



## CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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April 4, 2014

Re: Notice of Preparation (NOP) of a Recirculated Environmental Impact Report (REIR) Newark Area 3 & 4 Specific Plan

Dear Mr. Grindall,

These are the preliminary comments of the Citizens Committee to Complete the Refuge regarding an NOP for a *Recirculated* Environmental Impact Report (REIR) issued March 12, 2014. We may submit additional comments prior to the close of the public scoping period. We request clarification of whether the comment period closes on Saturday, April 12, 2014 (30-days after receipt of the March 12th NOP), or on Monday, April 15, 2014 at 5p.m.

CEQA requires that a Notice of Preparation (1) describe the project and (2) describe the potential environmental effects. CEQA Guideline 15082, subd. (a)(1). The NOP must provide responsible and trustee agencies "with sufficient formation describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response." This NOP does not provide such sufficient information.

Based upon our review of the limited information available in the NOP, the NOP describes a significantly larger project, with a significantly larger development footprint, and a different environmental baseline.

### **Different project description:**

The NOP describes the Area 3 and 4 Specific Plan Area as "an approximately 950-acre site" (NOP page1). The Project Description provided in the previous EIR was of an "approximately 850-acre site" [Area 3 & 4 Specific Plan DEIR, dated December 2009, page 3; Area 3 & 4 Specific Plan FEIR, dated April 2010, page 94, page 95, page 114]. This represents a significant change in the project description.

In addition, the NOP states (NOP page 1), "A total of 638 acres: all of Area 4<sup>1</sup> and a 77-acre parcel in Area 3 are evaluated for development (note - the parcel in Area 3 was described in the 2009 DEIR as a 78-acre parcel, and Area 4 as a 560-

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<sup>1</sup> The Specific Plan would result in several significant impacts to biological resources, related primarily to development of Area 4, including loss of wetland habitat, impacts to various special status species, loss of rare transition and upland habitat, impacts related to degradation of water quality and changes to wetland hydrology.

acre parcel)..." The previous EIR described a significantly smaller development footprint. The 2009 DEIR states, "The Specific Plan land use plan for Area 4 includes up to 316 acres of potential development..."[2009 DEIR, page 11] and "Depending on the final development plans for Area 4, some or all of 316 acres would be developed" [2009 DEIR, page 240]. The area currently being evaluated for development in Area 4 is significantly larger.

**Different environmental baseline:**

The NOP states that Area 3 has a 1992 General Plan designation of only Special Industrial. (NOP, p. 1.) The 2009 DEIR describes Area 3 (page 9) as "consisting of approximately 296 acres," and that "Area 3 has a General Plan designation of Public-Institutional, Public Parks-Open Space, and Special Industrial" (2009 DEIR, page 8). We understand the 77-acre parcel (or 78-acre depending on the environmental review document used) being proposed for development has a designation of "Special Industrial," however, the 2009 DEIR and 2010 FEIR incorporated into environmental review the entirety of the lands identified by the City as "Area 3" - is that no longer the case?

**Change in project approvals sought:**

The NOP states that the project includes a General Plan amendment on the 77-acre portion of Area 3 to change the designation from Special Industrial to Low Density Residential (NOP, p. 2.). The 2009 DEIR states, "At the time of the approval of the Specific Plan, the existing General Plan designation in Sub-Area A [Area 3] would be amended to Medium Density Residential." (2009 DEIR, page 11) The 2010 FEIR (page 235) states, "The proposed General Plan amendment and rezoning on the 78-acre portion of Area 3 from Special Industrial and High Technology Park to Medium Density Residential and Residential District R-6000 is a discretionary action subject to review and approval by the City Council." The 2010 Area 3 and 4 Specific Area Plan states (page 2), " Sub Area A is currently designated as Special Industrial under the General Plan and zoned as MT-1 High Technology Park. The General Plan will be amended to a Medium Density Residential designation, and Sub-Area A will be rezoned to Residential District R-6000 (single family detached homes), as contemplated by this Plan."

The NOP doesn't include a General Plan amendment to Area 4. (NOP, p. 1-2.)

The 2009 DEIR (page 12) states for Area 4:

At the time of the Specific Plan approval, the existing General Plan designation in Sub-Areas B and C would be amended to Medium Density Residential. Sub-Areas B and C would also be rezoned to Residential District R-6000 (single-family detached) with a Planned Unit Development permit and conditional use permit.

And at page 33:

The Specific Plan proposes to provide high quality residential including a mix of executive housing types as recommended in the General Plan. The existing General Plan designation in Sub-Areas A-C would be amended to Medium Density Residential. The other portions of Areas 3 and 4 (Sub-Areas D - F) would retain their existing General Plan designations of Low Density Residential, Public-Institutional, Public Parks-Open Space, and Special Industrial.

The 2010 Newark Areas 3 and 4 Specific Plan states (2010 FEIR Appendix A, page 2), "Sub Area B is currently designated as Low Density Residential under the General Plan and zoned as Agricultural. The General Plan will be amended to a Medium Density Residential designation, and Sub Area B will be rezoned to Residential District R-6000 (single family detached homes), as contemplated by this Plan." And, at page 3, " Sub Area C is currently designated as Low Density Residential under the General Plan and zoned as Agricultural, with a small portion zoned Industrial. The General Plan will

be amended to a Medium Density Residential designation, and Sub Area C will be rezoned to Residential District R-6000 (single family detached homes or a golf course), in accordance with this Plan."

The approvals being sought under the current NOP are different from those considered during the previous environmental review process.

In addition, there is new information that must be considered in a recirculated EIR:

Since the 2010 EIR, significant new information has become available that must be now be considered:

- The NOP fails to mention consideration of flood hazard. Since the 2010 EIR, new (higher) estimates of sea level rise have come into acceptance by the scientific community, and recognized by the State of California. The impacts of locating the proposed development within the 100-year flood plain must be re-evaluated to determine if the mitigation measures proposed are adequate for the life of the project, and discussion must be provided of additional environmental impacts that are likely to occur should the proposed flood protection mitigation measures prove inadequate.
- The "Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California" was finalized August 27, 2013. This plan identifies significant losses of uplands and transition zone habitat in the South San Francisco Bay, and identifies the value of the lands identified by the City of Newark as Area 4, for restoration of transition habitat. The review of the environmental impacts of the proposed project on species considered in the Tidal Marsh Recovery Plan must be reviewed in light of the scarcity of remaining habitat, including not only the impacts that will result from development proposals of Area 4 itself, but also in light of the cumulative impacts of this and other past, present and reasonably foreseeable projects within the South San Francisco Bay, generally described in the Recovery Plan as being from Hayward to Alviso and up to Redwood City.
- A March 25, 2014 San Jose Mercury News article disclosed a proposal to transport crude oil by rail through a number of East Bay communities including Newark. The REIR should disclose whether fracked oil might be transported on the Union Pacific Railroad lines that bisect Areas 3 and 4, and propose appropriate safety measures. In light of this new information, the EIR should also reopen consideration at the previously proposed at grade public access crossing at Mowry Avenue.

**Potential Environmental Effects Not Sufficiently Described:**

The NOP fails to comply with CEQA Guideline 15082's requirement that an NOP include the "probable" environmental effects of the project.

The NOP omits any impacts associated with the changes in the project described above which cannot be described by a simple reliance on the "previously approved Areas 3 and 4 Specific Plan EIR," as the NOP contemplates. In addition, the NOP improperly omits the project's "probable" environmental effects by excluding any reference to "the significant unavoidable impacts" identified in the 2010 EIR, including the following:

- Emissions of Reactive Organic Gases (ROG) and NOx from development and operation of the proposed Areas 3 and 4 Specific Plan will exceed BAAQMD significance thresholds and result in a significant unavoidable air quality impact, and contribute to a significant unavoidable cumulative air quality impact.
- Temporary daily emissions of NOx and ROG from truck hauling along with emissions from onsite equipment used to move fill material would have emissions above the BAAQMD daily thresholds. Because they are above the BAAQMD threshold of significance, the effect of these emissions to the air basin would be significant. There is no feasible mitigation to reduce this impact to a less than significant level.
- Implementation of the Specific Plan will destroy archaeological deposits through placement of fill and soil compression and, therefore, result in a significant unavoidable cultural resources impact.

- The proposed residential and golf course development and Stevenson Boulevard railroad overpass would result in a substantial visual change to Area 4, resulting in a significant unavoidable project visual impact and contribute to a significant cumulative visual impact.

The NOP further improperly omits the projects “probable” environmental effects by excluding any reference to aesthetic and visual Project impacts.

CCCR may submit additional scoping comments prior to the close of the comment period. Based on our review of the information provided in the REIR NOP, the REIR will analyze a significantly larger project area, with a significantly larger area of potential development, will utilize a different environmental baseline, and seek a different set of approvals.

Thank you for the opportunity to provide comments. We request that we receive any and all notices pertinent to the Area 3 and 4 Specific Area Plan environmental review process, including any and all supplemental information, workshops, public scoping sessions, planning commission meetings, and city council meetings.

Please immediately provide us with the names of the responsible agencies to which the City sent this defective NOP, so that we can promptly share the above comments.

Sincerely,

A handwritten signature in black ink that reads "Carin High". The signature is written in a cursive, slightly slanted style.

Carin High  
CCCR Vice-Chair