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City of Newark City Council
37101 Newark Boulevard
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December 11, 2025

Re: December 11 Public Hearing Agenda Item E-1 Mowry Village Project and Proposed Resolutions Recommending Certification of the Final Environmental Impact Review (FEIR) Document, and Proposed Resolutions Recommending Amendments and Changes to the General Plan and Areas 3 & 4 Specific Plan and Approval of the Proposed Mowry Village Project

Dear Mayor Hannon, City Council Members, and Mr. Interiano,

These comments are submitted on behalf of the Citizens Committee to Complete the Refuge (CCCR) regarding the proposed Planning Commission recommendations to the Newark City Council for the Mowry Village Project (Project) and Environmental Impact Report (EIR). We thank you for the opportunity to provide comment. All of the comments submitted by CCCR, both orally and in writing, including those of its consultant, Richard Grassetti of Grassetti Environmental Consulting, attorney Jason Flanders of Aqua Terra Aeris Law Group (ATA), and the joint comment letter submitted by eleven environmental groups, are hereby incorporated by reference as if set forth in full in this letter, and are re-raised as substantive and procedural reasons why the City should not approve this project.

The project fails to comply with the requirements of the California Environmental Quality Act (CEQA) to inform decision-makers and the public about the potential significant environmental effects of the activities proposed, or identify meaningful, or enforceable ways that environmental damage can be avoided or mitigated. But even beyond consideration of deficiencies of the CEQA document, the proposed project does not make sense from a planning and community perspective in an era of rising sea levels.

PROJECT STUDY AREA MAP NEEDS TO BE REVISED:

The Project Study Area Map(s) included in the EIR should be revised to include the proposed first responder secondary Emergency Vehicle Access route along the private Cargill crystallizer levee, out to Mowry Avenue. The map should also be revised to include the emergency vehicle access route that follows the gravel road along the western side of the Union Pacific railroad tracks and continues through the Sanctuary West portion of Area 4.

Emergency Vehicle Access

- 2 EVAs routes approved by Alameda Fire Dept. and 3rd EVA secured through Cargill



Slide from staff presentation to the Newark Planning Commission on 11-13-25.

BASELINE CONDITIONS ARE INADEQUATELY DESCRIBED IN THE EIR:

The EIR fails to adequately describe baseline conditions of the project site and areas immediately adjacent that may be subject to direct and indirect impacts during and after project construction. (E.g., *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, (1994) 27 Cal.App.4th 713; CEQA Guidelines § 15125(a).) In particular, the EIR fails to provide information regarding the wetlands immediately adjacent to the project boundary. The EIR also fails to update information regarding the documented occurrence of the federal and state listed endangered salt marsh harvest mouse (SMHM) within SubArea D, and concluded without providing substantive information, that additional surveys for SMHM within SubArea D were not necessary. The EIR also improperly defers analysis of impacts to waters of the U.S. (WOTUS) and waters of the State (WOTS).



Figure from Areas 3 & 4 Specific Plan EIR showing the location of SubArea D and the Mowry Village Project

Failure to Provide Information Regarding the Location and Areal Extent of Wetlands Immediately Adjacent to the Proposed Project

The DEIR and FEIR fail to provide adequate information to assess the potential for direct and indirect impacts to wetlands habitat that have long been documented as occurring within SubArea D. Figure 4 from the Areas 3 & 4 Specific Plan EIR, “Newark Areas 3 & 4 – Specific Plan DEIR Biological Resources Section: Habitat Map,” dated February 2009, depicted the presence of potential waters of the U.S. (WOTUS) and waters of the state (WOTS) immediately adjacent to the fence line of the proposed project boundaries [Attachment 1]. The jurisdictional delineation for the Specific Plan was conducted for the Areas 3 & 4 Specific Plan in 2007.

The presence of wetlands immediately adjacent to the Mowry Village Project fence line can be seen in the photo below. In this January 2024 photo, the dark wetted areas are perennial pickleweed-dominated (*Salicornia depressa*) diked tidal saltmarsh, listed as an obligate wetland plant (OBL) on the National Wetland Plant List¹, meaning the species always occurs in wetlands. Note the light tan patches are *Phragmites australis* which has been listed as a facultative wetland plant (FACW) on the National Wetland Plant List, meaning, “a species that is usually found in wetlands but can also occur in non-wetland habitats,” with FACW plants “occurring in wetlands approximately 67% to 99% of the time.” The gray areas are primarily salt grass (*Distichlis spicata*) found throughout coastal salt marshes of California also listed as a facultative wetland plant (FACW). These plants indicate both the wetland nature of the site as well as the salinity of the habitat.

¹ National Wetland Plant List. Arid West.

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fnwpl.sec.usace.army.mil%2Fstatic%2Freports%2F2022_NWPL_AW.xlsx&wdOrigin=BROWSELINK



Photo taken by San Francisco Bay Baykeeper 1-11-2024 Note the presence of wetlands right up to the existing fence line.

- a. The DEIR states a wetlands jurisdictional determination from the U.S. Army Corps of Engineers (Corps) was received, dated January 25, 2023. Has a jurisdictional determination been received from the San Francisco Bay Regional Water Quality Control Board (RWQCB) for the extent of waters and wetlands that are not regulated by the Corps, but would be regulated as waters of the state (WOTS) for the proposed project?

In a letter dated October 14, 2025, the RWQCB stated, “The DEIR lacks sufficient information to determine the full extent of Waters of the State that may be present at the project site,” in part because the site visits were not conducted during the right time of year, either at the end of the wet season or very early in the dry season. The RWQCB also refuted the statement that wetland plants would be visible all year round stating, “In the Bay Area, it is common for wetland plants to be visually dominant at the end of the wet season, while upland plants become visually dominant during the dry season.” This is certainly true for season wetland habitats within the Bay Area, where it may be challenging to perform forensic botany late in the dry season, by which time defining species characteristics may no longer be visible.

The FEIR is inconsistent with respect to the identification and impact analysis of the project on of “off-site” wetlands. As an example, Topical Response 4 states:

“...An analysis of impacts to state and federally protected wetlands was provided on page 3-85 through 3-86 of the Draft EIR which determined that implementation of the proposed project would have a less than significant impact to wetlands. As identified in the Draft EIR, U.S. Army

Corps of Engineers (USACE) provided a jurisdictional determination that identified that the Constructed Storm Drain, Storm Water Detention Basin 1, and Storm Water Detention Basin 2 are not jurisdictional resources. However, the jurisdictional determination identified the Alameda County Flood Control and Water Conservation District (ACFC&WCD) Line D channel as a jurisdictional aquatic resource, specifically Other Waters with In-stream Wetlands." [emphasis added]

And:

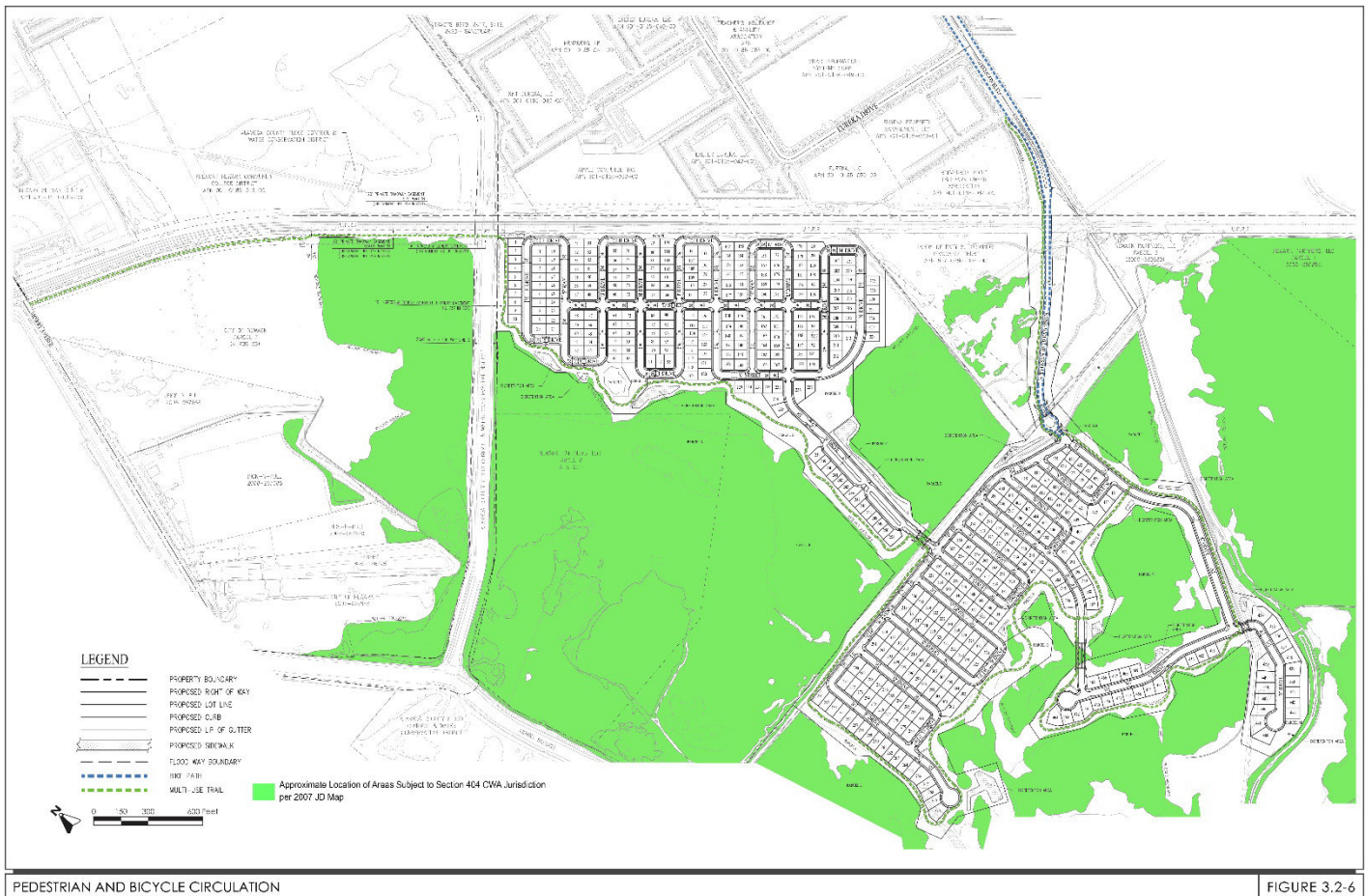
"On-site construction activities of the proposed project would have no impact on this jurisdictional resource as it is located off-site. However, extension of the potable and non-potable water mains from the southwest corner of the Sanctuary West Development located to the east of the project site would occur within the vicinity of ACFC&WCD Line D. Impacts to ACFC&WCD Line D from off-site construction would be avoided through the use of specific construction methods to construct the extension. Potable and non-potable water mains would be extended approximately 900 linear feet from the southwest corner of the Sanctuary West development, within the old Addition road alignment adjacent and parallel to ACFC&WCD Line D channel via open trench. The potable and non-potable water mains would then daylight south of the ACFC&WCD Line D channel to be attached and suspended to the newly constructed bridge that spans the ACFC&WCD Line D channel. The extension of the potable and non-potable water mains would be constructed via an open trench and attached to the constructed bridge that spans the ACFC&WCD Line D channel which would ensure that impacts to ACFC&WCD Line D channel are avoided. On-site and off-site construction activities would avoid all nearby jurisdictional aquatic features and would not result in substantial adverse effects on state or federally protected wetlands." [emphasis added]

- b. The analysis of impacts to WOTUS and WOTS was just a mere two pages – and the impacts analyzed were confined to consideration of the “extension of the potable and non-potable water mains that would in the vicinity of Alameda County Flood Control and Water Conservation District (ACFC&WCD) Line D. There is no analysis of potential construction impacts and Operations & Maintenance (O&M) impacts to the wetlands that are immediately adjacent to the project boundary.

The lack of information regarding the location and extent of immediately adjacent “off-site” wetlands obstructs the public’s ability to determine potential direct and indirect impacts of the project on waters and wetlands, and whether those impacts could be avoided or mitigated.

- c. Has a Corps and RWQCB jurisdictional delineation been confirmed for the areas immediately adjacent to the proposed project boundaries? The last jurisdictional delineation we are aware

of dates back to 2007 for the Areas 3 & 4 Specific Plan, and that delineation would have expired.

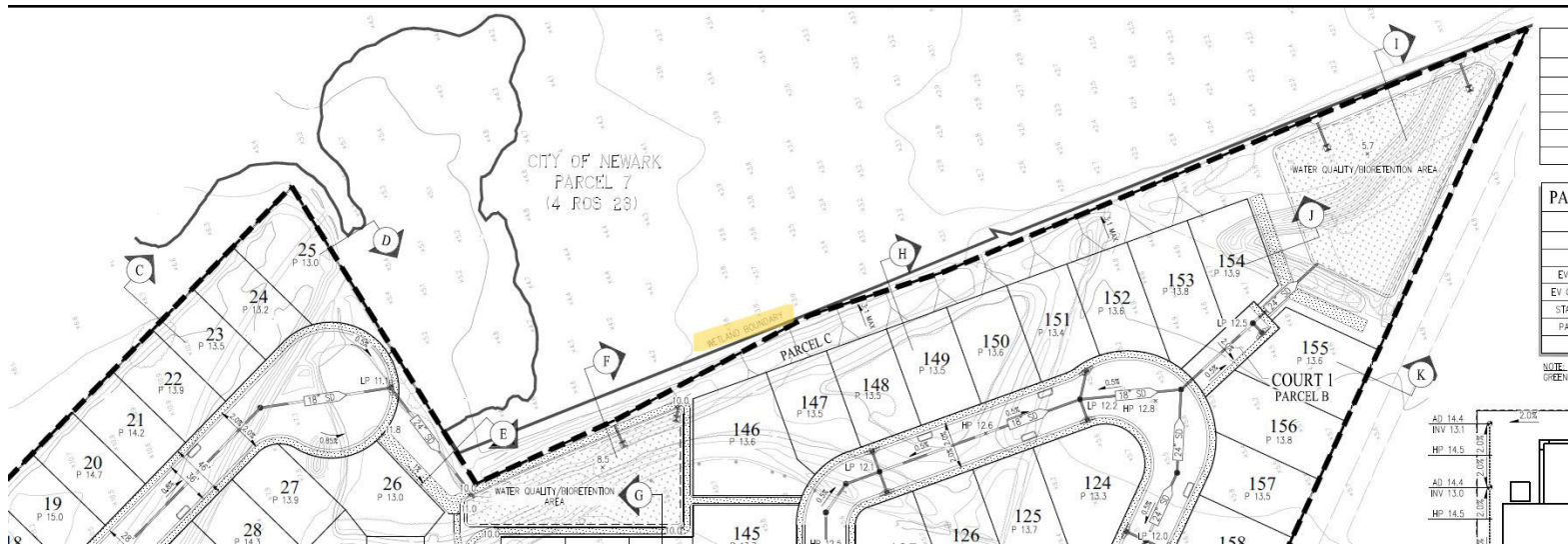


2007 Map depicting approximate location of Corps Section 404 Clean Water Act jurisdiction in green
[Attachment 2]

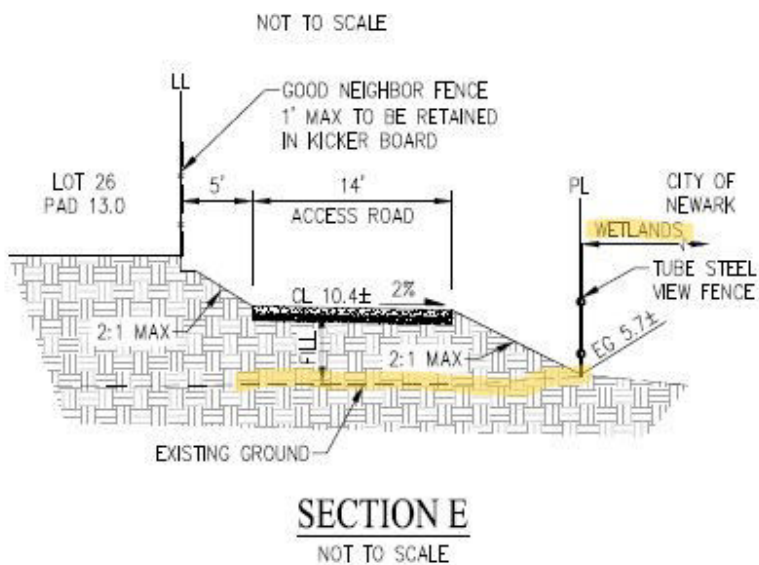
- d. If so, that should be included in the information provided in the EIR. If not, then where is the evidence to support the conclusion that there are no impacts to “off-site” wetlands, or that potential impacts would be “less than significant”?

The FEIR does mention the presence of “salt marsh habitat adjacent to the stormwater detention basins” under a discussion about the salt marsh harvest mouse, but provides no details.

The FEIR fails to identify the boundary and proximity of wetlands that are immediately adjacent to the project boundary. For example, see Sheet TM-4 “Mowry Village Tract 8517 Preliminary Grading & Drainage Vesting Tentative Map.” [Attachment 3] The figure below is a portion of that map. The text highlighted in yellow says “wetland boundary.” The actual location of the wetland boundary is unclear in the figure. The text is located above a straight line that stretches from the right-angle bend of the property boundary to the tip of the triangle at the southwestern tip of the project boundary – is the straight line meant to demark the boundary of wetlands adjacent to the project site? If so, wetlands rarely follow a straight line, but instead tend to follow ground elevation contour lines.



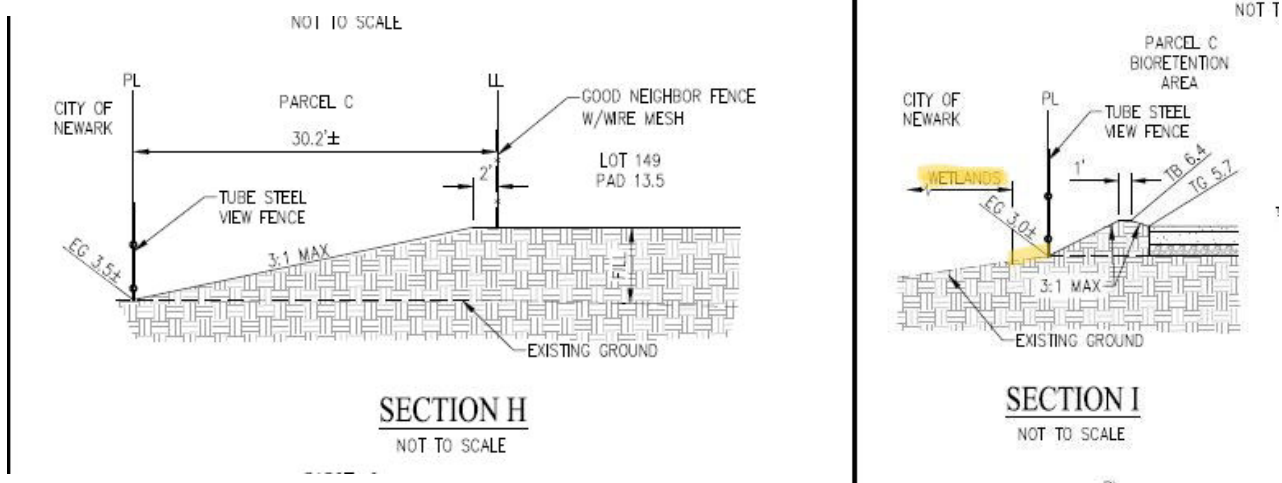
Where is the wetlands boundary with respect to the project boundary and what is the actual distance between existing wetlands that are immediately adjacent to the proposed project boundary and the proposed toe of slope/tube steel view fence?



- Cross-section E – The wetland boundary appears to be in the same location as the proposed “tube steel view fence” and the “toe of slope”? What impacts will occur to wetlands at this location?

The section shows a dashed line for the existing grade, a slope below an access road, with the toe of the slope occurring at the wetlands boundary, where a “tube steel view fence” will be installed, in other words according to the figure, there is 0’ buffer between impacts of the proposed project and wetlands. How is it possible to have not wetlands impacts when construction is planned up to existing wetlands?

- Cross-section H doesn't mention the word wetlands, but it would seem from the location of the cross-section that the toe of the fill slope would be very close to the wetlands boundary, and neither potential construction or O&M impacts are mentioned, let alone analyzed.



- The same concerns exist for cross-section I. Wetlands are right up to the existing fence line at this cross-section location, yet the cross-section indicates there is some undefined (the cross-section is not to scale) distance between the proposed project and the wetlands boundary.



Photo taken by San Francisco Bay Baykeeper 1-11-2024. Standing water and the presence of wetlands right up to the existing fence line are visible.

MM BIO-1: Standard Construction BMPs, does include language such as “The preferred distance is 100 feet from any wetlands or marsh habitats” for the storage of construction material and fill, and that “A silt fence shall be installed to collect any discharge, and adequate materials shall be available for spill clean-up and during storm events,” but this is substantively different from identifying where wetlands and waters are located in relation to proposed project impacts, analyzing the types of impacts that could occur, assessing whether the impacts could be avoided or reduced, providing

approximations of the areal extent and permanence of those impacts, and providing potential mitigation measures to address the impacts to wetlands and waters.

- Similarly Impact BIO-3: Alt 5 states:

“...On-site and off-site construction activities would avoid all nearby jurisdictional aquatic features and would not result in substantial adverse effects on state or federally protected wetlands. Therefore, the potential impacts to wetlands are considered less than significant.” [emphasis added]

As stated earlier, what evidence has been provided to support this claim. Information fundamental to making such a determination is lacking. Any impacts should be disclosed so the public and decision-makers can review and comment on whether impacts to wetlands are truly “less than significant.”

- What does “would not result in substantial adverse effects” mean in this context, and who has made the determination whether an adverse effect is substantial or not? Does this mean fill could occur in wetlands? If fill occurs in wetlands, permits will be required from the Corps and the RWQCB.
- What specific mitigation measures will ensure the adjacent wetlands are protected during and post-construction (when maintenance activities are required) in areas where there is no apparent buffer zone between project elements and wetlands?
- What impacts would the use of concrete and any color staining of the concrete have on the water quality of the adjacent wetlands and the species that live in these sensitive habitats? What mitigation measures are proposed to reduce these impacts?
- What impacts would the use of concrete have on green-house gas emissions released through the construction of the project? What mitigation measures are proposed to reduce these impacts?
- What impacts will project fencing have on the movement of wildlife during and after project construction? Will the fencing be a source of entrapment?

Individually and collectively, these errors and omissions are fatal to the adequacy of the EIR. The California legislature has declared that “[t]he remaining wetlands of this state are of increasingly critical economic, aesthetic, and scientific value to the people of California” (Pub. Resources Code 5811(a)), and that “[i]t is essential that California protect its last remaining wetlands and restore wetlands to achieve long-term gains for climate mitigation and resilience, flood risk reduction, clean water, biodiversity conservation, and recreation” (Water Code § 16200(j)). Recent comments from the Regional Water Quality Control Board echo these concerns. The failure to adequately investigate and disclose the extent of adjacent wetlands precludes “an understanding of the significant effects of the proposed project and its alternatives.” (See CEQA Guidelines § 15125(a).)

Baseline for the federal and state listed endangered salt marsh harvest mouse (SMHM) is inadequate.

In July 2024, CCCR sent a letter to the City of Newark [Attachment 4] regarding updated information we had received through a Freedom of Information Act (FOIA) request, regarding a 2019 documented occurrence of SMHM within a portion of SubArea D. Both CCCR and the California Department of Fish and Wildlife (CDFW) urged that additional surveys for the mouse be conducted within the entirety of Subarea D to ensure that no “take” of the mouse would occur as a result of project implementation both during and after project construction.

The EIR and Appendix D (Biological Resources) note the species has been reported from areas south of Alameda County Flood Control and Water Conservation District (ACFC&WCD) Line D, but fails to report that the species has been detected within Subarea D. This omission results in a failure to identify, analyze, avoid, minimize and mitigate potential significant and adverse impacts of the proposed project on a state and federal listed species.

FEIR response to comments 2-221 – CCCR3-3 states:

“As indicated in the comment from CCCR, the BRTR acknowledges that the southern tip of the proposed project site that contains an auto wrecking yard and stormwater detention basins is located adjacent to salt marsh habitat that is suitable for use by the SMHM which is within Sub Area D of the Areas 3&4 Specific Plan area but outside of the proposed project site. The BRTR concluded that no potential adverse impacts to SMHM would result from the proposed project as the proposed project site does not provide suitable habitat for this species.”

[emphasis added] [BRTR – *Biological Resource Technical Report prepared by Helix Environmental Planning, Inc in 2022*]

The FEIR acknowledges the presence of suitable habitat for the SMHM immediately adjacent to the project site, but fails to analyze the potential impact of project construction and subsequent O&M activities on SMHM that may occur in this suitable habitat. The Google Earth image and photos below, demonstrates the connectivity between the salt marsh habitat where the SMHM was trapped and salt marsh habitat on other portions of SubArea D.



Pickleweed (Salicornia depressa) and salt grass (Distichlis spicata) represent suitable habitat of the federal and state listed endangered salt marsh harvest mouse.



Salt grass (Distichlis spicata), seen in the foreground, and pickleweed (Salicornia depressa), seen in the background, are dominant species in the diked tidal saltmarsh surrounding the project site.



Pickleweed dominated diked tidal salt marsh extends to the eastern property boundary of the project site.



General location where SMHM was detected and salt marsh habitat occurs within this portion of SubArea D.

“The commenter urges the City to require protocol level survey be conducted for SMHM on all undeveloped portions of Sub Area D of the Areas 3&4 Specific Plan area.

SMHM are a fully protected species under the Fish & Game Code, and therefore, there are no protocol level surveys that can be conducted for this species. Additionally, as noted above, the proposed project would not result in direct or indirect impacts to SMHM, and no further study for this species is warranted. Additional surveys for SMHM are not warranted or required and the analysis provided in the Draft EIR is adequate for the purposes of CEQA. As the proposed project would not result in direct or indirect impacts to SMHM, no changes to the analysis or findings of the Draft EIR are warranted and no further response is required.”

The FEIR fails to provide evidence to support its conclusion that the proposed project would not result in direct or indirect impacts to SMHM. Suitable habitat exists immediately adjacent to the project boundary as acknowledge by the FEIR response to CCCR 3-3 cited earlier. The preliminary grading plans mentioned above, indicate that there could be construction activities immediately adjacent to suitable habitat.

The FEIR response to comment CCCR3-5 once again sidesteps issue by stating:

“The commenter states without inclusion of the 2019 study to provide accurate baseline information documenting SMHM habitat at the project site, the Draft EIR is inadequate as it fails to evaluate a critical project effect.

Baseline information regarding habitat types present on the proposed project site is provided in the BRTR prepared for the proposed project. As noted in Response to Comment CL-CCCR3-3 above, the BRTR identified that vegetation communities (habitat types) within the project site consist of developed land (auto salvage yard), ruderal/disturbed, constructed stormwater basins, a constructed storm drain, and a segment of the ACFW&WCD channel which are not suitable habitat for SMHM. The BRTR concluded that there is no potential for direct or indirect impacts to SMHM.

The findings of the 2019 study prepared by Dr. Gretchen Padgett-Flohr do not indicate that the habitat types present on the project site are suitable for SMHM, and this 2019 study does not present new significant information. As such, recirculation of the Draft EIR is not warranted.”

- CCCR notified the City of Newark regarding the 2019 study by Dr. Padgett-Flohr, to alert the City that there was updated information regarding the occurrence of the SMHM, a federal and state listed endangered species, north of Line D and within SubArea D.

- CCCR and CDFW urged that a survey for the SMHM occur within the rest of SubArea D to ensure that adequate baseline information for the SMHM would be provided, so an analysis of potential direct and indirect impacts could be made, and to ensure proper mitigation measures are in place to ensure “take” of the species does not occur during project construction or during subsequent O&M activities.
- Inclusion of the information from the 2019 study does in fact present “new significant information” that should be included in the EIR because the information provided in the DEIR (p.3-75) we now know to be out of date and incorrect:

“The nearest CNDDDB reported occurrence of salt marsh harvest mouse documents two individuals caught during a trapping survey approximately 1,500 feet south of the study area across the ACFC&WCD Line D. The record dates to 1985 and individuals were trapped on the edge of a salt marsh that abut a disked field (CFDW 2021). This record occurs within an expanse of salt marsh habitat.

The study area does not contain suitable habitat for salt marsh harvest mouse. The ruderal/developed habitat in the main portion of the study area is located over 2,000 feet north of suitable marsh habitat that could support this species and is separated from this habitat by the ACFC&WCD Line D which is a barrier to dispersal for salt marsh harvest mouse.” [emphasis added]

FEIR Response to comment CDFW-1:

“The commenter states they reviewed the 2019 study referenced in the comment letter by CCCR and reached out to Dr. Gretchen Flor who conducted the study. The commenter states Dr. Flor agrees that SMHM could be in other areas and also recommends the City conduct additional trappings. The commenter states that as SMHM are a fully protected species under the Fish and Game Code, SMHM may not be taken or possessed at any time, except for necessary scientific research and therefore, CDFW cannot issue an incidental take permit for SMHM and the proposed project must avoid impacts. The commenter states that CDFW supports additional trapping in this area for purposes of scientific research.”

- CDFW and Dr. Padgett-Flohr both agreed that SMHM could be in other areas [of SubArea D] and recommended that additional trapping be conducted.

The baseline information provided in the EIR is inadequate. The FEIR response states, “The BRTR concluded that due to lack of habitat for SMHM on the project site, no potential adverse impacts to SMHM would result from project implementation.” What is the basis for the conclusion that “no potential adverse impacts to SMHM would result from project implementation”?

Appendix D of the FEIR refers to the installation of a salt marsh harvest mouse exclusion fence:

“The exclusion fence has been installed along the southern portion of the Study Area that borders any potential habitat. The fence is a durable species barrier designed to exclude sensitive species from a site where they could be harmed. The fence is the same design and construction as that approved by the USFWS for previous projects on adjacent properties. The woven geotextile fence is backed by steel mesh for added strength and wind resistance. A 14-inch metal climbing barrier is buried five inches below grade. The fence extends three feet above the ground and is supported by five-foot wood stakes every six feet with four screws per stake and every other stake is cross-braced. The fence is tethered by a 0.25-inch yellow polymer rope and zip-ties to provide additional support.” [emphasis added]

- e. Has this exclusion fence already been installed as the wording suggests? If so, when? Implementing a mitigation measure or project component prior to CEQA review and approval would constitute illegal piecemealing. Were the proper permits Incidental Take Permits obtained from the USFWS and CDFW? Was a qualified biologist present to oversee the fence installation?

INADEQUATE IDENTIFICATION AND ANALYSIS OF IMPACTS TO BIOLOGICAL RESOURCES:

Failure to Analyze and Mitigate the Impacts of Nighttime Lighting on Wildlife

CCCR’s substantive concerns regarding the failure to analyze and mitigate the impacts of nighttime lighting on wildlife have not been adequately addressed in the FEIR response to comments. CCCR provided specific mitigation measures that could be incorporated to reduce the adverse impacts of the project on the environment. Instead of adopting any of the proposed mitigation measures, the FEIR states, “The analysis provided in the Draft EIR determined that compliance with General Plan policies and Municipal Code requirements would reduce any potential impacts related to light and glare and impacts would be less than significant.” [emphasis added] And:

“The proposed project would install lighting according to the City’s lighting standards and requirements as outlined in the Newark Municipal Code Section 174.17.060 and would include shielding to ensure light spillage does not occur on adjacent properties. Section 17.17.060©(4) establishes a performance threshold and requires that light level at the property line shall not exceed 0.3 foot-candles. Therefore, night lighting would not spill over to adjacent properties and would not be directed toward off-site, undisturbed wetland areas.” [emphasis added]

This statement alone does not ensure nighttime light trespass into adjacent wildlife habitat will not occur, and in fact exceeds the foot candle recommendations of the International Dark-Sky Association

in its Board Policy on the Application of the Lighting Principles document², dated June 2021 that was included in CCCR's DEIR comment letter:

"Lighting should not shine onto open space / riparian corridors / habitat. Light trespass should be limited to 0.1 foot-candle, which is less than the Newark Municipal code maximum of 0.3 foot-candle. For comparison, a night with a full moon has 0.01 footcandle and an overcast night has only 0.00001 foot-candle. 0.03 foot-candles is brighter than the moon, and the impacts of this level of light trespass to animals that are attracted to light, or use moonlight for navigation and seasonal rhythm internal clocks are harmful and unmitigable." [emphasis added]

The reliance on the Newark Municipal Code is inadequate. The DEIR notes that "The proposed project would provide exterior lighting throughout the site to illuminate the main entrances of the single-family homes, private streets, sidewalks, common space areas, and driveways for security and safety purposes. Additional lighting would be installed along the project frontage on Mowry Avenue (page 2-25)." The DEIR also notes "There is currently no street lighting located along the portion of Mowry Avenue in front of the project site and vehicle headlight glare is limited in the area, as this section of Mowry Avenue does not have a lot of vehicle traffic (page 3-5)." [emphasis added] The area west of the UPRR tracks is dark at night and supports hundreds of resident birds and thousands of migratory shorebirds and waterfowl in the winter. The housing development will include street lighting within the development and along Mowry Avenue. The EIR acknowledges that the project will introduce more lighting to the area but fails to analyze the potential significant and adverse impacts to wildlife at all. Instead, the EIR merely states the proposed lighting will be "designed in accordance with lighting and regulations and standards outlined under Newark Municipal Code Section 17.17.060 Lighting and Illumination."

There is no assessment of whether code section will adequately mitigate the adverse impacts of night light pollution.

As we have stated previously, mitigation measures may be incorporated into project plans, policies, or designs—but they nevertheless remain mitigation measures. CEQA Guidelines, § 15126.4(a)(2). CEQA Guidelines state:

The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other person which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project.

² International Dark Sky Association. 2021. "Board Policy on the Application of the Lighting Principles Adopted January 28, 2021. Amended June 24, 2021." <https://darksky.org/app/uploads/bsk-pdf-manager/2021/08/BOARD-policy-application-of-light-FINAL-June-24-2021.docx.pdf>

CEQA Guidelines, § 15126.4(a)(1)(A). Moreover, CEQA requires that mitigation measures are likely to be effective, but the provisions of the Newark Municipal Code do not adequately consider, nor mitigate the negative biological impacts of Artificial Light At Night (ALAN) that will be introduced next to natural habitat as a consequence of the proposed project. *See, Sierra Club v. Cty. Of San Diego*, 231 Cal.App.4th 1152, 1169 (2014). The EIR contains no information indicating that the Municipal Code standards would protect light sensitive species, and indeed the evidence indicates the contrary.

The biological impacts of ALAN on the natural environment are pervasive, proven, and unregulated by the city or state law. ALAN is emerging as a significant disruptor to ecosystems because it impairs biological function in individuals, disrupts daily and seasonal ecological function and decouples critical interactions within and among species³. Attraction to light by insects is a driver of the insect “apocalypse”⁴, has been shown to disrupt pollination even during the day. Disappearing insect populations are depleting food sources for fish and birds and unraveling our global food webs. Attraction to light is also affecting migration behavior in birds.⁵ Increasing scientific evidence also shows links between ALAN (indoor and outdoor) and many common human diseases as well as impacts to mental health.⁶ The blue light component of the spectrum emitted by LED fixtures has been shown to be especially harmful to all living organisms and to ecosystems.

Indeed, ALAN is documented to have serious adverse impacts for a wide range of wildlife ranging from invertebrates to mammals.⁷ [Special Issue Light Pollution Attachment 5] Longcore and Rich reported that light pollution disrupts migratory patterns, foraging capabilities, predation, nesting, breeding, etc.⁸ Longcore and Rich also report the findings of Buchanan⁹ in which three different species of amphibians forage at different illumination intensities. As an example, the squirrel treefrog (*Hyla squirella*) 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. [The 0.3

³ Annika K. Jägerbrand and Kamiel Spoelstra. 2023. “Effects of anthropogenic light on species and ecosystems.” *Science* 380(6650) DOI:10.1126/science.adg3173

⁴ Daley, Jason. 2019. “The Devastating Role of Light Pollution in the ‘Insect Apocalypse.’” *Smithsonian Online Magazine*. <https://www.smithsonianmag.com/smart-news/light-pollution-contributes-insect-apocalypse-180973642>

⁵ Van Doren, Benjamin M., Kylke G. Horton, Adriaan M. Dokter, Holger Klinck, Susan B. Elbin, Andrew Farnsworth. “High-intensity urban light installation dramatically alters nocturnal bird migration.” 2017. *PNAS*. <https://www.pnas.org/content/early/2017/09/26/1708574114>

⁶ Kluger, Jeffrey. 2017. “Light Pollution is Getting Worse Every Year. That’s Bad For Your Health.” *Time*. <https://time.com/5033099/light-pollution-health/> and

Reducing nighttime light exposure in the urban environment to benefit human health and society
K. M. Zielinska-Dabkowska, E. S. Schernhammer, J. P. Hanifin, G. C. Brainard. 2023. *Science* 380(6650)
DOI:10.1126/science.adg3173 <https://www.science.org/doi/10.1126/science.adg5277>

⁷ Artificial Light at Night: State of the Science 2023. DarkSky International DOI: 10.5281/zenodo.8071915.
<https://zenodo.org/record/8071915>

⁸ Longcore, T. and Rich, C. “Ecological Light Pollution” *Front Ecol Environ*. 2004. 2(4): 191-198

⁹ Buchanan, B.W. “Low-illumination prey detection by squirrel treefrogs” 1998. *J Herpetology* 32: 270-74

footcandles cited in the Newark Municipal Code is equivalent to 3.23 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)¹⁰. Buchanan found frogs he was studying stopped their mating calls when the lights of a nearby stadium were turned on.

The lands surrounding the Project site support numerous wildlife species that have the potential to be impacted by the introduction of nighttime lighting on the edge of the Bay. These Baylands habitat support federally and state listed species, rare endemic species, resident breeding populations of common wildlife and thousands of migratory shorebirds and waterfowl forage and rest in the wetlands and ponds adjacent to the site [Attachment 6] wildlife species documented in the vicinity of Mowry Village). The EIR fails to address the impacts of nighttime lighting on these documented species.

The Newark Municipal Code exempts street lighting and athletic field lights, and these lights can “vacuum” insects and disorient migratory birds. The code also exempts all construction lighting, which is of great concern because the project will take years to build, and the lighting (even if it moves from one building site to another within the development footprint) will likely impact generations of insects, amphibians, birds and other animals.

The Newark Municipal Code does prohibit the use of searchlights, mercury vapor lights, and “laser lights or any other lighting that flashes, blinks, alternates, or moves,” though it is unclear whether the reference to laser lights and the lighting that follow, are or are not exempt if they are “seasonal lighting.” The Newark Municipal Code is completely silent regarding the use of LED lighting. Kerbiriou et al¹¹, concluded:

“Our re-analysis clearly indicates that the switches in spectrum and in intensity with replacement of LPS [low pressure sodium] lamps with LEDs [light emitting diodes] have significant additive and interactive effects, on bat activity. We also show that bat activity and buzz ratio decrease with increasing LED intensity while an opposite effect is observed with LPS lamps.

...Our results stress the need to consider simultaneously the effects of changes in the different lights characteristics when street lighting changes.”

The Newark Municipal Code does not adequately address potentially significant and adverse impacts

¹⁰ De Molenaar, JG, DA Jonkers, and ME Sanders . 2000. “Road illumination and nature. III. Local influence of road lights on a black-tailed godwit (*Limosa l. limosa*) population.” Wageningen, The Netherlands: Alterra.

¹¹ Kerbiriou, Christian, Barré, Kevin, Mariton, Léa, Pauwels, Julie, Zisis, Georges, Robert, Alexandre, Le Viol, Isabelle. 2020/04/24. “Switching LPS to LED Streetlight May Dramatically Reduce Activity and Foraging of Bats” Diversity 2020, Vol 12, 165

of Artificial Light at Night (ALAN). The DarkSky website¹² quotes research scientist Christopher Kyba, regarding the impacts of ALAN on nocturnal animals:

“...the introduction of artificial light probably represents the most drastic change human beings have made to their environment.

...Near cities, cloudy skies are now hundreds or even thousands of times brighter than they were 200 years ago. We are only beginning to learn what a drastic effect this has had on nocturnal ecology.”

The website also includes a quote from Chad Moore, who co-founded the U.S. National Park Service Night Skies Program, **“When we add light to the environment, that has the potential to disrupt habitat, just like running a bulldozer over the landscape can.”**[emphasis added]

Sufficient evidence exists that demonstrates artificial lights have adverse impacts on wildlife. The project as proposed would locate night lighting adjacent to wetlands utilized by amphibians and resident and migratory birds. The EIR fails to adequately analyze the impacts of the project on the environment, identify impacts, and provide adequate mitigation measures. The adjacent wetlands are of ecological significance as they lie within historic Baylands, and were recommended for restoration by The Baylands and Climate Change: What We Can Do. Baylands Ecosystem Habitat Goals Science Update 2015¹³ and by the Recovery Plan for the Tidal Marsh Ecosystems of Northern and Central California¹⁴.

CCCR had proposed the following mitigation measures be implemented to reduce the adverse impacts of nighttime lighting:

- a. The EIR should include as mitigations all the best practices that the International Dark-sky Association includes in its Board Policy on the Application of the Lighting Principles document¹⁵ (June 24, 2021). This policy provides guidance for implementing the Five Principles for Responsible Outdoor Lighting¹⁶ that are offered by the International Dark Sky Association as mitigation for the significant impacts of ALAN on the environment. Thus, policy and additional work suggest the following outdoor lighting guidelines for private, public, residential, and non-residential lighting.

¹² DarkSky. Resources Page. <https://darksky.org/resources/what-is-light-pollution/effects/wildlife-ecosystems/> accessed 9-14-23.

¹³ California State Coastal Conservancy. 2015. “*The Baylands and Climate Change: What We Can Do. Baylands Ecosystem Habitat Goals Science Update*” Oakland, CA.

¹⁴ U.S. Fish and Wildlife Service. 2013. “*Recovery Plan for the Tidal Marsh Ecosystems of Northern and Central California.*”

¹⁵ Dark Sky Society. 2021. “*Board Policy on the Application of the Lighting Principles.*” International Dark-Sky Association. https://www.darkskysociety.org/handouts/ida_board_proclamation.pdf

¹⁶ DarkSky. “*Five Principle for Responsible Outdoor Lighting.*” <https://www.darksky.org/our-work/lighting/lighting-principles/>

- Street lights should be reduced to 40% capacity during “quiet” hours (i.e. 10:00pm-5:00am).
 - Residential and non-residential lighting should turn off or dim at least 50% during “quiet” hours.
 - Follow the IDA model lighting ordinance use of five lighting zones to systematically regulate appropriate lighting levels for different areas. These zones range from LZ0 (pristine natural environments and limited outdoor lighting) to LZ4 (limited application in areas of extensive development in the largest cities)¹⁷.
 - Private and public lighting should complement each other to prevent over lighting spaces.
 - All outdoor lighting fixtures will be capable of accepting 7-pin controls that can enable use of dimmers, timers, motion sensors, and networking.
- b. Lighting should not shine onto open space / riparian corridors / habitat. Light trespass should be limited to 0.1 foot-candle, which is less than the Newark Municipal code maximum of 0.3 foot-candle. For comparison, a night with a full moon has 0.01 footcandle and an overcast night has only 0.00001 foot-candle. 0.03 foot-candles is brighter than the moon, and the impacts of this level of light trespass to animals that are attracted to light, or use moonlight for navigation and seasonal rhythm internal clocks are harmful and unmitigable.
 - c. To the largest extent possible, avoid lighting within 300 feet of wetlands and natural areas.
 - d. Lighting near sensitive habitats (300-ft from water features, open space, parks...) should have a wavelength of no more than 520NM, or no more than 2400 Kelvin. All outdoor lighting that is visible from open space, including parking areas, should have Correlated Color Temperature of no more than 2700 Kelvin. All other outdoor lighting fixtures should have CCT of no more than 300 Kelvin. Should be limited to CCT of 2700 Kelvin or less.
 - e. Require and implement Lights-out programs during bird migration seasons.

The Newark Municipal Code states that the maximum height for outdoor exterior lighting fixtures for residential districts of 16 feet, but fails to place adequate limitations on the extent of lateral spread or the Correlated Color Temperature (CCT) of lighting, which is a measure of how much harmful blue light is present in the spectrum.

The EIR fails to adequately address the issue of lateral spread (light trespass) into undeveloped areas adjacent to the project site, as stated above in recommended mitigation “b” above, light trespass should be limited to 0.1 foot-candles, but the Newark Municipal Code allows a maximum of 0.3 foot-candles.

¹⁷ International Dark Sky Association. 2011. “Joint IDA-IES Model Lighting Ordinance (MLO) with User’s Guide. https://www.darksky.org/wp-content/uploads/bsk-pdf-manager/16_MLO_FINAL_JUNE2011.PDF

We have stated the reasons why reliance on the Newark Municipal Code is inadequate to address the adverse impacts of nighttime lighting. With that in mind the EIR should also address:

- What mitigation measures will be implemented to reduce lateral spreading of light to surrounding habitat 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 proposed development be prevented from changing the light fixtures?

These issues cannot be deferred until after the DEIR is circulated, or after the project is approved. Cf., *Sacramento Old City Ass'n. v. City Council*, 229 Cal.App.3d 1011 (1991); CEQA Guidelines, § 15126.4(a)(1); *Clover Valley Foundation v. City of Rocklin*, 197 Cal.App.4th 200, 236 (2011); *Cmtys. for a Better Env't v. City of Richmond*, 184 Cal.App.4th 70, 92 (2010).

The EIR Fails to Adequately Address the Impact of Coastal Squeeze

The Mowry Village Project will exacerbate coastal squeeze, the loss of natural habitats or deterioration of their quality arising from anthropogenic structures or actions which prevent the landward transgression of those habitats that would otherwise naturally occur in response to sea level rise in conjunction with other coastal processes.

FEIR response to comments is indicative of a common problem with the Mowry Village EIR, on the one hand, the EIR acknowledges the presence of salt marsh habitat adjacent to the project boundary, and on the other, disavows their presence.

Topical Response No. 13: Coastal Squeeze states:

“Coastal squeeze impacts were discussed in Draft EIR Section 3.10 Hydrology and Water Quality on page 3-177. Coastal squeeze is defined as the loss of natural habitats or deterioration of their quality arising from placement of structures along the shoreline, preventing landward transgression of those habitats that would naturally occur in response to sea level rise. The project site is not located directly along the shoreline and would not result in the placement of structures or fill along the shoreline. Additionally, the project site is not identified as a natural habitat as there are existing structures located on the southern portion of the project site, closest to the shoreline. The existing use of the project site does not provide the City with protection against coastal squeeze, and therefore the development of the project site with a denser development would not result in changes to these conditions or exacerbate potential coastal squeeze impacts beyond existing conditions. Furthermore, the proposed fill would be placed on areas of the project site that are already located above the

100-year flood water line to increase the elevation of the site and would not result in changes to the surrounding areas.

While the developed portion of the project site is located closer to the Bay compared to the undeveloped portion of the project site, the proposed project would not result in development on land closer to the Bay beyond what has already been developed.

Additionally, the project site is located inland with long distance of shallow water associated with the salt ponds located between the open Bay and the project area. This area would protect the project site from landward transgression of habitats resulting from sea level rise.”

Silva et al¹⁸, define coastal squeeze as “...a process in which rising sea levels and other factors, such as hard infrastructure, cause loss of space in both directions – land and sea – and where the ecosystems no longer have the necessary conditions to maintain the essential functions.”

Borchert et al¹⁹ open their scientific paper regarding the potential of coastal wetlands to adapt to sea level rise by migrating landward and the challenges posed by coastal squeeze, with the following statement:

“Climate change adaptation efforts are particularly important in low-lying coastal regions that are threatened by rising seas (Hinkel et al., 2014; Nicholls, Hoozemans, & Marchand, 1999; Titus et al., 2009). As global temperatures continue to increase, warming oceans coupled with melting ice sheets and glaciers are expected to accelerate the rate of sea level rise (Church et al., 2013; Sweet et al., 2017). Coastal and estuarine ecosystems are particularly vulnerable to accelerated sea level rise (Ellison, 2015; Kirwan & Megonigal, 2013; Nicholls & Cazenave, 2010; Scavia et al., 2002; Thorne et al., 2018). Climate-smart conservation efforts along the coast can increase the adaptive capacity of valuable coastal ecosystems and also protect coastal communities from the harmful impacts of sea level rise (Arkema et al., 2013; Duarte, Losada, Hendriks, Mazarrasa, & Marbà, 2013; Spalding et al., 2014; Stein et al., 2014).”
[emphasis added]

The FEIR is completely off the mark in its coastal squeeze response. “Additionally, the project site is not identified as a natural habitat as there are existing structures located on the southern portion of the project site, closest to the shoreline.” The project site does not have to be identified as natural habitat to have a coastal squeeze impact. The project itself will have an impact on existing salt marsh habitat, habitat that is immediately adjacent to the project boundary and visible in photos included in this letter, will result in coastal squeeze. The introduction of approximately 252,000 cubic yards of

¹⁸ Silva, R., Martínez, M. L., van Tussenbroek, B. I., Guzmán-Rodríguez, L. O., Mendoza, E., & López-Portillo, J. 2020. “A framework to manage coastal squeeze.” *Sustainability*, 12(24), 10610.

¹⁹ Borchert, S. M., Osland, M. J., Enwright, N. M., & Griffith, K. T. 2018. “Coastal wetland adaptation to sea level rise: Quantifying potential for landward migration and coastal squeeze.” *Journal of applied ecology*, 55(6), 2876-2887

imported fill to the site, along with the retaining wall to hold the fill in place, represent hardened structures that will prohibit the upslope migration of existing salt marsh habitat as levels of flood inundation of SubArea D increase, and will result in the drowning of this habitat.

“Furthermore, the proposed fill would be placed on areas of the project site that are already located above the 100-year flood water line to increase the elevation of the site and would not result in changes to the surrounding areas.” It is precisely because fill is being placed that there will be coastal squeeze impacts to adjacent wetlands. This is the very essence of the phenomenon of coastal squeeze. The fill necessary to elevate the building pads will effectively create a development island on the Baylands. Rising sea levels and floodwaters will be displaced by the fill and flow to other areas and prevent the natural inland migration of the surrounding wetlands.

“The existing use of the project site does not provide the City with protection against coastal squeeze...” “Coastal squeeze” is a phenomenon that impacts natural habitats of the Bay, not the City. It is a phenomenon where, in this case, construction of hardened structures, i.e. of the Mowry Village development, will result in coastal squeeze impacts on surrounding wetlands. The natural habitats will be trapped between the development fill pad and rising water levels.

The authors go on to explain why the loss of coastal wetlands to coastal squeeze is concerning:

“Coastal wetlands are highly productive ecosystems that provide many benefits to society, including erosion control, coastal protection during storms, water filtration, flood reduction, carbon sequestration, recreational opportunities and maintenance of productive coastal fisheries (Barbier et al., 2011; Costanza et al., 2014; Morgan, Burdick, & Short, 2009; Sutton-Grier, Wowk, & Bamford, 2015).”

The authors then state:

“To maximize the adaptive capacity of coastal wetlands, there is a pressing need in many estuaries to better identify, manage and protect low-lying, undeveloped lands that could facilitate the landward migration of these ecosystems (Ellison, 2015; Lester & Matella, 2016; Rogers, Saintilan, & Copeland, 2014; Wigand et al., 2017).” [emphasis added]

In other words, the best way to reduce the impacts of “coastal squeeze” is “protect low-lying, undeveloped lands that could facilitate the landward migration of these ecosystems.”

The 2022 San Francisco Estuary Partnership (SFEP) “*2022 Estuary Blueprint*,”²⁰ (Estuary Blueprint) also known as the “*Comprehensive Conservation and Management Plan*,” (CCMP) was developed to “establish priorities and guide decisions to address a range of environmental issues for the Estuary.”

²⁰ 2022 San Francisco Estuary Blueprint (Comprehensive Conservation and Management Plan for the San Francisco Estuary). San Francisco Estuary Partnership: San Francisco, CA.

The San Francisco Estuary Partnership was “established in 1988 by the State of California and the U.S. Environmental Protection Agency under the Clean Water Act’s National Estuary Program when the San Francisco Estuary was designated as an estuary of national significance.” SFEP is a “collaboration of local, state, and federal agencies, NGO’s, academia, and business leaders working to protect and restore the San Francisco Bay-Delta Estuary.”

One of the Action Items identified in the Estuary Blueprint, is that tidal marsh habitat be protected, restored, and enhanced. Task 10-3 states:

“Protect San Francisco Bay historical Baylands (including both tidal marsh and non-tidal wetlands and waters within the historical Bay margins) to preserve and enhance tidal habitats and adjacent habitats to allow for migration with sea level rise.”

In other words, to avoid the impacts of coastal squeeze, preserve and enhance low-lying, adjacent habitats to allow tidal habitats to migrate as sea levels rise. This action item again points to the impact the proposed project will have on the environment, specifically wetlands habitats.

Action Item 11 of the Estuary Blueprint - "Protect, restore, and enhance estuarine-upland transition zones and adjacent upland ecosystems" is as the title explains – focused on transition zones and adjacent upland areas. The description provides further explanation of this Action Item:

“Include protection of adjacent upland ecosystems and diked historic baylands where feasible and appropriate. Integrate transition zones and adjacent upland ecosystems into restoration and enhancement projects in the Estuary to provide both migration space and high water refugia.”

Task 11-2 states:

“Protect transition zones, adjacent upland areas, and diked historic baylands for wetland migration space, based on identified needs and opportunities, through acquisition of fee title, partnerships to develop conservation easements, or other management agreements.”

The San Francisco Bay Joint Venture (SFBJV), is a “public-private partnership with a mission to protect, restore, increase, and enhance habitats throughout the San Francisco Bay region for the benefit of birds, other wildlife, and people. The opening remarks to *“Restoring the Estuary”*²¹ note:

²¹ San Francisco Bay Joint Venture. 2022. Restoring the Estuary - A Framework for the Restoration of Wetlands and Wildlife in the San Francisco Bay Area. Richmond, CA.

“...we are at a time of rapid change, emerging challenges and an ever-increasing need to respond with urgency. How we approach the next 10-15 years will be pivotal in determining the health and resilience of the San Francisco Estuary much further into the future.

This framework outlines a well-researched and achievable vision for the restoration of the Estuary and other important habitats throughout the SFBJV region. It embraces and expands upon the 2015 Baylands Ecosystem Habitat Goals Update, while working in concert with other regional plans like the 2022 Estuary Blueprint to provide needed guidance to those in and beyond our partnership who will be carrying on this work in the years ahead.” [emphasis added]

“Restoring the Estuary” similar to the Estuary Blueprint, recognizes the critical need to protect low-lying, adjacent upland areas for tidal marsh migration space, and that such areas are crucial to the current and future resilience of the Bay ecosystem and for our communities. *“Restoring the Estuary”* sets as a goal, the protection of adjacent uplands:

“...adjacent uplands are being explicitly called out for their important role in long-term estuarine resilience to sea level rise. Specifically, these uplands provide potential spaces for marshes to move landward as sea levels rise, also referred to as “marsh migration space.” Under higher rates of sea level rise, these uplands may be the few remaining places where marsh habitat can persist.”[emphasis added]

The goals set within the *Estuary Blueprint* and *Restoring the Estuary* demonstrate that impacts that place development and introduce hardened structures within low-lying adjacent uplands (Mowry Slough is a fully tidal slough connected to San Francisco Bay, and Lines B and D even today receive tidal flow to the Union Pacific railroad tracks at high tides) e.g. the Mowry Village site, are impacts that should be evaluated and mitigated under CEQA.



It is evident from this photo that the proposed development site is directly in the path of sea level rise and would block the landward migration of the surrounding diked tidal saltmarsh habitat. This is the textbook definition of coastal squeeze.

The San Francisco Estuary Institutes “*Resilience Metrics Mapbook*”²² states, “The Mowry OLU has an unusually large amount of potential transition zone and migration space for the South Bay.” This indicates that the Newark Baylands, of which the Mowry Village site is a part, is of regional significance because of the “unusually large amount of potential transition zone and migration space for the South Bay.” [Attachment 7 Mowry OLU] This attribute of the Newark Baylands further indicates the importance of these lands to the health and persistence to tidal wetlands in San Francisco Bay and the significance of the impacts related to coastal squeeze.

The Mowry Village DEIR and FEIR response dismissed the need to analyze the contribution of the project to coastal squeeze. The DEIR states:

“The proposed project could have the potential to exacerbate coastal squeeze which is defined as the loss of natural habitats or deterioration of their quality arising from placement of structures along the shoreline, preventing the landward transgression of those habitats that would naturally occur in response to sea level rise. However, given the baseline condition of the project site as already developed with existing structures, development of the proposed project would not exacerbate potential coastal squeeze impacts beyond what is already present. Therefore, this would not be a driving impact for the proposed project.”

²² Plane, E; Braud, A; Sneed, A; Lowe, J. 2025. “*San Francisco Baylands Resilience Metrics Mapbook*.” SFEI Contribution No. 1238. San Francisco Estuary Institute: Richmond, CA.

This fails to account for the actual project changes to the site, which entail significant coastal hardening and infrastructure to mitigate the effects of sea level rise. The EIR's failure to accurately assess and disclose the extent of adjacent wetlands only worsens the EIR's consideration of effects to coastal squeeze. The baseline condition for 19 of the 29 acres is minimally developed as the property is an auto wrecking yard where old cars are parked. The site contains only a few structures that serve as offices. The remaining 10 acres is undeveloped. The entirety of the site is currently at the proper elevation to provide tidal marsh migration space if the site were remediated and restored, thereby providing ecosystem resilience benefits such as carbon sequestration and flood accommodation. Additionally, the Conditional Use Permit (CUP) for the Pick-n-Pull auto dismantling business expires in 2034, and the CUP includes conditions that require clean-up of the site. Last, funding currently exists through the Restoration Authority, California Coastal Conservancy and Proposition 4, for climate resilience and restoration projects. Lists of funding available for climate sea level rise adaptations projects, implementation of natural and nature-based solutions, and habitat restoration projects can be found at a growing number of websites. We provide links to two of sources of funding grants:

- Coastal Quest Building Resilient Communities Coastal Funding Database: <https://www.coastal-quest.org/our-programs/coastal-funding-database/>
- Bay Area Climate Adaptation Network (BayCan) Funding Tracker: <https://www.baycanadapt.org/fundingtracker>

The EIR must evaluate the individual and cumulative impacts of the project and of past, current, and reasonably foreseeable projects that will result in the loss of tidal marsh migration space that will exacerbate coastal squeeze and squander the opportunity to provide resilience benefits for the existing community. Under CEQA, it is well established that “[t]he significance of an activity depends upon the setting.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 [citing CEQA Guidelines, § 15064, subd. (b)]; see also *id.* at 721; CEQA Guidelines, § 15300.2, subd. (a).) Again, the Legislature warns that “Historical filling and development projects have reduced California wetlands to a mere 10 percent of their original extent. The loss of coastal wetlands is even more alarming with 95 percent of the formerly abundant lagoons and marshes along California’s 1,100-mile coastline having been destroyed.” (Water Code § 16200(c).) Thus, the “relevant question” is “whether any additional amount” of shoreline development “should be considered significant in light of the serious nature” of the existing problem. (See, *Kings County, supra*, 221 Cal.App.3d at 661; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 [“the relevant issue ... is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools.”]) Newark has extensively developed the northwest corner of the city placing new development up to the edge of wetlands located along Newark Slough and Plummer Creek. These developments west of Willow Street have precluded any potential for tidal wetland inland migration and have contributed to the cumulative loss of migration space further exacerbating coastal squeeze. The EIR fails to adequately assess this cumulative impact.

Deferral of Analysis of Impacts Resulting from Actions Undertaken to Address Flood Inundation
Topical Response No. 9: Sea Level Rise Impacts on Infrastructure and Groundwater Rise

The FEIR states:

Potential additional protection against sea level rise required for the proposed project would be analyzed during the final design and permitting stage of the proposed project. The Applicant would provide a final sea level rise hydrology report and designs during the Construction Document review phase to the satisfaction of ACFC and the City. The Applicant would install any required infrastructure deemed necessary by ACFC and the City to protect against potential sea level rise impacts, such as tide/flap gates, bypass pipes, and/or storage tanks as part of the proposed project. The Applicant may also submit a sea level rise adaptability plan during the Construction Document review phase if such improvements are to be implemented in phases. However, in the case of phasing, funding and timing mechanisms would also be required to be in place to the satisfaction of ACFC and the City. In accordance with General Plan Policy EH-3.8: Flood Control Improvements, the proposed project and the City would work with the ACFC&WCD on future improvements to the storm drain, flood control channel, and levee system as needed to ensure that these systems continue to protect City neighborhoods and business districts from flooding. The proposed project has been designed to withstand existing hazards and impacts such as geologic hazards and flooding and the level of analysis provided in the Draft EIR is adequate." [emphasis added]

The phrases "potential additional protection against sea level rise required for the proposed project," "installation of any required infrastructure deemed necessary by ACFC and the City...such as tide/flap gates, bypass pipes, and/or storage tanks" and "sea level rise adaptability plan" all suggest actions that could result in impacts to the environment. These types of structures would typically be placed in wetlands (tide/flap gates), deliver stormwater to wetlands (bypass pipes) or remove water from areas prone to flooding, or require significant land to install (storage tanks). Given that there is no remaining land within the 29 acres it is foreseeable that these features could have impacts to the surrounding wetland habitats.

The EIR must identify and analyze reasonably foreseeable impacts:

- Since the potential need for such actions has been mentioned, the EIR should treat them as reasonably foreseeable impacts, and within the EIR provide a range of potential environmental impacts that could occur if any of these actions are implemented – not just identifying the type of work that might occur, but also the resources that could be impacted and to what degree. For example, installation of a tide/flap gate could have a number of

different potential impacts depending on the purpose for installing the tide/flap gate – is it to keep tidal flows from moving up Line D? If so, what happens during heavy rain storms? Is it to move water off SubArea D? Then what happens to the reach of existing wetlands? There are consequences for any of the actions listed that could result in impacts to biological resources.

- A “sea level rise adaptability plan” is too vague as it could include any number of measures, many of which could have significant adverse impacts to biological resources. The range of potential actions needs to be identified.
- Waiting to the Final Design and permitting stage of the project to identify the types of actions needed essentially thwarts the public’s ability to participate in the environmental review process. It would be inconsistent with the CEQA requirement that:
 - Decision makers and the public be informed about potential significant environmental effect of the proposed actions.
 - And in turn the public would be excluded from process of identifying ways environmental impacts might be avoided or minimized

As presented, this deferral of identifying and analyzing a range of potential project components and their impacts, obstructs the public’s ability to review and comment on impacts that may affect habitats and the hydrological regime of SubArea D, which in turn could impact the extent of existing wetlands and the species associated with those wetlands such as the SMHM, as well as direct and indirect impacts to other biological resources. For CEQA, “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient” CEQA review. (*County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 193 (1977).) “Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.” (*Id.* at 192-93.) And worse it could lead to the approval of a project without disclosing the magnitude of impacts to the environment to decision makers and the public. “CEQA’s demand for meaningful information is not satisfied by simply stating information will be provided in the future.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431 [cites and quotes omitted].)

PUBLIC SERVICE AND PUBLIC SAFETY CONCERNS:

CCCR and others have raised concerns regarding the single point of public ingress and egress – Mowry Avenue, and specifically the potential adverse impacts this single point of public access could have on response time in the unfortunate advent of an emergency, where seconds can make a huge difference in an outcome. The FEIR response to comments does not adequately address the concern regarding anticipated response times in the event of an emergency within the proposed development.

Exhibit 1 (pdf page 258) of the Staff Report states, “The project site is located approximately 0.6 miles away from the nearest fire station and based on the short distance, emergency response to the project site would be able to meet the response time goal of five minutes.” This fails to address the concern regarding a single access road, especially if/when impeded by traffic or hazardous conditions. However, in a response to complaints regarding delays associated with the at-grade rail crossings, Union Pacific states, “ A 9,000-foot train takes about 4 minutes to go through a crossing at 25 miles per hour...”²³ And this does not include the situation where a freight train may be stopped at an at-grade rail crossing. In Newark it is not uncommon for residents to be delayed by 10-12 minutes from the time the safety arms lower, the train passes, the arms raise and traffic clears the crossing. The FEIR response states in part, “The State Public Utilities Commission has regulations governing the occupancy of public grade crossing by railroads which state that a public railroad grade crossing may not be blocked for longer than 10 minutes unless no vehicle or pedestrians are waiting at the crossing.” In emergency situations, minutes, even seconds matter.

The FEIR also mentions the possibility of using helicopters to access the site, and an alternative route that goes through the Cargill, Inc. property and utilizes the elevated levee road with steep side slopes, on the back side of the salt ponds. While we certainly appreciate the willingness of Cargill to make this route available, special equipment would be required to utilize this route and no estimated response time has been provided for this approximately 1.75-mile alternative emergency access route that is elevated between two water bodies – the Cargill salt ponds and ACFC&WCD Line B flood control channel – and requires access through gates.

- What is the estimated response time for the alternative emergency access route through the Cargill property?

The staff slide presentation during the November 13, 2025 Planning Commission Hearing included a slide identifying the Emergency Vehicle Access routes. This slide also showed one other potential access route that would run south along the railroad tracks from Mowry Avenue and then through the Sanctuary West property south of Line D.

²³ Union Pacific News. September 2024. “*Trains of All Lengths Keep Economies on Track.*”
<https://www.up.com/news/service/train-length-insights-it-240918>

Emergency Vehicle Access

- 2 EVAs routes approved by Alameda Fire Dept. and 3rd EVA secured through Cargill



- Has a delineation been confirmed by the Corps and RWQCB for WOTUS and WOTS for the entirety of this route? Is the entirety of this proposed EVA across city-owned park lands and the Sanctuary West property restricted to areas that have been confirmed to be uplands?
- Has a delineation been conducted for the bridge site that would be required to convey the road across the wetlands and waters of Line D?
- Any impacts associated with the EVA routes should be identified, analyzed and mitigated in the EIR.

MITIGATION MEASURE CONCERNS:

CCCR is extremely concerned that several of the Mitigation Measures proposed for impacts to Biological Resources are inadequate. These measures include:

MM BIO 1: Standard Construction BMPs: Please see above for the concerns stated above regarding inadequate baseline information and details of activities proposed, that are necessary to determine whether proposed mitigation measures adequately protect adjacent wetlands during construction and post-construction. It is impossible to determine whether or not the mitigation measure will protect wetlands habitats, when we don't know:

- How close the project is to adjacent wetlands,
- The types of activities that will occur within, or in close proximity to wetlands,
- The types of activities will occur within, or in close proximity to wetlands post-construction, e.g. O&M activities

Biological Resources – Burrowing Owl Mitigation (BIO-1 and MM BIO-4 and MM BIO-5) Some of the Proposed Mitigation Measures Would Constitute “Take” Under the California Endangered Species Act (CESA): FEIR Response to CL-CCCR-10:

“As identified in Section 3.4 Biological Resources of the Draft EIR, the proposed project would have a less than significant impact on burrowing owls with implementation of Mitigation Measure BIO-4 and Mitigation Measure BIO-5. Mitigation Measure BIO-4 requires pre-construction surveys for burrowing owls and requires that protective measures be taken if owls are identified. Specifically, per Mitigation Measure BIO 5, to reduce impacts of the project on the local (South Bay) burrowing owl population, habitat shall be preserved and managed for burrowing owls off-site if eviction of resident owls is required.

The California Fish and Game Commission (CDFG Commission) unanimously approved designation of the Western Burrowing Owl (*Athene cunicularia hypugaea*) a candidate species under CESA, on October 10, 2024. As a candidate for potential listing, the Western Burrowing Owl is afforded the same protections as species protected under CESA. The consequences of the owl’s designation as a candidate species under CESA, means mitigation measures, such as the one described in MM BIO-4 would be considered “take.” “Take is defined as “hunting, pursuing, catching, capturing, killing, or attempting any of those activities.” Therefore an Incidental Take Permit would be required, if actions such as owl relocation are permitted at all, and any take without a permit would constitute a Fish and Game Code violation. (See, Cal. F&G code § 2080.1.)

The FEIR response also includes this statement:

“Assuming burrowing owl habitat mitigation would occur off-site, some on-site enhancements shall also be made to reduce impacts of the project on the local (South Bay) burrowing owl population. Such enhancements shall include the provision of two artificial burrow complexes on the sides of the adjacent levees (if allowed by levee managers) and management of at least portions of levee side slopes around these burrow complexes to provide suitable conditions for burrowing owls and ground squirrels (e.g., periodic mowing to maintain short vegetation).”

This mitigation measure is infeasible. A mitigation measure must be “feasible or effective in remedying the potentially significant problem” it is intended to address. *Gray v. Cty. of Madera*, 167 Cal.App.4th 1099, 1116 (2008); *see also Sierra Club v. County of San Diego*, 231 Cal.App.4th 1152, 1168 (2014) (no evidence that recommendations for reducing greenhouse gas emissions would be enforceable or effective). Flood control levees generally have strict requirements to ensure the integrity of the levee is protected. Flood control agencies actively managed rodent (ground squirrels, rats and other rodents that create burrows) populations to protect the integrity of flood control levees. Promoting activities that encourage burrows in the sides of levees would not be allowed by any flood control agency and is therefore this mitigation is infeasible.

The Sacramento District U.S. Army Corps of Engineers (Corps) Levee Safety webpage states, “Levees change over time: banks erode, closures rust, animals burrow, and pumps wear out. Ongoing vigilance is needed to reduce the risks associated with flooding.” [emphasis added]

A 2019 Corps Guidance pamphlet²⁴ states:

“Operations and Maintenance Manual. For each project, it is important that the O&M manual include an annual maintenance program to control animal burrows and vegetative growth. It is also important that vegetation be managed in such a manner as to avoid the need for mechanized removal and associated embankment repair, and avoid any incidental growth and subsequent presence of endangered species that might prohibit access and activities necessary for O&M.” [emphasis added]

Clearly the proposed mitigation of locating owl burrows in the side of the levee is infeasible for two reasons, 1) such an action could threaten the structural integrity of the flood control levee, and 2) flood control levee managers do not want to introduce species that could restrict future O&M activities more difficult to receive authorization to carry out.

Further, mitigation measure BIO-5 is also too uncertain to support a finding that impacts to burrowing owl will be less-than-significant. Mitigation measure BIO-5 states that “Mitigation may take the form of off-site habitat preservation and management (in which case all the monitoring and habitat requirements in the following paragraphs would apply) or the purchase of credits in an off-site mitigation bank. The availability at mitigation banks is ever changing; therefore, the mitigation shall provide flexibility of the location of the mitigation bank utilized to fulfill this mitigation. Local mitigation shall be preferred and if local mitigation is available, the project shall mitigate locally. However, if compensatory mitigation is not available within the County, the mitigation may be fulfilled outside of the County.” Hence, no specific sites have been identified as feasible, or even potentially feasible, and any determination that this mitigation measure would feasibly reduce impacts to burrowing owl to less-than-significant levels is not supported by the evidence or the mitigation measure itself. (See, *Gray, supra*, 167 Cal.App.4th at 1116; *Sierra Club, supra*, 231 Cal.App.4th at 1168.)

MM BIO-5 further requires that “The mitigation area must be contiguous with habitat that is permanently preserved as open space to avoid having the site surrounded by development in the future,” making the feasibility of identifying suitable mitigation sites even harder and more uncertain.

²⁴ Department of the Army Corps of Engineers. 2019. “*Engineering and Design GUIDELINES FOR LANDSCAPE PLANTING AND VEGETATION MANAGEMENT AT LEVEES, FLOODWALLS, EMBANKMENT DAMS, AND APPURTENANT STRUCTURES.*” Pamphlet No. 1110-2-18

Next, MM BIO-5 states that “At least 50 percent of the mitigation area must consist of upland habitat suitable for use by burrowing mammals,” which means half of the site may be unusable by burrowing owl, thus failing to mitigate impacts at the 6.5 acre rate the EIR claims is required.

The new proposed mitigation measures for impacts to the Western Burrowing Owl must be provided for public, agency and decision-maker review and comment.

MM BIO-7: Reduce the Spread of Invasive Species: We urge that the City review the planting palette provided with the Landscape Plan as some of the species listed are either invasive plant species that should not be planted next to natural habitats or plants that are toxic to wildlife. In particular, the following plants in the Mowry Village Conceptual Plant Palette, dated August 25, 2024, have been identified as invasive by the California Invasive Plant Council. These species are inappropriate to plant adjacent to natural areas and lands owned and managed by the San Francisco Bay National Wildlife Refuge Complex. The current language of MM BIO-7 is completely nonspecific as to what species will be considered invasive and screened for at the site.

Cotoneasters Species

Listed as: Cal-IPC - moderate and CalEPPC List A-1

Cotoneasters occur naturally in Eurasia, but the plants used in gardens emanate almost exclusively from China, with a few from the Himalaya (Hickman 1993)²⁵. Cotoneasters displace native plants by their rapid growth, competition for light, an aggressive, competitive root system, abundant seed production, and an effective seed-dispersal strategy. They may compete for the same ecological niche as the related native toyon (*Heteromeles arbutifolia*) in part of the toyon’s range.

In October 2017 the National Park Service and Golden Gate National Parks Conservancy staff are working on cotoneaster removal at several project sites in the Golden Gate National Recreation Area including Oakwood Valley and Tennessee Valley. Cotoneaster is considered an invasive woody shrub with red berries that are readily dispersed by birds—forms dense stands that block all light to the understory. It can effectively outcompete native vegetation in all plant communities, including oak bay woodland, coastal scrub, and in the open grasslands where mission blue butterflies (*Icaricia icariodes missionensis*) are found.

Nandina species

Even though this plant is not considered invasive in California, ALL parts of the plant are poisonous because it contains compounds that decompose producing hydrogen cyanide and could be fatal if ingested. It is considered Toxicity Category Four, which is non-toxic to humans but is so to grazing animals and cats.²⁶

²⁵ Hickman, J. C. 1993. “*The Jepson Manual: Higher Plants of California*.” University of California Press. 1424 pp.

²⁶ California Invasive Plant Council. “Cal-IPC Plants A to Z.” <https://www.cal-ipc.org/plants/profiles/>

Nandina berries contain cyanide and other alkaloids that produce highly toxic hydrogen cyanide (HCN) which is extremely poisonous to all animals. Sudden death may be the only sign of cyanide poisoning and death usually comes in minutes to an hour.

The U.S. Department of Agriculture and most states classify *Nandina domestica* as a noxious, non-native, invasive weed from China and Japan. It has naturalized and invaded our national parks, national wildlife refuges, national forests, city parks, and other habitats throughout the U.S. Yet homeowners and commercial landscapers are still planting this toxic species without constraint. In addition to bird deaths in Georgia, bird deaths have been reported in Houston and other parts of the country. Hydrogen cyanide is a painful and unnecessary way for birds to die. *Nandina* is also toxic to dogs, cats, and many other animals.

MM BIO-8 – Post-Construction Predator Management Plan and Program: The mitigation measures proposed have not been found to be effective at protecting wildlife in adjacent habitats from the adverse impacts of nuisance species/predators (including free-roaming domestic pets).

The California Code of Regulations Title 14 §15126.4 (a)(2) requires:

“Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments.”

The mitigation measures proposed to address potentially significant and adverse impacts of the project regarding the introduction of, increase in, subsidizing of non-native predators, and controlling nuisance species and non-native predators fail to meet this standard.

The Mitigation and Monitoring Report EIR does state that outdoor feeding of pets will be prohibited, domestic pets will be prohibited in wetlands and other sensitive off-site habitats, that off-leash dogs will be prohibited, and that outside cats will be prohibited.

The City of Newark would be responsible for ensuring compliance with this mitigation measure. The Mitigation and Monitoring Report indicates the City of Newark Community Development Department will be the Monitoring Party, and states monitoring will occur, “Once prior to issuance of occupancy certificate, and throughout operation of the project as needed.”

- Is there adequate city funding to ensure adequate staff time for monitoring to occur “as needed”? Are there limitations on how often monitoring by staff can occur? What is the mechanism for ensuring enforcement of activities that are prohibited actually occurs?
- Is the City of Newark prepared to get into the business of monitoring family pets?

One of the proposed mitigation measures is “minimizing disturbance” by:

“...educating the public about the importance of preserving the ecological integrity of the adjacent natural areas, instructing recreational users to stay on the levee tops out of sensitive habitats and keep dogs on leashes.”

- Will there be signage posted within the development regarding the prohibitions?
- How will these prohibitions be monitored effectively to prevent impacts to listed species, rare endemic species, common local wildlife and shorebirds and waterfowl returning from long distance migration?

With respect to monitoring and enforcement the FEIR also states:

“The conditions of the predator management plan will be incorporated as clear, enforceable rules into the Covenants, Conditions, and Restrictions (CC&Rs) to be established for the Mowry Village Residential Project. The CC&Rs will include provisions for monitoring compliance, reporting violations, and imposing penalties for non-compliance which is anticipated to involve regular inspections, community reporting mechanisms, and fines or other penalties for violations.”

- Please provide clarification regarding the party responsible for monitoring and enforcing the conditions. Page 29 of the BRTR states that “Any neighborhood association established for new residential areas will be responsible for disseminating this information, and the neighborhood association and the City will be responsible for enforcing the program.” Does the Community Development Department remain the Monitoring Party? The City is relying on educational outreach to help reduce the impacts of domestic pets on biological resources, are there consequences for the community if, for example, leash law aren’t adhered to?

Dogs negatively impact wildlife in three ways: (1) by causing direct mortality of wildlife through predatory action, (2) by disrupting normal behavior, which can affect population parameters (e.g., reproductive success), and (3) through disease transmission.²⁷ These impacts can be significant, especially to special-status species, which are generally more prone to population decline.²⁸

The mitigation measure proposed would not eliminate the potentially significant impacts dogs would have on wildlife.

Several studies have shown low compliance with leash laws at parks.²⁹ Without an effective

²⁷ Weston MA, JA Fitzsimons, G Wescott, KK Miller, KB Ekanayake, T Schneider. 2014. “*Bark in the park: A review of domestic dogs in parks.*” *Environmental Management* 54:373-382.

²⁸ *Ibid.*

²⁹ Weston MA, JA Fitzsimons, G Wescott, KK Miller, KB Ekanayake, T Schneider. 2014. *Bark in the park: A review of domestic dogs in parks.* *Environmental Management* 54:373-382. *See also* Jorgensen JG, MB Brown. 2017. *Evaluating CCCR CC Comments Mowry Village*

monitoring and enforcement program, it is highly likely that leash laws will not be observed. Pet owners frequently allow their dogs to run off-leash even where it is clearly signed that dogs are not permitted or are only permitted if on a leash.³⁰

In addition, many wildlife species view dogs as a threat, even leashed dogs can have an adverse impact on wildlife.³¹ Banks and Bryant (2007) showed that dog walking in woodland leads to a 35% reduction in bird diversity and a 41% reduction in abundance, both in areas where dog walking is common and where dogs are prohibited.³² Based on their review of 133 publications, Weston et al. (2014) reported: “[s]tudies presenting results on how wildlife reacts to dogs report that flushing behavior of mammals and birds is usually greater when pedestrians are accompanied by a dog compared to pedestrians walking alone.”³³

Other issues - There is no mention of specific mitigation measures dealing with domestic cats, feral cats, gulls, corvids, Norway and roof rats, etc. that might be attracted to the development. How will these species be dealt with, and in particular, how will Norway and roof rats be controlled?

These species are of particular concern as often, anti-coagulant poisons are used by homeowners to control these pest species, which could result in significant adverse impacts to special-status species such as the state and federally-listed salt marsh harvest mouse, Burrowing Owl, other raptors and more species noted in the attached Wildlife in the Vicinity of Mowry Village.

MM BIO-8 also fails to adequately address potential indirect impacts to the state and federally-listed endangered salt marsh harvest mouse resulting from the proposed project. The EIR states that suitable habitat does not exist within the project boundaries and that an exclusion fence has been installed to prevent adverse impacts during construction, and that “...the preparation and implementation of a post-construction predator management plan and program to educate the project residents regarding measures to minimize the potential for subsidizing predator species and to minimize the potential effects of pets on sensitive species.” We have already commented regarding the ineffectiveness of the proposed predator/nuisance species management plan and the

Persuasive Messages to Influence Dog Leash Law Compliance at a Public Area in the Great Plains. Great Plains Research 27:131-142. *See also* Jorgensen JG, M Bomberger Brown. 2014. Piping Plovers *Charadrius melodus* and dogs: compliance with and attitudes toward a leash law on public beaches at Lake McConaughy, Nebraska, USA. Wader Study Group Bulletin 121(2):7–12.

³⁰ United States Fish and Wildlife Service. 2007. Recovery Plan for the Pacific Coast Population of the Western Snowy Plover (*Charadrius alexandrinus nivosus*). Sacramento, California. xiv + 751. *See also* Jorgensen JG, M Bomberger Brown. 2014. Piping Plovers *Charadrius melodus* and dogs: compliance with and attitudes toward a leash law on public beaches at Lake McConaughy, Nebraska, USA. Wader Study Group Bulletin 121(2):7–12.

³¹ Banks PB, JV Bryant. 2007. “Four-legged friend or foe? Dog walking displaces native birds from natural areas.” Biology Letters 3:611-613. *See also* Lord A, JR Waas, J Innes, MJ Whittingham. 2001. Biological Conservation 98:233-240.

³² *Ibid.*

³³ Weston MA, JA Fitzsimons, G Wescott, KK Miller, KB Ekanayake, T Schneider. 2014. “Bark in the park: A review of domestic dogs in parks.” Environmental Management 54:373-382.

proposed education program.

The DEIR maintains that suitable habitat for the salt marsh harvest mouse does not exist within the project boundaries. However, CCCR shared a 2019 report with the City of Newark that documents the occurrence of the SMHM within SubArea D. In addition, the 2022 Biological Resources Technical Report for the Mowry Village Project (Technical Report) acknowledges that:

“Recent studies have also shown that salt marsh harvest mice are more flexible in habitat use and, in their diet, than previously thought (Smith and Kelt 2019). Salt marsh harvest mice will use non-native plant species, such as rabbitsfoot grass (*Polypogon monspeliensis*), in their diet (Smith and Kelt 2019) in addition to other native species and are not tied exclusively to pickleweed dominated wetlands but will also use other mixed vegetation wetlands (Sustaita et al. 2011). This shows that salt marsh harvest mice may use mixed vegetation salt marsh habitat (Sustaita et al. 2011; Smith et al. 2014).”

Nor does the fact that the undeveloped portions of the site are “disced does not rule out the possible occurrence of SMHM. Smith³⁴ reported that SMHM were trapped in high management treatment habitats after the area had been recently disced. While it is unlikely that SMHM habitat exists within the current developed Pick-n-Pull facility, the undeveloped 10 acres of the project site may provide transition zone and upland escape habitat during periods of flooding. The fact that the species has been detected within SubArea D, and that immediately adjacent to the project site significant suitable habitat for the SMHM exists, it becomes all the more important that effective, enforceable methods of minimizing the negative impacts of domestic pets and nuisance species are in place.

Breaux³⁵ reported:

“Rats which are found in San Francisco Bay marshes are more likely to be roof than Norway rats (Jurek, pers. comm.). Where urbanization abuts natural marshes as it does in many areas of the South Bay, and garbage provides a food supply, Norway rats are likely to find the marsh habitats quite hospitable. In 1927, DeGroot noted that reclaimed land behind dikes along the San Francisco Bay shoreline was responsible for an increase in rats and a decrease in native California clapper rails (*Rallus longirostris obsoletus*): “No sooner is a dyke constructed than Norway rats appear in great numbers. Large gray fellows they are, on a dark night appearing

³⁴ Smith, Katherine. *Emerging Perspective on Salt Marsh Harvest Mouse Conservation and Management – Ducks, Dikes and Demographics*. 2014. California Department of Fish and Wildlife, UC Davis. Bay Delta Science Conference. <https://scienceconf2014.deltacouncil.ca.gov/sites/default/files/uploads/2014-10-30-306PM1-SMITH.pdf>

³⁵ Breaux, Andr  e. Non-Native Predators: Norway Rat and Roof Rat *Rattus norvegicus* and *Rattus rattus* Goals Project. 2000. Baylands Ecosystem Species and Community Profiles: Life histories and environmental requirements of key plants, fish and wildlife. Prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. P.R. Olofson, editor. San Francisco Bay Regional Water Quality Control Board, Oakland, Calif.

to be as large as small cotton-tail rabbits....The Clapper Rail has no more deadly enemy than this sinister fellow” (DeGroot 1927).” [emphasis added]

And:

“Control of rats has not been implemented and continues to be a problem in the South Bay for endangered species, such as clapper rails and, quite possibly, salt marsh harvest mice (*Reithrodontomys raviventris*). Additional threats to other target species selected by this project as representative of wetland species in the San Francisco Bay region (e.g., California voles (*Microtus californicus*), ornate shrews (*Sorex ornatus californicus*), salt marsh wandering shrews (*Sorex vagrans haliocoetes*), and amphibians, reptiles, terrestrial invertebrates in general, and some ground nesting birds) probably occur.”

An adverse impact of particular concern is the difficulty in controlling nuisance species once they gain a foothold in an area. Breaux³⁶ states:

“Control measures are difficult, since there is no poison specific to rats that is safe for endangered mammals, such as the salt marsh harvest mouse. Given the difficulties in any control programs (e.g., public outcry against removing feral cats and the difficulty of trapping or shooting these large rodents) the most effective control measure at this time is to protect marshes with large buffers, and to keep shelter and garbage far from the wetland edge.”

As mentioned by Breaux, there is no control measure that would be specific to rats, that would not adversely impact small mammals, such as the endangered salt marsh harvest mouse, raptors, owls, and domestic pets that do not observe the prohibition against free-roaming pets.

The EIR has not addressed the use of anti-coagulant poisons to control nuisance species. The use of such products needs to be explicitly addressed and should be banned from use due to the proximity to sensitive habitats and potential adverse impacts to the SMHM and to raptors.

REASONABLY FORESEEABLE INDIRECT EFFECT OF THE PROJECT:

The EIR fails to analyze reasonably foreseeable indirect effects of the project on the environment. The only development west of the Union Pacific railroad tracks is the Pick-n-Pull auto dismantling business. The proposed project requires the extension of water supply lines, sewer lines, electrical lines, street lighting and other utilities to support the Mowry Village project. Upgrades will also be made to the Mowry Avenue at-grade crossing of the Union Pacific railroad tracks and to Mowry Avenue west of the railroad tracks. The Union Sanitary District Cherry Street pump station will also be replaced as it doesn't have capacity to serve the Mowry Village project.

³⁶ *Ibid.*

These upgrades to utilities, Mowry Avenue, and the Union Sanitary District Cherry Street pump station remove obstacles to additional growth and development. The environmental effects resulting from induced growth could result in significant environmental impacts and has not been adequately addressed within the Mowry Village EIR.

The FEIR Response to Comment CL-GECO-23 admits that:

“...the proposed project would result in extension of utilities into an area currently without services, and widening of Mowry Avenue and placement of fill have the potential to induce growth in the area.” But the EIR rejects these concerns arguing that:

“the extension of the water and sanitary sewer mains would not result in a removal of barrier of growth as the project site is located near the terminus of Mowry Avenue and vacant developable lands near the project site are limited. Due to the project site’s close proximity to Mowry Slough and the use of nearby lands as salt production ponds, available developable lands near the project site are extremely limited and the developable land located to the east of the project site is already planned for development through the Area 4 – Sanctuary West Project which would construct its own utility infrastructure expansion and would not rely on mains located along Mowry Avenue. Therefore, the extension of utility infrastructure for the proposed project would not cause other property owners to develop adjacent or nearby properties. Additionally, the off-site roadway improvements to Mowry Avenue would not result in a removal of barrier of growth as the proposed project would not extension of Mowry Avenue from its current terminus.”

Growth inducing impacts are adequately addressed in the Draft EIR and no further response is required.

A description of surrounding land uses is provided in Section 2.1.5 Surrounding Land Uses of the Draft EIR. As described in the Draft EIR, the property to the south and southwest, known as the Harwinder Singh site, was previously developed with one warehouse type structure near Mowry Avenue, and the site was used as an auto wrecking yard. The building has since been demolished, and there are presently no buildings on the Harwinder Singh site. Additionally, Cargill owns and operates salt production ponds located west of the project site, and Mowry Slough begins approximately 1,500 feet southwest of the site. The proposed project would not develop the City’s property and adjacent private parcels that surrounds the site. The surrounding parcels would continue to operate at its current conditions and uses.” (DEIR at 6-2)

The information provided in the EIR is inaccurate and insufficient to answer the question whether there are reasonably foreseeable indirect effects of the project that must be identified and analyzed.

West of the Union Pacific railroad tracks, within SubArea D, the City of Newark owns approximately 66 acres of land.

The fact that there are no buildings present on the Harwinder Singh site has no bearing on whether a permit application for development could be submitted for the site – see a previous real estate flyer for the property. [Attachment 12] The Singh site is a 5-acre parcel, the Mowry Village 31-unit apartment complex is proposed on just 0.84 acres of land.

The EIR has failed to demonstrate that the improvements to Mowry Avenue and the extension of utility lines west of the Union Pacific railroad tracks will not result in additional growth and development.

ALTERNATIVES CONSIDERED ARTIFICIALLY CONSTRAINED:

The Response to Comment CL-CCCR-32 seems to artificially constrain the consideration of alternative off-site locations for the proposed project to those that are “undeveloped.” The response to comment states:

“The Applicant and the City considered the residential development of alternative site locations within the City limits that are located closer to transit hubs to reduce project generated VMT. Undeveloped lots within City limits were assessed by size and proximity to a transit hub. There are no undeveloped sites within City limits that are large enough to accommodate a project of similar size and scale to the proposed project and in proximity to a transit hub. Therefore, the Alternative Location Alternative was determined to be infeasible and was rejected from further consideration.” [emphasis added]

- Why was the analysis of alternative sites limited to “undeveloped lots”? The City has been analyzing previously developed areas for their potential to support new housing, for example, the New Park Place Specific Plan, involves the conversion of an underperforming shopping mall to housing. Sites such as the New Park Place Specific Plan are located closer to public transit, and necessary daily public amenities, with reduced impacts to Biological Resources and other environmental impacts.
- The City of Newark 2023-2031 Housing Element analyzed many previously developed areas to support new housing. Why did the analysis of alternatives fail to evaluate any of the sites identified in the Housing Element as alternatives?

GROUNDWATER RISE AND ASSOCIATED IMPACTS:

Rising groundwater level in response to sea level rise, is a reasonably foreseeable phenomenon and maps depicting the potential for groundwater rise can be accessed through the Out Coast Our Future (<https://ourcoastourfuture.org/hazard-map/>). The San Francisco Estuary Institute (SFEI) has

also mapped potential groundwater rise in response to sea level rise. The SFEI mapping of groundwater rise under differing levels of sea level rise can be explored at:

<https://sfei.maps.arcgis.com/apps/instant/portfolio/index.html?appid=2ab0c998497f4f7398aa54f176a6fb26>

The City of Newark prepared a Sea Level Rise Vulnerability Assessment and Adaptation Strategy – Modeling Report which indicates current conditions show emergent groundwater around the southern and western property lines of the Project site and across much of SubArea D³⁷. The Project site shows groundwater at 0-3 feet below the ground surface today! This same study mapped the impact of 36" of sea level rise on groundwater elevation and determine nearly the entire 100-acre SubArea D would present with emergent groundwater. Clearly the water table in this entire area is very shallow. Potable water lines, sewer lines, cable lines will be located below grade in areas already experiencing emergent groundwater. Trenches excavated to place underground utilities will fill with water in these areas. The proximity to SF Bay and the historical nature of these baylands including diked tidal wetlands and halophytic (salt tolerant) vegetation indicates that these utility lines may be subject to uncommon hydrostatic pressure and corrosion. These conditions could cause sewage lines to fail and contaminate nearby habitats and water bodies. Failed water lines could also cause erosion and other impacts on the adjacent habitats. The EIR failed to evaluate the current groundwater levels and potential risk these conditions may have on the environment both during construction and through the life of the Project.

A 2023 article³⁸ by the San Francisco Bay Area Planning and Urban Research Association (SPUR) refers to shallow groundwater rise associated with sea level rise as a “lesser-known climate risk for Bayshore cities and neighborhoods.” The article identifies “potential consequences” that include:

“...a variety of potential hazards [that] include increased flood and liquefaction risk, the movement of contaminants in soils, and the disruption and degradation of both below-ground and above-ground infrastructure, such as roads, building foundations, utility lines, and underground pipe systems.”

The article goes on to discuss the degradation of underground infrastructure and states:

“The majority of the region’s underground infrastructure – sewer, water, wastewater systems, and utility lines – is located within six feet of the ground surface. Although underground infrastructure is designed to withstand historical groundwater highs, groundwater is projected to surpass these historical highs, leaving underground pipes vulnerable. Groundwater can infiltrate stormwater pipelines through cracks and joints, reducing the capacity of these drainage systems to convey stormwater runoff, leading to flooding. Groundwater rise can also

³⁷ City of Newark. January 22, 2025. “Sea Level Rise Vulnerability Assessment and Adaptation Strategy – Modeling Report.”

³⁸ Atkinson, Sarah & Sarah Harper. “New Findings on Shallow Groundwater Rise Highlight a Climate Risk Not Addressed by Policy.” April 2023. <https://www.spur.org/news/2023-04-13/new-findings-shallow-groundwater-rise-highlight-climate-risk-not-addressed-policy>

cause soil subsidence or swelling beneath waterlines, which can cause separation at joints or line breaks.”

The article also discusses increased liquefaction risk for shoreline communities:

With groundwater rise, liquefaction risk could increase significantly in the Bay Area’s low-lying Bayshore communities built on reclaimed marshlands and wetlands or artificial fill – think Treasure Island, Bay Farm Island in Alameda, and much of downtown San Francisco. Saturated sandy and loose sediment, common in these areas, are already more likely to behave like liquid during intense shaking from earthquakes, resulting in the ground sinking or building and infrastructure shifting. Add groundwater rise, causing prolonged periods of soil saturation, and liquefaction becomes more severe, according to USGS research.” [emphasis added]

A 2021 article on MIT Technology Review website³⁹ [Attachment 11] states:

“For something you’ve probably never heard about, rising groundwater presents a real, and potentially catastrophic, threat to our infrastructure. Roadways will be eroded from below; septic systems won’t drain; seawall will keep the ocean out but trap the water seeping up, leading to more flooding. Home foundations will crack; sewers will backflow and potentially leak toxic gases into people’s homes.”

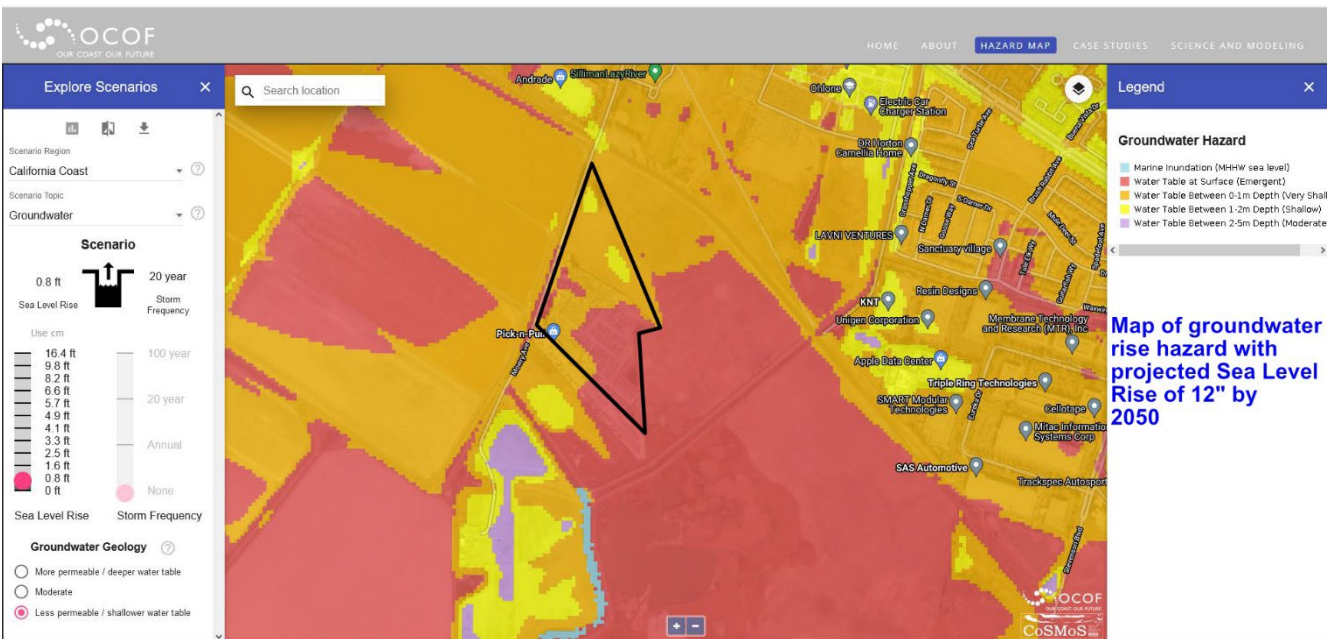
And, this impact of climate change has been underestimated:

“And because of how groundwater moves, people who are at risk may not know it until it’s too late. “One of the most important things about the groundwater is that the rising groundwater level precedes any inundation of the surface,” says Rozell. Put another way, we will experience groundwater flooding long before the ocean comes lapping at our front door.”

Why does this matter for the Mowry Village project? The map below, from the Our Coast Our Future website mentioned above, depicts the potential for groundwater rise with just 12” of sea level rise.

You can see from the map, that within SubArea D a for a large portion of the site (including the project site before fill pad construction) is projected to have emergent groundwater – that is, groundwater at the ground surface, and most of the remainder of Subarea D and the project site will have groundwater that is within 0-1 meter of the ground surface. The site will only get wetter over time.

³⁹ Pierre-Louis, Kendra. “How rising groundwater caused by climate change could devastate coastal communities – Higher sea levels will push the water table up with them, causing flooding, contamination and all manner of unseen chaos.” 2021. MIT Technology Review. <https://www.technologyreview.com/2021/12/13/1041309/climate-change-rising-groundwater-flooding/>



In response to comments regarding the impacts of groundwater rise on underground infrastructure, Topical Response 9 states:

“ ...With an average existing elevation of approximately 5 to 10 feet and the proposed project having an average pad elevation of 14.2 feet, the elevation would be raised significantly more than 12 inches and would reduce potential impacts of groundwater emergence.”

We concur that within the proposed development fill pad, the undergrounded utilities may (at least for the time being) not be subject to the impacts of groundwater rise. However, that is just within the fill pad itself (and also the segment of the utility line that is suspended on the underside of a bridge), the rest of the utility line alignments will be undergrounded and in areas that are vulnerable to groundwater rise. Thus utilities brought to the proposed development will likely be subject to the negative impacts of groundwater rise.

AN ALTERNATIVE PATH FORWARD FOR NEWARK:

In contemplating whether to deny or approve the proposed Mowry Village Project, CCCR urges the Newark City Council to consider an alternative approach for this site. We urge the Newark City Council to contemplate what is best for the entire community of Newark in the long-term. The proposed Mowry Village Project is located within an area that has long been identified as suitable for tidal wetlands restoration (since the late 90's).

The City of Newark could wait for the expiration of Pick-n-Pull's Conditional Use Permit (CUP), at which time both the City's CUP [Attachment 8] and Alameda County's Department of Health Services Certified Unified Program Agency (CUPA) [Attachment 9] require the site be cleaned up by Pick-n-Pull. After the site is cleaned up, the site could be restored to tidal wetlands. This area has been identified as having the potential for implementation of nature-based solutions (e.g. tidal wetland restoration), which would be consistent with NBS-3 of the City's draft Climate Action Plan. CCCR provided a memo to City of Newark staff and Mayor regarding existing clean-up requirements for the Pick-n-Pull business [Attachment 10].

Tidal wetlands are recognized globally as one of the most important, if not the most important habitat, to help the human population fight climate change. Acre-for-acre tidal wetlands draw down and store ten times more carbon than forests. Tidal wetlands can buffer against storm surge and can hold flood waters. The climate resilience that tidal wetlands provide is something that is being sought after in other parts of the Bay Area, across the Nation, and globally, as tidal wetland protection and restoration is being prioritized, and funding exists for climate resilience projects.

In contemplating what is best for the community in an era of rising sea levels, for lands that are situated in an area vulnerable to sea level and groundwater rise, does it make sense from a community perspective to build housing at this location? Is it the right decision to locate new development in an area that might put residents in harm's way in the future – especially when the entire community and region might be burdened by protecting these 233 housing units?

We have learned through the Shoreline Levee process in Alviso just how financially costly that may be. The 2015 cost estimate for the 5 Reaches of the Phase I levee construction was \$194 million, with the Non-Federal Sponsors share estimated to be \$104.4 million. Fast forward to the 2025. The estimates for Reaches 1-3 are now \$545 million and the Non-Federal share of construction costs has doubled to \$207 million.⁴⁰ Is Newark prepared to pay its Non-Federal cost share for future mitigation resulting from the construction of housing units placed along the Bayshore? Communities along the edges of San Francisco Bay are living in an era of rising sea and groundwater levels and planning must be adjusted to ensure that we do not put more residents, development and infrastructure at risk. It is just too costly to continue to put new development and residents in harm's way.

A 2023 document released jointly by the Metropolitan Transportation Commission (MTC), Association of Bay Area Governments (ABAG) and San Francisco Bay Conservation and Development Commission (BCDC), "Sea Level Rise Adaptation Funding and Investment Framework Final Report" utilizes a Total Water Level of 4.9' (1.4' permanent sea level rise plus a figure of 3.5' above MHW for a 100-year

⁴⁰ Valley Water News and Events. "Milestone reached in South San Francisco Bay Shoreline Phase 1 Project." September 25, 2025. <https://www.valleywater.org/news-events/news-releases/milestone-reached-south-san-francisco-bay-shoreline-phase-i-project>

storm) by 2050 to “identify adaptation vulnerability and protection (page i).”⁴¹ Based upon a Total Water Level of 4.9’ by 2050, the agencies have estimated the cost of protecting existing development and infrastructure would cost approximately \$110 billion, with a \$95-\$105 billion shortfall. **Putting new development in areas that will be at risk and require additional protection does not make sense.**

<https://mtc.ca.gov/planning/resilience/sea-level-rise-adaptation-funding-investment-framework>

Comments have been made during public meetings that sea level rise is a regional issue, and that if and when 6’ of sea level rise occurs, the entire region will be in trouble, and that this development will be right there in the mix with Oakland Airport, the major highways, other critical infrastructure, technology firms and other development. Which begs the question, if that is the case, where will this development fall within the prioritization of funding for flood protection projects?

Also, we won’t have to wait to see 72” (6’) of flood inundation. Areas along the San Francisco Bay shoreline will be subject to the combined impacts of sea level rise, groundwater rise, and storm surges/events. The [Adapting to Rising Tides Bay Shoreline Flood Explorer](#) allows the user to choose a sea level rise and storm surge scenario. For example, the combination of 12” of sea level rise plus a 50-year storm surge event is estimated to result in a total water level of 48” (4’). 24” of sea level rise plus a 100-year storm surge could result in a total water level of 66” (5.5’). In other words, the Bay Area as a region could experience significant, temporary flood inundation with just 2’ of sea level rise. And lest we feel we won’t have to worry about a 100-year storm event in our lifetime, some scientists are now predicting we could see the equivalent of a 100-year storm event once every 25 years.⁴²

What does this mean for the shoreline communities of the Bay Area? BCDP released its guidance for the development of regional and subregional adaptation plans (RSAPS and SSAPs) early this year. Every shoreline community will be required to submit a shoreline adaptation plan no later than 2034.

The goal of the RSAP process⁴³ is not only to jumpstart shoreline communities to begin planning for sea level rise adaptation, but also to encourage local governments to think more regionally when planning development and planning for sea level rise adaptation, and to encourage planning for resilience for the community and the environment. And in particular, being mindful of how your community’s plans for the shoreline might impact neighboring communities. The adaptation strategies could involve anything from restricting new development in areas that will be vulnerable to

⁴¹ Metropolitan Transportation Commission / Association of Bay Area Governments and the San Francisco Bay Conservation and Development Commission. 2023. “Sea Level Rise Adaptation Funding and Investment Framework Final Report.”

⁴² Jeffrey Kluger. “Weather Events Are Happening More Than Once Every 100 Years.” Time Magazine. May 30, 2025. <https://time.com/7289719/hundred-year-weather-events-happen-more-often/>

⁴³ San Francisco Bay Conservation and Development Commission. “Regional Shoreline Adaptation Plan: One Bay Vision, Strategic Regional Priorities, and Subregional Shoreline Adaptation Plan Guidelines.” December 2024. <https://www.bcdc.ca.gov/wp-content/uploads/sites/354/2024/12/regional-shoreline-adaptation-plan-spreads.pdf>

sea level and groundwater rise, to incorporating natural and nature-based solutions as part of the community's sea level rise adaptation strategy.

CCCR certainly recognizes the need for housing and the significant need for affordable housing. CCCR would support a development with the proposed amenities and affordable housing units within the City's urban core, where the homes would be closer to public services and transit hubs, and not located in an area that will be vulnerable to future flood risk.

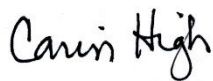
This project does not meet the State definition of "infill housing." According to the California Governor's Office of Land Use and Climate Innovation, "The term "infill development" refers to building within unused and underutilized lands within existing development patterns..." and "Infill development is critical to accommodating growth and redesigning our cities to be environmentally- and socially-sustainable. One look at Google Earth will make apparent that the proposed project location is not "environmentally- or socially-sustainable."

This is not an appropriate place to be locating housing and especially not the place to be locating affordable housing. Approval of the proposed development sets a bad precedent of continuing to locate new development and housing in an area that will become increasingly wet and more vulnerable to flood inundation.

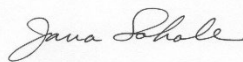
CCCR urges the Newark City Council to deny certification of the CEQA document and to deny approval of the proposed project. In doing so, the City would be demonstrating its leadership in providing climate resilience for the community and beyond.

Thank you for the opportunity to provide comments. We request that we be kept informed of future opportunities to review and provide comments on the Mowry Village Project.

Respectfully submitted,



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Attachments:

- Attachment 1 Map of Biological Resources from the Areas 3 & 4 Specific Plan
- Attachment 2 2007 Map of approximate location of Section 404 Clean Water Act jurisdiction Areas 3 & 4 Specific Plan
- Attachment 3 Preliminary grading and drainage plan from Item E1 Staff Report of Mowry Village
- Attachment 4 Letter to the City of Newark re SMHM with attachments
- Attachment 5 Light Pollution Special Issue Science 2023
- Attachment 6 Wildlife in the vicinity of Mowry Village

- Attachment 7 SFEI Mowry OLU from the Resilience Metrics Mapbook
Attachment 8 Pick-n-Pull Conditional Use Permit issued by the City of Newark
Attachment 9 Alameda County Environmental Health Department CUPA un-032 Closure Guidelines for aboveground hazardous materials storage
Attachment 10 CCCR Memo Regarding the Expressed Concern of the Clean Up of Hazardous Materials at Pick-n-Pull
Attachment 11 Articles related to the phenomenon of groundwater rise
Attachment 12 Prior real estate flyer for parcel in SubArea D

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