

**CEQA FINDINGS OF FACT**

**OF THE OHLONE COMMUNITY COLLEGE DISTRICT**

**For Newark Center for Health Sciences  
& Technology Master Plan**

**December 8, 2004**

## **I.** **INTRODUCTION**

The project applicant, the Ohlone Community College District (“District”), is requesting approval of a Master Plan for the proposed Newark Center for Health Sciences & Technology project (“Master Plan”). The Master Plan site is located within the City of Newark, Alameda County, and is bounded by Cherry Street to the east, Union Pacific Railroad tracks to the west, an Alameda County Flood Control and Water Conservation District (ACFCWCD) flood control channel to the south and the City of Newark’s Silliman recreation Center to the north.

The Master Plan includes development of up to 160,000 square feet of education and support space on the 81-acre site along with parking lots, a maintenance area, open space and similar uses.

The Master Plan area was originally considered to house high technology research and development land uses, but due to market forces and other factors, this type of use was never built and the site remained vacant. The property was subsequently purchased by the Ohlone College Community College District as a site for the Newark center for Health Science and Technology.

## **II.** **PROJECT DESCRIPTION**

### **Project Location**

Located within the City of Newark, the 81-acre Project site is located west of Cherry Street, south of Mowry Avenue and east of the Union Pacific Railroad tracks. Alameda County Tax Assessor Numbers for the parcels comprising the site are 901-0185-013-07 and 901-0185-014.

For geographic orientation purposes, the following directions will be used in this DEIR: north will mean towards Mowry Avenue and the George Silliman Center; east will mean towards Cherry Street; south will mean towards Stevenson Boulevard; and west will mean towards San Francisco Bay.

Topographically, the site is generally flat with a gradual but distinct slope from east to west, toward San Francisco Bay. The site is vacant and apart, from street trees and a constructed berm along Cherry Street, contains no trees or unique geological outcrops. A recorded wetland exists in the westerly portion of the Project site. The site has historically been used for agriculture and continues to be cultivated for field crops.

Surrounding land uses include athletic fields on the Newark Memorial High School campus to the east, vacant lands to the south and west and a combination of research and development

uses and the George M. Silliman Recreation Center, operated by the City of Newark, to the north.

## **Project Objectives**

Project Objectives outlined in the DEIR include:

- 1) To develop and implement a campus master plan that provides strong identity and visibility from Cherry Street.
- 2) To develop a campus master plan that protects existing natural features and resources to the fullest extent feasible.
- 3) To provide a range of educational opportunities for District students within a campus of approximately 160,000 square feet, which includes classroom space, library and research space, office use, support uses and partnership space.
- 4) To allow for development of additional partnering land uses and activities on the site, so long as such uses further the basic educational mission of the District.
- 5) To provide for future expansion of the Newark Center in the future, as long as necessary CEQA environmental determinations are made prior to future construction.
- 6) To provide adequate on-site parking to support anticipated land uses as well as facilities to support non-vehicular modes of travel, including but not limited to bicycle facilities and a bus stop.
- 7) To provide connections to existing civic and educational uses in the Project vicinity, including the George M. Silliman Center and Newark Memorial High School.
- 8) To incorporate energy conservation and efficiency systems as part of Project design to minimize use of these resources.

(DEIR, p. 8).

## **Discretionary Actions**

Lead Agency. The Ohlone College Community College District is the lead agency for the Project. The District has the principal responsibility for approving and carrying out the project and for ensuring that the requirements of CEQA have been met. The following list identifies the entitlements requested from the District for the Project; unless otherwise specified, the entitlements pertain to the Project in its entirety:

- Approval of Environmental Impact Report
- Approval of Newark Center Master Plan for Technology & Health Sciences

It is anticipated that the District will also rely on the EIR without further environmental review for

approval of other future discretionary entitlements and permits (e.g., maintenance building, parking areas) absent grounds for the preparation of a subsequent EIR, supplemental EIR, or addendum.

Trustee Agencies. A trustee agency is a state agency that has jurisdiction by law over natural resources that are held in trust for the people of the State of California. Trustee agencies that have jurisdiction over resources potentially affected by the Project are:

- California Department of Fish and Game (fish and wildlife) and

Responsible Agencies. Responsible agencies are public agencies, other than the lead agency, that are anticipated to have discretionary approval responsibility for reviewing, carrying out, or approving elements of a project. Responsible agencies should participate in the lead agency's CEQA process, review the lead agency's CEQA document, and use the document when making a decision on project elements. Several agencies may have responsibility for or jurisdiction over the implementation of elements of the Project.

## Project Description

A single main educational building is proposed to be constructed fronting along Cherry Street. This building is proposed to contain two stories with 160,000 gross square feet of floor space. The main building would have a height of approximately 35 feet. Of this, approximately 145,000 square feet would be devoted to classrooms, offices and administrative space. Ten thousand (10,000) gross square feet would be used as a clinic for Washington Hospital or a similar user. A separate 5,000-square foot service and maintenance building would be constructed along the north side of the proposed campus. A separate day care building of approximately 18,000 square feet could also be constructed.

Academic programs to be undertaken within the Newark Center are proposed to consist of computer and information technology, exercise science and wellness, health sciences, environmental science and general education. A Learning Research Center (library and media center) is also proposed.

Administrative and support services included on the campus are proposed to consist of student services, a bookstore, a cafe, information services, admissions and records, maintenance and shop facilities and campus security.

Primary vehicular access to the site is proposed to be in the approximate center of the site's Cherry Street frontage, using an existing left turn lane within the landscaped center median. Two new secondary drives are proposed to connect to Cherry Street using existing curb cuts at the site's northern and southerly property lines. The main access drive is proposed as a four-lane entrance road with two inbound and two outbound lanes separated by a center median. The secondary drives are both proposed to have two travel lanes (right in and right out) only.

The central driveway intersection with Cherry Street is proposed to be signalized.

The three access drives connect to the campus perimeter roadway. This private roadway system provides access to the interior of the campus, including parking lots, the service/maintenance area and other areas.

Main parking lots would be located behind the main building with smaller parking areas sited east and west of the main building. Parking is proposed for approximately 650 vehicles, including disabled-access parking and parking for shuttle busses.

An AC Transit bus stop is located along Cherry Street, near the proposed main Project entrance.

Bicycle and motorcycle parking would also be provided.

Site landscape includes an existing 50-foot wide landscaped easement along the south side of Cherry Street. Additional landscape development, varying from about 75 to 150 feet in width is proposed for this area between Cherry Street and the main building. Paved and planted outdoor use areas would be provided to the south, east and west of the main building. Significant tree cover would be provided at walkways and within parking lots.

Approximately 12.5 acres of the development portion of the site is proposed to be landscaped.

Water, sewer, natural gas, electrical and telecommunication services would be extended to the site from Cherry Street, all underground. Sewer service is also available on the west side of the Project site. On-site storm drains and open swales would also be constructed to accommodate increased amounts of stormwater. The storm drain system is also proposed to include a 0.74-acre detention basin south of the main building to assist in stormwater control.

To assist with energy conservation, solar collection panels are proposed to be installed on the roof of the main building. Other energy conservation techniques are also proposed to be used as part of campus development, including but not limited to a ground-source heat pump and an energy recovery system for the air handling system.

#### Grading

The development portion of the Project site is proposed to provide for building areas and to improve site drainage.

### **IV. BACKGROUND**

In early 2002, the voters of the Ohlone College Community College District approved Bond Measure A, which authorized the District to purchase land and construct a permanent college campus facility in Newark. Although the District has operated a facility in the City of Newark for a number of years, this facility is on leased land and is not anticipated to accommodate future student loads. Accordingly, the 81-acre site was purchased by the District in anticipation of developing such a master plan and constructing permanent facilities.

The site is currently vacant and had been planned for research and development uses for Sun Microsystems, Inc., however, construction plans were never implemented and the site is vacant.

### **V. RECORD OF PROCEEDINGS**

The record of proceedings for the District's decision on the Project consists of the following documents, at a minimum:

- The Notice of Preparation, and all other public notices issued by the District in conjunction with the Project;
- The Draft Environmental Impact Report for the Newark Center Master Plan ("DEIR");
- All comments submitted by agencies or members of the public during the 45-day comment period on the Draft EIR;
- All comments and correspondence submitted to the District with respect to the Project, in addition to timely comments on the Draft EIR;
- The Final Environmental Impact Report for the Project, including all documents referred to or relied upon therein, which include, but are not limited to the following:
  - All timely comments received on the Draft EIR and responses to those comments;
- The mitigation and monitoring plan for the Project;
- All findings and resolutions adopted by the District in connection with the Newark center Master Plan, and all documents cited or referred to therein;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the District in connection with the Master Plan project;
- Any documentary or other evidence submitted to the District at such information sessions, public meetings and public hearings;
- The relevant files and the materials.
- Matters of common knowledge to the District, including, but not limited to Federal, State, and local laws and regulations;

## VI. FINDINGS REQUIRED UNDER CEQA

Public Resources Code section 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects[.]" (Emphasis added.) The same statute states that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and

the feasible alternatives or feasible mitigation measures which will *avoid or substantially lessen* such significant effects.” (Emphasis added.) Section 21002 goes on to state that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. (See Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a). For each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that “[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) The second permissible finding is that “[s]uch changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.” (CEQA Guidelines, § 15091, subd. (a)(2).) The third potential conclusion is that “[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(3).) Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. (See also *Citizens of Goleta Valley v. Board of Supervisors (Goleta II)* (1990) 52 Cal.3d 553, 565.)

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Id.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

The CEQA Guidelines do not define the difference between “avoiding” a significant environmental effect and merely “substantially lessening” such an effect. The District must therefore glean the meaning of these terms from the other contexts in which the terms are used. Public Resources Code section 21081, on which CEQA Guidelines section 15091 is based, uses the term “mitigate” rather than “substantially lessen.” The CEQA Guidelines therefore equate “mitigating” with “substantially lessening.” Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Pub. Resources Code, § 21002.)

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less than significant level. These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 519-521, in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

Although CEQA Guidelines section 15091 requires only that approving agencies specify that a particular significant effect is “avoid[ed] or substantially lessen[ed],” these findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less than significant level, or has simply been substantially lessened but remains significant.

Moreover, although section 15091, read literally, does not require findings to address environmental effects that an EIR identifies as merely “potentially significant,” these findings will nevertheless fully account for all such effects identified in the Final EIR.

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (CEQA Guidelines, § 15091, subd. (a), (b).)

These findings constitute the District’s best efforts to set forth the evidentiary and policy bases for its decision to approve the Project in a manner consistent with the requirements of CEQA. To the extent that these findings conclude that various proposed mitigation measures outlined in the Final EIR are feasible and have not been modified, superseded or withdrawn, the District hereby binds itself to implement these measures. These findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when the Board of Trustees adopts a resolution approving the Project.

## **VII. MITIGATION MONITORING AND REPORTING PROGRAM**

A Mitigation Monitoring and Reporting Program (MMRP) was prepared for the Project, and was approved by the Board of Trustees by the same resolution that has adopted these findings. (See Pub. Resources Code, § 21081.6, subd. (a)(1); CEQA Guidelines, § 15097.) The District will use the MMRP to track compliance with Project mitigation measures.

## VIII. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

The Draft EIR identified a number of beneficial, significant and potentially significant environmental effects (or “impacts”) that the Project will cause. All of these significant effects can be fully avoided through the adoption of feasible mitigation measures.

### **A. Aesthetics and Light and Glare**

#### **Impact 4.1.1: On-site aesthetic impacts**

**Approval of the Newark Center Master Plan would convert the easterly portion of the site from agricultural to urban uses. The proposed Master Plan contains policies to guide this development to ensure that an attractive campus is built that would be consistent with surrounding land uses. For this reason, this impact is considered *less than significant*. (DEIR, p. 17.)**

**Mitigation Measures:** No significant impacts related to on-site aesthetics would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 17.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts associated with on-site aesthetic impacts are considered less than significant without mitigation. Therefore, there are no residual significant impacts. (DEIR, p. 18.)

#### **Impact 4.1-2: Surrounding aesthetic impacts**

**The proposed Newark Center Project would be consistent with existing surrounding uses on the west side of Cherry Street and would provide a buffer for uses on the east side of Cherry Street. This impact would be *less than significant*. (DEIR, p. 17.)**

**Mitigation Measures:** No significant impacts related to surrounding aesthetic impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 17.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts associated with aesthetic impacts to surrounding land uses are considered less than significant without mitigation. Therefore, there are no residual significant impacts. (DEIR, p. 18.)

#### **Impact 4.1.3: Impacts to views and vistas**

**Development of the Newark Center Project would not block existing views and vistas of the distant Newark Coyote Hills. This impact is considered *less than significant*.** (DEIR, p. 18.)

**Mitigation Measures:** No significant impacts related to blockage of views and vistas would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 18.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts associated with views and vistas are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 18.)

#### **Impact 4.1.4: Light and Glare impacts**

**Project development would increase night lighting and the potential for glare in the neighborhood and for passing motorists. This would be a *potentially significant impact and mitigation required*** (DEIR, p.18.)

**Mitigation Measures:** The mitigation for this impact will be to have outdoor lighting designed to maximize public safety and security while minimizing visual intrusion and glare both on campus and off-campus. Outdoor light fixtures shall include shrouds and other shielding as appropriate. Lighting along pedestrian pathways shall be low-level lights. To the extent practicable, area lighting and security lighting shall be controlled by the use of timed switches and/or motion detector activation to reduce energy consumption. (DEIR, p. 18.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Installation of light fixtures with appropriate shields and shrouds will minimize spill over of night lighting off of the site. Use of timers, motion detectors and similar devices will ensure that lights could be turned off or dimmed when not needed, further reducing the potential impact of light and glare. (DEIR, p. 18.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.1-1 would light and glare impacts

to a less-than-significant level. (DEIR, p. 18.)

**Remaining Impacts:** No impacts remain.

## **B. Air Quality**

### **Impact 4.2-1: Construction air quality impacts**

**Construction activities to implement the Project would have the potential to cause nuisances related to dust and PM<sub>10</sub>. This is a *potentially significant impact*.** (DEIR, p. 26.)

**Mitigation Measures:** The mitigation for this impact will be to implement a number of specific mitigation measures recommended by the Bay Area Air Quality Management District, including but not limited to frequent watering of the project site, covering the beds of haul trucks, sweeping of adjacent streets, replanting of graded areas as soon as possible and similar actions. (DEIR, p. 27.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Implementation of standard dust control measures as recommended by the Bay Area Air Quality Management District will minimize generation of fugitive dust from the site. (DEIR, p. 27.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.2.1 would reduce construction generated air quality emissions to a less-than-significant level. (DEIR, p. 27.)

**Remaining Impacts:** No impacts remain.

### **Impact 4.2-2: Regional air emissions**

**The Project would result in a regional emission increase, but it would not exceed the BAAQMD significance thresholds. This impact is considered *less than significant*.** (DEIR, p. 27.)

**Mitigation Measures:** No significant impacts related to regional air emissions would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 27.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts associated with regional air emissions are considered less than significant. Therefore, there are no residual significant impacts. (DEIR, p. 27.)

#### **Impact 4.2-3: Carbon monoxide emissions**

**The Project would change traffic volumes and congestion levels, changing carbon monoxide concentrations. This impact is considered *less than significant*.** (DEIR, 28.)

**Mitigation Measures:** No significant impacts related to carbon monoxide emissions would occur under the Project; therefore, no mitigation measures would be required (DEIR, p. 28.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts associated with carbon monoxide emissions are considered less than significant. Therefore, there are no residual significant impacts. (DEIR, p. 28.)

### **C. Biological Resources**

#### **Impact 4.3-1: Impacts to wetlands.**

**Approval of the Master Plan and construction of the proposed Project would remove approximately 0.08 acre of wetland on the site. This impact is considered *significant*.** (DEIR, p.40.)

**Mitigation Measures:** The mitigation for this impact will be to provide replacement of like kind at a 1:1 ratio on the project site, if feasible. (DEIR, p. 41.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Replacement of on-site wetlands would provide a similar wetland as the one impacted by implementation of the proposed Master Plan. (DEIR, p. 41.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.3-1 would reduce wetland impacts to a less-than-significant level. (DEIR, p. 41.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.3-2: Impacts to special-status plant species.**

**Construction of the proposed Project could result in impacts to special-status plant species, if they were to occur on the site. These plants include alkali milkvetch, Congdon's tarplant, Contra Costa goldfields, dwarf downingia, hairless popcorn flower, and the prostrate navarretia. This impact is considered *significant*. (DEIR, p.41.)**

**Mitigation Measures:** The mitigation for this impact will be to undertake plant surveys to determine the potential for special status plants to exist on the project site. If found, individual species of special-status plants will be transplanted and a monitoring plan developed to ensure success of the transplantation. (DEIR, pp. 41-42.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Transplantation of individual plant species will provide for replacement plant species to the ones potentially lost. (DEIR, pp. 41-42.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.3-2 will reduce impacts to special-status plant species to a less-than-significant level. (DEIR, p. 41.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.3-3: Impacts to vernal pool tadpole shrimp and California Tiger Salamander.**

**The Project could affect the vernal pool tadpole shrimp and the California tiger salamander if they were to occur in the pool and ditches or upland habitat on the Project site. This impact is considered *significant*. (DEIR, p.42.)**

**Mitigation Measures:** The mitigation for this impact will be to undertake appropriate surveys to determine the potential for vernal pool tadpole shrimp and California Tiger Salamander to exist on the project site. If found, a mitigation plan for vernal pool tadpole shrimp shall be developed in consultation with biological regulatory agencies which will likely include translocation of species to another suitable wetland area on the project site along with a reporting plan and monitoring of the site. If California Tiger Salamanders are found on the site, a mitigation plan shall be developed in consultation with biological regulatory agencies and the habitat area should be either preserved, or a suitable alternative site shall be created elsewhere on the site. Monitoring and reporting and mechanisms shall be put in place to ensure success of the mitigation plan (DEIR, p. 43.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Preparation of mitigation plan(s) in consultation with biological regulatory agencies

along with appropriate monitoring and reporting programs will ensure success of either preservation or relocation of vernal pool tadpole shrimp and California Tiger Salamander species. (DEIR, p. 42.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.3-3 will reduce impacts to vernal pool tadpole shrimp and California Tiger Salamander to a less-than-significant level. (DEIR, p. 42.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.3-4: Impacts to burrowing owl.**

**Grading of the Project site could impact western burrowing owls. Burrowing owls have been previously found on the site and if they were to occur on the site during grading they could experience mortality. Burrowing owls may use the site at all times of the year. This impact is considered *significant*.** (DEIR, p.44.)

**Mitigation Measures:** The mitigation for this impact will be to undertake protocol level surveys for burrowing owl and, if found, to develop and implement a mitigation plan in consultation with appropriate regulatory agencies. The mitigation plan will likely include either preservation of owl borrows on the project site or transplantation to a suitable alternative site (DEIR, p. 45.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Preparation of mitigation plan(s) in consultation with biological regulatory agencies along with appropriate monitoring and reporting programs will ensure success of either preservation or relocation of burrowing owl species. (DEIR, p. 45.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.3-4a and 4.3-4b will reduce impacts to burrowing owl to a less-than-significant level. (DEIR, p. 45.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.3-5: Impacts to nesting raptors.**

**Construction activities may impact nesting raptors or other nesting bird species through removal or pruning of trees on-site, discing of land, through noise, or proximity of construction activity to a nest. This impact is considered *significant*.** (DEIR, p.46.)

**Mitigation Measures:** The mitigation for this impact will be to undertake surveys for the presence

of nesting raptors on the site, including nests. If found, a number of steps are required to reduce impacts to nesting raptors, including avoiding such areas during construction, monitoring of nest sites and possibly changes in the construction schedule if nests are disturbed during construction (DEIR, p. 46.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Completion of nesting raptor surveys and implementation of avoidance and monitoring will significantly reduce impacts to these species. (DEIR, p. 46.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.3-5 will reduce impacts to nesting raptors to a less-than-significant level. (DEIR, p. 46.)

**Remaining Impacts:** No impacts remain.

#### D. Cultural Resources

##### **Impact 4.4-1: Impacts to archeological and Native American resources.**

**Although no prehistoric, Native American or archeologically significant resources have been identified within the Project area, there is a strong possibility that such unrecorded resources exist. Construction of new buildings, underground utility lines and site grading could result in disturbance to archeological and/or Native American resources. This impact is considered *significant*. (DEIR, p.58.)**

**Mitigation Measures:** The mitigation for this impact will be to conduct further subsurface testing, mapping any identified resources and avoiding such resources. If such resources cannot be avoided, a resource protection plan shall be prepared (DEIR, p. 59.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Testing for and mapping of unrecorded and underground resources would ensure the extent of such resources. If avoidance of mapped underground and unrecorded resources is not possible, the proponent shall prepare a suitable resource protection plan that conforms with CEQA standards. (DEIR, p. 59.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.4-1 would reduce impacts to archeological and Native American resources to a less-than-significant level. (DEIR, p. 59.)

**Remaining Impacts:** No impacts remain.

## E. Geology and Soils

### **Impact 4.4-1: Seismic ground shaking impacts.**

**There is a high potential to expose the Project site, site improvements, students, staff and visitors to moderate to very strong ground shaking during a major earthquake. This impact is considered *significant*.** (DEIR, p.62.)

**Mitigation Measures:** The mitigation for this impact will be to design future site improvements in a manner consistent with applicable building codes and site-specific soils and geotechnical analyses. (DEIR, p. 59.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Future construction of Master Plan improvements in conformity with current building codes and site-specific geotechnical studies will reduce but not eliminate seismic ground shaking impacts. (DEIR, p. 62.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.5-1 would reduce impacts from seismic ground shaking to a less-than-significant level. (DEIR, p. 62.)

**Remaining Impacts:** No impacts remain.

### **Impact 4.4-2: Soil settlement impacts.**

**There is the potential for soil settlement on-site. This could result in damage to buildings, parking areas, underground utilities and other improvements. This impact is considered *significant*.** (DEIR, p.62.)

**Mitigation Measures:** The mitigation for this impact will be undertake future building-specific settlement analyses to determine estimated building settlement and to design such buildings and related improvements with the assumption of soil settlement. (DEIR, p. 63.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Future construction of Master Plan improvements in conformity with building settlement studies will reduce the impacts of soil settlement to such improvements. (DEIR, p. 63.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.5-2 would reduce impacts from soil settlement to a less-than-significant level. (DEIR, p. 63.)

**Remaining Impacts:** No impacts remain.

**Impact 4.4-3: Liquefaction impacts.**

**There is the potential for liquefaction on-site that could result in damage to buildings and other on-site improvements. This impact is considered *significant*.** (DEIR, p. 63.)

**Mitigation Measures:** The mitigation for this impact will be undertake future building-specific analyses to determine the potential for liquefaction and to design such building foundations and related improvements to overcome the effects of liquefaction. (DEIR, p. 63.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Future construction of Master Plan improvements in conformity with site-specific liquefaction studies will reduce the impacts of liquefaction. (DEIR, p. 63.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.5-3 would reduce impacts from liquefaction to a less-than-significant level. (DEIR, p. 63.)

**Remaining Impacts:** No impacts remain.

**Impact 4.4-4: Expansive soil impacts.**

**There is the potential for structural damage to Project buildings and other improvements as a result of soil expansion and contraction. This impact is considered *significant*.** (DEIR, p.63.)

**Mitigation Measures:** The mitigation for this impact will be to underlay building foundations with a minimum of 12 inches of non-expansive fill material to overcome the effects of expansive soils. The depth of such fill material will be determined by a site-specific geotechnical analysis. (DEIR, p. 63.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Future construction of building foundations in conformity with site-specific soil studies will reduce the impacts of expansive soils. (DEIR, p. 64.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.5-4 would reduce impacts from expansive soils to a less-than-significant level. (DEIR, p. 64.)

**Remaining Impacts:** No impacts remain.

## **F. Hazardous Materials**

### **Impact 4.6-1: Impacts from pesticide contamination.**

**The Project site contains pesticides in shallow soil that exceed the US Environmental Protection Agency's residential and commercial/industrial Preliminary Remediation Goals. This impact is considered *significant*.** (DEIR, p.67.)

**Mitigation Measures:** The mitigation for this impact will be to prepare a health risk assessment in consultation with an appropriate regulatory agency and ensure that the site is cleared of contamination to the extent that the proposed Master Plan can be implemented on the project site. (DEIR, p. 67.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** The health risk assessment, prepared in conjunction with an appropriate regulatory agency will identify appropriate remediation for on-site pesticide contamination. (DEIR, p. 67.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.6-1 would reduce impacts from pesticide contamination to a less-than-significant level. (DEIR, p. 62.)

**Remaining Impacts:** No impacts remain.

### **Impact 4.6-2: Impacts from on-site storage.**

**The use, storage and disposal of hazardous materials could result in potential releases of those hazardous materials into the atmosphere, the underlying soil and the groundwater aquifer. This impact is considered *significant*.** (DEIR, p.67.)

**Mitigation Measures:** The mitigation for this impact will be the preparation of a Hazardous Materials Management Plan to control the storage, use, and handing of hazardous materials.

(DEIR, p. 68.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Preparation of the Hazardous Materials Management Plan will ensure that hazardous materials used by students and staff will be used and stored in a safe manner. (DEIR, p. 68.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.6-2 would reduce impacts from hazardous materials use and storage to a less-than-significant level. (DEIR, p. 68.)

**Remaining Impacts:** No impacts remain.

## G. Hydrology, Drainage and Water Quality

### Impact 4.7-1: Impacts of altered drainage patterns.

**Construction of proposed drainage improvements on the site would not change historic drainage patterns and would also significantly minimize existing quantities of natural erosion from the site. This impact is considered *significant*.** (DEIR, p.77.)

**Mitigation Measures:** No significant impacts related to alteration of existing drainage patterns would occur under the Project; therefore, no mitigation measures would be required (DEIR, p. 77.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts associated with alteration of drainage patterns are considered less than significant. Therefore, there are no residual significant impacts. (DEIR, p. 77.)

### Impact 4.7-2: Impacts of increased rate or volume of stormwater drainage.

**The Project would likely increase runoff volumes and peak rates, potentially causing damage to the existing wetland and downstream drainage facilities. This impact is considered *significant*.** (DEIR, p.79.)

**Mitigation Measures:** The mitigation for this impact will be to design the on-site storm drainage system to protect and maintain existing hydrologic conditions and sustain the existing on-site wetland. This is to be demonstrated by preparing hydrologic model runs to confirm that existing

drainage facilities can accommodate future project stormwater runoff (DEIR, p. 79.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Completion of hydrologic model runs will demonstrate that existing drainage facilities can accommodate stormwater rate and volume increases associated with the project. (DEIR, p. 79.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.7-2 would reduce impacts from increased stormwater rate and volume to a less-than-significant level. (DEIR, p. 79.)

**Remaining Impacts:** No impacts remain.

**Impact 4.7-3: Impacts to soil erosion and surface water quality.**

**Soils on the Project site would be susceptible to wind and water erosion during grading operations, potentially exposing the existing on-site wetland and downstream drainage facilities to increased sedimentation. Activities associated with construction could lead to release of pollutants and potential degradation of water quality in the existing wetland and downstream tidal and open water habitats. Once the Project has been constructed, post-development runoff and drainage would contain pollutants that could potentially degrade water quality in the existing wetland and downstream tidal and open water habitats. If discharges from the storm drain system are discharged to the Line D channel without energy dissipation and slope protection, the banks and/or bed of the channel could erode impairing water quality and increasing maintenance costs. This impact is considered *significant*. (DEIR, p.82.)**

**Mitigation Measures:** The mitigation for this impact will be to implement the following actions as part of the project:

- a) Prior to commencing construction, the District shall prepare an erosion and sediment control plan for the Project and submit it to the City of Newark Public Works Department for review.
- b) Prior to commencing construction, the District shall prepare a storm water pollution prevention plan (SWPPP) for the Project. The SWPPP shall include water-quality control measures to reduce potential risks of surface- and groundwater contamination during the construction and post-construction phases of Project development. The SWPPP shall be developed in conjunction with staff of the City of Newark Public Works Department.
- c) Prior to commencing construction, the District shall prepare and submit to the RWQCB a storm water management plan (SWMP) describing the best management

practices (BMPs) proposed for post-construction water quality control and treatment, including how the BMPs will be designed, operated, maintained and monitored.

- d) Utility plans for the storm drain network shall conform to County (ACFCWCD) requirements for installation of energy dissipation and slope protection to minimize channel erosion at the outfall to the Line D channel.
- e) Prior to site occupancy, the District shall prepare an integrated pest management plan describing how pests will be monitored and controlled on the Project facilities and grounds.

(DEIR, p. 82.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Adherence to the above measures, including but not limited to preparation of an erosion control and sediment control plan, a Stormwater Pollution Prevention Plan (SWPPP) a Stormwater Management Plan and in integrated pest control plan, will reduce potential soil erosion impacts to a less-than-significant level. (DEIR, p. 82.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.7-3 would reduce impacts from soil erosion and related degradation of surface water quality to a less-than-significant level. (DEIR, p. 82.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.7-4: Flooding impacts**

**Portions of the Project site may be subject to flooding during extreme storm events, potentially causing damage to buildings and building contents and other improvements on-site. However, none of the proposed Project improvements would lie within a 100-year floodplain (Zone A) as mapped by FEMA. Therefore, the risk of flood damage has been classified as low by FEMA. In addition, FEMA mapping has not been updated to account for recent changes in the channel infrastructure and maintenance in the ACFCWCD Line D channel that would further reduce the risk of flooding at the site. This impact is considered *less than significant*. (DEIR, p. 83.)**

**Mitigation Measures:** No significant impacts related to blockage of views and vistas would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 83.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts associated site flooding are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 83.)

## H. Land Use and Planning

### **Impact 4.8-1: On-site land use impacts**

**Since the site is currently vacant, development of the proposed Newark Center for Health Science & Technology would have no impact on existing land uses. This impact is considered *less than significant*. (DEIR, p. 83.)**

**Mitigation Measures:** No significant impacts related to on-site land use impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 90.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts associated with site on-site land use impacts are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 90.)

### **Impact 4.8-2: Surrounding land use impacts.**

**Location of the Newark Center Maintenance Yard near the Silliman Recreation Center could result in potentially significant adverse aesthetic impacts to the Silliman Center . This impact is considered *significant*. (DEIR, p.91.)**

**Mitigation Measures:** The mitigation for this impact will be to construct a 6-foot tall wall or solid fence along the Project perimeter adjacent to the Silliman Center to screen unsightly conditions. The wall or fence is to be built at the same time as the permanent maintenance facility is constructed (DEIR, p. 91.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Construction of a solid wall or fence will screen the adjacent Silliman Center from any potentially unsightly uses on the Project site. (DEIR, p. 91.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.8-2 would reduce impacts to surrounding land use impacts to a less-than-significant level. (DEIR, p. 91.)

**Remaining Impacts:** No impacts remain.

### **Impact 4.8-3: Regulatory impacts**

The Project site is exempt from City of Newark land use regulations. However, the City of Newark Planning Commission has adopted a Resolution indicating that the proposed Master Plan is consistent with the Newark General Plan. This impact is considered *less than significant*. (DEIR, p. 91.)

**Mitigation Measures:** No significant impacts related to regulatory impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 90.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts to applicable regulatory documents are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 92.)

## **I. Noise**

### **Impact 4.9-1: Construction noise impacts**

Since the site is currently vacant, development of the proposed Newark Center for Health Science & Technology would have no impact on existing land uses. This impact is considered *significant*. (DEIR, p. 98.)

**Mitigation Measures:** The mitigation for this impact will be to prepare and implement a Construction Noise Management Plan to control the effects of noise on surrounding properties. The plan should include, at minimum, a listing of hours of construction operations, use of mufflers on construction equipment, limitation on on-site speed limits, identification of haul routes to minimize travel through residential areas and identification of noise monitors. Specific noise management measures shall also be included in appropriate contractor specifications (DEIR, p. 98.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Completion of the Construction Noise Management Plan will ensure that appropriate steps will be taken as part of project construction to control noise. (DEIR, p. 98.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.9-1 would reduce construction project noise impacts to a less-than-significant level. (DEIR, p. 98.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.9-2: Interior noise impacts**

**Portions of the interior of the main building fronting Cherry Street could be subject to significant noise from vehicles using Cherry Street if operable windows are included as part of the building. This impact is considered *significant*.** (DEIR, p. 98.)

**Mitigation Measures:** The mitigation for this impact will be to have final building design for the Cherry Street frontage of the main building be provided with a source of ventilation that does not require operable windows. Final building plans shall also be reviewed by a mechanical engineer to ensure this standard is met. (DEIR, p. 99.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Installation of appropriate ventilation will ensure that interior building noise will be consist with appropriate interior noise standards. (DEIR, p. 99.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.9-2 would reduce interior noise to a less-than-significant level. (DEIR, p. 98.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.9-3: Permanent noise impacts**

**Increased traffic associated with the construction of the proposed Newark Center would contribute less than 1 dB to the surrounding noise environment. This impact is considered *less than significant*.** (DEIR, p. 99.)

**Mitigation Measures:** No significant impacts related to regulatory impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 99.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than

significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to permanent noise are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 99.)

#### **Impact 4.9-4: Railroad noise impacts**

**Train operations on the adjacent UPRR would not generate noise levels above the normally acceptable exterior noise exposure level. This impact is considered *less than significant*.** (DEIR, p. 99.)

**Mitigation Measures:** No significant impacts related to regulatory impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 99.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to railroad noise are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 99.).

#### **Impact 4.9-5: Operational noise impacts**

**Future operations within the Maintenance area could generate significant noise levels, impacting outdoor activities of the Silliman Center. This impact would be reduced to a less-than-significant level through adherence to Mitigation Measure 4.8.2. This impact is considered *less than significant*.** (DEIR, p. 99.)

**Mitigation Measures:** No significant impacts related to regulatory impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 100.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to operational noise of the Project are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 100.).

## **J. Transportation and Circulation**

#### **Impact 4.10-1: Project traffic impacts**

**Although construction of the proposed Project would increase traffic on nearby roadways and intersections, increases in traffic would not be significant based on standards of significance. This impact is considered *less than significant*. (DEIR, p. 111.)**

**Mitigation Measures:** No significant impacts related to Project traffic would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 111.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to Project traffic are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 111.)

#### **Impact 4.10-2: Cumulative traffic impacts**

**The addition of Project traffic to future cumulative conditions would result in the Cedar/Mowry intersection operating at an unsatisfactory operation during the PM peak hour condition. This impact is considered *significant*. (DEIR, p. 113.)**

**Mitigation Measures:** The mitigation for this impact will be for the District to contribute a proportional share to the City of Newark towards recommended cumulative intersection improvements at the Cedar/Mowry intersection, which shall consist of re-striping the southbound Cedar Boulevard approach to include two (2) left-turn lanes, one (1) through-lane, and one (1) shared through/right-turn lane (DEIR, p. 113.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Completion of identified roadway improvements would mitigate the District's contribution to future cumulative traffic impacts. (DEIR, p. 113.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.10-2 would reduce cumulative traffic impacts to a less-than-significant level. (DEIR, p. 113.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.10-3: Public transit impacts**

**The proposed Project is expected to generate additional ridership on both the AC Transit District and the Bay Area Rapid Transit District. Based on ridership projections for the**

**Project, increases are anticipated to be less-than-significant on each public transit district. This impact is considered *less than significant*.** (DEIR, p. 115.)

**Mitigation Measures:** No significant impacts related to public transit impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 115.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to public transit service are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 115.).

#### **Impact 4.10-4: Access and on-site circulation impacts**

**The addition of Project traffic to future cumulative conditions would result in the Cedar/Mowry intersection operating at an unsatisfactory operation during the PM peak hour condition. This impact is considered *significant*.** (DEIR, p. 116.)

**Mitigation Measures:** The mitigation for this impact will be for the District to install stop signs along the north-south internal road intersecting with the three site driveways to promote traffic safety and internal circulation efficiently (DEIR, p. 116.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Installation of stop signs at identified internal intersections will ensure safe and efficient internal circulation. (DEIR, p. 116.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.10-4 would reduce on-site circulation impacts to a less-than-significant level. (DEIR, p. 116.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.10-5: Impacts to emergency access**

Three driveways would be provided to the Project site as well as a perimeter drive to ensure adequate emergency access to the site even if one or more of the driveways are blocked. This impact is considered *less than significant*. (DEIR, p. 116.)

**Mitigation Measures:** No significant impacts related to emergency access impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 116.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to emergency access provision are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 116.)

#### **Impact 4.10-6: Pedestrian and bicycle impacts**

Construction of the proposed Project would have no impact to existing public bicycle and pedestrian facilities and on-site pedestrian and bicycle facilities would be provided as part of the Project. This impact is considered *less than significant*. (DEIR, p. 116.)

**Mitigation Measures:** No significant impacts related to pedestrian and bicycle impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 116.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to pedestrian and bicycle impacts are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 116.)

#### **Impact 4.10-7: On-site parking impacts**

Approximately 650 on-site parking spaces would be provided as part of the Newark Center Master Plan. Based on the District standard of 0.22 spaces per maximum student enrollment, 539 spaces would be needed, so that parking supply would exceed the District standard. This impact is considered *less than significant*. (DEIR, p. 117.)

**Mitigation Measures:** No significant impacts related to parking impacts would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 117.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to on-site parking are considered less than significant.

Therefore, there are no residual significant impacts. (DEIR p. 117.).

## K. Utilities and Public Services

### Impact 4.11-1: Police service impacts

**Increases in calls for police services to the Newark Police Department that could occur as a result of the Project could be accommodated with existing police personnel and equipment. This impact is considered *less than significant*.** (DEIR, p. 126.)

**Mitigation Measures:** No significant impacts related to police services would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 127.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to police services are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 130.).

### Impact 4.11-2: Fire and emergency service impacts

**Increases in calls for fire and emergency services to the Newark Fire Department that could occur as a result of Project could construction be accommodated with existing police personnel and equipment. This impact is considered *less than significant*.** (DEIR, p. 126.)

**Mitigation Measures:** No significant impacts related to fire and emergency would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 127.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to fire and emergency services are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 130.).

### Impact 4.11-3: Impacts to water supply

**Increases in water consumption could be accommodated by existing capacity. New water facilities would not be required to serve the project site. This impact is considered *less-than-significant impact, although mitigation is recommended to reduce water consumption for site irrigation*.** (DEIR, p. 128.)

**Mitigation Measures:** The mitigation for this impact will be for the Project landscape plan to incorporate native plant and drought tolerant plants, use drip irrigation systems and to use recycled irrigation water when available (DEIR, p. 128.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project that avoid the significant environmental effect as identified in the Final EIR.

**Explanation:** Inclusion of drought tolerant plants, drip irrigation systems and recycled irrigation water will reduce the amount of water needed for the Project. (DEIR, p. 128.)

**Effects of Mitigation:** Implementation of Mitigation Measure 4.11-3 would reduce water use impacts to a less-than-significant level. (DEIR, p. 130.)

**Remaining Impacts:** No impacts remain.

#### **Impact 4.11-4: Wastewater collection, treatment and disposal impacts**

**Increases in wastewater generation as a result of Project construction could be accommodated in existing USD collection, treatment and disposal facilities without need for facility expansion. This impact is considered *less than significant*.** (DEIR, p. 129.)

**Mitigation Measures:** No significant impacts related to wastewater collection, treatment or disposal services would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 129.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to wastewater collection, treatment and disposal services are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 130.).

#### **Impact 4.11-5: Solid waste impacts**

**Increases in solid waste from the Newark Center Project could be accommodated in the local landfill. This impact is considered *less than significant*.** (DEIR, p. 129.)

**Mitigation Measures:** No significant impacts related to solid waste services would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 129.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to solid waste services are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 130.).

#### **Impact 4.11-6: Electrical and natural gas service impacts**

**Electrical and natural gas service to the project site could be accommodated. This impact is considered *less than significant*.** (DEIR, p. 129.)

**Mitigation Measures:** No significant impacts related to electrical and natural gas services would occur under the Project; therefore, no mitigation measures would be required. (DEIR, p. 129.)

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

**Remaining Impacts:** Impacts related to electrical and natural gas services are considered less than significant. Therefore, there are no residual significant impacts. (DEIR p. 130.).

## **IX.**

### **PROJECT ALTERNATIVES**

Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects[.]” (Pub. Resources Code, § 21002, italics added.) The same statute states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will *avoid* or *substantially lessen* such significant effects.” (*Ibid.*, italics added.) Section 21002 goes on to state that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects.” (*Ibid.*)

CEQA defines “feasible” to mean “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 CEQA Guidelines add another factor: “legal” considerations. (CEQA Guidelines, § 15364; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*).) Among 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, and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site. (CEQA Guidelines, § 15126.6, subd. (f)(1).) The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; see also *Sierra Club v County of Napa* (2004) 121 Cal.App.4th 1490, 1500-1507.)

Where a significant impact can be substantially lessened (i.e., mitigated to an “acceptable level”) solely by the adoption of mitigation measures, the lead agency, in drafting its findings, has no obligation to consider the feasibility of alternatives with respect to that impact, even if the alternative would mitigate the impact to a greater degree than the Project. (Pub. Resources Code, § 21002; *Laurel Hills Homeowners Association, supra*, 83 Cal.App.3d at p. 521; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 691, 730-731; and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 400-403.) In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility of modifying the project lies with some other agency. (CEQA Guidelines, § 15091, subds. (a)(2), (a)(3).)

The preceding discussion regarding Project impacts reveals that all of the significant effects identified in the EIR have been at least substantially lessened, if not fully avoided, by the adoption of feasible mitigation measures.

### Summary of Alternatives Considered

The EIR evaluates the following alternatives to the Project:

- No Project Alternative,
- Development under Newark General Plan land use designations, and
- Reduced campus development

The No Project alternative would be the environmentally superior alternative among the proposed Project and the three alternatives analyzed in the DEIR. The No Project Alternative, however, does not attain any of the project objectives. (DEIR, p. 136.)

The City of Newark General Plan Alternative would result in development of up to 1,058,500 square feet of light industrial, research and development and similar land uses under the “Special Industrial” General Plan land use designation. It is anticipated that implementation of this amount of development on the site would generate significant and likely unavoidable traffic and air quality impacts, which do not occur under the proposed Project. Also, this alternative would not allow Project objectives of developing a community college-level campus to be constructed (DEIR, p. 133.)

The Reduced Campus Alternative would result in less significant impacts than identified for the proposed Project in the DEIR, however, as indicated in the DEIR, the Proposed Project is not anticipated to result in significant impacts that cannot be mitigated to a less-than-significant level. Similarly, this alternative would not allow Project objectives to be achieved. (DEIR, p. 136.)

## A. No Project Alternative

### Description

Under this alternative, it is assumed that no development would occur on the Project site and it would remain in an undeveloped, vacant condition. Existing agricultural operations that have historically occurred on the site would continue.

Consistent with CEQA requirements, this No Project Alternative is evaluated in the EIR. The No Project Alternative would not meet any of the objectives of the Project. (DEIR, p. 132.)

### Environmental Impacts

- *Aesthetics and Light and Glare*: No changes to the existing aesthetic character of the Project site would result since the site would remain in a vacant and undeveloped condition. No sources of light or glare would result.
- *Air Quality*: There would be no impact to air quality regarding either short-term construction impacts or long term operation of new uses on the site. Since no vehicles would visit the site, no new sources of carbon monoxide or related pollutants would be added to the atmosphere. There would be no contribution from the Project site to ozone precursors.
- *Biological Resources*: No impacts would result to existing on-site wetlands, special-status plants or animals or their respective habitats, since no development would occur.
- *Cultural Resources*: Existing underground archeological, paleontological or Native American resources on the Project site would remain undisturbed, since no grading or construction activities would occur.
- *Geology and Soils*: No excavation, grading or related impacts would occur so that erosion impacts to adjacent bodies of water would not occur. There would be no risk related to seismic shaking of on-site buildings or improvements, since none would exist.
- *Hazards*: Existing sources of soil contamination would remain within the Project area. Since no change to existing land uses would be encouraged, remediation of contaminated conditions would likely not occur or would occur at slower pace.
- *Hydrology Drainage and Water Quality*: Existing hydrologic and drainage patterns would remain unchanged so that there would be no increases in the quantity of stormwater runoff from the site. No major sources of soil erosion would be created so that surface water quality would not be degraded from present conditions.

- *Land Use*: No changes to existing land uses would occur.
- *Noise*: No changes to existing noise patterns would result since there would be no new noise generators on the site.
- *Transportation, parking and circulation*: Existing traffic generation and street patterns in the Project area would continue as currently found. Cherry Street would not be signalized at the proposed Project entrance.
- *Utilities and Public Services*: No new or increased demand would be created for new or upgraded utilities and community services, since no development would occur. Therefore, there would be no need to extend police, water, sewer, telecommunication and power facilities to the area to support new development. There would be no change in the amount of solid waste generation within the Project area.

(DEIR pp 131-132).

### **Feasibility/Relationship of Alternative to Project Objectives**

Although the No Project alternative would result in few and less intensive environmental impacts than the proposed Project, it would not achieve Project objectives of developing and operating the Newark Center on the site.

For this reason, the District rejects this alternative as infeasible.

### **B. General Plan Development**

#### **Description**

The second alternative would include development of the site under the existing SI-Special Industrial General Plan land use designation. This designation, according to the Land Use Element of the General Plan, is intended to foster development of the highest standards of building design, landscaping and aesthetic standards. Land uses include businesses involves with advanced technology, commercial research and manufacturing including but not limited to biotechnology, electronics, robotics and medicine. The maximum floor area ratio (the ratio of total lot size to building floor area) is 0.35 to 1. Assuming a slightly lower floor area ratio of 0.30, a maximum of 1,058,500 square feet of special industrial space could be constructed on the 81-acre site. This would likely include office type use along with associated parking and landscaping uses. Due to the amount of development assumed for this alternative, the entire Project site would likely be developed. (DEIR, pp. 132-135.)

#### **Environmental Impacts**

- *Aesthetics and Light and Glare*: This alternative would convert the entire site from an undeveloped open space field to urban type uses, rather than allowing over the half of the site remain as undeveloped as proposed in the Project. More numerous sources of light and

glare would be created since more buildings and parking areas would be created, which would result in a greater impact than the proposed Project. Light and glare would also likely result in a greater impact to wetland resources on the westerly portion of the site near the Union Pacific railroad tracks. With appropriate mitigation, this impact could be reduced to a less-than-significant level.

- *Air Quality:* Air quality impacts would likely be greater under Alternative 2 than the proposed Project. Short-term construction impacts related to site grading and construction activities would be greater and would last for a longer duration than the proposed project, since much more of the site would be graded. Long-term operational air quality impacts would similarly be greater than the proposed Project, since significantly more vehicle trips would be associated with industrial development. Table 6, Projects with Potentially Significant Emissions, published in the Bay Area Air Quality Management District's CEQA Guidelines, (revised 12/99) indicate that office development with more than 280,000 square feet of development would be considered to result in potentially significant cumulative air quality impacts in terms of ozone emission. It is unlikely that this impact could be reduced to a less-than-significant level, so cumulative air quality impacts associated with this alternative could be considered significant and unavoidable. Increased emissions of carbon monoxide, nitrogen dioxide, reactive organic gases and other impacts could also be potentially significant in terms of consistency with state and federal air quality standards. Depending on the type of future use under this Alternative, a greater number of diesel trucks could visit the site, which would represent another source of air pollution not anticipated with the
- *Biological Resources:* Greater impacts to biological resources would result under Alternative 2 than the proposed Project, since a greater amount of the site would be disturbed to accommodate development. The 0.08-acre wetland located in the northeastern portion of the site would be removed and it is unlikely that replacement wetlands could be relocated on the site. Greater impacts to special-status plants and wildlife would also result. It is likely that all biological resource impacts could be reduced to a less-than-significant level.
- *Cultural Resources:* Greater impacts to archeological, paleontological and/or native American resources would result under Alternative 2 than the proposed Project, since a greater surface area of the site would be disturbed for development purposes. It is likely that such impacts could be reduced to a less-than-significant level.
- *Geology and Soils:* Greater impacts related to grading, site disturbance and erosion and exposure of people and improvements to seismic risk would occur under Alternative 2 than the proposed Project since more development would be present on the site. These impacts could be appropriately mitigated however.
- *Hazards:* Site grading and disturbance would potentially release more groundborne contaminants into the atmosphere. Also, a greater amount of development on the site would result in a greater quantity of potentially hazardous material on the site, since more building square footage and landscape areas would need to be repaired and maintained. Depending on the type of future use that could be located on the site under this alternative. Greater amounts of hazardous materials could be used, transported and

stored than under the proposed Project. It is likely that such hazard impacts could be mitigated to a less-than-significant level.

- *Hydrology Drainage and Water Quality:* Greater quantities of stormwater runoff would be generated under this alternative, since more impervious surfaces would be created. This could likely be mitigated through construction of onsite detention or retention basins. Similarly, there would be a higher potential for degradation of surface water due to erosion during construction and polluted runoff from parking areas and other portions of the area. This too could be mitigated by adherence to erosion control plans and implementation of Stormwater Pollution Prevention Plans.
- *Land Use:* Land use under this alternative would change the site from an undeveloped area to a business or research and development park. Since this type of land use is envisioned in the Newark General Plan, this impact would not be considered significant. Less-than-significant impacts would occur in terms of consistency of industrial uses with surrounding existing industrial use to the north and south or with the Silliman Center also to the north.
- *Noise:* Greater noise impacts would result under Alternative 2 than under the proposed Project. Greater noise impacts would relate to more construction over a longer duration than the proposed Project, a greater number of vehicles (including the possibility of trucks) visiting the site as compared to the Project, and greater noise generation from operation of on-site mechanical equipment. These impacts could likely be mitigated to a less-than-significant level.
- *Transportation, parking and circulation:* There would be greater impacts with regard to increase local and regional traffic under Alternative 2 than the proposed Project. Trip generation would be greater since significantly more square footage would be built on the site. Peak hour vehicle impacts would also be greater, since hours of operation for office and business parks would be more consistent with surrounding peak hour use of local streets. It is unknown if traffic impacts at local intersections could be mitigated to City of Newark Level of Service standards. Parking would be provided at a ratio specified in the Newark Zoning Ordinance so this would not be a significant impact. Emergency access provisions would be reviewed by the Newark Fire Department.
- *Utilities and Public Services:* Implementation of Alternative 2 would require greater use of potable water than the proposed Project due to more development on the site. Wastewater generation would similarly be greater as would demand for police and fire services. Solid waste generation would be greater under Alternative 2 due to more site development. Since the Newark General Plan has assumed this general type and amount of development on the site, all of the above utility and service impacts could be mitigated to a less-than-significant level.

(DEIR, pp.132-135).

## Feasibility/Relationship of Alternatives to Project Objectives

As noted previously, the concept of “feasibility” under CEQA encompasses the question of whether a particular alternative or mitigation measure promotes existing District policies, as well as the underlying goals and objectives of a project. (*City of Del Mar, supra*, 133 Cal.App.3d at p. 417; *Sequoiah Hills Homeowners Assn., supra*, 23 Cal.App.4th at p. 715.) “[F]easibility’ under CEQA also encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*City of Del Mar, supra*, 133 Cal.App.3d at p. 417.)

The General Plan alternative would result in greater impacts than the Project in almost every environmental topic area. More intense impacts would result in terms of peak hour and cumulative traffic generation, air quality impacts, need for greater utility services (water, wastewater generation, solid waste and similar) and greater need for community services (police and fire services). More of the site would be developed which would require a greater amount of grading and earth movement increasing the potential for soil erosion. A greater quantity and rate of stormwater runoff would also be generated from the site, since a substantially greater amount of the site would need to be graded to allow site improvements.

This Alternative would also not allow the Ohlone Community College District to development the Newark Center project, which is one of the primary objectives of the Project

For each of the above reasons, the District rejects this alternative as infeasible.

### C. Reduced Campus Development

#### Description

This alternative proposes a reduced campus alternative on the project site that assumes approximately one-half the amount of development on the site as under the proposed Project. This would include approximately 90,000 square feet of educational and related floor space, approximately 350 parking spaces and other open space and landscaping. (DEIR, p. 135.)

#### Environmental Impacts

- *Aesthetics and Light and Glare*: This Alternative would result in less aesthetic and light and glare impacts, since a greater amount of the Project site would remain undeveloped. These impacts could be mitigated to a less-than-significant level.
- *Air Quality*: Air quality impacts would be less than the proposed Project, since less development would occur. This would include both construction impacts and long-term operational air quality impacts. As is true with the proposed Project, air quality impacts could be mitigated to a less-than-significant level.

- *Biological Resources*: Fewer biological resource impacts would result, since less of the site would be required to be developed. Less habitat of special-status plant and wildlife would be disturbed and it is possible than existing wetlands could be avoided rather than disturbed. Biological resource impacts could be reduced to a less-than-significant level.
- *Cultural Resources*: Fewer impacts to cultural resources would result under Alternative 3 since less of the site would be disturbed for development. Similar to the Project, these impacts could be successfully mitigated.
- *Geology and Soils*: Fewer impacts would result to soil and geological resources, since less of the site would need to be disturbed to allow construction of the Newark Center. These impacts could be mitigated to a less-than-significant level.
- *Hazards*: Fewer ground borne hazardous materials would be disturbed, since less of the site would be graded to accommodate Newark center improvements. The same measure recommended for the Project would be applied to Alternative 3.
- *Hydrology Drainage and Water Quality*: Although greater stormwater runoff would result from Alternative than the No Project Alternative, less runoff would occur than under both the Project and Alternative 2. With appropriate sizing of detention or retention basins, drainage impacts would be less-than-significant. Similarly, impacts to surface water quality would be mitigated to a less-than-significant level.
- *Land Use*: A less intense impact to surrounding land uses would result under Alternative 3 since less development would occur.
- *Noise*: Implementation of Alternative 3 would result in less short-term construction noise and less long-term operational noise since less development is anticipated.
- *Transportation, parking and circulation*: Fewer vehicle trips would result under this Alternative than Alternatives 2 and 3 since less development is anticipated.
- *Utilities and Public Services*: There would be less demand for all public services and utilities under Alternative 3 than under the Project or Alternative 3 due to less development.

(DEIR, pp. 135-136)

### **Feasibility/Relationship of Alternatives to Project Objectives**

As noted previously, the concept of “feasibility” under CEQA encompasses the question of whether a particular alternative or mitigation measure promotes existing District policies, as well as the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; *Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

The Reduced Campus alternative would result in less intense impacts to aesthetics, light and glare, biological resources, cultural resources, and all other environmental topics reviewed in the DEIR, since less of the site would need to be disturbed to allow campus improvements. However, the reduced Campus Alternative would not allow for development of the Newark Center

development program envisioned by the District in that only approximately 90,000 square feet of educational, administrative and related uses could be accommodated rather than the 160,000 square feet evaluated as part of the proposed Project.

For the above reason, the District rejects this alternative as infeasible.