

May 28, 2004

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**COMMENTS ON NOTICE OF PREPARATION OF
ENVIRONMENTAL IMPACT REPORT FOR
CAMPUS BAY PROJECT AND PROPOSED CORRESPONDING
ZONING, GENERAL PLAN AND SPECIFIC PLAN AMENDMENTS**

Dear Ms. Vonblum and Ms. Parker:

Introduction

These Comments are submitted on behalf of Bay Area Residents for Responsible Development (hereinafter referred to as "BARRD"), an unincorporated association of persons who live and/or work near the proposed Simeon/Cherokee Campus Bay Project (hereinafter referred to as "Simeon" or the "Simeon Project"). BARRD members, like many other affected nearby residents, are extremely concerned that the Simeon Project will:

- Unsafely expose prospective residents to **toxic volatile organic compounds (VOCs)** and other toxic materials buried at the site;
- Forever eliminate **open space, wetlands**, transitional ecotone, and **clapper rail** habitat that has already been sorely compromised by activity at the site;
- Destroy **aesthetics** and property values by eliminating view corridors from existing homes and replacing natural features with an overly dense urban footprint;
- Further reduce already compromised **public services** (police, fire, schools); and

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- Create local and worsen regional **traffic congestion and air quality.**

The City of Richmond should reject the ill-advised Simeon Project. In this Environmental Impact Report the City should require serious and detailed consideration of many different alternatives that do not have the same negative impacts as the proposed project.

EIR Comments

The burden of preparing an adequate EIR lies with the lead agency and the applicant, not the community. The following comments are submitted not as an exhaustive list of subjects but rather as an illustration of some of the issues which must be considered.

1. Project Description and Environmental Setting

The project developer has already acknowledged that this EIR may be used to obtain approvals for other than a master planned residential community, e.g. if environmental agencies advise against building residential units on the site. Accordingly, the project description should include a clause for "or other redevelopment of the site."

The environmental setting must include a description of the health havoc wreaked by this site on previous apartment residents on the site and current downwind business employees. ESA, as the EIR preparer, should investigate in detail the history of illnesses and deaths suffered by current and former employees next door to the site to determine, with best available current information, whether there is a pattern of morbidity and mortality associated with site exposures. The "setting" should also consider previous transfers of hazardous materials from the adjacent UC site to this site, materials which may pose different risks from those deposited by site owners.

2. Aesthetics

Commenters have already emphasized the loss of aesthetics (and thus property values) for existing nearby homes if highrises are approved as proposed. This loss of aesthetics is so significant that its full impact requires detailed evaluation in the EIR: (1) what views are lost, (2) by how many people, (3) at what cost, and (4) how are these aesthetics valued by those who will lose them?

A similar aesthetic loss must be evaluated for users not only of the Bay Trail but other nearby open space, in that the bucolic and relaxing natural sightlines to trees on the nearby UC property will be lost in urban canyons. This loss must be accorded hedonic

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values and alternatives considered that will not result in these losses. Mitigation cannot be considered until non-intrusive alternatives have been exhausted.

Finally, it is imperative that the EIR evaluate the aesthetic damage (apart from habitat) of the large wall-like structure that Simeon has created at the edge of the wetland (hereinafter the "Simeon Wall"), creating what they appear to call a so-called vertical transitional ecotone (i.e. a wall, with actually no transitional flora at all). This structure is not part of any baseline, and has recently been created by Simeon. The Simeon Wall deprives the viewer from the Bay Trail of any sense of preserving the wetland or habitat, and makes the remaining natural area appear to be a small enclave, somewhat like an artificially created grassland at a zoo, a fact that has not gone unnoticed by would-be avian users.

3. Air Quality

The EIR should consider both stationary and mobile sources from the project. Stationary sources include increased emissions from power plants serving the project, emissions from units, etc. Mobile sources include the 2660 cars anticipated by way of parking spaces, visitors, etc. Mobile source emissions will depend to some extent on the traffic study, but the traffic study (see below) therefore needs to consider vehicle trips comprehensively with respect to trips for food, clothes cleaning, fuel, recreation, entertainment, work, school, etc.

The EIR must consider local air quality in this part of Richmond and regional air quality in the air basin, both on a direct and cumulative basis. Alternatives to the proposal should be considered which do not generate the same air emissions, e.g. less dense development, commercial development that generates fewer vehicles, etc. If mitigation is considered, the EIR must perform an in-depth evaluation on the extent to which the "transit system" which the developer has talked about (but not written down) is (1) economically feasible (including funding sources in perpetuity), (2) effective in reducing vehicle miles traveled, and (3) practical.

Finally, downwind business employees have already experienced toxic air contaminant exposure from previous remediation work at the site. Simeon proposes to drill through the cap with pilings and may perform other work that generates toxic gases or dust. The EIR should evaluate previous impacts as a means of determining future construction impacts from the project.

4. Biological Resources

Clapper rail habitat must be evaluated from a true **baseline**. In this case the baseline must be considered without reference to the road that has recently been erected between

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the Simeon and University of California property, which has resulted in discontinuous habitat, and also without reference to the Simeon Wall, which is a very recent and disingenuous byproduct of supposed remediation of the acidic pyrite cinders on the property.

Clapper rails have been observed in both 2003 and 2004 on the property. The EIR must acquire and present this data in evaluating impacts of the proposed development on this endangered species, especially with regard to buffer zones required for this species.

Recent and proposed topographical changes to the natural habitat must be evaluated with respect to impacts on all affected flora and fauna, including but not limited to migratory birds and the salt marsh harvest mouse.

Site features, such as a restaurant or public use facility and roads next to the habitat and wetlands areas must be considered in terms of emissions, animal attraction, human interactions, and overall site impacts from ground level and higher level night lighting.

The EIR must consider alternatives that do not impact the marsh and habitat, which would require reducing the project footprint so close to these natural features. There is no reason why these alternatives would not be feasible.

5. Hazards and Hazardous Materials

The Simeon project's future impacts must be evaluated with respect both to past morbidity and mortality, current understanding of the presence of toxic constituents, and future exposure pathways.

The EIR has a responsibility to incorporate investigations and findings by relevant environmental agencies, but also has an independent responsibility to incorporate other relevant information. In this light the EIR should and must incorporate the risk values for volatile organic compounds set forth the Federal Environmental Protection Agency and the California Department of Toxic Substances Control in the EPA Guidance for Vapor Intrusion (i.e. dangers of indoor air exposure). The developer has consistently used a model ("Johnson-Ettinger") which has expressly been deemed to be outdated by EPA. ESA should contact Federal EPA or otherwise incorporate their Guidance into the Risk Assessment pertinent to the proposed development.

The developer has already acknowledged that toxic levels at the site are so high that the levels are not suitable for unrestricted use or mere passive barriers to intrusion. One alternative to this significant impact on human health that must be considered in the EIR is a delay of development until remediation has been completed. Although the developer

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has already noted this potential in documents submitted to the Regional Water Quality Control Board, he has rejected this health-conservative approach in favor of immediate returns from his investment. The EIR must consider whether a longer term approach is technologically feasible, as the developer admits, and fits the ultimate objective of environmentally responsible development on the site better than the current proposal.

The Simeon Project proposes mitigation measures for the toxic wastes on the site whose feasibility must be considered in the EIR. Specifically, a cap is proposed for the lead, arsenic, pesticides, and various other toxics buried on the site. It is not clear whether the proposed remediation includes consideration of toxic wastes from the adjacent UC site that were reportedly dumped on this site. With regard to the feasibility of the cap for long term residential development, the EIR must consider the impacts and feasibility of cap repair, repair of the activated vegetative wall that will not last the life of the project, and other features in the midst of a residential development. How will cap cracks be repaired without exposures to residents to gas or dust? How will the vegetative barrier be repaired without further harm to wildlife and neighbors?

The primary feasibility issue pertains to the proposals for avoiding exposure to VOCs. The developer does NOT propose to clean them up, but instead to install layers of plastic and active ventilation systems (fans) to wick away the toxic fumes. The EIR needs to consider the long term technical feasibility of this measure on a practical level and the health consequences of system failures. If system failures result in exposures, a residual significant adverse impact must be accorded to the project. Moreover, to the extent that the project proposes a complex set of responsible entities to ensure that the systems are operated and maintained (homeowner association, neighborhood association, and ultimate responsibility of the City of Richmond), the EIR must evaluate the practical feasibility of the City's acceptance of this significant liability.

The nature of the risk assessment associated with this part of the EIR must consider not only the risk of harm to residents and visitors and wildlife, but also the risk that harm will not be adequately mitigated by compensation. The project proponent has claimed that there will be 20 years of insurance for environmental harm. The EIR must look into the actual policy, its inclusions, and exclusions. In addition, the EIR must consider the likelihood of latent disease (cancer) from exposures that manifest themselves after the insurance has expired. Given that the current owner is a single purpose entity without other assets and that the owner plans to sell to other single purpose entities for purposes of vertical development, the EIR must consider as a mitigation measure at least extracting corporate and personal guarantees from the developers (Simeon and Cherokee) to back up the insurance policy on the project.

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6. Land Use and Planning

Downwind businesses are at risk from encroachment by residential uses on their activities. The incompatibility of the project with existing industrial zoning and uses must be considered as a significant adverse impact of the project. Alternatives which do not cause these impacts, such as nonresidential uses near these businesses and traffic access which does not cause snaris because of industrial truck use, must be considered.

7. Public Services

These comments are not intended to address the issue of public services in a comprehensive fashion. It is clear that Richmond has a public services crisis because of fiscal constraints. It is also clear that the one time impact fees to be paid by the project would not cover the public services it will require. In addition, the EIR needs to consider whether any planned Owner Participation Agreement with the Redevelopment Agency would further reduce available tax revenues from the project that could be used to pay for those services. An alternative that does not use this level of public services (e.g. R&D) needs to be considered. In addition, mitigation that eliminates public subsidies or requires further payments by the project must be considered.

8. Traffic

The Traffic Study must be conducted by a party not employed by the applicant. The Traffic Study must consider local routes to essential services (e.g. food, clothing, laundry, recreation, banks, etc.) and the level of service at each of those affected intersections. In addition, the EIR must consider cumulative impacts of added traffic in the neighborhood and on freeways at commute hours. The intra-project impact of traffic circulation as proposed for emergency egress must also be investigated.

Critical to this issue is the cumulative impact of added vehicles on Bay Area and Richmond traffic patterns.

9. Alternatives

At the scoping meeting on this project, an ESA representative stated that the alternatives to be considered would be (1) R&D, (2) commercial, and two "reduced residential" alternatives.

To be fair, the alternatives must also consider:


- Conversion to parkland and open space
- Further cleanup prior to development

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- Development substantially away from habitat, wetlands, and the Bay Trail
- Commercial development that is not only "big box" use
- Reduced residential that does not merely assume R&D on the rest of the site, e.g. less dense and lower (3 stories or less) development that is away from the bay but occupies the uplands portion of the site

Conclusion

The site of the proposed project is an inextricable part of the San Francisco Bay and the City of Richmond's shoreline. In light of the significant risks of residential development on the site and the significant risk of expansive development to Richmond's natural attractions of wetlands and species habitat, we ask that the EIR focus on how to manage this site in the best interests of all local residents. Thank you for your consideration of these comments. Please do not hesitate to call or write for further clarification.

Sincerely yours,

Peter H. Weiner
Attorney for BARRD