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San Francisco Bay Chapter
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EAST BAY PUBLIC LANDS SUBCOMMITTEE

REPLY TO 802 Balra Drive, El Cerrito, CA 94530

August 1, 2002

Ayn Wieskamp, President and Members of the Board
of Directors for the East Bay Regional Park District
Box 5381
2950 Peralta Oaks Court
Oakland, CA 94605

Re: Draft General Plan for Eastshore State Park
And Draft Environmental Impact Report

Dear President Wieskamp and Members of the Board:

A. Introductory Comments

The Sierra Club has the following comments about the Draft General Plan for the Eastshore State Park. These comments are made after consideration of the plan and are based on 40 years of work to first save the East Bay Shoreline from fill and commercial development and then to create the Eastshore State Park.

To begin with, the Sierra Club joins in the comments from Citizens for the Eastshore State Park (CESP), a copy of which is enclosed with this letter. Rather than reiterate those points, the Club will highlight its concerns that go beyond those expressed in the CESP letter.

B. The Positive Aspects of the Draft Plan

The Sierra Club commends the planning team for a number of features of the draft plan that protect habitat and wildlife. The Club is pleased that the planners did not attempt to circumvent the protections provided to the Emeryville Crescent and the Albany Mudflats through the exercise of the Public Trust over those lands in the 1980's by Emeryville and Albany respectively and in conjunction with the State Lands Commission.

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The Club also is pleased that the draft plan designates the Berkeley Meadow, Albany Bulb, Neck, and Beach as "Conservation Areas." These are critical habitat areas for Bay coastal

wildlife which have colonized these landfill areas after much of their habitat was wiped out by the hand of man. The Club appreciates the action of the planners in removing active recreation facilities from the Berkeley Meadow. The Club also supports the protection of the Hoffman Marsh, which the plan provides.

C. Issues That Remain

The Club remains very concerned about many aspects of the plan, however. The draft plan does not fully meet the goals and standards of the Club's Conservation and Habitat Restoration Plan, a copy of which was provided to the Board and planning team many months ago. The elements of the draft plan that do not meet those standards are unacceptable.

1. Designation as a State Recreation Area

The Sierra Club does not support the designation of this new park unit as a State Recreation Area. The Club has advocated for a designation as a State Seashore or Park. Given recent history over the planning of this park, the Club is concerned that the term "Recreation Area" will be used to justify more active recreation in the park that is warranted for the protection and enhancement of wildlife and their habitat. The designation as a "Seashore" or "Park" better expresses the desires of the many people who worked to create this park and better exemplifies the principles that we believe this Park should stand for. The Sierra Club asks that the Board join with us and many other organizations in urging a change in designation to "Park" or "Seashore."

2. Structured Sports Fields on the Albany Plateau

The Sierra Club supports active recreation in the appropriate park setting. In fact, the Club is on record urging the acquisition of the remaining Berkeley lands owned by Golden Gate Fields North and South of Gilman Street for active recreational use such as structured sports fields. Encompassing 46 acres those lands could theoretically provide space for 20 sports fields.

The Club remains opposed to the location of any playing fields on the Albany Plateau for two reasons. First, the plateau is an existing habitat area. Birders and others have identified many bird species that use the plateau, including Marsh Hawks. With so much of coastal upland habitat lost in the Bay Area, the Sierra Club believes it is time we began the process of protecting

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areas in which the coastal wildlife now find their existence. Is it too much to ask that we try to recreate some of that lost habitat where it is returning?! The Plateau is too important an area to be lost for uses that are not allowed in a State Park, which is the Club's second point.

State law prohibits structured sports fields in a State Park or Recreation Area. The Public Resources Code is very clear on this point. The planners admit this prohibition exists and so state in the plan. They try to get around this prohibition in two ways that are not legal or proper.

First, the plan contends that special legislation for this park requires that any plan be consistent with each city's general plan. The argument runs that because Albany created a conceptual waterfront plan in the 1990's which provides for ball fields on the plateau, the park plan must follow that plan. This argument fails because that concept plan was never adopted by the City of Albany as an element of its general plan. It never went through a general plan process to be formerly voted on by the Council for inclusion in the city's general plan. The argument also fails because it State law pre-empts and supercedes local laws that are inconsistent with State law, even if they are in the general plan. Otherwise, State Park planning law would be completely at the whim of local decisions and would trump the laws of the State. According to the planners' logic if, for example, Albany's general plan provided that the Plateau was to be an active recreation with a gambling casino, then the State Park Plan would have to plan for such a use in the State Park. Just using an example like this one shows the absurdity of the planners' argument.

The draft plan tries to get around this point with a legal fiction, to wit, state park lands will be leased away to an outside group in the form of an exclusive sports franchise. A special JPA of exclusive sports users will operate the fields for their members benefit. The park lands will not be open to all Californians as they should be. This legal fiction means that the State is taking away lands owned for the use and enjoyment of all Californians for the benefit of a limited user group. Such a transfer is not legal.

Therefore, the Sierra Club urges the Board to join with it and expressing its opposition to the proposed ballfields on the Plateau.

3. Lack of Adequate Protection for Wildlife

a. Dogs

The Plan does not adequately protect wildlife or their habitat. The Sierra Club is very concerned about the ambiguities regarding off leash and leashed dog regulations and their enforcement. The draft general plan states contradictory statements on the issue. Without further clarification, it appears that many areas that are critical to wildlife would be open to off leash dog

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use, and "Who Let the Dogs Out," would become the theme song for the Park. The Club urges the Board to insist that the Park have strict rules banning off leash dogs from all areas of the park except North Point Isabel and Point Isabel. The Club also maintains that unless the State Parks or East Bay Regional Park District put forward a plan for real enforcement of the off leash dog prohibition, then leashed dogs should also be prohibited from the Brickyard, Meadow, Bulb, Neck, Beach, Plateau, and Trail by Hoffman Marsh. Without real enforcement, dog owners will allow their animals to run off leash in areas where they should not be allowed.

b. Better Protection for Wildlife

The Meadow and Bulb need to have stronger and better protections for wildlife than the existing policies provide. Too many trails are proposed. There are too many facilities adjacent to these protected areas. The policies in the draft plan are contradictory and appear to allow activities that would be harmful to wildlife. Rafting ducks also need better protection in the water areas such as the Brickyard Cove and the North Basin Cove. The Club urges the Board to join with it in insisting on real verifiable measures that will enhance and protect wildlife.

4. Too Much Parking and Too Many Facilities

The draft plan calls for too much parking, some 700 parking spaces with 300 of them on the North Basin Strip. The planners should be looking to adjacent city lands for these uses.

The draft plan also calls for locating too many facilities on the park land. The number and size of these facilities should be reduced.

C. The Process Has Failed The Participants

Over the course of the planning process, it has become evident that the process has not worked. To begin with, it is clear that the voices of all of those who have supported the Club's Conservation and Habitat Restoration Plan have not been adequately heard. Despite the tremendous out pouring of support in cards, letters, and at meetings for the Club's plan, the planners have made virtually no changes in the plan since the first concept plan. The only change that was made, protecting the Meadow and Bulb, was done only after the Sierra Club and Golden Gate Audubon Society made it clear they would actively oppose any plan that did not protect the Meadow and Bulb.

Planning should proceed from first principles. Instead the planners have sought to put together a compromise plan that gives something to everyone, but pleases no one and which cannot be justified by policies or the law.

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Equally troublesome is the rush to judgment the planners have imposed. The public is forced to react in a very short time period to the plan and DEIR. More time should be allowed for the public to comment. The time period from when the draft plan was released to the close of comments on the DEIR is too short. More time should be allowed to the public for it to comment on the plan and DEIR, especially with the extra time allowed for the final approval by the State Parks Commission.

D. Conclusion

The Club urges the Board to take a pro-active role in this process and actively comment on the plan. It should also support the Sierra Club, CESP, and Golden Gate Audubon Society and articulate a vision for this park that protects wildlife.

Sincerely yours,


Norman La Force, Chair
East Bay Public Lands Committee
Chair, San Francisco Bay Chapter Legal
Committee

cc: Ron Schafer, Bay Area District Superintendent, Dept. of Parks and Recreation
Don Neuwirth, Planning Team Leader for ESP Planning
Mayor Shirley Dean, Berkeley & Members of the Berkeley City Council
Mayor Petty Thomsen and Members of the Albany City Council
Robert Cheasty, Sylvia McLaughlin, and Stana Heame, CESP
Arthur Feinstein and Russ Wilson, Golden Gate Audubon Society
Briggs Nesbitt, Save the Bay
Steven Krieg and Ed Bennett, Chapter ExCom,