



CITY OF NEWARK

Planning Commission

City Hall, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4330 | E-mail: planning@newark.org

AGENDA

Tuesday, March 14, 2023
7:00 P.M.

HYBRID IN-PERSON/VIRTUAL MEETING
REFER TO THE END OF THE AGENDA TO REVIEW
OPTIONS FOR PARTICIPATING IN THE MEETING REMOTELY OR IN-PERSON

IF YOU ATTEND THE MEETING IN PERSON, A FACE COVERING IS RECOMMENDED BUT NOT REQUIRED.

A. ROLL CALL

B. MINUTES

C. WRITTEN COMMUNICATIONS

D. ORAL COMMUNICATIONS

Members of the public are invited to address the Planning Commission on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Commission from acting on non-agenda items.

E. PUBLIC HEARINGS

E.1 Public Hearing to consider a Resolution to recommend City Council approval of P2021-002, an Ordinance Establishing a Planned Development Overlay District, Design Review, a Minor Use Permit, and a Vesting Tentative Map and adoption of a Mitigated Negative Declaration supported by an Initial Study in accordance with the California Environmental Quality Act for a 118-unit residential

development located at 38288-38594 Cedar Boulevard (APNs 92A-2375-002-06, 92A-2375-022-01).

(RESOLUTION)

F. STAFF REPORTS

G. COMMISSION MATTERS

G.1 Election of Officers

H. PLANNING COMMISSIONER COMMENTS

I. ADJOURNMENT

HYBRID IN-PERSON/VIRTUAL MEETING NOTICE

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Assembly Bill 361(2021). Members of the public may attend the meeting in person, virtually via Zoom, or watch it via YouTube. If you attend the meeting in person, a face covering is recommended but not required.

Chair Becker, Vice Chair Fitts, and Commissioners Aguilar, Otterstetter, and Bogisich may be attending this meeting via teleconference. Teleconference locations are not open to the public. In the event that any members of the Planning Commission elect to attend this meeting via teleconference, all votes conducted during the teleconferencing session will be conducted by roll call vote.

How to view the meeting remotely:

Livestream online at YouTube: <https://www.youtube.com/@cityofnewark3077>

Copy/paste the YouTube URL into your browser if the link does not automatically open.

How to participate in the meeting remotely, via Zoom Webinar:

From a PC, Mac, iPad, iPhone or Android device: <https://us06web.zoom.us/j/83086923427>

From a telephone dial +1 669 900 6833

Webinar ID: 830 8692 3427

Provide live, remote public comments when the Chairperson calls for comments. Use the raise your hand feature in Zoom to be called upon by the Secretary.

For frequently asked Zoom questions, please go to [Agendas and Minutes](#) and select the Frequently Asked Questions link.

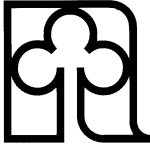
Submission of Public Comments: Public comments received by 4:00 p.m. on the Planning Commission meeting date will be provided to the Planning Commission and considered before Planning Commission action. Comments may be submitted by email to planning@newark.org.

No question shall be asked of a Planning Commissioner, city staff, or an audience member except through the Chairperson. No person shall use vulgar, profane, loud, or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the Chairperson for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Commission Meeting Access/Materials:

The agenda packet is available for review at [Agendas and Minutes](#). The packet is typically posted to the City website the Friday before the meeting, but no later than 72 hours before the meeting.

Pursuant to Government Code 54957.5, supplemental materials distributed less than 72 hours before this meeting, to a majority of the Planning Commission, will be made available for public inspection at this meeting and will be posted, if time allows, at [Agendas and Minutes](#). Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection. For those persons who require special accommodations, please contact the Administrative Support Specialist at least two days prior to the meeting at planning@newark.org or 510-578-4330.



E.1

Hearing to consider a Resolution to recommend City Council approval of P2021-002, an Ordinance Establishing a Planned Development Overlay District, Design Review, a Minor Use Permit, and a Vesting Tentative Map and adoption of a Mitigated Negative Declaration supported by an Initial Study in accordance with the California Environmental Quality Act for a 118-unit residential development located at 38288-38594 Cedar Boulevard (APNs 92A-2375-002-06, 92A-2375-022-01). The subject site is zoned RM Residential Medium Density with a General Plan designation of Medium Density Residential – from Senior Planner Carmelisa Lopez.

(RESOLUTION)

Background

The Applicant, Robson Homes LLC, submitted an application to demolish the existing buildings and site improvements and construct a 118-unit residential development comprised of single-family residences and two-unit attached townhouses (duets) on a 7.76-acre site located at 38288-38594 Cedar Boulevard.

The project site is a rectangular property consisting of four legal lots bounded by a personal storage facility to the northwest, Interstate 880 (I-880) to the northeast, an Alameda County Flood Control & Water Conservation District (ACFCD) channel to the southeast, and Cedar Boulevard to the southwest. The site currently contains several commercial buildings used by automobile repair and parts supply shops, a large metal storage shed for parking of trailers and campers, and paved areas for circulation, parking, and storage. The site is surrounded by commercial, industrial, church, school, and single-family residential uses. The site is zoned RM Residential Medium Density with a General Plan designation of Medium Density Residential.

Staff requests the Planning Commission to consider a Resolution recommending approval to the City Council of the following actions:

1. An Ordinance establishing a Planned Development Overlay District to allow the proposed development;
2. Design Review which is required for all projects that require a permit for new construction, reconstruction, rehabilitation, alteration, or other improvements to the exterior of a structure, site, or a parking area;
3. Minor Use Permit to allow a proposed wall up to 18 feet tall along the property line adjacent to Interstate 880;
4. Vesting Tentative Map to create 124 lots including six common and 118 residential lots; and

5. Adoption of a Mitigated Negative Declaration (MND) supported by an Initial Study for the proposed project in accordance with the California Environmental Quality Act (CEQA).

Project Proposal

The Applicant has proposed a project to subdivide the 7.76-acre site into 124 lots: 118 residential lots and six common lots for the private streets and common open space areas (see Attachment 1, Exhibit D). Residential lot sizes would range from 1,391 to 3,484 square feet (sq. ft.). A 5-foot-wide right-of-way dedication for Cedar Boulevard is also proposed at the front of the property.

A total of 118 residential units comprised of 90 single-family residences and 28 two-unit townhouses (duets) are proposed. The proposed net density would be 21 units per acre. Each building would have three stories and range from 28'-1" to 33'-10" in height. The five floor plans proposed include either three or four bedrooms, 3.5 bathrooms, decks, porches, and a two-car garage on the ground floor. The habitable area of each residence would range from 1,961 to 2,589 sq. ft. As will be discussed later in this report, the project would not meet all of the RM zoning district standards and parking standards in NMC [Table 17.07.030](#) and [Chapter 17.23](#), respectively.

Building Design

The proposed architectural design is a contemporary translation of early California architecture, developed as a combination of traditional New England and Spanish styles. The proposed floor plans and elevations would provide a variety of massing, wall breaks, colors, and materials. The proposed building materials would include stucco, board and batten, and brick. The main colors of the buildings would be shades of white and garage doors, doors, and various architectural features would be painted accent colors such as brown, forest green, and red. Enhanced side elevations are also proposed on various buildings adjacent to entrances to the neighborhood, open space areas, and facing I-880. Further, the buildings along Cedar Boulevard would be oriented toward Cedar Boulevard and their front entrances would face Cedar Boulevard.

Open Space and Landscaping

The project would include a total of 44,990 sq. ft. of open space area: 33,283 sq. ft. of common open space and 11,707 sq. ft. of private open spaces. The residences would include private open space areas such as decks and porches. The common open space areas would feature a diverse palette of trees, shrubs, and ground cover. Planting pockets with accent plantings are proposed along the sidewalks and walkways within the site. The common open space areas would also include various amenities such as play structures, benches, and pedestrian bridges over bioretention areas. Some common open spaces areas would include stormwater bioretention areas. The proposed streetscape along Cedar Boulevard would include large landscape areas, a low wall to maintain a clear distinction between the public and private realm, and a meandering sidewalk.

Fences and Walls

The project would include an 18-foot-tall masonry sound wall with plant pocket for vines along the rear property line and would wrap around the northwestern and southwestern boundaries, stepping down from a height of 18 to 10 feet from the rear to the front of the property. This wall would assist with reducing

highway noise levels as will be discussed later in the report. Fences and walls are also proposed throughout the development including four-foot-tall stucco walls and six-foot-tall fences and gates in the side yard of each residential lot for outdoor storage of store trash, recycling, and organic waste receptables, four-foot tall fences around the perimeter of the dog areas, and low stucco walls in front of the residences along Cedar Boulevard.

Parking, Access, and Circulation

Single-unit dwelling uses require two parking spaces per unit within a garage. Therefore, 236 parking spaces are required for the project. The project proposes a total of 294 parking spaces. Each residence would include two garage parking spaces for a total of 236 residential parking spaces. The remaining 58 parking spaces would be for guests. The guest parking spaces would be provided as parallel and head-in parking spaces on the private streets and within a parking area at the rear of the project site. As will be discussed in later in this report, the project would not meet some parking standards in [NMC Chapter 17.23](#), specifically the minimum dimensions for parallel parking spaces and the minimum parking drive aisle width for 90° (head-in) parking spaces.

The residences would be accessed via two driveways from Cedar Boulevard and private streets within the project site. The private streets and courts would provide direct access to the two-car garages on the ground level of each residence. Pedestrian circulation throughout the site would be provided via sidewalks and interconnected walkways.

Utilities

The project would include the undergrounding of utilities including tie-ins for stormwater, sewer, and water along Cedar Boulevard and relocation of certain streetlights, fire hydrants, and other on-site utilities. Existing 18-inch stormwater drainpipes in Cedar Boulevard near the southwestern and southeastern corners of the site would be replaced with 24-inch stormwater lines to serve the project.

Off-Site Improvements

The project would include the following off-site improvements:

1. Two 8-foot tall masonry walls, sidewalk reconstruction, and street tree plantings and landscape installation across the subject property, on the south side of Cedar Boulevard, in the street segment fronting the residential development to the south;
2. Traffic signal and crosswalk improvements at the Cedar Blvd and Smith Ave intersection;
3. Traffic median improvements on Cedar Boulevard;
4. Undergrounding of utilities along Cedar Blvd including tie-ins for storm, sewer, and water;
5. Sidewalk extension across the adjacent public storage property to the northwest;
6. Left turn queue lane extension at the corner of Cedar Blvd and Mowry Avenue; and
7. Bus shelter on the project site (within private property) adjacent to Lots 68 & 111.

Community Meeting

The Applicant held a community meeting on December 8, 2021 at 5:30pm at the Silliman Activity and Family Aquatic Center at 6800 Mowry Avenue in Newark. Notices were sent to property owners within 500 feet of the project site inviting them to attend the meeting. The notice also included the Applicant's contact information in the event a property owner could not attend and wanted to set up a separate time to meet and discuss the project.

There were a total 12 participants at the meeting. During the meeting, the Applicant presented the proposed development and provided an opportunity for participants to discuss the project and pose any questions. The Applicant answered questions about the proposed development and how the businesses currently occupying the project site would be affected and any relocation assistance that would be provided. No written comments were received.

Discussion/Analysis

Generally, the Medium Density Residential General Plan designation is intended for garden apartments and condominiums, townhomes, row houses, four- to eight-plexes, and older areas that contain a mix of multi-family and single-family homes within this range. These areas tend to be multi-family in character but retain some of the characteristics of suburban neighborhoods. Densities in areas with this designation range from 14 to 30 units per net acre. This designation is implemented through RM Residential Medium Density (RM) zoning district.

Pursuant to [Table 17.07.020](#) of the Newark Municipal Code (NMC), attached and detached single-unit dwellings are permitted in the RM zoning district. The project would include attached and detached dwellings and have a density of 21 units per acre, where a minimum density of 14 to 30 units per acre. Therefore, the proposed use is permitted and complies with the required density of both the RM zoning district and Medium Density Residential designation of the General Plan.

The Applicant requests deviations from some zoning regulations in order to construct the proposed project. The requested deviations are outlined in Table 1 below.

Table 1. Zoning Deviations		
	<i>Required</i>	<i>Proposed</i>
Development Standards for Residential Districts (NMC Table 17.07.030)		
Minimum Lot Size	6,000 sq. ft.	1,391 sq. ft.
Minimum Lot Width	60 ft.	21 ft.
Minimum Lot Depth	100 ft.	45 ft.
Minimum Setbacks		
Front	20 ft.	3 ft.
Interior Side	5 ft.	3 ft.
Street Side	10 ft.	3 ft.
Rear Side	20 ft.	3 ft.
Minimum Distance Between Structures	10 ft.	6 ft.
Maximum Lot Coverage	55 % of lot	70%
Minimum Landscaping	25% of lot	16%

Private Open Space	Uncovered areas only	Covered decks included
Parking Standards (NMC Chapter 17.23)		
Parallel Parking Space Dimensions	9 ft. x 19 ft.	8 ft. x 22 ft.
Minimum Parking Drive Aisle Width for 90° (Head-In) Parking Spaces	25 ft.	20 ft.

The Applicant also requests approval of a Minor Use Permit (MUP) to construct an 18-foot tall masonry sound wall along the rear property line that would wrap around the northwestern and southwestern boundaries, stepping down from a height of 18 to 10 feet from the rear to the front of the property. Pursuant to [NMC §17.17.040](#), wall heights greater than eight feet are permitted with the approval of an MUP. The environmental noise study prepared for the project (see Attachment 1, Exhibit E) determined the proposed wall would be required to meet General Plan Policy EH-7.4. This policy requires the noise levels in residential to be limited to 60 decibels (dB), or to the greatest extent feasible when levels are exceeded due to freeways and other noise-reduction measures. Exterior noise levels would be reduced up to 65 dB with the construction of the proposed sound wall.

Requested Entitlements

Planned Development Overlay District

The Applicant requests a Planned Development (-PD) Overlay District to allow for the proposed development. Pursuant to [NMC Chapter 17.12](#), a -PD overlay district provides for better coordinated development and incorporates development standards crafted to respond to site conditions in order to provide for greater flexibility in the design of the developments than is otherwise possible through the strict application of zoning district regulations. A -PD overlay district also ensures compliance with the general plan and promotes creativity in building design and innovation in development concepts.

As discussed in previous sections, the Applicant requests deviations from some zoning regulations. The requested deviations are outlined in Table 1 in the previous section. A PD plan and zoning amendment shall only be approved if the findings in [NMC §17.12.060](#) can be made.

The proposed project would have a net density of 21 units per acre which is consistent with envisioned density for the Medium Density Residential General Plan designation. The project would also not have a substantial adverse effect on surrounding land uses and would be compatible with the existing and planned land use character of the surrounding area. The zoning for this site and properties north of Cedar Boulevard were rezoned to Residential Medium Density in the mid-2010's to facilitate the conversion of the properties on this side of Cedar Boulevard to medium density residential use. Since the zoning amendment was adopted, medium-density residential development has been approved and constructed northwest of the project site along Cedar Boulevard known as Cedar Townhomes. An existing single-family residential neighborhood is also located across from Cedar Boulevard and within the greater project vicinity. Further, as will be discussed in the next section, the development generally complies with applicable adopted design guidelines.

Adequate transportation facilities and public services would be provided, and the approval of the project would not result in a reduction of traffic levels of service or public services that would be detrimental to public health, safety, or welfare. Access to the proposed 118 units would be provided via two driveways from Cedar Boulevard and private streets within the project site. The private streets and courts would

provide direct access to the two-car garages on the ground level of each unit. The project includes several on- and offsite improvements including a new traffic signal at the Cedar Boulevard and Smith Avenue intersection, a left turn queue lane extension at the corner of Cedar Boulevard and Mowry Avenue, traffic median improvements on Cedar Boulevard, undergrounding of utilities along Cedar Blvd including tie-ins for storm, sewer, and water, relocation of certain street lights, fire hydrants, and other on-site utilities, and a sidewalk extension across the adjacent public storage property to the northwest. A new bus shelter on the project site (within private property) is also proposed to serve bus routes along Cedar Boulevard.

Based on staff's analysis, the required findings can be made in the affirmative and are provided in Exhibit A of Attachment 1 of this report.

Design Review

Pursuant to [NMC §17.34.020](#), design review is required for all projects that require a permit for new construction, reconstruction, rehabilitation, alteration, or other improvements to the exterior of a structure, site, or a parking area. Design review ensures that new development supports the goals and objectives of the General Plan and other adopted plans and guidelines.

Throughout the review process, the applicant has made several enhancements and refinements to the project. The proposed architectural style is a contemporary translation of the traditional architecture commonly found in neighborhoods synonymous to early California architecture, developed as a combination of traditional New England and Spanish styles. The proposed floor plans and elevations provide a variety of massing, wall breaks, colors, and materials that would complement and blend harmoniously with each other. Enhanced side elevations are also proposed on various buildings adjacent to entrances to the neighborhood, open space areas, and facing I-880. Further, the proposed landscaping and open space areas would complement the buildings and enhance the appearance of the site.

When conducting design review, the Planning Commission shall evaluate projects to ensure that they satisfy the criteria in [NMC §17.34.060](#) to the extent that they apply. Based on staff's analysis, the required findings can be made in the affirmative and are provided in Exhibit A of Attachment 1 of this report.

Minor Use Permit

Pursuant to [NMC §17.17.040](#), fences, walls, hedges, and related structures are limited to a maximum of six feet when located outside of the front yard or four feet of a street side lot line. A wall height greater than six feet may be approved with an MUP. The project proposes an 18-foot-tall masonry sound wall along the rear property line that would wrap around the northwestern and southwestern boundaries, stepping down from a height of 18 to 10 feet from the rear to the front of the property. This wall would assist with reducing outdoor noise levels from I-880 to meet General Plan Policy EH-7.4 to limit noise levels to 60 dB in residential areas, or to the greatest extent feasible when levels are exceeded due to freeways and other noise-reduction measures. Exterior noise levels would be reduced up to 65 dB with the construction of the proposed sound wall.

Based on staff's analysis, the criteria for approval of an MUP for additional fence height can be made in the affirmative and are provided in Exhibit A of Attachment 1 of this report.

Vesting Tentative Map

The Applicant has submitted Vesting Tentative Tract Map 8583 to allow for a 124-lot residential subdivision on an approximately 7.76-acre site: 118 residential lots and six common lots for the private streets and common open space areas (see Attachment 1, Exhibit D). Residential lot sizes would range from 1,391 to 3,484 sq. ft. Lot A would include the private streets and courts and total 99,742 sq. ft. Lots C through F would include the common open space areas ranging from 2,405 to 10,775 sq. ft. in size. A 5-foot-wide right-of-way dedication for Cedar Boulevard is also proposed at the front of the property. A legislative body of a city or county shall deny approval of a tentative map if it makes any of the findings in California Government Code §66474.

Generally, the proposed tentative tract map is consistent with the General Plan in that the property is developed by street and parcel improvements in conformance with applicable goals and policies. The proposed map would meet the density requirement of the RM zoning district and land use designation. The proposed map and improvements would be constructed per the Planned Development Plan (i.e. the project plans, provided in Attachment 1, Exhibit D) and satisfy the conditions of approval included in the proposed resolution (see Attachment 1). The project site is physically suitable for the development type and proposed density of development. Further, the proposed project was reviewed pursuant to the California Environmental Quality Act (CEQA), as will be discussed in the next section, and determined that it would not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Based on staff's analysis and as discussed, the findings provided in Exhibit A of Attachment 1 support the approval of Vesting Tentative Tract Map 8583.

California Environmental Quality Act

Staff retained the consultant services of M-Group to prepare an Initial Study (IS) for the project in accordance with the [CEQA Guidelines §15063](#). The IS examined the nature and extent of potentially adverse effects on the environment that could occur if the project is approved and implemented (see Attachment 1, Exhibit E).

Staff has reviewed the IS for the project and based upon substantial evidence in the record, find that all potentially significant effects of the project, as identified in the IS, can and will be avoided or mitigated to a less than significant level by project revisions or other requirements imposed on the project.

Based on the review and pursuant to [Public Resources Code Section 21080\(c\)\(2\)](#) and [CEQA Guidelines Section 15070](#), the City has prepared a Mitigated Negative Declaration (MND) for the project. An MND is a statement by the City that the project will not have a significant effect on the environment if the project incorporates revisions (mitigation measures) identified during the environmental review.

When an IS/MND is submitted to the State Clearinghouse for review by state agencies, CEQA requires a minimum review period of 30 days to circulate an MND for public review. The IS/MND was available for public review from December 21, 2022 through January 20, 2023 on the State Clearinghouse's website, the City's website, and City Hall. Additionally, on December 21, 2022, the City filed a Notice of Intent (NOI) to adopt an MND to the Alameda County Clerk.

The City received comments from the California Department of Transportation (Caltrans) on the IS/MND during the public review period of the IS/MND. Caltrans requested that the existing planting and irrigation

within Caltrans' right-of-way be maintained and the proposed sound wall along the rear property line match and complement the existing walls along the I-880 corridor. Caltrans also reminded the City that any permanent work or temporary traffic control that encroaches onto Caltrans' right-of-way will require a Caltrans encroachment permit and that it is the City's responsibility for all project mitigation that will need improvements to the State Transportation Network. Pursuant to [CEQA Guidelines §15074](#), the City reviewed and considered all comments received on the IS/MND. A response to Caltrans' comments are provided in Exhibit G of Attachment 1 of this report.

The IS/MND and associated appendices, Mitigation Monitoring and Reporting Program (MMRP), and the CEQA Findings of Fact are provided in Exhibits A, E, and F of Attachment 1 of this report.

Required Noticing

Pursuant to NMC [§17.31.060](#) and [§17.35.050](#), on February 28, 2023, a public hearing notice was published in The Tri City Voice and mailed to all property owners within a minimum 500-foot radius of the project site, all neighborhood and community organizations that have filed a written request for notice of projects in the area where the site is located, and all persons and groups who have filed a written request for notice regarding the specific application.

Action

Staff recommends that the Planning Commission approve, by resolution, a recommendation to the City Council for the following:

1. Approval of P2021-002, an Ordinance Establishing a Planned Development Overlay District, Design Review, a Minor Use Permit, and a Vesting Tentative Map for a 118-unit residential development located at 38288-38594 Cedar Boulevard (APNs 92A-2375-002-06, 92A-2375-022-01), based on the findings provided in Attachment 1, Draft Resolution; and
2. Adoption of a Mitigated Negative Declaration supported by an Initial Study in accordance with the California Environmental Quality Act for a 118-unit residential development located at 38288-38594 Cedar Boulevard (APNs 92A-2375-002-06, 92A-2375-022-01), based on the findings provided in Attachment 1, Draft Resolution.

Attachments

1. Draft Resolution
 - Exhibit A – Findings of Fact
 - Exhibit B – Statement of CEQA Findings of Fact
 - Exhibit C – Conditions of Approval
 - Exhibit D – Planned Development Plan (Project Plans)
 - Exhibit E – Initial Study and Mitigated Negative Declaration, December 2022
 - Exhibit F – Mitigation Monitoring and Reporting Program, December 2022
 - Exhibit G – Response to Comments on the Draft Initial Study & Mitigated Negative Declaration, February 2023
 - Exhibit H – Ordinance (Planned Development Overlay District) – See Attachment 2
2. Draft Ordinance (Planned Development Overlay District)

P2021-002

RESOLUTION NO. _____

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWARK RECOMMENDING THAT THE CITY COUNCIL APPROVE P2021-002, AN ORDINANCE ESTABLISHING A PLANNED DEVELOPMENT OVERLAY DISTRICT, DESIGN REVIEW, A MINOR USE PERMIT, AND A VESTING TENTATIVE MAP AND ADOPTION OF A MITIGATED NEGATIVE DECLARATION SUPPORTED BY AN INITIAL STUDY IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR A 118-UNIT RESIDENTIAL DEVELOPMENT LOCATED AT 38288-38594 CEDAR BOULEVARD (APNS 92A-2375-002-06, 92A-2375-022-01)

WHEREAS, Robson Homes LLC (the “Applicant”), has filed with the City of Newark an application for a Planned Development Overlay District, Design Review, a Minor Use Permit, and a Vesting Tentative Map to construct a 118-unit residential development comprised of single-family residences and two-unit attached townhouses (duets) on a 7.76-acre site located at 38288-38594 Cedar Boulevard (APNs 92A-2375-002-06, 92A-2375-022-01) (the “Property”) (the “Project” as illustrated in **Exhibit D**); and

WHEREAS, the Applicant proposes to demolish the existing buildings and site improvements; and

WHEREAS, the Property is a 7.76-acre property consisting of four legal lots that has a General Plan Land Use designation of Medium Density Residential and is currently zoned RM Residential Medium Density; and

WHEREAS, the Applicant seeks approval of an Ordinance pursuant to [Newark Municipal Code \(NMC\) Chapter 17.12](#) to establish a Planned Development Overlay District to allow for the proposed development; and

WHEREAS, the Applicant seeks a Design Review, which pursuant to [NMC §17.34.020](#) is required for all projects that require a permit for new construction, reconstruction, rehabilitation, alteration, or other improvements to the exterior of a structure, site, or a parking area; and

WHEREAS, the Applicant seeks a Minor Use Permit (“MUP”) for the proposed 18-foot tall masonry sound wall along the rear property line that will wrap around the northwestern and southwestern boundaries, stepping down from a height of 18 to 10 feet from the rear to the front of the property, which pursuant to [NMC §17.17.040](#), requires an MUP to allow a wall height greater than six feet; and

WHEREAS, the Applicant seeks approval of Vesting Tentative Tract Map 8583 to allow for the construction of the Project. Vesting Tentative Tract Map 8585 includes 118 residential lots ranging from 1,391 to 3,484 square feet in size, six common lots for the private streets and common open space area, and a 5-foot-wide right-of-way dedication (approximately 5,085 square feet) at the Property's frontage to the City's public-right-way; and

WHEREAS, pursuant to and in accordance with the provisions of the California Environmental Quality Act (Public Resources Code §21000 et seq) ("CEQA"), the State of California Guidelines for the Implementation of the California Environmental Quality Act (commencing with §15000 of Title 14 of the California Code of Regulations; herein referred to as the "CEQA Guidelines"), the City is the "lead agency" for the preparation and consideration of environmental documents for the Project; and

WHEREAS, staff retained the consultant services of M-Group to prepare an Initial Study ("IS") (included as **Exhibit E**) for the Project in accordance with [California Environmental Quality Act \(CEQA\) Guidelines §15063](#). The IS examined the nature and extent of potentially adverse effects on the environment that could occur if the Project is approved and implemented; and

WHEREAS, staff has reviewed the IS for the Project and based upon substantial evidence in the record, find that all potentially significant effects of the Project, as identified in the IS, can and will be avoided or mitigated to a less than significant level by project revisions or other requirements imposed on the Project; and

WHEREAS, based on the review and pursuant to [Public Resources Code Section 21080\(c\)\(2\)](#) and [CEQA Guidelines §15070](#), the City has prepared a Mitigated Negative Declaration ("MND") for the Project. An MND is a statement by the City that the Project will not have a significant effect on the environment if the Project incorporates revisions (mitigation measures) identified during the environmental review; and

WHEREAS, when an IS/MND is submitted to the State Clearinghouse for review by state agencies, CEQA requires a minimum review period of 30 days to circulate an MND for public review. The IS/MND was available for public review from December 21, 2022 through January 20, 2023 on the State Clearinghouse's website, the City's website, and City Hall. Additionally, on December 21, 2022, the City filed a Notice of Intent ("NOI") to adopt an MND with the Alameda County Clerk; and

WHEREAS, the City received comments from the California Department of Transportation ("Caltrans") on the IS/MND during the public review period of the IS/MND. Pursuant to [CEQA Guidelines §15074](#), the City reviewed and considered all comments received on the IS/MND (response to comments included as **Exhibit G**); and

WHEREAS, pursuant to NMC [§17.31.060](#) and [§17.35.050](#), a public hearing notice was published in The Tri City Voice on February 28, 2023 and mailed as required for a public hearing before the Planning Commission at, or after, 7:00 p.m. on March 14, 2023; and

WHEREAS, the Planning Commission held a public hearing on March 14, 2023, and fully considered the Project, entitlements, staff report, findings of fact, conditions of approval, public comments, and all other testimony and evidence presented at the public hearing; and

WHEREAS, the Planning Commission finds that the staff report and standards for approval reflects the City's independent judgement and analysis of the Project; and

WHEREAS, the Planning Commission finds that the Project does satisfy the requisite findings of fact necessary for approval as further explained in the staff report and the findings of fact associated with this Resolution, as identified in **Exhibit A** attached to this Resolution; and

WHEREAS, based upon a thorough review of the Project and the IS/MND dated December 2022 (included as **Exhibit E**), and the record as a whole, the Planning Commission does find and determine that the IS/MND has been prepared in compliance with the requirements of CEQA; and serves as the appropriate environmental documentation for the Project, based on the Statement of CEQA Findings of Fact and accompanying Mitigation Monitoring Reporting and Program ("MMRP") provided in **Exhibits B and F**; and

WHEREAS, the City's General Plan and the Zoning Code are incorporated herein by reference and are available for review at City Hall during normal business hours and on the City's website.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Newark as follows:

Section 1. That the forgoing recitals are true and correct and made part of this Resolution.

Section 2. The Record of Proceedings ("Record") upon which the Planning Commission bases its recommendation includes, but is not limited to: 1) the staff report, City files and records and other documents, prepared for and/or submitted to the City relating to the IS/MND, the Project, the Project's associated development entitlement requests; 2) all designs, plans, studies, data and correspondence submitted by the City in connection with the IS/MND, the Project, and the Project's associated development entitlement requests (illustrated in **Exhibit D**), 3) the IS/MND and the appendices and technical reports cited in and/or relied upon in preparing the IS/MND (provided in **Exhibit E**); 4) the evidence, facts, findings and other determinations set forth in this resolution; 5) the City of Newark General Plan and its related EIR, and the NMC; 6) all documentary and oral evidence received at public workshops, meetings, and hearings, the Project, and the Project's associated development entitlement requests; 7) all other matters of common knowledge to the City decision maker including, but not limited to, City, state, and federal laws, policies, rules, regulations, reports, records and projections related to development within the City of Newark and its surrounding areas.

The location and custodian of the records is the City of Newark Community Development Department, 37101 Newark Boulevard, Newark, California, 94560.

Section 3. The Planning Commission hereby recommends to the City Council the adoption of the

IS/MND dated December 2022, complete with the included Statement of CEQA Findings of Fact set forth in **Exhibit B** attached hereto and incorporated herein by reference, and based thereon and on the Record as a whole, the Planning Commission hereby finds and recommends that the City Council find that all significant environmental effects of the Project and its associated development entitlement actions have been reduced to a less-than-significant level in that all significant environmental effects have been avoided or mitigated as set forth in the IS/MND. Based upon the foregoing, the Planning Commission finds, determines, and recommends that the City Council find and determine, on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the Project and its associated actions will not have a significant effect upon the environment and that the IS/MND reflects the lead agency's independent judgment and analysis.

Section 4. The Planning Commission hereby recommends the City Council adopt the mitigation measures set forth in the IS/MND and its accompanying MMRP, set forth in **Exhibits E and F**, pursuant to Public Resources Code §21081.6, which is a program designed to ensure compliance with the mitigation measures imposed to avoid or substantially lessen the significant effects identified in the IS/MND and said mitigation measures are described in the MMRP included therein and incorporated herein by reference.

Section 5. That the Planning Commission does hereby make the necessary findings and determinations required by the NMC to recommend approval of the requested Ordinance establishing a Planned Development Overlay District, Design Review, Minor Use Permit, and Vesting Tentative Map for the Project, as further explained in the staff report and findings of fact for approval as set forth in **Exhibit A** attached hereto and incorporated herein by this reference.

Section 6. Based on the findings and determinations, the Planning Commission does hereby recommend approval of P2021-002 for an Ordinance establishing a Planned Development Overlay District, Design Review, Minor Use Permit, and Vesting Tentative Map and adoption of an MND supported by an IS in accordance with the CEQA allowing for a residential development at 38288-38594 Cedar Boulevard (APNs 92A-2375-002-06, 92A-2375-022-01), subject to the Conditions of Approval, as further set forth in **Exhibit C** attached hereto and incorporated herein by this reference.

Section 7. The Planning Commission recommends City Council approval of the Zoning Ordinance as identified in **Exhibit H**, finding that it is consistent with the General Plan, necessary to achieve the balance of land uses desired by the City, increases the inventory of land within a given zoning district, promotes the growth of the City in an orderly manner and promotes and protects the public health, safety, peace, comfort, and general welfare of the residents of the City of Newark.

This Resolution was introduced at the City of Newark Planning Commission’s March 14, 2023 regular meeting by Commissioner _____, seconded by Commissioner _____, and passed as follows:

AYES:

NOES:

ABSENT:

STEVEN TURNER, Secretary

JOHN BECKER, Chairperson

Attachments

Exhibit A – Findings of Fact

Exhibit B – Statement of CEQA Findings of Fact

Exhibit C – Conditions of Approval

Exhibit D – Planned Development Plan (Project Plans)

Exhibit E – Initial Study and Mitigated Negative Declaration, December 2022

Exhibit F – Mitigation Monitoring and Reporting Program, December 2022

Exhibit G – Response to Comments on the Draft Initial Study & Mitigated Negative Declaration,
February 2023

Exhibit H – Ordinance (Planned Development Overlay District)

Exhibit A

FINDINGS OF FACT

P2021-002

38288-38594 Cedar Boulevard

Alameda County Assessor’s Parcel Numbers 92A-2375-002-06 and 92A-2375-022-01

Planned Development Overlay District ([Newark Municipal Code \[NMC\] Chapter 17.12](#))

The project’s zoning deviations from the RM Residential Medium Density zoning district development standards in [NMC Table 17.07.030](#) and parking standards in [NMC Chapter 17.23](#) are as follows:

Table 1. Zoning Deviations		
	<i>Required</i>	<i>Proposed</i>
Development Standards for Residential Districts (NMC Table 17.07.030)		
Minimum Lot Size	6,000 sq. ft.	1,391 sq. ft.
Minimum Lot Width	60 ft.	21 ft.
Minimum Lot Depth	100 ft.	45 ft.
Minimum Setbacks		
Front	20 ft.	3 ft.
Interior Side	5 ft.	3 ft.
Street Side	10 ft.	3 ft.
Rear Side	20 ft.	3 ft.
Minimum Distance Between Structures	10 ft.	6 ft.
Maximum Lot Coverage	55 % of lot	70%
Minimum Landscaping	25% of lot	16%
Private Open Space	Uncovered areas only	Covered decks included
Parking Standards (NMC Chapter 17.23)		
Parallel Parking Space Dimensions	9 ft. x 19 ft.	8 ft. x 22 ft.
Minimum Parking Drive Aisle Width for 90° (Head-In) Parking Spaces	25 ft.	20 ft.

A Planned Development (PD) plan and zoning amendment shall only be approved if the findings in [NMC §17.12.060](#) can be made.

A. The proposed development is consistent with the general plan and any applicable specific plan, including the density and intensity limitations that apply.

The proposed development is consistent with the General Plan. The Project will have a proposed density of 21 units per net acre which is within the 14 to 30 units per net acre density envisioned for the General Plan Medium Density Residential Land Use Designation.

Exhibit A: Findings of Fact

The Project is consistent with many of Newark's General Plan goals, policies, and actions including, but not limited to:

Policy LU-1.10 Vacant and Underutilized Sites – Encourage the development of Newark's remaining vacant and underutilized sites for their highest and best use, consistent with the designations shown on the General Plan Diagram. Future growth in the city should generally be directed to the areas identified in this General Plan. The Project proposes the envisioned land use and density for the Medium Density Residential General Plan land use designation, the land use designation for this property.

Policy LU-1.16 Planned Unit Development – Use the planned unit development approach or form based zoning codes to accommodate attractive, creative development on sites where traditional zoning standards do not achieve the best design solution. The deviations to the zoning regulations requested provides greater flexibility in the design of the development and promotes creativity in building design and innovation in development concepts. With the requested -PD overlay district, the development will result in 118 high-quality single-family residences and two-unit attached townhouses (duets).

Policy LU-2.7 Design Guidelines – Maintain design guidelines and a design review process that applies to building and site design throughout the city. The Project requires a Design Review entitlement and conforms with the required findings in [NMC §17.34.060](#).

Policy LU-4.12 Fences and Gates – Ensure that fences, gates, railings, walls, and other site elements intended to provide safety, security, and privacy are designed to be compatible with each other, with adjacent structures, and with the neighborhood context. Fence, wall, or hedge designs which obscure lines of sight for motorists, or create potential conflicts between pedestrians and cars, should be avoided. The proposed fences, walls, and other site elements are designed to complement the building and site design and blend harmoniously with the neighborhood context.

Policy T-2.2 Pedestrian Facilities – Work to close gaps in the pedestrian network and improve sidewalk connectivity between residential and commercial areas. Develop curbs, gutters, sidewalks on all remaining Newark streets not yet fully improved to encourage safe, convenient pedestrian travel. The proposed subdivision will dedicate approximately 5,085 sq. ft. of the site's frontage to the City's public-right-of-way that will contribute towards public improvements and help close the pedestrian network gap on Cedar Boulevard between Smith Avenue and Moores Avenue. The Project will also include a sidewalk extension across the adjacent public storage property to the northwest of the project site to connect to the sidewalk in front of the adjacent residential development northwest of the public storage property.

Action T-5.A Traffic Study Requirements – Require traffic studies for major new developments to determine projected impacts on the transportation system, and the measures required to maintain adopted levels of service (LOS). The Traffic Impact Assessment prepared for the Project (see the appendices in Exhibit E) concluded that traffic generated by the Project will not cause an increase in vehicle miles traveled that will exceed applicable thresholds. The assessment also recommended coordination with the City to determine if a

Exhibit A: Findings of Fact

traffic signal should be installed at the intersection of Cedar Boulevard and Smith Avenue, a southbound left-turn pocket at the intersection of Cedar Boulevard and Mowry Avenue should be extended, and if a left turn median refuge along Cedar Boulevard in front of the Project site should be installed. The Applicant has discussed these improvements with the City and included them as part of the Project.

Action EH-4.J Phase I Assessments – Require a Phase I Environmental Site Assessment (ESA) when a property is changed from an existing use to a more sensitive use (for example, industrial to residential). If potential hazardous materials issues are identified, ensure they are investigated and that sites are cleaned to regulatory agency standards prior to development. A Phase I ESA was prepared for the Project (see the appendices in Exhibit E) was used to prepare the environmental hazards analysis in the IS/MND for the project. As conditioned, the Project will be cleaned to regulatory agency standards prior to the grading permit stage.

Policy EH-7.4 Residential Noise Standard – Exterior – Plan for and implement strategies to maintain exterior noise levels that are consistent with the noise compatibility guidelines in Table EH-2. For residential areas, this limit is 60 dBA Ldn for outdoor living areas. Where this level is exceeded due to freeways, arterials, and/or railroads, the construction of berms, walls, buffer zones, and other noise-reduction measures to reduce noise to the greatest extent feasible will be required. The proposed 18-foot-tall masonry sound wall along the rear property line that will wrap around the northwestern and southwestern boundaries will reduce exterior noise levels up to 65 dB, which is the extent feasible due to the adjacent freeway.

Action HW-1.F Health Risk Assessments – Require submittal of a Health Risk Assessment (HRA) for applicants proposing major development or redevelopment within 1,000 feet of the I-880 or SR 84 freeways. For projects where the incremental cancer risk exceeds ten in one million, PM_{2.5} concentrations exceed 0.3 µg/m³, or the appropriate non-cancer hazard index exceeds 1.0, the HRA shall identify mitigation measures capable of reducing potential risks to acceptable levels. A health risk assessment was prepared for the Project (see the appendices in Exhibit E) was used to prepare the applicable analysis in the IS/MND for the project. As conditioned and with the implementation of the mitigation measures in the MMRP (see Exhibit F), the Project will reduce potential risks to acceptable levels for residential use.

2015 Housing Element Update Housing Priority #2 – Assist in the development of housing opportunities and accessibility for all economic levels in the City. The Project will create 118 market-rate residential units. The Applicant will also pay the Affordable Housing Impact Fee for the Project at building permit issuance which will go into the Affordable Housing Impact Fee that will be used to fund the City's affordable housing initiatives and programs.

Based on this analysis, this finding can be made in the affirmative.

- B. Adequate transportation facilities and public services exist or will be provided in accord with the conditions of development plan approval, to serve the proposed development; and the*

Exhibit A: Findings of Fact

approval of the proposed development will not result in a reduction of traffic levels of service or public services so as to be a detriment to public health, safety, or welfare.

Adequate transportation facilities and public services will be provided, and the approval of the Project will not result in a reduction of traffic levels of service or public services that will be detrimental to public health, safety, or welfare. Access to the proposed 118 units will be provided via two driveways from Cedar Boulevard and private streets within the project site. The private streets and courts will provide direct access to the two-car garages on the ground level of each unit. The Project will include a total of 294 parking spaces. Each residence will include two garage parking spaces for a total of 236 residential parking spaces. The remaining 58 parking spaces will be for guests. The guest parking spaces will be parallel and head-in parking spaces on the private streets and a parking area at the rear of the project site.

The Project also includes several on- and offsite improvements including a new traffic signal at the Cedar Blvd and Smith Ave intersection, a left turn queue lane extension at the corner of Cedar Blvd and Mowry Avenue, traffic median improvements on Cedar Boulevard, undergrounding of utilities along Cedar Blvd including tie-ins for storm, sewer, and water, relocation of certain street lights, fire hydrants, and other on-site utilities, and a sidewalk extension across the adjacent public storage property to the northwest. A new bus shelter on the project site (within private property) is also proposed to serve bus routes along Cedar Boulevard.

This finding can be made in the affirmative.

- C. The proposed development will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.*

The Project will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area. The zoning for this site and properties north of Cedar Boulevard were rezoned to Residential Medium Density in the mid-2010's to facilitate the conversion of the uses on these properties to residential. Since the zoning amendment was adopted, medium-density residential development has been approved and constructed northwest of the project site along Cedar Boulevard known as Cedar Townhomes. An existing single-family residential neighborhood is also located across from Cedar Boulevard and within the greater project vicinity. With the exception of a few properties with existing commercial uses along Cedar Boulevard and a school and church use across from Cedar Boulevard, the project site is generally surrounded by residential uses.

- D. The development generally complies with applicable adopted design guidelines.*

The overall design of the Project including its scale, massing, site plan, exterior design, landscaping, and open space areas enhances the appearance and features of the project site and its immediate surrounding. The Project promotes high-quality design and well-crafted and maintained buildings. The landscaping is compatible with and enhances the architectural

Exhibit A: Findings of Fact

character and features of the homes and helps relate the structures to the surrounding landscape. Project details, materials, and landscaping are designed to be internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the architectural design as well as the intended character of the area. The Project's compliance with the required Design Review findings are further discussed in the next section. This finding can be made in the affirmative.

- E. The proposed development is demonstratively superior to the development that could occur under the standards applicable to the underlying base district, and will achieve superior community design, environmental preservation and/or substantial public benefit.*

The project site is zoned Residential Medium Density. The Project will be classified as attached and detached dwellings uses which are permitted in this zoning district. The proposed density of 21 units per net acre is also within the required density of 14 to 30 units per net acre. The deviations to the zoning regulations requested will allow the development standards to be crafted to respond to site conditions and provide for greater flexibility in the design of the developments than is otherwise possible through the strict application of zoning district regulations. It will also promote creativity in building design and innovation in development concepts. With the requested -PD overlay district, the development will result in 118 high-quality single-family residences and two-unit attached townhouses (duets) which is superior to the development that could otherwise occur under the standards applicable to the underlying zoning district. This finding can be made in the affirmative.

Design Review (NMC §17.34.060)

When conducting design review, the project shall be evaluated to ensure it satisfies the criteria below to the extent applicable.

- A. The overall design of the project including its scale, massing, site plan, exterior design, and landscaping will enhance the appearance and features of the project site and surrounding natural and built environment.*

The overall design will enhance the appearance of the project site and surrounding environment. The proposed architectural design is a contemporary translation of early California architecture, developed as a combination of traditional New England and Spanish styles. The proposed floor plans and elevations will provide a variety of massing, wall breaks, colors, and materials. The proposed buildings will include various materials and colors that will enhance the building facades and highlight various architectural features. Enhanced side elevations are also proposed on various buildings adjacent to entrances to the neighborhood, open space areas, and facing I-880.

The proposed landscaping and common open space areas will also complement the buildings and enhance the project site and surrounding natural and built environment. The common open space areas will include various amenities such as play structures, benches, and pedestrian bridges over bioretention areas. The landscaping for the Project will feature a

Exhibit A: Findings of Fact

diverse palette of trees, shrubs, and ground cover. Planting pockets with accent plantings are proposed along the sidewalks and walkways within the site.

This finding can be made in the affirmative.

- B. The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community.*

The proposed homes will be three stories with habitable floor areas ranging from 1,961 to 2,589 square feet (sq. ft.). The project proposes a village concept with homes staggered and set back from each other to provide visual relief and landscape opportunities. The proposed floor plans and elevations will provide a variety of massing, wall breaks, colors, and materials. Pockets of open space areas are proposed throughout the site and will include various amenities such as play structures and benches for the enjoyment of the future residents and guests. The project site will also feature extensive use of internal paseos and walkways to facilitate internal pedestrian circulation and connections to open space areas and streets. Further, the proposed streetscape along Cedar Boulevard will enhance Cedar Boulevard with large landscape areas, street trees, a low wall to maintain a clear distinction between the public and private realm, and a meandering sidewalk to match the meandering sidewalks in front of the residential development northwest of the project site. This finding can be made in the affirmative.

- C. Project details, materials, signage and landscaping, are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.*

The homes will include attractive and high-quality colors and materials such as stucco, board and batten, brick and a white, brown, green, and red color palette. As mentioned, the homes will be staggered and set back from each other to provide visual relief and landscape opportunities. The proposed landscaping will complement the homes and be fully integrated with the overall design of the project. This finding can be made in the affirmative.

- D. The design of streetscapes, including street trees, lighting, and pedestrian furniture, is consistent with the intended character of the area.*

The proposed design of the streetscape will be consistent with the intended character of the area. The proposed streetscape along Cedar Boulevard will include large landscape areas, street trees, streetlights, a low wall to maintain a clear distinction between the public and private realm, and a meandering sidewalk to match the meandering sidewalks in front of the residential development northwest of the project site. The Project will also include a bus shelter is also proposed on the project site (within private property) along Cedar Boulevard and a sidewalk extension across the adjacent public storage property to the northwest of the project site to connect to the sidewalk in front of the adjacent residential development northwest of the public storage property. Further, the Project will also include offsite improvements that will enhance and be compatible with the character of the area such as traffic signal and crosswalk improvements at the Cedar Boulevard and Smith Avenue

Exhibit A: Findings of Fact

intersection and traffic median improvements in front of the project site on Cedar Boulevard. These streetscape improvements will adhere to the City's streetscape standards. This finding can be made in the affirmative.

- E. Parking areas are designed and developed to buffer surrounding land uses; compliment pedestrian-oriented development; enhance the environmental quality of the site, including minimizing stormwater run-off and the heat-island effect; and achieve a safe, efficient, and harmonious development.*

The City's off-street parking requirement will be satisfied by the provision of a two-car garage for each unit for a total of 236 residential parking spaces. A total of 58 guest parking spaces will also be provided on the private streets and a parking area at the rear of the project site. The parking spaces will be accessed via two driveways on Cedar Boulevard and the private streets and courts throughout the project site. Pedestrian circulation will be achieved via sidewalks and interconnected pathways throughout the project site.

Landscaping along the site perimeter and throughout the site and accent plantings along the sidewalks and walkways within the site will screen the parking areas from Cedar Boulevard and help reduce the heat island effect and stormwater run-off. Bioretention areas will also be installed within common open space areas to minimize stormwater run-off.

This finding can be made in the affirmative.

- F. Lighting and lighting fixtures are designed to complement buildings, be of appropriate scale, provide adequate light over walkways and parking areas to create a sense of pedestrian safety, and avoid creating glare.*

The Project will include exterior wall-mounted lighting on the ground level of the proposed residences and streetlights along Cedar Boulevard, proposed Street A, and the proposed parking area at the rear of the project site. The proposed lighting will provide adequate light at building entrances and over walkways and parking areas to ensure pedestrian safety. The Project is conditioned to require all exterior lighting to not create glare off-site and comply with all applicable regulations in [NMC §17.17.060](#). This finding can be made in the affirmative.

- G. Landscaping is designed to be compatible with and enhance the architectural character and features of the buildings on site, and help relate the building to the surrounding landscape.*

The Project will include landscaping around the site boundaries, open common space areas, and along the sidewalks and walkways throughout the site. The proposed landscaping will enhance the pedestrian experience as they travel throughout the site as well as pedestrians walking on the sidewalks along the Project's street frontage. The diverse landscaping palette will be compatible with the proposed architectural design which will allow them to relate to the surrounding landscape. The Project will be required to conform to all state and local landscaping and water conservation standards. This finding can be made in the affirmative.

Minor Use Permit for Additional Wall Height (NMC Section 17.17.040)

Fences, walls, hedges, and related structures are limited to a maximum of six feet when located outside of the front yard or four feet of a street side lot line. A wall height greater than six feet may be approved with a Minor Use Permit if in compliance with the following:

- A. *The additional fence height will not impair the provision of adequate light, air, circulation, and visual openness around adjacent residential structures.*

An 18-foot-tall masonry sound wall with plant pockets for vines is proposed along the rear property line and will wrap around the northwestern and southwestern boundaries, stepping down from a height of 18 to 10 feet from the rear to the front of the property. The proposed wall will be required to meet General Plan Policy EH-7.4 which requires the noise levels in residential areas to be limited to 60 decibels (dB), or to the greatest extent feasible when levels are exceeded due to freeways and other noise-reduction measures. The proposed wall will reduce exterior noise levels up to 65 dB. While the additional height may block natural light, the proposed wall will reduce noise from and screen the adjacent highway (I-88) which will be a greater benefit to the future residents. Based on this analysis, this finding can be made in the affirmative.

- B. *The additional fence height will not detract from the overall appearance of the neighborhood.*

The 18-foot-tall section of the sound wall will be located at the rear of the property. It will abut I-880 and match the existing walls along the I-880 corridor. The height of the proposed sound wall will step down along the side property lines from the rear to the front of the property to a height typical for side yards on residential properties. The proposed streetscape along Cedar Boulevard will also include large landscape areas, street trees, a low wall in front of the residences, and a meandering sidewalk. Therefore, the additional height for the proposed sound wall will not detract from the overall appearance of the neighborhood. This finding can be made in the affirmative.

- C. *The additional fence height is not detrimental to the health, safety, and welfare of people living in the neighborhood.*

The additional height for the proposed wall will be a sound barrier for the people living in the neighborhood, reducing exterior noise levels to the extent feasible. The additional height will not be detrimental to the health, safety, and welfare of people living in the neighborhood. This finding can be made in the affirmative.

Vesting Tentative Map (California Government Code §66474)

A legislative body of a city or county shall deny approval of a tentative map if it makes any of the following findings:

Exhibit A: Findings of Fact

- A. *That the proposed map is not consistent with applicable general and specific plans as specified in Government Code §65451.*

The General Plan includes numerous goals and policies pertaining to land use and design, growth management, circulation, community facilities and utilities, open space and conservation, health, safety, and noise. The proposed vesting tentative tract map is required to abide by all applicable goals and policies included in the adopted General Plan. Generally, the proposed tentative tract map is consistent with the General Plan in that the property is developed by street and parcel improvements in conformance with applicable goals and policies. This finding can be made in the negative.

- B. *That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.*

The proposed subdivision meets the density requirement of 14 to 30 units per net acre specified for the RM Residential Medium Density zoning district and the Medium Density Residential General Plan land use designation. The proposed map and improvements will be constructed per Planned Development (PD) Plan (provided in **Exhibit C**) and satisfy the conditions of approval included in this resolution (provided in **Exhibit B**). Further, the proposed map will dedicate approximately 5,085 sq. ft. of the site's frontage to the City's public-right-of-way. This five-foot-wide street dedication will contribute towards public improvements and help close the pedestrian network gap on Cedar Boulevard between Smith Avenue and Moores Avenue. Therefore, the proposed design or improvement of the proposed subdivision is consistent with the General Plan. This finding can be made in the negative.

- C. *That the site is not physically suitable for the type of development.*

The project site is a rectangular property consisting of four legal lots bounded by a personal storage facility to the northwest, I-880 to the northeast, an Alameda County Flood Control & Water Conservation District (ACFCD) channel to the southeast, and Cedar Boulevard to the southwest. The site is generally flat and currently contains several commercial buildings used by automobile repair and parts supply shops, a large metal storage shed for parking of trailers and campers, and paved areas for circulation, parking, and storage. The site is surrounded primarily by residential uses and some commercial, industrial, church, school, and uses.

Based on the technical studies prepared for the Project (provided as appendices attached to **Exhibit D**), the site is physically suitable for the proposed residential development as conditioned and with the implementation of the mitigation measures in the Mitigation Monitoring & Reporting Program (see **Exhibit E**).

This finding can be made in the negative.

- D. *That the site is not physically suitable for the proposed density of development.*

Exhibit A: Findings of Fact

The proposed subdivision meets the density requirement of 14 to 30 units per net acre specified for the RM Residential Medium Density zoning district and the Medium Density Residential General Plan land use designation. Therefore, this finding can be made in the negative.

- E. *That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

Staff retained the consultant services of M-Group to prepare an Initial Study (IS) for the Project in accordance with the [CEQA Guidelines §15063](#) (see **Exhibit D**). The IS examined the nature and extent of potentially adverse effects on the environment that could occur if the Project is approved and implemented. Staff reviewed the IS and based upon substantial evidence in the record, find that all potentially significant effects of the project, as identified in the IS, can and will be avoided or mitigated to a less than significant level by project revisions or other requirements imposed on the project. Based on the review and pursuant to Public Resources Code Section 21080(c)(2) and CEQA Guidelines Section 15070, the City prepared a Mitigated Negative Declaration (MND) for the Project. An MND is a statement by the City that the Project will not have a significant effect on the environment if the Project incorporates revisions (mitigation measures) identified during the environmental review. The Mitigation Monitoring and Reporting Program (MMRP) is provided as **Exhibit E**. Therefore, as conditioned, the design of the tentative tract map and the proposed improvements are not likely to cause substantial environmental damage nor substantially injure fish or wildlife or their habitat. This finding can be made in the negative.

- F. *That the design of the subdivision or type of improvements is likely to cause serious public health problems.*

The Alameda County Fire Department (ACFD), Building Inspection Division, Engineering Division, Planning Division, and Police Department have reviewed the proposed map. Outside agencies that may be affected by the proposed development have also reviewed the proposed map. The applicant has incorporated the recommendations from each department, division, and agency as part of the project design. The Project includes condition of approval that must be addressed at various stages of the project. Therefore, the map is consistent with all applicable provisions of the City's Subdivision Ordinance, the Subdivision Map Act, the California Fire Code, the California Building Code, and generally, applicable development standards of the Zoning Code, unless otherwise stated in the PD Plan (**Exhibit C**). This finding can be made in the negative.

- G. *That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

The proposed improvements will not be within public easements and/or right of way. The private streets, courts, parking areas, and common open spaces areas will be maintained through an agreement between future residents, managed by a homeowner's association.

Exhibit A: Findings of Fact

Therefore, as conditioned, the design of the map will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision, in that such easements presently exist and such access will be retained, as currently provided within the Project and to adjacent public streets. This finding can be made in the negative.

Exhibit B

STATEMENT OF CEQA FINDINGS OF FACT

P2021-002

38288-38594 Cedar Boulevard

Alameda County Assessor's Parcel Numbers 92A-2375-002-06 and 92A-2375-022-01

The California Environmental Quality Act (CEQA) requires that if an Initial Study (IS)/Mitigated Negative Declaration (MND) identifies one or more potentially significant environmental effects for a proposed project then the lead agency must make certain findings for each of those potentially significant effects. These findings must be accompanied by a brief explanation of the facts supporting each finding. (Pub. Resources Code Section 21081(a).)

All CEQA project impacts and mitigation measures, including those discussed below, are analyzed in greater detail in the Project IS/MND which is included as **Exhibit E**. The Findings of Fact set forth below do not repeat the full discussion of impacts and mitigation measures in the IS/MND and the Record for the Project and its associated development entitlement actions. Instead, the Findings provide a summary of the description of impacts, along with a reference to the location in the IS/MND that describes in detail the setting and potentially significant impacts. The Facts that follow in turn reference the specific mitigation measures for such impacts. All Mitigation Measures (MM) are in the Mitigation Monitoring and Reporting Program (MMRP) provided under **Exhibit F** and are incorporated herein by reference.

**FINDINGS REGARDING POTENTIALLY SIGNIFICANT IMPACTS THAT WILL BE
AVOIDED OR REDUCED TO LESS-THAN-SIGNIFICANT LEVELS BY THE
IMPLEMENTATION OF MITIGATION MEASURES**

AIR QUALITY IMPACT

Construction period emissions will be generated from on-site demolitions and construction activity, construction vehicle trips, and evaporative emissions which consists of vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle. Criteria air pollutant emissions would be less than significant prior to mitigation and will be reduced further with the implementation of **MM AQ -1** and **AQ-2** (see IS/MND pp. 29 and 32, respectively).

Project related demolition, grading, excavation and building construction activities at the project site would also temporarily generate fugitive dust in the form of PM10 and PM2.5 and larger particles that can cause nuisance impacts. The Bay Area Air Quality Management District (BAAQMD) CEQA Air Quality Guidelines recommend using specific Best Management Practices (BMPs), which has been a practical and effective approach to control fugitive dust emissions. **MM AQ-1** includes the BMPs to reduce the impacts to a less-than-significant level.

Further, nearby sensitive receptors could be exposed to pollutants as a result of construction activity. The results of the health risk assessment prepared for the proposed project (see appendices in the IS/MND) indicated that a single-family residence across Cedar Boulevard to

Exhibit B: Statement of CEQA Findings of Fact

the southwest of the project site would be a maximally exposed individual (MEI), where the maximum increased cancer risks from construction exceed the respective BAAQMD single-source thresholds (greater than 10.0 per million for cancer risk). With the implementation of **MM AQ-2**, the cancer risk from project construction activity will be reduced to a less-than-significant level.

Finding

Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or mitigate the potentially significant environmental impact related to construction emissions and temporary construction activity through implementation of the **MMs AQ-1** and **AQ-2** as identified in the IS/MND, so that environmental effects after mitigation are reduced to a less-than-significant level.

Facts in Support of Finding

MM AQ-1 was proposed in the IS/MND to reduce and/or avoid the Project's construction emission levels. **MM AQ-1** requires the implementation of nine BMPs. **MM AQ-2** was also proposed in the IS/MND to reduce diesel particulate matter and other emissions from temporary construction activity and construction equipment.

BIOLOGICAL RESOURCES IMPACT

The existing trees on the Project site could provide nesting habitat and their removal could impact migratory birds that may be nesting on these trees, which has the potential to result in a significant impact. To reduce these potential impacts to nesting birds, the Project shall be required to implement **MM BIO-1** (see IS/MND pp. 36-37).

Finding

Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or mitigate the potentially significant environmental impact related to nesting birds through implementation of **MM BIO-1** as identified in the IS/MND, so that environmental effects after mitigation are reduced to a less-than-significant level.

Facts in Support of Finding

MM BIO-1 was proposed in the IS/MND to reduce and/or avoid the Project's impact on nesting birds during the bird nesting season. **MM BIO-1** requires a pre-construction nesting bird survey conducted by a qualified biologist no more than 14 days prior to the start of construction activities. If active nests are identified, a disturbance-free buffer shall be established based on the needs of the species. The buffer will require construction fencing along the perimeter of the buffer and biological monitoring of the active nests. No construction or earth-moving activity shall occur within any established nest protection buffer prior to September 1 unless it is determined by a qualified ornithologist/biologist that the young have fledged. Should

Exhibit B: Statement of CEQA Findings of Fact

construction activities cease for 14 consecutive days or more within the nesting season, an additional nesting bird survey shall be required prior to resuming construction if any of the existing trees remain on or are adjacent to the site.

CULTURAL RESOURCES IMPACTS

The Project will involve grading and therefore a possibility exists of an accidental discovery or recognition of an archaeological resource. Implementation of **MM CUL-1** will reduce the impact to a less-than-significant level if there is the presence of undiscovered cultural resources associated with past prehistoric human occupation in the vicinity of the project site (see IS/MND, p. 42).

Findings

Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or mitigate the potentially significant environmental impact related to archaeological resources through implementation of **MM CUL-1** as identified in the IS/MND, so that environmental effects after mitigation are reduced to a less-than-significant level.

Facts in Support of Findings

MM CUL-1 was proposed in the IS/MND to reduce and/or avoid the Project's impacts on archaeological resources. If historic, archaeological or Native American materials or artifacts are identified during project construction, **MM CUL-1** requires work within a 50-foot radius such find to cease. The City shall be notified and retain the services of a qualified archeologist and/or paleontologist to assess the significance of the find. If human remains are found, all ground disturbing activities near or in any area potentially overlying adjacent human remains shall cease, the County Coroner shall be contacted immediately, and the provisions of State law shall be carried out.

GEOLOGY AND SOILS IMPACT

The Hayward fault is approximately 2.5 miles northeast of the project site. Therefore, the potential exists for a large earthquake to induce strong to very strong ground shaking at the site during the life of the project. Implementation of **MM GEO-1** will reduce the potential impact to a less-than-significant level (see IS/MND, p. 51).

The project site is also located in a liquefaction hazard zone per California Geological Survey (CGS) Earthquake Zones of Required Investigation. The geotechnical report for the project (provided in the appendices in the IS/MND) indicates that some of the subsurface soils are prone to liquefaction when subject to seismic shaking. Implementation of **MM GEO-1** will reduce the potential impact to a less-than-significant level.

Additionally, the post-tensioned slab foundations of the proposed structures must be designed to accommodate the potential settlements from building loads and liquefaction. Implementation of

Exhibit B: Statement of CEQA Findings of Fact

MM GEO-1 will result in less-than-significant impact with respect to on or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse as a result of its development.

Further, the project site is anticipated to be moderately expansive. Expansive near-surface soil is subject to volume changes during seasonal fluctuations in moisture content which can cause movement and cracking of foundations, slabs, and pavements. Implementation of **MM GEO-1** will reduce the potential impact related to expansive soils to a less-than-significant level.

Finding

Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or mitigate the potentially significant environmental impact related to seismic ground shaking, liquefaction, and expansive soils through implementation of the **MMs GEO-1** and **GEO-2** as identified in the IS/MND, so that environmental effects after mitigation are reduced to a less-than-significant level.

Facts in Support of Finding

MM GEO-1 has been proposed in the IS/MND to reduce and/or avoid the Project's exposure to the risk of loss, injury, or death involving seismic ground shaking, liquefaction, and expansive soils. **MM GEO-1** requires the Applicant to provide evidence that structural considerations for construction on the project site include the design parameters listed under CBC Seismic Design Criteria, and recommendations of the Project's geotechnical report are incorporated into the Project's grading and building plans and shall be implemented as part of the project construction.

HAZARDS AND HAZARDOUS MATERIALS IMPACT

Portions of the project site are included in one or more lists or databases maintained by state regulatory agencies pursuant to Government Code §65962.5, specifically as Leaking Underground Storage (LUST) sites. Implementation of **MM HAZ-1** will reduce the impact to a less-than-significant level (see IS/MND p. 67).

Finding

Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or mitigate the potentially significant environmental impact related to hazardous materials through implementation of the **MM HAZ-1** as identified in the IS/MND, so that environmental effects after mitigation are reduced to a less-than-significant level.

Facts in Support of Finding

MM HAZ-1 was proposed in the IS/MND to reduce and/or avoid the Project's exposure to hazardous materials. **MM AQ-1** requires the implementation of over a dozen best management practices. These measures include, but the Applicant to provide evidence that demonstrates that the recognized environmental condition (REC) on the site has been resolved to the satisfaction

Exhibit B: Statement of CEQA Findings of Fact

of the applicable regulatory agencies for future residential land use prior to the issuance of a grading permit for the project.

TRIBAL CULTURAL RESOURCES IMPACTS

While the project site is developed with industrial/commercial buildings and almost entirely paved, the Project would involve grading and therefore a possibility exists of an accidental discovery or recognition of a tribal cultural resource. Implementation of **MM CUL-1** (described in the sections above) would reduce any potential impact to tribal cultural resources and/or burial finds, in the event they are accidentally encountered, to a less-than-significant level (IS/MND p. 99-100).

Additionally, the City notified 10 tribes on April 7, 2022 regarding the Project and one response was received from the Confederated Villages of Lisjan Tribe. The representative of this tribe indicated that they had no further information to supply about the site at this time and wished to be notified if there were any findings. Implementation of **MM TC-1** will ensure the cultural resource representatives for the Confederated Villages of Lisjan Tribe are notified in the event of an unanticipated discovery of potential tribal cultural resources or human remains are found during construction, which will reduce the impact to a less-than-significant level (IS/MND p. 107).

Findings

Based on the Record, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the Project which will avoid or mitigate the potentially significant environmental impact related to culturally sensitive sites through implementation of the **MM CUL-1 and TC-1** as identified in the IS/MND, so that environmental effects after mitigation are reduced to a less-than-significant level.

Facts in Support of Findings

MM CUL-1 was proposed in the IS/MND to reduce and/or avoid the Project's impacts on cultural resources. **MM TC-1** requires that the Confederated Villages of Lisjan Tribe be notified within 24 hours in the event of an unanticipated discovery of potential tribal cultural resources or if human remains are found during construction. This MM also indicates **MM CUL-1** applies to cultural resources as well.

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CONDITIONS OF APPROVAL

P2021-002

38370 Cedar Boulevard

Alameda County Assessor's Parcel Numbers 092A-2375-002-06;092A-2375-022-01

Planning Division

- a. All conditions of approval for this project shall be printed on the project plans.
- b. All approved deviations from [Title 17 \(Zoning\)](#) of the Newark Municipal Code (NMC) as shown in the Resolution shall be printed on the project plans.
- c. The project shall be subject to all environmental mitigation measures as described in the Project's Initial Study and Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, both dated December 2022.
- d. The project shall implement the recommendations from the Salter Environmental Noise Study dated May 5, 2021, or as amended, to meet the City's noise standards. Prior to the issuance of a building permit, the applicant shall submit documentation showing how the project will implement the recommendations to the Community Development Director for review and approval.
- e. The landscape plans submitted for building permit review shall demonstrate compliance with NMC [Chapter 17.21 \(Landscaping\)](#) and [§17.23.090 \(Parking Area Design and Development Standards\)](#).
- f. The sound wall proposed along the rear property line adjacent to Interstate 880 (I-880) shall match or complement the existing walls along the I-880 corridor.
- g. There shall be no roof-mounted equipment other than satellite dishes, other similar television or radio antennas, and solar equipment.
- h. Mechanical and electrical equipment such as air conditioners (AC) units shall not be placed in the front or street side yard. If equipment is placed in any other location that makes it visible to public view, the equipment shall be properly screened with solid material pursuant to the regulations in [NMC §17.17.100 \(Screening\)](#).
- i. All exterior lighting shall comply with all applicable regulations in [NMC §17.17.060 \(Lighting and Illumination\)](#). All exterior lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- 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.

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- k. 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.
- l. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 7:00 p.m. and 7:00 a.m.
- m. The covenants, conditions, and restrictions (CC&Rs) filed for this development shall include the following provisions:
 - 1) There shall be no short-term rentals which is a rental of the unit or room(s) within a unit for a period of 30 consecutive calendar days or less.
 - 2) Garages shall only be used for automobile parking, incidental storage, and similar uses and shall not be used as living space. This restriction shall not apply when a garage conversion is proposed to accommodate an accessory dwelling unit (ADU) or junior ADU (JADU) in conformance with State regulations in effect.
 - 3) No refuse, garbage or recycling shall be stored outdoors except within designated waste and recycling container areas. Waste and recycling containers may be stored within the garage but may not obstruct required parking areas.
 - 4) All residents shall have access to and use of the common open space areas. Private improvements within common open space areas are prohibited except as shown on approved project drawings.
 - 5) The homeowner's association shall be responsible for maintenance of all common open space areas including, but not limited to, the dog area and park areas.
 - 6) The homeowner's association shall be responsible for maintenance of the trellis bus shelter structure along Cedar Boulevard.
 - 7) Guest parking spaces shall be clearly marked as reserved for guests and available with unrestricted access.
 - 8) Exterior changes including, but not limited to, paint, landscaping, hardscape, and windows and doors, are prohibited unless expressly approved by the City.
- n. Prior to the issuance of a building permit, any changes to the approved color elevations, floor plans, and/or fence details shall be reviewed and approved by the Community Development Director.
- o. Prior to the issuance of a building permit, the roof material as submitted by the applicant as part of this application 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

EXHIBIT C

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 applicant shall submit a “Will Serve” letter, or equivalent document, demonstrating approval of the project and agreeance to provide garbage, refuse and recycling services from Republic Services to the Community Development Director. Any revisions to the proposed garbage, refuse and recycling service pick up plan shall require review and approval 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, the plans for the proposed bus turnout/bay and trellis bus shelter structure, shall be submitted for the review and approval of AC Transit and the Community Development Director, in that order.
- r. Prior to the issuance of a building permit, the applicant shall pay the City’s impact fees in effect as well as the Community Development Maintenance Fee.
- s. Prior to the issuance of a Certificate of Occupancy for an individual unit, roll-up garage doors with automatic garage door openers shall be provided for such unit.
- t. Prior to the issuance of a Certificate of Occupancy, the parking areas within and applicable to the specific construction phase shall be installed and striped as shown on the approved site plan.
- u. Prior to the issuance of grading and site work permit(s), 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.
- v. Prior to final inspection and utility release for each unit, the applicant 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 or on a side elevation of the home, not facing a street, just under the building eave, with the satellite mounting location either on the underside of the soffit or on the fascia board.
- w. All signs shall be submitted for the review and approval of the Community Development Director. All signs shall comply with NMC Chapter 17.25, Signage Standards.
- x. 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 §15064.5 shall be prepared by the archeologist and/or paleontologist and approved by the Community

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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.

- y. 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.
- z. 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).
- aa. Prior to the issuance of a building permit, the applicant shall pay the applicable impact fees, in the amount in effect at the time.

Engineering Division

- bb. The project shall conform to Vesting Tentative Map – Tract 8583, sheets TM1.0 through TM8.0, and all conditions of approval set forth herein. Approval of the Vesting 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.
- cc. The final map shall designate and/or dedicate emergency vehicle access ways, private vehicle access ways, open space/recreational easements, public utility easements, and other easement as may be required over the common area. The final easement geometry shall be subject to the approval of the City Engineer.
- dd. The development will require approval of a final tract map filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. The final map shall be recorded prior to the issuance of any building permits.
- ee. 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. These plans shall be prepared by a qualified person licensed by the State of California to do such work. The plans shall be drawn to an appropriate scale as required by the City Engineer.
- ff. Prior to approval of the final map, the applicant shall enter into a Subdivision Improvement Agreement with the City and guarantee all necessary public and private street improvements and other common area improvements within the subdivision and beyond

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the map boundary in accordance with the tract improvement plans to be approved by the City Engineer.

- gg. The applicant shall dedicate right-of-way and install complete street improvements for Cedar Boulevard as shown on the Vesting Tentative Map exhibits and as described below:

Cedar Boulevard

- 1) The applicant shall dedicate 5 feet of right-of-way (total half street width of 49 feet) and install street improvements including, but not limited to, project driveways, bus turnout, landscape median, public sidewalks, pavement widening, curb and gutter removal and replacement, curb ramps, frontage landscaping, grind and overlay to the median, pavement striping and signage, street lighting, undergrounding existing overhead utilities, fire hydrants, landscape and irrigation facilities, utility connections, removal of existing street trees to facilitate street improvements, and other related improvements. No work shall be required on the south side of the proposed landscape median, except for the masonry wall, sidewalk, and landscaping improvements specifically identified on the approved exhibits.
- 2) A City standard Type-S driveway cut shall be constructed at the project entrances on Cedar Boulevard.
- 3) The applicant shall install a traffic signal at the intersection of Cedar Boulevard and Smith Avenue. Traffic Signal plans shall be prepared, reviewed, and approved as part of the tract improvement plans. The applicant shall submit complete traffic signal plans, inclusive of a pole schedule with the first submittal of the improvement plan set. The applicant shall identify long lead items. City will endeavor to prioritize the review and approval of the long lead items. Within 45 days of City approval of the long lead items, the applicant shall order or otherwise contract for the delivery and installation of the items and submit to the City a written confirmation of contract or order invoice. The applicant shall in good faith effort have the traffic signal operational prior to issuance of the first Certificate of Occupancy for any residential unit. (For the purposes of clarity, this condition is not intended to restrict the proposed model homes, anticipated to be lots 115-117). If the traffic signal is not operational prior to issuance of the first Certificate of Occupancy for any residential unit due to manufacturing or delivery delays of the long lead items, the applicant and the City Engineer shall discuss an alternative option to implement until the traffic signal is operational, subject to approval by the City Engineer. All costs to fund the alternative option shall be funded by the applicant.
- 4) Since the traffic signal is identified as a priority improvement by the City, the applicant is entitled to traffic impact fee credit for the total cost of the traffic signal improvements not to exceed \$500,000. The final scope and cost estimate of the traffic signal improvement is subject to review and approval by the City Engineer. The traffic impact fee cost for each building permit shall be reduced by the

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approved total credit divided by the number of the approved units.

- 5) The applicant shall install new monolithic PCC sidewalk along the Public Storage frontage to provide pedestrian connection between the project site and existing sidewalk of the Timber subdivision on Cedar Boulevard. Sidewalk improvements shall include, but not limited to, removal of existing trees and driveway, grading, construction of new City Standard 6-foot monolithic sidewalk, and a retaining wall or cut slope as appropriate. Additional landscaping is not required in this area, only restoration of existing landscaping and irrigation disturbed during construction.
 - 6) The applicant shall install an 8-foot high pre-cast masonry wall within the existing right-of-way on the south side of Cedar Boulevard adjacent to the existing wall between the church property and Moores Avenue (excepting therefrom the area along the flood control channel). Improvements shall include, but not limited to, removal of existing trees and sidewalk, grading, construction of new City Standard sidewalk, 8-foot masonry wall, planting strip with vines in front of wall, planting strip with street trees and groundcover between existing curb and gutter, and irrigation. The existing wood fences along Cedar Blvd shall remain in place.
 - 7) The applicant shall extend the left-turn pocket at Cedar Boulevard and Mowry Avenue as shown on the approved exhibits.
- hh. The applicant shall install private streets and common area improvements including, but not be limited to driveways, drive aisles, parking facilities, utilities, recreational areas and facilities, storm water treatment facilities, screen walls, fencing, and all landscape areas. All private streets and common area improvements in the development shall be designed and constructed to City standards, are subject to review and approval by the City Engineer and shall be included with the tract improvement plans.
- ii. The applicant shall obtain grading and site work permit(s) from Building Inspection Division for the site grading (rough grading and/or fine grading) and private structures including, but not limited to, project privacy sound wall, play structures, mailboxes, trellis bus shelter, and low retaining walls.
- jj. Prior to the building permit issuance for the privacy sound wall along I-880, the applicant shall contact the California Department of Transportation (Caltrans) and confirm if an encroachment permit is required for installation of the project privacy wall and any other required improvements within or adjacent to the Interstate-880 right-of-way. Applicant shall either demonstrate to the satisfaction of the Chief Building Official that no encroachment permit is required, or obtain such encroachment permit if one is required.
- kk. Concurrent with approval of the final map, the applicant shall effectuate the removal of any existing easements encumbering the property that conflict with areas proposed for improvement. Elimination or modification of existing easements on the site requires the approval from the respective utility district or company and the City of Newark.

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- ll. All improvements shall conform to the City's Sight Visibility Ordinance, Newark Municipal Code Chapter 10.36. Prior to Final Map approval, all building architecture and other above-ground improvements shall be located and designed as necessary to comply with this ordinance.
- mm. Prior to the issuance of the initial grading or any building permits for this project, the applicant shall submit a Storm Water Pollution Prevention Plan 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 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 storm water runoff from this site including, but not limited to, 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.
- nn. The provided Preliminary Stormwater Treatment Plan is approved in concept only. Final approval is subject to the applicant providing the necessary plans, details, and calculations that demonstrate the plan complies with the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region.
- oo. The property owner shall enter into a Stormwater Treatment Measures Maintenance Agreement, which will be recorded against the property . The applicant's project engineer shall provide all required exhibits associated with the agreement.
- pp. The applicant 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. 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 Alameda County Flood Control District prior to approval of the final map. The calculations shall show that the City and County freeboard requirements will be satisfied.

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- qq. All stormwater treatment measures are subject to review and approval by the Alameda County Mosquito Abatement District. The applicant shall modify the grading and drainage and stormwater treatment design as necessary to satisfy any imposed requirements from the District.
- rr. The entire site shall be equipped with full trash capture devices approved by the Regional Water Quality Control Board – San Francisco Bay Region and the Mosquito Abatement District, for 100% trash capture at all on-site and adjoining off-site storm drain inlets. All on-site trash capture devices shall be permanently maintained by the HOA. Acceptable off-site trash capture devices can be found on the City's website at <https://www.newark.org/departments/public-works/engineering-division/stormwater-program>.
- ss. 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.
- tt. 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, unpaved 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 two times daily, or treated with (non-toxic) soil stabilizers.
 - 7) All paved access roads, parking areas, and staging areas at construction sites with visible mud or dirt track-out 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.

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- 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.

- uu. Where a grade differential of more than a 1-foot is created along the boundary parcel lines between the proposed development and adjacent property, the applicant 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.
- vv. Prior to final map approval or early subdivision grading approval for the project, whichever comes first, the updated Geotechnical Study clarifying the lateral spreading hazard and ground improvement recommendations shall be reviewed and approved by the City selected peer review consultant. The review fee shall be paid by the applicant per the City's Master Fee Schedule.
- ww. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building plans (i.e. site preparation and grading, site drainage improvements and design parameters for foundations) to ensure that their recommendations have been properly incorporated.
- xx. The applicant's geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations prior to the placement of steel and concrete. The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to final project approval.
- yy. 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.

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- zz. Prior to issuance of a Certificate of Occupancy or release of utilities for any building, vehicle access ways and parking facilities serving said building shall be paved in accordance with the recommendation of a licensed engineer based on a Traffic Index of 5.0 and striped as shown on the approved site plan. Minimum asphalt concrete thickness for the vehicle access ways shall be 4 inches. This condition is not intended to cover vehicle access ways or parking facilities project wide, only those specific areas which are necessary for each individual building and consistent with an approved construction phasing plan filed with Building Inspection Division.
- aaa. Prior to issuance of a Certificate of Occupancy or release of utilities for each phase of dwelling units to be delivered, the on-site drive aisles and uncovered parking facilities serving such phase shall be installed and striped as shown on the approved plans . All on-site uncovered parking facilities and drive aisles shall be drained at a minimum slope of 1.0% for asphalt surfaces and 0.3% for Portland cement concrete surfaces.
- bbb. The applicant shall remove the existing joint utility pole and anchor pole and underground existing overhead lines along the Cedar Boulevard frontage to the nearest riser fronting the Public Storage property. Additionally, the applicant shall underground existing overhead lines along the westerly and northerly property lines of the project site.
- 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. As shown on the approved entitlement drawings, pad mounted electrical transformers shall be installed with an appropriate public utility easement and shall be screened properly from the roadways.
- ddd. All improvement plans are subject to review and approval by the Alameda County Water District (ACWD), Union Sanitary District (USD), Alameda County Flood Control and Water Conservation District (ACFC&WCD), and Pacific, Gas & Electric Company (PG&E). Any modifications to the site design provided with the vesting tentative map as necessary to satisfy requirements from individual utilities or districts are the sole responsibility of the applicant. The applicant shall coordinate with Pacific, Gas & Electric Co. for the design of the underground utility improvements for the proposed development as soon as practical following vesting tentative map approval.
- eee. The joint trench and street light plans shall be submitted by the applicant with the first tract improvement plan check and approved prior to final map approval.
- fff. Multiple street cuts and openings (i.e. greater than two street cuts or openings) as a result of utility connections and other necessary street openings on Cedar Boulevard shall be resurfaced from curb to curb to the satisfaction of the City Engineer. All pavement restoration and resurfacing shall be completed concurrent with site development.
- ggg. The applicant shall repair and/or replace any public improvements along the Cedar Boulevard right-of-way and private improvements along the exterior boundary of the site damaged as a result of construction activity to the satisfaction of the City Engineer.

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- hhh. The applicant shall provide all required paper and digital submittals of the 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 mylar copy and an electronic copy of the recorded final map; (2) Two full-sized reproducible copy, four half-sized reproducible copy, and electronic copies of the approved improvement plans in a format approved by the City Engineer; (3) Electronic copies and 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.
- iii. The applicant shall establish a Homeowner's Association (HOA) consisting of all property owners of lands in the development at the time of incorporation and in the future for the purpose of maintaining the association's property, common drive aisles, common area parking facilities, common area stormwater treatment facilities, common area landscaping, and landscaping in the adjacent public rights-of-way (excluding any landscaping/improvements in medians, on the opposite side of Cedar Blvd., or otherwise included in the LLD), and for paying for lighting (if any), common garbage collection services (if any), security patrol services (if any), and other functions of a Homeowner's Association. Common areas within the development shall be owned and/or maintained by the Homeowner's Association as described in the covenants, conditions and restrictions (CC&Rs). Each property owner shall automatically become a member of the association in accordance with the Developer's phasing plan and shall be subject to its share of the Homeowner's Association in accordance with the budget reviewed and approved by the Department of Real Estate. 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.
- jjj. Prior to City Council approval of the final map(s), any declaration of covenants, conditions and restrictions (CC&Rs) governing the maintenance and operation of this development shall be reviewed and approved by the Community Development Director at his/her discretion after review and recommendations by the City Attorney. Said covenants, conditions and restrictions shall be available 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 run with the land and therefore be binding on parties with leasehold interests. The CC&Rs shall be written to require homeowners to require renters to comply with the CC&Rs, and a copy of the CC&Rs shall be given to each renter. The CC&Rs shall require the HOA to properly budget for a pavement maintenance program for on-site pavement.
- kkk. The applicant shall at its own cost, have an initial Homeowner's Association budget prepared which initial budget shall be reviewed and approved by the California Department of Real Estate. The Homeowner's Association budget shall set forth the monthly assessment costs.
- lll. 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

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and all associated trash capture devices shall be cleaned on a regularly scheduled basis as detailed in the required Stormwater Treatment Measures Maintenance Agreement.

- mmm. The Homeowner's Association shall be required to contract with a professional association management firm to handle all necessary maintenance operations. Documentation of such contract shall be submitted to the City of Newark prior to the issuance of the first Certificate of Occupancy for a residential unit in the project. All commonly owned facilities shall be properly maintained in a manner consistent with the CC&Rs and project requirements. (For the purposes of clarity, this condition is not intended to restrict the proposed model homes, anticipated to be lots 115-117.)
- nnn. The applicant shall prepare 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 disclosure statement shall also 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 disclosure statement is subject to review and approval of the City Engineer prior to the issuance of the first Certificate of Occupancy for any residential unit. (For the purposes of clarity, this condition is not intended to restrict the proposed model homes, anticipated to be lots 115-117.)
- ooo. The applicant is to provide a complete set of construction plans and a copy of the project geotechnical report and recorded Final Map to the Homeowners Association at the time of its formation.
- ppp. The CC&Rs shall contain a provision that prohibits the amendment of those provisions of the CC&Rs, identified in these Conditions of Approval, without the City's approval.
- qqq. 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 Common Area or to lower the standards for maintaining and repairing such Common Area below that of other typical professionally managed and professionally landscaped common interest subdivisions; (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 material amendment to Sections....(sections required by condition of approval to be listed), 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 fails to Maintain the Common Area, or if the Association fails to enforce any of the provisions, the City, as an intended third party beneficiary of the provisions of this Master Declaration, shall have the right, but not the

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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.

- rrr. The Declarant shall provide educational materials provided by City of Newark on stormwater pollution prevention to all residents as part of the builder disclosure package or otherwise within (3) three months of the initial sale of each home.
- sss. Each initial buyer shall sign an acknowledgment that he/she has read the articles and bylaws of the Homeowner's Association and the CC&Rs governing the operation and maintenance of the development.
- ttt. 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). This area of Newark has a "flower/shrub" theme for street names. The applicant may request a different theme for street names, which will be subject to review and approval by the City Engineer.
- uuu. A signpost with a sign having an area of at least 15-inches by 21-inches shall be installed at or near the project entrances. The sign shall indicate "Private Property. Not dedicated for public use."
- vvv. Reflective address signs shall be provided at each courts to help identify the location of a residential unit for accurate first response. Signs shall be subject to review and approval by the City Engineer and the Fire Marshal.

Landscape-Parks Division

- www. Prior to approval of the final map, the applicant shall petition the City Council to participate in a Landscaping and Lighting District for the perpetual maintenance of the median landscaping, lighting system, and stormwater trash capture devices along the project frontage on Cedar Boulevard. Maintenance activities will be performed by the City of Newark or its contractors through the Landscaping and Lighting District. All property owners within the vesting tentative map boundary shall be assessed annually in accordance with requirements established with the Landscaping and Lighting District. The applicant shall deposit sufficient funds for the City to hire a consultant to prepare the Engineer's Report, which shall be approved by the City Council. Prior to issuance of the first Certificate of Occupancy for any residential unit, the City Council shall adopt a resolution for the formation of the Landscaping and Lighting District. The applicant shall record an indenture advising all prospective property owners in the project that their properties are included in a Landscape and Lighting District for maintenance of landscaping, lighting, and related improvements installed as part of the project.
- xxx. All landscape maintenance on-site and along the project frontage, including the right-of-way planter strips along Cedar Boulevard but excluding the median landscaping or landscaping on the opposite side of Cedar Boulevard, shall be the responsibility of the Homeowners Association. The applicant shall enter into a Landscape Maintenance

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Agreement prior to approval of the final map. The applicant shall be permitted to assign the obligations to the HOA and shall thereafter be released from any ongoing obligations under such Agreement. The Landscape Maintenance Agreement shall run with the land and be binding to the Homeowners Association as successors.

- yyy. The applicant shall dedicate to the City of Newark a 4-to-6-foot landscape, sidewalk, and public utility easement along the frontage of Cedar Boulevard in accordance with the approved vesting tentative map.
- zzz. Prior to final map approval, landscape plans for work within the public right-of-way, dedicated easement areas, and all common areas shall be included with the tract improvement plans and approved by the City Engineer. The plans shall be prepared by a licensed landscape architect in accordance with the City of Newark requirements, standard details, and the State of California Model Water Efficient Landscape Ordinance (MWELo). The Landscape Planting Plans can be conceptual but must demonstrate compliance to Newark requirements and MWELo prior to final map approval. Final Landscape Planting Plans shall be approved prior to installation of landscape planting.
- aaaa. Prior to the release of utilities or issuance of any Certificate of Occupancy for a given project phase, all landscaping and irrigation systems associated with that phase, including all frontage and median landscaping, shall be completed or guaranteed by a cash deposit filed with the City in an amount to cover the remainder of the work.
- bbbb. Prior to installation by the applicant, applicant shall submit a plan with plant species, location, container size, quality and quantity of all landscaping plants and materials within the public right-of-way, and such plan shall be reviewed and approved by the City Engineer. All street trees shall be a minimum of 24-inch box specimen. Plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- cccc. Any above ground utility structures along Cedar Boulevard, including backflow prevention devices, and appurtenances, shall be installed within the applicant's property line and a minimum of 10 feet behind street face of curbs on Cedar Boulevard. 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.

Building Division

- dddd. Upon building submittal, clarify all fund sources, if any public funding or tax credits are being utilized, and provide accessible units on funding requirements.
- eeee. Prior to building permit submittal, revise the proposed parking to comply with all applicable accessible parking requirements.

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- ffff. Prior to building permit submittal, clarify chases being utilized to pass utilities from heating, ventilation, and air conditioning (HVAC) equipment between floors, as not all walls line up to chases or to be used as a chase between floors.
- gggg. Per [NMC §17.24.100.A.3](#), construction for this project, including site work and all structures, shall occur only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday and between the hours of 10:00 a.m. and 6:00 p.m. on Sundays and holidays. 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 shall be made in writing.

Police Department

- hhhh. The development shall comply with [Chapter 15.06 \(Security Code\)](#) of the Newark Municipal Code and [§510 \(Emergency Responder Radio Coverage\)](#) of the California Fire Code.
- iiii. The Police Department highly recommends the installation of community safety cameras in common areas where the residences would be most susceptible to criminal activity. This would include parking areas, exterior pathways and exterior doors. The community safety cameras could be operated and controlled by individual owners, the Building Management or the Owners' Association.
- jjjj. The proposed development should comply with the City of Newark street numbering system and tie in with the existing area street numbering. Additionally, the proposed buildings should display the street address in a manner clearly visible from the adjacent roadway and parking areas in order to facilitate public safety personnel's ability to quickly identify its location during emergency responses.
- kkkk. Individual residence numbering should be in a systematic method, specific to each unit in a non-repeating manner (i.e. no two units in the development with the same unit number). Additionally, street addresses should be displayed to front and rear garage area of each residence. Maps with unit numbering of the entire development should be placed in easy to find locations (preferably at entrances to the development and the buildings) in order to aid public safety personnel's ability to identify specific units during emergency responses.

General Conditions

- llll. All proposed changes from approved exhibits shall be submitted to the Community Development Director for review and approval.
- mmmm. The applicant hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or

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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.

- nnnn. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the applicant shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the applicant (which shall be the same counsel used by applicant) and reasonably approved by the City. Applicant's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with [Government Code §66474.9](#).
- oooo. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to [Government Code §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 §66020, the developer will be legally barred from later challenging such exactions.