




- E.3 Hearing to consider P-17-01, a planned unit development, U-17-02, a conditional use permit, and E-17-03, an addendum to the Dumbarton Transit Oriented Development (TOD) Specific Plan Program Environmental Impact Report (PEIR) (SCH No. 2010042012) and the subsequent Initial Study/Mitigated Negative Declaration (IS/MND) for the SHH/FMC project (SCH No. 2014012056), for a proposed five-story mixed-use hotel and retail space at 37556 Willow Street (APN 092-0115-011-03) – from Assistant Planner Bowab.  (RESOLUTIONS-2)**

Background

Villa Developers & Investment, LLC has submitted an application for a five-story hotel and retail mixed use project. The project area is approximately 53,140 square feet (1.22 +/- acres) in size, after right-of-way land dedication. The property is currently vacant and is bounded by Enterprise Drive to the north, Willow Drive to the east, planned medium density residential to the west, and planned affordable senior housing to the south. The subject site is zoned R-FBC (Commercial Retail – Form Based Code). This project was scheduled for a Planning Commission Public Hearing on August 8, 2017, and the meeting was adjourned to a regular Planning Commission meeting on August 22, 2017.

The five-story commercial project will include a 146-room hotel and an 8,300 square foot grocery/retail space. The proposed project will include approximately 168,440 square feet of floor area and be approximately 80 feet in height. The grocery/retail component will be located on the ground level along with shared parking on the ground and 2nd level. The hotel will operate on all 5 floors with guest rooms starting on the 3rd floor. The grocery/retail amenities will include elevated pedestrian enhanced walkways and outdoor seating areas with tables. Hotel amenities will include a lobby, an outdoor pool, a pool deck, a small recreation area, 3 fire pits, 2 lounge areas, 2 balconies, a restaurant, 2 bars, 3 meeting rooms, and 2 kitchens.

The architectural design and layout of the project was carefully designed as a gateway development for the Dumbarton Transit-Oriented Development (TOD) Specific Plan area. This project will be the first commercial development in the area and is pedestrian oriented with amenities activating the street front. The hotel entrance is located on the corner of the development facing the round-a-bout entrance to the TOD Specific Plan area. The modern design consists of undulating roof lines, an articulating façade, a large granite and glass pop-out feature, a metal canopy and awnings, and various types of granite stone, glass, and cement elements. In addition, due to the proximity of future planned residential to the west of the proposed project, no windows or openings are proposed on the west side of the building close to the property line. This will ensure the project won't be a nuisance to future residents by restricting the view of the garage and loading areas.

Planned Unit Development and Conditional Use Permit Findings

The Findings given in the draft resolution of approval contains language that comes from the

Newark City Code, Sections 17.40.050 (Planned Unit Development Permit – Permit procedure) and 17.72.070 (Use Permits – Action by Planning Commission) and are supported by the application materials on file, this staff report and the supporting exhibits attached.

Further elaboration for each finding is as follows:

- a. *That the proposed location of the planned unit development is in accord with the objectives of the zoning title and the purposes of the district in which the site is located.*

This location was planned for a commercial development as part of the TOD Specific Plan and the hotel and retail use fits under the approved zoning district.

- b. *That the proposed location of the planned unit development and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

The hotel, restaurant and retail space shall be a complement to the area and the residents by reducing vehicular trips and providing retail options within walking and biking distance.

- c. *That the standards of population density, site areas and dimensions, site coverage, yard spaces, heights of structures, distances between structures, usable open space, off-street parking and off-street loading facilities and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the zoning title.*

The building is being designed to fit the urban setting which was and is envisioned for the TOD area. The design and layout of the building have taken into account the proposed surrounding uses and will be compatible with the area.

- d. *That the standards of population density, site area and dimensions, site coverage, yard spaces, heights of structures, distances between structures, usable open space, and off-street parking and off-street loading facilities will be such that the development will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities.*

Access to the site will be by a driveway off of Enterprise Drive and from Willow Street through the adjacent parking lot. There is a recorded easement to allow access to the site through the adjacent parking lot of the affordable senior housing site to the south. Enterprise Drive will be the main entrance to the parking garage and the hotel is not expected to generate traffic that exceeds the level of service of that roadway.

Hotels are required to provide one-off street parking space for each employee, plus one additional parking space for each guest room or for each two beds, whichever is greater. For retail, a minimum of three parking spaces per one thousand square feet of floor area is required. Based on this ratio, the project is required to have 181 parking spaces. A parking study, by Fehr & Peers, and a Transportation Demand Management (TDM) Plan, by Hexagon Transportation Consultants, Inc., were prepared to allow for a reduction in parking for this project. The study and plan concluded if all recommended TDM measures are implemented by the project, the required parking spaces may be reduced by 35%. This would reduce the required parking spaces from 181 to 118 required parking spaces. A total of 118 parking spaces are provided on-site. This project is conditioned to implement the TDM measures in the attached TDM Plan and to re-evaluate the TDM Plan annually for the life of the project.

- e. *That the combination of different dwelling types and/or the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity.*

There are a variety of uses surrounding this location, which include senior housing, multifamily and single family uses. The commercial location on this property and across the street on Enterprise Drive are part of a larger design to provide neighborhood services to the numerous housing units planned as part of the specific plan.

- f. *That the proposed location of the conditional use is in accord with the purposes of the zoning title and the purposes of the district in which the site is located.*

The proposed use is in line with the proposed TOD Specific Plan.

- g. *That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

There are several conditions related to this project to minimize any potential negative impacts of the development. Staff does not believe there will be any negative impacts of the general public within the vicinity.

- h. *That the proposed conditional use will comply with each of the applicable provisions of Chapter 17.72 (Use Permits).*

Staff has reviewed the project and it is in compliance with the provisions of Section 17.72.

Environmental Review

The addendum to the existing Dumbarton Transit Oriented Development (TOD) Specific Plan Program Environmental Impact Report (PEIR) and the subsequent Initial Study/Mitigated Negative Declaration (IS/MND) for the SHH/FMC project was prepared by HELIX Environmental Planning, Inc. The addendum concludes this proposed modified project will have similar, and in most cases lesser, impacts than the previous approved SHH/FMC project because the project site has now been graded.

The addendum was made available to the public beginning July 25, 2017. We received one comment letter from Alameda County Water District (Exhibit E) and have attached a response letter (Exhibit F) that addresses all their comments.

Recommendation

Staff believes this project will be beneficial for the City and recommends approval of the proposed five-story mixed-use hotel and retail space project, subject to the conditions of approval listed in the attached resolution.

Action – It is recommended that the Planning Commission, by resolutions: (1) approve P-17-01, a planned unit development, and U-17-02, a conditional use permit, for a proposed five-story mixed-use hotel and retail space at 37556 Willow Street (APN 092-0115-011-03) with Exhibits A, C and D; and (2) E-17-03, an addendum to the Dumbarton Transit Oriented Development (TOD) Specific Plan Program Environmental Impact Report (PEIR) (SCH No. 2010042012) and the subsequent Initial Study/Mitigated Negative Declaration (IS/MND) for the SHH/FMC

project (SCH No. 2014012056), for a proposed five-story mixed-use hotel and retail space at 37556 Willow Street (APN 092-0115-011-03), with Exhibit B.

Attachments

- A- Plan Set, July 19, 2017
- B- Addendum by HELIX Environmental Planning, Inc., July 2017
- C- Parking Study by Fehr & Peers, March 8, 2017
- D- Transportation Demand Management (TDM) Plan by Hexagon Transportation Consultants, Inc., April 7, 2017
- E- Alameda County Water District comment letter, August 7, 2017
- F- Response letter to ACWD regarding Addendum comments, August 18, 2017

RESOLUTION NO.

RESOLUTION APPROVING P-17-01, A PLANNED UNIT DEVELOPMENT, AND U-17-02, A CONDITIONAL USE PERMIT, TO ALLOW FOR A PROPOSED FIVE-STORY MIXED-USE HOTEL AND RETAIL SPACE AT 37556 WILLOW STREET (APN: 092-0115-011-03)

WHEREAS, Villa Developers & Investment, LLC has filed with the Planning Commission of the City of Newark application for P-17-01, a planned unit development, and U-17-02, a conditional use permit, for a proposed five-story mixed-use hotel and retail space project; and

PURSUANT to the Municipal Code Section 17.72.060, a public hearing notice was published in The Tri City Voice on July 25, 2017 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on August 8, 2017 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

WHEREAS, the public hearing was scheduled for August 8, 2017 and was adjourned to a regular Planning Commission meeting on August 22, 2017; and

WHEREAS, pursuant to Chapter 17.40 (Planned Unit Developments), Section 17.40.050 (Permit Procedure) and Chapter 17.72 (Use Permits), Section 17.72.070 (Action by Planning Commission), the Planning Commission hereby makes the following findings:

1. That the proposed location of the planned unit development is in accord with the objectives of the zoning title and the purposes of the district in which the site is located;
2. That the proposed location of the planned unit development and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity;
3. That the standards of population density, site areas and dimensions, site coverage, yard spaces, heights of structures, distances between the structures, usable open space, off-street parking and off-street loading facilities and landscaped areas will produce an environment of stable and desirable character consistent with the objectives of the zoning title;
4. That the standards of population density, site areas and dimensions, site coverage, yard spaces, heights of structures, distances between the structures, usable open space, off-street parking and off-street loading facilities will be such that the development will not generate more traffic than the streets in the vicinity can carry without congestion and will not overload utilities;

5. That the combination of different dwelling types and/or the variety of land uses in the development will complement each other and will harmonize with existing and proposed land uses in the vicinity;
6. That the proposed location of the conditional use is in accord with the purposes of the zoning title and the purposes of the district in which the site is located;
7. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity;
8. That the proposed conditional use will comply with each of the applicable provisions of Chapter 17.72 (Use Permits).

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby approves this application and recommends the City Council approve this application as shown on Exhibit A, C and D, subject to compliance with the following conditions:

Planning Division

- a. No refuse, garbage or recycling shall be stored outdoors except within approved trash and recycling enclosure.
- b. Elevators must be open to public during retail hours to accommodate overflow parking on the 2nd floor.
- c. Prior to the issuance of a building permit, a screening design shall be submitted to and approved by the Community Development Director. Roof equipment shall not be visible from public streets. All equipment shall be fully screened within the context of the building's architecture, as approved by the Community Development Director. Said screening design shall be maintained to the satisfaction of the Community Development Director. The building owner shall paint the roof equipment and the inside of its screening wall within the context of the building's color scheme and maintain the painted areas to the Community Development Director's satisfaction. Screening panels shall not exceed six feet in height unless the screens are part of the integral design elements of the building, as determined by the Community Development Director.
- d. Construction site trailers and buildings located on-site shall be used for office and storage purposes and shall not be used for living or sleeping quarters. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- e. There shall be no outdoor vending machines other than sale of newspapers. There shall be no outdoor storage of any materials for sale, display, inventory or advertisement, except Christmas trees, without the review and approval of the Planning Commission and City Council.

- f. The drive aisles shall not be used by delivery trucks between the hours of 11:00 p.m. and 7:00 a.m. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 8:00 p.m. and 7:00 a.m.
- g. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- h. The site and its improvements shall be maintained in a neat and presentable condition to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site cleanup. Graffiti removal/repainting and site cleanup shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- i. All exterior utility pipes and meters shall be painted to match and/or complement the color of the adjoining building surface, as approved by the Community Development Director.
- j. Prior to the issuance of a building permit, the developer shall submit final colored elevations for the review and approval of the Community Development Director. The building elevations shall reflect all architectural features and projections such as roof eaves, bay windows, greenhouse windows, chimneys and porches. A site plan showing the building location with respect to property lines shall also show the projections. Said elevations shall specify exterior materials.
- k. Prior to the issuance of a building permit, any change to the floor plans as submitted by the developer as part of this application shall be reviewed and approved by the Planning Commission and City Council. Any minor changes shall be submitted for the review and approval of the Community Development Director to assure consistency with the approved project.
- l. Prior to the issuance of a building permit, the location and screening design for centralized garbage, refuse and recycling collection areas for the project shall be submitted for the review and approval of Republic Services Inc. and the Community Development Director, in that order.
- m. Prior to the issuance of a building permit, roof material shall be submitted to the Community Development Director for review and approval. All roof material shall consist of fire retardant shake roof, concrete tile or a roof of similar non-combustible material. Mansard roofs with the above material may be used to screen tar and gravel roofs. All roofs shall be of Class C fire resistant construction or better. Composition shingles shall be Presidential-style or of comparable quality, subject to the review and approval of the Community Development Director.
- n. Prior to the issuance of a building permit and after approval of the acoustical analysis

report, wall and fence details shall be submitted for the review and approval of the Community Development Director.

- o. During project construction, should archeological or paleontological artifacts or remains be discovered, work in the vicinity of the find shall stop immediately until a qualified archeologist or paleontologist, as appropriate, can evaluate the site and determine the significance of the find. Project personnel shall not collect or alter cultural resources. Identified cultural resources shall be recorded on forms DPR 422 (archeological sites) and/or DPR 523 (historic resources). If human remains are found, the County Coroner shall be contacted immediately.
- p. Prior to their installation, mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster. The mailbox compartments of centralized mailboxes shall identify the individual units with permanent, easily legible lettering.
- q. Prior to the issuance of a Certificate of Occupancy, all on-site parking facilities shown on the approved plans shall be installed and striped. This shall include, but not be limited to, identifying compact parking spaces and providing directional arrows as required by the Community Development Director.
- r. Prior to the issuance of a sign permit, all signs, other than those referring to construction, sale, or future use of this site, shall be submitted to the Community Development Director for review and approval.
- s. All construction within the project area shall be limited to 8:00 a.m. to 6:00 p.m. Monday through Friday, unless alternative hours are approved by the Newark Building Official. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy duty mufflers designed to reduce noise impacts.
- t. The applicant shall contract with a qualified, licensed geotechnical engineering firm to identify appropriate materials and methods for soil compaction and the construction of building foundations to ensure compliance with the Uniform Building Code. All recommendations contained in the geotechnical reports shall be followed by the applicant and the City of Newark during construction phases of the project.
- u. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The applicant shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval.
- v. If a significant time passes subsequent to rough grading, the developer shall hire a qualified biologist to: (1) determine if Burrowing Owl habitat(s) exist on the site, and (2) implement a plan to protect the owls and to excavate the site around any active burrows

using hand tools to assure that the owls are not buried during grading in the event Burrowing Owl habitat(s) is found on the site. The Burrowing Owl habitat(s), if found, shall not be disturbed during the nesting season. The Burrowing Owl study shall be conducted not more than 30 days prior to the time site grading activities will commence.

- w. If any condition of this Planned Unit Development (PUD), and Conditional Use Permit (CUP) be declared invalid or unenforceable by a court of competent jurisdiction, this Architectural and Site Plan Review shall terminate and be of no force and effect, at the election of the City Council on motion.
- x. The developer hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- y. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the developer shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the developer (which shall be the same counsel used by developer) and reasonably approved by the City. Developer's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.
- z. Prior to the submittal for building permit review, all conditions of approval for this project, as approved by the City Council, shall be printed on the plans.
- aa. Unless a building permit is issued within 24 months of project approval, the entitlements expire unless extended by Community Development Director.

Engineering Division

- bb. The developer shall provide the following street improvements along Willow Street and Enterprise Drive along the project frontage.

Willow Street & Enterprise Drive: The developer for Tract 8157 has provided improvement security for the project street frontage. Improvements required for the project are limited to utility connections as approved by the City Engineer. Pavement restoration for utility cuts shall be a minimum of 10-foot wide pavement grind and overlay.

- cc. Right-of-way encroachments by building canopies shall be limited to two-thirds (2/3) the width of the sidewalk and shall be at least eight (8) feet above grade. Canopy encroachment shall be free standing (i.e. no post, column or supports within the right-of-way).
- dd. Prior to building permit issuance, the developer shall dedicate right-of-way in-fee title where areas were previously dedicated as roadway easements. The developer shall provide legal descriptions and plats prepared by a California-licensed Land Surveyor for City Engineer approval during the building permit review process.
- ee. The provided Preliminary Stormwater Control Plan is approved in concept only. The project must be designed to include appropriate source control, site design, and stormwater treatment measures to prevent stormwater runoff pollutant discharges and increases in runoff flows from the site in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region. Examples of source control and site design requirements include but are not limited to: properly designed trash storage areas, sanitary sewer connections for all non-stormwater discharges, minimization of impervious surfaces, and treatment of all runoff with Low Impact Development (LID) treatment measures. A properly engineered and maintained biotreatment system will only be allowed if it is infeasible to implement other LID measures such as harvesting and re-use, infiltration, or evapotranspiration. The stormwater treatment design shall be completed by a licensed civil engineer with sufficient experience in stormwater quality analysis and design. The design is subject to review by the Regional Water Quality Control Board. The developer shall modify the site design to satisfy all elements of Provision C.3 of the MRP. The use of treatment controls for runoff requires the submittal of a Stormwater Treatment Measures Maintenance Agreement prior to the issuance of any Certificates of Occupancy.
- ff. The developer shall submit detailed grading and drainage plans for review and approval by the City Engineer. These plans must be based upon a City benchmark and need to include pad and finish floor elevations, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavement shall drain at a minimum of one percent. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer. The calculations shall show that the City and County freeboard requirements will be satisfied. The County's updated Hydrology and Hydraulics Manual can be downloaded at <http://www.acfloodcontrol.org/projects-and-programs/hydrology-hydraulics/hydrology-hydraulics-manual/>.

- gg. The project site is located within a seismic hazard area as indicated on the official Seismic Hazard Zone maps released by the State Geologist. The project geotechnical

engineer shall continue to address the mapped hazard and obtain City approval with respect to the liquefaction hazards prior to building permit submittal. The seismic hazard report shall be peer reviewed by the City's geotechnical consultant at the developer's expense.

- hh. Prior to any soil improvement measures and/or dewatering activities, the project geotechnical engineer(s) shall coordinate with ACWD to ensure compliance with ACWD Ordinance No. 2010-01. Any groundwater extracted during dewatering should be properly disposed of due to the presence of potential VOCs. In addition, any groundwater extracted during the project should be quantified and may be subject to a Replenishment Assessment Fee in accordance with the Replenishment Assessment Act of ACWD.
- ii. Prior to issuance of a Certificate of Occupancy or release of utilities for each unit, the on-site drive aisles and uncovered parking facilities shall be installed and striped as shown on the approved site plan. All on-site uncovered parking facilities and drive aisles shall be drained at a minimum slope of 1.0% for asphalt surfaces and 0.3% for Portland cement concrete surfaces.
- jj. All new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground for all buildings in the development in accordance with the City of Newark Subdivision Standards. Electrical transformers shall be installed in underground vaults with an appropriate public utility easement or within the public right-of-way, unless deemed infeasible by PG&E to install in underground vaults due to the load restrictions.
- kk. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked. Open street cuts will not be permitted on Enterprise Drive and Willow Street unless the affected area is scheduled for a pavement overlay concurrent with site development.
- ll. Prior to the approval of the building permit, the developer shall petition the City Council to participate in an active Landscaping and Lighting District for perpetual maintenance of median landscaping, traffic circle landscaping, frontage landscaping, and lighting systems on Willow Street and Enterprise Drive. The developer shall deposit sufficient funds for the City to hire a consultant to prepare the Engineer's Report, which shall be approved by the City Council. Prior to issuance of a Certificate of Occupancy, the City Council shall adopt a resolution for the annexation into an assessment district.
- mm. In compliance with the BAAQMD CEQA Air Quality Guidelines, the developer shall implement the following basic construction mitigation measures for all construction activities:
 - 1. All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - 2. All haul trucks transporting soil, sand, or other loose material off-site shall be

- covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 4. All vehicle speeds of unpaved roads shall be limited to 15 mph.
 5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
 6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measures Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 8. A publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints shall be posted. This person shall respond and take corrective action within 48 hours.

These measures shall be incorporated into the grading plans as well as the best management practices of the storm water pollution prevention plan, and shall be implemented to the satisfaction of the City Engineer.

nn. In compliance with the BAAQMD CEQA Air Quality Guidelines, the developer shall implement the following additional construction mitigation measures for all construction activities:

1. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
2. Wind breaks (e.g. trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
3. Vegetative ground cover (e.g. fast germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
4. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
5. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
6. Site accesses up to a distance of 100 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel.
7. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.

8. Minimizing the idling time of diesel powered construction equipment to two minutes.
9. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e. owned, leased, and subcontractor vehicles) would achieve a project wide fleet average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent CARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after treatment products, add-on devices such as particulate filters, and/or other options as such become available.
10. Use low VOC (i.e. ROG) coatings beyond the local requirements (i.e. Regulation 8, Rule 3: Architectural Coatings).
11. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOX and PM.
12. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engines.

These measures shall be incorporated into the grading plans as well as the best management practices of the storm water pollution prevention plan, and shall be implemented to the satisfaction of the City Engineer.

- oo. Prior to the issuance of any grading permit, all water wells within the project boundary shall be identified on the plans to be protected or properly destroyed. If the well(s) are to remain, a letter so indicating must be submitted to ACWD for review and approval. If the well(s) are: 1) no longer required by any regulatory agency; 2) no longer monitored on a regular basis; or 3) damaged, lost, or the surface seal is jeopardized in any way during the construction process, the wells must be destroyed in compliance with the Well Ordinance. In addition, any abandoned wells located within the project area must be properly destroyed prior to construction activities.
- pp. Prior to the start of any subsurface drilling activities for wells, exploratory holes, and other excavations, the developer shall apply and obtain a drilling permit from ACWD's Engineering Department at 43885 South Grimmer Boulevard, Fremont.
- qq. Prior to issuance of a building permit, specific measures shall be identified in a Risk Management Plan describing routine operation and maintenance of utility systems so that soil or groundwater does not pose a risk to the health and safety of workers during installation and post-construction operations and maintenance. The Risk Management Plan shall be subject to review and approval of the City Engineer, ACWD, and USD.
- rr. As a benefited property within the Dumbarton TOD for the waterline extension on Willow Street, the developer shall pay its pro-rata benefit cost as outlined in the Waterline Agreement prior to issuance of the building permit. If the developer pays its pro-rata benefit cost based on the waterline extension estimated cost, the developer shall pay a supplemental reimbursement for the difference between actual cost and estimated

cost after receipt of the actual cost is provided.

Landscape/Parks Division

- ss. Prior to the issuance of a Certificate of Occupancy, the developer shall enter into a Landscape Maintenance Agreement to ensure the perpetual maintenance of all landscaping along the project frontage, including the right-of-way and adjoining easement areas, and all other visible on-site landscape improvements. This agreement shall run with the land and be binding upon all future owners.
- tt. The Preliminary Proposed Plant Palette is approved in concept only. The final landscape plant palette shall provide the following plant material sizing: Trees shall be a minimum of a 15-gallon container size; shrubs and vines shall be a minimum of 5-gallon container size.
- uu. The project shall comply with the State of California Model Water Efficient Landscape Ordinance and shall provide a landscape documentation package to demonstrate compliance prior to building permit issuance.

Building Division

- vv. Construction for this project, including site work and all structures, can occur only between the hours of 8:00 AM and 6:00 PM, Monday through Friday. The applicant may make a written request to the Building Official for extended working hours and/or days. In granting or denying any request the Building Official will take into consideration the nature of the construction activity which would occur during extended hours/days, the time duration of the request, the proximity to residential neighborhoods and input by affected neighbors. All approvals will be done so in writing.
- ww. As per the Newark Municipal Code all the structures shall be equipped with a fully automatic fire sprinkler system.

Police Department

- xx. The development shall comply with Chapter 15.06, Security Code, of the Newark Municipal Code.
- yy. The development shall comply with Section 5.10 of the California Fire Code for radio reception.
- zz. Security cameras need to be placed within the parking structure. Cameras placed at the entrance should be of sufficient acuity to identify vehicle license plates, vehicle make, model and color. Cameras need to be placed in stairwells and other pedestrian access points to deter criminal activity within the parking structure.

General

- aaa. The project is subject to all conditions of approval associated with City Council Resolution No. 10,195 for Vesting Tentative Tract Map 8157, unless amended with conditions of approval stated herein. In case of conflict between conditions of approval, the amendments shall take precedence over and be used in lieu of the conflicting portions.
- bbb. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The applicant shall pay the prevailing fee for each additional separate submittal of project exhibits requiring Planning Commission and/or City Council review and approval.
- ccc. If any condition of this planned unit development and conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this planned unit development and conditional use permit shall terminate and be of no force and effect, at the election of the City Council on motion.
- ddd. This planned unit development and conditional use permit shall be given a hearing before the City Council for the Council's review and approval.
- eee. The applicant hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- fff. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the developer shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the developer (which shall be the same counsel used by developer) and reasonably approved by the City. Developer's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.
- ggg. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other

exactions. The applicant is hereby further notified that the 90-day approval period in which the applicant may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

The Commission makes the findings prescribed in Newark Municipal Code Sections 17.40.050 and Section 17.72.070, and directs a Notice of Decision be mailed to the applicant and filed with the City Clerk who shall present said Notice to the City Council pursuant to Newark Municipal Code Section 17.72.080.

This Resolution was introduced at the Planning Commission's August 22, 2017 meeting by , seconded by , and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson