CITY OF HAYWARD AGENDA REPORT

AGENDA DATE February 3, 1998

AGENDA ITEM _____

WORK SESSION ITEM WS#2

TO: Mayor and City Council
Planning Commission

FROM: Director of Community and Economic Development

SUBJECT: **REVIEW OF FINAL EIR AND SPECIFIC PLAN FOR THE SOUTH OF ROUTE 92 AREA**

RECOMMENDATION

It is recommended that the City Council and Planning Commission review and comment on the final Environmental Impact Report (FEIR) and the final Specific Plan for the South of Route 92 area.

BACKGROUND

On October 28, 1997, Council reviewed the draft Specific Plan and EIR and, on November 13, 1997, the Planning Commission heard testimony from the public regarding those documents. Since that time, the EIR consultants have reviewed each of the comments, conducted further research on the issues, and prepared responses to the questions and comments.

THE FINAL SPECIFIC PLAN

Overview

Data about the proposed projects and the project site has continued to evolve during this time period, the Specific Plan has, therefore, been updated and revised to include the most recent data available. The final Specific Plan (Plan) describes the location, physical characteristics and the economic context of the Plan area. It also sets forth the Specific Plan's objectives, General Plan policies and zoning for the Plan area and the ways in which the Specific Plan is or is not consistent with the General Plan. The Specific Plan discusses allowable land uses, circulation, public facilities and services, recreation and open space and utilities. The last chapter discusses how the Plan will be implemented.

Land Uses

Overall Development Concept

The plan area is located between industrially zoned land, developed industrial sites and the Baumberg Tract, former Cargill Salt property that has been acquired by the Wildlife Conservation Board for open space and natural habitat. As such, the development concept for the Plan area is to provide a transition from busy industrial-type activities to a serene natural environment. To achieve this, the Specific Plan:

(1) takes the opportunity to expand upon the existing industrialized areas near Hesperian and Industrial Boulevards and along Arden/Baumberg Avenues by developing business park and light manufacturing uses;

(2) benefits from the proximity of the natural areas by developing bay-oriented neighborhoods and controlled public access on the western edge; and

(3) preserves those parts of the plan area that could be viable natural habitats.

The land use concept for the Plan area calls for both the development and the conservation of land. There are four distinct development areas: business park/light manufacturing area on Oliver East and the City of Hayward parcels; single family residential development on Oliver West, light manufacturing and wetlands preservation on the Weber parcels and the sports park on Oliver East and ACFCWCD properties. Figure IV-5 (following page IV-1) in the Specific Plan depicts the location of each type of land use. Associated with the residential uses are neighborhood parks and trails. Acreage for the conservation and enhancement of wetlands as permanent open space is also provided. Table IV-1: Land Use Program (following page IV-1) in the Specific Plan lists the number of acres for each type of use by property.

Special Characteristics of the Specific Plan Area

New Zoning Designations

The Plan includes four new zoning designations: Business Park (BP), Light Manufacturing (LM), Commercial/Retail (CR) and Open Space (O). Allowable uses are described in the Development Guidelines and a brief summary follows.

- **Business Park (BP)** includes administrative, executive and business offices, design professions offices, research and development, analytical and scientific offices, and headquarters of region-wide software, biotech, finance, insurance or other similar types of offices.

- **Light manufacturing (LM)** includes the manufacture and assembly of machines, appliances and instruments, electrical supplies, pharmaceutical or biological products; laboratories; industrial support and service facilities; and research and development facilities. Warehousing is not permitted unless it is to store a product manufactured or assembled onsite or to store a product for which Hayward is the "point-of-sale" to the end user (i.e., Hayward receives a portion of sales tax on the product). Facilities that use significant quantities of hazardous materials will require a use permit.

- **Commercial/Retail (CR)** is similar to the City's Neighborhood/Commercial (CN) zoning. It allows grocery stores, drug stores, florists, hardware stores and more; however, it does not allow check cashing stores, automobile repair or parts stores, or dance studios which are permitted or allowed with administrative or with conditional use permits in the CN zone.

- **Open Space (O)** is used to designate the neighborhood parks and the sports park. Because new zoning districts are proposed, a Zoning Ordinance Text Change and a Zone Change will accompany the Specific Plan when it is considered at public hearing.

Open Space Ordinance
On February 25, 1997, the City adopted an ordinance which made any changes in open space designations on the City's General Policies Plan Map after January 1, 1996, subject to approval by a majority of the Hayward electorate. The Oliver West and Weber parcels are currently designated Open Space-Baylands on the General Policies Plan Map; therefore, adoption of a General Plan Amendment changing these designations would become effective only if approved by a majority of Hayward voters. Since any Specific Plan must be consistent with the City's General Plan, the Specific Plan covering the Oliver West and the Weber properties would become effective only if the General Plan Amendment were approved by the voters. Therefore, the resolutions which will be considered at the public hearing for the adoption of the GPA, Specific Plan and Development Guidelines covering the Oliver West and Weber parcels will be written to be contingent upon approval of the Hayward electorate.

Jurisdictional Boundaries
Figure I-3 (following page I-2) in the Specific Plan shows the jurisdictional boundaries in the area. Currently, the Oliver East parcel is in Alameda County, although it is within the City of Hayward's Sphere of Influence. Oliver East is designated "Industrial Corridor" on the City's General Policies Plan Map. Water and sewer serving this parcel will be connected to the City's water and wastewater systems. It is the City's intention

to annex the Oliver East parcel and the FEIR has been prepared with that action in mind.

The two acre ACFCWCD parcel is located in Union City, although within the City's Sphere of Influence. The Oliver Trust will attempt to purchase the property from ACFCWCD; if it is not possible to purchase the entire property, then it is anticipated that the Trust will purchase sufficient square footage for the storm water pump station and appropriate easements. Although a letter from the ACFCWCD indicated that they did not want to sell this parcel, subsequent conversations with the County indicate that they would be willing to sell a majority of the site. If a majority of the property is purchased, it will be annexed by the City.

Location of Wetlands and Habitat and the Establishment of the Urban Limit Line (ULL)
In 1997, two wetlands delineations were completed, one for the Oliver East/Oliver West and one for the Weber parcels. A total of 52.1 acres of jurisdictional wetlands were delineated on the Weber property, of which about 1.7 acres would be impacted by the Specific Plan. As previously noted, Mr. Weber would like to include another approximately two acres of wetlands in the development area, making a total of approximately four acres that would be impacted. Only about 0.48 acre of jurisdictional wetlands was found on the Oliver West property, of which approximately 0.03 would be impacted. No jurisdictional wetlands were found on the Oliver East site because none of that parcel occurs within the 1857 Bay shoreline as defined by the U.S. Army Corps of Engineers.

Urban Limit Line
Figure X-1 (following page X-1) in the Specific Plan shows the proposed location of the Urban Limit Line. Oliver East, Oliver West and approximately 22 acres of uplands on the Weber parcels would be included within the ULL as appropriate for development. Almost all jurisdictional wetlands and all of the 18 acre Salt Marsh Harvest Mouse habitat would be outside the ULL, and, therefore, excluded from development. However, the ULL has been drawn to allow Mr. Weber to develop approximately four acres of wetlands, if he is successful in obtaining permits to do so from the jurisdictional agencies.

Sports Park
A 25-acre sports park is planned along the edge of Old Alameda Creek on the Oliver East and ACFCWCD parcels. The largest of Hayward's community parks, it will contain active recreation facilities, including several baseball and soccer fields as well as basketball and tennis courts. The precise mix of uses is to be determined by the Hayward Area Recreation District's planning staff. To be maintained by the Hayward Area Recreation District, it will be a community resource where sports leagues can

conduct season and play-off games with some spectator seating. The sports fields will be equipped with night lighting which allows for the full utilization of the facility. Parking will be available in designated areas on the adjoining street and in on-site lots. The sports park is located on the east side of the SP/UP railroad tracks in order to be easily accessible to all, including employees in the adjacent business park and the residential development. Although the Plan includes the two acre ACFCWCD parcel, if that parcel is not available for sale, then two acres of business park/light manufacturing will become part of the sports park.

The Plan assumes that the City will transfer its 12.2 acres to the Oliver Trust, in exchange for 25 acres to be developed as the sports park. The City's 12.2 acres will be used as business park. The exact nature of the land exchange will be finalized before development of Oliver East proceeds.

ALTERNATIVES REVIEWED IN THE DEIR

The draft EIR reviewed three alternatives to the draft Specific Plan:

(1) No build/no project which equals no development, the properties remain relatively vacant as per current conditions;

(2) No project/develop as per existing zoning which, in effect, means that Oliver East can be developed as industrial under existing County zoning which has a wide variety of uses including open storage and warehousing; and

(3) HASPA Plan/Oliver East Alternative which consists of no development west of railroad tracks except compatible open space uses and includes some wetlands restoration; business park/industrial development east of railroad tracks.

In the context of the alternatives studied, the Specific Plan calls for the greatest amount of development and consequently has the highest number of significant impacts. Although the vast majority of wetlands are excluded from development under the Specific Plan, the Specific Plan has not been designated the "environmentally superior alternative" because the other alternatives contain less development. The three alternatives, however, do not fulfill other City objectives such as expanding the supply of owner-occupied housing and increasing the variety of housing stock, particularly housing for professionals, technical specialists and managers and business owners, and creating opportunities for businesses that provide higher wage jobs and/or sales tax revenues to develop and expand in Hayward.

THE FINAL EIR

The Final EIR lists all commenting correspondence and then provides responses to comments in two ways. First, a Master Response has been prepared for each of the eight most commented upon categories. Second, in the Comments and Responses section, the Planning Commission Meeting minutes and each comment letter is published on even-numbered page(s) and the response to the identified comments is published on the odd-numbered page(s) located opposite the comment letter to make it easy for the reader to see the specific response to each comment.

The following is an overview of the issues most frequently identified during the public comment period and a summary of the responses prepared by the EIR consultants.

Residential Development and Environmental Noise

Issue Summary

The issue of environmental noise in the proposed residential area was raised at the PC public hearing and in a number of written comments. As a result, the EIR noise consultant monitored noise levels at the project site over a five consecutive day period, 24-hours a day, at three locations on the Oliver West parcel. The measurements began on Friday, December 12, 1997 and were concluded on Tuesday, December 16, 1997.

Measurement Location 1 was about 100 feet from the Union Pacific railroad tracks; Location 2 was in the approximate center of the site; Location 3 was at the western boundary of the site. The measurements at Location 1, adjacent to the railroad tracks, provided hourly average data and single-event data for the railroad trains over the entire monitoring period. Data gathered at Locations 2 and 3, provided hourly data and single-event data, for aircraft overflights.

EIR Conclusion

The noise consultants found that there were significantly more trains along that track than was reported to the EIR consultants by PUC staff. In addition to PUC staff, the Union Pacific railroad public projects engineer and the Oakland Terminal Superintendent were contacted. There are many discrepancies between the reports from each of these sources -- all of them reporting fewer trains than the noise data indicated; therefore, the EIR consultants utilized the actual recorded single-event and hourly noise data in their evaluation of the noise impacts on this site. Their findings were that the noise data were consistent with that which could be expected along a railroad line and that the mitigations in the EIR -- a sound wall along the residential property boundary common to the railroad right of way and preparation of a detailed noise analysis at the point of application, identifying treatments necessary to achieve acceptable interior noise levels of L_{dn} of 45 dBA or less -- were sufficient.

Regarding aircraft noise, the noise consultants concluded that :

> While aircraft noise is a significant contributor to the overall noise environment at the project site, the site's noise exposure would be considered compatible with the proposed residential development. The direct effects of speech interference and sleep disturbance would be minimal at this site.

Regarding noise impacts due to the proposed expansion at Oakland Airport, the consultant concluded that, although there is a substantial increase in aircraft activity projected, FAA requirements to phase out Stage 2 (the noisiest) aircraft by the year 2000 would offset the effects of increased flight activity.

Location of the "Historic" Shoreline of the San Francisco Bay

Issue Summary

Some commentors stated that the EIR misinterpreted the location of the "historic shoreline" of the San Francisco Bay, therefore, providing inaccurate information in the EIR regarding the amount and location of wetlands subject to Federal jurisdiction. Commentors have stated that there are more jurisdictional wetlands than the 0.48 acre estimated for this property and that the mitigation for development proposed as the preferred alternative is grossly inadequate.

EIR Conclusion

The EIR consultants utilized the U.S. Army Corps of Engineers 1857 mapping which defines the limit of the Corps jurisdiction under Section 10 of the Rivers and Harbors Act of 1899. Irrespective of the geology, hydrology, or morphology of the Bay margin, this boundary is considered by the Federal government to be the "jurisdictional" shoreline and is so defined by law. Therefore, the wetlands delineation referred to in the EIR text utilized the Federal jurisdictional shoreline since the delineation would be submitted for approval to Federal authorities.

The Buffer

Issue Summary

There were a variety of questions, comments and concerns about the proposed buffer zone which focused on how it would work and whether it would actually prevent predators from attacking endangered species.

EIR Conclusion

The proposed buffer zone is based upon an approach approved by the U.S. Fish and Wildlife Service for Redwood Shores, a similar project to South of 92 Oliver West. Endangered species in that case were also the salt harvest mouse and the California Clapper Rail. The FEIR describes the buffer in significantly greater detail than the draft

EIR. On the South of 92, as in the Redwood Shores case, the final decision on the adequacy of the buffer will be made by the U.S. Fish and Wildlife Service and the property owners will have to abide by that decision in order to develop the property.

Wetlands

Issue Summary

Several comments were made to the effect that the wetlands delineations that were made were inaccurate, inadequate, and/or not enough information was provided to determine whether they were done properly.

EIR Conclusion

The FEIR details the regulatory background, wetland delineation methodology and results and wetlands habitat values. These delineations will be submitted for review and approval to the U.S. Army Corps of Engineers and be reviewed by Federal biologists among others for accuracy, thoroughness and completeness.

Predators, Burrowing Owl, California Clapper Rail and Salt Marsh Harvest Mouse

Issue Summary

There were a variety of comments on these issues and potential impacts. These are important issues; some, such as the Borrowing Owl, have scientific methodologies to address and mitigate any impacts.

EIR Conclusion

In the case where specific scientific methodologies and guidelines approved by wildlife agencies exist to mitigate the impacts, those have been included in the EIR as mitigation measures. In response to comments, Mitigation Measure 3.2.3-5, in regard to the Burrowing Owl, has been made more specific, in accordance with Department of Fish and Game guidelines.

With regard to the assertion by the US Fish and Wildlife Service that the DEIR did not take the Recovery Plan into account, the EIR consultants found that the Recovery Plan objectives for habitat restoration or acquisition do not mention these properties by name, although adjacent properties are listed by name. Under the present Act, listing decisions must be based on the best available scientific and commercial data. This also applies to Recovery Plans. The Salt Marsh Harvest Mouse and California Clapper Rail Recovery Plan referred to by the Service, was developed in the 1980s and discussions with Service staff in the Endangered Species Branch indicated that to date they have been unable to locate the scientific data on which it was based.

Regarding predators, it is important to note that the mitigation measures proposed are intended to be cumulative. Any one mitigation measure would not be sufficient, in and

of itself, to reduce the potential impacts of development on adjacent habitat, but all of the measures proposed should collectively and cumulatively reduce the impacts to insignificant levels.

Upland Habitat Values

Issue Summary

Some comments suggested that the value of upland habitat on the project site, particularly for wintering and migratory waterfowl was not adequately addressed.

EIR Conclusion

The EIR consultants took another look at the upland portions of the Oliver and Weber properties that are proposed for development. Their findings confirmed the original DEIR conclusions that these areas have low habitat value, except for brief times following harvest, with the exception of the burrowing owl (discussed below). Therefore, they concluded that loss of that habitat was considered less than significant. The areas considered to have moderately high habitat values are the wetlands which are either not being developed or the loss of which will be required to be fully mitigated. Upland foraging habitat for burrowing owl and other species will be replaced within the 100-foot buffer and is proposed to be preserved and restored on the Baumberg Tract.

Potential for Liquefaction as a Result of Earthquake

Issue Summary

Several comments were made about the potential for liquefaction in the Specific Plan area.

EIR Conclusion

No liquefiable soils were encountered on the Oliver parcels; i.e. no significant loose sand layers were encountered within the maximum depth explored (about 52 feet below the existing ground surface). Although a relatively soft sandy silt layer was encountered below a depth of 30 feet in one test-boring on Oliver West, this was not judged liquefiable because of the high clay content. The Bay Mud also has such a high clay content that it does not liquefy, although its high water content makes it subject to settlement. The proposed filling of most of the Specific Plan area would accelerate the settlement of the Bay Mud by squeezing water out of it and compressing it, thereby, reducing the amount of settlement anticipated from the weight of buildings and reducing the potential for differential settlement. The Bay Mud beneath the developed portion of the Specific Plan area would be more stable after filling than it is now.

Even though the site could be expected to be subject to very strong ground shaking during a major earthquake on the Hayward Fault, because no liquefiable soils were

encountered on the site, there would be little likelihood of seismically-induced ground subsidence or lateral spreading. Seismic risks to structures proposed for development in the Specific Plan area would be no greater than for similar, modern, well-designed and constructed developments elsewhere in the Bay Area. Foster City and Redwood Shores are two examples of similar developments that performed well during the 1989 Loma Prieta earthquake.

SIGNIFICANT AND UNAVOIDABLE IMPACTS

The following are significant and unavoidable impacts:

- Loss of approximately 211 acres of open space, currently designated as Open Space-Baylands on the General Policies Plan Map due to the development of single family homes and light manufacturing facilities on the Oliver West and Weber properties.

- Loss of approximately 238 acres of Important Farmland on Oliver East and West (designated as such because flowers and hay were grown there).

- Loss of currently vacant agricultural land would constitute a significant change in visual conditions in the Specific Plan area.

- Construction activities for the light manufacturing uses planned on the Weber parcel would cause temporary noise level increases for residential land uses located in the Baumberg Avenue area.

Because the implementation of the Specific Plan may result in certain unavoidable significant impacts, even if all feasible mitigations are imposed, the City Council must adopt a Statement of Overriding Considerations before approval of the Specific Plan.

NEXT STEPS

The Planning Commission will meet on February 12, 1998 for a Worksession on the Development Guidelines and to hold a public hearing to make recommendations to Council regarding the Final EIR, Specific Plan, Development Guidelines, General Plan Amendment, Zoning Ordinance Text Change and Zone Changes. On February 17, 1998, Council will review the recommendations and conduct a public hearing on the same documents.

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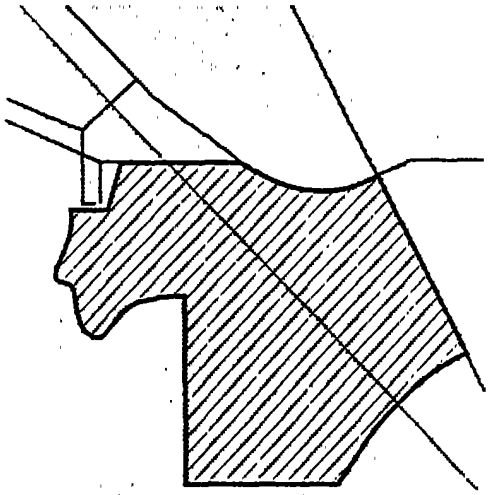
Attachments: South of Route 92 Specific Plan (January 30, 1998)
Final EIR for South of Route 92 Specific Plan

South of Route 92/ Oliver & Weber Properties Specific Plan

ON FILE

City of Hayward
Community & Economic Development Department

Prepared by
Real Estate Planning Strategies



ON FILE

SOUTH OF ROUTE 92
GENERAL PLAN AMENDMENT AND SPECIFIC PLAN
OLIVER ESTATE/WEBER PROPERTIES

Program Environmental Impact Report

Final

Comments and Responses to the Draft EIR

SCH #95103079

Prepared for:

City of Hayward / Department of Community and Economic Development

Prepared by:

EIP Associates

January 1998

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127-7535

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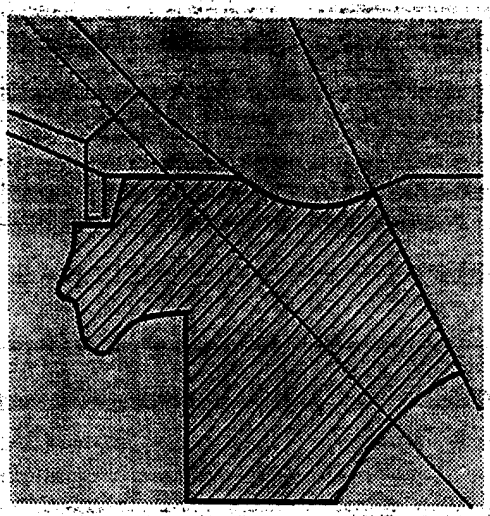
Mailed agenda for interested parties Meeting of 2/3/98



SOUTH OF ROUTE 92
GENERAL PLAN AMENDMENT AND SPECIFIC PLAN
OLIVER ESTATE/WEBER PROPERTIES

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January 1998

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SOUTH OF ROUTE 92
GENERAL PLAN AMENDMENT
AND
SPECIFIC PLAN
OLIVER ESTATE/WEBER PROPERTIES

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PROGRAM ENVIRONMENTAL IMPACT REPORT
-FINAL-
COMMENTS AND RESPONSES TO THE DRAFT EIR

SCH #95103079

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January, 1998

TABLE OF CONTENTS

I. INTRODUCTION

On October 1, 1997, in accordance with the California Environmental Quality Act (CEQA) Guidelines, a Draft Program Environmental Impact Report (EIR) for the South of Route 92 General Plan Amendment and Specific Plan (Oliver Estate/Weber properties), was completed and submitted for public/agency review and comment. The public/agency review and comment period extended for 45 days and ended on November 17, 1997.

Public hearings regarding the Draft Program EIR were held on October 28, 1997 at a City of Hayward joint City Council/Redevelopment Agency work session, and on November 13, 1997, before the City of Hayward Planning Commission. At the public hearings, oral comments were presented regarding the content and adequacy of the Draft EIR. This Final EIR contains written comments on the Draft EIR submitted during the 45-day review period, along with the record of comments of the public hearings. Responses to written and oral comments are contained in this document.

Those letters of comment and record of comments from the hearings regarding the adequacy of the Draft EIR that require responses are numbered in the left hand margin. The responses are correlated with the comments by the numbers shown. To facilitate use of this Final EIR, each page of comment within a letter is followed immediately by responses (i.e., response pages face comment pages). If verbal comments made by a speaker at either of the hearings mostly repeat written comments prepared by the speaker, responses were prepared for the written comments. Where a comment is substantially the same as another comment, the response refers the reader to the previous response. Where a substantial number of comments addressed similar issues, Master Responses have been prepared. These Master Responses are located at the beginning of Section III, *Comments and Responses*. The Master Responses are identified as follows:

- Master Response MR-1: Shoreline Location
- Master Response MR-2: Wetlands

II. LIST OF FIGURES

III. LIST OF COMMENTING CORRESPONDENCE

Letters of Comment	Comment Number(s)
Jean Hart, Deputy Director Alameda County Congestion Management Agency Nov. 17, 1997	1-8
Ronald Barklow and Viola Saima-Barklow Nov. 10, 1997	9-89
Margaret-Mary Bauer Nov. 16 and Nov. 17, 1997	90-94
Lorraine F. Buchanan	95
Mrs. Alice Bugren Nov. 17, 1997	96-99
Florence M. La Riviere, Chairperson Citizens Committee to Complete the Refuge Nov. 14, 1997	100-101
Evelyn M. Cormier Nov. 16, 1997	102-106
Frank Delfino Nov. 12, 1997	107-116
Brian Hunter, Regional Manager, Region 3 California Department of Fish and Game Nov. 13, 1997	117-122
Brian Wiese, Advance Planning East Bay Regional Park District Nov. 12, 1997	123-124B
William Weller, President Fairway Park Neighborhoods Association Nov. 17, 1997	--
Monte Florence Nov. 17, 1997	--

III. COMMENTS AND RESPONSES

MASTER RESPONSES

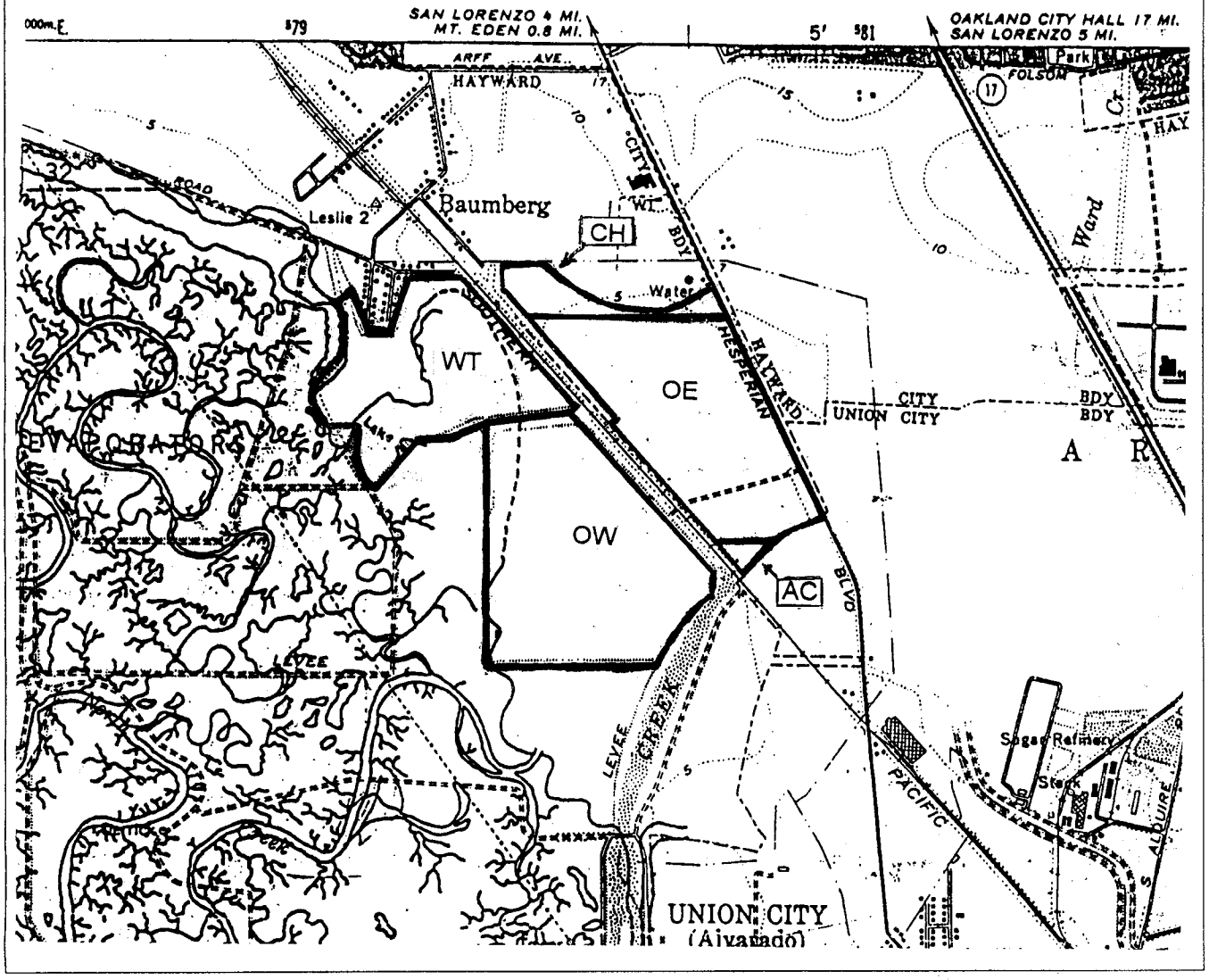
MASTER RESPONSE MR-1: SHORELINE LOCATION

RESPONDS TO COMMENTS 70, 236, 237, 238, 239, 240, 241, 304, 336, and 337.

It is necessary to eliminate some misunderstandings with respect to the interpretations some commentors have made regarding the "shoreline" of San Francisco Bay. For the purposes of this EIR, the "historic" or "ancient" shoreline discussed in the text, and shown in the figures, is from the 1857 mapping used by the U.S. Army Corps of Engineers to define the limits of the historic navigable waters, prior to substantial human intervention, and the limit of Corps jurisdiction, under Section 10 of the Rivers and Harbors Act of 1899, within the footprint of the historic sloughs. The Corps uses this boundary as part of its determination of whether a project is or is not within a former slough subject to Corps jurisdiction. Figure MR1.1 of this FEIR shows the 1857 historic shoreline in the Specific Plan Area. The parcel boundaries are superimposed on the version of the Nichols and Wright 1971 map provided by the Corps (see Response 236 for more details regarding the Nichols and Wright map), and the area inside the 1857 historic shoreline is shown in blue. The area outside the 1857 historic shoreline within the Specific Plan Area is shown in yellow. Irrespective of all discussions of the geology, hydrology, or morphology of the Bay margin, this boundary is considered the "jurisdictional" shoreline, and cannot be changed without Congressional authorization. With that understanding, it is possible to clarify some questions regarding geologic deposits, soils, and channels outside the 1857 shoreline.

As discussed on pp. 3.2.1-9 through -11 of the DEIR and in Response to Comment 70, marine deposits (Bay Mud) and river deposits (alluvium) exist in the subsurface materials in the Specific Plan Area outside the 1857 shoreline. This is because the surface of the Bay has been both higher and lower in the recent geologic past than it is at present. During the latest glacial maximum (about 15,000 to 25,000 years ago) sea level was so low that San Francisco Bay did not exist: it was a river valley system in which alluvium was deposited from the eroding uplands of the Coast Ranges to the east. During warmer periods (about 6,000 to 10,000 years ago) sea level was so high that deposits of marine clays were formed thousands of feet inland from the present Bay margin. Thus, "shorelines" of one sort or another exist at many positions around, and under the present Bay. The Corps has noted that hydraulic mining along the Sacramento River prior to 1900 generated so much silt in San Francisco Bay that tidal action in the South Bay's marshes was forced eastward beyond the limits mapped by the 1857 survey. Thus, marine deposits from both the geologic and historic past exist outside the 1857 shoreline. Similarly, channels and soils formed on the geologic deposits reflect conditions ranging from tens of years to thousands of years in age, and cannot necessarily be used to define historic tidelands.

Newark 7.5-Minute Topographic Quadrangle
United States Geological Survey
Scale 1:24,000



SOURCE: EIP Associates

LEGEND

Parcel Name Codes:

CH	City of Hayward
WT	Weber Tract
OW	Oliver West
OE	Oliver East
AC	Alameda County Water Conservation and Flood Control District

Historic Shoreline, 1857 Mapping, Version Provided by Corps of Engineers

Area Inside 1857 Shoreline

Area Outside 1857 Shoreline in Specific Plan Area

SOUTH OF ROUTE 92 SPECIFIC PLAN

Figure MR1.1 1857 Historic Shoreline in Specific Plan Area
Nichols and Wright Map (1971) - Version Provided by Corps of Engineers

MASTER RESPONSE MR-2: WETLANDS

RESPONDS TO COMMENTS 9, 22, 24, 32, 50, 79, 119, 158, 182, 187, 188, 195, 200, 230, 235, 240, 244, 245, 246, 250, 254, 255, 285, 293, 305, 306, 325, and 339.

Several commentors asked for clarification or expressed disagreement with the conclusions regarding wetland acreage and values on the Oliver and Weber Properties. Some of these questioned the meaning of the statement that the Weber property wetlands had been present for a "number of years". Others pointed out inconsistencies regarding the acreage of wetlands occurring and subject to impacts on the Oliver properties. Some pointed out that the Wetland Delineation Reports, cited as Appendix D, were missing from the DEIR. One comment asked about the methodology of the delineations and the personnel who conducted them. Another requested that the results be preceded by the term: "It is the consultant's opinion...". Some commentors expressed the opinion that most of the Oliver West property was a wetland, "masked" by disturbance from ongoing farming operations and representing a unique habitat referred to as "wetland meadows". They cited the presence of hydric soils, formed under saturated soil conditions, as evidence that this parcel was a wetland. One commentor asked why soil sampling data, which would have confirmed the presence of hydric soils, were not included.

Some clarification is needed on these issues because the Wetland Delineation Reports for the Oliver and Weber Properties were not included in the Draft EIR. These reports are included for public review at the Department of Community and Economic Development to provide details that will answer many of these commentors' questions. Another issue that requires clarification is confusion over two aspects of wetlands: their status as jurisdictional wetlands subject to regulation under Section 404 of the Clean Water Act versus their intrinsic wetland habitat values regardless of regulatory status. These two aspects of wetlands are related but not identical. The following response provides a background on the regulatory aspects for clarification on the acreage discrepancies, summarizes the methodology and results of the jurisdictional wetland delineations (including the soil sampling data), and discusses the biological habitat values of wetlands in the project area as related to significance of impacts and mitigation requirements.

- **Regulatory Background**

Section 404 of the Federal Clean Water Act requires that a permit be obtained prior to discharges of fill or dredged material into "Waters of the United States", which include wetlands. The Corps of Engineers regulations define wetlands as : "Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas" (33 CFR 328.3[b], 1992).

This definition has been interpreted by the Corps for purposes of wetland delineation (Corps of Engineers Wetlands Delineation Manual. Environmental Laboratory 1987) to require three criteria to be designated a wetland: 1) inundation or saturation for at least a portion of the growing season (wetland hydrology), 2) prevalence of "hydrophytic" (wetland) vegetation

delineation report was peer reviewed by Vickie Reynolds, consulting wetland field biologist and former staff member of the San Francisco District, Corps of Engineers Regulatory Branch, who concurred with the results following minor revisions. The delineation reports have not yet been submitted to the Corps for an official determination. Nevertheless, the results are based on objective, repeatable, scientific procedures and the results are therefore not merely the consultants' opinion.

A total of 52.1 acres of jurisdictional wetlands were delineated on the Weber property, of which about 1.7 acres would be impacted by the preferred project. These wetlands correspond to depressional areas (primarily former duck ponds) which were observed to be inundated and/or saturated for prolonged periods during the rainy season from ponding (fulfilling the hydrology criterion), support wetland plant species such as rabbits foot grass and pickleweed when they are not being farmed, and occur on Reyes clay soils which meet the hydric soil criteria because the Series is listed as such by the Soil Conservation Service and is indicated as hydric by very low chroma (10YR2/1). The duck ponds, abandoned in the 1980's, were constructed as catchments surrounded by small levees when the site was operated as a duck hunting club, hence the statement that the wetlands have been "present for some time". There may have been wetlands on the site prior to that time, as one commentor suggested. This is irrelevant to their present regulatory and habitat value status, however. CEQA requires that impacts be assessed in relationship to the existing, not historic, setting. What is relevant is whether they currently have wetland habitat values (they do) and are likely to be considered jurisdictional wetlands subject to regulation (they are).

The areas found to be uplands on the Weber property also occur on Reyes clay soils (drained), but no prolonged inundation or saturation was observed during repeat visits in the rainy season, and dominant vegetation in the fallow areas is a mixture of facultative plants (occurring in both wetlands and uplands) such as ryegrass and upland plants such as hare barley. The ubiquitous occurrence of hydric soils on the property is a result of conditions when the soils were forming over the last 10,000 years and does not necessarily indicate present wetland characteristics. (As discussed in MR-1, the entire Specific Plan area was at one time or another within the tidal influence of the Bay, including during the period of soil formation).

Only about 0.48 acre of jurisdictional wetlands was found on the Oliver West property, of which about 0.03 acre would potentially be impacted. The remaining 0.45 acre, which would be left undisturbed, occurs within the proposed 100-foot wide buffer. These wetlands, which meet the three-criteria definition, are limited to areas within excavated irrigation ditches. The Corps generally exempts areas displaying wetland characteristics from regulation under Section 404 of the Clean Water Act if they occur in operational irrigation or drainage channels that were "excavated on dry land" (Preamble, 33CFR 328.3: Definitions). The 0.48 acre found to be jurisdictional is within the shoreline shown on the Nichols and Wright (1971) map and thus was not excavated on dry land. An additional 3.06 acres of irrigation channels on the Oliver West property met the three criteria definition, but are likely to be exempt from regulation as they were excavated on dry land (above the 1857 Bay shoreline) and are part of a continuous farming operation. Vegetation in the uplands on Oliver West was either lacking due to recent discing or composed of upland grasses and weeds, such as ripgut brome, cut-leaf geranium, and wild radish. Vegetation in the channels on the west side of the property was composed primarily of pickleweed and ryegrass (obligate wetland and facultative species), while the eastern channels

jurisdiction because they were excavated on dry land and are in operation for agricultural purposes. Preliminary results of the draft wetland delineation report show that ~~T~~there are 0.48-acres of jurisdictional wetlands on the Oliver West parcel and 52.1-acres of jurisdictional wetlands on the Weber parcel. ~~A portion of the jurisdictional wetland area on the Oliver East parcel (0.03) acres), is proposed to be developed, the loss of which is to be compensated for on-site, where there are areas of uplands capable of being converted into wetlands.~~ Development of the Weber property would consume 1.7-acres of wetlands which would be compensated for on-site. Development of the Oliver West property would consume 0.03-acres of wetlands which would also be compensated for on-site."

- **Wetland Habitat Values**

Another aspect of wetlands that is even more important under CEQA than their regulatory status is the occurrence and level of habitat values. The two issues (regulatory status versus habitat value) are related but not identical. This case is a good example: much of the 0.48 acre of jurisdictional wetlands on the Oliver West site is virtually devoid of wetland habitat value because it is sprayed or dredged to remove wetland vegetation for efficient water conveyance and is surrounded by areas heavily disturbed by unregulated, ongoing, intensive agriculture.

Conversely, the 2.8 acres of non-jurisdictional freshwater marsh habitat on the Oliver East property, and the 3.06 acres of non-jurisdictional freshwater marsh and willow scrub habitat on the Oliver West property (of which a total on both properties of 0.33 acre would be subject to impact) do display moderate levels of wetland habitat values. These habitat values result from the occurrence of: 1.) wetland vegetation (tules, cat-tails, willows) which can provide foraging and possibly nesting habitat for common waterbirds; and 2.) wetland hydrology which can provide aquatic habitat and drinking water for wildlife. These values are only moderate because the habitats are small, isolated, non-contiguous and surrounded by human activity and disturbance from agriculture and transportation (SPRR and Hesperian Blvd.). Similarly, the values of the impacted jurisdictional wetlands on the Weber property are moderate, not high, because they are small, isolated, and offer only seasonal foraging habitat for common waterbird species in the winter. (They dry up in the late spring and then are disced and farmed during the summer and early fall.) Nevertheless, in accordance with the significance criteria defined by CEQA and summarized in the DEIR, impacts to habitats with moderate wetland values (regardless of regulatory status) are considered significant before mitigation.

Because wetland habitat values on both the Weber and Oliver properties are considered only moderate for reasons described above, it is the EIR biologists' professional judgment that a 1:1 replacement ratio for mitigation is adequate, provided that conditions of project approval require that the replacement wetlands: 1.) are adjacent to, or contiguous with, other wetlands in the vicinity (such as in the proposed buffer or Weber wetland preserve), 2.) provide similar habitat values (but of higher quality) compared with habitats impacted, 3.) are constructed in advance of, or concurrently with, wetland losses to development, 4.) are preserved in perpetuity by deed or easement, and 5.) are maintained, monitored, and managed under the direction of qualified wetland biologists for at least five years or until success criteria are attained and wetland values are demonstrated to be sustainable.

MASTER RESPONSE MR-3:
BUFFER ZONE

RESPONDS TO COMMENTS 112, 115, 229, 241, 263, and 318.

The water feature at the core of the buffer zone would be a channel in which minimum water width would be 50 feet and minimum water depth would be 3 feet. The channel would be located along the north and west sides of the Oliver West property. The channel would be excavated to approximately 3 feet below mean sea level. The walls of the channel would rise to approximately 7 feet above mean sea level.

Water circulation in the buffer zone channel would be driven by the rise and fall of the tide and would be controlled by tide gates. The rising tide would flow up Old Alameda Creek into Flood Control Line A-2, a tidally controlled channel along the west side of the railroad embankment. Where Line A-2 passes the northeast corner of Oliver West, new inflow pipes would be installed in the western level to connect Line A-2 with the channel in the buffer zone. The bottom of the pipes would be about 1 foot above sea level, which is the elevation of the base of Line A-2 at this point. Water would flow through the pipe into the buffer zone channel. Hydraulically controlled gates in the pipes would close when the water level in the buffer zone channel reached 5 feet above mean sea level, leaving about 2 feet of freeboard along the berm facing the habitat area (Weber) and about 3 feet of freeboard along the channel wall adjacent to the developed area (Oliver West). The gate would prevent water from extreme high tides from entering the buffer zone channel and overtopping its banks. See Figures MR 3.1, MR 3.2, MR 3.3 and MR 4.1 in Master Response MR-4.

Water in the buffer zone channel would flow west to the northwest corner of the Olive West parcel and then south to the southwest corner of the parcel. At this point new outfall pipes would be installed along the southern boundary of Oliver West to connect the buffer zone channel with Old Alameda Creek. The bottom of the pipes would be at sea level, about 2 feet above the base of Old Alameda Creek at the pipes' discharge point. Tide gates in the pipes would prevent water from Old Alameda Creek from flooding the buffer zone channel.

As designed, the operation of the tide gates in the new pipes would regulate the water depth in the new channel between 3 feet at low tide, and 8 feet at high tide. Extreme high tides would not increase the water depth in the buffer zone channel because the tide gates would be closed, preventing excess water from entering. Low tides would not empty the buffer zone channel because the minimum water level would be at sea level, the elevation of the bottom of the discharge pipes, leaving 3 feet of water in the channel. The water in the buffer zone channel would not stagnate because the tidal surge through the new inflow pipes would be strong enough to provide mixing twice each day. Additionally, during the rainy winter months, stormwater in Line A-2 would enter the buffer zone channel with the tidal flow, further mixing the tidal waters. Site visits during 1996 and 1997 (including the summer months) by project engineers indicate there is sufficient flow in the Line A-2 to ensure circulating of water in the buffer zone channel. The elevations of the base Line A-2 and Old Alameda Creek, taken from actual field surveys conducted in November, 1997, indicate the hydraulic gradient is sufficient to maintain flow in the buffer zone channel.