



## CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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Re: Housing Element Update (HEU) & General Plan Amendments/Zoning Ordinance Amendments Draft  
Program Environmental Impact Report (DEIR)

Dear Mr. Grindall,

This responds to the HEU and General Plan Amendments/Zoning Ordinance Amendments DEIR, dated April 2009. The Citizens Committee to Complete the Refuge (CCCR) has retained California Environmental Quality Act (CEQA) consultant Richard Grassetto to provide comments regarding the glaring inadequacies of this DEIR. Mr. Grassetto's letter has been submitted to the City under separate cover. In addition, we concur with and wish to incorporate all comments submitted by Margaret Lewis.

A review of the DEIR reveals the information contained in this document is:

- internally inconsistent (e.g. refer to the discussion of the number of housing units analyzed in the DEIR in Mr. Grassetto's letter),
- is confusing/misleading (the DEIR references programs or projects that to the best of our knowledge have long been abandoned without providing supportive details as to why these projects are mentioned, e.g. the "Southern Crossing"),
- omits discussion of significant environmental impacts or omits significant new information regarding environmental impacts,
- proposes mitigation measures that are insufficient to mitigate identified impacts and/or are unenforceable,
- neglects to analyze alternatives that avoid significant adverse environmental impacts, yet meet the basic project purpose.

For all of these reasons, as well as the arguments provided in letters from Richard Grassetto and Margaret Lewis we urge the City of Newark to correct the fatal flaws of this DEIR and re-circulate the corrected document.

**Scoping comment letters not included in the document:** In January 2009, the City of Newark issued a Notice of Preparation regarding the preparation of this DEIR. One of our members (after several inquiries) was informed by e-mail that scoping comments would be accepted from January 14 to February 13, 2009. CCCR submitted a seven page letter that was date stamped received by the City February 13, 2009. We are perplexed and exasperated that the DEIR includes a comment letter from a member of the public in the appendices, but the CCCR letter (received before the close of comments)

and a letter from Margaret Lewis (also received and date stamped before the close of comments) were not included. We would like an explanation of why these two letters were omitted when another letter from a member of the public was included.

**Reliance on outdated documents/Omission of significant new information:** The DEIR states [page 4] it:

“relies on environmental settings, impacts and mitigation measures contained in two previous EIRs adopted by the City of Newark:

Environmental Impact Report for the General Plan update Project 2007, prepared by Jerry Haag (SCH 91093071) 1992 [emphasis added]; and  
Area Two Specific Plan Environmental Impact Report, prepared by Jerry Haag, Urban Planner (SCH 99012070) 1999 [emphasis added].

We emphasize that the DEIR relies on a general plan (GP) environmental impact report (EIR) dating back to 1992, and references a specific area plan EIR dating back to 1999, for a project that was never constructed and has since been substantially changed. In fact, the City’s website includes a Request for Proposals (RFP) dated August 21, 2008 for “Consulting Services to Assist the City of Newark in Development of a Specific Plan and Environmental Impact Report for the Dumbarton Transit-Oriented Development.” In the RFP, the City states the project area was previously described as “Area 2”, but is now referred to as “Dumbarton Transit-Oriented Development (TOD).” Additional information needs identified for the Dumbarton TOD include: parking analysis, further review of soil and groundwater contamination issues, delineation of wetlands and development of mitigation strategies[“The Area 2 Specific Plan area *contains areas of significant natural value that have the potential for preservation.*” Emphasis added.], school needs assessments, “potential traffic impacts and preliminary mitigation strategies will need to be completed”, etc. It is evident from the above that the impacts assessed under the 1999 Area Two EIR are no longer pertinent to the project under consideration in this DEIR.

The environmental setting in and around Newark has changed substantially since 1992. Environmental impacts such as traffic congestion, demand for water supply, etc. have changed dramatically in the intervening years. New issues have arisen that were not considered in previous documents such as sea level rise, greenhouse gas emissions (GHGs), etc. New information has been obtained regarding the environmental setting since the GPU EIR was published including conceptual development designs for Areas 3 and 4, confirmation of the extent of wetlands occurring within Area 4 by the U.S. Army Corps of Engineers, occurrences of federally listed species within Area 4 and adjacent to Areas 2 and 4, etc. In addition, the economic situation which confronts our nation and state, though not directly considered under CEQA, has a profound influence on the ability of the City to deliver public services that are considered under CEQA and would be influenced by the current proposal (e.g. fire protection, police services, schools). These issues are either summarily omitted in the current DEIR or inadequately discussed.

It is inappropriate to rely on descriptions of environmental settings, quantification of impacts, thresholds of significance, or mitigation measures as described in the 1992 GP EIR or the 1999 Area Two EIR without the incorporation of more recent and relevant information. There are instances within the DEIR where the document fails to incorporate and disclose new and substantive information regarding significant environmental impacts that should be taken into consideration during the decision making process.

For example, the San Francisco Public Utilities Commission released their Bay Division Pipeline Reliability Upgrade Project DEIR in December 2008. That document includes a map identifying all of the known locations of hazardous materials that exist within the pipeline alignment. The alignment happens to transect the City of Newark. Along with the map are detailed descriptions of the hazardous materials occurring at the various sites as well as mitigation measures. For example, the AO Smith site appears to be adjacent to development area N. The SFPUC EIR states health risk assessments for the area concluded that soil and groundwater containing residual chemicals would not pose a threat to the health of residents or construction workers, however:

...standard safety precautions such as dust control should be followed during construction activities, and prolonged contact with groundwater should be limited. An environmental disclosure statement included in the 1995 site management plan for the site requires that all potential buyers, construction workers, or interested parties receive a copy of the statement, which summarizes the conditions and potential risks at the site. ACWD requires that all groundwater extracted at this site pass through a treatment system prior to its discharge or use.

The Newark HEU DEIR mentions seven sites specifically, but does not include specific information regarding the history of site contamination or clean-up activities, nor a complete list of the hazardous materials. For example, the Newark HEU DEIR mentions the FMC Corporation site. The SFPUC EIR also mentions the site, the history of contamination, the types of contamination, remedial measures that have occurred and the following:

...However, consultants and contractors who work on the property must follow proper health and safety protocols...As of 2002, a deed restriction for this site was being prepared and construction activities at this site must be in accordance with the adopted risk management plan (FMC 2002)...

The identification of “potentially significant human health hazard as a result of releasing contaminants into the atmosphere” is deferred in the HEU DEIR to “prior to grading or soil disturbing activities *on all housing sites*” (emphasis added – the mitigation measure refers to “housing sites” only and does not discuss mitigation measures for other types of development), at which time Phase I assessments might identify the need for additional measures. While Phase I information must be developed prior to any ground disturbing activities, it is clear detailed information currently exists regarding the location, nature, and remediation of hazardous materials within Area Two and other areas of Newark. Why isn’t this information provided in the Newark Housing Element Update DEIR? CCCR had specifically

requested, among other issues related to hazardous materials, a map be provided documenting the location of problem sites within Area Two with respect to proposed development of housing units.

The DEIR states, "Program EIRs analyze the broad effect of a proposed regulatory program," i.e. the updated Housing Element, "...with "an acknowledgement that site-specific environmental review may be required for future particular aspects of the broader program when they are proposed for implementation." This is understandable when potential constraints to lands may not yet be known or studies not yet conducted. However, there are several environmental impacts, such as the issue of hazardous materials which have been studied in detail and for which an abundance of information is currently available. Information such as this should be provided to decision makers and the public and could have formed the basis for the development of alternatives to be analyzed that would pose less environmental risk. Decision makers and the public should have access to currently available substantive information to inform the development of community plans for the area.

As further example of substantive information inadequately discussed within this DEIR, the DEIR states in the discussion of liquefaction and other soil hazards, "Area 2, 3, and 4 contain areas *likely subject to liquefaction* due to their close proximity to San Francisco Bay." [emphasis added] However, the Notice of Preparation (NOP) of an EIR for a Specific Area Plan for Areas 3 and 4, dated May 8, 2007 states under the heading "Geology and Soils", "The project site is *at a location where historic occurrences of liquefaction and where geotechnical and groundwater conditions indicate the potential for ground displacement and compressible soils.*" [emphasis added] If it is known that historic occurrences of liquefaction have occurred within the project boundaries, why isn't this information specifically stated in the HEU DEIR? The NOP for the Area 3 and 4 specific area plan was released long before the HEU DEIR.

Another example of substantive information that has not been included within this DEIR is the issue of sea level rise which will be discussed below under the section of Hydrology.

It is evident from our review of the HEU DEIR that existing substantive information that is pertinent to decisions of where it is appropriate to locate housing within the city boundaries and that should have been incorporated into the development of alternatives to be analyzed has not been included in this DEIR.

**Project Description:** Please refer to Mr. Grasseti's letter regarding the numerous inadequacies, inconsistencies, and fatal flaws regarding the project description for this DEIR.

**Project Location and Context:** The DEIR acknowledges, "...Much of Newark abuts the Don Edwards National Wildlife Refuge a multi-jurisdictional, federally owned wildlife refuge that preserves plant and wildlife habitat on and adjacent to San Francisco Bay," but fails to acknowledge that portions of Area 2 and Area 4 lie within the congressionally approved refuge expansion boundary, and that those areas within the expansion boundary were identified based upon their significant habitat and wildlife values. [Land Protection Plan, Potential Additions to San Francisco Bay National Wildlife Refuge, Alameda, San Mateo, and Santa Clara Counties, September 1990. Public Law 100-556]

**Aesthetics and Glare:** The 1992 GPU barely touches on the issue of aesthetics, though it does refer to “visual significance” and states:

Visual significance refers to those qualities of a city that defines its image. Those areas of Newark that establish its visual significance can be referred to as: *edges, gateways, pathways and nodes*...Salt ponds and the wildlife refuge form the fourth edge. The edges of a city reinforce the sense of place for the residents. Newark’s strong edges help distinguish the City from other cities in the bay with less well-defined boundaries.

The DEIR does not adequately address the impacts implementation of the DEIR may have on its “fourth edge” i.e. views of the salt ponds and wildlife refuge from within the project boundaries and from areas surrounding the project boundaries. The potential development of high density housing within Area 2 and the construction of housing and the construction of an elevated roadway over the Southern Pacific Railroad tracks on Stevenson Boulevard could significantly obstruct views of the bay from within the project boundaries and from immediately surrounding locations. This impact is not analyzed or mitigated.

The DEIR does assume that views and vistas of the “Newark Coyote Foothills” and foothills in Fremont to the east “would not be significantly blocked,” and defers analysis of this presumption to when “actual” development is proposed on Areas 2, 3, and 4.

CCCR had requested the DEIR consider the impacts of implementing the HEU on the quality of experience one has when visiting the adjacent Don Edwards San Francisco Bay National Wildlife Refuge (DESFBNWR). Specifically, due to increases in traffic and significant increases in building densities of adjacent lands, etc., implementation of the draft HEU will have significant negative impacts on the quality of the outdoor experience one has when visiting the wildlife refuge. And asked how these negative impacts would be mitigated. The DEIR does not address this significant impact.

Under the discussion of the impacts of lights and glare on the adjacent wildlife refuge, the DEIR acknowledges that the impacts would be significant and would require mitigation, but leaves to question whether all the elements of the proposed mitigation measure will be implemented and whether any of the proposed measures are enforceable.

The Newark DEIR states as part of the light and glare mitigation measure, “...directing lights downward so that light and glare will be minimized.” An example of a more enforceable statement is available in the Newhall Ranch Resource Management and Development Plan (<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentVersionID=21427>) that specifically states for night lighting adjacent to natural areas “...all lighting will be designed to be directed away from natural areas using shielded lights, low sodium-vapor lights, bollard lights, or other available light and glare minimization methods.”

Wording of the mitigation measure should be altered to read, "Photometric plans shall be required by the City of Newark for projects located adjacent to the National Wildlife Refuge." The mitigation measure should also clearly state that coordination with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) will be required regarding the adequacy of mitigation measures for night lighting or glare impacts that may affect listed species.

**Air Quality:** The mitigation measures proposed to ameliorate the adverse impacts of the HEU on air quality [Mitigation Measure 4.2-2] are largely voluntary and unenforceable and do not adequately address the increased vehicle miles, hence greenhouse gas emissions (GHGs) that will result from implementation of the HEU. Areas 3 and 4 are located on the southern boundaries of the City of Newark, distant from most city services. The construction of bicycle lanes and sidewalks will likely have little effect on the use of automobiles for daily activities such as shopping, transit to schools, work, etc.

The requirement to construct transit amenities does not ensure adequate public transit will be available to deter residents from using their automobiles. Can the City ensure public transit will be available to developments in Area 3 and 4?

How would the City enforce any of the mitigation measures itemized in Mitigation Measure 4.2-2?

Mitigation Measure 4.2-3 (exposure to toxic air contaminants) – An increasing number of studies indicate there are significant adverse impacts to residents living close to freeways and heavily congested arterials (<http://www.sdearthtimes.com/et0603/et0603s21.html>, <http://171.66.122.149/cgi/reprint/200403-281OCv1.pdf>, <http://aapgrandrounds.aapublications.org/cgi/content/extract/18/6/67>, to list but a few). Will the measures described in the mitigation measure be required of the developer? Will developers be required to install filtration units as described in measure b or will that be left to the discretion of the individual homeowners? If this measure is not required of the developer, then it cannot be considered adequate to reduce the impacts to a level that is less than significant.

Mitigation Measure 4.2-1 regarding construction impacts recommends under measure (g) the application of (non-toxic) soil stabilizers. We would like to have clarification of the specific nature of the soil stabilizers as bittern salts have been utilized in other areas and could have negative impacts to water quality if introduced to creeks, tidal sloughs, the bay, etc.

The new concept for Area 2 – the Dumbarton TOD emphasizes high density development focused around a transit hub and train station. What is the likelihood funding for the Dumbarton Rail will be reinstated before the 2014 horizon? Would high density housing be approved prior to approval and construction of a Dumbarton Rail Station? If so, how would the increased GHGs be mitigated in the absence of a viable public transit system?

**Biological Resources:** As mentioned above, portions of Area 2 and 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 and 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 Area 4 and that seasonal wetlands be improved. (*emphasis added*)

Salt marsh harvest mouse a federally listed endangered species is known to occur on Area 4. Burrowing owls, a species of special concern have been observed on portions of Area 4 in the past and may be present in portions of Area 2.

All these attributes of the lands of Area 4 (and portions of Area 2) are of regional significance in maintaining the biodiversity of the San Francisco Bay ecosystem and not just of local importance.

In addition to wetlands, Area 4 is unique to the Central and South Bay in the existence of an expanse of open space that provides extremely rare upland transition zone habitat and in the face of sea level rise would provide an area for transgression (landward migration) of tidal marsh species.

CCCR had specifically requested the HEU DEIR analyze and avoid, or if need be mitigate the adverse impacts of implementation of the HEU.

Specifically:

- Will the DEIR deal with the issue of sea level rise? Will the DEIR consider what impacts development of lands adjacent to the bay will have on tidal marsh species that will be vulnerable to the effects of sea level rise? Some of these species are federally listed species.
- What mitigation measures will be taken to buffer the refuge, wetlands, or other wildlife habitat from the substantial increase in human, vehicular, and noise disturbance?
- How will introductions of any landscaping material to the refuge, wetlands, etc. (e.g. plantings, chemicals, etc.) be prevented?
- How will the introduction of non-native invasive species that are attracted to areas of newly disturbed soils be prevented from spreading onto the adjacent refuge or other wetlands?
- 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 increase in light pollution and its effects on the biota of the adjacent wildlife refuge be monitored?
- What measures will be put into place to avoid the introduction of refuse onto the wildlife refuge or other wildlife habitat?
- 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?

- Will the implementation of the HEU result in the need for additional infrastructure that will impact the refuge or other wetland areas (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.
- What are the cumulative impacts of this project and others proposed in the vicinity on endangered or rare species and the habitat they require? How will those impacts be mitigated?
- How will road kill of wildlife be avoided with the increased traffic that will be created by implementation of the HEU?

All of these impacts are known to occur when development is located in proximity to wildlife areas. The Newhall Ranch Resource Management and Development Plan (<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentVersionID=21427>) discusses similar impacts and cites references documenting these impacts.

Another impact of concern would be the indirect impact of implementing Mitigation 4.7-1 (flooding impacts). The mitigation measure focuses solely on elevating building pads to raise new construction out of the flood hazard zone. What impact would this tremendous import of fill have on existing adjacent wetlands? Would these areas be degraded or dewatered by changes in hydrological patterns that result from raising the elevation of the developed lands?

The DEIR discusses only direct impacts to wildlife and habitat, does not provide mitigation measures other than the requirement of site-specific surveys and vaguely suggests impacts will be mitigated to a less-than-significant level by avoidance, safe relocation, or securing of replacement habitats. There is no discussion to scientifically support relocation as a viable mitigation measure, or the identification of where replacement habitats would be procured. Nor does the DEIR suggest mitigation ratios to replace lost habitat.

As stated above, the DEIR includes no mention of the Refuge expansion boundary or the restoration potential and value of the lands of Area 4 (and portions of Area 2).

Under Regulatory Framework the DEIR fails to mention the requirement to file a Storm Water Pollution Prevention Plan with the Regional Water Quality Control Board for grading of sites over five acres.

**Geology and Soils:** CCCR requested a map be included in the DEIR indicating areas susceptible to liquefaction. This information was not included, but should have been included and an alternative restricting the development of structures in areas with moderate to high susceptibility for liquefaction or seismic hazard should have been analyzed and included in this document. Decision makers and the public should have the opportunity to understand what seismic hazards exist for areas of proposed housing and to determine if housing in those areas should be avoided.

Mitigation Measure 4.5-1 - It appears the mitigation measure proposed applies only to developments on sites that have four or more dwellings. Shouldn't the mitigation measures be applied uniformly to all development sites in areas at risk of liquefaction or seismic hazard?



The DEIR fails to mention the fact that the outboard (bayward) portions of lands within Area 2 and all of Area 4 are currently “protected” from inundation by bay waters by privately owned levees. Will the City or County assume responsibility for these levees as the HEU is implemented? Will the levees be maintained to a standard such that they would withstand earthquakes? Who will be responsible for damage to lands on the inboard side of these levees should they fail? These questions were asked in our scoping letter and were not responded to.

**Hazardous materials:** Please refer to earlier portions of this letter. Of additional concern is the fact that none of the mitigation measures proposed specifically address how hazardous materials would be dealt with on non-housing sites, all mitigation measures refer specifically to demolition or ground-disturbing activities on “housing sites.”

**Hydrology and Water Quality:** As mentioned above, the DEIR fails to mention that levees located at the bayward edges of portions of Area 2 and all of Area 4 are privately owned. No information is provided regarding the standards of design, maintenance, or ability to withstand seismic events for these privately owned levees. There is no indication whether the city or the county will assume responsibility for the upgrade and maintenance of these levees, or whether these levees as currently designed are capable of withstanding seismic events. This is a significant issue that must be addressed within the DEIR, and failure to include this information places future inhabitants at risk.

Mitigation Measure 4.7-1 addresses flood hazard solely by elevating building pads in flood prone areas “at minimum one foot above the 100-year flood hazard area, or in accord with City standards, whichever provides the greater flood control protection...”

CCCR had requested a map depicting the location of the 100-year floodplain be provided so decision makers and the public could see where areas of risk are located with respect to areas of proposed housing. This information was not included in this DEIR. We also asked that a map depicting areas that would be susceptible to sea level rise be included. This information was not included.

April 7, 2009, BCDC Staff released a draft staff report, “Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on its Shoreline.” This report states:

Residents, businesses and entire industries that currently thrive on the shoreline are subject to flooding by the middle of the century, and probably earlier. *Shoreline development located in the current 100-year flood plain is subject to a 100 percent change of flooding by mid-century.* [emphasis added]

Sea level rise has been scientifically documented and its potential for flooding existing developed areas of the bay depicted in maps and scientific documents. Failure to analyze and report impacts of sea level rise in this DEIR is an inexcusable oversight.

The DEIR states “Pursuant to C.3 water quality standards enforced by the City of Newark, minimal and less-than-significant increases in the amount of stormwater leaving each housing site as they develop are expected. This should also result in a less-than-significant impact to substantial changes to local and regional drainage patterns.” What specifically are the C.3 water quality standards? In what document is this set of standards located?

**Noise:** CCCR had specifically requested that noise impacts to wildlife receptors either within the project boundaries or on the adjacent Refuge be addressed within this DEIR. No discussion is provided within the DEIR. It has been well documented that human disturbance can disrupt behavior patterns of wildlife including resting, feeding, nesting, breeding, and escape behaviors (see the discussion included in the Newhall Ranch Resource Management and Development Plan (<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentVersionID=21427> as an example).

Federal and state listed species are known to occur on or immediately adjacent to areas proposed for housing. Noise generated by construction of housing units or emanating from constructed housing units could result in the “take” of listed species. Mitigation measures such as restrictions on the time of year construction can proceed, the time of day construction is permitted, and the requirement of buffer zones (distance of would be determined through consultation with USFWS and CDFG) to distance wildlife from adverse impacts of noise should be incorporated into the DEIR.

**Public Services:** The DEIR fails to include specific information regarding the response times of the police or fire departments that could be expected after implementation of the HEU, nor does the DEIR indicate which of the many housing unit numbers mentioned in the DEIR was utilized for the determination that there would be a less-than-significant impact to these vital services. The DEIR should provide information on the length of time a resident of Newark in the northern or southern extremes of the City could expect to wait before receiving services of the police or fire department.

The only impact and mitigation measure considered with respect to police services is the possible relocation of the Newark police facility, but the document fails to analyze whether another centrally located site is available, or whether the funds exist to relocate the facility.

Public school impacts – The DEIR does not indicate when the student generation rates were developed. Are these recent or dated generation rates? What methodology was utilized to develop the generation rates?

**Transportation:** The DEIR does not provide information regarding vehicle miles traveled for different components of the Housing Element. These estimates provide decision makers and the public with an easy indication of the degree to which new developments will add to existing congestion and generation of GHGs.

The DEIR alludes to regional transportation plans that appear to have been abandoned or are infeasible, e.g. the Southern Crossing, and utilization of a north-south railroad rights-of-way to create additional north-south routes to supplement I-880. What are these plans? Are they still valid, feasible, funded plans?

The DEIR fails to consider the impacts of traffic congestion at the intersection of Stevenson Boulevard and Cherry Street, the sole public access point to the proposed Area 4 development.

**Utilities:** The DEIR mentions the requirement that prospective developers obtain a “will serve” letter from the Alameda County Water District (ACWD). Is this sufficient for purposes of satisfying the CEQA requirements of SB 221 and SB 610? Will ACWD be able to provide guarantees of water availability for new development 20 years into the future given the current uncertainties surrounding the ability to provide water?

Will the City enforce the measures outlined in Mitigation Measure 4.12-1b?

**Alternatives Analysis:** The DEIR fails to provide analysis of alternatives that could significantly reduce environmental impacts and threats to public safety. For example, Area 4 contains significant biological resources, is subject to inundation by sea level rise, is within the 100-year flood plain, and is subject to liquefaction, yet the City has not included review of an alternative that would preclude development of this site. Clearly retaining this area as open space would be an environmentally superior alternative.

**Conclusion:** Based upon our review of the DEIR and the analysis provided by Richard Grassetti and Margaret Lewis, it is evident the document fails to satisfy the basic tenants of CEQA. Title 14 CCR §15002 states one of the basic purposes of CEQA is to, “Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.” Several significant environmental issues receive only cursory review in the DEIR. For example, sea level rise, flood hazard, hazardous material, etc. are not addressed or are inadequately addressed. These are environmental issues that will have tremendous and profound impacts on residents of Newark.

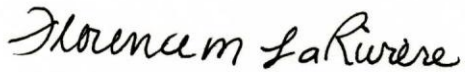
The purpose of requiring public review is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. Public review permits accountability and informed self-government...Public review ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise...Thus, public review provides the dual purpose of bolstering the public’s confidence in the agency’s decision and provide the agency with information from a variety of experts and sources.” *Schoen v. Department of Forestry & Fire Protection* (1<sup>st</sup> Dist. 1997) 58 Cal. App 4<sup>th</sup> 556, 573-574 [68 Cal. Rptr. 2d 343] (internal quotation marks and citations omitted): see also *Save our Peninsula Committee v. Monterey County Bd. Of Supervisors* (6<sup>th</sup> Dist. 2001) 87 Cal. App. 99, 133 [104 Cal. Rptr. 2d] (same) (From Remy, Michael H., Tina A. Thomas, James G. Moose, and Whitman F. Manley. *Guide to CEQA, California Environmental Quality Act*. 11th. Point Arena, CA: Solano Press Books, 2007)

This worthy goal has not been accomplished within this CEQA document, therefore, it would be a contrary to the requirements of CEQA to certify this DEIR, adopt the updated housing element, or approve the general plan and zoning ordinance amendments. The inadequacies and inconsistencies of

this DEIR must be corrected, omitted impacts included, analyzed and mitigated, and the corrected DEIR must be re-circulated.

Thank you for the opportunity to provide comment. We wish to receive copies of comment letters to this DEIR, a copy of the corrected DEIR, and final EIR.

Sincerely,

A handwritten signature in cursive script that reads "Florence M. LaRiviere".

Florence M. LaRiviere  
Chairperson

[Letter with typos corrected - City of Newark advised of corrections by e-mail at 5:38 pm on May 26, 2009. Original copy was date stamped received by city staff prior to 5 p.m. on May 26<sup>th</sup>.]