



- E.1 Hearing to consider: (1) adopting a resolution making certain findings and recommending City Council approval of an Initial Study and Mitigated Negative Declaration (E-14-14); (2) adopting a resolution recommending City Council approval of a General Plan Amendment (GP-14-15) to change the land use designation from CC (Community Commercial) to MR (Medium Density Residential); (3) adopting a resolution recommending City Council approval of a rezoning (RZ-14-38) for an approximately 10 acre portion of Vesting Tentative Map 8208 from CC (Community Commercial) to R-2500 (Medium Density Residential); (4) adopting a resolution approving P-14-16, a planned unit development, and U-14-17, a conditional use permit, for a 281 unit residential development at 5699 Mowry Avenue, with Exhibit A, pages 1 through 42; (5) by motion, recommending the City Council approve TM-14-18, Vesting Tentative Map 8208; and (6) by motion, recommending the City Council find the proposed benefits to the community are in excess of those required by the impacts of the project and waive the Housing Impact Fee – from Assistant City Manager Grindall. ^{TG}
(RESOLUTIONS-4)(MOTIONS-2)

Background/Discussion – Prima Residential and Mowry Capella, LLC have made an application to construct up to 281 residential units at 5699 Mowry Avenue. This property is currently zoned Community Commercial and is occupied by B.J.'s Restaurant and Brewhouse and a vacant former Mervyn's building. The property that is occupied by the Motel 6 building is also a part of this application.

The project proposes no changes to the BJ's Restaurant and Brewhouse or its parking lot or to the Swiss Park facility, 76 Gas Station or the Firestone Auto shop. A separate parcel will be created for the restaurant and it will retain its Community Commercial zoning.

Community Meeting

A community meeting to discuss this proposal was held on July 28, 2014. A community meeting to discuss this proposal was held on July 28, 2014. Approximately thirteen people attended the meeting, including representatives of the neighboring Swiss Park facility. Questions and concerns from the public included proposed landscaping, site pedestrian access, traffic safety, the demolition of Motel 6, construction duration, and noise generating from events held at Swiss Park. The applicant discussed the issues that were raised and took note of the public's concerns.

Environmental Determination

The Initial Study/Mitigated Negative Declaration was prepared for this project by Mr. Jerry Haag, Urban Planner. The key issues analyzed were aesthetics, agricultural and forestry resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation,

transportation/traffic, and utilities and service systems.

Of these seventeen issues, the only new significant impacts resulting from this project would include air quality, hazards and hazardous materials, noise, and traffic/circulation. These represent project-specific impacts that are specific to the location of the project site and the development proposed by the project.

As described in Section 3, *Air Quality*, of the attachment to the Initial Study, the project will reduce construction-related air quality emissions to a less-than-significant level (these measures are consistent with Bay Area Air Quality Management District [BAAQMD] recommendations. As such, the developer will be required to use water as needed to control dust and eliminate visible dust plumes. In addition, covering of all trucks hauling building debris, soil, sand, and other loose materials will be required. Another option could be to require all trucks to maintain at least two feet of freeboard.

Some of the future residences closest to Interstate 880 (I-880) could be exposed to pollutants from vehicle traffic that exceed the BAAQMD threshold for operational impacts, therefore the applicant will install air filtration and ventilation systems in residential buildings in the affected areas that would include sensitive receptors.

Section 8, *Hazards and Hazardous Materials*, recognizes that existing buildings on the site will be demolished. Prior to their demolition, a licensed contractor will determine the presence or absence of lead based paints or asbestos on the site. If found in quantities at or above objectionable levels as determined by the Alameda County Fire Department and Newark Building Division, these materials shall be safely removed consistent with OSHA and other applicable standard and disposed of in an appropriate location.

Section 12, *Noise*, notes that single-family residences proposed along Cedar Boulevard would be exposed to future noise levels of approximately 67dBA Ldn and would be considered "conditionally acceptable" according to the Environmental Hazards Element of the Newark General Plan. As shown in the Perimeter Wall Plan as part of the proposed project, an 8-foot masonry noise barrier would shield private outdoor use areas, resulting in exterior noise levels of 60 dBA Ldn or less when accounting for the acoustical attenuation provided by the proposed noise barrier. Exterior noise levels at private use areas of single-family residences along Cedar Boulevard would be considered "normally acceptable" according to the Environmental Hazards Element of the Newark General Plan. However, since the final designs of buildings and final topographic grades on the site are not established, the final height and location of the perimeter wall shall be reviewed by a qualified acoustical professional to ensure that the ultimate height, location, and design of the perimeter wall will ensure City of Newark standards for exterior noise exposure are met.

As currently proposed, noise levels expected from outdoor concerts at the adjacent Swiss Park would be in compliance with the City of Newark exterior and interior noise standards at the nearest residential land uses at the project site. However, to ensure that residents are fully aware of potential noise resulting from outdoor concerts at Swiss Park, residents of dwellings on the west side of the project site within 200 feet of the western property line, including owners and renters, shall receive written notice that outdoor music concerts, some with amplified sound, and other outdoor activities will occur at Swiss Park. Wording of this disclosure shall be approved

by the Community Development Director.

Traffic noise levels at the exterior facades of condominium buildings proposed nearest to I-880 were calculated to range from 74 to 77 dBA Ldn and would be considered “normally acceptable” to “clearly unacceptable” according to the Environmental Hazards Element of the Newark General Plan. The facades of condominium buildings adjacent to I-880 would require sound rated building elements to control traffic noise intrusion. As such, building facades for the proposed condominium dwellings near the I-880 freeway shall achieve an outdoor to indoor composite noise reduction of 35 dBA to reduce traffic noise to below 45 dBA Ldn with an adequate margin of safety. A similar treatment will be applied to condominiums nearest to Mowry Avenue to achieve an outdoor and indoor composite noise reduction of 30 dBA.

As with most projects, construction noise could be audible at the adjacent residential dwellings and, if on-site construction takes place over multiple phases, occupants of earlier phases of construction could be subject to excessive noise from later phases of on-site construction. To reduce noise impacts, equipment and trucks used for project demolition and construction will utilize the best available noise control techniques (e.g., improve mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible). Impact tools shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporation insulation barriers or other measures to the extent feasible.

Section 16, *Transportation/Traffic*, notes that, according to City of Newark guidelines, three of the study intersections would operate at an unacceptable Level of Service (LOS) D or worse under background plus project conditions. The intersections of Cedar Boulevard and Thornton Avenue, and Cedar Boulevard and Mowry Avenue would operate at LOS E in the AM peak hour. However, there would be no significant impacts at these intersections because the addition of project trips would neither cause the level of service to degrade to an unacceptable level nor cause the average delay at any of the intersections to increase by four or more seconds. All of the other study intersections would operate at acceptable levels of service.

The traffic analysis recommends that the final site incorporate on-site pedestrian and bicycle facilities, including but not limited to pedestrian paths and/or sidewalks bicycle lanes, bicycle racks and/or guarded bicycle parking and marked crosswalks to facilitate pedestrian and bicycle circulation. In addition, the on-site circulation system shall ensure that adequate travel lanes and turning radii will allow access by trucks, solid waste collection vehicles and fire equipment.

The review period for the Initial Study/Mitigated Negative Declaration ended on September 18, 2014. The City received letters from the Alameda County Water District, Swiss Park, and a property owner. These letters have been addressed in the Mitigated Negative Declaration.

General Plan Amendment/Rezoning

The current General Plan designation for the majority of the property is Community Commercial. The former Motel 6 property has a General Plan and zoning designation of High Density Residential and therefore needs no change. The change from Community Commercial to Medium Density Residential for the balance of the site is consistent with the project's density.

As the General Plan designation and zoning need to be consistent, approximately 10 acres of the site is proposed to be rezoned from Community Commercial to R-2500, which is a medium density zoning designation. The remainder of the site where BJ's Restaurant and Brewhouse is located will remain Community Commercial.

Project Design

The development, which will be known as "Prima", is proposed to contain approximately 42 detached homes, 146 attached townhomes, and 93 attached row condominiums. The developer is requesting approval of up to 281 homes for the project, including the triangular piece of property at the corner of Cedar Boulevard and Cedar Court which is now under contract and part of the Prima project.

The community's main entrance will be via a new private lane off of Cedar Boulevard with a secondary auto entrance proposed at Cedar Court. There are sidewalks adjacent to both of the entrances, as well as two additional pedestrian gates located at the southwest and southeast ends of the residential site. A community park located along the main drive will include an open turf area, picnic and sitting areas, and a youth play structure. Other open spaces include a toddler's play area as well as numerous landscaped open spaces throughout the community.

All three products (detached, townhomes, and condominiums) offer multiple floor plans. The plans offer a nice variation in design and many of the homes have private enclosed patios or balconies. The varying heights of the buildings, along with the strong architectural features and contrasting paint schemes add to the high quality of this development.

Housing Impact Fee

Section 17.18.050 (Discretionary Exemption by City Council) of the Newark Municipal Code allows the City Council to waive the payment of the Housing Impact Fee if a developer of a residential or non-residential project includes a provision of community benefits in excess of those required by the impacts of the project, and if the City Council finds that the proposed benefits to the community exceed those that would be provided by the payment of the housing impact fee. Such community benefits may include the provision of senior housing, the generation of significant sales taxes, or the elimination of nuisances. The amount that would be waived would typically be about \$30,000 per dwelling unit. If the City Council elects to waive the housing impact fees pursuant to this provision, the community benefits shall be guaranteed by a binding document in a form that is acceptable to the City Attorney.

Motel 6 has been the site of a significant amount of Police activity over the past years. Crimes allegedly committed on the property include rape, battery and assault with a deadly weapon, robbery, burglary, grand theft, domestic violence, drugs, prostitution and kidnapping. The elimination of this nuisance site will reduce the calls to the area significantly and allow the Police Department to allocate resources elsewhere. As such the Planning Commission may, by motion, recommend the City Council find the proposed benefits to the community are in excess of those required by the impacts of the project and a waiver of the Housing Impact fee is in order.

Attachments

Action – It is recommended that the Planning Commission; (1) Adopt a resolution making certain findings and recommending City Council approval of an Initial Study/Mitigated Negative Declaration (E-14-14); (2) adopt a resolution recommending City Council approval of a General Plan Amendment (GP-14-15) to change the land use designation from CC (Community Commercial) to MR (Medium Density Residential); (3) adopt a resolution recommending City Council approval of a rezoning (RZ-14-38) for an approximately 10 acre portion of Vesting Tentative Map 8208 from CC (Community Commercial) to R-2500 (Medium Density Residential); (4) adopt a resolution approving P-14-16, a planned unit development, and U-14-17, a conditional use permit, for a 281 unit residential development at 5699 Mowry Avenue, with Exhibit A, pages 1 through 42; (5) by motion, recommend the City Council approve TM-14-18, Vesting Tentative Map 8208; and (6) by motion, recommend the City Council find the proposed benefits to the community are in excess of those required by the impacts of the project and waive the Housing Impact Fee.

RESOLUTION NO.

RESOLUTION OF THE CITY OF NEWARK PLANNING COMMISSION MAKING CERTAIN FINDINGS AND RECOMMENDING CITY COUNCIL APPROVAL OF AN INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION FOR 281 DWELLING UNITS ON AN APPROXIMATELY 16.1 ACRE PROJECT SITE

WHEREAS, the Prima Project (“Project”), consists of the construction of 281 dwelling units on approximately 16.1 acres; and

WHEREAS, the entitlements requested include Vesting Tentative Map 8208, a general plan amendment, rezoning; planned unit development, and a conditional use permit, and;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA), a project level Initial Study and Mitigated Negative Declaration has been prepared for the Project, pursuant to Section 15070 *et seq.* of the CEQA Guidelines, to analyze and mitigate the Project’s potentially significant environmental impacts; and

WHEREAS, through this study, it has been determined that the Project’s potentially significant environmental impacts specifically relate to impacts associated with air quality, hazards and hazardous materials, noise, and traffic/circulation; and

WHEREAS, these potentially significant impacts can be mitigated to less than significant as shown in Section 18 of the Initial Study/Mitigated Negative Declaration, and;

WHEREAS, a 20-day public review period for the Notice of Availability of the IS/MND was established beginning on August 29, 2014 and ending on September 18, 2014. Copies of the notice were transmitted, along with copies of the IS/MND, to local agencies concerned with the Project. The notice was posted with the Office of the Alameda County Clerk on August 29, 2014; and

WHEREAS, as of the date of this resolution, September 23, 2014, three comment letters have been received and addressed in the Mitigated Negative Declaration; and

WHEREAS, on September 23, 2014, the Planning Commission of the City of Newark conducted a duly noticed public hearing to consider the Initial Study and Mitigated Negative Declaration of environmental impact for the proposed Project, considered all public testimony, written and oral, presented at the public hearing; and received and considered the written information and recommendation of the staff report for the September 23, 2014 meeting related to the proposed Project.

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Newark that it hereby recommends that City Council consider adopting the Initial Study and the Mitigation Monitoring and Reporting Program as set forth in Exhibit A to this Resolution and incorporated herein by reference, and approving the Mitigated Negative Declaration of

environmental impact for Vesting Tentative Map 8208, the general plan amendment, rezoning, planned unit development, and conditional use permit, making the following findings:

1. The Initial Study and corresponding Mitigated Negative Declaration of environmental impact were released for public review and said mitigation measures contained within the same would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and;
2. There is no substantial evidence in light of the whole record before the City of Newark that the project may have a significant effect on the environment.
3. The Planning Commission has read and considered the Initial Study and the Mitigated Negative Declaration, and the comments thereon, and has determined the Initial Study and the Mitigated Negative Declaration reflect the independent judgment of the City and were prepared in accordance with CEQA.
4. The Initial Study and the Mitigated Negative Declaration (including any revisions developed under 14 C.C.R § 15070(b)), all documents referenced in the same, and the record of proceedings on which the Planning Commission's decision is based is are located at City Hall for the City of Newark, located at 37101 Newark Blvd, California, and is available for public review.

The resolution was introduced at the Planning Commission's September 23, 2014 meeting by Commissioner , seconded by Commissioner , and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson

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 D.R. Horton and Mowry Capella, LLC for a 281 unit residential project consisting of detached homes, townhomes, and condominiums at 5699 Mowry Avenue and the City of Newark has prepared the proposed amendment to the Newark General Plan (GP-14-15) to change the land use designation of a portion of the subject property within the boundaries of Vesting Tentative Map 8208 from CC (Community Commercial) to MR (Medium Density Residential); and

WHEREAS, the proposed amendment would implement the goals of the City of Newark Housing Element of the Newark General Plan adopted December 12, 2013 by providing housing opportunities for households with a wide range of incomes and balancing housing and job growth in Newark; 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, an Initial Study and Mitigated Negative Declaration (E-14-14) have been prepared for this project in accord with the California Environmental Quality Act and circulated for a 20-day review period to all surrounding jurisdictions, public agencies, and interested individuals; and

WHEREAS, the Planning Commission has read, reviewed, and considered the Initial Study and Mitigated Negative Declaration 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 Mitigated Negative Declaration; and

WHEREAS, based upon the finding the approval of the project will not have a significant effect on the environment, the Planning Commission adopted a Mitigated Negative Declaration; and

WHEREAS, pursuant to California Government Code Sections 6061 and Section 65353, a public hearing was published in The Argus on August 29, 2014, and the Planning Commission held a public hearing on said application at 7:30 p.m. on September 23, 2014 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, GP-14-15, 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 September 23, 2014, meeting by Commissioner , seconded by Commissioner , and passed as follows:

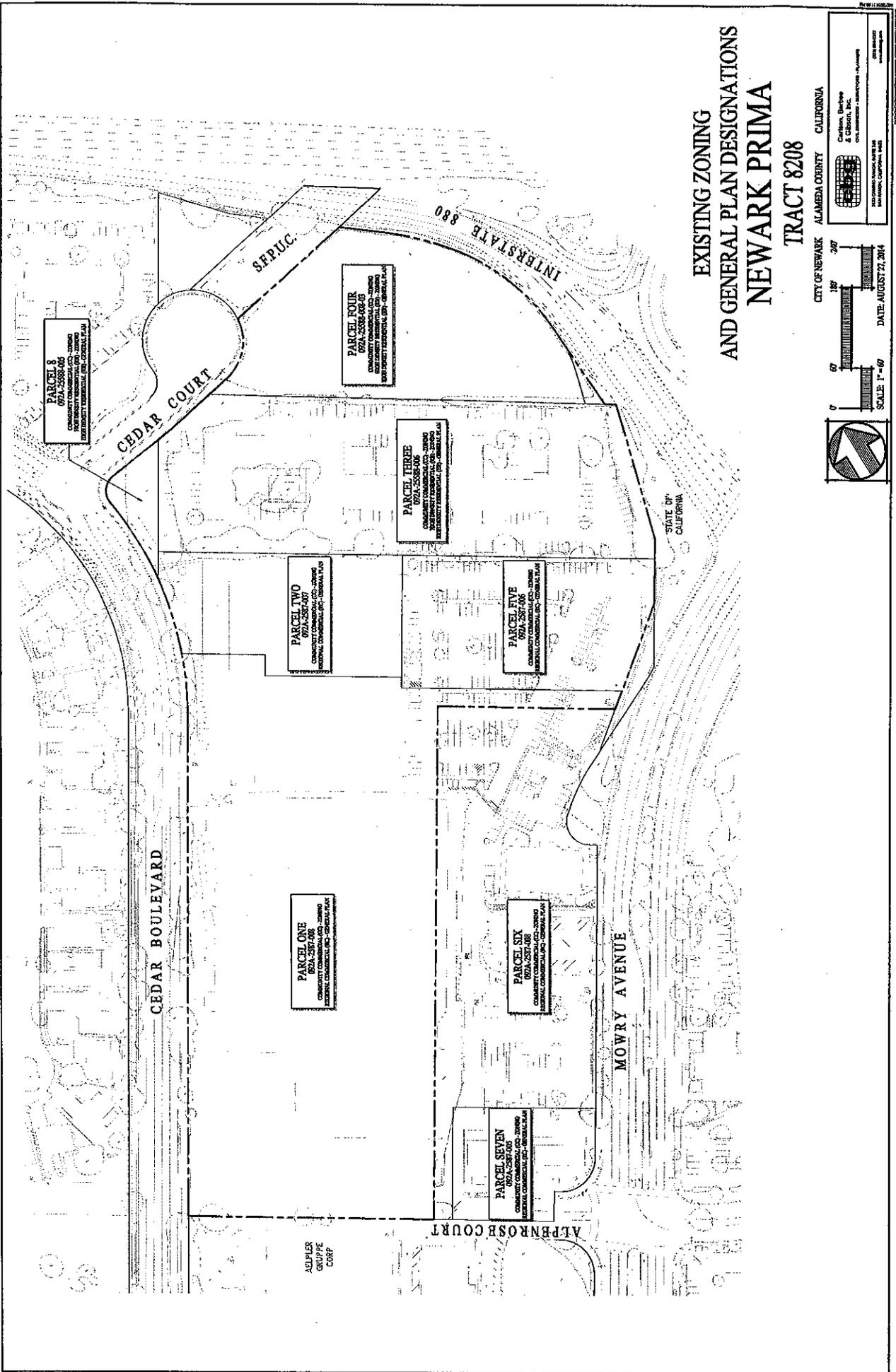
AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson



PARCEL 8
 02A-2558-06
 COMMUNITY COMMERCIAL (CC)-2000
 GENERAL PLAN

PARCEL TWO
 02A-2558-06
 COMMUNITY COMMERCIAL (CC)-2000
 GENERAL PLAN

PARCEL FOUR
 02A-2558-06-08
 COMMUNITY COMMERCIAL (CC)-2000
 GENERAL PLAN

PARCEL THREE
 02A-2558-06-07
 COMMUNITY COMMERCIAL (CC)-2000
 GENERAL PLAN

PARCEL FIVE
 02A-2558-06
 COMMUNITY COMMERCIAL (CC)-2000
 GENERAL PLAN

PARCEL ONE
 02A-2557-06
 COMMUNITY COMMERCIAL (CC)-2000
 GENERAL PLAN

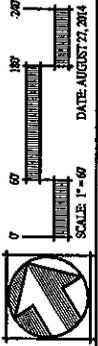
PARCEL SIX
 02A-2557-06
 COMMUNITY COMMERCIAL (CC)-2000
 GENERAL PLAN

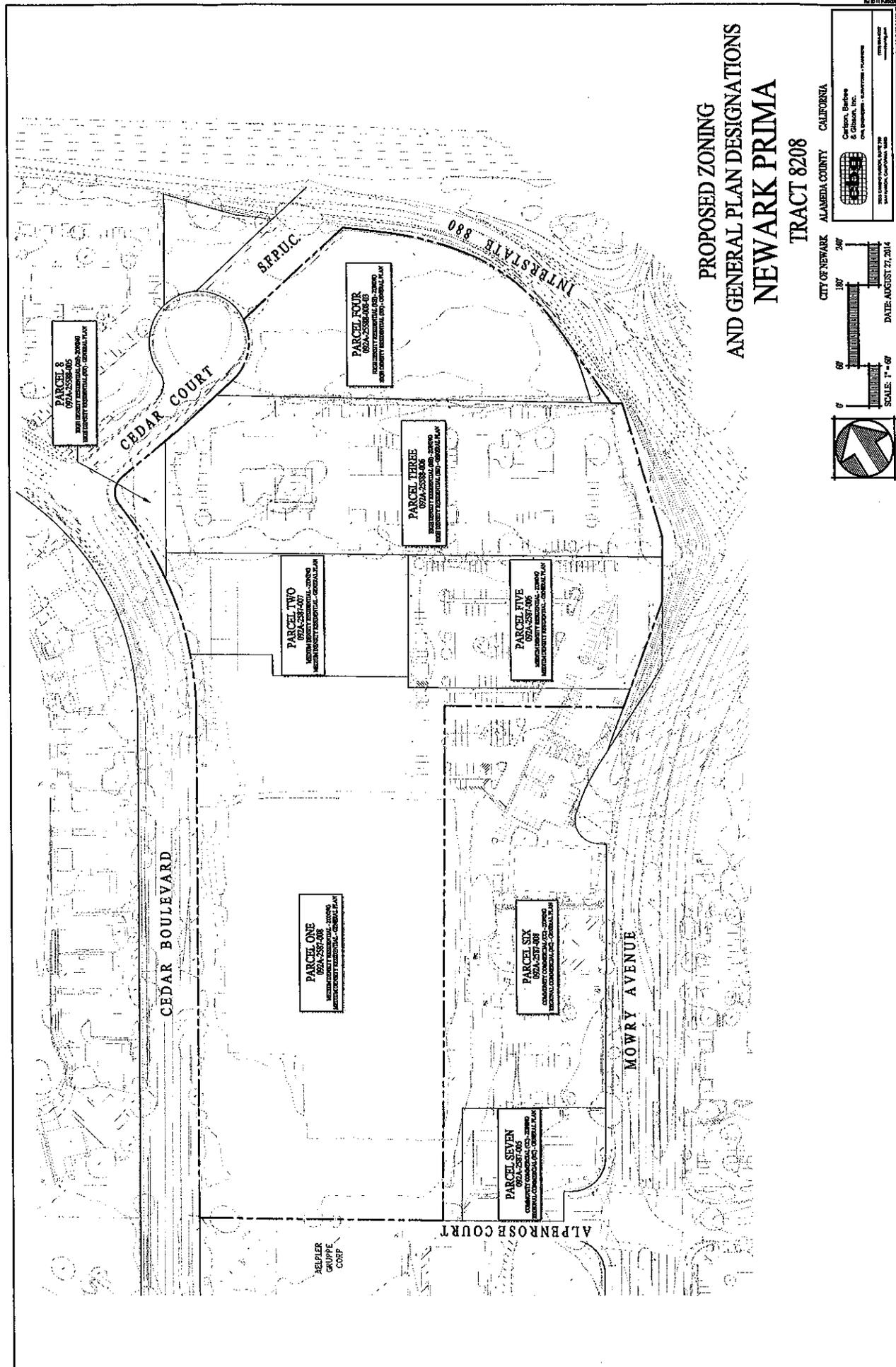
PARCEL SEVEN
 02A-2557-06
 COMMUNITY COMMERCIAL (CC)-2000
 GENERAL PLAN

ALPIER
 GROUPE
 CORP

**EXISTING ZONING
 AND GENERAL PLAN DESIGNATIONS
 NEWARK PRIMA
 TRACT 8208**

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA
 California, Decker
 & Gibson, Inc.
 CIVIL ENGINEERS - LANDSCAPE ARCHITECTS
 200 JOURNAL PARKWAY, SUITE 100
 SAN FRANCISCO, CALIFORNIA 94102
 (415) 441-8000
 www.caldeckergibson.com





**PROPOSED ZONING
AND GENERAL PLAN DESIGNATIONS
NEWARK PRIMA
TRACT 8208**

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

DATE: AUGUST 21, 2014

SCALE: 1" = 60'

0' 60' 120' 180' 240'

City of Newark
Department of Planning & Economic Development
1000 Broadway, Newark, CA 94560
Phone: (925) 786-1000
Fax: (925) 786-1001
www.ci.newark.ca.us

RESOLUTION NO.

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

WHEREAS, D.R. Horton and Mowry Capella, LLC have made an application to the Planning Commission of the City of Newark to consider the amendment (RZ-14-38) to Title 17 (Zoning) of the Newark Municipal Code and the Official Zoning Map, by rezoning property described as follows:

All that portion of real property shown on Vesting Tentative Map 8208 in the City of Newark, County of Alameda, State of California as shown on Exhibit A, attached hereto and incorporated herein by reference.

PURSUANT to Municipal Code Section 17.80.050, a public hearing notice was published in the Argus on August 29, 2014, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on September 23, 2014 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

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

- a. That the Planning Commission recommends that the Newark City Council amend Title 17 (Zoning) of the Newark Municipal code and Section 17.44.010 "Zoning Map" thereof, being the City of Newark Zoning Ordinance and Official Zoning Map, by rezoning the portion of property shown on Vesting Tentative Map 8208 from CC (Community Commercial) to R-2500 (Medium Density Residential); and
- b. That the Planning Commission has reviewed said zoning and finds it consistent and compatible with the objective, policies, general land uses, and the programs of Newark's General Plan, necessary and desirable to achieve the purposes of the ordinance and proper, fair, and for the best interest of the health, safety, and general welfare of the City of Newark; and
- c. That a copy of the minutes be forwarded to the City Council as a summary of the hearing.

The resolution was introduced at the Planning Commission's September 23, 2014 meeting by Commissioner, seconded by Commissioner, and passed as follows:

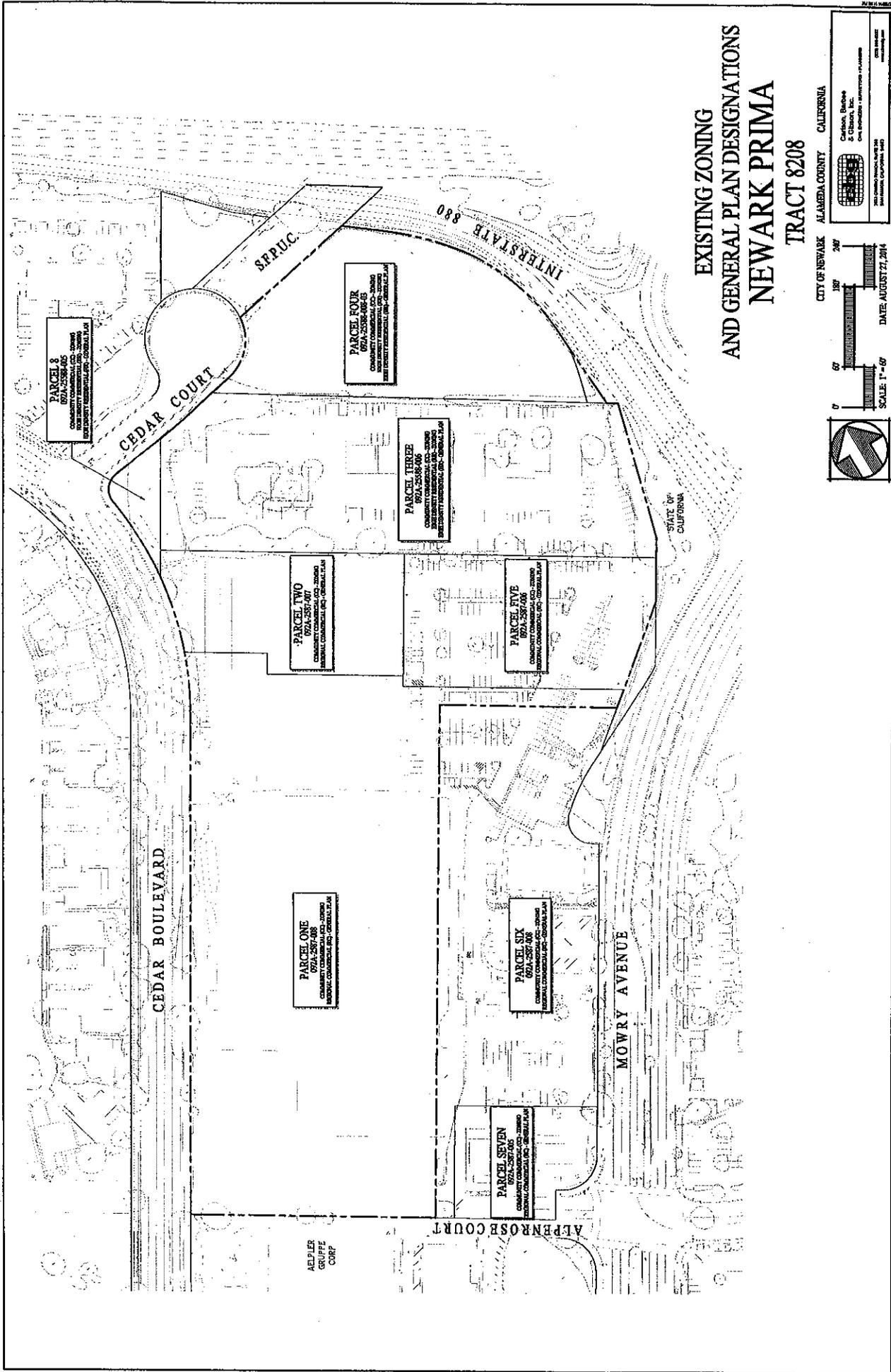
AYES:

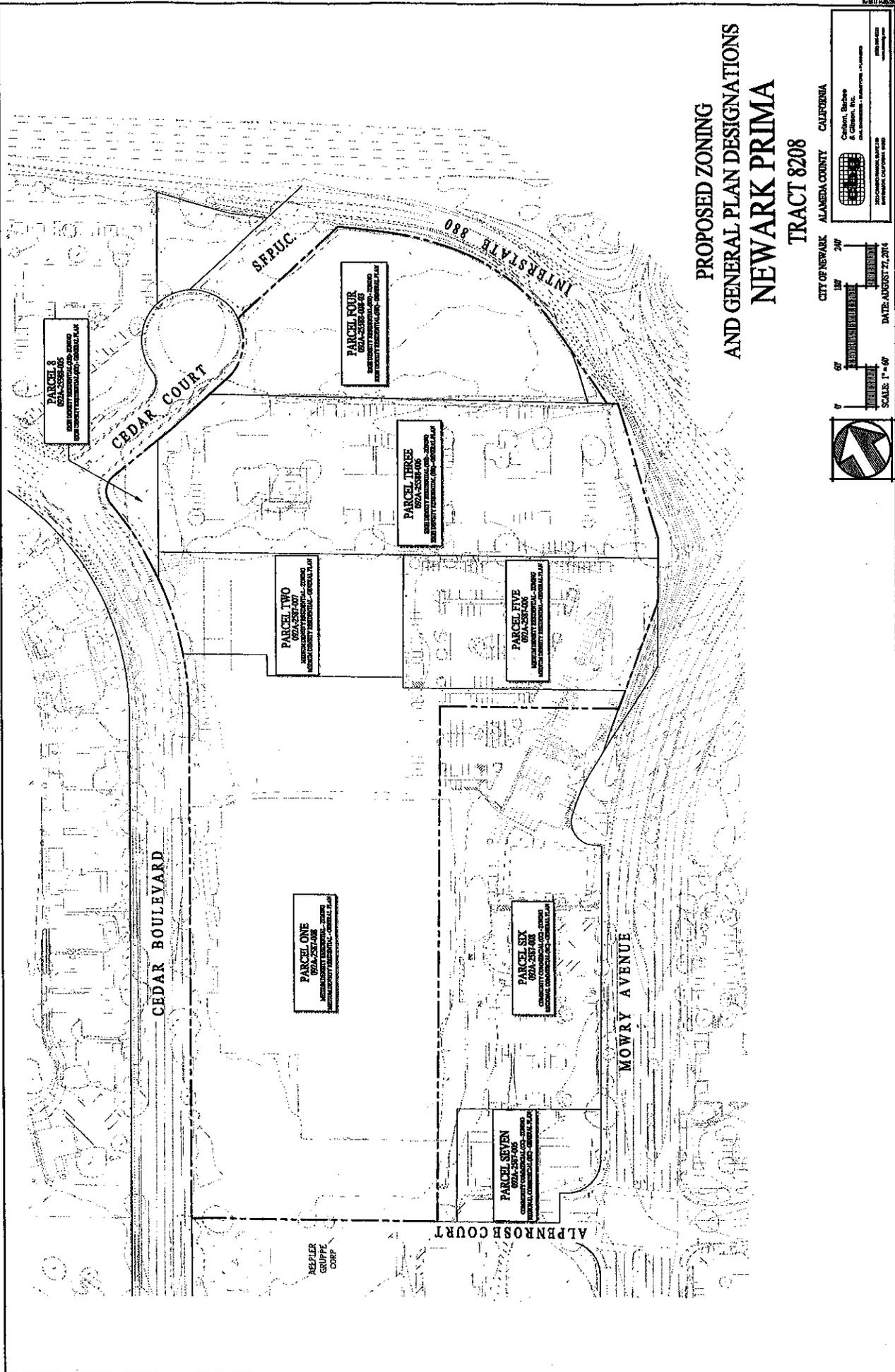
NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson





**PROPOSED ZONING
AND GENERAL PLAN DESIGNATIONS
NEWARK PRIMA
TRACT 8208**

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

Scale: 1"=60'

DATE: AUGUST 27, 2014

City of Newark Planning Department

City Engineer: [Signature]

City Clerk: [Signature]

City Manager: [Signature]

RESOLUTION NO.

RESOLUTION APPROVING P-14-16, A PLANNED UNIT DEVELOPMENT, AND U-14-17, A CONDITIONAL USE PERMIT, FOR A 281-UNIT RESIDENTIAL DEVELOPMENT (PRIMA RESIDENTIAL) AT 5699 MOWRY AVENUE

WHEREAS, Applicant has filed with the Planning Commission of the City of Newark application for P-14-16, a planned unit development, and U-14-17, a conditional use permit, for a 281-unit residential development at 5699 Mowry Avenue; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Argus on August 29, 2014, and mailed as required, and the Planning Commission held a public hearing on said application at 7:00 p.m. on September 23, 2014 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends that the City Council grant this application as shown on Exhibit A, pages 1 through 42, subject to compliance with the following conditions:

Planning Division

- a. The first permit issued for this project shall be the demolition permit(s) for the Motel-6 building. The building shall be demolished completely, as deemed by the Community Development Director, prior to release of any other permits.
- b. Approval of TM-14-18, Vesting Tentative Map 8208, shall be effective at such time RZ-14-38, the Rezoning of the property within the boundary of Vesting Tentative Map 8208, takes effect.
- c. The project shall be subject to the environmental mitigation measures as described in the Mitigated Negative Declaration prepared for this project.
- d. There shall be no roof-mounted equipment other than satellite dishes, other similar television or radio antennas, and solar equipment. AC units shall not be mounted on the roof.
- e. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- f. 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.

- g. The covenants, conditions and restrictions (CC&Rs) filed for this development shall include a provision requiring that that garages shall only be used for automobile parking.
- h. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 7:00 p.m. and 8:00 a.m.
- i. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti removal/repainting and site cleanup shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- j. All exterior utility pipes and meters shall be painted to match and/or complement the color of the adjoining building surface, as approved by the Community Development Director.
- k. Prior to the issuance of a building permit, the elevations as submitted by the developer as part of this application shall be reviewed and approved by the Planning Commission and City Council. The building elevations shall reflect all architectural projections such as roof eaves, bay windows, greenhouse windows, chimneys and porches. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials.
- l. Prior to the issuance of a building permit, the floor plans as submitted by the developer as part of this application shall be reviewed and approved by the Planning Commission and City Council.
- m. All roof material shall consist of fire retardant shake roof, concrete tile, or a roof of similar noncombustible material. Mansard roofs with the above material may be used to screen tar and gravel roofs. All roofs shall be of Class C fire resistant construction or better. Composition shingles shall be Presidential-style or of comparable quality, subject to the review and approval of the Community Development Director.
- n. Prior to the issuance of a building permit, the location and screening design for garbage, refuse and recycling collection areas for the project shall be submitted for the review and approval of Republic Services and the Community Development Director, in that order. The approved garbage, refuse and recycling areas shall be provided prior to the issuance of a Certificate of Occupancy, as required by the Community Development Director. No refuse, garbage or recycling shall be stored outdoors except within the approved trash and recycling enclosures.
- o. Prior to issuance of building permit, an Acoustical Assessment shall be prepared to demonstrate that the exterior and interior noise levels are consistent with the City's land use compatibility standards and Title 25, Section 1092 of the California Code of

Regulations. The Acoustical Assessment shall be prepared by a qualified Acoustical Consultant and submitted to the Community Development Director for review and approval. Measures (e.g., attenuation barriers, acoustically rated windows [i.e. appropriate STC or OITC ratings, upgraded insulation, etc.] shall be implemented where conditions exceed the Noise and Land Use Compatibility Criteria of “Normally Acceptable” noise exposure levels.

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

- p. Prior to issuance of a grading permit, the developer shall hire a qualified biologist to: (1) determine if occupied Burrowing Owl habitat(s) exist on the site, and (2) implement a plan to protect the owls and to excavate the site around any active burrows using hand tools to assure that the owls are not buried during grading in the event Burrowing Owl habitat(s) is found on the site. The occupied Burrowing Owl habitat(s), if found, shall not be disturbed during the nesting season. The Burrowing Owl study shall be conducted not more than 30 days prior to the time site grading activities will commence.
- q. During project construction, if historic, archeological or Native American materials or artifacts are identified, work within a 50-foot radius of such find shall cease and the City shall retain the services of a qualified archeologist and/or paleontologist to assess the significance of the find. If such find is determined to be significant by the archeologist and/or paleontologist, a resource protection plan conforming to CEQA Section 15064.5 shall be prepared by the archeologist and/or paleontologist and approved by the Community Development Director. The plan may include, but would not be limited to, removal of resources or similar actions. Project work may be resumed in compliance with such plan. If human remains are encountered, the County Coroner shall be contacted immediately and the provisions of State law carried out.
- r. Prior to their installation, mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster. The mailbox compartments of centralized mailboxes shall identify the individual dwelling units with permanent, easily legible lettering.
- s. Prior to the issuance of a Certificate of Occupancy, the parking areas, aisles and access drives shall be installed and striped as shown on the approved site plan. Guest parking spaces shall be clearly marked as reserved for guests, as approved by the Community Development Director.
- t. Prior to the issuance of a Certificate of Occupancy, roll-up garage doors with automatic garage door openers shall be provided for each unit.

- u. Prior to final inspection and utility release for each unit, the developer shall pre-wire each unit for satellite and cable television connections, as required by the Community Development Director.
- v. Prior to the issuance of a sign permit, all signs, other than those referring to construction, sale, or future use of this site, shall be submitted for the review and approval of the Community Development Director.

Engineering Division

- w. The development will require approval of a vesting tentative map and final tract map for the proposed residential development, filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. The final map shall designate and/or dedicate emergency vehicle access easements, private vehicle access ways, open space/recreational easements and public utility easements, as appropriate, over common areas of the project. The final map shall also include a 2-foot wide street dedication along Cedar Boulevard frontage.
- x. Prior to any final map approvals, a lot line adjustment or parcel map to separate this proposed residential development from the remaining commercial site shall be approved by the City of Newark and recorded. Concurrent with recording of the lot line adjustment or parcel map, the property owner shall effectuate the removal of any and all record easements within the remaining commercial parcel that are no longer needed. All instruments to extinguish such easements are subject to review by the City Engineer and approval from the respective easement beneficiary.
- y. Concurrent with approval of the final map, the developer shall effectuate the removal of all existing easements encumbering the property within the tract boundary that conflict with areas proposed for improvement. Elimination or modification of existing utility easements on the site requires the approval from the respective utility district or company and the City of Newark.
- z. The project shall conform to the approved tentative map and all conditions of approval set forth herein. Approval of the 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. The tentative map provides a preliminary design for the infrastructure improvements associated with the proposed residential subdivision. The developer shall be responsible for any required changes to this preliminary design as determined necessary by the City of Newark to satisfy applicable design requirements of the City or any other public agencies or utilities with jurisdictional authority.
- aa. Prior to approval of the final map, the developer shall guarantee all necessary in-tract common area improvements and off-site street improvements as required by the City of Newark Subdivision Ordinance and these conditions of approval, and in accordance with tract improvement plans to be approved by the City Engineer. Improvements in the on-

site common areas in the development shall include but are not necessarily limited to all private streets, underground utilities including all joint trench infrastructure, storm drain systems, common area stormwater bio-treatment facilities, in-tract lighting, perimeter walls and fences including an 8-foot high precast concrete masonry wall along the project street frontages, public landscape areas, and bicycle and pedestrian facilities as required to satisfy mitigation measures of the approved environmental document. Pedestrian access to the adjoining commercial site shall be coordinated with the adjoining property owner.

Off-site improvements include, but are not necessarily limited to: City standard driveways; wheelchair accessible curb ramps built to current ADA standards; relocation of the curb and gutter (and associated public improvements) on the Cedar Boulevard frontage to provide a curb to curb width of 70 feet; replacement 5-foot wide sidewalk along all street frontages, including the adjoining San Francisco Public Utilities Commission right-of-way; full curb-to-curb pavement grinding and a minimum 0.20' thick pavement overlay on the entirety of Cedar Court; conform pavement grinding and a full curb-to-curb pavement overlay or a combination of patch paving and a full curb-to-curb microsurfacing treatment, with approved black aggregate, on Cedar Boulevard between the project limit to the west up to and including the Cedar Court/Cedar Boulevard intersection;; landscape and irrigation facilities; all utility connections; repair of any additional existing damaged public improvements (e.g curb and gutter, sidewalk, etc.) within the project limits; new signage and pavement striping modifications; and any necessary additional street lighting and fire hydrant installations.

All noted on-site and off-site improvements shall be considered in determination of the tract improvement plan set review and inspection fees for the subdivision and included in the tract improvement plan set to be submitted with the final map for City approval. Improvement plans must be prepared by a qualified person licensed by the State of California to do such work.

- bb. The developer shall install a minimum 8-foot high precast concrete wall along the north side of Cedar Boulevard from Moores Avenue to a point approximately 350 feet east of Birch Street. The scope of improvements associated with installation of this wall shall include but are not necessarily limited to sidewalk removal and replacement (5-foot standard width), all street tree removal and replacement, replacement of all existing damaged concrete curb and gutter improvements within the aforementioned limits, and new landscaping and irrigation system improvements.
- cc. This site is subject to the State of California National Pollutant Discharge Elimination System (NPDES) Program General Permit for Storm Water Discharges Associated with Construction Activity. Prior to issuance of a grading permit or a building permit, the developer needs to provide evidence that the proposed site development work is covered by said General Permit for Construction Activity. This will require confirmation that a Notice of Intent (NOI) and the applicable fee were received by the State Water Resources Control Board and the submittal of the required Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the City Engineer. In addition the grading plans

need to state: “All grading work shall be done in accordance with the Storm Water Pollution Prevention Plan prepared by the developer pursuant to the Notice of Intent on file with the State Water Resources Control Board.”

- dd. Prior to the issuance of a grading or any building permits for this project, the developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for the review and approval of the City Engineer. The site specific plan shall include sufficient details to show how storm water quality will be protected during both: (1) the construction phase of the project and (2) the post-construction, operational phase of the project. The SWPPP shall be prepared by a Qualified SWPPP Developer (QSD) in the State of California. The construction phase plan shall include Best Management Practices from the California Storm Water Quality Best Management Practices Handbook for Construction Activities. The specific storm water pollution prevention measures to be maintained by the contractor shall be printed on the plans. The operational phase plan shall include Best Management Practices appropriate to the uses conducted on the site to effectively prohibit the entry of pollutants into stormwater runoff from the project site including, but not limited to, low impact development stormwater treatment measures, trash and litter control, 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.
- ee. The project must be designed to include appropriate source control, site design, and stormwater treatment measures to prevent stormwater runoff pollutant discharges and increases in runoff flows from the site in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2009-0074, revised November 28, 2011, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region. Examples of source control and site design requirements include, but are not limited to: properly designed trash storage areas, sanitary sewer connections for all non-stormwater discharges such as fountains, swimming pools, trash compactors, and trash enclosures; minimization of impervious surfaces; and treatment of all runoff with Low Impact Development (LID) treatment measures. A properly engineered and maintained biotreatment system will only be allowed if it is infeasible to implement other LID measures such as harvesting and re-use, infiltration, or evapotranspiration. The stormwater treatment design shall be completed by a licensed civil engineer with sufficient experience in stormwater quality analysis and design. The design is subject to review by the Regional Water Quality Control Board. The developer shall modify the site design to satisfy all elements of Provision C.3 of the MRP. The use of treatment controls for runoff requires the submittal of a Stormwater Treatment Measures Maintenance Agreement prior to the issuance of any Certificates of Occupancy.
- ff. All stormwater treatment measures subject to review and approval by the Alameda County Mosquito Abatement District. The developer shall modify the grading and drainage and stormwater treatment design as necessary to satisfy any imposed requirements from the District.

- gg. The entire site shall be equipped with full trash capture devices approved by the Regional Water Quality Control Board – San Francisco Bay Region, 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 homeowners association under the required Stormwater Treatment Measures Maintenance Agreement.
- hh. The developer shall submit a grading and drainage plan for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District. This plan must be based upon a City benchmark and needs 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 developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer prior to approval of the final map. The calculations shall show that the City freeboard requirements will be satisfied (0.75 feet to grate or 1.25 feet to the top of curb under a 10-year storm duration).

- ii. 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 developer shall install a masonry retaining wall unless a slope easement is approved by the City Engineer. Said retaining wall shall be subject to review and approval of the City Engineer. A grading permit is required by the Building Inspection Division prior to starting site grading work.
- jj. Prior to approval the final map(s), the developer shall submit a pavement maintenance program for the drive aisles and parking areas on the project site. The maintenance program shall be signed by the property owner and the property owner shall follow the maintenance program at the City Engineer's direction.
- kk. All new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked unless otherwise approved by the City Engineer.
- ll. Prior to approval of the final map(s), the developer shall guarantee the undergrounding of the existing overhead utility lines adjacent to Interstate 880 and Mowry Avenue in accordance with the City of Newark Subdivision Ordinance. The undergrounding scope, design, and field work is subject to approval by Pacific, Gas and Electric Company and the California Department of Transportation. All associated work shall be completed prior to issuance of the first Certificate of Occupancy.

- mm. The developer shall repair and/or replace any public and private improvements damaged as a result of construction activity to the satisfaction of the City Engineer and adjoining property owners.
- nn. The developer shall ensure that a water vehicle for dust control operations is kept readily available at all times during construction at the City Engineer's direction.
- oo. The developer shall incorporate a Homeowner's Association consisting of all property owners of lots in the development at the time of incorporation and in the future for the purpose of owning and maintaining the association's property, including but not limited to all private streets and common drive aisles, parking areas, landscape areas, stormwater treatment areas, storm drain systems, public access areas, and for paying for security lighting, any common garbage collection services, any security patrol services, if provided, and other functions of a Homeowner's Association. All common areas within the development shall be owned and maintained by the Homeowner's Association. Each property owner shall automatically become a member of the association and shall be subject to a proportionate share of the maintenance expenses. The Homeowner's Association shall be incorporated prior to the sale of any individual lots and/or prior to acceptance of tract improvements, whichever occurs first. A centralized facility of sufficient size for Homeowner's Association use as a clubhouse/meeting room shall either be constructed on the property or designated at an off-site location, subject to approval by the Community Development Director. The CC&Rs shall prohibit the use of private streets as alternative routes to the in-tract public street system.
- pp. Prior to City Council approval of any final maps, the bylaws governing the property owner's association and any declaration of covenants, conditions and restrictions (CC&Rs) filed for this development shall be reviewed and approved by the City Council at its discretion after mandatory review and recommendations by the City Attorney. Said covenants, conditions and restrictions shall be prominently displayed in the project sales office at all times. Approval of the covenants, conditions and restrictions shall not make the City a party to enforcement of same. The CC&Rs shall apply equally to both owners and renters. The CC&Rs shall be written to require renters to comply with the regulations of the CC&Rs, and a copy of the CC&Rs shall be given to each renter. The CC&Rs shall be written to allow less than a majority of owners to have pavement or landscape maintenance done and the cost thereof assessed to all owners in the project. The CC&Rs shall include a pavement maintenance program for all private streets and common drive aisles.
- qq. The Homeowner's Association CC&Rs shall prohibit the on-site parking of non-self-propelled recreational vehicles, including boats, and any self-propelled recreational vehicles not used for transportation unless separate storage facilities are provided. The CC&Rs shall regulate the provision of any on-site parking of self-propelled recreational vehicles used for transportation. The CC&Rs shall prohibit the on-site repair and washing of all motor vehicles.

- rr. The CC&Rs for the project shall include a disclosure statement to all property owners indicating that the project site is located within a seismic hazard zone for liquefaction. The disclosure statement shall indicate that the buildings have been designed to current code requirements. The statement shall further indicate that the buildings, site improvements, and utilities are subject to damage during an earthquake and that the buildings may be uninhabitable after an earthquake. This CC&R disclosure statement is subject to review and approval of the City Engineer prior to final map approval.
- ss. The developer shall also assist the Homeowner's Association by having a management consultant firm review the maintenance and operating functions of the association. The management consulting firm shall be responsible to prepare a written report with recommendations to the association for managing the association's obligations and setting initial monthly assessment costs for each lot in the development. Membership and assessment cost shall be mandatory for all property owners of property in the development and shall run with the land. The developer shall pay all costs of incorporation and initial management review and reports.
- tt. The Homeowner's Association shall be required to contract with a professional management firm to oversee all necessary maintenance operations. Documentation of such contract shall be submitted to the City of Newark. All commonly owned facilities shall be properly maintained in a manner consistent with the CC&Rs and project requirements.
- uu. The Homeowner's Association shall periodically provide educational materials on stormwater pollution prevention to all residents.
- vv. Each buyer shall sign an acknowledgment that he/she has read the constitution and bylaws of the Homeowner's Association and the CC&Rs applied to the development.
- ww. The developer shall provide a complete set of construction plans in electronic format and reproducible paper (mylar) format to the Homeowner's Association at the time of its formation.
- xx. All new utilities including, but not limited to, electric and communication services shall be provided underground for all buildings in the development in accordance with the City of Newark Subdivision Standards. Electrical transformers shall be installed in underground vaults with an appropriate public utility easement or within the public right-of-way.
- yy. Fire hydrants are to be located along public and private streets as determined by the Alameda County Fire Department.
- zz. A streetlight plan and joint trench plan shall be submitted by the applicant with the first tract improvement plan check and approved prior to final map approval. LED lighting shall be utilized on all public and private streets and other common areas.

- aaa. All tract 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, and 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 developer. The developer shall coordinate with PG&E as soon as practical following vesting tentative map approval.
- bbb. Prior to approval of any final map(s), the developer shall obtain and submit a Land Use Permit from the San Francisco Public Utilities Commission for all proposed improvements over the City and County of San Francisco's Hetch-Hetchy right-of-way, and pay all associated costs therewith. A note to this effect shall appear on the improvements plans for work on Cedar Boulevard and Cedar Court.
- ccc. Above ground architectural and building features that project over proposed property lines shall be permitted on townhouse and/or condominium units by easements recorded on the final map. Such features include, but are not limited to, eaves, bay windows, balconies, porches, landings, and stairways. The details for these easements, including dimensions and descriptions, shall be included on the final map. Foundations for townhouse units shall be contained within the individual lot.
- ddd. 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. Available street names will need to be determined. All addressing is based on the Alameda County grid pattern with streets running generally northerly and southerly having 5-digit addresses and streets running generally westerly and easterly having 4-digit addresses.
- eee. The developer shall repair and/or replace any public or private improvements damaged as a result of construction activity to the satisfaction of the City Engineer.
- fff. Prior to issuance of a Certificate of Occupancy or release of utilities for any residential units, private streets, common vehicle accessways and parking facilities serving said units shall be paved in accordance with the recommendation of a licensed engineer based on a minimum Traffic Index of 6.0.
- ggg. Prior to issuance of a Certificate of Occupancy or release of utilities for each dwelling unit, the on-site drive aisles and uncovered parking facilities shall be installed and striped as shown on the approved site plan. All on-site uncovered parking facilities and drive aisles shall be drained at a minimum slope of 1.0% for asphalt concrete surfaces and 0.3% for Portland cement concrete surfaces.
- hhh. Prior to the issuance of any permits, any proposed permeable pavement design shall be based on a geotechnical engineer's recommendation and reviewed by the manufacturer or the National Ready Mixed Concrete Association (NRMCA). The developer shall submit

documentation to the City confirming approval by the manufacturer or NRMCA and geotechnical engineer. The developer shall also ensure that the contractor hired to install the permeable pavement be certified by the NRMCA. Documentation that confirms certification shall be submitted directly to the City Engineer for review and approval.

- iii. The developer shall provide all required paper and digital submittals of the project final map, tract improvements plans, and as-built plans as required by the City Engineer, including, but not necessarily limited to the following: (1) One full-size reproducible copy and one reduced reproducible copy of the approved tentative map; (2) Two electronic copies of the approved final map and improvement plans in a format approved by the City Engineer; (3) One full-size mylar copy and one reduced copy of the recorded final map; (4) One reproducible set and four blue-line or photocopied sets of the approved tract improvement plans; (5) Two electronic copies and one mylar set of the as-built tract improvement plans. The City will require a digital submittal of all final maps and improvements plans. All CAD work must be prepared in a manner consistent with the Union Sanitary District's digital submittal requirements for layering conventions. This can be found on the web at: <http://www.unionsanitary.com/digitalSubmittal.htm>. Digital files submitted shall be based on accurate coordinate geometry calculations and the NAD83 State Plane Coordinate System (Zone III) and NGVD29 (USD requires NAVD88) as vertical datum. A deposit of \$5,000 shall be provided by the developer to the City to ensure submittal of all required documents.
- jjj. The developer shall provide as-built record drawings in both electronic format and on mylar paper based on full and complete review and inspection by the developer's project civil engineer, landscape architect, and other design professionals of all public improvements and all improvements on private streets and property included in the tract improvement plan set.
- kkk. If any condition of the tentative tract map be declared invalid or unenforceable by a court of competent jurisdiction, this vesting tentative map shall terminate and be of no force and effect, at the election of the City Council on motion.
- lll. Pursuant to Government Code Section 66474.9, the subdivider, or any agent thereof, or successor thereto, shall defend, indemnify, and hold harmless the City of Newark, its officials, employees or agents (collectively "City") from any claim, action or proceeding against the City to attack, set aside, void, or annul, the City's approval concerning this subdivision map application, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any such claim, action, or proceeding and cooperate fully in the defense.
- mmm. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these conditions constitute written notice of s statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code

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

Landscape-Parks Division

nnn. The developer shall install landscape improvements along the project frontages of Cedar Boulevard and Cedar Court in accordance with the approved Preliminary Landscape Plans. These improvements shall include but are not limited to replacement of all street trees, new shrubs and/or groundcover in the parkway strip, ivy adjacent to the new 8-foot masonry wall, soil amendments, and a fully functional drip irrigation system to irrigate all new trees and planting. Street trees shall be replaced at not less than a 1:1 ratio. All such improvements shall be maintained by the Homeowners Association.

The developer shall install landscape improvements on the north side of Cedar Boulevard between Moores Avenue and a point approximately 350 feet east of Birch Street in accordance with the approved Preliminary Landscape Plans. These improvements shall include but are not limited to replacement of all street trees, new shrubs and/or groundcover in the parkway strip, ivy adjacent to the new 8-foot masonry wall, soil amendments, and a fully functional drip irrigation system to irrigate all new trees and planting. The irrigation system shall include a separate water meter and all backflow prevention equipment, to the extent necessary for a complete system. Street trees shall be replaced at not less than a 1:1 ratio. Maintenance of this area will not be the responsibility of the Homeowners Association.

ooo. The developer shall install landscape and irrigation improvements within the Interstate 880 and Mowry Avenue rights-of-way adjacent to the development in accordance with the approved Illustrative Landscape Plan, subject to approval of detailed landscape construction plans by the California Department of Transportation (Caltrans) and the City Engineer. Maintenance of said rights-of-way shall be the responsibility of the Homeowners Association, subject to any and all maintenance agreements, encroachment permits, or other forms of approval required by Caltrans and the City of Newark.

ppp. All landscape maintenance on-site and along the project frontage of the project shall be the responsibility of the Homeowners Association. The developer shall enter into a Landscape Maintenance Agreement prior to approval of the final map. This agreement shall run with the land and be binding to the homeowners association as successors. Landscape maintenance of these areas by the City under the terms of the Agreement would occur only in the event that City Council deems the homeowners association's maintenance to be inadequate. Any project perimeter walls and adjoining landscape areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls. Maintenance of the walls and landscape features on the north side of Cedar Boulevard is explicitly not the responsibility of the homeowners association or its successors. Any work other than routine maintenance, including but not necessarily limited to, tree removal, tree pruning, or changes to the approved planting palette shall be

approved in advance by the City Engineer. All tree pruning shall be performed by or under the direction of a certified arborist.

- qqq. The developer shall retain a licensed landscape architect to prepare working drawings for both off-site and on-site landscape plans in accordance with City of Newark requirements, the approved Conceptual Landscape Plan, and the State of California Model Water Efficient Landscape Ordinance. The landscape plans shall be included with the full tract improvement plan set. The associated Landscape Documentation Package must be approved by the City Engineer prior to final map approval.
- rrr. The developer shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to approval of the final map, the developer shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project.
- sss. All plant species identified for placement in the public right-of-way, common area landscaping, and as part of biotreatment measures are subject to final approval of the City Engineer as part of the landscape improvement plans.
- ttt. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- uuu. Prior to the release of utilities or issuance of any Certificate of Occupancy, all landscaping and irrigation systems shall be completed or guaranteed by a cash deposit deposited with the City in an amount to cover the remainder of the work.
- vvy. Prior to issuance of Certificate of Occupancy or release of utilities, the developer shall guarantee all trees for a period of 6 months and all other plantings and landscape for 60 days after completion thereof. The developer shall insure that the landscape shall be installed properly and maintained to follow standard horticultural practices. All plant replacements shall be to an equal or better standard than originally approved subject to approval of the City Engineer.

Building Inspection Division

- www. Construction for this project can occur only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday. The developer may make a written request to the Building Official for extended working hours and/or days. In granting or denying any request, the Building Official will take into consideration the nature of the construction activity which would occur during extended hours/days, the time and duration of the request, the proximity to residential neighborhoods, and input by affected neighbors. All approvals will be done so in writing.

General

- xxx. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval. All time extensions for this planned unit development and conditional use permit shall be approved by the Planning Commission and City Council.
- yyy. If any condition of this planned unit development and conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this planned unit development and conditional use permit shall terminate and be of no force and effect, at the election of the City Council on motion.
- zzz. This planned unit development and conditional use permit shall be given a public hearing before the City Council for the Council's review and approval.
- aaaa. Prior to the submittal for building permit review, all conditions of approval of this project, as approved by the City Council, shall be printed on the plans.
- bbbb. The developer hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- cccc. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

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

This Resolution was introduced at the Planning Commission's September 23, 2014 meeting by Commissioner , seconded by Commissioner , and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING TENTATIVE MAP 8208 AND
SUBDIVISION AND ZONING VARIANCES THERETO

WHEREAS, D.R. Horton has submitted TM-14-18, Vesting Tentative Map 8208, to the City Council of the City of Newark with subdivision and zoning variances covered by P-14-16, a planned unit development, and U-14-17, a conditional use permit, for a 281-unit residential project at 5699 Mowry Avenue;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby approve TM-14-18, Vesting Tentative Map 8208 with said subdivision and zoning variances covered by P-14-16 and U-14-17, as shown on Exhibit A, pages 1 through 42 and made a part hereof by reference, subject to the following conditions:

- a. All applicable conditions listed in Planning Commission Resolution No. _____, dated September 23, 2014, approving P-14-16 and U-14-17.
- b. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.
- c. That if any condition of this vesting tentative map be declared invalid or unenforceable by a court of competent jurisdiction, this vesting tentative map shall terminate and be of no force and effect, at the election of the City Council on motion.
- d. Approval of this tentative tract map shall become effective at such time as GP-14-15, the General Plan Amendment, and RZ-14-38, the rezoning of the portion of property within the boundary of Vesting Tentative Map 8208, takes effect.

Jerry Haag
Urban Planner

2029 University Ave.
Berkeley, CA 94704
(510) 644-2106

September 19, 2014

To: Terrence Grindall, AICP, Assistant City Manager, City of Newark
From: Jerry Haag, Environmental Consultant
Re: CEQA Comments Received on Newark Prima Project

Background. At the City's request, I prepared an Initial Study for the Newark Prima Project. Based on the results of the Initial Study, adoption of a Mitigated Negative Declaration by the City is recommended to meet CEQA requirements, since all potentially significant impacts can be mitigated to a less-than-significant level.

Public Comment Period. As required by CEQA, the City completed a 20-day public comment period on the CEQA document ending on September 18, 2014.

Comment Letters. The City received three letters during the public comment period, as follows:

- a) Bernard, Balgley & Bonaccorsi, representing Swiss Park, dated 7/7/14
- b) Alameda County Water District, dated 9/17/14
- c) Ronald & Gale Brown, dated 8/18/14

Summary & Response to Comment Letters.

- Letter a: Concerns were raised regarding increased traffic on Alpenrose Court as the main entrance to the proposed Prima project, maintenance of Alpenrose Court, noise incompatibility between Swiss Park and future residential uses on the adjacent site.

Response: Alpenrose Court is not a major entrance or exit to and from the proposed Prima site and a significant traffic increase is not anticipated on this roadway. Maintenance of the surface of Alpenrose Court is not a CEQA issue and no response is needed. In terms of noise impacts between the two uses,

the Initial Study contains Mitigation Measure Noise-2 to ensure that no significant noise impacts would result between the proposed use and Swiss Park.

- Letter b: ACWD staff notes that there is an existing water well on the site that must be destroyed and that drilling permits are needed for any new well drilling. The District notes the status of the existing drought which may result in water service cutbacks to the proposed project. Other infrastructure status conditions are noted in the letter.

Response: Comments from ACWD are noted but raise no new substantial environmental issues.

- Letter c: Local property owners note concern with additional traffic on local streets associated with the proposed project as well as the potential for increased enrollment at Bunker School. Apartments or condominium dwellings are not preferred on the site.

Response: The Initial Study analyzed short-term and cumulative traffic impacts of project build-out and found no significant traffic impacts would result. In terms of the potential for increased student enrollment in local schools, the Initial Study notes that payment of mandated school impact fees will offset any school impacts.

Conclusion. The three comment letters raise no new or more significant impacts that have been included in the Initial Study document.

LAW OFFICES

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ELISE M. BALGLEY

July 7, 2014

Mr. John Becker, City Manager
Mr. Terrance Grindall, Assistant City Manager
City of Newark
37101 Newark Blvd.
Newark, CA 94560

Re: Aelpler Gruppe Swiss Club, Inc./Swiss Park-5911 Mowry Avenue; Newark

Dear Mr. Becker and Mr. Grindall:

I have been retained by Aelpler Gruppe Swiss Club, Inc. ("Aelpler Gruppe") and its tenant Newark Swiss Park, Inc. to communicate with the City of Newark regarding the proposed rezoning and residential development adjacent to Aelpler Gruppe's property at 5911 Mowry Avenue, Newark ("Swiss Park"). While I understand no formal application has yet been made to the City, Aelpler Gruppe has been contacted by DR Horton through Vince Fletcher, its Director, Land Acquisition with respect to the proposed development. There are various concerns which need to be taken into consideration at this early stage as the development process is considered.

I first want to share some background which may be useful in understanding those concerns. Aelpler Gruppe is a fraternal organization formed by Swiss immigrants to purchase land and build a community center for their own pleasure and preserve Swiss culture and traditions for future generations. It has occupied the Swiss Park property since early 1935. At this point, Aelpler Gruppe leases that property to Newark Swiss Park, Inc. Swiss Park remains a thriving hub for Swiss on the west coast who gather many times each year to celebrate and reaffirm their heritage.

Over the years, Aelpler Gruppe has been extremely cooperative with any request from the City of Newark. Two examples of this cooperation are particularly noteworthy. Aelpler Gruppe deeded portions of its property to the City of Newark without compensation from the City of Newark. (Conveyance No. 69-15, dated February 11, 1969). When the existing outdoor amphitheater was constructed, the City requested that it be built facing toward the freeway to avoid noise in nearby

John Becker
July 7, 2014

residential areas. Aelpler Gruppe complied with that request. This means, of course, that the amphitheater faces the proposed residential development and sound will flow in the direction of the development.

Now the issue has arisen of the proposed rezoning and a 280 unit residential development. I will discuss each of Aelpler Gruppe's primary concerns in turn.

Clearly the proposed development will cause a significant increase in the volume of traffic in the area. That circumstance alone may cause a significant decrease in business at Swiss Park with a resulting loss of revenue. Similarly, there is a risk that the activities currently permitted at Swiss Park will not be allowed given the new zoning and presence of the residential development. Again, Swiss Park's revenue would be decreased. The contemplated decreases in revenue may well create a situation in which the fraternal organization itself is no longer sustainable at all.

The increase in traffic volume will also make the **safe** flow of traffic for all property owners sharing Alpenrose Court uncertain. Alpenrose Court is simply not large enough to handle traffic from the proposed development and Swiss Park traffic. This impact will be particularly great when large outdoor events are held at Swiss Park; traffic might be anticipated to back up to the freeway exit on Mowry Avenue. Even construction traffic on Alpenrose Court while the development is being built will have a problematic impact on Swiss Park and traffic in the area in general.

The maintenance of Alpenrose Court is also a concern. It has been proposed that a homeowners' association from the new development would maintain Alpenrose Court. It is anticipated that the initial responsibility would actually fall upon the developer and ultimately be transferred to the members of the homeowners' association. Once that responsibility is transferred, Aelpler Gruppe will have no assurance that Alpenrose Court will be properly maintained as required by the already existing Reciprocal Access Agreement.

Swiss Park's use, in compliance with its current CVR zoning, is not compatible with residential uses. Swiss Park is used for outdoor picnics, festivals, concerts and indoor hall events. All of those generate noise which would presumably not be appreciated by residents of the proposed development. This situation is likely, at best, to generate tension between Swiss Park and its new neighbors and, at worst, create new legal liabilities for Swiss Park and, through it, Aelpler Gruppe.

There is another source of conflict between Swiss Park and its proposed neighbors. Assuming the entrance to the proposed development is from Alpenrose Court, it is likely that there will be unauthorized residential overflow parking on Swiss Park's grounds.

Aelpler Gruppe does not have definitive proposals as to how these issues might be addressed

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assuming the new development is allowed to proceed, but I can provide certain general ideas. First, the proposed development should be required to have at least two entrances/exits with at least one being other than from Alpenrose Court. It should be noted that the impact on Swiss Park will not be significantly altered whether the entrance to the new development is from Alpenrose Court or Cedar Boulevard. Second, the development should have binding CC&Rs running with the land which will insulate Aelpler Gruppe from liabilities due to the traffic and noise from Swiss Park.

The City's attention to these points is greatly appreciated. I would be happy to discuss the matter with you or any other appropriate representative of the City if clarification is needed.

Sincerely,

BERNARD, BALGLEY & BONACCORSI



ELISE M. BALGLEY

EMB/be

cc: Vince Fletcher; Director Land Acquisition, DR Horton
Client



DIRECTORS

43885 SOUTH GRIMMER BOULEVARD • P.O. BOX 5110, FREMONT, CALIFORNIA 94537-5110
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September 17, 2014

Terrence Grindall, Assistant City Manager
City of Newark
Community Development Department
37101 Newark Boulevard
Newark, CA 94560

Dear Mr. Grindall:

Subject: Draft Initial Study and Mitigated Negative Declaration for the Prima Residential Project

The Alameda County Water District (ACWD) wishes to thank you for the opportunity to comment on the Draft Initial Study and Mitigated Negative Declaration for the Prima Residential Project (Project).

ACWD staff has reviewed the Draft Initial Study and Mitigated Negative Declaration (IS/MND) and offers the following comments for your consideration:

1. **Groundwater Well Protection/Destruction:** ACWD has identified a water well located within the project area. In order to protect the groundwater basin, each well located within the property must be in compliance with ACWD Ordinance No. 2010-01. If the well is to remain, a letter so indicating must be sent to ACWD and will require a permit for inactive classification if the well will not be used for a period of twelve (12) months. Any abandoned wells located within the project area must be properly destroyed prior to construction activities.
2. **Drilling Permit Requirement:** As required by ACWD Ordinance No. 2010-01, drilling permits are required prior to the start of any subsurface drilling activities for wells, exploratory holes, and other excavations. Application for a permit may be obtained from ACWD's Engineering Department, at 43885 South Grimmer Boulevard, Fremont or online at <http://www.acwd.org>. Before a permit is issued, a cash or check deposit is required in a sufficient sum to cover the fee for issuance of the permit or charges for field investigation and inspection. All permitted work requires scheduling for inspection; therefore, all drilling activities must be coordinated with ACWD prior to the start of any field work.

3. Utilities and Service Systems – Water Supply: The ACWD service area and the State of California are currently experiencing a water supply shortage emergency. ACWD has taken steps to encourage water use reductions throughout the service area. On March 13, 2014, ACWD declared a water shortage emergency and adopted ACWD Ordinance No. 2014-01, imposing broad water use restrictions, water use prohibitions, and other measures, including restrictions on water use for purposes other than domestic use, public health, and fire protection. These restrictions will remain in place through the end of the water shortage emergency. In addition, ACWD may adopt additional water use restrictions or implement other measures should they become necessary.
4. Utilities and Service Systems – Water System Improvements: The Draft IS/MND cites “minor upgrades and improvements” to the locate water distribution system. ACWD has identified that the likely water system configuration serving the Project would include an offsite water main connection to the existing water distribution system in Mowry Avenue. This may require portions of the water main to be installed on property not under control of the Project and/or the State right-of-way adjacent to the project site.
5. Utilities and Service Systems – Existing Water System Facilities: ACWD currently owns and maintains water system facilities within the project area which must be protected in place. Any proposed improvements must maintain adequate clearances from these existing public water system facilities. ACWD will not approve plans showing improvements in conflict with existing or proposed public water system facilities. For example, ACWD maintains a pipeline within the eastern side of the project site generally along the project frontage with Interstate 880 and Mowry Avenue. Any proposed trees in the vicinity of this pipeline must maintain a minimum horizontal clearance of five feet from the edge of this pipeline. The plans associated with the Project and the IS/MND should be updated to reflect these clearances.
6. ACWD Contacts: The following ACWD contacts are provided so that the City can coordinate with ACWD as needed during the CEQA process:
 - Eric Cartwright, Special Assistant to the General Manager, at (510) 668-4206, or by e-mail at eric.cartwright@acwd.com, for coordination regarding water supply issues.
 - Steven Inn, Groundwater Resources Manager, at (510) 668-4441, or by e-mail at steven.inn@acwd.com, for coordination regarding ACWD’s groundwater resources.
 - Michelle Myers, Well Ordinance Supervisor, at (510) 668-4454, or by e-mail at michelle.myers@acwd.com for coordination regarding groundwater wells and drilling permits.

City of Newark
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- Ed Stevenson, Development Services Manager, at (510) 668-4472, or by e-mail at ed.stevenson@acwd.com, for coordination regarding public water systems and water services.

Again, thank you for the opportunity to comment on the Draft Initial Study and Mitigated Negative Declaration for the Prima Residential Project.

Sincerely,



Robert Shaver
Assistant General Manager - Engineering

la/mh

By E-mail

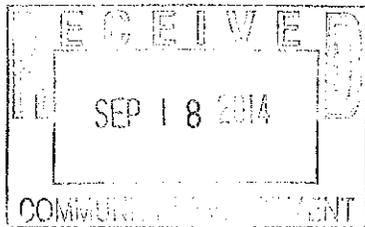
cc: Eric Cartwright, ACWD
Ed Stevenson, ACWD
Steven Inn, ACWD
Michelle Myers, ACWD

9-15-2014

Terrence Arundall
Community Development Department

Dear Sir -

Regarding the development of the 19.43 acre site on Mowry Ave, we feel 282 units is too many in that area. At a minimum of 2 cars per unit, that puts 564 more vehicles on Cedar and/or Mowry. It also puts more children in Bunker School. We think residential development of the area is a good idea, but prefer single family homes, no apartments or condos.



Sincerely,
Ronald & Dale Brown
Owners of 5798 Wintergreen
since 1968.

Current address:

14205 Deerwood Dr
Red Bluff CA 96080
530-528-9210