



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto, CA 94306 Tel: 650-493-5540 www.cccrrefuge.org cccrrefuge@gmail.com

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Dear Members of the Planning Commission,

I urge you to continue the public hearing on the General Plan Update and EIR to a later date.

The public's ability to provide substantive comments during this public hearing are being thwarted because the documents in under review were not provided in a timely fashion.

This is inconsistent with California Government Code, Section 65033:

The Legislature recognizes the importance of public participation at every level of the planning process. It is therefore 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.
[emphasis added]

The October 24th agenda packet for the City Council indicated the Final EIR would not be available until October 30th, the day after this hearing. Clearly the schedule for completion was accelerated. We are told the Planning Commission received their copies on Friday, October 26th. The public however, did not have access to the documents until yesterday morning October 28th - a mere one day before this public hearing.

The public must be afforded additional time for review as changes have been proposed in the Addendum and the Final EIR, and in some instances these changes are inaccurate or may require further revision.

As just one example, the Addendum proposes the following changes at page CS-4. The Addendum proposes to add new language:

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 following portion of the original sentence:

[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.

In addition to needing additional time to review the changes that have been proposed, the public identified many substantive flaws in the EIR, as did regulatory and resource agencies. The public must be provided more than one day to review the manner in which these concerns were addressed.

I have participated in the planning process of a number of different cities along the edges of the Bay. I have never encountered the situation where the community was given only one day to review important documents before the planning commission was expected to make their recommendations to the city council. And unfortunately, this is not the only time this has happened in Newark. The Development Agreement for the Area 3 and 4 specific area plan, the largest parcel of undeveloped land remaining in the City, was also published for public review and comment, just one day before the Planning Commission issued a recommendation of approval.

This is not the appropriate way to conduct business, as it conveys to the community that their knowledge regarding local matters, and their concerns, are of no importance to decision makers.

I urge the Planning Commission to continue this hearing to a later date to provide sufficient opportunity for the community to review the 1,080 page Final EIR, and to provide substantive comments during the public hearing.

Sincerely,
Carin High
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