

All references to the Area 3 and 4 Specific Plan EIR in the General Plan Tune Up Program EIR (December 2013), and references to the Area 3 and 4 Specific Plan EIR in City of Newark Resolution 10145 (December 12, 2013) shall be deemed to refer to the Newark Areas 3 And 4 Specific Plan Project Recirculated Environmental Impact Report, including all references to the Area 3 and 4 Specific Plan EIR for purposes of environmental baseline, environmental analysis, and mitigation measures. All such references are hereby restated in whole or as amended in the Newark Areas 3 and 4 Specific Plan Project Recirculated Environmental Impact Report.

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ALAMEDA COUNTY

APR 24 2016

CLERK OF THE SUPERIOR COURT
By Cynthia M. Levin, Deputy

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Attorneys for Respondents and Defendants
CITY OF NEWARK; CITY COUNCIL
OF THE CITY OF NEWARK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CITIZENS COMMITTEE TO COMPLETE THE
REFUGE, INC.

Case No. RG14709701

Petitioner and Plaintiff,
vs.

ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Honorable Frank Roesch
DEPARTMENT: 24

CITY COUNCIL OF THE CITY OF NEWARK et
al;
Respondents and Defendants.

STIPULATION FOR ENTRY OF
JUDGMENT

CITY OF NEWARK et al.

FILE BY
FAX

Real Parties in Interest and Defendants.

1 **WHEREAS**, the Petition for Writ of Mandate filed in this action alleges that the Respondents
2 and Defendants violated the California Environmental Quality Act (“CEQA”) as the General Plan Tune
3 Up EIR and 2013 General Plan Tune-Up Project approvals allegedly incorporated and relied upon the
4 Areas 3 and 4 Specific Plan Project EIR (State Clearinghouse #2007052065) which was the subject of
5 ongoing litigation (Alameda County Superior Court Case No. RG10530015) (“*CCCR#1*”);

6 **WHEREAS**, the Court in *CCCR#1* issued Judgment and a Peremptory Writ of Mandate to the
7 City on November 25, 2014, a Notice of Entry of Judgment was filed on December 5, 2014, and no
8 appeal of that Judgment was timely filed by any party;

9 **WHEREAS**, consistent with the *CCCR #1* Writ and Judgment, the City of Newark on February
10 26, 2015 rescinded Resolution No. 9745 (certifying the EIR for the Newark Area 3 and 4 Specific Plan
11 Project and Approving the Mitigation Monitoring and Reporting Program), and rescinded Resolution
12 No. 9746 (Approving and Adopting the Newark Area 3 and 4 Specific Plan and Related General Plan
13 Amendment);

14 **WHEREAS**, consistent with the *CCCR #1* Writ and Judgment, the City of Newark on March 12,
15 2015 rescinded Ordinance No. 442 (Approving and Adopting the Newark Area 3 and 4 Specific Plan
16 Project Development Agreement) and rescinded Ordinance No. 443 (Approving Z-10-17, a Map
17 Amendment to Title 17 Zoning of the Newark Municipal Code Rezoning Parcels to be Consistent with
18 the Proposed Newark Area 3 & 4 Specific Plan);

19 **WHEREAS**, on March 26, 2015 the City certified a Newark Areas 3 and 4 Specific Plan Project
20 Recirculated Environmental Impact Report (“REIR”), which Citizens Committee To Complete the
21 Refuge, Inc. has not and will not file suit to challenge that March 26, 2015 City action and REIR
22 certification;

23 **WHEREAS**, the City of Newark’s March 26, 2015 Resolution certifying the REIR included a
24 Finding (hereinafter “the Clarifying Finding”) that “All references to the Area 3 and 4 Specific Plan EIR
25 in the General Plan Tune Up Program EIR (December 2013), and references to the Area 3 and 4
26 Specific Plan EIR in City of Newark Resolution 10145 (December 12, 2013) shall be deemed to refer to
27 the Newark Areas 3 And 4 Specific Plan Project Recirculated Environmental Impact Report, including
28 all references to the Area 3 and 4 Specific Plan EIR for purposes of environmental baseline,
29 environmental analysis, and mitigation measures. All such references are hereby restated in whole or as
30 amended in the Newark Areas 3 and 4 Specific Plan Project Recirculated Environmental Impact
31 Report;”
32

1 **WHEREAS**, the parties have met and conferred regarding the above circumstances, and on
2 April 23, 2015 entered into a Settlement Agreement by and between Citizens Committee to Complete
3 the Refuge, Inc., City Council of the City of Newark and City of Newark, and Newark Partners LLC
4 (hereinafter "Settlement Agreement") which includes this Stipulation For Entry of Judgment and
5 Judgment;

6 **WHEREAS**, this Stipulation is pursuant to and in implementation of a settlement and
7 compromise of disputed claims, that no party admits any fault, error, or liability by virtue of this
8 Stipulation, and nothing in the Settlement Agreement or in this Stipulation for Entry of Judgment shall
9 be deemed to be an admission as to the truth, accuracy or validity of any claims, defenses, or allegations
10 raised in connection with this litigation;

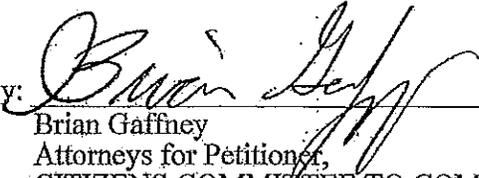
11 **WHEREAS**, settlement of this litigation under the terms provided herein is in the public interest.

12 **NOW THEREFORE**, Petitioner/Plaintiff **CITIZENS COMMITTEE TO COMPLETE THE**
13 **REFUGE, INC.** and Respondents/Defendants **CITY COUNCIL OF THE CITY OF NEWARK** and
14 **CITY OF NEWARK** by and through their respective counsel **HEREBY STIPULATE AND AGREE**
15 as follows:

- 16 1. That judgment be entered in this proceeding as set forth in the **[Proposed] Judgment** submitted
17 herewith.
- 18 2. This Stipulation may be executed in one or more counterparts, each of which, taken together,
19 shall constitute one original, and may be filed with facsimile or electronic signatures.

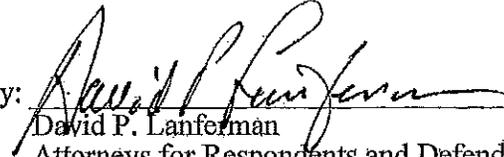
1 DATED: April 24, 2015

LAW OFFICES OF BRIAN GAFFNEY APC

2
3 By: 
4 Brian Gaffney
5 Attorneys for Petitioner,
6 CITIZENS COMMITTEE TO COMPLETE THE
7 REFUGE

8 DATED: April 24, 2015

RUTAN & TUCKER LLP

9
10 By: 
11 David P. Lanferman
12 Attorneys for Respondents and Defendants,
13 CITY COUNCIL OF THE CITY OF NEWARK;
14 CITY OF NEWARK
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By [Signature] Deputy

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CITY OF NEWARK et al.

Real Parties in Interest and Defendants.

Case No: RG14709701

ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Honorable Frank Roesch
DEPARTMENT: 24

JUDGMENT

JUDGMENT

IT IS HEREBY ADJUDGED, DECLARED, ORDERED AND DECREED that:

1. References to the Newark Areas 3 and 4 Specific Plan Project Environmental Impact Report ("2010 EIR") in the City of Newark General Plan Update EIR of December 2013 and in City of Newark Resolution 10145 (December 12, 2013) shall be deemed to refer to the certified Newark Areas 3 and 4 Specific Plan Project Reirculated Environmental Impact Report ("REIR") for the Area 3 and 4 Specific Plan, and not to the now-rescinded and superseded 2010 EIR, including all references to the 2010 EIR for purposes of environmental baseline, environmental analysis, and mitigation measures and all such references will be deemed restated in whole or as amended in the REIR.

2. The City shall include copies of (1) this Stipulation for Entry of Judgment and Judgment and (2) the Clarifying Finding in all copies of the City's General Plan and General Plan Tune Up Environmental Impact Report maintained at City libraries and City offices, and released in response to Public Record Act requests.

3. Within 30 days of the effective date of the Settlement Agreement, the City shall provide and maintain electronic links to (1) this Stipulation for Entry of Judgment and Judgment and (2) the Clarifying Finding on the City of Newark's website related to the General Plan Tune Up at <http://www.newark.org/departments/planning-and-economic-development/general-plan-update/>.

4. The Petition filed in this action is denied, and Petitioner shall take nothing or obtain any judicial relief thereby (except as the parties have stipulated as set forth herein and in the Settlement Agreement).

5. The parties hereto waive any statutory or common law rights to claim any award of costs or attorneys fees, by motion or otherwise, against each other, unless Newark Partners fails to pay the negotiated fees and costs per the terms of the Settlement Agreement. Any claims by Petitioner/Plaintiff for costs or attorneys fees shall be exclusively as provided by the terms of the Settlement Agreement, unless Newark Partners fails to pay the negotiated fees and costs per the terms of the Settlement Agreement.

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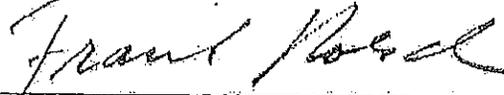
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1 6. This Judgment is a final judgment resolving all claims and causes of action in this matter
2 (Alameda Superior Court Case No. RG14709701). Pursuant to Code of Civil Procedure section 664.6,
3 this Court retains jurisdiction over the parties for the sole and limited purpose of enforcing this
4 Judgment. Enforcement proceedings, if any, will be heard by the Honorable Frank Roesch or such other
5 judge in the Alameda Superior Court as may be assigned if Judge Roesch becomes unavailable.

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8 Dated:

4/29/2015

By:



HONORABLE FRANK ROESCH
Judge of the Alameda Superior Court

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