



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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December 18, 2008

Re: Notice of Preparation (NOP) of an Draft Environmental Impact Report (DEIR) for the
Ballpark Village Community Specific Plan

Dear Mr. Diekmann,

This responds to your NOP for the proposed Ballpark Village Community Specific Plan (Ballpark Village) located within the undeveloped portions of the Pacific Commons project near I-880 and Auto Mall Parkway in southern Fremont. We thank you for the opportunity to provide comments.

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.

In 1999/2000, Catellus received permit approval to fill what is an unprecedented amount of wetland fill - 46 acres of seasonal wetlands. The seasonal wetlands filled provided important habitat for two federally listed endangered species (vernal pool tadpole shrimp and Contra Costa goldfields) and for the California tiger salamander, a species that was later federally listed as threatened. The project site also supported the burrowing owl, four additional rare plants, shorebirds, and waterfowl.

For over a year CCCR participated in meetings between the City of Fremont, Catellus, the U.S. Army Corps of Engineers (Corps), and the resource agencies. At issue was the minimization of the fill footprint and the compensatory mitigation that would be required to reduce the adverse impacts resulting from the substantial wetland fill. Also of concern were the adverse impacts to endangered, threatened, and rare species and their habitats. Another major issue was that adequate measures be provided to protect the mitigation area from impacts arising from the developed area. This last issue was given great consideration by FWS when they wrote their biological opinion.

As recently as the public scoping session, we have heard comments from the development team suggesting the impacts of the new proposal will be no different than those of the original development proposal -- nothing could be further from the truth. The impacts of the current proposal are vastly different in scope and magnitude from what was originally negotiated and the consultation process with the U.S. Fish and Wildlife Service must be revisited. The Department of Fish and Game may also have new concerns that will need to be addressed.

Project Description: The Oakland A's proposed Ballpark Village is located within the City of Fremont's Industrial Planning Area. The majority of the project (approximately 222 acres) would be located within the undeveloped portions of the Pacific Commons project. The proposed development project consists of the construction of a 900,000 square foot major league baseball stadium with a seating capacity of 32,000 fans; 200,000 square feet of ancillary building space; approximately 540,000 square feet of retail; and 80-room hotel, up to 3,150 residential units; approximately 300,000 square feet of office and R & D; a 7.5-acre auto dealership; an elementary school, parking lots, associated open space, circulation, and infrastructure improvements.

Land Use: The NOP states the EIR will discuss compatibility within each development area and with surrounding land uses, and in particular, potential land use conflicts that may arise from the introduction of residential and commercial uses within an existing industrial area. We believe these are all important issues that must be reviewed and discussed. There is an equally important issue regarding the introduction of residential uses into this area that must be discussed within the EIR.

The proposed Ballpark Village is bordered by the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge) to the south and west. In April of this year ProLogis (Catellus) donated 390 acres which lie immediately adjacent to the Pacific Commons development to the Refuge. The 390 acres comprised the majority of the acreage required by the Corps and resource agencies as compensatory mitigation for impacts to wetlands and federally listed species. As

explained above, the mitigation site provides habitat for three federally listed species, a number of rare plant species, the burrowing owl, shorebirds, and waterfowl. The vernal pool habitat is extremely rare within the bay ecosystem.

To quote the Biological Opinion prepared by the U.S. Fish and Wildlife Service (Service):

Older aerial photographs as well as soils and existing wetlands patterns on and adjacent to the site suggest that, prior to human modification, much of the site supported and extensive vernal pool and seasonal wetlands complex, including uplands, as well as a limited amount of intertidal channels. The Bay Area contains three areas of historic vernal pool soils: adjacent to Suisun Marsh, west of Sonoma Creek, and in the Fremont/Newark area—including the proposed project site (EcoAtlas, 1997). Further studies confirmed that *the project site [i.e. Pacific Commons] is the largest contiguous undeveloped area of vernal pool soils remaining in the vicinity of the South San Francisco Bay* (Wetlands Research Associates 1998). [emphasis added]

The existing General Plan (p. 6-18) states:

Open Space Goal 2: Recognition, protection, and enhancement of significant natural areas and wildlife habitats in the city, including Bay Trail, seasonal, and freshwater wetlands, and open meadows and fields.

Policy OS 2.1.2: Land uses and activities in areas adjacent to the Wildlife Refuge must be compatible with, and, if possible, should promote the goals of the Refuge.

Implementation 2: *Prohibit residential subdivisions contiguous with the Wildlife Refuge to limit the threat of domestic and feral animals.* [emphasis added]

The Ballpark Village proposal includes 2,100 to 3,150 residential units immediately adjacent to the Refuge. *This is clearly inconsistent with the policies of the General Plan.* When the Biological Opinion for the Pacific Commons project was written residential units were not a component of the project and take of listed species as a result of impacts from adjacent housing was not considered.

- There has been a change in the conditions under which the Biological Opinion was issued therefore, formal consultation must be reinitiated. When will the City request re-initiation of the consultation process?
- How will the City address the inconsistency with policies of the General Plan? Will this end up merely being an exercise in what is considered “contiguous”?

Aesthetics: The NOP states the EIR will describe the existing visual conditions of the Plan Area and address the potential effects on scenic resources or any degradation of the existing visual character. The NOP also states the EIR will discuss the potential adverse effects of lighting types within the Plan Area.

- How will decision-makers and the public determine the impacts of the proposed project on the scenic resources and existing visual character? Will photographic renderings be prepared to demonstrate the visual impact of the proposed development on the existing vistas (street elevation)?
- If renderings are provided will they include impacts to existing vistas overlooking the open space towards the bay:
 - From within the Pacific Commons project?
 - From I-880 towards the bay?
- What impact will mature vegetation of the proposed project have on existing vistas?
- Will views across the bay still be possible?
- What impact will the light pollution have on migratory and resident birds and other wildlife?
- How far into the adjacent Refuge will the impacts of light pollution from the proposed project extend?
- How far into the surrounding neighborhoods will the light pollution extend?
- Will the proposed project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Population, Employment, Housing: The NOP states the proposed project would contribute to increased housing and job growth in Fremont. The economic analysis for the proposed project was conducted in another set of economic realities. The economic landscape has drastically changed in the past year dramatically impacting all sectors of our economy including retail, housing, the auto industry, etc.

- To what extent can the EIR provide decision-makers with an analysis of job growth and housing demand that reflects today's economic environment?
- How will the EIR adequately forecast a return in demand and growth given the economic uncertainty that exists?
- The NOP states the EIR will "assess the socioeconomic impacts of the increased growth that will be created by the proposed project, to the extent that they will directly or indirectly result in physical changes to the environment." Given the economic conditions will the EIR also provide different trajectories that include no growth and various rates of growth?
- Initially, Santana Row had been provided as an example of the type of neighborhood that would be created surrounding the Ballpark Village. If the residential development should proceed would that still be the type of environment that would be created? What differences would occur in the type of residential development that is constructed if the ballpark and residential components occur in separate locations?
- What impact will the Ballpark Village proposal have on the existing Pacific Commons businesses?

Transportation, Circulation, and Parking: Either alternative of the proposed project will have severe, adverse impacts to existing traffic, circulation, and parking conditions.

- How far away from the proposed project (and alternative location) will the EIR analyze impacts on traffic, circulation, and parking conditions? The ballpark component will have negative impacts on existing traffic and circulation conditions miles away from the immediate location of the ballpark.
- What transit services are proposed in the interval between completion of the stadium and completion of the Warm Springs BART Station?
- Has AC Transit indicated they will be willing and able to provide additional buses on game days? What impacts will game days have on existing local ridership of AC Transit buses?
- Will shuttle buses be provided from the more distant parking lots? Who will provide these shuttle buses and where will they originate from?
- What impact will the Ballpark Village proposal and alternative have on parking within the existing Pacific Commons development, surrounding business parks, and residential neighborhoods?
- The Southern Pacific Railroad tracks support both passenger and freight traffic. Does this line have the capacity to support additional passenger trains? What impacts will additional train traffic have on neighborhoods adjacent to the train tracks (not just within the immediate vicinity of the proposed development)? What impacts will increased train traffic have on traffic congestion within other parts of Fremont (e.g. congestion caused at railroad crossings)?
- If the ballpark is located at an alternative site from the proposed residential component will public transit be provided to service the residential development? What type of public transit would be provided?
- The Draft Ballpark Village Community Specific Plan describes a pedestrian oriented community. Where is the nearest grocery store, drug store, public library, etc. to the proposed residential development? Are they located in Fremont or Newark?

Air Quality: The proposed development *will* substantially increase emission concentrations in Fremont through increased vehicle trips, demolition and construction.

- The Los Angeles Board of Education recently restricted the construction of new schools within 500 feet of freeways and other sources of air pollution. How will the air quality impacts of the traffic generated by the proposed project on students of the proposed elementary school be assessed? What about impacts to the residents of the proposed development?
- The tremendous increase in vehicular traffic immediately adjacent to the refuge will expose the organisms and wetlands to a significant increases in tailpipe exhaust and constituents such as nitrogen oxide, toxics heavy metals, and polynuclear aromatic hydrocarbons. What measures will be implemented to reduce these impacts? How will this be monitored? What contingency measures will be implemented to prevent adverse impacts to federally listed species and the aquatic environment?
- Will carbon dioxide levels and nitrogen oxide levels be monitored over time?
- Will the EIR analyze the impacts of idling vehicles waiting to exit ballpark parking lots?

- How will the greenhouse gas emissions generated by the proposed project be analyzed and why are so many housing units being proposed in an area with no transit station?
- What provision for mass transit will be provided to reduce greenhouse gas emissions? (However, given the location of the proposed development, isn't unlikely that mass transit would be used by the residents, students, shoppers, diners, ballpark visitors, etc.?)

Noise: The NOP states the existing noise environment is dominated by I-880. The freeway noise is fairly consistent, punctuated occasionally by the sounds of truck deceleration, motorcycles, and emergency sirens. The impacts of noise from a baseball stadium will be substantially different and from a wildlife perspective, closer and unpredictable.

- How will the impacts of stadium noise on wildlife on the adjacent refuge be identified and what mitigation exists?
- The Oakland A's have several fireworks displays per year. This is clearly incompatible with the adjacent Refuge. Will there be no fireworks displays if a ballpark is built on the Pacific Commons site?
- How far away will noise impacts of the proposed ballpark stadium be analyzed, i.e. will impacts to neighboring businesses, neighborhoods, and schools be analyzed?

Biological Resources: The biological significance of the adjacent Refuge has been mentioned above. The current proposal refers to "...A landscaped pedestrian trail leading from Ballpark Village to the Municipal Parcel would create a 2+-acre recreational pedestrian area and a natural buffer along the Refuge at the south and west edges of the Plan Area..."

- How will trespass onto the refuge, both pedestrian and vehicular, be prevented? What mitigation measures will be taken to monitor and prevent such activities, in perpetuity?
- What mitigation measures will be taken to buffer the refuge from the substantial increase in human, vehicular, and noise disturbance?
- Given the proximity of the Refuge to the development site will the use of fireworks be prohibited within the community specific area?
- How will introductions of any landscaping material to the refuge (e.g. plantings, chemicals, etc.) be prevented?
- How will the introduction of non-native invasive species that are attracted areas of newly disturbed soils be prevented from spreading onto the adjacent Refuge?
- How will the introduction of pest species be monitored and prevented (plants, domestic and feral animals, corvids, gulls, etc.)?
- What contingency measures will be proposed to deal with nuisance species?
- How will the exponential increase in light pollution and its effects on the biota of the adjacent wildlife refuge be monitored? How will the tremendous increase in light pollution from the stadium and/or residential retail, and commercial development be mitigated?

- What measures will be put into place to avoid the introduction of refuse onto the wildlife refuge? What mitigation measures will be implemented to clean up refuse that still makes its way onto the Refuge from the proposed development?
- As mentioned above, the tremendous increase in vehicular traffic immediately adjacent to the refuge will expose the organisms and wetlands to a significant increases in tailpipe exhaust and constituents such as nitrogen oxide, toxics such as heavy metals, and polynuclear aromatic hydrocarbons. What measures will be implemented to reduce these impacts? How will this be monitored? What contingency measures will be implemented to prevent adverse impacts to federally listed species and the aquatic environment?
- The Biological Opinion prohibited any additional construction on the Preserve area aside from that authorized under the original Corps permit. Will the proposed changes in the development result in the need for additional infrastructure that will impact the refuge (e.g. increase in storm drain capacity, flood control, water delivery structures, expansion of roadways, etc.) if so they must be included in the EIR?
- Are any changes proposed that could impact the hydrology of the refuge? What are they? What impact will these have on vernal pool hydroperiod? Again, this was prohibited under the Biological Opinion.
- What are the cumulative impacts of this project and others proposed in the vicinity on endangered or rare species and the habitat they require within the area? How will those impacts be mitigated?
- How will road kill of wildlife be avoided with the increased traffic that will be created by the proposed development?

Hydrology and Water Quality: The Biological Opinion required that drainage from the developed areas of Pacific Commons not impact the hydrology or water quality of the Refuge.

- How will the project proponent ensure runoff from the proposed development project (e.g. the landscaped buffer, etc.) does not adversely affect the sustainable function of the Refuge as required by the Biological Opinion?
- Where is the 100-year flood plain with respect to the proposed project?
- Is the projected extent of sea level rise within the vicinity of the proposed project?

Geology, Soils, and Seismicity:

- What is the seismic hazard at either the proposed or alternative location for the stadium? What is the seismic hazard for the residential and elementary school site?

Hazards and Hazardous Materials:

- Could the presence of a ballpark stadium expose residents of the surrounding area to any increased hazards? What are they?

Public Services:

- What station will be the first responder in the event of an emergency?

- Does the city have the capability of responding to a major incident at the proposed ballpark stadium?
- What is the estimated response time for emergency personnel or police?
- What impact will the proposed development have on response times (e.g. staffing, in view of increased traffic congestion, etc.) for the rest of the city?
- What impact will the proposed project have on the City's ability to maintain or improve levels of service within existing areas of the city (including issues of road maintenance in addition to emergency services)?
- Will a turn-key elementary school be provided by the project proponent or will the project proponent merely fund the construction of an elementary school? If the proponent does not intend to construct the elementary school, how much funding will be made available? If the school district is responsible for the construction of the elementary school, it is imperative they have detailed and site specific information necessary to determine the costs of constructing schools in this area given the potential for flood hazard, liquefaction, earthquake hazard, etc. Have site specific borings or testing of the subsurface materials been conducted to determine the liquefaction or lateral spreading hazards of the proposed school site? If not, will these studies be conducted for incorporation into the DEIR?
- Will the construction of the school be dependent upon occupancy of constructed housing units? If so, what number of housing units would need to be occupied before construction of the school begins?
- How reliable is the estimated of number of students that will be generated by the proposed development? Will a break-down of estimated elementary school, junior high and high school students generated by the proposed project be provided? What provisions will be made for junior high and high school students?

Infrastructure and Utilities:

- Does the existing sanitary sewer line have the capacity to deal with the needs of a ballpark stadium? What impacts would improvements to the existing sewer and water delivery lines have on the adjacent Refuge and listed species?
- What impact, if any, will recent lawsuits and regulatory decisions regarding the exports of water from the Delta, and/or drought conditions have on the City of Fremont's available water supply? Would the projected water demands of this development proposal have any impact on existing development within the city?
- How will the exponential increase in solid waste generated by the ballpark be dealt with?
- Does sufficient capacity exist to supply the electrical needs of the Ballpark Village proposal?

Global Climate Change: While improved energy efficiency and reduced water demand are admirable goals for any project, in reality the proposed project does little to discourage those coming to the Ballpark Village, or those residing within the proposed Ballpark Village from getting into their cars and driving to their destination. One of the key components of GHG

emissions reduction guidance focuses on higher density housing located around transit hubs. Even with the construction of the Warm Springs BART station the proposed Ballpark Village is not within easy walking distance of the BART station.

- What realistic and feasible measures will be implemented to significantly reduce VMT?
- What realistic and feasible measures will be implemented that significantly reduce the level of congestion on roadways and parking lots (and therefore reduce the contribution of Green House Gases (GHG) from idling engines)?

Planning Policy Analysis: Please refer to the Land Use section for our comments regarding the proposed project's inconsistency with the existing General Plan policy for institutional open space and residential developments.

Cumulative and Growth Inducing Impacts:

- What reasonably foreseeable projects will be considered when addressing cumulative and growth inducing impacts? There are numerous projects which will likely result in increased traffic congestion, demand upon city services, etc. including, but not limited to the Area 2 and Area 3 and 4 specific area plans in the City of Newark, the Globe, Patterson Ranch, the proposed upscale grocery store development at the intersection of Automall Parkway and Technology Drive, the proposed retail at King and Lyons, and the proposed Newby Island landfill expansion.
- Will the cumulative impact analysis analyze cumulative impacts on traffic congestion, public services, water availability, air quality, and GHG emissions?
- What are the cumulative impacts of this project and others proposed in the vicinity on endangered or rare species and the habitat they require within the area? How will those impacts be mitigated?
- What are the cumulative impacts of the proposed project on the Refuge?

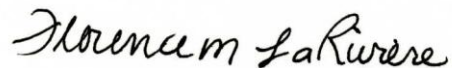
Alternatives: We commend the proposal to consider alternatives that separate the ballpark location and the residential/retail/commercial components. CCCR strongly urges the city to explore alternatives that separate the stadium from the proposed residential/retail/commercial development, and alternatives that locate the development of either component closer to public transit. We question the wisdom of locating residential development so far away from transit and other necessary public services such as police, fire, schools, etc. as it is counter to recent climate change legislation and guidance. At the same time, we hope the City will fully analyze in detail the ramifications of the proposed development on areas adjacent to any proposed location.

Public Scoping Process: The proposal to construct the Ballpark Village within the City of Fremont will have a profound impact upon the quality of life of Fremont residents. Many residents attended the recent public scoping session and city council meeting. Many of those who attended left feeling disenfranchised because they felt they did not have an adequate opportunity to publicly ask questions about the proposed project or express their concerns. While providing an opportunity for verbal public comments is not required by the CEQA process, given the magnitude of this project it is in the best interest of the city to promote dialogue rather than discourage it. We encourage community development staff and the city council to provide the public an opportunity to express their concerns at community workshops or at some other venue with the city council and staff.

Economic Analysis: We realize the issue of economics is not directly under the purview of CEQA, however, it is important to raise concerns regarding the need to update the economic analysis for the proposed project (now 18 months old), as well as request an economic analysis of any alternative site(s). The economic landscape has changed dramatically in recent months. The parameters and assumptions of the outdated economic analysis will not provide decision makers or the public with reliable information upon which to assess the impacts of the proposed development on the city and its residents.

Thank you for the opportunity to provide comments.

Sincerely,



Florence M. LaRiviere
Chairperson

CC: John Chambers, CEO Cisco Corporation
Janice Gan, California Department of Fish and Game
Ryan Olah, US Fish and Wildlife Service
Mark D'Avignon, U.S. Army Corps of Engineers
David Smith, EPA
Bruce Wolfe, SFBRWQCB
Bob Wasserman, Mayor of City of Fremont
Jeff Schwob, Planning Director of City of Fremont
Jill Keimach, Community Development Director City of Fremont
Mendel Stewart, Project Leader San Francisco Bay National Wildlife Refuge Complex
Amanda Jorgenson, CNPS Executive Director
Norman LaForce, Sierra Club
Christina Wong, Greenbelt Alliance
David Lewis, Save the Bay
Carol Whitham, vernalpools.org