



# CITY OF NEWARK PLANNING COMMISSION

37101 Newark Boulevard, Newark, California 94560-3796 □ 510/578-4330 □ FAX 510/578-4265

City Administration Building  
7:30 p.m.  
City Council Chambers

## AGENDA

Tuesday, May 12, 2015

### A. ROLL CALL

### B. MINUTES

- B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, April 28, 2015. (MOTION)

### C. WRITTEN COMMUNICATIONS

- D. ORAL COMMUNICATIONS (Anyone wishing to address the Commission on any planning item not on the Agenda may take the podium and state his/her name and address clearly for the recorder.)

### E. PUBLIC HEARINGS

- E.1 Hearing to consider P-15-14, a planned unit development, and U-15-15, a conditional use permit, to hold SummerFest (consisting of activities such as arts, crafts, food and commercial vendors, live music, micro-breweries, car show, and a kids' zone) in the NewPark Mall parking lot on July 11 and 12, 2015, and dates to be determined in 2016 and 2017. NewPark Mall is bounded, generally, to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 (Nimitz Freeway). The Assessor's Parcel Number is 901-0111-025-00– from Assistant City Manager Grindall. (RESOLUTION)

- E.2 Hearing to consider: (1) Adopting a resolution recommending City Council approval of a General Plan Amendment (CPA-15-20) to change the land use designation from P-I (Public Institutional) to S-I (Special Industrial); and (2) by resolution, revoking P-14-23, a planned unit development, and U-14-24, a conditional use permit, for a private school at 39201 Cherry Street (APNs: 901-110-68 & 69) – from Assistant City Manager Grindall.

(RESOLUTIONS - 2)

- E.3 Hearing to consider adopting a resolution recommending: (1) City Council approval of GPA-15-23, Housing Element Update 2015 and: (2) that the General Plan Tune Up Program Environmental Impact Report addressed the Environmental Impacts of the Housing Element Update 2015 (E-15-22) – from Assistant City Manager Grindall. (RESOLUTION)

### F. STAFF REPORTS

**G. COMMISSION MATTERS**

**G.1 Report on City Council actions.**

**H. ADJOURNMENT**

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 at the Planning Division Counter located at 37101 Newark Boulevard, 1st Floor, during normal business hours. 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.

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# CITY OF NEWARK

## PLANNING COMMISSION

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City Administration Building  
7:30 p.m.  
City Council Chambers

### MINUTES

Tuesday, April 28, 2015

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#### A. ROLL CALL

At 7:31 p.m., Chairperson Fitts called the meeting to order. All Planning Commissioners were present except Commissioner Bridges (Personal).

#### B. MINUTES

##### B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, April 14, 2015.

Commissioner Nillo moved, Vice-Chairperson Aguilar seconded, to approve the Minutes of April 14, 2015. The motion passed 4 AYES.

#### C. WRITTEN COMMUNICATIONS

None.

#### D. ORAL COMMUNICATIONS

None.

#### E. PUBLIC HEARINGS

##### E.1 Hearing to consider the request by LOV (League of Volunteers), for P-15-11, a planned unit development, and U-15-12, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNs: 901-111-20 & 21) with performances from September 3 through September 7, 2015.

Assistant City Manager Grindall gave the staff report.

Answering Vice-Chairperson Aguilar, ACM Grindall stated all parking for this event will be located in the NewPark Mall's parking lot and directional signage as well as security personnel will be onsite.

Chairperson Fitts opened the Public Hearing.

Applicant Shirley Sisk, LOV, 8440 Central Avenue, Newark, CA 94560, stated she has read and agrees to all conditions listed in Resolution 1908.

Answering Commissioner Otterstetter, Ms. Sisk stated the Circus Operator provides the security which is part of their staff.

Chairperson Fitts closed the Public Hearing.

Motion by Commissioner Nillo, seconded by Vice-Chairperson Aguilar, to approve Resolution 1908, with Exhibit A, pages 1 through 3, approving the request by LOV (League of Volunteers), for P-15-11, a planned unit development, and U-15-12, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from September 3 through September 7, 2015.

Vice-Chairperson Aguilar recused himself due to his business's involvement with the adjacent property for Item E.2.

**E.2 Continued Hearing to consider whether the Planning Commission should revoke Conditional Use Permit (CUP) No. U-84-14, issued to E-Z 8 Motel, on the grounds that E-Z 8 Motel is not complying with the conditions of the permit and is violating applicable provisions of Title 17 of the City of Newark Municipal Code.**

ACM Grindall gave the staff report and recommended that this Item be opened, public testimony be received, then the Item be continued to a specific date approximately 3 months later to allow time for a full assessment of the agreed upon security measures.

ACM Grindall mentioned correspondence dated April 27, 2015 from E-Z 8 Newark, LLC, which was received both electronically and via mail delivery, were given to the Planning Commissioners.

Discussion ensued between Chairperson Fitts and ACM Grindall clarifying the objective for the 3 month continuance.

Chairperson Fitts reopened the Public Hearing.

Mr. Jerry Cannon, representing E-Z 8 Newark, LLC, 10399 Roof Fin Stairs, San Diego, CA 92108 and Mr. John Wynne from Duckor, Spradling, Metzger, Wynne, 32043 4<sup>th</sup> Avenue, San Diego, CA 92103 stepped up to the podium.

Mr. Cannon stated he believed E-Z 8 had fully complied with the Agreement as documented in his April 27, 2015 correspondence.

Mr. Cannon described his interactions with the Newark Police Department as favorable and felt rapport with the Police Department had been restored and hopes the same would happen with all City Staff.

Mr. Cannon stated the 3 month continuance would be beneficial; he reserves all legal claims; and he described the permitting process for the security gates.

Answering Commissioner Otterstetter, Mr. Cannon stated one other property that he oversees has a similar gate in place which took 3-4 months to install.

Commissioner Otterstetter described her personal observations at E-Z 8 where the gates were not yet installed, were installed but not working, and no security personnel were on site.

Answering Commissioner Nillo, Mr. Alonzo Battle, 5555 Cedar Court, Newark, CA 94560, described the process for registering hotel guests and the visitors of hotel guests.

Answering Commissioner Nillo, Mr. Cannon stated he thought the Newark Police was his point of contact and he did not know what information was relayed to other City Staff.

Commissioner Nillo suggested Mr. Cannon work with both the Police Department and the Community Development Department staff.

Mr. Wynne emphasized his letter dated April 27, 2015 details their position on this matter and thanked staff for making his letter as well as the letter from Mr. Cannon and Mr. Crouch part of the Administrative record.

ACM Grindall stated the intent behind staff's letter from December 23, 2014 was to implore E-Z 8 to abide by the Agreement and stated staff was not contacted by E-Z 8 to attend the meeting between E-Z 8 and their Security Advisor.

Mr. Richard Dominquez, 5647 Moores Avenue, Newark, CA 94560, gave his opinion that the security measures would give the hotel the appearance of a prison. Mr. Donimquez thanked City staff for trying to move the City forward.

Ms. Cindy Parks, 36283 Birkshire Place, Newark, CA 94560, stated she was disappointed by the lack of compliance with the Agreement and had hoped the Conditional Use Permit had been revoked back in July 2014 but understands why the City want to grant additional time to E-Z 8 to determine if the security measures is effective or not.

Ms. Parks stated her belief that 24 hours was not a sufficient length of time for the Security Advisor to make an accurate assessment of the E-Z 8 operation.

Mr. Richard Main, 6007 Peppertree Court, Newark, CA 94560, stated his opinion that City staff and the Police Department exhibits an abuse of power towards the E-Z 8 in order to curtail criminal activity.

Mr. Main asked Chairperson Fitts for an extension of the 5-minute time limit that is given to all speakers, which was denied.

Mr. Main stated his belief that the City would be liable to E-Z 8 for expenses incurred and liable if E-Z 8 goes out of business.

Ms. Lucille Schulzman, 5644 Arbutus Court, Newark, CA 94560, stated businesses should be responsible for the customers that their business attracts and should make sure the business is not detrimental to the City or to the residents surrounding their business.

Mr. Lirenso, 5806 Wintergreen Drive, Newark, CA 94560, stated he and his neighbors had signed a petition to raise their fence height to keep people from the E-Z 8 Motel from jumping over their fences as they are fleeing from the Police.

Mr. Lirenso stated it is important to hear first-hand experiences from people living in close proximity to the Motel.

Chairperson Fitts stated Mr. Main was out of order for making comments about the time keeper from his seat in the audience.

Motion made by Commissioner Nillo, seconded by Commissioner Otterstetter to continue this Item to the July 28, 2015 Planning Commission Meeting. Motion passed 3 AYES.

Vice-Chairperson Aguilar returned to the Council Chambers and rejoined his fellow Planning Commissioners.

**F. STAFF REPORTS**

None.

**G. COMMISSION MATTERS**

**G.1 Report on City Council actions.**

ACM Grindall informed the Planning Commissioners that both the Enterprise and Jones Hamilton projects were approved at the April 23, 2015 City Council Meeting.

Commissioners' Comments

Commissioner Nillo wished the public a Happy Cinco De Mayo and a Happy Mother's Day.

**H. ADJOURNMENT**

At 8:52 p.m., Chairperson Fitts adjourned the regular Planning Commission meeting of Tuesday, April 28, 2015.

Respectfully submitted,



TERRENCE GRINDALL  
Secretary



- E.1 Hearing to consider P-15-14, a planned unit development, and U-15-15, a conditional use permit, to hold SummerFest (consisting of activities such as arts, crafts, food and commercial vendors, live music, micro-breweries, car show, and a kids' zone) in the NewPark Mall parking lot on July 11 and 12, 2015, and dates to be determined in 2016 and 2017. NewPark Mall is bounded, generally, to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 (Nimitz Freeway). The Assessor's Parcel Number is 901-0111-025-00 – from Assistant City Manager Grindall <sup>TB</sup> (RESOLUTION)**

**Background/Discussion** – The Newark Chamber of Commerce has submitted an application to hold their seventh annual outdoor fund-raising festival called “Summerfest” in the NewPark Mall parking lot on July 11, 2015 (Saturday) and July 12, 2015 (Sunday). Attached is Exhibit A, pages 1(site plan) and 2 (site layout).

Summerfest is a two-day festival consisting of activities such as arts and crafts, food and commercial vendors, live music, micro-breweries, a car show and a kid’s zone. Summerfest is proposed to be held from 10:00 a.m. to 6:00 p.m. each day. The event would take place in the parking lot between Sear’s and Macy’s, next to the Newark Farmers Market that is held every Sunday. The Chamber would use the funds raised from the event to help continue promoting local businesses. NewPark Mall is zoned CR (Regional Commercial). Approval of a conditional use permit and a planned unit development is required.

If granted, this would be the seventh consecutive year the Chamber has received land use permit approvals to have Summerfest at the NewPark Mall. Last year’s event was held at the same location as proposed this year. Planning staff has not received any complaints regarding any prior Summerfest event. As such, staff recommends approval of the conditional use permit and planned unit development application for the events to be held on July 11, 2015 and July 12, 2015, subject to the conditions of approval listed in the attached resolution; and further recommends that if approved, the application be granted a three-year approval good for two days (to be determined) during the summer of 2016 and 2017.

Environmental Review

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15304, Class 4(e), minor temporary use of land having negligible or no permanent effects on the environment.

**Attachment**

**Action** – It is recommended that the Planning Commission, by resolution, approve the request by the Newark Chamber of Commerce for P-15-14, a planned unit development, and U-15-15, a conditional use permit, with Exhibit A, pages 1 and 2, to hold “Summerfest” (consisting of activities such as

arts, crafts, food and commercial vendors, live music, micro-breweries, car show, and a kids' zone) in the NewPark Mall parking lot on July 11, 2015, July 12, 2015 and two days (to be determined) during the summer of 2016 and 2017. (NewPark Mall is bounded, generally, to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 [Nimitz Freeway]).

RESOLUTION NO.

RESOLUTION APPROVING P-15-14, A PLANNED UNIT DEVELOPMENT, AND U-15-15, A CONDITIONAL USE PERMIT, TO HOLD SUMMERFEST IN THE NEWPARK MALL PARKING LOT ON JULY 11 AND 12, 2015 AND DATES TO BE DETERMINED IN 2016 AND 2017

WHEREAS, the Newark Chamber of Commerce has filed with the Planning Commission of the City of Newark application for P-15-14, a planned unit development, and U-15-15, a conditional use permit, to hold SummerFest (consisting of activities such as arts, crafts, food and commercial vendors, live music, micro-breweries, and a kids' zone) in the NewPark Mall parking lot on July 11 and 12, 2015 and dates to be determined in 2016 and 2017 (NewPark Mall is bounded, generally, to the north by Mowry Avenue, to the west by Cedar Boulevard, to the south by Balentine Drive, and to the east by Interstate 880 [Nimitz Freeway]); and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Argus on May 1, 2015, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on May 12, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approves this application as shown on Exhibit A, pages 1 and 2, subject to compliance with the following conditions:

Planning Division

- a. This approval shall be for SummerFest on July 11 and 12, 2015 between the hours of 10:00 a.m. and 6:00 p.m., with a reasonable amount of time for set-up prior to opening and for clean-up after closing as determined by the Community Development Director. Further, the application shall be granted a three-year (2015-2017) approval good for two days (to be determined) during the summers of 2016 and 2017. Any future changes to the location at NewPark Mall, general layout, or event content shall be reviewed by the Community Development Director and approved at his/her discretion.
- b. The volume levels of all sound equipment and speakers associated with this project shall not exceed levels determined to be acceptable by the Community Development Director.
- c. All lighting shall be directed on-site so as not to create glare off-site.
- d. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 9:00 p.m. and 7:00 a.m.

- e. Garbage and recycling pick-up shall be coordinated with the City's waste management provider so that a sufficient number of dumpsters are available on-site and picked-up to ensure no refuse, garbage or recycling is stored outdoors except within the approved trash and recycling dumpsters. Prior to the event openings, the developer shall submit written evidence of the waste management provider's approval.
- f. 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 clean-up shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site shall remain graffiti free.
- g. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy-duty mufflers designed to reduce noise impacts.
- h. The event staff shall, as needed, direct patrons to park their vehicles in the NewPark Mall parking lot.
- i. Prior to the event opening, the event staff shall submit evidence to the City of approval from the County Health Department for the proposed food and beverage sales, as well as the appropriate liquor license permit from the Department of Alcoholic Beverage Control. There shall be no sale of alcohol other than beer and wine at SummerFest.
- j. Within 24 hours of the conclusion of the events, all structures and improvements brought to the subject site associated with this project shall be removed and the site returned to its original, pre-event condition, to the satisfaction of the Community Development Director.

Engineering Division

- k. Event staff shall implement all applicable Best Management Practices (BMPs) from the California Best Management Practice Handbook for Construction Activities to prevent the pollution or contamination of storm water runoff from the event area. Additional BMPs may be required by the City Engineer, as necessary, to minimize the pollution of storm water runoff and to satisfy requirements under the Municipal Regional Stormwater Permit issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay. The following notes shall be added to the final plans::
  - 1. Any stockpiled materials with the potential to pollute storm water runoff shall be properly contained and covered to prevent any such pollution.
  - 2. The parking lot and drive aisles shall be cleaned daily or as required by the City Engineer to remove accumulated trash and debris generated from the project area. Migration of trash and debris into the public right-of-way is prohibited and will be strictly enforced.

3. Water-tight waste receptacles shall be placed around the site as necessary to minimize litter, to the satisfaction of the City Engineer.
4. Any liquid spills associated with the proposed project must be cleaned immediately and prevented from entering the storm drain system.
5. Temporary sanitary facilities shall be managed and maintained at all times, placed away from drainage facilities and traffic circulation, and secured to prevent overturning.
6. All applicable Best Management Practices from the California Storm Water Quality Best Management Practices Handbook for Construction Activities shall be implemented, as necessary, to minimize storm water pollution to the satisfaction of the City Engineer.

#### Police Department

- l. SummerFest staff shall implement a security program to protect patrons and staff before, during and after the events (until the events are finished and completely off the site), to the satisfaction of the Police Chief. This shall include, but not be limited to, the developer providing security staff to protect the structures and equipment brought onto the site. The developer shall provide the Police Department with the names and mobile telephone numbers of security staff and/or managers, along with the contact name, mobile telephone number and office telephone number of the on-site person in charge who can be reached at all hours while the events are at the subject site.

#### Fire Department

- m. An approved fire department access road shall be provided so that all portions of the structures or tent are within 150 feet of the access road. Fire access roads shall have an unobstructed width of 20 feet and vertical clearance of 13 feet 6 inches.
- n. Tents or membrane structures shall not be located within 20 feet of lot lines, buildings, parked vehicles, or internal combustion engines.
- o. Applicant shall submit a site layout map and obtain a fire department permit for the installation of tents and temporary membrane structures.
- p. Applicant shall meet all applicable fire code requirements at the time of application submittal.

#### General

- q. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's

and Council's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval.

- r. If any condition of this conditional use permit and planned unit development be declared invalid or unenforceable by a court of competent jurisdiction, this conditional use permit and planned unit development shall terminate and be of no force and effect, at the election of the City Council on motion.
- s. This conditional use permit and planned unit development shall be given a public hearing before the City Council for the Council's review and approval.
- t. All conditional use permit and planned unit development conditions of approval of this project, as approved by the City Council, shall be posted at the site and distributed to event personnel.
- u. The developer hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- v. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

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

This Resolution was introduced at the Planning Commission's May 12, 2015 meeting by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and passed as follows:

AYES:

NOES:

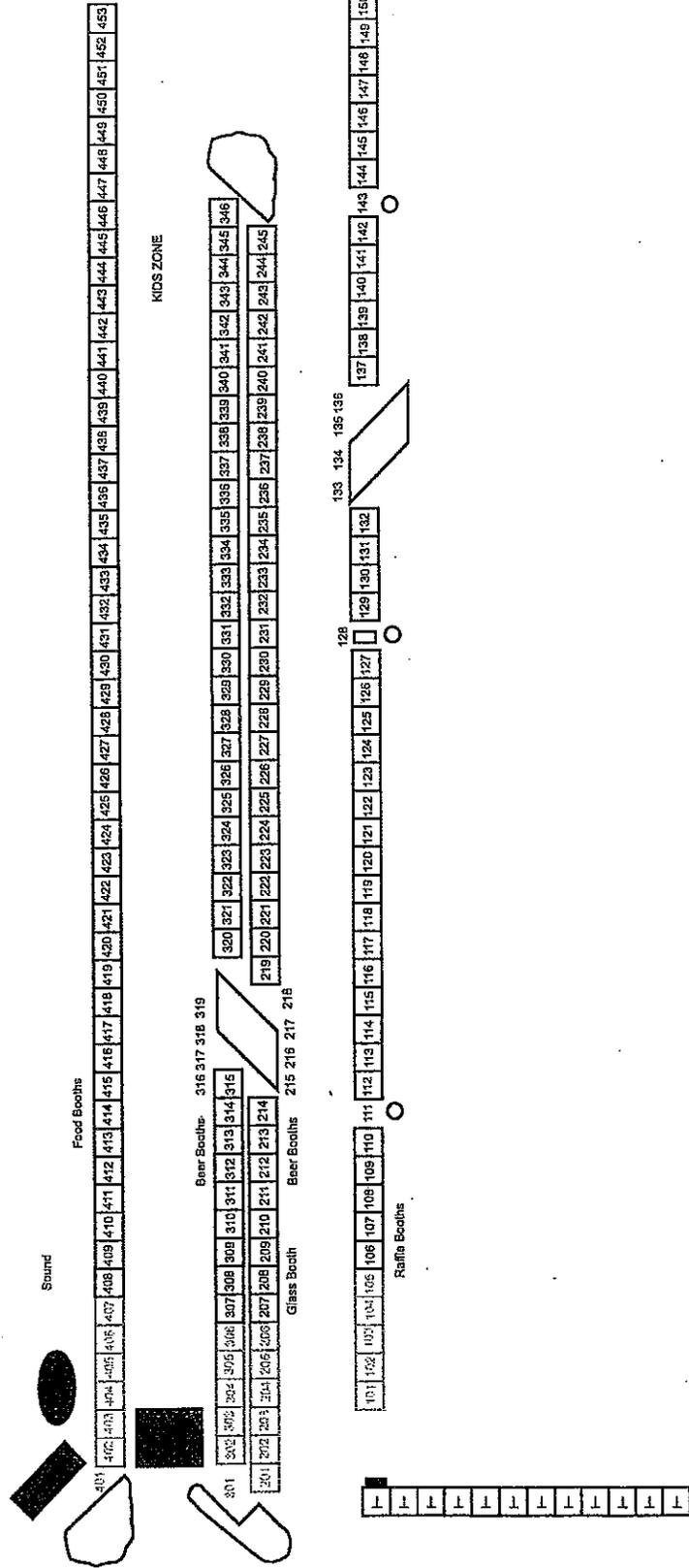
ABSENT:

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

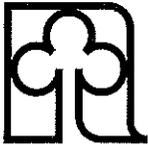
\_\_\_\_\_  
WILLIAM FITTS, Chairperson



# NEWARK SUMMERFEST SITE MAP



**EXHIBIT**  
A<sub>1</sub> p. 2



- E.2 **Hearing to consider: (1) Adopting a resolution recommending City Council approval of a General Plan Amendment (GPA-15-20) to change the land use designation from P-I (Public Institutional) to S-I (Special Industrial); and (2) by resolution, revoking P-14-23, a planned unit development, and U-14-24, a conditional use permit, for a private school at 39201 Cherry Street (APNs: 901-110-68 & 69) – from Assistant City Manager Grindall. TG (RESOLUTIONS-2)**

**Background/Discussion** – In October 2014, the City Council approved a General Plan Amendment, a planned unit development, and a conditional use permit to allow a private school (Stratford School) to locate at 39201 Cherry Street. Subsequent to that approval, Stratford School informed the City they would not be pursuing the project.

As the approval of the planned unit development and conditional use permit limits uses on the site to a private school only, the owner has requested revocation along with a General Plan Amendment to restore the Special Industrial designation.

The applicant is requesting the General Plan designation be restored to S-I (Special Industrial) as it was before the private school project. The S-I designation was designed to accommodate high-tech, Research & Development uses envisioned for the area and is still consistent with the nearby Stevenson Point Tech Park, Ohlone College, and the envisioned development of adjacent Area 3.

**Attachment**

**Action** – It is recommended that the Planning Commission: (1) by resolution, recommend City Council approval of a General Plan Amendment (GPA-15-20) to change the land use designation from P-I (Public Institutional) to S-I (Special Industrial); and (2) by resolution, revoke P-14-23, a planned unit development, and U-14-24, a conditional use permit, for a private school at 39201 Cherry Street (APNs: 901-110-68 & 69).

RESOLUTION NO.

RESOLUTION RECOMMENDING CITY COUNCIL  
APPROVAL OF AN AMENDMENT TO THE LAND USE  
ELEMENT OF THE GENERAL PLAN

WHEREAS, in response to the application filed by Aditya Birla Investments, LLC for the revocation of a planned unit development and a conditional use permit to allow a private elementary school at 39201 Cherry Street (APNs: 901-110-68 & 69), the City of Newark has prepared the proposed amendment to the Newark General Plan (GPA-15-20) to change the land use designation of the subject property within the boundaries of Tentative Tract Map 7967 from P-I (Public and Institutional) to S-I (Special Industrial); and

WHEREAS, the proposed amendment is consistent with existing goals, policies and objectives contained in the Newark General Plan with respect to the promotion of balanced land use; and

WHEREAS, the Planning Commission has read, reviewed, and considered the information contained in the staff report and conducted a public hearing on the proposed amendment to the Newark General Plan for the subject property as shown on Exhibit A, and discussed, evaluated, analyzed, reviewed, and considered the information presented in said hearing; and

WHEREAS, the Planning Commission did review and use their independent judgment to consider the information at the public hearing; and

WHEREAS, pursuant to California Government Code Sections 6061 and Section 65353, a public hearing was published in The Argus on May 1, 2015, and the Planning Commission held a public hearing on said application at 7:30 p.m. on May 12, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Newark hereby recommends the City Council approve General Plan Amendment, GPA-15-20, with Exhibit A, based on the staff report, staff presentation, and public comments received, with the finding that the proposed amendment is consistent with all other goals and policies of the Newark General Plan.

This resolution was introduced at the Planning Commission's May 12, 2015, meeting by Commissioner, seconded by Commissioner, and passed as follows:

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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WILLIAM FITTS, Chairperson



RESOLUTION NO.

RESOLUTION REVOKING A PLANNED UNIT DEVELOPMENT (P-14-23) AND A CONDITIONAL USE PERMIT (U-14-24) FOR A PRIVATE SCHOOL LOCATED AT 39201 CHERRY STREET (APNs: 901-111-68 & 69)

WHEREAS, On October 23, 2014, The City Council of the City of Newark approved a planned unit development and conditional use permit to allow a private school at 39201 Cherry Street; and

WHEREAS, subsequent to that approval, the applicant informed the City the project would not be pursued; and

WHEREAS, pursuant to Chapter 17.72.160 of the Newark Municipal Code, a use permit granted pursuant to the provisions of Chapter 17.72 (Use Permits) shall run with the land and shall continue to be valid upon change of ownership of the site or structure which was the subject to the use permit application; and

WHEREAS, Aditya Birla Investments, LLC, Inc., has filed with the Planning Commission of the City of Newark application to revoke the planned unit development (P-14-23) and conditional use permit (U-14-24) for a private school to be located at 39201 Cherry Street; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Argus on May 1, 2015, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on May 12, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

NOW, THEREFORE, the Planning Commission, after due consideration, revokes the planned unit development (P-14-23) and conditional use permit (U-14-24) for a private school to locate at 39201 Cherry Street, under the authority granted in the Newark Municipal Code Section 17.72.130, and directs a Notice of Decision be mailed to the applicant and filed with the City Clerk who shall present said Notice to the City Council pursuant to Newark Municipal Code Section 17.72.080.

This Resolution was introduced at the Planning Commission's May 12, 2015 meeting by Commissioner, seconded by Commissioner, and passed as follows:

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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WILLIAM FITTS, Chairperson



- E.3 Hearing to consider adopting a resolution recommending: (1) City Council approval of GPA-15-23, Housing Element Update 2015 and: (2) that the General Plan Tune Up Program Environmental Impact Report addressed the Environmental Impacts of the Housing Element Update 2015 (E-15-22) – from Assistant City Manager Grindall. TG (RESOLUTION)**

**Background/Discussion** – The Housing Element of the General Plan must be updated periodically and certified by the State of California. The Housing Element was last updated in 2009. Newark is required to approve a Housing Element update in 2015. The City approved a comprehensive update of the General Plan in December of 2013, but the Housing Element was not updated at that time. An Environmental Impact Report was prepared and certified for the General Plan Update.

Staff has developed a Draft Housing Element Update that is consistent with the approved 2013 General Plan. The Housing Element update process included two Community Meetings, one of which was on July 30, 2014 to present housing conditions information and proposed criteria for housing site selection. A second Community Meeting to review the previous information and discuss potential sites for new housing was held on September 3, 2014. The meetings were well attended with approximately 40 people in attendance at each meeting. Information from both meetings, including the presentations used at the meetings and a draft map of housing sites, were posted on the City's website shortly after each meeting.

The purpose of the Housing Element is to support the vision of assuring the provision of safe, decent, affordable shelter for all Newark residents. The Housing Element places a particular emphasis on lower income Newark residents and residents with special needs, including seniors and persons with disabilities. The Housing Element includes an evaluation of housing needs in the City, based on demographics and housing conditions. As required by State Law, it identifies sites sufficient to accommodate the city's share of the region's housing needs over an eight year period. A key issue in the Housing Element Update is the identification of sites for housing to accommodate the Regional Housing Need Allocation (RHNA) as developed by the Association of Bay Area Governments (ABAG). Due to the 2013 General Plan update and all the other planning efforts that have been completed in the last few years, the City has sites, already designated for housing, to accommodate the RHNA housing units. Therefore this Housing Element Update does not include any new sites for housing. It does contain updated housing information and updated details about the existing housing sites. It also evaluates constraints to housing production and establishes measures to mitigate such constraints.

The draft Housing Element Update was posted on the City's website in early December 2014 and email notification was sent to all those who had attended earlier Community Meetings as well as either the Housing Element Meetings or any other meeting on housing development in the City. The availability of the Draft Housing Element Update was advertised through the City's website, an email notice, and a mailing to advocacy groups, property owners, and other interested parties. We have received no comments from the Community on the document.

This Housing Element presents a comprehensive picture of the issues facing Newark today, as well as a plan for addressing those issues.

The Housing Element must be reviewed and approved by the State Department of Housing and Community Development. At their January 13, 2015 meeting, the Planning Commission unanimously approved the Draft Housing Element and recommended that the City Council approve the Draft Element and submit it to the State Department of Housing and Community Development. On January 22, 2015 the City Council unanimously approved the Draft Housing Element and authorized staff to submit the Draft Housing Element to the State Department of Housing and Community Development.

As a part of the review of the Draft Element by the State, certain changes were recommended to clarify that the Housing Element complied with State Law. The changes were primarily non-substantive, however, there were two Programs added. A "Program" is an action that the City commits to accomplish. The two added programs are: (1) Program 6: Adoption of a Fair Housing Ordinance -- a clear statement of the City's commitment to work to eliminate housing discrimination and to continue to comply with State and Federal law-by the end of 2016; and (2) Program 9: Adoption of a Reasonable Accommodation Ordinance -- Establishing a process to allow flexibility in the Zoning Code to accommodate access for the disabled by the end of 2015.

The State Department of Community Development has provided written confirmation that if the City approves the Housing Element Draft as modified, it would be approved by the State.

#### **Environmental Determination**

The Newark Housing Element Update 2015 is fully consistent with the General Plan Update that was analyzed in the General Plan Tune Up Program Environmental Impact Report that was certified in 2013. The Housing Element Update 2015 makes no change to the General Plan in regards of the amount of intensity of development allowed. There are no changes to the Land Use Diagram or other policy changes that can be reasonably foreseen to create physical environmental changes different from the General Plan Update that was analyzed in the General Plan EIR. Thus, no new or increased significant impacts will result.

Further, there have not been substantial changes in the built or planned environment or any other environmental condition in the 17 months since the certification of the General Plan Update EIR that would indicate new or increased significant impacts will result.

These determinations are documented in the attached Environmental Declaration.

**Action** – It is recommended that the Planning Commission, by resolution, recommend: (1) City Council approval of GPA-15-23, Housing Element Update 2015 and: (2) that the General Plan Tune Up Program Environmental Impact Report addressed the Environmental Impacts of the Housing Element Update 2015 (E-15-22).

RESOLUTION NO.

RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL OF GPA-15-23, HOUSING ELEMENT UPDATE 2015 AND THAT THE GENERAL PLAN TUNE UP PROGRAM ENVIRONMENTAL IMPACT REPORT ADDRESSED THE ENVIRONMENTAL IMPACTS OF THE HOUSING ELEMENT UPDATE (E-15-22)

WHEREAS, in response requirements of State law an update the General Plan Housing Element has been prepared; and

WHEREAS, the Housing Element Update process included two Community Meetings, one on July 30, 2014 to present housing conditions information and proposed criteria for housing site selection. A second Community Meeting to review the previous information and discuss potential sites for new housing was held on September 3, 2014; and

WHEREAS, the Planning Commission considered and approved the Draft Housing Element Update at a public meeting January 13, 2015; and

WHEREAS, the City Council Approved the Draft Housing Element Update at a public meeting on January 22, 2015; and

WHEREAS, the Draft Housing Element Update was submitted to the State Department of Housing and Community Development for review and comments, and after revision was deemed by Housing and Community Development staff to meet the statutory requirements of State Law on May 1, 2015; and

WHEREAS, the proposed amendment would replace the existing Housing Element of the General Plan in its entirety; and

WHEREAS, the proposed amendment is consistent with land use diagram and existing goals, policies and objectives contained in the Newark General Plan; and

WHEREAS, the Newark City Council certified the General Plan Tune Up Program Environmental Impact Report for the General Plan Update on December 12, 2013; and

WHEREAS, as detailed in the Environmental Declaration attached as Exhibit A, the environmental effects of the proposed Housing Element Update 2015 were fully addressed in the previously approved General Plan Tune Up Environmental Impact Report; and

WHEREAS, the Planning Commission has read, reviewed, and considered the information contained in the staff report, in the Housing Element 2015, and in the General Plan Tune Up Program Environmental Impact Report; and

WHEREAS, the Planning Commission has conducted a public hearing on the proposed amendment to the Newark General Plan, and discussed, evaluated, analyzed, reviewed, and considered the information presented in said hearing; and

WHEREAS, the Planning Commission did review and use their independent judgment to consider the information at the public hearing; and

WHEREAS, the Planning Commission recommends that the City Council find that the project's environmental impacts were addressed in the previously Certified General Plan Tune Up Program Environmental Impact Report; and

WHEREAS, pursuant to California Government Code Sections 6061 and Section 65353, a public hearing was published in The Argus on May 1, 2015, and the Planning Commission held a public hearing on said General Plan Amendment at 7:30 p.m. on May, 12, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Newark hereby recommends the City Council approve General Plan Amendment, GPA-15-23, based on the staff report, staff presentation, previously certified Environmental Documentation and public comments received, with the finding that the proposed amendment is consistent with all other goals and policies of the Newark General Plan.

This resolution was introduced at the Planning Commission's May 12, 2015, meeting by Commissioner, seconded by Commissioner, and passed as follows:

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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WILLIAM FITTS, Chairperson

## CITY OF NEWARK

### ENVIRONMENTAL DECLARATION THAT THE GENERAL PLAN TUNE UP PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH#2013012052) ADDRESSES THE IMPACTS OF THE HOUSING ELEMENT UPDATE 2015

#### A. PROJECT INFORMATION

1. **Project Title:** NEWARK HOUSING ELEMENT UPDATE 2015 (GPA-15-23)
2. **Lead Agency Name and Address:** City of Newark  
37101 Newark Blvd.  
Newark, CA 94560
3. **Contact Person(s) and Phone Numbers:** Terrence Grindall  
(510) 578-4208
4. **Project Location:** Citywide

#### INTRODUCTION & PROJECT DESCRIPTION:

The City of Newark ("City") prepared a Draft and a Final Environmental Impact Report (collectively, "EIR") for the Newark General Plan Update which updated the policy framework and a consolidated set of land use designations intended to guide future development and redevelopment in Newark. The General Plan Tune Up Program Environmental Impact Report ("General Plan EIR") was certified by the City of Newark in December 2013.

The project that is the subject of these findings (the "Newark Housing Element Update 2015") is the only chapter of the General Plan that was not updated at the time of the General Plan Update. Housing Elements must be updated on a specified schedule set by the State Department of Housing and Community Development (HCD). HCD's schedule required that Bay Area Cities update their Housing Elements by 2015.

#### ANALYSIS:

The following is a specific analysis of the Housing Element Update 2015 and verification that it will not cause environmental impacts such that any of the circumstances provided in State CEQA Guidelines section 15162 are present. Specifically, the Housing Element Update 2015 will not cause any new or increased significant impacts on the environment not already analyzed in the General Plan EIR previously certified by the City of Newark.

The General Plan Update included a policy framework and land use designations intended to guide future development and redevelopment in Newark. The primary operative in creating environmental impacts is the facilitation of growth created by land use designations. An area that is designated for change or intensification or use within the General Plan land use diagram can reasonably be foreseen to potentially create environmental impacts. Since the Housing Element Update does not include any changes whatsoever in the land designations as documented in the Land Use diagram, there would not be any change in the impacts associated with the Land use diagram and analyzed in the General Plan EIR.

Furthermore the Housing Element Update does not include any changes to the Policies and Goals of the General Plan. And none of the Programs on the Plan would create environmental Impacts not already addressed in the General Plan Tune Up Program EIR

The General Plan has a long term planning horizon extending to 2035. It was projected in the General Plan EIR analysis that the General Plan policies and vision would result in an approximately 40% increase in the City's population and in the number of housing units. Less than half of one percent of that growth has occurred in the 17 months since the General Plan EIR was certified by the City Council.

#### **CONCLUSION:**

Accordingly, and based on the findings and information contained in the certified General Plan Tune Up Program EIR, the analysis above, and the CEQA statute and State CEQA Guidelines, including sections 15164 and 15162, the proposed Housing Element Update 2015 will not result in any additional effects on any environmental resources located on or near the project area, and the potential environmental effects of the proposed Housing Element Update 2015 have been adequately addressed in the certified EIR for the Newark General Plan Tune Up EIR.

The Newark Housing Element 2015 is fully consistent with the General Plan Update that was analyzed in the General Plan EIR. The Housing Element Update 2015 does not amend the General Plan in terms of the amount of intensity of development allowed. There are no changes to the Land Use Diagram or other policy changes that can be reasonably foreseen to create physical environmental changes different from the General Plan Update that was analyzed in the General Plan EIR. Thus, no new or increased significant impacts will result.

Further, there have not been substantial changes in the built or planned environment or any other environmental condition in the 17 months since the certification of the General Plan Update EIR that would indicate new or increased significant impacts will result.

There are no changed circumstances that have occurred within the meaning of CEQA Guideline 15162. (See Govt. Code § 65457; Pub. Res. Code § 21166; 14 Cal. Code of Regs. § 15182.)

The Housing Element Update 2015 does not include substantial changes are proposed in from the General Plan Update which will create new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The Housing Element Update 2015 does not include substantial changes from the General Plan Update with respect to the circumstances under which the project is undertaken which would

require revisions of the environmental document due to the involvement of any new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The Housing Element Update 2015 does not include new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the General Plan Tune Up Program Environmental Impact Report was adopted.

The Housing Element Update 2015 will not create one or more significant effects not discussed in the General Plan EIR.

The Housing Element Update 2015 would not have significant effects previously examined that will be substantially more severe than shown in the General Plan EIR;

The mitigation measures or alternatives previously found not to be feasible in the General Plan EIR would not in fact be feasible and would not substantially reduce one or more significant effects of the project.

Mitigation measures or alternatives which are considerably different from those analyzed in the General Plan EIR would not substantially reduce one or more significant effects on the environment.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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May 1, 2015

Mr. Terrence Grindall, Assistant City Manager  
Community Development Department  
City of Newark  
37101 Newark Blvd.  
Newark, CA 94560

Dear Mr. Grindall :

**RE: City of Newark's 5<sup>th</sup> Cycle (2015-2023) Draft Housing Element**

Thank you for submitting Newark's draft housing element update which was received for review on March 5, 2015, along with revisions received on April 27, 28, and 30, 2015. Pursuant to Government Code (GC) Section 65585(b), the Department is reporting the results of its review. This review was facilitated by a telephone conversation with you on April 8, 2015, as well as other communications.

The draft element with revisions meets the statutory requirements of State element law. The element will comply with State housing element law (GC, Article 10.6) when it is adopted and submitted to the Department, in accordance with GC Section 65585(g).

To remain on an eight year planning cycle, pursuant to Senate Bill 375 (Chapter 728, Statutes of 2008) the City must adopt its housing element within 120 calendar days from the statutory due date of January 31, 2015 for ABAG localities. If adopted after this date, GC Section 65588(e)(4) requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit the Department's website at: [http://www.hcd.ca.gov/hpd/hrc/plan/he/he\\_review\\_adoptionsteps110812.pdf](http://www.hcd.ca.gov/hpd/hrc/plan/he/he_review_adoptionsteps110812.pdf).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

The Department appreciates your hard work and dedication in preparation of the housing element and looks forward to receiving Newark's adopted housing element. If you have any questions or need technical assistance, please contact Tom Brinkhuis, of our staff, at (916) 263-6651.

Sincerely,

A handwritten signature in black ink that reads "Glen A. Campora".

Glen A. Campora  
Assistant Deputy Director