



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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Terrence Grindall
Community Development Director
City of Newark
37101 Newark Blvd.
Newark CA 94560

Planning Commission
City of Newark
37101 Newark Blvd.
Newark CA 94560

Re: General Plan Tune-up FEIR

Dear Mr. Grindall and Planning Commissioners,

The Citizens Committee to Complete the Refuge appreciates the Planning Commission's decision to delay making a recommendation regarding the General Plan Update, the General Plan Environmental Impact Report, and any General Plan land use changes on October 29, 2013. We appreciate your consideration of the public's request that we be permitted more than a single day to review and comment on the 1,040 page Final Environmental Impact Report (FEIR). Unfortunately, the public hearing was closed prior to reaching that decision. We hope that the public hearing will be reopened and the public be given another opportunity to provide comment before you make your recommendations.

It is our understanding the notification of the FEIR release was October 31, 2013, though there has been some feedback that members of the public did not receive notification until November 7th or later. It is unfortunate the Planning Commission is being asked to make their recommendation on this matter before all responses to the FEIR may have been received.

The Planning Commission should not recommend approval for the General Plan Update (GPU) or the General Plan Update Environmental Impact Report (GPU EIR). The GPU FEIR fails to adequately respond to substantive comments provided by responsible agencies or by the public. Lippe Gaffney Wagner LLP (LGW) submitted a letter addressing some of the more pressing flaws of the EIR and FEIR, by email on November 8, 2013.

The FEIR is lengthy, the responses to comments (RTCs) refer to a number of other environmental review documents, therefore, assessing the adequacy of the RTCs has been a difficult task and one we have not yet completed. The General Plan FEIR purports to be a "program" level document. We concur that "program" level environmental review is generally appropriate for a General Plan Update, however, as pointed out in the comment letters submitted by LGW and Richard Grassetti (GECO), the GPU EIR/FEIR contain a level of specificity regarding the Area 3 and 4 focus area that require more detailed identification and analysis of impacts and mitigation measures. The General Plan Update EIR/FEIR rely on the impact analysis and mitigation measures incorporated into the Area 3 and 4 Specific Area Plan EIR, a document that is currently under legal challenge.

We have repeatedly commented that it is unwise for the City to incorporate the Area 3 and 4 EIR by reference as responsible agencies and the public found many of the analyses and mitigation measures flawed or inadequate.

The FEIR RTC states:

Additionally, the City notes that the land use changes proposed in the Specific Plan and assumed as part of the No Project Alternative described and analyzed on pages 6-1 through 6-10 of the Draft EIR, are consistent with the City's adopted Housing Element. Policy 2.2a of the Housing Element, adopted in 2008, calls for the development of "specific plans and zoning amendments for Areas 2, 3 and 4 to provide significant amounts of land for new residential development." Specifically, the Housing Element and its EIR anticipate a total of 1,260 housing units in Area 3 and 4, which is the same number of housing units envisioned in the Area 3 and 4 Specific Plan. Therefore, irrespective of whether the Area 3 and 4 Specific Plan is suspended or not, it is appropriate for the No Project Alternative analyzed in the Draft EIR to have assumed substantial residential growth in the Southwest Newark Residential and Recreational Focus Area by 2035. It is reasonable to assume that under a No Project scenario the City would implement existing policies, including those contained in the adopted Housing Element, and that consequently, the No Project Alternative could result in up to 17,900 housing units and approximately 20,600 jobs in Newark by 2035, including residential and non-residential development in the Southwest Newark Residential and Recreational Focus Area.

This comment ignores the issue at hand. The GPU EIR is incorporating by reference the proposed land use and zoning changes of the Area 3 and 4 specific area plan without adequate identification, analysis or mitigation of the impacts that would result from implementation of the specific area plan. No independent analysis is included in the GPU EIR of the impacts of the proposed development described on pages 3-8 and 3-9:

Area 4 is one of the last undeveloped sectors of the city and is largely in agricultural use today. The Area 3 and 4 Specific Plan amended 1992 General Plan Land Use designations to allow for development of up to 1,260 single- and multi-family housing units, a new elementary school capable of accommodating 600 students, a golf course, and additional recreational open space areas. The Specific Plan envisions the preservation of approximately 200 acres of open space in Area 4 and the retention of existing light industrial and institutional uses in most of Area 3. Key components of the Area 3 and 4 Specific Plan, shown in Figure 3-4, include:

- A new 78-acre residential neighborhood in Subarea A composed of single-family detached homes and multifamily residential units, including up to 189 multi-family units at below market rate. (Note: Below-market-rate (BMR) housing units are priced to be affordable to households with moderate income or below.)
- Single-family detached homes in Subarea B and C;
- A new elementary school in Subarea A, capable of accommodating 600 students;
- An 18-hole golf course in either Subarea C or D, configured to optimize habitat areas and limit disturbance to wildlife and wetlands to the extent feasible;
- Improvements to the circulation network, including:
 - A public street extension of Stevenson Boulevard with a structural overpass providing vehicular and pedestrian access into Area 4 over the Union Pacific railroad tracks. Modifications to two Pacific Gas & Electric (PG&E) transmission towers to accommodate the overpass.
 - A new driveway providing access from Cherry Street into Subarea A. A new traffic signal and pedestrian crosswalk are planned at this intersection;

- A new driveway providing access to Subarea A from Stevenson Boulevard, midway between Cherry Street and the existing industrial uses;
- A paved trail and pedestrian bridge over the flood control channel in Area 3, providing connection between the new residential neighborhood, Ohlone College, and the George M. Silliman Recreation Complex;
- A multi-use trail at Mowry Avenue in Area 4, providing east-west access for emergency vehicles, pedestrians, and cyclists; and
- Utilities infrastructure, including a new public water distribution system within the residential streets of Area 4, new sewer mains within public residential streets in Area 3, and a new pump station to discharge wastewater generated by new uses in Area 4.

None of the potential impacts associated with the components listed above are identified or analyzed within the GPU DEIR. Mitigation measures from the Area 3 and 4 EIR are incorporated by reference, and those same mitigation measures were deemed inadequate by responsible agencies and by the public. Agricultural use is substantially different from that of residential development. The impacts resulting from the change from agricultural use to residential use should have been identified and analyzed for aesthetic, biological, cultural, hydrological, and geological resources and land use. Adequate mitigation measures should be proposed. The GPU EIR cannot rely on the Housing Element Update EIR to provide this analysis - as an example, the HEU EIR states, "This EIR is considered a Program EIR, consistent with the provisions of CEQA...Program EIRs analyze the broad effects of a proposed regulatory program..." Thus the HEU DEIR would not have analyzed or proposed mitigation for, the impacts associated Area 3 and 4 Specific Plan elements described above.

The GPU EIR states:

After certification of the EIR, a lawsuit was filed challenging the adequacy of the EIR (Alameda Co. Sup. Ct. # RG10-530015). An order was issued in November 2012 suspending the City resolutions certifying the EIR and adopting the Area 3 and 4 Specific Plan Project and the related General Plan Amendment, pending further order or resolution of the litigation. As of August 12, 2013, that litigation remains pending and that suspension remains in effect, however, the information and analysis in the Area 3 and 4 Specific Plan, EIR and associated mitigation measures are assumed as part of the background condition for purposes of analysis in this EIR.

Furthermore, the only land use designation change addressed in the Area 3 and 4 Specific Plan EIR was the change of 78 acres in Area 3 to Medium Density Residential from Special Industrial. At a program EIR level of detail, these uses have substantially similar impacts on the environment. (This is documented in section 6: Alternatives). Therefore, regardless of whether the Area 3 and 4 EIR is upheld or not, this Program EIR fully addresses the environmental impacts of the proposed General Plan.
[emphasis added]

No supportive information is provided to demonstrate the gross assumption that changing the land use designation in Area 3 from Special Industrial to Medium Density Residential would have "substantially similar impacts on the environment." How can the City justify this assumption? Clearly there is the potential for differences in traffic patterns, human disturbance, light, noise, public utilities, the degree to which clean-up of toxic soils must occur, etc.

The Revisions to the Draft EIR state:

The third paragraph under Section 6.6, Environmentally Superior Alternative, on page 6-27, of the Draft EIR is hereby revised as follows:

Additionally, the Restricted Growth Alternative would conflict with the City's recent major planning initiatives, including the recently adopted Dumbarton TOD Specific Plan, the Area 3 and 4 Specific Plan, and the 2009-2014 Housing Element. Also, the Restricted Growth Alternative would likely subject the City of Newark to significant damages arising from the condemnation or inverse condemnation of private property. Further, as this alternative would not involve development in the Dumbarton TOD Focus Area, it would not promote the development of compact, walkable neighborhood in this sector of the city, which is identified as a priority development area (PDA) in the SCS [*Sustainable Communities Strategy*]. Development in PDAs is integral to the land use concept plan for the region articulated in the SCS. The SCS allocates well over two-thirds of all regional growth in the Bay Area through 2040 within PDAs, and PDAs are expected to accommodate 80 percent (or over 525,570 units) of new housing and 66 percent (or 744,230) of new jobs in the region over that same time frame. *Consequently, because the Restricted Growth Alternative would not satisfy all the project objectives, because it would conflict with specific plans previously adopted by the City of Newark, and because it would not support development of the Dumbarton TOD PDA as envisioned in the SCS, the Restricted Growth Alternative is considered infeasible.*

We objected to the construction of this alternative in our GPU DEIR comment letter. By linking the restriction of development in Area 4 to the restriction of any development in the DTOD, the City created an alternative that was doomed to be rejected before the public even had an opportunity to weigh in, because the DTOD has already been identified as a priority development area. We had requested the City, for all the substantive reasons raised repeatedly in previous comment letters from responsible agencies and the public, consider an alternative that preserves Area 4.

If the purpose of the "tuneup" was to:

The primary purpose of the proposed Plan is to update the policy framework and land use designations that will guide future development in Newark to incorporate recent planning efforts undertaken by the City and satisfy new State and regional regulations that have come into force since the General Plan was last updated.

It is evident that development of Area 4, a vision that was developed in 1992, is no longer consistent with policies regarding climate change, walkable communities, reduction of green house gas emissions, and preservation of the bay's biodiversity. Area 4 is the square peg that does not fit with the language regarding conservation and sustainability in the proposed GPU. It is appropriate that the City should, during its General Plan Update, consider an alternative that preserves Area 4. Such an alternative would be consistent with the language of BCDC's Bay Plan (cited in previous letters), in the California Climate Change Strategy (cited previously), the Goals Project, and the Refuge expansion boundary.

We pointed out in our letter dated October 29, 2013, that changes made to the General Plan and to the EIR regarding the California Endangered Species Act (CESA) and "incidental take" require further revision. The following language was added:

The California Endangered Species Act mandates that if a development project would result in the "take" of a threatened or endangered species, then mitigation must be provided as part of an Incidental Take Permit issued by the Department of Fish and Wildlife.

While striking out:

[The California Endangered Species Act mandates that] ~~State agencies not approve projects that jeopardize the continued existence of threatened or endangered species if reasonable alternatives exist.~~

This change is misleading and inaccurate. The California Endangered Species Act also states:

No Section 2081(b) permit may authorize the take of "fully protected" species and "specified birds" (Fish and Game Code Sections 3505, 3511, 4700, 5050, 5515, and 5517). If a project is planned in an area where a fully protected species or a specified bird occurs, an applicant must design the project to avoid all take; the Department cannot provide take authorization for the species under CESA. [emphasis added] (the language taken directly from the CDFW website today - http://www.dfg.ca.gov/habcon/cesa/incidental/incid_perm_proced.html)

The inclusion of this statement is a critical piece of information for decision makers and the public and the Addendum requires correction. This particular example is pertinent to the City of Newark's plans for development, as one species in particular, the salt marsh harvest mouse, is known to occur on Area 4, and has been identified on lands adjacent to the DTOD. Other "fully protected animals" are known to utilize lands within Newark's boundaries.

We ask that this be revision be corrected to accurately reflect the CESA treatment of "fully protected animals."

We are extremely concerned with the change in the description of the salt ponds. The description of these lands as "salt harvesting, refining, and production lands" conveys an impression that these lands have no resource value.

FEIR, page 3-7: This passage is incomplete as revised:

The Refuge and Areas for Potential Additions ~~approved acquisition boundary~~ are shown in Figure 4.3-1. As of April 2013, the USFWS owned and/or managed approximately 30,000 acres. ~~under the approved acquisition boundary.~~⁵ As shown in Figure 4.3-1, none of the focus areas contain lands within the Refuge and most of the Refuge lies within the City of Fremont. However, Area 4 includes lands within the Areas for Potential Additions.

Please note, as depicted on Figure 4.3-1 of the GPU DEIR, and page 3-9 of the FEIR, that a large portion of the lands that Cargill refers to as their "salt harvesting, refining, and production lands" are also included with the Refuge expansion boundary. These lands have been identified in the Bay Goals Project¹ (copy provided with CCCR comment letter to the GPU DEIR), and that document recommended:

¹ Goals Project. 1999. Baylands Ecosystem Habitat Goals. A report of habitat recommendations prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. U.S. Environmental Protection Agency, San Francisco, Calif./S.F. Bay Regional Water Quality Control Board, Oakland, CA

Modify and manage for shorebirds and waterfowl a complex of salt ponds adjacent to and including the crystallizer complex between Mowry Slough and Newark Slough.

The Western Snowy Plover Recovery Plan² identified WSPL wintering and breeding habitat within one of the ponds identified by Cargill as "salt harvesting, refining and production lands" and immediately adjacent to another pond. Thus demonstrating the value of this area for a federally listed species.

A feasibility analysis conducted by Siegel and Bachand³ make the following statements:

...In contrast, crystallizers are readily modified to provide excellent seasonally ponded panne habitat for Western Snowy Plovers and other species.

... Crystallizer ponds are the most easily restored and managed lands for Western snowy plover nesting, California least tern foraging, shorebird roosting, and habitat for the endemic rare insect western Tanarthrus beetle. The loss of these crystallizer ponds to development, especially on such a scale, would severely hamper recovery efforts for these species.

These excerpts demonstrate the tremendous restoration potential for the area that is now labeled, "salt harvesting, refining, and production lands." We request that the GPU and EIR text be modified to inform the public and decision makers that the majority of these lands are within the Refuge expansion boundary, and that they have been deemed extremely desirable for the restoration.

In conclusion, the issue before the Planning Commission, is not only whether you will choose to recommend approval of the General Plan Update, but whether you believe the GPU EIR adequately discloses impacts that may result from GPU implementation and adequately analyzes those impacts. Next, does the GPU/EIR avoid potential adverse impacts to the environment, and have adequate mitigation measures been proposed for those impacts not avoided. Lastly, does the GPU EIR provide the community and decision makers an opportunity to analyze real alternatives (not alternatives constructed in a manner such that they are doomed to fail from the outset) and the environmental impacts of those alternatives. Through this letter and others that have been submitted by LGW, GECCO, and other, we have demonstrated that the GPU EIR is inadequate and should not be certified.

Thank you for the opportunity to provide comments.

Sincerely,

Carin High
CCCR

² U.S. Fish and Wildlife Service. 2007. Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (*Charadrius alexandrinus*). In 2 volumes. Sacramento, California xiv + 751 pages. Volume 2 p. L-59

³ Siegel, S.W. and P.A.M. Bachand. 2002. Feasibility Analysis of South Bay Salt Pond Restoration, San Francisco Estuary, California. Wetlands and Water Resources, San Rafael, California. 228 pp.