

2 of 2



### NEIGHBORHOOD PARKS COUNCIL

f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities supporting alternative transportation?

44-5

The Bicycle Plan outlined in the DEIR (Figure II-14) does not provide near-term improvements to the bicycle network between Innes Avenue (India Basin/Area C) and Crisp Avenue. Bicycle improvements should also be constructed in Phase I connecting Crisp Avenue, through the Shipyard to Candlestick Point. Class III bike markings will not be safe or adequate, particularly on streets with high vehicle traffic. Since the planned Bay Trail alignment along the shoreline is dependent on environmental remediation, and development of much of this area will not occur until at least Phase III, construction of an interim Class I bike path to provide a short-term connection that is not dependent on the possible Yosemite Slough bridge is very important. A comparable interim bicycle and pedestrian connection in Mission Bay on the south side of Mission Creek under the 280 freeway has been critical to the hundreds of residents and workers in that new neighborhood.

44-6

#### Chapter III. P – Recreation

While Mitigation measure RE-2 is a good beginning, in that phasing of parks and open space should be linked to residential **and** employment-generating uses, it does not adequately address the need.

44-7

Table III.P-3 should be amended to show, at each phase of development, the park-to-population ratio including the employee population, and should be maintained throughout the development at no less than 5.5 acres per 1,000 residents **and** employees. In addition, there should be an adjacency requirement, so that parks and recreation facilities (including facilities for families and children, if appropriate) are built adjacent to and concurrently with infrastructure and vertical development parcels, and connecting with existing open spaces (India Basin Shoreline Park and Hillside Park and Open Space, for example).

44-8

The proposed Marina and waterfront recreation areas should be sited to provide protection from summer winds (Chapter III.G – Wind) and southern surge in the winter. In addition to an analysis of Windsurfing in the Recreation section, there should be an analysis of appropriate conditions for kayaking and other non-motorized vessel operations along the Bay Area Water Trail.

44-9

Sincerely yours,

NEIGHBORHOOD PARKS COUNCIL

Corinne W. Woods  
Blue Greenway Coordinator

For Meredith Thomas, Executive Director

## ■ Letter 44: Neighborhood Parks Council (1/12/10)

This letter is identical to Letter 49. Letter 44 was submitted to the San Francisco Planning Department, while Letter 49 was submitted to the Agency.

### **Response to Comment 44-1**

As indicated in Response to Comment 31-9, Figure III.B-3 has been revised to include Bay Area Water Trail access points in the Project vicinity. While the precise location of access points within the Project area will be determined through future public processes, including the CPSRA General Plan Amendment process, the Project will provide access for small non-motorized recreational watercraft and therefore will advance the purposes of the Bay Area Water Trail. Refer to Response to Comment 31-9 for the revised Figure III.B-3.

### **Response to Comment 44-2**

Refer to Draft EIR Section IIIS (Greenhouse Gas Emissions) for discussion of the Project's impact to greenhouse gas emissions.

Senate Bill 97 (Chapter 185, 2007) requires the Governor's Office of Planning and Research (OPR) to develop draft CEQA guidelines "for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions." On April 13, 2009, OPR submitted to the Secretary for Natural Resources its proposed amendments to the state CEQA Guidelines for greenhouse gas emissions, as required by Senate Bill 97. These proposed CEQA Guideline amendments would provide guidance to public agencies regarding the analysis and mitigation of the effects of greenhouse gas emissions in draft CEQA documents.

At the time the Draft EIR was prepared and released, these guidelines had not been adopted by the Natural Resources Agency. However, On December 31, the Natural Resources Agency formally adopted the proposed new CEQA Guidelines concerning the analysis of greenhouse gas emissions. These new CEQA Guidelines do not become legally effective until the Office of Administrative Law (OAL) approves the Guidelines and transmits them to the Secretary of State for inclusion in the California Code of Regulations. OAL has 30 days to review the Guidelines, and they become legally effective 30 days after OAL submits them to Secretary of State. The OAL approved and filed the guidelines with the Secretary of State on February 16, 2010. The guidelines were be published in the *California Code of Regulations* on March 18, 2010.

With respect to transportation, the revised language is as follows:

Would the project:

- a) Exceed the capacity of the existing circulation system, based on an applicable measure of effectiveness (as designated in a general plan policy, ordinance, etc.), taking into account all relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?
- b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?

- c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?
- d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?
- e) Result in inadequate emergency access?
- f) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?

While the revised guidelines referenced by the commenter had not been adopted at the time the Draft EIR was prepared and circulated for public review, the Draft EIR does include an analysis of Greenhouse Gas Emissions in Section III.S. Further, with respect to the transportation requirements of the CEQA guideline changes, no changes occurred that 'require' any new analysis. Appendix G as cited by the commenter is just a sample of what criteria may be used in an initial study. They are not formal requirements. As discussed in the CEQA Guidelines (Section 15064.7), lead agencies as have the discretion to set their own thresholds for determining significance of project impacts.

The criteria for determining significance for each mode of transportation in the Draft EIR, as established by the City of San Francisco, are described in pages III.D-31 through -33 of the Draft EIR.

The Draft EIR adequately examines the potential traffic-related impacts of the Project in relation to the existing traffic conditions and street system capacity. The Draft EIR also provides detailed analysis of alternative transportation modes including transit (refer to Impacts TR-17, TR-18, TR-19, TR-20, TR-21, TR-22, TR-23, TR-24, TR-25, TR-26, TR-27, TR-28, TR-29, TR-30, TR-39, TR-47, and TR-52), bicycles (refer to impacts TR-31, TR-32, TR-40, TR-48, and TR-53) and pedestrians (refer to Impacts TR-33, TR-34, TR-41, TR-49, and TR-54).

The timing and phasing of transportation improvements would be developed and included in the Project's DDA. Refer also to Master Response 18 (Transit Mitigation Measures) for details and clarity regarding proposed roadway configuration and implementation mitigation measures.

### **Response to Comment 44-3**

The particular comment is one of the proposed amendments to the CEQA guidelines for evaluating transportation impacts. While the revised guidelines had not been adopted at the time the Draft EIR was prepared and circulated for public review, with respect to the transportation requirements of the CEQA guideline changes, no changes occurred that "require" any new analysis. As stated on page III.A-3 of the Draft EIR, the impact significance used in the EIR are appropriately based on the San Francisco Planning Department MEA and Agency guidance regarding environmental effects to be considered significant. Page III.A-3 of the Draft EIR specifically states that:

The impact significance criteria used in this EIR are based on San Francisco Planning Department Major Environmental Analysis (MEA) and San Francisco Redevelopment Agency guidance regarding the environmental effects to be considered significant. This guidance is, in turn, based upon Appendix G to the CEQA Guidelines and MEA's Initial Study checklist, with some modifications. In cases where potential environmental issues associated with the Project are identified, but are not clearly addressed by the guidance listed above, additional impact significance criteria are presented. The significance criteria used for each environmental topic/resource are presented at the beginning of the impact discussion in each section of Chapter III of this EIR.

### **Response to Comment 44-4**

This particular comment is also one of the proposed amendments to the CEQA guidelines for evaluating transportation impacts. Refer to Response to Comment 44-3 for discussion of revisions to the CEQA guidelines.

### **Response to Comment 44-5**

This particular comment is also one of the proposed amendments to the CEQA guidelines for evaluating transportation impacts. Refer to Response to Comment 44-3 for discussion of revisions to the CEQA guidelines.

### **Response to Comment 44-6**

Figure II-14 does not provide the phasing of the bicycle improvements on the Project roadway network. The timing and phasing of transportation improvements would be defined in the Infrastructure Plan, which would be included in the Project's DDA.

Within Hunters Point Shipyard Class II bicycle lanes would be provided on Innes Avenue, Robinson Street, Fisher Street, and along Crisp Road a Class I off-street facility would be provided. Construction of these streets and development adjacent to these roadways are currently planned to occur within the first phases of CP-HPS Phase II development, and therefore interim bicycle and pedestrian connections would not be necessary. The bicycle network within Hunters Point Shipyard would connect with existing Bicycle Route #7 on Palou Avenue (a Class III facility).

### **Response to Comment 44-7**

The analysis provided in Impact RE-2, beginning on page III.P-15 of the Draft EIR and concluding on page III.P-31, evaluates not only impacts that could occur as a result of the resident and employee population, but also what could occur with the existing population of the Bayview area. The analysis determines that the increase in the Project's resident and employee population and the existing area population would not lead to substantial physical deterioration or degradation of existing and proposed facilities, nor would it result in the need for new or expanded facilities. The Project would, therefore, not cause a significant impact and no mitigation is required. Nonetheless, mitigation measure MM RE-2 has been identified to ensure that parks are phased as development occurs.

### **Response to Comment 44-8**

Page III.P-31 of the Draft EIR has been revised to include Table III.P-3a (Residential Units, Employment, and Park Acreage Provided during Each Stage of Development) following Table III.P-3 in the Draft EIR, page III.P-31:



**Table III.P-3a Residential Units, Employment, and Park Acreage Provided during Each Stage of Development [New]**

<u>Stage of Development</u>	<u>Residential Units</u>	<u>Population</u>	<u>Total Parkland (ac)</u>	<u>Park-to-Population Ratio (acres per 1,000 Residents)</u>	<u>Employees</u>	<u>Park-to-Population Ratio (acres per 1,000 Residents &amp; employees)</u>
Existing	256	1,113a	120.2	108	=	201.5
Phase 1	3,160	7,363	235.6	32.0	2,346	24.3
Phase 2	5,165	12,035	246.9	20.5	7,474	12.7
Phase 3	7,670	17,872	250.4	14.0	10,595	8.8
Phase 4	10,500	24,465b	336.4	13.8	10,730	9.6

a. Refer to Table III.C-1 (Existing Population [2005]) in Section III.C (Population, Housing, and Employment). This population correlates to the total number of households in the Traffic Analysis Zone, which includes more than the 256 households located in the Candlestick portion of the Project site (e.g., 292). It is likely, therefore, that the population within the Candlestick portion of the Project site is less than 1,113, which would only increase the existing park-to-population ratio.

b. Calculated as 2.33 people per residential unit.

As illustrated in Table III.P-3a, when employees are included in the Project’s population, the parkland ratio remains well above the standard of 5.5 acres per 1,000 population at all phases of the Project. The Project will not cause significant physical degradation of exiting park facilities.

Figure II-17 (Proposed Building and Parks Construction Schedule), Draft EIR page II-52, shows that the Project’s construction schedule would maintain adjacency between residential development and park construction and improvement. This phasing will be made mandatory by the Project’s Disposition and Development Agreement. (Figure II-17 has been revised in Section F [Draft EIR Revisions] to reflect that building construction activities would occur 1 to 2 years later than originally planned.)

**Response to Comment 44-9**

The comment regarding marina siting is noted. The Project area is not presently used by substantial numbers of small non-motorized craft such as kayaks. Moreover, with the exception of the Yosemite Slough bridge impacts discussed in Response to Comment 47-20, the Project is unlikely to impact conditions for watercraft other than windsurfers.

## ■ Letter 45: National Trust for Historic Preservation, Western Office, and California Preservation Foundation (1/12/10)

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**Letter 45**



NATIONAL  
TRUST  
FOR  
HISTORIC  
PRESERVATION®

**Western**  
OFFICE

January 12, 2010

VIA EMAIL

Stanley Muraoka  
Environmental Review Officer  
San Francisco Redevelopment Agency  
One South Van Ness Avenue, Fifth Floor  
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Bill Wycko  
Environmental Review Officer  
San Francisco Planning Department  
1650 Mission Street  
San Francisco, CA 94103

Re: Draft Environmental Impact Report (DEIR) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (SFRA File No. ER06.05.07, SFPD File No. 2007.0946E)

Dear Mr. Muraoka and Mr. Wycko,

On behalf of the National Trust for Historic Preservation and the California Preservation Foundation, we appreciate the opportunity to comment on the Draft Environmental Impact Report (DEIR) for Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (Project). We have serious concerns that the City's analysis of the Project's impacts to historic and cultural resources is inadequate and incomplete.

After review of the Project alternatives analysis in the DEIR, we find the analysis of alternatives incorporating historic preservation insufficient to meet the strict mandates of the California Environmental Quality Act (CEQA). Of additional concern are the substantial gaps in the identification and evaluation of historic resources on the Project site and inadequate analysis of impacts of Project components on historic resources. The mitigation measures proposed for impacts to historic resources are also insufficient to address the significant adverse impacts posed by the Project. In the foregoing letter, we

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recommend that the City conduct supplemental analysis of the Project in order to give legally sufficient treatment to historic resource and historic preservation issues.

#### Interests

The National Trust for Historic Preservation (National Trust) was chartered by Congress in 1949 as a private non-profit membership organization for the purpose of facilitating public participation in the preservation of our nation's heritage. 16 U.S.C. § 468. With the support of over 207,000 members nationwide, including nearly 20,000 members in California, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. The National Trust has nine regional and field offices around the country, including the Western Office in San Francisco which is responsive to preservation issues in the State of California.

The California Preservation Foundation (CPF) is the only statewide nonprofit organization dedicated to the preservation of California's diverse cultural and architectural heritage. Established in 1977, CPF works with its extensive network of 1,500 members to provide statewide leadership, advocacy and education to ensure the protection of California's diverse cultural heritage and historic places.

The National Trust and CPF have participated in a number of mandamus actions enforcing CEQA's mandate to "take all action necessary" to protect California's "historic environmental qualities." (Pub. Resources Code § 21001 (b).) Among the CEQA cases in which the National Trust and CPF have recently participated as *amicus curiae* are Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App.4th 587 and Preservation Action Council v. City of San Jose (2006) 141 Cal.App.4th 1336.

#### Requirements of the California Environmental Quality Act

CEQA reflects the "policy of the state" that projects with significant environmental impacts should not be approved "if there are feasible alternatives ... available which would substantially lessen the significant environmental effects ..." (Pub. Resources Code § 21002.) CEQA thus requires consideration of alternatives that would "feasibly obtain most of the basic objectives of the project." (Guideline § 15126.6 subd.(a).) "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code § 21061.1.) The listed factors are "taken into account" to the extent that they may impact the capability for accomplishment of the project, but do not stand alone.

Any project that would demolish an historic resource necessarily has a significant effect on the environment, requiring a lead agency to study and adopt feasible alternatives such as rehabilitation, if available and practical. (Pub. Resources Code § 21081, 21084.1; see

↑  
45-1  
cont'd.

45-2

45-3  
↓

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Architectural Heritage, supra, 122 Cal.App.4th 1095, 1118.) CEQA's requirements to identify and analyze feasible project alternatives in an EIR are of great importance when projects threaten historic resources, as is its substantive mandate that demolition not be allowed if there is indeed a feasible alternative.

↑  
45-3  
cont'd.

#### Proposed Impacts to Historic Resources in the Hunters Point Shipyard

The National Trust and CPF are particularly concerned about the significant impacts of the Project on historic resources identified as eligible for listing in the California Register of Historical Places (CR) and determined eligible for listing in the National Register of Historic Places (NR), including demolition and potentially incompatible new construction. As outlined in the DEIR, the Project includes demolition of five of eleven contributing elements in the identified CR-eligible Hunters Point Commercial Dry Dock and Naval Shipyard Historic District: Buildings 208, 211, 224, 231, and 253. This action would result in the removal of all significant buildings associated with the Naval use of the Hunters Point Shipyard from 1941 to 1974 and would result in a significant impact that cannot be reduced to a less-than-significant impact via mitigation.

45-4

The DEIR suggests proposed mitigation measures that are inadequate for reducing impacts, such as written and photographic documentation of the identified district according to National Park Service Historic American Building Survey guidelines and interpretive displays related to the history of the Hunters Point Shipyard. These measures clearly fail to reduce the environmental detriment "to a point where clearly no significant effect" will result. (Pub. Resources Code § 21064.5.) Therefore, the City is required to modify the Project in a manner that would protect historic resources if there are feasible alternatives.

#### Inadequacy of the Historic Preservation Alternative (Alternative 4)

The DEIR does not sufficiently include historic preservation in its alternatives analysis and does not adequately demonstrate that retention and rehabilitation of the five buildings in the Hunters Point Commercial Dry Dock and Naval Shipyard Historic District proposed for demolition is infeasible or will not meet the Project Objectives.

Alternative 4 is the sole alternative incorporating historic preservation. The DEIR states that Alternative 4, "would fail to meet several of the Project objectives because it would include a reduced development program, including a 30 percent reduction in residential and most non-residential uses, no State Lands agreement, no development of the Yosemite Slough bridge or stadium, and no development of the marina compared to the Project." The associated table analyzing Alternative 4 against Project Objectives (Table VI-8: Attainment of Project Objectives, Alternative 4), however, indicates that the *alternative meets five of the six summarized project objectives*. The sole objective not met by the alternative (no construction of a new stadium for the San Francisco 49ers) is unrelated to the currently identified historic preservation issues on the project sites.

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This alternative also only analyzes the retention of 3 of the 5 eligible historic resources currently being proposed to be demolished. There is no alternative that examines retaining all of the contributing buildings and elements in the Hunters Point Commercial Dry Dock and Naval Shipyard, nor justification for the selection of three of the five resources for preservation and rehabilitation.

Alternative 4 is also the only alternative, other than No Project Alternative, in which all key aspects of the Project were eliminated. There is no examination of historic preservation in alternatives that incorporate key aspects of the Project, including but not limited to the HPS Phase II Stadium, Yosemite Slough Bridge, or the CP-HPS Phase II Development Plan. The placement of historic preservation in an alternative without key Project components prejudices a fair assessment of a viable preservation alternative.

Due to the lack of alternatives that incorporate the retention of the potential historic resources in the CR-eligible Hunters Point Commercial Dry Dock and Naval Shipyard Historic District, there are potentially other feasible alternatives that would meet the project objectives and lessen the impacts to cultural resources. Since public agencies "should not approve projects as proposed if there are feasible alternatives," additional alternative should be analyzed in a supplemental analysis.

#### **Inadequate Analysis of Impact of Development of Heritage Park**

The DEIR does not adequately address potential impacts of the development of Heritage Park on historic resources. The Project Description regarding treatment of Heritage Park states: "Heritage Park (15.6 acres) would retain and reuse historic resources and materials as much as possible while utilizing modern design with industrial character." The majority of the area comprising Heritage Park consists of the Hunters Point Commercial Dry Dock National Register Historic District (NRHD) determined eligible for the NR and the CR in 1998. Per the Hunters Point Shipyard Reuse Final EIR (2000), any construction within the Hunters Point Commercial Dry Dock NRHD must comply with the Secretary of the Interior's Standards for Rehabilitation (Standards). All potential impacts to historic resources in the NR and the CR eligible districts should be analyzed in the DEIR, not just the impact of demolition of historic resources in the district. While the DEIR cites a memorandum from Page & Turnbull analyzing proposed repairs to Dry Docks 2, 3, and 4 for compliance with the Standards, there is no analysis of impacts to the district as a whole from the Project in and around the eligible districts.

#### **Inadequate Evaluation of the Historic Significance of Candlestick Park Stadium**

The DEIR does not adequately evaluate Candlestick Park Stadium for historic significance. The Project includes demolition of Candlestick Park Stadium, the first major league baseball stadium constructed of concrete. Designed by recognized Bay Area architect John Bolles, Candlestick Park was completed in 1960. A historic resource study from 2007 conducted by Jones & Stokes determined that Candlestick Park was ineligible for the NR,



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as it did not meet the criteria consideration requiring exceptional significance for properties less than 50 years old. The study also noted that the park had undergone modifications for joint use as a baseball and football stadium, including the expansion and enclosure in 1970 and more recent modifications to convert the stadium into a football-only facility.

A critical circumstance has changed concerning the NR eligibility of Candlestick Park Stadium, however, as the Stadium has reached 50 years in age. A fresh evaluation of the Park is required given that the strict "exceptional significance" criteria no longer would apply. However, the DEIR simply asserts that, "The stadium, if reviewed at the 50-year mark, would not meet criteria for listing on the NRHP or CRHR due to lack of physical integrity resulting from the extensive alterations discussed above." The DEIR cites no report or written opinion from a professional meeting the Secretary of the Interior's Professional Qualification Standards for Architectural History to support this assertion. The supporting technical studies prepared by Circa Historic Property Development utilized to prepare the DEIR do not include any recommendation regarding the eligibility of Candlestick Park Stadium for the NR now that it has achieved the 50 year age mark, or evaluation of eligibility of the stadium for the California Register of Historical Resources. Circa Historic Property Development's technical report in fact recommends this analysis.

#### **Inadequate Evaluation of NR Eligibility for Buildings 208, 211, 224, 231, and 253**

The DEIR does not provide adequate and current evaluation of Buildings 208, 211, 224, 231, and 253 for eligibility for the NR. More than ten years has passed since the buildings were evaluated for NR eligibility in 1998, and neither that evaluation nor the present evaluation for CR eligibility includes a comparative evaluation of these resources with similar surviving resources in the San Francisco Bay area. Given the dramatic disposal and demolition of Naval resources in the region, the framework for evaluation of such resources for local significance has changed, and the eligibility of Buildings 208, 211, 224, 231, and 253 should be reevaluated.

#### **Insufficient Information on Rehabilitation of Historic Resources**

The DEIR provides insufficient information on plans to rehabilitate historic resources in the Hunters Point Commercial Dry Dock District. The DEIR states in Section III.J.4 , Impact CP-1b that the project will include rehabilitation of Dry Docks 2 and 3 and Buildings 140, 204, 205, and 207, all contributors to the Hunters Point Commercial Dry Dock District, determined eligible for the NR and the CR in 1998. The DEIR states in the same section that the rehabilitation of these buildings will comply with the Secretary of the Interior's Standards for Rehabilitation of Historic Buildings. The Project Description does not include any information regarding the proposed rehabilitation, and the DEIR does not contain analysis from a professional meeting the Secretary of the Interior's Professional Qualification Standards for Architectural History that any proposed treatment for these buildings will meet the Standards.





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### Inadequate Mitigation Measures

The DEIR acknowledges that some impacts to historic resources cannot be mitigated to a less-than-significant level, but the mitigation proposed to reduce the impacts, namely Historic American Building Survey documentation and interpretive displays, is both unimaginative and inadequate. The proposed demolition of key buildings associated with the Navy's use of the site between World War II and the 1970s and the history of ship repair during that era removes some of the most substantial reminders of the site's history and destroys more than half of an identified historic district. For this level of impact, more significant and meaningful mitigation should be required.

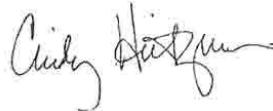
At a minimum, the Project mitigation measures should include measures outlined in the Hunters Point Shipyard Reuse Final EIR (2000) that have yet to be completed. The Hunters Point Shipyard Reuse Final EIR included an agreement to designate resources on the Project site eligible for the NR as San Francisco Landmarks, or to expressly prohibit the demolition of these structures (Section 4.12.1; page 4-98). Neither the NR-eligible Hunters Point Commercial Dry Dock District or Dry Dock 4, which is individually listed on the CR and was determined individually eligible for the NR in 1998, are San Francisco Landmarks. In addition, the Hunters Point Commercial Dry Dock District has not been formally listed on either the state or national register. Preparation of nomination forms for these designations should be required as part of any mitigation for impacts to historic resources on the site in this phase of development.

The National Trust and CPF recommend a supplemental analysis to address our comments on the analysis of the treatment of historic resources and historic preservation considerations in the DEIR. Please do not hesitate to contact Elaine Stiles, Program Officer with the Western Office of the National Trust or Jennifer Gates, Field Services Director at the California Preservation Foundation with any questions or responses to these comments.

Sincerely,



Anthea M. Hartig, Ph.D.  
Director, Western Office  
National Trust for Historic Preservation



Cindy Heitzman  
Executive Director  
California Preservation Foundation

cc: Joy Navarrete, San Francisco Planning Department  
Jack Gold, Executive Director, San Francisco Architectural Heritage  
Tina Tam, Historic Preservation Coordinator, San Francisco Planning Department  
San Francisco Historical Commission

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Wayne Donaldson, California State Historic Preservation Officer  
Gretchen Hilyard, President, Northern California Chapter, DOCOMOMO  
Elizabeth Goldstein, President, California State Parks Foundation

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## ■ Letter 45: National Trust for Historic Preservation, Western Office, and California Preservation Foundation (1/12/10)

### **Response to Comment 45-1**

This comment contains introductory information and is not a direct comment on the content or adequacy of the Draft EIR. No response is required.

### **Response to Comment 45-2**

This comment contains introductory information and is not a direct comment on the content or adequacy of the Draft EIR. No response is required.

### **Response to Comment 45-3**

Refer to Responses to Comments 28-1 and 39-3, and to Section F (Draft EIR Revisions) of this document, with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

### **Response to Comment 45-4**

Draft EIR Section III.J (Cultural Resources and Paleontological Resources) discusses the NRHP-eligible Hunters Point Commercial Drydock Historic District, as identified in 1998. The Hunters Point Commercial Drydock Historic District is shown in Figure III.J-2 (Potential Historic District), page III.J-23. As discussed in Draft EIR Chapter II (Project Description), page II-23, the Project would retain structures in this NRHP-eligible Hunters Point Commercial Drydock Historic District, including Drydocks Nos. 2 and 3, and Buildings 104, 204, 205, and 207. Impact CP-1b, Impact of Hunters Point Phase II, pages III.J-33 to -34, notes that that the Project would have less than significant impacts on the NRHP-eligible district. Section III.J also identified a larger CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, shown on Figure III.J-2, that would include Buildings 208, 211, 224, 231, and 253. The Project would demolish those buildings, and as stated in the Draft EIR, this would be an unavoidable significant adverse impact on the CRHR-eligible district. (As noted in Section B (Project Refinements), herein, the Project analyzed in the Draft EIR proposed demolishing Buildings 208, 211, 224, 231, and 253. Building 208 will now be retained as an element of the cultural landscape, but would not be occupied.) The NRHP-eligible resources would remain and would continue to be part of the NRHP-eligible Hunters Point Commercial Drydock Historic District.

The NRHP-eligible Hunters Point Commercial Drydock Historic District as part of the Project would be bounded by new R&D development to the west and south and by the shoreline areas of HPS and San Francisco Bay to the north and east. Structures in the historic district, including Drydock Nos. 2 and 3, and Buildings 104, 204, 205, 207, and 208 would be within open space areas, as shown in Draft EIR Figure II-9 (Proposed Parks and Open space), page II-27. (Figure II-9 has been revised in Response to Comment 86-5 to reflect the proposed Bay Trail route around the Yosemite Slough.) With the Project, R&D buildings south of the drydocks would replace large-scale buildings, such as Building 211 and

Building 253. While nearby R&D development up to 105 feet in height would be a different design than the existing structures in the historic district, that new development would not alter the setting of the historic district such that its integrity would be impaired. In addition, the historic district would retain its waterfront setting, including the drydocks. Thus, new development at HPS would not have an adverse impact on the setting and context of NRHP-eligible Hunters Point Commercial Drydock Historic District as part of Project.

Mitigation measure MM CP-1b.1, pages III.J-34 to -35, requiring documentation of the CRHR-eligible resources before demolition, would reduce, but not avoid, the significant effect on CRHR-eligible resources.

Refer to Section F of this document, discussing Subalternative 4A (Proposed Project with Historic Preservation Alternative) that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District and would avoid significant adverse effects on historic resources.

### **Response to Comment 45-5**

Refer to Responses to Comments 28-1 and 39-3, and to Section F (Draft EIR Revisions) of this document, with regard to Alternative 4 (Reduced CP-HPS Phase II Development, Historic Preservation) and Subalternative 4A (CP-HPS Phase II Development Plan with Historic Preservation) as preservation alternatives that would retain the structures in the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and would avoid significant adverse effects on historic resources.

### **Response to Comment 45-6**

The Draft EIR found that the Project would not have a significant adverse effect on the NRHP-eligible Hunters Point Commercial Drydock District. As stated on Draft EIR pages III.J-33 to III.J-34:

The Project proposes to retain the buildings and structures in the potential Hunters Point Commercial Drydock District, identified in 1998 as eligible for listing in the NRHP. Drydocks 2 and 3 and Buildings 140, 204, 205, and 207 would be rehabilitated using the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Page & Turnbull, architects and historic resource consultants, reviewed the proposed treatment and rehabilitation of Drydocks 2, 3, and 4. The treatments would include repair of concrete surfaces of the drydocks and addition of guardrails along their perimeter. Page & Turnbull found that the proposed treatments would provide a methodology for resolving severe deterioration issues, and ultimately provide for the longevity of the historic resources; the treatments would be consistent with the *Secretary of the Interior's Standards for Rehabilitation*<sup>266</sup> (refer to Appendix J [Drydock Assessment] of the Draft EIR). Heritage Park is proposed at Drydocks 2 and 3 and would include interpretive display elements related to the history of HPS. Per CEQA Guidelines Section 15064.5(b)(3), these impacts would be mitigated to a less-than-significant level.

As discussed on in Section III.J, pages III.J-33 to -34, the Project would demolish structures identified as part of the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District; this would be a significant and unavoidable adverse effect. Refer to Response to Comment 28-1 with regard to Subalternative 4A (CP-HPS Phase II Development Plan; Stadium, Marina, Yosemite Slough Bridge,

with Historic Preservation), which would retain the structures in the California Register of Historical Resources (CRHR)-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, and would avoid significant adverse effects on historic resources.

The Draft EIR includes supplementary information on the historic treatment of the Drydocks 2, 3, and 4 as atypical structures. All buildings to be retained in the NRHP-eligible Hunters Point Commercial Drydock Historic District, would, as noted, be rehabilitated under the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Draft EIR, page III.J-29, third full paragraph, notes:

CEQA Guidelines Section 15064.5(b)(3) states that “generally, a project that follows the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be considered as mitigated to a level of less than a significant impact on the historical resource.”

### **Response to Comment 45-7**

Refer to Response to Comment 39-4 on the evaluation of Candlestick Park stadium under NRHP and CRHR criteria. As discussed in that Response, Candlestick Park stadium would not meet NRHP or CRHR criteria as an historic resource.

### **Response to Comment 45-8**

The *Bayview Waterfront Plan Historic Resources Evaluation, Volume II: Historic Resources Survey and Technical Report*, October 2009, by Circa Historic Property Development (Circa Report, cited on page III.J-1), evaluated structures at Hunter Point Shipyard for eligibility for the NRHP, the CRHR, and local historic registers. The Circa Report concluded that Buildings 208, 211, 224, 231, and 253 met criteria as contributors to the CRHR-eligible Hunters Point Commercial Drydock and Naval Shipyard Historic District, described on pages III.J-22 through III.J-25. The Circa Report did consider NRHP criteria in that evaluation, and concluded that Buildings 208, 211, 224, 231, and 253 did not meet criteria for the NRHP. The conclusion is noted on page III.J-22 and Table III.J-1, page III.J-24. Therefore, the Draft EIR provides information that updates the evaluation of historic resources at Hunters Point Shipyard since the 1998 study noted in the comment, the 1998 study is also addressed on Draft EIR, page III.J-21.

To clarify the summary of the Circa Report in the Draft EIR, the following underlined text has been added after the second sentence, first paragraph, page III.J-22:

... The investigation evaluated the eligibility of buildings and structures for the NRHP, the CRHR, or local historic registers. ...

Refer also to Response to Comment 39-1 with regard to evaluation of historic resources at Hunters Point Shipyard.

### **Response to Comment 45-9**

Refer to Responses to Comments 34-4 and 45-6 with regard to preservation of resources in the NRHP-eligible Hunters Point Commercial Drydock Historic District consistent with the Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

***Response to Comment 45-10***

Refer to Response to Comment 34-6, clarifying that the Navy is completing the NRHP listing process for the Hunters Point Commercial Drydock Historic District identified in 1998.

## ■ Letter 46: Visitacion Valley Planning Alliance (1/11/10)

1 of 5

Letter 46



VISITACION VALLEY PLANNING ALLIANCE

Joy Navarette  
San Francisco Planning Department  
Suite 400  
1660 Mission Street  
San Francisco, CA 94103

January 11, 2010

Dear Ms. Navarette,

I wish to make a few comments regarding the DEIR for the Candlestick Hunters Point Development Project, some of which may not seem appropriate, but are relevant nevertheless.

Overall, the sponsor's community planning outreach process has been deeply flawed. That has had a significant impact on the EIR, because certain issues did not get addressed in a public forum and get answered in the EIR. Our neighborhood, Visitacion Valley, has, except for a single initial meeting, been left out of the planning process. The sponsors of the project refused to hold any further meetings in our neighborhood. One can only think it was because of the huge impacts that the project will have on Visitacion Valley and the sponsor did not want to address them.

The actual Project is partially in Visitacion Valley. Some of the area south and east of Bayview Hill within the Candlestick Park Stadium area is in Visitacion Valley and our shoreline extends to the tip of CPSRA. Our neighborhood will be deleteriously impacted by this mega project due to the enormous transportation/traffic and open space impacts.

Given the lack of sufficient time to read and respond to the DEIR, I am going to concentrate on a few issues in a general fashion:

### 1) Transportation, Traffic and Land Use.

The City of San Francisco purportedly adheres to the *Transit First* policy. The EIR states that the Project promotes alleviating the use of single occupancy vehicles and tying land use and transportation, i.e. residents may either walk or take public transportation to their nearby jobs.

46-1

46-2



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How does this conform with the entertainment center and regional retail proposed for the Candlestick Point area? Both of these entities will generate traffic from the greater Bay Area and create the need to expand Harney Way to accommodate the expected high volume of traffic. The closest and only link to Candlestick Point from Highway 101 is Harney Way, which is bounded on the south by the Bay. Already, Highway 101 cuts the greater Visitacion Valley Watershed from the Bay. Now the shoreline access will be further degraded by the Harney Way expansion to say nothing of the impact on the proposed and existing Executive Park developments. If feasible economically and topographically, build a land bridge across Harney Way to allow easier access to the Bay and continuous interface with the shoreline that was originally envisioned by Executive Park developers and the community.

46-2  
cont'd.

The proposed LOS at intersections in Visitacion Valley are not acceptable and need to be better mitigated, primarily by better land use planning for the Project, i.e. no regional entertainment and retail center. Already Bayshore Boulevard, Tunnel and Blanken Avenues are congested and this is even before the Schlage Lock, Executive Park, Travelodge and Sunnydale developments are completed.

Our neighborhood is held hostage to traffic and parking congestion on the 49er Game Days and this will only be exacerbated by an entertainment and regional retail center at Candlestick Point.

**2) Regional planning.**

There needs to be coordinated regional planning between San Mateo and San Francisco Counties. Visitacion Valley is caught in the middle of unprecedented mega developments that should be working together for the good of the entire region.

- The 600 acre Brisbane Baylands project next door to Visitacion Valley is proposing an Entertainment Center to replace the Cow Palace, which will eventually have to be closed. The Baylands site, being directly adjacent, has easy access to Highway 101. Why would anyone even consider building another entertainment center at Candlestick Point, which can only be accessed by a single narrow strip of land, i.e. Harney Way?

46-3

- The solely commercial development at the Baylands, as well as the research and development and other commercial development proposed for Hunters Point, will generate enormous employment opportunities for the entire region. It does not all have to be included in this Project - to the point of spoiling another neighborhood, Visitacion Valley, which is finally emerging from years of neglect.

**3) Open Space.**

We are missing a golden, once and forever opportunity to create a magnificent signature park in the Southeast by not emphasizing the link between Bayview Hill and CPSRA. As an aesthetic consideration, yes, almost anything would be better than the stadium parking there now. However, aesthetically and environmentally, a better alternative, rather than a narrow link across the roadway, would be significant

46-4

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expansion of the connection between the state and city parks. It would create a grand view in both directions from the Hill and the shoreline. It would provide an unfettered safe means for wildlife to travel from hill to shore, as well as increase the open space for the public. A Doyle Drive type of pedestrian/wildlife crossing could be built by culverting the roadway to create a land bridge.

As District 10 residents know, the southeastern waterfront has the potential to offer the kind of quality open space found at other locations such as Crissy Field. Overlooking the potential to better connect Bayview Hill to the Project's broader open space seriously underestimates the value - aesthetic, educational, recreational, environmental and even financial - that such space will bring to the City. This could be a cultural attraction, if an outdoor sculpture garden were created on the order of New York State's Storm King Center.

In any other section of the City, the Candlestick Point portion of the Project would not be acceptable. There has not been sufficient attention paid to development planning at Candlestick, certainly nothing compared to the Shipyards, which has had its own CAC and years of community participation.

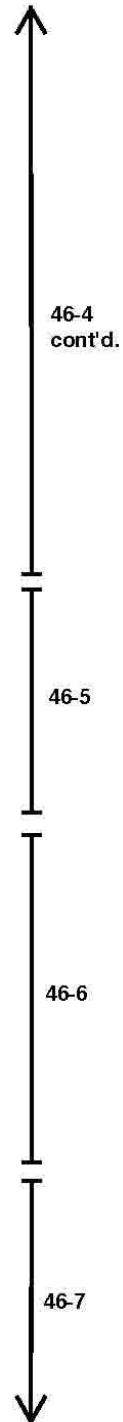
**4) Air Quality.**

Further studies need to be done specifically for Executive Park and the greater Visitacion Valley intersections. The DEIR does not include air quality studies in Visitacion Valley, only in BVHP. Most anticipated Project traffic will travel along Harney Way and come from 101 and the future Geneva Extension. The southern routes will be those most used, because of accessibility and that is where the air quality will be most heavily impacted. Once again, the well being of our residents is not being addressed.

**• Aesthetics.**

Although, I am generally favorable of higher density brought about by taller buildings, it is disingenuous for the DEIR to state that there will be no adverse effects visually on the views either towards or from Bayview Hill, which will in effect be obscured. There will be an enormous impact on the view corridors affecting the southern neighborhoods, which will block the bay views. Also, I will reiterate the aesthetic importance of the view corridor that could be created by a significant expansion of the land connecting Bayview Hill and CPSRA. The proposed buildings will forever block the magnificent view from the park up the eastern side of Bayview Hill, which has been degraded on all other sides. This is the only remaining open space left of the Hill that descends to the shore

Overall, there is much to look forward to in the project, but, again, the Candlestick land use portion and traffic issues in Visitacion Valley have been overlooked. There is a strong sense in our neighborhood that we are being sacrificed to this Project. We are sandwiched between 2 mega developments - one, in our own City and one at the Brisbane Baylands - both of which are ready to go forward without consideration of health and aesthetic issues that will emanate from traffic congestion, upheaval of our neighborhood and quality of life that their projects will produce.



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I ask that further study be done on the effects of this Project on our neighborhood particularly as concerns the Candlestick Point area in terms of traffic congestion, Harney Way, connecting Bayview Hill and CPSRA, and deleting the regional entertainment and retail centers, which are traffic generators, in favor of local neighborhood serving uses. I have enclosed an alternative concept plan for Candlestick Point that shows an expansion of the land mass between Bayview Hill and CPSRA and an adjacent mixed-use retail/housing area. The mixed-use area would have retail on the ground floor with housing above and be more in keeping with other San Francisco neighborhoods - a main street kind of concept - rather than separating the housing from retail as shown in the Project's plan.

There is a basic disconnect between some of the City's stated policies, such as the *Precautionary Principle* and *Transit First* and the proposed Project that need to be examined. If given sufficient time, I could have commented more specifically. Although I read portions of the DEIR, I could not give it the attention that such an important document deserves.

Thank you.

Fran Martin

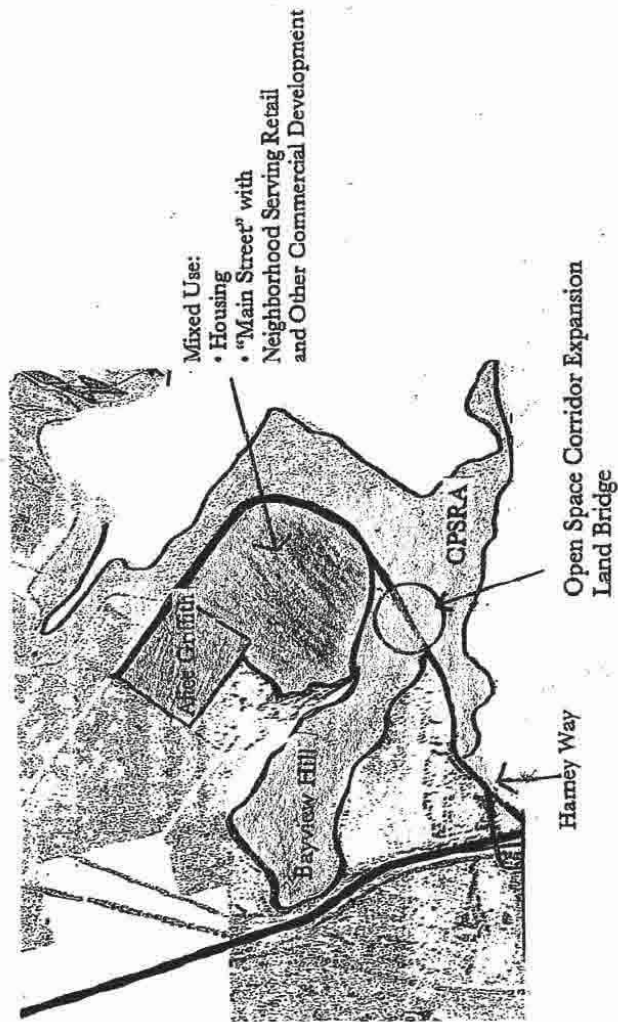
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46-7  
cont'd.

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### Alternative Plan: Candlestick Point



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## ■ Letter 46: Visitacion Valley Planning Alliance (1/11/10)

### **Response to Comment 46-1**

Refer to Response to Comment 1-1 and Response to Comment 85-5 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR.

### **Response to Comment 46-2**

The comment questions whether construction/approval of an entertainment and regional retail center at the location proposed is consistent with the City's Transit First policy. There would be a robust transit network serving the entertainment and retail sites. These facilities would be served by three transit lines, including:

- 29-Sunset, with service to Mission Street, the Balboa Park BART station, San Francisco City College, and San Francisco State University
- CPX, which would provide express service to the Transbay Terminal in Downtown San Francisco, where patrons can connect to many other local bus lines as well as regional transit systems, including ferries, AC Transit bus service to the East Bay, and Golden Gate Transit bus service to Marin and Sonoma Counties
- 28L BRT, which would provide high-frequency service in exclusive right-of-way to the Hunters Point Shipyard transit hub, the Bayshore Caltrain station, and the Balboa Park BART station

Consequently, patrons from the regional retail and entertainment centers who wish to use transit would be able to connect to destinations throughout the entire Bay Area with only a single transfer between systems or routes. The ability to provide convenient connections to this robust transit network was a key reason for the design and proposed location of these uses.

The Project proposal includes a mix of regional and local transit links to ensure quick access by transit from points throughout the Bay Area to major destinations in the Project area. These include the proposed stadium, the parks, and the entertainment and retail center complex at Candlestick Point. While these land uses are consistent with the voter-approved Proposition G, the transit links proposed in the Project have been designed specifically to ensure that regional attractions (e.g., the arena) have multiple transit route access and strong connections to BART and Caltrain. Thus, the entertainment and retail complex would have direct access to BART and the T-Third by the 28L-BRT and the 29-Sunset, and direct access to Caltrain by the 28L-BRT, as well as multiple pedestrian and bicycle links to the Bayview via Gilman Avenue, Jamestown Avenue, and Ingerson Avenue, and along Harney Way and the State Park; links that would also serve the same local-to-regional transit hubs.

Unlike numerous regional attractions in the Bay Area, transit serving this site would not only provide links to BART, Muni Metro, and Caltrain, it would provide those links on exclusive right-of-way to reduce and minimize conflicts, congestion impacts and other typical delay and unreliability factors of conventional bus transit service. The Project therefore provides a high level of transit orientation and amenity to support the trips to and from the Project, from both San Francisco and the larger Bay Area.

The commenter also suggests that the proposed reconstruction of Harney Way would negatively impact shoreline access. The proposed configuration of Harney Way includes a number of pedestrian amenities

designed to improve shoreline access. The reconstruction would include two new signalized intersections, at Thomas Mellon Drive and Executive Park East. Each of these new signalized intersections would provide new crosswalks across Harney Way and allow controlled crossings for pedestrians. The reconstructed Harney Way has also been designed in two phases—the first being a slightly narrower, interim phase with fewer travel lanes, and the second being a slightly wider ultimate phase with more travel lanes when traffic volumes warrant—such that pedestrian crossing distances across travel lanes would remain as short as possible for as long a duration as possible.

The intersection and freeway facility LOS impacts associated with the Project were analyzed and described in the Draft EIR. The analysis indicated a number of significant traffic-related impacts to the surrounding roadway system, including facilities in Visitacion Valley. The analysis describes mitigation measures to reduce traffic-related impacts to less than significant levels, where feasible mitigation measures were identified. However, at a number of facilities expected to experience significant impacts, no feasible mitigation measures were identified. For those facilities where no feasible mitigation measures were identified, a detailed discussion of mitigation measures considered and why they were determined to be infeasible is provided in the Transportation Study in Appendix D of the Draft EIR.

The commenter also suggests that unacceptable LOS at intersections in Visitacion Valley be mitigated by land use planning for the Project by not providing a regional entertainment and retail center. A number of intersections in Visitacion Valley would operate at LOS E or LOS F under future year 2030 conditions without the Project. Therefore, not providing the Project's regional entertainment and retail center would not mitigate the poor operating conditions at these intersections. Chapter VI of the Draft EIR describes a number of Alternatives to the Project, some of which would generate less traffic than the Project, and would therefore add less traffic to study intersections in Visitacion Valley.

Impacts TR-38 and TR-43 describe traffic and parking impacts, respectively, associated with 49er game day conditions. Although mitigation measures are proposed to reduce the severity of traffic impacts, they would remain significant and unavoidable with mitigation. Parking impacts during 49er game days were found to be less than significant. Visitors to the regional retail and entertainment center during game days would likely use regional facilities, such as US-101 and the Harney Way interchange, rather than local roadways within Visitacion Valley to access the retail and entertainment center.

### **Response to Comment 46-3**

The Project's commercial uses have been designed to provide a range of opportunities to the region, the adjacent neighborhoods, and the new Project residents. The retail market analysis prepared by CBRE Consulting (Appendix U to the Draft EIR) determined that the commercial uses proposed by the Project would be sufficiently supported by growth in the region and the new residents of the Project. The market analysis determined that there would be no adverse urban decay impacts from cumulative development on the surrounding neighborhoods, including Visitacion Valley. Access to the Project area would be improved under the Project with numerous connections, including BRT and a marina, to the greater San Francisco area. It is anticipated that there would be sufficient market base to support more than one entertainment venue.



### **Response to Comment 46-4**

The comment is acknowledged. This proposal does not reduce or avoid any significant and unavoidable impact of the Project.

### **Response to Comment 46-5**

The Draft EIR evaluates potential impacts from the Project construction and traffic along the Harney Way corridor, including Executive Park, as described in Section III.H (Air Quality) and in Appendix H3, Attachments 1, 2, 4 and 6. The greater Visitacion Valley area is farther away than and generally upwind of the Harney Way corridor. As pollutant concentrations from these types of sources decrease with increasing distance and as the predominant wind direction tends to blow from west to east, out to the San Francisco Bay, the air quality impacts in Visitacion Valley would be lower than those in the Harney Way corridor. As discussed in Appendix H3, Attachments 1, 2, 4 and 6, the impacts in the Harney Way corridor were well below the BAAQMD CEQA threshold of significance so no adverse health impacts associated with the Project would be expected for the greater Visitacion Valley area.

### **Response to Comment 46-6**

Refer to Response to Comment 31-5 regarding the subjectivity of aesthetic evaluation. Section III.E (Aesthetics) of the Draft EIR does not indicate there would be no impact on views. Rather, the analysis acknowledges that the towers would partially obstruct some views from different vantage points, which were clearly identified. Figure III.E-22 (View 10: Northeast from Bayview Hill), page III.E-33, of the Draft EIR, shows the view from Bayview Hill. To the east, residential towers at Candlestick Point would be visible. Short and mid-range views of degraded and unmaintained areas would be replaced with well-designed development (page III.E-60 of the Draft EIR). As shown in Figure III.E-21 (View 11: Northwest from CPSRA), page III.E-34, of the Draft EIR from the easterly area of CPSRA, the Bay, Bayview Hill, and Candlestick Point stadium are clearly visible. Views of Bayview Hill would be partially obstructed, as noted on page III.E-60 of the EIR. However, this view would not be completely blocked, as shown in the simulation, and Bayview Hill would remain fully visible from other vantage points.

### **Response to Comment 46-7**

The traffic-related impacts associated with the Project have been analyzed and are presented in the Draft EIR. Specifically, Impacts TR-1 through TR-16, TR-38, TR-46, and TR-51 identify traffic-related impacts due to the Project, their levels of significance, whether mitigation is feasible, and level of significance after mitigation. These impacts include traffic throughout the transportation study area, including a number of intersections in the Visitacion Valley area and the nearest freeway facilities. They also include the cumulative effects of a number of already approved and/or reasonably foreseeable development projects in the study area, as referenced by the commenter.

The health and aesthetic impacts emanating from traffic congestion, as well as quality of life have been addressed in Draft EIR Sections III.I (Air Quality), Section III.E (Aesthetics), and Section III.B (Land Use and Plans) respectively. Further as the Draft EIR includes a cumulative analysis of all impact areas,

the combination of the Project with all reasonably foreseeable development has also been addressed in Chapter III (Environmental Setting, Impacts, and Mitigation Measures) under each issue area.

With regard to replacing the regional retail centers with neighborhood-serving uses, these ideas were addressed in Chapter VI Alternatives. A reduced development scenario was presented in Alternative 3, page VI-4, in which retail uses would not be developed.

Refer to Response to Comment 52-7 regarding the neighborhood-serving retail (which includes grocery stores) uses and other services proposed by the Project that would be available and accessible to the larger Bayview community and also to the residents of Alice Griffith. Draft EIR Chapter II (Project Description), page II-16, second paragraph, states:

Existing 256 public housing units would be demolished on the existing SFHA site and 844 new homes would be constructed in their place along with neighborhood serving retail and services, open space and new streets. The 844 new homes would include a mix of market-rate, affordable and below-market rental and homeownership and public housing replacement units.

Figure II-4 (Proposed Land Use), page II-11, identifies the location of neighborhood-serving retail with a pink striped overlay.

The commenter reiterates a previous comment regarding consistency between the Project and the City's Transit First Policy. Refer to Response to Comment 46-2 for a discussion of the consistency of the City's Transit First policy with the proposed entertainment and regional retail center.

The commenter notes that the specificity of comments was affected by the length of time available to comment. Refer to Responses to Comments 80-1 and 84-11 for a discussion of the adequacy of the public comment period, including the many opportunities for providing comments on the Draft EIR. In addition, refer to Response to Comment 96-1 for a discussion of the other opportunities for providing public comment prior to publication of the Draft EIR. Refer to Response to Comment 85-5 for a discussion of the extensive planning process for the Project.

Finally, the commenter has submitted an alternative concept plan for consideration that replaces the proposed regional retail and entertainment center with residential, neighborhood serving retail and other commercial development. California has declared that the statutory requirements for consideration of alternatives must be judged against a rule of reason. CEQA Guidelines Section 15126.6(f) defines the "Rule of Reason," which requires that an EIR set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to those that would avoid or substantially lessen any of the significant effects of the Project. Of those alternatives, the EIR need examine in detail only those that the Lead Agency determines could feasibly attain most of the basic objectives of the Project. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR is (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to offer substantial environmental advantages over the project proposal (CEQA Guidelines Section 15126.6(c)). Further, CEQA Guidelines Section 15126.6(f)(1) states that "the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is

already owned by the proponent).” Sufficient information is not provided by the commenter on the alternative concept plan to draw any conclusions about its feasibility.

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## ■ Letter 47: California State Parks Foundation (1/12/10)

1 of 97

Letter 47



CALIFORNIA  
STATE PARKS  
FOUNDATION

January 12, 2010

Via Email and U.S. Mail

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Environmental Review Officer  
San Francisco Planning Department  
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San Francisco, CA 94103

**RE: Candlestick Point-Hunters Point Shipyard Phase II Draft Environmental  
Impact Report; SCH No. 2007082168**

Dear Mr. Muraoka and Mr. Wycko,

On behalf of the California State Parks Foundation (“CSPF”) and our 115,000 members statewide, we write to comment on the Draft Environmental Impact Report (“DEIR”) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (“Project”). Our comments consist of this cover letter and the attached legal comment letter with exhibits from experts. CSPF is concerned primarily with the Project’s impacts to the Candlestick Point State Recreation Area (“CPSRA”) and the Yosemite Slough Wetlands Restoration Project.

**The California State Parks Foundation**

The California State Parks Foundation is the only statewide non-profit membership organization dedicated to protecting, enhancing and advocating for California’s 278 natural, cultural and historic state parks. Through programs that help restore park properties, educate teachers and students about environmental resources in parks, build volunteerism and stewardship in our state parks, and promote sound public policy, we work to protect countless natural, cultural and historical treasures found within our parks, as well as the 280 miles of coastline, 625 miles of lake and river frontage, 18,000 campsites and 3,000 miles of hiking,

47-1

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[www.calparks.org](http://www.calparks.org)



Your Voice for **Parks**

biking and equestrian trails. On behalf of our members, we are committed to ensuring that state parks continue to provide recreation, adventure, renewal, and inspiration to all Californians.

**Statewide Advocacy to Protect State Parks**

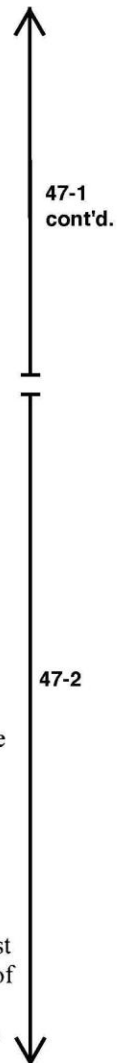
In recent years, it has become clear that California’s 278 state parks are vulnerable to proposals to use these lands for purposes inconsistent with their acquisition and development as parks. Each year we monitor parkland for these proposed “non-mission” uses. Almost 25% of our state parks are confronting non-conforming uses. These proposals, individually and collectively, are a significant threat to the California State Park system. Heated public dialogue and litigation resulted from proposals to construct a toll road through San Onofre State Beach and a power line through Anza Borrego Desert State Park, for instance.

**Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project and CSPF**

Before commenting generally on the DEIR, I want to comment on the nature of the dialogue that has taken place between CSPF and the City regarding this project. I think it is fair to say that we have received the level of respectful, proactive dialogue that you would hope for in a project as complex and far-reaching as this one. This dialogue has given us a high level of confidence that the issues raised in our comments on the DEIR will be resolvable with further dialogue.

We have chosen to send the detailed comment letters that you will find in this package because we also respect the formal nature of this moment in the development of any project and wish to be forthright about our concerns. However, we hope that many of these concerns will be dealt with outside the environmental review process.

I would also like to comment on our view of the project overall. Although you will see many concerns raised about specific aspects of the project, overall we feel that the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project will provide substantial benefits to the system of both state and city parks in the area and provide the level of residential and commercial development appropriate to the site. It is ultimately the policy makers who must opine on whether this is true. However, it is essential to us to express this more balanced view of the project. It may be too easy to read into the concerns expressed in the following pages an opposition to the overall project which does not exist. We write with the intent to address flaws



in the DEIR in furtherance of a better disclosure of the impacts of the project, better analysis of alternatives, and our desire to improve it to its full potential.

↑ 47-2  
cont'd.

**The DEIR**

CPSRA is a unique and valuable recreational resource, and like all our state parks, merits the utmost protection from any surrounding development. The Project, however, does not recognize and protect the full recreational value of CPSRA.

47-3

The Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project DEIR does not convince us that CPSRA will be sufficiently protected. Notwithstanding the Project's planned improvements to certain areas of CPSRA, which CSPF recognizes and appreciates, we remain unconvinced the damage that would occur elsewhere to the park is necessary.

**Yosemite Slough and the Bridge**

Frankly this is the area of our biggest concern. The DEIR overlooks impacts to Yosemite Slough – a critically important and valuable part of the state park – are evident.

First, the environmental documentation appears to cloak the true nature of the proposed Yosemite Slough Bridge. Simply put, Yosemite Slough Bridge is a road proposal that runs through a park. However, nowhere in the environmental documentation is the bridge presented as exactly that: a road through a park. Instead, the Project seems intentionally designed to avoid this conclusion. For example, the state park is oddly divided with the Yosemite Slough area being excluded from the project site and treated disparately while the remainder of the park is included as part of the project.

47-4

Second, the Project fails to recognize the importance of the Yosemite Slough Wetlands Restoration Project. No analysis is provided on how the project will affect the California Department of Parks and Recreation's ("DPR") and CSPF's multi-million dollar efforts to revitalize the Slough.

Finally, the impacts from the Yosemite Slough Bridge remain largely unexamined. This manmade infrastructure will impose a significant change to the park setting anticipated both in the parks General Plan and in the Yosemite Slough Wetlands Restoration Project. The DEIR needs to fully examine these impacts. Further, CSPF is concerned that the bridge itself is





unnecessary. Our traffic expert concludes that the DEIR does not contain sufficient justification for the bridge. Additionally, the Project does not advance a no-bridge option if the 49ers Stadium is built elsewhere. If the fundamental purpose of the bridge is to meet game-day traffic needs, an alternative proposal for traffic should be presented in the event no stadium is built.

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**Impacts to Candlestick State Recreation Area as a Whole**

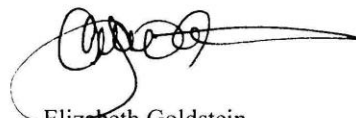
CSPF also is concerned more generally with the Project's impacts to the entire state park. The DEIR repeatedly asserts that improving the state park in some areas justifies degradation and the take of the park elsewhere, and therefore significant impacts to park resources are minimal. This turns the California Environmental Quality Act ("CEQA") on its head. Significant impacts must be analyzed and fully disclosed prior to any form of mitigation.

Development projects should avoid encroachments on parklands if at all possible, and we are not convinced that this Project is configured in a manner that sufficiently protects our parklands. This project contemplates the take of existing parklands and negative impacts to the remainder. Compensation is presented in the form of replacing or improving upon certain parklands via a reconfiguration deal with DPR. The DEIR, however, fails to clearly analyze the details of this scenario or recognize the severity of park impacts. As a result, we do not believe that the environmental documentation fulfills its legal mandate under CEQA to fully evaluate and inform decision makers and the public as to the merits of the Project.

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We look forward to the continued dialogue regarding this important project.

Yours Truly,



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**California State Parks Foundation  
Legal Comment Letter on the Draft Environmental Impact Report  
for the Candlestick Point – Hunters Point Shipyard Phase II Development Plan Project;  
SCH #2007082168**

We write on behalf of the California State Parks Foundation (“CSPF”) to comment on the Draft Environmental Impact Report (“DEIR”) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (“Project”), a joint proposal of the San Francisco Redevelopment Agency (“Agency”) and San Francisco Planning Department (“Planning Department”).

As explained in detail below, the DEIR for the Project does not comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code §§ 21000 *et seq.* (“CEQA”) and the CEQA Guidelines, California Code of Regulations, Title 14, §§ 15000 *et seq.* (“Guidelines”). Approval of the Project also threatens to violate several other state and federal laws. The Agency and Planning Department should not approve the Project or grant any permits for the Project until a revised DEIR is prepared and re-circulated for public review and comment.

These comments are prepared with the assistance of two technical experts, WRA, Inc. and Tom Brohard, P.E. The comments of each of these two experts are appended hereto as Exhibit A and Exhibit B, respectively. Please note that these expert comments supplement the issues addressed below and should be addressed and responded to separately.

**I. INTRODUCTION**

The California State Parks Foundation is a nonprofit organization whose mission is to protect, enhance, and advocate for California’s 278 magnificent State Parks. CSPF is therefore concerned with the Project’s negative impacts to the Candlestick Point State Recreation Area (“CPSRA” or “State Park”) and to ongoing efforts to revitalize the Yosemite Slough area of this park.

The massive scope of this project – over 10,000 residential units, over 1 million gross square feet (gsf) of retail and offices space, 2.5 million gsf of research and development uses, a new 49ers stadium, a 900-foot bridge, and a 19-year construction period – would have tremendous impacts on the State Park. Much of the Project’s development, including the Yosemite Slough Bridge, would occur on, or immediately adjacent to, existing state parklands. Despite this development’s obvious inconsistencies with park purposes, the DEIR consistently underestimates the full scope of significant recreational, visual, biological, and other impacts to CPSRA.

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Yosemite Slough Bridge is of major concern. Its imposing nature and surrounding landscaping will reduce CPSRA's attractiveness to the public. This bridge would decrease the recreational value of the state park by introducing unnatural and discordant visual elements intruding upon previously open vistas of the bay. The DEIR largely ignores these impacts.

Traffic justifications for the Yosemite Slough Bridge also are not persuasive. Our traffic expert finds that the bridge will not significantly alter traffic congestion, and that alternative transportation plans have not been adequately studied and considered. Moreover, if the new 49ers stadium is not built, which is a real possibility, the political impetus for the bridge evaporates. But the Project contains no contingencies for no-bridge alternatives if a new stadium never materializes. Equally disturbing, the DEIR fails to provide any legally enforceable mechanisms to ensure the Yosemite Slough Bridge will not be opened for automobile use on a year-round basis.

The DEIR's flaws extend to its treatment, more generally, of the Yosemite Slough – an integral part of the State Park. Most notably, the DEIR does not provide any analysis of Project inconsistencies with the Yosemite Slough Wetlands Restoration Project. Sponsored by the California Department of Parks and Recreation ("DPR") in collaboration with CSPF, this wetlands plan will enhance and restore Yosemite Slough's recreational and biological values. The DEIR's failure to consider significant inconsistencies with the wetlands restoration plan violates fundamental CEQA principles, and forecloses the possibility of adopting environmentally superior and feasible alternatives that would allow for the Project to move forward in concert with the wetlands restoration plan, rather than threaten its recreational and biological improvements.

The DEIR is replete with omissions and legal deficiencies with respect to impacts to other areas in CPSRA as well. For example, the DEIR operates under the flawed premise that improving the State Park in some areas justifies degradation elsewhere; and, as a result, the DEIR truncates its analysis of significant impacts to park resources. This violates CEQA requirements to fully disclose impacts.

Ultimately, the environmental documentation fails to achieve its fundamental purpose of informing the public under CEQA and its Guidelines. The project description is incomplete and misleading; a thorough analysis of significant environmental impacts separate from proposed mitigations is still needed; inconsistencies with other plans remain unidentified; a full discussion of alternatives has yet to be performed; and mitigation measures are insufficient, unenforceable, and often missing altogether. The ability of CSPF, decisionmakers, and the rest of the public to fully understanding Project impacts is therefore severely compromised.

**II. THE DEIR IS INADEQUATE AND FAILS TO COMPLY WITH CEQA**

The DEIR fails to realize two of the essential purposes of CEQA. First, CEQA is designed to inform decisionmakers and the public about potential, significant environmental effects of a project. Guidelines § 15002(a)(1). The EIR process is the "heart" of this requirement. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84. The EIR has been



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described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. Guidelines § 15002(a)(2) and (3); see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.

As discussed below, the DEIR falls short of these mandates by failing to inform the public or decision makers about the Project’s significant impacts, examine an adequate range of alternatives, and propose adequate mitigation measures.

**A. THE DEIR MUST DESIGNATE ONE LEAD AGENCY**

The DEIR lists both the City’s Planning Department and the City’s Redevelopment Agency as essentially “co-lead” agencies for the Project. See, e.g., DEIR, I-10. This violates CEQA’s requirement that the EIR designate a single lead agency for a project. “If two or more agencies are involved in implementing or approving a proposed project, only one agency can be the lead agency. Guidelines § 15051(a). The Guidelines establish criteria for selecting a single lead agency amongst two or more contenders.” Remy, Thomas, *Guide to CEQA* (11<sup>th</sup> Ed.), 2007, p. 54. Although the Redevelopment Agency takes on projects exclusively within the City and County of San Francisco, it is a separate legal entity from the City and County. As explained on its website, “[t]he San Francisco Redevelopment Agency, incorporated August 10, 1948, is authorized and organized under the provisions of the California Community Redevelopment Law (“CCRL”). The Agency is an entity legally separate from the City and County of San Francisco, but existing solely to perform certain functions exclusively for and by authorization of the City and County of San Francisco.” See <http://www.sfdevelopment.org/index.aspx?page=22>. The Redevelopment Agency has its own Commissioners and is charged with its own mandate.

Failure to properly designate a single lead agency poses significant and unnecessary procedural burdens to the public and results in administrative waste for the relevant agencies. For instance, the DEIR states that there will be a separate EIR certification by the Redevelopment Agency and the Planning Commission. See, e.g., DEIR, ES-4 and Table ES-4. This creates confusion and additional procedural hurdles for the public in making its comments and for purposes of understanding the public’s exhaustion responsibilities and attendant appeal rights. The DEIR must be revised to repair this legal defect. One agency should be designated as lead with the other agency designated as a responsible agency. The lead agency must give the responsible agency the opportunity to comment on the project and provide the responsible agency with any and all procedural considerations to which any other responsible agency is entitled under CEQA. A revised DEIR must then be re-circulated for public review and comment.

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**B. THE DEIR IS A PROGRAM-LEVEL EIR, NOT A PROJECT-LEVEL EIR**

CEQA mandates the use of programmatic EIRs for individual projects with significant environmental effects that are implemented in phases. Guidelines § 15165. Program EIRs serve a vital function by allowing decisionmakers the opportunity to consider the wisdom in pursuing a project in its proposed form as early in the process as possible. *See Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271 (City of Los Angeles was required to prepare a tiered EIR to address any new impacts related to Port of Los Angeles project in its more recent and detailed form.)

In this instance, the massive scope of the Project, its preliminary nature, and its phased 19-year construction period, make it inappropriate for project-level analysis. *See*, DEIR, Figure II-16 (timing for different phases). The uncertain nature of the Project is evident. For example, widely divergent plans for a new 49ers stadium include the possibility that the stadium may not be built at all, or that the stadium may be opened for expanded use by the Oakland Raiders. Uncertainties also exist with the Candlestick Point Tower Variants, which offer divergent configurations that could have notably different impacts on CPSRA (e.g., shade, wind, aesthetic impacts). DEIR, Figures IV-13 to IV-16. If the present DEIR is not treated as a programmatic EIR, these ambiguities in the scope of the Project would result in future phases of development avoiding environmental review as they take form.

As but one example of the anemic analysis of Project variants, the 49ers/Raiders shared stadium scenario entails almost double the number of game days (from 12 to 20 games) and up to 20 secondary smaller events, yet the DEIR provides no meaningful analysis of the impact of doubling the NFL use of the stadium to recreational values in CPSRA. *See Exhibit B*, p. 3; DEIR, IV-238 (less than two pages of analysis of recreational impacts states that “[i]n summary, impacts from the Shared Stadium Variant would be substantially similar to the Project”).

The DEIR cannot be a project-specific, comprehensive document aimed at full disclosure of impacts and mitigation while the Project is still conceptual in its present form. Either the DEIR must disclose the nature of the Project with greater specificity, or the present DEIR must be treated as a programmatic document that will be supplemented by tiered environmental review as the Project details unfold.

Ultimately, the public needs to understand how the Project will differ, including its environmental impacts, if the 49ers stadium is expanded in use, if the 49ers stadium is not built. The DEIR, as a project-level document, does not serve this function. The DEIR must be revised to make clear that it is a programmatic document that must be analyzed for sufficiency at each phase of Project development at which major decisions are ripe for review.

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**C. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE PROPOSED PROJECT**

An accurate, stable, and finite project description is an indispensable prerequisite to a legally adequate EIR. *See County of Inyo, supra*, at 192 (“A curtailed or distorted project description may stultify the objectives of the reporting process.”). As one analyst notes:

“The adequacy of an EIR’s project description is closely linked to the adequacy of the EIR’s analysis of the project’s environmental effects. If the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake.”

Kostka and Zischke, “Practice Under the California Environmental Quality Act,” p. 580 (2/09 update).

Here, the DEIR provides a project description that is unclear and inconsistent. The DEIR provides no explanation for excluding Yosemite Slough from the Project site and boundaries; no clear description of project objectives related to Yosemite Slough Bridge and the proposed 49ers stadium; no consistent and comprehensive listing of related laws and regulations that the Project must comply with; and no identification or description of reasonable foreseeable future activities. As a result of the DEIR’s failure to discuss key Project components, as well as the exclusion of Yosemite Slough from the Project site, potentially significant environmental impacts are not adequately analyzed or addressed.

**1. Project Boundaries Are Inappropriately Designed to Exclude Yosemite Slough**

Consistent with the DEIR’s many attempts to downplay impacts to Yosemite Slough, the Project boundaries, inexplicably, exclude the Yosemite Slough area, even though the rest of the State Park is included. The result is that the majority of CPSRA (120 acres) is included in Project boundaries, while Yosemite Slough, consisting of 34 acres (22% of the park), is excluded. This contradicts CEQA’s mandate to accurately describe the project. Lead agencies may not artificially narrow project descriptions to minimize project impacts and undercut public review. *Santiago County Water Dist. v. County of Orange* (1981) 118 CA3d 818, 829-830 (a project description that omits integral components of the project may result in an EIR that fails to disclose all of the impacts of the project); *see also Laurel Heights Improvement Ass’n, supra*, at 253.

The DEIR minimizes impacts to the State Park by fragmenting it for disparate treatment. In effect, the DEIR removes from the project site the area that may be most affected – Yosemite Slough – and then claims park impacts are less than significant. *See Orinda Ass’n v. Board of*

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*Supervisors* (1986) 182 CA3d 1145, 1171 (lead agency may not split a single large project into small pieces so as to avoid environmental review of the entire project). Park users are intended to recreate throughout the entire park, walking, hiking, and moving from one area to the next. The State Park's value is as a whole unit. Thus, the DEIR's oft-cited conclusion that Project improvements to the State Park will offset or somehow mitigate negative impacts is baseless if the State Park is artificially divided, or illegally "piecemealed," into segments for analysis.

Moreover, substantial portions of Yosemite Slough Bridge will be built on State Park property. Exhibit A, Figures 1 and 2. Land-based portions of the bridge, both on the north and south side, are located within CPSRA, and no justification exists to exclude Yosemite Slough from project boundaries. Guidelines § 15124. Ultimately, the public and decision makers are not fully informed that this is a bridge to be built on state park lands.

Excluding Yosemite Slough from the Project site also is inappropriate and nonsensical because Project road development would surround Yosemite Slough in all directions. *See* DEIR, Figure II-16. The DEIR categorizes transportation improvements to Carroll Avenue, Ingalls Street, Thomas Avenue, and Griffith Street – arterial routes that surround Yosemite Slough – as "offsite" improvements. *Id.* Treating Yosemite Slough as distinct from the rest of the park when it is surrounded by development is misleading and undercuts public review. *Santiago County Water Dist., supra*, at 829-830.

Deficiencies in the DEIR stemming from the exclusion of Yosemite Slough from Project boundaries include:

- Inconsistent Methodologies. The DEIR's treatment of Yosemite Slough is inconsistent. The DEIR's analytical methodology fluctuates in maps and diagrams between including and excluding Yosemite Slough as part of the State Park and/or other study areas. *See, e.g.*, Figure III.N-1 (Yosemite Slough included in watershed study area); Figure III.N-3 (only a portion of Yosemite Slough included in habitat study area); Figure III.P-1 (Yosemite Slough included with CPSRA); and Figure III.P-2 (Yosemite Slough excluded from park areas); *see also* Exhibit A, pp. 4-5. An EIR's project description and analysis must be consistent, otherwise public participation is stymied. *County of Inyo, supra*, at 197.
- Confusing Implications. The *Yosemite Slough* bridge – as the name itself denotes – runs across Yosemite Slough; yet the DEIR only includes the bridge and not the slough as part of the Project Site. Exhibit A, Figure 1. No logical reason exists to exclude the remainder of the Yosemite Slough area. Construction of the bridge will include abutments, footings, piers, bridge approaches, and revetment construction – all of which will affect and be intricately tied with the slough itself.

Simply put, the Project proposes to build a roadway through Candlestick State Recreation Area dividing Yosemite Slough from the balance of the park. Manipulating project boundaries to avoid this conclusion is fundamentally misleading to the public and decision-makers; wrongly

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implies that the Project and its impacts are not closely tied to Yosemite Slough; and flaunts the basic requirements of CEQA to fully inform the public. A revised DEIR must include Yosemite Slough in the project site.

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**2. The DEIR Sets Forth Project Objectives That Are Inconsistent and Vague**

The DEIR's project description fails to adequately discuss fundamental features of the Project with regard to the newly proposed 49ers stadium, related traffic plans, project variants, and the configuration of development in Candlestick Point. A revised and re-circulated DEIR is required to correct these deficiencies. *Mountain Lion Coalition v. California Fish and Game Comm'n* (1989) 214 Cal.App.3d 1043, 1052 (an agency cannot simply release a draft report "that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review").

The DEIR is unclear as to whether the 49ers Stadium will be built and the impacts and changes to the Project that would result if not. Rather than state clear Project objectives, the DEIR sets forth the vague goal of "encouraging the 49ers" to remain in San Francisco, including by providing the necessary transportation structure. DEIR, II-7. The result is a project that imparts no clear guidance on what is required, especially from a transportation perspective. Guidelines § 15124(b); *see also City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4<sup>th</sup> 398, 406 (DEIR must contain a clear and comprehensive project description).

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The DEIR is inconsistent in its treatment of the 49ers stadium. While the Project objectives describe the 49ers stadium as merely a possibility, elsewhere in the DEIR the 49ers stadium is treated as a foregone conclusion. *See, e.g.,* DEIR, II-7 (project characteristics include 69,000-seat 49ers stadium); DEIR, Table II-3.

The inadequate treatment of the 49ers stadium is particularly troubling with respect to Yosemite Slough Bridge. The DEIR's assertion that a bridge is necessary to accommodate game-day traffic is unjustified even if a new 49ers stadium is built. Exhibit B, pp. 1 and 3-4. Moreover, given the uncertainty of a new stadium, the need for the Yosemite Bridge is even more attenuated.

Even more misleading, the DEIR's project description contains no mention of the scenarios listed as "project variants" elsewhere in the document. *See* DEIR, Chapter II, Project Description; IV-214 to IV-248. Such "variants," which find no basis in CEQA, include: the possibility of a stadium being jointly used by the 49ers and Oakland Raiders, and increased levels of development for housing or research and development should a stadium not be built. *Id.* The existence of these "variants" are a per se violation of CEQA's requirement that the project description be accurate, stable and finite. *See County of Inyo, supra*, at 192.



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The Executive Summary suffers from the same flaws and exclusions. *See* DEIR, Volume I, Executive Summary. No discussion of Project variants is presented in the Executive Summary.

Moreover, the DEIR's discussion of "Project Variants," when it does occur, is perfunctory and incomplete. For example, the DEIR devotes a mere 34 pages of analysis (in an enormous six-volume DEIR with thousands of pages) to specifically address the potential environmental effects should a new stadium be built for two NFL football teams, instead of just one. DEIR, IV-214 to IV-248.

The DEIR's description of project objectives does not comply with CEQA disclosure law. A revised DEIR must be re-circulated to the public that clearly, comprehensively, and consistently describes project objectives relative to the 49ers stadium and associated traffic, and to project variants. If these critical future decisions and uncertainties cannot be ascertained in more detail, the DEIR must address them on a programmatic-EIR level, as discussed above.

**3. The DEIR Minimizes the Extent of the Project By Failing to Describe and Analyze Reasonably Foreseeable Future Activities**

The DEIR fails to analyze several reasonably foreseeable aspects of the Project. Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable future activities that are a consequence of project approval. *Laurel Heights Improvement Ass'n, supra*, at 396. CEQA mandates that foreseeable future activities not be piecemealed, each only being analyzed for minimal potential impacts, but which cumulatively together may have disastrous consequences. *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452; *see also Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268 ("CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish"). The court in *Laurel Heights* set forth a two-part test to determine whether an EIR must include an analysis of the environmental effects of future expansion or other action: "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Laurel Heights Improvement Ass'n, supra*, at 396.

One reasonably foreseeable consequence of approving the Project would be heavy use of the Yosemite Slough Bridge by private automobiles during secondary game events and on a full-time basis by private automobiles, buses, and rail as population and transportation pressures grow. *Exhibit B*, pp. 5-8. The DEIR in fact identifies no legally enforceable restrictions in its transportation analysis that would prevent the Yosemite Slough Bridge from being used full-time, year-round by automobiles; and the DEIR admits that the bridge is designed to be "rail ready," but fails to analyze likely future impact from new rail infrastructure. *Id.*; *see also* DEIR, III.D-46. Greater use of the bridge by automobiles, buses, and rail would result in significant Project impacts to the environment and CSPRA.

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This is precisely the type of situation CEQA cautions lead agencies against. Environmental problems should be considered at a point in the planning process “where genuine flexibility remains.” *Mount Sutro Defense Committee v. Regents of University of California* (1978) 77 Cal.App.3d 20, 34. A revised DEIR must consider the masked environmental impacts that would result from foreseeable uses of the Yosemite Slough Bridge, as well as any associated mitigation measures and cumulative environmental impacts.

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**4. The DEIR Fails to Identify Necessary Federal Approvals**

Under CEQA, a project description must include “[a] list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.” Guidelines § 15124(d)(1)(C). The DEIR fails to appropriately identify and integrate the required approvals and environmental reviews for the Project.

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Under Table ES-1, “Major Project Approvals,” there is no mention of the need for permits, approvals, and compliance with the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”), the Endangered Species Act, 16 USC §§1533, *et seq.* (“ESA”), Marine Mammal Protection Act, 16 USC §§ 1631 *et seq.* (“MMPA”), or the Magnuson–Stevens Fisheries Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.* (“MSA”). But under the heading “Regulatory Framework” for biological resources, the DEIR recognizes the need to comply with the ESA, MMPA, and MSA. DEIR, III.N-38-III.N-40. This is inconsistent. An accurate project description in the DEIR demands that all federal approval processes be clearly and comprehensively listed for major environmental laws.

**5. The DEIR Fails to Describe the Project’s Connection to Mitigation Measures for SFO Airport Improvements and the BART Extension**

The Yosemite Slough Wetlands Restoration Project fulfills mitigation obligations for (1) the various project and improvements by the San Francisco Airport (“Airport Improvements”) and (2) the San Francisco Bay Area Rapid Transit District (“BART”) San Francisco Airport Extension Project (“BART Extension”). Both of these projects required permits, certifications, and approvals from numerous public agencies, including the U.S. Army Corps of Engineers (“USACE”), and the California Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB”). The wetlands restoration plan fulfills mitigation obligations related to a USACE Permit and RWQCB Waiver by providing mitigation offsets and credits for wetlands creation by the Airport Improvements and BART Extension.

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The DEIR fails to identify the Project’s connection to these mitigation efforts, and whether they would be frustrated, diminished, or altogether nullified by the Project. Particularly disturbing is the possibility that the City of San Francisco is filling in wetlands related to Airport

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Improvements, while weakening attendant mitigation efforts with superceding projects. Without any acknowledgement in the DEIR of these potential impacts, the legal status of the mitigation measures for both the Airport Improvements and BART Extension is unknown. The DEIR must be revised to address this deficiency.

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**D. THE DEIR IS INCONSISTENT WITH THE YOSEMITE SLOUGH WETLANDS RESTORATION PROJECT**

The DEIR fails to analyze and disclose Project inconsistencies with the Yosemite Slough Wetlands Restoration Project (“Wetlands Restoration Plan”). Avoiding conflicts with other land-use plans *before* development proposals are approved is one of CEQA’s principle purposes. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 307 (1988) (CEQA requires that environmental problems be considered at a point in the planning process where “genuine flexibility remains.”); Guidelines §§ 15125(d) and (e) (DEIR must discuss any inconsistencies with other plans and any such analysis must discuss “potential future conditions discussed in the plan.”) As discussed below, the Project is inconsistent with both the biological and recreational goals of the Wetlands Restoration Plan.

Proposed by the California Department of Parks and Recreation and administered in collaboration with California State Parks Foundation, the Wetlands Restoration Plan already has been approved and obtained funding. DPR prepared a Final Initial Study and Mitigated Negative Declaration (April 2006, SCH# 2005122023). To date, over \$13 million has been raised to execute the wetlands and park improvements under the plan. All draft working drawings have been completed and reviewed by DPR, as well as supporting documentation. The project has also received Section 401 Water Quality Certification and Waste Discharge Requirements (July 2007), and San Francisco Bay Conservation and Development Commission Permit Amendments (March 2005 and September 2009). Only a few approvals remain before the Yosemite Slough restoration project is ready for construction.

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The Wetlands Restoration Plan will transform Yosemite Slough both recreationally and biologically, but absolutely no analysis is provided in the DEIR of how the Project will significantly impact these efforts.<sup>1</sup> The massive development proposed by the Project – including the fragmentation of the slough by the Yosemite Slough Bridge – would undermine this multi-million dollar restoration effort and the values, resources, and recreational opportunities this plan was designed to enhance and protect. In consequence, the lead agencies are poised to approve a Project that will conflict with the Wetlands Restoration Plan. Exhibit A, pp. 2-4.

<sup>1</sup> The DEIR recognizes the existence of the Restoration Plan, and even some of the goals and objectives, but then fails to analyze or describe Project impacts to these goals and objectives. See DEIR III.N-46.

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As discussed below, the Project's inconsistencies with the Wetlands Restoration Plan constitute separate, undisclosed significant impacts under CEQA which must be disclosed in a revised DEIR that is re-circulated for public review and comment.

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**1. The Project Conflicts with the Biological Goals of the Yosemite Slough Wetlands Restoration Plan**

The DEIR omits any discussion of Project inconsistencies with the biological goals of the Wetlands Restoration Plan. A non-exhaustive list of biological benefits to be provided by the plan include:

- establishing the largest contiguous wetland area in the County of San Francisco, increasing existing tidally influenced area from 9 to 20 acres, restoring essential wildlife habitat, improving water quality, and preventing erosion along the shoreline of the City of San Francisco;
- creating two isolated bird nesting islands (including one designed specifically for special status species, e.g. western snowy plover and double-crested cormorants);
- providing nursery areas for fish and benthic organisms, as well as transitional and upland areas to buffer sensitive habitats;
- designing restoration to address soil contamination issues, arising from previous fill activities, that could affect human and wildlife health.

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The DEIR omits any discussion of the significant biological impacts that inevitably will result from the Project's inconsistency with the wetlands plan. The Project, for example, would hinder the creation of restored wetlands, adversely impact improved habitat and newly planted wetlands vegetation, and impede or alter currents entering and existing Yosemite Slough that sustain fisheries and other wildlife. Exhibit A, pp. 2-4. These inconsistencies (and others that remain unanalyzed) would have a significant impact on biological resources and must be fully disclosed and analyzed in a revised DEIR.

**2. The Project Conflicts with the Recreational Goals of the Yosemite Slough Wetlands Restoration Plan**

The DEIR omits any discussion of Project inconsistencies with the recreational goals of the Wetlands Restoration Plan. A non-exhaustive list of recreational benefits to be provided by the plan include:

- providing park visitors with public access to Yosemite Slough, including by serving Bayview Hunters Point, a community unfairly impacted by environmental degradation;

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- building more than 5,000 feet of new interpretive trails, including connections between the restored wetlands area and the remainder of CPSRA;
- creating five vista points;
- constructing an approximately 1,200 square foot multi-use interpretive center;
- adding 2.5 acres of passive public use areas; and
- providing additional amenities including fencing, lighting, benches and drinking fountains.

The Project is inconsistent with these recreational elements. The Yosemite Slough Bridge, for example, would be built directly on two scenic vista sites under the plan. Exhibit A, Figure 1. The bridge also would significantly impede other views of the Bay from the newly created recreational areas. *Id.*, p.3. And proposed trail improvements under the Project directly conflict with those of the Wetlands Restoration Plan. *Id.*, p. 8. These inconsistencies (and others that remain unanalyzed) would have a significant impact on recreational resources under the Wetlands Restoration Plan and must be fully disclosed and analyzed in a revised DEIR.

Analyzing inconsistencies with the Wetlands Restoration Plan also necessitates a revised DEIR that includes Yosemite Slough within the Project boundaries. In its current form, the DEIR gives disparate treatment to areas within CPSRA by excluding the slough from the project site, and as a result, the DEIR underestimates significant recreational impacts to planned improvements under the Wetlands Restoration Plan. As but a few examples, the DEIR (1) fails to provide adequate photos depicting views from Yosemite Slough and (2) fails to analyze the effects of the Yosemite Slough Bridge on boaters' ability to utilize the slough. Exhibit A, pp. 4 and 8. A revised DEIR therefore must fully reanalyze recreational impacts with Yosemite Slough as part of the Project Site.

**3. The DEIR Treats Yosemite Slough Wetlands Restoration Plan In a Different Manner Than Other Plans**

The DEIR's treatment of the Wetlands Restoration Plan is inconsistent with the DEIR's treatment of other plans. Specifically, the DEIR considers how the Project will affect future improvements planned by the U.S. Navy on lands located within the project site. Exhibit A, p. 3; DEIR, III.N-49. No explanation is given as to why a similar analysis was not provided for the Restoration Plan.

**E. THE DEIR FAILS TO ADEQUATELY ANALYZE THE PROJECT'S SIGNIFICANT AND POTENTIALLY SIGNIFICANT IMPACTS**

**1. Biological Impacts Are Not Fully Addressed**



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The DEIR fails to fully analyze the Project's significant impacts to biological resources. The attached expert report, prepared by WRA, Inc. details but a few of the flaws in the Project's treatment of biological impacts. See Exhibit A. Among the conclusions of WRA are that the DEIR: (i) failed to identify numerous significant and potentially significant biological impacts; (ii) underestimated the extent of many of the biological impacts that were identified; (iii) incorrectly analyzed and overestimated the extent to which mitigation would render impacts less-than-significant; and (iv) failed to incorporate feasible mitigation measures to protect biological impacts.

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**a. The DEIR Uses Inconsistent, Vague, and Flawed Methodology to Analyze Biological Impacts**

The DEIR is inconsistent in its treatment of impacts to biological resources. An EIR must be "organized and written in a manner that will be meaningful and useful to decisionmakers and to the public." Pub. Res. Code § 21003(b). The DEIR downplays impacts to the State Park and Yosemite Slough by using inconsistent study areas. Yosemite Slough is only partially included in the H.T. Harvey study (2009)<sup>2</sup>; yet the entire Yosemite Slough area is included in the Yosemite Slough Watershed Wildlife Study (2004).<sup>3</sup> See Figures III.N-1 and III.N-2. The DEIR's failure to include the entire Yosemite Slough area in the H.T. Harvey study precludes a meaningful evaluation of biological impacts to the State Park.

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The DEIR also excludes from its analysis of off-site aquatic resources the "area of construction" within Yosemite Slough. DEIR, III.N- 1 ("[t]he off-site aquatic resources discussed include Yosemite Slough (except the area of construction)..."). No explanation is given for the exclusion of this "area of construction" from the Yosemite Slough analysis. By refusing to define, or justify this area of exclusion, the DEIR fails to adequately inform the public and analyze the full scope of impacts to biological resources in Yosemite Slough.

The above flaws preclude the public and decisionmakers from properly responding to the DEIR.

**b. The DEIR Fails to Analyze Biological Impacts to Yosemite Slough**

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Yosemite Slough, even in its presently unimproved condition, is a special area as part of a state park and due to its biological importance to wildlife. See, e.g., Exhibit A, pp. 4-7 (discussing Project impacts to biologically important resources in Yosemite Slough). Under CEQA, "[s]pecial emphasis should be placed on environmental resources that are rare or unique

<sup>2</sup> H.T. Harvey & Associates, Hunters Point Shipyard and Candlestick Point State Recreation Area Final Delineation of Wetlands and Other Waters, San Francisco, California, February 2009 and revised July 13, 2009 and October 13, 2009.

<sup>3</sup> Golden Gate Audubon Society, *Final Report Yosemite Slough Watershed Wildlife Survey 2003-2004*, prepared by LSA, July 27, 2004.

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to that region and would be affected by the project.” Guidelines § 15125(c); *Bozung v. Local Agency Formation Comm’n* (1975) 13 Cal.3d 263, 283 (an EIR must describe “environmental resources peculiar to the region.”) Rather than give special attention to Yosemite Slough, however, the DEIR does the opposite and glosses over impacts. See Exhibit A, pp. 4-7.

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**2. Recreational Impacts from the Project Are Significantly Underestimated**

The DEIR fails to adequately analyze and mitigate impacts to recreational facilities. The DEIR’s recreational analysis violates the basic CEQA requirement that EIRs be “organized and written in a manner that will be meaningful and useful to decision makers.” Pub. Res. Code § 21003(b). The DEIR glosses over and minimizes the impacts to recreational resources without providing sufficient detail for a meaningful analysis, and ignores other significant impacts altogether.

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**a. The DEIR Underestimates Potentially Significant and Significant Impacts to the State Park from the Yosemite Slough Bridge**

CSPF is particularly concerned with the lack of consideration given to impacts from the proposed Yosemite Slough Bridge to CPSRA. Yosemite Slough Bridge is undeniably a proposal to build a road through a park. It carries with it all the negative recreational impacts that roads have on parks. The sense of place and park experience in CPSRA would be drastically altered by a massive intrusion of steel and concrete – carrying buses and cars, and possibly rail – all of which will diminish park connectivity and forever alter the presently open vistas to the Bay.

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The DEIR offers no justification for concluding that potentially significant or significant impacts would not result to the recreational resources of the State Park where the bridge would be located. The analysis is incomplete and uninformative, especially as to those areas of the park that will be directly taken for bridge construction or are immediately adjacent to the proposed bridge. See Exhibit A, Figure 1 (showing areas of park directly occupied by and adjacent to proposed bridge). It violates commonsense to conclude that a bridge running through a park would not significantly diminish its recreational worth. Much of CPSRA’s value and extraordinary significance lies in its location abutting the open Bay, an increasingly rare resource for urban settings. The proposed Yosemite Slough Bridge would unquestionably and significantly diminish the quality of this park experience. *Id.*, pp. 4 and 8 (discussing aesthetic and recreational impacts to State Park).

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**b. The DEIR Must Analyze Impacts to Various Recreational Users**

The DEIR fails to analyze the impacts of the Project to specific park users, including bicyclists, kayakers, canoeists, water-dependent recreators, picnickers, beach goers, hikers,

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walkers, bird watchers, and other recreational enthusiasts (with the exception of impacts to windsurfers), all of whom will be adversely affected by the Project. An EIR may conclude that impacts are insignificant *only* if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07. Thus, if an agency fails to investigate a potential impact, its finding of insignificance simply will not stand.

The Project is massive and involves, among other things, new residential towers, expanded and new roadways, a 81-foot wide and 900-foot long bridge, vegetation and tree removal, and construction activities with building demolitions, pile driving, heavy trucks, ground disturbance, and grading. The massive scope of the project, with buildings in Candlestick Point as high as 420 feet (or 42 stories), and its development encroaching on parklands presently slated for recreational use, will undoubtedly have significant impacts to recreational users.

The DEIR must be revised and re-circulated to analyze Project impacts to different user groups within CPSRA.

**c. The DEIR Fails to Adequately Analyze Impacts Resulting from the Loss of Parklands**

The DEIR fails to provide substantial evidence for the conclusion that the loss of 29.2 acres of CPSRA parklands, albeit currently underutilized, is less than significant.

First, the standards of significance adopted by the DEIR related to recreational resources are vague and lack any objective criteria. The DEIR states, for example, that an impact is significant if it is to “adversely affect existing recreational resources.” DEIR, III.P-11. The DEIR’s application of this criteria to the loss of 29.2 acres is too vague to have any import; in fact, under this meaningless standard, the take of any number of parkland acres could be deemed insignificant. The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. The DEIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” *Santiago County Water Dist., supra*, at 831.

Second, the DEIR confuses significant impacts and mitigation. In effect, the DEIR argues the take of 29.2 acres is not significant because the remainder of CPSRA would be improved. This turns the CEQA analysis on its head by using proposed mitigation as the basis for avoiding a significant impact finding. Indeed, the proposed improvements to the park, if anything, are mitigation for the DEIR’s implied significant impact associated with the take of parklands. Taking parklands for development has a significant impact on recreational resources, and the DEIR must be revised to disclose the significant recreational impact of taking 29.2 acres of the CPSRA. Exhibit A, p. 8. If the DEIR is proposing to mitigate that impact by improving the remaining parkland, the DEIR must propose this improvement as a mitigation measure that is subject to public review and comment.

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**d. The DEIR Fails to Adequately Analyze Impacts from Increased Park Visitation**

The DEIR omits any meaningful analysis of the impacts of increased park users on CPSRA. The DEIR simply concludes that “[i]ncreased visitation to CPSRA would not significantly and adversely affect the park’s existing recreational facilities and opportunities,” and that “while the number of additional visitors cannot be accurately predicted at this time, the Project’s improvement will increase the amount of land at CPSRA that provides recreational opportunities (as discussed above), and will thus enable the park to accommodate the new demand.” DEIR, III.P-32. These bare conclusions are insufficient. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568 (DEIR must contain facts and analysis). The Project’s impacts resulting from the increased use of parklands must be analyzed and considered for protecting parklands and providing necessary infrastructure. This analysis should recognize the number of acres of the State Park currently in use, those that will be brought into use, and the impacts of increased users on both.

47-29

More generally, the DEIR criteria for what constitutes a significant increase in the use of parklands is unjustified. The DEIR selects 5.5 acres of parkland per 1,000 residents as a baseline condition from which to evaluate impacts. DEIR, III.P-11. But the San Francisco General Plan states that *the City should increase the per capita supply of public open space from the parkland-population ratio at the time of the General Plan’s adoption in 1986, which back then was 5.5 acres per 1,000 residents. Id.* There is no justification for *decreasing* the Project area’s current ratio of 108 acres of parkland per 1,000 residents back to the City General Plan’s baseline level in 1986. A revised DEIR must recognize significant impacts from a decrease in available parklands per resident.

**e. The DEIR’s Recreational Analysis Is Inconsistent, Contradictory, and Vague**

The DEIR’s recreational analysis section is contradictory. The DEIR initially concludes that there will be “no potentially significant or significant impacts and therefore no mitigation measures are included,” DEIR, III.P-1; but later in the section the DEIR identifies significant impacts and mitigation measures. *See*, DEIR, III.P-12 (potentially significant impacts from construction purportedly analyzed and referenced throughout other sections of DEIR); DEIR, III.P-31 (mitigation measure identified for recreational impacts). This is inconsistent and confusing for the public and decisionmakers.

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Further, the analysis of construction impacts to recreational resources is flawed with numerous incorrect references to other sections of the DEIR. The DEIR claims to analyze noise impacts from construction in the “Section III.I (Noise),” DEIR III.P-12; however, the referenced section contains *absolutely no analysis of noise impacts to recreational resources*. (See detailed discussion on noise analysis below). Another example is Figure 11-21, erroneously cited in the recreational section as the location of new marshland, which actually depicts flood zones and

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potential sea level rises. These flaws must be remedied.

**3. The DEIR Fails to Adequately Analyze and Mitigate Impacts to Transportation and Traffic**

The DEIR's traffic analysis is flawed and fails to justify the conclusion that Yosemite Slough Bridge is necessary to meet project objectives. The attached expert report, prepared by Tom Brohard, P.E., details the flaws in the transportation analysis. Exhibit B. As outlined in this report, the bridge would be ineffective at alleviating traffic congestion and transportation alternatives to constructing a bridge have not been adequately explored. Accordingly, a revised DEIR must be prepared to fully evaluate and disclose the necessity for the bridge and fully examine feasible alternatives for transportation.

As detailed in Mr. Brohard's report, the DEIR fails to substantiate the basis for its conclusions regarding the need for, and impacts from, the Yosemite Slough Bridge. Specifically including:

- the bridge is not necessary to accommodate Project traffic, with or without the new 49ers stadium;
- the project description is too vague to support the traffic analysis relative to the bridge (including with regard to the bridge's relationship with future foreseeable conditions and Project variants);
- the bridge is not necessary for the BRT System; and
- the DEIR fails to analyze bridge impacts on bicyclists and pedestrians, attendant Caltrans safety standards, and conflicts with already planned bicycle and pedestrian trails.

See Exhibit B.

One of the justifications for the Yosemite Slough Bridge is to facilitate efficient handling of game day traffic for the newly proposed 49er's Stadium. But building a proposed 81-foot wide, 900-foot long bridge through a park – especially through and over Yosemite Slough – should be a measure of last resort. The DEIR fails to justify the conclusion that traffic from game days could not be served as well, if not better, with non-bridge alternatives. *Id.*, pp. 3-5. The DEIR is remiss in not analyzing and determining the degree to which traffic could be routed around the CPSRA and Yosemite Slough, rather than build a bridge through a state park. *Id.*

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**4. The DEIR Fails to Disclose All Potentially Significant and Significant Aesthetic Impacts of the Project**

Aesthetic impacts to CPSRA from the Project are clear-cut, significant, and unmitigable. The DEIR's analysis of aesthetic impacts is glaringly deficient and violates the intent of CEQA to fully disclose environmental impacts.

The park offers stunning views of San Francisco Bay, including from picnic areas, fishing areas (including two fishing piers), and hiking trails (including a fitness course for seniors and a bike trail). CPSRA is a unique resource, being the first state parkland purposely acquired to bring the State Park System into an urban setting. Yet, the DEIR underplays the park's significance and fails to treat CPSRA as the rare and unique resource it is. Candlestick is the largest park in the Bayview Hunters Point area by far, even in its current configuration. When fully built out, it will dwarf all other park resources in the area. Guidelines §15125(c) ("Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context"); *Kings County Farm Bureau, supra, at 720* (guidelines are to be interpreted broadly in order to "afford the fullest possible protection to the environment").

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**a. Simulations of Yosemite Slough Bridge Are Uninformative and Inadequate**

Yosemite Slough Bridge, as currently envisioned, will be a visual blight on the State Park. Yosemite Slough Bridge is a massive new structure – 81 feet wide and 900 feet long – across a previously open vista, and the new bridge will forever alter the panoramic vistas, as well as the visual character and scenic value of the State Park. The DEIR, however, provides only two simulations of the bridge, both of which are deficient. See Figure III.E-20 and III.E-24. The limited information presented in the DEIR on the bridge's aesthetic impacts is grossly inadequate to allow a meaningful evaluation by the public.

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CEQA requires that an EIR be detailed, complete, and reflect a good-faith effort at full disclosure. Guidelines § 15151. Yet, the primary simulation depicting the bridge, Figure III.E-24, fails to provide a level of information necessary to analyze or comment on its aesthetic impacts. First, the depiction of the bridge is too far away to give a sense of its size. The bridge frame, truss, and/or beam are indiscernible; only three of the supporting legs (of the more than 10) are displayed; and the simulation gives absolutely no sense of the bridge's width of 81 feet. Second, the Bay View depicted is hazy, failing to present the Oakland skyline, one of the more stunning aspects on a clear day. Finally, the bridge simulation is unrealistic because it is devoid of any typical activities; there are no buses, cars, bicyclist, or pedestrians shown on the bridge, which will significantly affect aesthetics.

The other primary simulation of the Yosemite Slough Bridge, Figure III.E-20, is even

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less informative. The simulation is at such a distance as to render the bridge less than a 1/2" x 1/2" depiction on the page, a minor part of the 6" x 3.5" simulation, which fails to convey any sense of bridge's massive structure and imposition on the park. Both depictions of the bridge are at long-range. See Figure III.E-20 and III.E-24. Mid- and short-range depictions are necessary to analyze aesthetic impacts, especially considering the bridge runs through the State Park, imposing itself within a few feet of recreational users.

Other simulations of Yosemite Slough Bridge were produced by the project applicant, Lennar Urban, and by consultants; however, these other simulations were not included in the analysis of aesthetics or elsewhere in the DEIR. See Exhibit A (reference to and attachment of various simulations and graphics that were produced but not included or discussed in the DEIR). These undisclosed simulations show the bridge in greater detail. Two of these simulations depict panoramic views from the southside bay trail and northside plaza; several show the bridge width and use of lanes for buses, cars, and pedestrians from a birds-eye view; others appear to depict the bridge at mid- to short-range distances. An EIR must disclose all potentially significant adverse environmental impacts of a project. Pub. Res. Code § 21100(b)(1); Guidelines § 15126(a). The DEIR must be revised and re-circulated to include these more accurate simulations.

To provide an accurate sense of the visual impacts to the State Park, the DEIR must include additional photo surveys (along with those noted above that are known to have been produced by Lennar Urban and consultants but not provided in the DEIR) to demonstrate the magnitude of the bridge by depicting the Bay view clearly from the Yosemite Slough area. A full analysis of aesthetic impacts requires depicting a view of the bridge from short-distances in the immediately adjacent State Park, both within Yosemite Slough and along the Candlestick Point shoreline. The DEIR must be revised and re-circulated to include all such relevant information.

**b. The DEIR Selects an Deficient Number and Range of Viewpoints of the State Park**

Consistent with ongoing attempts to downplay impacts to Yosemite Slough, the DEIR selects a limited number of views of and into Yosemite Slough. See, e.g., Exhibit A, p. 4.

**c. The DEIR Erroneously Concludes that Aesthetic Impacts from Construction Will Be Less Than Significant to the State Park**

The DEIR admits that "construction of the Yosemite Slough Bridge would change the appearance of the Slough," including with bulldozer, trenching equipment, generator, truck, etc. DEIR, III.E-51. But the DEIR concludes without any explanation that the impact would be less than significant to scenic vistas and scenic resources because the equipment is "not tall enough to interfere with views" and "the overall view of the Slough would remain as a scenic resource." *Id.* This conclusion has no support. *Citizens of Goleta Valley, supra, at 568* (DEIR must contain both facts and analysis, not just an agency's bare conclusions.) Construction of major



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infrastructure in a state park is highly significant to recreational users, would change the scenic resource value of Yosemite Slough, and would impede views of the Bay.

Similarly, the DEIR glosses over potential significant impacts from construction light and glare to the State Park. As but one example, the DEIR admits the need for security lighting after hours without analyzing impacts to the State Park from having the Yosemite Slough Bridge illuminated. DEIR, III.E-52. The DEIR must be revised to show potentially significant and significant aesthetic impacts to CPSRA associated with construction of the bridge, and to include mitigation measures for such impacts.

**d. The DEIR Erroneously Concludes that Aesthetic Impacts from Operations Will Be Less Than Significant to the State Park**

The DEIR's analysis of aesthetic impacts from operations is replete with errors and fails to identify, analyze, or support with substantial evidence, its conclusions. The DEIR must contain both facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley, supra, at 568*. Below is a non-exhaustive list of the most glaring deficiencies:

- No meaningful analysis is provided to address the effect Yosemite Slough Bridge will have on scenic vistas. DEIR, 111.E-53 (Impact A-4).
- The DEIR admits that Yosemite Slough Bridge would change the appearance of the Slough and replace views of open water. DEIR, III.E-58. But the DEIR sites Figure III.E-8, two photographs of Yosemite Slough's existing conditions that do nothing to show how the appearance of the Slough would change or views of open water would be obstructed. The DEIR then erroneously concludes, without any pertinent analysis, that the "bridge would not substantially damage a resource that contributes to a scenic public setting." *Id.* This conclusion has no support, let alone the foundational substantial evidence required by CEQA.
- The DEIR admits that "Yosemite Slough bridge would limit some foreground views of the Slough," but no simulations are provided to show the limited foreground impacts. DEIR, III.E-61. The DEIR then dismisses these impacts as insignificant by concluding that "however, overall views of the Bay would remain." *Id.* The Project's significant impact on foreground views must be disclosed and mitigated in a revised DEIR. Furthermore, claimed preservation of "overall views" is not mitigation for significant impacts to foreground views.
- The DEIR admits that "[s]hort- and mid-range views of the Slough would be somewhat altered with the inclusion of the proposed bridge," and states the obvious: that "short- and mid-range views of the remainder of the Slough would remain as under current conditions." *Id.* The DEIR then erroneously concludes that the Project would not substantially degrade the existing visual character or



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quality of the State Park and Yosemite Slough. This conclusion fails CEQA's substantial evidence test for the sufficiency of an EIR's analysis.

- The DEIR admits "[t]he Project would alter the scenic nature of the Project site in that it would create a dense urbanized setting where one does not currently exist." Then, with no explanation or quantitative or qualitative analysis, it concludes that "this change in character would not represent a degradation of scenic quality." DEIR, III.E-64. The DEIR contains no evidence to support this bare conclusion. To clarify, CSPF does not object to parks in urban settings; to the contrary. However, in the context of a DEIR, all impacts that will result in a change in character must be fully analyzed.
- The DEIR admits that "Yosemite Slough bridge would change the open water character along the bridge route across a relatively narrow portion of the Slough" but erroneously concludes that "[t]his would not be considered a substantial adverse change in the overall visual character of Yosemite Slough, as the bridge would occupy only a small footprint relative to the entire Slough." DEIR, III.E-64. No analysis is provided as to the nature of and how adverse the change in the open water character would be. *Santiago County Water Dist., supra*, at 831 (an EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be").

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A revised DEIR must be re-circulated to address the foregoing deficiencies.

**e. The DEIR Fails to Adequately Analyze and Mitigate Impacts of Light and Glare to the State Park**

The DEIR fails to analyze the impacts of light and glare to the State Park. The State Park – as open space area for recreating and with minimal artificial lighting – is not strictly urban in character, though it is located in an urban area. The Project will change an area of low-level illumination into an area of moderate- to high-illumination and will result in a substantial increase in the ambient light from structures and vehicle headlights. *See* DEIR, III-E-58. But the DEIR makes no effort analyze the impact of light and glare specific to *parklands*. Fundamental information such as the hours the State Park is open and will have visitors is missing. The DEIR also fails to analyze the impact of headlights from buses and other vehicles on the Yosemite Slough Bridge, as well as impacts from general operational lighting on the bridge. "[A]n agency must use its best efforts to find out and disclose all that it reasonably can." Guidelines § 15144. The light and glare from vehicle headlights, and the urbanization of Candlestick point, will have significant impacts to biological resources as well as aesthetics in the Project area.

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**5. The DEIR Fails to Adequately Examine Potentially Significant and Significant Impacts from Noise and Vibration**

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The DEIR's evaluation of potential noise impacts is seriously flawed on three counts: (1) the selection of sensitive noise receptors does not include areas within the State Park; (2) Yosemite Slough Bridge is not analyzed as a source of noise; and (3) no potentially significant or significant impacts from noise to recreational users are identified.

**a. Sensitive Noise Receptors Must Include Locations in the State Park**

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The DEIR does not provide the legally required disclosure on noise and vibrational impacts to the State Park. Not a single noise measurement location is selected within the State Park. DEIR, Figures III.1-1 and III.1-2. The DEIR categorizes parks and open space as noise-sensitive land areas. See Figure III.I-5. However, the DEIR provides no significance threshold and absolutely no quantitative or qualitative analysis for measuring the Project's noise impacts to these noise-sensitive land uses.

An EIR must disclose all potentially significant adverse environmental impacts of a project. Pub. Res. Code § 21100(b)(1); Guidelines § 15125(c); *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874 (EIR's analysis of significant effects, under CEQA Guidelines § 15125(c), must be as accurate as possible). The DEIR must be revised to include an analysis of the impacts of noise and vibration, both from construction and operation of the Project, to the State Park, including Yosemite Slough. Should the revised analysis show a potentially significant or significant impact associated with noise to the State Park, the DEIR must be further revised to include enforceable mitigation to prevent those impacts.

**b. Yosemite Slough Bridge Is Not Analyzed in Traffic Noise Modeling**

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The DEIR inappropriately excludes Yosemite Slough Bridge from the analysis of roadway noise levels. DEIR, Figure III.I-7. This oversight is especially troubling considering that the bridge is likely to have numerous and significant noise impacts to the immediately adjacent Yosemite Slough and State Park areas, including from bus and automobile traffic on a long-term basis, as well as noise impacts from constructing the bridge (e.g. pile driving). And such activities would diminish the recreational value of these areas. A revised DEIR must be re-circulated to analyze traffic noise impacts from the proposed Yosemite Slough Bridge.

**c. Significant Noise Impacts to Parklands Are Underestimated**

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The DEIR's significance thresholds include any permanent increases in the ambient noise levels in the Project vicinity above levels existing without the Project. DEIR, III.I-21 (Significance Criteria I.d). Additionally, the San Francisco Noise Ordinance, which also



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contains significance thresholds, relies on and incorporates World Health Organization (“WHO”) guidelines that require existing quiet outdoor areas to be preserved and that the ratio of intruding noise to natural background sound to be kept low.<sup>4</sup> DEIR, Table III.I-2. Under both these significance thresholds, noise impacts to the State Park would be significant, assuming they are similar to projected noise levels identified in the DEIR to surrounding neighborhoods of the State Park and Yosemite Slough. *See* DEIR, III.I-10. Noise impacts to the park from the construction and operation of Yosemite Slough Bridge will be significant, and a revised DEIR must be re-circulated to analyze these impacts.

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**6. The DEIR Fails to Adequately Analyze Project Impacts to Air Quality**

**a. The DEIR Fails to Quantify and Properly Mitigate Significant Fugitive Dust Emissions Due to Construction**

The DEIR erroneously concludes that the Project’s fugitive dust emissions during construction are less than significant without identifying any significance thresholds or explaining the basis for this conclusion. DEIR, III-H-16. This violates CEQA. “[A]n agency must use its best efforts to find out and disclose all that it reasonably can.” Guidelines § 15144. The DEIR then defers mitigation to a “site-specific dust control plan” and concludes that these yet-to-be disclosed mitigated emissions are not significant, again, without referring to any significance thresholds or other bases for this conclusion and without any supporting calculations, e.g., mitigated emissions. DEIR, III-H-17. The DEIR thus reaches contradictory conclusions; namely, that these emissions are not significant, yet will require mitigation in the form of a site-specific dust control plan. *Id.* Without any significance thresholds and post-mitigation quantification, it is impossible to determine if the deferred mitigation will reduce construction emissions of fugitive dust to insignificance.

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The DEIR attempts to find refuge in the lack of significance thresholds in BAAQMD’s outdated 1999 CEQA Guidelines and in the City’s Health Code. BAAQMD’s significance thresholds (or lack thereof) do not save the lead agency from conducting an impact analysis that complies with CEQA. Indeed, the lead agency is fully authorized to develop its own threshold. Guidelines § 15064.7. (“Each agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects”); Pub. Res. Code § 21082 (directing agencies to adopt procedures and criteria for evaluating projects). There are a number of approaches the DEIR could have taken to determine the significance of the Project’s construction emissions. The DEIR must be revised to provide an analysis of air quality impacts that complies with CEQA’s basic disclosure requirements.

<sup>4</sup> Claimed compliance with the San Francisco Noise Ordinance does not excuse the DEIR from a fully analysis of the Project’s noise impacts to the park. Consistency with local standards or general plans is not enough, by itself, to demonstrate that noise impacts will not be significant. *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882 (compliance with 50 dB county general plan standard does not necessarily mean noise impacts are insignificant).



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The DEIR's deferral of mitigation, in contradiction of CEQA, is particularly troublesome in this case in light of the high levels of contamination known to exist in the soil in the Project area. DEIR, III.H-17. The DEIR must be revised to specifically describe the mitigation measures that will be employed to reduce the Project's fugitive dust emissions.

47-42  
cont'd.

**b. The DEIR Cannot Rely on Outdated Significance Criteria that The BAAQMD has Replaced**

For purposes of determining the air quality impacts from construction and operation of the Project, the DEIR relies on the outdated BAAQMD CEQA Guidelines published in December 1999. The BAAQMD recently updated its CEQA guidelines in a publicly-available document that is readily accessible on the BAAQMD's website.<sup>5</sup> The new guidelines will be in effect within the next few months and are therefore applicable to this Project. The DEIR's failure to use the appropriate significance thresholds for air quality has resulted in a failure to disclose the full extent of the Project's impacts. As the DEIR admits, under the new, relevant BAAQMD CEQA guidelines, the Project's construction-related emissions of ROG and NOx will be potentially significant and unavoidable. DEIR, III.H-40. Additionally, the DEIR admits that "it is possible that the Project will contribute considerably to a cumulative impact" in the zone of influence of the Project. DEIR, III.H-41. Yet, the DEIR does not attempt to quantify this impact, let alone mitigate it. This violates CEQA's disclosure requirements. The DEIR must be revised to disclose these significant impacts. And, as a consequence of any significant, unavoidable impacts, the lead agency must first identify all possible mitigation for these impacts and prepare a statement of overriding considerations before it may approve the Project.

47-43

**c. The DEIR's Analysis of DPM from Construction Must Be Revised to Provide Full Disclosure to the Public**

The DEIR claims that DPM emissions from construction activities "were estimated assuming the following mitigation were in place: Construction equipment used for the Project will utilize a phased-in emission control technology in advance of a regulatory requirement such that 50 percent of the fleet will meet USEPA *Tier 4* engine standards for particulate matter control (or equivalent) during 2010 and 2011 construction activities..." DEIR, III.H-24 (emphasis added). The document then states that as mitigation for the significant DPM emissions from construction, the Project Applicant shall require construction equipment used for the Project to utilize "emission control technology such that 50 percent of the fleet will meet USEPA *Tier 2* standards . . . for particulate matter control (or equivalent) during 2010 and 2011 construction activities. . ." DEIR, III.H-25 (emphasis added). These statements contradict each

47-44

<sup>5</sup> These new guidelines are scheduled for approval by the BAAQMD Board of Directors on April 7, 2010, long before project construction would commence. See <http://www.baaqmd.gov/Divisions/Planning-and-Research/Planning-Programs-and-Initiatives/CEQA-GUIDELINES.aspx>.

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other (one claims USEPA Tier 4 engine standards will be used, the other claims that US EPA Tier 2 engine standards will be used.) *Id.*

Furthermore, the DEIR may not “assume” any type of mitigation in making its initial significance determination. In so doing, the DEIR, in violation of CEQA, “double counts” the same mitigation measure (first by using it to artificially reduce the initial DPM emission estimate from construction, then by counting it as mitigation to claim that the impact is less than significant). The DEIR plainly admits that if it did not double-count this mitigation “the impacts would be potentially significant.” DEIR, III.H-25. The DEIR makes precisely the same mistake in analyzing DPM emissions from construction on Alice Griffith Public Housing. DEIR, III.H-26. The DEIR also makes the same mistake in analyzing DPM emissions from operation of the Project. DEIR, III.H-34. The DEIR must be revised to correct these deficiencies.

**d. The DEIR Illegally Avoids Any Quantification of Toxic Air Contaminant Impacts from Construction**

Instead of quantifying the cancer risk associated with TACs from construction, the DEIR states that an “analysis was not conducted to determine the impact of Project construction activities without the dust control mitigation measures described [above]. However, due to the scale of the construction activities and proximity to adjacent receptors, without these dust control measure[s], the impacts from TACs bound to soil PM10 would likely be above the BAAQMD’s significance threshold and would therefore be potentially significant.” *See, e.g.*, DEIR, III.H-30. As noted above, this discussion turns CEQA’s requirements on their head. Instead of quantifying the impact, then comparing it to a significance threshold, making a significance determination, and finally proposing mitigation to reduce the impact to less than significant, the DEIR uses proposed mitigation as the basis to avoid all of the preceding analytical steps. This fails to comply with CEQA.

**7. The DEIR Fails to Adequately Examine Impacts to Cultural and Paleontological Resources**

As WRA, Inc. notes, Double Rock is culturally significant to the local community, and the proposed project, including the bridge, would disrupt views of Double Rock from CPSRA and areas within the surrounding community. Exhibit A, p. 4. A revised DEIR must analyze these cultural impacts.

**8. The DEIR Fails to Adequately Examine the Project’s Hydrological Impacts**

The DEIR omits analysis of whether the construction of the proposed bridge pilings may impede or alter currents entering and exiting Yosemite Slough, thereby impacting the function of Yosemite Slough and its biological habitats. Exhibit A, p. 7. These impacts must be addressed in a revised DEIR.



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**9. The DEIR Fails to Adequately Examine Impacts to the State Park from Shadows**

Shadow studies indicate that during the winter months CPSRA would be impacted by shadows from noon onward. But the DEIR erroneously fails to identify this impact as significant.

47-48

The significance of shadow impacts is informed by the City of San Francisco planning ordinances. *See* City of San Francisco Planning Code 295 (shadow allowance not to exceed 1% for large City parks).<sup>6</sup> The DEIR should adopt a significance threshold for examining shadow impacts to CPSRA with standards equally as rigorous as those provided by the City in Planning Code 295. But regardless, even under existing significance standards, the DEIR should recognize that exceeding a shadow allowance of 1% for CPSRA will substantially affect outdoor recreational activities in the park. The DEIR should fully analyze this issue and disclose significant shadow impacts. Additionally, the DEIR should analyze steps to minimize these impacts through modified residential tower locations and designs.

Shading impacts from the Yosemite Slough Bridge to biological resources also are inadequately analyzed in the DEIR. Exhibit A, pp. 4-7. A revised DEIR must fully analyze negative impacts to Yosemite Slough's biological resources from the bridge's shading.

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**F. THE DEIR FAILS TO IDENTIFY AND INCORPORATE EFFECTIVE MITIGATION MEASURES**

CEQA requires that an EIR propose and describe mitigation measures sufficient to minimize the significant adverse environmental impacts of a project. Pub. Res. Code §§ 21002.1(a), 21100(b)(3); *see also* Guidelines § 15370 (mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact). Lead agencies must adopt feasible mitigation measures that will substantially lessen or avoid the Project's potentially significant environmental impacts. Pub. Res. Code §§ 21002, 21081(a). "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. Guidelines § 15364. Mitigation measures also must be fully enforceable through permit conditions, agreements, or other legally binding instruments. Guidelines § 15126.4(a)(2); *Kings County Farm Bureau, supra*, 727 (a public agency may not rely on mitigation measures of uncertain efficacy or feasibility).

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The DEIR identifies numerous significant and potentially significant environmental impacts of the Project. DEIR, Table ES-2. However, the DEIR lacks effective mitigation for virtually all categories of impacts related to the State Park. Many of the mitigation measures are

<sup>6</sup> If this standard is applied to CPSRA, the park would fall into the large park category with less than a 20% shadow loading factor currently. That would allocate a 1% increase allowance to CPSRA.

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ineffective, deferred, or unenforceable, and feasible mitigation measures are overlooked for several significant impacts. Numerous defective mitigation measures are identified in the attached expert letters. See Exhibit A and Exhibit B. Defective mitigation measures include:

MM BI-4a.1: "Wetlands and Jurisdictional/Regulated Waters Mitigation for Temporary and/or Permanent Impacts." The DEIR states that wetlands and jurisdictional waters shall be avoided to "the maximum extent possible." DEIR, III.N-59. This criteria is vague, unenforceable, and ineffective. The mitigation measure further states that where avoidance of existing wetlands and drainages is not possible such impacts will be mitigated by compliance with other environmental laws. DEIR, III.N-59 to III.N-60. Merely citing compliance with other laws is insufficient as a mitigation measure. *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 CA4th 1, 38 (EIR defective because it simply presumed compliance with California Department of Pesticide Regulation would prevent adverse impacts from pesticide use.) The DEIR must independently analyze impacts to wetlands and not simply rely on compliance with other laws. The DEIR must be revised to recognize that the impacts MM BI-4a.1 purports to mitigate will be significant and unavoidable, even with mitigation.

MM B1-4c: "Mitigation for Shading Impacts to Jurisdictional/Regulated Waters." This mitigation measure is not sufficiently detailed to allow the public to review its effectiveness. DEIR, III.N-68. Further, the creation or restoration of mitigation for permanent shading from the Yosemite Slough Bridge is not specifically identified and deferred to the future. *Id.*

MM RE-2: "Phasing of parkland with respect to residential and/or employment generated uses." This mitigation measure strives to keep the parkland-to-population ratio at 5.5 acres per 1,000 residents. DEIR, III.P-31. As discussed above (analysis of significant impacts to recreational resources), the provision of 5.5 acres per 1,000 residents is not less than significant; and therefore this mitigation measure fails.

More generally, all DEIR mitigation measures related to limiting the use of Yosemite Slough Bridge by private automobiles are ineffective and unenforceable. Exhibit B, pp. 5-8. No legally enforceable restrictions are identified in the DEIR to prevent the bridge from ultimately being used year round by private automobiles.

The DEIR also fails to identify feasible mitigation measures for Project impacts. For example, the DEIR fails to identify mitigation measures to offset the numerous operational impacts, as discussed above, to recreational facilities in the State Park. See DEIR, Section III.P.

**G. THE DEIR FAILS TO ADEQUATELY ANALYZE CUMULATIVE IMPACTS**

An EIR must discuss significant "cumulative impacts." Guidelines § 15130(a). To be legally adequate, the cumulative impacts analysis must examine the project over time and in

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conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." Guidelines § 15355(b).

Here, the DEIR fails to analyze the Project's numerous cumulative impacts, including, but not limited to:

- cumulative recreational impacts with the Yosemite Slough Wetlands Restoration Project. Exhibit A, pp. 2-3; and
- cumulative impacts with the Mitigation Measures for SFO Airport Improvements and the BART Extension. As discussed above, the Yosemite Slough Restoration Project fulfills mitigation obligations for Airport Improvements and the BART Extension. The DEIR fails to analyze the cumulative impacts of the Project and the Project's impediments to these mitigation efforts.

A revised DEIR must fully address all cumulative impacts from the Project.

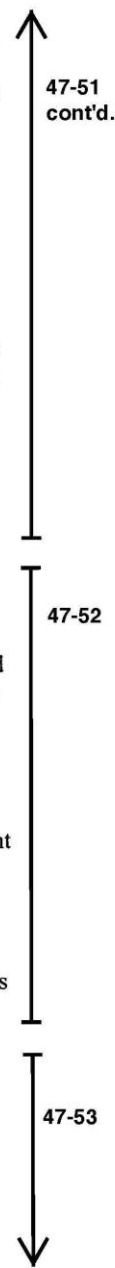
#### **H. THE DEIR DOES NOT ADEQUATELY ANALYZE PROJECT ALTERNATIVES**

A proper alternatives analysis is critical for achieving CEQA's goal of fostering informed decision-making. Pub. Res. Code § 21061; Guidelines § 15126.6(a). An EIR must evaluate the comparative merits of the alternatives. Guidelines § 15126.6(d). And project objectives under CEQA must not be defined overly narrowly so as to preclude a meaningful analysis of alternatives. See *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438.

The serious flaws in the DEIR's project objectives and treatment of potentially significant impacts to CPSRA, as discussed above, preclude a proper analysis of Project alternatives. A comparative analysis of alternatives is impossible unless the Project's vague objectives to "encourage" the 49ers to build a stadium are clarified – including the attendant need for the Yosemite Slough Bridge – and until the full scope of impacts to Yosemite Slough and CPSRA are examined. The entire alternatives section needs to be reexamined after the DEIR's numerous other deficiencies are rectified.

##### **1. The DEIR Fails to Provide Substantial Evidence to Reject Project Alternatives without Yosemite Slough Bridge**

If alternatives are rejected, an EIR must explain in meaningful detail why such alternatives do not satisfy the goals of the proposed project, do not offer substantial environmental advantages, or cannot be accomplished. *Laurel Heights Improvement Assn., supra*, at 405; see also *City of Santee, supra*, at 1438.



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Our traffic expert concludes that the DEIR (1) contains serious flaws and fails to consider all reasonable and viable alternatives and (2) fails to justify the traffic need for the bridge, regardless of whether a new 49ers stadium is constructed. Exhibit B, pp. 3-5. A revised DEIR therefore must reanalyze and fully consider the Project alternatives without the Yosemite Slough Bridge.

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**2. The DEIR Fails to Consider A Reasonable Range of Alternatives to Minimize Environmental Impacts**

47-54

An EIR must analyze a reasonable range of alternatives to the project that would feasibly attain most of the basic project objectives. The consideration of alternatives must be judged against a rule of reason to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by responsible officials. Guidelines § 15126.6(f); *Citizens of Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citing, *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197; *Laurel Heights at 399*). Alternatives must be adequately discussed, "even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." Guidelines § 15126.6(b).

The DEIR should consider less environmentally damaging options to building the Yosemite Slough Bridge, which would significantly impact CPSRA, presents inconsistencies with the Yosemite Slough Wetlands Restoration Project, and significantly impact irreplaceable marsh lands and other waters of the United States. *See* DIER, Table III.N-4. A reasonable range of alternatives for the Project is informed by the scope of the project, its location next to CPSRA and Yosemite Slough, and concerns expressed by the public. Significant environmental impacts that are overlooked in the DEIR are attributable, in many instances, to the Yosemite Slough Bridge. The DEIR therefore should examine the following alternatives to the bridge:

- a tunnel under Yosemite Slough;
- a no bridge alternative if the newly proposed 49ers Stadium is not built; and
- improvements to arterial routes as a traffic alternative to accommodate any game-day traffic.

*See Exhibit B* (DEIR fails to fully examine alternatives to the Yosemite Slough Bridge that would be equally or more effective at meeting transportation needs).

**I. THE DEIR IS INCONSISTENT WITH NUMEROUS OTHER LAND PLANS AND POLICIES**

47-55

In addition to inconsistencies with the Yosemite Slough Wetlands Restoration Project (discussed above), the DEIR fails to identify inconsistencies with other plans. Avoiding conflicts with other land-use plans *before* development proposals are approved is one of CEQA's

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fundamental purposes. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 307 (1988) (CEQA requires that environmental problems be considered at a point in the planning process where “genuine flexibility remains.”); Guidelines §§ 15125(d) and (e) (DEIR must discuss any inconsistencies other plans and any such analysis must discuss “potential future conditions discussed in the plan.”)

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**1. The Project Is Inconsistent with the Candlestick Point State Recreation Area General Plan**

47-56

The DEIR does not disclose the Project’s many inconsistencies with the CPSRA General Plan. The CPSRA plan states:

“It is the policy of the department to protect the scenic values and to enhance, manage, and protect the biotic and natural resources of the area, while fully realizing the potential of the area for fulfillment of outdoor recreation needs.”

See DEIR, III.N.44. However, as discussed above, the Project would degrade scenic values, threaten natural resources, and, in many ways that could be avoided, reduce the recreational value of the park. These inconsistencies are significant.

The DEIR is not forthright in its analysis. The DEIR vaguely asserts that “[t]o the extent that the final improvements to the reconfigured CPSRA would be inconsistent with the CPSRA General Plan, these improvements would be addressed through the State Parks General Plan amendment process.” DEIR, III.B-12. This is not full disclosure. No analysis is provided disclosing the extent to which the Project is actually inconsistent with the CPSRA General Plan. The Project’s proposed land swap and reconfiguration agreement with DPR must be described and analyzed in more detail to fully inform the public of impacts to the park.

A revised DEIR needs to fully describe and identify inconsistencies with the CPSRA General Plan to comply with CEQA.

**2. The DEIR Must Identify All Inconsistencies with Senate Bill 792**

47-57

The DEIR must identify all inconsistencies with Senate Bill 792, including conflicts with provisions designed to protect CPSRA. Section 26(a)(3), for example, requires that any agreement to reconfigure the State park will “provide an overall benefit to the state recreation area and will further the objective of preserving the park’s natural, scenic, cultural and ecological values for present and future generations.” The Project’s significant impacts to CPSRA, as discussed herein, raise inconsistencies with SB 792. The DEIR must provide a direct analysis of the Project’s inconsistencies with all park-protective provisions within S.B. 792.



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**3. The Project Is Inconsistent with the San Francisco Bay Plan and Violates the McAteer-Petris Act**

47-58

The McAteer-Petris Act of 1965, Government Code §§ 66600, *et seq.*, and the San Francisco Bay Plan (“Bay Plan”) set forth policies to protect the shoreline of the Bay and minimize Bay fill. The San Francisco Bay Conservation and Development Commission (“BCDC”) is authorized to issue or deny permit applications for placing fill, extracting materials, or changing the use of any land, water, or structure within the area of its jurisdiction, in conformity with the provisions and policies of both the McAteer-Petris Act and the Bay Plan. Projects inconsistent with the Bay Plan may not be approved. *See* Gov. Code § 66632(f).

The Project would violate the McAteer-Petris Act requirement that Bay fill only be authorized by BCDC if there is no feasible upland location to the project. Gov. Code § 66605. As discussed herein, the DEIR did not adequately discuss feasible traffic alternatives to constructing the Yosemite Slough Bridge that would involve improvements to upland locations. Exhibit B, pp. 3-5.

The Project is inconsistent with Bay Plan policies on “Appearance, Design, and Scenic Views.” These policies state:

- “all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay”;
- “maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore”;
- “towers, bridges or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible especially in flat areas”;
- and
- “additional bridges over the Bay should be avoided, to the extent possible, to preserve the visual impact of the large expanse of the Bay.”

Bay Plan, pp. 61-63. The DEIR fails to fully analyze and disclose the visual impacts from the Yosemite Slough Bridge that would violate these policies. Exhibit A, p. 4.

The Project also is inconsistent with Bay Plan policies protecting wildlife, wetlands, and other biological resources. These policies state:

- “to the greatest extent possible, the Bay’s tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.” Bay Plan, p. 16 (“Fish, Other Aquatic Organisms, and Wildlife”);
- “[t]idal marshes and tidal flats should be conserved to the fullest possible extent,” and



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projects that substantially harm tidal marshes or tidal flats are allowed “only if there is no feasible alternative.” Bay Plan, p. 23 (“Tidal Marshes and Tidal Flats”); and

- “[s]ubtidal areas that are scarce in the Bay or have an abundance and diversity of fish, other aquatic organisms and wildlife... should be conserved,” and “[f]illing, changes in use, and dredging projects in these areas should therefore be allowed only if... there is no feasible alternative.” Bay Plan, p. 27 (“Subtidal Areas”).

The DEIR must analyze inconsistencies with these policies that would result from the Project’s significant impacts to biological resources. See Exhibit A, p. 7.

Finally, the proposal to build the Yosemite Slough Bridge is inconsistent with Bay Plan Transportation policies because (1) the bridge would not provide adequate clearance for vessels that normally navigate the waterway beneath the bridge, Bay Plan, p. 47 (policy 3b); see Exhibit A, p. 8; and (2) the DEIR does not adequately explore other feasible traffic alternatives (discussed above) to a building a bridge. Bay Plan, p. 47 (policy 2); see Exhibit B, p. 9. The DEIR must be revised to recognize these transportation inconsistencies with the Bay Plan.

**4. The Project Is Inconsistent with the Bayview Hunters Point Redevelopment Plan**

The Bayview Hunters Point Redevelopment Plan sets forth the explicit policy to create a “restored and redeveloped Yosemite Slough on CPSRA land.” DEIR, III.B-24. Yet, the DEIR erroneously concludes that “[a]lthough the construction of the Yosemite Slough bridge would change this area, it would not detract from its use in the CPSRA or its biological and other resource utility.” *Id.* As discussed above, the Project threatens to impede the restoration and redevelopment of Yosemite Slough, and therefore is also significantly inconsistent with the objectives of the Bayview Hunters Point Redevelopment Plan to support restoration of the Slough. A revised DEIR must recognize this inconsistency.

**J. THE DEIR MUST BE REVISED AND RE-CIRCULATED**

A supplemental or revised DEIR must be prepared and re-circulated for public review. CEQA requires a lead agency to re-circulate an EIR when significant new information is added to the EIR following public review but before certification. Pub. Res. Code § 21092.1. CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” including, for example, “a disclosure showing that ... [a] new significant environmental impact would result from the project.” Guidelines § 15088.5. Lead agencies cannot rely on an DEIR “that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review.” *Mountain Lion Coalition v. California Fish and Game Comm’n* (1989) 214 Cal.App.3d 1043, 1053. As explained by a recent CEQA decision:

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“The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.” (Guidelines, § 15125(c)) We interpret this Guideline broadly in order to ‘afford the fullest possible protection to the environment.’ (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720) In so doing, we ensure that the EIR’s analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible. (See also Remy et al., *Guide to the California Environmental Quality Act* (CEQA) (10th ed. 1999), pp. 374-376.)

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*Friends of the Eel River v. Sonoma County Water Agency*, (2003) 108 Cal. App. 4th 859, 874.

Here, the DEIR is fundamentally inadequate and precludes a meaningful public review of Project impacts, including impacts related to the State Park, the Yosemite Slough Wetlands Restoration Project, recreational users, and biological resources. Substantial new information will be needed to adequately assess the proposed Project’s environmental impacts, re-examine feasible alternatives, and identify effective mitigation. A revised DEIR is required to provide the public and decisionmakers with meaningful opportunity to understand the full scope of Project impacts, mitigation measures, and alternatives. Guidelines § 15088.5(b)(4).

### III. THE PROJECT MUST COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

47-61

The Project has a “federal nexus” that demands review under the National Environmental Policy Act. A federal nexus attaches to a CEQA project when it requires major federal action, including discretionary permits, entitlements, or authorizations. All agencies of the federal government must, to the fullest extent possible, comply with NEPA. *See* 42 U.S.C. § 4332. In particular, if a federal agency’s actions may affect wetlands and other important habitats, including critical habitat under the Federal Endangered Species Act the federal agency must comply with NEPA and further produce an Environmental Impact Statement (“EIS”). *See* 40 C.F.R. § 1508.27.

Here, federal approvals or permits are required from the U.S. Navy, Army Corps of Engineers, Department of the Interior, Coast Guard, and Department of Housing and Urban Development, *see* DEIR, ES-6, and the Project proposes to fill wetlands and potential impact critical habitat under the FESA. The DEIR, however, omits any discussion of NEPA requirements. Under CEQA, when a project also is subject to NEPA review, lead agencies should try to prepare a combined environmental review document and, “[t]o avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document.” Guidelines § 15222.

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The Project must comply with NEPA, and the DEIR must be revised to comply with the CEQA Guidelines by listing NEPA among the Project's necessary environmental review processes.

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cont'd.

**IV. THE PROJECT CONFLICTS WITH SECTION 404 OF THE CLEAN WATER ACT**

47-62

As currently configured, the Project does not meet the requirements of Section 404 of the Federal Clean Water Act, 33 U.S.C. §§ 1344, *et seq.* ("CWA"). Under Section 404, a permit must be obtained from the USACE prior to the discharge of dredged or fill materials into any "waters of the United States or wetlands." *Id.* § 1344(b).

The DEIR concedes that a permit from the USACE would be required for the Project. DEIR, III.N-37. However, there is no meaningful discussion regarding the standards for obtaining such a permit or whether the Project can meet those standards. Under the CWA, no permit to fill or discharge into U.S. waters is permitted if there is a "practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 C.F.R. § 230.10(a). A "practicable" alternative is one that is "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." *Id.* at § 230.10(a)(2).

A "practicable alternative" exists to building the proposed Yosemite Slough Bridge that would avoid impacts from the bridge to Section 404 waters. *See* Figure III.N-3 and III.N-5 (impacts to wetlands and other waters). As discussed above, the DEIR fails to adequately consider project alternatives that would avoid construction of the Yosemite Slough Bridge, *see also* Exhibit B, and therefore the Project falls short of Section 404 permit requirements to demonstrate that no "practicable alternative" exists to constructing a through the sensitive waters of Yosemite Slough.

**V. THE PROJECT POTENTIALLY CONFLICTS WITH NUMEROUS OTHER PROVISIONS OF LAW**

47-63

**A. THE PROJECT POTENTIALLY VIOLATES THE LAND AND WATER CONSERVATION FUND ACT OF 1965**

Pursuant to the Land and Water Conservation Fund Act of 1965 ("LWCFA"), DPR received three grants between 1979 and 1981 to assist with the development of trails, picnic areas, and other amenities on the CPSRA. The DEIR, however, fails to demonstrate how development and the take of lands on the CPSRA would comply with LWCFA. Instead, the DEIR summarily concludes that the "reconfiguration of the CPSRA, discussed below, would comply with LWCFA." DEIR, III.P-6. This bare conclusion is insufficient to demonstrate compliance.

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**B. THE PROJECT POTENTIALLY VIOLATES THE CALIFORNIA PUBLIC PARK PRESERVATION ACT**

47-64

The Public Park Preservation Act, Pub. Res. Code § 5400 *et seq.*, restricts the ability of public agencies to use parklands for other purposes. The Act provides that a public agency that acquires public parkland for non-park use must either pay compensation sufficient to acquire substantially equivalent substitute parklands or provide substitute parklands of comparable characteristics. Pub. Res. Code § 5401. The DEIR should assess the applicability of this provision of State Code given the Project proposes transfers of parklands between public agencies.

**C. THE PROJECT POTENTIAL VIOLATES CALIFORNIA PUBLIC RESOURCES CODE SECTION 5096.516**

47-65

Public Resources Code (“PRC”) section 5096.516 prohibits the transfer of any land being used as a public park unless: the selling or transferring agency prepares a detailed report and specific finding that the land no longer serves a needed conservation purpose; a public hearing is held; and the transfer gains Legislative approval. Pub. Res. Code § 5096.516(a). Several exceptions apply, including for the sale or transfer of property with less than \$1 million in fair market value; however, parklands with high scenic values, like areas in CPSRA, likely have market values in excess of this minimum requirement. (The general rule in California for establishing just compensation is the market value of the property determined by the highest and most profitable use for which the property is adaptable.)

To date, CSPF is not aware of any efforts to ensure the Project meets the requirements of PRC 5096.516. The DEIR should identify PRC 5096.516 as a pertinent state law and disclose the time and schedule for Project compliance.

**VI. CONCLUSION**

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Development projects should avoid impacting State parklands if at all possible, and we are not convinced that this Project, in its present iteration, is designed in a park-friendly manner. CPSRA is a unique resource meriting the utmost protection of our environmental laws.

For the reasons set forth above, the DEIR violates CEQA’s fundamental mandates of informing the public and decisionmakers of significant environmental impacts, fails to identify

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all feasible mitigation measures, and fails to analyze a reasonable range of alternatives to the Project. To comply with CEQA and rectify these deficiencies, we request that a revised DEIR be re-circulated for public review.

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Sincerely,



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**California State Parks Foundation  
Hunters Point Shipyard Phase II  
Development Plan Project; SCH  
#2007082168**

**EXHIBIT A**

WRA

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California State Parks Foundation  
**Hunters Point Shipyard Phase II  
Development Plan Project; SCH  
#2007082168**

**EXHIBIT B**

**Tom Brohard, P.E.**

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January 5, 2010

James Birkelund, Esq.  
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Re: Technical Comment on the Candlestick Point-Hunter's Point Shipyard Phase II DEIR

Dear Mr. Birkelund,

At the request of the California State Parks Foundation, WRA is preparing this technical review of the Candlestick Point-Hunter's Point Shipyard Phase II DEIR. The purpose of this letter is two-fold:

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- 1.) To provide an analysis of potential impacts the Candlestick Point-Hunter's Point Shipyard Phase II Project ("project") may have on the current conditions within Yosemite Slough and impacts the project may have to the Yosemite Slough Wetlands Restoration Project; and
- 2.) To provide technical review of the DEIR from a CEQA compliance and biological resources perspective.

WRA has been involved in the Yosemite Slough Restoration Project since 2003, providing restoration site design, biological resources surveys, and permitting assistance. At the date of this letter the Yosemite Slough restoration Project has completed a Final Initial Study and Mitigated Negative Declaration (California Department of Parks and Recreation, April 2006, SCH# 2005122023). The project has also received Section 401 Water Quality Certification and Waste Discharge Requirements (July 2007), and San Francisco Bay Conservation and Development Commission Permit Amendments (March 2005 and September 2009). The U.S. Army Corps of Engineers (Corps) Section 404 permit application has been submitted and is nearing completion. The Restoration Project's regulatory permit application requirements will be fulfilled upon the issuance of the Corps permit.

Aspects of the proposed Candlestick Point-Hunter's Point Shipyard Phase II redevelopment project, in particular, the Yosemite Slough Bridge, will have significant impacts to restored wetlands and to recreational values of the Yosemite Slough Restoration Project. These significant impacts could result in the need to at least partially revise the already completed and almost fully permitted Restoration Project design, causing significant delays and at least partial re-application for permits that have already been granted for the project. These potential design and permit revisions would come at great cost to this California State Parks project at a time of limited funding availability.

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In addition, much of the cost for the Yosemite Slough Restoration Project was funded by wetland impact in-lieu fee funds provided by Bay Area Rapid Transit (BART) and City and County of San Francisco Airport Commission as mitigation for wetlands that have been impacted as part of permitted projects undertaken by these public agencies. If the proposed Candlestick Point-Hunter's Point Shipyard Phase II redevelopment project would impact the

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wetlands to be created as part of the Yosemite Slough Restoration Project, the wetland impacts could affect both the regulatory permits of these public agencies and the funding agreements that have been made with the California State Parks Foundation to provide wetland mitigation in Yosemite Slough.

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In addition to these potential impacts on the Yosemite Slough Restoration Project, the Yosemite Slough bridge has the potential to impact current conditions within the State Park and especially to Yosemite Slough. Based on overlays of the proposed bridge using topographic maps and GIS technology, the proposed Yosemite Slough bridge overlaps with the California State Parks operating boundary, with portions of Parks-owned property, and with significant portions of the planned restoration, including planned viewpoints and created wetlands (see Figures 1 and 2, attached). These impacts were not analyzed in the DEIR. More specific comments on the proposed Candlestick Point-Hunter's Point Shipyard Phase II DEIR are described in detail below in relation to the Yosemite Slough Restoration and current conditions within the DEIR Study Area.

**A) Significant and Potentially Significant Impacts of the Candlestick Point-Hunter's Point Shipyard Phase II Redevelopment Project on the Yosemite Slough Restoration**

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Comment A1. A comment letter dated September 12, 2007 from the California Department of Parks and Recreation (DPR) was submitted in response to the circulated Notice of Preparation (NOP) for the Candlestick Point-Hunter's Point Shipyard Phase II redevelopment project (Appendix A of the DEIR, NOP Comment Letters). The DPR comment letter on the NOP raised concerns that the proposed redevelopment project (especially the Yosemite Slough bridge) could compromise the Yosemite Slough Restoration. The DEIR failed to analyze these impacts, which were raised by the DPR in its role as a Responsible Agency under CEQA. The potential impacts of the Yosemite Slough Bridge, raised by the DPR as a Responsible Agency under CEQA, should have been analyzed in the DEIR as required by Section 21080.4(a) of the Public Resources Code. The DEIR made every effort to *exclude* an analysis of these potential impacts to Yosemite Slough, repeatedly stating that Yosemite Slough was excluded from the project site and failing to analyze direct, indirect, and cumulative impacts that the bridge could have on the restoration project particularly with regard to Recreation, Aesthetics, and Biological Resources.

Comment A2. The DEIR fails to acknowledge inconsistencies with the Yosemite Slough Restoration Plan as a pertinent local plan and policy in the Recreational, Land Use, and Aesthetics sections, among others, and fails to analyze the potential conflicts of the project with the established goals of the restoration plan as required by Section 15125(d) of the Public Resources Code. The DEIR recognizes the Yosemite Slough Restoration Plan as a pertinent local plan in the Biological Resources section, but does not include any analysis of inconsistencies with the Yosemite Slough Restoration Plan, including the project's physical impacts to the planned environment and related mitigation. The Candlestick Point-Hunter's Point Shipyard Phase II project would have potential significant impacts because it is inconsistent with the Yosemite Slough Restoration Plan.

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Comment A3. A portion of the DEIR Study Area in the vicinity of the Yosemite Slough bridge overlaps with the Yosemite Slough Restoration Plan, and therefore would have direct impacts to the restoration (see Figure 2, attached). In addition, the Yosemite Slough bridge would conflict with many of the goals of the Yosemite Slough Restoration

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Plan, blocking scenic vistas, affecting recreational opportunities, and impacting portions of the restored wetlands. These impacts and potential impacts were not discussed in the DEIR.

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Comment A4. The DEIR does not analyze inconsistencies that would be caused by direct, indirect, and cumulative impacts of the project on wetlands that have been designed as part of the Yosemite Slough Restoration Project (Figure 2).

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Comment A5. Additionally, the DEIR's treatment of the Yosemite Slough Restoration Project is inconsistent with the methodology used in the DEIR to analyze potential impacts of the redevelopment on Navy remediation efforts. On pages III.N-48 and 49 of the DEIR an analysis methodology is discussed for the Navy remediation efforts in which impacts to baseline conditions as they existed at the time of the NOP as well as impacts to baseline conditions as they will exist after completion of the Navy remediation efforts and mitigation planned as part of the remediation. This analysis is appropriate for the Navy remediation efforts because the planned and approved remediation efforts effectively alter the baseline conditions that the Candlestick Point-Hunters Point Shipyard redevelopment project are likely to impact. This methodology is further supported in section III.A-2 which states "*While the baseline condition is generally the physical conditions that existed at the time the NOP is published, which was August 2007, there may be reasons why a different baseline condition should be used for the analysis*". We agree with the above methodology and it should be applied evenly and consistently to other approved projects within and adjacent to the proposed redevelopment area. The Yosemite Slough Restoration Plan is set to begin construction prior to implementation of the Hunters Point redevelopment. The analysis of impacts should specifically address impacts of the redevelopment project on the baseline conditions that would be present at the time of completion of the approved Yosemite Slough Restoration Plan.

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Comment A6. Based on the extent of the DEIR Study Area, the project will cause significant impacts to wetlands created as part of the Yosemite Slough Restoration. These potential impacts should be considered in the same way the Navy mitigation wetland impacts have been considered. These potential impacts should be addressed in sections III.B and III.N of the DEIR.

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Comment A7. The Yosemite Slough Bridge will have noise related impacts on the users of the Yosemite Slough Restoration area. The potential impacts to Yosemite Slough Restoration park users from introducing new sources of noise on the Yosemite Slough Bridge should be analyzed in section III.I of the DEIR.

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Comment A8. The Yosemite Slough Bridge will have aesthetic impacts on the users of the Yosemite Slough Restoration area in the form of blocking viewpoints of Double Rock, the East Bay skyline, and open water of the Bay from the planned Vista Points. The bridge would also have a potential significant impact on views of the restored Yosemite Slough from open water areas and land-based viewpoints to the east of the proposed bridge. These are potential significant impacts, and should therefore be addressed in section III.E of the DEIR.

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Comment A9. Shading as a result of the Yosemite Slough Bridge has the potential to significantly impact the establishment of wetland vegetation to be planted as part of the

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Yosemite Slough Restoration. These potential impacts should be analyzed in sections III.F and III.N of the DEIR.

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The following comments are not related to the consideration of the completed Yosemite Slough Restoration Project in the baseline conditions for the DEIR. These comments stand alone and should be addressed regardless of inconsistencies with the wetlands restoration plan.

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**B) Technical review of the DEIR from a CEQA compliance and biological resources perspective**

*1) Aesthetics, Section III.E*

Comment B1a) The analysis of impacts to aesthetics did not adequately address impacts of the Yosemite Slough Bridge on views from Yosemite Slough and the State Park. Yosemite Slough and other areas of the park provide views of Double Rock, the East Bay Skyline, and open water of the Bay. The viewshed analysis should have included viewpoints, for example, from Yosemite Slough looking east toward the Bay. The only viewpoint that was analyzed in the DEIR from within Yosemite Slough did not incorporate the views of Double Rock, San Francisco Bay, or the East Bay skyline. The proposed Yosemite Slough Bridge will have potentially significant impacts on the views from Yosemite Slough and other areas of the state park out onto the San Francisco Bay, Double Rock, and East Bay skyline. These significant impacts should be analyzed in section III.E of the DEIR. Examples of views from within Yosemite slough that will be significantly impacted due to the Yosemite Slough bridge are shown in the photographs attached to this letter. Two viewpoint graphics developed by Lennar Urban are also attached showing the impact the bridge would have on views from Yosemite Slough. These viewpoints were not included in the aesthetics analysis in the DEIR.

Comment B1b) Double Rock is a defining element of the local community, with many businesses, churches and housing developments bearing the name Double Rock. The proposed project, including the proposed bridge, could limit or entirely block views of Double Rock from portions of the surrounding community (see Figure III.E-20). The blocking of views of Double Rock may be considered a potentially significant impact from an aesthetics well as from a cultural resources perspective. These potential significant impacts should be analyzed in sections III.E and III.J of the DEIR.

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Comment B1c) Blocking the aesthetic viewpoint from Yosemite Slough with the proposed Yosemite Slough bridge is inconsistent with BCDC San Francisco Bay Plan Appearance, Design, and Scenic Policies 2, 4, 6, and 10 (pp 62-63 of the Bay Plan). This inconsistency with the Bay Plan was not disclosed or analyzed as part of the DEIR.

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*2) Biological Resources, Section III.N*

Comment B2a) Figure III.N-2 does not indicate any mapped habitat types within the portion of the Study Area that overlaps with the Yosemite Slough Restoration Project area. Therefore, it is unclear if this area was included in the analysis of potential impacts to biological habitats. All habitat types located within the Study

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Area should be identified and impacts should address all of these habitat types affected by the proposed project. Figure III.N-2 should be revised to show the habitat types that exist within this portion of the Yosemite Slough Restoration Area, as the project could have significant impacts to biological habitats in this area.

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Comment B2b) The Study Area for the Biological Resources analysis is not clearly defined and not clearly maintained throughout the analysis. As an example see the following unclear sentence from page III.N-1: "*The off-site aquatic resources discussed include Yosemite Slough (except the area of construction), the open water area between Candlestick Point and HPS Phase II (known as South Basin), and adjacent open waters that would be impacted by Project components (i.e., breakwaters, gangways, floats, etc.)*." This sentence appears to state that aquatic impacts in the area proposed for construction at Yosemite Slough are not analyzed. The Study Area needs to be clearly defined and all impacts within the Study Area need to be adequately addressed. This is especially true of areas where construction is proposed.

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Comment B2c) The regulatory setting does not discuss NMFS regulation of eelgrass as Essential Fish Habitat. The NMFS does consider eelgrass Essential Fish Habitat (EFH).

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Comment B2d) Table III.N-4 is referred to as a reference point for viewing potential self mitigating impacts that are discussed as part of the impacts to wetlands and waters in Impact BI-4a through BI-4c. This table does not clearly show which impacts were determined to be self mitigating, and there is also no figure that shows which impacts have been determined to be self-mitigating. Therefore, the impacts that have been identified as self mitigating are not adequately disclosed. It should be clearly shown which areas of wetland and the extent of wetlands impacted that are considered to be self mitigating and those that will require compensatory mitigation.

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Comment B2e) The wetland mitigation and monitoring plan requirements (MM BI-4a.1) are inadequate and not consistent with standard wetland mitigation and monitoring plans based on Corps San Francisco District regulatory policy (Corps 2004). There is no requirement for a long term management component of the mitigation and monitoring plan, which is clearly required in Corps guidance. Also, the requirement that mitigation wetlands contain at least 65 percent cover by native species leaves open the possibility that as much as 35 percent of the created mitigation wetlands could be comprised of non-native or invasive species, if the total vegetative cover was 100 percent. This poses a direct conflict with the monitoring requirements of the Yosemite Slough Restoration by allowing higher cover of invasive species in areas directly adjacent to the restoration area. This requirement should be changed to allow no more than 5 percent cover by non-native invasive plant species, independent of the total vegetative cover, to be consistent with commonly applied requirements for invasive species cover in mitigation wetlands.

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Comment B2f) In the Impact BI-4c it is stated that the proposed bridge would be 81 feet wide by 902 feet long and that 0.94 acres of open water/mudflat habitats would be impacted as a result. A bridge of these dimensions would cover an area approximately 1.7 acres. The DEIR does not clearly identify which other habitat types would be directly shaded by the remaining 0.8 acres of the proposed bridge.

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The DEIR should identify and analyze the potential impacts to all habitat types shaded by the bridge.

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Comment B2g) Shading impacts associated with construction of the new bridge (Impact BI-4c) were not analyzed consistently with the methods that were utilized for impacts from buildings. The shade from the proposed bridge will impact areas adjacent to the bridge in addition to the aerial footprint of the bridge. Solar aspect was considered in the analysis for buildings and should also have been considered in analyzing impacts caused by the bridge. These shading impacts would affect subtidal and intertidal areas in Yosemite Slough, with potential impacts to subtidal and tidal marsh vegetation. Impacts from shading on subtidal and tidal marsh vegetation have been well documented (Kelty and Bliven 2003). Therefore the project would have significant and potentially significant impacts on subtidal habitats due to the proposed bridge.

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Comment B2h) Though no eelgrass was observed in the area of the Yosemite Slough bridge, this area has been identified as habitat that could potentially support eelgrass (Merkel and Associates 2004), and therefore should be identified as an area for application of eelgrass mitigation measures as part of mitigation measures MM BI-5b.1 through MM BI-5b.4. The previously known locations of eelgrass were identified and analyzed as part of the DEIR, but the evaluation did not account for the fact that the location, areal coverage, and density of shows extremely wide variation from year to year in San Francisco Bay. Therefore, the location, areal coverage, and density of eelgrass in the DEIR Study Area may have changed since the time of the baywide eelgrass survey. No new eelgrass survey of the area was performed to evaluate how the eelgrass distribution may have changed since the time of the baywide eelgrass survey. Given the established tendency of eelgrass to vary widely in location, areal coverage, and density in San Francisco Bay, and the fact that the area of Yosemite Slough has been identified as an area with suitable habitat conditions for eelgrass, the DEIR should require surveys and mitigation as needed for the construction of the Yosemite Slough Bridge. There is potential that eelgrass could occur in the Yosemite Slough bridge area, and therefore potential significant impacts may occur.

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Comment B2i) The DEIR Impact BI-6 does not consider potentially significant noise impacts of the Yosemite Slough Bridge on potential bird roost and nest sites on Double Rock. Double Rock was identified as an area of potential nesting habitat as part of the *Yosemite Slough Watershed Wildlife Survey*, which was specifically referenced as background documentation in the DEIR. Therefore, there could be significant impacts to the use of Double Rock by birds as a result of noise on the Yosemite Slough bridge.

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Comment B2j) Potential impacts to Western Red Bat (Impact BI-8), including displacement, injury, or kill of live individuals, are identified but then determined to be less than significant with no mitigation. Western Red Bat has been identified as a California Species of Special Concern and "High Priority" species by the Western Bat Working Group. Based on this designation, impacts to Western red bat, including displacement, injury, or kill of an individual are considered significant under Section 15380(d) of the Public Resources Code, and mitigation should be proposed for this significant impact.

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- Comment B2k) The noise from construction equipment is cited as being sufficient to rouse Western Red Bat in time for this species to vacate the area of construction (Impact BI-8). However, low frequency noise emitted by machinery is often not detectable to bats. Therefore, the noise related to removal of potential roost sites may not be sufficient to alert the bats to the disturbance in sufficient time to flee the area. The project could therefore result in potential significant impacts to Western Red Bat during construction. 47-91
- Comment B2l) Temporal loss of Oyster habitat was not analyzed as part of Impact BI-10 in the DEIR. New hard substrate material takes time to become suitable for oyster establishment so there will be significant temporal impacts to oysters while the hard substrate develops sufficient biotic material coverage to allow oyster attachment. Additional mitigation is necessary to compensate for these significant temporal impacts. 47-92
- Comment B2m) The potential impacts on EFH and special status fish species of shading from the Yosemite Slough bridge were not discussed as part of the discussion in Impact BI-11 or BI-12. Several studies have demonstrated that shaded structures can have significant impacts on fish behavior, affecting EFH (see Southard, et al. 2006 and Hanson 2003). These significant impacts should be discussed and mitigation proposed as part of the DEIR. 47-93
- Comment B2n) Mitigation measure BI-4a.1, referenced for EFH impacts (Impact BI-12), which includes creation of EFH as a potential mitigation measure, has not been demonstrated to be feasible. Creating EFH habitat in San Francisco Bay is complicated and not well established as a feasible mitigation measure. Most attempts to accomplish creation of EFH within San Francisco Bay have not been successful. This mitigation has not been proven feasible. 47-94
- Comment B2o) Long term impacts on EFH as a result of the operation of the marina that are not related to maintenance dredging are not discussed as part of Impact BI-12b. All potentially significant long term operational impacts of the marina on EFH, such as fuel spillage, motorized boat use, and other factors, should be analyzed in the DEIR. 47-95
- Comment B2p) The project is inconsistent with the BCDC San Francisco Bay Plan Fish, Other Aquatic Organisms, and Wildlife Policies 2 and 4 (pg 16 of the Bay Plan), with Bay Plan Tidal Marshes and Tidal Flats Policies 1 and 3 (pg 23 of the Bay Plan), and with Subtidal Areas Policies 1 and 2 (pg 27 of the Bay Plan). These inconsistencies were not disclosed or analyzed as part of the DEIR. 47-96
- 3) *Hydrology, Section III.M, and Biological Resources, Section III.N* 47-97
- Comment B4a) The DEIR does not address whether the construction of the proposed bridge pilings may impede or alter currents entering and exiting Yosemite Slough, thereby impacting the functioning of the Slough and the biological habitats within Yosemite Slough. Potential impacts from altered currents within Yosemite Slough should be analyzed in the DEIR to determine whether or not the impacts would be significant.

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4) *Recreation, Section III.P*

Comment B4a) There is no discussion as to whether construction of the bridge will impede the ability of small boat traffic, such as kayaks and zodiacs, to travel between Yosemite Slough and the Bay. Yosemite Slough is a Traditional Navigable Waterway and the proposed bridge over the slough will have a low overhead clearance during high tides and may impede navigation into or out of Yosemite Slough during the tides when this slough would be accessible to boaters. The DEIR should discuss and analyze potentially significant impacts associated with the restricted use of this area. The bridge is inconsistent with BCDC San Francisco Bay Plan Transportation Policy 3(b) if it does not provide adequate clearance for vessels that normally navigate the waterway beneath the bridge. Based on the bridge specifications, the bridge allows a minimum of 4 feet of clearance, which may not allow small watercraft adequate clearance.

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Comment B4b) Impact RE-3 in the DEIR discusses the fact that 29 acres of park land would be lost, but dismisses this as a less than significant impact with no mitigation because of the assumption that use of the remaining parks after the redevelopment project implementation would be improved. This appears to be a mixture of an impact and mitigation measure, with the decrease in park land being the impact, and increased use as the mitigation measure. The analysis does not differentiate between these two aspects. The loss of parkland is a significant impact that must be recognized and should have a complete associated mitigation measure.

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Comment B4c) The project would have significant impacts on recreational trails in the State Park. Figure III.B-3 and the respective sections of the Land Use Chapter show the proposed Bay Trail crossing the proposed Yosemite Slough Bridge, thereby bypassing the portion of the trail that is planned for construction as part of the Yosemite Slough Restoration Plan. This divergence from the Bay Trail Plan and the Yosemite Slough Restoration Plan would realign the trail away from the natural shoreline and may be inconsistent the intent of the bay trail. The recreational analysis in the DEIR does not adequately address the new trail alignment's significant impact on adjacent park lands.

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Our review disclosed serious flaws and several significant unaddressed issues regarding the Yosemite Slough Bridge.

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The analysis above provides a non-comprehensive list of defects in the DEIR. WRA's analysis was necessarily limited given the massive scope of the Candlestick Point-Hunter's Point Shipyard Phase II Project and DEIR and given the time constraints that are part of this CEQA review process. Please let me know if you have any questions or comments regarding the above analysis.

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Sincerely,



Justin Semion  
Associate Aquatic Ecologist  
WRA, Inc.

References Cited:

Hanson, Jeanne, M. Helvey, and R. Strach, eds. *Non-Fishing Impacts to Essential Fish Habitat and Recommended Conservation Measures*. National Marine Fisheries Service (NOAA Fisheries) Alaska Region, Northwest Region, Southwest Region. August 2003.

Kelty, Ruth and Steve Bliven. NOAA Coastal Ocean Program, Silver Spring, Maryland. *Environmental and Aesthetic Impacts of Small Docks and Piers. Workshop Report: Developing a Science-Based Decision Support Tool for Small Dock Management, Phase 1: Status of the Science*. January 2003.

Merkel and Associates 2004. *Baywide Eelgrass Inventory of San Francisco Bay: Pre-survey Screening Model and Eelgrass Survey Report*. Prepared for Caltrans. October 2004.

Southard, SL, RM Thom, GD Williams, JD Toft, CW May, GA McMichael, JA Vucelick, JT Newell, JA Southard. *Impacts of Ferry Terminals on Juvenile Salmon Movement along Puget Sound Shorelines*. Prepared for the Washington State Department of Transportation.

U.S. Army Corps of Engineers (Corps). 2004. Special Public Notice: San Francisco and Sacramento Districts. *Mitigation and Monitoring Proposal Guidelines*. December 2004.



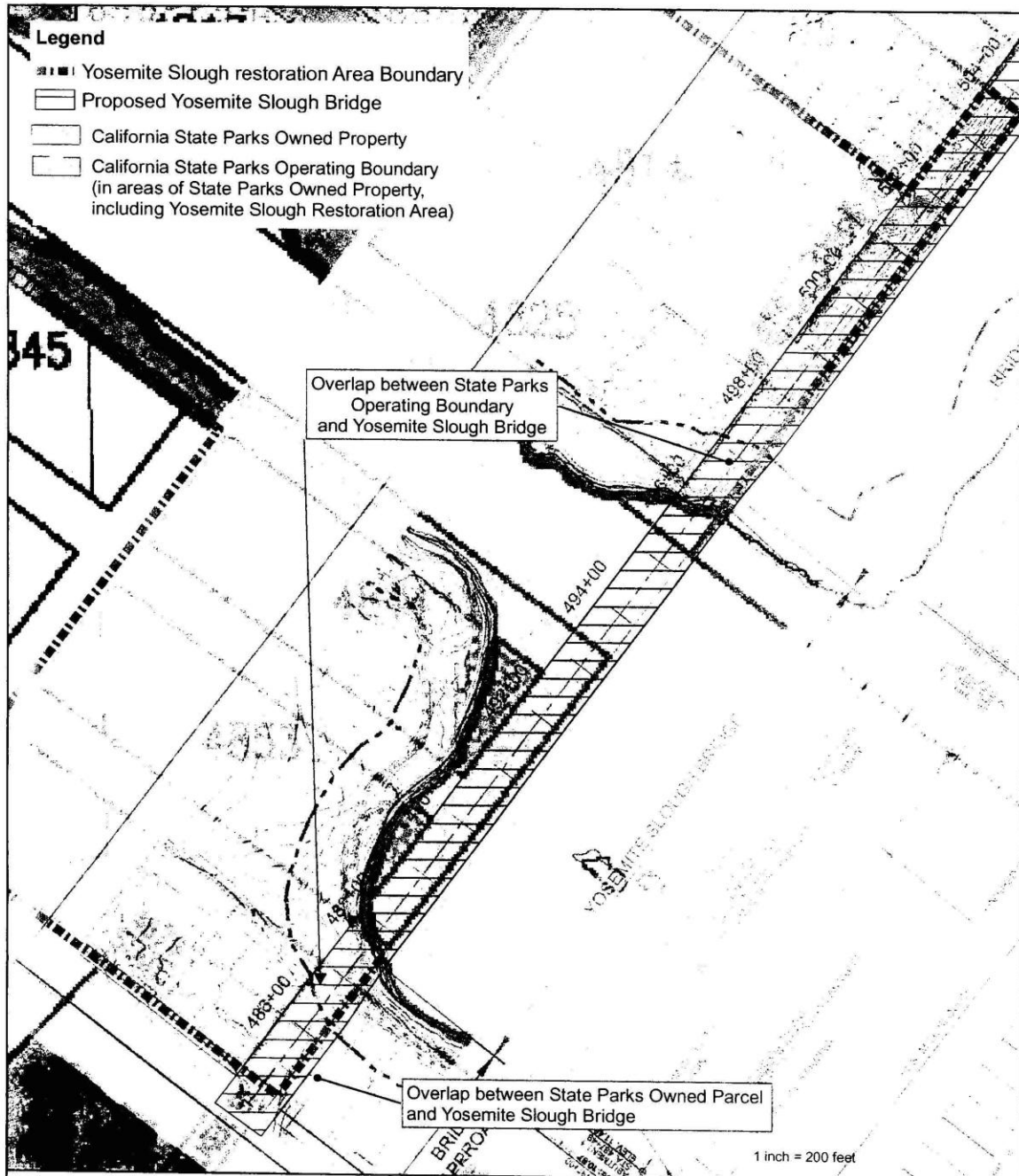
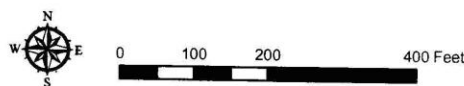


Figure 1. Proposed Yosemite Slough Bridge in Relation to the California State Parks Yosemite Operating Boundary and Parks Owned Parcels



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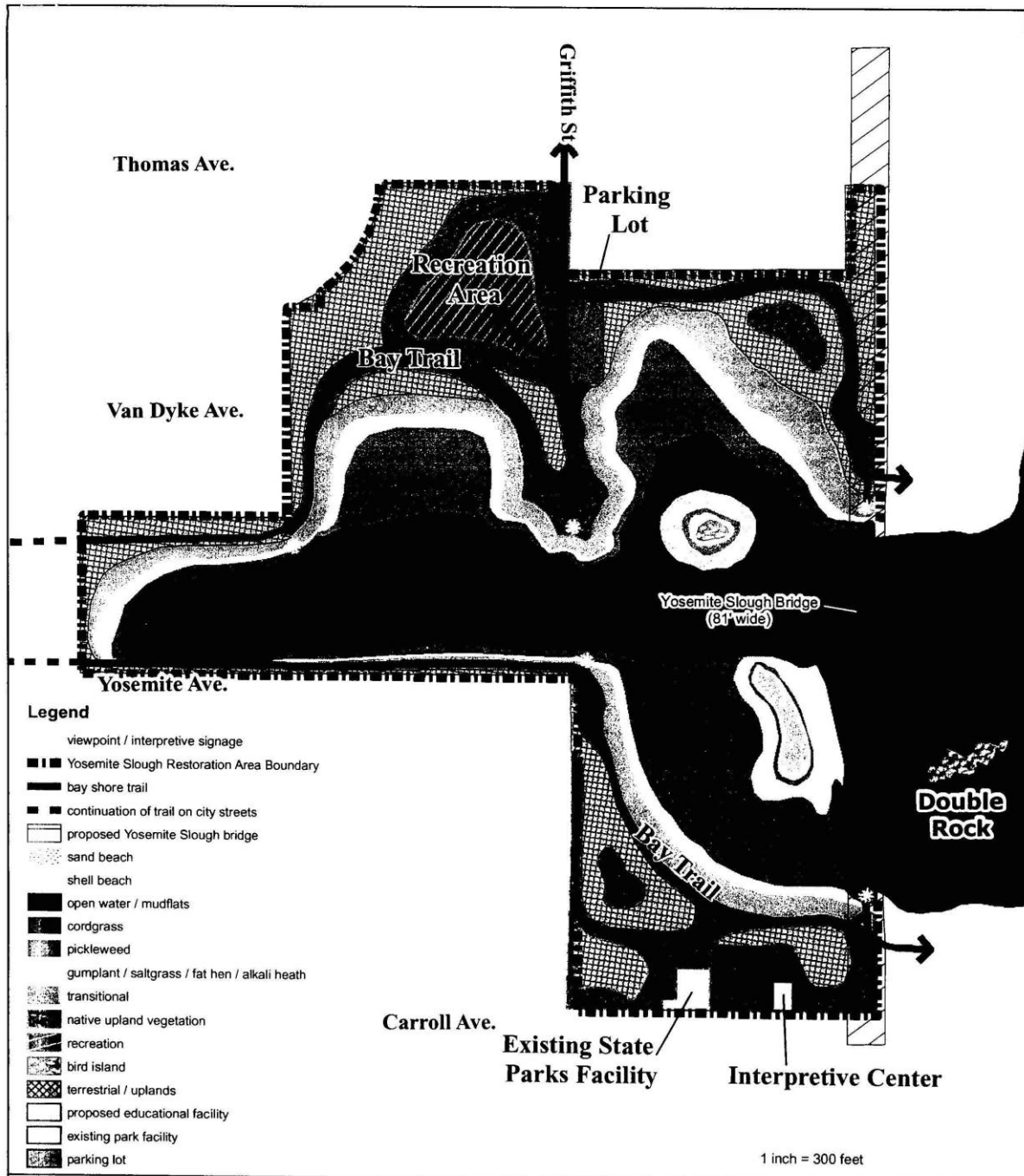
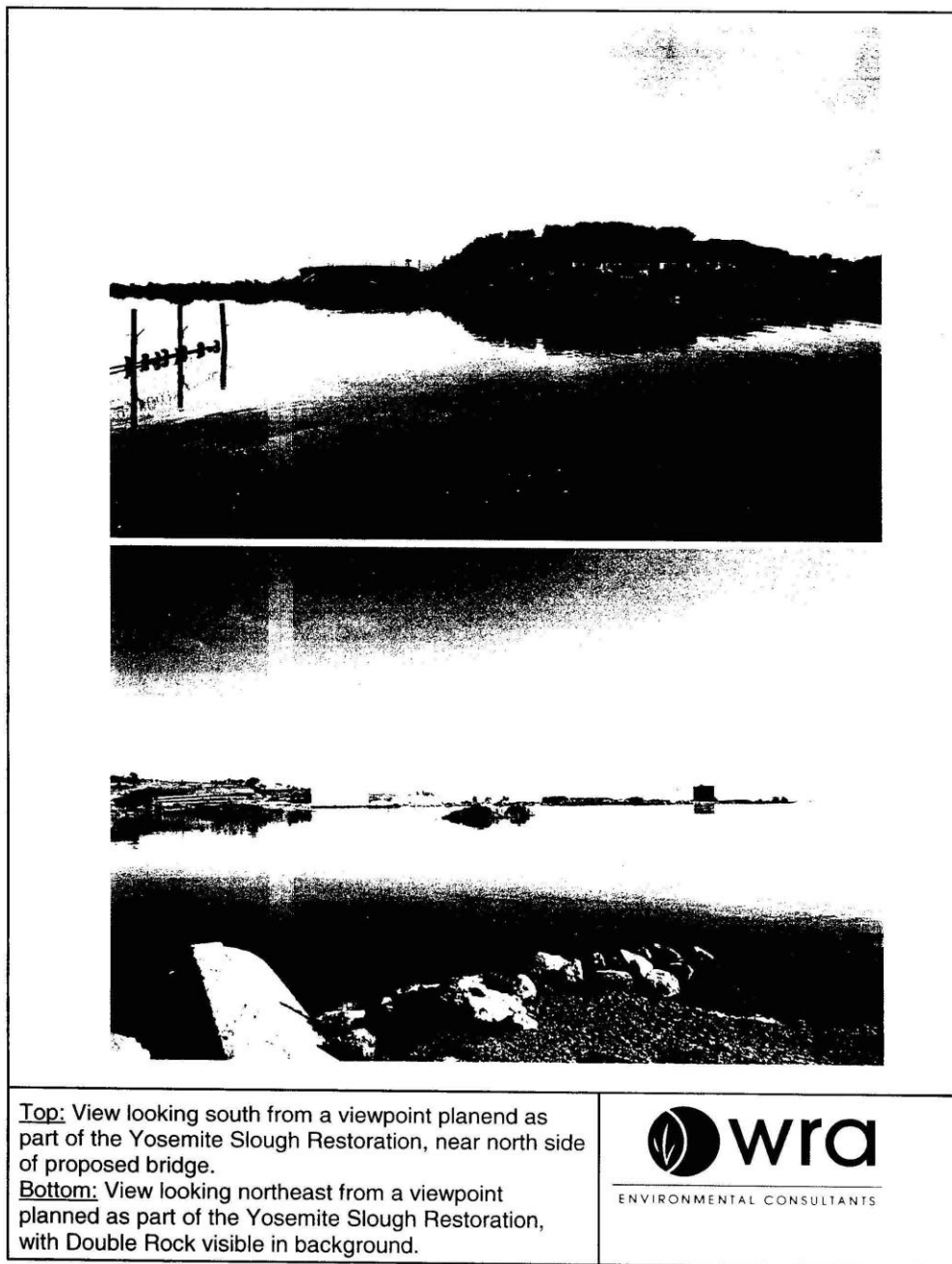


Figure 2. Proposed Yosemite Slough Bridge in Relation to the Yosemite Slough Restoration Project

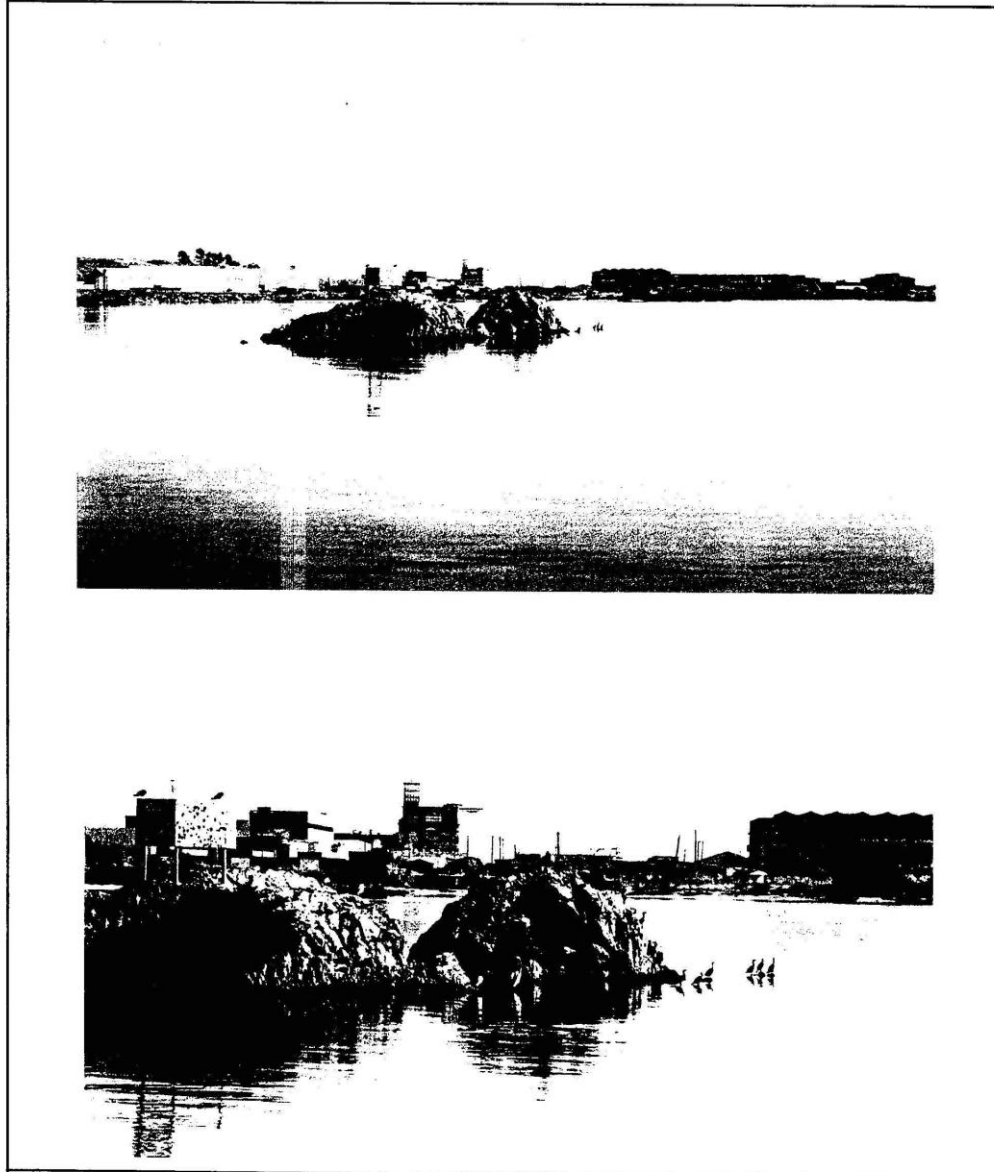


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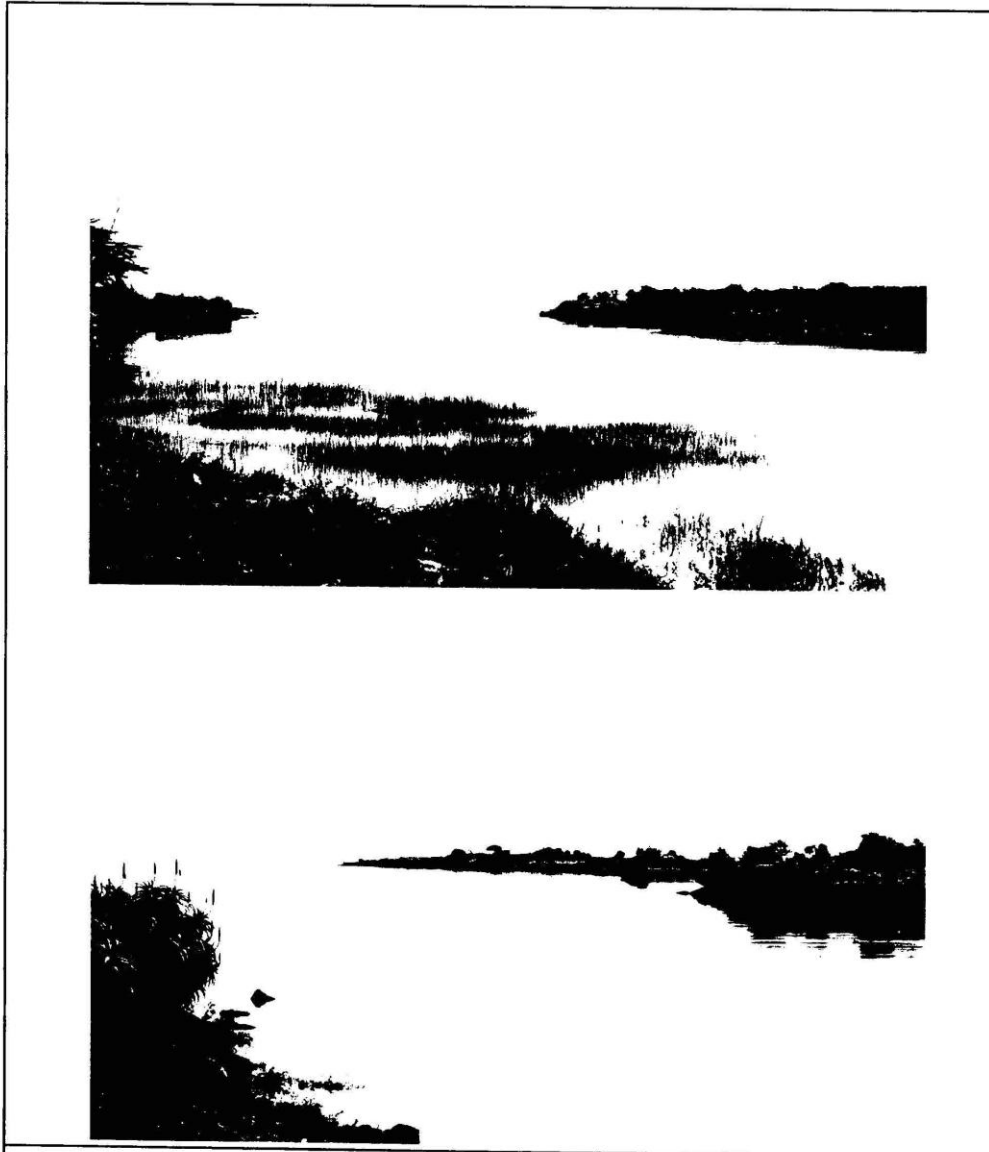
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Top: View of Double Rock from planned Yosemite Slough viewpoint near existing parks facility, west of the proposed bridge.  
Bottom: Wildlife Viewing at Double Rock from Yosemite Slough planned viewpoint near existing Park Facility. The Proposed Bridge would directly block this viewpoint.



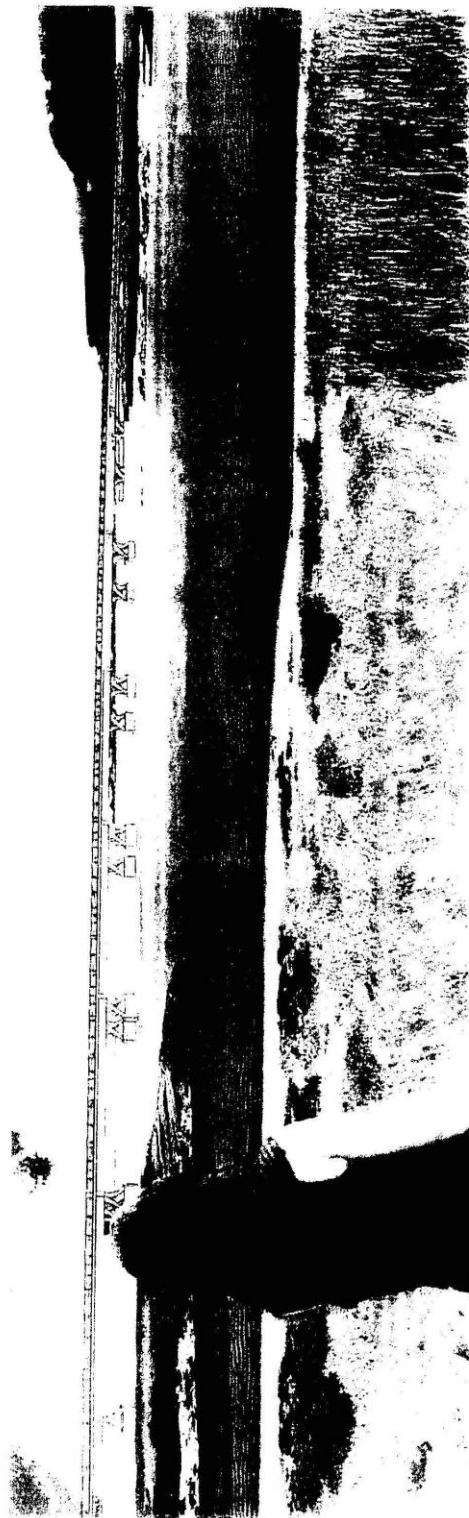
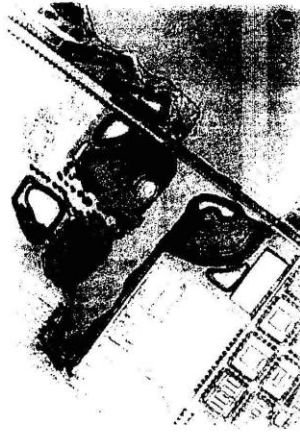
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Top: View looking east from Yosemite Slough planned viewpoint near Van Dyke Ave..  
Bottom: View looking west from Yosemite Slough planned viewpoint near end of Griffith St. The proposed bridge would block both of these viewpoints.



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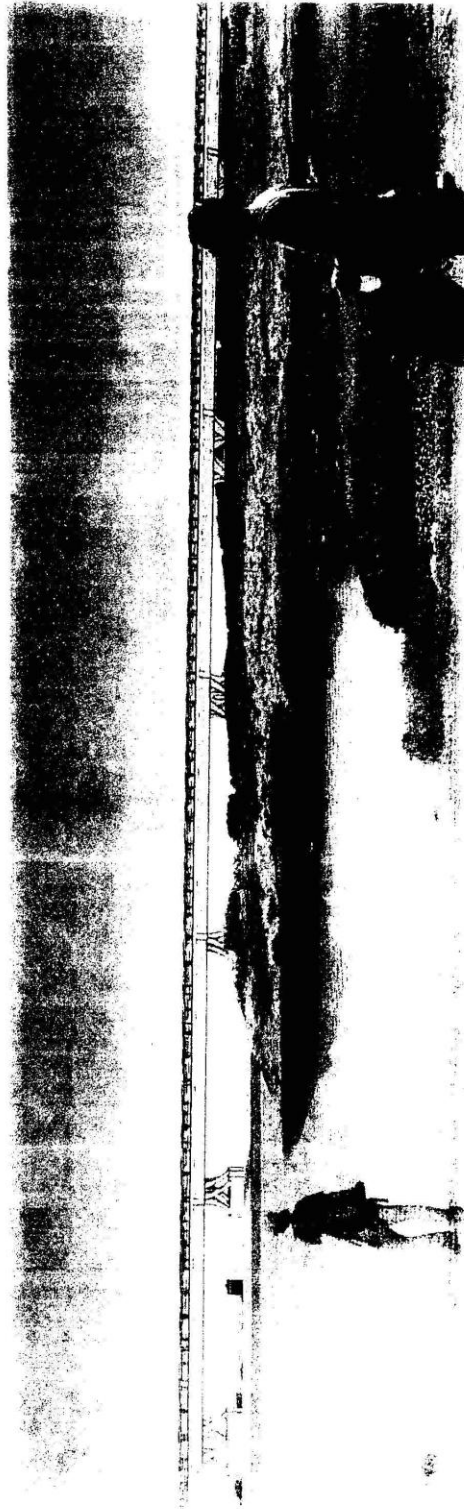
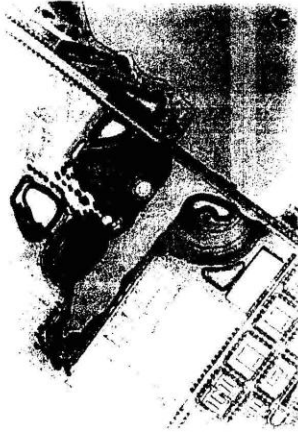


YOSEMITE SLOUGH BRIDGE: Panoramic view from northside plaza

January 28, 2010

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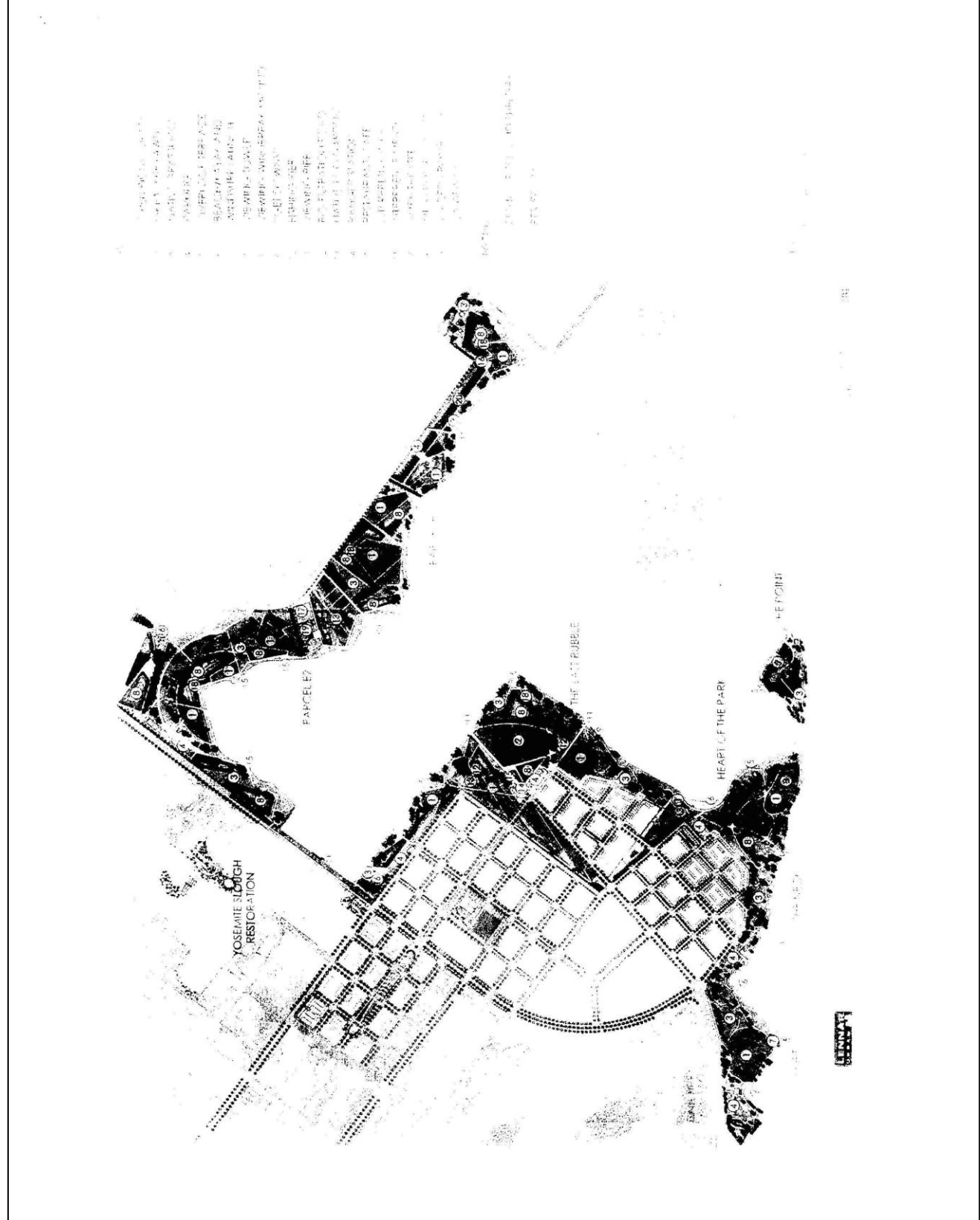


YOSEMITE SLOUGH BRIDGE: Panoramic view from southside bay trail

January 26, 2010

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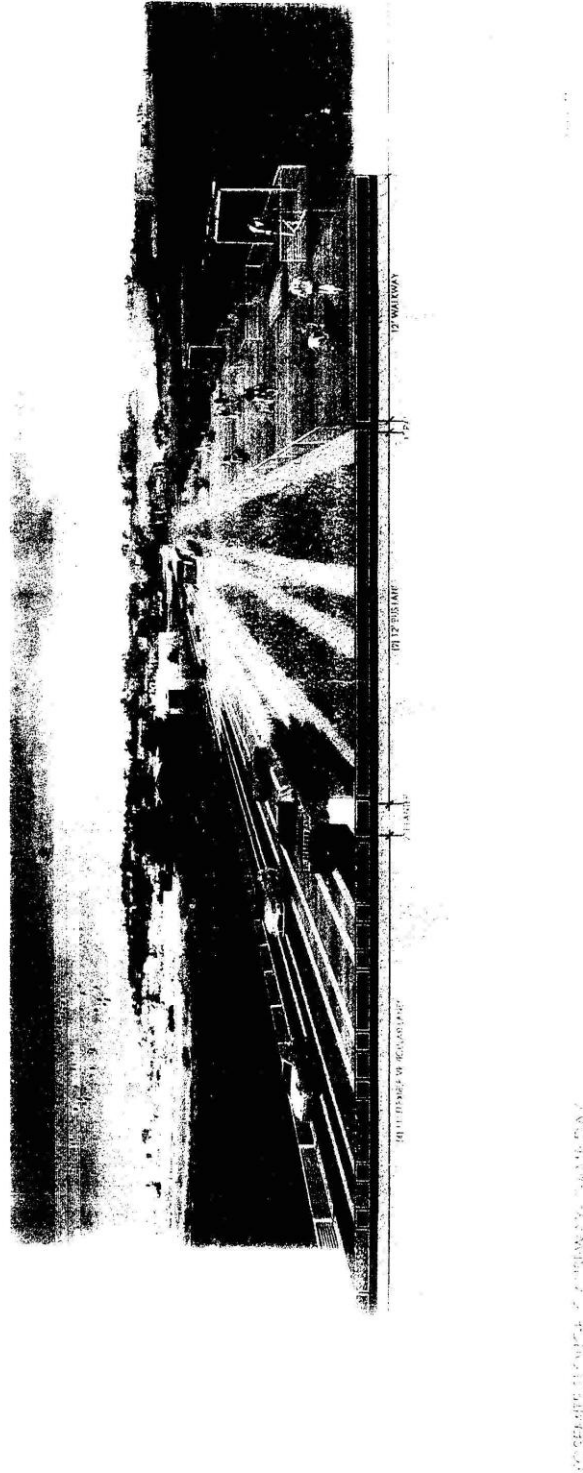
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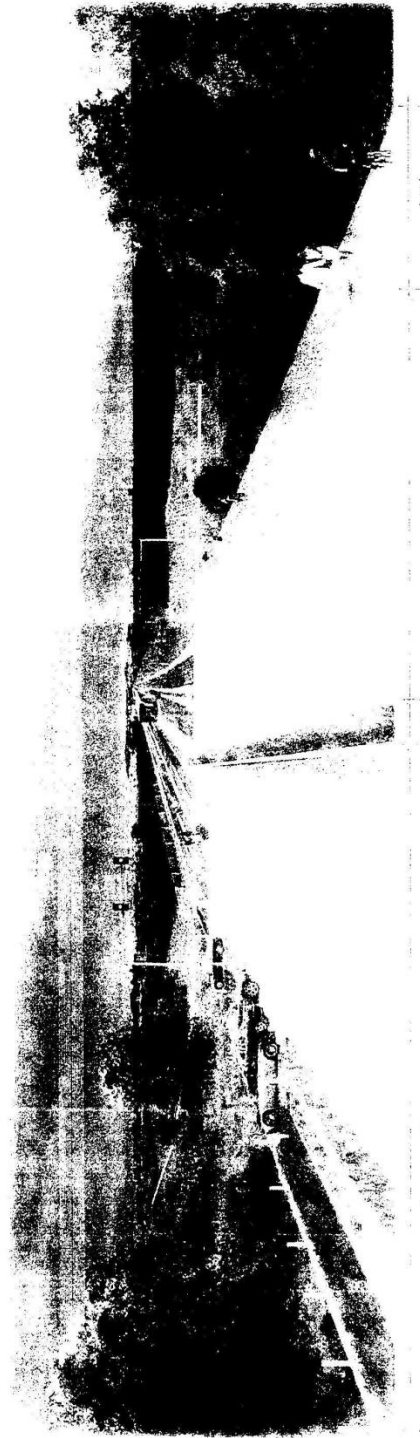




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YOU WILL SEE THE AIRPORT

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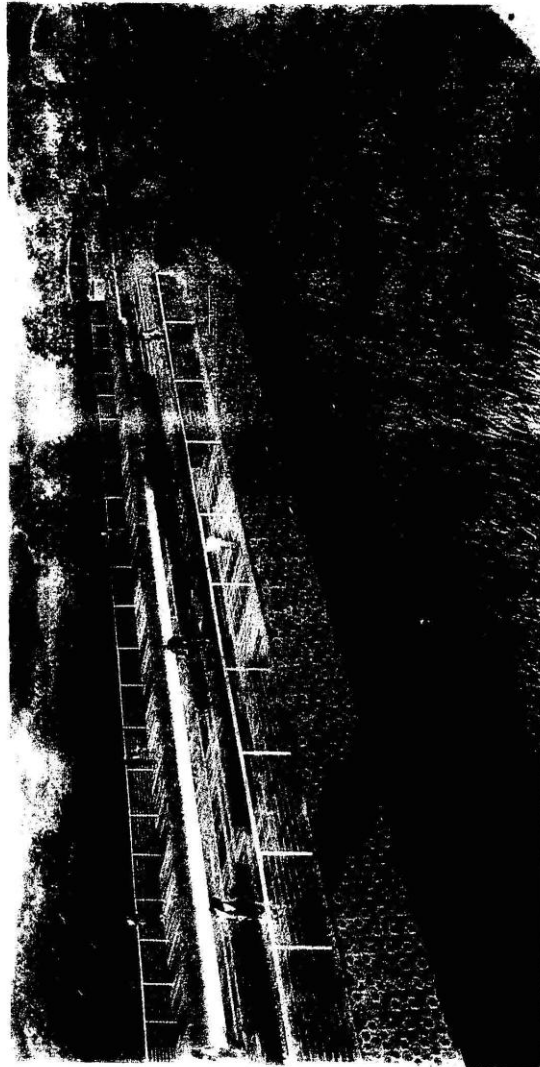
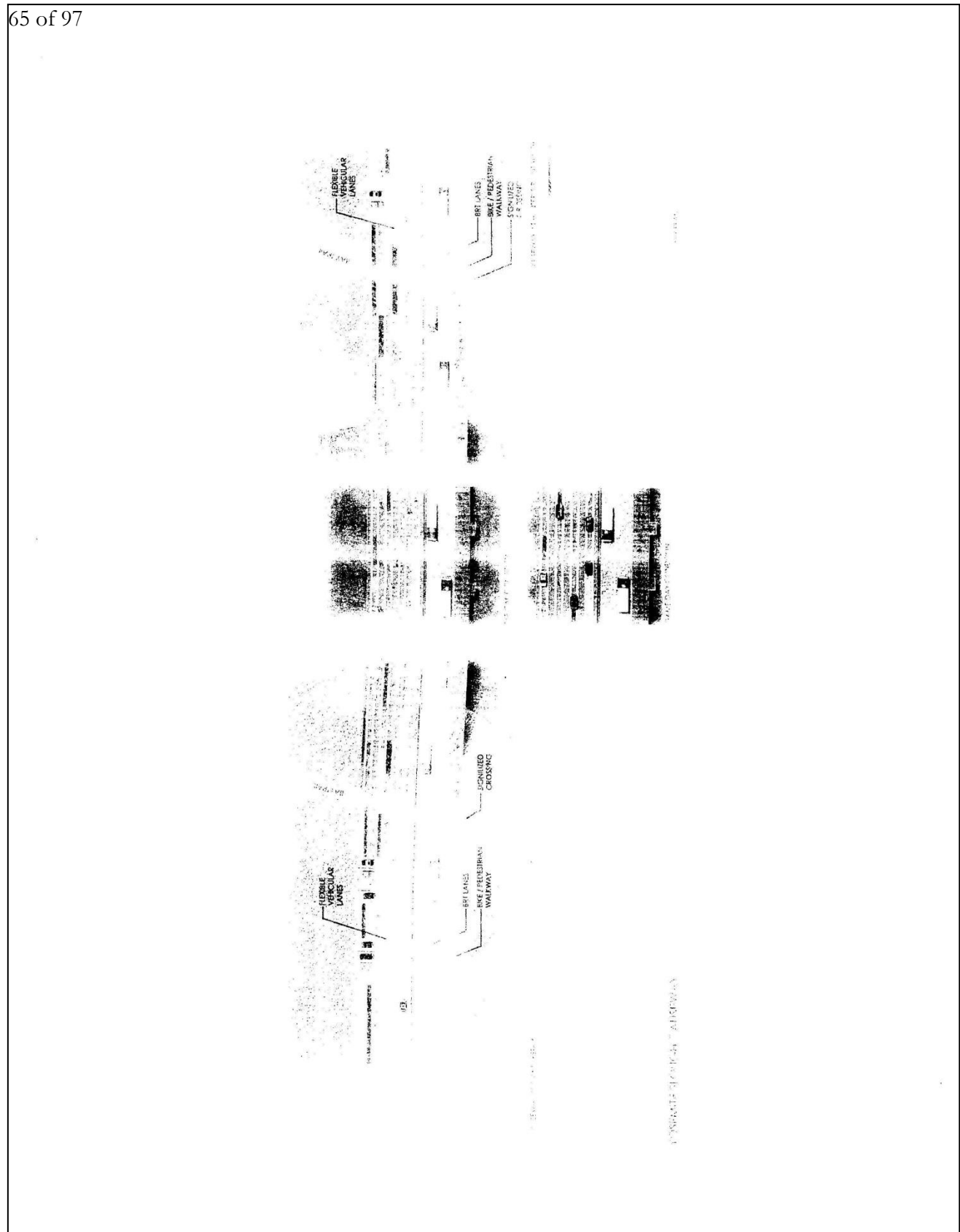


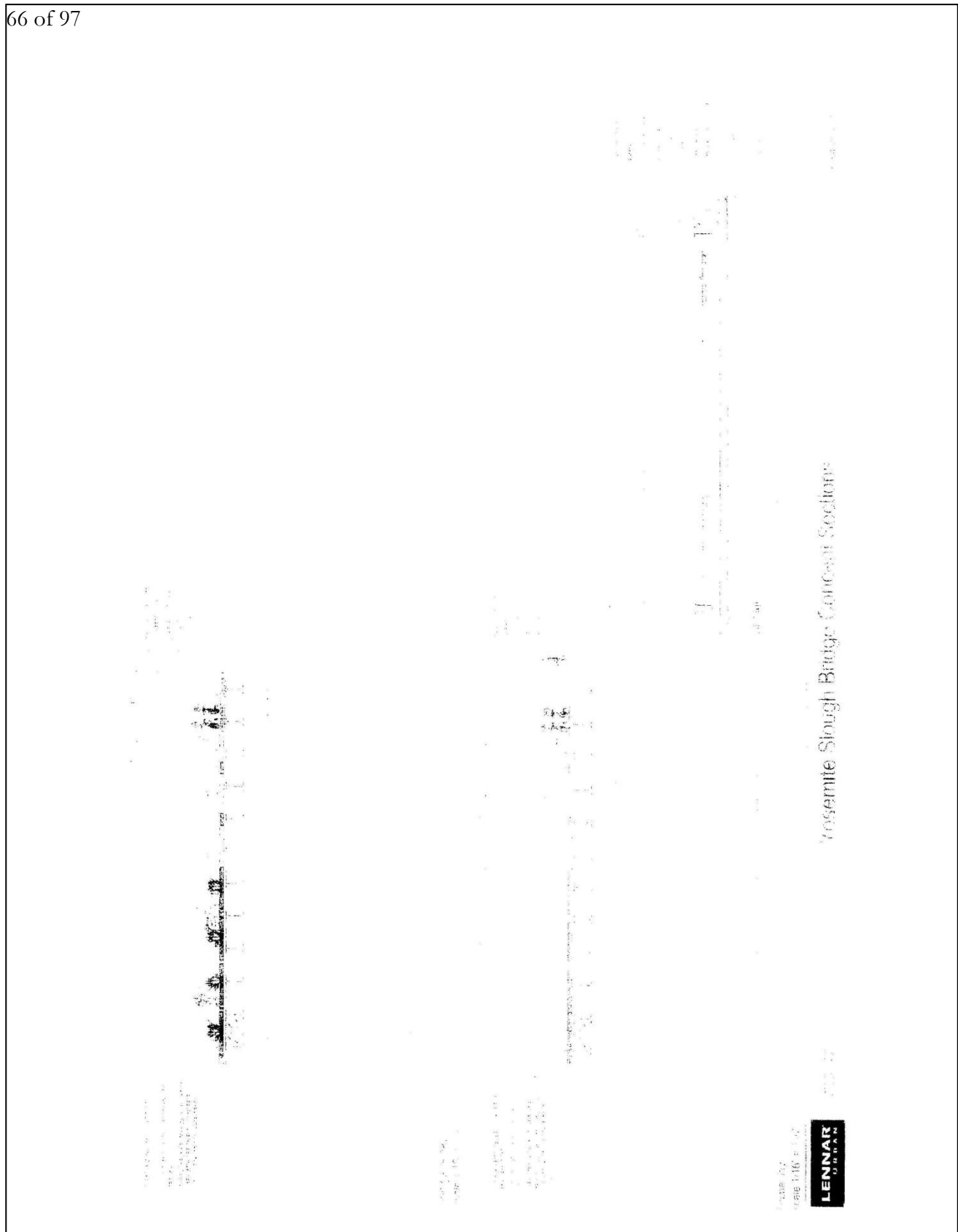
FIGURE 3-10: Aerial view of the shipyard.



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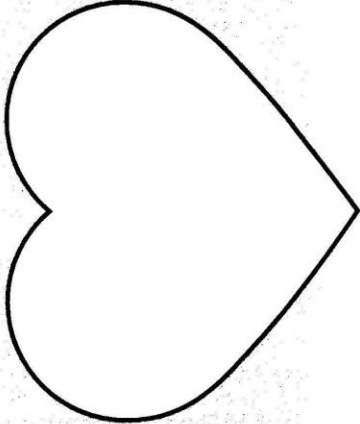
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**Please use this decal to  
show your support for  
California's State Parks!**

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# Tom Brohard and Associates

January 7, 2010

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840 California St., Suite 45  
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**SUBJECT: Review of the Draft Environmental Impact Report (Draft EIR) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan in the City of San Francisco – Yosemite Slough Bridge Traffic Issues**

Dear Mr. Birkelund:

Tom Brohard, P.E., has reviewed various portions of the November 2009 Draft Environmental Impact Report (Draft EIR) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan in the City of San Francisco. Other documents including Appendix D, the November 2009 Hunters Point Shipyard Development Plan Transportation Study as well as various appendices to the Transportation Study, have also been reviewed. My review of these documents has focused on the transportation analysis of the seven-lane Yosemite Slough Bridge that has been proposed as part of the Project

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The analysis presented in Chapter VI of the Draft EIR for “No Bridge” (Alternative 2) concludes the seven lanes and various transportation modes proposed on the Yosemite Slough Bridge can be provided elsewhere with no additional impacts. While I generally concur, construction of the bridge creates a number of other issues. As examples, opening the four reversible auto lanes on only 49ers game days will be difficult to continue to restrict during other sell-out secondary events at the stadium and at the arena. Once opened for traffic access to the stadium and the arena, it will not be possible to keep the four lanes closed at all other times as traffic and transit conditions continue to deteriorate in the area with construction and occupancy of the Proposed Project.

The Draft EIR contains serious flaws and fails to consider all reasonable and viable alternatives. The Yosemite Bridge is not required to accommodate “game day” traffic. Other vehicle access opportunities on surface streets on game days have not been analyzed, and all four of the “game day” lanes may be deleted. No justification is provided to construct the bridge as “rail-ready” to accommodate future light rail service. The Draft EIR fails to analyze a tunnel under Yosemite Slough in lieu of the two bus rapid transit lanes on the bridge. Impacts on bicycle and pedestrian access to the California State Parks with the bridge have not been properly assessed. The issues and concerns in this letter must be carefully considered in a recirculated EIR for the Proposed Project.

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