

RESOLUTION NO.

RESOLUTION RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF NEWARK APPROVE U-19-6, A CONDITIONAL USE PERMIT AND P-19-7, A PLANNED UNIT DEVELOPMENT, TO ALLOW CONSTRUCTION OF A 469-UNIT RESIDENTIAL DEVELOPMENT (SANCTUARY WEST) ON AN APPROXIMATELY 430-ACRE SITE WITHIN THE AREAS 3 AND 4 SPECIFIC PLAN AREA LOCATED AT THE SOUTH WESTERN EDGE OF THE CITY (APNs 537-801-2-6, 537-850-7-2, 537-850-9, 537-850-11-1 AND 537-850-11-4) AND MAKING CEQA FINDINGS THAT THE ENVIRONMENTAL EFFECTS OF THE PROJECT WERE SUFFICIENTLY ANALYZED UNDER THE AREAS 3 AND 4 SPECIFIC PLAN RECIRCULATED ENVIRONMENTAL IMPACT REPORT AND THAT THE PROPOSED PROJECT IS EXEMPT FROM CEQA PURSUANT CALIFORNIA GOVERNMENT CODE SECTION 65457

WHEREAS, Sobrato Organization has filed with the City of Newark an application for U-19-6, a conditional use permit and P-19-7, a planned unit development for a 469-unit residential project known as the Sanctuary West Residential Project (the “Project”) on an approximately 430-acre site within the Areas 3 and 4 Specific Plan area located at the south western edge of the City (APNs 537-801-2-6, 537-850-7-2, 537-850-9, 537-850-11-1 and 537-850-11-4); and

WHEREAS, pursuant to the Municipal Code Section 17.72.060, a public hearing notice was published in The Tri City Voice on October 8, 2019, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on October 22, 2019 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

WHEREAS, in 1992, the City of Newark adopted the General Plan Update including Areas 3 and 4 that allowed future development of Area 4 consisting of, among other things, high-quality, low-density housing, an 18-hole golf course, and open space; and

WHEREAS, on June 22, 2006, the City of Newark agreed in a Memorandum of Understanding with New Technology Park Associates to prepare a Specific Plan for Areas 3 and 4 to address future land uses and to provide a framework for future development; and

WHEREAS, on June 28, 2010, the City Council of the City of Newark certified a Final Environmental Impact Report for the Newark Areas 3 and 4 Specific Plan and approved the Newark Areas 3 and 4 Specific Plan, a map amendment to the General Plan, a Development Agreement and a map amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning

parcels consistent with the Specific Plan; and

WHEREAS, subsequently, the Citizen's Committee to Complete the Refuge, a non-profit public benefit corporation, filed a legal challenge that resulted in a judgment ordering the City to void the resolutions and ordinances approving the project; and

WHEREAS, on February 26, 2015, the City of Newark repealed and rescinded the certification of a Final Environmental Impact Report, approval of a General Plan amendment, Zoning map amendment and Development Agreement; and

WHEREAS, on March 26, 2015, the City of Newark City Council certified a Recirculated Environmental Impact Report (REIR), State Clearinghouse Number 2007052065, that was prepared pursuant to the California Environmental Quality Act (CEQA), addressing and disclosing the environmental impacts of the Newark Areas 3 and 4 Specific Plan and approved a Mitigation Monitoring Reporting Program, the Specific Plan, the related General Plan amendments, Development Agreement, and a zoning map amendment; and

WHEREAS, pursuant to the requirements of CEQA, a Compliance Checklist/Addendum has been prepared for the Project, pursuant to Sections 15164 and 15168 of the CEQA Guidelines and Government Code section 65457, to determine whether the Project is consistent with the Specific Plan, and within the scope of the REIR and to determine whether any of the events specified in Public Resources Code Section 21166, as further addressed by CEQA Guidelines Section 15162, have occurred since the City's certification of the Recirculated Environmental Impact Report; and

WHEREAS, the evidence and analysis presented in this Compliance Checklist demonstrates, that the Project would not result in any new or substantially more significant environmental impacts from changes to the Project or changes in circumstances beyond those previously evaluated and disclosed in the Recirculated Environmental Impact Report, and that no new information of substantial environmental significance shows that the Project would have new or substantially more severe impacts beyond those previously evaluated and disclosed in the Recirculated Environmental Impact Report, as set forth in Section 21166 of CEQA, and as set forth in Section 15162 of the CEQA Guidelines and the conclusions in the REIR remain unchanged; and

WHEREAS, the Planning Commission has read and considered the Compliance Checklist and the comments thereon, and has determined the Compliance Checklist reflects the independent judgment of the City and was prepared in accordance with CEQA and CEQA Guidelines; and

WHEREAS, the Compliance Checklist, all documents referenced in the same, and the record of proceedings on which the Planning Commission decision is based is are located in the Community Development Department's files at City Hall for the City of Newark, located at 37101 Newark Blvd, California, and are available for public review; and

WHEREAS, Sanctuary West is subject to a development agreement entitled:

“Development Agreement by and Between City of Newark and Newark Partners, LLC” (the Development Agreement). Pursuant to the Development Agreement, Sanctuary West is to be considered pursuant to the City’s Zoning Ordinance as it existed in 2015; and

WHEREAS, pursuant to Chapter 17.72 (Use Permits), Chapter 17.40 (Planned Unit Developments), Section 17.40.050 (Permit Procedure) and Section 17.72.070 (Action by Planning Commission), of the City’s Zoning Ordinance as it existed in 2015, the Planning Commission hereby makes the following findings:

1. That the proposed location of the planned unit development is in accord with the objectives of the zoning title and the purposes of the district in which the site is located in that;

*A purpose of the Zoning Ordinance was “to encourage, classify, designate, regulate, restrict and segregate the highest and best location and use of buildings, structures and land to serve the needs of agriculture, residences, commerce, industry and other purposes in appropriate places.” To that end, the Zoning Ordinance established zoning districts. The Project site was in a residential (“R”) district, and specifically R-6000. The purpose of the R-district was to “reserve appropriately located areas for family living at a reasonable range of population densities consistent with sound standards of public health and safety; to preserve as many of the desirable characteristics of one-family residential districts as possible while permitting higher population densities; to reserve areas appropriate by location and character for high density multifamily dwellings; and to assure adequate light, air, privacy and open space for each dwelling.”*

*The Project would develop the Project site with single-family residences, parks, and open spaces. Accordingly, it is in accord with the objective of the R district to preserve as many of the desirable characteristics of one-family residential districts as possible. The Project also clusters the proposed residences on the least biologically sensitive portions of the Project site, leaving the remainder as open space. Through this strategy, the Project assures that residents will have adequate open space. The Project also proposes sufficient setbacks and landscaping to ensure each residence has light, air, and sufficient privacy. Overall, the Project would result in a similar residential density across Area 4 when accounting for the Project’s open spaces as is permitted under the R-6,000 zoning. For these reasons, the Project is in accord with the Zoning Ordinance.*

*Another purpose of the Zoning Ordinance was to “facilitate adequate provisions for community utilities, such as transportation, water, sewage, schools, parks, and other public requirements; to lessen congestion on streets; to promote by proper handling public safety, welfare and general prosperity with the aim of preserving a wholesome, serviceable and attractive community.” The Project would accomplish this purpose by implementing all applicable mitigation measures identified in the Areas 3 and 4 Specific Plan (“Specific Plan”) Recirculated Environmental Impact Report (REIR) and complying with the development regulations in the Specific Plan. The Project also proposes approximately 4.70 acres of parks and approximately 346 acres of open space to meet the community’s active and passive recreation needs. The Project’s water demand has been factored in the*

*Alameda County Water District's (ACWD) Urban Water Management Plan, and ACWD has confirmed that it can serve the Project. Finally, the Project would construct the utilities and infrastructure required to serve it, including a new water distribution system, a pump station and new sewage main, and the extension of Stevenson Boulevard to the Project site and an emergency vehicle access road to Mowry Avenue. The Project thus would result in a new, attractive residential neighborhood that would add to the City's existing neighborhoods and promote the general welfare by implementing the City's longstanding vision for residential development in Area 4, as articulated in the General Plan and Specific Plan.*

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

*The Project would not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity of the Project. The Project leaves the majority of the Project site as open space to protect the Project site's most biologically sensitive areas. The Project would result in a new residential, single-family neighborhood, which would enhance and complement the surrounding properties, including the residential neighborhood under development in Area 3. The Project implements the Specific Plan, which has long planned for residential development of the Project site. The Project also would result in new parks and passive recreation areas for the City's residents. The Project would comply with all applicable mitigation measures in the REIR, and would not result in any new or more significant environmental impacts than disclosed in the REIR. For these reasons, the Project would not be detrimental to the public health, safety, or welfare, or materially injurious to existing properties or improvements in the vicinity.*

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

*The Project is consistent with the population density, site areas and dimensions, site coverage, yard spaces, heights of structures, distances between structures, usable open space, and off-street parking spaces and landscaped areas envisioned by the Specific Plan. Such development will produce a stable and desirable single-family neighborhood, with landscaping around each home, as well as parks and a large amount of open space. The response to Finding 1, above, explains why the Project is consistent with the objectives of the Zoning Ordinance.*

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

overload utilities;

*The Project's impacts on roadways and utilities were disclosed in the REIR. The Project would develop approximately 43 percent less of Area 4 than permitted by the Specific Plan, reducing impacts on roadways and utilities.*

*Regarding streets, the environmental checklist prepared for the Project concluded that the Project would result in one intersection operating below the City's level-of-service ("LOS") standard under cumulative plus Project conditions. The Project is required to pay its fair share for the improvements to the intersection necessary for it to operate at the desired LOS. These improvements are identified in the City's General Plan as Transportation Impact Fee improvements. With the improvements, traffic would no longer exceed below the City's LOS standard. In addition, the Project would extend Stevenson Boulevard into Area 4 to provide adequate ingress and egress for the Project.*

*Regarding utilities, the environmental checklist prepared for the Project concluded that with the utility upgrades proposed by the Project, the Project would not overload utilities. The utility updates proposed by the Project include a water distribution system, new pump station to replace the existing Cherry Street pump station, and a new 10-inch sewer main connection installed east of the railroad tracks.*

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

*The Project proposes single-family dwellings, parks, and open space. These elements will complement each other and harmonize with the development in Area 3, which consists of residences, a park, and a school. The Project's land uses also would not be detrimental to or interfere with the commercial and institutional development in the area, which is separated from the Project site by Area 3 and a railroad corridor.*

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

*As discussed under Planned Unit Development Finding 1, above, the proposed location of the Project is in accord with the purposes of the Zoning Ordinance and the R-6000 zoning district.*

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

*As discussed under Planned Unit Development Finding 2, above, the proposed location of the Project and Project operation will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

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

*The purpose of Chapter 17.72 (Conditional Use Permits) is to “give the district use regulations of this title the flexibility necessary to achieve the purposes of the zoning title.” A conditional use permit is required for projects that have altered the otherwise applicable development regulations through a Planned Unit Development. The Planned Unit Development would permit the Project to develop single-family residences on lots smaller than 6,000-square-feet, which allows the residences to be clustered away from wetlands and results in the Project preserving larger swaths of open space than it could if it strictly complied with the RS-6,000 zoning. Clustering development to preserve wetlands and create large open spaces benefits biological resources. At the same time, the residential lots will be large enough to provide adequate light, air, and privacy to future residents. Thus the flexibility permitted by the Planned Unit Development serves the purpose of the Zoning Ordinance to permit a new, attractive, single-family development in the area, while protecting wetlands and preserving open space.*

NOW, THEREFORE, BE IT RESOLVED based on the entirety of the record before it, which includes but not limited to such things as the City staff report, testimony by staff and the public, the application materials, including without limitation the Compliance Checklist, the plan set, and all other documents, and all adopted City planning documents relating to the Project including the General Plan, 2015 Municipal Code, the Specific Plan, and all associated approved and certified environmental documents, the Planning Commission of the City of Newark further finds and determines as follows:

1. The recitals set forth above are found to be true and correct and are incorporated herein by reference and the exhibits attached to this Resolution, including the Compliance Checklist (Exhibit B) are each incorporated by reference and made part of this Resolution, as if set forth fully within.
2. The Planning Commission of the City of Newark does hereby find that the environmental effects of the proposed Sanctuary West Residential Project in Area 4 are within the scope of the previously-approved 2015 Recirculated Environmental Impact Report (REIR) for the Areas 3 and 4 Specific Plan (State Clearinghouse No. 2007052065), that the REIR adequately describes the proposed Sanctuary West Residential Project in Area 4, and that there are no new substantial changes to the Project or to the circumstances surrounding the Project, nor new information of substantial environmental significance, nor other events since that REIR was certified in 2015 that require supplemental or subsequent CEQA review.
3. The information and analysis set out in the Compliance Checklist (Exhibit B), prepared pursuant to CEQA Guidelines Sections 15164 and 15168(c)(4) and Government Code Section 65457, demonstrates: (a) that the proposed construction of up to 469 residential

units in Area 4 is consistent with the Areas 3 and 4 Specific Plan; (b) that none of the events listed in Public Resources Code Section 21166 and CEQA Guidelines Section 15162 have occurred; and (c) that the proposed Project would not result in any new or substantially more significant environmental impacts from changes to the Project or changes in circumstances beyond those previously evaluated and disclosed in the REIR. The Compliance Checklist also demonstrates that there is no new information of substantial importance that could not have been known at the time the REIR was prepared that shows the Project would have new or substantially more severe environmental impacts than analyzed in the REIR.

4. The Compliance Checklist (Exhibit B) provides substantial evidence supporting the conclusions that: (a) the proposed Project is within the scope of the Newark Area 3 and 4 Specific Plan program REIR; (b) the proposed Project implements and is consistent with the Specific Plan; and (c) that none of the major changes, new information, or other environmentally-significant events specified in Public Resources Code Section 21166 and CEQA Guidelines Section 15162 have occurred since 2015.
5. A supplemental or subsequent EIR to the Newark Areas 3 and 4 Specific Plan REIR is not required or warranted, and the Project is exempt from further CEQA review pursuant Government Code Section 65457 for residential projects that are consistent with a specific plan for which an EIR was certified. In addition, pursuant to CEQA Guidelines Section 15168 (projects within the scope of a program EIR), no further detailed CEQA review of the proposed Project is justified or required.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Newark does hereby recommend that the City Council approve this Project as shown on Exhibit D, pages 1 through 30, subject to compliance with the following conditions:

I. Planning Division

- a. The project shall be subject to the applicable environmental mitigation measures as included in Mitigation Monitoring Reporting Program (Exhibit C) which are incorporated herein by reference.
- b. The project shall comply with all the requirements of Development Agreement by and between City of Newark and Newark Partners, LLC dated November 11, 2015.
- c. The project shall comply with all the requirements of Newark Areas 3 and 4 Specific Plan dated September 2009.
- d. Any residential building shall maintain an 80-foot setback from the centerline of the railroad tracks.
- e. The project shall maintain a clear and open road for emergency vehicles at all times between Mowry Avenue and Stevenson Boulevard. The road shall be an “all-weather”

access road and may not be blocked by any construction materials or vehicles.

- f. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- g. 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.
- h. 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).
- i. 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 CEQA 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.
- j. 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.
- k. 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.
- l. AC units shall not be placed in front or street side yard and if placed in any other location that would makes it visible to public view, shall be properly screened with solid material.
- m. Prior to the issuance of a building permit, all exterior elevations shall be reviewed and approved by the Community Development Director.
- n. Prior to the issuance of a building permit for the sound wall and fence, wall and fence



details shall be submitted for Community Development Director's approval.

- o. Prior to the issuance of a building permit, the roof material shall be reviewed and approved by the Community Development Director. 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.
- p. Prior to the issuance of a building permit, the project shall be submitted for the review and approval of Republic Services and the Community Development Director, in that order. The appropriate garbage, refuse and recycling service shall be approved prior to the issuance of a Certificate of Occupancy, as required by the Community Development Director. No refuse, garbage or recycling shall be stored outdoors except within the approved trash and recycling containers.
- q. 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.
- r. Prior to the issuance of a Certificate of Occupancy, roll-up garage doors with automatic garage door openers shall be provided for each unit.
- s. Prior to the issuance of a Certificate of Occupancy, the parking areas, aisles and access drives in common spaces shall be installed and striped as shown on the approved site plan. Guest parking spaces shall be clearly marked as reserved for guests, as approved by the Community Development Director.
- t. 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. The exterior connections for the pre-wire shall be made to the roof and not on the side elevation walls of the units.
- u. 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.
- v. 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.
- w. The multi-use trail shall be constructed with contiguous phases of development (residential and infrastructure). Prior to the issuance of a Certificate of Occupancy for any non-model

dwellings within a phase, the multi-use trail segment contiguous to that phase shall be completed.

- x. If the multi-use trail gets the designation of the Bay Trail, the developer shall install signage at appropriate locations throughout the trail in the project.
- y. 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.
- z. Prior to the transfer of title for any lot in the development, the applicant shall provide disclosures notices to the buyer as to the possibility of ground borne vibration from trains using the railroad tracks on the north of the subdivision. The method of disclosure shall be subject to review and approval of Community Development Director.

## II. Fire Division

- a. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet.
- b. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities as certified by an engineer. In Alameda County the imposed load is 75,000 lb all weather surface. Grass paving systems are not permitted.
- c. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an approved area for turning around fire apparatus. (2016 CFC 503.2.5).
- d. Fire hydrants shall be operational prior to bringing any combustibles to site.
- e. Gates shall be 20 foot wide. (2016 CFC 503.5).
- f. Bridges shall conform to HS-20 Loading Standards.
- g. Prior to first Certificate of Occupancy in the lots 1 through 237 as included in the Vesting Tentative Tract Map 8495, Emergency Vehicular Access shall be completed.

## III. Engineering Division

- a. The development will require approval of a final map filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. The final map must be approved prior to the issuance of any building permits.
- b. The final map shall designate and/or dedicate all required easements and right-of-way, including but not necessarily limited to emergency vehicle access easements, private vehicle access ways, storm water drainage easements, open space/recreational easements and public utility easements over all common areas of the project. The final easement

geometry shall be subject to the approval of the City Engineer.

- c. Easement dedication for emergency vehicle access, trail easement, and utilities located outside of the final map boundary, including but not limited to the EVA bridge over the Alameda County Flood Control Channel, shall be dedicated by separate easement documents and recorded prior to or concurrently with the final map approval. Maintenance of these improvements shall be through the project's Homeowner's Association.
- d. Prior to submittal of the first Final Map and Subdivision Improvement Plans to the City of Newark Engineering Division, the applicant shall initiate and facilitate discussions with Union Pacific Railroad (UPRR) and the City of Newark regarding modifications of UPRR's easement rights encumbering the emergency vehicle access easement to/from Mowry Avenue to allow the dual use of both easements for their intended and uninterrupted purposes.
- e. Prior to final map approval, the applicant shall cause the existing easement for sanitation facilities and incidental purposes to be eliminated from the project boundary. A copy of the recorded Quitclaim Deed or similar document shall be provided to the City.
- f. Prior to final map approval, the applicant shall cause the existing easement in favor of Shell Oil Company for the transportation of oil and incidental purposes to be eliminated from the project boundary. A copy of the recorded Quitclaim Deed or similar document shall be provided to the City.
- g. The applicant shall coordinate with the various utility agencies regarding the placement of the utility lines and appurtenances within the Stevenson Boulevard Extension bridge, the EVA bridge, and the 5 bridges within the project boundary so that utility vaults and boxes are placed within appropriate utility easements outside of the roadway pavement.
- h. Utilities lines and appurtenances placed on the outside edge(s) of bridges shall be screened or painted to match the bridge to the satisfaction of the Community Development Director.
- i. 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.
- j. 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). Final street names shall be approved and shown on the final map prior to final map approval. 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.

- k. The final map 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 the approval of the final map, 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 the vesting tentative map exhibits 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. All required easements and right-of-way dedication as shown on the vesting tentative map exhibit shall be dedicated on the final map or by separate grant deeds for right-of-way dedication outside of the project boundary. The tract improvement plans shall be prepared by a qualified person licensed by the State of California to do such work.
- l. The applicant shall install complete off-site street improvements for the Stevenson Boulevard Extension between Eureka Drive and the modified cul-de-sac at the project entrance as shown on the Vesting Tentative Map exhibits and as described below:

Stevenson Boulevard Extension east of Union Pacific Railroad (UPRR) right-of-way

- i. Required roadway, complete street and utility improvements for the extension of Stevenson Boulevard east of UPRR right-of-way shall include, but are not limited to, a fourteen-foot travel lane, three-foot bike buffer and six-foot bike lane in each direction; twelve-foot wide landscaped median; seven-foot landscape parkway strip and twenty-foot multi-use along the north side; five foot landscape parkway strip along the south side; curb and gutter; street lights; fire hydrants; storm drain improvements; utilities; landscaping; and stormwater treatment measures.

Stevenson Boulevard Overpass

- i. The applicant, at their cost, shall install complete roadway and utility improvements and secure the dedication of right-of-way and/or easements to the City of Newark for the Stevenson Boulevard Overpass crossing UPRR right-of-way. The Stevenson Boulevard Overpass right-of-way width shall be fifty-one feet (51'). Dedication of the required right-of-way and/or easements over the UPRR right-of-way necessary to construct the Stevenson Boulevard Overpass shall be recorded prior to approval of the first Final Map that requires the Stevenson Boulevard Overpass. Upon acceptance of the completed improvements, the City of Newark will assume ownership and maintenance responsibilities for the Stevenson Boulevard Overpass.
- ii. Required roadway, complete street and utility improvements for the Stevenson Boulevard Overpass shall include, but are not limited to: a twelve-foot travel lane,

two and half-foot bike buffer and five-foot bike lane in each direction; ten-foot multi-use trail with curb and gutter along the north side of the overpass; safety barriers; fencing; utilities; and street lights.

- iii. The applicant, on behalf of City of Newark, shall prepare all required forms and register the Stevenson Boulevard Overpass bridge structure with California Department of Transportation (Caltrans). The bridge number from Caltrans shall be obtained prior to it being opened for public use.
- iv. The applicant shall commence the construction of the Stevenson Boulevard Overpass, once PG&E has completed the improvements necessary on The Dumbarton Newark 115kv line and The Newark Ravenswood 230 kv line to provide the minimum safety clearance requirements beneath the transmission lines.

#### Stevenson Boulevard Extension west of UPRR right-of-way

- i. The applicant, at their cost, shall obtain right-of-way, access rights and/or easements necessary to construct the Stevenson Boulevard Extension west of UPRR right-of-way. Upon submittal of the first Final Map and Subdivision Improvement Plans to the City of Newark Engineering Division, the applicant shall provide evidence that the process to obtain the necessary right-of-way, access rights and/or easements has been initiated. If, prior to Final Map approval the applicant is unable, through the use of diligent efforts, to obtain the necessary right-of-way, access rights or easements, the applicant shall enter into an agreement with the City as specified in Subdivision Map Act Section 66462.5. The applicant shall pay all costs of acquiring off-site real property interests required in connection with the subdivision.
- ii. Right-of-way required for the Stevenson Boulevard Extension west of UPRR right-of-way varies in width between one hundred seventeen feet (117') and two hundred sixteen feet (216'). Required roadway, complete street and utility improvements for the Stevenson Boulevard Extension west of UPRR right-of-way shall include, but are not limited to, a ten-foot (10') travel lane, three-foot (3') bike buffer and six-foot (6') bike lane in each direction; seven-foot (7') landscape parkway strip and twenty-foot (20') multi-use along the northern side; five foot (5') landscape parkway strip along the south side; curb and gutter; street lights; fire hydrants; storm drain improvements; landscaping; and stormwater treatment measures.

#### Stevenson Boulevard Extension termination

- i. The Stevenson Boulevard extension west of UPRR right-of-way shall terminate at a modified cul-de-sac as shown on the vesting tentative map exhibits. The minimum clear pavement width (face-of-curb to face-of-curb) shall be twenty feet (20'). The applicant shall dedicate public access easements over the clear pavement width within the cul-de-sac. Maintenance of the cul-de-sac and associated landscaping shall be the responsibility of the Homeowner's Association.

- m. A portion of the Stevenson Boulevard extension east of UPRR right-of-way is within the City of Fremont city limits. The applicant, at their cost, shall provide all necessary improvements required by City of Fremont to obtain approval and permits for the construction of the Stevenson Boulevard extension from the City of Fremont prior to final map approval.
- n. The applicant, at their cost, shall facilitate the preparation and execution of a maintenance agreement between the City of Newark and the City of Fremont for maintenance of the Stevenson Boulevard Extension street improvements east of the UPRR right-of-way.
- o. Maintenance of those sections of the multi-use trail constructed by the project within the public right-of-way, excluding the Stevenson Boulevard Overpass, shall be the responsibility of the Homowner's Association unless that responsibility is assumed by another entity, e.g., the US FWS.
- p. The applicant, at their cost, shall secure the dedication of right-of-way and/or all necessary easements and install complete roadway improvements to provide a secondary emergency vehicle access road connecting the project to Mowry Avenue. The design and layout of the emergency vehicle access road and bridge shall be subject to review and approval by the Fire Marshal.
- q. The emergency vehicle access bridge over the Alameda County Flood Control and Water Conservation District (District) channel shall conform to the standards and specifications of the District and, if applicable, the Federal Emergency Management Agency (FEMA), including minimum freeboard requirements.
- r. Public streets shall be designed based on specific traffic indexes established by the City Engineer.
- s. The applicant shall install complete street improvements for all in-tract private streets as shown on the Vesting Tentative Map exhibits. All private streets shall be designed based on a traffic index of not less than 6.0.
- t. Prior to issuance of a Certificate of Occupancy for the first dwelling unit for the project, the applicant shall install complete street improvements for the Stevenson Boulevard Extension and any backbone residential streets serving the phase of development for which the residential occupancy is a part of to provide a complete vehicle and pedestrian access and circulation. Improvements include but are not necessarily limited to final street paving, curb, gutter, sidewalk and pedestrian facilities, street lighting, signing and striping, underground utilities, and stormwater treatment measures.
- u. The applicant 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.
- v. Prior to the approval of any final map for the project, the applicant shall obtain the

necessary permits and/or agreements from UPRR for utility crossings, construction, and use of the Stevenson Overpass within the UPRR right-of-way. Roadway and utility easements for the Stevenson Overpass shall be recorded prior to final map approval.

- w. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed. The project shall provide drainage conveyance systems to drain stormwater runoff from the UPRR corridor.
- x. 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 applicant shall provide evidence that the proposed site development work is covered by said General Permit for Construction Activity. The grading plans shall state: "All grading work shall be done in accordance with the Storm Water Pollution Prevention Plan prepared by the applicant pursuant to the Notice of Intent on file with the State Water Resources Control Board."
- y. Prior to the issuance of a grading or any building permits for this project, the applicant shall submit a Stormwater Pollution Prevention Plan (SWPPP) for the review and approval of the City Engineer. The site specific 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, stockpile protection, liquid storage containment, 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.
- z. The Preliminary Storm Water Control Plan, Sheet TM14 of the Vesting Tentative Map, prepared by CBG dated July 11, 2019 is approved in concept only. The final Stormwater Management Plan is subject to City Engineer review and approval prior to approval of the Tract Improvement Plans. Approval is subject to the applicant providing the necessary plans, details, and calculations that demonstrate the plan complies with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued by the San Francisco Bay Regional Water Quality Control Board.
- aa. All storm drain outfalls that discharge into the wetlands shall be designed with positive

flow and with invert elevations above the Alameda County Flood Control District's adopted mean higher high water tidal elevation for the project site. As an alternative, in-line check valves may be installed to prevent backwater from entering the storm drain system and bioretention areas. In all cases, calculations shall be provided demonstrating that drawdown times within all bioretention areas are less than seventy-two (72) hours or as required by the Alameda County Mosquito Abatement District.

- bb. An exhibit shall be included with the first tract improvement plan check submittal package demonstrating that the bioretention discharge locations are in compliance with mitigation measure MM BIO-2.1 of the Recirculated Environmental Impact Report for Newark Areas 3 and 4. Specifically, the exhibit shall identify every seasonal wetland to be preserved that fronts the development envelope; the size of each wetlands; the location of the upslope perimeter of all wetlands greater than one (1) acre in size; all points of discharge into the wetlands; and the distance between points of discharge in wetlands over one (1) acre in size.
- cc. In accordance with Provision C.10 of the Regional Water Quality Control Board's Municipal Regional Permit, storm drain inlet filters shall be installed in all on-site and adjacent off-site storm drain inlets. The storm drain inlet filters shall meet the full trash capture requirements of the San Francisco Bay Regional Water Quality Control Board and shall comply with maintenance and performance requirements of the Mosquito Abatement District. Alternative full trash capture devices such as hydrodynamic separators or pipe screens that meet the requirements of the Regional Water Quality Control Board and Mosquito Abatement District may also be used if approved by the City Engineer. All on-site trash capture devices shall be permanently maintained by the Homeowner's Association.
- dd. The property owner shall enter into an Agreement with the City of Newark that guarantees the property owner's perpetual maintenance obligation for all stormwater treatment and trash capture measures installed as part of the project, including but not limited to the bioretention areas and full trash capture devices installed along the Stevenson Boulevard Extension. Said Agreement is required pursuant to Provision C.3 of the Municipal Regional Stormwater NPDES Permit, Order No. R2-2015-0049. Said permit requires the City to provide verification and assurance that all treatment measure and trash capture devices will be properly operated and maintained. The Agreement shall be recorded against the property and shall run with the land.
- ee. All stormwater treatment measures and full trash capture devices are subject to review and approval by the Alameda County Mosquito Abatement District. The applicant shall modify the grading, drainage, stormwater treatment or full trash capture design as necessary to satisfy any imposed requirements from the District.
- ff. The applicant shall submit detailed grading and drainage plans for review and approval by the City Engineer and the Alameda County Flood Control District (District). These plans must be based upon a City benchmark and need to include pad and finish floor elevations



of each proposed structure, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavement shall drain at a minimum of one percent. The applicant 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 applicant's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer and the District prior to grading permit and/or final map approval. The calculations shall show that the City and County freeboard requirements will be satisfied.

- gg. Detailed grading and drainage plans shall demonstrate that the existing storm drain pump located adjacent to the Mowry Slough is in a good working condition and can adequately convey the flows it was originally designed for. The Homeowner's Association shall own and maintain the storm drain pump. The project CC&Rs shall include language for this maintenance. The plans shall include construction of adequate maintenance access to the storm drain pump.
- hh. Prior to final map approval, the applicant shall submit a storm drain analysis demonstrating that the existing Stevenson Point Techpark storm drain basin/system has adequate capacity to accommodate any additional runoff generated by the project.
- ii. The applicant shall enter into new agreements or amend existing agreements with the Stevenson Point Techpark Owner Association for the additional runoff from Stevenson Boulevard draining into the privately-owned and maintained basin. The agreement shall be executed and recorded prior to final map approval.
- jj. Prior to final map approval, the applicant shall apply for and receive approval of a conditional letter of map revision based on fill (CLOMR-F) from the Federal Emergency Management Agency. The CLOMR-F shall be based upon the grading plan for the project and shall conclude that lots proposed to have structures for human occupancy will be removed from the special flood hazard area.
- kk. Prior to occupancy of any buildings within the special flood hazard area, the applicant 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 are no longer within the special flood hazard area.
- ll. The applicant shall enter into a Storm Drainage Easement Agreement with the City of Newark for the permanent discharge of all public stormwater runoff within the development to the various private common area parcels designated for stormwater treatment to be owned and maintained by the required Homeowner's Association. Storm Drain Easements shall be dedicated to the public over these designated parcels with the final map as required by the City of Newark.

- mm. The project Preliminary Earthwork and Import Fill Recommendations prepared for the project identified toxaphene-impacted soil to be treated or encapsulated onsite. Prior to issuance of any grading permits, other than those grading permit(s) required to perform such remediation, the applicant shall obtain approval from DTSC and/or ACWD that the site remediation has been completed. If toxaphene-impacted soil is to be placed within the site and encapsulated, it shall be placed outside of publicly-owned and maintained infrastructure or roadway.
- nn. The project Preliminary Geotechnical Exploration and Supplemental letters prepared by Engeo are generally complete for planning level assessment of the likely geotechnical constraints of the site. The final seismic design criteria and liquefaction analysis shall meet current building codes in effect at the time of building permit issuance.
- oo. Prior to the submittal of any grading permit application for the project, additional geotechnical investigation (design-level exploration program) shall be conducted, completed, and submitted for review and approval to the City Engineer. If modifications to the preliminary seismic hazard mitigation measures include recommendations for ground improvement techniques, the applicant shall coordinate and obtain approval from ACWD to ensure impacts to the groundwater resources are minimized.
- pp. Additional geotechnical investigation shall be conducted to identify depths and types of foundations required for all bridges and associated retaining walls for the project site. The geotechnical investigation shall be reviewed and approved by the City Engineer prior to the submittal of any grading permit, final map, or building permit application for the project. Bridge design shall be per Caltrans standards.
- qq. The project Geotechnical Consultant shall provide a surcharge phasing and monitoring plan for the project import fill. The surcharge phasing and monitoring plan shall be reviewed and approved prior to the issuance of any grading permit for the import fill associated with the surcharge program.
- rr. The soil surcharging target static consolidation rates shall be achieved prior to the removal of the surcharged import fill. The project geotechnical consultant shall provide the results to the City Engineer for review and approval.
- ss. Peer review of geotechnical investigation reports and analyses shall be done through one of the City's geotechnical peer review consultants. Costs for such peer review consultant services shall be paid for by the applicant as set forth in the City master fee schedule.
- tt. The applicant, at their cost, shall retain an independent project geotechnical consultant to review grading plans and specifications and provide construction inspection to ensure operations are performed in accordance with the recommendations and project specifications.

- uu. 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.
- vv. Where a grade differential of more than a 1-foot is created along the boundary lot lines between the proposed development and adjacent property or between any adjacent residential lots created by the project, the applicant shall install a masonry or concrete retaining wall unless otherwise approved by the City Engineer. Said retaining wall shall be subject to review and approval of the City Engineer.
- ww. The grading plans shall identify the shortest and closest truck route to the project site and require the applicant to enforce the use of such truck route by all project construction traffic. The applicant shall retain, at their cost, a pavement specialty consultant to perform pre-construction and post-construction pavement condition surveys of the identified truck route for the project. The post-construction report shall include pavement rehabilitation recommendations required to bring the roadway back to a pre-construction structural condition or better. The pavement rehabilitation report and plan shall be reviewed and approved by the City Engineer. The recommended pavement rehabilitation shall be performed prior to tract acceptance or at the discretion of the City Engineer if the identified truck route pavement condition is deemed to be in poor condition.
- xx. The applicant shall ensure that a water vehicle for dust control operations and a pick-up or vacuum type street sweeper to remove tracked dirt and debris from adjacent streets is kept readily available at all times during construction at the City Engineer's direction.
- yy. The applicant 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.
- zz. The Preliminary Utility Plan includes a water supply system and sanitary sewer system layout that are subject to review and approval by Alameda County Water District (ACWD) and Union Sanitary District (USD), respectively. Prior to approval of any final maps, the applicant shall satisfy ACWD and USD requirements for the proposed development. Any necessary site and utility design changes to satisfy ACWD and USD design requirements shall be the applicant's responsibility.
- aaa. The project is required to install water efficiency measures, including but not limited to a separate, non-potable distribution system (i.e. purple pipe) for non-residential landscape needs, which includes a non-potable water transmission main extending through the site with a connection(s) to Cherry Street meeting ACWD requirements and on-site system extending to areas where recycled water could be used.
- bbb. All existing overhead utilities, with the exception of transmission lines, within the development boundaries and within City right-of-way 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.
- ccc. All new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground for all buildings in the development in accordance with the City of Newark Subdivision Standards. Electrical transformers shall be installed in underground vaults with an appropriate public utility easement or within the public right-of-way.
- ddd. The applicant shall request Pacific, Gas & Electric Co. to commence with the design of the underground utility improvements for the proposed development immediately following approval of the tentative map.
- eee. Dry utility boxes, with the exception of street light boxes, shall not be installed within the landscape planters adjacent to the roadway.
- fff. Any utility connections and/or underground work within structurally sound street pavement shall be bored and jacked. Open street cut will not be permitted unless a pavement overlay is proposed for the disturbed area subject to the approval of the City

Engineer.

- ggg. Utility boxes and vaults shall not be placed in pavement areas, sidewalks or driveways. They shall instead be placed behind the sidewalk within appropriate utility easements.
- hhh. A streetlight plan and joint trench plan shall be submitted by the applicant with the first tract improvement plan check and approved prior to final map approval. LED lighting shall be utilized on all public and private streets and other common areas. The minimum maintained foot-candle level for all public and private streets shall be 0.12.
- iii. A signpost with a sign having an area of at least 15-inches by 21-inches shall be installed at or near all private street entrances from public streets. The name of the private street is to be placed on the sign in clearly legible 4-inch letters. The sign shall have painted, in at least 1-inch letters, "Private Property. Not dedicated for public use."
- jjj. The applicant shall retain a licensed landscape architect to prepare working drawings for all frontage and common area landscape improvements in accordance with City of Newark requirements. The landscape plans shall be included with the tract improvement plan set.
- kkk. The plant species identified for any proposed biotreatment measures are subject to final approval of the City Engineer.
- lll. Prior to installation by the applicant, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- mmm. The applicant 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, common 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. The CC&Rs shall prohibit the use of private streets as alternative routes to the in-tract public street system.
- nnn. 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 subject to review by the City Attorney and the

Community Development Director. 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.

- ooo. 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.
- ppp. 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.
- qqq. The Homeowner's Association shall periodically provide educational materials on stormwater pollution prevention to all residents.
- rrr. 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.
- sss. The applicant 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.
- ttt. 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.
- uuu. The following language shall be included in the CC&Rs:

Rights of City: Notwithstanding anything to the contrary in this Master Declaration, no amendment hereto which deals with any of the following matters shall be effective without the prior written consent of the Director of the City's Community Development Department, such consent not to be unreasonably withheld: (i) Any amendment, the design

or purpose of which is to eliminate an obligation of the Association to maintain, manage and repair the Master Common Property all Improvements therein or to lower the standards for maintaining and repairing such Master Common Property and Improvements; (ii) Any amendment with regard to the fundamental purpose for which the Project was created (e.g., a change from residential use to a different use);(iii) Any amendment to Sections....(list sections required by condition of approval), and all defined terms therein, each of which were required as a condition of approval for the Project.(note: will need to define "Project.")

Enforcement by City: If the Association or any Owner (as the case may be) fails to Maintain the Common Area or any Improvement, or if the Association fails to enforce any of the provisions, listed in Section XXX (Rights of City), the City, as an intended third party beneficiary of the provisions of this Master Declaration, shall have the right, but not the duty, to compel performance of such provisions in any manner provided by law or in equity and in any manner provided in this Master Declaration.

- vvv. The project CC&Rs shall be submitted for review with the first submittal of the final map and improvement plans.
- www. The applicant shall provide all required paper and digital submittals of the tentative map, project final map, tract improvement plans, and as-built plans as required by the City Engineer, including, but not necessarily limited to the following: (1) one full-sized copy and one reduced copy of the approved tentative map; (2) electronic copies of the approved final map and improvement plans in a format approved by the City Engineer; (3) one full-sized mylar copy of the recorded final map; (4) two full-sized sets and four reduced sets of the approved tract improvement plans; (5) one mylar set of the as-built tract improvement plans. All digital copies of the final map and improvement plans shall be prepared in accordance with Union Sanitary District digital submittal standards. A deposit of \$5,000 shall be provided by the applicant to the City to ensure submittal of all required documentation.
- xxx. The applicant shall provide as-built record drawings in both electronic format and on mylar paper based on full and complete review and inspection by the applicant'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.
- yyy. Prior to the first certificate of occupancy issued for Lots 1 through 237 as shown on the vesting tentative map, the 40-foot Emergency Vehicle Access Easement and emergency vehicle access roadway and bridge providing secondary access to the project site from Mowry Avenue shall be fully constructed and completed.
- zzz. All street intersections of the development are subject to the requirements of the Visibility Ordinance.

- aaaa. The Homeowner's Association shall be responsible for maintenance of the entire 40-foot Emergency Vehicle Access (EVA) Easement and the EVA roadway and bridge along the Recreational Parcel and over the Alameda County Flood Control facility. Maintenance shall include, but is not limited to, landscaping, irrigation, paving, and lighting. The maintenance responsibility shall be included in the CC&Rs.
- bbbb. Prior to approval of any final maps, the developer shall demonstrate to the satisfaction of the City that it has obtained approval from Union Sanitary District (USD) of the entire sanitary system designed to serve the development including construction of a new pump station to replace USD's existing Cherry Street Pump Station and sewer lines conveying flows to and from its location to the new location at 7238 Stevenson Blvd. Developer shall enter into an Improvement and Relocation Agreement with USD, in a form approved by the District, for the work associated with the new pump station.

#### IV. Landscape Division

- a. Maintenance of all common areas, common area facilities, site frontage areas including the planter strips adjacent to the roadways, and all red curbing within the development shall be maintained by the required homeowner's association.
- b. The applicant shall retain a licensed landscape architect to prepare working drawings for all frontage area and common area landscape improvements in accordance with City of Newark requirements and the State of California Model Water Efficient Landscape Ordinance. The landscape plans shall be included with the first tract improvement plan set submitted for review. The landscape plans shall be concurrently approved with the tract improvement plans and final map.
- c. The applicant shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to the approval of the final map, the applicant shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project.
- d. All street trees shall be a minimum of 24-inch box specimens. All plant replacements shall be an equal or better standard than originally approved subject to approval by the City Engineer.
- e. Landscaping and irrigation systems shall be installed along the Stevenson Boulevard Extension prior to the first certificate of occupancy issued for the project.
- f. Prior to the release of utilities or issuance of any Certificate of Occupancy, all landscaping and irrigation systems on the lot and the lot frontage areas shall be complete. Cash deposit to guarantee remainder of the work can be accepted subject to the City Engineer approval.
- g. Stormwater treatment facilities and associated infrastructure serving a drainage area shall be installed and operational prior to the occupancies of the homes within the same drainage



area. A certification by a licensed civil engineer and/or licensed landscape architect certifying that the stormwater treatment facilities and associated infrastructure were installed and are operating properly shall be submitted to the City and approved by the City Engineer.

- hhh. Prior to the release of utilities or issuance of any Certificate 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.
- iii. Prior to issuance of Certificate of Occupancy or release of utilities, the applicant shall guarantee all trees for a period of 1 year and all other plantings and landscape for 60 days after completion thereof. The applicant shall ensure that the landscape is 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.

#### V. Building Division

- a. Construction for this project, including site work and all structures, can occur only between the hours of 8:00 AM and 6:00 PM, Monday through Friday. The applicant may make a written request to the Building Official for extended working hours and/or days. In granting or denying any request the Building Official will take into consideration the nature of the construction activity which would occur during extended hours/days, the time duration of the request, the proximity to residential neighborhoods and input by affected neighbors. All approvals will be done so in writing.
- b. A fully automatic fire sprinkler system shall be installed in each dwelling.
- c. This project will require the payment of school developer fees. School developer fees are assessed and collected by the Newark Unified School District.

#### VI. Police Division

- a. The development shall comply with Chapter 15.06, Security Code, of the Newark Municipal Code and Section 5.10 of the California Fire Code for radio reception.
- b. Housing numbers should be well placed, illuminated and easily recognizable for first responders.
- c. A map of the entire complex should be placed in easy to find locations (preferred- street entrance into the complex) to aid first responders in locating specific dwelling.

#### VII. General

- a. 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.

- b. If any condition of this amendment to a planned unit development and conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this amendment to a 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.
- c. 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.
- d. The developer hereby agrees to defend with separate counsel reasonably selected by the City, 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.
- e. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The 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.