

Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

May 21, 2009

SUBJECT: REVIEW OF ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF
NEWARK HOUSING ELEMENT UPDATE

Dear Mr. Grindall;

Grassetti Environmental Consulting (GEC) has been retained by the Citizens' Committee to Complete the Refuge to review the Environmental Impact Report (EIR) on the City of Newark Housing Element and relevant background documentation for technical adequacy and compliance with the California Environmental Quality Act (CEQA) and its implementing Guidelines. This review was conducted by Richard Grassetti, the firm's principal, and is based on my 25 years of experience in CEQA document preparation, review, and training.

My review indicates that the CEQA documentation for the project is inadequate and incomplete, and that the EIR fails to meet CEQA Guidelines. Specifically, the EIR's project description is incomplete and inconsistent, the range of alternatives is inadequate, there are analytical inconsistencies and problems with assumptions used in the document, certain mitigation measures are weak and unenforceable, and some technical analyses are omitted/flawed in a manner that results in omission or understatement of important potential impacts. The bases for these conclusions are detailed below.

Reliance on Past Environmental Impact Reports

The Introduction (DEIR p.4) to the DEIR states that the DEIR "relies on environmental setting, impact, 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. In addition, according to the DEIR, the 1999 Area 2 plan has been abandoned and replaced with an entirely new development plan, therefore the 1999 Area 2 Plan EIR does not appear relevant to the current project impact assessment.

Project Description Issues

The “project” for the purposes of this EIR is the proposed Housing Element (HE) and associated general plan and zoning changes that assist in implementing the HE. The Project Description (DEIR p. 8) states that Newark requires 1755 new housing units of various affordability levels to comply with State of California requirements. However, the Project Description fails to identify the number of units assumed to be provided by the proposed project zoning and general plan revisions. Elsewhere in the DEIR, a figure of 1993 units is used, which, according to the HE (HE p. 34) is the number of units expected on identified HE sites by 2014. Yet, according to the HE housing site inventory full development the proposed general plan and zoning revisions assumed in the DEIR would permit an additional approximately 3800 units, for a total of 5523 units, over three times the unit count assumed in some of the DEIR technical analyses. Other DEIR technical analyses use a total of 5738 units, for which I can find no supporting documentation. The unit count is further complicated by substantial internal inconsistencies in the HE between the text discussion on pp 29-35 and the numbers in HE Table 5-36, which purports to summarize expected housing units by 2014. These inconsistencies/full development numbers are summarized in the table on the following page.

CEQA defines a “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment” (CEQA Guidelines, Section 15378(a)). As summarized above, the actions necessary to provide the units assumed/required in the HE would, at full buildout result in 5523 units. Therefore, the EIR should assess the impacts of that full buildout. Failure to do so results in impermissible piecemealing of the GPA/rezoning portion of the project.

Another substantial problem with the stability of the project description is its treatment of Area 2. The Housing Element assumes that some portion of a 2008 Concept Plan for which a Specific Plan has not been approved would be implemented during the 2010-2014 period. The City planning documents include three different scenarios for Area 2. The General Plan of 1992 for industrial; the 1999 Specific Plan for community college and assorted high-technology with some commercial; the current so-called plan for a TOD. The proposed Housing Element’s assumption that the only unapproved scenario of the three would be approved and partially built out by 2014 is puzzling.