CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto CA 94306 Tel 650 493-5540 Fax 650 494-7640 Florence@refuge.org

City of Fremont
Community Development Department
Planning Division
39550 Liberty Street, P.O. Box 5006
Fremont, CA 94537-5006
ATTN: Scott Ruhland, Associate Planner
Sent by Email to: sruhland@fremont.gov

August 2, 2010

Re: Patterson Ranch Planned District Recirculated 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. Let us begin by commending the City and the landowners on their recognition of the importance of the natural resource values of these lands as demonstrated by the removal of the active sports park from the lands to the west of Ardenwood Boulevard. This action acknowledges a vision for the area long held by residents of Fremont and we appreciate in particular the efforts of staff to bring about these changes. While we are encouraged by the changes that have been proposed, we still firmly believe to adequately protect the resources of Coyote Hills Regional Park and to avoid further burden to the existing community, additional changes are necessary.

We commend the City on the overall organization and readability of the EIR, however, we have substantive concerns that must be addressed to ensure compliance with California Environmental Quality Act (CEQA) Requirements. We urge the City to address these issues prior to certification of this EIR.

3.2 Background and Context:

Development Proposals and 2006 Citizen Initiative: "…Approximately 66 percent of the voters voted against the initiative, causing it to fail." 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. In fact, data from the City of Fremont and from independent surveys indicate nothing could be further from the truth. 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.

3.3 Revised Project Description:

Project Description: The DEIR states the proposed planned district will consist of 500 to 520 housing units on approximately 87 acres and approximately 14 acres of neighborhood parks and trails located east of Ardenwood Boulevard and two churches on ten acres and one acre for a Union Sanitary District pump station west of Ardenwood Boulevard. Two storm water quality-detention basins are also proposed for the 101-acre parcel to the east of Ardenwood Boulevard to handle stormwater runoff from the proposed development.

The residential component is envisioned to be developed as seven neighborhood clusters consisting of single-family detached, one or two-story homes, with the exception of Scenario 2 which would replace some of the single family homes in neighborhood cluster 1 with 72 apartment units housed in four and eight building units.

The Ardenwood area has some of the highest housing unit densities in Fremont. Rather than "blend with the surrounding development" we are concerned the site will add further burden to the Ardenwood community that are not adequately mitigated. In addition, given the environmental constraints of the site e.g. public safety, liquefaction, water supply, etc. we do not believe the site can sustainably support the development of 500 to 520 housing units.

Emergency Access and Access to ACWD and USD Facilities: The EIR states "A secondary emergency vehicle access road would be provided at the northern tip of the project to provide access to neighborhood cluster 7. Emergency vehicles would be able to access neighborhood cluster 7 via an existing all weather paved surface on the north side of Crandall Creek (K-line channel)."

- Has the Fremont Fire Department determined this route will be a viable alternative route in the event of a fire or other emergency in the neighborhood 7 cluster?
- How would emergency vehicles access the arrowhead from the existing all weather paved surface north of Crandall Creek? Would or could this access route be compromised if levee expansion were needed in the future to address sea level rise (as proposed as possible mitigation in this EIR)? Please provide additional information and plans.

Religious Facilities: We strongly urge the City to move all developed areas to the east of Ardenwood boulevard. Ardenwood Boulevard serves as an artificial barrier, isolating the open space to the west from direct contact with development related disturbances and reducing the adverse impacts of invasive and nuisance species, night lighting, noise, etc.

Remaining Project Area: The EIR states:

> The approximately 316 acre open space area southwest of Ardenwood boulevard would be maintained by the property owners and is proposed for donation to public agencies. Approximately 8 acres would be dedicated to Fremont to comply with parkland dedication requirements, and an additional 32 acres would be donated to Fremont. The City has not determined the future use of the total 40-acre dedicated land and would complete further environmental review when and if a

plan is prepared. Agencies and specific acreages for donations have not been confirmed, although the East Bay Regional Park District (EBRPD) and Fremont have been discussed as beneficiaries.

- Where within the approximately 316 acres of lands to the west of Ardenwood Boulevard will the 40 acres proposed for donation to the City of Fremont be located? Why wasn't information regarding the specific location of this acreage provided within the EIR? Will the 40 acres of land donated to the City be placed under permanent conservation easement?
- What does the phrase "agencies and *specific acreages* for donations have not been confirmed" mean? The EIR states approximately 40 acres of land would be donated to the City of Fremont, is there a possibility that less than the remaining 276 acres of land would be donated to an entity such as EBRPD?

We strongly believe any lands (other than the 40 acres that are to be donated to the City of Fremont) must be donated to the East Bay Regional Park District (EBRPD). The lands are immediately adjacent to, in fact contiguous with Coyote Hills Regional Park. It makes most sense to have all of these lands under the management of one entity. This is especially preferable if there is hope of implementing the recommendations of the The Baylands Ecosystem Habitat Goals Report (June 2000. "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.

We understand donation of the additional 276 acres of land might be considered a benefit to the City of Fremont in that it will add to the parkland acreage under City of Fremont control thereby increasing the ratio of parkland acreage to residents, however, we urge the developer and the City to find a creative way in which the City might obtain credit for the acreage without actual ownership. From a management perspective and from the perspective of possibly obtaining grants to restore and unify the fragments of willow habitat that exist within the Coyote Hills Regional Park (Coyote Hills) boundaries and in Patterson Slough it makes much more sense to have the lands owned by EBRPD. Failing donation to the EBRPD, the lands should be donated to the Don Edwards San Francisco Bay National Wildlife Refuge, as most of the lands to the west of Ardenwood Boulevard lie with the congressionally approved refuge expansion boundary and the Refuge, like EBRPD has personnel trained to manage natural open space lands.

We have the following substantive questions for the scenario in which the lands are donated to the City of Fremont:

- What experience does the City of Fremont have managing "natural" open space?
- What would be the financial impacts to the City of Fremont of managing these lands?
- For example – what is the cost of managing vegetation on the site if necessary for fire abatement, managing nuisance species, etc.?
- What are the costs of keeping the site free of vandalism and rubbish?
- Does the Parks and Recreation Department have adequate staff to manage and monitor this site?
- Who in the City of Fremont would coordinate the restoration of the willow riparian habitat and native grasslands and where would the funds come from? What expertise do they have?
- Would a permanent conservation easement be established?

While donation of the 316 acres is not being proposed to satisfy the requirements of CEQA it is in fact a component of the overall project that has been offered by the landowners to assuage the concerns about the impacts of this massive development project on open space and on the important resources of Coyote Hills, therefore, it is not unreasonable for the public to ask that more specific information be provided during this period of project review.

"…approximately 138 acres, would be used as a "borrow" site to remove and transfer approximately 300,000 cubic yards of soil to site 1."

We strenuously object to this proposal. We will elaborate on our objections later in our comments.

Drainage, Grading and Infrastructure Program: The description of the drainage system proposed in the EIR does not provide adequate information. The EIR states the surface water runoff for neighborhood clusters 1 through 6 would "drain via an outfall downstream of Ardenwood Boulevard into a connection point within Crandall Creek (K-line channel) that is tidally influenced." It would appear this will require construction of a storm drain system through the open space area to connect the developed areas to the east of Ardenwood Boulevard to the "connection point" within Crandall Creek.

- What is the alignment of the drainage infrastructure to the west of Ardenwood Boulevard?
- Where will the "connection point" be located within Crandall Creek?

Grading: We are strongly opposed to the use of the future open space area as a "borrow" site for fill needed to raise the proposed development out of the 100-year flood plain. The only soils that should be removed from this area are those that are contaminated by toxaphene or dieldrin and only to the level necessary to remove the contaminants. "Borrowing," that is removal of up to 4 feet of soil from the open space area could severely limit future restoration of the site by limiting the types of habitats that could be restored. The figures and description provided in the EIR are insufficient. It would appear from Figure 3-9 Borrow and Haul Route Plan, that in excess of four feet of soil could be removed from some portions of Area D.

- Please provide a site map that clearly indicates the existing elevations.
- Please provide more detailed information regarding the depths of soil that are proposed to be removed from each of the areas (i.e. A, B, C, D, and E).

Toxic Remediation: WHAT?????!!!!! The EIR states:

The project proponent is in the process of testing a microbial solution that has been shown to enhance soil fertility and the microbial degradation of pesticides. It has not been previously tested on toxaphene, but has been effective on similar types of pesticides.

Site 1 is currently under testing for this treatment.

To reiterate our initial reaction - WHAT??????!!!!

- How much of Site 1 is undergoing this remedial treatment and where specifically is the "testing" being conducted?
- Has this been approved by the Department of Toxic Substances?

In December 2005 the U.S. Environmental Protection Agency, Office of Inspector General, released a report, "More Information Is Needed On Toxaphene Degradation Products." (http://www.epa.gov/oig/reports/2006/20051216-2006-P-00007.pdf) This study reported the need for the identification of reliable analytical methods to identify toxaphene degradation products and their levels (resulting from natural "weathering" of toxaphene through microbial action) in the environment and to determine what risk specific toxaphene degradation products pose to humans.

While toxaphene is a recognized toxin and regulations exist that set limits on the amounts of toxaphene that can exist in drinking water for example, this report highlighted the need for studies to determine if limits should be set for toxaphene degradation products as well. Some of the degradation products of toxaphene are also capable of accumulating in the body and according to this report there are indications that some degradation products may be "at least as toxic as the original toxaphene." The degradation products of concern identified in the study include p26, p40, p41, p44, p50, and p62. The report highlighted studies that indicate "…p26 and p50 caused more abnormalities in the central nervous system of rat embryos than toxaphene caused." The report went on to recommend "…future studies should center principally on p26, p40, p41, p44, p50, and p 62…the studies should address the likelihood that these degradation products will cause tumors {i.e. cancer) or will harm embryos.

The study also recommended, "...Specifically, toxaphene degradation products should be targeted for analysis at toxaphene-containing sites…" At the time of this report the authors noted:

> The analytical methods approved by EPA to identify and measure toxaphene do not evaluate toxaphene degradation products. The approved methods generally use a testing instrument called a gas chromatograph with electron capture detectors, and have been proved to be capable of testing for the original toxaphene mixture, but have not been formally validated for toxaphene degradation products. However, as noted above, the toxaphene degradation products are a different mixture than the original toxaphene mixture.

However:

> A new analytical method using a gas chromatograph with negative ion mass spectroscopy (NIMS) should be used to test for toxaphene degradation products. Academia and the European

Union have successfully used the NIMS method for at least 5 years to test for toxaphene degradation products in the environment.

- What determines if the "remediation" is successful? Is the site being assessed only for levels of toxaphene, or are all the harmful degradation products of toxaphene being analyzed as well? And can these harmful degradation products be degraded or do they persist in the environment where they can pose a potentially greater threat to humans?
- What analytical methods are being utilized to monitor the level of toxaphene and its degradation products?

Development Agreement: The EIR indicates the applicants have proposed a 15-year year development agreement. While we are awaredevelopment agreements provide some advantages 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 in turn 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.

4.0 Environmental Setting, Impacts and Mitigation Measures:

4.1 Aesthetics:

4.1.2 Existing Conditions – Project Visual Character: 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]

As mentioned in this latest EIR 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." The 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.

Sensitive Visual Resources: The EIR states:

Landmark trees are also designated as significant aspects of Fremont's visual character, and are identified as remnants of large historical agricultural estates, including the Patterson Ranch (now Ardenwood Historic Farm). According to the Fremont General Plan, there are no City-designated landmark trees in the project area.

- While not necessarily within the purview of this document, we suggest the coast live oak trees that exist to the east of Ardenwood Boulevard should be considered for designation as landmark trees.

Paseo Padre Parkway and Designated Gateway Entry:

The word "several" should be deleted from the following statement as Paseo Padre Parkway provides a continuous unimpeded view towards Coyote Hills. "In the project area, Paseo Padre Parkway provides ~~several~~ unimpeded views towards the Coyote Hills."

The assessment "Views from motorists traveling along the adjacent roadways would likely be of short duration because of the vehicle speed," incorrectly implies that due to the "short" duration of the motorists' view impacts to the viewshed might not be significant. To the contrary, the view from the Union Pacific Railroad Tracks (UPRR) provides immediate visual relief from the dense development that exists just east of the overcrossing. And it is expansive views of open space that do indeed "set Fremont apart and make it a special place to live."

Views of the Project Area: The photos provided in this section are of very little value in depicting the visual character of the project site. A comprehensive visual overview of the project site could have been provided by standing at the UPRR and shooting photos across the site to the north and west. Views from areas considered to be "obstructed" should be from those vantage points rather than providing pictures of the areas of obstructed or limited views. As it is, the pictures provided confuse more than educate.

- The map identifying the locations of the various views of the project area should have also included arrows indicating the direction the picture was taken and the locations more precisely identified.
- For example, is View 2 taken from the location indicated on the map, or is the View of the general location indicated on the map?
- Is View 3 of the project location?
- View 4 is ineffective in demonstrating the "expansive views of project area southwest of Ardenwood Boulevard looking towards the Coyote Hills."

In our scoping comments we had specifically requested photo renditions be provided demonstrating the viewshed before and after project construction at a variety of locations including:

- the view west from the UPRR overcrossing,
- a point along Paseo Padre Parkway heading towards
- Paseo Padre Parkway in the vicinity of the proposed active sports park,
- Ardenwood Boulevard heading north from the intersection with Paseo Padre Parkway,
- Ardenwood Boulevard from the Alameda Creek Flood Control Channel looking towards the intersection of Ardenwood Boulevard and Paseo Padre Parkway and towards Coyote Hills Regional Park,
- and from the hilltops within Coyote Hills Regional Park looking towards the east.

We had also requested that the "after" photo renditions reflect mature landscaping elements and the increased elevation of site due to the introduction of fill material.

The previous EIR provided before and after project photo renditions for several of the viewpoints requested. This EIR only provides the before and after photo renditions from Coyote Hills.

- What happened to the other "After" photo renditions? Why were these not provided?
- The previous "after: renditions indicated that views of Coyote Hills would be completely obscured for travelers along Paseo Padre Parkway – is this anticipated for the new development as well? If so this would be a significant adverse impact.
- The "before" pictures are provided from odd angles that do not accurately document the views possible from each location, but instead seem to minimize the views of Coyote Hills. Why were the specific camera angles selected at each of the viewpoints?
- Will fences be a constructed for homes located along Paseo Padre Parkway?

Impact AES-1: Construction activities associated with the project would temporarily change the visual character of the project area. (Significant)

We agree completely that this will be a significant adverse impact. We question the use of the word "temporary."

- What does the City consider "temporary"? The EIR states on page 3-34, "It is anticipated that the project area would be developed through a phased process by multiple builders up to a 15-year time frame depending on market conditions." Several months to a year may be considered "temporary." Construction activities carried out over a period of 15-years is hardly temporary.

Mitigation Measure AES-1 requires the contractor screen the construction sites from public view at street level.

- Does this mean the site will look like the Tupelo site immediately across Paseo Padre Parkway for 15years? The chain link fence surrounding the Tupelo site is a visual blight itself. Are there any other mitigation measures that can be employed that will further reduce the adverse aesthetics impacts of up to 15 years of "temporary" construction impacts? In view of the potential for 15 years of "temporary" construction impacts we do not concur that the adverse impacts of construction activities will be reduced to a level less than significant.

Impact AES-2: The proposed residential development would block some views of Coyote Hills for motorists and pedestrians traveling southwest on Paseo Padre Parkway. (Less than significant)

We do not concur that the impacts will be less than significant. As mentioned above, one of the first visual impacts upon reaching the top of the UPRR overcrossing is the expanse of open space that is suddenly revealed to travelers heading west along Paseo Padre Parkway. This expansive view provides instant relief from the dense development areas just east of the overcrossing. Previous renditions of the project site after development indicated there would be no views of Coyote Hills remaining for travelers along Paseo Padre Parkway. The open space that lies to the west of Ardenwood Boulevard would not be revealed to the traveler until they have reached the intersection of Paseo Padre Parkway and Ardenwood Boulevard. The views for people heading south and north along Ardenwood Boulevard would be compromised by the construction of two churches. These are significant adverse impacts to the viewshed.

Impact AES-6: The majority of the project area would remain as open space, thus preserving the open, natural visual quality of the area. Although the project would introduce new urban development to the area, the residential development would occur in an area surrounded by existing residential neighborhoods, consistent to their scale and height, and would not degrade the visual character of the area. (Less than Significant). And Impact AES-8: Project development would not substantially affect views of the Coyote Hills from private residences surrounding the project area. (Less than Significant)

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. Any views of the open space located to the west of Ardenwood Boulevard currently available to residents of the area would be blocked by the proposed development.

Of the four viewpoints, only one, Viewpoint D (provided the location of this view point is located west of the proposed church developments) would provide views of the open space area that are supposed to ameliorate the significant impacts to the view-shed. This viewpoint would only be available to travelers along Paseo Padre Parkway, not existing residents. For the other three viewpoints the proposed church developments 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: Preparation of a Lighting Plan to Reduce Light Spillover. It is unclear whether the mitigation measures proposed to reduce the impacts of light pollution are 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 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. Lighting impacts from the housing development could have adverse impacts to wildlife inhabiting Crandall Creek. In addition, light pollution from the proposed churches west of Ardenwood Boulevard could have adverse impacts to wildlife inhabiting the adjacent open space and Crandall Creek.

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. There is no supporting evidence that the impacts of the lighting plan will not adversely impact wildlife resources, therefore this impact remains significant.

We concur the use of nighttime lighting should be prohibited on the borrow sites.

Issues Not Discussed Further – Glare: The EIR states the windows of the residential homes and future religious facilities will not introduce glare. With two-story buildings reflective surfaces will be higher off the ground. What documentation exists to support the conclusion that windows of the two-story housing units will not produce glare that would be visible from Coyote Hills? This impact must be analyzed and mitigated.

4.2 Agricultural Resources:
4.2.2 Existing Conditions: The EIR states:

> At the time the Notice of Preparation (NOP) was published in 2007, the project site was classified by the FMMP maps as Prime and Unique Farmland. However, the FMMP maps were updated in 2008 for Alameda County, and the farmland designation for the project site changed to "Grazing Land" with a small portion designated as "other land".

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.

Under the section, **Project Consistency**, the EIR states:

> …These soils are categorized as Class I and II soils in the NRCS land use capability classification. Because soil classifications represent Class I and Class II soils, the project area would be considered **"**prime agricultural land" under Section 56064(a).

The Department of Conservation responded on December 14, 2009 to the previous EIR that:

> Although the agricultural value may have been reduced due to the lack of farming over the years, it does not hold that there is no longer any agricultural value. The *inability* to farm land for an agricultural purpose, rather than the refusal to do so, is what could constitute a lower agricultural value of the land. If the lack of agriculture on the land is by choice, then the property still has agricultural value, and therefore we suggest that mitigation measures be applied for the conversion and loss of agricultural lands, which at one time supported agricultural activities.

Mitigation Measure AG-1a: Purchase of agricultural conservation easements: "The project proponent(s) shall purchase or provide funds for agricultural conservation easements on land of at least equal quality and size as partial compensation for direct loss of agricultural land on the project site."

- Where?
- Would the purchase be restricted to Alameda County?
- Would the lands purchased be contiguous?

Mitigation Measure AG-1b: Exclude Area E from the soil borrowing area.

Why is this considered a "mitigation measure" when the provisions of the existing Open Space Easement Agreement state "Provisions of this easement agreement relinquish the right to construct improvements on this portion of the project area, except for improvements that are reasonably necessary for agricultural purposes…"? It would appear activities such as removal of up to four feet of soil would be in obvious conflict with and prohibited by the existing easement agreement.

Removal of soil from all lands to the west of Ardenwood Boulevard should be prohibited. The goal of balancing on-site cut and fill is inappropriate as the depths of proposed removal could compromise future efforts to restore the lands identified for open space.

While balancing on-site cut and fill activities may reduce greenhouse gas emissions in the short term, in the long term enlightened planning dictates preservation of local agricultural lands so local food sources are available for communities.

4.3 Air Quality:

Impact AQ-2: Development of the project area would conflict with implementation of the 2005 Bay Area Ozone Strategy, specifically in regards to population, vehicle miles traveled, and transportation control measures. (Significant) – Population and vehicle miles traveled. The EIR is correct in its determination that the impacts of this project as proposed are significant and unavoidable (under the current project scenario). The EIR states the City incorporates youth transportation program such as CARB's Lower Emission School Bus Program.

- How many of Fremont Unified School District's students are bused to their respective schools?
- What percentage of FUSD's enrollment does this represent?

The EIR also states the project "addresses appropriate TCMs associated with improving pedestrian and bicycle access and facilities. The project would provide up to three bus stops around the perimeter of the project area."

With cutbacks facing every local agency, have any assurances been provided by AC Transit District that buses will be available to service the development? This is a critical concern as school aged children may have to depend on the AC Transit system to get them to their schools as the school district has been forced to cut-back its school bus programs as funds for education continue to dwindle.

Mitigation Measures AQ – 4a and 4b – Measures to Control Construction Dust Emission and Diesel Exhaust Emissions: The EIR lists a number of proposed mitigation measures. These measures only have value if adequate oversight is provided.

- Who will enforce these mitigation measures, how often will inspections occur, and what penalties will result if the contractor is in non-compliance?

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:
4.4-2 Existing Conditions – General Project Area Characteristics and Surrounding Land Uses: 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 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 the impacts of night lighting (church sites), noise, nuisance species, soil removal, etc. 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 are 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 and osprey have been observed roosting in the sycamores just east of Patterson Slough. Snow and cackling geese have been observed foraging in the fields. 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.

4.4.3 Regulatory Setting: U.S. Fish and Wildlife Service (USFWS) and the 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 to Crandall Creek and potentially for the proposed cut-off wall adjacent to Crandall Creek, and the proposed soil removal west of Ardenwood Boulevard that could adversely impact waters of the U.S. and State.

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.

Fremont General Plan and Project Consistency:

Goal OSA2: Recognition, protection, and enhancement of significant natural areas and wildlife habitats in the City, including Bay tidal, seasonal, and freshwater wetlands, and open meadows and fields.

How is the project consistent with this Goal when the project could jeopardize future enhancement of the open space to be preserved through removal of up to 4 feet (or more?) of soil from this area? For example, the removal of soil could prevent restoration of grasslands by removal of top soil, or by lowering the elevations to the point that groundwater is intercepted. Despite the proposed set aside of open space, the project as proposed is not consistent with the Fremont General Plan because the restoration potential of the site will be compromised by the proposed soil removal activities.

4.4.4 Impacts and Mitigation Measures: Project Impacts:

Cooper's hawk are regularly observed at Coyote Hills, it should be assumed the species forages on the project site.

Golden eagle have been observed foraging over the project area west of Ardenwood Boulevard.

Saltmarsh common yellowthroat are known to have established breeding territories within the willow habitat at the Coyote Hills in close proximity to the border with Patterson Ranch. It should be assumed the species occurs within the project boundaries.

Alameda song sparrows have breeding territories on park lands in close proximity to the boundary with Patterson Ranch.

(ii) Impact: Potential Loss or Disturbance of Active Nests and (iii) Impact: Loss of Nesting and Foraging Habitat. The EIR is flawed in its assessment of these impacts on nesting and foraging birds. The EIR appears to limit it concerns of construction disturbance impacts to Patterson Slough.

- Why wasn't the important willow riparian nesting, roosting, and foraging habitat within Coyote Hills Regional Park that exists immediately adjacent to the western edge of borrow Area C identified as a regionally important resource that must be protected in this EIR? The adverse impacts of massive soil disturbance on this valuable habitat must be taken into consideration in the discussion of impacts. Loggerhead shrike and Cooper's hawk are known to nest in this area as well as tree swallows, common yellowthroats, Wilson's warblers, and song sparrows.
- Will Area C be removed from the proposed "borrow" activities? Due to the sensitive nature of the area immediately adjacent to Area C we urge the project proponents to remove Area C from the proposed earth removal activities.

Mitigation Measure BIO-1a: Preconstruction nesting bird survey:

Please amend the following mitigation measure to include the bolded words. "…The size of the buffer zones and types of construction activities restricted within them will be determined through consultation with the CDFG **and or USFWS**, taking into account factors such as the following…"

Mitigation Measure BIO 1b: Establishment of Environmental Protection Zone:

- Is the two week interval between conducting a nesting bird survey and the initiation of construction adequate? What is the scientific basis for setting this as an appropriate time span? Shouldn't a one week time span be utilized as birds can establish a new nest within that period?
- How was the distance of 50 feet established as a "no-disturbance buffer" around Patterson Slough? What scientific studies/evidence provided the basis for this distance? Did this distance

adequately take into account the types of noise that would occur adjacent to Patterson Slough? Given the decibel levels of proposed construction equipment , why wouldn't a distance of at least 100 feet be more appropriate? A Caltrans paper, "The Effects of Highway Noise on Birds," dated September 2007, and prepared by Robert J. Dooling and Arthur N. Popper, provide a table that identifies the typical noise emission level at 50 feet from the source (dBA)of a variety of construction equipment. A scraper is reported to have an emission of 89 dBA, a truck 85 dBA, a dozer 85 dBA, and a grader 85 dBA. The EIR provides a table (4.12-1) of typical noise levels. The equivalent on the table provided would be louder than a hair dryer at 3 feet, louder than a garbage disposal and blender at 3 feet, and almost equivalent to a motorcycle at 20 feet. Clearly a buffer of 50 feet is inadequate to protect nesting and foraging birds.

- Why does this section begin with the establishment of a 50 foot "no-disturbance" buffer for Patterson Slough and end with "4. Under no circumstances shall construction activities be allowed within 25 feet of Patterson Slough."? The "no-disturbance" buffer should not be subject to negotiation.
- Why wouldn't it be equally important to protect "foraging" habitat during the period of avian migration? Condition 2 would allow excavation/grading within 25 feet of Patterson Slough after the month of August and before the month of January – a time when migratory birds are passing through the area. Isn't protection of foraging habitat for migratory birds also important?
- Why wasn't a "no-disturbance" buffer zone established for the regionally significant willow habitat immediately adjacent to Area C? 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)

Mitigation Measure BIO-1c: Restrictions on borrow site use:

- On what scientific basis was the 300-foot buffer from Patterson Slough established? The USFWS often requires buffers ranging from 600-700 feet.
- Why hasn't a similar buffer been established for the willow grove that exists within Coyote Hills?

We strongly urge the project proponent to abandon plans to excavate soils from the future open space area.

Mitigation Measure BIO-1e: Burrowing Owl habitat replacement (if required):

It appears habitat management items 1-3 will only be possible within the 136 acre open space easement area if massive excavation of earth occurs west of Ardenwood Boulevard? Within the excavation zone we question whether items 1-3 could be accomplished given the removal of up to 4 feet of earth.

- What funding mechanism will be provided to pay for maintenance and monitoring of onsite burrowing owl habitat?

Significance after Mitigation: Less than Signicant: The EIR has provided absolutely no scientific rationale upon which it has established buffer criteria, has not identified regionally important nesting/foraging/roosting habitat within Coyote Hills immediately adjacent to the project site as a sensitive area, has provided absolutely no scientific rationale to inform the conclusion that the adverse impacts of the project have been reduced to a level that is less than significant.

- On what basis has this determination been made?

Measures to maintain suitable raptor foraging habitat within the open space have not been identified. Certainly with the massive excavation proposed for the lands west of Ardenwood Boulevard, including the excavation of up to 4 feet of earth there will be significant adverse impacts to invertebrates, rodents, small mammals, reptiles, and amphibians that form the prey base of foraging raptors. The only portion of the site that will remain untouched is the 136 open space easement area.

- Can the remaining 136 acres support the existing population of raptors that utilize the site? If yes, how was this determined?

Mitigation Measure BIO-3: 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.

Impact BIO-6: The project could result in loss of riparian or sensitive plant community due to altered site hydrology. (Significant). Mitigation Measure BIO-6: Implement a Patterson Slough and Wetland Plan. The EIR is correct to identify the impact of the proposed massive excavation of soils as a significant adverse impact. Maintaining the hydrologic regime is critical, but equally important and not addressed at all is the question of the impact of removing up to 4 feet of soil on the restoration of appropriate target vegetation after the top soil is removed. The EIR is flawed in that it does not address this important ecological issue.

- What is the condition of the subsoil?
- Is it capable of supporting grassland habitat and wetland habitat?
- Will it provide suitable burrow habitat for small mammals?
- How long will it take for the invertebrate populations small mammal depend upon to become established?
- In the absence of this information how can decision makers and the public reach a determination that even with suitable mitigation measures for maintaining existing wetlands (not that we are stating the mitigation measures are adequate), that the adverse impacts have been reduced to a level that is less than significant?

Regarding the proposed mitigation measures:

- What funding mechanism and what amount of funding will be provided to ensure mitigation is successfully implemented and completed?
- What does "raptor foraging habitat be maintained in the open space" mean specifically? Does this mean only in the 136 acre open space easement? Does this mean within the areas where massive excavation occurs it is required that raptor foraging habitat is restored? Please elaborate.
- The baseline data must extend to areas that are not within the project area but immediately adjacent. If it does not, a rationale as to why this is unnecessary should be provided.
- Timeframes must be established for obtaining proper contours. How quickly after it has been determined that adequate hydrologic conditions are being maintained would contingency measures be implemented? They should be implemented as soon as the problem is identified.
- What if these problems can only be corrected through the import of fill? Is this a tool that will be within an adaptive management toolbox?
- Monitoring should occur for a 10-year period to capture a range of rainfall data.
- Any required restoration activities should only occur after approval has been obtained from the Regional Water Quality Control Board (RWQCB), the U.S. Army Corps of Engineers (Corps), CDFG, and USFWS.
- Is the 30 feet monitoring distance adequate for oaks or should oaks at a greater distance from areas of disturbance be monitored? What is the scientific rationale for the 30 foot criteria?
- All monitoring, including monitoring of oaks should be extended to 10 years, longer if contingency measures are necessary (10 year period begins after the last contingency measure is implemented).
- Monitoring of planted species should be for a period of 10 years for trees, at least 5 years for herbaceous species.
- Monitoring for adequate erosion control should also occur. How will this large expanse of disturbed sediments be stabilized? Will there be one massive mud hole to the west of Ardenwood Boulevard?
- Disking is not the appropriate manner in which to manage the lands for raptors.
- 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 and in riparian areas a ten-year monitoring period. 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-7: Crandall Creek Jurisdictional Delineation, Provide Replacement wetlands at a 10:1 ratio. The project proponent should be required to monitor any areas of "temporary" disturbance to demonstrate there are not adverse impacts to wetlands and waters. Monitoring should be required as determined by the Corps and the RWQCB.

Mitigation Measure BIO-8a: Approval of landscaping plan and HOA provided information:

- How likely is it that this mitigation measure will be effective?
- Who will ensure the CC&Rs are enforced if the HOA fails to do so?
- Will the City intervene if this mitigation measure is not implemented and adhered to and who in the City will have the responsibility?

Mitigation Measure BIO-8b: Use of appropriate waste and recycling receptacles:

- As above, who has the responsibility of maintaining and servicing the receptacles and where does the funding come from?

Mitigation Measure BIO-8c: HOA provided information regarding urban-adapted wildlife species:

- This measure is strictly educational as written. Of what value is this measure without an enforcement component?

Mitigation Measure BIO-6:

- Who is responsible for detecting and controlling the spread of non-native and invasive plant species resulting from the use of soil borrow sites?

Impact BIO-10: Nighttime lighting associated with the residential development could disturb resting and foraging wildlife behavior and could potentially alter sensitive breeding cycles and nesting behavior of sensitive wildlife species. (Significant)

Not mentioned at all with respect to this adverse impact is the location of the church sites to the west of Ardenwood Boulvard closer to Patterson Slough. Please refer to the discussion of the adverse impacts of light pollution on wildlife species under **Mitigation Measure AES-7A**.

- The EIR proposes incorporation of light spillover mitigation measures into the HOA CC & R's, what mechanisms would be utilized to enforce adherence to the proposed mitigation measures?

Mitigation Measure BIO-10a: Develop a lighting plan to minimize spillover: Any plan to minimize light spillover must be reflect scientific evidence that demonstrates the measures are effective, the proposed boundaries will minimize adverse impacts to nocturnal wildlife, and that the measures adopted will be enforceable and enforced. The party(ies) responsible for enforcement must be identified and there should be consequences for failure to enforce the mitigation measures. Additionally, the same requirements should apply to the churches if they are located to the west of Ardenwood Boulevard.

Mitigaton Measure BIO-10b: Borrow site lighting restrictions. We strongly concur night lighting should be prohibited if the massive excavation of soils occurs in the open space area.

Mitigation Measure BIO-11a: Fencing design and maintenance to protect sensitive riparian habitats:

- Please provide specific information regarding the alignment of the proposed fencing.
- Will the fencing isolate open space areas to the east of Patterson Slough from the slough?
- Will the fencing isolate the Crandall Creek area from Patterson Slough?
- What impact will the fencing have on mammals that might inhabit the areas to the east of the slough? Will they be able to access the slough? Will this fencing not only prevent access to the slough by domestic pets, but also wildlife species?

- How effective is the fencing on preventing access by cats? In other words, does the efficacy of the fencing outweigh the disadvantages of fragmenting the open space habitat?
- If all developed areas are located to the east of Ardenwood Boulevard (including the churches) the artificial barrier of the four lanes of traffic on Ardenwood Boulevard might provide a sufficient obstacle/barrier that exclusion fencing might not be necessary?

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. The churches should be moved as well. There is no detailed description of the fencing proposed, it is impossible to determine from the information provided if wildlife impacts might arise from the fragmentation of habitat, therefore it cannot be demonstrated the impacts have been reduced to a level that is not significant.

Mitigation Measure BIO-11b: HOA supplied information. As with **Mitigation Measure BIO-8c** this measure is purely educational. There is no enforcement component. Supplying educational information does not ensure cats will not be allowed outdoors unattended or that dogs will be kept on leash near sensitive areas.

Studies demonstrate free-roaming domestic cats can have a significant adverse impact on populations of birds, small mammals, reptiles, and amphibians. Ground nesting birds are particularly vulnerable (e.g. waterfowl, shorebirds, etc.). Cat predation in conjunction with habitat loss can greatly magnify negative impacts on bird populations (e.g. http://www.abcbirds.org/cats/factsheets/predation.pdf, "Domestic Cat Predation on Birds and Other Wildlife." or Gay, Frank 1999. "Reducing Cat Predation on Wildlife." Outdoor California.).

Human disturbance of nesting birds can result in abandonment of nests and chicks, resulting in decreased reproductive success (Rodgers and Smith 1995, Carney and Sydeman 1999, USFWS 2001, Ruhlen and others 2003, Lafferty and others 2006). Disturbance can also lead to decreased abundance or behavioral alteration of non-breeding birds (Burger and Gochfeld 1991, Schummer and Eddleman 2000, Lafferty 2001, Burger and others 2004).

Signage has been demonstrated to be completely ineffectual in reducing trespass into areas supporting populations of sensitive or listed species. Recent studies by USGS scientist Kevin Lafferty at the Coal Oil Point U.S. Reserve in Santa Barbara (*2005 Final Report on the Western Snowy Plovers; Restoration of breeding by snowy plovers following protection from disturbance, Biodiversity and Conservation 92006) 15:2217-2230)* concerning human impacts to shorebirds on a beach showed that after a year of very adequate signage there was no improvement in the public's adherence to staying out of restricted areas. However, once a steward/docent program was in place on the beach, the public's compliance with restricted zones increased exponentially.

While a docent program may not be possible, monitoring of public compliance with signage and an enforcement program must be implemented.

Refuge staff have extensive experience with the issue of people along levee trails failing to comply with leash requirements. At Bair Island signage was posted regarding leash laws and the consequences should dog walkers fail to comply. A required % of compliance was posted, in addition volunteers provided information, consequences of non-compliance was advertised – no dogs allowed, and non-compliance was monitored. In the end, even with an extension of the monitoring period, the public

failed to comply with the leash requirement, and dog walking may be prohibited once trails are reopened to the public (currently shut down for restoration work).

Unless some regular enforcement program is funded and implemented on a regular and frequent basis, it should not be assumed the significant adverse impacts of domestic pets can be reduced to a level that is less than significant.

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

- How will road kill of wildlife be avoided with the increased construction traffic levels that will be created by the massive excavation project?
- 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?

Furthermore, the 276-acre "donation" (316 acres minus the 40 acres being donated to the City) is not listed as a required mitigation measure. If there is any uncertainty as to who will accept the property and if they will accept and maintain the property as required by these mitigation requirements, this "donation" must be listed as a mitigation measure.

4.5 Cultural Resources:

Mitigation Measure CUL-1a: Require Protection measures for Cultural Resources within the Excavation Contract and Develop an Archaeological and Cultural Monitoring Plan.

- We completely support the development of a cultural resources protection plan but wonder why avoidance of impacts to discovered resources wouldn't be considered as a component of this plan?
- Why wouldn't avoidance of additional disturbance of any previously undocumented cultural resources be a viable mitigation measure if the discovery is located in the open space area?

4.6 Emergency Services:

- What would the estimated response times be for emergency responders to the arrowhead?
- Is this estimated response time consistent with the General Plan goals of 6 minutes and 40 seconds for 90% of the calls for the Fremont Fire Department?

Impact ES-1: Increased number of residents generated by the project would increase the number of calls for police services; however the Service and Safety staffing measure deployed by the Fremont Police Department (FPD) will ensure adequate response times for police services to the project area. (Less than Significant)

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.

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 the inclusion of two-story 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.

- Have the mitigation measures proposed in the EIR been subjected to additional peer review? What were the conclusions of that review?
- 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? Impact GEO-3: Implementation of the project could expose people and developments to adverse effects from seismic related ground failure including liquefaction and lateral spreading. (Significant). According to the EIR the "northern portion of the project area is most susceptible, and there are "sandy deposits scattered throughout the project area which could have high risk of liquefaction."
- We assume this includes portions of the arrowhead? The area of the project site that would be the most difficult to reach in the event of an emergency. An area that is normally accessible only by bridge.
- Is this bridge capable of withstanding a seismic event and of what magnitude?
- Does the grouting technique adequately remediate liquefaction risk of the numerous sand layers?
- Is grouting to a depth of 20 feet sufficient? Who has made the determination that this is an adequate depth and based upon what engineering/scientific documentation?
- 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.
- Will the current landowner be responsible for funding, implementing, and completing the proposed mitigation measures?
- Will the current landowner 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:

Fremont General Plan: Policy HS 6.2.1: Require that hazardous materials be managed in a manner that minimizes risk to workers and residents.

The proposed method of remediating the soils through use of a microbial slurry that is intended to accelerate degradation of toxaphene could have environmental consequences that are as detrimental and toxic as toxaphene itself as discussed under the earlier discussion of the **Project Description – Toxic Remediation.**

- Are all degradation products of toxaphene being monitored and can and will those products be remediated as well? If not, good grief why not? If not, the remediation method should be halted immediately and the Environmental Protection Agency (EPA), the RWQCB, and the Department of Toxic Substance Control (DTSC) should be consulted immediately.
- Can these harmful degradation products be transported off-site through stormwater or groundwater? While these products may be occurring on-site due to natural "weathering" of toxaphene, the proposed remediation method would accelerate and increase the levels of these toxic degradation products.
- How will microbial slurry be confined to project site? Could the microbes in the slurry be transported off-site into waters and adjacent wetlands?
- What measures are being implemented to ensure this does not happen?
- What impacts could an increased concentration of these microbes have on receiving waters and wetlands?

We recommend the City require the landowner to implement **Alternative 1a – Excavation and Off-Site Disposal to a Permitted Facility.** Unless the landowner is already monitoring for the degradation products of toxaphene and unless the degradation products can themselves be broken down into products that are not toxic, the method presents too large an environmental risk. Unless all the questions raised above can be resolved the possibility of increased mobility of toxic breakdown products presents too great a risk to receiving waters.

We strongly oppose Alternative 1c – Excavation and Placement in Open Space Areas with a Vegetative Cover and Alternative 1d – Excavation and Placement in Open Space with a Soil Cap. For all of the reasons stated above neither of these proposals adequately mitigate the deleterious impacts of toxaphene. They merely bury the problem. Weathering of toxaphene and the production of toxic degradation products would still continue to adversely impact on-site and off-site receiving waters and bio-receptors.

One other issue that does not appear to be addressed is how will the use of herbicides, pesticides, and fertilizers be regulated within the developed areas? Who will provide the oversight? What methods of enforcement will be employed?

4.9 Hydrology – 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 water quality basins to address water quality issues. Will bioaccumulation within the swale areas immediately pose any health risks to wildlife or humans utilizing the "nature park"?
- 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

Sea level rise should be given serious consideration as the proposed development could be impacted within a realistic life-time for the housing units.

- What impact could sea level rise have on the proposed development – would raising the levee along Crandall Creek be an adequate mitigation measure or would other mitigation measures be necessary to protect the developed areas from flooding during a realistic project life-time of 100 years? 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? What impacts would raising the levee along Crandall Creek have on emergency access routes?
- Will the invert elevation of the outfall into Crandall Creek downstream of Ardenwood Boulevard be at an elevation that would not be impacted by projections of sea level rise?

Mitigation Measure HYDRO-2: Prepare and implement an erosion control plan and a Storm Water Pollution Prevention Plan (SWPPP) incorporating Stormwater Best Management Practices. These measures should include a cut-off date for installation of the erosion control plan and on-going monitoring of the measures throughout the rainy season. The plan should also provide a funding mechanism to ensure adequate funds are available to implement contingency measures immediately should problems arise.

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 indentified 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 developed areas (i.e. the churches) 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?
- Since the "donation" of 316 acres of land is not a mitigation requirement of the EIR, how will the City ensure a transfer of land to EBRPD or the Refuge occurs?

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.

Fremont General Plan – If review of Policies 8.1.5 leads the City reason Coyote Hills Regional Park, because of the "relative remoteness" within the park and the associated recreational activities in comparison to a neighborhood park should have an allowable noise standard that is similar to "other noise sensitive uses", i.e. 60 L_{dn}, then why shouldn't the construction buffers proximate to the park be much larger than the 281 feet proposed? Why should 76 dBA be an acceptable noise criterion?

Impact NOI-5: Construction activities on the open space portion of the project area would generate a temporary increase in noise at Coyote Hills Regional Park (Significant), and Mitigation Measure NOI-5 – Construction Noise Reduction Measures.

- Who would be monitoring noise levels, who would assess the impacts on the sensitive habitat and species, how often, and what happens is the noise levels cannot be minimized below the desired levels?

As stated about the boundary of 281 feet is inadequate. No construction activity should occur in Area C at all given the regionally important nesting, roosting, and foraging habitat that exists immediately adjacent to the project site.

4.12 Parks and Recreation: Project Consistency: The project would include the dedication of 8 acres of public parkland to Fremont to comply with the City's parkland dedication…" Thirty-two acres will also be donated to the City, and approximately 276 acres will be donated to either (we strongly urge that one of these entities be selected) EBRPD or the Refuge. All lands to be donated must be permanently protected from development through a conservation easement.

4.15 Public Utilities and Energy:

- The estimate of water usage provided in the EIR is dated, and reflects the usage during the years 2006-7. When will an updated figure be available? Can the Alameda County Water District (ACWD) accurately determine whether sufficient water is available to supply the project in the absence of updated information?
- The EIR states ACWD may not be able to recover 100% of its contracted capacity from Semitropic storage under critical dry year conditions. Will sufficient water supplies be available to Fremont residents in critical dry years if full Semitropic contractual capacity cannot be delivered?
- The EIR states under critical dry year conditions ACWD's supplies would not be sufficient to meet the future demands in the service area with or without the project. However, water delivery problems would certainly be exacerbated by the construction of this project.
- When will the Integrated Resources Plan and Urban Water Management Plan be available?
- What form of mitigation might be required?
- What mitigation measures could be imposed that will translate into reliable additional water supplies?
- Should the City make any decision regarding the feasibility of this project before this information is available? Receipt of this information after the public comment period has closed precludes meaningful public comment.

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 242 students that will be generated by the proposed project.

Table 4.16-2 Fremont Unified School District Schools in the Project Area is of little value as it does not include information regarding the student capacity each of the schools listed can handle.

During the previous EIR it was 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.

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. This EIR provides no mitigation for the additional burden that would be placed on the school district. This is an adverse impact to the community, FUSD, and the long-term sustainability of any development project that should be constructed on the site. Parents purchase homes on the ability to provide their children access to good neighborhood schools.

4.16 Traffic and Circulation:

- How will the borrow operation impact access to Patterson Ranch and park entry traffic? Did the EIR include estimates of the impacts existing, and currently vacant office space in Ardenwood Technology Park been included in the estimates of existing traffic conditions?

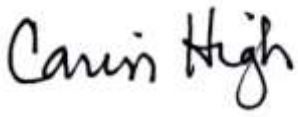
5.0 Cumulative Impacts and Climate Change: This project is not sustainable from a climate change perspective. There is limited public transit in the area and no shopping, banking, etc. within easy walking distance. Parents will need to drive their children to school. Members of the proposed religious facilities will need to drive to the area.

6.0 Alternatives to the Project – Some of the impact assessments of the project alternatives are flawed. For example, Alternative 2 – the No Project Alternative refers to polluted runoff generated to agricultural land uses, however, the remaining farms in the Fremont area – Perry Farms and a farm located on Walnut Avenue, do not use pesticides. Perry Farms is completely organic, and consumers prefer and increasingly demand organic food products. Therefore we question this assumption. Under Alternative 3 – the Reduced Development Alternative, the EIR misrepresents the impacts of the developed restricted to the east of Ardenwood Boulevard by stating the adverse impacts of nuisance species and human disturbance would be similar, even though all development would be restricted to the east and separated from the open space area by a four lane roadway.

While we believe the removal of the active sports park represents a tremendous leap forward in the planning process, we have identified serious, substantive and alarming issues that must be addressed and in our opinion removed from the project proposal. We also believe as we stated earlier that the development proposal itself is far from suitable for the lands to the east of Ardenwood Boulevard due to the many serious environmental constraints and concerns for public safety. We hope the City will continue to press for a plan that addresses the issues we have raised. The area already has some of the highest housing densities in the City - any future plan must not further burden the surrounding community, school district, or the ability of the City to serve the existing residents of Fremont.

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,



Carin High
CCCR Vice-Chair