



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

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ATTN: Scott Ruhland, Associate Planner
Sent by Email to: sruhland@fremont.gov

December 14, 2009

Re: Patterson Ranch Planned District Draft Environmental Impact Report (DEIR)

Dear Mr. Ruhland,

The Citizens Committee to Complete the Refuge thanks you for the opportunity to review and comment on the DEIR for the Patterson Ranch Planned District. While we commend the City on the organization and readability of the EIR we find it contains serious omissions, inaccuracies, and flaws that must be rectified to comply with California Environmental Quality Act (CEQA) Requirements. We urge the City to address these issues and re-circulate the EIR. Please note that Richard Grassetti our CEQA consultant has prepared comments regarding CEQA issues and submitted a letter under separate cover.

Project Description: The DEIR states the proposed planned district will consist of 839 housing units, an additional 39 secondary dwelling units, 50,000 square feet of commercial space, an elementary school, two churches, and an active sports park. The residential component is envisioned to be developed as 10 neighborhood clusters including, four *five-story* apartment buildings (emphasis added), 18 three-story townhouse buildings, 166 two- to three-story detached single-family townhouses, 457 one- or two-story single family housing units, and 39 secondary housing units. The residential component of the proposal would include 14.9 acres of neighborhood parks, approximately 11 acres of new streets and alleys, and undisclosed acreage of parking lots (though those may be included in the acreage estimates of streets and alleys?). The active sports park is located west of Ardenwood Boulevard and adjacent to Patterson Slough and will include night-lighting, two cricket/four soccer fields, three tennis courts, two basketball courts, a play area for children, a 2-acre dog park, and 4,625 square feet of community building space.

3.2.2 Development Proposals and 2006 Citizen Initiative – "...Approximately 66 percent of the voters voted against the initiative, causing it to fail." The statement wrongly implies Fremont voters would support massive development adjacent to Coyote Hills Regional Park. Data from the City of Fremont and from independent surveys indicate nothing could be further from the truth. While it is true the 2006 Citizen Initiative failed this should not be misconstrued as public support of a massive development in front of the park. The initiative language that appeared on the ballot (composed by the City) was confusing, voters who were interested in protecting Coyote Hills from massive development were uncertain if they should vote "yes" or "no." The Parks and Recreation Background Report General

Plan Update 2030 states, "In an on-line survey conducted in 2007 for the General Plan update, 84% of respondents rated the quantity and character of Fremont's parks and open space as a very high or high priority, the highest ranking for any single issue." The same report identified Coyote Hills Regional Park as the second most visited recreational facility in Fremont. These statements confirm the results of the surveys of Fremont voters conducted by David Binder Research in 2002 and 2006 that found that over 70% of voters surveyed wanted no development directly in front of Coyote Hills Regional Park.

3.4.2 Development Agreement: The EIR indicates the applicants have proposed a 15-year year development agreement. While we are aware there are some advantages development agreements provide for cities, we are strongly opposed to entering into a development agreement for this length of time. The "State of California General Plan Guidelines 2003" states, "...A disadvantage of development agreements is that a city or county may be unable to respond to changing markets or apply new regulations to a project that is controlled by a long-term development agreement." The League of California Cities "Development Agreement Manual: Collaboration in Pursuit of Community Interests," dated 2002 states:

...A development agreement can limit the public agency's ability to respond to a changing regulatory environment, precisely because it locks in the regulatory requirements in effect at the time the agreement is approved. If the agency's planning regulations are in need of review or updating, the agency may be subject to criticism if the conditions imposed by the agreement do not sufficiently protect the community's interests...

...A development agreement also places a premium on an agency being able at the outset to identify all of the issues presented by a project. Since changes to the agreement require mutual assent, it may be difficult to add conditions or requirements later, should the agency identify the need to do so after the agreement is entered into.

The City of Fremont is currently in the process of updating its General Plan. When does the City anticipate final approval of the updated General Plan and will the General Plan 2030 result in changes to the City's planning regulations?

Given the economic downturn, the negative impacts to City finances, and the uncertainty as to when the situation will improve, is it appropriate to enter a long-term agreement at this point in time?

The Ardenwood area has suffered the consequences of previous development agreements. There have been instances in the past where the developers of the area were able to obtain favorable changes to the development agreements, but were unwilling to accept changes that would have addressed needs of the residents of those developments, e.g. a fire station. The San Jose Mercury News ran a story on September 18, 1985, "Builders Douse Fire Station Plan Ardenwood Developers Reject Fremont's Plan to Level Per-Acre Fee." To quote the article:

...City Manager Kent McClain had recommended a similar fee be imposed on both industrial and residential construction in the city's Northern Plain, but just before the city council meeting, one of Ardenwood's leading developers called McClain to say such a fee would violate the city's development agreement for the project.

"It's very awkward because we're going around the rest of the city and doing this," said City Attorney Allen Sprague, "and here's a developer getting us because we made a deal with him. It's the biggest development in the city."

But the city had no choice, said Sprague, who agreed with developer Jack Brooks' interpretation of the pact between the city and Ardenwood.

“A development agreement is a deal and I think it has to be honored,” Sprague said. Ardenwood’s builders are required to donate land for a fire station, but nothing in the initial agreements said anything about actually paying for it, he said...

Yet the developers were able to obtain changes to the development agreements that suited their needs resulting in changing the use of one parcel from housing to other uses, and from a town center to housing on another. A 15-year development agreement is not in the interests of the citizens of Fremont.

4.1 Aesthetics: The DEIR fails to include in the discussion of aesthetics the following statements from the current General Plan (p. 2-4-5 and p. 9-45-48):

In trying to describe what is special about Fremont as a place to live, the words “open feeling” often arise. That open feeling is hard to define, but generally it refers to several of the physical characteristics of Fremont that together create a sense of openness. Those characteristics include the open space within the city; the accessibility of open space in the hills and baylands; the views to the hill face, the Bay, and Mission Peak...

F-7 An Open Space Frame that Includes the Hillface, Bay, Wetlands, and Gateways:

It is Fremont’s open space frame – including its hill face, wetlands and Bay – *that set it apart and make it a special place to live.* These open areas are also gateways to Fremont. [emphasis added]

Fremont’s visual resources are important natural resources critical to Fremont’s identity as a community. Fremont’s views of the Bay and the hills make it an attractive location for businesses and homes. Views of natural landmarks help to orient people in the community and provide a sense of historical continuity. *Such resources require recognition and conservation just as do other natural resources that increase Fremont’s quality of life and character...*[emphasis added]

...First there are the views entering the City from the Dumbarton Bridge (or from trails in the Wildlife Refuge) where the undeveloped character of the Bay’s edge allows for expansive vistas of Fremont, Coyote Hills and the more distant Hill Face rising from the Bay Plain...

Coyote Hills, an island of hills in a low lying plain with water on two sides, is one of the outstanding natural physical characteristics of Fremont...[emphasis added]

The entrance into Fremont via the Dumbarton Bridge is identified as a natural gateway, and further states “...For travelers, the gateways increase the sense of Fremont as a distinct community.” General Plan also identifies Paseo Padre Parkway as one of Fremont’s Scenic Routes or “the network of places from which the City is best seen.” We are in complete agreement that the open space of the Patterson Ranch land and Coyote Hills Regional Park, make for an experience that in the Bay Area is unique to travelers through the city of Fremont. We do not agree however, the impacts of the project will be less than significant.

4.1-12 Issues Not Discussed Further – Glare. The EIR states the windows of the residential homes will not introduce glare. With five-story buildings reflective surfaces will be much higher off the ground and could negatively impact the views from the hilltops of Coyote Hills looking to the east. This impact must be analyzed and mitigated.

Impact AES-4: Development of the Project would not alter views from the Coyote Hills Regional Park Trails to Fremont... – In our scoping comments we had specifically requested the EIR provide visual renderings of the impacts of the proposed development on the vista from the hilltops within Coyote Hills Regional Park looking towards the east. The EIR states on the one hand, “According to the Fremont General Plan, views from Coyote Hills are considered important trail views, or Walkway views, that define the character of Fremont as it is experienced by the public.”(4.1-2 Views of the Project Area)

Then concludes, “Development of the project would not substantially alter the views from this designated scenic vista, as views of Fremont as a whole would still be available. The elevated location of the trails within the Coyote Hills would allow for continued expansive views of Fremont.”

The 2005 Coyote Hills Regional Park Land Use Plan states (page 53):

Potential future housing developments along the eastern boundary of the park could have a significant visual affect on the parkland. Current open farm fields that now lie between the park and the industrial park on the eastern side of Paseo Padre Parkway *provide a visual open space that gives visual “breathing room” for the park.* If high-density residential development were constructed on these fields, the park would become visually compressed and potentially walled in with an abrupt edge of wood and stucco. The entrance of the park could become less welcoming to park visitors. [emphasis added]

We do not concur that the project wouldn’t substantially alter the views from Coyote Hills Regional Park.

Impact AES-6: The proposed development would not degrade the visual character of the area.

The discussion of impacts in this section repeatedly refers to one- to three-story residential buildings and neglects to mention the four *five-story* apartment buildings or their impact on the aesthetics of the area. All of this development occurring in an area that currently has no structures within the proposed developed area.

The determination that the development would not degrade the visual character of the area ignores the common complaint of residents in the area of feeling closed in and overcrowded. Rather than the instant feeling of expansiveness and relief one experiences upon reaching the intersection of the Paseo Padre Parkway and Union Pacific Railroad tracks where the vista of undeveloped lands and the Coyote Hills is revealed, drivers will be treated instead to another unending wall of houses. And while residents of adjacent neighborhoods are identified as an “affected viewer group” the analysis of impacts to the view-shed appears to be focused not on those who live in the area but on those driving through. The EIR falsely concludes,

Since the majority of the project area would remain in open space and the residential development on the project area is surrounded by existing residential neighborhoods, the project would not significantly degrade or alter the existing visual character or aesthetic quality of the project area and its surroundings.

Of the four viewpoints, only one, Viewpoint D would provide marginal views of the open space area that is supposed to ameliorate the significant impacts to the view-shed. For the other three viewpoints existing trees along Patterson Slough would obscure sight of any of the proposed open space, therefore, all that would be visible to every person driving, biking, jogging, walking, or living in proximity to the

viewpoints, would be the wall of development that will be built along Paseo Padre Parkway. This is a significant adverse impact that must be re-analyzed and mitigated.

Mitigation Measure AES-7a: The mitigation measure proposed to reduce the impacts of light pollution is inadequate. The EIR acknowledges that the project will introduce more lighting to the area and that those impacts could be significant, however the EIR reasons that the lighting that will be emitted is consistent with that emitted from existing neighborhoods and that the preparation of a lighting plan will reduce the adverse impacts of spillover to a level that is less than significant. The mitigation measure states exterior lighting fixtures on all buildings will reduce lateral spreading of light to surrounding areas. How will this mitigation measure be enforced in the long-term once the development is occupied? Will the exterior lighting fixtures prevent lateral spreading regardless of the type of bulb used? How will residents of the neighborhoods and businesses be prevented from changing the light fixtures?

The mitigation measures proposed do not adequately take into consideration the negative impacts of light pollution that will be introduced next to natural habitat as a consequence of the proposed project.

Light pollution is documented to have serious adverse impacts for a wide range of wildlife ranging from invertebrates to mammals. It disrupts migratory patterns, foraging capabilities, predation, nesting, breeding, etc. (Longcore and Rich, "Ecological Light Pollution" *Front Ecol Environ* 2004, 2(4): 191-198). Longcore and Rich report the findings of Buchanan (1998 "Low-illumination prey detection by squirrel treefrogs," *J Herpetology* 32: 270-74) in which three different species of amphibians forage at different illumination intensities. As an example the squirrel treefrog (*Hyla squirrela*) forages only between 10^{-5} lux and 10^{-3} lux under natural conditions, while the western toad (*Bufo boreas*) only forages at illuminations between 10^{-1} and 10^{-5} lux.

Evidence suggests light pollution affects the choice of nesting sites in the black-tailed godwit, with choice locations being the farther away from roadway lighting (De Molenaar et al 2000, in Longcore and Rich). Buchanan found frogs he was studying stopped their mating calls when the lights of a nearby stadium were turned on.

Sufficient evidence exists that demonstrates artificial lights have adverse impacts on wildlife. The project as proposed would locate night lighting right next to Patterson Slough. This area is of ecological significance as it represents the eastern border of what was once the largest willow grove along the eastern edges of the bay and was recommended for restoration by the Goals Project.

4.2 Agricultural Resources: The EIR states the impacts of the proposed planned district that would convert 154 acres of agricultural lands to developed areas less than significant because these lands are no longer considered "Prime Farmland." The designation of "prime farmland" is misleading – while the designation does take into consideration important attributes of soil quality, growing season, moisture supply, as well as physical and chemical criteria, the designation also hinges on whether the lands have been used for the production of irrigated crops within the past four years. The land has not been cropped in the last four years (though winter wheat continues to be grown on the site) thus the designation of "prime farmland" has been changed to "grazing lands," conversion of which is not considered significant under the CEQA Guidelines. This is merely a convenient loophole as the lands were considered "prime farmlands" as recently as the 2007 Notice of Preparation circulated by the City of Fremont. With the looming issue of reducing greenhouse gas emissions, enlightened planning dictates preservation of local agricultural lands so local food sources are available for communities.

4.3 Air Quality: Please see the comments submitted on our behalf by Richard Grassetti.

Impact AQ-2: Population and vehicle miles traveled. In addition, EIR inaccurately assumes the proposed project will “reduce motor vehicle travel by encouraging use of alternative transportation mode3s, including transit, bicycle, and pedestrian modes of transportation.” This project is not located within easy walking distance of existing shopping and there is no guarantee the proposed commercial space will be occupied or successful.

The school site is not incorporated into the proposed neighborhood but located across a busy thoroughfare. The options for parents are to allow their children to venture out alone or walk their children to school and cross Ardenwood Boulevard during the morning commute hour, or take their children up along the path along the Alameda Flood Control Channel. It is unlikely the majority of parents will do this, thus at minimum 330+ parents will get in their cars and drive their children to school resulting in congestion within the neighborhood streets and at Ardenwood Boulevard.

There is some question whether the Fremont Unified School District (FUSD) will have the financial capability of building a new school at the proposed location. If this is the case, parents will have to bus or drive their children into the middle of Fremont or southern portions of the city to schools that have the capacity to accept them as all the neighboring schools are already exceeding their capacity. The impacts of school travel have not been considered in the calculation of vehicle miles traveled.

Mitigation Measure AQ-2: TCM3 states it will improve transit service that will serve the area when in reality this mitigation measure only focuses on building facilities for transit – bus shelters, etc. Transit agencies are facing the same economic challenges all agencies are coping with. There is no guarantee buses will be available to serve the development. The EIR states the impacts of the project will be significant and unavoidable even with “implementation” of the mitigation measures. The impacts are only *unavoidable* with the proposed project design.

4.4 Biological Resources – The EIR is silent regarding the *regional* significance of Patterson Ranch. CCCR submitted scoping comments regarding the inclusion of Patterson Ranch lands 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 National Wildlife Refuge because of their value to provide an opportunity for the preservation and enhancement of highly significant wildlife habitat for the protection of migratory waterfowl and sensitive and rare wildlife species. Because of the uniqueness of the willow grove habitat, the presence of seasonal wetlands and ponds and an expanse of uplands that could be restored to native grasslands, this area was given a Priority One status for acquisition. Unfortunately monies have not been available for acquisition and addition to the Refuge. This does not diminish the ecological importance of these lands.

The Baylands Ecosystem Habitat Goals Report (June 2000) in “Segment R – Coyote Hills Area” states:

...The marshes encircled Coyote Hills except to the east where moist grassland bounded the upper margin of the marsh. These grasslands were characterized by springs and seeps, willow groves, seasonal ponds...

...The diked baylands east of Coyote Hills support *the largest remaining willow grove in the baylands ecosystem*, seasonal and diked wetlands, and a permanent freshwater pond.
[emphasis added]

Under “Unique Restoration Opportunities” the report states, “...On the eastern side of Coyote Hills, there are seasonal wetlands and willow grove habitat that could be restored or enhanced.” Fragments of this historic willow grove exist at the eastern boundary of Coyote Hills Regional Park and on the Patterson Ranch site. The current alignment of Patterson Slough represents the approximate northeastern boundary of the historic willow grove. Historically the willow grove tapered to the east all the way to Ardenwood Historic Farm. Willow grove habitat supports a tremendous diversity of wildlife species. The 2005 Coyote Hills Land Use Plan states the willow habitat within the Park boundaries supplies an abundant supply of insects that provide a food base nearly 100 species of wintering, migratory and breeding birds.

The Patterson Ranch site is part of a complex of habitats that is unique in its habitat and wildlife diversity, while having a relatively small geographic range.

The proposed development will have profound and significant adverse impacts on the opportunity to preserve and recover habitats that are now rare along the bay’s edges and to protect wildlife habitat that is currently within the public domain. This is contrary to the General Plan. Page 6-9 of the Open Space section of the General Plan states, “The farmland [*Patterson Ranch*] protects the refuge and park from encroachment by less compatible uses.” And page 6-10, “Any future use, including open space, parks and recreation, and agriculture, should be compatible with the Wildlife Refuge.”

The EIR should be revised to incorporate language regarding the regional significance of these lands and impacts of night lighting, noise, nuisance species, and vibrations from proposed geotechnical mitigation should be avoided especially during the breeding season of resident species, and fully mitigated.

The Field Investigations referred to in the EIR are inadequate. The most recent surveys are two years old, most are five years old or older. Recent reconnaissance-level surveys conducted by Pacific Biology mention only one night survey and one day survey during unspecified hours. While the surveys for special status species including the California red-legged frog, western burrowing owl, California tiger salamander, and vernal pool fairy and tadpole shrimp may have been conducted according to required protocols, they are all dated, some as much as five years old, and should be revisited. The same holds true for special-status plants species.

The limited on-site survey time has resulted in an incomplete picture of species that utilize the area. Golden eagles have been observed hunting the fields, as have rough-legged hawks. Coyote Hills Regional Park naturalists could provide a more complete picture of the species that utilize the site and the Ohlone Audubon Society has been conducting Christmas Bird Counts in the area for over twenty years. Due to the diversity of habitats that occur in the Coyote Hills/Patterson Ranch complex, there are regularly rare bird sightings in the area.

4.4-22 Protected Trees: The EIR states forty-six trees were identified within the northern portion of the project area where development is proposed. How is the “project area” being defined? Does the “project area” include the portions of the site where storm drainage facilities will be created? If so, it appears the storm drainage facilities are in close proximity to large oak trees that are located near the intersection of Patterson Ranch Road and Paseo Padre Parkway. How will the oaks be protected from the change in water regime resulting from the construction of the storm drainage facilities?

4.4.3 Regulatory Setting and Project Consistency, U.S. Fish and Wildlife Service (USFWS).

Fish and Wildlife Coordination Act (16 USC Section 651 et seq.). The Fish and Wildlife Coordination Act requires that agencies consult with fish and wildlife agencies (both federal and state) on projects where waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatsoever, including drainage, that could affect biological resources. Thus coordination with USFWS may be required regarding the impacts of the proposed storm drainage facilities.

The Federal Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and Executive Order 13168 are inadequately described and only briefly mentioned under Mitigation Measure BIO-1a. These acts should be more fully described. The Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act prohibit the take of migratory birds (or any part, nest, eggs or any such bird) and the take and commerce of eagles. Executive Order 13168 requires that any project with federal involvement (i.e. U.S. Army Corps of Engineers Clean Water Act permit for fill in wetlands) address the impacts of federal impacts on migratory birds.

Mitigation Measure BIO-1a:

Noise impacts to wintering, migratory, and breeding birds are not adequately mitigated. The focus of the noise impact analysis is the noise generated by construction related and restoration activities and not on the on-going, daily increases in noise levels that will result once the project has been constructed. This is a significant flaw in the EIR and must be rectified and fully mitigated. The EIR suggests the donation of 274.5 acres of wildlife habitat will offset these impacts. This may be true for species utilizing upland areas away from the areas of human activity, but will not be sufficient for species dependent on the riparian habitat found in Patterson Slough. Studies of the impacts of the effects of anthropogenic noise suggest the noise interferes with territorial vocalization (i.e. impacts to birds in breeding season) and the density of passerines occupying suitable habitat. These studies provide evidence that anthropogenic impacts on wildlife are not speculative, can be significant, and should be analyzed and avoided or fully mitigated. (Fuller, Warren, and Gaston. 2007. "Daytime noise predicts nocturnal singing in urban robins." *Biol Lett* 2007 August 22: 368-370 and Bayne, Habib, and Boutin, October 2008. "Impacts of Chronic Anthropogenic Noise from Energy-Sector Activity on Abundance of Songbirds in the Boreal Forest." *Conservation Biology* 22 (5): 1186-1193)

Furthermore, the 274.5 acres "donation" is not listed as a required mitigation measure. Has an "accepting" party been identified for the donation of the 274.5 acres of land? Have they already agreed to accept the property and to maintain the acreage as natural habitat? If there is any uncertainty as to who will accept the property and if they will accept and maintain the property, this "donation" must be listed as a mitigation measure. Even doing so does not insure the significant impacts to biological resources will be mitigated to a level that is less than significant because implementation of the mitigation is not under the control of the City of Fremont.

Mitigation Measure BIO-2: The mitigation measure for impacts of the proposed project to bats is inadequate. The impacts of light pollution on bats are not addressed in the EIR. Swift (1980, "Activity patterns of pipistrelle bats." *J. Zool London* 190) reported that light near a roost access point can result in delay of departure from the roost, resulting in less foraging time. Artificial lighting can make bats vulnerable to nocturnal avian predators. And there have been reports of street lighting acting as a barrier to bat migration. Therefore, the mitigation proposed has not demonstrated the impacts of the project will be reduced to a level that is less than significant.

Mitigation Measure BIO-5: Please see the earlier discussion regarding the impacts of light pollution on wildlife species.

Mitigation Measure BIO-6: Fencing designed to minimize access. The project planner stated at a community meeting that “fencing was ineffective in keeping nuisance species out of natural areas.” This was one reason the residential housing was moved to the east of Ardenwood Boulevard. There is no detailed description of the fencing proposed, therefore it cannot be demonstrated the impacts have been reduced to a level that is not significant.

Impact BIO-7: Is inadequate in that it only analyzes the impacts of human disturbance and pet use. The EIR completely ignores the significant impacts of nuisance species attracted to areas where trash associated with human use can be scavenged (e.g. food scraps), new perching posts – light fixtures for predators become available, etc. In addition, adverse impacts resulting from introductions of non-native invasive plant species (escapes from landscaped areas) was not considered.

The adverse impacts nuisance species attracted to the developed areas such as California gulls, crows, ravens, starlings, brown-headed cowbirds, raccoons, etc. on wildlife species is not even mentioned in the EIR. These impacts have serious repercussions not only for species immediately adjacent to the project, but for species impacted by California gulls subsidized by food matter obtained from the project site, that are located further afield. The South Bay Salt Pond Restoration Project has noted the impacts of the California gull on species such as the young of the snowy plover, American avocet, and black-necked stilts that are located along the flight path between the roosting areas of the gulls and the subsidized food source at Newby Island Landfill.

Mitigation Measure BIO-8a: The applicant must demonstrate indirect impacts (reduction in size) will not occur to existing adjacent wetlands as a result of the excavation activities proposed.

Mitigation Measure BIO-8b: It is unclear who will be responsible for the implementation of the mitigation measure. Will it be the landowners prior to sale of the lands? Will it be the first developer? The U.S. Army Corps of Engineers (Corps) typically requires, at minimum, a five-year monitoring program. Who will be responsible for ensuring the mitigation will be successfully completed and what guarantee will be provided that sufficient funds will be available? The impacts of the project cannot be reduced to a level that is less than significant without identifying the responsible party and ensuring a funding source.

Mitigation Measure BIO-10: The applicant has not explained why the removal of 46 trees cannot be avoided, has not analyzed whether there will be an adverse impact to oaks located by the intersection of Paseo Padre Parkway and Patterson Ranch Road, and has not identified who will be responsible for developing and successfully implementing and completing this mitigation measure.

The EIR does not address several questions included in our scoping comments:

- How will road kill of wildlife be avoided with the increased traffic levels that will be created by the proposed development?
- What provisions for restoration of open space lands will be provided?
- How will long term maintenance and management of those lands be provided?
- How will the loss of foraging habitat for raptors be mitigated?

4.5 Cultural Resources: What impacts if any will the proposed storm drainage facilities have on existing cultural resources?

4.6 Emergency Services: We cannot comprehend how impacts to Fremont Police Department (FPD) and Fremont Fire Department (FFD) response times could be considered less than significant. The current priority one response time for FPD is 9:10 minutes, and for priority two and three calls average 11:65 and 17:30 minutes respectively. Incidents do occur at FUSD elementary schools requiring rapid response from the FPD (e.g. stranger danger, medical emergencies, etc). The General Plan Health and Safety Goals call for a response time of 5:30. Are these response times adequate to ensure the safety of children in a school constructed in the project area?

The EIR states current citywide staffing (of FFD) and service demand prohibits the recommended move of a ladder truck closer to the proposed development, and that the project area currently experiences longer than desirable response times for a ladder truck. Furthermore, Fremont does not “presently have the ability to fund the ongoing operation of an additional fire company (including a ladder truck).” The proposed project proposes a multitude of multi-story buildings, including four five-story apartment buildings. How can this impact be less than significant??

4.7 Geology, Soils & Mineral Resources: The project site is riddled with fluvial deposits dating back to when three creeks meandered across the site dumping sand and silt deposits as water levels rose and fell. The geologic conditions of the site have resulted in this area being susceptible to liquefaction and liquefaction-induced lateral spreading. The EIR recommends mitigation measures that will require extensive modification of the soils in areas where residential and educational facilities are proposed.

- What guarantee exists that the mitigation measures will be effective in the event of an earthquake?
- Will the City of Fremont be vulnerable to legal action should the mitigation measures proposed be ineffectual?
- Existing utility lines including a gas line run through the project area. Will the mitigation measures ensure these utility lines will not put future residents at risk?
- Please provide examples where the mitigation measures proposed have successfully withstood seismic events equivalent to the magnitude predicted for this site.
- Who will be responsible for funding, implementing, and completing the proposed mitigation measures?
- Will the mitigation measures be completed on the school site before the site is offered to FUSD?
- What additional measures can be anticipated to be required to meet State school and residential and commercial building codes in addition to those already proposed?
- Who will be responsible for construction of the cut-off wall and has this technique been demonstrated to prevent lateral spreading at similar sites? What impacts will construction of the cut-off wall have on wetlands just northeast of Patterson Slough?

4.8 Hazards and Hazardous Materials:

- Where specifically is the gas line that is located east of Ardenwood Boulevard? And will mitigation measures pertaining to soil instability be implemented to ensure this gas line will not put future residents at risk in the event of an earthquake?

- Who is financially responsible for the remediation of toxic soils and when will the remediation take place?
- Where will the toxic soils be disposed? They should not be placed in the proposed open space areas.
- Will areas where unlined storm drain facilities be fully mitigated to prevent mobilization of toxaphene and dieldrin?
- Will the toxic soils of the school site be fully remediated prior to it being offered to the school district?
- How will the use of herbicides, pesticides, and fertilizers be regulated within the developed areas?

4.9 Hydrology – Please refer to the comments of Carol Beahan and Richard Grassetti. We support these comments. And please address the questions we posed during the scoping period:

- Will there be an increase in winter and spring levels of ponding within Coyote Hills Regional Park?
- Will the addition of year-round surface flows from the proposed development have any impacts on the management of the Coyote Hills Regional Park water regime?
- Where will surface run-off from the lands west of Ardenwood be directed?
- What impact will the proposed hydrological and topographical modifications have on Patterson Slough?
- Hydrocarbons and heavy metals from road run-off, fertilizers, herbicides, and pesticides can build up in wetlands over time. The developer proposes construction of a bioswale to address water quality issues. Will bioaccumulation within the swale area or areas immediately downstream of the swale pose any health risks to wildlife?
- How will the bioswale be constructed and how will down-cutting be avoided?
- What will be the depth of excavation for the proposed swale and will groundwater be encountered due to the excavation?
- Will the proposed development impact the manner in which Coyote Hills Regional Park and the Alameda County Flood Control and Water Conservation District (ACFCWCD) manage the ponding or movement of water within the South, Main, and North Marshes of the Park?
- The San Francisco Bay Conservation and Development Commission (BCDC) has implemented a Climate Change Planning Project to identify and report on the impacts of climate change on the San Francisco Bay. As part of this project, BCDC has produced maps which delineate shoreline areas that may be impacted by sea level rise: <http://www.bcdc.ca.gov/index.php?cat=56> What impact could sea level rise have on the proposed development – e.g. could sea level rise require tidegates that discharge waters from Coyote Hills Regional Park be replaced at higher elevations and if so, who would bear the financial responsibility for accomplishing this task? What would the consequences be to the developed areas if this does not occur?
- Is groundwater rising within the Coyote Hills general area and if so, what impacts will this have on the developed areas and would any remedial measures be required within Coyote Hills Regional Park because of the proposed development?

4.10 Land Use and Planning. Please refer to the Biological Resources section regarding the regional, ecological significance of the Patterson Ranch site, the functions it serves for wildlife and as a buffer that

protects the wildlife and aesthetic resources of Coyote Hills Regional Park. The General Plan (p. 3-17, p. 3-27) states:

Portions of the western edge of the Planning Area have been targeted by the National Wildlife Refuge for purchase. The areas identified for possible acquisition include open space and agricultural uses.

Virtually all of the city's Fundamental Goals are relevant to land use, but the following are perhaps the most relevant:

F7 – AN OPEN SPACE FRAME THAT INCLUDES THE HILLFACE, BAY WETLANDS AND GATEWAYS.
[emphasis added]

- Earlier discussions have indicated the lands west of Ardenwood Blvd. have been identified as having value for inclusion within the Wildlife Refuge, and were in fact identified as a priority area. Unfortunately funding has not been available for acquisition. The Goals Project has identified unique restoration opportunities on the land west of Ardenwood Blvd. How does the proposed development recognize the important habitat and wildlife values of the lands west of Ardenwood Blvd. in placing school grounds and active sports parks in proximity to important natural resources?
- Will a conservation easement or some other vehicle that prevents future development of the “open space” areas be enacted, in other words, how will the open space areas be protected from any future development?
- The EIR indicates “open space” areas may be transferred to the East Bay Regional Park District or other entity. How will the city ensure this transfer will occur?

4.11 Noise and Vibration: Please refer to the Biological Resources section. The EIR does not adequately identify, analyze, or mitigate the adverse impacts of construction/restoration related noise and vibration on wildlife, nor does it analyze or mitigate the adverse impacts of project (after constructed) generated noise on wildlife. According to research of noise impacts on wildlife, these impacts will be significant and must be addressed in this document.

4.12 Parks and Recreation: The lands to the west of Ardenwood Boulevard are an inappropriate location for an active sports park for a number of reasons. The EIR does not address the project generated impacts of night-lighting and anthropogenic noise on existing wildlife resources. The development of an active sports park will attract nuisance species that compete or predate existing wildlife. There are no provisions for monitoring the activities of the dog park users to ensure dogs will only be off-leash in the designated fenced areas and not in natural areas. The active sports park should be relocated elsewhere or the 30-acre site should be utilized as a passive park which would be much more consistent with the use that already exists at Coyote Hills Regional Park.

The EIR inaccurately assumes users of the park will walk or ride bikes to the park resulting in an underestimation of traffic and greenhouse gas emission impacts. The sports park is designated a “city wide park.” As such it should be assumed people will get in their cars to reach the site.

4.15 Schools and Libraries: The analysis of the need for a school provided in the EIR is misleading. The EIR states: “Students generated by the project would be served by existing elementary, junior high, and

high schools that serve the project area.” A demographic update report submitted to FUSD in November 2009 indicates chronic overcrowding currently exists and will continue at Ardenwood and Forest Park elementary schools. In addition, Thornton Junior High School and American High School are at capacity and cannot accept additional students. This is without the addition of the estimated 699 students that will be generated by the proposed project.

Almost since the time development first began in the Ardenwood area there has been a chronic problem of overcrowding at the elementary school. A February 1987 San Jose Mercury News headline read “School Shortage Puts Squeeze on North Fremont.” An August 1992 Mercury news story regarding the Ardenwood Forest II proposal for the same site stated, “A second school is under construction in the Ardenwood area, but it will be overcrowded the day it opens even without a new development, the report says...” This project will only exacerbate a problem that has existed for more than two decades.

The applicant has not met with the school district since June 2008 and at that time mitigation measures that were proposed would be insufficient to build a school. The applicant originally proposed presenting the school district with a “turn-key” elementary school. Now the offer is approximately 10 acres and \$9 million towards construction costs, \$11 million short of what the consultant estimated it would cost to build a school in 2008 dollars (\$20 million).

The EIR suggests that no location within the project boundaries would meet Department of Education standards as there are issues of railroad tracks, high pressure transmission pipelines, flood hazards, liquefaction, and toxic soils located across the project site. It is possible that even if the District were to find adequate funds to make up the difference between the monies offered by the developer and the actual costs of school site construction, the site would not be deemed acceptable.

Therefore, the analysis of traffic congestion and greenhouse gas emissions are inaccurate as they have not taken into consideration the considerable distance students from the new development will have to travel to reach schools that have the capacity to accept them. It is estimated by the Superintendent of Schools that high school students will have to travel to Kennedy High School, junior high students to Walters, and elementary school students to the central or southern areas of Fremont (Please see comments submitted by Richard Grassetti).

4.16 Traffic and Circulation: The EIR is inaccurate in assumptions made about the use of the “city wide park” and the means by which students will get to school. In addition, the EIR does not adequately consider the congestion that will occur during the morning commute as parents from the neighborhood drive their children to school and other parents come into the area to drop their children off at the church pre-school. This is of considerable concern as Ardenwood Boulevard-Union City Boulevard, and Paseo Padre Parkway are used by commuters on their way to the Dumbarton Bridge, San Mateo Bridge, and Nimitz Freeway. These impacts must be considered and mitigated.

5.0 Cumulative Impacts and Climate Change: This project is not sustainable from a climate change perspective. There is no guarantee the proposed commercial uses will be successful. There is limited public transit in the area and no shopping, banking, etc. within easy walking distance. There is a good possibility FUSD would not be able to build a new elementary school, and a city wide park is located all the way at the northernmost boundary of the city all of these factors ensure people will get into their cars to reach their respective destinations.

6.0 Alternatives to the Project – Please refer to the comments prepared by Richard Grassetti. We were extremely disappointed to find an alternative that would lessen adverse impacts to the environment, yet meet most of the project objectives was not considered. Instead alternatives are proposed that no

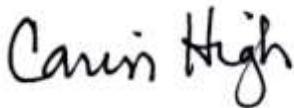
one would ever seriously consider approving. The existing General Plan designation that would allow approximately 266 residential units to be built across the entire 426 acres would have significant adverse impacts and the City and developer have already acknowledged this. The no build alternative does not meet the objectives of the developer and the 878 units clustered to the east of Ardenwood Boulevard would merely exacerbate existing feelings of overcrowding. We had requested the city analyze two alternatives in addition to the No Project, and Proposed Project alternatives:

- An alternative that moves all project elements to the east of Ardenwood Blvd (i.e. schools, churches, and active sports park) with joint use between the active sports park and schools, and analyzes an intermediate housing density, and
- An alternative that moves all project elements to the east of Ardenwood, with joint use of the school site, intermediate housing density, but allows a passive-only park located to the west of Ardenwood Blvd and along Ardenwood Blvd.

We believe these alternatives are consistent with growing concerns about the importance of incorporating schools into neighborhoods (Safe Routes to Schools), would address concerns voiced by the surrounding community since the early 1990s about the adverse impacts of even more high housing densities within the community (which already has 276 housing units on the 15.5-acre Tupelo lot across the street from the project area, and 5000+ houses in adjacent Ardenwood/Forest Park areas, and would lessen the adverse environmental impacts of the proposed project. We urge the City to reconsider appropriate alternatives that comply with CEQA requirements.

We believe the DEIR as written contains numerous omissions, inaccuracies, and flaws and that it does not comply with the requirements of CEQA. We urge the City to address and correct these issues and to re-circulate the EIR. Thank you for the opportunity to provide 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