwest Newark Residential and Recreational Focus Area Specific Plan (July 2011)." While CCCR is unaware of what document constitutes the "Southwest Newark Residential and Recreational Focus Area Specific Plan (July 2011)," to the extent the DEIR is referencing the Areas 3 and 4 Specific Plan EIR, CCCR objects for the reasons stated herein and in previous comments (attached on CD) about the Areas 3 and 4 Specific Plan EIR adequacy.]	
LGW-16	Citizens is submitting as part of these DEIR comments a CD that includes its pleadings and briefings challenging the Areas 3 and 4 Specific Plan EIR, as well as the administrative record in that prior litigation - which includes Citizens and others administrative comments on the Areas 3 and 4 Specific Plan EIR. Please include each of the documents on the attached CD as part of the administrative record for this General Plan Tune Up Program EIR.	The comment is noted; however, it does not pertain to the merits of this DEIR. No further response is required.
LGW-17	III. The DEIR Improperly Fails to Conduct Adequate "Project Level" Review Where the General Plan Includes the Specific Plan Details. The General Plan EIR erroneously states that " regardless of whether the Areas 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan." (GP DEIR, 3-11--12.) This statement is wrong for the reasons stated above, and further because the proposed General Plan does more than change the land use designation for a portion of [former] Area 3. As noted above, the proposed General Plan obligates the City to implement the Areas 3 and 4 Specific Plan.	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-18	Because the proposed General Plan incorporates and requires implementation of this Specific Plan, it is not a standard General Plan -- it includes the same level of detail (if not more, in some instances) as the Areas 3 and 4 Specific Plan as proposed in 2010. Therefore, under CEQA this DEIR must subject this portion of the proposed General Plan to project-level environmental review. Herein, we first note many of the specifics incorporated into the proposed General Plan, and thereafter the CEQA provisions requiring greater environmental review.	The commenter provides no evidence for the assertion the General Plan EIR "requires" implementation of the project envisioned in the Area 3 and 4 General Plan. Also, please see response to comment LGW-17 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
LGW-19	Numerous General Plan "Policies" require implementation consistent with the Areas 3 and 4 Specific Plan6: Policy LU-7.1 Southwest Newark Residential and Recreational Project (Area 3 and 4 Development). Facilitate the development of the 637 acres formerly known as "The Area 3 and 4 project" consistent with previously approved plans for this area. The residential holding capacity of this area shall be 1,260 units. Policy LU-7.6 The preferred open space use is an 18-hole golf course with clubhouse. Policy LU-7.9 address inclusionary housing requirements consistent with the Area 3 and 4 Development Agreement. Several proposed General Plan "actions" also direct the City to implement the Southwest Newark Project as proposed in the Areas 3 and 4 Specific Plan.7 For example, Action LU-7.D (Design Standards) specifies implementation of "the standards in previously approved plans for this area addressing lot size, height, setback, lot coverage, open space, patios, and balconies, and parking." Action LU-7.E (Grading and Fill) "require[s] grading and fill plans which ensure long-term mitigation of flood hazards, consistent with previously approved plans for the Southwest Newark Residential and Recreational Project area. Building pad and curb elevations shall conform to previously adopted standards." So also, Action LU-7 (A Street and Path Network) and Action LU-7.B (Railroad Overcrossing) requires actions consistent with previously approved plans. The Land Use Element of the proposed General Plan provides the following specificity regarding the Southwest Newark Residential and Recreational Project This is the largest area proposed for future development in Newark, comprising 636 acres in the area bordered by Mowry Avenue on the west, Stevenson Boulevard on the east, Cherry	The commenter is providing the description of the proposed project in the Southwest Newark Residential and Recreation project and incorrectly infers from the description that is provided that the General Plan is in some way entitling this project. The commenter provides no evidence for the assertion the Draft EIR "requires" implementation of the project envisioned in the Area 3 and 4 Specific Plan. Please also see response LGW-17 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.

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	Street on the north, and Mowry Slough on the south. The Union Pacific Railroad bisects the area. Previous General Plans for Newark referred to the land north of the railroad as "Area 3" and the land south of the Railroad as "Area 4." Area 3 was originally 298 acres, but 221 acres of this total has been committed to other land uses, including the Newark campus of Ohlone College, Sportsfield Park, and the Stevenson Point Technology Park. The remaining 77 acres, which is located along the south side of Cherry Street west of Stevenson Boulevard, was vacant as of 2013. A Specific Plan for the 636-acre area was adopted in 2010. The Plan calls for the development of up to 1,260 housing units, a major recreational facility such as an 18-hole golf course, and the dedication of conservation open space on some of the low-lying areas south of the railroad tracks. An area facing Cherry Street just east of Ohlone College has been set aside for a new 600-student elementary school and a new neighborhood park. The rest of former Area "3" has been designated for Low-Medium Density Residential uses on the General Plan Map. The Specific Plan envisions single-family lots ranging from 3,150 square feet to 4,800 square feet, although the flexibility exists to transfer the allowable density within this area to facilitate multi-family housing construction on a portion of the site. Development of single-family lots is planned south of the railroad tracks. Some of the area designated as "Low Density Residential" on the Map will be conserved as wetland habitat and some will be improved with recreational facilities. The Specific Plan divides the area south of the tracks into four lettered sub-areas (B, C, D, and E). Of these four areas, Area B (125 acres) is planned for housing, Area D (100 acres) may be used for a golf course or similar recreational amenity, Area E (244 acres) is to be conserved as open space, and Area C (90 acres) may be used for either recreation or housing. In the event a golf course is developed, it is envisioned as an 18-hole public course. A golf course could provide an amenity that is lacking in Newark today and would round out the range of recreational opportunities available to those who live and work in the city. It could also be an economic development asset that can attract businesses, executive housing, and higher quality retail uses nearby. Ancillary facilities such as a clubhouse, banquet facility, driving range, and maintenance buildings, could potentially complement such a facility. Construction of a golf course is contingent on its fiscal feasibility, market demand, and other factors. In the event a golf course is not developed, another citywide recreational amenity should be provided here. The Specific Plan includes residential street and intersection standards, along with plans for a railroad overpass at Stevenson Boulevard. The Stevenson Avenue Bridge should include a 12-foot travel lane in each direction, adjacent to 5-foot bike lanes. One side of the bridge will have a sidewalk for pedestrians. A pedestrian and bicycle bridge across the Alameda County Flood Control Channel is also planned, connecting the site to Ohlone College. A multi-use trail is also proposed across the southern part of the site, providing a component of the Bay Trail. A grading and fill plan for this area has been prepared. ... .Building pads of occupied structures will be at least 11.25 feet above mean sea level (msl), with the finished floor at least six inches above the building pad. The top of curb grades for residential streets will be no less than 10 feet above msl. Detailed grading and stockpile management plans will be required before construction is approved and stormwater management plans will be required to contain runoff. A new network of water, sewer, and storm drain lines will be constructed to serve the development, supplemented by related infrastructure such as pump stations. (Proposed General Plan, pp. LU-23 to LU-26.) Similarly, the Parks, Recreation, and Open Space section states: The Southwest Newark Residential and Recreational Development includes plans for a golf course or major public recreational facility. A golf course would likely be 120 acres or larger and could potentially double the City's total park acreage. The Specific Plan for Southwest Newark (formerly Areas 3 and 4) also includes an approximately 5-acre neighborhood park, to be co-located with an elementary school on the south side of Cherry Street east of Ohlone College. The park will not only serve new residents, it will remedy a park access deficiency in the residential area on the north side of Cherry	

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	Street in this area. [6 "A policy expresses the City's commitment and intent on a topic area related to the goal." (Proposed General Plan, I-4.) "A goal is a general, overall and ultimate purpose, aim or end toward which the City will direct its efforts." (Ibid, underscore added.) The word "will" indicates that this provision is mandatory. (Proposed General Plan, I-5 ["'Must', 'shall,' or 'will' identify provisions which are mandatory. Verbs such as "require" reflect similar obligatory directives."].) This provides further evidence that the proposed General Plan will implement the specifics of the Areas 3 and 4 Specific Plan.][7 "An action is a specific program to be carried out in response to an adopted policy... ." (Proposed General Plan, I-4.)]	
LGW-20	Likewise, the Draft EIR provides specificity regarding the Southwest Newark Residential and Recreational Focus Project. This Draft EIR is unequivocal that "The proposed Plan would incorporate the development envisioned in the ...Areas 3 and 4 Specific Plan" (DEIR, pp. 4.3-36 to -37.). The EIR's project description (at DEIR, p. 3-11) lays out in specific detail that: The Area 3 and 4 Specific Plan amended 1992 General Plan Land Use designations to allow for development of up to 1,260 single- and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas. The Specific Plan envisions the preservation of approximately 200 acres of open space in Area 4 and the, retention of existing light industrial and institutional uses in most of Area 3, Key components of the Area 3 and 4 Specific Plan, shown in Figure 3-4, include: - A new 78-acre residential neighborhood in Subarea A composed of single-family detached homes and multifamily residential units, including up to 189 multi-family units at below market rate. (Note: Below-market-rate (BMR) housing units are priced to be affordable to households with moderate income or below.) - Single-family detached homes in Subarea B and C; - A new elementary school in Subarea A, capable of accommodating 600 students; - An 18-hole golf course in either Subarea C or D, configured to optimize habitat areas and limit disturbance to wildlife and wetlands to the extent feasible; - Improvements to the circulation network, including: - A public street extension of Stevenson Boulevard with a structural overpass providing vehicular and pedestrian access into Area 4 over the Union Pacific railroad tracks. Modifications to two Pacific Gas & Electric (PG&E) transmission towers to accommodate the overpass. - A new driveway providing access from Cherry Street into Subarea A. A new traffic signal and pedestrian crosswalk are planned at this intersection; - A new driveway providing access to Subarea A from Stevenson Boulevard, midway between Cherry Street and the existing industrial uses; - A paved trail and pedestrian bridge over the flood control channel in Area 3, providing connection between the new residential neighborhood, Ohlone College, and the George M. Silliman Recreation Complex; - A multi-use trail at Mowry Avenue in Area 4, providing east-west access for emergency vehicles, pedestrians, and cyclists; and - Utilities infrastructure, including a new public water distribution system within the residential streets of Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge wastewater generated by new uses in Area 4.	Please see response to LGW-19.
LGW-21	Further at DEIR, pp. 3-20--3-21, the project description states: The Southwest Newark Residential and Recreational Focus Area is made up of two non-contiguous sectors in the southwest of the city, as shown in Figure 3-7. Together, these two sectors cover an area of 637 acres. The boundaries of the larger of the two sectors correspond to the boundaries of Area 4, as delineated in the Areas 3 and 4 Specific Plan adopted by the City in 2010 and described earlier in this chapter. The boundaries of the smaller sector correspond to the vacant, undeveloped portion of Area 3, bounded by Ohlone College to the north, Cherry Street to the west, Stevenson Boulevard to the south, and the Stevenson Point Technology Park to the west. The vision for the Southwest Newark Residential and Recreational Focus Area contained in the proposed Plan is consistent with the vision outlined in the Areas 3 and 4 Specific Plan. The proposed Plan does not include any additional land use changes over and above those already incorporated into	Please see response to LGW-19.

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	the existing General Plan at the time the Areas 3 and 4 Specific Plan was adopted by Newark City Council in 2010. At the time the Specific Plan was adopted the land use designation in the 78-acre portion of the focus area formerly known as Area 3 was changed from Special Industrial to Medium Density Residential. The land use designation for the larger portion formerly known as Area 4 was already Low Density Residential in the 1992 General Plan and no changes were made at the time the Specific Plan was adopted.	
LGW-22	As described in the proposed Plan, the Southwest Newark Residential and Recreational Focus Area is envisioned as one of Silicon Valley's premier new neighborhoods, with executive housing and high quality recreational opportunities. Proposed Plan land use designations applicable to this Focus Area would allow for the development of 1,260 single and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas as envisioned in the Areas 3 and 4 Specific Plan. Additionally, the proposed Plan contains policies that support development envisioned in the Areas 3 and 4 Specific Plan, including the 1,260 housing units, the golf course, an interior street and path network, and an overpass crossing the Union Pacific Railroad tracks at Stevenson Boulevard. The proposed Plan also includes policies intended to protect and enhance sensitive natural resources in the Southwest Newark Residential and Recreational focus area, including wetland and aquatic habitat, natural hydrological features, and other biological resources.	Please see response to LGW-19.
LGW-23	CEQA requires that given the specifics involved in the proposed General Plan, that this DEIR correspondingly provide detailed analysis of potential impacts. “The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” (CEQA Guidelines 15146.)	The commenter is incorrect in asserting that the General Plan obligates the City to complete a particular project. A General Plan is a policy document providing the vision for the community including the general location and general intensity of future development. It does not create legal obligations to pursue a particular project. Individual developments when and if proposed would be receive further environmental review and are subject to future action by the City Council. The General Plan EIR is a program EIR- to does not include approval or “obligation” for any specific development project.
LGW-24	In addition, an EIR on a project such as the adoption or amendment of a general plan “should focus on the secondary effects that can be expected to follow from the adoption or amendment.” (CEQA Guidelines 15146, subd. (b).) The sufficiency of the information contained in an EIR is reviewed in light of what is reasonably feasible. (Guidelines, § 15151; Kings County Farm Bureau v. City of Hanford, supra, 221 Cal.App.3d at p. 733.) At minimum, an EIR ”must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.“ (Laurel Heights, supra, 47 Cal.3d at p. 405.) (Rio Vista Farm Bureau Ctr. v. Cnty. of Solano (1992) 5 Cal. App. 4th 351, 375.) Here, given the great specificity known about the “Southwest Newark Residential and Recreational Project,” this DEIR is required, but failed to, more detailed analysis. Simply calling it a program EIR will not suffice under CEQA given that is reasonably feasible to provide greater specificity.	Please see Master Response 2 regarding reliance on previous environmental review.
LGW-25	IV. The DEIR’s Cumulative Impacts Analysis Is Deeply Flawed. A. It Is Improper for the DEIR’s Cumulative Impacts Analysis to Rely on the Areas 3 and 4 Specific Plan and Areas 3 and 4 Specific Plan EIR CEQA provides that “[p]reviously approved land use documents, including ... specific plans ..., may be used in cumulative impact analysis.” (Pub. Res. Code § 21100, subd. (e) (emphasis added).) The CEQA Guidelines further provide that a “pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs.” (CEQA Guideline 15130, subd. (d) (emphasis added).) The Areas 3 and 4 Specific Plan has not been properly approved and the Areas 3 and 4 Specific Plan EIR has not been properly certified. As argued above, to the extent that this DEIR is attempting to “tier” off the analysis of impacts and mitigations in the Areas 3 and 4 Specific Plan EIR, such tiering violates CEQA as the prior EIR was not properly certified. (Pub. Res. Code § 21094, subd. (a)(1).)	Please see response to LGW-24.

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LGW-26	It is also inappropriate to rely on the mitigation analysis in the Areas 3 and 4 Specific Plan EIR and any measures "adopted" as part of the Areas 3 and 4 Specific Plan. Areas 3 and 4 Specific Plan has not been properly approved and the Areas 3 and 4 Specific Plan EIR has not been properly certified. These approvals have been set aside by court order since November 2012, months before the Notice of Preparation for the General Plan Update Draft EIR was issued on January 18, 2013. Further, Citizens challenged the Areas 3 and 4 Specific Plan EIR for, inter alia, failure to adequately disclose or analyze cumulative impacts, and improper deferral of mitigations of impacts. Citizens renews each these objections in regards to the adequacy of the instant DEIR, particularly given that the DEIR's project description states that "the information and analysis in the Areas 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR." (DEIR, p. 3-11.)	Please see response to LGW-24.
LGW-27	B. It Is Improper to Conclude That The General Plan Update's Cumulative Impacts Will Be Less Than Significant Based Simply On Mitigation Measures for Specific Plans or Other Projects. The DEIR violates CEQA by concluding that the General Plan's cumulative impacts will be less than significant simply because the impacts of an individual plan or project will be mitigated. Under CEQA, significant cumulative impacts may occur even if individual projects mitigate the impacts of that project to a level of insignificance.	Please see response to LGW-24.
LGW-28	The DEIR assumes, for many resource areas, that cumulative impacts will be less than significant simply because individual projects will be required to mitigate the impacts of that project to a level of insignificance. For instance, the DEIR concludes that the General Plan's cumulative biological impacts will be less than significant before mitigation as follows: This section analyzes potential impacts to biological resources that could result from a combination of the proposed Plan and other past, present, and reasonably foreseeable development in the South Bay. Such development includes infill development in the adjacent City of Fremont as well as the South Bay Salt Ponds restoration project, which will provide habitat for a number of tidal habitat-associated species, including the salt marsh harvest mouse, salt marsh wandering shrew, and will include enhancement of managed ponds specifically for use by waterbirds. The Dumbarton TOD Focus Area and the Southwest Newark Residential and Recreational Focus Area are the largest remaining tracts of relatively undeveloped land in the Plan Area. In the absence of project-specific mitigation measures identified in previous environmental review conducted by the City of Newark, potentially significant impacts related to special-status plants and animal species, wetlands, riparian habitat, and sensitive natural communities would all contribute to cumulatively significant impacts in the South Bay. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the development of the Areas 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan would be significant without mitigation. However, as determined in previous environmental review conducted by the City, the mitigation measures prescribed for all of these impacts would adequately mitigate the project's contribution to these cumulative impacts. Buildout of the proposed Plan would not include any additional development in these areas over and above that which has already been analyzed in previous EIRs. Proposed Plan policies and actions detailed above provide a framework that promotes context-sensitive development and seeks to minimize impacts on sensitive natural resources. Additionally, future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas. Therefore, with adherence to applicable federal, State, and local regulations and implementation of mitigation measures identified in previous environmental review and adopted by the City of Newark, the proposed Plan would result in less-than-significant cumulative impacts to biological resources in the	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR

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	South Bay. (DEIR, p. 4.3-48.) This repeats the flaws in the Areas 3 and 4 Specific Plan EIR (which Citizens renews its prior objections to) and ignores the very purpose of cumulative impacts analyses. The biological impact mitigation measures for the Specific Plan will only "minimize" impacts, not eliminate them, and because these impacts are minimized, but not avoided, an EIR cannot avoid considering such impacts as part of its cumulative impacts analysis.8 The courts have long recognized that even individually "minimized" impacts can still be cumulatively significant when considered in connection with past, present and future projects. As explained in EPIC v. Johnson: CDF then stated that timber operations in general had to substantially lessen significant adverse impacts on the environment, and closed with this comment: "To address the cumulative effect issue the Department has taken the tact [sic] that if the adverse effects are minimized to the maximum on each individual operation, then the total effect in the surrounding area will also be minimized to an acceptable level." This statement is at odds with the concept of cumulative effect, which assesses cumulative damage as a whole greater than the sum of its parts. [8 For example, the Areas 3 and 4 Specific Plan EIR states that "Impact BIO-2" is significant because "Development within Area 4 would result in substantial adverse effects on federally protected wetlands (seasonal wetlands) and associated special status species due to altering the hydrology on the project site." (AR 466.) The Areas 3 and 4 Specific Plan EIR proposes Mitigation Measures BIO-2.1 through 2.5, which it finds will reduce this significant incremental impacts to less-than-significant. (AR 466-468.) One of these, Mitigation Measures BIO-2.4, provides that "[t]he following measures shall be implemented to minimize any perennial ponding within the existing seasonal wetlands.... Nuisance runoff from the proposed residential and golf course uses shall be minimized and controlled to reduce their input into the remaining natural habitat during the dry season." (AR 467 (emphasis added).) Similarly, the Areas 3 and 4 Specific Plan EIR states that "Impact BIO-8" is significant because "Project development would result in significant impacts due to the loss of federally and state listed endangered salt marsh harvest mouse and California species of special concern salt marsh wandering shrew individuals and habitat." (AR 480.) The Areas 3 and 4 Specific Plan EIR proposes Mitigation Measures BIO-8.1 through 8.4, which it finds will reduce this significant incremental impacts to less-than-significant. (AR 481-482.) Mitigation Measures BIO-8.1 provides: "Temporary disturbance to and permanent loss of salt marsh harvest mouse and salt marsh wandering shrew habitat shall be avoided to the maximum extent practicable." (AR 481 (emphasis added).) Mitigation Measures BIO-8.3 provides: "Mitigation Measure MM BIO-8.2 will minimize the probability of salt marsh harvest mice and salt marsh wandering shrews entering the site but in addition, any individuals already in the impact areas shall be salvaged and translocatedto the exterior of the construction exclusion area. Although detecting every individual on a site is not feasible due to these species' secretive habits ...." (AR 481 (emphasis added).) In other words, the measures in question acknowledge that these impacts will not or cannot be entirely avoided.]	
LGW-29	C. The DEIR Fails to Properly Consider The Cumulative Biological Impacts of Development. The DEIR states cumulative biological impacts could result from a "combination of the proposed Plan and other past, present, and reasonably foreseeable development in the South Bay." (2013 GP DEIR, 4.3-48.) Yet, the DEIR's cumulative impacts section only considers three "sources" of cumulative biological impacts: (1) the General Plan, (2) the Areas 3 and 4 Specific Plan, and (3) the Dumbarton TOD Specific Plan, and based on these three "projects" concludes that any cumulative biological impacts will be less than significant. The DEIR improperly omits any consideration of any South Bay development beyond these three sources, and specifically omits consideration of the well documented losses of seasonal wetlands and uplands in the South Bay.9 This omission is particularly egregious given that the DEIR itself acknowledges that "the cumulative losses of seasonal wetland habitat around the South Bay are	As a program level EIR, it is not required to analyze specific projects and therefore the analyses contained throughout the DEIR are adequate for a program level review.

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	significant." Despite this admission, the DEIR includes no discussion of the extent to which habitat will be lost due to other development, and no discussion of whether the cumulative impact will remain significant even if Newark's plans are mitigated. [9 The EPA/Regional Water Board's "Baylands Ecosystem Habitat Goals Report" (1999) by Monroe et al. states that "since the mid-19th century, 80 percent of original tidal marsh as well as large amounts of mudflats, seasonal wetlands, and upland habitats in the San Francisco Bay have been lost due to human development," that historically, moist grasslands existed in large expanses adjacent to much of the baylands in South Bay, and that in the South Bay "development has destroyed most of the historical moist grasslands" with notable exceptions including the "upper reach of Mowry Slough in Newark."]	
LGW-30	D. The Draft EIR Improperly Relies On Assumed Future Mitigation to Conclude that Cumulative Impacts Are Less Than Significant. Another premise supporting the DEIR's conclusion that cumulative biological impacts will be less than significant is that "future development under the proposed Plan would be subject to separate project-level environmental review to identify and mitigate specific impacts to biological resources in these areas." (DEIR, p. 4.3-48.) Courts have found similar analysis inadequate. For example, a quantitative cumulative impact analysis for groundwater cannot be avoided by simply assuming that impacts of future projects would be mitigated through water conservation efforts. (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App. 3d 692, 729.) For these reasons, the DEIR's cumulative impacts analysis is flawed.	Please see response to LGW-24. Additionally, as a programmatic level EIR, there are no specific projects being proposed as part of the proposed General Plan and therefore project specific impacts cannot be analyzed. For that reason, the programmatic approach is appropriate under CEQA and, therefore, no changes are necessary.
LGW-31	V. The DEIR Improperly Analyzes Alternatives. The DEIR's analysis of alternatives improperly used a baseline where the Areas 3 and 4 Specific Plan is considered part of the "existing built environment." The Areas 3 and 4 Specific Plan is considered one of the "existing plans and policies" under the No Project Alternative (DEIR, p. 6- 1) and the Areas 3 and 4 Specific Plan "would continue to be implemented." (DEIR, p. 6-3.) The DEIR's improper approach skews its analysis of other alternatives, included the preferred alternative, by comparing the proposed Project to a baseline where the Areas 3 and 4 Specific Plan already exist. While analysis of the no project alternative must include a discussion of "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services" (CEQA Guideline 15126.6, subd. (e)(2)), here the set aside Areas 3 and 4 Specific Plan is not a current plan nor can it reasonably be expected to occur in the foreseeable future if the General Plan were not approved.	Please see Master Response 1 regarding the baseline for environmental review and Master Response 3 regarding the adequacy of alternatives. With regards to alternatives, pursuant to CEQA Guidelines Section 15126.6, an EIR shall describe a range of reasonable alternatives to the project. Accordingly, three alternatives were selected; including the CEQA required No Project Alternative.
LGW-32	VI. The EIR Will Need to Be Recirculated for Additional Responsible Agency and Public Comment Because significant new information will need to be is added to the EIR before certification, the City of Newark will be required to recirculate the DEIR. Such new information will include, inter alia, changes in the environmental setting, and additional specific information about the impacts and mitigations related to the Areas 3 and 4 specific plan. (CEQA Guideline 15088.5.) Recirculation will also be required because this draft EIR is so fundamentally and basically inadequate that meaningful public review and comment is precluded. (Mountain Lion Coalition v. Fish & Game Com.(1989) 214 Cal.App.3d 1043).	Please see response to LGW-1 regarding recirculation.
GECO-1	SUBJECT: REVIEW OF ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF NEWARK GENERAL PLAN TUNE UP DRAFT PROGRAM EIR Dear Mr. Grindall; Grassetti Environmental Consulting (GECo) has been retained by Citizens' Committee to Complete the Refuge (Citizens) to review the Draft Program Environmental Impact Report (EIR) on the City of Newark's General Plan Tune Up for compliance with the California Environmental Quality Act (CEQA) and its implementing Guidelines. This review was conducted by Richard Grassetti, the firm's principal, and is based on my 30+ years of experience in CEQA document preparation, review, and training. My review indicates that the CEQA documentation for the project is inadequate and incomplete, and that the EIR fails to meet CEQA Guidelines. The bases for these conclusions are detailed	The comment is noted. As indicated in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines.

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GECO-2	Vague and Unclear Project Description - What's a Tune Up? State planning law includes provisions for adopting General Plans, Specific Plans, Master Plans, Subdivision, Rezoning, and other planning and entitlement approvals. Nowhere among those various options is a "tune up". Therefore, neither the public nor the City decision makers are readily informed by the DEIR as to what the actual project (discretionary action and underlying activities) is. Reading the Executive Summary doesn't help – Section 1.3 refers to the Tune Up as an "updated policy framework", which is also not a discretionary act under CEQA. Similarly, on p. 2-1, Section 2.1, describing the Proposed Action, fails to inform the reader as to the City's proposed action. It is not until p. 3-23, that the EIR states that this is, in fact, a new General Plan, and then only peripherally, "As required by state law, the Public review Draft General Plan will be circulated for review…" This is the first mention of the actual discretionary action proposed by the City, and the first mention that the project is, in fact, an updated General Plan. Only on p. 3-28, a full 58 pages into the document, does the EIR finally mention (in a table), that the project for which the EIR is being prepared is "the proposed Plan", but even there, the DEIR does not tell the public that this is a new, updated, General Plan.	The type and purpose of the EIR is described on pages 1.3 through 1.4, page 2-1, and page 3-1 of the Draft EIR. The proposed action is described on page 2-1 and pages 3-14 through 3-29 of the Draft EIR. Approvals and discretionary and ministerial actions required for implementation of the proposed Plan are detailed on page 3-28 and 3-29 of the Draft EIR. The City further notes that the General Plan Tune Up is the working title of the proposed Plan.
GECO-3	Backwards Planning has Resulted in Backwards CEQA Tiering Land use planning in California is based on the concept of a General Plan being the blueprint for development within a city or county. Specific plans are adopted after adoption of a General Plan, with which the specific plans must be consistent. Newark has adopted specific plans that were not generally consistent with its General Plan, and is now attempting to rectify the inconsistencies by "Tuning Up" its General Plan to be consistent with its specific plans.	In 2008, the City amended its General Plan to include Policy 2.2a of the Housing Element which calls for the development of "specific plans and zoning amendments for Areas 2, 3 and 4 to provide significant amounts of land for new residential development." Pursuant to this policy, the City then prepared and adopted the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan in 2011. As described on pages 3-3 through 3-14 of the Draft EIR, the General Plan was amended with the adoption of the specific plans. Therefore, the comment is incorrect to assert that the City has undertaken "backwards planning" and incorrect to assert that the City is "now attempting to rectify the inconsistencies."
GECO-4	In addition to not complying with California's planning hierarchy, it also results in inconsistencies between this DEIR and the EIRs that were prepared for the Specific Plans and Area Plans.	The comment does not identify any specific instances of inconsistency. The City disagrees with this comment. No further response is required.
GECO-5	Further, this EIR fails to allow those EIRs to tier off of the General Plan EIR, but instead, appears to tier the general Plan EIR off of the Specific Plan/Area Plan EIRs. This DEIR acknowledges the correct environmental review sequence on the bottom of page 1-3, but fails to follow that sequence. As detailed in the tables below, this has resulted in conflicting and confusing EIR conclusions of significance, where the General Plan EIR concludes that impacts are less-than-significant impacts while the underlying specific plans/area plans have been determined to have potentially significant impacts.	As noted on page 2-2 and 2-3 of the Draft EIR, a number of documents, including the Area 3 and 4 Specific Plan EIR and the Dumbarton TOD Specific Plan EIR, are incorporated by reference pursuant to CEQA section 15150. The Draft EIR does not tier off the specific plans. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review.
GECO-6	Additionally, this General Plan EIR frequently defers impact analyses to future EIRs that, in reality, have already been done. This problem is compounded by the confusion, confirmed by a November, 2012 trial court order holding that the Area 3 and 4 EIR does not specify whether it provides program or project-level analysis of the Area 3 and 4 plan. Program EIRs based on other Program EIRs that defer analysis to never-to-be-required project EIRs does not constitute CEQA compliance.	Please see Responses to Comments GECO-3 and GECO-5 above. Previous environmental review conducted by the City is incorporated by reference into the Draft EIR. Additionally, as noted on pages 1-3 through 1-4, the Draft EIR is a Program EIR, and as such, it is not project-specific and does not evaluate the impacts of specific projects that may be proposed under the Plan. Future development projects on specific sites, including sites in the Southwest Newark Residential and Recreational Focus Area and the Dumbarton TOD Focus Area, will require separate project-level environmental review in order to secure the necessary development permits. With respect to the reliance of the Draft EIR on previous environmental review conducted by the City, please see Master Response 2 regarding Reliance on Previous Environmental Review.
GECO-7	Reliance on Past Environmental Impact Reports The DEIR relies in part on the Areas 3 and 4 EIR and a Housing Element EIR. The Areas 3 and 4 EIR has been suspended by the Alameda Superior Court as it was materially deficient. One of the primary issues in the case was whether the Area 3 and 4 EIR provided an adequate level of analysis to serve as a project-level EIR. For both these reasons, it is inappropriate for this DEIR to rely on the findings of that prior document. Further, the DEIR assumes that	Please see Master Response 2 regarding Reliance of Previous Environmental Review.

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	the Areas 3 and 4 General Plan Amendments have been approved – this is wrong, as the approvals have been suspended by the court.	
GECO-8	The Housing Element EIR relied on the environmental setting, impact analysis, and mitigation measures contained in two previous EIRs adopted by the City of Newark. Those EIRs covered the City's General Plan and a previous proposal for development of Area 2, and were prepared in 1992 and 1999, respectively. Given the age of those documents (17 and 9 years), the amount of new development in Newark and adjacent communities since their preparation, the abundance of more recent data on biological resources, traffic, and air quality, and regulatory changes since 1992 and 1999, their analyses of traffic, air quality, noise, hydrology, land use, and biological resources settings, impacts, and mitigation measures are obsolete and cannot be assumed to be adequate for the currently proposed project. Basing this EIR on those EIRs in any substantive way results in a shell game, where impacts of the "Tune Up" are never actually identified and compared to existing setting conditions.	Please see Master Response 1 regarding Baseline for Environmental Review.
GECO-9	CEQA Baseline and Sea Level Rise – Ignoring the Elephant in the Room This DEIR's environmental setting and impact analyses are entirely silent on the greatest environmental issue to affect some of the opportunity areas, namely sea-level rise [The DEIR identifies City policies regarding sea-level rise, but includes no information on the physical environmental setting, impacts, or mitigation measures, which are the focus of CEQA.]. The San Francisco Bay Conservation and Development Commission (BCDC), which has jurisdiction over shoreline areas of the City, recommends the following consideration of sea level rise (BCDC, San Francisco Bay Plan, http://www.bcdc.ca.gov/laws_plans/plans/sfbay_plan#38): Climate Change, findings: c. Global surface temperature increases are accelerating the rate of sea level rise worldwide through thermal expansion of ocean waters and melting of land-based ice (e.g., ice sheets and glaciers). Bay water level is likely to rise by a corresponding amount. In the last century, sea level in the Bay rose nearly eight inches. Current science-based projections of global sea level rise over the next century vary widely. Using the IPCC greenhouse gas emission scenarios, in 2010 the California Climate Action Team (CAT) developed sea level rise projections (relative to sea level in 2000) for the state that range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. The CAT has recognized that it may not be appropriate to set definitive sea level rise projections, and, based on a variety of factors, state agencies may use different sea level rise projections. Although the CAT values are generally recognized as the best science-based sea level rise projections for California, scientific uncertainty remains regarding the pace and amount of sea level rise. Moreover, melting of the Greenland and Antarctic ice sheet may not be reflected well in current sea level rise projections. As additional data are collected and analyzed, sea level rise projections will likely change over time. The National Academy of Sciences is in the process of developing a Sea Level Rise Assessment Report that will address the potential impacts of sea level rise on coastal areas throughout the United States, including California and the Bay Area.	The comment is noted. The BCDC is not an authority on flood danger or improvements needed to address flooding; It is a State Agency with authority to regulate fill of the Bay and other areas of its defined jurisdiction. Please see Master Response 4 regarding sea level rise.
GECO-10	BCDC also suggests that planning efforts address sea-level rise as follows: e. Shoreline areas currently vulnerable to a 100-year flood event may be subjected to inundation by high tides at mid-century. Much of the developed shoreline may require new or upgraded shoreline protection to reduce damage from flooding. Shoreline areas that have subsided are especially vulnerable to sea level rise and may require more extensive shoreline protection. The Commission, along with other agencies such as the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency, the United States Army Corps of Engineers, cities, counties, and flood control districts, is responsible for protecting the public and the Bay ecosystem from flood hazards. This can be best achieved by using a range of scientifically based scenarios, including projections, which correspond to higher rates of sea level rise. In planning and designing projects for the Bay shoreline, it is prudent to rely on the most current science-	Please see Master Response 4 regarding sea level rise.

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	based and regionally specific projections of future sea level rise, develop strategies and policies that can accommodate sea level rise over a specific planning horizon (i.e., adaptive management strategies), and thoroughly analyze new development to determine whether it can be adapted to sea level rise. o. Approaches for ensuring public safety in developed vulnerable shoreline areas through adaptive management strategies include but are not limited to: (1) protecting existing and planned appropriate infill development; (2) accommodating flooding by building or renovating structures or infrastructure systems that are resilient or adaptable over time; (3) discouraging permanent new development when adaptive management strategies cannot protect public safety; (4) allowing only new uses that can be removed or phased out if adaptive management strategies are not available as inundation threats increase; and (5) over time and where feasible and appropriate, removing existing development where public safety cannot otherwise be ensured. Determining the appropriate approach and financing structure requires the weighing of various policies and is best done through a collaborative approach that directly involves the affected communities and other governmental agencies with authority or jurisdiction. Some adaptive management strategies may require action and financing on the regional or subregional level across jurisdictions. w. The California Climate Adaptation Strategy recognizes that significant and valuable development has been built along the California coast for over a century. Some of the development is currently threatened by sea level rise or will be threatened in the near future. Similarly, the coastal zone is home to many threatened or endangered species and sensitive habitats. The strategy acknowledges that high financial, ecological, social and cultural costs of protecting everything may prove to be impossible; in the long run, protection of everything may both futile and environmentally destructive. The strategy recommends that decision guidance strategies frame cost-benefit analyses so that all public and private costs and benefits are appropriately considered. The strategy further recommends that state agencies should generally not plan, develop, or build any new significant structure in a place where that structure will require significant protection from sea-level rise, storm surges, or coastal erosion during the expected life of the structure (emphasis added0. However, the strategy also acknowledges that vulnerable shoreline areas containing existing development or proposed for new development that has or will have regionally significant economic, cultural, or social value may have to be protected, and infill development in these areas should be closely scrutinized and may be accommodated. The strategy recommends that state agencies should incorporate this policy into their decisions. If agencies plan, permit, develop or build any new structures in hazard zones, the California Climate Adaptation Strategy recommends that agencies employ or encourage innovative engineering and design solutions so that the structures are resilient to potential flood or erosion events, or can be easily relocated or removed to allow for progressive adaptation to sea level rise, flood and erosion.	
GECO-11	As discussed below, it is my professional opinion that the City's approach is in error. CEQA both permits and requires that the baseline used in an EIR to be adjusted to consider all potentially significant environmental impacts.	Please see Master Response 1 regarding baseline for environmental review and Master Response 4 regarding sea level rise
GECO-12	The DEIR uses existing conditions as its setting, which is normally the appropriate baseline for CEQA documents. However, as discussed in a recent California Supreme Court Decision, a future baseline condition may be substituted for existing conditions if using the existing conditions as a baseline "would be misleading or without informational value" [Neighbors for Smart Rail v. Exposition Metro Line Construction Authority and Los Angeles County Metropolitan Transportation Authority, August 5, 2013 (Smart Rail).]. Given that the scientifically accepted projections of sea-level rise would result in a far different setting scenario than under existing conditions, and given that the project's environmental impacts would be significant and more severe under those condition, a future baseline should be used for this issue, either in place of, or in addition to, the existing condition baseline.[3 Smart Rail at p. 448:	Please see Master Response 1 regarding baseline for environmental review and Master Response 4 regarding sea level rise

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Comment ID	Comment	Response
	"existing conditions is the normal baseline under CEQA, but factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decision makers." Smart Rail at p. 449: "Communities for a Better Environment provides guidance here in its insistence that CEQA analysis employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts. (Communities for a Better Environment, supra, 48 Cal.4th at pp. 322.)" Smart Rail at p. 454: "nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project's significant adverse effects."] Under the likely future conditions (sea-level rise of 5 feet or more), portions of the City of Newark's sewage disposal, storm drainage, flood control, and roadway networks likely would not function adequately to serve the proposed development, which would result in impacts of the project on the environment (for example project-generated increases in flood flows, increase in sewage problems, unmet water supply demands, etc.). CEQA also requires that an EIR on a long-term project address long-term impacts of the project [Smart Rail at p. 454: "An EIR should consider "both direct and indirect effects and [give] due consideration to both the short-term and long-term effects of the project. (Cal.Code Regs., tit. 14, § 15126.2, subd. (a).)" Smart Rail at p. 455: "The CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades. That a project will have a long operational life, by itself, does not justify an agency's failing to assess its impacts on existing environmental conditions."]. Given CEQA's requirement that EIRs disclose a project's environmental impacts and the potential severity of impacts, a long-range, plan-level EIR that does not address the substantial long-range environmental impacts associated with sea-level rise is inadequate.	
GECO-13	Cumulative impacts associated with long-term sea level rise also must be addressed. The EIR should analyze how cumulative development proposed in the new Plan would affect infrastructure capacity and need to improve both utilities and flood protection infrastructure.[Smart Rail at p. 450 states, "In particular, the effects of the project under predicted future conditions, themselves projected in part on the assumption that other approved or planned projects will proceed, are appropriately considered in an EIR's analysis of cumulative impacts (see Cal.Code Regs., tit. 14, § 15130) or in a discussion comparing the project to the "no project alternative" (id., § 15126.6, subd. (e)). " and again at Smart Rail, p. 454: "As the Sunnyvale West court observed, a project's effects on future conditions are appropriately considered in an EIR's discussion of cumulative effects and in discussion of the no project alternative. (Sunnyvale West, supra, 190 Cal.App.4th at pp. 1381–1382.)]	The comment is noted. Please see Master Response 4 regarding sea level rise.
GECO-14	Finally, the EIR, in some cases, assumes that an approved Areas 3 and 4 Plan is the baseline and in other cases uses existing conditions. CEQA does not permit a Plan-to-Plan analysis absent a compelling reason to do so.	Please see Master Response 1 regarding baseline for environmental review.
GECO-15	Analytical Gaps The purpose of an EIR is to provide an evidence-based analysis of environmental impacts leading to a conclusion regarding potential significance of the impact, and to set forth and analyze mitigation measures for potentially significant impacts. In many cases this EIR provides a skeletal discussion of the existing conditions, then a list of policies in the proposed Plan and other documents, and then a conclusion of significance. What's missing is the analytical step of explaining how the EIR got from the list of policies to a finding of non-significance. Said another way, the EIR fails to include an analysis of impacts; instead in only includes a list of policies followed by conclusions of significance. In so doing, in many areas as identified in the Deficiencies in the Technical Analyses discussion below, the EIR lacks an analytical bridge between the environmental setting, proposed General Plan policies, and the determination of impacts significance. [It should be noted that cities may approve projects by that do not meet all of a Plan's policies, so that the mere adoption of policies does	The commenter's opinion is noted; however, the comment does not specifically raise any environmental concerns. No further response is required. This comment serves as an introduction to subsequent comments (GECO-16 to GECO-57). Responses to each of the comments on the technical areas are provided below. In addition, if the City is inclined to approve a future project that does not conform with one or more Plan policies, the City will either need to adopt a statement of overriding considerations in conjunction with site-specific review for the project or amend the Plan at that time, which will require additional environmental documentation to support that action.

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Comment ID	Comment	Response
	not assure mitigation of impacts]	
GECO-16	For example: The EIR does not provide any analysis of cumulative aesthetic impacts, just a listing of policies and a conclusion. Further, the conclusion of no significant cumulative impacts because of implementation of policies that have been determined not to be effective for Areas 3 and 4 is contradictory and nonsensical.	Please see page 4.1-13 through 4.1-15 for a complete discussion on cumulative impacts related to aesthetics. Additionally, and as stated in Section 2.2.3, Incorporation By Reference, several existing documents were used throughout the DEIR pursuant to Section 15150 of the CEQA Guidelines. No changes are necessary.
GECO-17	The EIR's construction related air quality "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no supporting analyses.	As stated in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared as a program EIR and therefore does not consider project-specific impacts. As such, and in the absence of proposed projects under the proposed Plan, there are no project-specific air quality impacts to be analyzed as part of this EIR. Therefore, provided the policies and actions under the proposed Plan are adhered to, impacts would therefore be less than significant. No changes are necessary.
GECO-18	The air toxics "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis.	As described in Chapter 4.2, Air Quality, the evaluation of health risk for a General Plan is based on BAAQMD's recommended methodology for a Plan-Level analysis. In accordance with BAAQMD's recommendations, AIR-4 describes impacts from both siting new sources of toxic air contaminants and from placement of sensitive receptors proximate to existing sources of toxic air contaminants. As identified in AIR-4, Policy EH-1.6, would require that sensitive receptors placed proximate to major sources of air pollution would be required to mitigate to achieve BAAQMD's performance standards for community risk and hazard impacts and Action EH-1.C, would require that projects that generate new sources of TACs would be required to reduce emissions to the BAAQMD's performance levels for community risk and hazard impacts.
GECO-19	The Impact BIO-1, BIO-2, and BIO-3 "analyses" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis. Those impacts also rely on future CEQA review and mitigation to reduce impacts to less than significant, which apparently is not proposed by the City.	As stated in Chapter 1.0, Executive Summary, and in Chapter 2.0, Introduction, the DEIR was prepared as a program EIR and therefore does not consider project-specific impacts. As such, and in the absence of proposed projects under the proposed Plan, there are no project-specific biological impacts to be analyzed as part of this EIR. No changes are necessary.
GECO-20	The Impact GEO-3 "analysis" (p. 4.5-15) does not assess any impacts associated with major hazards in proposed development areas, including lateral spreading, liquefaction, subsidence, or collapse. A list of policies followed by a conclusion is not an impact assessment.	On page 4.5-15, the referenced discussion is presented under a subheading entitled "Impact Discussion." With respect to Impact GEO-3, the potential for development under the proposed Plan to result in significant impacts related to on- or off-site land sliding, lateral spreading, subsidence, liquefaction, or collapse is discussed and considered, and appropriate and relevant regulatory requirements and policies are identified. The foregoing evaluation is consistent with current CEQA guidelines (CCR Title 14, Division 6, Chapter 3, Article 9, Section 15126 et seq.). Furthermore, the EIR evaluates the environmental impacts of the proposed General Plan, commensurate with the level of detail provided in the project description, an approach that is also consistent with CEQA Guidelines. The degree of specificity in an EIR should correspond to the degree of specificity in the activity described in the EIR. In this case, the activity described in the EIR is a General Plan, not a specific, narrowly-tailored construction project, where a greater degree of specificity would be expected.
GECO-21	In addition, the EIR (Impacts HYDRO-1, 3, 4, and 5) fail to include any analysis the project's potential impacts on stormwater quality, either during construction of postconstruction, beyond a listing of policies and a conclusion.	The EIR under Impacts HYDRO-1, 3, 4, and 5 does discuss and analyze in detail the potential impacts of the project on storm water quality, including construction and post-construction impacts. These discussions are provided in each section prior to the listing of policies and conclusions. Unlike project permitting, CEQA review of general plans looks at the big picture and therefore this is a program level EIR. Thus, the impact sections discuss how future development projects would be required to comply with Federal, State, and local regulations that would minimize potential impacts on storm water quality and these requirements are listed and discussed in detail.
GECO-22	Impact UTIL-8 includes no actual analysis, just a list of policies and a conclusion.	The EIR under Impact UTIL-8 does include a discussion and analysis regarding storm water facilities, which is provided in the paragraph prior to the list of policies and conclusions. Because this document is a program level EIR, a detailed discussion of specific projects is not appropriate. However, the section does discuss the requirements for future development projects to comply with C.3 stormwater provisions, which will minimize the amount of runoff and impact on storm water facilities.

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GECO-23	Inappropriate Use of CEQA Checklist Approach The DEIR fails to identify a number of impacts, as identified below, because of its inappropriate use of the CEQA Initial Study checklist questions as the only possible impacts. That checklist is intended as a preliminary screening mechanism, not a detailed listing of all possible impacts. Once it has been determined that an EIR is required, the EIR should focus on actual impacts that may result from a project, not just responding to CEQA checklist questions.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
GECO-24	Additionally, as noted below, there are a number of instances where the EIR employs an impact heading which states that the project would not result in a significant impact, while the discussion that follows the heading reaches the opposite conclusion, thereby confusing the reader.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
GECO-25	Project Objectives The objective of "Embrace Newark's bayfront location" (p.3-3) is unclear. "Embrace" is a vague term preventing any measure of whether the project's alternatives' will achieve such an objective. Why is the preservation of open space along the bayfront not "embracing" this location? This is important because the DEIR concludes that the restricted Development Alternative does not achieve this objective, while never actually defining the objective. Given BCDC's policies encouraging protection of these bayfront areas as habitat and open space, we suggest removing this objective or defining it in terms of compliance with the Bay Plan's objectives.	The objective to "embrace Newark's bayfront location" reflects an acknowledgment that the city's historic growth patterns were oriented toward Interstate 880 and SR 84, rather than to the natural resources and amenities on the City's western flank. The intent of this objective is best understood in the context of the policies it underpins, including Policy LU-4.13 (enhancing views to water and wetlands, incorporating bayfront identity in public art and gateway treatment, Policy ED-5.6 (providing shoreline amenities such as trails, wildlife refuges, and bay vistas), and Policy PR-5.3 (encouraging alignment of the Bay Trail near the shoreline). These policies are all consistent with the Bay Plan's objectives. It is important to note that the Bay Plan only applies to areas under BCDC jurisdiction and not the more expansive mandate that the commenter is implying.
GECO-26	Deficiencies in the Technical Analyses Aesthetics The aesthetics discussion for the Southwest Newark and Residential Recreational Focus Area (SNRRFN) goes into great detail about parking lots and fire station building details, but fails to portray the overall change, at a Plan level, of the proposed Plan change. This is not appropriate and fails to provide the reader with an overview of what aesthetics might be changed by the project.	Impacts to the visual character of the Southwest Newark Residential and Recreational Focus Area are discussed on pages 4.1-11 through 4.1-12. The discussion described existing conditions, as well as the type of development envisioned in the relevant specific plan for the focus area, and then analyzes potential impacts in light of the regulations and policies which would guide development in this focus area under the proposed Plan. The impact discussion is appropriate and adequate. No change to the Draft EIR is required.
GECO-27	Impact AES-1 lists General Plan policies and concludes, without analysis, that development of the Plan would not result in significant impacts, but fails to explain how it reached this conclusion.	As discussed in AES-1 on page 4.1-6 through 4.1-7, there are no officially designated scenic vistas or view corridors in Newark nor does the proposed General Plan identify specific vistas or views for special protection in the future. Additionally, AES-1 states several existing and proposed policies that, in combination, would protect the current views. The analysis also states that future development would also be subject to applicable local laws and regulations. Therefore, the conclusion was reached that implementation of the proposed Plan along with compliance with existing laws and regulations with regard to scenic vistas would result in less than significant impacts. No further changes are necessary.
GECO-28	Similarly, the discussion of Impact AES-3 just lists statutes and policies, and summarily concludes that development of the Plan would not result in significant impacts, but does not explain how it reached this conclusion. There is no analytical bridge between the statement of policies and the determination of significance of impacts.	As indicated in AES-3 on page 4.1-12, the impact was in fact determined to be significant. Indicated on page 4.1-16, there are no feasible mitigation measures, and therefore it was concluded that AES-3 would result in a significant and unavoidable impact. The less than significant determinations in AES-3 refer to the impacts to visual character as a result of implementation of each of the four focus areas independently analyzed, however, collectively the implementation of the proposed Plan in all four focus areas would result in a significant impact. No changes are necessary.
GECO-29	The conclusion of AES-3 identifying the impact as significant appears to conflict with the statement on p. 4.1-8 that this impact would be less than significant.	Please see response to comment GECO-28.
GECO-30	Air Quality: The DEIR indicates that the project would have a large jobs/housing imbalance, which would generate more vehicle miles traveled and, therefore, more emissions, than otherwise generated. Plan growth would exceed BAAQMD Plan Area projections. In addition, the DEIR acknowledges that project VMT (and associated emissions) would exceed proportional population growth. The DEIR acknowledges that these emissions would constitute a significant impact (p. 4.2-34). However, the DEIR also states that the project is consistent with the 2010 Bay Area Clean Air Plan (p. 4.2-19). The project cannot be consistent with the plan if it exceeds plan per-capita emissions and planned population growth.	On page 4.2-18, the Draft EIR states that "while the proposed Plan would support the primary goals of the 2010 Bay Area Clean Air Plan, buildout of the proposed Plan would not be consistent with the Clean Air Plan because the projected vehicle miles traveled (VMT) increase from buildout of the proposed Plan would be greater than the projected population increase." Further, on page 4.2-48, the Draft EIR finds that although "numerous goals, policies, and actions contained in the proposed Plan address future increase in VMT and criteria air pollutants under the Plan, the projected growth in VMT in the Plan Area would still exceed the rate of population growth. [As] there are no additional measures that would reduce this impact..." this impact would remain "significant and unavoidable." The significance finding of the Draft EIR is valid and appropriate. No associated change is required to the Draft EIR.

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GECO-31	The DEIR (p. 4.2-39) then concludes that, because future CEQA analyses would be required to analyze air pollution emissions, operational emissions of criteria air pollutants under the plan would be less than significance. There are three problems with this approach.	Please see Responses to Comments GECO-3, GECO-5, and GECO-6 above. As noted, the Draft EIR is a programmatic EIR. Future development projects on specific sites, including sites in the Southwest Newark Residential and Recreational Focus Area and the Dumbarton TOD Focus Area, will require separate project-level environmental review in order to secure the necessary development permits. Air quality analysis included in the Draft EIR was prepared in accordance with BAAQMD CEQA Guidelines (June 2010) which do not require an evaluation of emissions from program-level planning activities such as the proposed Plan. [See BAAQMD's CEQA Air Quality Guidelines Part III, Assessing & Mitigating Plan Level Impacts (pages 9-1 through 9-20)]. Subsequent project level environmental analysis for future development will be required to conduct air quality analysis pursuant to the BAAQMD CEQA Guidelines outlined on pages [See BAAQMD's CEQA Air Quality Guidelines Part II, Assessing & Mitigating Project Level Impacts (pages 3-1 through 8-9)]. As the details of future development proposals cannot be known at this time, further technical analysis of air quality impacts in accordance with BAAQMD Guidelines would be speculative and not required pursuant to CEQA Section 15145. Therefore, the approach to air quality analysis taken in the Draft EIR is consistent with BAAQMD CEQA Guidelines and is appropriate. No change to the Draft EIR is required to address this comment.
GECO-32	First, this EIR ignores that the EIRs for the changes in the Plan have already been completed, and future EIRs apparently are not contemplated.	As described on pages 1.3 through 1.4, page 2-1, and page 3-1, the Draft EIR is a Program EIR and as such it is not project-specific and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. Please also see Response to GECO-3, GECO-5, and GECO-6 above.
GECO-33	Second, this conclusion of non-significance directly conflicts with the actual analysis of plan emissions, which showed that it would exceed district assumptions and significance standards. This EIR's confusing and contradictory approach fails to provide the reader with consistent information needed to consider the project's impacts.	As identified in Impact AIR-1 (see conclusion on page 4.2-34), impacts for consistency with BAAQMD's Bay Area Clean Air Plan were identified as significant because the rate of VMT growth would outpace the rate of population and employment growth.
GECO-34	Third, impacts cannot become less than significant simply based on future analysis.	The significance findings of the Draft EIR are not based on future analysis. Please see Responses to Comments GECO-31 through GECO-33.
GECO-35	For example, this EIR considers construction related air quality impacts to be reduced to less than significant by future environmental review (p. 4.2-39). Yet, as discussed above, such a review is not even proposed by the City because the City apparently intends to rely on past environmental reviews for most of the entitlements in these areas.	Please see Response to Comment GECO -32. The analysis and significance findings of the Draft EIR are valid and no change is required to the Draft EIR.
GECO-36	Further, the construction emissions analyses in both this EIR and the Areas 3 and 4 EIR upon which this study relies, fail to account for transport and grading of millions of cubic yards of materials to form huge earthen platforms needed to raise portions of Areas 3 and 4 out of flood hazard zones and create the massive new levees required to protect those areas from effects of sea level rise.	Please see Response to Comments GECO-3, GECO-5, GECO-6, and GECO-31 above. BAAQMD's CEQA Air Quality Guidelines identifies methodology for evaluating both "Project-Level" and "Plan-Level" impacts. This is because at a Plan-Level, details regarding subsequent projects are not known at a sufficient enough detail to be handled quantitatively. As identified in Part III, Assessing & Mitigating Plan Level Impacts (pages 9-1 through 9-20), and plans are the appropriate place to establish requirements for new construction. However, it would be speculative to identify phasing of future development citywide, construction subphasing, preliminary equipment, and estimates of soil import/export at the General Plan level. Part II, Assessing & Mitigating Project Level Impacts (pages 3-1 through 8-9), identifies methodology for evaluating project level impacts. Future discretionary projects within the City of Newark would be required to utilize BAAQMD's CEQA Air Quality Guidelines. Quantification of construction-related air quality impacts, including assessment of impacts from transport of soil import/export would be required for large construction projections pursuant to BAAQMD's methodology.
GECO-37	The cumulative air quality impacts analysis (AIR-3) and odors analysis (AIR-6) also rely on future environmental review to identify and require mitigation, while the City apparently is not contemplating any such future reviews. The City and the public can not know if approval of the proposed General Plan	Please see Response to Comment GECO-31 and GECO-32. The air quality analysis in the Draft EIR was prepared in accordance with BAAQMD standards. The Draft EIR does not defer mitigation.

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Comment ID	Comment	Response
	"tune-up" will have significant impacts if, as here, the EIR improperly defers analysis of impacts and mitigation measures.	
GECO-38	Biological Resources: The biological resources discussion relies on mitigation measures in the Housing Element EIR and Areas 3 and 4 EIRs to reduce impacts to less than significant. As described below, those measures from other EIRs may not be effective or sufficient:	As indicated in Chapter 2.0, Introduction, in Section 2.2.3, Incorporation By Reference, CEQA Guidelines Section 15150 allows all or parts of other documents to be incorporated into the EIR. No changes are necessary.
GECO-39	Housing Element EIR Mitigation Measures: The biological resources setting Table 4.3-1 and the conclusions that there are no substantial wildlife migration corridors do not reference any supporting biologist or biological resources report. What is the evidence/source document supporting the assertions of species likelihood, as summarized in the table, or wildlife corridors, as claimed on p. 41?	Please see page 4.3-20 for a list of sources used in preparing Table 4.3-1.
GECO-40	Given that detailed biological resources assessments have been completed for some or all of Areas 2 and 4, please include that information in the EIR. For example, it is known that the federally –listed endangered salt marsh harvest mouse occurs on Area 4. Therefore, it is incumbent on this EIR to include and consider that known information.	Please see page 4.3-29 in the Biological Resources chapter for information pertaining the Salt-marsh harvest mouse.
GECO-41	Mitigation Measures 4.3-1 and 4.3-2 are inappropriate deferrals of analysis (in conflict with Sundstrom v. County of Mendocino) to future mitigation measures. At a minimum, this EIR should include prescriptive measures, similar to others approved by regulatory agencies for other projects in the area that would clearly mitigate the project's potential impacts to special status species.	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
GECO-42	Areas 3 and 4 EIR Mitigation Measures [As noted above, it is improper for this EIR to rely upon an EIR that has been suspended because it was materially deficient.] Eviction of burrowing owls as proposed in mitigation BIO-4.2 may result in those evicted owls being depredated at a higher rate than if not evicted, or otherwise suffer population losses as a result of this eviction. The comment notes that, if no such studies exist, impacts to owls should be considered significant and unavoidable. Please note that the document, "Status of Burrowing Owls in Southern California," published by the nonprofit Institute for Bird Populations, found that the owl population in western Riverside County continues to drop despite a sweeping habitat conservation plan that is supposed to protect the birds and 145 other species of animals and plants. As reported in the Riverside Press Enterprise, January 14, 2008: The study's authors found that one-fourth of the owl habitat in western Riverside County was destroyed in the first three years after the habitat plan went into effect. "As long as we treat the mitigation efforts the same, it is very likely burrowing owls will become extinct from the local area," said the study's lead author, Jeff Kidd, a wildlife biologist who lives in the Lake Mathews area of Riverside County. Developers in Riverside County most often use "passive relocation" when owls stand in the way of development. In passive relocation, one-way doors are installed at burrow entrances to keep the owls from re-entering and being killed when the land is graded, said Kidd, a licensed wildlife biologist. Kidd said he calls the process "active eviction." "They usually have no other home to go to, so they die. They get predated or they get hit by vehicles," he said.	Please see Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
GECO-43	Impacts BIO-5 and BIO-6 are examples of why the EIR should not have relied upon the Initial Study Checklist questions in its determination of impact topics – the CEQA physical environmental issues that should have been addressed in these impact discussions are loss of trees and impacts to SF Bay Refuge habitats and sensitive species. Instead, the EIR focuses on compliance with the City's tree ordinance and Basin Plan and Habitat Goals, which are not a physical environmental effect and are therefore peripheral to the CEQA analysis.	Impacts to biological resources, including to the extent required under CEQA impacts to sensitive species, natural habitats, and trees, are discussed and analyzed on pages 4.3-32 through 4.3-48. The analysis of the Draft EIR is adequate. No change to the Draft EIR is required to address this comment.
GECO-44	Cultural Resources The historic structures discussion relies on studies completed in 1989, nearly 25 years ago; it is likely that additional structures have become eligible for listing since that time. Please update this list.	As indicated on page 4.4-7, the St. Edward's Church and the James Graham residence were confirmed to be the only historic resources on the City's list of historic resources.

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GECO-45	The policies described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less-than-significant level. Potential loss of historic structures has been determined by the courts to be an unavoidable significant impact (i.e. League for Protection of Oakland's Historic and Architectural Resources v. City of Oakland). These policies do not prohibit such a loss therefore this impact remains significant and unavoidable.	The comment is noted. As discussed in Chapter 4.4, Cultural Resources, page 4.4-7 indicates that there are no historic resources in Newark that have been placed on the National or California registers, which would require special considerations under CEQA.
GECO-46	Geologic Resources The erosion discussion (Impact GEO-2) fails to address potential erosion impacts associated with the grading and placement of millions of cubic yards of fill required to form earthen huge platforms needed to raise portions of Areas 3 and 4 and other low-lying areas out of flood hazard zones and future need to create the massive new levees required to protect those areas from effects of sea level rise.	In Section 4.5.3, the impact discussion pertaining to erosion (Impact GEO-2) does, in fact, consider the potential for substantial soil erosion or loss of topsoil that could arise from development-related grading, including the emplacement of engineered fill. The section identifies and considers relevant regulatory requirements for construction-related erosion control, such as the City's ordinances that govern grading and excavation (i.e., City of Newark Municipal Code Sections 15.50.020 and 15.50.042). Potential impacts associated with flooding lie outside the scope of this chapter; they are (appropriately) discussed in Chapter 4.8 of the EIR. As noted elsewhere in these responses, a discussion of flooding impacts associated with future sea level rise is not an example of an environmental effect caused by development. Instead, it represents an effect on the Project caused by the environment. As such, it does not require consideration or discussion under CEQA.
GECO-47	In addition, reliance on seismic design requirements from the California Building Code (Impacts GEO-1, 2, and 3) will not reduce impacts to infrastructure, such as roadways and pipelines.	The impact discussions for GEO-1, GEO-2, GEO-3 do not assert that the CBC pertains to seismic risk to infrastructure such as streets or underground utilities. City of Newark General Plan policies, such as Policy EH-2.4 (Infrastructure Resilience), do address standards for roads and infrastructure which consider geologic hazards.
GECO-48	Hydrology and Water Quality As discussed earlier in this letter, this section fails entirely to address sea level rise. The only flood hazard discussion is based on the 2009 FEMA flood hazard maps, which do not include rise in sea level and are currently being revised. New tidal and flood hazard elevations are currently being developed by FEMA in conjunction with the Alameda County Flood Control District [San Francisco Bay Area Coastal Study, California Coastal Analysis and Mapping Project, September 2012.]. As described in the plan for that study: FEMA's coastal study and mapping efforts benefit from new technologies and coastal data, including the latest 2010 detailed topographic data collected as part of the California Coastal Mapping Program. The coastal flood hazard analyses use regional-scale storm surge and wave models of San Francisco Bay. These models produce time-series output of water levels, open ocean swells, and wind-driven waves at over eight thousand points along the complex San Francisco Bay shoreline. Input parameters to the regional-scale models include ocean tide levels, lower Sacramento River discharges, wind and pressure fields, and various river and creek discharges. The model output from the regional models is used to estimate wave runup and overtopping along the Bay's myriad of shoreline structures and steep shorelines, as well as overland wave propagation over beaches, marshes, and inland developed areas. These onshore analyses will form the basis for potential revisions to the Base Flood Elevations (BFEs) and Special Flood Hazard Areas (SFHAs) within the coastal areas of the nine Bay Area counties. Coastal High Hazard Areas (Zone VE) will be mapped when supported by flood hazard modeling results. Any long-term planning effort for bayfront areas should include the findings of this study.	Please see Master Response 4 regarding sea level rise. Please also see Response to Comment GECO-49. Please see Chapter 4.8, Hydrology and Water Quality, impact analysis HYDRO-3 for an impact discussion related to potential flooding. Existing City regulations prohibit construction in the flood zone. If the flood zone boundaries change as a result of the referenced study, the regulations would apply to the new defined areas.
GECO-49	The DEIR correctly notes that BCDC assumes projects will have a lifespan of at least 50-90 years. Therefore, the analysis of impacts (and the baseline) should consider projected reasonable worst-case tidal heights during that time period. Recent estimates of up to 69 inches of sea level rise during the lifetime of proposed project housing would, if they occur, result in the project contributing to large-scale flooding of many of the proposed sites. In addition, rising sea levels will result in rearward flooding of local creeks draining to the Bay. The EIR relies on mitigation measures provides no evidence that raising Area 4 and other low-lying areas outside of possible sea level rise flood levels is even feasible while allowing flood control channels to continue to function. In addition, such elevation increases could require	The comment is noted. Please see Master Response 1 regarding the baseline for environmental review. Please see Master Response 4 regarding sea level rise. For a discussion on the analysis in Chapter 4.8, Hydrology and Water Quality, of the Draft EIR address runoff and erosion in several analyses including the discussions in HYDRO-1, HYDRO-3, HYDRO-4, and HYDRO-5. In general, the impacts were determined to be less than significant resulting from compliance with several existing State, federal, and regional regulations and policies, as well as with the implementation of several policies and actions under the proposed General Plan.

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	placement and grading of millions of cubic yards of material, which could result in significant erosion and associated water pollution not assessed in this document.	
GECO-50	Maps of both revised FEMA flood elevations and projected sea level rise inundation of portions of the site should be added to the EIR.	As noted on Figure 4.8-4, FEMA data from 2010 was used for the analysis in the Draft EIR. The comment does not indicate a specific, more recent data set to use, nor does it provide substantial evidence that the Draft EIR contain inadequate information. No revision to the Draft EIR is required. Please also see Master Response 4 regarding sea level rise.
GECO-51	Impacts HYDRO 6 and HYDRO-9 use the wrong baseline and therefore fail to consider impacts of a 50-90 year Plan, as recommended by BCDC. See also previous comment regarding adequacy of flooding and sea level rise issues.	Please see Master Response 1 regarding baseline for environmental analysis and Master Response 4 on sea level rise.
GECO-52	Public Services The Plan should identify potential locations and impacts associated with construction of a new police station, which would be required to serve the increased population as well as the reconstruction of City Hall and library necessitated by implementation of high-density housing on the current City Hall site.	Although the discussion under PS-3 starting on page 4.12-7, and related to police services indicated a potential significant impact in the analysis, policies in the proposed General Plan would ensure that such impacts were reduced to less than significant levels. As stated in Chapter 1.0 and Chapter 2.0, the DEIR was prepared as program EIR, therefore does not consider project-specific impacts. As such, there were no immediate plans to construct a new facility at the time of the preparation of the EIR and, therefore, those project-specific impacts are not considered. No changes are necessary.
GECO-53	Utilities Water: The water supply analysis uses adequacy of water supply normal rainfall years as its criteria of significance. The DEIR acknowledges that water supply in single- or multiple-dry years would not be adequate for the proposed increased buildout envisioned by the General Plan Tune Up (Table 4.14-3). Yet the DEIR finds this impact to be less than significant solely on the basis of Plan policies that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence upon which to base the conclusions of a less-than-significant impact in these dry years. Further, the assumption that other water supplies would be available in such years (bottom of p. 4.14-10) is unsupported, as no firm contracts have apparently been established by the City or ACWD for those sources, and multiple agencies will by vying for any such sources in those years.	The commenter is mistaken in stating that the water supply analysis only uses the adequacy of water supply during normal supply years as its criteria of significance. As noted on pages 4.14-10 and 4.14-12 as well as Table 4.14-3, the adequacy of water supply during single- and multiple-dry years is discussed. The Alameda County Water District (ACWD) also serves the Cities of Fremont and Union City, which report in their General Plans that there would be a deficiency during single- or multiple-dry years. However, the projected increase in water use for Newark under the General Plan Update for 2035 with additional housing and commercial development is only 557 acre-feet, which is a very small percentage of the ACWD's supply demand of 72,800 acre-feet. The ACWD would also implement their drought contingency plan during dry years, which contains measures that will reduce demands by up to 50 percent. Additional reductions in water usage that were not accounted for in the analysis include requirements for new development to comply with Newark's Green Ordinance and Newark's Bay Friendly Landscape Guide to reduce irrigating water. Development within the Plan area would include the latest technology in water efficient plumbing fixtures and irrigation systems, as specified in the 2010 California Plumbing Code and the ACWD's Water Efficiency Measures for New Residential and Commercial Development. In addition, new development within the City would use non-potable groundwater or recycled water for non-potable uses when supply becomes available. With adoption of these measures by ACWD and the City of Newark, water supply would be adequate even in dry years.
GECO-54	Wastewater and Stormwater Systems: Projected sea-level rise during the project lifetime (at least 50-90 years) will require massive changes to the City's wastewater and stormwater system. Project-generated increases in flows into the systems, development of low-lying areas or construction of large developments on raised platforms, and construction of new high levees to protect the new development will exacerbate these problems and expand the need for facility alterations. The Plan should address the potential need for new lift stations, pumping plants, drainage issues, and contingencies for the projected sea-level rise baseline. We suggest coordinating with the ACFCD in this analysis.	Please see Master Response 4 regarding sea level rise. Impact analysis HYDRO-1 and HYDRO-5 analyze the impacts related to water quality as a result of implementation of the proposed Plan. Also, as discussed throughout Chapter 4.8, future development would be subject to project-by-project review in which specific impacts and mitigation measures would be identified with regards to wastewater and stormwater systems. Also identified throughout Chapter 4.8 are several policies under the proposed Plan which would protect the City of Newark's water quality and water sources.
GECO-55	Alternatives: The benefits (reduced impacts compared to the proposed project) of the Restricted Growth Alternative are understated. Air pollution and GHG emissions would be further reduced by elimination of the need to construct huge levees and earthen platforms for flood protection of development in flood areas. Hydrologic and water quality impacts would be substantially reduced by eliminating much of the planned development in flood-prone areas and areas where flooding will worsen substantially with sea-level rise over the next 50-90 years.	The comment contains factual inaccuracies. First, the construction of levees and earthen platforms is not proposed as part of the Plan or its alternatives. It appears the commenter is speculating such construction will be necessary in the future. To the extent that the comment relates to sea level rise, please see Master Response 4. Second, as discussed on page 6-22 through 6-23, the proposed Plan would result in less-than-significant impacts with respect to hydrology and water quality. While a reduced area would be subject to the potential to affect drainage patterns, water quality, and water resources and the Restricted Growth Alternative would represent a

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		slight improvement over the proposed Plan in regards to hydrology and water quality. The determination of the Draft EIR is appropriate. No change to the Draft EIR is required.
GECO-56	The environmentally Superior Alternative discussion should be revised to eliminate or clarify the vague objective of "embracing Newark's bayfront location". Further, it is unclear why the Restricted Growth Alternative could not be designed to meet the objectives of facilitating cleanup of contaminated sites and foster TOD. Please revise the description of that alternative to meet those goals.	The comment is noted. See response to comment GECO-25.
GECO-57	Conclusion As described above, this DEIR has numerous substantive flaws that render it inadequate under CEQA. It is my professional recommendation that this EIR must be revised as indicated in this letter and recirculated for further public review and comment. Please feel free to contact me at 510 849-2354 if you have any questions regarding the comments herein.	The commenter's opinion is noted. As indicated in Chapter 1.0, Executive Summary, this DEIR was prepared in accordance with CEQA Guidelines.
General Public		
Bradley-1	For the record, I have attached the "written" version of the comments I made last night at the Planning Commission meeting. Thank you for the opportunity to address you regarding the GPT. First let me alert you to the opportunity which was lost to encourage citizens to read over the draft version of the new General Plan. Like you, I would like more citizens to become involved in its vision and formulation. I recently received the latest edition of Newark's official publication, the Newark News. Did I find notification of the Draft General Plan Tune Up and its Draft Environmental Impact Report? even a brief mention of the draft documents being out on the streets and on the City's website for public review? Unfortunately, no. I would like commissioners to consider using all the media at their disposal to encourage citizens to share their views regarding the proposed Plan. Second, I would like you to know that I think there are some very good policies and actions proposed in the latest draft of the General Plan. For example, I really like the fact that City policy does not allow development in 100-year floodplains. I have heard what flooding in the 1980's did to the community of Alviso, just south of us. I think that most folks would consider the policy very sound. The first of two messages I would like to share with you tonight is simply this: all the good policies in the world are only as good their implementation. The planning documents say that the City does not allow development in flood plains. Unfortunately, many if not most of the policies and actions in the new Plan were not drafted in the kind of language that would actually require much in the way of compliance with their intent. I would urge planning commissioners to remove from the draft General Plan most of the "should's", the "may's", the "encourage" or "promote" or "facilitate", and the "to the extent practical". Why? Because as long as the General Plan policies and actions remain conditional, indeterminate, vague and voluntary, the policies will rarely be implemented in the manner or the spirit for which they were created. By allowing developers proposing to build in flood plains to mitigate the risks by building structures which are situated 11 feet atop pads placed in the flood plain does not cut it. And my second message? It is a foreboding: I fear that most of the City's limited resources and well-intentioned efforts are going to be sucked up with implementing the Dumbarton TOD Plan Focus area and recently dubbed Southwestern Newark Residential and Recreation Focus Area. I fear that it will be another 20 years before the City finds the time to focus on what I believe the majority of Newark citizens would like to see addressed now, namely, the challenges of renewing and revitalizing our existing neighborhoods and our retail, commercial and industrial areas. How? Through many of the policies and actions which, for me stand out as the visionary policies and actions that are also in the draft Plan: the policies and actions which address in-fill, pedestrian and bicycle friendly streets and corridors, maintenance and needed rehabilitation of parks, library, and other public facilities, more convenient access to local, out-of-walking-distance destinations such as the regional BART station and medical centers. I believe that those of you who live in this community would really appreciate a General Plan	The commenter raises questions of policy and priorities regarding the General Plan; however, it does not pertain to the merits of the DEIR. No further response is necessary.

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	that puts real meat on the policy bones, and actions that will focus on the types of services we all know are needed now, not some 20 to 30 years down the line. If you allow the major targets of growth and development to focus on the Dumbarton TOD and Southwestern Newark Recreation and Residential projects, then those will be the priorities, and not the types of core development that we need now. I would urge commissioners not to recommend the draft General Plan as it stands today. I would urge commissioners to come up with a real update reflecting the tremendous changes in physical, socio-demographic and economic landscape that have occurred since 1992. You should not continue to make recommendations to the Council that result in "business as usual." The Plan, as it stands now, and as it was just described to you by the City's consultant, will largely result in creating more urban density, traffic congestion, over-priced residential housing, and a continuing deterioration of the quality of life in our existing community. Again, thank you for the opportunity to share my thoughts on this draft update of the City's General Plan. I would appreciate your sharing them with all the planning commissioners. Again, thanks, for the chance to comment.	
Bradley2-1	Dear Mr. Grindall, I appreciate the City's resources that make sending the subject comments (attachment) by email. It was a dreadfully long document to review, but obviously represents a great deal of work on the part your staff and consultants. I apologize for the line numbers in my letter, but I could not get my Microsoft Word program to insert page numbers. Would you acknowledge receipt of the attached comments. I want to assure that there are no problems with the attachment that would delay your review. I will be passing by the Newark Library later this afternoon and will drop a hard copy of my comments (if there's a drop box available). Sincerely, John	The comment is noted. The attachment has been reviewed.
Bradley2-2	Thank you for the opportunity to comment on the draft General Plan Tune Up (DGPT) and related Environmental Impact Report (DEIR). I ask that my comments be given careful consideration as it has taken a great deal of time and effort to review and try to understand the documents. If other persons besides yourselves are tasked with reviewing comments from the public and drafting responses to the comments, then I ask you to personally assure that their responses are appropriate and not merely form-type responses. First, let me comment on the fact that, as a resident and postal customer of the Newark community, I recently received in the mail a copy of the Newark News, an official publication of the City. As you know, it is a newsletter which the City officials share with the residents to keep them posted as to what's going on in the community. I was mildly surprised that I found no mention of the DGPT/DEIR which had been released for a minimal public comment period. I presume there were many reasons why no mention of these documents was made in the Newark News. Nevertheless, I was disappointed that there was no announcement of the General Plan Tune-Up nor a request, however brief, that residents take a look at it and letter City Council representatives know if the plan is in fact in tune with their thinking. After all, it is the plan, with all its well-meaning policies and action directives, that will provide the guidance and foundation on which you, our elected officials and City staff, will move forward in serving residents in so many vital elements of our community life. I do presume that the City fulfilled its minimal obligatory notifications (which is probably noted somewhere in the 568-page DEIR). However, the fact that I did not see notice of it in the Newark News, nor hear it openly discussed by officials in community forums such as neighborhood association meetings, causes me to wonder in what ways City Council Members and City staff persons might inspire residents to become more involved in the formulation of such an important and visionary plan.	The comment is noted. As indicated in Chapter 2.0, Introduction, Section 2.4.1 states that the DEIR will be available for a 45 day comment period. As such, the public review comment period was open from August 14, 2013 through September 27, 2013, or 45 days, as required by CEQA Guidelines Section 15105.
Bradley2-3	Second, I want you to know that I think there are numerous policies and tasks in the draft version of the new, updated General Plan. However, this letter will not focus on all the good points of the draft General Plan Tune-Up, but rather on what I find confusing or deficient or inconsistent about the draft and its	The comment is noted; however, it does pertain to the merits of the DEIR. No further response is required.

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	accompanying report on environmental impacts. I do very much appreciate for instance that the City does not allow development in 100-year flood plains. On the other hand, I think it very ingenuous to get around this policy by placing development on artificially created mounds in the 100-year flood plain. And this is exactly what the draft GPT suggests as a way to mitigate. First it states that it does not allow development in 100-year flood plain and then makes an exception to the policy by stating it will be okay if the developer places the residential units at least 11+ feet above mean high tide. The mitigation that is proposed in several policy and action items under different elements of the DGPT do not avoid or minimize impacts to our environment in any but the legally most minimal manner possible, and in many cases I do not see how they meet even legally minimal criteria. This is my concern: that the DGPT appears to go to considerable lengths to assert that future development proposals will not have significant impacts; or if there will be significant impacts, then they will be mitigated to a level of non-significance; or if the impacts cannot be reduced to a level of non-significance, then the project will be considered of such overwhelming public benefit that they will be approved notwithstanding the significant environmental impacts. The remainder of my letter is a compilation of my annotations made during my review of those parts of the DGPT that I was able to find time to read and reflect upon. I will try to lay them out in some order, following the outline of the DEIR. Some of my comments may appear trivial but I have tried to be observant and frank in my critical review of the DGPT/DEIR. I was struck by how much work must be involved in updating our General Plan every so often, and I agree with the need for periodically reassessing our progress and status because conditions do change that require readjustments. It is my hope that both the final EIR and final GP will serve in a real way as a vision and guide for City Council members, Planning Commissioners, City planners and other staff, and , last but not least, Newark residents.	
Bradley2-4	Page 1-1 The term "discretionary" appears to be used six times in the DEIR. The text states that it relates to "actions and approvals." However, I cannot find in the DEIR a detailed list of such discretionary actions and approvals. In an un-numbered table on page 3-28 of the DEIR it specifies such actions and approvals as recommendations from Planning Commission regarding GPT and DEIR or actions by the City Council addressing the adoption of the GPT and certification of the DEIR, as well as adoption of "ordinances, guidelines, programs, and other mechanisms for implementation of the [GPT]." If possible, I would like to see a list of all actions and approvals that associated with the GPT implementation.	As indicated in Chapter 1.0 and Chapter 2.0, the DEIR was prepared as a program EIR, therefore, there were no specific projects included as part of the proposed General Plan. As such, specific discretionary approvals are unknown until specific projects are proposed, in which further independent CEQA review would be required. However, page 3-28 in the Project Description indicates a list of agencies that could potentially have jurisdiction, and provide discretionary approvals, over projects in Newark. No changes are necessary.
Bradley2-5	Page 1-2 There appears to be a typographic error: "statuts" should probably be "statute." Please let me know as to which statute is the author(s) referring?	Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-6	Page 1-3 The GPT includes some non-mandated sections: Chapters 6, 10, and 11 of the General Plan are considered optional elements, since they are not explicitly required by state law. These elements address economic development, public health, and community services and facilities. The DEIR states that these elements have been included because of the importance of these issues to the future of Newark, and their integral relationship to the topics addressed elsewhere in the Plan. Am I correct in assuming that, once adopted, the optional elements will carry the same legal weight as the mandated elements?	Optional elements do carry the same legal weight as mandated options. Once a General Plan is legally adopted and deemed adequate, all elements [mandatory or optional] are considered equal.
Bradley2-7	The DEIR attempts to explain why it has been prepared as a "Program EIR". It states that "As a Program EIR, it is not project-specific, and does not evaluate the impacts of specific projects that may be proposed under the Plan. Such subsequent projects will require a separate environmental review to secure the necessary development permits. While subsequent environmental review may be tiered off this EIR, this EIR is not intended to address impacts of individual projects." And yet the DEIR appears to deal with some very specific plans for development that were already approved but not compatible with the existing General Plan, namely, the Dumbarton TOD and Area 3 and 4 projects. At a later point in the DEIR it	The comment is noted. As stated, the DEIR was prepared as a programmatic EIR and therefore does not consider project-specific impacts, however, the Dumbarton TOD specific Plan and the Area 3 and 4 Specific Plan are plan level documents, and therefore not considered specific projects in and of themselves. For example, the Dumbarton TOD Specific Plan would have subsequent projects as part of the overall plan. This DEIR does not attempt to analyze those project-specific impacts associated with development under the greater DTOD Plan, but rather the impacts of the overall vision and buildout projected in the Dumbarton TOD Specific Plan. In regards to the previous specific plans (Dumbarton TOD and the Area 3 and 4), subsequent EIRs under the proposed General Plan would

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	states that the Specific Plans for these developments are incorporated by reference. The latter plans which are not consistent with the 1992 General Plan are being included anyhow. Will the Dumbarton TOD and Area 3 and 4 projects require EIRs subsequent to this General Plan Tune Up? I do not presume that the City is proposing to require new or supplemental EIRs for these projects. But is there any further review of those projects that required by CEQA? If so, what type(s) of review and approvals need to be addressed before the implementation of those projects? Will there be some "monitoring review" to assure citizens that those projects, before being implemented, are in accord with the updated General Plan?	not be required. Consequently, there are policies under the proposed General Plan to ensure consistency with those specific plans, as listed on page 4.9-7 of the DEIR. However, independent CEQA review will still be required for future development under either of the plans. Future development under the proposed General Plan, Area 3 and 4 Specific Plan, and the Dumbarton TOD Specific Plan would be subject to project-level CEQA review to identify impacts and mitigation measures specific to the proposed development. As discussed in Section 2.4.3 of the DEIR, a mitigation monitoring or reporting program will be completed as part of the Final EIR, at which time will be considered prior to consideration of the Plan by the Newark City Council.
Bradley2-8	Toward the end of this page, the DEIR states that when a Program EIR is relied on for a "subsequent" activity, the lead agency must incorporate feasible mitigation measures and alternatives developed in the Program EIR into the subsequent activities. I ask the question how many of the mitigation measures documented in the Dumbarton TOD and Area 3 and 4 Specific Plans are incorporated within the DGPT? or the this "Program EIR"? Also I ask the question, are there any new mitigation measures and alternatives developed in the DGPT that are not reflected in the EIRs for those projects? If so, what are they?	References to mitigation measures from previous EIRs have been incorporated throughout the document. Although the comment does not specifically refer to a section or area of concern, areas throughout the document and analyses contained in each chapter specify when a mitigation measure is incorporated by reference. Please see Table 1-1 starting on page 1-8 for a summary of impacts and mitigation measures associated with the DEIR. No changes are necessary.
Bradley2-9	Page 1-4 In explaining CEQA requirements providing for "the analysis of a range of alternatives that could feasibly attain the objectives of the Plan," I question whether or not the "No Project" alternative would meet the apparent objectives of the Plan. Is this a simple matter of the "No Project" alternative not having to meet the objectives under CEQA? What exactly is the purpose of the "No Project" alternative? If one of the objectives of the draft GPT is to implement already approved specific plan developments which are not entirely consistent with the existing 1992 General Plan, how do the non-no-project alternatives meet that this objective? Am I correct in assuming that each of the alternatives analyzed in the DEIR are real and that they could be recommended by the Planning Commission to the City Council for adoption? The DEIR does not really make the options clear to me.	Please see Chapter 6.0, Alternatives, for a complete discussion and analysis of alternatives. As discussed on page 6-1, the alternatives were analyzed pursuant to Section 15126.6 of the CEQA Guidelines. As such, three alternatives were selected for consideration to which one was identified as the environmentally superior alternative, as described on page 6-27. As discussed, although the environmentally superior alternative would be the Restricted Growth Alternative, it would not meet all of the objectives listed on page 6-26. CEQA requires that the environmentally superior alternative be identified, however, that need not be the actual alternative selected if it does not meet most of the stated objectives. As stated in Section 15126.6(e) of the CEQA Guidelines, the purpose of the no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative is not a baseline for determining whether the proposed project's environmental impacts may be significant. Pursuant to Section 15126 of the CEQA Guidelines, the lead agency is responsible for selecting a range of reasonable alternatives.
Bradley2-10	There are many other elements in the draft GPT that are addressed in the DEIR, however, they do not appear to be given equal focus. Instead what I have read appears to focus on the impacts of urbanizing the last, relatively undeveloped, natural spaces remaining within the City limits. In the paragraph initiating section 1.4 - Summary of Alternatives to the Proposed Plan, it states that the DEIR will only address alternatives based on their potential ability to reduce or eliminate the following impacts determined to be significant and unavoidable for the proposed Plan: Aesthetics, Air Quality, Cultural Resources, and Greenhouse [sic] Gas Emissions. It appears then that addressing impacts of development on "open space" resources which have many significant values, including "ecosystem services," and other General Plan Elements will not be given much attention. That is not the most appropriate strategy by which to develop alternatives in my opinion. Apparently impacts to our open space resources (and many other elements) were not deemed significant nor unavoidable by planners. I do not see water supply, climate change, nor biology in this list of elements found to have significant and unavoidable impacts, although they are cited below on page 1-6 as controversial issues.	Section 1.4, Summary of Alternatives to the Proposed Plan, identifies and lists the sections of the DEIR [not the proposed General Plan] to which resulted in significant and unavoidable impacts in some part of the analysis. As such, impacts on open space are in fact addressed throughout various chapters of the DEIR; however, only the impacts determined to have a significant and unavoidable impact are listed under Section 1.4. Provided a specific impact to open space was not provided a specific section, page, or chapter cannot be referenced addressing concerns about open space.
Bradley2-11	I call your attention to a typographic error in the last bullet item on the page: "Greenhous" should be "Greenhouse."	Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-12	Pages 1-5 and 1-6 What is the "proposed Plan"? Is it one of the alternatives, or is it something else? Is not the "proposed project" usually one of the alternatives. What choice, if any, are City residents and City decision-makers being offered with respect to amending the current General Plan? Do planners and decision-makers actually have a choice in approving any one or combination of the alternatives?	Proposed Plan refers to the proposed General Plan Tune Up. In regards to alternatives, the alternative that is considered the environmentally superior alternative is identified; however, a combination of the stated alternatives cannot be approved. As such, the No-Project Alternative and Restricted Growth Alternative were determined to be infeasible, therefore, the proposed Plan is the alternative to which would achieve most, if not all, of the stated

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		objectives in Chapter 3.0, Project Description. For a discussion of the environmental review process, please see Section 2.4 starting on page 2-4.
Bradley2-13	The statement under the No Project Alternative that it " could result in up to 17,900 housing units in Newark by 2035, including approximately 10,950 single-family homes and 6,950 multifamily units, as well as approximately 20,600 jobs" appears at odds with what is stated below in the "reduced residential" alternative. It makes it sound as if even under the "no project" alternative, the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan would be implemented. Is it possible to proceed with development plans that are not entirely consistent with the General Plan? How are the proposed developments to be implemented without modifying the current General Plan? The statement does not appear to clearly reflect or convey the reality of the matter. Again, how is it possible that the No Project alternative could result in all the additional housing when Specific Plans are not compatible with the existing General Plan. Is this a case where project proponents desire developments that are neither envisioned nor condoned (if that's the appropriate word) by the existing General Plan and so they want to change it? If this is the case, then the Final EIR should make it more explicit. To many citizens, it makes more sense to change general plans first and then consider and approve more specific plans as they are proposed. I know that this is often the way the land use planning and decision-making process proceeds, by putting the proverbial cart before the horse, so as to accommodate every Tom-Dick-and-Harry-proposed variance and amendment, but it does not lead to implementing a vision which fosters a sense of sustainable place and community. I believe citizens have had enough of the growth-oriented, short-term profitable, quantity-over-quality kind of city planning and development. Am I correct in understanding the Restricted Growth Alternative that it focuses on filling in, improving our existing neighborhoods, retail/commercial and industrial areas, that is revitalizing what the Newark community currently has or could improve upon without having to urbanize the two remaining relatively undeveloped areas of open space in the southwest and western portions of the City? Both the latter areas current provide buffers between the Cargill Salt operations and continued space in Area 2 for job creation if needed, and greater, less costly insurance against sea level rise. In the description of each alternative, there is data regarding potential housing units and jobs: 17,900 and 20,600 under the No Project alternative; 16,280 and 24,800 under the Reduced Residential alternative; and 16,995 and 22,300 under the Restricted Growth alternative. It is not clear to me how these figures could be so similar to those given in the previous alternatives. Would you explain how the numbers were arrived at? If the numbers are correct, than am I correct in assuming that there could be almost 17,000 additional housing units and more than 22,000 job positions created under the Restricted Growth alternative? If the figures are correct, why would the draft GPT be including the urban development of the City's last remaining natural open spaces, particularly that in Area 4? The draft Plan does not appear to be very visionary with respect to natural open space resources nor at all in tune with the citizenry's increased awareness over the past 20 years of the valuable ecosystem and socio-cultural services such open space provides the our human populations. Indeed, there appears to be a very "business-as-usual" attitude underlying the proposed DGPT.	As stated on page 6-1 in the Alternatives chapter, under the No Project Alternative, existing plans such as the Dumbarton TOD and Area 3 and 4 Specific Plans would continue to be implemented. The No Project Alternative is intended to provide a scenario under which the proposed General Plan would not be adopted and the existing General Plan, and adopted Specific Plans and Area Plans would continue to be implemented. If a Specific Plan, or any other plan for that matter, is adopted through the appropriate adoption process, such as the Dumbarton TOD and Area 3 and 4 Specific Plans, then they are presumably consistent with the General Plan otherwise they could not have been adopted. Please see Chapter 4.0, Land Use and Planning, for discussions pertaining to consistency with the Dumbarton TOD Specific Plan and the Area 3 and 4 Specific Plan. The projections in the alternatives were extrapolated from various sources such as the Area 3 and 4 Specific Plan, the Dumbarton TOD Specific Plan, and the current Housing Element. Please see the description and summary of each alternative for further discussion. Also, as indicated in Chapter 1.0 and Chapter 2.0, the DEIR was prepared as a program EIR and therefore does not consider project-specific impacts. Accordingly, the housing units, population, and employment numbers are merely projections.
Bradley2-14	I see also on this single page of the DEIR, the sections summarizing the "issues to be resolved" and the "areas of controversy." I did note, by its absence from the list of issues to be resolved the idea of whether or not the draft GPT should be adopted "as is". I think that this is the most significant issue to be resolved, that is, whether or not the draft GPT represents a plan which will lead toward assuring a better place for the Newark community. As to the issues needing resolution that were stated I appreciated the summation, however brief. Because my time is so limited, I relied on word processing search tools to expedite my review of the DEIR; and when I searched the entire document for the "issues to be resolves" and "resolve" I could not find anywhere in the document where the City planners have described and	The Issues to be Resolved are determined based on the information gathered during the scoping process and subsequent public meetings. Accordingly, the issues identified in Section 1.5, Issues to be Resolved, are general in nature and therefore, collectively, the DEIR addresses some or all of the issues throughout various chapters and individual analysis contained within each chapter.

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	explained if or how these issues were resolved. I suggest that the final document include a brief description of how the issues were either resolved, or attempted to be resolved, or will be resolved. I appreciate the fact that there are sections of the DEIR that do address these issues in very concise, legalistic terms, but I hope there will be some text in the final document that clearly focuses on the resolution in layman terms.	
Bradley2-15	Page 1-9 Please clarify which "public actions can only be taken after a finding that the action is consistent with an adopted general plan" by providing in the final DEIR as relevant a list as possible of these public actions as they relate to the DTOD and Southwest Newark Residential and Recreation Focus Area projects. In order to better understand the full scope of the draft GPT, please also provide a listing of the actions in the draft GPT which "provide specific direction for how these implementing ordinances [covering zoning and subdivision regulations] should be revised to better achieve the Plan's goals."	All major land use actions and major infrastructure improvements must be consistent with the General Plan. The zoning code and other regulations must be consistent with the General Plan.
Bradley2-16	Page 2-1 The DEIR describes the proposed Plan as "a 'tune up' of the 1992 City of Newark General Plan." It states that "the vision for the growth and development of the community outlined in the 1992 General Plan remains a valid reflection of community values and priorities today." It further asserts that "the land use designations and policies of the 1992 General Plan provide a solid base on which to build." As long as the objective of the proposed plan is to concentrate future development primarily in four areas, namely, the Dumbarton TOD Focus Area, the Southwest Newark Recreational and Residential Focus Area, the Old Town Focus Area, and the Greater New Park Focus Area, then it will be difficult to develop any alternatives to the proposed Plan that achieve these objectives. For example, if the objective is to convert Area 4 into a residential/recreational development it seems nearly impossible to come up with a viable alternative that would result in the achievement of that objective in Area 4. City planners appear to be offering citizens a Plan that, at least in its draft form, can have no feasible options? Is this correct? If not, please clarify this confusion in the Final EIR. Even if these were the direction and intent of the General Plan adopted in 1992, the proposed Plan appears not to recognize that times, environmental conditions and individual attitudes have significantly changed. Citizens', including their children's awareness of such phenomena as aging demographic structure, long-term physical and mental well-being, economics of ecosystem services, a San Francisco Bay Area-wide natural resources-oriented Bay Plan, the adverse effects resulting from the disappearance of local open space, and sea level rise has increased greatly since 1992, even if City planners do not seem in their proposed tune-up to be tuned in to these watershed changes on the on the natural and demographic landscapes.	As stated in Chapter 6.0, Alternatives, the alternatives chosen were done so pursuant to Section 15126.6 of the CEQA Guidelines which states that a range of reasonable alternatives to the project be analyzed. As such, three alternatives were chosen to analyze that were found to be feasible in that they would seek to achieve some or all of the stated objectives listed in Chapter 3, and on page 6-26 of Chapter 6. Accordingly, the alternatives presented are sufficient and in compliance with CEQA Guidelines. Additionally, there is no stated objective explicitly focusing on converting Area 4 into residential/recreational development. For a list of objectives, please see page 6-26.
Bradley2-17	Page 2-5 I see toward the bottom of page 2-5 that "all responses to comments submitted on the Draft EIR by agencies will be provided to those agencies at least 10 days prior to final action on the Plan." Just above this it states that "All persons who commented on the Draft EIR will be notified of the availability of the FEIR and the date of the public hearing before the City." Is it possible for private residents such as myself to view responses to our comments prior to any final action on the Plan. I am not sure how public comment such as mine will be handled. I am aware that individual comments from letters (including letters from agencies) often are grouped together by subject matter and then responses by subject matter are drafted by staff. In any case, on the same page of the DEIR it states that "public input is encouraged at all public hearings before the City." I will be difficult for me to provide informed input to Council Members without first knowing how the comments in my letter have been responded to. I thank you ahead of time for your consideration and "encouragement" in this matter.	The comment is noted. All comments and responses will be published in the Final EIR, as indicated in Section 2.4.2, Final EIR, and pursuant to CEQA Guidelines. Accordingly, the FEIR will be presented to the City of Newark for potential certification as the environmental document for the proposed Plan. All persons who commented on the Draft EIR will be notified of the availability of the FEIR and the date of the public hearing before the City, as stated on page 2-5.
Bradley2-18	Will the required monitoring program described on Page 2-5 become available to the public for comment before the proposed final GPT is submitted to the City Council for consideration? I think it is important that the public has the opportunity to review the monitoring/reporting plan for its relevance,	The monitoring or reporting program will be circulated with the Final EIR prior to the public hearing.

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	completeness, and validity with respect to its intended purpose. This is a part of the planning process that sadly has been neglected in the past but, without it, citizens and decision-makers can have no assurance that plans are implemented and objectives achieved as intended. I would like the opportunity to review and have the chance to comment on it before it is presented to the City Council for adoption; perhaps it could be posted on the City's website.	
Bradley2-19	Page 3-1 On this page, City planners assert that "The vision for the growth and development of the community outlined in the 1992 Newark General Plan remains a valid reflection of community values and priorities today." The year 1992 was a long time ago and I'm wondering how the planners ascertained that the '92 plan continues to be a "valid reflection of community values and priorities" after some 20 years. Is this assessment based on any systematic collection survey results? Is this assertion more anecdotal in nature, not based on the results of any valid survey or research? To be forthright, I was not around the Bay Area in 1992. I became a Newark resident/homeowner in 2005. It would be helpful to see data documenting and identifying what the community values and priorities actually were in 1992. Can Newark City planners offer any data substantiating their characterization of the community's values in 1992 and their adequacy for today's population and the socio-cultural milieu of 2013? It is asserted in the DEIR that vision of the draft General Plan Tune Up promotes the same, strong sense of community and neighborhood familiarity that the 1992 General Plan apparently advocated for. But the same Tune Up espouses previously inconsistent decisions which allowed for residential neighborhood development on the outskirts of our community (albeit on a greener side of the railroad tracks as it urbanizes the last remaining natural open spaces. Please explain in the Final GPT how the proposed Plan is consistent with the timing and location of development given the projections for sea level rise and the majority of citizens not in favor of filling bay lands.	The commenter's opinions about the General Plan are noted; however, it does not pertain to the merits of the EIR Please see Master Response 4 regarding sea level rise.
Bradley2-20	One of the draft GPT's objectives is to "meet the regional need for housing, as defined in State Legislation and the Bay Area's Sustainable Community Strategy (SCS) and provide a wide range of housing opportunities for all housing types and income levels." Neither the draft GPT nor the DEIR adequately explain why it is incumbent on Newark to meet the region's additional housing needs. It seems to me that Newark has already done more than fair its share of filling up land with housing. Is there space for more? Sure, but it does not have to be located in the last remaining open space that Newark has. Instead the City's General Plan ought continue to plan for housing on vacant property in already developed areas. Instead continue to plan for increasing housing density as redevelopment opportunities arise. Nowhere can I find an explanation for why the City must endeavor to urbanize or industrialize every last parcel of unused, vacant, natural open space. What forces a community to urbanize their last remaining large parcels of natural open space? Why can't it be preserved as open space? Do flood plains need to be filled in order to meet regional housing needs. Can't this need for housing be met by using other lands besides flood plains and lands immediately adjacent to the Bay?	Please see the discussion on page 4.11-1 regarding the Regional Housing Needs Allocation (RHNA). As discussed, State law mandates that each jurisdiction provide sufficient land to accommodate a variety of housing opportunities for all economic segments of the community. The Association of Bay Area Governments is the regional planning agency that determines the RHNA for jurisdictions within Alameda County, including Newark. Please see Chapter 4.9, Land Use and Planning, for a discussion on impacts on land use and planning.
Bradley2-21	I would argue that over the past 20+ years, the attitudes of the majority of citizens in Newark have evolved. They are not in favor of allowing flood plains and baylands to be filled with more urbanization. Instead, citizens want to see flood plains and the bay lands conserved. Citizens want to see the integrity of the Bay estuary preserved. Citizens from all around the Bay, including the majority of citizens in Newark, expect to see the Bay protected from any further encroachment by urban and industrial development. I would argue that since the drafting of the 1992 Newark General Plan, we have "discovered" that the climate is warming up, the ocean's mean high tide is rising and subsequent risk of flooding increasing, the San Francisco estuary's natural indigenous communities are in serious decline, and the quality of fresh water aquifers in our watershed is becoming compromised. Our City's planners and decision-makers will miss the boat if they approve the proposal Plan as it is currently formulated.	The comment is noted. Potential impacts with regard to flood impacts can be found in Chapter 4.8, Hydrology and Water Quality, in impact discussions HYDRO-3, HYDRO-4, HYDRO-6, and HYDRO-7.

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	Doesn't all this newly found appreciation for leaving still undeveloped bay lands intact have any significant value?	
Bradley2-22	Page 3-11 It appears that "modifications to two Pacific Gas & Electric (PG&E) transmission towers" to accommodate the proposed structural overpass over the Union Pacific railroad tracks into Area 4. I have heard that the costs of such modifications are extremely expensive, as in the tens of millions of dollars. What are the estimated costs of implementing these modifications? Who is paying for the PG&E transmission tower modifications? The developers? the City? or the rate payers? " Utilities infrastructure, including a new public water distribution system within the residential streets of Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge wastewater generated by new uses in Area 4." From the California General Plan Guidelines: Capital facilities must be consistent with the general plan (Friends of B Street v. City of Hayward (1980) 106 Cal.App.3d 988). The network of publicly-owned facilities, such as streets, water and sewer facilities, public buildings, and parks form the framework of a community. Although capital facilities are built to accommodate present and anticipated needs, some (most notably water and sewer facilities and roads) play a major role in determining the location, intensity, and timing of development. For instance, the availability of sewer and water connections can have a profound impact upon the fea *[SIC]* Were the proposed capital facilities determined to be consistent with the 1992 General Plan? If not, were there amendments made to the General Plan prior to the proposed Plan?	The comment is noted; however, it does not pertain to the merits of the EIR Please see Master Response 5 for a discussion of the Area 4 project. It is Newark policy that developers pay the cost of infrastructure improvements and changes needed to facilitate their developments.
Bradley2-23	Page 3-12 The DEIR states that "Furthermore, the only land use designation change addressed in the Area 3 and 4 Specific Plan EIR was the change of 78 acres in Area 3 to Medium Density Residential from Special Industrial. At a program EIR level of detail, these uses have substantially similar impacts on the environment. (This is documented in section 6: Alternatives). Therefore, regardless of whether the Area 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan." If impacts are substantially similar, then are we really being presented with "alternatives"? The reasoning appears circular. It appears that the City's planners are admitting that if the Area 3 and 4 EIR is not upheld, they will rely on the associated mitigation measures as part of the background condition for purposes of analysis in the GP-T EIR and this results in DEIR assertion that "this Program EIR fully addresses the environmental impacts of the proposed General Plan."	As discussed on page 3-12, although the change addressed in the Area 3 and 4 Specific Plan EIR included the change of 78 acres to Residential from Special Industrial, the overall impacts in the context of a program EIR are similar in that neither the Area 3 and 4 Specific Plan, nor the DEIR for the proposed General Plan consider or analyze project-specific impacts, so while the change in designation occurred, there were no specific projects proposed under the Area 3 and 4 Specific Plan, nor are any specific projects being proposed under the proposed General Plan. As such, the impacts, at a programmatic level, would be similar, therefore, no changes are necessary. Even if the Area 3 and 4 Specific Plan EIR is not upheld, any background information used for the purposes of the DEIR would not necessarily render the analysis void or untrue. Please see Master Response 5 for a discussion of the Area 4 project.
Bradley2-24	Page 3-15 In Table 3-3, the DEIR states that the proposed Plan's State-mandated topic of conservation is to be combined with the topic of sustainability, thus creating a new Element. policies which keep Newark a business-friendly, economically competitive community. The Conservation Element addresses wetlands management, vegetation and wildlife, waterways and water quality, salt production, and urban forestry are addressed. The Sustainability Element includes strategies to curb nonrenewable resource consumption, reduce greenhouse gas emissions, encourage recycling, promote green building and renewable energy, and implement other measures which make Newark a more sustainable city. Unfortunately, this DEIR does not address this element very well. The DGPT fails to address sea level rise with the most current information. And the City's planners have opted not to address the issue of sea level in the DEIR because it is not necessary to analyze environmental impacts on the proposed Plan but only the proposed Plan's impacts on the environment. But not to discuss the reality of rising sea level in more detail appears irresponsible to me.	The comment is noted. Please see Master Response 4 regarding to sea level rise.
Bradley2-25	Page 3-28 Although the DEIR states that "no specific developments are proposed as part of the Plan," why are there so many pages in both the GPT and the DEIR devoted to the DTOD Project and the Area 3 and 4 Project (renamed the Southwestern Newark Recreational and Residential Focus Project)? The text of this paragraph does not point out that at least two Specific Plans had been previously approved and that those Plans were not entirely consistent with the original 1992 Plan. Did the adoption and	This comment is in incorrect. In 2008, the City amended its General Plan to include Policy 2.2a of the Housing Element which calls for the development of "specific plans and zoning amendments for Areas 2, 3 and 4 to provide significant amounts of land for new residential development." Pursuant to this policy, the City then prepared and adopted the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan in 2011. As described on pages 3-3 through 3-14 of the Draft EIR, the General Plan was amended with the adoption of the specific plans. Therefore,

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	certification of the two Specific Plans (DTOD and Area 3 and 4 Project) treat inconsistencies with 1992 GP as significant and otherwise mitigated to level of non-significance or given "overriding" consideration? What the text of the DEIR does not tell us is if there are any discretionary actions left regarding the implementation of the DTOD and the Area 3 and 4 Project. Are there? If there are, what are they? What becomes of those projects if the proposed GPT is not adopted or its DEIR is not certified?	the comment is incorrect to assert that the City has undertaken "backwards planning" and incorrect to assert that the City is "now attempting to rectify the inconsistencies."
Bradley2-26	I would like to see included in the Final EIR information that gives me an idea of what happens to future proposals which upon review are found not to be consistent with the General Plan. As it stands, the DEIR simply tells me that future development proposals will be reviewed for consistency and adequately reviewed per CEQA. Please include a brief discussion in both the final EIR and GPT what happens to proposals that do not pass GP and/or CEQA muster. If such projects are proposed in the future, does the City simply amend the GP to conform with the project and determine "overriding considerations" in the case of unavoidable significant environmental impacts? The DEIR reiterates on this page the fact that the [final] EIR will serve as the environmental document for all discretionary actions associated with development of the proposed Project. Please see and respond to my comments above regarding "discretionary." The DEIR is also intended to assist other responsible agencies in making approvals that may be required for development under the proposed Plan. Do these Federal, State, regional, and other regulatory agencies have any discretion in their determinations? If not discretion, do these agencies have ministerial authority that could preclude the implementation of the projects as referred to in the GPT?	The comment is noted; however, it does not pertain to the merits of this DEIR. In regards to the question about what happens to inconsistent plans or projects, that is a planning issue. In regards to the question about other agencies, depending on the project, some agencies may or may not have jurisdiction and therefore may or may not have the discretionary or ministerial authority. To the extent that the level of authority from federal, State, regional, and local agencies is identified would be discussed at the project level provided that they type and location of specific projects determines which agency or agencies would provide approvals. Accordingly, this DEIR identifies agencies that would be required to approve all or in part, programs under the proposed General Plan according to each agencies respective responsibilities and jurisdictional boundaries.
Bradley2-27	Page 3-29 The DEIR states that the proposed Plan would also require discretionary and ministerial actions by the three other agencies and that these actions would occasion the revisions of regional models related to growth and development projections. However, I have been under the impression that much of the project proposals and their prior adoption by City planning and council members relied on the existing model projections. Would you please clarify what models were used in the analyses underlying the DEIR and why they may require revision?	The comment is noted. To the extent that other agencies would be involved, such regional models related to growth would need to be modified to reflect implementation under the proposed General Plan. For example, if an increase to population in a specific area results in the need for updated or new streets, the Alameda County Transportation Commission may need to update their existing regional models to reflect such development projections. In short, other agencies would need to potentially update and modify their respective plans and projections to reflect the updates of the proposed General Plan. In regards to what models were used in the analyses underlying the DEIR, that question is too vague to provide a detailed response. As such, each chapter and analysis in the DEIR identify or cite to which sources were used for the discussion. See the Regulatory Setting of each chapter for a discussion of plans or models that may have been used for that chapter.
Bradley2-28	4.2-10 The DEIR states that one objective of the County-wide Transportation Plan (CWTP) is to "[e]encourage a pattern of major employment centers and employment in general with convenient transit access and nearby mixed use and residential areas." It seems that the City has approved and permitted the development of a number of office and light-to-moderate industrial facilities which lack convenient connection with BART as well as adequate arterial access to and from many facilities. The railroad infrastructure in Newark is another barrier to an enhanced, efficient mobility. The City already has several employment centers. Now the challenge is to make them convenient to residents and commuters. Our resources over the next 25 years should be directed toward these types of improvements, not toward creating residences near new, costly transit stations that will only serve to create more congestion. There is serious doubt about a rail station ever being built as envisioned in the Dumbarton TOD Project as its adverse impacts on the environment are to great and it is so very expensive; I have heard that rail transit is the most expensive, cost inefficient infrastructure to build and maintain. It is in my opinion unfortunate that City planners have not provided a discussion of the actual prospects for obtaining the funds necessary to implement the rail project. Toward the bottom of this page of the DEIR it states that "Projects in the 2012 CWTP are eligible to receive local, regional, and federal funding through 2040." Which of the PDAs and GOAs in Newark are projects in the 2012 CWTP? The paragraph above refers to the Alameda County Draft Land Use Scenario Concept (which title sounds very, very preliminary and imaginary). What generally does it mean that the Newark PDAs "are included	The commenter's opinions are noted; however, it does not pertain to the merits of the EIR The inclusion of Newark Projects in the Plan Bay Area means that these areas- Dumbarton TOD and Old Town are areas that the regional has identified and places to grow in a more sustainable way.

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	in MTC's Plan Bay Area?	
Bradley2-29	Page 4.2-15 In discussing CEQA thresholds, the DEIR states: "While identifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, identifying the effects on the Project and its users of locating the Project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes." This is not clear to me. Perhaps you could illustrate the meaning with a brief example. What it seems to be saying is that pointing out a proposed project's vulnerability to an environmental hazard is consistent with CEQA, but explaining the effects of the environmental hazard, such as the results of an earthquake on the project's infrastructure, is not consistent with CEQA's purpose. The DEIR goes on to state: " Appendix G of the Guidelines is a sample checklist form that is suggested for use in preparing an initial study, and which the City has employed to assist in the preparation of this Draft EIR (see Guidelines, § 15063, subd. (f))." I am not sure what the author(s) are trying to say. Please clarify this in the Final EIR.	In short, the statement clarifies the purpose of the DEIR in that it is looking at impacts of the project, in this case the proposed General Plan, and the potential effects of such on the environment, as required under CEQA. Consequently, CEQA does not require consideration of effects on the project (the proposed Plan). In the case of earthquakes, CEQA requires the consideration of a project related to disturbance of a known fault, of which could cause rupturing, to which could lead to impacts on the project or people. Although this seemingly appears to refer to an impact of the environment on the project, the thresholds of Geology and Soils actually analyze the impacts of a project on a known fault (the environment) to which the rupturing of such would then result in an impact on the project or people.
Bradley2-30	Also below, there appears to be a typographic error where "Bellona" should be "Ballona" as in most other references cited in the DEIR	Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-31	The DEIR states: "Accordingly, while the City provides the following informational analysis of thresholds taken from Appendix G of the CEQA Guidelines, that the Guidelines language in thresholds d and e, as they relate to the placement of sensitive receptors under the proposed Plan, above are not examples of an environmental effect caused by development, but instead is an example of an effect on the Project caused by the environment." Again, the writing of this sentence is not very clear. I am understanding that some environmental condition like traffic noise is measured but, because they are not effects of a proposed development project, they will not get analyzed in an EIR? With all due respect, this doesn't make any common sense. Can you state or explain what you are intending to say in plainer English? I think is important. For instance, with respect to traffic noise in the background environment, there is a lot of proposed mitigation measures to make sure that folks will not be too adversely affected by the noise. (I live in an "orange" noise zone according to the City's maps, in a house that was built in the early 1970's. I sure wish the City's decision-makers back then would have required the developers to build more insulated homes so I would not be so exposed to the constant rumble of the nearby freeways.)	CEQA requires that the results from a project or plan be disclosed so that decision makers and the public can make an informed decision about the impacts of their decisionss. Issues such as existing noise levels are important issues that are considered when contemplating new development, however, they are result of existing conditions not the results of the General Plan. The fact the CEQA is focused on the impacts of the plan should not be construed to mean that the City does not consider existing conditions. Please see Chapter 4.10, Noise, Section 4.10.3, Impact Discussion, for a discussion on noise related impacts under the proposed Plan. Noise is in fact analyzed to the extent of the noise being related to impacts of buildout of the proposed Plan on the environment. In the example in the comment, traffic resulting from a project, which generates noise, is in fact an impact of the project on the environment. For that reason, the Noise chapter addresses such impacts.
Bradley2-32	Page 4.2-16 In using acronyms such as BAAQMD, please spell out acronyms the first time they are used, and additionally if there's lots of pages between usages. I presume there is a glossary of abbreviations used in this document, but I find it hard to navigate to when viewing and inserting comments electronically. I had to go back to a footnote several pages prior to the determine it stood for Bay Area Air Quality Management District. (Before retiring, I used to work in government and understand how pervasive acronyms have become. Guess I might understand them better if I practiced texting on a cell phone?)	The comment is noted. As stated on page 4.2-1 in the opening paragraph, BAAQMD is spelled out the first time it is used. Accordingly, BAAQMD stands for Bay Area Air Quality Management District.
Bradley2-33	The DEIR states that "A comparison that the project VMT or vehicle trip increase is less than or equal to the projected population" must be determined. I am not sure I understand this bullet. Please consider rewording it in the context of completing the phrase "but an analysis of the following:". Neither does the last bullet make much sense to me. It is not understandable in the context following the phrase "but an analysis of the following:" Instead it sounds like an excuse…or the analysis itself. If it is intended as an analysis, it probably should not be formatted as a bullet. In any case, could it be re-phrased in the Final EIR? I think such footnotes as number 19 appear overly pedantic and contribute to the general un-readability of a documents which is intended for review by "interested public" and decision-makers.	The bullet referred to in the comment means that, under BAAQMD, a plan-level review with respect to air pollutant emissions, must include a comparison that the project Vehicle Miles Traveled (VMT) or vehicle trip increase is less than or equal to the project population increase.

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Bradley2-34	Page 4.2-17 The DEIR states that "The BAAQMD's significance thresholds for local community risk and hazard impacts apply to both the siting of a new source and to the siting of a new receptor" and notes that "the purpose of this EIR is to identify the significant effects of the Plan on the environment, not the significant effects of the environment on the Project." In this case, as a result of the proposed General Plan, there may be impacts in two respects: (1) a project resulting in new sources of pollution, and (2) those new sources possibly having impacts on current and future residents. The air quality resulting from the project implementation becomes a part of the human environment that affects humans in that modified environment. Does this make sense? or am I writing gibberish also?	As stated, the DEIR is a program EIR and does not analyze project-specific impacts, therefore in the absence of proposed projects, it cannot be determined where or to what extent sources of pollution would be placed.
Bradley2-35	The DEIR states that the "City of Newark is not in one of the six impacted communities identified in BAAQMD's CARE program." What is the CARE program? The DEIR states that "For a plan-level analysis, a project must also identify goals, policies, and objectives to minimize potential impacts and create overlay zones for sources of TACs and receptors." Please clarify what is the issue that the DEIR is attempting to address? What is the bottom line? Would you try and state this in plainer English. If you really think that the proverbial "man on the street" can comprehend this, then do not bother.	The Community Air Risk Evaluation (CARE) was initiated in 2004 by BAAQMD to evaluate and reduce health risks associated with exposures to outdoor toxic air contaminants in the Bay Area. The section on page 4.2-17, the subject of the comment, intends to lay the foundation for BAAQMD thresholds with regard to Community Risk and Hazards. As stated, provided the City of Newark is not within the CARE program, it therefore has less stringent requirements (thresholds) than a community that is considered impacted under the CARE program, or otherwise areas having higher levels of TACs. However, as discussed, certain measures must still be complied with such as creating overlay zones and identify goals and policies to reduce potential impacts.
Bradley2-36	Page 4.2-18 I think that the AIR-1 sentence "While the proposed Plan would support the primary goals of the 2010 Bay Area Clean Air Plan, buildout of the proposed Plan would not be consistent with the Clean Air Plan because the projected vehicle miles traveled (VMT) increase from buildout of the proposed Plan would be greater than the projected population increase" would be improved if stated thus: ....because the increase in projected vehicle miles traveled (VMT) would exceed the goal??? After reading it 5 times, I still do not understand exactly what the DEIR is attempting to say.	The AIR-1 sentence is a statement of finding based on thresholds of CEQA Guidelines. Accordingly, it states that the proposed Plan would support the goals of the 2010 Bay Area Plan, the Plan would be inconsistent with the Clean Air Plan due to the fact the projected VMT is greater than the increase of the projected population. As stated on page 4.2-34 the projected VMT would be above the threshold of the BAAQMD, therefore the impact would be significant, as determined.
Bradley2-37	Page 4.2-19 The DEIR states that "New policies would be introduced as part of the proposed Plan to minimize impacts. With the additional measures proposed in the City's CAP, impacts would be less than significant." Are these "additional measures" newly proposed in the proposed General Plan? or are they already part of the "prepared and approved" CAP?	The statement is saying that policies under the proposed General Plan, in addition to policies in the City's already CAP would reduce impacts to a less than significant level.
Bradley2-38	The sentence "Table 4.2-4 identifies the control measures included in the 2010 Bay Area Clean Air Plan, and, as shown, implementation of the proposed Plan goals, policies and actions in Table 4.2-4 would ensure that the proposed Plan would be consistent with the 2010 Bay Area Clean Air Plan and that the impacts due to inconsistency would be less than significant...." is poorly stated. In the first part of sentence the author states that the proposed Plan would be consistent with the 2010 Bay Area Clean Air Plan, and then in the second part of the sentence asserts that there would be inconsistencies (but not significant ones).	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required..
Bradley2-39	Under Regional Growth Projections for VMT and Population and Employment, the DEIR states that "As a result, BAAQMD's approach to evaluating impacts from criteria air pollutants generated by long-term growth associated with a plan is done in comparison to BAAQMD's AQMP rather than a comparison of emissions to project-level significance thresholds." Is noun "criteria" serving as an adjective to pollutants? I am not sure what the phrase "criteria air pollutants" refer to.	Page 4.4-2, under the heading Criteria Air Pollutants, provides an in depth description of what criteria air pollutants are. As stated, criteria air pollutants are pollutants emitted into the ambient air by stationary and mobile sources.
Bradley2-40	Page 4.2-20 With regard to the "stationary and area source control measures," does the City's General Plan have a policy and action that would assure that new and existing sources of stationary and area sources are complied with? Does the City's General Plan take on the responsibility of checking with the BAAQMD? or receiving from the responsible source evidence of its compliance? Will this be part of the Mitigation and Monitoring Report Plan?	The comment is noted; however, it does not pertain to the merits of the EIR. Please refer to the General Plan page HW-18 for Policies and actions in support of air quality goals.
Bradley2-41	With regard to the "mobile source control measures," does the proposed General Plan include policy and actions to assure that mobile sources and their owners, especially those associated with development,	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required. Please refer to the General Plan page HW-18 for policies and actions in support of air quality goals.

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	are CARB-compliant?	
Bradley2-42	Page 4.2-24 I am not in favor of the Action t-3B because I am not in favor of the Dumbarton Rail project due to the disturbance to wildlife and wildlife habitat that it will create both during its construction and operations and maintenance activities. I am guessing that the residential component of the project will only result in further congestion on Newark roadways.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required..
Bradley2-43	Page 4.2-39 I think there is a "non sequitur" in the sentence toward the bottom of this page that states: "Further, future development under the proposed Plan would be subject to separate environmental review pursuant to CEQA in order to identify and mitigate potential air quality impacts. As such impacts from construction emissions under the proposed Plan would be *less than significant*." Separate environmental review may identify air quality impacts that cannot be mitigated. The "less than significant" is not a slam-dunk simply based on review and identification of potential air quality issues. This is not necessarily "self-mitigating."	As stated, the DEIR is a program EIR and does not analyze project-specific impacts, therefore the determination of less than significant is based on the analysis of the proposed Plan, not necessarily any specific project. Therefore, the determination is not necessarily stating that all future development under the proposed Plan would result in less than significant impacts, but rather the subsequent project-specific CEQA review required for future development would be required to identify and mitigate those impacts accordingly on a project-by-project basis. For purposes of this DEIR and in the absence of specific projects, it was assumed that future development would adhere to applicable laws and regulations, therefore in the case of this DEIR, impacts were determined to be less than significant. No changes are necessary.
Bradley2-44	Page 4.2-40 In the sentence "The analysis under was based on 2035 traffic data in the Alameda County Travel Demand Forecast model, which incorporate cumulative development anticipated in the county and the region through 2035 as projected by ABAG" the DEIR does not explain "under" what or "under" where. I presume this is a typographical error.	"Under" is referring to the analysis following that specific statement.
Bradley2-45	The DEIR states that "cumulative impacts from the proposed Plan related to criteria air pollutant increases would be the same as the Plan-specific impacts discussed previously in this chapter." But this doesn't make sense. How does the Alameda County Travel Demand Forecast model incorporate "cumulative development"? Were any of the development projects in the proposed Plan actually incorporated into that model in any specific manner? If so, to which page of which document(s) can I go to verify this?	The Alameda County Travel Demand Forecast model does not specifically model individual developments. However, the Alameda County Travel Demand model does embody land use projections that are regionally accepted and have undergone environmental review. The traffic analysis is disclosing traffic impacts associated with implementing the City's proposed GP in comparison to the County's Plan. In that sense, the analysis reasonably satisfies the objective of the EIR (from a traffic perspective).
Bradley2-46	The DEIR asserts that the "implementation of the proposed Plan policies cited under AIR-2 would reduce operational emissions of criteria air pollutants from development projects under the proposed Plan to the maximum extent practicable. As such, impacts from construction and operational emissions of criteria air pollutants generated with buildout of the proposed Plan would be less than significant." This is confusing; it appears to be a repetition of the previous sentence.	The first part of the statement is merely stating that the proposed policies would reduce operational emissions of criteria air pollutants, whereas the second statement is making a final determination, or conclusion related to both operation and construction emissions.
Bradley2-47	Page 4.2-41 In the next to the last paragraph on this page the DEIR states: "Because these are screening distances, refined analysis of the effects from many of the high volume roadways would likely show much lower potential TAC exposure and smaller buffer zones." The DEIR does not explain what "screening distances" means? nor what "refined analysis" means in this context? nor who is responsible for carrying out such analysis? It would help if you provided these clarifications in the final EIR?	BAAQMD has provided conservative estimates of risk and hazard impacts from roadways for each county within the Bay Area based on the average annual daily traffic volumes and distance from the roadway. These are referenced to as the screening distances in Chapter 4.2, Air Quality. For projects that fall within these screening distances, a refined analysis is required to determine the actual level of risk. The refined analysis must follow BAAQMD's methodology for modeling local risk and hazards. Future discretionary projects that trigger this requirement would be required to prepare a health risk assessment following BAAQMD's methodology, which would be submitted and approved by the City.
Bradley2-48	Page 4.2-43,44 The DEIR states under Action HW-1.F: Health Risk Assessments that the City shall requires project development proponents to submit a Health Risk Assessment within 1,000 feet of the I-880 or SR 84 freeways. I would amend this to specify that the "1,000 feet" is from the edge of the CalTrans right-of-way closest to the proposed development. The overall action could be good if the BAAQMD guidelines are conservative. But I do not know what they. Does a HRA typically take into account prevailing winds? Also I do not know if the agencies have identified "acceptable" impact levels; have they? what are they? where can they be verified? Of course Newark has a few residential neighborhoods that are clearly within the 1000 feet "screening" area, one of which I live in. How does the Lake neighborhood deal with TACs from both SR-84 and I-880? Do assessment tools take these	The commenter is correct. The distance measured shall be the edge of the nearest lane of travel, pursuant to BAAQMD's methodology. BAAQMD's guidelines for evaluating community risk and hazards can be found on BAAQMD's website. All sources within 1,000 feet are considered (e.g., if new residential land uses are within 1,000 feet of SR-84 and I-880, both roadways would be included in the risk assessment). Health risk assessments take into account meteorology (e.g., wind direction by time of day), and BAAQMD's CEQA Guidelines identify thresholds for which impacts would be less than significant for both cancer (excess cancer risk > 10 in a million) and acute risk (increase of more than 0.3 ug/m^3 in annual average $PM_{2.5}$). It should be noted that many existing neighborhoods were constructed prior to the listing of diesel particulate matter as a toxic air contaminant (which was listed by CARB in 1999). While this EIR addresses impacts from new development, BAAQMD is implementing several

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	potential double whammies into account?	programs within the Bay Area to minimize existing community risk and hazards.
Bradley2-49	Page 4.2-48 The DEIR describes Mitigation Measure AIR-1: Numerous goals, policies, and actions contained in the proposed Plan address future increase in VMT and criteria air pollutants under the Plan; however, the projected growth in VMT in the Plan Area would still exceed the rate of population growth. There are no additional measures that would reduce this impact. Where in the document does it explain why increase in VMT will exceed rate of population growth? I would like to review and understand this conclusion. If impacts are significant and unavoidable, would this not be reasonable grounds for denying permits on a project? Just how are proposed project benefits measured against significant and unavoidable impacts? Am I correct in stating that the City Council members always have discretionary authority ignore significant and unavoidable impacts with the adoption of a statement of overriding considerations?	Although the EIR identifies that Impact AIR-1 is significant because the rate of growth in VMT would outpace the rate of growth in population and employment in the City, the difference is fairly small (2 percent). The rate of growth in vehicle miles traveled is based on the Alameda Congestion Transportation Commission (CTC) regional travel demand model. Growth in VMT is affected not only by land uses in the City but also destinations and origins (where people who live or work drive to in the region). Consequently, the City only has direct control over the one end of the trip for trips that travel outside of the City boundaries. As stated in BAAQMD's CEQA Guidelines, "Due to the SFBAAB's nonattainment status for ozone and PM, and the cumulative impacts of growth on air quality, [General Plans] almost always have significant, unavoidable adverse air quality impacts." The qualitative comparison of the growth in the General Plan to the growth identified by City-related VMT in Alameda CTC's regional transportation demand model identifies that the project would not meet BAAQMD's Plan Level criteria. Therefore, impacts are considered significant and unavoidable. Policies and implementation actions were identified in the General Plan to reduce impacts. However, no additional feasible measures were identified that would reduce impacts to a less than significant level. When a significant impact is identified in an EIR, a Statement of Overriding Considerations is required that identifies the specific reasons to support approval of the project despite having a significant impact. Pursuant to the CEQA Guidelines Section 15093, "CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable'."
Bradley2-50	Page 4.3-6 In the section covering local regulations the DEIR describes the role of the San Francisco Bay Conservation and Development Commission (BCDC). First off I would like to see a map in the final DEIR that delineates the BCDC's jurisdiction in the City of Newark. It would clarify where precisely "the ending at the culvert at the Mowry Avenue bridge crossing is located; it would also help to clarify where precisely the "the bend of the channel near Plummer Creek" is located. Unfortunately Figure 4.3-2 does not have the BCDC jurisdictional delineation. There is a typographical error in the phrase "or change is..."; it should read "or change in...".	Although Figure 4.3-2 does not depict BCDC's jurisdiction, it does depict vegetation and habitat types. The intent of Figure 4.3-2 is to identify vegetation and habitat types, not necessarily depict jurisdictional boundaries other than City limit. No changes are necessary.
Bradley2-51	Page 4.3-8 The following remarks pertain to Figure 4.3-2: The northern portion of The Lake should also be colored emergent freshwater green. I am not sure to which grassland area, between Newark Blvd and Cedar Blvd. the DEIR is referring? Would you please clarify in the Final EIR. The figure shows more grassland in the Mayhews Landing area than I think there actually is. There is the possibility that saltmarsh wetlands have become infested with invasive annual grasses and other weeds. To my knowledge, there is only a relatively narrow strip of grassland around the perimeter of the Mayhews Landing unit of the National Wildlife Refuge. There should be wetlands of some type delineated in the Dumbarton TOD Plan Focus Area. Sensitive resources in the area may show up in the subsequent Figure 3.3-3, but even this figure is difficult to interpret. Albeit fragmented and isolated, at least two parcels adjacent to the railroad track on the east side of Willow street support seasonal wetland vegetation. Every year there is saturated soil that holds water for days on end and support vernal pool-like ephemeral vegetation. Butterflies and other insects abound although I'm unaware of even presence-absence surveys being undertaken to see if there might be any Threatened and Endangered or otherwise sensitive plants and organisms exist. The San Francisco Public Utilities District may have	Please see Figure 4.3-2b included in Chapter 3 of the Final EIR for more detail regarding Area 3 and 4 and its surrounding areas. Additionally, Figure 4.3-2 was prepared with US Department of Agriculture Forest Service information. Further, the commenter provided no evidence or source to support the suggested locations of the wetlands. Additionally, vegetation and habitat types have been adequately identified through the Area 3 and 4 EIR and this DEIR to the extent of providing information needed for an adequate analysis under CEQA Guidelines. No changes are necessary.

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	performed some surveys in the area due to their maintenance work on the Hetch Hetchy Pipeline. The figure makes everything appear to be annual grassland in the vicinity of the Dumbarton TOD Plan Focus Area. It may be that the resolution of the figure is too coarse to indicate the location of a wetland mitigation parcel managed by Urban Wildlands in that area, but it is certainly worth taking note of and assessing potential impacts on this area resulting from proposed development. I am wondering if the US Fish and Wildlife Service's Wetland Inventory database for this region was used? If not, I would recommend requiring project proponents to take advantage of this information. It is a valuable adjunct to information provided by the Department of Agriculture. See the following link: http://www.fws.gov/wetlands/index.html.	
Bradley2-52	Page 4.3-11 Under salt pond habitat (and nearby grassland habitat also), I do not see Short-eared Owl, Golden Eagle or any swift, swallow or bat species mentioned? But on walks taken around salt ponds I have observed at least these avian creatures. I think the Final EIR should include the most comprehensive lists of critters that are currently available and that the proposed Plan should incorporate requirements that project proponents use the most current information available regarding biological resource data. I request that the biological resource data upon which this DEIR relies is not considered adequate for future proposed projects (as "programmatic" might imply). The biological data which is being presented or incorporated by reference in the DEIR is not used to automatically "tier off" of and relieve future project proponents of their responsibilities to investigate each project. I am very concerned that City planners will use the "programmatic" nature of the proposed Plan to expedite in an inappropriate manner the project planning process. I request assurance in the Final DEIR and General Plan Tune-up that this is not the City's intent. The DEIR refers to the Coyote Hills Regional Open Space. Is there distinction between Coyote Hills Regional Open Space and Coyote Hills Regional Park? I appreciate the City's efforts to review the California Natural Diversity Database (CNDDB) or to require project proponents to do so. There is in this database a wealth of useful information. Nevertheless, there are limitations of the CNDDB, and these should be stated clearly. For instance, sensitive plant species in the Dumbarton TOD may not be listed in the database. Review of data from CNDDB will never substitute for on-the-ground reconnaissance, survey, and "truthing". Again, when it comes to evaluating biological resources that may be affected directly or indirectly by project development, the CNDDB may provide a starting point but it should not be the "last" word. Even with non-biological resources, a utility pipeline for example, we would never rely solely on a utility facilities map or text description; instead we would require on-site visit and investigation before proceeding with project implementation.	As cited on Figure 4.3-4, the City of Newark's California Natural Diversity Database from 2012 was used to determine special status species in Newark. Additionally, Table 4.3-2 is a comprehensive list of special status animal species in the vicinity of Newark, as cited in numerous sources within the past 1-3 years, which can be found on page 4.3-30. Referencing the comment about the Coyote Hills Regional Open Space, the Coyote Hills Regional Park has an open space adjacent to the park and just out of city limits.
Bradley2-53	Page 4.3-12 There is a typographical error in the "legend" at the bottom of Figure 4.3-3: "Congdon's tarplan" should be "Congdon's tarplant."	Please see Figure 4.3-3 included in Chapter 3 of the Final EIR for revisions.
Bradley2-54	Page 4.3-13 The following remarks refer to Table 4.3-1: Referring to Alkali milk-vetch, I request that references to surveys need to be supported with citations/reference---which include who, what, where, when, why. These citations/references are especially important when City planners reach a conclusion appearing in column three --- "potential for occurrence [of a species]" --- that "further surveys for the area were deemed to be warranted for impact assessment." Actually, any time I see in the DEIR the statement "[was] deemed to be unwarranted," I would request that the conclusion be supported in the Final EIR by citations/references which include the "who, what, where, when, why" information. Referring to the Arcuate bush mallow, I would expect that where inadequate information exists to rank occurrence, then policy would require site surveys at plant-appropriate times of the year. Referring to Brittlescale, when were the surveys performed? What protocol was followed? I agree that there is suitable habitat. I think the plant has been observed and recorded on the Warm Springs unit of the DESFBNWR (Reynolds, S. 2005) which is located immediately southeast of Newark in city of Fremont. With respect to California	With regards to citations, citations are used appropriately in the form of footnotes and citations at the bottom of each table or figure. With respect to the other comments, the purpose of the DEIR is to analyze potential impacts at the programmatic level of the proposed General Plan, and not to scrutinize a difference of opinions and/or scrutinize varying biological sources. As such, the comments reflect more of a difference in opinion of sources cited and therefore needs no further response. The sources cited and used for purposes of the DEIR are commonly used and considered to be reputable sources of information and/or included information through incorporation by reference pursuant to CEQA Guidelines. No changes are necessary. As stated on page 4.3-31 of the DEIR, the Santa Cruz tarplant was acknowledged to be suspected or have known to occur in areas throughout Newark, however, it was also mentioned that the likelihood of the species occurring in Newark is low or is not able to be determined at this time. Accordingly, adherence to several policies under the proposed Plan would reduce the potential impacts of future development on special-status plant species, including Policy CS-1.2, Policy CS-2.2, and Action CS1.A.

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	sea-blite, and all other plants and animals, when further surveys are indicated, General Plan policy should require that project proponents follow protocols acceptable to the California Department of Fish and Wildlife, the California Native Plant Society, the US Fish and Wildlife Service or other regulatory agency. Referring to the Caper-fruited tropidocarpum, here is an example of the author recommending further surveys in development areas based on habitat type, viz., valley and foothill grassland. I do not understand why the author did not offer similar a recommendation for Congdon's tarplant. This appears to be inconsistent. Page 4.3-14 Continuation of remarks related to Figure 4.3-1: With respect to Chaparral harebell, I am not sure what is meant by "to rank the occurrence." This statement made in several instances in this table 4.3-1. It is my understanding that this species generally occurs in a higher elevation range (300-1250 meters). With respect to Congdon's tarplant, the table entry is confusing. I am not sure whether or further surveys are being recommended or not. The second sentence says they should be, at least in certain areas. As an amateur plant enthusiast, I personally am in favor of requiring further surveys because I think I have seen it in the Newark area and also given that suitable habitat, namely, "disturbed California annual grassland habitat (with alkaline substrates), particularly near seasonal wetland," is fairly abundant in the Newark vicinity. In addition, in the same tabular information related to Congdon's tarplant, I do not know what they mean by "pre-development surveys"? Would you please clarify in the final DEIR with respect to the timing of such surveys? With respect to California goldfields, what survey protocol did the City's consultants follow? Was the protocol acceptable to the regulatory agencies? Regarding its "confirmed absence from impact areas," does this refer to the proposed Plan area? Regarding Delta wooly-marbles, who says it only occurs in vernal pool areas? The next column, labeled "Habitat," shows several other types of habitat in which this plant may occur. Do grassland or ephemeral wetlands occur in Areas 2, 3 or 4? Why does an action statement like "surveys would only be required for those areas" appear under the heading Potential Occurrence? Regarding Santa Cruz manzanita, there appear to be several occurrences on record (much of it historical) of this plant, although it seems to be located in chaparral area of the east Oakland Hills. I request that the final Proposed Plan require that surveys by qualified personnel be conducted to confirm presence or absence of this species. Regarding Santa Cruz tarplant, since there is inadequate information I request that the final Proposed Plan require surveys to confirm the presence or absence of this plant. There are, as the City's consultants probably know, historic sightings of this species in the region. Page 4.3-19	
	Continuation of remarks related to Figure 4.3-1: With respect to Slender-leaved pondweed, although the DEIR states Newark "generally lacks appropriate habitat," I request that the final Proposed Plan require surveys to confirm the presence or absence of this species because it has been found "in the vicinity of Newark." Upon checking, I discovered that at least one place it's been located is the Alameda Creek area near or in the Patterson Ranch area, which is practically across the street from the City of Newark. Still, there are a few remaining areas where shallow freshwater habitat occurs in what is left of Newark's mostly urbanized landscape, especial in Areas 2 and 4, which may not be too unlike where it was previously identified. With respect to Uncommon jewelflower, although Calflora maps show many occurrences in Alameda County including at least one occurrence along east bay shoreline north of Newark. Page 4.3-20 Continuation of remarks related to Figure 4.3-1: Regarding Western leatherwood, as far as I know it has only been located in the west Bay Area, where there are number of known locations (Rancho San Antonio Open Space Preserve in Los Altos and Jasper Ridge Biological Preserve in Palo Alto), none near the shoreline. With respect to Wooly-headed lessingia, there are known occurrences of this plant in the Milpitas-San Jose area as well as Alameda County and therefore I would request that the final Proposed Plan require surveys by qualified personnel to determine its presence or absence from proposed project sites with habitat determined appropriate by a qualified professional. As	

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	both a citizen and member of the California Native Plant Society, I appreciate the fact that the City and its consultants are using the society's *Inventory of Rare and Endangered Plants*, as well as the California Natural Diversity Database as mentioned above. Page 4.3-21 Continuation of remarks related to Figure 4.3-1: With respect to the Monarch butterfly, I think the concern here is ability of species to persist in our immediate area, our town. If we (my wife and I) have to drive out of the City to enjoy observing them, then they are too far away in my opinion. Fortunately, we still have them occasionally in our front and back yard due we think to cultivation of native plants instead of traditional sod. Otherwise we can infrequently admire them floating across the National Wildlife Refuge salt marshes, or walk or bike over to some regional park like Coyote Hills or Quarry Lakes but these are outside the Newark City limits. It sure would be nice to have some accessible open space in Newark that boasted these charismatic insects and more proactive encouragement by the City for the creation of butterfly habitat in the residential parks and neighborhoods. With respect to Vernal Tadpole Shrimp, I would like the DEIR to provide citations/references to the subject surveys. What survey protocols were used? Who was it that made the determination of "absence"? When, where, how, and why? Were surveys conducted in potential site in the Dumbarton TOD Plan Focus area? Page 4.3-22 Continuation of remarks related to Figure 4.3-1: With respect to the California Tiger Salamander, I appreciate the slightly more detailed summary as to its potential occurrence. Still I request that the final DEIR include citation/reference to the mentioned surveys. Page 4.3-23 Continuation of remarks related to Figure 4.3-1: Regarding the Alameda Whipsnake, is there any evidence of occurrence or suitable habitat in the proposed development areas? I request that the City require in its final General Plan Tune-up appropriate surveys by qualified personnel to determine presence or absence of this species in all areas proposed for development. With respect to the Alameda Song Sparrow, I request a citation/reference in the final EIR to the information under the heading Potential Occurrence. Also I would like to know if the Alameda Song Sparrow has been heard or seen in the areas proposed for development, how many and where. As above in many instances, I request that the City include a policy/action in the final GPT which requires surveys by qualified personnel using appropriate protocols to determine presence or absence. Page 4.3-24 Continuation of remarks related to Figure 4.3-1: With respect to the Peregrine Falcon, I request that the annotation under habitat reflect the fact that the birds frequently find tall urban structures with ledge-like features, e.g. utility and bridge towers, suitable habitat for nesting. They often use the third-story ledges of the aLoft Hotel in Newark for refuge during rainy weather. With respect to American White Pelicans, this species use the freshwater storm runoff ponds in the Coyote Hills Regional Park and also the salt ponds of the south Bay. I have seen them foraging on the freshwater lake in Newark's Lake neighborhood, and also over in Quarry Lakes Regional Park and Lake Elizabeth in adjacent Fremont. With respect to Bryant's Savanna Sparrow, how do we know it does not use/nest in the Dumbarton TOD project area? There is certainly suitable habitat in vicinity. I request the City include in its final GPT requirements for presence/absence surveys by qualified personnel following professional protocol. Page 4.3-26 Continuation of remarks related to Figure 4.3-1 Regarding Black Rail, the bird definitely occurs in La Riviere Marsh on the National Wildlife Refuge, across Thornton Avenue from the Mayhews Landing unit. Refuge biologists can confirm occurrence based on vocalizations although their breeding status is still unknown. Regarding California Clapper Rail, have City planners checked with biologists at the National Wildlife Refuge as to the presence or absence of this species in Mowry and Newark Sloughs? I doubt that rails will persist for another 50 years at the southeast end of the Bay unless we can assure them the protection of higher elevation refugia during extreme high tide events. I request that the final DEIR include the citation/references regarding the summary information for this species. For your information, there potential habitat for this bird in portions of Plummer Creek. Regarding California Least	

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	Tern, this species may be making a modest comeback in the San Francisco estuary. Small, nesting colonies of the bird are being observed along the Hayward shoreline south of a prime colony at Alameda Point. When did anyone specifically look for it in the vicinity of Area 4? I would probably agree with conclusion "unlikely due to..." although I am not very familiar the shoreline in the City of Newark's purview. I know that red fox and feral and stray cats can wreak havoc with nesting colonies, as well as avian predators such as ravens and kestrels. I would request that policies and actions in the final GPT require final project designs to minimize the exposure of potential tern nesting colonies from potential urban predators. In this case, I am asking the City to do what it can to promote the full recovery of this species, a recovery that is seriously vulnerable to sea level rise. Regarding Great Blue Heron, I would point out that these birds can even establish themselves in urban park habitat. We have substantial colonies of nesting egrets and night-herons in the tree-topped islands of the Lake in the Lake neighborhood of Newark. Regarding Loggerhead Shrike, this is a California bird of special concern and population declines in Alameda County over past 3 decades are presumed to result from grassland, both natural and ruderal, habitat lost to urban developments. By continuing down the path of paving over every last bit of grassland remaining in natural open space areas, our City is contributing sadly to the problematic decline. Page 4.3-27 Continuation of remarks related to Figure 4.3-1 With respect to Common Yellowthroat, I know that there are Common Yellowthroat in freshwater marsh on edge of Lake Elizabeth in Fremont, and also along marsh edges of both Coyote Hills and Quarry Lakes Regional Parks in Fremont. Am not sure if they are same subspecies as ones found in salt marshes. I have also observed these birds in the Mayhews Landing unit of the DESFBNWR, not more than 1 mile from Area 2. As for the Western Burrowing Owl, I have observed individuals at the Warm Springs unit of the National Wildlife Refuge which is relatively close to proposed development areas in Newark. In the Breeding Bird Atlas for Alameda County, it remarks that "many undeveloped areas near the San Francisco Bay, (….) which formerly supported nesting pairs in the early to mid-1980's, have since been replaced by warehouses and other businesses." I request that the final GPT include policies and actions that would promote the recovery in this bird in our town. Page 4.3-28 Continuation of remarks related to Figure 4.3-1 As for the White-tailed Kite, in the Potential Occurrence column, "May be" is too soft an expression. They have been sighted in these areas by bird watchers. There is even some evidence in the *Alameda Breeding Bird Atlas* (2011) of possible nesting. As for the Willow Flycatcher, there appears to be a contradiction here. There may not be suitable nesting habitat, but obvious there's suitable foraging habitat. Please include in the final DEIR citations to support the conclusion of "absence." With respect to the Yellow Warbler, there also appears to be some confusion. There is the statement that there is no suitable nesting habitat, but obvious there probably is some suitable habitat (for foraging?) if migratory individuals are observed. Please clarify this in the final DEIR. Page 4.3-29 Continuation of remarks related to Figure 4.3-1 With respect to the American Badger, please include in the Final EIR a reference(e) to the who, what, where, when, how, and tabular information. With respect to the Harbor Seal, the phrase "May be" in the Potential Occurrence column is not accurate. They are there. A friend of mine, Norton Bell, has been collecting data on them for both Mowry and Newark Sloughs for at least the past decade. For example: Here are the abbreviations, names and coordinates of the Harbor Seal observation locations and most likely haulout locations. To see the sites, copy the coordinates and paste them into the search bar in Google Maps satellite view at http://maps.google.com/maps (Coordinates for a location in google maps can be found by clicking on "what's there".) SSP, Salt Pile (mound) observation location: 37.488548,-122.032056 SSP, Salt Pile (mound) haulout location: 37.484377,-122.033043 MSN, Mowry Slough North Bank observation location: 37.492703,-122.034631 MSN, Mowry Slough North Bank haulout location: 37.493213,-122.043257	

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	MSS, Mowry Slough South Bank observation location: 37.494269,-122.047462 MSS, Mowry Slough South Bank haulout location: 37.491647,-122.042989 NS, Newark Slough observation location: 37.506219,-122.083426 NS, Newark Slough haulout location: 37.491647,-122.042989 Please take such data into account in the Final EIR. I think Norton Bell can be reached through the biologists with the Don Edwards San Francisco Bay National Wildlife Refuge. With respect to the Pallid Bat, please include in the Final EIR reference(s) for the information. I am interested in when and how the observations were made? With respect to the Salt Marsh Harvest Mouse, I do not believe the assumption made for the statement in the Potential Occurrence column is a valid one, if no other reason but sea level rise and climate change. Please provide reference(s) in the Final EIR. Where did the authors get information relative to characterizing the population in northwest Newark as 'large and healthy…and [its] habitat in excellent condition. The Mayhews Marsh unit of the National Wildlife Refuge is a mess, with plenty of non-native house mice (and rats?), as well as non-native, invasive plant species. I would like to see some policy commitments and action made in the final version of the General Plan regarding the recovery of endangered and threatened species which occur within the City of Newark. This is especially critical in the future given sea level rise projections. There are certainly lands remaining in the City that could contribute toward assuring the persistence of the endangered Salt Marsh Harvest Mouse. A major document dealing with the recovery of endangered and threatened species in the San Francisco Bay tidal marsh is due to be published by the U.S. Fish and Wildlife Service in the very near future. I am not sure that it will be available in time to inform the proposed General Plan, but I request that the City do whatever is possible to contribute toward recovery efforts. If vegetation such as pickleweed, for instance, exists in or could be restored into Area 2 or Area 4, then paving over or otherwise drastically modifying such areas would not be contributing to the animal's recovery. Page 4.3-30 Continuation of remarks related to Figure 4.3-1 As pertains to the Salt Marsh Wandering Shrew, it is possible that biologists at the Don Edwards National Wildlife Refuge have documented the animal in the Mayhew Landing unit. If the City has not assured that their consultants actively pursued solicitation of information from the National Wildlife Refuge, I would request that this be done before the submitting to the City Council, the final draft of EIR for certification. As pertains to the Townsend's Big-eared Bat, I do not know much. If the City's biological consultants have not checked with Dr. ??? at San Jose State University, then I request that they try to confer with this bat research regarding the status and distribution of bats in the study area.	
Bradley2-55	Page 4.3-31 In discussing the data in Table 4.3-1, the DEIR states that a population of the sensitive Congdon's tarplant occurring in Newark "is not expected to remain for another five years"? Please include in the final EIR a reference to this conclusion. Who is making this assertion and on what assumptions is it based? Please provide this information in the final EIR. No matter if true, it appears to make short shrift of a very sensitive plant resource. It somehow attempts to justify a finding of "no real significance." I suggest that if we have a population of any sensitive biological resource and it is not projected into the plan horizon, this makes it very significant. I request that the final EIR give citizens and decision-makers an idea of what "sensitive natural community" designation entails and why such communities are important ecologically and on a local scale by including appropriate text.	The comment is noted. Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-56	Page 4.3-32 By the time the DEIR gets into describing the Standards of Significance in the biological resource section, I still have not seen that the author(s) have addressed the "natural" ecosystem and the important and valuable landscape services it provides the human community. Section 4.3 appears to focus on the animal and plant communities. Perhaps a discussion of the impacts on the other component of the natural ecosystem, namely, that abiotic dimension is touched on under hydrology or air quality. I would ask that the author of the DEIR find a way to discuss the big picture ecosystem and the invaluable	The categories have been adequately analyzed under the CEQA Guidelines. Additionally, through the appropriate planning process and adoption of the Area 3 and 4 Specific Plan and the Dumbarton TOD Specific Plan, the City has presumably weighed and considered the pros and cons of each plan, such as ecosystem services. Please see Master Response 2 regarding the adequacy of previous environmental review. As such, no changes are necessary.

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	services it supplies the human population. The Final EIR would be seriously deficient if discussion of the ecosystem as a whole is omitted. And perhaps it is dealt with in a piecemeal fashion while discussing other elements like air quality, groundwater supply, flood control, and natural open space. But the biological dimension of each of these "non-living" resources is critical. The vegetation in salt marshes can be critical in mitigating storm surges at extreme high tides, the vegetation and soil bacteria significantly affect the quality of water that seeps in our groundwater supply. These are critical resources of the human environment that provide us much of economic value and impacts from developments can compromise the integrity of these ecosystem processes resulting in many environmental problems that we are still trying solve at tremendous expense in human health and wealth (e.g. air pollution, ground water contamination, toxic chemical dumps, land subsidence, flooding, etc.). In the first sentence after the heading Standards of Significance, the authors use the term "cultural." I wonder why the word "cultural" is being used as it generally related to a specific subset of resources in the human environment. In fact, I did not find the term "cultural" in Appendix G of CEQA in the context it is being used here. I this a typographical error? In the fifth standard, "Conflict with any local policies or ordinances protecting biological resources...", is the Bay Conservation and Development Commission's Bay Plan considered "local"? Does Alameda County have any local policies aimed at protecting biological resources which might be at odds with this proposed General Plan Tune-up? In the sixth standard, I ask the question: Can the Don Edwards San Francisco Bay National Wildlife Refuge's Comprehensive Conservation Plan be construed as an HCP? I have heard that a consortium of cities, agencies, and Santa Clara County have adopted a Habitat Conservation Plan. If so, is this HCP relevant? It is my understanding that the Pacific Gas & Electric Company is developing an HCP. If so, would this be relevant to this standard of significance?	
Bradley2-57	Under Section 4.3.3 Impact Discussion, the DEIR states in BIO-1 that the "Buildout of the proposed Plan would result in less-than-significant impacts to special-status plant and animal species in the Plan Area." This is neither a discussion nor an analysis of impacts in the DEIR at this point. The statement in BIO-1 is a conclusion. By placing it in this position in the text, it makes the subsequent discussion/analysis appear to be a post-facto justification for the conclusion. I request that the statement in BIO-1 is positioned in the final EIR at the end of the discussion and analysis leading to its conclusion. I also request that the same reformatting of all of the "conclusions" related to the significance of impacts throughout the DEIR be placed after the discussion and analysis. The discussion and analysis of impacts in an EIR should be a straightforward, objective exposition exploring the potential effects the proposed action may have on the environment. The discussion and analysis should appear as an explanatory logic leading to a conclusion regarding significance of impacts. The discussion and analysis are filled with conditional modifiers. If I am reading it correctly, it appears to say that (1) Given that Newark is already a pretty urbanized place, no one considers it to have any real wildlife habitat value; and (2) Buildout of the Plan could potentially result in both direct and indirect adverse impacts to sensitive plant and wildlife species. These statements do not appear to complement each other.	In the example of BIO-1, each heading that has that format is a summary statement to easily see the determination of that specific threshold/analysis. The subsequent discussion below that statement is the analysis and discussion leading to that summary statement. In regards to the second half of the comment, stating that a plan would have both direct and indirect impacts is an accurate statement considering that the DEIR was prepared as a program EIR and therefore does not consider project-level or project-specific impacts. As such, stating that the plan would only have direct or indirect impacts would be incorrect in that one would imply that the other is not true. For example, if we had stated that the plan would have direct effects, it would imply that it may not have indirect effects, and vice versa. Additionally, stating that Newark is urbanized does not imply that wildlife is not important nor does it imply that it has no value. The purpose of such statement is to provide context and background. No changes are necessary.
Bradley2-58	Page 3.3-33 The DEIR states that "The federal, State, and local regulations described in Section 4.3.1.1 of this chapter would protect special-status species present or potentially present within the Plan Area and compliance with these regulations would minimize potential impacts." This is theoretically true, but who assures compliance? And although potential impacts might be minimized, who is saying they would be minimized to a level of non-significance? Also, I am concerned that the City seems to be more interested in meeting the bare minimal compliance. From a wildlife habitat perspective, our goal is protect the habitat, not just the sensitive animals. Converting open space areas into developed urban residential areas reduces the opportunities for assuring adequate space for plants and critters. By maximizing urban	As stated in Chapter 2.0, Introduction, a mitigation or reporting program report will be completed as part of the final EIR to ensure compliance with mitigation as identified under the DEIR. In regards to protecting habitat and wildlife, CEQA Guidelines require consideration of special status plant and animal species, as indicated in Appendix G of the CEQA Guidelines. For that reason, the DEIR has adequately met such obligations required by CEQA Guidelines, and no further changes are necessary. In response to conclusions of less than significant based on compliance with agencies' regulations, in the absence of specific projects being proposed under the General Plan, the DEIR cannot nor does it analyze project-specific impacts. Accordingly, assumed compliance with agency regulations are deemed to mitigate or result in impacts less than significant. Without any specific projects to

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	development we would be minimizing open space within the City and reducing opportunities for citizens to connect with nature via walking and bicycling to the natural spaces. We are making it impossible for our children not to be what the author Richard Louv refers to as the "last child in the woods." BIO-1 is one of innumerable instances in the DEIR where it is being concluded that impacts to biological resources are being reduced to a level of insignificance based on compliance with other agencies' regulatory jurisdiction. But this is I think very flawed thinking and it is a flawed approach which applies to most of the innumerable instances in the DEIR wherein the conclusion of "no significant impact" is being made.	analyze, it is impossible to analyze specific impacts to provide to that level of certainty, therefore, under a program EIR, certain assumptions such as adherence and proper compliance must be assumed in order to make any kind of determination. Therefore, no changes are necessary.
Bradley2-59	At a Planning Commission Work Session on September 24, 2013, the City's consultant was explaining to the planning commissioners the progress that had been made to date on updating the General Plan. He explained how the consultants (and I am not sure at whose direction) "cut and pasted" in a wholesale fashion all the mitigation measures from the Specific Plans for the Dumbarton TOD and the Areas 3 and 4 Projects directly into the policies and actions making up the latest draft version of the General Plan. He explained to the five or six members of the Planning Commission who were present for the Work Session that by doing the cut-and-paste job it was making the new proposed General Plan a "self-mitigating" Plan. The idea which pervades the entire DEIR that the General Plan is somehow self-mitigating because it has incorporated the mitigation measures from other project Specific Plans is simply false. Each development project is unique. Each development project will have its unique mitigation measures, sometimes incorporated into its project proposal or imposed upon it by a City or State or Regional State agency that has jurisdiction. The mitigation measures are specific to the project Specific Plans. They may be and sometime are measures found in other Specific Plans, but when a project is finally approved by a land use authority such as the City Council, the mitigation measures are not policies, not directives, not recommendations or best management practices, they are in fact legal requirements with which project proponents must comply with. To assert, as I think the City's consultant did, that the mitigation measures as expressed in General Plan policy terms result in some type of "self-mitigating" General Plan whereby almost any significant impact resulting from proposed projects can be reduced to a level of non-significance is specious and fallacious. Besides the uniqueness of each proposed project and whatever final mitigation measures it may entail, there is the flaw I think in assuming that "policy" equates to "requirement". I am not sure how this holds up in a court of law. But in everyday reality, exceptions to policy are commonplace. I think in land use planning they are referred to as "variances." It is my opinion, therefore, that if we have valid reasons to assume that exceptions to policy occur, then we cannot presume or conclude that exceptions will not occur to "self-mitigating" policy. We cannot in effect be assured that project impacts will be reduced to levels of non-significance simply because we boast "self-mitigating" policies. If this line of reasoning is incorrect, I would request that you provide me with an explanation of its defectiveness. If it is not, then I request that all of the conclusions regarding impacts being reduced to a level of non-significance based on the "self-mitigating" character of the proposed Plan be revised to either indicate they are or may be significant, or revised to state that there is simply not enough information to make a determination at the programmatic plan level as to the level of significance of impacts resulting from future proposed projects.	The concept of self-mitigating is for the policy measures that are needed to reduce impacts of the Plan would be included in the plan itself, rather than outside of the plan. All future development will receive environmental review and specific mitigation measures to the extent required under CEQA.
Bradley2-60	Page 3.3-34 In explaining mitigation measures associated with the City's Housing Element and the Dumbarton TOD Project, the DEIR states that preconstruction surveys and additional surveys would require avoidance and relocation measures. I would point out that avoidance of direct impacts often does not adequately offset adverse impacts but serves only to isolate the resource. Such "mitigation" often focuses on the minimal avoidance measures and does little or nothing to contribute to the long-term survival of the resource.	The commenter refers to page 3.3-34, however, the comment appears to be referring to page 4.3-34. Please see page 4.3-36 to 4.3-39 for a discussion related to direct and indirect impacts. Additionally, page 2-5 of the DEIR states that a mitigation monitoring or reporting plan will be prepared as part of the FEIR, at which time will be reviewed prior to adoption. Further implementation of mitigation measures and/or policies and actions are a planning issue and would be addressed by the City as applicable to future development. No changes are necessary.

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Bradley2-61	The DEIR identifies the Policy CS-1.3 in the draft proposed Plan related to interagency cooperation. It call for the City to "participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas." The DEIR does not discuss or reference to what extent the City of Newark has participated in cooperative efforts with the National Wildlife Refuge or the Fish and Wildlife Office of the U.S. Fish and Wildlife to encourage long-term preservation of the baylands for instance. The DEIR does not attempt to share with the public the extent to which this policy been implemented? Did the 1992 General Plan contain such a reasonable policy? The DEIR does not attempt to describe what "participate in cooperative efforts" means. The City, for instance, has a representative who sits on the Bay Conservation and Development Commission. Does this activity pass for "participate in cooperative efforts..."? Does participating in meetings with the proponents of the Dumbarton Rail Project, a project which could have numerous adverse impacts on biological resources of our baylands, agreeing to support the type of high density community which could facilitate the funding of the project, constitute participation in cooperative efforts to encourage long-term preservation of the baylands? I request that the City revise the DEIR to include better descriptions of what its policies mean in practical everyday language and some relevant examples. This should not prove too difficult if in fact the City has been implementing the General Plan policies.	The comment is noted.
Bradley2-62	The DEIR refers to Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. It appears that a number of citizens have been telling the City that much of the land in the proposed DTOD and Areas 3 and 4 Projects are very sensitive natural areas. Historic baylands in Area 4 are considered essential to the expansion of the area under the management of the National Wildlife Refuge. Conservation of both areas could contribute to assuring the long-term conservation of baylands especially given sea level rise.	The comment is noted. Please see Master Response 4 regarding sea level rise and Master Response 5 regarding Area 4.
Bradley2-63	Page 3.3-35 It appears that Action CS-2.B is missing. In the section of the DEIR describing Action CS-2.C: Impacts on Special Status Species, paragraph (3) states that "As appropriate based on the results of the preconstruction surveys, construction limits shall be clearly flagged as directed by the biologist to ensure that impacts to sensitive biological resources are avoided or minimized to the extent feasible." This reminds me of the inadequate measures being taken to protect the roosting and rookery areas of the islands in the manmade lake in the Lake neighborhood: One of the three island rookeries has been allowed to become connected to the shoreline making it accessible to mammalian predators. The construction crews have clearly flagged the limits of construction but have done nothing to protect the sensitive resources on one of the islands where a great many egrets and herons nest and roost. In the same section, under paragraph (4), the DEIR states that the City "shall require ...." I appreciate the use of the word "shall" in this case as it demonstrates the City's commitment to cooperating with these agencies. These are all excellent (and nowadays standard) mitigation/best management practices. Toward the bottom of this page the DEIR states that "Applicable federal, State, and local regulations, together with proposed Plan policies and actions listed above would reduce potential impacts to special-status species that could result from buildout of the Plan, compliance, and implementation to the maximum extent practicable. I think that the phrase "compliance, and implementation to the maximum extent practicable" is better placed before the action part of the sentence. Thus: "...and actions listed above, including compliance and implementation to the maximum extent practicable, would reduce…". I also request that the word "practicable" be revised to "feasible."	The list of policies and actions on page 3.3-35 only list policies related to the protection of special-status species. No changes are necessary.

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Bradley2-64	Page 3.3-36 With respect to BIO-2 in the DEIR, please see my remarks and requested revision above for BIO-1. These "headings" (which I pointed out above ought not to be "headings") should reflects the conditional nature of "self-mitigating policy/measures. Thus: ":…would result in less-than-significant……if mitigation policies and measures are fully implemented." In the third paragraph on this page, the DEIR states that "Previous environmental review for the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element identified impacts to riparian habitat and sensitive natural communities in the Dumbarton TOD Focus Area and in the Southwest Newark Residential and Recreational Focus Area, including mitigation measures to address those impacts." I request that the final EIR state whether or not these referenced mitigation measures received concurrence and approval from the relevant regulatory agencies. If not, then those measures may not be enough to reduce the impacts to a level of "no or less-than significant." To be transparent, again I request that all assertions of "no or less-than significant" impacts should clearly reflect their conditional status. In the fourth paragraph on the page the phrase "...was determined reduce the impacts" the word "to" should be inserted after "reduce." In the fourth paragraph, the DEIR states that "Under Mitigation Measure 4.3-6, wetland plant and animal populations shall be relocated from any impacted wetlands." Were the direct and indirect impacts of plant and animal relocation identified and discussed? If not, then I request that a discussion and analysis of this measure be included in the pertinent environmental documents. In the fifth paragraph, the DEIR states: "The Areas 3 and 4 Specific Plan EIR identifies Impacts BIO-1 associated with impacts to riparian habitat. This impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measures BIO-1.1 through BIO-1.2B, which require wetland and habitat avoidance to the maximum extent feasible and either on-site wetland creation (at a ratio of 1:1) and enhancement (at a ratio of 0.5:1) or off-site mitigation banking at a ratio of 1.5:1." I have never heard of a 1:1 ratio for wetland/riparian mitigation except perhaps in cases where the creation of replacement wetland/riparian areas has been successfully implemented before project construction begins. Usually wetland mitigation ratios between 3:1 and 5:1 are the case. As I stated previously in this letter, each proposed project is unique, each proposed project site is unique, and the determination of mitigation ratios usually hangs on the nature of the impacts, their direct and indirect effects, their permanent or temporal duration. Again, I request that the final EIR state whether or not these referenced mitigation measures received concurrence and approval from the relevant regulatory agencies. If not, then the measures described above may not be enough to reduce the impacts to a level of "no or less-than significance."	Please see response to Bradley2-58 regarding headings. In regards to referencing previous EIRs, CEQA Guidelines Section 15150 allows for an EIR to incorporate by reference all or portions of another document that is a matter of public record. Accordingly, it is not the intent of this DEIR to analyze or scrutinize the adequacy of previous environmental reviews. Provided the previous reviews are available to the public, and have not legally been vacated or deemed inadequate, they are considered adequate otherwise for purposes of incorporation by reference. Therefore, the determinations are adequate and need no further changes. Regarding the comment on direct and indirect impacts, as stated, the DEIR is programmatic and therefore does not consider project-specific impacts. Therefore, it cannot be determined at this time, in the absence of specific projects, any potential indirect or direct impacts to wetland plant and animal populations, therefore, the analysis is adequate and no changes are necessary.
Bradley2-65	Page 3.3-37 The DEIR states that "Impact BIO-10, regarding indirect impacts to waterbirds associated with the loss of wetlands, would be mitigated to less-than-significant levels with the implementation of Mitigation Measure BIO-10.1, requiring a mitigation plan for creation or enhancement of replacement wetlands." I would remark that a mitigation plan in and of itself is not adequate or suitable mitigation. It is the implementation of an appropriate and regulatory agency-acceptable plan that is paramount. Therefore, the measure in and of itself would not mitigate the referenced impacts. I request that the Final EIR be revised on this point to reflect the reality. Has this measure ever been implement in the history of the urbanization of the Newark area? Has it occurred in any manner for the proposed DTOD or Area 3 and 4 developments? With reference to Action CS1.A: Development Review. Use the development review and CEQA processes to ensure that sensitive natural areas are set aside as open space and are managed to ensure their long-term conservation. To what extent was this accomplished by the City before the Dumbarton TOD or Area 3 and 4 proposed developments? I request that one or two examples be included in the final DEIR in order to give citizens like me an idea of open space that already has been set aside by the City and managed to ensure long-term conservation. There is a typographic mistake	The purpose of an EIR is identify and analyze potential impacts of a project, not to provide the extent to which mitigation measures would be enforced. Accordingly, implementation of mitigation measures is an enforcement issue, not a CEQA related issue. In regards to the level of accomplishment by the City regarding Action CS1.A, that is a planning issue, therefore, no response is required. Referring to the clarification of Policy CS-4, that does not raise any environmental concerns and not based on the merits of the DEIR, therefore no response is required. Please see Table 3-1 in the Final EIR for text edits. Please refer to Master Response 5 regarding Area 4.

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	above: "CS1.A" should be CS-1.A. Pertaining to "Policy CS-4: Wetlands Delineation. Encourage the owners of large potentially developable properties to enter into early discussions with appropriate agencies conduct wetland delineation studies. Such studies should be used to identify areas to be conserved as permanent open space, as well as appropriate mitigation measures to offset any wetland impacts." This is probably a good policy, but it does not actually require anything of development proponents. Who is considered an owner? What "large potentially developable properties" still remain in Newark? It is not clear in the policy just who ought to conduct the wetland delineation studies? The project proponents? the agencies? both? How "early" is early? I suggest that the policy be revised in the Final GPT to provide more specific guidance as to timing of such well intentioned discussions and ways they will pursue to determine if in fact the City "encouragement" is resulting in the desired objective. Have the proponents of the Dumbarton TOD and Area 3 and 4 Projects already begun such discussion with the "appropriate agencies"? Have they conducted wetland delineation studies yet? Pertaining to "Action CS2.B: Wetlands Restoration in New Development Areas. Work with the developers of Newark's remaining large development sites, including Dumbarton TOD and the Southwest Newark Residential and Recreational Project (Areas 3 and 4), on efforts to restore and/or re-vegetate natural habitat areas." I request that the policy be revised per my previous comment regarding specification of the timing of the action and how they City is to monitor the effectiveness of this policy. There is a typographic mistake: CS2.B should be CS-2.B.	
Bradley2-66	Page 3.3-38 Pertaining to "Policy CS-3.6: Abating Illegal Dumping. Prohibit and abate the dumping of debris and refuse in and near wetlands and waterways, and the illicit discharge of pollutants into the storm drain system." The City says it will do this, however, they appear not to have sufficient staff or on-call contractors to accomplish this. Another problem is that they will often "pawn" off the responsibility and work to some other potential accountable agency, such as Caltrans, Alameda County Water District, etc. This was the experience that staff at the National Wildlife Refuge often had in the matter of illegal dumping in the vicinity of the Mayhews Landing unit of the Refuge along Thornton Avenue. It was extremely difficult to get the City to go to dump sites in a timely fashion.	The comment is noted; however, it does not pertain to the merits of the EIR. No further response is required.
Bradley2-67	Farther along on this page the DEIR states that "Once that map is "verified," the full extent of waters of the U.S./State would be known and the extent of impacts on regulated areas ascertained." The wetland delineation process and "verified map" are distinct from "ascertaining the extent of impacts". Please revise the DEIR (and proposed Plan, if appropriate) to reflect this fact.	The General Plan is a policy document and does not directly analyze detailed projects. When specific projects were proposed they would experience environmental review.
Bradley2-68	Page 3.3-39 There is a grammatical mistake, an incomplete sentence or "typo". Thus " A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007." should probably be "...was received from...". Toward the bottom of this page the DEIR states: "Significance Before Mitigation: Less than significant." This statement in facts occurs throughout the DEIR. What does this line mean? It appears to be wrong because it is concluded above (and in numerous places throughout the DEIR) that it is compliance with the mitigation policies and measures that would lead to meeting a "less than significant" threshold. Am I correct? The implementation of these policies and actions comes after, not before, the finding in the DEIR as to "meeting a 'less than significant' threshold." If this is the case, then please revise the "Before Mitigation" phrases in the Final EIR to read "After Mitigation". *Please do this for every such finding in the DEIR where this is the case.*	Please see Chapter 3 of the Final EIR for text revisions. The term "significance before mitigation" is meant to be a quick way to find out the level of significance of the impact of the particular analysis that proceeded it. For example, if you wanted to see the impact of BIO-3 without having to read the analysis, you could refer to page 4.3-32 and see that the analysis determined a level of significance of less than significant. Additionally, the heading "significant before mitigation" because mitigation measures, if there are any, are identified at the end of each chapter or section. Throughout the analysis, there may be references to policies being implemented to lead to a determination of less than significant, however, mentioning of implementation of policies or other regulatory measures do not constitute mitigation measures in and of themselves. That said, implementation of policies and regulatory measures may in fact mitigate impacts, however, they may not be the actual identified mitigation measure. No changes are necessary.
Bradley2-69	Page 3.3-40 The DEIR states that "It was found that this impact would be mitigated to a less-than-significant level with the implementation of Mitigation Measure 4.3-6, which requires a wetland delineation to be conducted." It is difficult to see how merely the performance of wetland delineation would be adequate mitigation for impacts to waters of the U.S. unless of course the wetland delineation	The statement was referring to a conclusion reached in a previous environmental review, which has been incorporated by reference pursuant to CEQA Guidelines Section 15150. As such, in the context of the analysis and threshold which analyzes if buildout would result in significant impacts to as-yet undelineated waters, Mitigation Measure 4.3-6 would mitigate the potential impact to undelineated impacts by simply calling for the procedure to

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	shows that no impacts actually occur in the USACE's jurisdiction. Please clarify this matter in the final EIR.	conduct a wetland delineation to identify potential wetlands not otherwise delineated. The statement and reference is adequate in the overall context of the discussion. No changes are necessary.
Bradley2-70	The DEIR states that "... or if avoidance is not feasible, that a program be prepared and approved to create and enhance on-site wetlands or create suitable wetland resources off-site." It is difficult to conceive how the mere preparation of a program to create and enhance on-site wetlands... could achieve adequate mitigation. It would be the requirement of successfully implementing such a program that would result in real mitigation. And I would suggest that the City, if the regulatory agencies have not, insist that such mitigation programs are fully assured by bonding. Some developers walk away from unsuccessful implementation of mitigation measures/commitments and neither the City nor the agencies have the personnel to assure compliance. Financial bonding would accomplish such contingencies. It is difficult to understand how any permanent loss of wetlands situated so relatively close to the baylands could be adequately mitigated for by such measures. It may sound reasonable but it is likely not very practical.	As indicated in Section 2.4.3, Mitigation Monitoring, of the Introduction, pursuant to Public Resources Code Section 21081.6, a mitigation monitoring or reporting program for any project for which it has made findings pursuant to Public Resources Code 21091 must be adopted for the purposes of ensuring all mitigation measures adopted through the preparation of the EIR are implemented. The performance and implementation of the mitigation measures are an enforcement issue (not a CEQA issue), therefore, no further response is required with respect to the outcome or performance of mitigation measures.
Bradley2-71	The DEIR states that "...Mitigation Measure Bio-1.2B, requiring, as an alternative to Measure Bio-1.2A, the acquisition and permanent preservation of existing wetlands at a ratio 1.5:1 (existing habitat: habitat impacted) at an approved wetland mitigation bank or other private lands within 10 air miles of the affected area and along the eastern shore of south San Francisco Bay within the same geographic watershed." I would point out that the fact of sea level rise poses another challenge in terms of any flat, undeveloped open space that is close to the existing Bay shore or salt ponds. The best use for such land may be to serve as buffer to protect existing urban infrastructure. At the bottom of the DEIR states that "Additionally, the proposed Plan includes the following goal, policies, and actions that address potential impacts to wetlands, including waters of the US:... It appears the following section (from this point forward to page 4.3-42) is redundant. It is repetition of policies and measures that already were enunciated. Hopefully it was not intentional but a case of inadvertent mis-copy-and-paste.	Please see Master Response 4 regarding sea level rise. Each analysis is drafted as its own focus, therefore, although some lists of policies and actions may be repeated, it is done so as they apply to one or more analysis. No changes are necessary.
Bradley2-72	Page 3.3-41 Pertaining to Policy CS-2.3: Don Edwards National Wildlife Refuge. Preserve and maintain the Don Edwards National Wildlife Refuge and the surrounding wetlands along San Francisco Bay. Does this policy include those lands within the Refuge's "acquisition boundaries" which were identified over 20 years ago as lands worthy of consideration for inclusion within the boundaries of the National Wildlife Refuge at some future date? This is the last relevant open space within the Newark City limits. It will be too late to directly contribute to the National Wildlife Refuge if the City allows appropriate open space to be developed for other urban uses. This policy consequently seems specious. One wonders, given the fact that the acquisition boundaries have been known since 1989, why it is not a reasonable alternative to be considered. Certainly there are citizens in Newark who would support this general plan vision and land use alternative.	The acquisition boundary defines area that is potentially eligible for incision in the refuge. Such property could only be acquired from willing sellers. The acquisition boundary does not necessarily indicate that the property should or could be added to the refuge- only that it is eligible. Please see Master Response 3 regarding the Appropriacy of Alternatives.
Bradley2-73	Land Use Page 4.9-2 With regard to the Dumbarton TOD Specific Plan, I wonder to what extent the existing General Plan had any influence. What is the sense of having a General Plan if the City Council tends to amend it each time a new development proposed that is not compatible with the current Plan? The General Plan is intended to establish direction and principles to guide growth and sustainable, long-term development. I plead ignorance. Was the word "sustainable" used in the 1992 General Plan?	The comment is noted.
Bradley2-74	Page 4.9-5 Pertaining to the section of "Undeveloped Lands" in Newark, the salt evaporation ponds are only "undeveloped" in the sense that there are not buildings or paved streets. The ponds were built. The levees surrounding the ponds were built. They require a substantial amount of expensive, on-going maintenance.	The comment is noted.
Bradley2-75	Page 4.9-7 Regarding Land Use Action T-2.B: Cedar Boulevard Pedestrian and Bicycle Trail, I think this would be a great project, really contributing to the pedestrian/bicycle-friendly goal. This could also provide connectivity with the commercial facilities to the north of Jarvis and to the west of Thornton and	The comment regarding Action T-2.B is noted; however as it does not pertain to the merits of the EIR no further response is required. To the extent that the remainder of the comment relates to the treatment of previous environmental review in the Draft EIR, please see Master Response 2.

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	also access to the Dumbarton Bridge and the regional Bay Trail on the Don Edwards San Francisco Bay National Wildlife Refuge. The DEIR states under LU-2 that "The proposed Plan would not conflict with an applicable land use plan, policy, or regulations adopted for the purpose of avoiding or mitigating an environmental effect." The DEIR further states that "Per State law, the General Plan is the primary planning document for the community. Once adopted, the proposed Plan would replace the 1992 Newark General Plan. The Area 3 and 4 Specific Plan and the Dumbarton TOD Area Specific Plan would remain in force. Were these proposed developments actually consistent with the 1992 General Plan? or did they require major amendments to the General Plan and Zoning Ordinance? Again, I wonder if this General Plan Tune-up is not simply an bureaucratic exercise to bring what was the primary planning document for our community into conformity with inconsistent revisions and amendments previously recommended and adopted by the Planning Commission and City Council, respectively? Is there some truth in what I am saying?	
Bradley2-76	Page 4.9-8 With regard to Action LU-7.B: Street and Path Network, has there been an economic analysis done to indicate whether or not the City will have enough revenue to be responsible for the operation and maintenance of these public streets? How is all the residential development in this proposed project consistent with smart growth principles? Will we not be creating a relatively isolated residential community west of the railroad tracks with no locally available goods and services unless residents get into cars and travel? Further reading of this section indicates that the Zoning Ordinance will need to be updated to ensure consistency with the proposed Plan after adoption. So the Zoning Ordinance has not been amended yet to bring the Dumbarton TOD and Area 3 and 4 Projects into conformity with a General Plan. These are major changes. Why wasn't the General Plan updated before approvals were granted? There is a great deal of emphasis in the proposed Plan to revitalize our existing community. One would think that the City ought to be trying to discourage the development of new neighborhoods that will be more or less isolated (divided?) from the existing community. With respect to the section of the DEIR that begins on this page with "As described in Chapter 4.6, Greenhouse Gas Emissions, of this Draft EIR, the proposed plan would not conflict ... ", I am not sure why this paragraph is stated here. It appears out of context. Is it somehow meant to imply that the City's proposed land uses will be in compliance with regional GHG emissions reduction strategies? Building more pedestrian and bicycle-friendly infrastructure might advance such strategies, but the building of new medium density residential, relatively isolated from commercial/retail outlets and local transportation infrastructure will not. Buildout of the proposed Plan, as the DEIR shows, will certainly translate into more VMT and thus GHG emission. But then the City appears to put its collective head in the ground and proceed with unwarranted growth and development by adopting a resolution of "overriding consideration." When the DEIR claims that "Overall, implementation of the proposed Plan would not conflict with an applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect and associated impacts would be less than significant...", I'm not sure this is entirely accurate given the goals and policies of the BAAQMD and MTC/ABAG and the proposed residential development in parts of Area 4. There are, in fact, other more regionally and locally beneficial uses for Area 4 lands that would result in less traffic and consequently less VMT and greater offset of GHG. This is one of those ecosystem services, not discussed under Biological Resources that natural open space could provide. Could the 960+ acres of open space be translated into its beneficial contribution to achievement and maintenance of air quality? Here it is again, the statement that before any mitigation, the level of significance is "less-than-significant." This language is confusing when there is so much talk above about mitigation policies and actions. Again, the statement found on this page "Significance Before Mitigation: Less than significant" appears contrary. Should not the statement read "Significance After Mitigation"? Regarding	The analysis of LU-2 analyzes whether the proposed Plan conflicts with an applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Accordingly, the reference to Chapter 4.6 was referring to the consistency with the CARBs Scoping Plan. Please refer to Master Response 5 regarding Area 4.

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	the assertion that "Conflicts with the Habitat Goals and the Basin Plan are discussed in Chapter 4.3, Biological Resources, of this Draft EIR ...", conflicts with the Habitat Goals were not discussed in Chapter 4.3. They were not even identified. The only information in Chapter 4.3 regarding any conflicts was a sentence stating that no official agency had formally adopted the "habitat goals" plan or guidelines, and therefore presumably the City was not required to describe and discuss possible conflicts with the Habitat Goals? As a matter of fact, regulatory agencies such as the Bay Conservation and Development Commission do use the Habitat Goals document to guide their implementation of the Bay Plan. To me, this type of issue avoidance in the DEIR demonstrates the City's lack of sincerity in the realms of conservation and sustainability.	
Bradley2-77	Page 4.9-9 The DEIR enumerates some of the "numerous policies and actions [in the proposed Plan] intended to minimize such [inevitable] disturbances and support the goals of the [National Wildlife Refuge's Comprehensive Conservation Plan] CCP. But the DEIR does not appear to describe or analyze any of the "inevitable" conflicts that might result from the proposed Plan. It makes reference to "limitations on off-leash dogs" and the "avoidance of excessive night lighting," but gives the reader neither description nor analysis of how these might have adverse effects on the protection and conservation of wildlife. I could find no mention of "cats" in the DEIR although the depredation of wildlife resulting from house cats in urban areas is well known and researched. Although most of the policies and actions referred to on this and the next page appear to be very laudatory, they are not discussed in any detail. Nor do any of them address the impacts of urban land uses on the long-term protection and preservation of the baylands and other open space habitats within the current expansion boundaries of the Don Edwards San Francisco Bay National Wildlife Refuge.	The comment attempts to conclude the fact that inevitable disturbances may occur, which may or may not be true, however, in the absence of specific projects, such disturbances, if any, cannot be determined nor analyzed at the programmatic level such as this DEIR. As stated throughout the DEIR, future development would require separate project-level CEQA review which would identify "inevitable" disturbances at that time. Accordingly, the applicable policies are intended to be applied at the project-level, therefore in the absence of specific projects being analyzed in the DEIR, therefore, adherence to such policies and actions proposed under the General Plan can only be assumed to be adhered to and accordingly are analyzed correctly for a programmatic level analysis. No changes are necessary.
Bradley2-78	Page 4.9-10 One of the policies referred to in my previous comment is "Policy CS-2.6: Salt Pond Management. Encourage the management of salt ponds to enhance their value for wildlife habitat and recreation. In the event that salt production ceases, conduct a Specific Plan to explore a balance between development and preservation of important wildlife and open space resources cited in the DEIR." What exactly does this imply? Could the wording of this policy be revised to better reflect the refuge's goals in its CCP or even more broadly, given the limited planning horizon, its [the National Wildlife Refuge System's] mission statement? This policy also appears contradictory/inconsistent as the urban development of Area 4 does nothing in the way of encouraging long-term preservation of the baylands etc. Guess it's the difference between narrowly conforming with existing wetland protection laws and promoting landscape open space resource preservation. One of the CCP-supportive actions, Action CS-2.E: Wetland Acquisition and Conservation. Support acquisition of wetlands and other environmentally sensitive areas by land trusts and other environmental organizations for the purpose of mitigation banking and wetlands restoration, provided there are no conflicts with other General Plan goals and objectives." This latter provision totally limits the scope of the City's future support, given that the City has been trying their utmost to incorporate into the Plan update the urbanization of the two largest remaining areas of open space. The City also cites as an action to support the Refuge's CCP the following: "Action POS-1.A: Don Edwards National Wildlife Refuge Expansion. Work with property owners, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the California Coastal Conservancy in the expansion of Don Edwards San Francisco Bay National Wildlife Refuge and the conservation and restoration of salt marsh open spaces along San Francisco Bay." But this an embarrassingly belated, practically irrelevant gesture of support since the City, over the past few years, has been advocating and promoting the residential and commercial development of the last remaining open spaces in the City.	The commenter’s opinions are noted. Please refer to the Master Response 5 regarding Area 4.

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Bradley2-79	Page 4.9-11 In the DEIR's conclusion (appearing at the top of this page) that the "overall, implementation of the proposed Plan would result in a less-than-significant impact with respect to conflicts with the CCP," would you please state in the final EIR if City planners or their consultants formally or informally consulted with Refuge personnel to seek concurrence on this important matter? With regard to the statement in the DEIR that "BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek ...", it is extremely difficult locate this jurisdictional landmark on the map provided in the DEIR. In the final EIR, would you please more clearly delineate the on the map for this reader. I don't see the bridge and I'm not sure if I'm looking at the referenced "bend in the Plummer Creek channel." The statement in the DEIR to the effect that "Neither the adopted Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs" is very good news indeed. Although I cannot distinguish in sufficient detail the boundaries of these historic duck clubs, I presume the hunting was carried out in wetlands and nearby uplands. Just how close to the duck clubs is the City anticipating development? With regard to the policy statement in the DEIR, namely, "Policy CS-1.2: Conservation of Sensitive Areas. Support the conservation of environmentally sensitive areas and unique natural resources in the city," I believe there is a strong case to support addressing Area 4 as "unique natural resources" in that it pretty much represents the last remaining intact natural open space area in the City of Newark and as such are valuable and unique de facto? All the open space west of the railroad tracks in Area 4 it has unique value as open space. There is Shoreline Lake and the Silliman Complex but these are dedicated to the preservation and conservation of natural open space. I urge the City Planning Commissioners to recommend dedicating as much of Area 4 as possible. Perhaps finding a way to implement the proposed "Policy CS-1.3: Interagency Cooperation. Participate in cooperative efforts with private landowners, the federal government, and surrounding cities to encourage the long-term preservation of the baylands and other sensitive natural areas" before proceeding with or during the on-going development of the Areas 3 and 4 Project would achieve the preservation of this unique and valuable resource.	In regards to the comment about the level of collaboration with agencies and other organizations, that is a planning issue and therefore no further response is required. Although the BCDC jurisdiction is not depicted throughout the DEIR, the boundaries are described through text and therefore are sufficient enough to the extent the BCDCs jurisdictions were referred to in analyses. As such, a map of the jurisdictions of regulatory agencies may or may not be necessary. Regarding the BCDCs jurisdiction, a map was determined to be needed and, therefore, no further response is required. Regarding the dedication of Area 4 for preservation, that is a planning related issue, not CEQA, therefore, no further response is required; however please refer to Master Response 5 regarding Area 4. For information,. As such, please see the Restricted Growth Alternative on page 6-2 for a discussion which includes restricting growth in environmentally sensitive areas along the western edge of Newark. Although that alternative was found to be environmentally superior, it does not meet most of the stated objectives, also found in the Alternatives chapter and, therefore, was rejected as the preferred alternative, as discussed on page 6-27.
Bradley2-80	Page 4.9-12 It is on this page that the DEIR concludes that "Under the proposed Plan, the land use designation and zoning applicable to the duck clubs would remain unchanged as Low Density Residential. No development is envisioned on the location of the duck clubs, nor could any development of these areas, to the extent they are managed wetlands as defined under the McAteer-Petris Act, occur without a permit from BCDC or any other agency with jurisdiction over these areas. Further, as BCDC policies do not explicitly prohibit development on these locations and as none is envisioned in the proposed Plan, conflicts with the Bay Plan would be less than significant." In the finalization of the proposed Plan, I suggest that a policy directive be developed that would result in converting all those portions of Area 2 and Area 4 where development is not envisioned from the existing "low density residential" zoning to an "open space" designation. It just makes good sense; it the right thing to do. Why wait until it would require another round of amending the General Plan and Zoning Ordinance. I am still uncertain as to how the City can, in the proposed Land Use Planning element, come to a finding of "less than significant" before any required mitigation is determined. Who knows if impacts will be able to be mitigated to a level of "less than significance"?	As stated in Chapter in 1.0, and 2.0, the DEIR was prepared at the programmatic level and therefore does not analyze project-specific impacts. Therefore, determinations of less than significant assume that adherence and compliance with policies and regulations under the proposed General Plan along with local, State, and federal laws would result in less than significant impacts where indicated. Further, future development would be subject to independent CEQA review which would identify project-level impacts and mitigation measures. Please refer to Master Response 5 regarding Area 4.
Bradley2-81	Page 4.9-13 The DEIR states that "... buildout of the proposed Plan would not contribute to a cumulative impact associated with division of an existing community." No, but what is the rationale behind creating an isolated community? Cherry Avenue serves as a clear and formidable separation of residential neighborhoods from commercial/industrial, except in the southern portion of the Newark Old Town area. If dividing an existing community is not advocated, then why would we want to promote the creation of a divided Newark community? By locating residential units in Area 4, the City would actually be creating a	The discussion on page 4.9-13 discusses the potential of cumulative impacts that reflect cumulatively the independent analyses found in LU-1 through LU-3, of which are not required to address isolation of communities, but rather if development would divide existing communities. For that reason, no changes are necessary. The comment referring to promoting isolated communities is incorrect, and no such promotion is stated or otherwise implied in the DEIR. In response to locating residential units in Area 4, no specific projects are being proposed under the proposed General Plan, therefore, project-level CEQA review has not been conducted under this DEIR

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	fairly isolated residential enclave. This seems contrary to policies in the proposed Plan for improving and cultivating a greater sense of community. At the bottom of this page, the DEIR tersely states that "The Plan would not result in any significant Plan-specific or cumulative impacts related to land use and planning and therefore no mitigation measures are required." But would it not be more honest to state something to the effect that: Since all adverse impacts have been reduced to a level "less-than-significant" through policies and actions that avoid or minimize impacts to the maximum extent practical, no *additional* mitigation measures are required? Because throughout the DEIR there is reference made to compliance with whatever, yet-to-be-determined mitigation measures required by the numerous, non-City regulatory agencies, the statement regarding cumulative impacts of land use that "no mitigation measures are required" is very distressing and confusing to say the least.	and, therefore, did not analyze any specific housing development in Area 4, because no such development has been formally proposed. In response to the mitigation comment, stating that there are no mitigation measures is accurate given that implementation of proposed policies and previous mitigation measures identified in prior environmental review do not constitute formal mitigation measures on their own. That said, although policies and regulation may result in mitigating effects, they are not in and of themselves considered mitigation measures. As such, no changes are necessary.
Bradley2-82	Page 4.10-1 There is a typographical error: "beings" in line 2 should probably be "begins".	Please see Chapter 3 of the Final EIR for text revisions.
Bradley2-83	Page 4.10-4 How exactly is one supposed to "read" There are several dBA figures that are not associated with any source. Please revise for the Final EIR. Page 4.10-9 Under Vibration Standards the DEIR that "For industrial uses, the City of Newark likewise requires that no vibrations be perceptible beyond the boundaries any particular site, with an exception for vibration caused by temporary construction." Should not even temporary construction noise be mitigated to the maximum extent practical because in many cases "temporary" construction can go on for days and weeks?	Table 4.10-2 does not present thresholds; it was included to illustrate how loud some indoor and outdoor noise events are relative of the dBA logarithmic scale. These events are presented to provide order of magnitudes, so the reader can have an idea of what a particular level represents. For example, a gas lawn mower at 3 feet away generates noise levels between 90 and 100 dBA. The City does not have noise thresholds to regulate construction noise, which is reduced by limiting it during the daytime hours.
Bradley2-84	Page 4.10-10 The DEIR states that "Figure 4.10-1 shows the existing 65 dBA CNEL train noise contours, along with those from motor vehicle traffic." I do not see any noise contours delineated. It displays noise monitoring point locations, not noise contours.	The discussion in page 4.10-10 should have referred to Figure 4.10-2, which shows the 60, 65 and 70 dBA CNEL noise level contours for existing and future conditions.
Bradley2-85	Page 4.10-22 The DEIR cites "Action EH-6.A: Noise Ordinance – Limits on Noise Levels. Draft and adopt a Noise Ordinance that establishes acceptable noise levels and standards, as well as provisions for enforcement and penalties in the event these levels are exceeded." As with many other "actions" referenced in the DEIR, it does not appear that the planners have recommended any target dates for completion of the recommended actions. Please consider including "target dates for completion" of all actions in the proposed Plan.	As required by Government Code Section 65400, the Community Development Department will investigate and make recommendations to the City Council regarding implementation after the Plan is adopted (see P. 152 of the General Plan Guidelines). The City will address the implementation of General Plan actions in its annual progress report. Alternatives for the prioritization of General Plan actions will be considered, further evaluated, and discussed with the City Council following Plan adoption.
Bradley2-86	Page 4.10-28 The DEIR cites "Policy EH-7.6: New Noise Sources. Require new developments that have the potential to create long-term noise increases to mitigate potential impact to off-site receptor properties." Will this policy apply to on-site open space resource receptors, that is, the wildlife and the folks who may be using the open space? If not, please include in the final Plan policy that would address receptors occupying open space. Page 4.10-35 In its conclusion regarding Noise Impacts, the DEIR states that Although the most effective mitigations such as soundwalls or earthen berms may theoretically be capable of reducing increases to ambient noise to levels below the above standards, such reductions cannot be guaranteed; and, in many cases, other considerations will prevent the use of these noise-attenuating features. Therefore, there are no additional measures available to reduce the associated impacts to a less-than-significant level....No feasible mitigation measures are available to reduce noise impacts to less than significant levels, impacts would remain significant and unavoidable." I am not sure that I understand what's being asserted. Cannot the noise-reducing mitigation measures be guaranteed? Many measures are proven to reduce noise impacts. Although they may not reach target levels, they are better than nothing. What other considerations? for example? might preclude the use of noise-attenuating features. The conclusion that there is "no feasible mitigation measures available to reduce noise impact to less than significant is sad, very sad. It is a difficult assertion to prove, especially given our discretion to regulate land use and setbacks, and so forth. I am suspect that when you attempt to meet the standards set by regulatory agencies, it will find that much the same, namely that it is not	Mitigation measures for noise are site-specific and are highly dependent on the geometry from the noise source to the receiver, and on the characteristics of the noise source. Several factors could deem a mitigation measure infeasible, such as cost, land ownership, space, soil conditions, etc. As this is a program-level analysis, it is not possible to guarantee that every new project would not be exposed to, or would not expose nearby sensitive uses to noise levels above thresholds. This will be analyzed in detail when projects are subject to environmental review, or tract map/building permit approval.

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	possible to mitigate every impact resulting from proposed development to a less than significant level.	
Bradley2-87	Page 4.12-5 The DEIR cites "Action CSF-4.F: Improving Fire Response Capacity. Ensure the provision of sufficient facilities and additional fire personnel, to respond to the demand created by new development." Of course this sounds like a responsible policy, however, in the discussion of Page 4.11-4, it claims that there will not be a need for new facilities, and it does not mention increases in fire personnel. It is hard to comprehend that the proposed increase in number of residents will not require additional personnel and equipment and probably facilities. How often do citizens hear statements to the effect that an agency "does not anticipate that this increase would require the construction or expansion of facilities," and then 10-15 years down the line hear from the same folks that such expansion is needed? or that a rehabilitation is needed and facilities will be expanded at the same time? It does not seem to make common sense that the increase in service population would be accommodated using existing stations? And how about personnel and equipment? Or does planning skip over those issues because CEQA may not require it? Farther down on this page, under the discussion regarding Cumulative Impacts, the phrase "modification of existing facilities" is introduced. I did not see that idea in the above discussion. Of course such modifications can be very expensive.	The comment is noted. The determination was based on the implementation of policies under the proposed Plan along with local and State regulations, such as impact fees to ensure adequate fire protection facilities. The impact analysis in Chapter 4.12, Public Services and Recreation, analyzes whether or not new facilities would be required as a result of the proposed Plan. As stated, the increase to service population would occur over span of 20 years, and as indicated through communication with the Fire Chief of the Alameda County Fire Department, new facilities would not be required. Therefore impacts were determined to be less than significant. It was discussed that additional staff and equipment would be needed as a result of an increase to service population, however, under CEQA the need for staffing and equipment alone is not considered an environmental impact, unless that staffing or equipment resulted in the need for new facilities, of which the construction of such facilities could result in environmental impacts.
Bradley2-88	Page 4.12-6 Under a discussion of Newark Capital Facilities Fees the DEIR states that the fees as they pertain to residential development need not be paid to the City until the issuance of the Certificate of Occupancy Why isn't the fee paid before construction in the case of residential development? It would appear that needs for law enforcement would arise (with occupants moving in, and before) and fees not being received until such time as would result in a lag before they could be used to construct or modify facilities and secure the personnel needed to address the protection of homes and residents?	The comment is noted; however as it does not pertain to the adequacy of the EIR, no further response is required.
Bradley2-89	Page 4.12-15 In section 4.12.4 PARKS AND RECREATION, the DEIR "describes the regulatory framework and existing conditions, and the potential for environmental impacts related to parks and recreation." There is no reference in this major heading to Open Space. However, above it was referred to as a mandatory element. There does not appear to be any acknowledgment of open space per se nor an impact analysis…. In its discussion of parks, the DEIR offers no analysis of space that would allow opportunities for unstructured play. Perhaps the planners are taking a minimally required perspective, namely, parks and school grounds, period. There is little if anything setting the background as to the value of open space, why it is a mandatory element, and so forth. Again, I would suggest that in as much as the proposed Plan could eliminate much of the remaining open space in the City and that much of that would be on lands adjacent to baylands that are fully capable of sustaining bay restoration. On Page 7 of the draft GPT it states that the City has expanded two of the state-mandated categories. The Open Space, it stated, was expanded to cover Parks and Recreation. So far in this DEIR, it appears that sodden parks and playing fields are the only kind of park land the DEIR is focusing on relative to this mandatory Open Space element. Reference is made under the DEIR description of Regional and State Park to the Don Edwards San Francisco Bay National Wildlife Refuge encompassing 30,000 acres. The reader should probably know that half of the 30,000 acres is located on the west side of the Bay, and that most of the remainder on the Newark side of the Bay is not accessible by citizens due to Cargill salt operations. I suggest in discussions of this sort that the DEIR consider addressing acreage in terms of available miles of accessible trails. Page 4.12-22 The DEIR states that "Additionally, continued implementation of the parkland dedication requirements established in the Municipal Code would ensure that existing parks or public facilities are well-maintained and improved as needed." Inspection of almost any park in Newark would show that policy and ordinances do not assure that existing parks or public facilities are well-maintained and improved when and as needed. For example, the exercise equipment	The comment is noted. The requirements under CEQA and requirements of State law pertaining to mandatory elements of a General Plan are independent of each other. Therefore, there is no requirement that Open Space be addressed as its own heading under CEQA Guidelines. Regarding the identification of opportunities for unstructured play, an EIR is not required to identify areas of play. Pursuant to CEQA Guidelines, each chapter looks at existing conditions, the proposed project (or Plan), and analyzes impacts accordingly. No changes are required.

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	in the Lakeshore park have needed replacement for several years. The paved trail providing accessibility has been in various stages of disrepair for several years, as has been the park irrigation system. The City is slowly, extremely slowly, addressing the huge backlog of maintenance repair and replacement needs it has. How can the City Council and City Planning Commissioners go on promoting new facilities when we do such an inadequate job of maintaining what we already have?	
Bradley2-90	Page 7-1 I do not think this is accurate. In fact the federal government owns much of this property in fee-title. Leslie Salt Co. and its successor Cargill Inc. have salt resource extraction rights in perpetuity. Nonetheless, the salt evaporation ponds function as significant migratory water bird and waterfowl habitat. The designation Salt Harvesting does perhaps more accurately reflect that nature of activities from a layman's perspective; however the designation Agriculture / Resource Production does help the layman understand why the land is eligible for Williamson Act benefits. I am not sure why the designation name change for this acreage. From another perspective it could be designated migratory bird habitat. This concludes my comments. Again, I urge you to consider carefully the suggestions I have made and address the questions I have raised. Sincerely, John R. Bradley	The comment is noted; however as it does not pertain to the adequacy of the EIR, no further response is required.
Burrows-1	I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay.	The comment is noted; however, it does not pertain to the merits of the DEIR and no further response is required. To clarify issues involving Area 4, please see Master Response 5
Burrows-2	I read the financial analysis of the various scenarios, and of course you are going with Area 4, which according to the analysis provides the biggest upside. Unfortunately, the key assumptions of your analysis did not seem to evaluate the environmental costs of filling in Bay wetlands, or the threat of sea level rise from global warming. Nor did it evaluate potential financial upsides of folding the properties into the Don Edwards National Wildlife Refuge. Seems a bit shortsighted. There was a golf course out in that general area in the past, which has disappeared into the wetlands of history - why do you want to repeat that failure? When this project goes upside down, your name will remain attached to it.	The comment is noted; however, it does not pertain to the merits of the DEIR and no further response is required. To clarify issues involving Area 4, please see Master Response 5.
Burrows-3	Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from development: -The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay -The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise" -Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem" and "critically important to waterfowl and shorebirds" I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Response 3 regarding the adequacy of alternatives. To clarify issues involving Area 4, please see Master Response 5.
Burrows-4	With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.	The comment is noted. Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. Please see Master Response 4 regarding sea level rise and to clarify issues involving Area 4, please see Master Response 5.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
Dorman-1	My family has lived in Newark since 1989, and I co-own a business located in Newark. I oppose the plans to fill Area 4. It's the wrong plan in the wrong area. I've heard all the arguments for development, including that the "developers will sue the city" if we don't dump 2 million cubic yards of fill into this wetland area. I don't find these arguments compelling. In the long run, the right thing to do is to protect Area 4. Please work to develop a General Plan EIR alternative that would accomplish this protection. Let's think about our kids and grand-kids, and let's not build housing stock that will be subject to flooding as sea levels rise. I know you care deeply about the city. We can do better than the current plan. Let's do the right thing.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Reponses 3 regarding the adequacy of alternatives and to clarify issues involving Area 4, please see Master Response 5.
Elkins-1	The plan to develop "Area 4" into residential housing and a golf course is clearly not forward thinking. With sea levels rising, you will literally and figuratively be bailing out any residents that live in this development within the next 50-100 years. I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay. This plan is rooted in thinking that is about a century too late.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Response 4 regarding sea level rise to clarify issues involving Area 4, please see Master Response 5.
Hooper-1	Clearly it makes no sense to endanger the Don Edwards National Wildlife Area with extensive development in Area 4. Moreover, do you know that King Tides will raise water levels nine feet within 25 years. Wetlands are one of the few things that will protect your community from climate change and rising seas. I oppose the City of Newark's destructive plans to fill and develop "Area 4" -- one of the largest tracts of restorable, undeveloped baylands in South San Francisco Bay. This shoreline area should be protected from development, included in the Don Edwards San Francisco Bay National Wildlife Refuge, and restored to benefit of Newark and the health of the Bay. Scientists and regulatory agencies agree that Area 4 represents a rare opportunity to restore San Francisco Bay, and should be protected from development: -The 1999 Baylands Ecosystem Habitat Goals Project identifies Area 4 as being uniquely situated for the restoration of both tidal marsh and adjacent upland transition zones, two habitats critical to the health of the Bay -The San Francisco Bay Regional Water Quality Control Board has stated that "large expanses of undeveloped uplands immediately adjacent to tidal sloughs are extremely rare in the south and central San Francisco Bay" and that "Area 4 represents a rare opportunity to... provide an area for tidal marsh species to move up slope in response to sea level rise" -Similarly, the California Department of Fish and Wildlife has stated that "this wetland is an integral component of the San Francisco Bay ecosystem" and "critically important to waterfowl and shorebirds."	Please see Chapter 4.3, Biological Resources, of the DEIR to see an impact analysis discussion related to biological resources, including wildlife, in the City of Newark. Please see Master Response 4 regarding sea level rise and to clarify issues involving Area 4, please see Master Response 5.
Hooper-2	I strongly encourage the City of Newark to develop a General Plan EIR alternative that would protect Area 4 in its entirety, focusing the City's future growth within already developed areas, near transit, shops, and services.	The comment is noted. As discussed in the Alternatives chapter on page 6-2, the Restricted Growth Alternative would restrict future growth in environmentally sensitive areas along the western edge of Newark. Please see the discussion from pages 6-19 through 6-25 regarding this alternative. Please see Master Response 3 regarding the adequacy of alternatives.
Hooper-3	With nearly all of Area 4 already within a FEMA-designated flood zone, and sea levels estimated to rise by more than four feet over the next century, this is simply an inappropriate place for development. Rather than put future residents at risk, the City of Newark should work to restore Area 4, providing recreational opportunities for residents, much-needed habitat for wildlife, and critical flood protection for the city.	Please see impact analysis Hydro-3 starting on page 4.8-25 in the Hydrology and Water Quality chapter of the DEIR for a discussion related to potential impacts related to flooding. Impact analysis HYDRO-4 on page 4.8-27 through 4.8-28 discusses runoff impacts and potential flooding. As discussed in the analysis, existing measures such as design review and standard conditions of approval related to water runoff and flooding, along with several policies contained in the proposed Plan, as identified on page 4.8-28, would result in impacts related to flooding to be less than significant and no changes to the DEIR are necessary. Please see Master Response 4 regarding sea level rise.
REA-1	Thanks for running a professional public meeting last night. Please allow me to elaborate on the remarks I made. You may recall that I emphasized the need for the Plan to articulate issues of quality of life in Newark, especially the need to create more opportunities for building a sense of shared community. One	There are Policies and actions in the proposed General Plan that address community gardens and other recreational issues raised by the commenter, however, these issues do not relate to the adequacy of the DEIR thus no further response in necessary. No further response is required.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
	of the means to do this, of course, is to promote public space for community gardens. Local Ecology and Agriculture Fremont (LEAF) is doing this with considerable success at several plots: http://www.leafcenter.org/ And public gardens with native plants are also well underway in the Quarry Lakes area, where native plants are now labeled. Why not Newark, too? We're hoping to make it happen not only at Lakeshore Park now more broadly. After working with Bob Costa for a couple years now, several of us citizen gardeners are calling for less lawns and more flower beds devoted to specific kinds of drought-resistant plants, such as succulents, California natives, and sunflowers representing various countries. Such well-tended, well-labeled plots could provide opportunities for educating the public—and particularly school children. Such endeavors might involve creating Newark versions of the San Jose Rose Garden, where residents from different areas or affiliations would commit to steward a project of their own conception. As in San Jose, these would not only provide esthetic interest and scientific information, but also great opportunities for community building—another challenge for Newark, which has the quietest PO I've ever known!	
REA-2	On the issue of sea-level rise, you may have seen the following story in today's paper: Plan on moving to Alameda Point someday? You might want to pack a swimsuit and snorkel. Much of the former Naval Air Station - site of a projected 1,425-home development - will be underwater by the end of the century due to sea level rise brought on by climate change, according to the city's draft environmental impact report on the project released this month. "For a lot of people, this is a very scary subject. We in the Bay Area have to come to grips with this not just at Alameda Point, but throughout the region," said Randy Rentschler, spokesman for the Metropolitan Transportation Commission, which is among the agencies studying the impacts of sea level rise in the Bay Area. (Chronicle Wed. 9/25/13). Clearly this issue of sea-level rise bears up the proposed developments here in Newark; the new General Plan needs to treat them more fully fairly, fully, and seriously.	The comment is noted. Please see Master Response 4 regarding sea level rise.
REA-3	Finally, I need to emphasize the need for much improved democratic process, which is a serious problem in many areas of Newark city government. The classic example occurred last April, when the president of the League of Women Voters scolded the Council for regularly violating the Brown Act—and then, just moments later, the Council ducked into closed session. In the case of the General Plan, it's clear that there was inadequate publicity for last night's public meeting/study session: nothing in the Newark News or Patch, no announcement via LARA or Island organizations, etc. And, as several citizens pointed out last night, allowing two days for public comment period is hardly sufficient. Finally, one might note how democratic process has declined since Barry Miller helped to author the original Plan back in 1992. At that time, city planner Charles Cashmark took the Plan around to several different neighbors, often getting impressive turnouts. Reversing this downward trend would seem to be an important issue for the New General Plan Few issues could be more important to the City's future. Thank you for your attention —	The comment is noted. The DEIR was prepared in accordance with CEQA Guidelines as indicated in Chapter 2.0, Introduction, of the DEIR.
LEWIS-1	Thank you for providing this marvelous work of science fiction. Where did the city find written in state government code that a city may provide a "tune-up" to replace a genuine general plan update. Does state law allow a half-baked EIR that relies on studies from more than twenty years ago and an outdated general plan and EIR? What is the time frame of this "tune-up"? It appears to be between 20 and 25 years thus giving the city a general plan that will be about 40 years old. This is worrisome	The comment is noted. The DEIR was prepared in accordance to CEQA Guidelines as indicated in Chapter 2.0, Introduction, of the DEIR. Also found in Chapter 2.0 on page 2-1, the horizon year for the proposed Plan is to 2035.
LEWIS-2	The DEIR is confusing as it appears to base itself from previous Specific Plan EIR's. It also relies on phantom master plans that will not come before public review until next year. NewPark Mall is one example. There are also no specifics for so-called Old Town and the city hall/library complex. A supplemental EIR for part of the Dumbo Rail TOD is not completed. Upon what is this "tune-up based?	The comment is noted. As indicated in Chapter 2.0, Introduction, of the DEIR, Section 15150 of the State CEQA Guidelines allows all or portions of another document to be incorporated by reference into subsequent EIRs. Although incorporating information from other documents, the General Plan EIR discloses and mitigates the impacts of the General Plan at a program level.

TABLE 5-1 RESPONSE TO COMMENTS MATRIX

Comment ID	Comment	Response
LEWIS-3	The Executive Summary is shameful. It appears to have been written by a pre-school class. There is no explanation of what LTS means or the significance of N/A. It appears that LTS means Less than Significant (impacts) and in that case this summary is dead wrong.	Table 1-1 in the Executive Summary of the DEIR has been revised to include a key at the bottom of the table to denote the abbreviations used in the table. Please see Chapter 3 of the Final EIR for text revisions.
LEWIS-4	What studies were done to conclude these findings? The DEIR claims to be self-mitigating. What does that mean? Is it like do-it-yourself brain surgery?	The document is referred to as self-mitigating because, where possible, measures to reduce environmental impacts were included in the General Plan itself as Policies or Actions. These issues do not relate to the adequacy of the DEIR thus no further response in necessary.
LEWIS-5	What is "focused high-density housing" proposed for Dumbarton TOD? According to state guideline transit oriented developments are supposed to have housing, public transit and commercial within the development footprint. DTOD has none of this. There isn't even a train to nowhere; there is no train period. No bus no trolley no nothing. There are only a few nearby businesses such as a trucking company and chemical plant. There is nothing to indicate anything will be built anytime soon due to the need for soil and groundwater clean-up.	The comment is noted; These issues do not relate to the adequacy of the DEIR thus no further response in necessary. No further response is required.
LEWIS-6	Another strange use of the English language are the words "embrace Newark's bayfront location". What does that mean? Is this a CEQA term? Where is Newark's bayfront? Last time I looked at a map Newark was surrounded by Fremont, salt and bittern ponds and two sloughs. Newark does have wetlands so we could embrace them.	The comment is noted. The term "bayfront location" as it relates to the DEIR refers to the general regional location of Newark. As depicted in Figure 3-1 in Chapter 3.0, Project Description, Newark is located adjacent to the San Francisco Bay, and although not directly on the San Francisco Bay, in general it was considered to be "bayfront" due to its close proximity of its western boundary to the SF Bay.
LEWIS-7	The photo labeled seasonal wetlands in the DEIR is wrong. It is tidal. But you would not expect the pre-schoolers to know that.	Please see Chapter 3 of the Final EIR for text revisions.
LEWIS-8	Newark has seasonal wetlands in DTOD and proof has been sent to the city. There are also seasonal wetlands elsewhere in the city but this document leaves them out.	On pages 4.3-39 through 4.3-48, the Draft EIR discusses wetlands, including seasonal wetlands, to the extent required under CEQA. Figure 4.1-1b shows seasonal wetlands in the Southwest Newark Residential and Recreational Focus Area. Additionally, the Dumbarton TOD Specific Plan EIR, incorporated by reference into the Draft EIR describes the Plummer Creek wetland mitigation bank, an area of restored tidal and seasonal wetlands, adjacent to the Specific Plan Area's southwestern edge.
LEWIS-9	This DEIR is not based on the entire city. It concentrates on a few sites; NewPark Mall, part of Old Town, Areas 3 and 4 and Dumbarton TOD with slight mention of the city hall and library complex.	As described throughout the Draft EIR and specifically on pages 3.14 through 3.29, the proposed Plan includes policies and information intended to guide future development and redevelopment in all of Newark and its sphere of influence through the horizon year of 2035. The Draft EIR notes that as the developable area of Newark is largely built out today, it is anticipated that future development will occur primarily but not exclusively in four focus area: the Dumbarton TOD Focus Area, the Southwest Newark Residential and Recreational Focus Area, the Old Town Focus Area, and the Greater NewPark Focus Area. As discussed on pages 3.23 through 3.27, buildout forecasts that serve as the basis for the environmental analysis in the Draft EIR clearly articulate the level of growth anticipated throughout the City, including areas outside of the focus area. No change to the Draft EIR is required.
LEWIS-10	The mall master plan won't be available until sometime in 2014.	Action LU-9.A from the proposed Plan calls for the creation of an Master Plan for the Greater NewPark Area, but does not proscribe a timeline for its completion.
LEWIS-11	The section of Old Town comprises a few blocks on Thornton Avenue. It doesn't even include the deserted city fire station.	The comment is noted; however, as it does not pertain to the merits of the Draft EIR, no further comment is required.
LEWIS-12	Areas 3 and 4, (the Southwest Newark R and R) is in litigation and cannot be considered approved for use in this DEIR.	Please see Master Response 2 regarding reliance on previous environmental review.
LEWIS-13	Dumbarton TOD is derailed and environmental review has not been completed.	As discussed on pages 3-12 through 3-15 of the Draft EIR, an EIR was prepared for the Dumbarton TOD Specific Plan, identifying significant impacts and mitigation measures required to address them. That EIR was certified by Newark City Council and a Statement of Overriding Considerations was adopted in July 2011. Please also see Response to Comments RWQCB-B-2 and RWQCB-B-10.
LEWIS-14	A new city hall and library are not on the horizon. Where does that leave this DEIR? Dead in the water.	Action LU-1.E of the proposed Plan calls for the development of a Civic Center Concept Plan. However, as the comment does not pertain to the merits of the EIR, no further comment is required.
LEWIS-15	Speaking of water, the DEIR is remiss in discussing and disclosing the impacts of housing and	The comment is noted. Please see Chapter 4.11, Population and Housing, for a complete discussion on impacts

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Comment ID	Comment	Response
	development on the "bayfront". The city has no policy or studies on sea level rise and instead points to state and/or federal agencies to take care of the problem. The city claims it will build on massive amounts of fill out of the flood zone and all will be well. Meanwhile Union Sanitary District who takes care of wastewater in Newark and Fremont is very concerned about their infrastructure. There are two pump stations; one on Cherry Street in Newark and the other one the Newark Pump Station located near Dumbarton TOD. In a recent study on their infrastructure, USD stated that all future infrastructure projects west of the Nimitz Freeway should incorporate future sea-level rise planning and include appropriate improvements if needed. There are also concerns about placing pipelines in filled areas as settlement could cause pipeline failure. The city can contact USD for a copy of the study. I could comment more on this flawed document but my brain has run out of bandwidth. After slogging for weeks trying to make sense of the DEIR and draft general plan I have decided it is nothing more than a bunch of bologna that makes no sense whatsoever. Did the youngsters at CalPoly submit their report to the city on the so-called meetings they held? Are their recommendations and studies part of this process? If so, where are those documents located? How much did this DEIR and draft general plan cost the city? Since it is pretty much worthless I hope the city gets a substantial refund and finds competent consultants to do the project right. And stop with the "tune-up" nonsense. It is insulting to our intelligence.	with regards to housing. Because the DEIR is programmatic, as discussed in Chapter 2.0, Introduction, it does not analyze project-specific environmental impacts, such as development on the "bayfront." As such, the analysis contained in Chapter 4.11 is adequate and no further changes are necessary. Please see Master Response 4 regarding sea level rise. The DEIR was prepared in accordance with CEQA Guidelines as indicated in Chapter 2.0, Introduction, of the DEIR.
MILLER-1	SUBJECT: GENERAL PLAN (GP) and EIR TUNEUPS: HYDROLOGY AND WATER QUALITY (my comments are in italics) SUMMARY My comments are a general critique of the tuneup documents of the City of Newark, and I reference some pages specifically. My comments primarily address Hydrology and Water Quality. What really is a GP DEIR tuneup—your very confusing conglomeration of regulations and uncommitted references to not take action? The general consensus of readers will find throughout the new tuneup plans that almost every nonspecific, generic claim by the City concludes insignificance, often even before nonspecific mitigations that have no details of action. Contradictions between different sections and lack of commitment makes one wonder who composed these confusing documents? Many members of the public claimed to be confused, due to the unprecedented proposals in these end-run tunups, which were obviously quickly created to circumvent faults in the prior EIRs. Timelines for public input were also very short. Specific corrective actions in the tuneups were not proposed to address prior faults. Many illogical and circular arguments, appeared to eventually contradict themselves.	As discussed in Chapter 2.0, Introduction, Section 2.4, Environmental Review Process, the DEIR was available in accordance with CEQA Guidelines. CEQA Guidelines Section 15105 states that draft EIRs be available for comment for no less than 45 days. The public review comment period lasted between August 14, 2013 through September 27, 2013, or 45 days as required by CEQA. As mentioned in Chapter 2.0, Section 2.2.3, Incorporation By Reference, states that the DEIR incorporated by reference several documents, listed on page 2-2 through 2-3, in accordance with CEQA Guidelines Section 15150, which permits information of some or all of previously adopted public documents. As such, some determinations of levels of significant may or may not refer to or reflect in part a determination made in an already existing document, such as the Area 3 and 4 Specific Plan EIR for example. The structure of the DEIR is such that the determination based on the analysis is always located at the end of an analysis and indicated by a bold heading titled "Significance Before Mitigation." Although some impact discussions may refer to or seemingly mention levels of significance within the discussion of a specific topic, that may or may not be consistent with the final determination at the end of the analysis, the final determination based on the analysis always comes after the bold heading "Significance Before Mitigation," and therefore is the actual determination.
MILLER-2	Frequent claims by the City lack committed actions. For example, attempts were cited "to do something, support, participate, work with them, address issues, consult with, provide some kind of guides and incentives, no future reviews by the City, defer analytical evaluations or mitigations into self-mitigations, etc." How could this even be considered a tuneup when the Plan does little or nothing to address the reality of the impact of these developments? The tuneup is more appropriately a "tuneout". The tuneup is only a means of quickly escaping proper creation and review of the prior EIRs and its flaws, and specifically circumventing needed corrections of the cited flaws. So why not appropriately rename the "Tuneup" a "Tuneout"?	As mentioned in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines. As such, the DEIR is programmatic and therefore does not analyze impacts related to specific projects. Future development would require further independent CEQA review on a project-by-project basis in which project-specific impacts and mitigation measures would be determined.
MILLER-3	As stated, numerous regulations, policies and recommendations in the General Plan Tuneup were cited, in detail, throughout many sections. Ironically, few if any have been adhered to in an acceptable or mitigatable manner to be less than significant, especially for CEQA requirements—also previously cited in comments from the public, numerous attorneys and agencies of interest. Explain why you have intentionally avoided the required specifics in implementing these regulations and policies with plans of timely implementation. These City plans need to reveal that the impacts are indeed significant and not adequately mitigatable in the development of Area 2 and 4, including the proposed unbuildable golf	The commenters opinions about past adherence to proposed polices, vibility of a golf course and significance are noted. The level of specificity is appropriate for a policy document.

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	course in environmentally undesirable sensitive areas. CEQA law requires environmental review of "discretionary" development projects. If significant impacts are found, an environmental impact report (EIR) is required, together with mitigation of significant impacts. Resources Code §21000, et seq., http://ceres.ca.gov/ceqa/stat.	
MILLER-4	Alternatives: Compare your existing Plan realistically to the alternative in developing a walkable and environmentally preferable and sustainable development in the old town and inner City infrastructure areas. These are quality of life concerns that many other cities have taken into consideration. The City needs to specifically address the true intentions and the monetary influence that many land owners and developers (Area 2 and 4 sprawl at edge of City) have had on the City for many years. You must consider that these development sprawls take resources and staff away from addressing the internal needs of the City, such as true infill and walkable towns that concentrate near inner City existing transportation and resources, or we will be saddled once again with lost opportunities.	Please see Master Response 3 regarding the Appropriacy of Alternatives.
MILLER-5	Added to depleting resources from population expansion, accelerating climate change, now and in the future, impacts of these large-scale new developments, ironically, also have been a significant contributing human cause of climate change and sea level rise. The environmental impacts of human developments, excessive consumption and associated pollution are creating environmental impacts that, in turn, are collectively and significantly affecting the projects themselves. Thus, logically, the science is requiring further assessments of the cumulative effects of all these projects on the environment and the effects of the changing environment on the projects themselves—as all are interrelated and inseparable. Project developments affect themselves through the self-created environmental changes they impose. The Area 2 and 4 development Plan simply exacerbates the circular environmental impacts on these developments that are coming back to haunt us—whether or not you attempt to degrade the application of CEQA law, regulations and policies, in order to put people into harm's way in Area 2 and 4, as well as the surrounding communities.	The comment is noted. Please see Master Response 4 regarding sea level rise. As indicated in the environmental analyses in Chapters 4.1 through 4.14, each environmental topic discusses cumulative impacts. As such, cumulative impact discussions take into consideration reasonably foreseeable projects and analyze those projects using a baseline that consists of current or existing conditions at the time of the preparation of the EIR to whatever the horizon year is for a given project, in this case to the year 2035.
MILLER-6	Alternative Plan for Restoration: The DEIR includes an alternative to restore and to preserve Area 4. However, the intended consequences are to connect the Area 4 development to the Dumbarton Transit Oriented Development (DTOD). The alternative has been designed to prevent restoration of Area 4. The DTOD has been included in the ABAG and is part of the Bay Plan. The city must preserve Area 4 and produce an alternative that is more viable, like focusing on the more important concerns within the inner city areas, as many areas have been reported to be available. The DTOD has been considered defunct, economically and for numerous other reasons.	The comment is noted. As indicated on page 6-1 of the Alternatives chapter, and pursuant to CEQA Guidelines Section 15126.6, *an EIR shall only describe a range of reasonable alternatives to the project which would feasibly attain most of the basic objectives of the project...* As such, three alternatives were selected to analyze which are discussed in detail in Chapter 6.0, Alternatives. While the chapter may or may not reflect every conceivable alternative, the Alternatives chapter was prepared in accordance with CEQA Guidelines nonetheless.
MILLER-7	The City needs to show that conversion of Area 2 and 4 to open space and restoration is the preferred alternative, as requested by the public and agency comments. Why does the City continually defer to development in the outer limits in the sprawl areas when it is not economical nor is it environmentally desirable? Do you realize that the City needs to become current by implementing a plan that utilizes [current climate change impacts, sea level rise and public needs] to adapt to changing environments? Do you ignore or argue around these illogically because of the influence of benefits to City staff from developers and certain land owners, while ignoring the needs of producing a plan that is actually beneficial to the citizens who live in Newark? I reiterate and emphasize: You must consider that these development sprawls take resources and staff away from addressing the internal needs of the City, such as true infill and walkable towns that concentrate near inner City existing transportation and resources.	The comment is noted. As indicated on page 6-27 of the Alternatives chapter, and pursuant to CEQA Guidelines, the environmentally superior alternative need only be identified; however, that does not necessarily require that it be the alternative to be implemented. As discussed in Section 6.6, Environmentally Superior Alternative, of the Alternatives chapter, the Restricted Growth Alternative was determined to be the environmentally superior alternative; however, that alternative fully meets only seven of the eleven objectives identified in Chapter 3.0, Project Description, and Chapter 6.0, Alternatives. The analysis further concluded that the Restricted Growth Alternative would conflict with the City's major planning initiatives including the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element.
MILLER-8	For example, Mt. View already has a plan to address sea level rise and climate change. Also look at other cities and Mt. View who developed the walkable, environmentally friendly and publically desirable inner city areas, which also impacted high marks for schools--in comparison to the degradation pattern of Newark's diversion to develop into areas vulnerable to sea level rise, even within the life of the project.	The comment is noted. Please see Master Response 4 regarding sea level rise.

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MILLER-9	WATER QUALITY AND AVAILABILITY: General Plan PAGE CS-5; DEIR page 4.8-14, 4.8-21+"Discharge into these waters is also regulated by the California Regional Water Quality Control Board (RWQCB). When development is proposed in areas where wetlands may be present, detailed on-site surveys are required and mitigation must be provided for any potential habitat impacts. If there will still be a possibility of impacts once a development is built, long-term agreements are required to ensure that wetlands are permanently protected". See Water Quality Control Board (RWQCB) letter of Feb 2013 to the City of Newark: The Newark Plan has not complied to address Water Board's comments and concerns nor does the Plan have a permanent and sustainable protection plan, only to defer or ignore the issues. If fact, the proposal is to cause destruction of certain wetland areas, which is also contrary to Newark's policies on protecting wetlands. Furthermore, if pumping is stopped, Area 4 would be nearly or all wetlands, as it has been prior to pumping. Therefore the land should be left to restoration, as suggested by the WQCB, EPA and numerous other historical comments throughout the years, which the City refuses to utilize as an alternative.	The comment is noted. As indicated on page 6-27 of the Alternatives chapter, and pursuant to CEQA Guidelines, the environmentally superior alternative need only be identified; however, that does not necessarily require that it be the alternative to be implemented. As discussed in Section 6.6, Environmentally Superior Alternative, of the Alternatives chapter, the Restricted Growth Alternative was determined to be the environmentally superior alternative; however, that alternative fully meets only seven of the eleven objectives identified in Chapter 3.0, Project Description, and Chapter 6.0, Alternatives. The analysis further concluded that the Restricted Growth Alternative would conflict with the City's major planning initiatives including the Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element.
MILLER-10	HYDROLOGY AND WATER QUALITY, GP page CS-8: As stated in PCS-8: "Newark is under the jurisdiction of the San Francisco Bay RWQCB. In addition, the Department of Water Resources oversees water-related activities. Among the concerns expressed in its most recent Water Management Plan are drought, aging infrastructure, climate change, population growth, and sea level rise". The Feb. 2010 letter from RWQCB expressed numerous issues for Newark to address, but non-specific generic statements, and lack of direct and specific plans expressed by the Newark Tuneup and prior documents reveals noncompliance towards resolving the concerns. The concerns of the Water Management Plan that include drought, climate change, population growth and sea level rise have not been adequately addressed either, as they are all interrelated. My letter to the City on January 18, 2010 extensively criticized and begged answers regarding the Newark Areas 3 & 4 Specific Plan Project Draft Environmental Impact Report SCH No.: 200705205, due to the serious impacts of climate change and hydrology. So far, inadequate or no specific comments were provided by the City, mostly responding as "comments noted", "references to prior statements", or "already commented, or irrelevant". So we ask the question as to why the City has continued to ignore many of these issues, where many were brought up repeatedly, again and again, by numerous sources with hundreds of pages of logical questions? Reduction in water usage as required was only addressed in the GP with nonspecific intentions again. For example the GP stated the Newark will "work with" (nonspecific commitment) the ACWD to reduce water usage. In contrast, in Area 2 and 4, its proposed plan will increase usage as developments continue to sprawl, rather than conserve through restoration or through existing or inner City infill areas that have a history of exposure to drought years. Incentive programs and public education, as referenced, are counter to the proposed increase in population and housing that will increase its use of resources in the sprawl plan of Area 2 and 4 of the GP and EIR. How does the City expect that projected long-term drought conditions to not have a significant effect on water consumption in the new exterior significantly large and sprawling developments, even with conservation?	The comment is noted. Please see Master Response 2 regarding the reliance on previous environmental review. Please see Master Response 4 regarding sea level rise.
MILLER-11	CLIMATE CHANGE AND SEA LEVEL RISE: GP page CS-18; and DEIR page 4.8-19 to 20, 4.9-20 Climate change and sea level rise are large topics, all interrelated, and have been specifically discussed thoroughly, where arguments of science continuously reject developments in these vulnerable areas, both by government agencies, various assemblies and institutions throughout the world, and the public. Again, to emphasize, the action of human influence has affected our environment, through climate change and sea level rise, which, in turn, cannot be separated from the science that demonstrates that climate change is affecting and reacting to both new and existing developments. We are not realistically changing to adapt or rectify our influence, only making it worse by placing more vulnerable, energy	The comment is noted. Please see Master Response 4 regarding sea level rise.

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	intensive sprawl in external areas. Creation of climate disruption and sea level rise by humans has caused a reversal of consensus to also include the environmental effects on the very developments that are, in turn, influencing the need to mitigate or, in particular, even avoid developments in the environmentally vulnerable areas. The environment is having an effect on these developments and must be considered in the evaluation of all proposals, now and in the future. The semantic arguments to avoid this reality are contrary to the laws, regulations or policies that address the environmental impacts on the projects at this point.	
MILLER-12	PROGRESSIVE UPDATES (See GP, page CS-18): Current climate change and sea level rise projections demonstrate that prior studies were far too conservative, i.e. 2007 IPCC, as many of the forces of nature that are causing change are non-linear, accelerating and can exacerbate one-another. Do you not agree that current changes and disruptions are rapidly causing us to perform more scientific studies, with reassessment and upgrading--by not only the IPCC but also numerous domestic and international research activities that are being forced to address the truth? Greenhouse gas reductions are not effective in most areas, and temperatures and greenhouse gases (C02 and more damaging gases) are rising much faster than predicted, as of 2013. For sea level rise and the impact of accelerated climate disruption, the EIR(s) from the City tend to utilize the 2007 IPCC projections, but then there are current arguments that can discredit much of those [conservative] projections, including reports from other sources of national and international monitoring. For example, to bring current the proposed GP and DEIR Tuneup, some quotes are as follows (comments in prior City documents cite a considerable amount of updates that were also ignored): 1. Current projections will eventually be 4-30 cm for 2000-2030, 12 to 61 cm for 2000-2050, and 42 to 167 cm for 2000-2100 in http://hazardmitigation.calema.ca.gov/plan/state_multi-hazard_mitigation_plan_shmp_commenting_2013. 2. The IPC greenhouse gas emissions projections in 2010 projected a sea level rise, relative to 2000, for the state to range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. State agencies may even use different sea level projections. Uncertainty is the key factor in these projections and it is best to adhere to the maximum impacts for the future, to avoid inundation. 3. Melting and ice sheet flows into the ocean are not adequately taken into account from the massive amounts of ice in Greenland and Antarctic ice. Ice sheets and land-based ice, displaced in the ocean will add a large significance to sea level rise. A much greater rise in sea level is projected by many other organizations and scientists, due to forces of nature not even accounted for, as of yet. 4. The National Academy of Sciences is also developing sea level rise evaluation. 5. Again, in these conservative projections, ice sheets and land-based ice were not accounted for in the 2007 IPCC, that the city still sticks too in the old EIRs and the Tuneup). I will add these projections, including the more ominous ones that are more likely, judging from the accelerating impact--since we aren't doing anything about it--only making it worse with the tar sands pollution contribution, fracking, deep water drilling , etc. You can see that most projections are conservative, for obvious reasons.	Please see Master Response 4 regarding sea level rise.
MILLER-13	6. Other more ominous projections: a. The National Atmospheric and Oceanic Administration's 2012 State of the Climate report, released earlier this month, showed global greenhouse gas emissions reached a new record high in 2011, and estimates suggest the record was broken again in 2012. b. In 2013: The IPCC has moved in the right direction this time by at least trying to account for the key contribution to sea level rise from melting ice sheets," director of Pennsylvania State University's Earth System Science Center Michael Mann told The Huffington Post in an emailed statement, explaining that it was ignored in the previous IPCC report from 2007. However, the projections they provide are still overly conservative, with an upper limit of roughly one meter by 2100, when there is published work that suggests the possibility of as much as two meters (six feet) sea level rise by 2100," he added. This fits a	Please see Master Response 4 regarding sea level rise. Please see Chapter 4.6, Greenhouse Gas Emissions, for a discussion and analysis on greenhouse gas emissions. As stated in Section 4.6, the chapter was based on the methodology recommended by the Bay Area Quality Management District for plan-level review. Therefore, no changes are necessary.

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	pattern of the IPCC tending to err on the side of conservative, in part--I believe---because of fear of being attacked by the climate change denial machine. c. The IPCC even acknowledges governments influenced their projections, and they still persist. For example, a more current IPCC projection (September, 2013) only presents a 10-32-inch rise in sea level, which had to be upgraded from the prior 7-23 inches. The report predicts global temperatures could reach 0.5-8.6F, leading to possible catastrophic changes to climate, and above all, to warming oceans. The higher numbers are more likely, due to lack of agreements between governments: Only the lowest scenario, which was based on major cuts in CO2 emissions and is considered unlikely, came in below limit that countries have set as their target in the climate talks to avoid the worst impacts of warming (3.6F) before the industrial revolution. At this point, emissions keep rising mainly due to rapid growth in China and other emerging economies. But those nations say rich countries should take the lead on emissions cuts because they've pumped carbon into the atmosphere for longer." Therefore, we have circular arguments of blame, and no government wants to put environment before economy, hence higher limits of sea level rise and climate temperatures are likely to occur. The IPCC still errs on the conservative and does not take into account other forces of climate change. IPCC projections become a moving target, as they are forced to consider the impact of the accelerating expansion of economics from the uncorrected growth of human population and lack of corrective action. d. Describing the IPCC's projections, Climate Progress' Joe Romm wrote on Sunday, "Like every IPCC report, it is an instantly out-of-date snapshot that lowballs future warming because it continues to ignore large parts of the recent literature and omit what it can't model." (Other scientific projections indicate that six feet in 2100 is insignificant if ice sheets slide off the terrain that supports them, into the ocean, leading to ocean water displacement--far greater than effect of melt on floating Arctic icebergs. The IPCC model does not take into account numerous other forces that are also coming into play, of course. Even the popular Scientific American and National Geographic (this month, Sept 2013 and this month, Oct. 2013) have been continuously publishing numerous, extensive maps and articles on the impact of global climate change and sea level rise). For example: e. As far back as 2008: Scientific American. The Unquiet Ice, Feb. 2008 (extensive article addressing many sources): "Loss of [land-based ice] of Antarctic and Greenland could add 200 ft of global sea level rise—has happened before with high C02 levels. The National Geographic (www.climate.ngm.com) and the special issue as far back as June 2008: "The Science Is In", states "…ice sheet [collapse] in both Greenland and Antarctica would raise sea level 20 feet, inundating many coastlines". Note: The 20-foot rise represents "collapse" and the 200-foot level represents "loss of land-based ice", or a smaller change verses a major melt-down of sub-glacial ice, which from international studies looks ominous, either way, since we are passing the tipping point. And the world is too concerned about impact on economy to adjust, like Area 2 and 4 developments. f. But then it is only a regional problem....(Cities and their vulnerable developments that deliberately put people and the environment into harm's way are excluded from responsibilities associated with regional impacts, when they are even aware of the outcome???) g. The IPCC's Fifth Assessment Report is set to be released in four parts between September 2013 and November 2014.	
MILLER-14	Therefore: The City of Newark has presented The GP and DEIR as a vain attempt to an end-run "Tuneup", as of its release in August 2013, in order to circumvent the lack of prior compliance and adherence to those issues of serious concern expressed in previous comments, repeatedly, from the public and government agency sources. If this Tuneup is considered current, then it must follow the more current updated rules, regulations and policies and to incorporate new projections for climate change, and, above all, sea level rise, added to the risk imposed on the exterior City developments of	Please see Master Response 4 regarding sea level rise. Please see impact analysis HYDRO-3, HYDRO-4, and HYDRO-6 in Chapter 4.8, Hydrology and Water Quality, for discussions related to potential flooding impacts. As stated throughout the discussions, several policies contained in the proposed Plan, along with conformance to existing laws and regulations relating to flooding, would result in less than significant impacts. For example, the implementation of low impact development techniques and retention basins would alleviate large volumes of runoff thereby minimizing flood risk, as discussed on page 4.8-25.

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	Area 4. If the Tuneup also recognizes they must address the developments to 2035, what about the impact in 2100, as other cities have addressed? Why has the City avoided those updates in the current City plans, with only generic statements, and no acceptable specific plan of action or commitment? And why does the City plan persist in referencing outdated information such as 2007 IPCC (7-26 inches at end of century), ignoring current impacts? Is not the plan for development long-term and should it not be realistic and current, as climate changes and sea level projections continue to rise. Are you not considering that this plan places people in harm's way, with inadequate protections to accommodate future impacts?	
MILLER-15	LIFE OF PROJECT: The City must also consider that "life of project" is typically beyond their limited projections. Historically, everyone does not simply abandon their residents and move to higher ground when there even is a disaster. See [current] impacts of climate change and storm surge, i.e. Boulder Colorado (areas topped the 100 and 500-year flood plain), Hurricane Sandy inundation and seaboard flooding, and many others throughout the world. Addressing life of project, or lifespan, with the shorter periods that were projected, does not allow for developments to continue with further improvements, but only an abrupt end, unlike most other projects that have continued for many years beyond. Worst case is likely--due to climate change and sea level rise that is increasing in magnitude and indeed may terminate these developments abruptly. The City must evaluate these for the worst case analysis, taking into account all forces of nature that can simultaneous occur.	As stated in Section 2.1 of Chapter 2.0, Introduction, the proposed Plan has a horizon year of 2035 and, therefore, the DEIR need only reflect a discussion of impacts associated with the proposed Plan to 2035. Therefore, no changes are necessary. Please see Master Response 4 regarding sea level rise.
MILLER-16	BCDC: GP page CS-10 and DEIR page 4.8-7: BCDC assumes that projects will at least last 50-90 years. But projections for climate change and sea level rise already defy the existence of such developments in Area 4, even with attempted mitigations. Sea level rise and tidal flooding can inundate the project, coupled with their effects on back-flooding of rivers, creeks, storm water discharge, storm surge flooding from above and from the sea, wave over-toping, subsequent erosion of the building pads, sewage backup, pump failure inundation, liquefaction, settling , and destruction of wildlife habitat and the protective value of wetlands and marshes, and other (yet unknown) hydrologic forces that are going to be brought forward to affect the Area 4 development. This is an example where the environment is also going to impact the development itself, from the effect of the development on the environment. You cannot separate this cause-and-effect relationship unless. Why have you not adjusted appropriately for these changes, where potential hydrologic impacts and fill above your conservative projection will be inadequate? Why have you not at least considered the simultaneous impact of flooding from storm surge, sea level rise and other hydrologic forces, in which the City itself has expressed concern? Historically, the Newark City tends to treat these risks separately, not collectively, and argues the proposed island type and/or peninsula developments in Area 4 will not be at risk with limited mitigations—which no one can guarantee. Can you deny that the proposed development Plan has been designated as being extremely vulnerable from all sides and from the impact of the variety of forces and environmental modifications as cited within the projects? Impacts are consistently significant and cannot by dependably mitigated with excess fill and unproven drainage technology in the face of the obstacles described.	Please see Master Response 4 regarding sea level rise.
MILLER-17	FLOODING: GP pages EH-9-10 and CS-18. DEIR page 4.8.1, 4.8-15, 4.8-27 The FEMA flood plain maps are outdated and nonspecific to the actual impact on developments in Area 4. The maps are typically only used for flood insurance and should not be exclusively used to decide mitigations for proposed future risks. Besides, these maps are still in the process of being updated. And why have you not specifically addressed these impacts, with corrections, rather than generic mitigations that erroneously claim insignificance? "Collaborative work" and "need to address" as cited by the City to develop adaptation strategies do not address or commit anything specifically for now or the future.	Flood risks for all communities within the Bay Area and throughout California are identified by Flood Insurance Rate Maps (FIRMs) that are issued by FEMA. These maps are periodically updated and are the basis for determining which projects are governed by the City of Newark's Municipal Code 15.40, *Construction in Flood Hazard Areas.* All projects within the 100-year floodplain must also complete hydrology and hydraulic analyses that demonstrate that areas that are raised out of the floodplain will not result in increases in off-site flood levels or redirect flooding to other properties. Each project must comply with the building flood-proofing requirements of the City of Newark and also prove that a Letter of Map Revision (LOMR) has been obtained from FEMA prior to building occupancy.

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	CEQA law, guidelines and checklists include issues and concerns beyond the limited citations in the DEIR of the City. Again, the 7 to 23-inch rise in sea level by end of century, as cited by the City is far outdated, as well. In fact, the development assumes that mitigations proposed will be acceptable, but sea level rise and climate change must also be considered as it advances into the future.	Please see Master Response 4 regarding sea level rise.
MILLER-18	LEVEES: DEIR page 4.8-1, 4.8-17: Existing levees in Area 4 are uncertified and in disrepair. No plans exist for economic commitment at a regional or local level. Many existing flood gates, tidal and otherwise, around the Bay are very old, not adequately maintained or repaired (due to economics, lack of attention or confusion of responsibility and ownership). Pumping to prevent flooding will also need to be continued in Area 4, even with building pad mitigations. Building pad elevation therefore becomes even more uncertain. Recent publications regarding the impact of sea level rise on Alameda City are ominous (look it up).	The comment is noted and there is agreement that levee failure poses a risk to life and property in areas where levees protect the surrounding property. FEMA's policy is to disregard the flood protection benefit provided by a levee unless it is certified. Since most of the levees within the City of Newark are not certified, then the land behind the levees is considered to be in a special flood hazard area or within a 100-year floodplain and building restrictions would apply. It also should be noted that this General Plan EIR addresses issues such as flooding on a programmatic level. Individual projects and specific plan areas are not only required to comply with Federal, State, and City of Newark flooding regulations, but are required to document this compliance with site-specific environmental analyses and mitigation measures. As with any area of the City, any building within Area 4 would need to meet these requirements. Please see Master Response 4 regarding sea level rise.
MILLER-19	STRATEGIES FOR ADAPTATION: The 2009 California Adaptation Strategy emphasizes the need for more serious adaptation, or even abandonment, if it is uneconomical and there is too much risk to remain. The 2009 California Climate Adaptation Strategy states: "Consider project alternatives that avoid significant new development in areas that cannot be adequately protected (planning, permitting, development, and building) from flooding, wildfire and erosion due to climate change. The most risk-averse approach for minimizing the adverse effects of sea level rise and storm activities is to carefully consider new development within areas vulnerable to inundation and erosion. State agencies should generally not plan, develop, or build any new significant structure in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure. However, vulnerable shoreline areas containing existing development that have regionally significant economic, cultural, or social value may have to be protected, and in-fill development in these areas may be accommodated. State agencies should incorporate this policy into their decisions and other levels of government are also encouraged to do so. (CS-2; OCR-1 and 2; W-4 and 9; TEI -2 and 7)." Areas 2 and 4 in Newark are undeveloped, do not have enough significant economic value in comparison to other alternatives, and development would not be infill but additional external sprawl that is considered new, adding to significant greenhouse gas emissions and climate change. Furthermore, additional expensive protections would be needed to avoid risk of storm surge, flooding and sea level rise. Why are you proposing to raise building pads up to a conservative level, when climate change and sea level rise are rapidly accelerating, as currently reported? As previously stated, the existing levees of Area 4 are not maintained either and are not FEMA certified. There are no current FEMA updates to guarantee that the proposed City plan will be acceptable, now or in the future. More current sea level rise projections must be incorporated in new FEMA rules. There are no regional plans or reasons to protect at the tax payer's expense, when structures are knowingly placed in harm's way, based on current data and future projections. Do you still expect to blame problems you knowingly create to be the responsibility shifted to a regional problem—as you need to be accountable for these decisions and to the tax payers?	Please see Master Response 4 regarding sea level rise. Please see impact analysis HYDRO-3, HYDRO-4, and HYDRO-6 in Chapter 4.8, Hydrology and Water Quality, for discussions related to potential flooding and erosion impacts. As stated throughout the discussions, several policies contained in the proposed Plan, along with conformance to existing laws and regulations relating to flooding, would result in less than significant impacts. For example, the implementation of low impact development techniques and retention basins would alleviate large volumes of runoff thereby minimizing flood risk, as discussed on page 4.8-25.
MILLER-20	PUMPING AND SALTWATER INTRUSION: DEIR page 4.8-23 Saltwater Intrusion to Groundwater Aquifers Saltwater intrusion. (Edwards and Evans, 2002): Saltwater intrusion into aquifers is a man-made problem in many places in California, resulting from over-pumping, but it will be accelerated and made worse by sea level rise. It occurs where saline water moves inland into a freshwater aquifer, contaminating it with salts and making it unsuitable for water supply or irrigation. Pumping coastal aquifers in excess of natural recharge rates draws down the surface of the aquifer. When the ocean has	The potential for saltwater intrusion is discussed on page 4.8-15 of the hydrology section of the EIR. Please see Master Response 4 regarding sea level rise.

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	a higher "potentiometric surface," or water elevation, it causes the saltwater wedge to intrude further inland (Figure 35). Seawater intrusion is already problematic in California's coastal aquifers throughout Central and Southern California, including the Pajaro and Salinas Valleys and aquifers in Orange and Los Angeles Counties. [Figure 35. Saltwater intrusion. Source: Edwards and Evans 2002] GP pages CS-10: An example in Area 4: Levees (uncertified), pumping of the wetlands and soil disruption to destroy vulnerable species of Area 4 has occurred since the 1980s. If left alone, Area 4 would be mostly, if not all wetlands, in an undeveloped and un-mitigatable flood zone, and would flourish as habitat for biological life to continue to proliferate. This is one example where the changes to Area 4 have added to a detrimental environmental impact in the area. The GP refers to the Newark aquifer as being shallow at 40-140 ft. below the ground in most inland locations with a series of wells to intercept bay water before it reaches the aquifer, with a considerable amount of salt water that remains. Reports have demonstrated that continued pumping will increase salt intrusion as wells continue to be pumped to provide water for the expanding population, as developments expand into the proposed Area 2 and 4 plan.	
MILLER-21	CONCLUSION: Emphasizing my previous comments: I still must ask: "What really is a GP DEIR Tuneup"—your very confusing conglomeration of generic regulations and uncommitted references to defer any action? After all, it was considered a tuneup—but was mostly a collection of citations of regulations, followed by the City's intentions to follow them by making nonspecific claims that avoid the issues that have been criticized in past reviews. Many members of the public claimed to be confused, due to the unprecedented proposals in these end-run tunups, which was obviously quickly created to circumvent faults in the prior EIRs. More appropriately the tuneup should be referenced as a "Tuneout". Therefore, I can only conclude that this GP and DEIR "Tuneup" attempt has only generated more flaws, while it even defers specific actions of commitment. The laws of CEQA, regulations and policies dictate that these Tuneups should to be totally scrapped or at least revised for more review and comment by the public.	Please see Chapter 1.0, Executive Summary, for an explanation of the DEIR. As stated, the DEIR addresses the environmental effects associated with the implementation of the proposed Newark General Plan. As stated on page 1-1, the DEIR was prepared pursuant to the CEQA Guidelines. As indicated in Chapter 2.0, Introduction, Section 2.4, Environmental Review Process, describes the process for public review, including statutory public review comment period timeframes. As discussed, the DEIR has a public comment period of 45 days as required by CEQA Guidelines Section 15105. Pursuant to Section 15105, the DEIR was available for public comment from August 14, 2013 through September 27, 2013.
SOKALE-1	Subject: Comment Letter on the Draft General Plan Tune Up Program EIR for the City of Newark, California Dear Mr. Grindall, I am writing as a Newark resident for over 20 years and member of the Citizens Committee to Complete the Refuge. As a member of the Newark community who has actively participated in the few opportunities provided for public involvement in shaping General Plan I must first express my great disappointment and displeasure at the very brief review period afforded the two documents currently out for public review. The Draft General Plan and Draft General Plan Tune Up Program EIR were released to the public almost simultaneously in August 2013. This affords the public very little time to review these two documents which total over 916 pages without appendices. In most cities a Draft General Plan is released and reviewed by the public long before the environmental document is circulated. This is the first time the public gets to review both documents. This does a disservice to the community by limiting the thoughtful comments that could be supplied by residents.	As indicated in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines. Accordingly, CEQA Guidelines Section 15105(a) states that the public review period for a draft EIR must not be for a period less than 45 days. In accordance with CEQA Guidelines, the public review draft EIR was open for commenting from August 14, 2013 through September 27, 2013, or 45 days as mandated by CEQA Guidelines. The General Plan update process took place over the course of more than a year, with three community meetings, 5 work sessions that were open to the public and at which public comment was invited.
SOKALE-2	I was also astounded to learn at the September 24, 2013 Planning Commission meeting that the General Plan was essentially finalized with the exception of a small "addendum" to be prepared by the consultant. As if this was not enough information for me to come to the realization that Newark city officials are disinterested in the thoughts and opinions of residents, than the EIR schedule certainly communicated this fact. The Planning Commission was shown a slide that indicated: Draft Program EIR comment period closes on September 27, 2013 Planning Commission to review Draft Program EIR on October 8, 2013 City Council to review General Plan on October 10, 2013 City Council to review and adopt the General Plan and certify Final Program EIR on October 24, 2013 I expressed my concern over how the City would find the time to prepare responses to comments, circulate comments and responses to elected officials and still certify the Final Program EIR by October 24. Did you plan this schedule to dissuade public	As indicated in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines. Accordingly, CEQA Guidelines Section 15105(a) states that the public review period for a draft EIR must not be for a period less than 45 days. In accordance with CEQA Guidelines, the public review draft EIR was open for commenting from August 14, 2013 through September 27, 2013, or 45 days as mandated by CEQA Guidelines.

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	comments?	
SOKALE-3	Newark General Plan – Introduction The Newark General Plan includes goals, policies and actions that "are intended to guide the City's actions during the life of the Plan (page I-4). The goals, policies and actions are the fundamental basis of the Plan. "In addition, the following words are used throughout the General Plan to indicate whether a particular provision is mandatory, advisory or permitted: "Must", "shall," or "will" identify provisions which are mandatory. Verbs such as "require" reflect similar obligatory directives. "Should" identifies a provision that is advisory. Verbs such as "encourage" and "support" are also advisory. Stated directives using these words should be followed unless there are compelling, countervailing considerations. More flexibility is intended in the application of such policies than those which are mandatory. "May" indicates a permissive provision. This indicates a course of action is permitted, but not required. Considerable discretion can be used when applying such policies to specific issues." These goals, policies and action statements do not constitute mitigation measures that provide for a "self-mitigating" General Plan.	The comment is noted; however, it does not pertain to the merits of the DEIR. No further response is necessary.
SOKALE-4	Newark General Plan Tune Up Program EIR A Cumbersome, Cobbling Together of Specific Plans CEQA Guideline Sections 15140 to 15155 of the CEQA Guidelines describe the how an EIR is to be written to be accessible to the public and decision-makers. Section 15140. WRITING EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents (Section 21083, Public Resources Code; Reference: Sections 21003 and 21100, Public Resources Code). Section 15141. PAGE LIMITS The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages (Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.). The Newark General Plan Tune Up EIR is beyond lengthy (558 pages) and requires back checking of multiple documents to begin to piece together the intent of the environmental review Particularly frustrating are the references to mitigation measures in the Housing Element EIR, Dumbarton TOD Specific Plan EIR and Areas 3 and 4 Specific Plan EIR. The General Plan Tune Up EIR reader is supposed to cross-references multiple documents in hopes of gleaning the nature and extent of analysis for project-based mitigation measures that are intended to reduce the level of significance of impacts identified in the General Plan Tune Up Program EIR which covers the entire City not simply certain specific plan areas.	CEQA Sections 15140 and 15141 offer guidelines for consideration in the preparation of EIRs. These are guidelines, not mandatory requirements to be strictly observed. In order to provide a thorough analysis, EIRs often exceed the recommended page limits. Please also see Response to Comment SOKALE-6 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
SOKALE-5	The General Plan Tune Up Program EIR cobbles together the analyses from these specific plan documents and then tosses in a series of goals, policies and action statements, which the City of Newark appears to rely upon to mitigate all other vaguely defined impacts. Impacts are not clearly described and therefore mitigation measures lack objectives and measurable performance standards. Many of the goals, policies and action statements are advisory only, providing no guarantee of implementation. The goals, policies and action statements that are considered to be "required" fail to identify who, when, where and how these measures will be implemented. No consideration is provided for failure to achieve the desired reduction in impact levels.	The comment does not identify specific instances of inadequacy; however the City disagrees with this comment. Throughout the Draft EIR, impacts are clearly described and identified. With respect to implementation of goals, policies, and action in the proposed Plan, the City notes that future development under the proposed Plan will be evaluated for consistency with the proposed goals, policies, and actions through the City's permitting and approval process.
SOKALE-6	The document lacks focus and clarity unless the intent was simply to obfuscate. This nearly across the board scattershot approach makes this EIR particularly unapproachable to the resident wishing to add their voice to the future plans for the City of Newark.	The Draft EIR maintains a clear and consistent approach to the environmental analysis throughout. Each of Chapters 4.1 through 4.14 contains a description of applicable regulations, existing conditions, and thresholds of significance, together with an impact discussion. Each chapter's impact discussion identifies potential impacts of the proposed Plan and first discusses the extent to which these impacts would be reduced by existing regulations and mitigation measures previously adopted by the City of Newark. Then the impact discussion considers the extent to which any residual impacts not sufficiently addresses by existing regulations and previously adopted mitigation measures would be reduced through the implementation of goals, policies, and actions contained in the

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		proposed Plan. Where significant impacts remain after the consideration of applicable regulations, previously adopted mitigation measures, and proposed goals, policies, and actions, mitigation measures for the proposed Plan are identified and discussed. The Draft EIR is adequate and no change is required to address this comment.
SOKALE-7	The Draft Program EIR also misleads members of the public about the validity of Areas 3 and 4 Specific Plan. It makes numerous assertions and incorporates aspects of the Areas 3 and 4 Specific Plan into the Draft Program EIR even though the City of Newark knows that a legal challenge to the Areas 3 and 4 Specific Plan EIR is working its way through the court. The City of Newark has not properly adopted the Areas 3 and 4 Specific Plan nor properly certified the Areas 3 and 4 Specific Plan EIR. On November 20, 2012, the Alameda Superior Court issued its Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions. The Suspending Resolutions are intended "To ensure that the [Areas 3 and 4 Specific Plan] project does not proceed until the EIR is effective," the court ordered the City to "SUSPEND Resolution 9745 (Certifying the EIR) and Resolution 9746 (adopting the Newark Areas 3 and 4 Specific Plan Project and the related General Plan Amendment" pending resolution of the case or further order of the court. That suspension was in effect when this Draft General Plan Program EIR was released to the public and remains in effect at the time of this comment letter. Thus, the Areas 3 and 4 Specific Plan is not in effect, and it disingenuous for the City of Newark to represent it as approved and rely on its analysis in the Draft General Plan Program EIR. Reliance on this Areas 3 and 4 Specific Plan and the accompanying environmental document creates a false pretense and results in an incomplete analysis of General Plan impacts.	On page 3-11, the Draft EIR notes that an Alameda County Superior Court order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Area 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. Therefore, the comment is incorrect to assert that the City has mislead members of the public. Additionally, the City notes that pursuant to CEQA Section 21167.3, "if an injunction or stay is issued prohibiting the project from being carried out or approved pending final determination of the issue of such compliance, responsible agencies shall assume that the environmental impact report or the negative declaration for the project does comply with the provisions of this division and shall issue a conditional approval or disapproval of such project." Therefore, the comment is incorrect to assert that the Draft EIR creates a false pretense by assuming the information and analysis in the Area 3 and 4 Specific Plan, EIR and associated mitigation measures as part of the background condition for purposes of the environmental analysis. Please also see Master Response 2 regarding reliance on previous environmental review.
SOKALE-8	The Draft Program EIR also defers the release of the Mitigation, Monitoring and Reporting Plan until release of the Final Program EIR. This deferral of information further reduces the public's ability to review and provide comment on this most important planning effort. I again am disappointed by the lack of timely information.	As indicated on page 2-5 in the Introduction of the DEIR, Public Resources Code Section 21081.6 requires that the lead agency adopt a monitoring or reporting program for any project for which it has made findings pursuant to Public Resources Code 21081. Such program is intended to ensure the implementation of all mitigation measures adopted through the preparation of an EIR. In accordance to the above Public Resource Codes, and Mitigation Monitoring or Reporting Plan cannot be adopted until the DEIR is adopted and certified and therefore cannot be released until such time.
SOKALE-9	The Planning Process – A Tune Up? California Environmental Quality Act (CEQA) review documents should be prepared early enough in the planning process to enable environmental factors to influence project design. The City of Newark has a history of establishing a project vision and then assuming the environmental conditions will support the desired project. When environmental factors do not support the project concept Newark grants approvals and entitlements irrespective of the feasibility of development. The General Plan Tune Up EIR continues this modus operandi. The General Plan Tune Up should provide an opportunity for decision-makers to step back and evaluate environmental conditions and project realities and make appropriate course corrections. However, this potential use of the "Tune Up" is not apparent.	The comment is noted. As indicated in Chapter 2.0, Introduction, the DEIR was prepared in accordance with CEQA Guidelines. As discussed in the Introduction, the DEIR was prepared as a programmatic document in which it does not intended to analyze project specific impacts. As mentioned throughout the document, future development would be subject independent CEQA review on a project-by-project basis to identify project-specific impacts and mitigation measures.
SOKALE-10	A few examples where course corrections are needed include: The feasibility of developing the Dumbarton Rail corridor appears to dim each day as ridership level projections are lowered and construction cost estimates escalate. The rail corridor competes with many regional projects that provide a far higher return on investment (ROI) per transportation dollar as determined by the Metropolitan Transportation Commission and has far less political support to garner state and federal monies than California High Speed Rail project. Instead of responding to this new information, Newark pushes ahead with high-density, transit-oriented development without the benefit of any transit infrastructure to support this intensity of development on the edge of the city. The development proposed in the General Plan Tune Up fills more wetlands and builds on the very edge of the city. The lack of a course correction at	The commenter's opinions are noted; however, they do not pertain to the merits of the DEIR. For clarifications regarding Area 4, please see Master Response 5. No further response is necessary.

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	this location will create significant traffic issues for the entire community and contribute to the loss of bayfront lands and habitats that make Newark unique. The feasibility of developing housing and a golf course in Area 4 grows slimmer each day as the legal challenge to the specific plan moves through the court system, projections for sea level rise mount and regional agencies with jurisdiction over wetlands, water quality and water infrastructure become more aware of the flaws in Newark's planning efforts. Newark's desire to fill historic tidal wetlands and the Bay edge are not actions that embrace the special landscape qualities of our community. Instead of taking the opportunity to adjust the vision for these lands, the City of Newark demonstrates the "Newark Way" by continuing to designate Whistling Wings and Pintail Duck Clubs lands for low-density residential land use. This outdated development proposal will also force further loss of wetlands in Newark and fails to acknowledge the impact this housing will have on wetlands in the future. The project will need sea level rise protection that will further impact the lands designated by Congress for inclusion into the Don Edwards San Francisco Bay National Wildlife Refuge. Filling these lands with homes and a golf course does not demonstrate the sustainable, long-term direction that Newark should be pursuing. The environment should influence the planning such that the General Plan truly represents the physical qualities of the landscape that make Newark unique – its bayfront! I encourage you to rethink the feasibility, sustainability and long-term economic viability of these aspects of these planning efforts.	
SOKALE-11	Project Description Inconsistencies Page 3-3 – The document states, "This Draft EIR compares the buildout potential for the proposed Plan with the existing baseline condition, described in detail in each section of the Chapter 4.0, Environmental Analysis." In fact, the document frequently assumes the baseline conditions of the suspended Areas 3 and 4 Specific Plan and associated EIR. As a result, this Draft General Plan Program EIR fails to identify and analyze the impacts and prevents full disclosure of the actual environmental impacts compared to existing conditions on the ground.	Please see Master Response 1 regarding baseline for the environmental analysis. The Draft EIR is not inadequate in this respect.
SOKALE-12	Page 3-8 – Areas 3 and 4 Specific Plan description indicates "…however, Area 4 is one of the last undeveloped sectors of the city and is largely in agricultural use today. However, on Page 3-21 the document states, "The proposed Plan also includes policies intended to protect and enhance sensitive natural resources in the Southwest Newark Residential and Recreational focus area, including wetland and aquatic habitat, natural hydrological features and other biological resources." The description on Page 3-8 should be revised to more accurately reflect the character of the lands in Area 4 including the fact the nearly ½ of the site is delineated wetlands.	On pages 4.3-39 through 4.3-40, the Draft EIR describes the extent of USACE delineated jurisdictional wetlands and other waters. Page 3-8 of the Draft EIR will be updated to include this same information: "A jurisdiction determination for the land within the Southwest Newark Residential and Recreational Focus Area received from the USACE in October 2007. The USACE determination established approximately 242 acres of wetlands and 34.21 acres of "other waters" for a total of 277 acres. These areas include all aquatic, diked salt marsh, seasonal wetlands, muted tidal saltmarsh, freshwater marsh, brackish marsh, and tidal salt marsh." This revision does not constitute substantial new information and does not change the findings of the Draft EIR.
SOKALE-13	The General Plan Draft Program EIR lacks a basic discussion about the physical and biological properties of the Area 4 lands proposed for development. Thus, a reader does not immediately have a sense that the project is primarily located in the existing 100-year floodplain, includes 277 acres of wetlands, that Area 4 was historically tidal wetlands and experiences 20 commuter train trips plus freight traffic per day. It does not mention that the site is routinely disked and actively pumped to drain into Mowry Slough. These actions have changed the character of plant and animal communities and distribution across the site. These actions are not intended to result in a meaningful food crop, but simply to continuously disturb the site to prevent the land from returning to its former mosaic of wetlands and transitional upland habitats. The project description does not set the existing conditions context of the Area 4 site for the reader.	Biological conditions in Newark are described on pages 4.3-9 through 4.3-31 of the Draft EIR. Hydrological conditions in Newark are described on pages 4.8-8 through 4.8-19 of the Draft EIR. Further, the description of existing conditions contained in the Area 3 and 4 Specific Plan EIR and other previous environmental review documents conducted by the City of Newark are incorporated by reference into the Draft EIR. Please see also Response to Comments GECO-3, GECO-5, GECO-6 and Master Response 2 regarding Treatment of Previous Environmental Review in the Draft EIR.
SOKALE-14	Page 3-12 – The document states, "At a program EIR level of detail, these uses have substantially similar impacts on the environment. Therefore regardless of whether the Area 3 and 4 EIR is upheld or not, the Program EIR fully addresses the environmental impacts of the proposed General Plan." Much of the analysis included in this Draft General Plan Program EIR relies upon the analyses of the flawed and suspended Areas 3 and 4 Specific Plan EIR. It is in error to rely on this previous work.	Please see Master Response 2 regarding Reliance of Previous Environmental Review.

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SOKALE-15	Environmental Analysis Aesthetics 3. Substantially degrade the existing visual character or quality of the site and its surroundings. Page 4.1-8 AES-3 – The proposed plan would result in a significant impact to the visual character of the Southwest Newark Residential and Recreational Focus Area, as determined in previous environmental review. The Draft General Plan Program EIR references other environmental review documents (currently suspended by Alameda Superior Court), but fails to assess the impacts of the overall General Plan. The General Plan includes actions regarding the development of several railroad grade-separations for roadways. These overpasses would significantly alter the character of the community and change the visual character of Newark. The soffit of the overpasses (bottom of the bridge) would need to provide 26.5 feet of vertical clearance from the rail line. Thus, the overall bridge structures would be three to four stories tall when including the bridge deck and railings. The support columns would also change the appearance of the local areas. Grade separations are proposed in: Action LU-7.B Railroad Overcrossing. Construct a Stevenson Boulevard or Mowry Avenue overpass across the Union Pacific Railroad, including dedicated bike lanes and sidewalk on one side. Action T-6.C Central Avenue Grade Separation. Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue. Pursue state and federal grant funding to carry out this project. Action T-6.D Dumbarton TOD Grade Separation. Add an overpass to move traffic over the rail lines between Filbert and Sycamore Streets in conjunction with the Dumbarton TOD development. Pursue state and federal grant funding to carry out this project. Action PR-5.D Cedar Boulevard Extension Linear Park. As funds allow, construct a linear park and trail on the Cedar Boulevard Extension. Crossing of the Union Pacific Railroad should be grade separated to minimize risk and noise. This impact has not been evaluated in the Draft General Plan Tune Up Program EIR. Please address this impact with regard to the potential to substantially degrade the existing visual character or quality of the community. Please indicate what measures will be taken to mitigate any potential impact to the visual character. Will the construction of these overpasses result in a cumulative impact to the community?	The impact discussion for AES-3 discusses potential impacts in the four focus areas where development is likely to be concentrated under the proposed Plan. As such, AES-3 provides an analysis in regards to the four focus areas based on previous specific plans and associated EIRs, which have been incorporated by reference pursuant to CEQA Guidelines Section 15150, and as indicated in Chapter 2.0, Introduction. Also discussed in Chapter 2.0 is the scope of the EIR which states that it was prepared on a programmatic level and does not consider project specific impacts. As such, the overall impacts associated with implementation of the proposed General Plan have been considered throughout the document; however, as mentioned throughout the DEIR, further independent CEQA review would be required on future development on a project-by-project basis to identify project-specific impacts and mitigation measures.
SOKALE-16	Cultural Resources Page 4.4-8 CULT-1 – The Plan would not cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5. The historic resources discussion relies upon “a brief three-part document entitled Historic Preservation Program City of Newark dated November 30, 1989.” This nearly 25 year old document is older than the former 1992 General Plan and other structures within the City of Newark may have historic significance. Reliance on this 1989 document does not support a full analysis of the potential impacts to historic structures. The Draft program EIR does not discuss the 129-year old historic schoolhouse Newark is currently attempting to sell and demolish (http://www.mercurynews.com/top-stories/ci_23258337/historic-newarkschoolhouse-decaying-at-ardenwood-farm-may).	As indicated on page 4.4-7, the St. Edward’s Church and the James Graham residence were confirmed to be the only historic resources on the City's list of historic resources. Also as discussed on page 4.4-7, there are no historic resources in Newark that have been placed on the National or California registers, which would require special considerations under CEQA.
SOKALE-17	It does not address the potential significance of the Newark Community Center and Newark Library designed by Architect Aaron Green, a protégé of Frank Lloyd Wright (http://www.sfgate.com/bayarea/article/SIGNATURE-STYLE-Aaron-Green-Gettingit-Wright-2694208.php). Please develop appropriate baseline for this analysis.	As indicated in Chapter 2.0, Introduction, the DEIR was prepared at the programmatic level and therefore does not consider project-specific impacts. As indicated throughout the DEIR, future development would be subject to further independent CEQA review to identify project-specific impacts and mitigation measures.
SOKALE-18	The goals, policies and action statements described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less than significant level. Newark’s recent decisions regarding historic resources indicate a lack of commitment to preservation. The potential loss of historic structures has been determined by the courts to be an unavoidable significant impact. These policies do not prohibit such a loss therefore this impact remains significant and unavoidable.	As discussed on page 4.4-7, there are no historic resources in Newark that have been placed on the National or California registers, which would require special considerations under CEQA. Additionally, as discussed in Chapter 2.0, Introduction, there will be a mitigation monitoring plan or report published with the final EIR (FEIR) to ensure implementation of mitigation measures identified as part of the EIR.
SOKALE-19	Hazards and Hazardous Materials 4. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, create a significant hazard to the public or the environment. Page 4.7-21: HAZ-2 – The Plan would not create a	Future development within the city of Newark would require compliance with federal, State, and local regulations with oversight and approval from responsible federal, State, and local agencies to ensure that potential contamination or exposure to hazardous materials is avoided or controlled to minimize the risk to the public or the

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	significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. The Draft Program EIR states: "The Plan would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. The proposed Plan would facilitate new development, including residential, mixed-use, commercial, parks, and recreational open spaces, within the City of Newark. Some of the new development could occur on properties that are likely contaminated. Construction of new buildings and improvements could have the potential to release potentially hazardous soil-based materials into the environment during site grading and excavation operations. Demolition of existing structures likewise could potentially result in the release hazardous building materials (e.g. asbestos, lead paint, etc.) into the environment. The Dumbarton TOD relies upon individual property owners to assess and mitigate the numerous toxic sites present in the area. This means some sites could be cleaned up quickly while others may not get under way for years. In the meantime, Newark is in the process of approving individual residential development projects under the General Plan without the benefit of a coordinated cleanup plan. Newark development approvals under the General Plan will allow residents to move into in this highly contaminated area prior to full cleanup. These new residents and adjacent neighbors have the potential to be exposed to significant hazards as a result of the General Plan. This approach to remediation in the Dumbarton TOD and carried forward in the General Plan may expose residents to the "release (of) potentially hazardous soil-based materials into the environment during site grading and excavation operations" at adjacent properties. The Dumbarton TOD includes numerous remediation projects for a wide variety of toxic contaminants. Actions are underway or proposed for the FMC, Ashland Chemical, Foster Chemical, Jones-Hamilton Company, Honeywell International sites and others (See Department of Toxic Substances Control and San Francisco Bay Regional Water Control Board Clean-up Orders). In most cases the target contaminants are numerous volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs). Chemicals include acetone, ethylbenzene, toluene, xylenes, ethylene diclororide, trichloroethene (TCE) and many others. Many of these contaminates are highly volatile carcinogens which could easily spread to the nearby locations. No meaningful analysis is provided to demonstrate how a piece meal cleanup effort by individual landowners will protect new residents from the adverse effect of hazardous materials. No standard of cleanup is established or if it has been established it is not explicitly stated in the General Plan or in the General Plan Program EIR. Please provide an analysis of this issue. Please indicate the standard of cleanup necessary for home occupancy. Please describe how and when this cleanup is to be achieved. Please describe how permanently capped toxic sites in Newark including the Dumbarton TOD area will be treated in the future. What goals, policies and action statement are intended to guide these sites? Will these sites ever be reopened and further cleanup undertaken or will these sites remain off limits to development?	environment on a case-by-case basis. Moreover, in DEIRs prepared for the Dumbarton TOD Specific Plan, the Areas 3 and 4 Specific Plan, and the 2010 Housing Element, future development in the Dumbarton TOD Focus Area, the Southwest Newark Residential and Recreational Focus Area, and on Housing Element opportunity sites has already been analyzed with regard to potential hazards and hazardous materials. The final EIRs identify mitigation measures that when implemented would reduce impacts to less than significant. These previously approved mitigation measures have been included herein as applicable regulations and conditions of approval. Additionally, the proposed Plan goals, policies, and actions, as listed topically herein under HAZ-1 through HAZ-8 in the DEIR, would further ensure that future development in the City if Newark does not contribute to cumulative increase in risk to hazards or hazardous materials. Finally, subsequent projects resulting from implementation of the proposed Plan would also be subject to independent CEQA review in which project-specific impacts would be further identified along with appropriate mitigation measures.
SOKALE-20	7. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. Page 4.7-26-28: HAZ-7 The proposed Plan would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. The General Plan includes actions regarding the development of several railroad grade-separations for roadways. Action T-6.C Central Avenue Grade Separation. Implement a railroad grade separation (roadway overpass) of the Union Pacific Railroad at Central Avenue. Pursue state and federal grant funding to carry out this project. Action T-6.D Dumbarton TOD Grade Separation. Add an overpass to move traffic over the rail lines between Filbert and Sycamore Streets in conjunction with the Dumbarton TOD development. Pursue state and federal grant funding to carry out this project. What is the trigger for development of these grade separation structures? If funding is not available for these structures how will	Impacts related to emergency access are discussed on pages 4.7-36 through 4.7-28 of the Draft EIR. The City does not agree that railway overpasses are required to ensure adequate emergency access. No change to the Draft EIR is required.

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	emergency response to the Dumbarton TOD area be addressed? The primary routes to this area include Central, Willow and Enterprise. All three of these routes include at-grade rail lines, which could limit access and hinder emergency response to the proposed development. If these overpasses are not constructed I conjunction with this development this may result in a significant impact to an adopted emergency response plan or emergency evacuation plan. Please address this issue.	
SOKALE-21	8. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands. Page 4.7-28-29: HAZ-8 Implementation of the Plan would not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands. The Draft EIR states, "As shown on Figure 4.7-2, the Plan Area is not designated as having high, very high, or extreme wildland fire threat to people, as determined by CAL FIRE's Wildlife Urban Interface Fire Threat data." Figure 4.7-2 on Page 4.7-18 does in fact indicate areas of high risk of wildlife in developed neighborhoods and areas planned for development. The EIR fails to adequately assess the level of impact through failure to acknowledge the actual wildfire risks as indicated on the CAL FIRE Threat Map. Please correct this analysis.	The Draft EIR text on page 4.7-30 is hereby amended as follows: *"As shown on Figure 4.7-2, the Plan Area does not include State Responsibility Areas of very high, high, or moderate risk from wildfire. The Plan Area does, however, include some Local Responsible Areas of high and moderate risk from wildfire, although the majority of the Plan Area is designated as non-wildland/non-urban and urban unzoned."*
SOKALE-22	This assessment also fails to acknowledge Newark's long-term support of the sale of fireworks, which place additional risk in these wildland interface areas. On the July 4th and throughout the year agencies with fire suppression resources are concerned about the heightened risk of fire in these areas which are subject daily to winds coming across the Bay that can quickly drive a wildland fire into residential neighborhoods. The General Plan supports residential growth that will include more people who will be able to purchase fireworks and further exacerbate the wildland fire threat. Please include this in the analysis.	Impacts associated with wildland fires are analyzed and discussed on pages 4.7-28 through 4.7-31 of the Draft EIR. As described, compliance with applicable regulations and conditions of approval and implementation of the proposed Plan goals, policies, and actions would ensure the risk of loss, injury, or death involving wildland fires is minimized to the maximum extent practicable. This is appropriate for a programmatic EIR such as the Draft EIR. No revision to the Draft EIR is required.
SOKALE-23	Land Use and Planning 3. Conflict with any applicable habitat conservation plan or natural community conservation plan. Page 4.9-8 LU-3 - The proposed Plan would result in less than significant conflicts with the Bay Plan and the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan. Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan The policies and action statements identified to minimize disturbances and support the Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan (DESFBNWR CCP) are couched in terms "participate in cooperative efforts", "support", "encourage" and "coordinate with" do not require Newark to implement said policies and actions that are intended to support the DESFBNWR CCP. These General Plan policies and actions and past discretionary actions by Newark provide no indication the DESFBNWR CCP will be supported by Newark's land use decisions. In fact, the General Plan and associated Draft Program EIR do not indicate the DESFBNWR Expansion Boundary areas or the wetlands and waters within the community upon which to formulate decisions. In the past few years Newark adopted the Areas 3 and 4 Specific Plan (currently suspended by Alameda Superior Court) that allow for the filling of wetlands within both of these planning areas. The Land Use Element of the General Plan designates Whistling Wings and Pintail Duck Clubs lands in Area 4 (Sub Area E), various wetlands in Area 4 (Sub Areas B and C) for low density residential use even though these lands were designated by Congress in 1991 as within the expansion boundary of Don Edwards San Francisco Bay National Wildlife Refuge. How do these designations in the Land Use elements support implementation of DESFBNWR CCP?	As discussed in LU-3, there were no precise locations for future development at the time the DEIR was prepared, and therefore no conflicts are expressly evident. Further, several policies under the proposed Plan, listed on page 4.9-9 through 4.9-10 would minimize any disturbances and consequently support the goals of the CCP. Additionally, it was stated that separate project-level CEQA review would be required to further identify project-specific impacts and mitigation measures. Designation as part of the potential expansion area of the Refuge does to determine land use or define a land use conflict. The expansion area identifies where land could be acquired from willing sellers as a refuge addition. For those reasons, no changes are necessary.
SOKALE-24	The Draft General Plan Program EIR states, "Under the proposed Plan, the land use designation and zoning applicable to the duck clubs would remain unchanged as Low Density Residential." How can the General Plan continue to extend Low Density Residential land use and zoning designations across Sub Area E of Area 4 if the policies and actions identified in the Draft General Plan are intended to support	Potential conflicts with the CCP are discussed on pages 4.9-9 through 4.9-1 of the Draft EIR. The Plan does not propose development on any land subject to the CCP nor does it envision development in the immediate vicinity of the Refuge over and above that envisioned in the Dumbarton TOD Specific Plan or the Area 3 and 4 Specific Plan and analyzed in the respective specific plan EIRs, including Sub Area E of Area 4. Implementation of the proposed

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	the goals of the CCP? This directly conflicts with the goals, policies and actions purported in the General Plan and as such must be considered a Significant Impact. If these lands are not "envisioned" for development then why are they identified in the plan for residential development?	Plan policies and actions cited above would help ensure that subsequent projects give adequate consideration to buffers and other site planning factors. Therefore the conclusion of the Draft EIR that implementation of the proposed Plan would result in a less-than-significant impact with respect to conflicts with the CCP remains valid. Further, the City notes that the proposed Plan does not preclude the Refuge from acquiring land within its expansion boundaries from willing property owners. Please see Response to Comment STB-6. For clarifications of the Area 4 project, please see Mater Response 5.
SOKALE-25	San Francisco Bay Conservation and Development Commission San Francisco Bay Plan The General Plan Tune Up EIR states, "As described in Section 4.3.1.1 above, the Bay Plan, implemented by BCDC, guides the future protection and use of San Francisco Bay, its shoreline, and its natural resources. BCDC has jurisdiction for Mowry Slough ending at the culvert at the Mowry Avenue bridge crossing, at the bend of the channel near Plummer Creek, and jurisdiction over managed wetlands, to the extent they are present in the Plan Area. Managed wetlands are areas of historical tidal marshes, such as private waterfowl hunting clubs and publicly owned wildlife management areas, that have been diked off from the Bay and were maintained during the three years immediately preceding November 11, 1969, for wildlife preservation, agriculture, or as a game reserve.2 Bay Plan policies pertaining to managed wetlands encourage the continued operation and maintenance of managed wetlands for waterfowl hunting or for waterfowl food production. Where development of managed wetlands would occur, Bay Plan policies encourage retaining the maximum amounts of water surface area consistent with the project. The proposed Plan would conflict with the Bay Plan if it would result in conflicts with these policies. The proposed Plan does not specifically propose any development within Mowry Slough or Plummer Creek, including portions within the jurisdiction of BCDC, and compliance with the setback requirements contained in the City's Grading and Excavation Ordinance (Newark Municipal Code, Chapter 15.50) would ensure that future development under the Plan would not occur within the limits of either Mowry Slough or Plummer Creek. With respect to the potential presence of managed wetlands within the Plan Area, there are two former duck clubs located in the Southwest Newark Residential and Recreational Focus Area, as shown in Figure 4.3-2: the former Whistling Wings Duck Club, has been farmed for the last several decades, and the former Pintail Duck Club, which currently consists of a large pond surrounded by wetland plants. Neither the adopted Area 3 and 4 Specific Plan nor the proposed Plan envision development in the location of the former duck clubs." Figure LU-1 – Proposed General Land Uses of the General Plan designates Whistling Wings and Pintail Duck Clubs lands in Area 4 (Sub Area E), various wetlands in Area 4 (Sub Areas B and C) and Plummer Creek wetlands along Central Avenue (directly adjacent to the Plummer Creek Mitigation Lands) in the Dumbarton TOD Specific Plan for low-density residential land use. These land use designations conflict with Bay Plan policies. This impact is Significant.	See response to SOKALE-24.
SOKALE-26	4.9.4 CUMULATIVE LAND USE IMPACTS Page 4.9-12 LU-4 - The proposed Plan, in combination with past, present, and reasonably foreseeable development in the surrounding area, would result in less-than-significant cumulative impacts with respect to land use and planning. "In the case of an area-wide planning document such as the proposed Plan, cumulative land use effects occur from development under the proposed Plan combined with effects of past, present, and reasonably foreseeable development on adjacent land. The geographic scope of this analysis is taken as the Plan Area and adjacent land in the City of Fremont." "With respect to cumulative land use impacts from conflicts with applicable habitat conservation plans or natural community conservation plans, as discussed above, Plan-specific impacts related to conflicts with CCP and the Bay Plan would be less than significant, and would not be cumulatively considerable, when considered together with other past, present and	The Draft EIR discusses conflicts with the Bay Plan and the CCP on pages 4.9-8 through 4.9-13. The City notes that fill or development of lands within the Refuge expansion boundaries does not constitute a conflict with the CCP as land within the expansion boundary is not subject to the CCP. Further, the City notes that the proposed Plan does not preclude the Refuge from acquiring land within its expansion boundaries from willing property owners. Please see Response to Comment STB-6. The analysis and conclusions of the Draft EIR are adequate. No change to the Draft EIR is required to address this comment.

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	reasonably foreseeable plans in the Plan Area and adjacent land in Fremont. Cumulative impacts related to conflicts with the Basin Plan would be less than significant, as discussed in detail in Chapter 4.3 of this Draft EIR." The General Plan Tune Up EIR fails to identify past, present and reasonably foreseeable future development that conflicted with the DESFBNWR CCP and the refuge expansion boundaries and Bay Plan and therefore cannot claim a "Less than Significant" impact. Some of these projects include: Past Projects: Newark Gateway – filled wetlands and expansion boundary lands in the Newark Coyote Tract. Pacific Commons – filled wetlands and expansion boundary lands in south Fremont Present Projects: Newark General Plan Tune Up Torian Site Residential Development – Part of Dumbarton TOD – application before USACE and RWQCB for fill of wetlands in Plummer Creek. Trumark Residential Development – Part of Dumbarton TOD – application before SFPUC Future Projects: Patterson Ranch – proposes development with expansion boundary in north Fremont Please provide a complete analysis of cumulative impacts that identifies all project within Newark and Fremont that conflict with DESFBNWR CCP and the Bay Plan.	
SOKALE-27	Utilities and Service Systems Page 4.14-13 UTIL-3 – The Plan, in combination with past, present and reasonably foreseeable development, would result in less than significant cumulative impacts with respect to water supply. The Draft Program EIR acknowledges that water supply in dry years would not be adequate to support the proposed buildout and finds this impact to be less than significant solely on the basis of goals, policies and actions that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence to support this conclusion. Please determine other measures or scale development to what is feasible and sustainable in the long-term.	As stated in the previous response, the increase in water supply demand with implementation of the General Plan Update is only 557 acre-feet as compared to ACWD's supply demand for Newark, Fremont, and Union City of 72,800 acre-feet (<1%). Enforceable measures to ensure that water supply is sufficient during dry years are the ACWD's Drought Contingency Plan, which included mandatory measures for use restrictions, water rationing, and charges for excessive usage. Further reductions in water demand will result from implementation of Newark's Green Ordinance, 2010 California Plumbing Code, ACWD's Water Efficiency Measures for New Development (most of which are mandated by Federal and State requirements), and use of recycled water for non-potable uses. In addition, all large scale development projects are required to be assessed for water supply through the preparation of Water Supply Assessments (WSAs) and each project's CEQA review process as reviewed by the ACWD.
SOKALE-28	Page 4.14-14 Sanitary Wastewater ACFCD has recently completed an analysis of facilities with regard to adapting to sea level rise. Please include the findings of this report in a revised analysis of the Plan's ability to be sustainable.	Please see Master Response 4 regarding sea level rise.
SOKALE-29	Alternatives The alternatives analysis should include an alternative that protects the lands west of the Union Pacific railroad between Mowry Avenue and Stevenson Boulevard. None of the alternatives address this option, which has been sought by many community members over the past two decades.	As discussed in the Alternatives chapter on page 6-1, and pursuant to Section 15126.6 of the CEQA Guidelines, an EIR need only to describe a range of reasonable alternatives to the project. As such, three alternatives were analyzed in compliance with CEQA Guidelines. Please see Master Response 3 regarding the adequacy of alternatives. No further response is necessary.
SOKALE-30	Thank you for the opportunity to comment on Draft General Plan Tune Up Program EIR. Please place me on your mailing list for all future notifications regarding this project	The comment is noted.