

June 7, 2010

City of Newark Planning Commission
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Via Facsimile 510-578-4265

Terrence Grindall
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Via email: Terrence.grindall@newark.org

Re: City of Newark Areas 3 and 4 Specific Plan Project - Planning Commission June 8, 2010
Public Hearing - Request that Matter Be Continued Without Hearing Until Adequate
Notice and the Public is Afforded Opportunity to Review All Project Documents

Dear Newark Planning Commissioners and Community Development Director:

I am writing on behalf of our client, Citizens Committee to Complete the Refuge (“CCCR”) and its members to raise CCCR’S objections to tomorrow’s Planning Commission hearing on the grounds of both a lack of adequate public notice and the City staff’s failure to make the underlying documents that would otherwise be considered at tomorrow’s Planning Commission meeting available for meaningful public review and comment.

As an initial matter, it is unclear whether the City of Newark gave adequate notice of tomorrow night’s Planning Commission meeting pursuant to Government Code sections 65090, and 65353. (Cf. *Environmental Defense Project v. County of Sierra* (2008) 158 Cal. App. 4th 877.)

Second, the City has failed to make the underlying documents – that would otherwise be considered at tomorrow’s Planning Commission meeting – available for meaningful public review and comment. CCCR, by and through Carin High, as well as other members of the public, have requested the opportunity to review and comment on all relevant documents pertaining to the Areas 3 and 4 Specific Plan Project as well as the related Environmental Impact Report. Ms. High emailed Mr. Grindall, Newark Community Development Director, on several occasions requesting this information not just for the benefit of public review, but with concerns that the Planning Commissioners have not had adequate time to review the Development Agreement. I have been informed that as of this afternoon, Ms. High, has not received the Development Agreement, and only was provided the staff report this morning. Similarly, I personally contacted Mr. Grindall, on behalf of CCCR, via email on June 2, 2010 and requested

that the Development Agreement and other relevant documents to be relied on by the Planning Commission in their review of the proposed Project be emailed to me. Mr. Grindall's reply via email later that day stated that he would send me the staff report and attachments via email when they were done. To date, I have not received any further email communications from Mr. Grindall.

The June 8, 2010 Planning Commission Agenda (Public Hearings, Item E.1) states that the Planning Commission "will consider recommendation that the City Council certify: E-10-12, a Final Environmental Impact Report on the Newark Areas 3 and 4 Specific Plan Project, and recommending that the City Council approve: GP-10-13, the Newark Areas 3 and 4 Specific Plan; related General Plan amendments: a map amendment to the General Plan Diagram to change the General Plan land use designations for certain parcels of land; and DA-10-14, Development Agreement for the project." Item E.2 of the Agenda states that the Planning Commission will "consider recommending that the City Council approve Z-10-17, a Map amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Areas 3 and 4 Specific Plan."

However, the public has never been given an opportunity for meaningful review and comment on all the documents and information referenced in the above agenda which will be before the Planning Commission at their June 8th hearing. California's Planning and Zoning Law declares that it is "the policy of the state and the intent of the Legislature that each state, regional, and local agency concerned in the planning process involve the public through public hearings, informative meetings, publicity and other means available to them, and that at such hearings and other public forums, the public be afforded the opportunity to respond to clearly defined alternative objectives, policies, and actions." (Gov. Code § 65033, italics added.) Most notably, the Development Agreement referenced above has never been provided to the public for review and comment. A Development Agreement is an integral part of the City's planning process and must be available for meaningful public review and comment. The Development Agreement should be provided to the public in advance in compliance with the state Planning and Zoning law's minimum, 10-day public notice requirements as referenced above. As a practical matter, 24 hours is inadequate for the public to review the Staff Report.

As referenced at the lower portion of the June 8th Agenda: "Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the Planning Commission, will be made available for public inspection at this meeting and at the Planning Division Counter located at 37101 Newark Boulevard, 1st Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person." This section of the Government Code is not applicable to the requirements regarding providing the public access to materials and/or public documents in advance of a hearing, especially documents such as the Development Agreement, Staff Reports and documents related to zoning changes and General Plan amendments. Therefore, without access to documents integral to the planning process for the Project, the public would be deprived of the opportunity for meaningful public review and comment, i.e the opportunity to respond to clearly defined alternative

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objectives, policies, and actions.” (Gov. § 65033.)

CCCR requests that the Planning Commission not hold any hearing on the Newark Areas 3 and 4 Specific Plan Project tomorrow, or take up any substantive consideration of the project in the future, unless and until the City complies with the state Planning & Zoning Law’s minimum, 10-day public notice requirement. (Gov. Code, §§65033, 65090, and 65353; Cf. *Environmental Defense Project v. County of Sierra* (2008) 158 Cal. App. 4th 877.)

As the Planning Commission is aware from my client’s previous comments, CCCR is a 501(c)(3) non-profit group whose goals are to save the Bay’s remaining wetlands by working to place them under the protection of the Don Edwards San Francisco Bay National Wildlife Refuge, and to foster world-wide education regarding the value of all wetlands. On behalf of its members, CCCR has previously commented on the procedural and substantive inadequacies of the EIR for the Newark Areas 3 and 4 Specific Plan Project, and appeared at prior Planning Commission meetings to raise its continued concerns about this project, which is inconsistent with the City’s General Plan, as well as multiple regional plans, and which threatens a wide range of adverse impacts (including, but not limited to, wetlands, traffic, air quality, cultural resources, biological resources, cumulative impacts, noise, climate change, hydrology and flooding impacts). In addition, CCCR has commented that this project conflicts with state and regional planning as it relates to climate change as well as every state law passed to address climate changes and its many impacts.

As a matter of law, the Planning Commission cannot call tomorrow’s agenda items to the floor for a hearing without violating the state Planning and Zoning Law, CEQA, and the public’s fundamental right to consider and comment on the actions that are proposed by their appointed and elected officials before those actions are taken. CCCR requests that the Planning Commission continue any consideration of the Areas 3 and 4 Specific Plan Project in the interests of 1) complying with its mandatory duties under the state Planning and Zoning Law and CEQA, and 2) allowing the public an actual place at the table in the City’s “public” consideration of this new and controversial project.

Thank you for your attention to this matter.

Very Truly Yours,

/S/ Celeste C. Langille

Celeste C. Langille

cc: Citizens Committee to Complete the Refuge