



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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

Dear Mr. Grindall,

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

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

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

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

Environmental significance of the lands of Area 4:

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

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

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

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

Project Description:

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

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

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

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

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

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

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

- **Does the City of Newark assume that compensatory wetland mitigation can be used exclusively, with no substantial avoidance and minimization of impacts to waters of the U.S.?**
- **Will the City of Newark look towards land use designs and uses that will minimize fill and alteration of waters of the U.S.?**

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

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

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

The MOU further states:

1. Section 230.10(a) allows permit issuance for only the least environmentally damaging practicable alternative. The thrust of this section on alternatives is *avoidance of impacts*. Section 230.10(a)(1) requires that to be permissible, an

alternative must be the least environmentally damaging practicable alternative. In addition, Section 230.10(a)(3) sets forth rebuttable presumptions that 1) alternatives for non-water dependent activities that do not involve special aquatic sites are available...*(emphasis added)*

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

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

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

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

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

Possible need for an Environmental Impact Statement (EIS):

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

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

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

Land Use:

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

Traffic and Circulation:

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

Biological Resources:

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

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

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

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

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

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

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

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

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

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

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

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

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

Air Quality:

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

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

Noise:

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

Hazardous Materials:

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

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

Hydrology and Water Quality:

The “Scope of Services” document states:

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

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

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

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

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

- It is our understanding that an agreement was reached between the owners of one of the parcels (Peery and Arrillaga) and the State of California and State Lands Commission in 1994 regarding the ownership of the tidal lands immediately adjacent to their property, whereupon Peery and Arrillaga quit claimed all their right, title, and interest in the waterways and lands lying westerly of the outer toe of the existing levee adjacent to Mowry Slough. In return, the State granted specific easements for drainage (this does not remove the requirement for CWA authorization) in very specific locations. If drainage features are planned outside the areas defined in the 1994 agreement, permits may be required from State Lands Commission.
- **Any reduction in the extent of existing wetlands as a result of drainage activities will be regulated by the Corps and require a CWA permit as this cannot be accomplished without the placement of fill in waters of the U.S. Under this scenario the acreage of impacts would include not only the area directly impacted by the fill activities, but also the acreage of the area drained.**
- **As a note of warning, water hazards may provide some sediment retention and storm flow desynchronization, however, they should not be considered compensatory mitigation since they require regular maintenance, do not replace wildlife values, and provide habitat for nuisance species and predators of concern such as bullfrogs.**

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

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

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

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

Geology and Soils:

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

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

Cultural Resources:

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

Utilities and Service Systems:

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

Public Services:

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

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

Energy:

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

Cumulative Impacts:

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

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

Alternatives:

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

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

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

Consistency with General and Regional Plans:

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

Significant unavoidable impacts – how will thresholds be determined?

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

We thank you for the opportunity to provide comments.

Sincerely,

Florence M. LaRiviere

Florence M. LaRiviere
Chairperson

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

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