



Mr. Terrence Grindall
Community Development Director
37101 Newark Boulevard
Newark, CA 94560

September 26, 2013

**SUBJECT: REVIEW OF ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF
NEWARK GENERAL PLAN TUNE UP DRAFT PROGRAM EIR**

Dear Mr. Grindall;

Grassetti Environmental Consulting (GECO) has been retained by Citizens' Committee to Complete the Refuge (Citizens) to review the Draft Program Environmental Impact Report (EIR) on the City of Newark's General Plan Tune Up for compliance with the California Environmental Quality Act (CEQA) and its implementing Guidelines. This review was conducted by Richard Grassetti, the firm's principal, and is based on my 30+ years of experience in CEQA document preparation, review, and training.

My review indicates that the CEQA documentation for the project is inadequate and incomplete, and that the EIR fails to meet CEQA Guidelines. The bases for these conclusions are detailed below.

Vague and Unclear Project Description - What's a Tune Up?

State planning law includes provisions for adopting General Plans, Specific Plans, Master Plans, Subdivision, Rezoning, and other planning and entitlement approvals. Nowhere among those various options is a "tune up". Therefore, neither the public nor the City decision makers are readily informed by the DEIR as to what the actual project (discretionary action and underlying activities) is. Reading the Executive Summary doesn't help – Section 1.3 refers to the Tune Up as an "updated policy framework", which is also not a discretionary act under CEQA. Similarly, on p. 2-1, Section 2.1, describing the Proposed Action, fails to inform the reader as to the City's proposed action. It is not until p. 3-23, that the EIR states that this is, in fact, a new General Plan, and then only peripherally, "As required by state law, the Public review Draft General Plan will be circulated for review..." This is the first mention of the actual discretionary action proposed by the City, and the first mention that the project is, in fact, an updated General Plan. Only on p. 3-28, a full 58 pages into the document, does the EIR finally mention (in a table), that the project for which the EIR is being prepared is "the proposed Plan", but even there, the DEIR does not tell the public that this is a new, updated, General Plan.

Backwards Planning has Resulted in Backwards CEQA Tiering

Land use planning in California is based on the concept of a General Plan being the blueprint for development within a city or county. Specific plans are adopted after adoption of a General Plan, with which the specific plans must be consistent. Newark has adopted specific plans that were not generally consistent with its General Plan, and is now attempting to rectify the inconsistencies by “Tuning Up” its General Plan to be consistent with its specific plans. In addition to not complying with California’s planning hierarchy, it also results in inconsistencies between this DEIR and the EIRs that were prepared for the Specific Plans and Area Plans. Further, this EIR fails to allow those EIRs to tier off of the General Plan EIR, but instead, appears to tier the general Plan EIR off of the Specific Plan/Area Plan EIRs. This DEIR acknowledges the correct environmental review sequence on the bottom of page 1-3, but fails to follow that sequence. As detailed in the tables below, this has resulted in conflicting and confusing EIR conclusions of significance, where the General Plan EIR concludes that impacts are less-than-significant impacts while the underlying specific plans/area plans have been determined to have potentially significant impacts. Additionally, this General Plan EIR frequently defers impact analyses to future EIRs that, in reality, have already been done.

This problem is compounded by the confusion, confirmed by a November, 2012 trial court order holding that the Area 3 and 4 EIR does not specify whether it provides program or project-level analysis of the Area 3 and 4 plan. Program EIRs based on other Program EIRs that defer analysis to never-to-be-required project EIRs does not constitute CEQA compliance.

Reliance on Past Environmental Impact Reports

The DEIR relies in part on the Areas 3 and 4 EIR and a Housing Element EIR. The Areas 3 and 4 EIR has been suspended by the Alameda Superior Court as it was materially deficient. One of the primary issues in the case was whether the Area 3 and 4 EIR provided an adequate level of analysis to serve as a project-level EIR. For both these reasons, it is inappropriate for this DEIR to rely on the findings of that prior document. Further, the DEIR assumes that the Areas 3 and 4 General Plan Amendments have been approved – this is wrong, as the approvals have been suspended by the court.

The Housing Element EIR relied on the environmental setting, impact analysis, and mitigation measures contained in two previous EIRs adopted by the City of Newark. Those EIRs covered the City’s General Plan and a previous proposal for development of Area 2, and were prepared in 1992 and 1999, respectively. Given the age of those documents (17 and 9 years), the amount of new development in Newark and adjacent communities since their preparation, the abundance of more recent data on biological resources, traffic, and air quality, and regulatory changes since 1992 and 1999, their analyses of traffic, air quality, noise, hydrology, land use, and biological resources settings, impacts, and mitigation measures are obsolete and cannot be assumed to be adequate for the currently proposed project. Basing this EIR on those EIRs in any substantive

way results in a shell game, where impacts of the “Tune Up” are never actually identified and compared to existing setting conditions.

CEQA Baseline and Sea Level Rise – Ignoring the Elephant in the Room

This DEIR’s environmental setting and impact analyses are entirely silent on the greatest environmental issue to affect some of the opportunity areas, namely sea-level rise¹. The San Francisco Bay Conservation and Development Commission (BCDC), which has jurisdiction over shoreline areas of the City, recommends the following consideration of sea level rise (BCDC, San Francisco Bay Plan, http://www.bcdc.ca.gov/laws_plans/plans/sfbay_plan#38):

Climate Change, findings:

c. Global surface temperature increases are accelerating the rate of sea level rise worldwide through thermal expansion of ocean waters and melting of land-based ice (e.g., ice sheets and glaciers). Bay water level is likely to rise by a corresponding amount. In the last century, sea level in the Bay rose nearly eight inches. Current science-based projections of global sea level rise over the next century vary widely. Using the IPCC greenhouse gas emission scenarios, in 2010 the California Climate Action Team (CAT) developed sea level rise projections (relative to sea level in 2000) for the state that range from 10 to 17 inches by 2050, 17 to 32 inches by 2070, and 31 to 69 inches at the end of the century. The CAT has recognized that it may not be appropriate to set definitive sea level rise projections, and, based on a variety of factors, state agencies may use different sea level rise projections. Although the CAT values are generally recognized as the best science-based sea level rise projections for California, scientific uncertainty remains regarding the pace and amount of sea level rise. Moreover, melting of the Greenland and Antarctic ice sheet may not be reflected well in current sea level rise projections. As additional data are collected and analyzed, sea level rise projections will likely change over time. The National Academy of Sciences is in the process of developing a Sea Level Rise Assessment Report that will address the potential impacts of sea level rise on coastal areas throughout the United States, including California and the Bay Area.

BCDC also suggests that planning efforts address sea-level rise as follows:

e. Shoreline areas currently vulnerable to a 100-year flood event may be subjected to inundation by high tides at mid-century. Much of the developed shoreline may require new or upgraded shoreline protection to reduce damage from flooding. Shoreline areas that have subsided are especially vulnerable to sea level rise and may require more extensive shoreline protection. The Commission, along with other agencies such as the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency, the United States Army Corps of Engineers, cities, counties, and flood control districts, is responsible for protecting the public and the Bay ecosystem from flood hazards. This can be best achieved by using a range of scientifically based scenarios, including projections, which correspond to higher rates of sea level rise. In planning and designing projects for the Bay shoreline, it is prudent to rely on the most current science-based and regionally specific projections of future sea level rise, develop strategies and policies that can accommodate sea level rise over a specific planning horizon

¹ The DEIR identifies City policies regarding sea-level rise, but includes no information on the physical environmental setting, impacts, or mitigation measures, which are the focus of CEQA.

(i.e., adaptive management strategies), and thoroughly analyze new development to determine whether it can be adapted to sea level rise.

o. Approaches for ensuring public safety in developed vulnerable shoreline areas through adaptive management strategies include but are not limited to: (1) protecting existing and planned appropriate infill development; (2) accommodating flooding by building or renovating structures or infrastructure systems that are resilient or adaptable over time; (3) discouraging permanent new development when adaptive management strategies cannot protect public safety; (4) allowing only new uses that can be removed or phased out if adaptive management strategies are not available as inundation threats increase; and (5) over time and where feasible and appropriate, removing existing development where public safety cannot otherwise be ensured. Determining the appropriate approach and financing structure requires the weighing of various policies and is best done through a collaborative approach that directly involves the affected communities and other governmental agencies with authority or jurisdiction. Some adaptive management strategies may require action and financing on the regional or sub-regional level across jurisdictions.

w. The California Climate Adaptation Strategy recognizes that significant and valuable development has been built along the California coast for over a century. Some of the development is currently threatened by sea level rise or will be threatened in the near future. Similarly, the coastal zone is home to many threatened or endangered species and sensitive habitats. The strategy acknowledges that the high financial, ecological, social and cultural costs of protecting everything may prove to be impossible; in the long run, protection of everything may be both futile and environmentally destructive. The strategy recommends that decision guidance strategies frame cost-benefit analyses so that all public and private costs and benefits are appropriately considered.

The strategy further recommends that state agencies should generally not plan, develop, or build any new significant structure in a place where that structure will require significant protection from sea-level rise, storm surges, or coastal erosion during the expected life of the structure [emphasis added]. However, the strategy also acknowledges that vulnerable shoreline areas containing existing development or proposed for new development that has or will have regionally significant economic, cultural, or social value may have to be protected, and infill development in these areas should be closely scrutinized and may be accommodated. The strategy recommends that state agencies should incorporate this policy into their decisions. If agencies plan, permit, develop or build any new structures in hazard zones, the California Climate Adaptation Strategy recommends that agencies employ or encourage innovative engineering and design solutions so that the structures are resilient to potential flood or erosion events, or can be easily relocated or removed to allow for progressive adaptation to sea level rise, flood and erosion.

The City cannot rely on the Area 3 and 4 EIR as it severely understated the potential impacts of sea level rise. The current DEIR apparently takes the position that, due to the Ballona Wetlands decision, it need not address this issue at all. As discussed below, it is my professional opinion that the City's approach is in error.

CEQA both permits and requires that the baseline used in an EIR to be adjusted to consider all potentially significant environmental impacts. The DEIR uses existing conditions as its setting, which is normally the appropriate baseline for CEQA documents. However, as discussed in a

recent California Supreme Court decision, a future baseline condition may be substituted for existing conditions if using the existing conditions as a baseline “would be misleading or without informational value”². Given that the scientifically accepted projections of sea-level rise would result in a far different setting scenario than under existing conditions, and given that the project’s environmental impacts would be significant and more severe under those condition, a future baseline should be used for this issue, either in place of, or in addition to, the existing condition baseline.³ Under the likely future conditions (sea-level rise of 5 feet or more), portions of the City of Newark’s sewage disposal, storm drainage, flood control, and roadway networks likely would not function adequately to serve the proposed development, which would result in impacts of the project on the environment (for example project-generated increases in flood flows, increase in sewage problems, unmet water supply demands, etc.). CEQA also requires that an EIR on a long-term project address long-term impacts of the project⁴. Given CEQA’s requirement that EIRs disclose a project’s environmental impacts and the potential severity of impacts, a long-range, plan-level EIR that does not address the substantial long-range environmental impacts associated with sea-level rise is inadequate.

Cumulative impacts associated with long-term sea level rise also must be addressed. The EIR should analyze how cumulative development proposed in the new Plan would affect infrastructure capacity and need to improve both utilities and flood protection infrastructure.⁵

² *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority and Los Angeles County Metropolitan Transportation Authority*, August 5, 2013 (*Smart Rail*).

³ *Smart Rail* at p. 448: “existing conditions is the normal baseline under CEQA, but factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decision makers.”

Smart Rail at p. 449: “Communities for a Better Environment provides guidance here in its insistence that CEQA analysis employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project’s likely impacts. (Communities for a Better Environment, *supra*, 48 Cal.4th at pp. 322.)”

Smart Rail at p. 454: “nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project’s significant adverse effects.”

⁴ *Smart Rail* at p. 454: “An EIR should consider “both direct and indirect effects and [give] due consideration to both the short-term and long-term effects of the project. (Cal.Code Regs., tit. 14, § 15126.2, subd. (a).)”

Smart Rail at p. 455: “The CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades. That a project will have a long operational life, by itself, does not justify an agency’s failing to assess its impacts on existing environmental conditions.”

⁵ *Smart Rail* at p. 450 states, “In particular, the effects of the project under predicted future conditions, themselves projected in part on the assumption that other approved or planned projects will proceed, are appropriately considered in an EIR’s analysis of cumulative impacts (see Cal.Code Regs., tit. 14, § 15130) or in a discussion comparing the project to the “no project alternative” (id., § 15126.6, subd. (e)). ”

Finally, the EIR, in some cases, assumes that an approved Areas 3 and 4 Plan is the baseline and in other cases uses existing conditions. CEQA does not permit a Plan-to-Plan analysis absent a compelling reason to do so.

Analytical Gaps

The purpose of an EIR is to provide an evidence-based analysis of environmental impacts leading to a conclusion regarding potential significance of the impact, and to set forth and analyze mitigation measures for potentially significant impacts. In many cases this EIR provides a skeletal discussion of the existing conditions, then a list of policies in the proposed Plan and other documents, and then a conclusion of significance. What's missing is the analytical step of explaining how the EIR got from the list of policies to a finding of non-significance. Said another way, the EIR fails to include an analysis of impacts; instead it only includes a list of policies followed by conclusions of significance. In so doing, in many areas as identified in the Deficiencies in the Technical Analyses discussion below, the EIR lacks an analytical bridge between the environmental setting, proposed General Plan policies, and the determination of impacts significance⁶.

For example:

- The EIR does not provide any analysis of cumulative aesthetic impacts, just a listing of policies and a conclusion. Further, the conclusion of no significant cumulative impacts because of implementation of policies that have been determined not to be effective for Areas 3 and 4 is contradictory and nonsensical.
- The EIR's construction related air quality "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no supporting analyses.
- The air toxics "analysis" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis.
- The Impact BIO-1, BIO-2, and BIO-3 "analyses" consists solely of a listing of Plan policies and a conclusatory statement, with no actual supporting analysis. Those impacts also rely on future CEQA review and mitigation to reduce impacts to less than significant, which apparently is not proposed by the City.
- The Impact GEO-3 "analysis" (p. 4.5-15) does not assess any impacts associated with

and again at Smart Rail, p. 454: "As the Sunnyvale West court observed, a project's effects on future conditions are appropriately considered in an EIR's discussion of cumulative effects and in discussion of the no project alternative. (Sunnyvale West, supra, 190 Cal.App.4th at pp. 1381–1382.)"

⁶ It should be noted that cities may approve projects by that do not meet all of a Plan's policies, so that the mere adoption of policies does not assure mitigation of impacts.

major hazards in proposed development areas, including lateral spreading, liquefaction, subsidence, or collapse. A list of policies followed by a conclusion is not an impact assessment.

- In addition, the EIR (Impacts HYDRO-1, 3, 4, and 5) fail to include any analysis the project's potential impacts on stormwater quality, either during construction of post-construction, beyond a listing of policies and a conclusion.
- Impact UTIL-8 includes no actual analysis, just a list of policies and a conclusion.

Inappropriate Use of CEQA Checklist Approach

The DEIR fails to identify a number of impacts, as identified below, because of its inappropriate use of the CEQA Initial Study checklist questions as the only possible impacts. That checklist is intended as a preliminary screening mechanism, not a detailed listing of all possible impacts. Once it has been determined that an EIR is required, the EIR should focus on actual impacts that may result from a project, not just responding to CEQA checklist questions. Additionally, as noted below, there are a number of instances where the EIR employs an impact heading which states that the project would not result in a significant impact, while the discussion that follows the heading reaches the opposite conclusion, thereby confusing the reader.

Project Objectives

The objective of "Embrace Newark's bayfront location" (p.3-3) is unclear. "Embrace" is a vague term preventing any measure of whether the project's alternatives' will achieve such an objective. Why is the preservation of open space along the bayfront not "embracing" this location? This is important because the DEIR concludes that the restricted Development Alternative does not achieve this objective, while never actually defining the objective. Given BCDC's policies encouraging protection of these bayfront areas as habitat and open space, we suggest removing this objective or defining it in terms of compliance with the Bay Plan's objectives.

Deficiencies in the Technical Analyses

Aesthetics

The aesthetics discussion for the Southwest Newark and Residential Recreational Focus Area (SNRRFN) goes into great detail about parking lots and fire station building details, but fails to portray the overall change, at a Plan level, of the proposed Plan change. This is not appropriate and fails to provide the reader with an overview of what aesthetics might be changed by the project.

Impact AES-1 lists General Plan policies and concludes, without analysis, that development of the Plan would not result in significant impacts, but fails to explain how it reached this conclusion.

Similarly, the discussion of Impact AES-3 just lists statutes and policies, and summarily concludes that development of the Plan would not result in significant impacts, but does not explain how it reached this conclusion. There is no analytical bridge between the statement of policies and the determination of significance of impacts.

The conclusion of AES-3 identifying the impact as significant appears to conflict with the statement on p. 4.1-8 that this impact would be less than significant.

Air Quality: The DEIR indicates that the project would have a large jobs/housing imbalance, which would generate more vehicle miles traveled and, therefore, more emissions, than otherwise generated. Plan growth would exceed BAAQMD Plan Area projections. In addition, the DEIR acknowledges that project VMT (and associated emissions) would exceed proportional population growth. The DEIR acknowledges that these emissions would constitute a significant impact (p. 4.2-34). However, the DEIR also states that the project is consistent with the 2010 Bay Area Clean Air Plan (p. 4.2-19). The project cannot be consistent with the plan if it exceeds plan per-capita emissions and planned population growth.

The DEIR (p. 4.2-39) then concludes that, because future CEQA analyses would be required to analyze air pollution emissions, operational emissions of criteria air pollutants under the plan would be less than significance. There are three problems with this approach. First, this EIR ignores that the EIRs for the changes in the Plan have already been completed, and future EIRs apparently are not contemplated. Second, this conclusion of non-significance directly conflicts with the actual analysis of plan emissions, which showed that it would exceed district assumptions and significance standards. This EIR's confusing and contradictory approach fails to provide the reader with consistent information needed to consider the project's impacts.

Third, impacts cannot become less than significant simply based on future analysis. For example, this EIR considers construction related air quality impacts to be reduced to less than significant by future environmental review (p. 4.2-39). Yet, as discussed above, such a review is not even proposed by the City because the City apparently intends to rely on past environmental reviews for most of the entitlements in these areas. Further, the construction emissions analyses in both this EIR and the Areas 3 and 4 EIR upon which this study relies, fail to account for transport and grading of millions of cubic yards of materials to form huge earthen platforms needed to raise portions of Areas 3 and 4 out of flood hazard zones and create the massive new levees required to protect those areas from effects of sea level rise.

The cumulative air quality impacts analysis (AIR-3) and odors analysis (AIR-6) also rely on future environmental review to identify and require mitigation, while the City apparently is not contemplating any such future reviews. The City and the public can not know if approval of the proposed General Plan "tune-up" will have significant impacts if, as here, the EIR improperly defers analysis of impacts and mitigation measures.

Biological Resources: The biological resources discussion relies on mitigation measures in the Housing Element EIR and Areas 3 and 4 EIRs to reduce impacts to less than significant. As

described below, those measures from other EIRs may not be effective or sufficient:

Housing Element EIR Mitigation Measures:

- The biological resources setting Table 4.3-1 and the conclusions that there are no substantial wildlife migration corridors do not reference any supporting biologist or biological resources report. What is the evidence/source document supporting the assertions of species likelihood, as summarized in the table, or wildlife corridors, as claimed on p. 41?
- Given that detailed biological resources assessments have been completed for some or all of Areas 2 and 4, please include that information in the EIR. For example, it is *known* that the federally –listed endangered salt marsh harvest mouse occurs on Area 4. Therefore, it is incumbent on this EIR to include and consider that known information.
- Mitigation Measures 4.3-1 and 4.3-2 are inappropriate deferrals of analysis (in conflict with Sundstrom v. County of Mendocino) to future mitigation measures. At a minimum, this EIR should include prescriptive measures, similar to others approved by regulatory agencies for other projects in the area that would clearly mitigate the project’s potential impacts to special status species.

Areas 3 and 4 EIR Mitigation Measures⁷

- Eviction of burrowing owls as proposed in mitigation BIO-4.2 may result in those evicted owls being depredated at a higher rate than if not evicted, or otherwise suffer population losses as a result of this eviction. The comment notes that, if no such studies exist, impacts to owls should be considered significant and unavoidable.

Please note that the document, "Status of Burrowing Owls in Southern California," published by the nonprofit Institute for Bird Populations, found that the owl population in western Riverside County continues to drop despite a sweeping habitat conservation plan that is supposed to protect the birds and 145 other species of animals and plants. As reported in the Riverside Press Enterprise, January 14, 2008:

The study's authors found that one-fourth of the owl habitat in western Riverside County was destroyed in the first three years after the habitat plan went into effect. "As long as we treat the mitigation efforts the same, it is very likely burrowing owls will become extinct from the local area," said the study's lead author, Jeff Kidd, a wildlife biologist who lives in the Lake Mathews area of Riverside County. Developers in Riverside County most often use "passive relocation" when owls stand in the way of development. In passive relocation,

⁷ As noted above, it is improper for this EIR to rely upon an EIR that has been suspended because it was materially deficient.

one-way doors are installed at burrow entrances to keep the owls from re-entering and being killed when the land is graded, said Kidd, a licensed wildlife biologist. Kidd said he calls the process "active eviction." "They usually have no other home to go to, so they die. They get predated or they get hit by vehicles," he said.

Impacts BIO-5 and BIO-6 are examples of why the EIR should not have relied upon the Initial Study Checklist questions in its determination of impact topics – the CEQA physical environmental issues that should have been addressed in these impact discussions are loss of trees and impacts to SF Bay Refuge habitats and sensitive species. Instead, the EIR focuses on compliance with the City's tree ordinance and Basin Plan and Habitat Goals, which are not a physical environmental effect and are therefore peripheral to the CEQA analysis.

Cultural Resources

The historic structures discussion relies on studies completed in 1989, nearly 25 years ago; it is likely that additional structures have become eligible for listing since that time. Please update this list.

The policies described on pp. 4.4-9 and 4.4-10 do not guarantee mitigation to a less-than-significant level. Potential loss of historic structures has been determined by the courts to be an unavoidable significant impact (i.e. League for Protection of Oakland's Historic and Architectural Resources v. City of Oakland). These policies do not prohibit such a loss therefore this impact remains significant and unavoidable.

Geologic Resources

The erosion discussion (Impact GEO-2) fails to address potential erosion impacts associated with the grading and placement of millions of cubic yards of fill required to form earthen huge platforms needed to raise portions of Areas 3 and 4 and other low-lying areas out of flood hazard zones and future need to create the massive new levees required to protect those areas from effects of sea level rise.

In addition, reliance on seismic design requirements from the California Building Code (Impacts GEO-1, 2, and 3) will not reduce impacts to infrastructure, such as roadways and pipelines.

Hydrology and Water Quality

As discussed earlier in this letter, this section fails entirely to address sea level rise. The only flood hazard discussion is based on the 2009 FEMA flood hazard maps, which do not include rise in sea level and are currently being revised. New tidal and flood hazard elevations are currently being developed by FEMA in conjunction with the Alameda County Flood Control District⁸. As described in the plan for that study:

FEMA's coastal study and mapping efforts benefit from new technologies and coastal data, including the latest 2010 detailed

⁸ San Francisco Bay Area Coastal Study, California Coastal Analysis and Mapping Project, September 2012.

topographic data collected as part of the California Coastal Mapping Program. The coastal flood hazard analyses use regional-scale storm surge and wave models of San Francisco Bay. These models produce time-series output of water levels, open ocean swells, and wind-driven waves at over eight thousand points along the complex San Francisco Bay shoreline. Input parameters to the regional-scale models include ocean tide levels, lower Sacramento River discharges, wind and pressure fields, and various river and creek discharges.

The model output from the regional models is used to estimate wave runup and overtopping along the Bay's myriad of shoreline structures and steep shorelines, as well as overland wave propagation over beaches, marshes, and inland developed areas. These onshore analyses will form the basis for potential revisions to the Base Flood Elevations (BFEs) and Special Flood Hazard Areas (SFHAs) within the coastal areas of the nine Bay Area counties. Coastal High Hazard Areas (Zone VE) will be mapped when supported by flood hazard modeling results.

Any long-term planning effort for bayfront areas should include the findings of this study.

The DEIR correctly notes that BCDC assumes projects will have a lifespan of at least 50-90 years. Therefore, the analysis of impacts (and the baseline) should consider projected reasonable worst-case tidal heights during that time period. Recent estimates of up to 69 inches of sea level rise during the lifetime of proposed project housing would, if they occur, result in the project contributing to large-scale flooding of many of the proposed sites. In addition, rising sea levels will result in rearward flooding of local creeks draining to the Bay. The EIR relies on mitigation measures provides no evidence that raising Area 4 and other low-lying areas outside of possible sea level rise flood levels is even feasible while allowing flood control channels to continue to function. In addition, such elevation increases could require placement and grading of millions of cubic yards of material, which could result in significant erosion and associated water pollution not assessed in this document.

Maps of both revised FEMA flood elevations and projected sea level rise inundation of portions of the site should be added to the EIR.

Impacts HYDRO 6 and HYDRO-9 use the wrong baseline and therefore fail to consider impacts of a 50-90 year Plan, as recommended by BCDC. See also previous comment regarding adequacy of flooding and sea level rise issues.

Public Services

The Plan should identify potential locations and impacts associated with construction of a new police station, which would be required to serve the increased population as well as the reconstruction of City Hall and library necessitated by implementation of high-density housing on the current City Hall site.

Utilities

Water: The water supply analysis uses adequacy of water supply normal rainfall years as its criteria of significance. The DEIR acknowledges that water supply in single- or multiple-dry years would not be adequate for the proposed increased buildout envisioned by the General Plan Tune Up (Table 4.14-3). Yet the DEIR finds this impact to be less than significant solely on the basis of Plan policies that are not enforceable and whose effectiveness is not calculated. There is no substantial evidence upon which to base the conclusions of a less-than-significant impact in these dry years. Further, the assumption that other water supplies would be available in such years (bottom of p. 4.14-10) is unsupported, as no firm contracts have apparently been established by the City or ACWD for those sources, and multiple agencies will be vying for any such sources in those years.

Wastewater and Stormwater Systems: Projected sea-level rise during the project lifetime (at least 50-90 years) will require massive changes to the City's wastewater and stormwater system. Project-generated increases in flows into the systems, development of low-lying areas or construction of large developments on raised platforms, and construction of new high levees to protect the new development will exacerbate these problems and expand the need for facility alterations. The Plan should address the potential need for new lift stations, pumping plants, drainage issues, and contingencies for the projected sea-level rise baseline. We suggest coordinating with the ACFCO in this analysis.

Alternatives: The benefits (reduced impacts compared to the proposed project) of the Restricted Growth Alternative are understated. Air pollution and GHG emissions would be further reduced by elimination of the need to construct huge levees and earthen platforms for flood protection of development in flood areas. Hydrologic and water quality impacts would be substantially reduced by eliminating much of the planned development in flood-prone areas and areas where flooding will worsen substantially with sea-level rise over the next 50-90 years.

The environmentally Superior Alternative discussion should be revised to eliminate or clarify the vague objective of "embracing Newark's bayfront location". Further, it is unclear why the Restricted Growth Alternative could not be designed to meet the objectives of facilitating clean-up of contaminated sites and foster TOD. Please revise the description of that alternative to meet those goals.

Conclusion

As described above, this DEIR has numerous substantive flaws that render it inadequate under CEQA. It is my professional recommendation that this EIR must be revised as indicated in this letter and recirculated for further public review and comment. Please feel free to contact me at 510 849-2354 if you have any questions regarding the comments herein.

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Sincerely

A handwritten signature in cursive script, appearing to read "Richard Grassetto".

Richard Grassetto
Principal
Grassetto Environmental Consulting