



- E.1 Hearing to consider: (1) Approving a resolution rescinding the December 8, 2015 approval of Gateway Station West, a 589-unit residential project within the Dumbarton Transit-Oriented Development Specific Plan area located at the western edge of the City, including all associated resolutions and motions (2) Approving a resolution making certain findings and recommending that the City Council Certify a Supplemental Environmental Impact Report (E-14-46) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development; (3) Approving a resolution recommending rezoning (RZ-14-48) an approximately 41-acre area (APN 537-852-7) from MT-1 (High Technology Park District) to MDR-FBC (Medium Density Residential – Form Based Codes) and HDR-FBC (High Density Residential – Form Based Codes); (4) Approving a resolution recommending that the City Council approve P-14-49, a planned unit development, and U-14-50, a conditional use permit, for a 589-unit residential project (Gateway Station West) located within the Dumbarton Transit Oriented Development Specific Plan area at the western edge of the City of Newark; (5) By motion, recommending that the City Council approve TM-14-47, Vesting Tentative Map 8099, to construct approximately 589 residential units; and (6) By motion, recommending that the City Council approve ASR-14-51, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 46 – from Assistant City Manager Grindall. (RESOLUTIONS-4)(MOTIONS-2)**

**Background/Discussion** – In collaboration with the landowners, the City of Newark began a planning effort in the Fall of 2007 to explore potential development around the planned Newark Dumbarton Rail Station. The Project Area includes approximately 205 acres of land that has previously contained various industrial, manufacturing, and chemical processing land uses since the early twentieth century. Most of the land is currently vacant. Integral Communities has now submitted a proposed Vesting Tentative Map and building plans for 589 residential units to be located on approximately 41 acres along Willow Street at the western edge of the City.

On December 8, 2015, the Planning Commission considered and recommended approval of the subject project, but the Findings of Fact and Statement of Overriding Considerations document was inadvertently omitted from the Planning Commission packet. This document is a critical part of compliance with the California Environmental Quality Act (CEQA). Therefore, it is recommended that the December 8, 2015 project approval, including all resolutions and motions, be rescinded and the project be reconsidered with the attached Findings of Fact and Statement of Overriding Considerations document.

This 589-unit residential project is consistent with the Specific Plan’s vision of a vibrant pedestrian oriented community. The project will provide important amenities, including a segment of bay-side trail that will be eligible for Bay Trail designation and a small, neighborhood dog park. The cost of these amenities is to be provided by the developer.

Although a total of 15.75 acres of wetlands are on-site, the project will only affect a total of 6.1 acres of these wetlands; and the applicant will purchase sufficient qualifying wetland mitigation credits for this impact. The applicant will also permanently preserve 3.67 acres of wetlands on-site. Additionally, as a separate voluntary measure that is not a part of this project, the applicant has donated 6 acres that includes 5.98 acre of wetlands, to a non-profit conservation organization.

It is proposed to rezone a portion of the Dumbarton Transit Oriented Development to be consistent with the Specific Plan. RZ-14-48 is a rezoning of an approximately 41-acre area that is generally located on the west side of Willow Street. The rezoning would be from MT-1 (High Technology Park District) to MDR-FBC (Medium Density Residential – Form Based Codes) and HDR-FBC (High Density Residential – Form Based Codes), which is consistent with the Specific Plan.

In addition to providing amenities, the project would also provide significant impact fee revenue including: \$16,718,800 in Affordable Housing fees; \$4,393,940 in Park fees; \$1,195,641 in Public Safety fees; \$1,051,110 in Community Services/Facilities fees; and \$380,401 in Transportation Impact fees. The project will also pay an Art in Public Places fee of \$159,030 and a \$1,472,500 Fiscal Impact fee which is envisioned to support the Central Avenue Railroad Overcrossing project. Collectively, the estimated total of impact fee revenue is \$25,371,422. The project will also pay \$4,053,000 in school fees to the Newark Unified School District.

#### Community Financing Agreement

The Dumbarton TOD Specific Plan contains critical elements necessary to implement the Plan. To ensure that the City's fiscal health is sustained, developers are required to contribute to the provision of public improvements and City services. As such, the applicant has agreed to enter into a Community Financing Agreement. Under the terms of the agreement, a contribution of \$2,500 per dwelling unit is required.

#### The Architectural and Site Plan Review

Gateway Station West features six different home types providing a community diverse in scale, streetscape and architectural character. Several coordinated styles such as Classic Agrarian, Contemporary Agrarian, Farmhouse and Craftsman, are proposed to provide architectural variety across the 41-acre site. The homes are designed for flexibility, with ground floor living spaces or optional dens or recreation rooms. In addition to the Bay-Side Trail, a one acre park and several smaller parks are scattered throughout the community. Landscaped pedestrian paseos between buildings and landscaped water bio-treatment and retention areas, which are available for recreation when not inundated, are linked with walkways resulting in a walkable community.

The residential home types are summarized below:

Single Family Homes 132 Traditional front-loaded single family detached homes – These three-story detached homes feature minimum lot sizes that are 35 feet wide by 50 feet in depth and offer three floor plans ranging from 2,299 square feet to 2,541 square feet. These plans offer up to 4 bedrooms and 3.5 bathrooms and will be available in all three Farmhouse, Craftsman, and Agrarian architectural styles.

119 Rear-loaded single family detached homes – These three-story detached homes feature landscaped paseos in the front and have lots that are 35 feet wide by 55 feet in depth. Three floor plans are offered, ranging from 2,491 square feet to 2,710 square feet. These plans offer up to six bedrooms and 3.5 bathrooms and will be available in the Farmhouse and Craftsman architectural styles.

70 Motor court cluster single family detached homes – These three-story detached homes offer four floor plans ranging from 1,541 square feet to 2,159 square feet. These plans offer up to 4 bedrooms and 3 bathrooms and will be available in the Farmhouse and Craftsman architectural styles.

Town Homes:

98 “Loft Split” traditional row town homes – These three-story town homes offer four distinct floor plans ranging from 1,486 square feet to 2,089 square feet within 6-plex and 7-plex building configurations. These plans offer up to 4 bedrooms and 3.5 bathrooms and will be available in the Contemporary Agrarian and Classic Agrarian architectural styles.

80 “P9 Cluster” motor court style town homes – These three-story town homes offer five distinct floor plans ranging from 1,582 square feet to 2,193 square feet and up to 4 bedrooms and 3 bathrooms designed in a Classic Agrarian style.

90 “Flats style” town homes – These three-story buildings offer four distinct floor plans ranging from 1,445 square feet to 2,193 square feet and up to 3 bedrooms and 3.5 bathrooms. This product offers all living space on a single floor or two floors. The buildings are arranged in a 6-plex designed in the Contemporary Agrarian style.

The Supplemental Environmental Impact Report (SEIR)

The draft SEIR for this project was prepared by Helix Environmental Planning and then reviewed by City staff. Of the issues analyzed, the only new potentially significant impacts resulting from this project would include impacts related to air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology/water quality, noise, and transportation/traffic, and hazardous materials. The SEIR concludes that all of the project’s potentially significant impacts would be mitigated to a less than significant level by mitigation measures imposed therein, except for discrete impacts involving off-site hazardous materials and transportation and traffic.

Table S-1 *Summary of Significant Effects*, discusses potentially significant impacts and notes mitigation measures that have already been accounted for in the original Dumbarton TOD EIR, as well as new, project-specific mitigation measures developed for Gateway Station West. The following is a synopsis of the new mitigation measures.

***Air Quality***

Impact: Construction-period project emissions would exceed the Bay Area Air Quality Management District’s (BAAQMD) significance threshold for NOx. Mitigation Measure: Prior to issuance of any Grading Permit, the Public Works Director and the Building Official shall confirm that the Grading Plan, Building Plans, and specifications stipulate that all diesel-powered off-road equipment used during the grading phase shall meet Tier 4 final off-road emission standards. This mitigation measure reduces all of the project’s air quality impacts to a less than significant level.

### ***Biological Resources***

Impact: Potentially significant impacts may occur to habitats regulated by the California Department of Fish and Wildlife (CDFW) pursuant to Section 1600 *et seq.* of the California Fish and Game Code. Mitigation Measure: A Streambed Alteration Agreement shall be obtained for impacts to habitats regulated by CDFW pursuant to section 1600 *et seq.* of the California Fish and Game Code.

Impact: In order to adequately implement the on-site open space preserve area, a management plan must be developed to monitor the progress of any on-site wetland mitigation and associated biological values. Mitigation Measure: The open space area shall be set aside in perpetuity, either through deed restrictions or conservation easements. Because the open space area contains waters under jurisdiction of the United States Army Corps of Engineers (USACE) and Regional Water Quality Control Board (RWQCB), and potentially suitable habitat for species regulated by the CDFW, the plan shall be developed in coordination with these agencies. The mitigation measures proposed in the SEIR reduce all of the project's impacts on biological resources to a less than significant level.

### ***Cultural Resources***

Although there are no known culturally significant resources on site and their discovery is unlikely, there is always the potential for the existence of buried archaeological materials within the project area and associated off-site improvements. If previously unidentified resources are discovered during construction, these impacts could be significant. The mitigation measures proposed in the SEIR reduce all of the project's impacts on cultural resources to a less than significant level.

### ***Geology and Soils***

Impact: Potentially significant geologic hazards associated with seismic ground shaking, liquefaction and related effects, manufactured slope instability, geologic/soil instability, shallow bedrock groundwater, and expansive soils may be associated with the project. Mitigation Measure: A site-specific geotechnical investigation shall be conducted by a qualified engineer or engineering geologist to verify that the final project plans and/or construction operations incorporate applicable regulatory/industry requirements, recommendations contained within the project geotechnical investigations, plan review, and field observations/testing. This mitigation measure reduces all of the project's impacts on geology and soils to a less than significant level.

### ***Hazardous Materials***

Impact: Proposed project site development could result in disturbances of soils or demolition of structures that could potentially release contaminants, as well as impacting existing groundwater monitoring wells (for an off-site remediation effort). Mitigation Measure 1: A qualified hazardous materials specialist shall review final project grading and development plans prior to approval to verify related conditions and assumptions in the project Phase I and Phase II Environmental Site Assessments or to identify modified and/or additional requirements. Mitigation Measure 2: After completion of final project grading and development plans, but prior to issuance of grading or building permits, a Hazardous Materials Remediation Plan (HMRP) shall be prepared by a qualified hazardous materials specialist. Mitigation Measure 3: All project dewatering operations, subsurface activities related to on-site remediation of liquefaction hazards and other pertinent activities, shall confirm with application related

requirements in the ACWD Groundwater Protection Act. These mitigation measures reduce all of the project's impacts relating to hazards and hazardous materials to a less than significant level except for impacts relating to offsite hazardous materials outside the control of the project applicant.

### *Hydrology/Water Quality*

Prior to mitigation, implementation of the proposed project would result in significant potential impacts to local groundwater resources associated with the use of subsurface measures to address identified liquefaction hazards (e.g., the installation of subdrains or piles, and implementation of efforts such as soil vibrocompaction, grouting and deep mixing), as well as water quality concerns related to the discharge of extracted groundwater (if required). Mitigation Measure 1: All project dewatering operations, subsurface activities related to on-site remediation of liquefaction hazards (e.g., the installation of subdrains or piles, and implementation of efforts such as soil vibrocompaction, grouting and deep mixing), and other pertinent activities, shall conform with applicable related requirements in the ACWD Groundwater Protection Act (Ordinance No. 2010 01). Specifically, the project applicant (or a designated representative of the applicant) shall provide written verification to the City that all applicable requirements related to dewatering operations and subsurface activities (as described) have been implemented to the satisfaction of the ACWD. Mitigation Measure 2: All project-related groundwater extraction disposal operations shall conform to applicable waste discharge requirements issued by the RWQCB for disposal of extracted groundwater (if such waste discharge requirements are issued by the RWQCB). Specifically, the project applicant (or a designated representative of the applicant) shall consult with the RWQCB prior to implementing on-site dewatering activities to determine if such waste discharge requirements are required, and shall provide written verification to the City that either: (1) no waste discharge requirements related to project dewatering are required by the RWQCB; or (2) all applicable requirements related to dewatering operations have been implemented to the satisfaction of the RWQCB. These mitigation measures reduce all of the project's impacts related to hydrology and water quality to a less than significant level.

### *Noise*

Impact: Location of ground-mounted heating, ventilation and air conditioning equipment (HVAC) within 25 feet of adjacent residential property lines could result in a potentially significant direct impact. Additionally, implementation of the proposed project would result in cumulative 2035 traffic noise levels along Enterprise Drive between Hickory Street and Willow Street contributing to a significant cumulative impact at a representative distance of 75 feet from the roadway. Mitigation Measure 1: For residences located within 25 feet of ground-mounted HVAC equipment, attenuation of exterior HVAC noise levels to 45Aweighted decibels equivalent sound levels shall be ensured prior to issuance of a Certificate of Occupancy. Mitigation Measure 2: Prior to the issuance of building permits, the project applicant shall coordinate with the City's Public Works Director to change the posted speed limit along Enterprise Drive (between Hickory Street and Willow Street) to 25 mph. Mitigation Measure 3: Prior to the approval of building permits for residences along Enterprise Drive between Hickory Street and Willow Street, a site-specific acoustic analysis shall be conducted to ensure exterior and interior sound levels are equal to or less than the applicable allowable limits. These mitigation measures reduce all of the project's impacts on noise to a less than significant level.

### *Transportation/Traffic*

Impact: The proposed project would increase traffic levels and would have a direct significant impact on the level of service at four intersections within the study area for the existing plus project condition, and would have a significant impact on the level of service at 10 future 2035 plus project (cumulative) scenarios.

The proposed mitigation measures will reduce all of the project's potentially significant impacts on transportation and traffic to a less than significant level except for direct impacts at the Cedar Boulevard/Thornton Avenue, and cumulative impacts on SR 84 Eastbound Ramps/Thornton Avenue, Cherry Street/Thornton Avenue, Newark Boulevard/Thornton Avenue, Cedar Boulevard/Thornton Avenue, and Cherry Street/Central Avenue. No feasible mitigation is available for these intersections, and therefore the project's impacts to the same will be significant and unavoidable.

The review period for the SEIR ended on September 16, 2015. During the review period, the City received four comment letters from public agencies and the general public. Letters were received from the California Department of Transportation, the Alameda County Water District, Cargill, Inc., and Ashland, Inc. These letters, and the City's full and complete responses to the same, are part of the attached Final SEIR.

The attached Findings of Fact and Statement of Overriding Considerations document key findings, including the City's independent determination that all potential significant impacts other than impacts relating to offsite hazardous materials and transportation and traffic can and will be mitigated to a less than significant level, and list project benefits that override the significant and unavoidable impacts relating to offsite hazardous materials and transportation and traffic described in the SEIR, allowing approval of the project despite the existence of these impacts.

### **Attachments**

**Action** – It is recommended that the Planning Commission: (1) Approve a resolution rescinding the December 8, 2015 approval of Gateway Station West, a 589-unit residential project within the Dumbarton Transit-Oriented Development Specific Plan area located at the western edge of the City, including all associated resolutions and motions, (2) Approve a resolution making certain findings and recommending that the City Council certify a Supplemental Environmental Impact Report (E-14-46) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development; (3) Approve a resolution recommending rezoning (RZ-14-48) an approximately 41-acre area (APN 537-852-7) from MT-1 (High Technology Park District) to MDR-FBC (Medium Density Residential – Form Based Codes) and HDR-FBC (High Density Residential – Form Based Codes); (4) Approve a resolution recommending that the City Council approve P-14-49, a planned unit development and U-14-50, a conditional use permit, for a for a 589-unit residential project (Gateway Station West) located within the Dumbarton Transit Oriented Development Specific Plan area at the western edge of the City of Newark; (5) By motion, recommend that the City Council approve TM-14-47, Vesting Tentative Map 8099, to construct approximately 589 residential units; and (6) By motion, recommend that the City Council approve ASR-14-51, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 46

(Rres)

RESOLUTION NO.

RESOLUTION RESCINDING THE DECEMBER 8, 2015 APPROVAL OF GATEWAY STATION WEST, A 589-UNIT RESIDENTIAL PROJECT WITHIN THE DUMBARTON TRANSIT ORIENTED DEVELOPMENT SPECIFIC PLAN AREA LOCATED AT THE WESTERN EDGE OF THE CITY, INCLUDING ALL ASSOCIATED RESOLUTIONS AND MOTIONS

WHEREAS, Integral Communities, has filed with the Planning Commission of the City of Newark an application for a 589-unit residential project within the Dumbarton Transit Oriented Development Specific Plan area located at the western edge of the City, including all associated resolutions and motions ; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Tri-City Voice on November 24, 2015, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on December 8, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

WHEREAS, at the December 8, 2015 Planning Commission meeting, the Supplemental Environmental Impact Report did not include a finding of fact and a Statement of Overriding Considerations pursuant to CEQA Guidelines Sections 15091 and 15126.6. As such, the approval was based on incomplete information and therefore should be rescinded.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby rescinds the December 8, 2015 approval of Gateway Station West, a 589-unit residential project within the Dumbarton Transit Oriented Development Specific Plan Area located at the western edge of the City, with the following conditions:

- a. Planning Commission Resolution Nos. 1918, 1919, and 1920 are hereby rescinded.
- b. The motion to recommend City Council approval of TM-14-47, Vesting Tentative Map 8099, to construct approximately 589 residential units, is hereby rescinded.
- c. The motion to approve ASR-14-51, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 46, is hereby rescinded.

This Resolution was introduced at the Planning Commission's February 2, 2016 meeting by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and passed as follows:

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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JEFF AGUILAR, Chairperson



RESOLUTION NO.

RESOLUTION OF THE CITY OF NEWARK PLANNING COMMISSION MAKING CERTAIN FINDINGS AND RECOMMENDING THAT THE CITY COUNCIL CERTIFY A SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR A ZONING AMENDMENT AND OTHER ENTITLEMENTS ALLOWING DEVELOPMENT OF A TOTAL OF 589 SINGLE- AND MULTI-FAMILY RESIDENTIAL UNITS (GATEWAY STATION WEST) ON APPROXIMATELY 41 ACRES (537-0852-009; 537-0852-010; AND 537-0852-011) AND APPROXIMATELY 13.5 ACRES OF DESIGNATED OPEN SPACE WITHIN THE DUMBARTON TRANSIT ORIENTED DEVELOPMENT SPECIFIC PLAN

WHEREAS, the City of Newark caused an Environmental Impact Report (State Clearinghouse No. 2010042012) to be prepared to assess the potential environmental impacts of the proposed Dumbarton Transit Oriented Development Specific Plan, and

WHEREAS, the Environmental Impact Report consists of a Draft Environmental Impact Report document and a Final Environmental Impact Report document as well as the technical appendices, and all comments received by the City of Newark regarding the Draft Environmental Impact Report during the mandatory public review period and responses to those comments; and

WHEREAS, the Planning Commission held a duly noticed public hearing on August 23, 2011, and recommended that the City Council certify the Environmental Impact Report (State Clearinghouse Number 2010042012) for the Dumbarton Transit Oriented Development Specific Plan; and

WHEREAS, the City Council held a duly noticed public hearing on September 8, 2011, and certified the Environmental Impact Report (State Clearinghouse Number 2010042012) for the Dumbarton Transit Oriented Development Specific Plan after finding it complete and adequate pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS, the Gateway Station West Project ("Project"), which is located within the Dumbarton Transit Oriented Development Specific Plan, consists of the construction of 321 single family units and 268 multi-family units on approximately 41 acres (APN No.'s 537-0852-009; 537-0852-010; and 537-0852-011) and approximately 13.5 acres of designated Open Space; and

WHEREAS, the entitlements requested include Vesting Tentative Map 8099 (TM-14-47), an amendment to Title 17 (Zoning) of the Newark Municipal Code and the Official Zoning Map (RZ-14-48), a planned development permit, conditional use permit, and an Architectural and Site Plan Review; and

WHEREAS, pursuant to the requirements of the CEQA, a Supplemental Environmental Impact Report (SEIR) has been prepared for the Project, pursuant to Sections 15163 and 15168(c)

of the State CEQA Guidelines, to analyze and mitigate the Project's potentially significant environmental impacts; and

WHEREAS, through the SEIR, it has been determined that the Project's potentially significant environmental impacts specifically relate to impacts associated with air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology/water quality, noise, and transportation/traffic; and

WHEREAS, the City has prepared Findings of Fact and Statement of Overriding Considerations that address the project's significant impacts and represent the City's independent judgment regarding the same. The Findings of Fact and Statement of Overriding Considerations attached hereto as Exhibit "A" and are hereby incorporated herein by reference, and;

WHEREAS, with the exception of certain impacts involving hazardous materials and transportation/traffic, pursuant to State CEQA Guidelines Sections 15091(a)(1) and 15092(b), the City finds that these potentially significant impacts can be mitigated to less than significant as shown in Table S-1, *Summary of Significant Effects*, of the SEIR and Section IV(A) of the Findings of Fact, and;

WHEREAS, the City has implemented all feasible mitigation measures for all potentially significant impacts, but as stated in Section IV(B) of the Findings of Fact, even after the implementation of all feasible mitigation measures, certain impacts involving hazardous materials and transportation/traffic will remain significant and unavoidable.

WHEREAS, pursuant to PRC Section 21081(b) and State CEQA Guidelines Section 15093, the City has balanced the benefits of the project against its significant and unavoidable adverse impacts related to hazardous materials and transportation/traffic, and for the specific overriding economic, legal, social, technological, and/or other benefits associated with the proposed project as stated in the City's Statement of Overriding Considerations (Section V of the attached Findings of Fact), the City finds and declares that the project's benefits outweigh its significant and unavoidable impacts.

WHEREAS, a Notice of Preparation (NOP), was along with copies of the project files, sent to local agencies concerned with the Project and then posted with the Office of the Alameda County Clerk on August 6, 2014, and a 45 -day public review period for the SEIR was established beginning on August 3, 2015 and copies of the SEIR were transmitted to the State Clearinghouse (SCH#2014-08-2022); and

WHEREAS, four comment letters from public agencies and the general public: the California Department of Transportation, the Alameda County Water District, Cargill, Inc. and Ashland, Inc., have been received; and

WHEREAS, on February 2, 2016, the Planning Commission of the City of Newark conducted a duly noticed public hearing to consider the SEIR for the proposed Project, considered all public testimony, written and oral, presented at the public hearing, and received and considered the written information and recommendation of the staff report for the February 2, 2016 meeting related to the proposed Project, and;

WHEREAS, the Planning Commission of the City of Newark recommends that the City Council certify the SEIR for Vesting Tentative Map 8099 (TM-14-47), the amendment to Title 17 (Zoning) of the Newark Municipal Code and the Official Zoning Map (RZ-14-48), and the associated planned development permit, conditional use permit, and Architectural and Site Plan Review, and;

NOW, THEREFORE, the Planning Commission finds and resolves the following:

1. The foregoing recitals are true and correct and are hereby incorporated into these findings by this reference.

2. The SEIR was released for public review and, with the exception of certain impacts involving hazardous materials and transportation/traffic, mitigation measures contained within the same would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur.

3. The Planning Commission has considered and evaluated all written and oral staff reports and comments received from persons who have reviewed the SEIR, the comments submitted on the SEIR, the responses to those comments, the public testimony and such other matters as are reflected in the record of the public hearing on the Project and the SEIR.

4. The SEIR, all documents referenced in the same, and the record of proceedings on which the Planning Commission's decision is based are located at City Hall for the City of Newark, located at 37101 Newark Blvd, California, and are available for public review.

5. The Planning Commission hereby makes, adopts, and incorporates herein as its "findings of fact" regarding the potential environmental impacts of the Project, the analysis and conclusions set forth in the SEIR (including, without limitation, the mitigation measures therein set forth) and in the Findings of Fact and Statement of Overriding Considerations Regarding the Supplemental Environmental Impact Report for the Gateway Station West Project (SCH #2014082022), attached hereto as Exhibit "A".

6. The Planning Commission finds that for each of the significant impacts which are subject to a finding under PRC Section 21081(a)(3), that each of the social, economic, and environmental benefits of the Project, independent of the other benefits, as stated in the attached Statement of Overriding Considerations (Section V of the Findings of Fact and Statement of Overriding Considerations), outweigh the potential significant and unavoidable adverse impacts – specifically, those impacts involving hazards and transportation/traffic identified in Section IV(B) of the attached Findings of Fact and – and render acceptable each and every one of the project's significant and unavoidable adverse environmental impacts.

7. The City Planning Commission recommends that the City Council adopt the Findings of Fact and Statement of Overriding Considerations attached hereto as Exhibit A pursuant to State CEQA Guidelines Sections 15091 through 15093 and 15126.6

8. A Mitigation Monitoring and Reporting Program ("MMRP") for the Project has been prepared in accordance with Section 21081.6 of CEQA, and the Planning Commission recommends that the City Council adopt the MMRP, which is attached to the FSEIR (Volume 1, Section E) and incorporated herein by reference.

9. Based on the evidence and oral and written testimony presented at public hearings, and based on all the information contained in the Community Development Department's files on the project, including, but not limited to, the SEIR, the Findings of Fact and Statement of Overriding Considerations, and the City's staff report, the Planning Commission finds that:

- a. The SEIR was prepared in compliance with CEQA and State CEQA Guidelines;
- b. The Planning Commission has reviewed and considered the information contained in the SEIR prior to approving the project;
- c. The SEIR adequately describes the project, its environmental impacts, reasonable alternatives and appropriate mitigation measures;
- d. The SEIR reflects the independent judgment and analysis of the City.

10. Based upon all of the evidence presented and the above findings, the Planning Commission recommends that the City Council of the City of Newark certify the Supplemental Environmental Impact Report for the Project with Errata and Responses to Comments and adopt the attached (a) Findings of Fact and Statement of Overriding Considerations, and (b) the Mitigation Monitoring and Reporting Program.

The resolution was introduced at the Planning Commission's February 2, 2016 meeting by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and passed as follows

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
TERRENCE GRINDALL, Secretary

\_\_\_\_\_  
JEFF AGUILAR, Chairperson

**GATEWAY STATION WEST**

**SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT  
(State Clearinghouse No. 2014082022)**

**FINDINGS OF FACT AND  
STATEMENT OF OVERRIDING CONSIDERATIONS**

*Prepared By:*  
**HELIX Environmental Planning, Inc.**  
11 Natoma Street, Suite 155  
Folsom, CA 95630

**December 2015**

**EXHIBIT** A

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## **I. INTRODUCTION**

The following Findings of Fact and Statement of Overriding Considerations are made for the Gateway Station West Project (project) in the City of Newark (City). The environmental effects of the project are addressed in the Draft and Final Supplemental Environmental Impact Reports (SEIR), State Clearinghouse (SCH) No. 2014082022 dated August and December 2015, respectively, which are incorporated by reference herein.

### **A. Findings of Fact and Statement of Overriding Considerations**

The California Environmental Quality Act (CEQA), Public Resources Code (PRC) Section 21081, and the State CEQA Guidelines, 14 California Code of Regulations. Section 15091 (collectively, CEQA) require that a public agency consider the environmental impacts of a project before a project is approved and make specific findings. State CEQA Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - 1. Changes 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 SEIR
  - 2. Such 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 or should be adopted by such other agency.
  - 3. Specific 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 PEIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a) (2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a) (3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant

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environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

State CEQA Guidelines Section 15093 further provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final SEIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final SEIR and/or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

As required by CEQA, the City, in adopting these findings, must also adopt a Mitigation Monitoring and Reporting Program (MMRP) for the project. The project’s MMRP is contained in the project’s Final SEIR. It is incorporated by reference as a part of these findings, and it meets the requirements of Section 15097 of the State CEQA Guidelines by providing the implementation and monitoring of measures intended to mitigate the potentially significant effects of the project.

Whenever these findings specifically refer to and adopt a mitigation measure that will avoid or mitigate a potentially significant impact, that specific mitigation measure is hereby made a Condition of Approval of the project.

Having received, reviewed, and considered the Final SEIR, as well as all other information in the record of proceedings on this matter, the following Findings of Fact (Findings) are made, and a Statement of Overriding Considerations (Statement) is adopted by the City in its capacity as the CEQA Lead Agency. These Findings and Statement set forth the environmental basis for current and subsequent discretionary actions to be undertaken by the City and responsible agencies for the implementation of the project.



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## **B. Environmental Review Process**

In accordance with the requirements of CEQA and the State CEQA Guidelines, a Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (Draft SEIR) was filed with the State Clearinghouse (SCH) Office of Planning and Research (OPR) on August 7, 2014. The NOP was distributed to public agencies and interested parties for a 45-day public review period, which extended from August 8 through September 9, 2014.

A Notice of Completion (NOC) of the Draft SEIR was filed with the SCH OPR on July 30, 2015. The Draft SEIR was circulated for a 45-day public review period, which extended from August 3 through September 16, 2015. During this public review period, the City received written comments on the Draft SEIR. Section 15088 of the State CEQA Guidelines requires that the lead agency responsible for the preparation of an EIR evaluate comments on environmental issues received from parties who reviewed the Draft SEIR and prepare a written response addressing each of the comments. A Final SEIR was prepared for the project, which incorporates all of the environmental information and analysis prepared for the project, including comments on the information and analysis contained in the Draft SEIR and responses by the City to those comments.

Pursuant to Section 15132 of the State CEQA Guidelines, the Final SEIR consists of the following:

- a) The Draft SEIR, including all of its appendices.
- b) A list of persons, organizations, and public agencies commenting on the Draft SEIR.
- c) Copies of all letters received by the City during the Draft SEIR public review period and responses to significant environmental points concerning the Draft SEIR that were raised during the review and consultation process.
- d) Any other information added by the lead agency.

## **C. CEQA Finding of Independent Judgement**

The City is the lead agency with respect to all projects occurring within the Dumbarton TOD Specific Plan pursuant to the Section 15367 of the State CEQA Guidelines. As noted above, Section 15091 of the State CEQA Guidelines requires that the lead agency prepare written findings for identified significant impacts, accompanied by a brief explanation for the rationale for each finding. The Final SEIR for the project identified potentially significant effects that could result from project implementation. However, the City finds that the inclusion of certain mitigation measures as part of the project approval will reduce most, but not all, of those effects to less than significant levels. Those impacts that are not reduced to less than significant levels are overridden due to specific project benefits identified in a Statement of Overriding Considerations provided below in Section 7.0.

In accordance with CEQA and the State CEQA Guidelines, the City adopts these findings as part of its approval of the project. Pursuant to Section 21082.1(c) (3) of the Public Resources

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Code, the City also finds that the Final SEIR reflects the City's independent judgment as the CEQA lead agency for the project.

**D. Administrative Record**

The record, upon which all findings and determinations related to the approval of the project are based, includes the following:

- The SEIR and all documents referenced in or relied upon by the SEIR.
- All prior and present information (including written evidence and testimony) provided by City staff to the Planning Commission and City Council relating to the SEIR, the approvals, and the project.
- All prior and present information (including written evidence and testimony) presented to the Planning Commission and City Council by the project sponsor and consultants.
- All final applications, letters, testimony, exhibits, and presentations presented by the project sponsor and consultants to the City in connection with the project.
- All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the project and the SEIR.
- For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation the general plan, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
- The MMRP for the project.
- All other documents composing the record pursuant to Public Resources Code section 21167.6(e).

**E. Custodian and Location of Records**

The documents and other materials which constitute the administrative record for the City's actions are located at the Newark Community Development Department, 37101 Newark Boulevard, Newark, CA 94560. The City's Community Development Department is the custodian of the administrative record for the project. Copies of these documents, which constitute the Record of Proceedings, are and at all relevant times have been and will be available upon request at the office of the City's Community Development Department. The Draft SEIR also was posted on the City's website at:

<http://www.newark.org/departments/planning-and-economic-development/projects-under-review/>.

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The contact for these materials is:

Terrence Grindall, Assistant City Manager  
City of Newark Community Development Department  
37101 Newark Boulevard  
Newark, CA 94560  
Phone: (510) 578-4330  
Email: TERRENCE.GRINDALL@newark.org

This information is provided in compliance with PRC Section 21081.6(a) (2) and Guidelines Section 15091(e).

## **II. PROJECT SUMMARY**

### **A. Project Location**

The project site is situated within the Dumbarton TOD Specific Plan area at the western edge of the City of Newark (City) in southwestern Alameda County. The project site is located at the southwest corner of the intersection of Hickory Street and Enterprise Drive (formerly Wells Avenue), and is bounded by vacant industrial land on the north, Hickory Street on the east, the Plummer Creek Wetland Mitigation Bank on the south, and solar salt ponds on the west. Enterprise Drive terminates near the northeast corner of the property. Off-site improvements may take place within portions of the adjacent or nearby Hickory Street, Enterprise Drive and 'A' Avenue right-of-way (ROW) corridors, as well as at a drainage culvert near the southwestern corner of the property.

### **B. Project Background**

On September 8, 2011, the Newark City Council certified the Final Environmental Impact Report (FEIR) and adopted a General Plan Amendment (GPA) for the Dumbarton TOD Specific Plan. Because the proposed project falls within the Dumbarton TOD Specific Plan, it is subject to the Specific Plan Program EIR, which serves as the foundation document for subsequent projects under the program. The project is located within the southwest portion of the Specific Plan area; therefore an SEIR containing a project-level analysis was prepared for the project.

### **C. Project Description**

The proposed project consists of a residential development consisting of 589 residential units, parks, and associated infrastructure. A total of 7.55 acres located in the southwest corner of the site are proposed for open space.

The residential development would include 321 single-family homes, 30 townhome structures with a total of 188 units, and 8 nine-plex and 2 four-plex structures with a total of 80 units. The architectural styles of the single-family homes and townhomes would be Farmhouse, Craftsman and Agrarian, consistent with the Dumbarton TOD Specific Plan form-based code. No project structures would exceed three stories in height. Project parking associated with these homes would include 1,178 off-street covered spots (two per unit for single- and multi-family

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residences) and an additional 271 total on-site street spots, including 12 handicap accessible spaces.

The project site generally would be accessed from Hickory Street. It also would be accessed via the future extension of 'A' Avenue between Hickory and Willow streets, as well as from Enterprise Drive east of Hickory Street. 'A' Avenue, 'B' Avenue, and 'C' Street would be 36-foot-wide arterial private roadways providing internal access for the project site. Twenty-foot-wide ancillary roadways and driveways would intersect these main roadways, and provide internal circulation for the villages. All roadways on the project site would provide the dimensions necessary for fire truck access.

The project would include walkways and sidewalks throughout the site, providing pedestrian access between homes and park areas within the site, as well as connecting to off-site areas. In addition, a section of trail under the proposed project design is a "candidate for status" as part of the San Francisco Bay Trail. The candidate trail would follow portions of the southern and western perimeter of the project site, adjacent to the Plummer Creek Wetland Mitigation Bank on the south, and abutting the western edge of proposed project residential and park development. The candidate trail would eventually provide connectivity to future Specific Plan developments off-site to the north (which is planned to include commercial/retail and the transit station) and to the east (the Torian Project site). The candidate trail would be 20 feet wide and multi-purpose in nature, and include parallel but separate bicycle and pedestrian trails with benches and landscaping. Barriers would be constructed along the southern and western edges of the candidate trail where they abut proposed project development, and adjacent to the solar salt (concentrator) basins.

Four parks providing a mix of active and passive recreational areas would provide a total of approximately 2.24 acres of park area in the proposed project, and would variously include such features as landscaping (including trees), turf areas, outdoor workout equipment/exercise stations, tot lot/shaded play area with a rubberized play structure, a barbeque area, swings, picnic tables, benches, basketball hoops and a sand volleyball court. Trees planted along the perimeters of the parks would provide some screening between the parks and the adjacent homes. An additional 5.78 acres of paseos (walkways) and associated green areas are proposed on 34 separate parcels throughout the project site. These areas would be landscaped and maintained as community use areas.

A total of 7.55 acres located in the southwest corner of the project site is proposed as permanent open space and would be preserved and maintained as native habitat. The area is characterized by seasonal wetland, with upland components within and around the perimeter of the wetland.

Infrastructure would include drainage, potable water lines and sewer facilities. A Low Impact Development (LID) storm drain system comprised of bio-retention areas, curbs and gutters along the roadways, and underground storm drain pipes would be installed as part of the project. The existing culvert near the southwestern site boundary would be replaced with a new box culvert (along with related facilities such as headwalls and guardrails, and implementing applicable recontouring/restoration). The Alameda County Water District (ACWD) would supply potable water to the project. Water service to the project site would connect to future water lines in Hickory Street, and would be from 10-inch-diameter water lines installed along 'P' Way,

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'A' Avenue, and 'C' Street in accordance with ACWD Standards, and then distributed via smaller 8-inch lines throughout the project.

The ACWD indicated in the adopted Water Supply Assessment (WSA) for the Dumbarton TOD Specific Plan PEIR that demand associated with the Specific Plan was consistent with its planning assumptions and is included in its forecast and water supply planning (ACWD 2010). The Union Sanitary District would provide sewer service to the project. Eight-inch diameter sanitary sewer lines would be installed in the main and ancillary roadways throughout the project, and wastewater would gravity-flow off site to the east via a proposed sewer line in 'A' Avenue; continuing east to connect to an existing 36-inch gravity sewer main in Willow Street, to the Newark Pump Station and ultimately to the Alvarado Treatment Plant. Existing access and utility (e.g., electrical, sewer) easements on the project site would remain and are incorporated into the project Tentative Map.

The conceptual landscaping design concentrates plantings along the perimeter of the project site, along village roadways and parking areas, and in active and passive park areas. Open space in the southwestern corner of the project site would not be planted. The project landscaping plan (excluding turf) includes 75 percent California-native, Mediterranean or climate-adapted plants, ornamental trees, shrubs, and groundcover. No plants listed as invasive by the California Invasive Plant Council (Cal-IPC) would be used, and irrigation practices would be weather-based and include moisture and/or rain sensor shutoff mechanisms. No more than 25 percent of the total landscape area would be irrigated turf (not including sport and multiple use fields).

If the proposed project moves forward before the approved Torian and "SHH" projects within the Specific Plan, the project would construct off-site improvements along Hickory Street, Enterprise Drive and the 'A' Avenue extension. Hickory Street would be improved within existing right-of-way (ROW) for the northernmost approximately 715 linear feet to include travel lanes, curb and gutter, sidewalks and landscaping. An approximately 300-foot long portion of 'A' Avenue extending east from Hickory Street would be constructed as part of the proposed project if the project moves forward before Torian. Specific improvements are anticipated to include a 56-foot-wide ROW, with two 10-foot-wide travel lanes, two 8-foot-wide parking lanes, two 5-foot-wide sidewalks, and two 5-foot-wide landscape corridors; to be confirmed during final design. The proposed project could also implement improvements to Enterprise Drive within a proposed 90-foot-wide ROW corridor extending approximately 1,100 feet between Hickory and Willow streets; including a 12-foot-wide median, 5-foot-wide sidewalk and adjacent 6-foot-wide landscape corridor along the southern edge of the proposed Enterprise Drive ROW (with all of the noted improvements except the proposed 5-foot-wide sidewalk located within the existing 80-foot-wide Enterprise Drive ROW).

### **III. SUMMARY OF IMPACTS**

The SEIR evaluates potentially significant effects for the following environmental areas of potential concern: (1) aesthetics; (2) air quality; (3) biological resources; (4) cultural resources; (5) greenhouse gases; (6) hazards and hazardous materials; (7) hydrology and water quality; (8) noise; (9) transportation and traffic. The following environmental areas were found to have no effect or less than significant impacts in the Specific Plan PEIR, or project specific development would not result in significant issues, and were therefore not analyzed further in the Draft SEIR

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for the proposed project: (1) agriculture and forestry resources; (2) hazards – public and private airports; (3) hazards – wildland fires; (4) mineral resources; (5) population and housing; (6) public resources; (7) recreation; (8) utilities and service systems.

Of the nine environmental subject areas evaluated in the SEIR, the City concurs that the proposed project would result in less than significant impacts following mitigation for air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, and noise. Two potentially significant impacts related to hazards and hazardous materials would be mitigated to below a level of significance, whereas one impact related to the worst case scenario release of hazardous materials from existing off-site facilities would remain significant and not fully mitigated. Numerous potentially significant impacts related to transportation and traffic would be mitigated to below a level of significance while the level of service at certain intersections following project implementation, impacts related to the increased demand for public transit, and cumulative impacts at certain intersections and roadway segments would remain significant and unmitigated. For those areas in which environmental impacts would remain significant and unavoidable, even with the implementation of mitigation measures, overriding considerations exist that may make the impacts acceptable.

#### **IV. FINDINGS REGARDING IMPACTS**

The following discussion of significant impacts identified for the proposed project is organized below by finding:

- Potential environmental impacts that will be mitigated to below a level of significance
- Potential environmental impacts determined to be significant and unavoidable after mitigation.

##### **A. Potential Environmental Impacts that will be Mitigated to Below a Level of Significance**

Pursuant to State CEQA Guidelines Sections 15091(a) (1) and 15092(b), and to the extent reflected in the SEIR and the MMRP, the City finds that for each of the following significant effects as identified in the Final SEIR, changes or alterations (mitigation measures) have been required in, or incorporated into, the project which avoid or substantially lessen each of the significant environmental effects as identified in the Final SEIR. The following discussion addresses all potentially significant effects for which changes or alterations (mitigation measures) have been required in, or incorporated into, the project which avoid or substantially lessen each of the significant environmental effects as identified in the Final SEIR.

##### **1. Air Quality**

###### **Potential Impacts**

Construction of the proposed project could result in potentially significant air quality impacts related to daily threshold exceedances of NO<sub>x</sub> during construction activities. The grading phase of construction would result in maximum daily emissions for NO<sub>x</sub> that would exceed the Bay

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Area Air Quality Management District (BAAQMD) thresholds of significance for NO<sub>x</sub>. These impacts are considered potentially significant.

While the BAAQMD does not list thresholds of significance for fugitive dust, the project would utilize Best Management Practices (BMPs) and would implement measures from the Dumbarton TOD PEIR to reduce fugitive dust emissions.

### **Mitigation Measures**

Mitigation Measures (MMs) 4.2-1a and 4.2-1b from the Dumbarton Specific Plan TOD PEIR are relevant to the proposed project and were largely incorporated into project design. One element of MM 4.2-1a is an action to occur during construction that was not taken into account in the modeling assumptions used for assessing project-level emissions; that one element is restated below to ensure project compliance with the Specific Plan PEIR. The additional mitigation measure identified for air quality in the Specific Plan EIR (MM 4.2-2) is related to potential impacts from emissions at the Dumbarton Transit Station. Consistent with MM 4.2-2, a health risk analysis was completed for project-proposed residences within 1,000 feet of the future station, no additional mitigation is required for that issue.

**MM 4.2-1a:** Prior to issuance of any Grading Permit, the Public Works Director and the Building Official shall confirm that the Grading Plan, Building Plans, and specifications stipulate that, in compliance with the BAAQMD CEQA Air Quality Guidelines, the following basic construction mitigation measure shall be implemented for the Gateway Station West Project. 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. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

### **Project-Specific Mitigation Measure**

The following mitigation measure is prescribed to address construction-related NO<sub>x</sub> emissions:

**MM Air-1 Tier 4 Off-road Construction Equipment.** Prior to issuance of any Grading Permit, the Public Works Director and the Building Official shall confirm that the Grading Plan, Building Plans, and specifications stipulate that all diesel-powered off-road equipment used during the grading phase shall meet Tier 4 final off-road emissions standards. A copy of each unit's certified Tier specification shall be provided to the City Building Department at the time of mobilization of each applicable unit of equipment.

### **Rationale**

The project design incorporates several features consistent with mitigation measures required as part of the Dumbarton TOD Specific Plan PEIR, and control measures during project construction that would be implemented to be consistent with the Dumbarton TOD Specific Plan PEIR. Further, the project would be required to comply with BAAQMD rules and BMPs to reduce emissions. These project design features and measures, emissions of all criteria

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pollutants (but NO<sub>x</sub>) related to project construction would be below the BAAQMD significance threshold. While there are no significance thresholds for fugitive dust, MM 4.2-1a from the Specific Plan EIR would reduce potentially significant impacts to air quality to a less than significant level by providing a mechanism for corrective action regarding dust complaints during construction. Further, the project-specific MM Air-1 would address the potential exceedances of NO<sub>x</sub> by requiring that all diesel-powered off-road equipment used during the grading phase meet Tier 4 off-road emission standards, with specifications provided to the City Building Department. Implementation of MM Air-1 would result in NO<sub>x</sub> being reduced to 49 pounds per day (below the significance threshold).

The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts from air pollutant emissions during construction activities. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

## **2. Biological Resources**

### **Potential Impact – Special Status Plants**

Rare plant surveys conducted for the project resulted in negative findings for special status plants. Survey results are typically considered valid for two blooming seasons after the surveys are conducted. If development of the project site and off-site improvement areas commences prior to the end of summer 2017, no further mitigation measures are required for special-status plant species. If development of the site does not commence prior to the end of summer 2017, rare plant surveys should be re-conducted to verify presence/absence of special-status plant species prior to ground disturbance. Impacts to special status plants as a result of ground disturbance would be a potentially significant impact.

### **Mitigation Measure**

**MM BIO-1:** The results of rare plant surveys are typically considered valid for two blooming seasons after the surveys are conducted. If development of the site commences prior to the end of summer of 2017, no further mitigation measure is required for special-status plant species. If development of the site does not commence prior to the end of summer of 2017, rare plant surveys should be re-conducted to verify presence/absence of special-status plant species.

If special-status plants are found in the project site and/or off-site improvement areas, project development plans shall consider avoidance to the extent practicable. If avoidance is not practicable while otherwise obtaining the project's objectives, then other suitable measures and mitigation shall be implemented as detailed below. A mitigation compliance report shall be submitted to the City planning staff or staff biologist at least 30 days prior to ground disturbance. The compliance report shall detail the avoidance and other mitigation measures that have been implemented by the project. The City may



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approve grading/site disturbance in a quicker timeframe than 30 days if compliance with the mitigation measures can be verified by the City sooner than 30 days.

The following measures shall be implemented if special-status plants are found in the project area during subsequent survey(s) prior to site disturbance:

- Initially the feasibility of avoidance shall be evaluated as noted above.
- If avoidance is not feasible, a mitigation plan shall be developed in consultation with CDFW personnel if it is a state listed (i.e., protected pursuant to the CESA) or a CNPS List 1B or List 2 plant. If the plant is state listed, an incidental take permit (i.e., a 2081 Agreement) shall be acquired for the project from CDFW prior to any grading within the project area. A copy of the permit shall be provided to the appropriate department within the City prior to any grading within the project area. Any conditions for the project established by CDFW in the 2081 Agreement shall become conditions of the project also enforceable by the City.
- If the plant is federally listed (i.e., protected pursuant to FESA), the project sponsor shall formally notify the USFWS within five days of the finding. As required in-practice by the USFWS, an “incidental take” permit may be necessary from the USFWS for any proposed impacts on any federally listed plants found within the project site. A copy of this permit or a letter from the USFWS that otherwise states this agency is satisfied with the avoidance and/or mitigation measures shall also be provided to the appropriate department at the City prior to the time the project site can be graded.
- If a plant is found on the project site that is a CNPS List 1B or 2 species, and the species is not otherwise protected pursuant to state or federal regulations, prior to construction within the project area, a qualified botanist shall collect the seeds, propagules, and top soils, or other part of the plant that would ensure successful replanting of the population elsewhere. The seeds, propagules, or other plantable portion of all plants shall be collected at the appropriate time of the year. Half of the seeds and top soils collected shall be appropriately stored in long-term storage at a botanic garden or museum (for example, Rancho Santa Ana Botanic Garden). The other half of the seeds, propagules, or other plantable portion of all plants shall be planted at the appropriate time of year (late-fall months) in an area of the subject property or off-site, protected property that will not be impacted by the project (if the project has a designated off-site mitigation site for impacts on other special-status species, the plants can be seeded on the mitigation site). This area shall be fenced with permanent fencing (for example, chain link fencing) to ensure protection of the species. The applicant shall hire a qualified biologist to conduct annual monitoring surveys of the transplanted plant population for a five-year period and shall prepare annual monitoring reports reporting

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the success or failure of the transplanting effort. These reports shall be submitted to the City and appropriate resource agency (CDFW and/or USFWS) no later than December 1st of each monitoring year.

- If the seeding/transplanting effort fails, the stored seeds and top soils can be taken out of long-term storage and sown in another location (either onsite or offsite) deemed suitable by CDFW. This seeding effort shall then be monitored for an additional three-year period to ensure survivorship of the new population. Annual monitoring reports shall be submitted to the City for the three-year period.
- A CNDDDB form shall be filled out and submitted to CDFW for any special-status plant species identified within the project site. Any mitigation plan developed in consultation with CDFW shall be implemented prior to the initiation of grading or issuance of a development permit.
- In lieu of the above-prescribed mitigation, as allowed in writing by the City (for CEQA protected species only) and/or CDFW (for CEQA and/or state listed species), mitigation requirements may be satisfied via the purchase of qualified mitigation credits or the preservation of off-site habitat. If the species in question is federally listed, then USFWS would also have to agree in writing, typically through issuance of a Biological Opinion, that the purchase of qualified mitigation credits or the preservation of off-site habitat would constitute satisfactory mitigation.

### **Rationale**

The above mitigation measures will reduce potentially significant impacts to special status plants by requiring rare plant surveys to verify the presence/absence of special-status plant species if development of the project site or off-site improvement areas does not commence prior to the end of summer 2017. If special-status plants are found at that time, and the population is unable to be avoided, then the appropriate compensatory mitigation and preservation actions would be developed in consultation with the appropriate resource agency. The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to special-status plants. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

### **Potential Impact – Burrowing Owls**

The project could result in significant direct impacts to burrowing owl, if present on the project site or off-site improvement areas during construction. The project could result in indirect impacts to the species.

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## Mitigation Measure

Because the only evidence of burrowing owl on the project site and off-site improvement areas was signs of potential past use by a solitary winter migrant, no compensatory mitigation is triggered; however, additional pre-construction surveys are warranted. If burrowing owl pair(s) or resident burrowing owl is observed during any of the pre-construction surveys, avoidance and compensatory mitigation would be required, as described below. The project specific mitigation presented below reflects revisions to Specific Plan MM 4.3-3 for consistency with the 2012 CDFW guidelines for pre-construction surveys and to address potential impacts to burrowing owls in the project site. MM BIO-9 (listed under mitigation measures for impacts to waters of the U.S. would address indirect impacts to the owl.

**MM BIO-2:** Pre-construction surveys for western burrowing owl shall be conducted in accordance with the CDFW 2012 protocol by a qualified biologist prior to ground disturbance (including grading, clearing and grubbing, brush removal, or any other ground disturbance) as described below to ensure there are no impacts on burrowing owls as a result of the proposed project.

The initial survey shall be conducted in the 30-day period prior to ground disturbance associated with the project, but no less than 14 days prior to the initiation of ground disturbance. Western burrowing owl surveys shall be conducted from two hours before sunset to one hour after, or one hour before to two hours after sunrise. All burrowing owl sightings, occupied burrows, and burrows with owl sign (e.g., pellets, excrement, and molt feathers) shall be counted and mapped. Surveys shall be conducted by walking all suitable habitat on the entire project area and (where possible) in areas within 150 meters (approximately 500 feet) of the project impact zone. The 150-meter buffer zone is surveyed to identify burrows and owls outside of the project area which may be impacted by factors such as noise and vibration (heavy equipment) during project construction. Pedestrian survey transects shall be systematically spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines shall be no more than 20 meters (approximately 100 feet) and shall be reduced to account for differences in terrain, vegetation density, and ground surface visibility. If no suitable burrowing owl habitat is present, no additional surveys will be required. If suitable burrows are determined to be present on the site, a qualified biologist will visit the site an additional three times to investigate whether owls are present where they could be affected by the proposed activities. The final survey shall be conducted within the 24-hour period prior to the initiation of construction.

If burrowing owl is present during the non-breeding season (generally September 1 through January 31), a buffer of 50 meters (approximately 160 feet) shall be maintained around the occupied burrow(s), if practicable. If maintaining such a buffer is not feasible, then the buffer must be great enough to avoid injury or mortality of individual owls or the owls shall be passively relocated in coordination with CDFW. If burrowing owl is detected on the site during the breeding season (peak of the breeding season is April 15 through July 15), and

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appear to be engaged in nesting behavior, a fenced 250-foot buffer shall be required between the nest site(s) (i.e., the active burrow(s)) and any earth-moving activity or other disturbance in the project area. This 250-foot buffer could be decreased to 160 feet once it is determined by a qualified burrowing owl biologist that the young have fledged (that is, left the nest). Typically, the young fledge by August 31. This date may be earlier than August 31, or later, and would have to be determined by a qualified burrowing owl biologist.

If burrowing owl is found on the project site, a qualified biologist shall delineate the extent of burrowing owl habitat on the site and a Mitigation Plan shall be prepared in consultation with CDFW for review and approval by the City. The Mitigation Plan shall identify the mitigation site and any activities proposed to enhance the site, including the construction of artificial burrows and maintenance of California ground squirrel populations on the mitigation site. In addition, for each pair of burrowing owls found in the construction area, two artificial nesting burrows shall be created at the mitigation site. The Plan shall also include a description of monitoring and management methods proposed at the mitigation site. Monitoring and management of any lands identified for mitigation purposes shall be the responsibility of the applicant for at least five years. An annual report shall be prepared for submittal to CDFW and the City by December 31 of each monitoring year. Contingency measures for any anticipated problems shall be identified in the plan. Compensatory mitigation shall consist of providing 6.5 acres of replacement habitat which shall be protected in perpetuity per pair of burrowing owls, or unpaired resident bird. Such a set-aside would offset permanent impacts on burrowing owl habitat. The protected lands shall be adjacent to occupied burrowing owl habitat if possible, and at a location selected in consultation with CDFW. Land identified to offset impacts on burrowing owls shall be protected in perpetuity by a suitable property instrument (e.g., a conservation easement or fee title acquisition).

### **Rationale**

The above mitigation measures will reduce potentially significant impacts to burrowing owls by requiring pre-construction surveys to verify the presence/absence of the owl. If burrowing owls are found at that time, the appropriate buffer shall be established around the occupied area until the habitat is no longer occupied. If, following abandonment of the burrow by the owls, the habitat is unable to be avoided by the proposed project, then compensatory mitigation would be provided in consultation with CDFW. This mitigation is consistent with the Staff Report on Burrowing Owl Mitigation (CDFW 2012) which contains survey protocol, avoidance and compensatory measures deemed acceptable by CDFW. Mitigation measure MM BIO-9 involves establishing the open space area in a conservation easement, and implementing an associated management plan. It also requires that the Covenants, Conditions & Restrictions of the neighborhood prohibit the keeping of outside feline pets or feral cat stations to prevent the introduction of human-associated predators on the owl. The management plan would include restriction activities, inspection and monitoring requirements. These restrictions and requirements would reduce indirect impacts to the owl associated with introducing development near suitable habitat. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA

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Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to burrowing owls. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

### **Potential Impact – Northern Harrier and Other Nesting Raptors**

The project could result in significant direct impacts to northern harrier and other raptors, if using the project site, off-site improvement areas, or adjacent areas for nesting during construction. The project could result in indirect impacts to northern harrier and other nesting raptors.

### **Mitigation Measure**

The following avoidance and minimization measures shall be implemented prior to site disturbance to avoid impacts to nesting northern harriers and other raptors on the project area or immediately adjacent properties as required by MM 4.3-2 from the Specific Plan PEIR.

**MM BIO-3:** In order to avoid impacts to northern harrier or other nesting raptors, a nesting survey shall be conducted within the project site prior to commencing with earth-moving or construction work if this work would occur during the raptor nesting season (between February 1 and August 31).

The raptor nesting survey shall include examination of all trees on or within 300 feet of the entire project site, not just trees slated for removal, since ground vibrations and noise from earth-moving equipment can disturb nesting birds and potentially result in nest abandonment. Areas within 300 feet of the project site shall be surveyed on foot if accessible or from within the project site or publicly accessible areas by scanning the surrounding land with the aid of binoculars. Since northern harriers are ground nesting raptors, the nesting surveys will include systematic walking transects of accessible, suitable nesting habitat within 300 feet of the project site.

If nesting raptors are identified during the surveys, orange construction fence shall be installed to establish a 300-foot radius around the nest unless a qualified biologist determines that a lesser distance will adequately protect the nest (refer to discussion below for more detail). If the tree or nest is located off the project site, then the buffer shall be demarcated per the above where the buffer intersects the project site.

The size of the non-disturbance buffer may be altered if a qualified raptor biologist conducts behavioral observations and determines the nesting raptors are well acclimated to disturbance. If this occurs, the raptor biologist shall prescribe a modified buffer that allows sufficient room to prevent undue disturbance/harassment to nesting raptors. If the buffer is reduced, the qualified raptor biologist shall remain on site to monitor the raptors' behavior during heavy

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construction in order to ensure that the reduced buffer does not result in take of eggs or nestlings.

No construction or earth-moving activity shall occur within the established buffer until it is determined by a qualified raptor biologist that the young have fledged (that is, left the nest) and have attained sufficient flight skills to avoid project construction zones. This typically occurs by August 31. This date may be earlier or later, and shall be determined by a qualified raptor biologist. If a qualified biologist is not hired to monitor the nesting raptors then the full 300-foot buffer(s) shall be maintained in place from February 1 through the month of August. The buffer may be removed and work may proceed as otherwise planned within the buffer on September 1.

### **Rationale**

The above mitigation measures will reduce potentially significant impacts to nesting northern harrier and other raptors by requiring pre-construction surveys to verify the presence/absence of nesting raptors, if construction activities commence during the raptor nesting period. If nesting raptors are found at that time, the appropriate buffer shall be established around the occupied nest, until the nest is no longer occupied. Mitigation measure MM BIO-9 involves establishing the open space area in a conservation easement, and implementing an associated management plan. It also requires that the Covenants, Conditions & Restrictions of the neighborhood prohibit the keeping of outside feline pets or feral cat stations to prevent the introduction of human-associated predators on the owl. The management plan would include restriction activities, inspection and monitoring requirements. These restrictions and requirements would reduce indirect impacts to nesting raptors associated with introducing development near suitable habitat. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to nesting raptors. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

### **Potential Impact – Saltmarsh Common Yellowthroat and Other Nesting Passerines and Migratory Birds**

The project could result in significant direct impacts to saltmarsh common yellowthroat and other nesting passerines and migratory birds, if using the project site, off-site improvement areas, or adjacent areas for nesting during construction. Construction and operation of the project could also result in indirect impacts to protected birds.

### **Mitigation Measure**

The following avoidance and minimization measures shall be implemented prior to site disturbance to avoid impacts to saltmarsh common yellowthroat and other nesting passerines and migratory birds utilizing the project area or immediately adjacent properties, as required by MM 4.3-4 from the Specific Plan PEIR.

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**MM BIO-4:** To avoid impacts on nesting passerines and other migratory birds, a nesting survey shall be conducted in the project site and areas within 100 feet of the site prior to commencing initial earth-moving or construction work if this work would occur during the passerine nesting season (between March 1 and September 1). Areas within 100 feet of the project site shall be surveyed on foot if accessible or from within the project site or publicly accessible areas by scanning the surrounding land with the aid of binoculars.

The nesting surveys shall be completed approximately 15 days prior to commencing work. If special-status birds are identified nesting on or near the project site, a 100-foot radius around all identified active nests shall be demarcated with orange construction fencing to establish a non-disturbance buffer. If an active nest is found off site, the intersecting portion of the buffer that is on site shall be fenced. No construction or earth-moving activity shall occur within this 100-foot staked buffer until it is determined by a qualified biologist that the young have fledged (that is, left the nest) and have attained sufficient flight skills to avoid project construction zones.

If common (that is, not special-status) birds, for example, red-winged blackbird, are identified nesting on or adjacent to the project site, a non-disturbance buffer of 75 feet shall be established or as otherwise prescribed by a qualified biologist. The buffer shall be demarcated with orange construction fencing. Disturbance around an active nest shall be postponed until it is determined by the qualified biologist that the young have fledged and have attained sufficient flight skills to leave the area.

Typically, most birds in the region of the project site are expected to complete nesting by August 1. However, in the region many species can complete nesting by the end of June or in early to mid-July. Regardless, nesting buffers shall be maintained until August 1 unless a qualified biologist determines that the young have fledged and are independent of their nests at an earlier date. If buffers are removed prior to August 1, the biologist conducting the nesting surveys shall prepare a report that provides details about the nesting outcome and the removal of buffers. This report shall be submitted to the City project planner and CDFW prior to the time that buffers are removed if the date is before August 1.

Existing vegetation along the tops of the banks of the north/south drainage ditch through the open space area that provides potential nesting habitat for saltmarsh common yellowthroat and other nesting passerines, as determined by a qualified biologist, shall be protected from removal during site remediation activities.

### **Rationale**

The above mitigation measures will reduce potentially significant impacts to nesting saltmarsh common yellowthroat and other nesting passerines by requiring pre-construction surveys to verify the presence/absence of nesting raptors, if construction activities commence during the raptor nesting period. If nesting saltmarsh common yellowthroat or other nesting passerines are

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found at that time, the appropriate buffer shall be established around the occupied nest, until August 1, unless otherwise determined by a qualified biologist, and with prior notification to CDFW and the City. Mitigation measure MM BIO-9 involves establishing the open space area in a conservation easement, and implementing an associated management plan. It also requires that the Covenants, Conditions & Restrictions of the neighborhood prohibit the keeping of outside feline pets or feral cat stations to prevent the introduction of human-associated predators on nesting birds. The management plan would include restriction activities, inspection and monitoring requirements. These restrictions and requirements would reduce indirect impacts to protected nesting birds associated with introducing development near suitable habitat. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to protected nesting birds. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

### **Potential Impact – Waters of the U.S./State**

Impacts to waters of the U.S./State on the project site would result from the placement of fill into the seasonal wetlands, drainages, and the un-vegetated ponded depression to facilitate construction of the proposed project, as a result of the alteration of project site's drainage patterns, and the potential for input of pollutants into wetlands and other waters not directly impacted by project construction. All waters of the U.S. in the Hickory Street ROW and 'A' Avenue would be permanently impacted. Waters of the U.S. in the Culvert Replacement Site would be temporarily impacted from during the culvert replacement, but would be allowed to return to the previous habitat following construction. Impacts to waters of the U.S. would be potentially significant.

### **Mitigation Measure**

The project specific mitigation is presented below to meet the requirements of Specific Plan MM 4.3-6 regarding obtaining the appropriate permits and providing appropriate mitigation for impacts to waters of the U.S./State on the project site or off-site improvement areas.

**MM BIO-5:** A verification of/concurrence with the 2015 wetland delineation must be obtained from the USACE.

Authorization from the Corps and the RWQCB (for example, an Individual Permit and a 401 Water Quality Certification) shall be obtained as necessary/required by these agencies prior to filling any waters of the U.S./State on the project site off-site improvement areas.

Impacts shall also be minimized by the use of BMPs to protect preserved waters of the U.S./State and to ensure that water quality standards are not compromised in preserved wetlands and other waters within the watershed. These practices can include installing orange construction fencing buffers, straw wattles to keep fill from entering preserved/avoided wetlands and other waters, and other protective



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measures. During project construction, a biological monitor shall be on site to monitor the integrity of any preserved wetlands and other waters during mass grading or filling of the project site or off-site improvement areas.

For those wetland areas that are not avoided by project construction, compensatory mitigation shall be provided. As approved by the USACE, the project applicant may purchase mitigation credits from an approved mitigation bank or an approved in-lieu fee mitigation entity at a 1:1 ratio.

As an alternative to the purchase of credits in a mitigation bank, wetlands may be created on site and, if so, shall have an equal or higher functional value than those wetlands affected by the project (known as in-kind replacement). If wetlands cannot be created in-kind and on site, then other alternatives shall include off-site and/or out-of-kind mitigation. In any case, mitigation requirements for wetland areas that are not avoided shall be that all impacted wetlands are replaced at a minimum 1:1 ratio (for each square foot of impact, one square foot of wetland would be restored/created) or at a ratio determined by the USACE at the time permits are issued. Mitigation requirements will be based upon the existing conditions of the wetlands impacted. Where practicable, wetland plant/animal populations shall be relocated prior to disturbance to the impacted wetlands to any re-created wetlands. Topsoils shall also be removed from impacted wetlands if practicable, and placed into any re-created wetlands. These topsoils would contain a seed bank of the impacted plant species which would germinate with fall/winter hydration of the re-created wetlands.

If wetlands are restored/created, adequate compensation shall include creating wetlands at a suitable location that meet the following performance standards:

- The wetlands shall remain inundated or saturated for sufficient duration to support a predominance of hydrophytic vegetation.
- The wetlands shall exhibit plant species richness comparable to affected wetlands.
- The wetlands shall replace the lost wetlands at a minimum ratio of one acre created for each acre, or fraction thereof, permanently impacted.
- The developer shall provide for the protection of the mitigation areas in perpetuity either through a permanent protection device such as a restrictive covenant or conservation easement.
- The developer shall establish a five-year program to monitor the progress of any restored or created wetland mitigation, other than Mitigation Bank Credits, toward these standards. At the end of each monitoring year, an annual report shall be submitted to the City, the RWQCB, and the USACE. This report shall document the hydrological and vegetative condition of the mitigation wetlands, and shall recommend remedial measures as necessary to correct deficiencies.

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- The USACE and other regulatory agencies generally require that wetlands not impacted by the proposed project and any new wetlands created to mitigate project impacts be set aside in perpetuity, either through deed restrictions or conservation easements. See the avoidance and minimization measure regarding the open space area (MM BIO-9).

**MM BIO-9:** The open space area shall be set aside in perpetuity, either through deed restrictions or conservation easements. Because the open space area contains waters under jurisdiction of the USACE and RWQCB, and potentially suitable habitat for species regulated by and CDFW, the plan shall be developed in coordination with these agencies. If a perpetual deed restriction is used to preserve the open space the land owner and any assignees/transferees of the title of the property shall assume liability for the perpetual management of the preserved lands. The deed restriction shall provide the allowed and prohibited uses of the preserved site, and these uses shall be approved by the agencies. If a conservation easement is established, a non-wasting management endowment (non-wasting infers that principal may not be used to pay for management actions, only interest on the principal sum may be used) shall be established in concert with the grantee of the conservation easement and shall be large enough to pay for necessary management actions. In lieu of a management endowment, other financial assurances may be provided that otherwise are found acceptable by the USACE. An example of an alternative funding source would be via a Geologic Hazards Assessment District (GHAD). Home Owners' Associations and Landscape Lighting Districts are not suitable funding entities as funds collected via these entities can be distributed City wide at the discretion of the City. In contrast, GHADs must be used within the taxing district where the funds are acquired.

At least 60 days prior to commencement of ground disturbing activities (including site remediation activities), the applicant shall submit to CDFW, RWQCB, USACE for review and approval a management plan for the open space preserve area. The management plan will address the following issues:

- **Funding:** The applicant shall provide to the agencies documentation that funds for monitoring and perpetual maintenance of the open space area is available through one of the previously described mechanisms.
- **Maintenance and Repair:** The applicant shall provide for routine maintenance such as debris removal and inspection and repair of fences and access entries. The frequency of the maintenance activities shall be developed in coordination with the agencies.
- **No Vehicles:** Except as needed for maintenance and repair, and access of existing easements on the property, or as necessary in emergency situations, non-motorized and motorized vehicles shall be prohibited from the open space area.

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- **Inspection and Monitoring:** The applicant shall establish a five-year program to monitor the progress of the wetland mitigation toward these standards. At the end of each monitoring year, an annual report shall be submitted to the City, the RWQCB, USACE, and CDFW. This report shall document the hydrological and vegetative condition of the wetlands, and shall recommend remedial measures as necessary to correct deficiencies.
  - **Restricted Activities:** The applicant shall identify activities prohibited from taking place in the open space area. These include, but are not limited to: (1) alteration of existing topography or other alteration or uses for any purpose; (2) placement of any new structures in the open space area; (3) dumping and/or burning of rubbish, garbage, or other waste or fill materials; (4) construction and/or placement of new infrastructure, other than those already identified in the project design, including new roads or trails, and storm water systems or utilities (outside of the existing easements); (5) use of pesticides or herbicides unless otherwise approved by the agencies.

To minimize the potential for predation and harassment of wildlife using the open space area, solar salt ponds, and Plummer Creek Wetland Mitigation Bank from cats associated with the Gateway Station West development, the keeping of outside feline pets or feral cat stations shall be prohibited. Enforcement of the restriction shall be reflected in the Covenants, Conditions & Restrictions of the neighborhood. All occupants of the project site and potential occupants shall be notified of this restriction.

### **Rationale**

The above mitigation measures will reduce impacts to waters of the U.S. through specific measures to avoid and minimize impacts, and to provide compensatory mitigation for unavoidable impacts. These measures include project design parameters, best management practices, and compensatory mitigation requirements that would reduce potential impacts to a less than significant level. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to waters of the U.S.. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

### **Potential Impact – Habitats Regulated by CDFW**

Permanent impacts to bed, banks, and channel of drainage ditches potentially regulated by CDFW would result from the placement of fill into certain drainages and associated seasonal wetlands to facilitate construction of the proposed project. Temporary impacts are associated with remediation activities along the segment of Drainage Ditch 1 through the open space area.

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## **Mitigation Measure**

**MM BIO-6:** A Streambed Alteration Agreement shall be obtained for impacts to habitats regulated by CDFW pursuant to Section 1600 et seq. of the California Fish and Game Code. Measures required by the Streambed Alteration Agreement shall be implemented as a condition of project approval and prior to ground disturbance affecting the drainage ditches and associated vegetation regulated by CDFW. A “no net loss” of bed, banks, and channels of the regulated waterways permanently lost as a result of the project shall be achieved with this mitigation measure.

## **Rationale**

The above mitigation measure will reduce impacts to habitats regulated by CDFW by requiring the applicant go through the appropriate permitting and coordination process to ensure no net loss of the regulated waterways. The Lake and Streambed Alteration Program provides a mechanism for CDFW to suggest modifications to the project to eliminate or reduce harmful impacts to fish and wildlife resources. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to habitats regulated by CDFW. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

## **Potential Impact – Protected Trees**

Two trees on the project site and two trees in the off-site improvement areas meeting the criteria for protection under the City Municipal Code would be removed for the proposed project. Two additional trees in the off-site improvement areas may be able to be retained.

## **Mitigation Measure**

**MM BIO-7:** A tree permit shall be obtained from the City prior to the removal of any tree protected by City ordinance on the project site or off-site improvement areas. To offset impacts resulting from the removal of protected trees, replacement trees shall be planted in designated open space areas such as multi-family landscaped areas or streetscape on the project site. Tree replacement shall be at a 1:1 ratio (that is, for each tree removed, one tree shall be planted as a replacement). Replacement trees shall be native California species that are native to the Newark area.

A Tree Management Plan shall be prepared for the proposed project if tree removal occurs. Preparation of this plan and subsequent planting and monitoring shall be a condition of project approval and shall be tied to a security bond or cash deposit posted by the developer with the City to pay for any remedial work that might need to occur, if the prior effort fails.

All planted trees shall be provided with a buried irrigation system that shall be maintained over a minimum three-year establishment period. The irrigation

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system shall be placed on automatic electric or battery operated timers so that trees are automatically watered during the dry months of the establishment period. At the end of the 3-year establishment period, the irrigation system could be removed, if necessary. The planted trees' health shall be monitored annually for 5 years by a qualified biologist or arborist. Annual monitoring reports shall be submitted to the City.

At the end of a five-year monitoring period, at least 80 percent of planted trees shall be in good health. If the number of planted trees falls below an 80 percent survival rate, additional trees shall be planted to bring the total number of planted trees up to 100 percent of the original number of trees planted. Irrigation and follow-up monitoring shall be established over an additional three-year period after any replanting occurs. Any replanting and follow-up monitoring shall be reported in annual reports prepared for the City, Community Development Department. A performance bond, letter of credit, or other financial instrument shall be established to pay for any remedial work that might need to occur, if the prior effort fails.

### **Rationale**

The City has a goal (General Plan Goal CS-4) to conserve and manage the City's tree resources and urban forest. Chapter 8.16 of the Municipal Code regulates the cutting down, destruction, or removal of any tree with a trunk diameter of 6 inches or greater at 4 feet above ground level allows the City to regulate tree removal in the City. The mitigation measure above is consistent with the City's regulatory requirements related to tree resource conservation and management, and would minimize and abate impacts to trees as a result of the proposed project. Implementation of the above mitigation measure would minimize impacts to trees to less than significant. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to trees meeting the requirements for protection under the City Municipal Code. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

### **Potential Impact – Salt Marsh Harvest Mouse**

Based on a habitat assessment prepared by a qualified CDFW and USFWS permitted salt marsh harvest biologist, the project is not expected to impact the salt marsh harvest mouse. To bolster this finding, the applicant has installed exclusionary fencing along the southern and western project site boundaries and proposes to voluntarily implement protective measures for salt marsh harvest mouse during culvert replacement activities.

### **Mitigation Measure**

MM 4.3-1 of the Dumbarton TOD Specific Plan PEIR requires that a CDFW and USFWS permitted federal and state permitted salt marsh harvest mouse biologist conduct a habitat

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assessment to determine whether suitable habitat is present for salt marsh harvest mouse. If the conclusion is rendered by the CDFW and USFWS-qualified biologist that no impacts to the salt marsh harvest mouse would occur, the standards of care dictated by CEQA will be met and no further action shall be warranted. Dr. Gretchen Padgett-Flohr determined that the site does not contain suitable habitat to support SMHM and that none would be affected by its development (HELIX 2015c). That conclusion was bolstered by an additional pedestrian survey of the site by Dr. Padgett-Flohr on July 10, 2014 that also concluded that no suitable habitat was present on the site. Based on these findings by a qualified, CDFW and USFWS permitted salt marsh harvest biologist, the standards of care dictated by CEQA have been met and no further action is warranted, and no compensatory mitigation is required.

However, to bolster this finding, the applicant proposes to voluntarily implement protective measures for salt marsh harvest mouse during culvert replacement activities in the culvert replacement site. The project specific mitigation is presented below based on the requirements of MM 4.3-1.

**MM BIO-8** A qualified biologist (biological monitor) shall be on site in the culvert replacement site during pre-construction and culvert replacement activities.

Vegetation required to be removed in the culvert replacement site shall be removed by hand, and the area to be cleared would be minimized to the extent possible. Removed vegetation shall be stockpiled in areas away from the work activities.

Mouse-proof fencing shall be installed prior to culvert replacing activities, and maintained for the duration of construction. Prior to installing the salt marsh harvest mouse fence, all vegetation must be cleared from alongside the fence line route. The fencing shall be installed around the work area to prevent mice from entering the work area. The fencing shall be climb-proof (for example, smooth plastic, not silt fencing), and installed in such a manner that the salt marsh harvest mouse cannot dig under the fence. The salt marsh harvest mouse is known to be an agile climber, but rarely digs extensively; regardless, fencing materials must account for both behaviors.

The salt marsh harvest mouse fence shall be constructed using eight-millimeter plastic sheeting that is sandwiched between wooden stakes and buried in a minimum six-inch deep trench. The stakes shall screw together, firmly sandwiching the plastic in place. It is mandatory to sandwich the plastic between stakes if the fence is to last through even moderate winds. The finished installed fence shall be three feet above the ground. The plastic sheeting shall be smooth and non-climbable, and shall be buried and stapled to the ground at three-inch intervals to prevent rodents from digging under the fence. If construction activities occur for longer than three months from when the fence was installed, the fencing shall be replaced after three months. The integrity of the salt marsh harvest mouse fencing shall be inspected on a weekly basis by the biological monitor.

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### **3. Cultural Resources**

#### **Potential Impacts – Archaeological Resources and Human Remains**

Although there are no known culturally significant resources on site and their discovery is unlikely, there is always the potential for the existence of buried archaeological materials within the project area and associated off-site improvements. If previously unidentified resources are discovered during construction, these impacts could be significant. Ground disturbing activities could uncover human remains, which would be considered a potentially significant impact.

#### **Mitigation Measures**

**MM 4.4-1a.** Prior to the issuance of grading permits for future development allowed within the Dumbarton TOD Specific Plan area, project sponsors shall retain qualified archaeologists meeting the Secretary of the Interior’s Professional Qualification Standards for prehistoric and historic archaeologist. The qualified archaeologists shall train the construction crew on the mechanisms used to identify cultural resources and to caution them on the legal and/or regulatory implications of knowingly destroying cultural resources or removing artifacts or human remains from the project sites.

In accordance with State CEQA Guidelines Section 15064.5, should subsurface deposits believed to be cultural in origin be discovered during the construction of future development projects within the project site, then all work shall halt within a 200-foot radius of the discovery. A qualified professional archaeologist, meeting the Secretary of the Interior’s Professional Qualification Standards for prehistoric and historic archaeologist, shall be retained at the project sponsor’s expense to evaluate the significance of the find. Work shall not continue at the discovery site until the archaeologist conducts sufficient research and data collection to make a determination that the resource is either: (1) not cultural in origin; or (2) not potentially significant or eligible for listing on the NRHP or the CRHP.

If a potentially eligible resource is encountered, then the archaeologist, lead agency, and project sponsor shall arrange for either: (1) total avoidance of the resource, if possible; or (2) test excavations to evaluate eligibility and, if eligible, data recovery as mitigation. The determination shall be formally documented in writing and submitted to the lead agency and filed with the Northwest Information Center as verification that the provisions in this mitigation measure have been met.

If human remains of any kind are found during construction activities, all activities shall cease immediately and the Alameda County Coroner shall be notified as required by State law (Section 7050.5 of the Health and Safety Code). If the coroner determines the remains to be of Native American origin, he or she shall notify the NAHC. The NAHC shall then identify the most likely descendant(s) (MLD) to be consulted regarding treatment and/or reburial of the

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remains (Section 5097.98 of the PRC). If an MLD cannot be identified, or the MLD fails to make a recommendation regarding the treatment of the remains within 48 hours after gaining access to the remains, the City shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance. Work can continue once the MLD's recommendations have been implemented or the remains have been reburied if no agreement can be reached with the MLD (Section 5097.98 of the Public Resources Code).

### **Rationale**

The above mitigation measure will reduce potentially significant impacts to previously undiscovered cultural resources and human remains by stipulating the notification requirements and post-discovery actions in the event such resources are encountered during construction. These actions would ensure that relevant information contained in the archaeological resources, which is important to understanding human history, is preserved.

In the event that human remains are unearthed, the County Coroner and the MLD would be notified of the discovery to ensure that the proper steps are taken. Mitigation would reduce impacts to human remains to below a level of significance because, based on the determined significance, the site would be avoided or recovery would be allowed, and the human remains would not be destroyed. The proposed mitigation would ensure that any discovered human remains would be preserved for the County Coroner and/or the MLD and associated tribe. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to cultural resources and human remains. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

## **4. Geology**

### **Potential Impact**

The proposed project would result in significant potential impacts related to seismic ground shaking, liquefaction, and associated effects such as dynamic settlement, manufactured slope instability, geologic/soil instability (including corrosive soils, trench excavation instability, and the presence of shallow bedrock and groundwater), and expansive soils.

### **Mitigation Measure**

Section 4.5 of the Dumbarton TOD Specific Plan PEIR identified MM 4.5-1 to address identified potentially significant geology/soils impacts within the Specific Plan area in the form of requiring design-level geotechnical engineering investigations for all proposed development within the Specific Plan area. While this requirement has been met through project-specific geotechnical investigations, as described in the Draft SEIR, additional project-specific requirements are identified below in MM GEO-1 to supplement the Specific Plan PEIR mitigation and address site-specific geologic hazards issues identified in the project geotechnical



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investigations associated with seismic ground shaking, liquefaction and related effects, manufactured slope instability, geologic/soil instability, and expansive soils.

**MM GEO-1:** A site-specific geotechnical investigation shall be conducted by a qualified engineer or engineering geologist to verify that final project plans and/or construction operations incorporate applicable regulatory/industry requirements (e.g., IBC/CBC and City standards), recommendations contained within the project geotechnical investigations (BSA 2013, 2014), related plan review, and field observations/testing. Specifically, such verification shall encompass requirements and recommendations related to potentially significant impacts from seismic ground shaking, liquefaction and related effects, manufactured slope instability, geologic/soil instability (including corrosive soils, trench instability, and shallow bedrock/groundwater), and expansive soils. The results of the noted investigation shall be documented by the project engineer or engineering geologist and submitted to the City for review.

### **Rationale**

The above mitigation measure will reduce potentially significant impacts to geology and soils by requiring that site specific investigations be performed, and recommendations provided by a project engineer or engineering geologist to verify that the project plans are consistent with applicable regulatory/industry requirements. Compliance with requirements and standards established by the City and IBC/CBC would reduce risks associated with seismic ground shaking, liquefaction and related effects, manufactured slope instability, geologic/soil instability, and expansive soils to below a level of significance. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to cultural resources and human remains. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

## **5. Hazards and Hazardous Material**

### **Potential Impacts**

Implementation of the proposed project would result in significant potential impacts related to the known and (potentially) unknown occurrence of hazardous materials within the project site and adjacent properties, the potential release of hazardous materials from more distant off-site sources, and effects to existing on-site groundwater monitoring wells associated with off-site remediation efforts. Impacts as a result of potential release of hazardous materials from more distant off-site sources are significant and unavoidable and are discussed in Section C.

### **Mitigation Measures**

#### Specific Plan Mitigation Measures

The following mitigation measures are identified in the Dumbarton TOD Specific Plan PEIR. Portions of MM 4.7-1a have been implemented through completion of the project Phase I and

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Phase II ESA investigations, including summarizing available information, assessing data gaps, and identifying and implementing additional investigations such as health risk assessments (with the remaining requirements in this measure addressed below in more detail as part of project-specific MMs under MM HZ-2). Pertinent elements of the TOD Specific Plan PEIR MMs 4.7-1b through 4.7-1e remain applicable to the proposed project and shall be implemented prior to site disturbance to address associated environmental impacts:

**MM 4.7-1b** Prior to grading permit issuance, areas to be graded shall be cleared of debris, significant vegetation, pre-existing abandoned utilities, buried structures, and asphalt concrete.

**MM 4.7-1c** Prior to the import of a soil to a particular property within the Specific Plan area as part of that property's site development, such soils shall be sampled for toxic or hazardous materials exceeding applicable Environmental Screening Levels for the proposed land use at such a property as required by the Oversight Agency prior to importing to such a property.

**MM 4.7-1d** Areas containing Naturally Occurring Asbestos (NOA) within the Dumbarton TOD Specific Plan area shall be confirmed prior to grading permit issuance. Prior to grading or construction of a particular property containing NOA, an application from the Bay Area Air Quality Management District (BAAQMD) shall be required for projects over one-acre in size. Dust control and an NOA air monitoring program shall be required. Additionally, the following general construction practices shall be adhered to for those properties containing NOA:

- The site shall be maintained in a wet condition to prevent airborne dust. On-site soil shall be wetted during grading and trenching operations.
- Over excavation and removal of NOA material to one foot below utility is recommended for utility corridors.

**MM 4.7-1e** On those properties where NOA is known to occur, the following measures shall be used for guidance only. The specific requirements for each property shall be determined by the risks involved and appropriate mitigation measures required to protect human health.

- Detached Single Family Residences – A minimum 3-foot soil cover in building pad areas, extending at least 5 feet beyond the building perimeter is recommended. Deed restrictions should be considered (such as not allowing swimming pools) if there is less than 10-feet of soil cover over the serpentinite with NOA.
- Podium Type Multi-Unit Residential Structures – A minimum 2-foot thick soil cover is recommended.
- Pavement and Concrete Hardscape – If NOA material is covered to prevent airborne dust after construction, soil cover is not required.

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- Landscaped Areas – A minimum 2-foot thick soil cover in landscaped areas is recommended.

### Project-Specific Mitigation Measures

A number of additional project-specific requirements are identified below to supplement the noted Specific Plan PEIR mitigation and address associated potential impacts related hazards and hazardous materials.

**MM HZ-1** A qualified hazardous materials specialist shall review final project grading and development plans prior to approval to verify related conditions and assumptions in the project Phase I and Phase II ESAs, or to identify modified and/or additional requirements.

**MM HZ-2** After completion of final project grading and development plans, but prior to the issuance of grading or building permits for the proposed Gateway Station West project, a Hazardous Materials Remediation Plan (HMRP) shall be prepared by a qualified hazardous materials specialist and submitted to the City and applicable Oversight Agencies (e.g., the RWQCB, DTSC and County DEH) for review and approval. The HMRP shall address remediation requirements (as applicable) for all potential hazardous material impacts identified in the project Phase I and Phase II ESAs, as well as other pertinent sources, based on review of final project grading and development plans. Specifically, remediation requirements in the HMRP shall include the following:

- REC No. 1 – Former Magnesia Site. If the project grading plans identify deeper excavations (e.g., underground utilities) in applicable portions of the REC No. 1 area, associated soils exhibiting the following characteristics shall be removed and properly disposed of at an approved off-site location: (1) arsenic concentrations above the identified background level (11 mg/kg); (2) cobalt concentrations above the identified screening level (23 mg/kg); and (3) pH levels above 8.5.
- REC No. 2 – Impacted Groundwater. Pursuant to coordination with and direction by the RWQCB, vapor intrusion engineering controls (e.g., seals or barriers) shall be implemented in applicable locations to address potential VOC vapor intrusion impacts from shallow groundwater.
- REC No. 4 – Former NSC Area. Soils within the proposed development area exhibiting the following characteristics shall be removed and properly disposed of at an approved off-site location: (1) arsenic concentrations above the identified background level (11 mg/kg); (2) lead concentrations above the identified screening level (80 mg/kg); and (3) PAH compounds with concentrations above the identified screening levels (as identified for individual compounds in the Phase II ESA, H&A 2014b).

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- REC No. 5 – Pistol Range. Soils exhibiting cobalt concentrations above the identified screening level (23 mg/kg) shall be removed and properly disposed of at an approved off-site location.
  - REC No. 6 – Naturally Occurring Asbestos. The HMRP analysis of REC No. 6 shall include requirements to: (1) implement Specific Plan EIR MM 4.7-1d, including dust control, air quality monitoring, and overexcavation for applicable utilities, as well as other pertinent measures identified in the HMRP (if applicable); and (2) review the NOA requirements identified in Specific Plan EIR MM 4.7-1e to determine if the associated requirements are applicable to the proposed project, or to identify other applicable measures to provide appropriate remediation of NOA in conformance with associated regulatory standards.
  - REC No. 7 – E-1 Drainage Ditch. Soils along the entire length of the E-1 Drainage Ditch that exhibit the following characteristics shall be removed and properly disposed of at an approved off-site location: (1) arsenic concentrations above the identified background level (11 mg/kg); (2) lead concentrations above the identified screening level (80 mg/kg); (3) PAH compounds with concentrations above the identified screening levels (as identified for individual compounds in the Phase II ESA, H&A 2014b); (4) TPHd and TPHmo with concentrations above the identified screening levels (110 mg/kg for TPHd, and 2,500 mg/kg for TPHmo); and (5) pH levels above 8.5.
  - REC No. 8 – E-1 Settling Ponds and Detention Basin. Soils exhibiting the following characteristics shall be removed and properly disposed of at an approved off-site location: (1) cobalt concentrations at the detention basin above the identified screening level (23 mg/kg); (2) TPHd at the detention basin with concentrations above the identified screening level (110 mg/kg); and (3) pH levels above 8.5 at the settling ponds and detention basin.
  - REC No. 9 – Historical Industrial Use. Based on the extensive history of industrial activities within and adjacent to the project site, all applicable project-related grading and excavation activities (as identified in the HMRP) shall be monitored by a qualified hazardous materials specialist for the potential occurrence of currently unknown hazardous materials or other hazards. If such conditions are encountered, activities shall cease in the subject area until appropriate remediation efforts are identified by a qualified hazardous materials specialist, reviewed and approved by the appropriate regulatory agencies, and properly implemented.

**MM HZ-3** All project grading, excavation and development activities in the vicinity of the four on-site groundwater monitoring wells (W-25 and B-26 through B-28, refer to SEIR Figure 4.7-1) shall conform with applicable related requirements in the ACWD Groundwater Protection Act (Ordinance No, 2010-01). Specifically, the project applicant (or a designated representative of the applicant) shall provide

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written verification to the City that all applicable requirements related to well protection, destruction and/or abandonment have been implemented to the satisfaction of the ACWD.

### **Rationale**

The above mitigation measures will reduce potential impacts related to hazardous materials to a less than significant level. The mitigation measures require abatement for areas containing NOA, and remediation for areas containing hazardous materials identified in the Phase I Environmental Assessment. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to hazardous materials within the project site and adjacent properties, and effects to existing on-site groundwater monitoring wells associated with off-site remediation efforts. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

## **6. Hydrology and Water Quality**

### **Potential Impacts**

Prior to mitigation, implementation of the proposed project would result in significant potential impacts to local groundwater resources associated with the use of subsurface measures to address identified liquefaction hazards (e.g., the installation of subdrains or piles, and implementation of efforts such as soil vibrocompaction, grouting and deep mixing), as well as water quality concerns related to the discharge of extracted groundwater (if required).

### **Mitigation Measures**

Section 4.8 of the Dumbarton TOD Specific Plan PEIR identified MM 4.8-4a to address identified potentially significant hydrology impacts within the Specific Plan area in the form of requiring detailed hydrology studies for all proposed development within the Specific Plan area. While this requirement has been met through the project-specific Drainage/Water Quality Technical Memorandum (CB&G 2015b), additional project-specific requirements are identified below to supplement the Specific Plan PEIR mitigation and address potential impacts related to the protection of groundwater resources and water quality effects from the disposal of extracted groundwater.

An additional mitigation measure identified for hydrology/water quality in the Specific Plan PEIR (MM 4.8-4b) is related to storm drain lines crossing the Hetch Hetchy Pipeline corridor (not part of the proposed project), and is thus not applicable to the current project.

**MM HYD-1:** All project dewatering operations, subsurface activities related to on-site remediation of liquefaction hazards (e.g., the installation of subdrains or piles, and implementation of efforts such as soil vibrocompaction, grouting and deep mixing), and other pertinent activities, shall conform with applicable related requirements in the ACWD Groundwater Protection Act (Ordinance No. 2010-01). Specifically, the project applicant (or a designated representative

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of the applicant) shall provide written verification to the City that all applicable requirements related to dewatering operations and subsurface activities (as described) have been implemented to the satisfaction of the ACWD.

**MM HYD-2** All project-related groundwater extraction disposal operations shall conform with applicable waste discharge requirements issued by the RWQCB for disposal of extracted groundwater (if such waste discharge requirements are issued by the RWQCB). Specifically, the project applicant (or a designated representative of the applicant) shall consult with the RWQCB prior to implementing on-site dewatering activities to determine if such waste discharge requirements are required, and shall provide written verification to the City that either: (1) no waste discharge requirements related to project dewatering are required by the RWQCB; or (2) all applicable requirements related to dewatering operations have been implemented to the satisfaction of the RWQCB.

### **Rationale**

The above mitigation measures will reduce potential impacts to hydrology and water quality to a less than significant level by requiring the applicant to obtain verification from the appropriate regulatory agencies that the applicable requirements by that agency have been implemented to the satisfaction of the agency. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts to hydrology and water quality. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

## **7. Noise**

### **Potential Impact – Temporary Increase in Ambient Noise**

Construction of the project would generate elevated noise levels that may disrupt nearby noise sensitive receptors. The magnitude of the impact would depend on the type of construction activity, equipment, duration of each construction phase, distance between the noise source and receptor, and the presence of any intervening structures. The project has incorporated design measures to reduce the potential effects of construction noise; nonetheless, there is the potential for disruption of nearby sensitive receptors, which would be considered a significant impact.

### **Mitigation Measure**

MM 4.10-1b from the Dumbarton TOD Specific Plan PEIR requires project applicants to implement a list of measures to respond to and track complaints pertaining to construction noise, ongoing throughout demolition, grading, and/or construction.

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**MM 4.10-1b**

- Identify a procedure and phone numbers for notifying the City Building Inspection Division staff and Newark Police Department (during regular construction hours and off-hours);
- Post a sign on site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- Designate an on-site construction complaint and enforcement manager for the project. The manager shall act as a liaison between the project and its neighbors (including on-site residents). The manager's responsibilities and authority shall include the following:
  - An active role in monitoring project compliance with respect to noise;
  - Ability to reschedule noisy construction activities to reduce effects on surrounding noise sensitive receivers;
  - Site supervision of all potential sources of noise (e.g., material delivery, shouting, debris box pick-up and delivery) for all trades; and,
  - Intervening or discussing mitigation options with contractors.
- Notify neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of construction activities regarding the details and estimated duration of the activity; and,
- Hold a preconstruction meeting with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

**Rationale**

The above mitigation measure would reduce impacts to sensitive receptors from construction noise to less than significant, because the City and construction contractor would be responsible for informing the nearby residents of the potential disturbance, and there would be a notification system in place in the event a sensitive receptor is disturbed. Through public involvement and active responsiveness to the concerns of the nearby residents, the potential impact would be reduced to less than significant. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts from construction noise on nearby sensitive receptors. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

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### **Potential Impact – On-site Stationary Noise Source (Residential HVAC Units)**

The proposed project would result in potentially significant impacts from noise where ground-mounted heating, ventilation, and air-conditioning (HVAC) equipment would be located closer than 25 feet from adjacent residential property lines.

#### **Mitigation Measure**

**MM NOI-1 HVAC Condenser Noise Attenuation.** For residences located within 25 feet of ground-mounted HVAC equipment, attenuation of exterior HVAC noise to levels to 45 dBA  $L_{EQ}$  (for usable outdoor space) shall be ensured prior to issuance of certificates of occupancy. For single-family attached or multi-family development, potential noise control measures to achieve the performance standard for outdoor usable space include, but are not limited to: noise control barriers around the HVAC units and/or the outdoor usable space, and/or installing roof-mounted units with a standard parapet wall.

#### **Rationale**

The above mitigation measure would reduce noise impacts by ensuring that noise levels from the HVAC equipment would be reduced to below the 45 dBA threshold for adjacent residential properties. Implementation of this mitigation measure would reduce the potentially significant impacts to less than significant.

The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts from HVAC noise on nearby residences. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

### **Potential Impact – Cumulative**

Implementation of the proposed project would result in cumulative 2035 traffic noise levels along Enterprise Drive between Hickory Street and Willow Street contributing to a significant cumulative impact at a representative distance of 75 feet from the roadway.

#### **Mitigation Measure**

The following MMs shall be implemented to reduce cumulative traffic noise levels along Enterprise Drive from Hickory Street to Willow Street.

**MM NOI-2 Reduce Posted Speed Levels along Enterprise Drive.** Prior to the issuance of building permits, the project applicant shall coordinate with the City's Public Works Director to change the posted speed limit along Enterprise Drive (between Hickory Street and Willow Street) to 25 mph. Implementation of this measure shall be indicated on all project plans and specifications.



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**MM NOI-3 Site-Specific Noise Analysis for Proposed Uses along Enterprise Drive.** Prior to the approval of building permits for residences located along Enterprise Drive between Hickory Street and Willow Street, a site-specific acoustic analysis shall be conducted to ensure exterior and interior sound levels are equal to or less than the applicable allowable limits (60 CNEL for single-family exterior, 65 CNEL for multi-family exterior, 45 CNEL for residential interior).

### **Rationale**

The above mitigation measures will reduce noise impacts from cumulative traffic along Enterprise Drive from Hickory Street to Willow Street to less than significant. Modeling results for the Year 2035 scenario demonstrate that implementation of MM Noi-2 would reduce off-site exterior noise levels to within City standards, as shown in Appendix J Table 5-2, *Mitigated Cumulative Exterior Traffic Noise Levels at 75-foot Representative Distance* of the Draft SEIR. With implementation of MM Noi-3, off-site proposed uses along Enterprise Drive would not be exposed to interior and exterior noise levels in excess of thresholds.

The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts from cumulative traffic levels along Enterprise Drive between Hickory Street and Willow Street. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

## **8. Transportation**

### **Potential Impacts – Level of Service at Intersections**

Consistent with the findings in the Specific Plan PEIR, the proposed project would increase traffic levels and would have a direct significant impact on the level of service at four intersections within the study area for the existing plus project, and would have a significant impact on the level of service at 10 future 2035 plus project (cumulative) scenarios.

### **Mitigation Measures**

The following mitigation measures are from the Specific Plan PEIR, and are relevant to the proposed project.

#### Direct Mitigation Measure

##### **MM 4.14-1:**

- *Willow Street/Thornton Avenue:* A right turn overlap phase to the northbound approach on Willow Street shall be provided. Additionally, a U-turn restriction for the westbound left turn movement on Thornton Avenue shall be posted.

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- *Cedar Boulevard/Thornton Avenue*: An additional westbound left turn lane from Thornton Avenue to Cedar Boulevard shall be provided.<sup>1</sup>
  - *Willow Street/Enterprise Drive*: Two options for mitigation at this intersection are proposed by the Specific Plan, including a roundabout or signalization of the intersection. One of the two options shall be implemented.<sup>2</sup>
  - *Cherry Street/Mowry Avenue*: Mitigation measures were identified at this intersection as part of the Area 3 and 4 EIR. The measures proposed included the addition of a second left-turn lane on the westbound approach, and resulting in realignment of the east and westbound approaches and modification to the traffic signal. These improvements are not sufficient to mitigate the project's impact; additional ROW to widen this approach may be needed. Therefore, additional mitigation measures were identified:
    - The westbound approach of the intersection of Cherry Street/Mowry Avenue shall be modified to include a right turn and a through-right turn lane. This improvement would require modification of the traffic signal and removal of the existing pork chop island.

#### Cumulative Mitigation Measures

##### **MM 4.14-6:**

- *SR 84 Eastbound Ramps/Thornton Avenue*: An additional eastbound right turn lane on the SR 84 Eastbound Off-Ramp at the intersection of SR 84 Eastbound Ramps/Thornton Avenue shall be provided
- *Gateway Boulevard/Thornton Avenue*: The northbound right turn lane on Thornton Avenue at the intersection of Gateway Boulevard/Thornton Avenue shall be restriped to provide a shared through-right turn lane. The existing north leg has three receiving lanes to make this improvement feasible.
- *Willow Street/Thornton Avenue*: Mitigation for cumulative impacts will be addressed through implementation of the mitigation required for direct impacts at this intersection, as described in MM 4.14-1.
- *Cherry Street/Thornton Avenue*: The intersection of Cherry Street/Thornton Avenue shall have an additional eastbound right turn lane on Thornton Avenue.
- *Newark Boulevard/Thornton Avenue*: The intersection of Newark Boulevard/Thornton Avenue shall have an additional northbound left turn lane on Newark Boulevard to accommodate the heavy left turn movement.

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<sup>1</sup> This mitigation measure has been identified to be infeasible due to lack of available ROW for the additional westbound lane.

<sup>2</sup> Since circulation and certification of the Dumbarton TOD Specific Plan EIR, the potential for signalization of this intersection has been eliminated. Mitigation would consist of roundabout implementation.

- *Cedar Boulevard/Thornton Avenue* Mitigation for cumulative impacts will be addressed through implementation of the mitigation required for direct impacts at this intersection, as described in MM 4.14-1.
- *Willow Street/Enterprise Drive*: Mitigation for cumulative impacts will be addressed through implementation of the mitigation required for direct impacts at this intersection, as described in MM 4.14-1. While a single-lane roundabout would operate acceptably with the proposed traffic volumes, right-turn bypass lanes may be provided to/from the west leg to connect to the four-lane section of Enterprise Drive west of the intersection.
- *Cherry Street/Central Avenue*: The intersection of Cherry Street/Central Avenue shall have an additional eastbound right turn lane on Central Avenue.
- *Cherry Street/Mowry Avenue*: Mitigation for cumulative impacts will be addressed through implementation of the mitigation required for direct impacts at this intersection, as described in MM 4.14-1.
- *I-880 NB Ramps/Mowry Avenue*: The intersection of I-880 NB Ramps/Mowry Avenue shall be restriped to include a left/right share lane, resulting in the northbound approach having a final lane configuration of a left-turn lane, a left and right shared lane, and dual right-turn lanes.

If restriping of the intersection is not achievable, an alternate mitigation shall be to revise the City's General Plan policy to permit LOS D operations at freeway ramp intersections with existing or proposed bicycle facilities. Currently, City General Plan Policy 3d states that the City should "Work with the State and City of Fremont to maintain LOS "C" at all intersections on the border of Newark, particularly Newark Boulevard/Dumbarton Freeway, Thornton Avenue/Dumbarton Freeway, Stevenson Boulevard/Interstate 880, Mowry Avenue/Interstate 880 and Thornton Avenue/Interstate 880, to accommodate buildout of lands in Fremont and Newark in the vicinity of the intersections." Additionally, General Plan Policy 2e supports completion of the Citywide Bicycle Master Plan, which may include new bicycle lanes on Mowry Avenue through the I-880 interchange. In order to recognize that automobile traffic operations should be balanced with bicycle access and pedestrian access across the interchange, General Plan Policy 3d may be amended in the following way to promote access for all travel modes: "Work with the State and City of Fremont to maintain LOS "C" at all intersections on the border of Newark, particularly Newark Boulevard/Dumbarton Freeway, Thornton Avenue/Dumbarton Freeway, Stevenson Boulevard/Interstate 880, Mowry Avenue/Interstate 880 and Thornton Avenue/Interstate 880, to accommodate buildout of lands in Fremont and Newark in the vicinity of the intersections, except at intersections that are along the City's proposed Bikeway Network where automobile LOS D is permitted." Revision of the City's General Plan to permit LOS D at freeway interchange intersections along the proposed bicycle network would reduce this impact to less than significant.

**MM 4.14-8:** Prior to issuance of building permits for a Specific Plan use, the applicant shall pay all applicable transportation-related fees in accordance with the latest adopted fee schedule at the time permits are sought. Such fees shall include, but not be

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limited to, the City of Newark Capital Facilities Fee for Transportation, and the ACTC Regional Transportation Impact Fee. Payment of these fees would partially mitigate the impacts of the Specific Plan.

### **Rationale**

The above mitigation measures will reduce the direct and cumulative significant impacts as a result of the proposed project at most of the impacted intersections. The mitigation measures include intersection modifications to improve operations with the addition of the Specific Plan (which includes the proposed project). The proposed mitigation at some intersections is infeasible, as discussed further in Section IV.B.2. The significant direct impacts at the Cedar Boulevard/Thornton Avenue intersection are unmitigable and would remain significant and unavoidable. Cumulative impacts at the following intersections would remain cumulatively significant and unavoidable:

- SR 84 Eastbound Ramps/Thornton Avenue
- Cherry Street/Thornton Avenue
- Newark Boulevard/Thornton Avenue
- Cedar Boulevard/Thornton Avenue
- Cherry Street/Central Avenue

For all other intersections, the direct and/or cumulative impacts would be reduced to a less than significant level following mitigation. The City finds that, pursuant to Section 15091(a)(1) of the State CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts from direct and cumulative traffic levels in the study area. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

### **B. Potential Environmental Impacts Determined to be Significant and Unavoidable after Mitigation**

Pursuant to Section 15091(a)(3) of the State CEQA Guidelines, the City finds that, for each of the following significant effects identified in the Final SEIR, specific economic, legal, social, technological, or other considerations make the mitigation measures or project alternatives infeasible:

#### **1. Hazardous Materials**

##### **Potential Impact – Release of hazardous materials from more distant, off-site sources**

There is the potential for a worst-case scenario release of boron trichloride, nitrogen dioxide, and/or chlorine from the off-site Matheson Tri-Gas facility. Such a scenario would be a significant impact, although the probability for such an occurrence is considered low based on established regulatory requirements and industry standards designed to avoid or minimize such releases.

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## **Mitigation Measure**

There are no feasible project-specific mitigation measures beyond those established by regulatory requirements and industry standards that are designed to avoid or minimize such releases. These regulatory requirements and industry standards are already in place and no mitigation measure would affect their efficacy.

## **Rationale**

The source of the potential release of hazardous materials is off of the project site and is under operation by other entities. As previously stated, the facility is under operation based on established regulatory requirements and industry standards designed to avoid or minimize accidental releases. There are no feasible project-specific mitigation measures that could be implemented.

## **2. Transportation and Traffic**

### **Potential Impact – Level of Service at Cedar Boulevard/Thornton Avenue**

Implementation of the project would result in the existing level of service at the Cedar Boulevard/Thornton Avenue intersection to degrade to unacceptable levels during the p.m. peak hour and would exacerbate operations by increasing the average delay by four or more seconds during the a.m. peak hour.

## **Mitigation Measures**

The Specific Plan PEIR includes the following mitigation measure to address the level of service:

**MM 4.14-1** *Cedar Boulevard/Thornton Avenue:* An additional westbound left turn lane from Thornton Avenue to Cedar Boulevard shall be provided.

## **Rationale**

MM 4.14-1 is a mitigation measure contained in the Specific Plan PEIR; however, this measure is infeasible due to a lack of available ROW along Thornton Avenue for the additional westbound lane, and potential secondary impacts (e.g., increased pedestrian crossing distances). No feasible mitigation measures, beyond the project design features already incorporated into the project, are currently available to address the operational phase level of service at the intersection. For this intersection, the impact would remain significant and unavoidable.

### **Potential Impact – Increased Demand for Public Transit**

The Dumbarton TOD Specific Plan PEIR identified significant impacts related to an increased demand for public transit lines serving the area as a result of Specific Plan implementation. Within the immediate project area, AC Transit's Line 275, a local bus line, has a stop along Willow Street approximately 0.2 mile from the project site. Although the project's design would accommodate transit services such as bus stops, shelters, and planned sidewalks to access future

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facilities, significant impacts are identified related to an increased demand for public transit lines and a need for action by the Alameda County Transit (ACT).

### **Mitigation Measure**

The Specific Plan PEIR includes the following mitigation measure to address public transit needs:

**MM 4.14-2** The City shall coordinate with AC Transit to improve bus service to the Specific Plan area to lessen the impact of vehicular traffic on the local and regional roadways. Potential transit accommodations may include:

- Implementation of shuttle service to the Ardenwood Park and Ride lot to provide a connection to the Dumbarton Express bus line and the Fremont and/or Union City BART stations
- Rerouting bus lines 251 and/or 275 through the Specific Plan area to provide convenient stop(s) with bus shelters and benches
- Addition of a new bus line to serve the Specific Plan area

### **Rationale**

As the future of the DRC Project is uncertain and improved bus service to the Specific Plan area cannot be guaranteed (as it is under Alameda County Transit's jurisdiction) as required in MM 4.14-2, this impact would remain significant and unavoidable. The current City General Plan (as amended during adoption of a Dumbarton TOD Specific Plan), allows LOS that would otherwise be considered unacceptable where projects are part of the City's regional effort to reduce vehicle trips and greenhouse gas emission, support transit and enhance the quality of life in the region, as is the case with the proposed project.

### **Potential Impact – 2035 Cumulative Level of Service at Intersections**

Implementation of the project would result in the 2035 cumulative level of service at numerous intersections in the study area to degrade to unacceptable levels, by increasing the delay by four or more seconds. As described in Section A.8, the impacts at four intersections could be reduced to less than significant through implementation of the proposed mitigation. However, the mitigation would not be feasible at five intersections. Those intersections and the proposed mitigation are listed below.

### **Mitigation Measure**

The Specific Plan SEIR includes the following mitigation measure to address the level of service:

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**MM 4.14-6:**

- *SR 84 Eastbound Ramps/Thornton Avenue:* An additional eastbound right turn lane on the SR 84 Eastbound Off-Ramp at the intersection of SR 84 Eastbound Ramps/Thornton Avenue shall be provided
- *Cherry Street/Thornton Avenue:* The intersection of Cherry Street/Thornton Avenue shall have an additional eastbound right turn lane on Thornton Avenue.
- *Newark Boulevard/Thornton Avenue:* The intersection of Newark Boulevard/Thornton Avenue shall have an additional northbound left turn lane on Newark Boulevard to accommodate the heavy left turn movement.
- *Cedar Boulevard/Thornton Avenue Mitigation* for cumulative impacts will be addressed through implementation of the mitigation required for direct impacts at this intersection, as described in MM 4.14-1.
- *Cherry Street/Central Avenue:* The intersection of Cherry Street/Central Avenue shall have an additional eastbound right turn lane on Central Avenue.

**Rationale**

MM 4.14-6 is a mitigation measure contained in the Specific Plan SEIR; however, the mitigation at the five intersections listed above is infeasible due to either the intersection being located outside of the City's jurisdiction, or due to a lack of available ROW to allow for the necessary roadway improvements to reduce the impact. No feasible mitigation measures, beyond the project design features already incorporated into the project, are currently available to address the operational phase level of service at the intersection. For these intersections, the cumulative impact would remain significant and unavoidable.

**Potential Impact – Level of Service at Five Roadway Segments**

Implementation of the Specific Plan, including the proposed project, would affect the level of service at the following three intersections, causing them to degrade from LOS E or better to LOS F:

- Thornton Avenue, from Willow Street to Spruce Street
- Thornton Avenue, from Spruce Street to Cherry Street
- Thornton Avenue, from Cedar Boulevard to I-880 Southbound Ramps

Two additional segments would experience a V/C increase of 0.02 or more of a segment already operating at LOS F without the project conditions:

- I-880, from SR 84 Eastbound to Thornton Avenue
- I-880, from Mowry Avenue to Stevenson Boulevard

Impacts at these roadway segments are potentially significant.

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## Mitigation Measure

The Specific Plan SEIR includes the following mitigation measure to address the level of service.

**MM 4.14-8:** Prior to issuance of building permits for a Specific Plan use, the applicant shall pay all applicable transportation-related fees in accordance with the latest adopted fee schedule at the time permits are sought. Such fees shall include, but not be limited to, the City of Newark Capital Facilities Fee for Transportation, and the ACTC Regional Transportation Impact Fee. Payment of these fees would partially mitigate the impacts of the Specific Plan.

## Rationale

The above mitigation would be required, which would reduce the traffic impacts of the Specific Plan regionally, but the fee program would not fully fund all of the mitigation necessary. Mitigation measures to reduce impacts to these roadway segments would not be feasible because these roadway segments are either outside of the City's jurisdiction or they do not have sufficient roadway ROW to allow for the necessary roadway improvements. No feasible mitigation measures, beyond the project design features already incorporated into the project, are currently available to address the operational phase level of service at the intersection. For these roadway segments, the impact would remain significant and unavoidable.

## C. Alternatives to the Proposed Project

State CEQA Guidelines (Section 15126.6) require that a discussion of project alternatives be part of any EIR. Any such identified alternatives must significantly meet project objectives, or they cannot be said to be true project alternatives. Further, State CEQA Guidelines 15091(a)(3) and 15091(b) require an explanation and analysis of why project alternatives are infeasible. Chapter 6 of the Draft SEIR discusses the following alternatives: No Project/No Build Alternative; No Project/Existing Specific Plan Alternative; Reduced Project Alternative; Wetland Avoidance Alternative.

Significant on-site impacts associated with the proposed project include air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology/water quality, and noise. In addition, off-site transportation/traffic impacts related to roadway/intersection operations were concluded to be significant and unavoidable under the Specific Plan and proposed project analyses.

### 1. No Project/No Build Alternative

#### Description

Pursuant to Section 15126.6(e) (3)(B) of the State CEQA Guidelines, the No Project/No Build Alternative represents the "...circumstance under which the project does not proceed." Consistent with the Specific Plan EIR, the No Project/No Build Alternative assumes that the site would remain in its current physical condition and would not be developed with the proposed project uses or any other uses permitted under the existing adopted Specific Plan. Existing on-



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site structures and uses associated with the City police dog training and firing range, as well as private construction storage activities, could remain, along with associated land uses and associated indirect effects to the adjacent undeveloped open space. Even if these existing uses remain, this alternative would not result in additional ground disturbance or increase in intensity of existing use patterns.

### **Environmental Effects Compared to the Proposed Project**

Accordingly, this alternative would avoid all of the potentially significant impacts associated with building the proposed project, including: 1) air quality, 2) biological resources, 3) cultural resources, 4) geology and soil, 5) hazardous materials, 6) hydrology and water quality, 7) noise, and 8) transportation and traffic. However, the No Project/No Build Alternative would also reduce the likelihood that existing on-site contamination would be fully remediated (as required for the proposed project), based on the projected lack of incentive for new development to "...absorb remediation costs and facilitate property remediation and redevelopment." Thus, this alternative would result in a greater impact from hazards and hazardous materials in comparison to the proposed project.

Under this alternative, the open space preserve would not be established, and the existing on-site land uses would remain, along with the potential for indirect effects to the adjacent undeveloped open space. However, even with the existing land uses, the No Project/No Build Alternative would not result in additional ground disturbance or an increase in the intensity of the existing use patterns.

### **Relation to Project Objectives**

The No Project/No Development Alternative would fail to meet the following project objectives:

- (1) Provide on-site residential development consistent with the densities identified in the Dumbarton TOD Specific Plan and the City General Plan Land Use Element, including housing needs identified during the period of 2015 to 2023 in the 2015 Housing Element Update.
- (2) Provide a mix of housing opportunities from single-family to multi-family housing to meet the City's housing needs.
- (3) Create a compact, walkable community with access to employment opportunities.
- (4) Provide residential units within walking distance of the future, planned transit station to generate the ridership necessary to support the station in keeping with the Dumbarton TOD Specific Plan.
- (5) Permanently preserve and/or restore sensitive biological resources (including wetlands) in the southwestern portion of the Gateway Station West project site.
- (6) Set aside land for open space preservation and recreation opportunities, including the candidate trail proposed for San Francisco Bay Trail status.

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- (7) Develop a focused new community with a distinct identity, architectural style and sense of place while being compatible with existing and planned neighborhoods.

Further, because the project site would remain largely vacant, the No Project/No Build Alternative would be inconsistent with all housing/development-related goals and objectives in the City General Plan, the adopted Dumbarton TOD Specific Plan and the proposed project. Nor would the No Project/No Build Alternative permanently place open space into protected preserve, or contribute to development of recreational opportunities associated with the candidate regional trail proposed for the project. It also would not meet the Specific Plan goal of using primarily vacant land for its highest and best use.

Because beneficial effects of development implementation relative to remediation of on-site contamination would not occur, and because project objectives would not be obtained, this alternative would be less preferred than the proposed project.

### **Finding and Rationale**

This alternative is deemed infeasible because it fails to feasibly attain the basic objectives of the project, and would fail to provide the public benefits associated with implementation of the proposed project, which include: conservation of environmental resources (63 percent of the on-site wetland habitats would be preserved in the open space preserve); provision of housing within a walkable/bikeable distance to employment opportunities, generation of the ridership necessary to support public transportation, and site remediation.

## **2. No Project/Existing Specific Plan Alternative**

### **Description**

Pursuant to Section 15126.6(e)(3)(A), “when the project is a revision of an existing land use or regulatory plan, policy or ongoing operation, the no project alternative will be the continuation of the existing plan, policy or ongoing operation.” In the current case, the Dumbarton TOD Specific Plan was adopted by the City in 2011. Although no Specific Plan Amendment is required due to the fact that the proposed changes are within the amount of variance permitted under the approved Specific Plan (up to 20 percent), the proposed project does propose land uses that would result in impacts different from those assessed under the adopted Specific Plan. The impacts of the proposed project are therefore also compared with impacts anticipated to occur under the existing plan (the Dumbarton TOD Specific Plan). Under this scenario, only the portions of the plan applicable to the proposed project area (generally west of Hickory Street and south of Enterprise Drive) are addressed.

Both the No Project/Existing Specific Plan Alternative (Existing Specific Plan Alternative) and the proposed project would affect 54.53 acres within the original full Specific Plan area of 160.3 acres. The adopted Dumbarton TOD Specific Plan shows low, medium, and medium high residential densities, as well as park and recreational open space acreage. Differences between the two plans include a decrease in residential units under the proposed project from a possible total of 652 to the proposed 589 residences (a difference of 63 homes), with some shifts in housing types as well. Acreage and locations of proposed park or open space areas would remain the same. It is possible that the “additional” homes proposed for the Gateway Station

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West development area under the Specific Plan would simply be transferred to another property within the Specific Plan, in accordance with policies in the plan.

### **Environmental Effects Compared to the Proposed Project**

Similar to the proposed project, implementation of the Existing Specific Plan Alternative would introduce structures and associated infrastructure in a currently largely undeveloped site. The Existing Specific Plan Alternative would have a development footprint matching the proposed project, although the density of residences would be increased. Implementation of the Existing Specific Plan Alternative would be anticipated to result in incrementally greater impacts associated with direct and/or cumulative air quality, biology, noise, and transportation and traffic; and impacts similar to those described for the proposed project for the issues of cultural resources, geology and soils, hazards and hazardous materials, and hydrology/water quality.

The projected maximum daily emissions during construction are expected to remain similar between the proposed project and the Existing Specific Plan Alternative. However, due to the increase in number of residences (63 units) under the Existing Specific Plan Alternative, this alternative would result in increased project-specific operation emissions associated with vehicular use over those for the proposed project. The proposed project is projected to be within the threshold of NO<sub>x</sub> emissions, but with the increase in residences, the Existing Specific Plan Alternative would result in emissions exceeding the threshold. As a result, the alternative would result in a significant operational impact for NO<sub>x</sub> that would not occur under the proposed project.

Impacts to biological resources would be slightly greater under the Existing Specific Plan Alternative, as the design includes a trail following the parcel boundary lines along the south and west sides of the project site, thereby locating a substantial portion of the trail in the area proposed for open space/wetland preserve. Under the proposed project, the trail would be placed immediately adjacent to the development, within the development footprint, removing a passive use area from immediately abutting the preserve, and reducing the additional area of impact. Similarly, the slightly greater footprint impact associated with the trail would result in slightly greater potential impacts to cultural resources; although the overall impact would remain the same.

Because the Existing Specific Plan Alternative would result in development of up to 63 more homes than the proposed project, the alternative would result in an increase in noise generated by HVAC systems, and an increase in the number sensitive receptors potentially affected by the noise. Further, this alternative would also significantly contribute to a potential cumulative noise impact associated with off-site project traffic. Similarly, because the proposed project would have fewer homes, project-generated traffic would be less than under the Existing Specific Plan Alternative, and would contribute less to significant and unavoidable off-site roadway and intersection impacts identified under the Specific Plan.

None of the significant impacts identified for the proposed project would be avoided or substantially reduced under the Existing Specific Plan Alternative, and these impacts would remain significant. Other than the focused hazardous materials and traffic issues, which would remain significant and unavoidable for both the proposed project and alternative, and operational

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NO<sub>x</sub>, which would remain significant for the alternative, all other impacts would be mitigated to less than significant levels for both the alternative and proposed project.

### **Relation to Project Objectives**

Both the Existing Specific Plan Alternative and the proposed project would meet the identified project objectives. Both projects generally would: (1) provide on-site residential development consistent with the densities identified in the Dumbarton TOD Specific Plan and the City General Plan Land Use Element, including housing needs identified for the period of 2015 to 2023 in the 2015 Housing Element Update; (2) provide a mix of housing opportunities from single-family to multi-family housing to meet the City's housing needs; (3) create a compact, walkable community with access to employment opportunities; (4) provide residential units within walking distance of the future, planned transit station to generate the ridership necessary to support the station in keeping with the Dumbarton TOD Specific Plan; (5) permanently preserve and/or restore sensitive biological resources (including wetlands) in the southwestern portion of the Gateway Station West project site; (6) set aside land for open space preservation and recreation opportunities, including the candidate trail proposed for San Francisco Bay Trail status; and (7) develop a focused new community with a distinct identity, architectural style and sense of place while being compatible with existing and planned neighborhoods.

The Existing Specific Plan Alternative would be incrementally more responsive to items 1, 2 and 4 as it could more closely adhere to the Dumbarton TOD Specific Plan densities and mix for the parcel, as well as the related Dumbarton TOD Specific Plan goal of developing predominantly vacant land for its highest and best use. As previously described, the Existing Specific Plan Alternative design includes a trail following the western and southern perimeter of the open space, which introduces direct and indirect impacts to the open space area. The proposed project would be incrementally more responsive to item 5, as the open space set aside under the proposed project would be slightly preferred over the alternative design.

### **Finding and Rationale**

While this alternative could feasibly attain the basic objectives and the public benefits associated with implementation of the proposed project, it is considered environmentally less preferable than the proposed project. This is based on increased incremental significant and unavoidable operational impact relative to air quality (NO<sub>x</sub>), a slightly increased impact associated with an improved trail surrounding the open space/preserve area, as well as the increased noise and transportation and traffic impacts when compared with the proposed project.

## **3. Reduced Project Alternative**

### **Description**

Under the Reduced Project Alternative, development would be scaled back in the central and southern portions of the project site, with an overall development area of approximately 28.5 acres versus approximately 41 acres for the proposed project. This alternative would include a total of 471 residential units, or 118 fewer units compared to 589 units under the proposed project. The candidate regional trail identified for the proposed project also would be proposed as part of this alternative. For the Reduced Project Alternative, although the exact

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footprint would vary slightly as the development footprint is somewhat smaller than the proposed project, it would be similar to the proposed project in that it would be sited adjacent to the alternative's proposed residential uses along the southerly and westerly parcel boundaries.

### **Environmental Effects Compared to the Proposed Project**

Implementation of the Reduced Project Alternative would be anticipated to result in generally incremental reductions of impacts related to air quality, biological resources, cultural resources and both direct and cumulative noise and transportation and traffic, with impacts to geology and soils, hazards and hazardous materials, and hydrology/water quality expected to be similar to those described for the proposed project. All CEQA levels of impact would remain the same except for the one intersection at Willow Street/Thornton Avenue under Existing Plus Project conditions, in which significant impacts under the proposed project would be reduced to a levels below significant under the Reduced Project Alternative. Excluding the focused hazardous materials and traffic issues, which would remain significant and unmitigable for both the proposed project and alternative, all impacts would be mitigated to less than significant levels for both the alternative and proposed project.

### **Relation to Project Objectives**

The Reduced Project Alternative would meet the identified project objectives; however, due to the reduction in residential units, the alternative would fail to meet the following project objectives to the same extent as the proposed project:

- (1) Provide on-site residential development consistent with the densities identified in the Dumbarton TOD Specific Plan and the City General Plan Land Use Element, including housing needs identified during the period of 2015 to 2023 in the 2015 Housing Element Update.
- (2) Provide a mix of housing opportunities from single-family to multi-family housing to meet the City's housing needs.
- (3) Provide residential units within walking distance of the future, planned transit station to generate the ridership necessary to support the station in keeping with the Dumbarton TOD Specific Plan.

The proposed project would be more responsive to housing items 1, 2 and 4 as it would provide approximately 20 percent more homes than the alternative, which would more closely adhere to the Dumbarton TOD Specific Plan and updated Housing Element densities and mix for the parcel (as well as open space preserve), as well as the related Dumbarton TOD Specific Plan goal of development of predominantly vacant land for its highest and best use. The proposed project would place 589 residential units (93 percent of the General Plan goal) on the site, but would have less medium high density housing. While both development scenarios would contain open space area, the Reduced Project Alternative would provide an additional 12.5 acres (or 30 percent) more. The Reduced Project Alternative also would be more responsive to item 5 as the larger open space set aside would be preferred over the smaller amount of open space associated with the proposed project. Overall, the differences in objectives attainment are

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considered less than substantial, with the two development scenarios being considered similar when the incremental variation in pros and cons of the two plans are weighed against each other.

### **Finding and Rationale**

While this alternative could feasibly attain the basic objectives and the public benefits associated with implementation of the proposed project, it is rejected because it fails to meet three of the basic objectives to the extent as the proposed project, and fails to provide the same level of significant public benefits associated with implementation of the proposed project, related to providing a mix of housing opportunities to meet the City's housing needs, and generating the ridership necessary to support the station in keeping with the Dumbarton TOD Specific Plan.

## **4. Wetland Avoidance Alternative**

### **Description**

Under the Wetland Avoidance Alternative, development would be limited to the northeastern and southeastern portions of the site, with an overall development area of approximately 10.4 acres versus approximately 41 for the proposed project. This alternative would include a total of 181 residential units compared to 589 for the proposed project, which would result in 408 fewer units. A trail connection would be provided. Similar to the proposed project, it is assumed that the trail would be aligned along proposed alternative development (as opposed to being placed all along the western parcel boundary as shown under the approved Specific Plan). Because the residential development areas associated with the Wetland Avoidance Alternative are separated from each other by open space and irregular in shape, however, a trail simply aligned along the western boundary of these uses would be circuitous. The proposed trail alignment for this alternative would trend along the parcel eastern boundary (along Hickory Street), which would also keep it from bisecting the large open space set aside associated with this alternative. The trail would continue to a point north of the Gateway Station West parcel's northeastern boundary to intersect with the current planned trail alignment as shown on Figure 3-4 of the Dumbarton TOD Specific Plan PEIR Land Use Map. As previously noted, significant impacts identified for the proposed project include air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology/water quality, and noise. In addition, off-site transportation/traffic impacts related to roadway/intersection operations were concluded to be significant and unavoidable under both the Specific Plan and proposed project analyses.

While the Specific Plan allows transfer of residential units to another location within the Specific Plan, due to the large number of units that would be available for transfer under this alternative (408 units to match the proposed project, or up to 491 units to match the approved Specific Plan); however, it is considered unlikely that this number of units could be accommodated within other areas of the Specific Plan.

### **Environmental Effects Compared to the Proposed Project**

Due to the reduced development footprint and substantially lessened number of residences, implementation of the Wetland Avoidance Alternative would be anticipated to result in a substantial reduction of impacts to biological resources and transportation and traffic relative to

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the proposed project, as well as potential but currently unknown impacts to cultural resources (although impacts would all remain significant), as well as reductions in impacts related to air quality and noise (with these impacts also to remain significant). Proposed project impacts to jurisdictional waters would be eliminated under this alternative. Potential impacts to geology and soils, and hydrology/water quality under this alternative are expected to be similar to those described for the proposed project, and would remain significant. The alternative would be slightly less preferred than the proposed project for the issue of hazards and hazardous materials. Excluding the focused hazardous materials and traffic issues, which would remain significant and unmitigable for both the proposed project and alternative, all impacts would be mitigated to less than significant levels for both the alternative and proposed project.

The less than significant impacts to air quality under the proposed project would be substantially lessened under the Wetland Avoidance Alternative, as the number of cars would be substantially reduced based on the fewer residences. Short-term, construction related impacts to air quality associated with NOx emissions would remain significant under the Wetland Avoidance Alternative; however, due to the reduced footprint and shorter construction period required to construct a smaller development, the timeframe for the impact would be substantially shorter. Although the potentially significant impact would not be eliminated, it would be reduced under the Wetland Avoidance Alternative.

The Wetland Avoidance Alternative would result in a disturbance footprint 75 percent less than the proposed project. The developable footprint would be almost wholly located within the ruderal/disturbed and nonnative habitats, and would avoid all impacts to wetlands and other waters of the U.S. on the project site and off-site improvement areas. Impacts to protected trees and species occurring in the ruderal/disturbed and nonnative habitats (e.g. burrowing owl and other raptors) would remain potentially significant. Impacts to other species would be reduced. Because this alternative would entirely avoid all waters of the U.S., remediation activities affecting waters of the U.S. would not be implemented, and the site remediation along the drainage ditch through the open space parcel would not occur. The habitat along the ditch would not be expected to improve as it would under the proposed project.

While impacts to previously undiscovered cultural resources would remain potentially significant under the Wetland Avoidance Alternative, the potential for impacts would be substantially reduced when compared with the proposed project.

Project-related site remediation would only occur in the vicinity of the build area; therefore, under the Wetland Avoidance Alternative, the area of remediation would be reduced and site remediation would not occur in the open space area, or the previously mentioned drainage ditch. Under the Wetland Avoidance Alternative, large portions of the site containing hazards issues would not be remediated, and some portions would be retained as open space while containing those hazards issues. Under the proposed project, all areas of the site containing hazards issues (open space and proposed for developed) would be remediated. The potential for off-site release of hazardous materials would remain significant and unmitigable.

Like the proposed project, noise impacts to sensitive receptors would remain potentially significant for ground-mounted HVAC systems located closer than 25 feet from adjacent residential property lines under the Wetland Avoidance Alternative. However, the number of

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sensitive receptors potentially impacted would be substantially reduced under the Wetland Avoidance Alternative. Further, due to the reduction in residents, the considerable contribution to noise impacts along Enterprise Drive from the proposed project would be reduced under this alternative, likely to a less than considerable level.

The Wetland Avoidance Alternative would result in substantially less traffic contributed to the significant and unavoidable impacts to several off-site roadway segments and intersections resulting from the Specific Plan. Based on the reduction in traffic associated with this alternative, significant impacts at eight intersections under the proposed project would not occur under the Wetland Avoidance Alternative. Under this alternative cumulative traffic impacts at two additional intersections would remain significant, but would be substantially lessened from the proposed project.

### **Relation to Project Objectives**

The Wetland Avoidance Alternative would provide 25 percent of the housing provided by the proposed project. As a result, the alternative would fail to meet the following project objectives to the same extent as the proposed project:

- (1) Provide on-site residential development consistent with the densities identified in the Dumbarton TOD Specific Plan and the City General Plan Land Use Element, including housing needs identified during the period of 2015 to 2023 in the 2015 Housing Element Update.
- (2) Provide a mix of housing opportunities from single-family to multi-family housing to meet the City's housing needs.
- (3) Create a compact, walkable community with access to employment opportunities.
- (4) Provide residential units within walking distance of the future, planned transit station to generate the ridership necessary to support the station in keeping with the Dumbarton TOD Specific Plan.
- (5) Permanently preserve and/or restore sensitive biological resources (including wetlands) in the southwestern portion of the Gateway Station West project site.
- (6) Set aside land for open space preservation and recreation opportunities, including the candidate trail proposed for San Francisco Bay Trail status.

The proposed project would be more responsive to housing items 1, 2, 3 and 4 as it would provide approximately 75 percent more homes than the alternative, which would more closely adhere to the Dumbarton TOD Specific Plan and updated Housing Element densities and mix for the parcel (as well as open space preserve), as well as the related Dumbarton TOD Specific Plan goal of development of predominantly vacant land for its highest and best use. Both the proposed project and the Wetland Avoidance Alternative would include the open space preserve; however, the proposed project would more closely meet the objective as it includes site remediation activities which are expected to improve habitat conditions. Further, due to its larger size, the proposed project would more fully support objective 6.



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The Wetland Avoidance Alternative is expected to be similar to the proposed project in regards to objective 7:

- (7) Develop a focused new community with a distinct identity, architectural style and sense of place while being compatible with existing and planned neighborhoods.

### **Finding and Rationale**

While the Wetland Avoidance Alternative would result in reduced environmental impacts related to air quality, biological resources, cultural resources, noise, and transportation and traffic, this alternative is infeasible because it does not meet the objectives specified in the Specific Plan for the proposed project. The Wetland Avoidance Alternative does not meet the related Dumbarton TOD Specific Plan goal of developing predominantly vacant land for its highest and best use. Further, it would fail to provide the extent of public benefits associated with implementation of the proposed project, including remediation of the site; provision of housing within a walkable/bikeable distance to employment opportunities, and generation of the ridership necessary to support public transportation.

## **V. STATEMENT OF OVERRIDING CONSIDERATIONS**

### **A. Background**

Pursuant to Section 21081 of CEQA and Section 15091 of the State CEQA Guidelines, the City of Newark found that mitigation was not feasible for: (1) potentially significant impacts from the worst-case scenario releases of hazardous materials from existing off-site facilities; (2) unacceptable level of service at the Cedar Boulevard/Thornton Avenue intersection; (3) increased demand for public transit lines and the need for action by the Alameda County Transit; (4) considerable unavoidable contributions to cumulative impacts of level of service at a number of intersections under 2035 conditions; (5) considerable unavoidable contributions to cumulative impacts of level of service at a number of roadway segments under 2035 conditions. The potentially significant hazardous materials impact from off-site facilities was not addressed in the Specific Plan PEIR. All other significant and unavoidable impacts are consistent with the findings of the Specific Plan PEIR. A General Plan Amendment was processed with the City's adoption of the Specific Plan to allow an unacceptable level of service at major and other intersections for projects that are part of the City's regional effort to reduce vehicle trips and greenhouse gas emissions, support public transit, and enhance the quality of life in the region. With adoption of the General Plan Amendment, the Specific Plan was determined to be consistent with the General Plan policy pertaining to transportation and circulation.

Under CEQA, before a project which is determined to have significant, unmitigated environmental effects can be approved, the public agency must consider and adopt a "Statement of Overriding Considerations" pursuant to State CEQA Guidelines 15043 and 15093. As the primary purpose of CEQA is to fully inform the decision makers and the public as to the environmental effects of a Project and to include feasible mitigation measures and alternatives to reduce any such adverse effects below a level of significance, CEQA nonetheless recognizes and authorizes the approval of projects where not all adverse impacts can be fully lessened or avoided. The agency, however, must explain and justify its conclusion to approve such a project through the Statement of Overriding Considerations setting forth the project's general social,

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economic, policy or other public benefits which support the agency's informed conclusion to approve the project.

**B. Statement of Overriding Considerations**

Pursuant to PRC Section 21081(b) and State CEQA Guidelines Section 15093, the City has balanced the benefits of the project against its unavoidable adverse impacts to hazardous materials and transportation and traffic, and has adopted all feasible mitigation measures with respect to these significant and unavoidable impacts. The City, having considered all of the foregoing, finds that there are specific overriding economic, legal, social, technological, and/or other benefits associated with the proposed project that outweigh unavoidable direct and/or cumulative impacts related to the above mentioned resources. The City also has examined alternatives to the proposed project and found that the No Project/No Build Alternative, Reduced Project Alternative, and Wetland Avoidance Alternative would be environmentally superior to the proposed project. Still, the City determined that although environmentally superior, the build alternatives would also result in significant and unavoidable impacts to hazards and hazardous materials, and transportation and traffic.

The City, (i) having independently reviewed the information in the SEIR and the record of proceedings; (ii) having made a reasonable and good faith effort to eliminate or substantially lessen the significant environmental impacts resulting from the project to the extent feasible by adopting the mitigation measures identified in the SEIR; and (iii) having balanced the benefits of the project against the significant environmental impacts, chooses to approve the project, despite its significant environmental impacts, because, in its view, specific economic, legal, social, technological, and Overriding Benefits of the project render the significant environmental impacts acceptable.

**C. Overriding Benefits**

The City of Newark finds that the proposed project would have the following substantial Overriding Benefits:

1. The project will provide on-site residential development consistent with the densities identified in the Dumbarton TOD Specific Plan and the City General Plan Land Use Element, and address housing needs identified in the 2015 Housing Element Update.
2. The project will provide a mix of housing opportunities to meet the City's housing needs.
3. The project will create a compact, walkable community with access to employment opportunities within a walkable/bikeable distance.
4. The project will help generate the ridership necessary to support the future, planned transit station.
5. The project will involve remediating the entire site of hazardous materials.
6. The project will involve developing predominantly vacant land for its highest and best use.

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7. The project includes trails and sidewalks, thereby encouraging alternate modes of transportation.
  8. The project will set aside land for open space preservation and recreational opportunities, including a candidate trail proposed for San Francisco Bay access.
  9. The project will permanently preserve sensitive biological resources (including wetlands) in the southwestern portion of the project site.
  10. The project is considered to be an example of “smart growth” that is designed to support existing and future public transit, create a walkable community, use land efficiently through compact development design, and reduce urban sprawl on the periphery of the City.
  11. The project will include improvements along the City-maintained Hickory Street, including the addition of travel lanes, curb and gutter, sidewalks, and landscaping.
  12. The project will include improvements along a 715-foot-long segment of the City-maintained Enterprise Drive, between Hickory Street and Willow Drive. These improvements would include construction of a 12-foot-wide median curb in applicable portions of the noted roadway segment, as well as installation of a 5-foot-wide sidewalk and an adjacent 6-foot wide landscape corridor along the southern edge of the proposed Enterprise Drive ROW (with all of the noted improvements except the proposed 5-foot-wide sidewalk located within the existing 80-foot-wide Enterprise Drive ROW).
  13. Construction of the project will create temporary, construction-related employment opportunities.

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RESOLUTION NO.

RESOLUTION RECOMMENDING THE AMENDMENT OF  
TITLE 17 OF THE NEWARK MUNICIPAL CODE BEING THE  
CITY OF NEWARK ZONING ORDINANCE BY CHANGING  
THE ZONING OF A SPECIFIED AREA IN THE CITY OF  
NEWARK

WHEREAS, Integral Communities has made an application to the Planning Commission of the City of Newark to consider the amendment (RZ-14-48) to Title 17 (Zoning) of the Newark Municipal Code and the Official Zoning Map, by rezoning property described as follows:

“All that portion of real property shown on Vesting Tentative Map 8099 in the City of Newark, County of Alameda, State of California as shown on Exhibit A, attached hereto and incorporated herein by reference.”

PURSUANT to Municipal Code Section 17.80.050, a public hearing notice was published in the Tri-City Voice on January 19, 2016, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on February 2, 2016 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, the Planning Commission, based on the evidence and oral and written testimony presented at public hearings, and based on all the information contained in the Community Development Department's files on the project, including, but not limited to, the EIR, the Planning Commission's staff report, does resolve:

- a. That the Planning Commission recommends that the Newark City Council amend Title 17 (Zoning) of the Newark Municipal code and Section 17.44.010 “Zoning Map” thereof, being the City of Newark Zoning Ordinance and Official Zoning Map, by rezoning portions of property shown on Vesting Tentative Tract Map 8099 from MT-1 (High Technology Park District) to MDR-FBC (Medium Density Residential-Form Based Codes) and HDR-FBC (High Density Residential- Form Based Codes); and
- b. That the Planning Commission has reviewed said zoning and finds it consistent and compatible with the objective, policies, general land uses, and the programs of Newark's General Plan, necessary and desirable to achieve the purposes of the ordinance and proper, fair, and for the best interest of the health, safety, and general welfare of the City of Newark; and
- c. That a copy of the minutes be forwarded to the City Council as a summary of the hearing.

This resolution was introduced at the Planning Commission's February 2, 2016, meeting by Commissioner, seconded by Commissioner, and passed as follows:

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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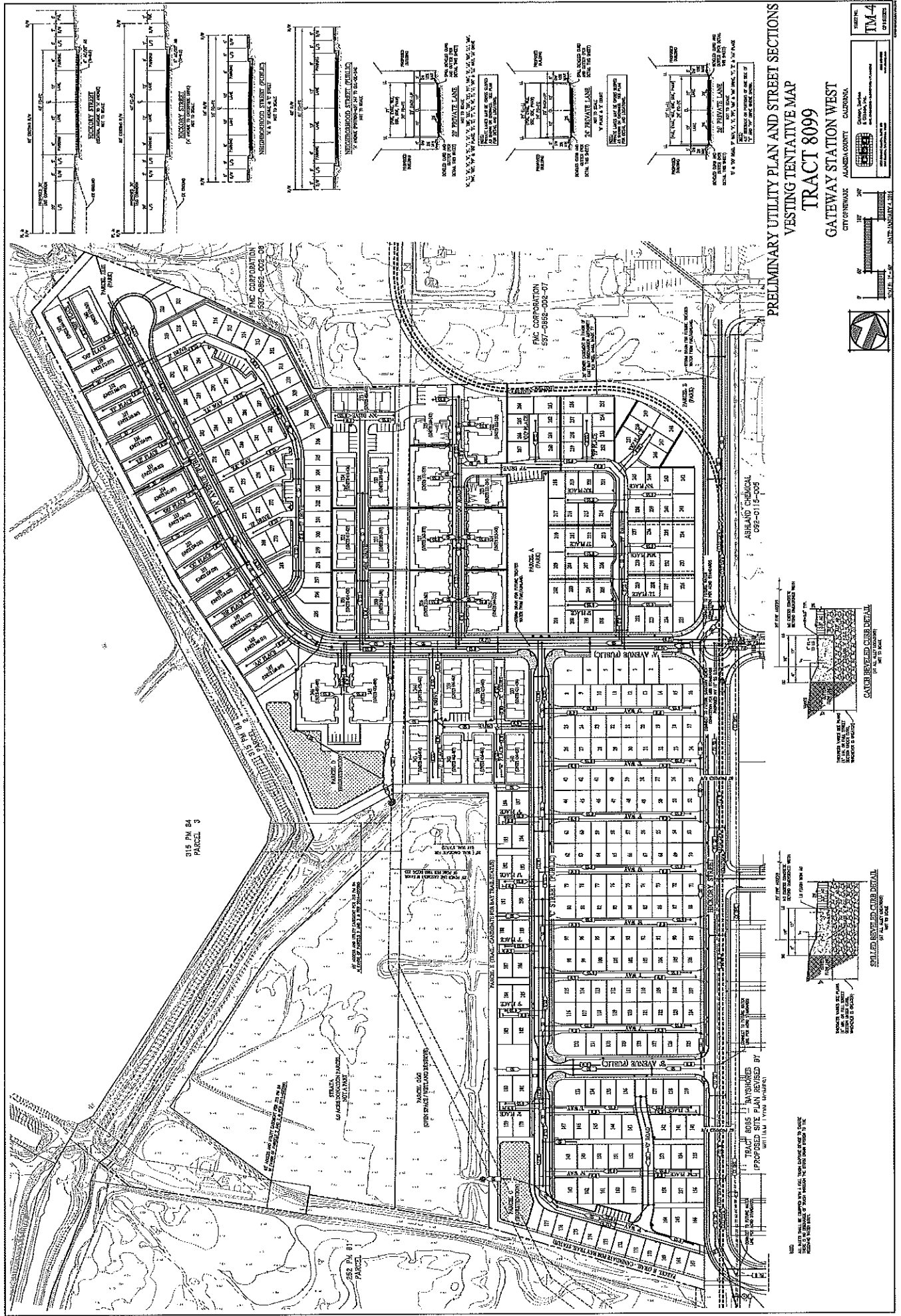
JEFF AGUILAR, Chairperson









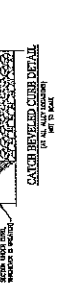


PRELIMINARY UTILITY PLAN AND STREET SECTIONS  
VESTING TENTATIVE MAP  
TRACT 8099  
GATEWAY STATION WEST

ALAMOGON COUNTY, CALIFORNIA  
CITY OF NEWARK  
DATE: JANUARY 4, 2011  
SCALE: 1" = 40'

PROJECT: TRACT 8099  
GATEWAY STATION WEST

DESIGNED BY: [Signature]  
CHECKED BY: [Signature]  
DATE: [Date]



1. TRACT 8099, GATEWAY STATION WEST  
2. VESTING TENTATIVE MAP  
3. PRELIMINARY UTILITY PLAN AND STREET SECTIONS  
4. TRACT 8099, GATEWAY STATION WEST  
5. VESTING TENTATIVE MAP  
6. PRELIMINARY UTILITY PLAN AND STREET SECTIONS

PROPOSED SITE PLAN REVISED BY  
WILLIAM LYNN BUNNEN

NOTES:  
1. ALL UTILITIES SHOWN ARE BASED ON THE LATEST AVAILABLE RECORDS.  
2. THE LOCATION OF UTILITIES IS SUBJECT TO FIELD SURVEY.  
3. THE LOCATION OF UTILITIES IS SUBJECT TO FIELD SURVEY.









RESOLUTION NO.

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWARK RECOMMENDING APPROVAL OF P-14-49, A PLANNED UNIT DEVELOPMENT, AND U-14-50, A CONDITIONAL USE PERMIT, FOR A 589-UNIT RESIDENTIAL PROJECT (GATEWAY STATION WEST) LOCATED WITHIN THE DUMBARTON TRANSIT ORIENTED DEVELOPMENT SPECIFIC PLAN AREA AT THE WESTERN EDGE OF THE CITY OF NEWARK

WHEREAS, the Applicant has filed with the Planning Commission of the City of Newark an application for P-14-49, a planned unit development, and U-14-50, a conditional use permit, for a 589-unit residential development within the Dumbarton Transit Oriented Development Plan Area; and

WHEREAS, pursuant to Municipal Code Section 17.72.060, a public hearing notice was published in the Tri-City Voice on January 19, 2016, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on February 2, 2016 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends that the City Council grant this application as shown on Exhibit A, pages 1 through 46, subject to compliance with the following conditions:

Planning Division

- a. Approval of TM-14-47, Vesting Tentative Map 8099, shall be effective at such time RZ-14-48, the Rezoning of the property within the boundary of Vesting Tentative Map 8099, takes effect.
- b. The project shall be subject to applicable environmental mitigation measures as described in the Dumbarton Transit-Oriented Development (TOD) Specific Plan Environmental Impact Report and the Supplemental Environmental Impact Report prepared for this project.
- c. There shall be no roof-mounted equipment other than satellite dishes, other similar television or radio antennas, and solar equipment. AC units shall not be mounted on the roof.
- d. All lighting shall be directed on-site so as not to create glare off-site, to the satisfaction of the Community Development Director.
- e. Construction site trailers and buildings located on-site shall be used for office and storage purposes only, 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.

- f. The covenants, conditions and restrictions (CC&Rs) filed for this development shall include a provision requiring that garages shall only be used for automobile parking and dwellings with apartment suites shall not be rented or sold to any occupants.
- g. Dwellings with apartment suites shall not be rented or sold to any occupants.
- h. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 7:00 p.m. and 8:00 a.m.
- i. 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 clean-up. 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.
- j. 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.
- k. The elevations as submitted by the developer as part of this application shall be reviewed and approved by the Planning Commission and City Council. The building elevations shall reflect all architectural projections such as roof eaves, bay windows, greenhouse windows, chimneys and porches. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials.
- l. 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.
- m. All roof material shall consist of fire retardant shake roof, concrete tile, or a roof of similar noncombustible 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, the location and screening design for garbage, refuse and organics recycling collection areas for the project shall be submitted for the review and approval of Republic Services and the Community Development Director, in that order. The approved garbage, refuse and organics recycling areas shall be provided prior to the issuance of a Certificate of Occupancy, as required by the Community Development Director. No refuse, garbage or organics recycling shall be stored outdoors except within the approved trash and recycling enclosures.
- o. Measures to respond to and track complaints pertaining to construction noise shall



include: (1) a procedure and phone numbers for notifying the City of Newark Building Inspection Division and Newark Police Department (during regular construction hours and off-hours); and (2) a sign posted on-site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).

- p. Prior to the issuance of 50% of building permits, a dog park shall be completed on Parcel HHH.
- q. Prior to the issuance of a building permit, the developer shall demonstrate compliance with the City's Affordable Housing Program, Chapter 17.18 of the Newark Municipal Code by paying a residential housing impact fee of \$20 per square foot of floor area per dwelling unit for the first 1,000 square feet; and \$8 per square foot of floor area for all square footage over 1,000 square feet.
- r. Prior to the issuance of a building permit, the developer shall enter into an agreement with the City Council to address Community Services fiscal support of \$2,500 per unit for the Map Area specific to this project.
- s. Prior to the issuance of a building permit, the developer shall pay the following fees: public safety impact fee (\$1,989 per single-family dwelling unit and \$2,079 per multi-family dwelling unit); community service and facilities impact fee (\$1,942 per single-family dwelling unit and \$1,596 per multi-family dwelling unit); transportation impact fee (\$801 per single-family dwelling unit and \$460 per multi-family dwelling unit); park impact fee (\$7,460 per dwelling unit); and art in public places and private development fee (\$270 per dwelling unit).
- t. Prior to issuance of a building permit, wall and fence details shall be submitted to the Community Development Director for review and approval.
- u. Prior to the issuance of a building permit, details of the outdoor recreational amenities such as play structures shall be submitted to the Community Development Director for review and approval.
- v. Prior to issuance of a grading permit, the developer shall hire a qualified biologist to: (1) determine if occupied 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 occupied 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. During project construction, if historic, archeological or Native American materials or artifacts are identified, work within a 50-foot radius of such find shall cease and the City shall retain the services of a qualified archeologist and/or paleontologist to assess the

significance of the find. If such find is determined to be significant by the archeologist and/or paleontologist, a resource protection plan conforming to State CEQA Guidelines Section 15064.5 shall be prepared by the archeologist and/or paleontologist and approved by the Community Development Director. The plan may include, but would not be limited to, removal of resources or similar actions. Project work may be resumed in compliance with such plan. If human remains are encountered, the County Coroner shall be contacted immediately and the provisions of State law carried out.

- x. Prior to their installation, mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster, in that order. The mailbox compartments of centralized mailboxes shall identify the individual dwelling units with permanent, easily legible lettering.
- y. The Bayside Trail shall be constructed with contiguous phases of development. Prior to the issuance of a Certificate of Occupancy for any non-model dwellings within a phase, the Bayside Trail segment contiguous to that phase shall be completed.
- z. Prior to the issuance of a Certificate of Occupancy, the parking areas, aisles and access drives shall be installed and striped as shown on the approved site plan.
- aa. Prior to the issuance of a Certificate of Occupancy, roll-up garage doors with automatic garage door openers shall be provided for each unit.
- bb. Prior to final inspection and utility release for each unit, the developer shall pre-wire each unit for satellite and cable television connections, as required by the Community Development Director.
- cc. 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 for the review and approval of the Community Development Director.

#### Engineering Division

- dd. The project shall conform to Tentative Map – Tract 8099, Sheets 1 through 8, and all conditions of approval set forth herein. Approval of this Tentative Map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Newark Municipal Code consistent with the State Subdivision Map Act. This vesting tentative map provides a preliminary design for the infrastructure improvements associated with the proposed subdivision. The developer shall be responsible for any required changes to this preliminary design as determined necessary by the City of Newark to satisfy applicable design requirements of the City or any other public agencies or utilities with jurisdictional authority.
- ee. Prior to the approval of any final maps, detailed design review applications must be processed for all proposed building and landscaping improvements within each designated final map boundary. This future design review may result in required

modifications to the infrastructure improvements shown on this vesting tentative map, including but not necessarily limited to public street layout, street widths, utility system design, and the total scope of public improvements; private street layout, widths, and scope of improvements; lot sizes, lot patterns, and the total number of lots; park improvements; stormwater drainage design and stormwater treatment improvements; solid waste management facilities; and other public improvements. The developer shall be responsible for any and all required changes to the preliminary infrastructure design.

- ff. The development will require approval of final tract maps filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. Any necessary parcel maps or lot line adjustments to acquire lands beyond the current property boundary of the tentative map shall be recorded prior to the first final map or issuance of any model home permits. The final map(s) must be approved prior to the issuance of any building permits. Permission to grade on adjacent private properties shall be obtained prior to approval of the first final map. Evidence of such agreements must be furnished to the City as part of the approval. All required easement dedications as shown on the vesting tentative map and as determined necessary with future design review shall be dedicated on the appropriate final map(s).
- gg. The final map(s) and complete tract improvement plans shall be submitted to the Engineering Division for review to ensure conformance with relevant codes, policies, and other requirements of the Newark Municipal Code and City of Newark street improvement standards. Prior to approval of the final map(s), the developer shall guarantee all necessary public and private street improvements and other infrastructure improvements within the subdivision and beyond the map boundary as required by the City of Newark Subdivision Ordinance and this vesting tentative map and all conditions herein, in accordance with tract improvement plans to be approved by the City Engineer. Improvement plans for on-site common areas and all private streets in the development shall be included with the tract improvement plans to ensure that the improvements are designed and constructed to City standards.

These plans must be prepared by a qualified person licensed by the State of California to do such work. Street improvements shall include, but may not be limited to all required improvements as indicated on the vesting tentative tract map on Willow Street, Hickory Street (including the Enterprise Drive intersection), Enterprise Drive, all in-tract public streets, all private streets, water, sanitary sewer, and joint trench utilities, storm drain systems and all stormwater treatment systems, street lighting systems including the replacement of all existing street lights in the plan area, all landscaping including median improvements and walls, park and other recreational area improvements, off-site traffic mitigation measures, and other improvements consistent with the Dumbarton Transit Oriented Development Specific Plan.

- hh. If performance bonds are posted or work has commenced by the developers of VTM 8085 or VTM 8157, or a combination thereof, for the full scope of improvements identified, this condition shall not apply. Otherwise, the full length of Willow Street shall be improved prior to or concurrent with the first proposed phase of work within the

vesting tentative map boundary. Improvements on Willow Street include, but are not limited to the following between Central Avenue and Enterprise Drive: construction of all intersection improvements proposed in the plan area, construction of all center medians including all landscaping improvements, placement of all utility main lines and utility stub-outs for future developments (excluding stub-outs for VTM 8085 and VTM 8098), a full width pavement grind and an asphalt concrete pavement overlay of 0.25' minimum thickness or greater, or replacement structural sections, that will result in a traffic index of not less than 9.0, curb and gutter, minimum 5-foot wide sidewalk, back-up landscaping, street light system replacement, pavement restriping, bike lane placement, street signage, any required traffic calming measures, and additional improvements as necessary. Street frontage improvements to the east side of Willow Street along the and the west side of Willow Street shall exclude improvements behind the curb including dry utilities, undergrounding of overhead lines, landscaping, and sidewalk improvements. Improvements north of Enterprise Drive shall include pavement resurfacing, restriping, bicycle and pedestrian facilities and any necessary improvements over the existing railroad crossing for full connectivity to the existing street system, and landscape improvements. Applicant shall use good faith effort to obtain all rights-of-way necessary for these required improvements. Final intersection improvements and other traffic calming measures, including roundabout configuration, are subject to modifications from the preliminary design as shown on the tentative map, at the developer's expense, to satisfy code and other design requirements to the satisfaction of the City Engineer.

- ii. All traffic mitigation measures identified under existing plus project conditions in the Dumbarton Transit Oriented Development Specific Plan Environmental Impact Report for impacts that were not determined to be significant and unavoidable shall be completed or guaranteed prior to the approval of any final maps. This includes all recommended improvements at the following intersections: Willow Street and Thornton Avenue, Willow Street and Enterprise Drive, and Cherry Street and Mowry Avenue. All additional traffic mitigation measures under the future year 2035 plus project conditions for impacts that were not considered significant and unavoidable (this is limited to striping modifications at Gateway Boulevard and Thornton Avenue) should be completed concurrent with other off-site improvements. The full scope of recommended improvements shall be incorporated into the tract improvement plans. If either of the developers for VTM 8085 or VTM 8157 post bonds to guarantee this work, then the condition shall be deemed satisfied.
- jj. Prior to approval of any final map(s), any proposed project phasing shall be submitted for the review and approval of the City Engineer. The phasing plan provided with the vesting tentative map is subject to modification as required by the City Engineer.
- kk. All improvements must conform to the City's Sight Visibility Ordinance, Newark Municipal Code Chapter 10.36. Prior to any final map approval all building architecture and other improvements on proposed lots within a given phase of the development shall be sited as necessary to comply with this ordinance. If necessary, the proposed lot pattern shown on the tentative map shall be modified to accommodate a future desired building product.

- ll. Concurrent with approval of the final map, the developer shall effectuate the removal of all existing easements encumbering the property within the tract boundary that conflict with areas proposed for improvement. Elimination or modification of existing utility easements on the site requires the approval from the respective utility district or company and the City of Newark.
- mm. Prior to approval of the final map(s), the developer shall submit a pavement maintenance program for the drive aisles and parking areas on the project site. The maintenance program shall be signed by the property owner and the property owner shall follow the maintenance program at the City Engineer's direction.
- nn. This site is subject to the State of California National Pollutant Discharge Elimination System (NPDES) Program General Permit for Storm Water Discharges Associated with Construction Activity. Prior to issuance of a grading permit or a building permit, the developer needs to provide evidence that the proposed site development work is covered by said General Permit for Construction Activity. This will require confirmation that a Notice of Intent (NOI) and the applicable fee were received by the State Water Resources Control Board and the submittal of the required Stormwater Pollution Prevention Plan (SWPPP). In addition the grading plans need to state: "All grading work shall be done in accordance with the Storm Water Pollution Prevention Plan prepared by the developer pursuant to the Notice of Intent on file with the State Water Resources Control Board."
- oo. Prior to the issuance of the initial grading or any building permits for this project, the developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for the review and approval of the City Engineer. The plan shall include sufficient details to show how storm water quality will be protected during both: (1) the construction phase of the project and (2) the post-construction, operational phase of the project. The SWPPP shall be prepared by a Qualified SWPPP Developer (QSD) in the State of California. The construction phase plan shall include Best Management Practices from the California Storm Water Quality Best Management Practices Handbook for Construction Activities. The specific storm water pollution prevention measures to be maintained by the contractor shall be printed on the plans. The operational phase plan shall include Best Management Practices appropriate to the uses conducted on the site to effectively prohibit the entry of pollutants into stormwater runoff from the project site including, but not limited to, low impact development stormwater treatment measures, trash and litter control, pavement sweeping, periodic storm water inlet cleaning, landscape controls for fertilizer and pesticide applications, labeling of storm water inlets with a permanent thermoplastic stencil with the wording "No Dumping - Drains to Bay," and other applicable practices.
- pp. 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 latest version of the Municipal Regional Stormwater NPDES Permit (MRP) adopted in November 2015 by the Regional Water Quality Control Board (RWQCB), 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 Storm Water Control Plan (Sheet TM-5) on this vesting tentative map would be approved as a conceptual plan only. Final approval is subject to the developer providing the necessary plans, details, worksheets, and calculations that demonstrate the plan complies with Provision C.3 of the MRP, subject to final review by the City Engineer and the RWQCB prior to the recording of any final maps. The developer is responsible for any and all necessary modifications to the site design to comply with MRP requirements. The use of treatment controls for runoff requires the submittal of a completed Stormwater Treatment Measures Maintenance Agreement prior to the approval of any final maps.

- qq. All stormwater treatment measures are subject to review and approval by the Alameda County Mosquito Abatement District. The developer shall modify the grading and drainage design and the stormwater treatment design as necessary to satisfy any and all imposed requirements from this District.
- rr. The preliminary Grading and Drainage Plan provided on Sheet TM-3 of the vesting tentative map has not yet been supported with a detailed drainage feasibility analysis. This analysis, including initial drainage calculations, shall be completed and submitted by the developer for review by the City Engineer and the Alameda County Flood Control and Water Conservation District (ACFC&WCD) for determination of the general feasibility of the proposed design prior to development of detailed grading and drainage plans. The ACFC&WCD will not allow the design capacity of the existing flood control channel to be exceeded. The developer shall be responsible for any and all changes to the preliminary drainage design as shown on the tentative map as necessary to satisfy ACFC&WCD and City of Newark storm drain system requirements.
- ss. The developer shall submit detailed grading and drainage plans for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District (ACFC&WCD). These plans must be based upon a City benchmark and need to include pad and finish floor elevations of each proposed structure, all rear yard drainage designs and surface treatments, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing and proposed drainage patterns. All pad elevations shall be a minimum 11.25 NGVD. All 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. All mitigation measures identified in the Hydrology, Drainage, and Water Quality section of the Environmental Impact Report shall be properly addressed with the detailed grading and drainage plans.

Hydrology and hydraulic calculations based on ACFC&WCD criteria shall be submitted for review and approval by the City Engineer and the ACFC&WCD prior to approval of any final maps. The calculations shall show that City and ACFC&WCD freeboard requirements will be satisfied (0.75 feet to grate or 1.25 feet to the top of curb under a 10-year storm event design).

- tt. Where a grade differential of more than a 1-foot is created along the boundary lot lines between the proposed development and adjacent property, the developer shall install a masonry retaining wall unless a slope easement is approved by the City Engineer. Said retaining wall shall be subject to review and approval of the City Engineer. A grading permit is required by the Building Inspection Division prior to starting site grading work.
- uu. Permission to grade on adjacent private properties shall be obtained prior to approval of the first final map. Evidence of such agreements must be furnished to the City as part of the approval.
- vv. The applicant shall submit a detailed soils report prepared by a qualified engineer, registered with the State of California. The report shall address in-situ and import soils in accordance with the City of Newark Grading and Excavation Ordinance, Chapter 15.50. The report shall include recommendations regarding pavement sections for all public and private streets. Grading operations shall be in accordance with recommendations contained in the soils report and shall be completed under the supervision of an engineer registered in the State of California to do such work. All documentation prepared during the inspection of grading operations shall be made available for review by the City Engineer.
- ww. An independent Project Geotechnical Engineer shall be retained to review the final grading plans and specifications and provide construction inspection review at the developer's expense. The Project Geotechnical Engineer shall approve the grading plans prior to approval by the City of Newark for issuance of a grading permit.
- xx. Prior to approval of any final maps, the developer shall satisfy Alameda County Water District (ACWD) requirements for the proposed development as specified in previous correspondence with ACWD during the specific plan and tentative map review process. This includes, but is not necessarily limited to the following improvements: (1) individual water services to all residential units with a new, complete looped public water system sized and installed in accordance with ACWD's Standard Specifications for Water Main Installation and integrated with the existing public water system, including consideration of any proposed phasing of the water system installation; (2) water system components beyond the tentative map boundary, but determined as necessary by ACWD to meeting requirements for the full specific plan area; (3) installation of non-potable water infrastructure for future use; (3) replacement of existing water mains as determined necessary by ACWD; and (4) recordation of necessary water service easements to ACWD. The Utility Plan provided on Sheet TM-4 of the vesting tentative map includes a preliminary water supply system layout that is subject to a complete review by ACWD at

such time as formal, detailed utility plans are developed for construction. Any necessary site and utility design changes necessary to satisfy ACWD's design requirements shall be the developer's responsibility.

- yy. Prior to approval of any final maps, the developer shall demonstrate to the satisfaction of City that it has obtained approval from Union Sanitary District (USD) of the entire sanitary sewer system designed to serve the development including any existing sanitary sewer infrastructure modifications beyond the tentative map boundary as necessary to serve the development; and potential relocation, modification, or protection in place of the existing twin force mains. The Utility Plan provided on Sheet TM-4 of the vesting tentative map includes a preliminary sanitary sewer system layout that is subject to a complete review by USD at such time as formal utility plans are submitted for construction. Any necessary site and utility design changes necessary to satisfy USD's design requirement shall be the developer's responsibility.
- zz. The developer shall incorporate a Homeowner's Association consisting of all property owners of lots in the development at the time of incorporation and in the future for the purpose of owning and maintaining the association's property, including but not limited to all private streets and common drive aisles, parking areas, landscape areas, stormwater treatment areas, storm drain systems, public access areas, and for paying for security lighting, any common garbage collection services, any security patrol services, if provided, and other functions of a Homeowner's Association. All common areas within the development shall be owned and maintained by the Homeowner's Association. Each property owner shall automatically become a member of the association and shall be subject to a proportionate share of the maintenance expenses. The Homeowner's Association shall be incorporated prior to the sale of any individual lots and/or prior to acceptance of tract improvements, whichever occurs first. A centralized facility of sufficient size such as a clubhouse shall be constructed for Homeowner's Association use at a location to be approved by the Community Development Director, unless the applicant is allowed to utilize a clubhouse at an alternative location, subject to approval by the Community Development Director. The CC&Rs shall prohibit the use of private streets as alternative routes to the in-tract public street system.
- aaa. Prior to City Council approval of any final maps, the bylaws governing the property owner's association and any declaration of covenants, conditions and restrictions (CC&Rs) filed for this development shall be reviewed and approved by the City Council at its discretion after mandatory review and recommendations by the City Attorney. Said covenants, conditions and restrictions shall be prominently displayed in the project sales office at all times. Approval of the covenants, conditions and restrictions shall not make the City a party to enforcement of same. The CC&Rs shall apply equally to both owners and renters. The CC&Rs shall be written to require renters to comply with the regulations of the CC&Rs, and a copy of the CC&Rs shall be given to each renter. The CC&Rs shall be written to allow less than a majority of owners to have pavement or landscape maintenance done and the cost thereof assessed to all owners in the project. The CC&Rs shall include a pavement maintenance program for all private streets and common drive aisles.



- bbb. The Homeowner's Association CC&Rs shall prohibit the on-site parking of non-self-propelled recreational vehicles, including boats, and any self-propelled recreational vehicles not used for transportation unless separate storage facilities are provided. The CC&Rs shall regulate the provision of any on-site parking of self-propelled recreational vehicles used for transportation.
- ccc. The CC&Rs for the project shall include a disclosure statement to all property owners indicating that the project site is located within a seismic hazard zone for liquefaction. The disclosure statement shall indicate that the buildings have been designed to current code requirements. The statement shall further indicate that the buildings, site improvements, and utilities are subject to damage during an earthquake and that the buildings may be uninhabitable after an earthquake. This CC&R disclosure statement is subject to review and approval of the City Engineer prior to final map approval.
- ddd. The developer shall also assist the Homeowner's Association by having a management consultant firm review the maintenance and operating functions of the association. The management consulting firm shall be responsible to prepare a written report with recommendations to the association for managing the association's obligations and setting initial monthly assessment costs for each lot in the development. Membership and assessment cost shall be mandatory for all property owners of property in the development and shall run with the land. The developer shall pay all costs of incorporation and initial management review and reports.
- eee. The developer shall enter into a Landscape Maintenance Agreement to ensure the perpetual maintenance of all common front yard, side yard and back-up area landscaping within the development by the Homeowner's Association. This agreement shall run with the land and be binding upon all future owners or assigns. Any and all necessary easements shall be dedicated over individual lots to allow for the perpetual access and maintenance of landscaping. The full extent of landscape maintenance shall be determined with the future landscape improvements plans and detailed in said agreement. Landscaping by the City at the expense of the Homeowner's Association in these areas will only occur in the event the City Council deems the Homeowner's Association maintenance to be inadequate. Project perimeter walls and adjoining landscaped areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls. A Landscape Maintenance Agreement template is enclosed for your use.

The City of Newark shall be provided with subordinate agreements to ensure that the position of the landscaping maintenance lien shall be superior to any liens or encumbrances other than taxes.

- fff. Prior to approval of the first final map, the developer shall petition the City Council to participate in an active Landscaping and Lighting District for the perpetual maintenance of median landscaping and lighting systems on Willow Street and Enterprise Drive, all public parks within the Dumbarton TOD Specific Plan area, and any public stormwater treatment and storm drain delivery systems including trash capture devices, all public

street trees, all street lighting systems and any additional landscaping, landscape-based stormwater treatment areas and storm drain systems, or lighting improvements within the public rights-of-way and dedicated public easement areas within the limits of the development. Maintenance activities will be performed by the City of Newark or its contractors through the Landscaping and Lighting District. All property owners within the tentative map boundary shall be assessed annually in accordance with requirements established with the Landscaping and Lighting District. The developer shall pay all associated costs in the City's Master Fee Schedule for establishment of the Landscaping and Lighting District. The developer shall record an indenture advising all prospective property owners in the project that their properties are included in a Landscaping and Lighting District for maintenance of landscaping, lighting, and related improvements installed as part of this project.

- ggg. All storm drain inlets within the entire development, located in both public and private areas, shall be equipped with full-capture trash devices approved by the Regional Water Quality Control Board that satisfy Provision C.10 requirements under the Municipal Regional Stormwater NPDES Permit. Trash capture device selection is subject to approval by the City Engineer. All trash capture device maintenance within public rights-of-way shall be completed through the Landscaping and Lighting District. All trash capture device maintenance within private areas shall be completed by the Homeowner's Association. The Homeowner's Association shall be responsible for trash and litter control and sweeping of all private streets within the development. All private storm drain systems and all associated trash capture devices shall be cleaned on a regularly scheduled basis as detailed in the required Stormwater Treatment Measures Maintenance Agreement.
- hhh. The Homeowner's Association shall be required to contract with a professional management firm to handle all necessary maintenance operations. Documentation of such contract shall be submitted to the City of Newark. All commonly owned facilities shall be properly maintained in a manner consistent with the CC&Rs and project requirements.
- iii. The Homeowner's Association shall periodically provide educational materials on stormwater pollution prevention to all residents.
- jjj. Each buyer shall sign an acknowledgment that he/she has read the constitution and bylaws of the Homeowner's Association and the CC&Rs applied to the development.
- kkk. The developer shall provide a complete set of construction plans in electronic format and reproducible paper (mylar) format to the Homeowner's Association at the time of its formation.
- lll. All existing overhead utilities within the development and along the fronting street rights-of-way to the centerline of the street shall be undergrounded to the nearest riser beyond the development's limits in accordance with the City of Newark Subdivision Standards. Undergrounding shall include all existing and proposed service drops.

- mmm. All new utilities including, but not limited to, electric and communication 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. This undergrounding requirement excludes the south side of Enterprise Drive and the east side of Hickory Street along the Ashland Chemical and Torian frontages.
- nnn. Fire hydrants are to be located along public and private streets as determined by the Alameda County Fire Department.
- ooo. A streetlight plan and joint trench plan shall be submitted by the applicant with the second tract improvement plan check and approved prior to final map approval. All existing street lights on Enterprise Drive and Willow Street within the limits of the Dumbarton Transit Oriented Plan Area shall be replaced (unless another developer has guaranteed this work) with street lights consistent with the approved Dumbarton Transit Oriented Development Specific Plan. LED lighting shall be utilized on all public and private streets and other common areas.
- ppp. A signpost with a sign having an area of at least 15-inches by 21-inches shall be installed at or near each private street entrance. The name of each private street shall be placed on this sign in clearly legible 4-inch letters. The signs shall have painted, in at least 1-inch letters, "Private Property. Not dedicated for public use."
- qqq. On-site private streets are to be posted for "No Parking," except in those areas designed to accommodate guest parking, as shown on the vesting tentative map.
- rrr. The connection between private streets and public streets shall be by a City of Newark standard driveway.
- sss. Garbage, trash, or recycling containers shall be suitably concealed in an area dedicated within the garage of each unit, except such features may be placed at curbside on the designated garbage pick-up day.
- ttt. Public Utility Easements (PUE), Water Line Easements (WLE), Storm Drain Easements (SDE), and Sanitary Sewer Easements (SSE) shall be dedicated over all private streets in the development. The PUE, WLE, SDE and SSE dedication statements on the final map shall state that the PUE, WLE, SDE and SSE are available for, but not limited to, the installation, access and maintenance of water supply sanitary and storm sewers, and gas, electrical, and communication facilities.
- uuu. Emergency Vehicle Access Easements (EVAE) shall be dedicated over the full pavement width on all private streets in the development. The final easement geometry shall be subject to the approval of the City Engineer.

- vvv. Easements for public access shall be dedicated over those parcels intended for public uses, including the trail, and the park parcels.
- www. The developer shall request Pacific, Gas & Electric Co. to commence with the design of the underground utility improvements for the proposed development immediately following tentative map approval.
- xxx. The developer shall ensure that a water vehicle for dust control operations is kept readily available at all times during construction at the City Engineer's direction. A pick-up or vacuum type street sweeper shall be available at all times at the direction of the City Engineer to remove tracked dirt and debris from adjacent streets.
- yyy. All existing buildings within the proposed division of land shall be completely demolished prior to recording the first final map.
- zzz. Above ground architectural and building features that project over proposed property lines shall be permitted on townhouse and/or condominium units by easements recorded on the final map. Such features include, but are not limited to, eaves, bay windows, balconies, porches, landings, and stairways. The details for these easements, including dimensions and descriptions, shall be included on the final map. Foundations for townhouse units shall be contained within the individual lot.
- aaaa. Street names and an addressing scheme shall be developed during the final map and improvement plan review process in accordance with the City of Newark's Street Numbering and Naming Ordinance (Chapter 12.12). The street name theme and individual street names shall be determined at a future date. All addressing is based on the Alameda County grid pattern with streets running generally northerly and southerly having 5-digit addresses and streets running generally westerly and easterly having 4-digit addresses.
- bbbb. The developer shall repair and/or replace any public improvements (pavement, curb, gutter, etc.) damaged as a result of construction activity to the satisfaction of the City Engineer.
- cccc. Prior to issuance of a Certificate of Occupancy or release of utilities for any residential units, private streets, common vehicle accessways and parking facilities serving said units shall be paved in accordance with the recommendation of a licensed engineer based on a minimum Traffic Index of 6.0.
- dddd. Prior to issuance of a Certificate of Occupancy or release of utilities for each dwelling 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 concrete surfaces and 0.3% for Portland cement concrete surfaces.

- eeee. The developer shall be responsible for implementation of all applicable mitigation measures identified in the Environmental Impact Report for the Dumbarton Transit Oriented Development Specific Plan and the Supplemental Environmental Impact Report prepared for this project.
- ffff. Prior to occupancy of any buildings within the special flood hazard area or acceptance of any public improvements, the developer shall apply for and receive approval of a letter of map revision based on fill (LOMR-F) from the Federal Emergency Management Agency. The LOMR-F shall be based upon the as-built grades of the building pads and shall determine that the pads and all public and private streets are no longer within the special flood hazard area as indicated on the current Flood Insurance Rate Map for the City of Newark, Community Panel No. 06001C 0443G, dated August 3, 2009.
- gggg. Prior to the issuance of any permits, any proposed permeable pavement design shall be based on a geotechnical engineer's recommendation and reviewed by the manufacturer or the National Ready Mixed Concrete Association (NRMCA). The developer shall submit documentation to the City confirming approval by the manufacturer or NRMCA and geotechnical engineer. The developer shall also ensure that the contractor hired to install the permeable pavement be certified by the NRMCA. Documentation that confirms certification shall be submitted directly to the City Engineer for review and approval.
- hhhh. The developer shall implement the following measures for the duration of all construction activity to minimize air quality impacts:
1. Watering should be used to control dust generation during demolition of structures and break-up of pavement.
  2. All trucks hauling demolition debris from the site shall be covered.
  3. Dust-proof chutes shall be used to load debris into trucks whenever feasible. Watering should be used to control dust generation during transport and handling of recycled materials.
  4. All active construction areas shall be watered at least twice daily and more often during windy periods; active areas adjacent to the existing land uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.
  5. All trucks hauling soil, sand, and other loose materials shall be covered or require all trucks to maintain at least 2 feet of freeboard.
  6. All unpaved access roads, parking areas, and staging areas at construction sites shall be paved, watered three times daily, or treated with (non-toxic) soil stabilizers.
  7. All paved access roads, parking areas, and staging areas at construction sites shall be swept daily with water sweepers; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
  8. Limit traffic speeds on unpaved roads to 15 mph.
  9. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  10. Replant vegetation in disturbed areas as quickly as possible.
  11. Minimize idling time (5 minutes maximum).
  12. Maintain properly tuned equipment.

These measures shall be incorporated into the grading specifications 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.

- iii. The developer shall provide all required paper and digital submittals of the project final map, tract improvements plans, and as-built plans as required by the City Engineer, including, but not necessarily limited to the following: (1) One full-size reproducible copy and one reduced reproducible copy of the approved tentative map; (2) Two electronic copies of the approved final map and improvement plans in a format approved by the City Engineer; (3) One full-size mylar copy and one reduced copy of the recorded final map; (4) One reproducible set and four blue-line or photocopied sets of the approved tract improvement plans; (5) Two electronic copies and one mylar set of the as-built tract improvement plans. The City will require a digital submittal of all final maps and improvements plans. All CAD work must be prepared in a manner consistent with the Union Sanitary District's digital submittal requirements for layering conventions. This can be found on the web at: <http://www.unionsanitary.com/digitalSubmittal.htm>. Digital files submitted shall be based on accurate coordinate geometry calculations and the NAD83 State Plane Coordinate System (Zone III) and NGVD29 (USD requires NAVD88) as vertical datum. A deposit of \$5,000 shall be provided by the developer to the City to ensure submittal of all required documents.
- jjjj. The developer shall provide as-built record drawings in both electronic format and on mylar paper based on full and complete review and inspection by the developer's project civil engineer, landscape architect, and other design professionals of all public improvements and all improvements on private streets and property included in the tract improvement plan set.
- kkkk. If any condition of this vesting tentative tract map be declared invalid or unenforceable by a court of competent jurisdiction, this vesting tentative map shall terminate and be of no force and effect, at the election of the City Council on motion.
- llll. Pursuant to Government Code Section 66474.9, the subdivider, or any agent thereof, or successor thereto, shall defend, indemnify, and hold harmless the City of Newark, its officials, employees or agents (collectively "City") from any claim, action or proceeding against the City to attack, set aside, void, or annul, the City's approval concerning this subdivision map application, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any such claim, action, or proceeding and cooperate fully in the defense.
- mmmm. The Conditions of Project Approval set forth herein include certain fees, dedication 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 developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code

66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

#### Landscape-Parks Division

- nnnn. The developer shall retain a licensed landscape architect to prepare working drawings for tract improvement landscape plans in accordance with City of Newark requirements and the State of California Model Water Efficient Landscape Ordinance as amended by the California Water Commission on July 15, 2015. The associated Landscape Documentation Package must be approved by the City Engineer prior to approval of any final maps.
- oooo. The developer shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to approval of any final maps, the developer shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project.
- pppp. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All street trees and park trees shall be minimum 24-inch box specimens. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- qqqq. Prior to the release of utilities or issuance of any Certificates of Occupancy, all landscaping and irrigation systems shall be completed or guaranteed by a cash deposit deposited with the City in an amount to cover the remainder of the work.
- rrrr. Prior to issuance of Certificate of Occupancy or release of utilities, the developer shall guarantee all trees for a period of 6 months and all other plantings and landscape for 60 days after completion thereof. The developer shall insure that the landscape shall be installed properly and maintained to follow standard horticultural practices. All plant replacements shall be to an equal or better standard than originally approved subject to approval of the City Engineer.
- ssss. Landscaping adjacent to the public right-of-way must conform to the City's visibility requirements in accordance with Newark Municipal Code, Chapter 10.36.
- tttt. Prior to the issuance of any Certificates of Occupancy, the developer shall pay park-in-lieu fees in accordance with the City's current Master Fee Schedule and any updates thereto.
- uuuu. Any above ground utility structures, including backflow prevention devices, and appurtenances shall be installed within the developer's property line and a minimum of 10 feet behind street face of curbs. The backflow prevention devices shall have a green painted security cage to protect it from vandalism. These locations shall be screened with

landscaping to the satisfaction of the City Engineer. The landscape screen shall not interfere with the utility companies' or City Fire Department's access.

#### Alameda County Fire Department

vvvv. This project shall comply with the City of Newark's adopted Fire Code including Appendix D.

#### Building Inspection Division

www. Construction for this project can occur only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday. The developer 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 and duration of the request, the proximity to residential neighborhoods, and input by affected neighbors. All approvals will be done so in writing.

#### General

xxxx. 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 developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval. All time extensions for this planned unit development and conditional use permit shall be approved by the Planning Commission and City Council.

yyyy. 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.

zzzz. This planned unit development and conditional use permit shall be given a public hearing before the City Council for the Council's review and approval.

aaaa. Prior to the submittal for building permit review, all conditions of approval of this project, as approved by the City Council, shall be printed on the plans.

bbbb. 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.

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

The Commission makes the findings prescribed in Newark Municipal Code Sections 17.40.050 and 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 February 2, 2016 meeting by Commissioner, seconded by Commissioner, and passed as follows:

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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JEFF AGUILAR, Chairperson