

SHH/FMC Project, City of Newark, California

Volume I

Final Initial Study / Mitigated Negative Declaration

March 7, 2014



Prepared for:
City of Newark
Community Development Department
37101 Newark Boulevard
Newark, CA 94560

Prepared by:
HELIX Environmental Planning, Inc.
11 Natoma Street, Suite 155
Folsom, CA 95630

VOLUME I
FINAL INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

SHH/FMC Project

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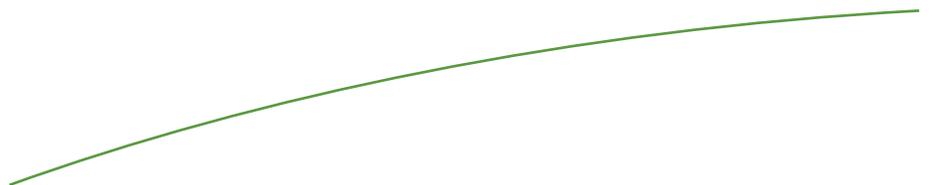
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Section A

INTRODUCTION TO THE FINAL
INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION



A. INTRODUCTION TO THE FINAL IS/MND

1. Final IS/MND Contents

This document constitutes the Final Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed SHH/FMC project in the City of Newark, California. Volume I consists of the following sections:

Section A, Introduction to the Final IS/MND: This section provides a description of the Final IS/MND contents and process, including information and a revised site plan reflecting minor modifications to the project description.

Section B, Responses to Comments on the Draft IS/MND: This section provides the comment letters on the Draft IS/MND that were received during a 30-day public review from January 28, 2014 to February 27, 2014, as well as the City's responses to each comment. Four comment letters were received on the Draft IS/MND from the following agencies, organizations and individuals:

- California Department of Fish and Wildlife, Bay Delta Region
- State of California, Public Utilities Commission
- Alameda County Water District
- Ashland, Inc. (c/o Barry J. Shotts, Attorney at Law)

Section C: Errata. This section documents specific text changes to the Draft IS/MND that are to be considered as part of the Final IS/MND. This includes clarifications/corrections to the information in the Draft IS/MND to reflect the project description changes and other document revisions made in response to comments contained in Section B. Minor typographical corrections and formatting revisions are not shown in the Errata section.

The full revised IS/MND and its technical appendices have been reproduced in "Track Changes" format and are contained in the accompanying Volume II of this Final IS/MND. Both Volumes I and II are provided on a CD in a sleeve attached to the back cover of this bound document. Please note that some of these documents have been modified since public circulation of the Draft IS/MND to reflect the modified project description and in response to several of the comments on the draft document. All substantive changes to the Draft IS/MND are reflected in Section C, Errata, of Volume 1.

2. IS/MND Process

The public review period began on January 27, 2014 and concluded on February 28, 2014, providing all parties with at least 30 days to review the Draft IS/MND as required under State CEQA Guidelines Section 15073. The Draft IS/MND was circulated to responsible agencies and other public agencies having legal jurisdiction over the environment affected by the proposed project. The Draft IS/MND was sent to the State Clearinghouse

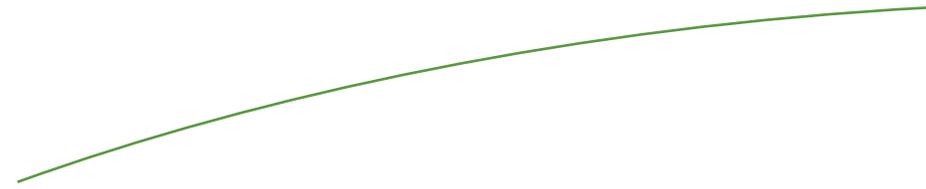
(SHC# 2014-01-2056), along with the required Notice of Completion (NOC) and Environmental Document Transmittal form. Simultaneously, notices of availability of the Draft IS/MND were published in the local newspaper.

The Final IS/MND has been provided to all of the above-listed entities that commented on the Draft document. In addition, the entire Final IS/MND is available for review on the City's website. The City of Newark Planning Commission (Planning Commission) will consider whether to approve the Final IS/MND as complete and in compliance with CEQA and State CEQA Guidelines and must consider it in approving or denying the proposed project. Public input is allowed at the Planning Commission hearing to consider this IS/MND and the project's related discretionary actions. In the final review of the proposed project, environmental, economic and social factors will be considered to determine the most appropriate course of action. If, after consideration of the IS/MND and public input, the Planning Commission may decide to approve the project. If the project is approved, a Notice of Determination (NOD) will be filed by the City with the County Clerk.



Section B

COMMENTS AND RESPONSES



B. RESPONSES TO COMMENTS

During the public review period commencing January 28, 2014 and ending February 27, 2012, four comment letters were received on the Draft IS/MND from the following agencies, organizations, and individuals:

- California Department of Fish and Wildlife, Bay Delta Region
- State of California, Public Utilities Commission
- Alameda County Water District
- Ashland, Inc. (c/o Barry J. Shotts, Attorney at Law)

Each comment letter was assigned an alphabetical designation in the order of the date the letter was received, and each comment in the letter was numbered beginning with the number one. The following pages provide the comment letter on the left side, with comments alpha-numerically numbered in the right-hand margin of each letter, and the corresponding responses to each comment are provided on the right-hand side of the page.

Where responses to comments warrant modifications to the Draft IS/MND, the reader is referred to modifications to the text within the body of the Draft IS/MND, provided in the form of “Errata” and presented in Section C of this document. Modifications to the Draft IS/MND occur where it is necessary to correct or clarify information in the document. In some cases, comments and responses provide additional information, which then becomes a part of the Final IS/MND.

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State of California – The Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Bay Delta Region
 7329 Silverado Trail
 Napa, CA 94558
 (707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



February 25, 2014

Mr. Clay Colvin
 City of Newark
 Community Development Department
 37101 Newark Boulevard
 Newark, CA 94560

Dear Mr. Colvin:

Subject: SHH/FMC Project, Initial Study/Mitigated Negative Declaration, SCH #2014012056,
 City of Newark, Alameda County

The California Department of Fish and Wildlife (CDFW) personnel have reviewed the subject document prepared for the City of Newark. The 8.09-acre SHH/FMC Project (Project) is planned for transit-oriented, mixed-use development with commercial and medium/high density residential as part of the Dumbarton Transit-oriented Development Specific Plan. The Project is located within the City of Newark in southwestern Alameda County at the southwest corner of the intersection of Willow Street with Enterprise Drive.

The Project site is bisected by an abandoned railroad corridor. To the north of the former railroad corridor, the site is vacant, and to the south, it contains stockpiles of fill/construction materials and vehicle and truck trailer storage. The surrounding land uses are characterized by existing and former industrial parcels, with nearby business/professional centers and residential lots.

Terrain in the immediate vicinity of the site is primarily flat, with isolated stockpiles providing the most notable topography. The site's elevation is generally 12 feet above mean sea level (amsl), with isolated stockpiles reaching elevations exceeding 50 feet amsl. A fence encloses the portion of the Project site that is in active use, which is heavily disturbed as a result of the existing use and lacks any natural habitat or vegetation. Various species of mostly non-native trees are present along the perimeter and occasionally within the existing use area. The vacant lot and abandoned railroad corridor are outside the fence and are not in active use. The railroad tracks have been removed from the former railroad corridor; however, cobble railroad ballast remains. The railroad corridor and vacant lot are vegetated primarily with ruderal species typical of disturbed habitats.

A townhome condominium development is proposed for construction on 4.08 acres in the southern portion of the site (Lots 1 – 14). A 0.17-acre park is proposed for construction in the townhome condominium neighborhood. A 2.08-acre lot in the center of the site (Lot 15) is proposed for development with affordable housing units. A total of 0.29-acre of Lot 15 is designated for open space as a buffer to avoid an existing isolated, seasonally inundated depression. The commercial development in the northern portion of the site will include a 15,000-square-foot retail market and 49 parking spaces on 1.22 acres (Lot 16). A total of 0.71 acres will be dedicated to the City as right-of-way for off-site infrastructure improvements.

CDFW is identified as a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) §15386. As a trustee for the State's fish and wildlife resources, CDFW has jurisdiction

Conserving California's Wildlife Since 1870

Mr. Clay Colvin
February 25, 2014
Page 2

over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species pursuant to California Fish and Game Code §1802. In this capacity, CDFW administers the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration Program and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the proposed Project.

Burrowing Owls

The Initial Study/Mitigated Negative Declaration (IS/MND) states no suitable habitat for burrowing owl is present in the study area and no burrowing owl was observed in or adjacent to the study area during the biological reconnaissance survey. Burrowing owls have been observed on the FMC property 500 feet north of the SHH/FMC Project and the Project site has 1.67 acres of perennial grassland. Burrowing owl habitat can be found in annual and perennial grasslands. Burrowing owls typically use burrows made by fossorial mammals, such as ground squirrels or badgers, but also may use man-made structures, such as cement culverts; cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement. Burrowing owls may use a site for breeding, wintering, foraging, and/or migration stopovers (Burrowing Owl Protocol 1993). The 1.67 acres of perennial grassland should be considered potential habitat for burrowing owls.

CDFW concurs with the Dumbarton Mitigation Monitoring and Reporting Program Measure 4.3-3 (Western Burrowing Owls) that requires burrowing owl surveys be conducted. CDFW recommends that burrowing owl surveys be conducted by a CDFW-approved biologist within and surrounding the proposed Project site according to the methodology described in *Appendix D: Breeding and Non-breeding Season Surveys of the CDFW Staff Report on Burrowing Owl Mitigation* (Staff Report), which is available at <http://dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>. This methodology is used to maximize the likelihood of detecting owls and determining the type and extent of habitat potentially used by owls. CDFW recommends that surveys be conducted in or near any features that may be used by burrowing owls for nesting, roosting or cover. If suitable owl nest sites are documented during surveys, CDFW recommends that owl avoidance and minimization measures be implemented consistent with the Staff Report (section on *Mitigation Methods*).

CDFW appreciates the opportunity to provide comments on the IS/MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or marcia.grefsrud@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager, at (707) 944-5577 or craig.weightman@wildlife.ca.gov.

Sincerely,



Scott Wilson
Regional Manager
Bay Delta Region

cc: State Clearinghouse

A1

A1 The Department of Fish and Wildlife concurs with Biological Resources Mitigation Measure 4.3.3 of the Project Specific Mitigation, Monitoring and Reporting Program (MMRP) (Appendix C) to ensure there is no impact on Western burrowing owl (*Athene cunicularia*).

Specifically, Mitigation Measure 4.3.3 of the Project Specific MMRP requires the Project to comply with Mitigation Measure 4.3.3 of the Dumbarton Transit Oriented Development Specific Plan (Appendix B). This measure requires that pre-construction surveys (take avoidance surveys) be conducted by a qualified western burrowing owl biologist 90 days prior to construction of the project and again 30 days prior to construction (meaning any ground disturbance).

If burrowing owls are detected on the site, mitigation shall be provided as stipulated in Mitigation Measure 4.3.3 of the Dumbarton Transit Oriented Development Specific Plan.

COMMENTS

RESPONSES

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

PUBLIC UTILITIES COMMISSION

505 Van Ness Avenue
SAN FRANCISCO, CA 94102
(415) 703-1815



February 26, 2014

Terrence Grindall
City of Newark
37101 Newark Blvd
Newark, CA 94560

Dear Mr. Grindall:

Re: SCH 2014012056 Newark SHH/FMC Project - MND

B1

The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings in California. The Commission's Rail Crossings Engineering Section (RCES) is in receipt of the draft Mitigated Negative Declaration (DMND) for the proposed SHH/FMC transit-oriented commercial/residential/park development project (as part of the Dumbarton Transit-Oriented Development). The City of Newark (City) is the lead agency.

B2

The Willow Street crossing (DOT# 750021M) is approximately 600 feet north of the project site. RCES recommends that the City add language to the SHH/FMC Project, so that any development adjacent to or near the railroad/light rail right-of-way (ROW) is planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade crossings. This includes considering pedestrian circulation patterns or destinations with respect to railroad ROW and compliance with the Americans with Disabilities Act (ADA). As part of the project approval, the City should consider the following safety improvement or mitigation measures at the Willow Street crossing:

- Installation of sidewalks, edge-lines and ADA-compliant detectable warning devices on all approaches;
- Installation of bicycle lanes to ensure the safety of bicyclists while riding through the crossing;
- There appears to be a driveway immediately adjacent to the railroad crossing. The City should consider removing or relocating the driveway further from the crossing;
- Installation of raised medians on both approaches in order to avoid gate drive-around; and
- Grade separation of the crossing if possible.

In addition, any modification of the existing crossing requires authorization from the Commission through the General order (GO) 88-B process. If you have any questions in this matter, please contact me at (415) 703-1815, sm4@cpuc.ca.gov.

Sincerely,

Sia Mozaffari
Utilities Engineer
Rail Crossings Engineering Section
Safety and Enforcement Division

C: State Clearinghouse

B1 It is acknowledged that the Public Utilities Commission (PUC) has jurisdiction over the safety of highway-rail crossings in California and that any construction or alteration to such crossings must be approved by the PUC. The City and project applicant for the subject project are not proposing to alter the Willow Street crossing in the general vicinity of the SHH/FMC project site.

B2 The PUC's comment letter suggests that the City should consider several safety improvements or mitigation measures to the Willow Street crossing in conjunction with the proposed project. Because potentially significant safety impacts have not been identified in the IS/MND, however, there would be no need to require mitigation for this project. Also, all of the suggested improvements and mitigation measures would occur at least 600 feet from the subject property and the applicant would not be expected to participate in their implementation.



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February 26, 2014

Terrence Grindall
 Community Development Director
 City of Newark
 37101 Newark Boulevard
 Newark, CA 94560-3796

Dear Mr. Grindall:

Subject: Initial Study/Mitigated Negative Declaration for the Dumbarton Transit Oriented Development SHH/FMC Project

The Alameda County Water District (ACWD) wishes to thank you for the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) for the Dumbarton Transit Oriented Development (TOD) SHH/FMC Project (Project).

ACWD has reviewed the IS/MND and would appreciate your consideration of the following comments:

1. Geology and Soils Mitigation Measures (pages 66-70): Reference is made to Appendix B (page 31). Mitigation Measures 4.5-2 and 4.5-3 from the Dumbarton TOD Specific Plan are crossed out and a note states the reason is the “measures [are] not relevant to the SHH/FMC Project.” ACWD does not support this finding and requests the following:
 - a. Page 67 of the IS/MND states “it is unknown whether the project site contains liquefiable soils; however, geotechnical investigations conducted on other properties in preparation of the EIR (RBF 2011) identified liquefiable soils in other areas of the Specific Plan. Therefore, the project site has a potential to contain liquefiable soils.” Since the project site may contain liquefiable soils, soil improvement measures may be necessary and would require coordination with ACWD to ensure compliance with ACWD Ordinance No. 2010-01 as required by mitigation measure 4.5-2 in the Dumbarton TOD Specific Plan. In addition, since groundwater is shallow within the project area dewatering may also be required. As a result, ACWD requests Mitigation Measure 4.5-2 from the Dumbarton TOD Specific Plan be included in the SHH/FMC Project IS/MND.
 - b. ACWD has identified 18 monitoring wells 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(s) are to remain, a letter so indicating must



C1

C2

- C1 Comment noted. The IS/MND correctly concludes that the project site is potentially susceptible to liquefaction and other geologic and soils conditions. The IS/MND identifies Mitigation Measure 4.5-1 from the Dumbarton TOD EIR as being capable of reducing these potential impacts to below a level of significance with the mitigation measure in place. The Final IS/MND for the SHH/FMC project will also incorporate Mitigation Measure 4.5-2 from the TOD EIR as requested by the ACWD, which further ensures the conclusion of the document and assures the ACWD in their future involvement in the process.
- C2 The City acknowledges that the ACWD must be included in any future well closure and/or deactivation activities on the SHH/FMC project site. Mitigation measure 4.5-1, currently included in the IS/MND for the SHH/FMC project already addresses this issue, however, Mitigation Measure 4.5-3 will also be incorporated into the document to address the concern expressed by the ACWD in their comment letter.

Terrence Grindall
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be sent to ACWD and will require a permit for inactive classification if the wells will not be used for a period of twelve (12) months. If the well(s) are: 1) no longer required by any regulatory agency; 2) no longer monitored on a regular basis; or 3) damaged, lost, or the surface seal is jeopardized in any way during the construction process, the well must be destroyed in compliance with ACWD Ordinance No. 2010-01. Therefore, ACWD requests Mitigation Measure 4.5-3 from the Dumbarton TOD Specific Plan be included in the SHH/FMC Project IS/MND.

2. Hazards and Hazardous Materials (pages 82-86): The installation, long-term operation, and maintenance of utilities to serve the project may include, but is not limited to, significant dewatering, disposal of groundwater, deep soil excavation, transportation and disposal of excavated soil, utilities submerged in groundwater, and worker exposure to soil and groundwater. The IS/MND does not adequately identify the hazards or hazardous materials sites remaining within the project area, after remediation activities are completed, that may continue to pose a risk to the health and safety of workers during the installation, long-term operation, or maintenance of all utilities required to serve the project. This analysis should be included in the IS/MND.

The ability to install a public water system within the project area would be conditioned upon confirmation that the soil or groundwater does not pose a risk to the health and safety of workers either during installation of the public water system or during long-term routine operation and maintenance of such a system. Any mitigation required to eliminate such hazards or potential hazards, such that the soil or groundwater does not pose a risk to the health and safety of workers during installation, and during long-term routine operation and maintenance of utility systems, must be identified and described in the IS/MND. The proposed mitigation should not rely on extraordinary measures by the utility to protect worker health and safety, such as unusual personal protective equipment, unusual soil or groundwater treatment or disposal requirements, or decontamination of tools and equipment required for potable water system maintenance. If specific measures are to be identified in a Risk Management Plan, the IS/MND should require ACWD approval of the plan as part of the mitigation.

3. Utilities and Service Systems - Water Supplies (page 125-129): While ACWD has prepared a Water Supply Assessment for the Dumbarton TOD Specific Plan which indicates adequate water supply would be available for normal and dry-year scenarios, the ACWD service area and the State of California are currently experiencing a severe water supply shortage. ACWD has taken steps to encourage water use reductions throughout the service area. In addition, ACWD may impose broad water use restrictions which may include restrictions on existing water use for purposes other than domestic use, public health, and fire protection, restrictions on new water service connections, or other measures. Such restrictions would remain in place through the end of the water supply shortage.

4. Climate Action Plan: Reference is made to the City of Newark's Climate Action Plan, January 2010 Initial Framework. ACWD agrees with the City that planning related to sea level rise is important for the region and for ACWD. ACWD recommends the IS/MND address the potential impacts of sea level rise and adaptation.

C3 The Draft IS/MND identifies on page 82 that the potential exists on site for hazardous materials to pose a “significant hazard to the public or the environment”. The IS/MND concludes that, with project-level mitigation incorporated, the issue would be less than significant. Mitigation Measures 4.7-1a-c from the Dumbarton TOD EIR are identified in the IS/MND as applying to the SHH/FMC project in response to this issue. These measures, in particular measure 4.7-1a, assures compliance with the requirements of the San Francisco Bay Regional Water Quality Control Board including the need to prepare a Health Risk Assessment (HRA) for the property. These measures have been incorporated into the SHH/FMC IS/MND and they address the concerns expressed in the ACWD comment letter.

C4 Comments noted. The City of Newark is aware of the steps being taken by the ACWD to address the current water supply shortage. We are also aware that the ACWD may impose broad water use restrictions on its existing customers as well as new water service connections.

C5 The comment makes reference to the City of Newark's Climate Action Plan (CAP), January 2010 Initial Framework, and agrees with the City that planning related to sea level rise is important to the region and for the ACWD. The IS/MND indicates on page 76 that the City has adopted a CAP to evaluate policies to reduce greenhouse gas emissions and adapt to the effects of climate change. Climate change adaptation is a regional issue and the City has committed to working with regional

Terrence Grindall
Page 3
February 26, 2014

5. ACWD Contacts: The following ACWD contacts are provided so that the City can coordinate with ACWD as needed during the CEQA process:

- 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.
- Rangarajan Sampath, Groundwater Resources Engineer at (510) 668-4411, or by e-mail at rangarajan.sampath@acwd.com, for coordination regarding cleanup sites.
- 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.
- 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 Initial Study/Mitigated Negative Declaration for the Dumbarton Transit-Oriented Development SHH/FMC Project at this time.

Sincerely,



Robert Shaver
Assistant General Manager - Engineering

la/ps

By Email

cc: Steven Inn, ACWD
Ed Stevenson, ACWD
Michelle Myers, ACWD
Rangarajan Sampath, ACWD

C5 agencies, including the Alameda County Flood Control District and the Bay Conservation and Development Commission (BCDC), to adapt to the potential future effects of climate change on the area, including sea level increases, effects of snowpack reduction on water supply, extreme weather events, or exacerbated air pollution.

As noted on page 4.67-27 of the Dumbarton TOD Specific Plan DEIR, according to BCDC, climate change is expected to raise sea levels between 12 and 36 inches by the year 2100. The project site is approximately two miles east of the San Francisco Bay and an increase in sea levels could increase flood related impacts, especially from storm surge-induced flood events. The City of Newark Municipal Code (Section 15.40.51 Newark Municipal Code) has flood elevation standards for lands within special flood hazard areas. These standards include requirements such as minimum elevations for finished floors above building pads and top of curb grades above sea level. Further, if sea level rise was determined to be a significant threat, then protective measures such as levees may be installed by regional and local governments to protect urbanized areas.

Finally, a discussion of potential flooding impacts possibly associated with future sea level rise is not necessarily an example of an environmental effect caused by development, but instead is an example of an effect on the project caused by the environment and this type of analysis may not be required under CEQA [*Ballona Wetlands Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473-474].

In response to the ACWD comment, the following text will be added (noted by underlined text) to the IS/MND:

The City of Newark has adopted a Climate Action Plan to identify and evaluate feasible and effective policies to reduce GHG emissions in order to reduce energy costs, protect air quality, and improve the economy and the environment. The plan identifies a 5 percent GHG reduction target from 2005 municipal emissions by July 2012, a 5 percent reduction in city and community emissions by July 2015, and a 15 percent decrease in communitywide emissions levels by 2020. Data collected by the City through the GHG monitoring process shows that the City has already

COMMENTS

RESPONSES

C5 cont. achieved the first two of these goals. In response to potential effects of climate change, the City has committed to working with regional agencies including the Alameda County Flood Control District and the Bay Conservation and Development Commission (BCDC) to adapt to the future effects of climate change on the area, including any rise in sea levels, effects of snowpack reduction on water supply, extreme weather events, and exacerbated air pollution.

COMMENTS

RESPONSES

BARRY J. SHOTTS
ATTORNEY AT LAW
1224 EDWARDS STREET
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TEL: 415-595-2821

February 24, 2014

VIA EMAIL

Mr. Terrance Grindall (terrence.grindall@newark.org)
Community Development Director
City of Newark
37101 Newark Blvd.
Newark, California 94560

Re: Ashland, Inc. Comments on SHH/FMC Project, City of Newark California – Initial Study/Mitigated Negative Declaration, dated January 24, 2014

Dear Mr. Grindall:

On behalf of Ashland Inc. (“Ashland”), we want to thank you for the opportunity to comment on the SHH/FMC Project, City of Newark, California – Initial Study/Mitigated Negative Declaration dated January 24, 2014 (the “MND”).

D1

As you know, Ashland owns property within the Dumbarton TOD Specific Plan and immediately adjacent to the SHH/FMC Project (the “Project”) analyzed in the MND (APN 092-0115-005, referred to herein as the “Ashland Property”). Ashland fully supports the Project, which proposes to create 159 new housing opportunities for Newark residents, including provision for 74 affordable housing units, and a 15,000 square foot neighborhood market to serve Newark residents. And, this new housing and commercial project would be energy efficient, well designed and located within a walkable, transit-oriented neighborhood. This is exactly the kind of project the Dumbarton TOD Specific Plan was intended to facilitate.

D2

That said, Ashland has two comments on the draft MND. First, the Project proposes to set aside a total of 0.29 acres of Lot 15 within the Project “for open space as a buffer to avoid an existing isolated, seasonally inundated depression.” MND at page 12. Figure 3 of the MND then depicts an “Open Space” area of 0.29 acres within Lot 15. Figure 3 also, however, purports to depict this open space area/buffer as extending onto the Ashland Property immediately to the west. Similarly, Entitlement Sheet A.00 of the Project’s proposed vesting tentative map (“VTM”) filed with the City of Newark purports to depict a “Wetland Preserve” encroaching upon the Ashland Property.

Ashland is not one of the Project applicants, no part of the Ashland Property is part of the Project, and Ashland has not agreed to create, set aside, or preserve any portion of its property as an “open space” area or “wetlands preserve” in connection with the Project or otherwise. Ashland has not independently reviewed or verified the MND’s opinion that there are 0.03

D1 The comments made in support of the project are noted.

D2 It is acknowledged that two of the figures presented in the IS/MND depicted open space on an adjacent property that is owned by Ashland Inc. These two figures have been modified to delete the open space boundary previously inferred on the Ashland property.

Land Use | Real Estate | Environmental
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COMMENTS

RESPONSES

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acres of "waters of the State" within the Project area. Ashland also notes that this 0.03 acre "depression" area lies entirely outside the Ashland Property and within a former railroad corridor; the area would therefore likely qualify for one or more exemptions to the Clean Water Act and/or the Porter Cologne Water Quality Control Act. Hence, any map or exhibit or sheet in the MND or Project VTM depicting an open space or wetlands preserve area on the Ashland Property is factually and legally incorrect and without evidentiary foundation and should be revised accordingly. Ashland reserves all rights with respect to its right to develop the Ashland Property.

D2
cont.

Second, the MND concludes in its evaluation of transportation/traffic impacts of the proposed Project that "buildout of the overall [Dumbarton TOD] Specific Plan will result in significant and unavoidable impacts to the intersection of Willow Street and Enterprise Drive." MND at page 122. The certified Environmental Impact Report for the Dumbarton TOD Specific Plan ("Specific Plan EIR") made no such finding and the MND offers no evidence for such a finding.

D3

Instead, the Specific Plan EIR concludes that impacts to this intersection would be significant without mitigation, but that the recommended improvements set forth in Mitigation Measure 4-14.1 (improvement of the intersection into either a single-lane roundabout or a signalized intersection) would reduce any impacts to a level of insignificance. The impact is therefore not "unavoidable," but would be less than significant with implementation of Mitigation Measure 4-14.1, and the MND should be corrected to so state.

Again, thank you for the opportunity to provide these two comments on the MND. Ashland supports the Project and agrees that a mitigated negative declaration, tiering off of the Specific Plan EIR, would be the appropriate finding under CEQA for the Project.

Very truly yours,



Barry J. Shotts

cc: Kimberly Humphrey Czirr
Michael Dever
Kristina Woods

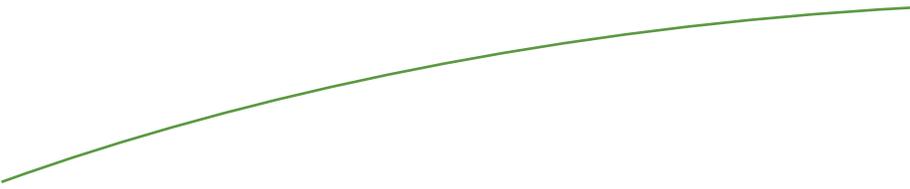
D3 Comments noted. The IS/MND inadvertently stated that the build-out of the Dumbarton TOD Specific Plan would result in significant and unavoidable traffic impacts at the intersection of Willow Street and Enterprise Drive. This statement has been corrected in the Final IS/MND to indicate that the traffic impacts at this intersection would be less than significant with the implementation of mitigation measure 4-14.1 contained in the certified Dumbarton TOD Specific Plan EIR.

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Section C

ERRATA



C. ERRATA

This section documents specific text changes to the Draft IS/MND that are to be considered as part of the Final IS/MND. This includes clarifications/corrections to the information in the Draft IS/MND to reflect the project description changes and other document revisions made in response to comments contained in Section B. Minor typographical corrections and formatting revisions are not shown in the Errata section. Also, the full revised IS/MND has been reproduced in “Track Changes” format and it is contained in the accompanying appendix to this Final IS/MND.

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REVISED PROJECT DESIGN

The Initial Study / Mitigated Negative Declaration for the SHH/FMC Project was circulated for public review January 28, 2014 through February 27, 2014. Following distribution, the project design analyzed in the Initial Study and technical documents was revised slightly(see revised Figure 3) to increase the total number of residential units provided within the existing project site footprint: the total residential units planned for construction increased from 159 units as presented in the circulated Initial Study to 163 units (an increase of 4 units), and the total number of parking spaces increased from 356 spaces to 362 spaces (an increase of 6 spaces). The circulated Initial Study identified 1,037 daily external vehicle trips to be generated, which is approximately 7 percent of the total traffic volume generated for the Specific Plan Area. With the currently proposed increase in residential units, the project will generate 1,053 external vehicle trips, which is approximately also 7 percent of the total traffic volume generated for the Specific Plan Area.

This Initial Study reflects the changes to the project description and considers the impacts in light of those changes. The technical studies prepared in support of the Initial Study (listed below) have been revised to reflect the new project design, and include an evaluation of impacts as a result of the currently proposed project. However, due to the relatively insignificant increase in residential units and traffic volumes, no new air quality or noise models were conducted. The traffic volume increase as a result of the additional residential units would not result in increased impacts to air quality, greenhouse gases, or traffic noise; therefore, additional analysis using new models is not necessary. No new impacts to any resources were identified as a result of the minimally revised project design.

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PROJECT SETTING AND SURROUNDING LAND USES

The project site is bisected by an abandoned railroad corridor. To the north of the former railroad corridor, the site is vacant, and to the south, it contains stockpiles of fill/construction materials and vehicle and truck trailer storage, and a 6,000-square-foot warehouse. The surrounding land uses are characterized by existing and former industrial parcels, with nearby business/professional centers and residential lots.

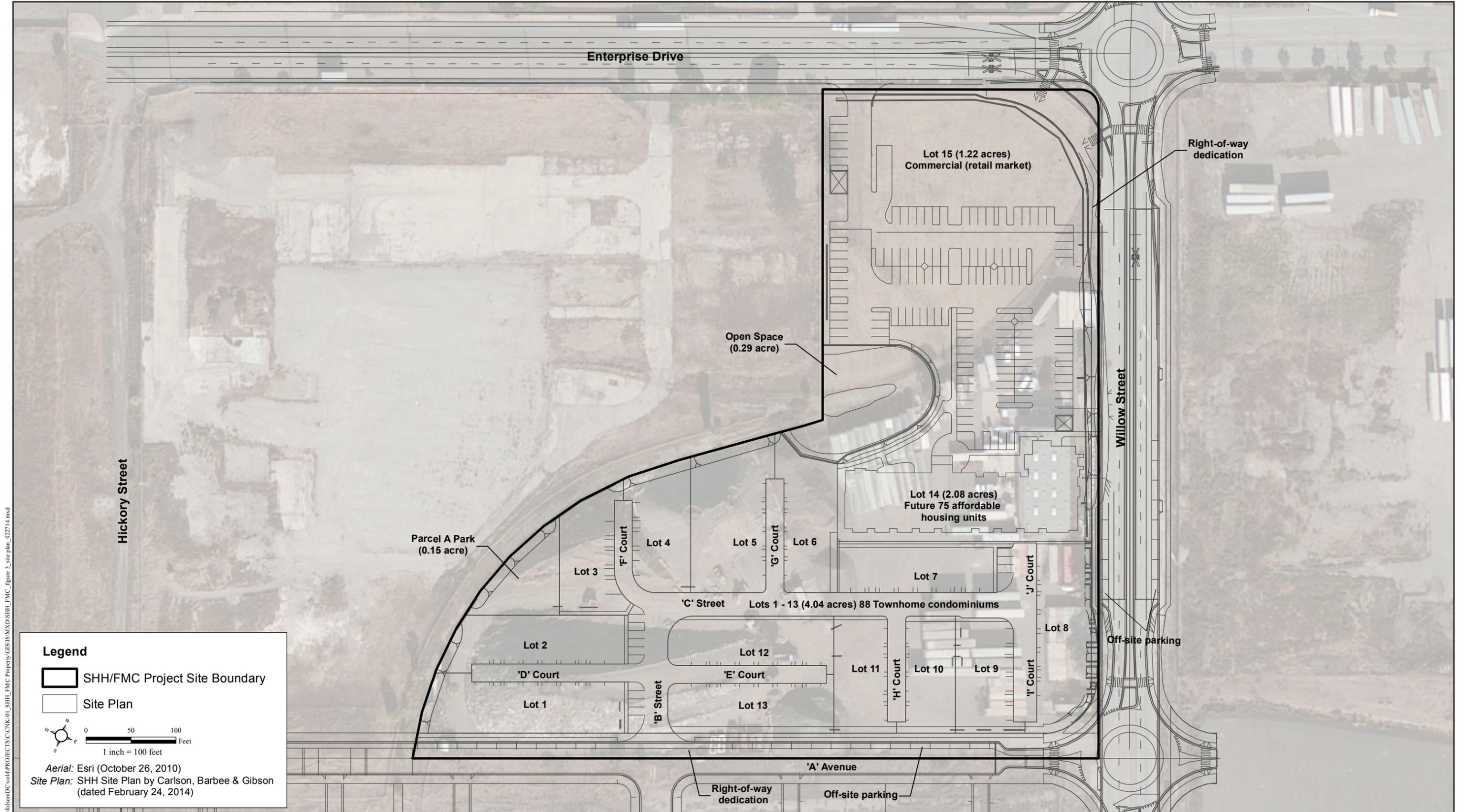
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PROPOSED PROJECT

The SHH/FMC Project site is 8.09 acres on which the project applicant is proposing to construct a mixed-use commercial and residential development. A townhome condominium development is proposed for construction on ~~4.084~~ acres in the southern portion of the site (Lots 1 – 143). A 0.175 acre park is proposed for construction in the townhome condominium neighborhood. A 2.08-acre lot in the center of the site (Lot 154) is proposed for development with affordable housing units. A total of 0.29 acre of Lot 154 is designated for open space as a buffer to avoid an existing isolated, seasonally inundated depression. The commercial development in the northern portion of the site will include a 15,000 square-foot retail market and 49 parking spaces on 1.22 acres (Lot 156)¹. A total of 0.745 acre will be dedicated to the City as right-of-way for off-site infrastructure improvements. Refer to **Figure 3** for the site design.

A total of ~~858~~ townhome condominium units in ~~143~~ buildings are proposed for construction to achieve a density of ~~242~~ dwelling units per acre on Lots 1 – 143. A total of ~~745~~ affordable housing units are proposed for construction on 1.72 developable acres on Lot 154 (~~2.08 acres – 0.29 acre of open space = 1.72 acres~~) to achieve a density of ~~434~~ dwelling units per acre. The site design for the lot will be part of future planning and construction, and is not included in the site plan for the proposed project. The total number of housing units proposed for construction is ~~15963~~ units on ~~6.16576~~ developable acres to achieve an overall site density of ~~268~~ housing units per acre. Additional proposed site improvements include: on and off-street parking, drive aisles, underground utilities, drainage structures, lighting, sidewalks, and landscaping.

¹ Vesting Tentative Map Tract 8157 SHH & FMC Properties prepared by Carlson, Barbee & Gibson, Inc. dated October 28, 2013.



Map date: Febraury 2014

Site Plan

SHH / FMC PROJECT
INITIAL STUDY

Figure 3

The project features are summarized in **Table 2**.

| Project Feature | Number units/spaces | Acres/square feet |
|--|------------------------------|--|
| <i>Townhome Condominium Neighborhood (Lots 1 – 13)</i> | | <u>4.084</u> acres |
| Residential units | 85 <u>8</u> units | 3.02 <u>3</u> acres |
| Garage parking spaces | 170 <u>6</u> spaces | --- |
| On-street parking spaces | 43 <u>4</u> spaces | --- |
| Neighborhood park | --- | 0.17 <u>5</u> acre |
| Streets | --- | 0.89 <u>6</u> acre |
| <i>Affordable Housing (Lot 154)</i> | | <u>2.08</u> acres |
| Residential units | 74 <u>5</u> units | 1.72 acres |
| <u>Housing parking spaces</u> | <u>56</u> spaces | --- |
| <u>Guest/on-street P parking spaces</u> | 94 <u>37</u> spaces | --- |
| Open Space Buffer | --- | 0.29 acre |
| <i>Commercial (Lot 165)</i> | | <u>1.22</u> acres |
| Retail market | --- | 15,000 square feet |
| Parking spaces | 49 spaces | --- |
| <i>Right-of-Way Dedication to City of Newark</i> | | <u>0.715</u> acre |
| Total residential | 159<u>63</u> units | <u>6.1612</u> acres (<u>5.76</u> developable acres) |
| Total parking spaces | 356 <u>362</u> spaces | --- |
| Total project area | --- | <u>8.09</u> acres |

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Residential Buildings

The applicant proposes to construct 143 two-story townhome condominium units on Lots 1 – 13. Each building will contain five to eight units: a total of ~~seventwo~~ seven 5-plex buildings, ~~one~~ five 6-plex buildings, ~~four~~ seven 7-plex buildings, and ~~two~~ six 8-plex buildings will be constructed. Four floor plan options are available for the units. Each unit will be three stories high, with a two-car garage on the ground level (and living space for three of the floor plans). The garage access will be provided at the rear of the building for all units; therefore, the buildings will be oriented so that the rear of the building faces towards the roadways in the neighborhood. Frequently, the

fronts of the buildings will not face roadways, but sidewalks will be constructed to provide access to the fronts of buildings. Buildings adjacent to the proposed park will be oriented so the fronts of the buildings face the park. Refer to the description of circulation in the next section for more information regarding driveway access.

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Circulation

Vehicular Access/Street Design

The townhome condominiums will be oriented along several local roadways serving the neighborhood, arranged in a grid pattern. 'B' Street will provide the only roadway access to the neighborhood, via 'A' Avenue. 'C' Street is an east/west oriented roadway that will function as the main arterial through the neighborhood. ~~'E', 'F', 'G', 'H', 'I', and 'J', and 'K' Courts~~ are north/south roadways that intersect 'C' Street. ~~'D' and 'E' Courts~~ ~~isare an~~ east/west roadways that intersects ~~E Court~~ 'B' Street. 'B' Street, 'C' Street, and ~~'E', 'F', 'I', and 'J', and 'K' Courts~~ will be 26-foot-wide. 'D,' 'E,' 'F,' 'G,' and 'H,' and ~~'I'~~ Courts will be 20-foot-wide.

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Parking

A total of 49 parking stalls will be provided for the commercial development. A total of 943 parking units are planned for the future affordable housing development – 56 parking units will be provided for residents, and 37 parking units will be provided for guests. A total of 220 parking units will be provided for the townhome condominiums, consisting of 176 off-street garage parking (each of the 88 units will feature a two car garage), and 44 will be provided for guests. The guest parking will be on-street parking, and will consist of 130 parking stalls on the project site, and 304 on-street parallel parking units along 'A' Avenue and Willow Street. ~~Ten~~ ~~Seven~~ (10) parking stalls will be provided along the west side of ~~'EB' Court~~ Street, 3 stalls along the west side of ~~'KJ' Court~~, 1922 parallel parking stalls along the north side of 'A' Avenue and 142 parallel parking stalls along both sides of Willow Street will provide additional guest parking for the townhome condominiums.

The townhome condominium neighborhood will include a pathway following the western perimeter of the neighborhood that will connect the retail market, the planned future affordable housing development, and the townhome condominium neighborhood with 'A' Avenue. Sidewalks or “pedestrian paseos” will be provided along 'B' Street that would connect with

sidewalks along Avenue 'A,' and along the fronts of buildings. Pedestrian access to 'A' Avenue will be provided from the southern terminus of 'E,' 'GH,' and 'I,' and 'J' Courts. Buildings facing 'A' Avenue and Willow Drive will directly access the off-site sidewalks along those roadways.

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Fire Access

The minimum width available for driving or turning movements through the project site is 20 feet. 'D,' 'E,' 'F,' 'G,' and 'H,' and 'I' Courts are 20 feet wide, and the turning radius at the intersections of 'C' Street with 'B' Street, and 'E,' 'FI,' and 'J,' and 'K' Courts will allow a 20-foot-wide drive area for fire trucks.

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Hoover's button-celery (*Eryngium aristulatum* var. *hooveri*)

Federal Status – None

State Status – None

Other – CNPS List 1B.1

Hoover's button-celery is an annual or perennial herb that occurs in vernal pools ranging from 9 to 148 feet amsl. The known range of this species includes Alameda, San Benito, Santa Clara, San Diego and San Luis Obispo. This species blooms from July to August (CNPS 2013).

The isolated, seasonally inundated depression in the study area provides marginally suitable soil and hydrologic conditions for this species. The CNDDDB contains one reported occurrence of this species on the Newark quad from a 2013 observance approximately 500 feet northeast of the study area. The habitat of the documented occurrence is a disturbed lot with primarily ruderal species. The species was not observed in the study area during a survey of the seasonally inundated depression conducted during its blooming period (August) and there is no known record of this species in the study area. This species is presumed absent from the site.

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Dumbarton Mitigation Monitoring and Reporting Program Measure 4.4-1b (Historic Buildings and Structures)

The Specific Plan MMRP measure 4.4-1b specifies that prior to approval of Tentative Subdivision Maps for any development in the Specific Plan area, any buildings, structures, or the railroad directly affected by or within 100 meters (328 feet) of development shall be evaluated for inclusion in the NRHP by a qualified professional archaeologist. If the building or structure is considered eligible, then the resource will be evaluated for impacts. If not eligible, no mitigation measures would be required. The project site is not within 328 feet of the Union Pacific Railroad (formerly Southern Pacific Railroad), but it contains an existing warehouse that will be impacted by the project and will need to be evaluated prior to approval of the Tentative Subdivision Map.

As required by MMRP measure 4.4-1, the SHH/FMC site was evaluated for the potential occurrence of archaeological and historical resources (see Appendix J). It was determined that significant resources do not occur on site and that no further evaluation will be necessary. MMRP measure 4.4-1 has been satisfied subsequent to circulation of the Draft IS/MND and it has been concluded that with implementation of the above measures, impacts to cultural resources would be less than significant.

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Evaluation of Geology and Soils

Question a: Less than significant with project level mitigation incorporated

Because there are no identified active earthquake faults on the project site, there is no risk of ground rupture on the project site from known earthquake faults; however, there is a potential for moderate earthquake-induced ground shaking due to other identified earthquake off-site faults in the San Francisco Bay Area. This could threaten the integrity of the structures on the project site and the people occupying those structures. The project site may be underlain by potentially liquefiable soils, and contains backfill that could result in seismically-induced ground failure from an adequately substantial earthquake from off-site faults. Due to the relatively flat topography of the project site, it is not susceptible to landslides as a result of seismic activity.

Impacts to people or structures as a result of seismic-related activity could be potentially significant. The impact of seismic-related ground shaking on the project site can be reduced if the project is constructed in compliance with the geotechnical engineering investigations and the

California Building Code requirements. ~~Measures contained in the~~ Specific Plan MMRP mitigation measure 4.5-1 will be implemented to reduce seismic-related activity impacts to a ~~less than significant~~ less than significant level. The issue of potential liquefaction will likewise be reduced by implementing Specific Plan MMRP mitigation measure 4.5-2.

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City of Newark Climate Action Plan

The City of Newark has adopted a Climate Action Plan to identify and evaluate feasible and effective policies to reduce GHG emissions in order to reduce energy costs, protect air quality, and improve the economy and the environment. The plan identifies a 5 percent GHG reduction target from 2005 municipal emissions by July 2012, a 5 percent reduction in city and community emissions by July 2015, and a 15 percent decrease in communitywide emissions levels by 2020. Data collected by the City through the GHG monitoring process shows that the City has already achieved the first two of these goals. In response to potential effects of climate change, the City has committed to working with regional agencies including the Alameda County Flood Control District and the Bay Conservation and Development Commission (BCDC) to adapt to the future effects of climate change on the area, including any rise in sea levels, effects of snowpack reduction on water supply, extreme weather events, and exacerbated air pollution.

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The proposed land uses and work plan will be approved by the San Francisco RWQCB prior to project approval. The Specific Plan MMRP measures 4.7-1a-c as well as measure 4.5-3 will be implemented to avoid, minimize, and mitigate impacts to the public and the environment as a result of hazardous materials.

Dumbarton Mitigation Monitoring and Reporting Program Measure 4.7-1a-c (Hazardous Materials)

The Specific Plan MMRP measure 4.7-1a specifies that prior to issuance of a building permit for any property within the Specific Plan area with residual environmental contamination, the agency with primary oversight shall have determined that the proposed land use and development for that property does not present an unacceptable risk to human health. This may be implemented through institutional controls, site specific measures, a risk management plan, and deed restrictions based on applicable cleanup standards.

Measure 4.7-1b requires that all areas be cleared prior to grading, and Measure 4.7-1c requires that soils imported into the Specific Plan area from off-site shall be tested for toxic or hazardous materials.

Measure 4.5-3 addresses the involvement of the Alameda County Water District in the monitoring and closure/deactivation of wells on the property.

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The SHH/FMC Project is proposing the following zoning designation for the APNs: APN 092-0115-011 would be commercial retail (R-FBC) with a 15,000 square foot retail building, APN 092-0115-012 would be high density residential (HDR-FBC) with ~~745~~ residential units on ~~1.72~~ developable acres to achieve a density of ~~434~~ dwelling units per acre, and APN 092-0115-013 would be medium-density residential (MDR-FBC) with ~~858~~ residential units on ~~4.048~~ acres to achieve a density of ~~212~~ dwelling units per acre. The total number of units planned for the SHH Property is ~~15963~~ (APNs 092-0115-012 and 092-0115-013).

The land use proposed by the project for APN 092-0115-011 is not consistent with the Specific Plan, but is consistent with the proposed land uses in the 2013 Updated General Plan. The land use proposed by the project for APN 092-0115-013 is consistent with the Specific Plan (which designates the land use as medium-high density residential), but is not consistent with the 2013 Updated General Plan. The proposed dwelling unit density on the parcel (~~212~~ units per acre) is consistent with the dwelling unit density for medium density residential identified in the Specific Plan (14-25 units per acre). The number of units proposed for construction on APN 092-0115-012 (~~745~~ units) exceeds the maximum number of units proposed for the parcel in the Specific Plan (48 units). ~~The following table~~ Table 11 compares the 2013 Draft Updated General Plan, City of Newark Zoning designation, the Dumbarton TOD Specific Plan land use designation and the proposed project.

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The medium density residential land use on APN 092-0115-013 would be inconsistent with the high density residential land use designation in the 2013 Updated General Plan, and the proposed number of units would achieve a density of ~~1922~~ units per acre, rather than the minimum density standard of 30 units per acre identified in the General Plan. Because the Dumbarton TOD Specific Plan designates the parcel as medium/high density residential, the proposed land use is consistent with the Specific Plan. The 2013 Updated General Plan is not approved; therefore, the

General Plan may be revised prior to approval to reflect the proposed residential land use density.

The number of dwelling units proposed for construction on APN 092-0115-012 (745 units) exceeds the maximum number of units allowed for that APN in the Specific Plan (48 units) by 267 units. The Specific Plan allows for a transfer of dwelling units between APNs, in the event there would not be a net increase in the total number of dwelling units permitted by the Specific Plan (2,500 units). Because the project is proposing to construct 130 fewer dwelling units on APN 092-0115-013 than is identified in the Specific Plan, those dwelling units could be transferred to APN-092-0115-012. ~~Seventeen~~Thirteen additional dwelling units would need to be transferred to APN 092-0115-012 to meet the proposed number of units on the parcel. A revised Unit Allocation Table would have to be filed with the City for each proposed transfer of dwelling units. A City of Newark approval of the density transfer is anticipated.

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Access and Parking

The proposed vehicular access and street design are described in detail in Section 3, *Description of Project*. The commercial development will be accessible directly from Enterprise Drive and Willow Street, and the townhome condominiums will be accessed from 'A' Avenue. A direct access point for the future affordable housing units has not been identified at this time.

The proposed parking is also described in Section 3 and summarized here. A total of 49 parking stalls will be provided for the commercial development. A total of 943 parking units are planned for the future affordable housing development – 56 parking units will be provided for residents, and 37 parking units will be provided for guests. A total of ~~243~~20 parking units will be provided for the townhome condominiums, consisting of 1706 off-street garage parking (each of the ~~858~~ units will feature a two car garage), and 434 will be provided for guests. The guest parking will be on-street parking, and will consist of 130 parking stalls on the project site, and 304 on-street parallel parking units along 'A' Avenue and Willow Street. ~~Ten (10)~~Seven parking stalls will be provided along the west side of 'E' Court, 3 stalls along the west side of 'KJ' Court, ~~1922~~ parallel parking stalls along the north side of 'A' Avenue and 142 parallel parking stalls along both sides of Willow Street will provide additional guest parking for the townhome condominiums.

Fire Access

The minimum width available for driving or turning movements through the project site is 20 feet. 'D,' ~~'E,' 'F,' 'G,' and 'H,' and 'I'~~ Courts are 20 feet wide, and the turning radius at the intersections of 'C' Street with 'B' Street, and ~~'E,' 'F,' and 'J,' and 'K'~~ Courts will allow a 20-foot-wide drive area for fire trucks.

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Implementation of the proposed project would result in an increase in traffic on Willow Street and Enterprise Drive, and buildout of the overall Specific Plan will result in significant and ~~unavoidable~~ mitigable impacts to the intersection at Willow Street and Enterprise Drive. ~~However~~ Also, the intersection is being evaluated and designed to accommodate the traffic generated by ~~the~~ Specific Plan buildout under a separate project in the Specific Plan area and is not the responsibility of the project applicant for the SHH/FMC Project. Although the proposed project will result in a relatively small increase in trips generated in the area in relation to the capacity of nearby streets, the SHH/FMC Project is consistent with the Specific Plan and the General Plan, and would not conflict with the City's operational standards as projected under those plans. The EIR prepared for the Dumbarton TOD Specific Plan identifies impacts to regional traffic as significant and unavoidable ~~mitigable~~. The SHH/FMC Project's contribution to these traffic ~~impacts~~ would be less than significant, and would not exceed the impacts already identified in the certified EIR. The following measure contained in the EIR prepared for the Dumbarton TOD Specific Plan will be implemented to minimize impacts on regional traffic.