

June 28, 2010

Via email city.council@newark.org
Via email terrence.grindall@newark.org

Mayor David W. Smith
Newark City Council
37101 Newark Boulevard
Newark, CA 94560-3796

Re: Citizens Committee to Complete the Refuge (“CCCR”) Continued Objection Regarding Areas 3 and 4 Specific Plan Project, EIR and Development Agreement - June 28, 2010 Adjourned Regular Meeting Agenda Item E.14

Dear Mayor Smith and Newark City Council,

This office writes again on behalf of our client, Citizens Committee to Complete the Refuge (“CCCR”) and its members regarding the Newark Areas 3 and 4 Specific Plan Project (“Project”) and EIR. CCCR again renews all objections it has previously raised regarding the Project, both orally and in writing, including, but not limited to, this office’s comments to the Planning Commission on June 7 and June 8, and to the City Council on June 24, 2010; the comments of Richard Grasseti of Grasseti Environmental Consulting; and the comments of Carol Beahan of Wildscape Engineering Services.

CCCR also objects to the introduction of any new material that might be proffered by county staff, the applicant, or their consultants at tonight’s June 28, 2010 City Council meeting, including, but not limited to, any changes to the Development Agreement that may have been proposed (but not circulated for review or comment by the public or the City’s Planning Commission) in violation of the state Planning & Zoning Law’s minimum, 10-day public notice requirement. (Gov. Code, §§65033, 65090, 65867; Cf. *Environmental Defense Project v. County of Sierra* (2008) 158 Cal. App. 4th 877.) CCCR also objects on the ground that the City Council lacks jurisdiction consideration any substantive modifications to the Development Agreement that may have been made subsequent to Planning Commission’s June 8, 2010 hearing (including, but not limited to, any changes that may have been made since the City continued this meeting on June 24, 2010), as inconsistent with the Planning and Zoning Law’s procedural requirements, which require Planning Commission review before the City Council may decide whether to approve the Development Agreement (Gov. Code, § 65867.)

With regard to any new information or studies that the City may now seek to insert into its record regarding the project’s significant adverse environmental effects, CCCR objects on the ground that it has been presented with no opportunity for the public to comment or respond to such material, and

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CCCR continues its objection that the City's procedural violation of CEQA in circulating an informational inadequate Draft EIR for public review and comment cannot be cured by instead inserting the missing information into the City's record at the City's final hearing and then summarily approving the project. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043, CEQA Guideline § 15088.5(a)(4)).

CONCLUSION

For the foregoing reasons, Citizens Committee to Complete the Refuge continues its objections on all previously stated grounds to the Project, and again request that the City Council decline to approve the Areas 3 and 4 Specific Plan Project EIR and Development Agreement, as well as all other associated approvals, and instead direct staff to prepare and circulate a revised, Draft EIR that addresses the concerns raised by CCCR's prior written and oral objections to the Project.

Sincerely,



Keith Wagner

cc: CCCR

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