

## 5. FINDINGS

The proposed 15 unit residential project would replace an existing church facility. The net change in trips would be the difference between the existing church trips and the project trips. The project would add a net increase of 8 a.m. peak hour trips and 12 p.m. peak hour trips on weekdays. Existing conditions at the study intersections are LOS A-B which is indicative of efficient traffic flows and minimal vehicle delays.

With the proposed project traffic, LOS would remain unchanged, with delays remaining the same or increasing slightly compared to existing conditions. The new project access road (stop control for the access road approach) would also operate at LOS A. Calculated vehicle queue lengths are minimal and would not increase with the added project trips.

The Birch Street/Project Access Road intersection was evaluated for installation of separate turn lanes. The intersection volumes would be well below the minimum threshold levels, therefore no turn lanes would be required. Sight distances appear to be adequate based on our existing field observations, exceeding the recommended sight distances based on the prevailing speeds.

Overall vehicle circulation and pedestrian access would be adequate based on the City of Newark guidelines for traffic.

**(2) Adopt a resolution approving an alternative means of compliance with the Inclusionary Housing Ordinance for the Birch Street Project; making findings supporting the use of an alternative means of compliance, and authorizing the Mayor to sign the Affordable Housing Implementation Agreement;**

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AN ALTERNATIVE MEANS OF COMPLIANCE WITH THE INCLUSIONARY HOUSING ORDINANCE FOR THE BIRCH STREET PROJECT; MAKING FINDINGS SUPPORTING THE USE OF AN ALTERNATIVE MEANS OF COMPLIANCE, AND AUTHORIZING THE MAYOR TO SIGN THE AFFORDABLE HOUSING IMPLEMENTATION AGREEMENT

WHEREAS, the Birch Street Project includes a condition that the project comply with the City's Inclusionary Housing Ordinance (Municipal Code Section 17.18); and

WHEREAS, the Inclusionary Housing Ordinance includes provisions for the application of an alternative means of compliance; and

WHEREAS, the payment of a \$25,000 Affordable Housing Fee per housing unit completed in the Birch Street project would provide funds to develop or preserve affordable housing in Newark and would be an alternative means of compliance with the Inclusionary Housing Ordinance; and

WHEREAS, the flexibly provided by the payment of the Affordable Housing Fee will allow the City to leverage funds with State and Federal programs to better address the needs of the Newark Community for affordable housing; and

WHEREAS, the funds from the Affordable Housing Fee will allow the City to target investment so that the achievement of affordable housing objectives can be coupled with the achievement of other Community objectives;

WHEREAS, the fee will allow the City to address the need for affordable housing more effectively than compliance with the ordinance and allow for the purchase of property in appropriate locations and the flexibility to leverage the funds with public and private sources to provide the type of housing that the community most needs;

WHEREAS, generally regional, State and Federal affordable housing funding or financing programs need an identified site to be competitive in the funding process. Without resources to acquire appropriate properties it is highly unlikely that the City would be able to effectively compete for these funds. Furthermore, this fee would allow the City to focus housing efforts on areas of particular need in the community and to tailor the level of housing affordability to have the greatest positive impact on those needing housing assistance.

WHEREAS, the funding provided by this development would allow the City to advance

project readiness of potential sites thus further improving the likelihood of receiving funding from Regional, State and Federal sources., the alternative means of compliance fulfills the purposes of the Inclusionary Housing Ordinance, and will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of the Ordinance.

WHEREAS, the alternative means of compliance will not unduly concentrate below market rate housing in one geographic area, because no particular project is now envisioned and the Planning Commission and City Council can monitor this concern when particular affordable housing developments are proposed; and

WHEREAS, the issue of concentration of future development of affordable housing is addressed because projects developed using the funds from the Affordable Housing Fee will be consistent with the General Plan and will require Planning Commission review and City Council approval.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark:

- a. The Affordable Housing Implementation Agreement for the Birch Street project, said agreement being on file with the City Clerk, is approved and the Mayor is authorized to sign the Agreement.
- b. That the City Council does find that:
  - i) The proposed alternative means of compliance fulfills the purposes of this, the Inclusionary Housing Ordinance, as set forth in Section 17.18.010; and
  - ii) The proposed alternative means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Section 17.18.030; and
  - iii) The proposed alternative means of compliance would better address the City's needs than compliance with the requirements of Section 17.18.030; and
  - iv) The proposed alternative means of compliance will not unduly concentrate below market rate housing in one geographic area.

## AFFORDABLE HOUSING IMPLEMENTATION AGREEMENT

THIS AFFORDABLE HOUSING IMPLEMENTATION AGREEMENT (“**Agreement**”) is made as of \_\_\_\_\_, 2014, by and between the CITY OF NEWARK, a California municipal corporation (the “**City**”), and Mission Peak Homes, Inc. a California corporation (the “**Developer**”). The City and Developer may be referred to herein individually as the “**Party**” or collectively as the “**Parties**.” This Agreement shall become operative and commence upon the date on which this Agreement has been (i) executed by Developer, and (ii) signed by the Mayor or his or her designee (the “**Effective Date**”).

### RECITALS

A. Developer is the owner of, or is in escrow to purchase, approximately (1.82.00) acres, more or less, of real property located in the City of Newark, County of Alameda, State of California, commonly known as 38517 Birch Street (APN 092A-2356-037) and more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by this reference (the “**Properties**”).

B. On June XX, 2014, the City Council of the City (the “**City Council**”) approved the following land use approvals and entitlements to construct 15 single family homes on the Properties: E-13-30, Mitigated Negative Declaration (“**MND**”) under the California Environmental Quality Act (“**CEQA**”); P-13-29, a Planned Unit Development (PUD); U-13-28, a Conditional Use Permit; and TTM-13-27, Tentative Tract Map 8165.

C. Developer plans to develop 15 single family homes and lots on the Property, (the “**Project**”), as depicted on the Site Plan attached hereto as Exhibit B and incorporated herein by this reference (“**Site Plan**”). The Project involves approval of Tentative Tract Map 8165, TTM-13-27, and approval of a Planned Unit Development, P-13-29, and U-13-28, a Conditional Use Permit, all as evaluated in the adopted MND.

D. The City included a condition of approval that “Payment by developer to the City of an in-lieu fee for each residential unit within the project at the time of issuance of a Building Permit in the amount of \$25,000 will constitute the project’s compliance with the City’s Affordable Housing Program as set forth in Chapter 17.18 of the Newark Municipal Code.” Developer has voluntarily accepted those conditions and freely agreed to comply with the City’s Affordable Housing Program, and to forever waive any right to protest or challenge such conditions, requirements, fees, or exactions pursuant to the City’s Affordable Housing Program, for itself and its successors or assigns.

E. Chapter 17.18 of the Newark Municipal Code (the “**Code**”) generally requires developers to set-aside a minimum of 15% of the total number of dwelling units in a project as inclusionary units for very low, low, and moderate income households. The Code also authorizes alternative means of compliance with the City’s Affordable Housing Program, including land dedication, payment of in-lieu fees, or approval of an alternative housing program

consisting of any combination of alternative means of compliance in a binding document and form acceptable to the City Attorney.

F. The Parties have freely negotiated and the Developer has voluntarily proposed and intends to comply with the City's Affordable Housing Program and satisfy the agreed affordable housing obligations for the Project and Property by entering into this "Affordable Housing Implementation Agreement" which is intended as the binding and written agreement and recordable instrument providing for alternative means of compliance with the Affordable Housing Program contemplated by the Code, pursuant to which the Parties intend to satisfy the affordable housing obligations for the Project and Properties by allowing Developer to pay an in-lieu fee totaling Twenty-Five Thousand Dollars (\$25,000.00) for each unit within the Project (the "Fee"), payable at building permit issuance (the "**Alternative Means of Compliance**"), and the City agrees to allow and accept such payment as compliance with the Code.

G. On May 13, 2014, the Planning Commission of the City (the "**Planning Commission**") reviewed the Alternative Means of Compliance for compliance with the Code. The Planning Commission made the following findings and recommended approval of the Alternative Means of Compliance to the City Council: (i) the Alternative Means of Compliance fulfills the purposes of Chapter 17.18 as set forth in Code Section 17.18.010; (ii) the Alternative Means of Compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Code Section 17.18.030; (iii) the Alternative Means of Compliance would better address the City's needs than compliance with the requirements of Code Section 17.18.030; (iv) the Alternative Means of Compliance will not unduly concentrate below market rate housing in one geographic area; and (v) the Alternative Means of Compliance meets the conditions set forth in Section 17.18.050(D).

H. On \_\_\_\_\_, the City Council reviewed the Alternative Means of Compliance, considered the Planning Commission recommendation, and approved the Alternative Means of Compliance based on the following findings: (i) the Alternative Means of Compliance fulfills the purposes of Chapter 17.18 as set forth in Code Section 17.18.010; (ii) the Alternative Means of Compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Code Section 17.18.030; (iii) the Alternative Means of Compliance would better address the City's needs than compliance with the requirements of Code Section 17.18.030; (iv) the Alternative Means of Compliance will not unduly concentrate below market rate housing in one geographic area; and (v) the Alternative Means of Compliance meets the conditions set forth in Section 17.18.050(D).

I. The City and Developer now desire to set forth the specific terms and conditions of the Alternative Means of Compliance, which will fully satisfy the Project's and Properties' inclusionary housing obligations under the Code and in connection with development of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

1. **Development of the Properties.** Notwithstanding anything set forth in this Agreement to the contrary, unless the Project is developed on the Properties, as evidenced by the issuance of the first building permit for a dwelling unit and commencement of construction of such dwelling unit, the Developer is not obligated by the terms of this Agreement to affirmatively act to develop all or any portion of the Project, proceed with the Alternative Means of Compliance (including but not limited to payment of the Fee), pay any sums of money, indemnify any Party, or to otherwise meet or perform any obligation with respect to the Project and the Alternative Means of Compliance.

2. **Alternative Means of Compliance.** Developer's inclusionary housing obligations for the Project and the Properties shall be fully satisfied by timely and full payment of in-lieu fees to the City, totaling Twenty-Five Thousand Dollars (\$25,000.00) per Project unit for which a building permit is sought by Developer. The Developer's obligation to pay the Fee for each Project dwelling unit shall arise upon the issuance of a building permit for that Project dwelling unit. In no event shall the Fee be paid more than once for any Project dwelling unit.

3. **Voluntary Agreement for Compliance and Waiver of Protest or Rights to Challenge the Agreed In-Lieu Fees.** The Developer affirms and agrees that this Agreement represents the Developer's proposal to pay affordable housing in-lieu fees as an Alternative Means of Compliance with the City's Affordable Housing Program and for satisfaction in part of conditions included in the Previous Approvals, and that the amount of the fees as well as the basis for determining the amount of the fees provided by this Agreement is the result of voluntary agreement and negotiation. The Developer, for itself and its successors or assigns, hereby waives and disclaims any right to contest, protest, or challenge the fees and obligations to pay the fees as provided by this Agreement, including any rights or remedies that might otherwise be claimed under Sections 66020 or 66021 of the California Government Code.

4. **Modification, Amendment, Cancellation or Termination.**

4.1 **Amendment and Cancellation.** This Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City, exercised by the duly authorized representative of the City, and the Developer or their successors in interest, exercised by the duly authorized representative of the Developer or its successor.

4.2 **Modification.** The City Manager, with the consent of the Developer, may make minor, non-substantive modifications to the Agreement without the need for formal action by the City's Planning Commission or City Council.

4.3 **Written Modification.** Any changes, amendments or modifications to this Agreement must be in writing and must be signed by an authorized representative of the Parties to be effective.

5. **Defaults, Notice and Cure Periods, Events of Default and Remedies.**

5.1 **Default By the Developer.**

5.1.1 **Default.** If the Developer fails to pay the agreed fees in full and timely manner when due, or delays, protest or contests its fee payment obligations, then the City

shall have no obligation to issue certificates of occupancy or other approvals for development, use, or occupancy of the Project, unless and until such payment default or dispute is cured. If the Developer does not perform its obligations under this Agreement in a timely manner, the City may exercise all rights and remedies provided in this Agreement or by applicable law, provided the City complies with the notice and cure provisions in this Agreement.

5.1.2 **Notice of Default.** If the Developer does not perform its obligations under this Agreement in a timely manner, the City through the City Manager may submit to the Developer a written notice of default in the manner prescribed in Section 9(a) identifying with specificity those obligations of the Developer under this Agreement which have not been timely performed. Upon receipt of any such written notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of any such written notice of default and shall complete the cure of any such default(s) no later than thirty (30) days after receipt of any such written notice of default, or if such default(s) is not capable of being cured within thirty (30) days, no later than sixty (60) days after receipt of any such written notice of default, provided the Developer commences the cure of any such default(s) within such thirty (30) day period and thereafter diligently pursues such cure at all times until any such default(s) is cured.

5.1.3 **Failure to Cure Default Procedure.** If after the cure period provided in Section 4.1.2 has elapsed, the City Manager finds and determines the Developer, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the City's Planning and Building Director shall make a report to the Planning Commission and then set a public hearing before the Planning Commission. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that the Developer, or its successors, transferees and/or assigns, as the case may be, has not cured a default under this Agreement, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Developer, and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council. Such right of appeal shall include, but not be limited to, an objection to the manner in which the City intends to modify this Agreement if the City intends as a result of a default of the Developer, or one of its successors or assigns, to modify this Agreement. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

5.1.4 **Termination or Modification of Agreements.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council, where no appeal is taken, after the expiration of the applicable appeal periods described herein.

5.1.5 **Lender Protection Provisions.**

5.1.5.1 **Notice of Default.** In addition to the notice provisions set forth in Section 4.1.2, the City shall send a copy of any notice of default sent to the Developer or any of its successors or assigns to any lender that has made a loan then secured by a deed of trust against the Properties, or a portion thereof, provided such lender shall have (a) delivered to

the City written notice in the manner provided in Section 8(a) of such lender's election to receive a copy of any such written notice of default and (b) provided to the City a recorded copy of any such deed of trust. Any such lender that makes a loan secured by a deed of trust against the Properties, or a portion thereof, and delivers a written notice to the City and provides the City with a recorded copy of any such deed of trust in accordance with the provisions of this Section 4.1.5.1 is herein referred to as a "**Qualified Lender.**"

5.1.5.2 **Right of a Qualified Lender to Cure a Default.** The City shall send a written notice of any Developer default to each Qualified Lender. From and after receipt of any such written notice of default, each Qualified Lender shall have the right to cure any such default within the same cure periods as provided to the Developer hereunder. If the nature of any such default is such that a Qualified Lender cannot reasonably cure any such default without being the fee owner of the Properties, or the applicable portion thereof, (as reasonably determined by the City), then so long as the Qualified Lender(s) is (are) diligently proceeding (as reasonably determined by the City) to foreclose the lien of its deed of trust against the fee owner of the Properties, or the applicable portion thereof, and after completing any such foreclosure promptly commences the cure of any such default and thereafter diligently pursues the cure of such default to completion, then such Qualified Lender shall have any additional sixty (60) days following such foreclosure to cure any such default.

5.1.6 **Exercise of City's Remedies.** Notwithstanding any other provision of this Agreement, and other than the City's right to suspend or withhold the issuance of occupancy certificates or other development permits for non-payment or dispute of the agreed fees, the City shall not exercise any right or remedy to cancel or amend this Agreement during any cure period.

## 5.2 **Default by the City.**

5.2.1 **Default.** In the event the City does not perform any obligations under this Agreement, the Developer shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided the Developer has first complied with the procedures in Section 4.2.2.

5.2.2 **Notice of Default.** Prior to the exercise of any other right or remedy arising out of a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed under this Agreement. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) no later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided the City shall continuously and diligently pursue each remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City is in default under this Agreement or whether the City has cured the default, or to seek the enforcement of this Agreement, the City and the Developer may submit the matter to negotiation/mediation pursuant to Section 8(n) of this Agreement.

5.3 **Monetary Damages.** The Developer and City acknowledge that neither the City nor the Developer would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application thereof. Both the City and the Developer agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the City and the Developer agree that neither shall be liable for monetary damages under or with respect to this Agreement or the application thereof and the City and the Developer covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement. This foregoing waiver shall not be deemed to apply to any fees or other monetary amounts specifically required to be paid by the Developer to the City or to be paid by the City to the Developer pursuant to this Agreement. This foregoing waiver is not intended to prohibit Developer from bringing any legal claim that Developer otherwise would have against City in the absence of this Agreement (i.e., non-contract claims and causes of action), nor to prevent the City from exercising any of its other remedies, authority, or police power under California law.

6. **Administration of Agreement and Resolution of Disputes.** The Developer shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project, the Alternative Means of Compliance or the interpretation and administration of this Agreement. All City Council decisions or determinations regarding the Project, the Alternative Means of Compliance or the administration of this Agreement shall also be subject to judicial review pursuant to Code of Civil Procedure section 1094.5, provided that, pursuant to Code of Civil Procedure section 1094.6, any such action must be filed in a court of competent jurisdiction not later than ninety (90) days after the date on which the City Council's decision becomes final. In addition, in the event the Developer and the City cannot agree whether a default on the part of the Developer, or any of its successors or assigns, under this Agreement exists or whether or not any such default has been cured, then the City or the Developer may submit the matter to negotiation/mediation pursuant to Section 9(n).

7. **Constructive Notice and Acceptance.** This Agreement, or a Memorandum thereof in form acceptable to the City Attorney, may be recorded in the public records of Alameda County against the Properties described herein, at the election of the City. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Properties is, and shall be, conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Properties.

8. **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the City, the Developer, and their respective successors and assigns. No other person or entity shall have any right of action based upon any provision of this Agreement.



(d) Further Assurances. The City and the Developer agree to perform, from time to time, such further acts and to execute and deliver such further instruments reasonably to effect the intents and purposes of this Agreement, provided that the intended obligations of the City and the Developer are not thereby modified.

(e) Assignment. This Agreement shall inure to the benefit of and bind the successors and assigns of the City and the Developer, and may be assigned by either the City or the Developer to any party or parties purchasing all or any part of the fee interest in the Properties. The provisions of this Section 9(e) shall be self-executing and shall not require the execution or recordation of any further document or instrument. Upon the sale, transfer or assignment of all or a portion of the Properties to a party that acquires fee title to the Properties or any portion thereof, Developer shall be released of all obligations under this Agreement; provided, however, that Developer shall not be released from liability for any default of Developer committed prior to the date of the transfer.

(f) Negation of Agency. The City and the Developer acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer joint venturers, partners or employer/employee.

(g) Attorney's Fees. In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief or other litigation, the prevailing Party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses.

(h) Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought.

(i) Authority. Each of the individuals executing this Agreement verifies that each of them has the authority to enter into this Agreement, that the necessary resolutions or other consents have been passed or obtained, and that this Agreement shall be binding on the Parties for whom each of them is signing.

(j) Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that anyone or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the reasonable control of the Party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor, subcontractor, or consultant to timely perform (so long as Developer is not otherwise in default of any obligation under this Agreement and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform), riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, or unusually severe

weather. An extension of time for any such cause (a “**Force Majeure Delay**”) shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

(k) Paragraph Headings. The paragraph and section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(l) Time of Essence. Time is of the essence of this Agreement, and all performances required hereunder shall be completed within the time periods specified. Any failure of performance shall be deemed as a material breach of this Agreement.

(m) Counterparts. This Agreement and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(n) Alternative Dispute Resolution Procedure.

(1) Dispute. If a dispute arises concerning whether the City or the Developer or any of Developer’s successors or assigns is in default under this Agreement or whether any such default has been cured or whether or not a dispute is subject to this Section (a “**Dispute**”), then such dispute shall be subject to negotiation between the Parties to this Agreement, and if then not resolved shall be subject to nonbinding mediation, both as set forth below, before either Party may institute legal proceedings.

(2) Negotiation. If a Dispute arises, the Parties agree to negotiate in good faith to resolve the Dispute. If the negotiations do not resolve the Dispute to the reasonable satisfaction of the Parties within 15 days from a written request for a negotiation, then each Party shall give notice to the other Party identifying an official or executive officer who has authority to resolve the Dispute to meet in person with the other Party’s designated official or executive officer who is similarly authorized. The designated persons identified by each Party shall meet in person for one day within the 20-day period following the expiration of the 15-day period and the designated persons shall attempt in good faith to resolve the Dispute. If the designated persons are unable to resolve the Dispute, then the Dispute shall be submitted to non-binding mediation.

(3) Mediation.

(i) Within 15 days following the designated persons’ meeting described in Section 9(n)(2), above, either Party may initiate non-binding mediation (the “**Mediation**”), conducted by Judicial Arbitration & Mediation Services, Inc. (“**JAMS**”) or other agreed upon mediator. Either Party may initiate the Mediation by written notice to the other Party.

(ii) The mediator shall be a retired judge or other mediator, selected by mutual agreement of the Parties, and if they cannot agree within 15 days after the Mediation notice, the mediator shall be selected through the procedures regularly followed by JAMS. The Mediation shall be held within 15 days after the Mediator is selected, or a longer period as the Parties and the mediator mutually decide.

(iii) If the Dispute is not fully resolved by mutual agreement of the Parties within 15 days after completion of the Mediation, then either Party may institute legal proceedings in Alameda County Superior Court or U.S. District Court, California Northern District.

(iv) The Parties shall bear equally the cost of the mediator's fees and expenses, but each Party shall pay its own attorneys' and expert witness fees and any other associated costs in connection with the mediation.

(4) Preservation of Rights. Nothing in this Section shall limit a Party's right to seek an injunction or restraining order from a court in circumstances where such equitable relief is deemed necessary by a Party to preserve such Party's rights.

(o) Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California.

(p) Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof.

(q) Interpretation. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has independently reviewed this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized.

[signatures on next page]

IN WITNESS WHEREOF, the City and the Developer hereto have each executed this Agreement as of the date first written above.

“DEVELOPER”

MISSION PEAK HOMES, INC., a California corporation

By: \_\_\_\_\_

Name: John S. Wong

Title: President

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for Mission Peak Homes, Inc.

“CITY”

CITY OF NEWARK,  
a California municipal corporation

\_\_\_\_\_  
Mayor, or his or her designee

ATTEST:

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City Clerk

APPROVED AS TO FORM:

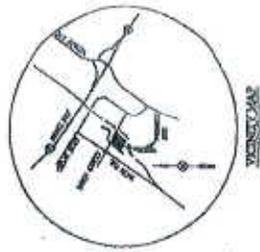
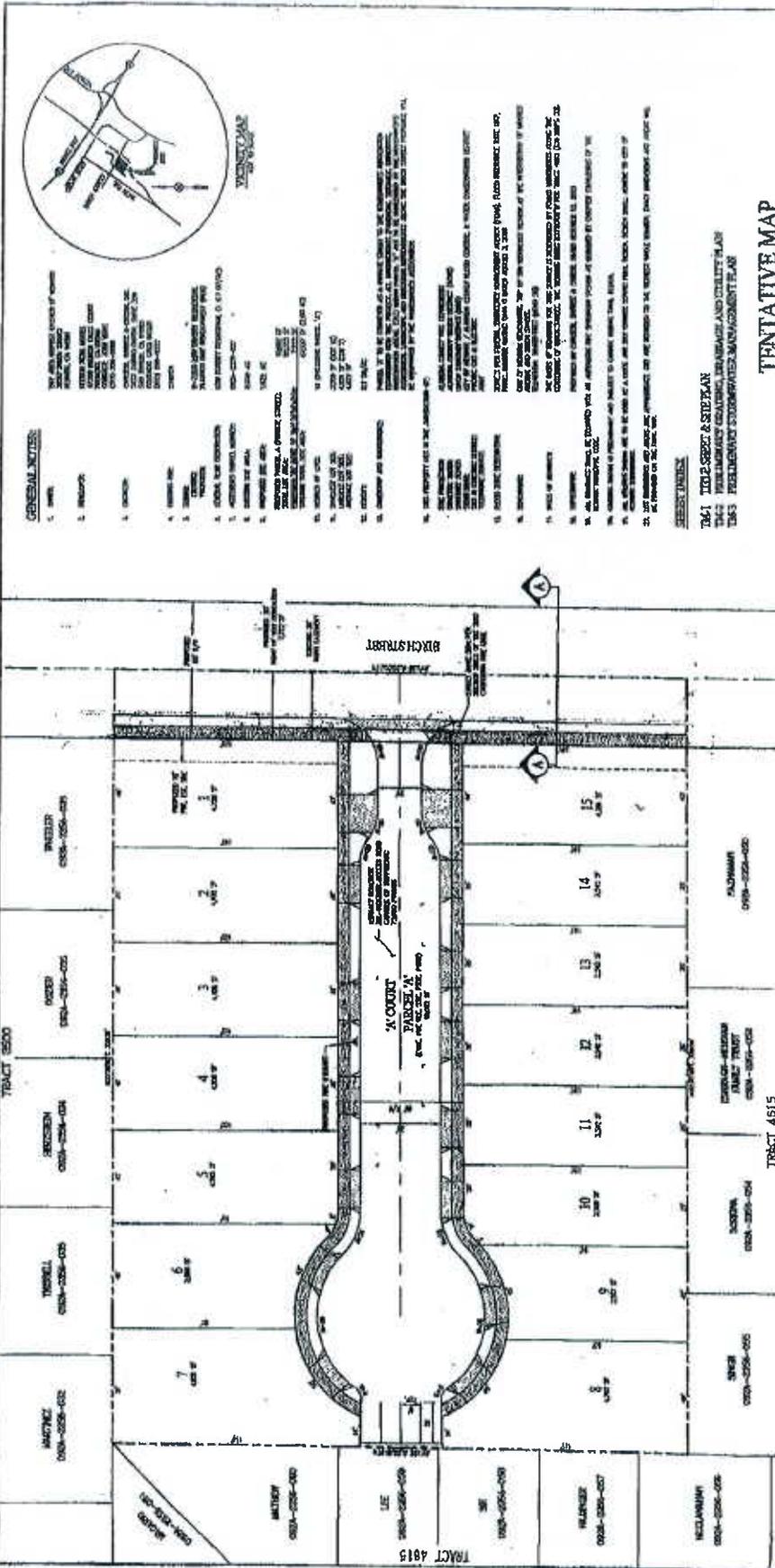
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City Attorney

**EXHIBIT "A" TO AFFORDABLE HOUSING AGREEMENT**

**LEGAL DESCRIPTION OF PROPERTIES**

[to be inserted]



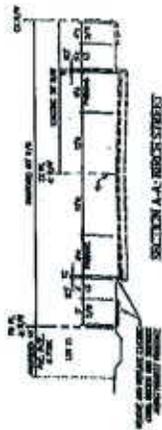
- GENERAL NOTES:**
1. ALL LOTS ARE SUBJECT TO THE CITY OF BERKELEY'S ZONING ORDINANCES AND THE CITY OF BERKELEY'S SUBDIVISION MAP ACT.
  2. THE CITY OF BERKELEY'S ZONING ORDINANCES AND THE CITY OF BERKELEY'S SUBDIVISION MAP ACT ARE SUBJECT TO THE CITY OF BERKELEY'S ZONING ORDINANCES AND THE CITY OF BERKELEY'S SUBDIVISION MAP ACT.
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**TENTATIVE MAP  
TITLE SHEET & SITE PLAN  
TRACT 8165  
BIRCH STREET**

CITY OF BERKELEY ALAMOSA CORREY CALIFORNIA

SHEET NUMBER  
**TM-1**  
OF 3 SHEETS

City of Berkeley  
Planning Department



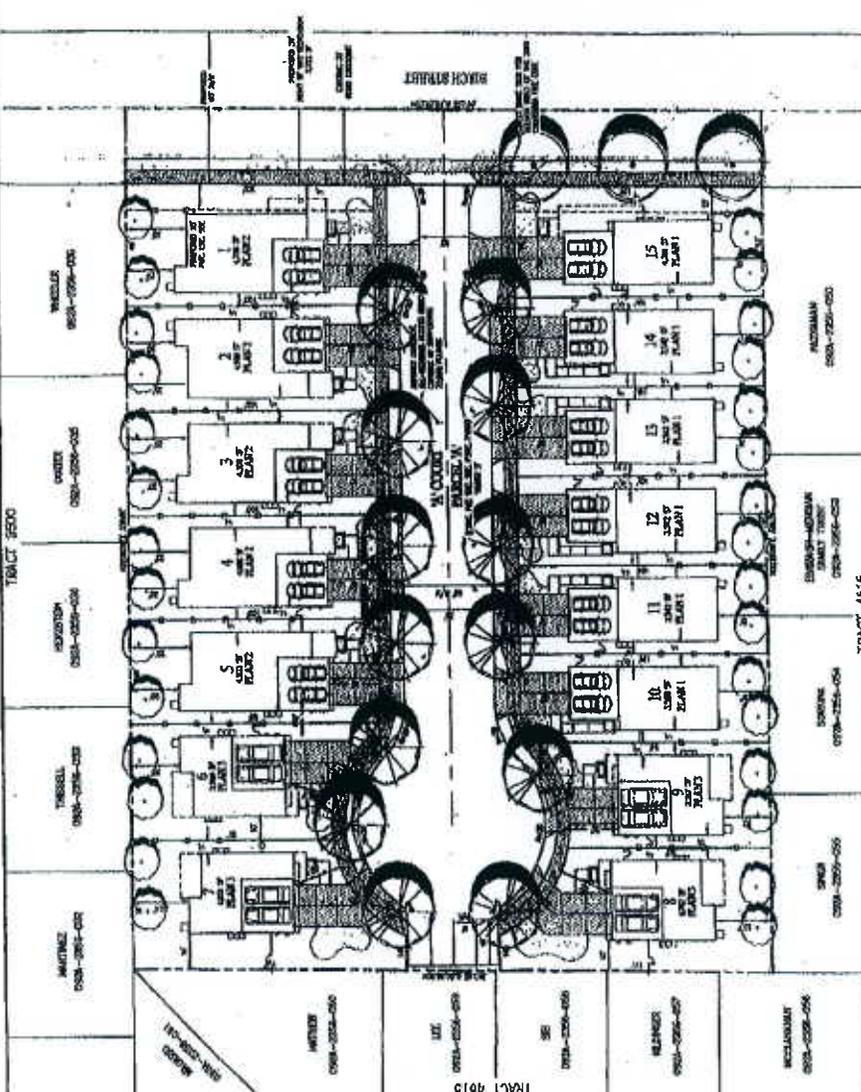
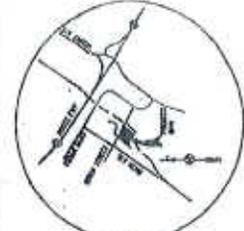
**EXHIBIT "B" TO AFFORDABLE HOUSING IMPLEMENTATION AGREEMENT**

**SITE PLAN**

[to be inserted]

**GENERAL NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF BIRMINGHAM, ALABAMA, ORDINANCES AND SPECIFICATIONS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF BIRMINGHAM, ALABAMA, AND THE ALABAMA DEPARTMENT OF REVENUE.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF BIRMINGHAM, ALABAMA, AND THE ALABAMA DEPARTMENT OF REVENUE.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF BIRMINGHAM, ALABAMA, AND THE ALABAMA DEPARTMENT OF REVENUE.
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16. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF BIRMINGHAM, ALABAMA, AND THE ALABAMA DEPARTMENT OF REVENUE.
17. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF BIRMINGHAM, ALABAMA, AND THE ALABAMA DEPARTMENT OF REVENUE.
18. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF BIRMINGHAM, ALABAMA, AND THE ALABAMA DEPARTMENT OF REVENUE.
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20. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF BIRMINGHAM, ALABAMA, AND THE ALABAMA DEPARTMENT OF REVENUE.



**ARCHITECTURAL SITE PLAN  
TRACT 8165**

**BIRCH STREET**

CITY OF BIRMINGHAM ALABAMA COUNTY CALDWELL

SCALE 1/4" = 1'-0"

DATE: 12/15/2010

PROJECT: TRACT 8165

DESIGNER: [Logo]

PD-1

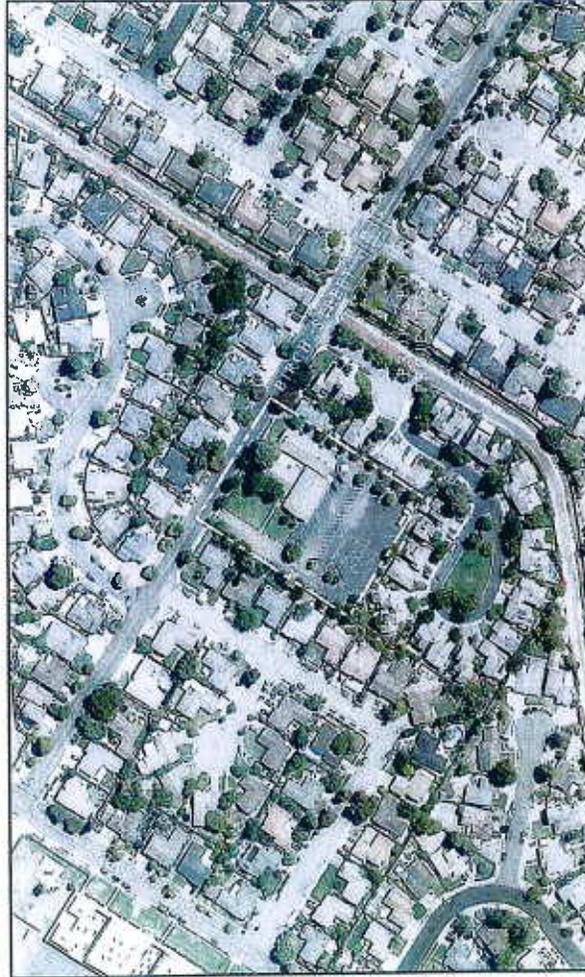
**EXHIBIT B**

**(3) By motion, approve P-13-29, a planned unit development, and U-13-28, a conditional use permit, and**

# BIRCH STREET

## PLANNED UNIT DEVELOPMENT

CITY OF NEWARK, CALIFORNIA



1.00 - AC  
 100+ UNITS  
 3-700+ LOW DENSITY RESIDENTIAL  
 PLANNED UNIT DEVELOPMENT (PUD)  
 15 SINGLE FAMILY DETACHED RESIDENTIAL LOTS

**PROJECT INFORMATION:**  
 EXISTING SITE AREA:  
 1.00 AC  
 EXISTING ZONING:  
 R100000 ZONING  
 PROPOSED LAND USE:  
 15 SINGLE FAMILY DETACHED RESIDENTIAL LOTS

**PROJECT TEAM:**

**CLIENT:**

MISSION PEAK HOMES  
 JOHN WOODS  
 4720 SUSSION FALLS COURT  
 FREDRICK, CA 94701  
 (510) 354-8888

**CIVIL ENGINEER:**

CORLSON, BARBEE & GIBSON, INC.  
 GREG MILLER  
 783 GAMING BARON, SUITE 350  
 SAN RAMON, CA 94583  
 (925) 866-0322

**ARCHITECT:**

STEVY GROUP, INC.  
 JILL D. WILLIAMS  
 308 SECOND STREET, SUITE 200  
 OAKLAND, CA 94612  
 (510) 732-2000

**LANDSCAPE ARCHITECT:**

VAN DORN ABILD LANDSCAPE ARCHITECTS INC.  
 RHIAN VAN DORN  
 81 4TH STREET  
 SAN FRANCISCO, CA 94103  
 (415) 864-1811

**SOILS ENGINEER:**

CORNERSTONE EARTH GROUP  
 JOHN L. DYER  
 1700 SPRINGBROOK RIDGE, SUITE 101  
 WALNUT CREEK, CA 94597  
 (925) 948-3100

**SHEET INDEX**

T-1 COVER SHEET  
 L1.0 SITE ILLUSTRATIVE  
 DWG. PLANS - SITE PLAN  
 TPA-1 ARCHITECTURAL SITE PLAN  
 CIVIL PLANS - UTILITIES AND  
 TPA-2 UTILITIES AND SITE PLAN  
 TPA-3 PELLERINUTY ROAD, CELEBRATE A UTILITY PLAN  
 TPA-4 PELLERINUTY ROAD, CELEBRATE A UTILITY PLAN  
 CONCEPTUAL LANDSCAPE PLANS  
 L1.8 CONCEPTUAL LANDSCAPE PLAN  
 L1.9 CONCEPTUAL LANDSCAPE DETAILS  
 L2.0 CONCEPTUAL PLANT LIST  
 L3.0 CONCEPTUAL PLANT MAINTENANCE  
 L4.0 CONCEPTUAL IRRIGATION PLAN  
 ARCHITECTURAL PLANS  
 A1.00 PLAN 1 FLOOR PLANS  
 A1.10 PLAN 1 - 'A' EXTERIOR ELEVATIONS  
 A1.20 PLAN 1 - 'B' EXTERIOR ELEVATIONS  
 A1.30 PLAN 1 - 'C' EXTERIOR ELEVATIONS  
 A1.40 PLAN 1 - 'D' EXTERIOR ELEVATIONS  
 A2.00 PLAN 2 FLOOR PLANS  
 A2.10 PLAN 2 - 'A' EXTERIOR ELEVATIONS  
 A2.20 PLAN 2 - 'B' EXTERIOR ELEVATIONS  
 A2.30 PLAN 2 - 'C' EXTERIOR ELEVATIONS  
 A2.40 PLAN 2 - 'D' EXTERIOR ELEVATIONS  
 A3.00 PLAN 3 FLOOR PLANS  
 A3.10 PLAN 3 - 'A' EXTERIOR ELEVATIONS  
 A3.20 PLAN 3 - 'B' EXTERIOR ELEVATIONS



**cbg**  
 Corlson, Barbee & Gibson, Inc.  
 1831 Commercial Blvd, Suite 200, Walnut Creek, CA 94597  
 (925) 948-3100 • FAX (925) 948-3100  
 www.corlsonbarbee.com

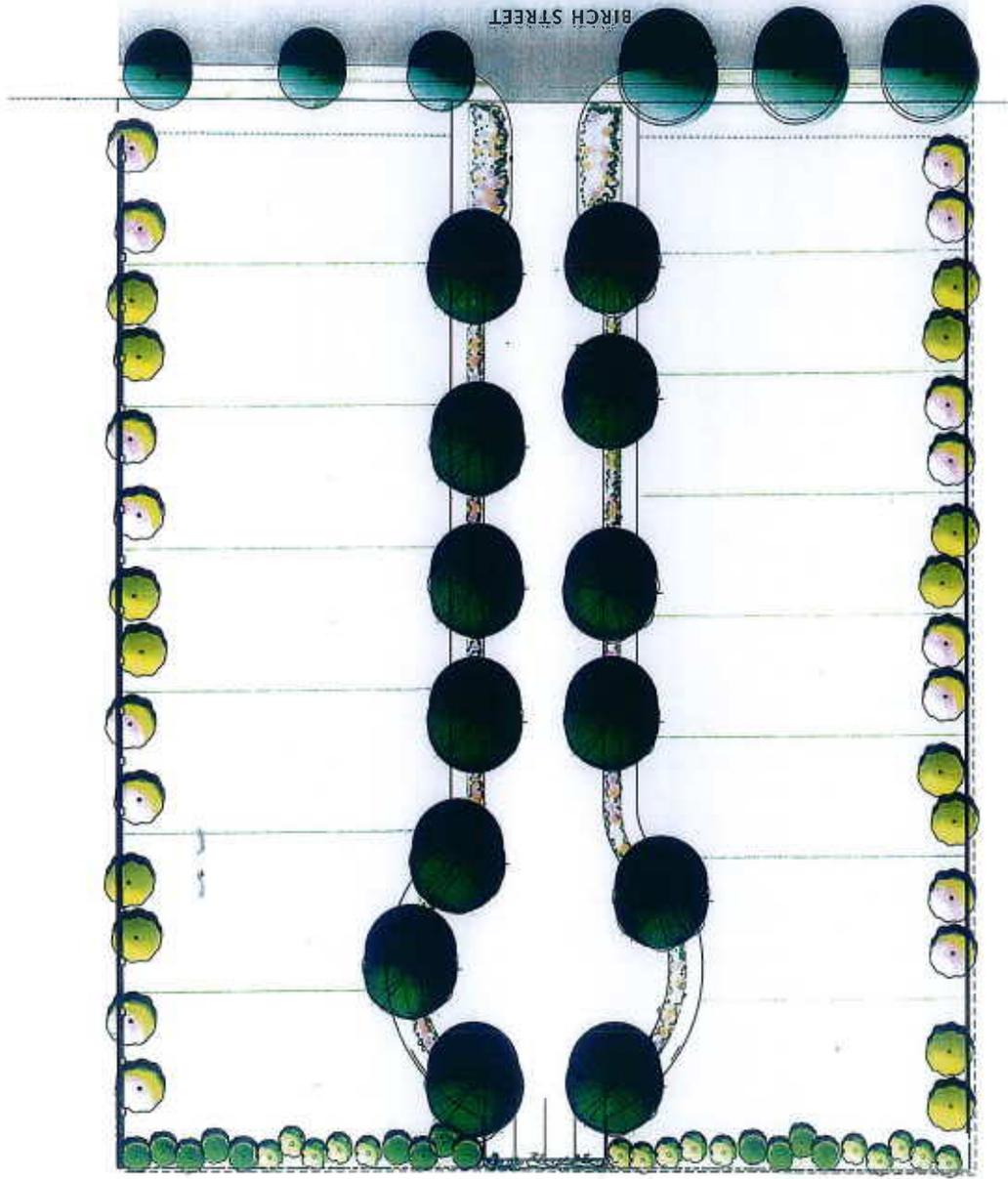


VAN DORN ABILD  
 LANDSCAPE ARCHITECTS, INC.  
 81 4TH STREET, SUITE 100  
 SAN FRANCISCO, CA 94103

**CORNERSTONE**  
**EARTH GROUP**  
**EXPERT**

T-1

MAY 2014




**VAN DORN ABED**  
 LANDSCAPE ARCHITECTS, INC.  
 81 HITCH ST., SAN FRANCISCO, CA  
 415 778-1100 FAX 415 778-1101

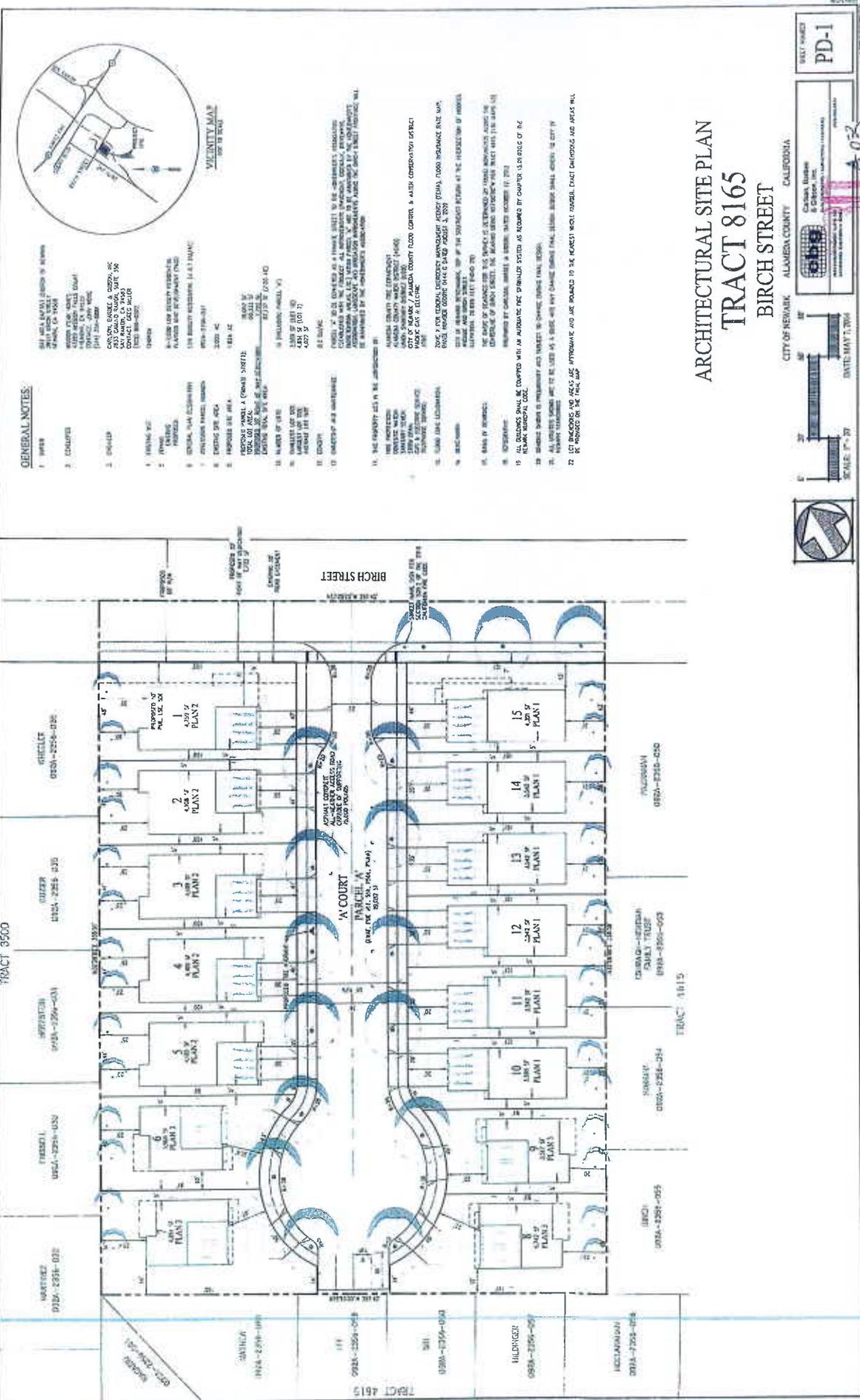
MISSION PEAK HOMES  
**BIRCH STREET**  
 NEWARK, CALIFORNIA

**SITE ILLUSTRATIVE**  
 SCALE: 1/16" = 1'-0"

DATE: 05/07/14



L1.0



**GENERAL NOTES:**

1. SHEET
2. DATE
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**ARCHITECTURAL SITE PLAN  
TRACT 8165  
BIRCH STREET**

SCALE: 1" = 20'

CITY OF NEWARK  
ALAMEDA COUNTY CALIFORNIA

CITY OF NEWARK  
ALAMEDA COUNTY CALIFORNIA

CITY OF NEWARK  
ALAMEDA COUNTY CALIFORNIA

**TRACT 8165**

114-2394-001

114-2394-002

114-2394-003

114-2394-004

114-2394-005

114-2394-006

114-2394-007

114-2394-008

114-2394-009

114-2394-010

114-2394-011

114-2394-012

114-2394-013

114-2394-014

114-2394-015

**TRACT 8165**

114-2394-016

114-2394-017

114-2394-018

114-2394-019

114-2394-020

114-2394-021

114-2394-022

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114-2394-024

114-2394-025

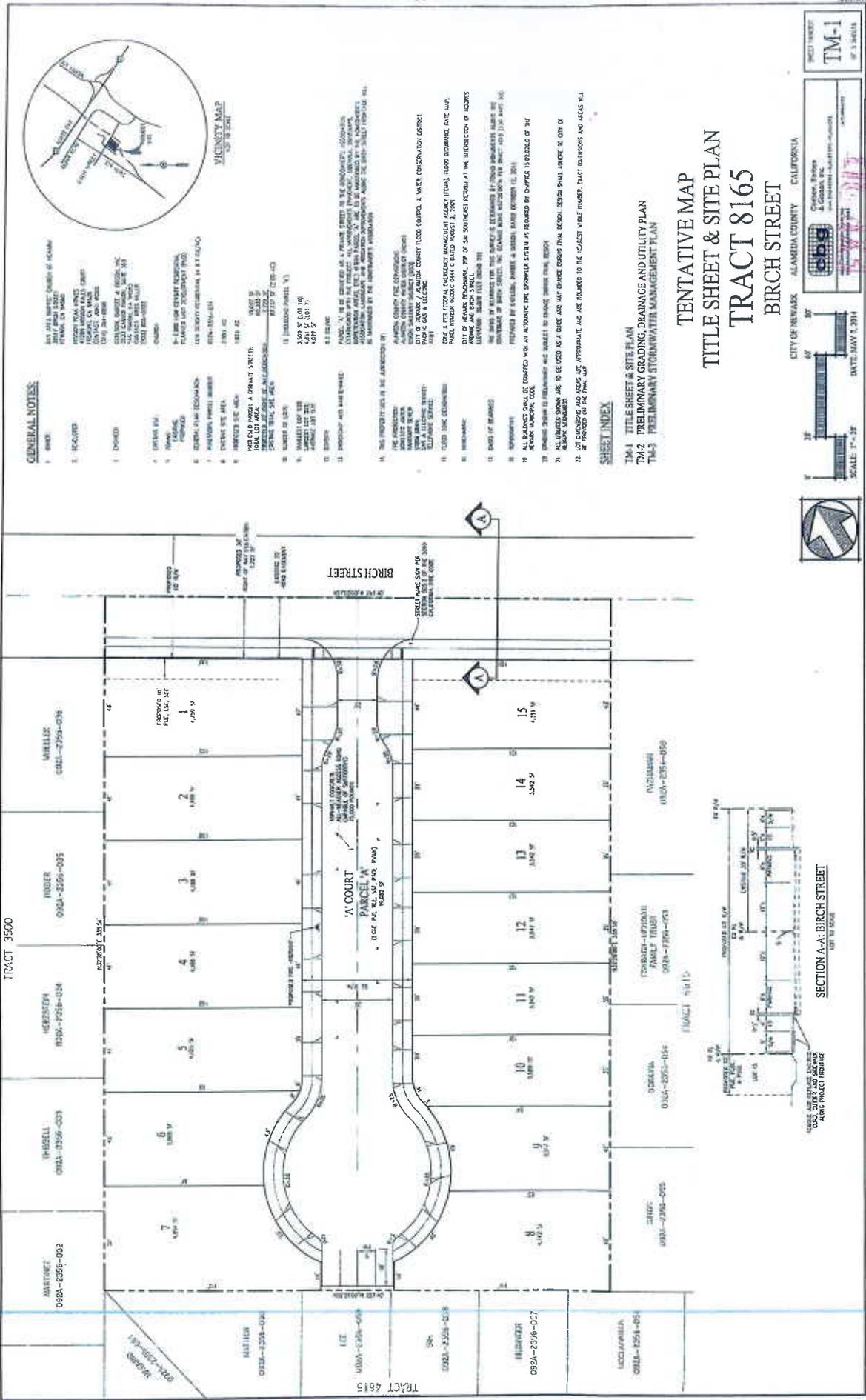
114-2394-026

114-2394-027

114-2394-028

114-2394-029

114-2394-030



**GENERAL NOTES:**

1. SEE:
  - a. ALL THE NEAREST CORNERS OF RECORD
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  - w. THE 1916 PLAT
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15. SPECIAL:
  - a. THE 1916 PLAT
  - b. THE 1916 PLAT
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  - y. THE 1916 PLAT
  - z. THE 1916 PLAT

TENTATIVE MAP  
TITLE SHEET & SITE PLAN  
TRACT 8165  
BIRCH STREET

TM-1 TITLE SHEET & SITE PLAN  
TM-2 PRELIMINARY GRADING DRAINAGE AND UTILITY PLAN  
TM-3 PRELIMINARY STORMWATER MANAGEMENT PLAN

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

DATE: MAY 2, 2011

SCALE: 1" = 20'

SECTION A-A: BIRCH STREET

TM-1

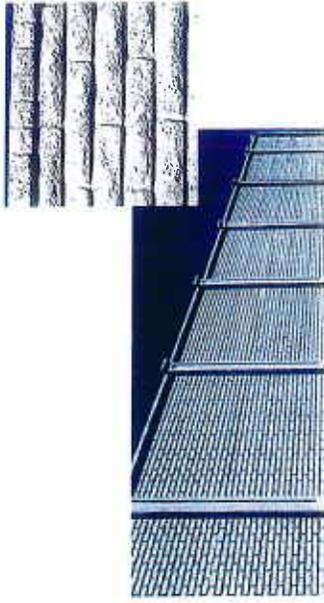
City of Newark  
Alameda County  
California

APR 11 2011

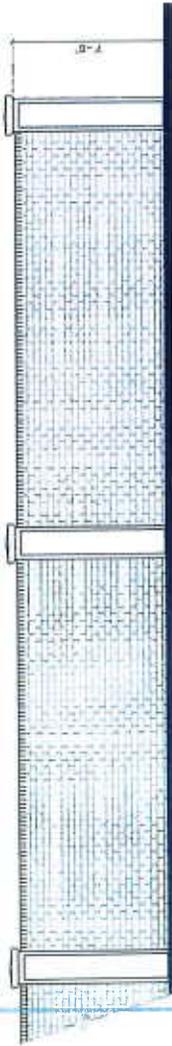








NOTES:  
 7' TALL PRECAST SOUNDWALL "SILVERSTONE" BY  
 OLD CASTLE PRECAST (FORMERLY SIERRA)  
 PRECAST  
 COLOR TO MATCH ARCHITECTURE.



**A** 7' TALL PRECAST WALL  
NOTES



NOTES:  
 POSTS AND KICKBOARD TO BE PRESSURE  
 TREATED CEDAR/SPINE. ALL OTHER WOOD TO BE  
 CLEAR HEART REDWOOD OR SELECT RED CEDAR  
 TO BE SELECTED & APPROVED BY OWNER.



**B** 7' TALL SOLID GOOD NEIGHBOR FENCE  
NOTES

**VAN DORN ABED**  
 LANDSCAPE ARCHITECTS, INC.  
 811 W 14TH ST., SAN FRANCISCO, CA  
 415 775 1100 FAX 415 775 1105

MISSION PEAK HOMES  
 BIRCH STREET  
 NEWARK, CALIFORNIA

CONCEPTUAL LANDSCAPE DETAILS  
 SCALE: AS NOTED

DATE: 05/07/14

L2.0

A-28





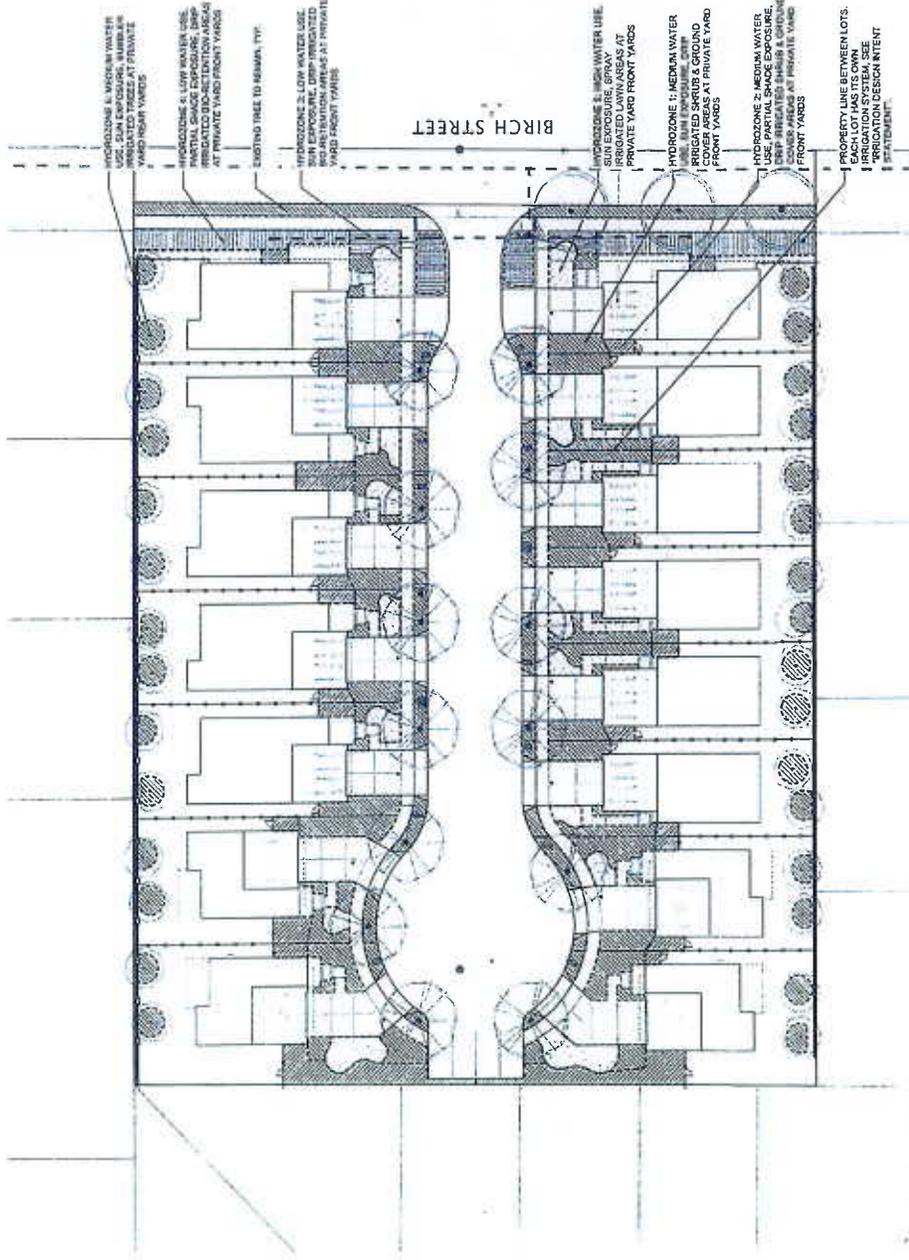
**HYDROZONE LEGEND**



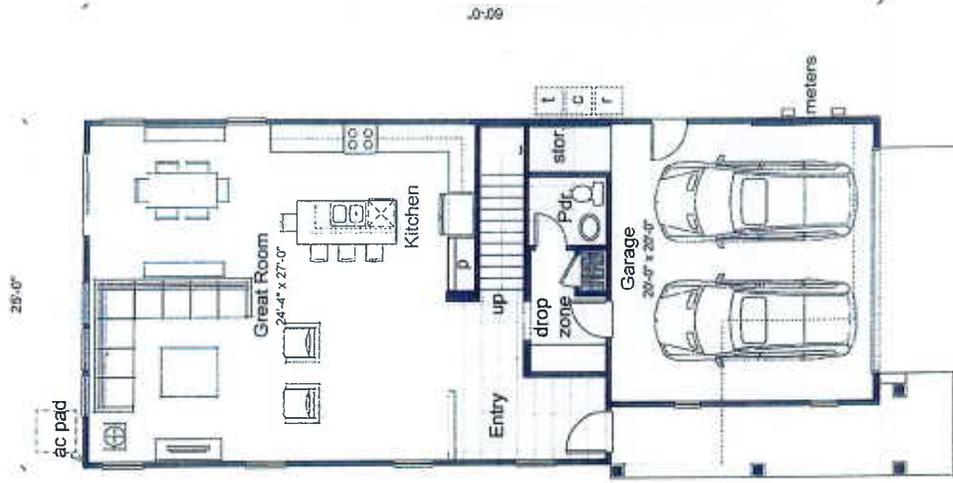
- HYDROZONE 1: MEDIUM WATER USE, SOIL EXPOSURE, DRY IRRIGATED SPRAY & WIND COVER AREAS AT PRIVATE YARD FRONT YARDS
- HYDROZONE 2: MEDIUM WATER USE, MEDIUM SHADE, BIOLOGIC SOIL, IRRIGATED SPRAY & GROUND COVER AREAS AT PRIVATE YARD FRONT YARDS
- HYDROZONE 3: LOW WATER USE, SOIL EXPOSURE, WIND COVER AREAS AT PRIVATE YARD FRONT YARDS
- HYDROZONE 4: LOW WATER USE, MEDIUM SHADE, BIOLOGIC SOIL, IRRIGATED SPRAY & GROUND COVER AREAS AT PRIVATE YARD FRONT YARDS
- HYDROZONE 5: HIGH WATER USE, SOIL EXPOSURE, SPRAY IRRIGATED LAWN AREAS AT PRIVATE YARD FRONT YARDS
- HYDROZONE 6: MEDIUM WATER USE, SOIL EXPOSURE, WIND COVER IRRIGATED TREES AT PRIVATE YARD FRONT YARDS

**IRRIGATION DESIGN INTENT STATEMENT**

EACH PROJECT LOT SHALL BE A CITY ZONE 16521 (RESIDENTIAL) ZONING DISTRICT. THE DESIGN AND CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN FRANCISCO'S SUSTAINABLE LANDSCAPE DESIGN AND CONSTRUCTION STANDARDS (SLS) AND THE CITY OF SAN FRANCISCO'S SUSTAINABLE LANDSCAPE DESIGN AND CONSTRUCTION STANDARDS (SLS) AND THE CITY OF SAN FRANCISCO'S SUSTAINABLE LANDSCAPE DESIGN AND CONSTRUCTION STANDARDS (SLS). THE DESIGN AND CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN FRANCISCO'S SUSTAINABLE LANDSCAPE DESIGN AND CONSTRUCTION STANDARDS (SLS) AND THE CITY OF SAN FRANCISCO'S SUSTAINABLE LANDSCAPE DESIGN AND CONSTRUCTION STANDARDS (SLS). THE DESIGN AND CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN FRANCISCO'S SUSTAINABLE LANDSCAPE DESIGN AND CONSTRUCTION STANDARDS (SLS) AND THE CITY OF SAN FRANCISCO'S SUSTAINABLE LANDSCAPE DESIGN AND CONSTRUCTION STANDARDS (SLS).



Appt



First Floor Plan  
4 Bedrooms/2.5 Baths  
Opt. Loft  
2,250 sf

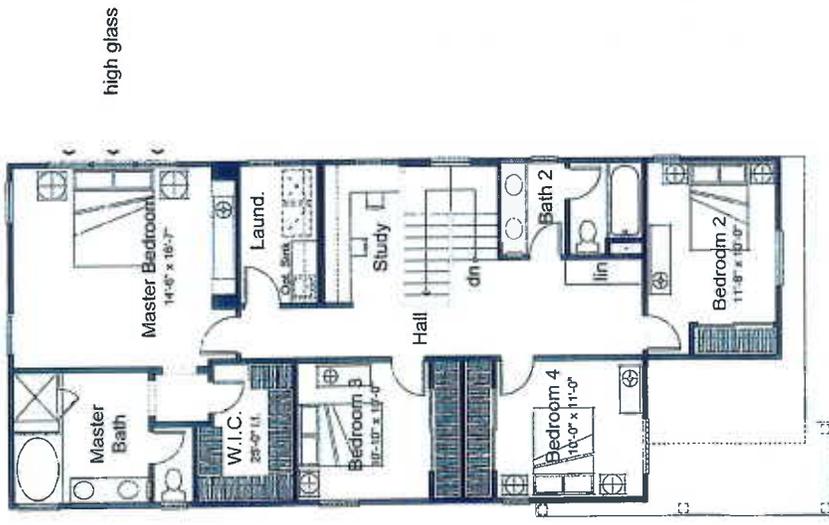
AI-00



KTCY Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA 94607  
510.272.2910  
kcy.com

PLAN 1 FLOOR PLANS

NEWARK, CA

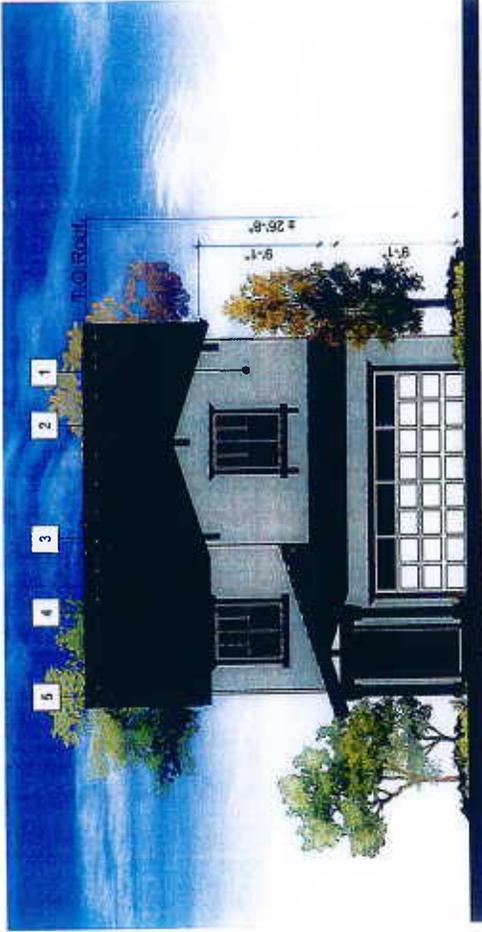


Second Floor Plan

BIRCH STREET



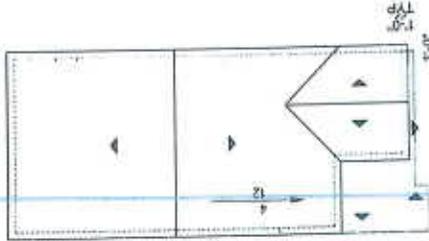
MISSION PEAK HOMES



Front

**Material Legend**

1. Stucco with Sreced
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Roof



Rear

Right

**PLAN I - 'A' EXTERIOR ELEVATIONS**

**BIRCH STREET**



MISSION PEAK HOMES

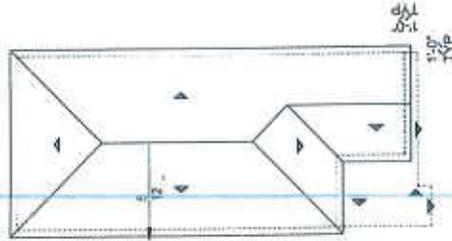
NEWARK, CA  
 94645  
 510.272.2910  
 ktyg.com

KTYG Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktyg.com

AP13

Left





Roof



Front

**Material Legend**

1. Stucco with Scream
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Rear

Right

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN I - 'B' EXTERIOR ELEVATIONS**

NEWARK, CA  
 927 4 1188  
 Project #

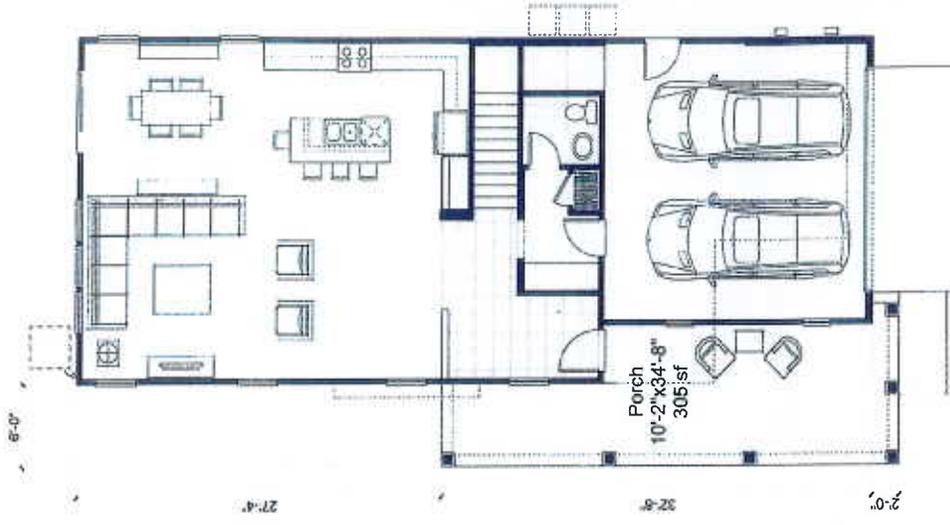
11/13/2014

KTGY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com

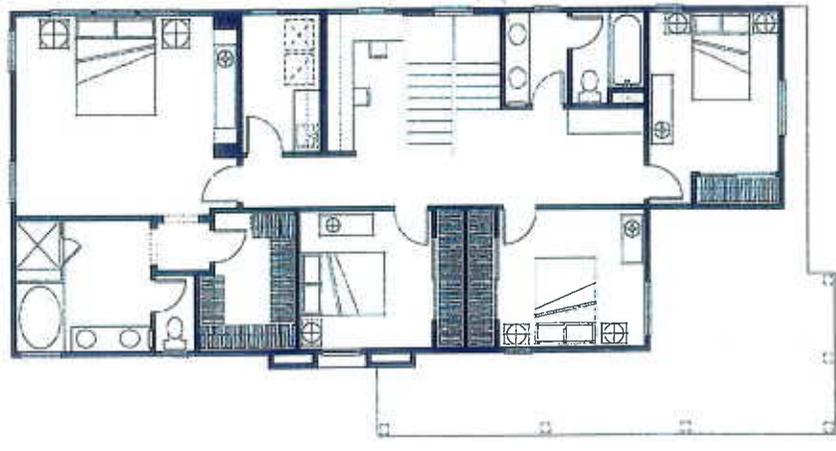
AP14

AI-12





First Floor Plan



Second Floor Plan



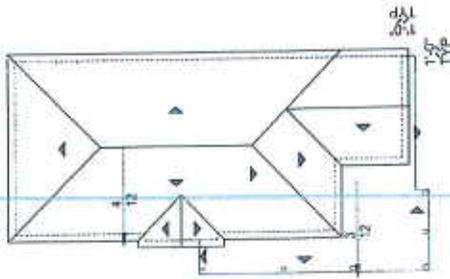
PLAN I ALT FLOOR PLANS

KTGY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com

NEWARK, CA  
 100 N. 10TH  
 PROJECT #

BIRCH STREET





Roof



Front



**Material Legend**

1. Stucco with Screenshot
2. Concrete Flat Roof Tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Right

Rear

Left



AI-13

**PLAN I - ALT 'A' EXTERIOR ELEVATIONS**

**BIRCH STREET**



MISSION PEAK HOMES

NEWARK, CA  
REV. 8/15/04  
Drawing #

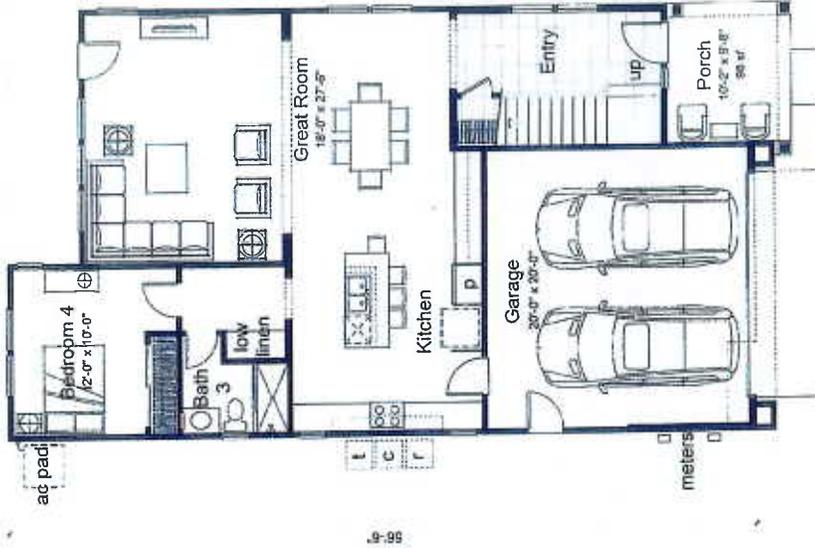
KTGY Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA 94607  
510.272.2910  
kigy.com

11/13/04

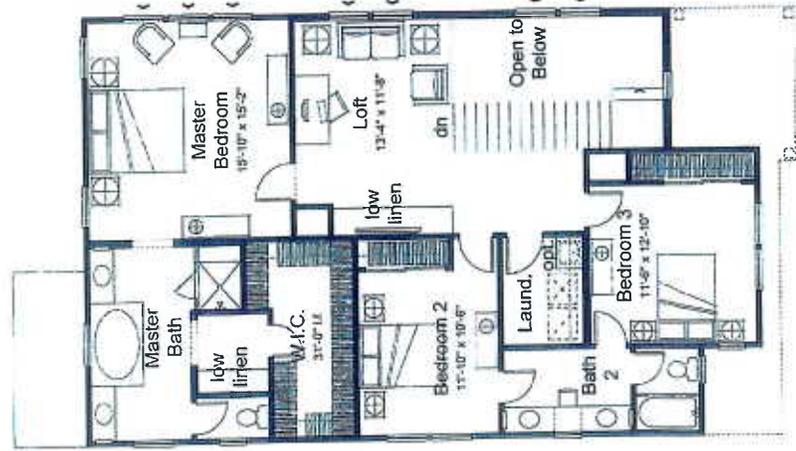


*AP10*

31'-0"



Second Floor Plan



high glass

high glass

high glass

BIRCH STREET



MISSION PEAK HOMES

First Floor Plan  
4 Bedrooms + Loft  
3 Baths  
2,489 sf

A2-00



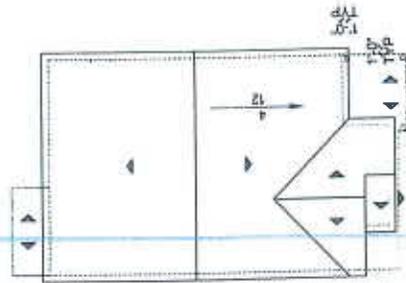
KTGY Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA 94607  
510.272.2910  
ktgy.com

PLAN 2 FLOOR PLANS

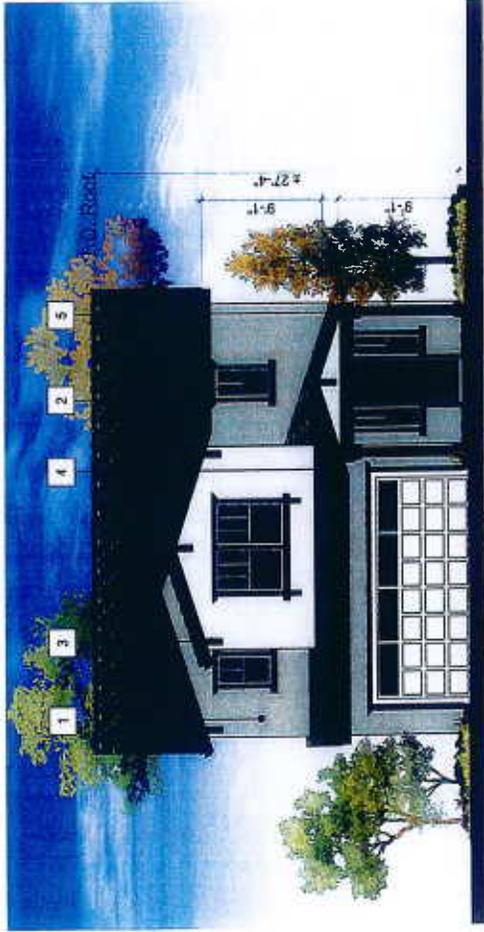
NEWARK, CA

01/18/14

17



Roof



Front

**Material Legend**

1. Stucco with Screenshot
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Right

Rear

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN 2 - 'A' EXTERIOR ELEVATIONS**

NEWARK, CA  
1022 N. LAMAR  
NEWARK, CA 94568

KTGY, Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA 94607  
510.272.2910  
ktgy.com

A p 18

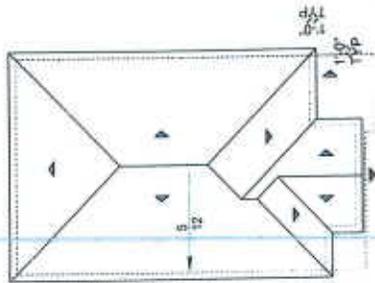
A2-11





**Material Legend**

1. Stucco with Screenshot
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Roof

Front



Right

Rear

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN 2 - 'B' EXTERIOR ELEVATIONS**

NEWARK, CA

APR 11 2019

KTGY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com

*Ap. 19*

A2-12





First Floor Plan



Second Floor Plan



KTGY Group, Inc.  
 Architecture-Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com

*Apr 20*

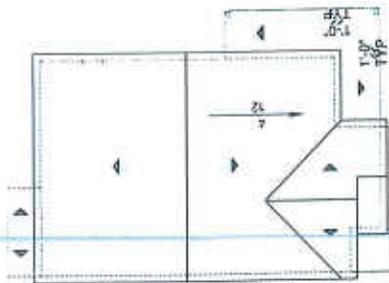
**PLAN 2 ALT FLOOR PLANS**

NEWARK, CA  
 APR 11 2010  
 PROJECT # 1000000000

**BIRCH STREET**



**MISSION PEAK HOMES**



Roof



Front

- Material Legend**
1. Stucco with Screenshot
  2. Concrete Flat Roof tile
  3. Foam Corbels
  4. Foam Trim
  5. Wood Columns
  6. Decorative Shutters
  7. Fiber Cement Lap Siding



Right

Rear

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN 2 - ALT 'A' EXTERIOR ELEVATIONS**

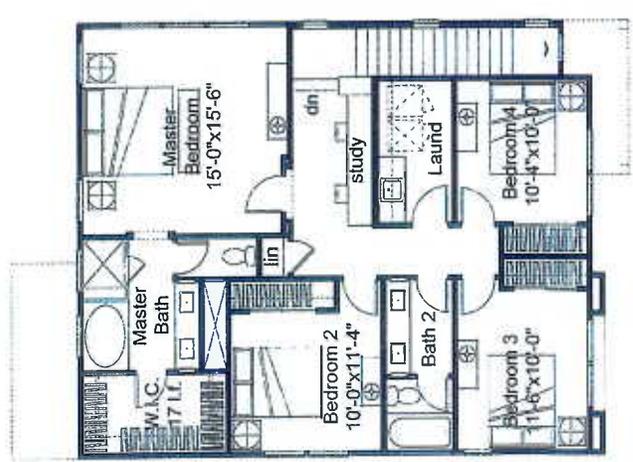
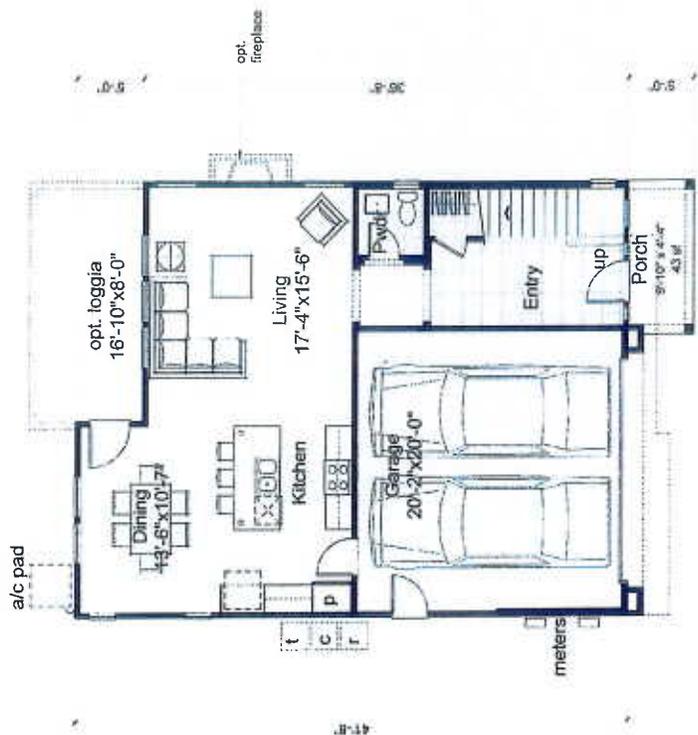
NEWARK, CA  
1000 N. BIRCH STREET  
NEWARK, CA 94560

KTGY Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA 94607  
510.272.2310  
kgy.com

**A2-13**



*Archi*



First Floor Plan  
4 Bedrooms/2.5 Baths  
1,971 sf

**A3-00**



KTGY Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA 94607  
510.272.2910  
ktgy.com

*A.P.2.2*

**PLAN 3 FLOOR PLANS**

NEWARK, CA  
832 N. 12th St.  
P.O. Box 8

**BIRCH STREET**

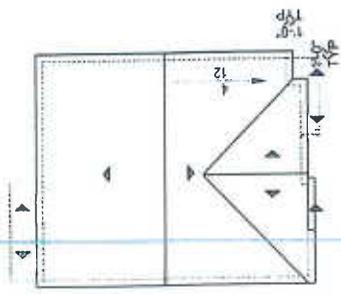


MISSION PEAK HOMES



Front

- Material Legend**
1. Stucco with Screenshot
  2. Concrete Flat Roof tile
  3. Foam Corbels
  4. Foam Trim
  5. Wood Columns
  6. Decorative Shutters
  7. Fiber Cement Lap Siding



Roof



Rear

Right

Left

A3-11

**PLAN 3 - 'A' EXTERIOR ELEVATIONS**

NEWARK, CA  
 917 8 1144

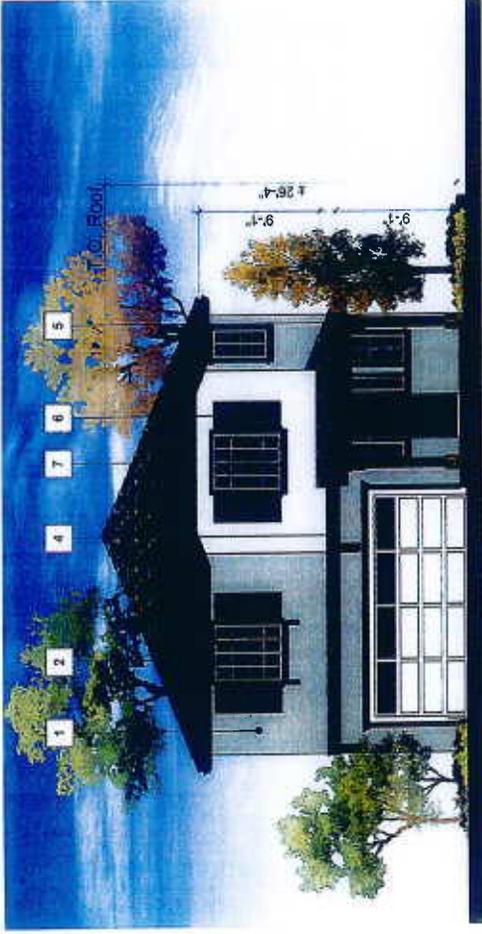
KTGY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com



**BIRCH STREET**



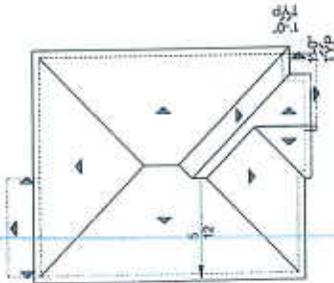
**MISSION PEAK HOMES**



Front

**Material Legend**

1. Stucco with Scream
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Roof



Right

Rear

Left

A3-12

**PLAN 3 - 'B' EXTERIOR ELEVATIONS**

**BIRCH STREET**



MISSION PEAK HOMES

NEWARK, CA  
DATE: 11/18/2014

KTGY Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA, 94607  
510.272.2910  
ktgy.com



A-24

**(4) Adopt a resolution approving Tentative Tract Map 8165.**

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
NEWARK APPROVING TENTATIVE TRACT MAP 8165

WHEREAS, Mission Peak Homes, Inc. has submitted TTM-13-27, Tentative Tract Map 8165, to the City Council of the City of Newark for a 15-unit residential subdivision on an approximately 1.82-acre project site (Birch Street Property) located at 38517 Birch Street; and

NOW, THEREFORE, pursuant to California Government Code Sections 66473 *et seq.*, the City Council and as a result of the studies and investigations made by the City Council and on its behalf, the oral and written testimony presented at the public hearings, the information contained in the Community Development Department's file and the Initial Study/Mitigated Negative Declaration (IS/MND), finds and resolves as follows:

1. That TTM-13-27, Tentative Tract Map 8165 is consistent with the City's General Plan and as such is compatible with the objectives, policies, general land uses, and programs specified therein. TM-13-27, Vesting Tentative Map 8165 calls for the construction of 15 residential units. TM-13-27, Vesting Tentative Map 8165 is an implementation of the City's previously adopted policies.
2. That the Birch Street Property is physically suitable for the construction of 15 residential units. The IS/MND recommended by the Planning Commission on May 13, 2014, analyzed all physical impacts of TTM-13-27, Tentative Tract Map 8165 on the Birch Street Property. The impacts on the Birch Street Property of both a residential use generally and the density envisioned by TTM-13-27, Tentative Tract Map 8165 were fully analyzed by the IS/MND.
3. That TTM-13-27, Tentative Tract Map 8165 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The IS/MND analyzed all the environmental impacts of TTM-13-27, Tentative Map Tract Map 8165.
4. That TTM-13-27, Tentative Tract Map 8165 is not likely to cause serious health problems. The IS/MND, recommended by the Planning Commission on May 13, 2014, analyzed all the environmental impacts of TTM-13-27, Tentative Tract Map 8165 on public health and safety.
5. That TTM-13-27, Tentative Tract Map 8165 does not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby approve TTM-13-27, Tentative Tract Map 8165 as shown on Exhibit A, pages 1 through 24, and made a part hereof by reference, subject to the following conditions:

## Planning Division

- a. This resolution and the conditions contained herein supersede all other conditions of approval associated with the subject property. No uses other than those permitted in Chapter 17.16 (R Residential District) shall be allowed.
- b. 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.
- c. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- d. Construction site trailers and buildings located on-site shall be used for office and storage purposes 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.
- e. 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 cleanup. Graffiti removal/repainting and site cleanup shall occur on a continuing, as needed basis.
- g. 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.
- h. 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 roof eaves, bay windows, greenhouse windows, chimneys, porches, and similar architectural features. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials. Final colors shall be submitted for the review and approval of the Community Development Director.
- i. 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.
- j. Prior to the issuance of a building permit, roof material shall be submitted for the review and approval of the Planning Commission and City Council. 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.
- k. 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. No refuse, garbage or recycling shall be stored outdoors except within approved trash and recycling enclosures.

- l. Prior to the issuance of a building permit, any proposed fence details shall be submitted for the review and approval of the Community Development Director. Fencing shall be at least six (6) feet high from the developer's finished lot grade between the project and the adjacent properties, except that fencing shall be a maximum of three (3) feet high within the front yard setback.
- m. 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.
- n. Prior to issuance of a grading permit, measures shall be put in place to respond to and track complaints pertaining to construction noise and shall include, at a minimum: (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, to be approved by the City prior to installation, shall also include a list of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).
- o. Prior to 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.
- p. 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.
- q. Prior to the issuance of a Certificate of Occupancy, the developer shall install any approved fencing approved by the Community Development Director.
- r. Payment by developer to the City of an in-lieu fee for each residential unit within the project at the time of issuance of a Building Permit in the amount of \$25,000 will constitute the project's compliance with the City's Affordable Housing Program as set forth in Chapter 17.18 of the Newark Municipal Code.

- s. Prior to the issuance of a Building Permit, the developer shall pay the following fees, in the amount in effect at the time: public safety impact fee (currently \$1,989 per dwelling unit); community service and facilities impact fee (currently \$1,942 per dwelling unit); transportation impact fee (currently \$801 per dwelling unit); Park Fee (currently \$7,460 per dwelling unit); and Art in Public Places and Private Development fee (currently \$270 per dwelling unit).
- t. 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 to the Community Development Director for review and approval.
- u. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy-duty mufflers designed to reduce noise impacts.

#### Engineering Division

- v. The development will require approval of tentative and final tract maps filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. The final map shall dedicate emergency vehicle access ways, private vehicle access ways, public utility easements, etc. over all common areas of the project covered by this conditional use permit and planned unit development. The private street, shown as Parcel 'A' on the tentative map, shall be conveyed to the required Homeowner's Association. The final map and tract improvement plans shall be submitted to the Engineering Division for review to ensure conformance with the approved environmental document, relevant codes, policies, and other requirements of the Newark Municipal Code. The final map must be approved prior to the issuance of any building permits.
- w. The project shall conform to Tentative Tract Map 8165, Sheets 1 through 3, and all conditions of approval set forth herein. Approval of this tentative map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Newark Municipal Code consistent with the State Subdivision Map Act. This tentative map provides a preliminary design for the infrastructure improvements associated with the proposed 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.
- x. Prior to approval of the final map, the developer shall guarantee all necessary street improvements adjoining the development and in common areas in accordance with tract improvement plans to be approved by the City Engineer. Improvement plans for on-site common areas in the development shall be included with the tract improvement plans to ensure that such improvements are designed and constructed to City Standards. These plans must be prepared by a qualified person licensed by the State of California to do such work. Street improvements shall include, but may not be limited to driveway access, public sidewalks, curb and gutter removal and replacement, frontage landscaping, pavement removal and replacement, replacement or repair of existing damaged public improvements, street lighting, utility connections, and other related improvements.

Common area improvements on-site in the private street area include, but may not be limited to curb and gutter, sidewalk, driveways, private street paving (Traffic Index = 6.0), parking facilities, utilities, street lighting, surface and sub-surface drainage improvements, storm water treatment measure installations, and all landscape areas.

- y. 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."
- z. Prior to the issuance of the initial 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 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 use 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.
- aa. 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, 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.

bb. The project shall be designed to comply with all requirements under Provision C.3.f. of the NPDES permit for limitations on increases of peak storm water runoff discharge rates. The developer shall be responsible for providing sufficient data and calculations to show that any increase in storm water runoff from the development will not result in increased potential for erosion or other significant adverse impacts of earthen channels downstream of the project site. The required analysis for such findings shall be completed by the developer to the satisfaction of the City Engineer and the Regional Water Quality Control Board.

cc. The developer shall submit detailed grading and drainage plans for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District. These plans must be based upon a City benchmark and need to include pad and finish floor elevations of each proposed structure, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavement shall drain at a minimum of one percent. The 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 and the Alameda County Flood Control District prior to approval of the final map(s). The calculations shall show that the City and County freeboard requirements will be satisfied.

dd. Where a grade differential of more than a 1-foot is created along the boundary lot 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.

ee. The applicant shall submit a detailed soils report prepared by a qualified engineer, registered with the State of California. The report shall address in-situ and import soils in accordance with the City of Newark Grading and Excavation Ordinance, Chapter 15.50. The report shall include recommendations regarding pavement sections for all public and private streets. Grading operations shall be in accordance with recommendations contained in the soils report and shall be completed under the supervision of an engineer registered in the State of California to do such work.

ff. Prior to approval of the final map, the developer's engineer shall submit a pavement maintenance program for the private street for the review and approval of the City Engineer. The developer shall incorporate the program into the required Storm Water Pollution Prevention Plan and Storm Water Treatment Measures Maintenance Agreement.

- gg. Prior to issuance of a Certificate of Occupancy or release of utilities for any individual lot, the entire private street shall be paved in accordance with the recommendation of a licensed engineer based on a Traffic Index of 6.0 and striped as shown on the approved site plan. All on-site uncovered parking facilities and drive aisles shall be designed to drain at a minimum slope of 1.0% for asphalt surfaces and 0.3% for Portland cement concrete surfaces.
- hh. Prior to approval of the final map, the developer shall satisfy Alameda County Water District (ACWD) and Union Sanitary District (USD) requirements for the proposed development. The Utility Plan provided on Sheet TM-2 of the tentative map includes a preliminary water supply system layout and a preliminary sanitary sewer system layout that are subject to a complete review by ACWD and USD at such time as formal, detailed utility plans are developed for construction. Any necessary site and utility design changes necessary to satisfy ACWD's and USD's design requirements shall be the developer's responsibility.
- ii. The developer shall request Pacific, Gas & Electric Company (PG&E) to commence with the design of the underground utility improvements for the proposed development immediately following approval of the tentative map. The developer shall be responsible for satisfying all PG&E requirements and all other utility provider requirements for a complete joint trench design and installation. A joint trench and street lighting plan shall be submitted by the developer with the first tract improvement plan check and must be approved prior to final map approval.
- jj. The developer shall incorporate a Homeowner's Association consisting of all property owners of lands in the development at the time of incorporation and in the future for the purpose of maintaining the association's property, common drive aisles, parking facilities, and landscaping, including landscaping in adjacent public rights-of-way, 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.
- kk. Prior to City Council approval of the final map(s), the bylaws governing the property owners' association(s) 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 on-site pavement.

- ii. 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.
- iii. 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.
- nn. The Homeowner's Association shall be responsible for trash and litter control and sweeping of all private streets within the development. All private storm drain systems and all associated trash capture devices shall be cleaned on a regularly scheduled basis as detailed in the required Stormwater Treatment Measures Maintenance Agreement.
- oo. The Homeowner's Association shall be required to contract with a professional management firm to handle 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.
- pp. All new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground for all buildings in the development in accordance with the City of Newark Subdivision Standards. Electrical transformers shall be installed in underground vaults with an appropriate public utility easement or within the public right-of-way.
- qq. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked. Open street cuts will not be permitted on Birch Street unless the affected area is scheduled for a pavement overlay concurrent with site development.
- rr. All existing buildings within the proposed division of land shall be completely demolished prior to recording the first final map.
- ss. Fire hydrants are to be located along public and private streets as determined by the Alameda County Fire Department.

- tt. 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 the private street.
- uu. A signpost with a sign having an area of at least 15-inches by 21-inches shall be installed at the private street entrance. The name of the private street shall be placed on this sign in clearly legible 4-inch letters. The signs shall have painted, in at least 1-inch letters, "Private Property. Not dedicated for public use."
- vv. 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.
- ww. A street name 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 "tree" 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.
- xx. The developer shall repair and/or replace any public improvements along the Birch Street right-of-way and private improvements along the exterior boundary of the site damaged as a result of construction activity to the satisfaction of the City Engineer.
- yy. 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. A pick-up or vacuum type street sweeper shall be available at all times at the direction of the City Engineer to removed tracked dirt and debris from adjacent streets.
- zz. The developer shall implement the following measures for the duration of all construction activity to minimize air quality impacts:
1. Watering should be used to control dust generation during demolition of structures and break-up of pavement.
  2. All trucks hauling demolition debris from the site shall be covered.
  3. Dust-proof chutes shall be used to load debris into trucks whenever feasible. Watering should be used to control dust generation during transport and handling of recycled materials.
  4. All active construction areas shall be watered at least twice daily and more often during windy periods; active areas adjacent to the existing land uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.
  5. All trucks hauling soil, sand, and other loose materials shall be covered or require all trucks to maintain at least 2 feet of freeboard.

6. All unpaved access roads, parking areas, and staging areas at construction sites shall be paved, watered three times daily, or treated with (non-toxic) soil stabilizers.
7. All paved access roads, parking areas, and staging areas at construction sites shall be swept daily with water sweepers; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
8. Limit traffic speeds on unpaved roads to 15 mph.
9. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
10. Replant vegetation in disturbed areas as quickly as possible.
11. Minimize idling time (5 minutes maximum).
12. Maintain properly tuned equipment.

These measures shall be incorporated into the grading specifications as well as the Best Management Practices of the Storm Water Pollution Prevention Plan, and shall be implemented to the satisfaction of the City Engineer.

- aaa. The developer shall provide all required paper and digital submittals of the tentative map, project final map, tract improvement plans, and as-built plans as required by the City Engineer, including, but not necessarily limited to the following: (1) One full-sized 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-sized 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. All digital copies of the final map and improvement plans shall be prepared in accordance with Union Sanitary District digital submittal standard. A deposit of \$5,000 shall be provided by the developer to the City to ensure submittal of all required documentation.
- bbb. 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.

#### Landscape-Parks Division

- ccc. Prior to issuance of a building permit, the property owner shall dedicate to the City of Newark a minimum 10-foot wide landscape and public utility easement, along the frontage of Birch Street. Minor variances to this minimum width will be allowed for some building structures. This easement shall incorporate all landscape areas beyond the minimum dimension to the nearest physical constraints. All improvements in the easement area and all stormwater treatment landscape improvements shall be maintained by the Homeowners Association.
- ddd. The developer shall enter into a Landscape Maintenance Agreement to ensure the perpetual maintenance of all landscaping along the property frontage and on the project

site. This agreement shall run with the land and be binding upon all future owners or assigns. Any and all necessary easements shall be dedicated over individual lots to allow for the perpetual access and maintenance of landscaping. The full extent of landscape maintenance shall be determined with the future landscape improvements plans and detailed in said agreement. Landscaping by the City at the expense of the Homeowner's Association in these areas will only occur in the event the City Council deems the Homeowner's Association maintenance to be inadequate. Project perimeter walls and adjoining landscaped areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls.

- eee. The developer shall retain a licensed landscape architect to prepare working drawings for landscape plans in accordance to with City of Newark requirements and the State of California Model Water Efficient Landscape Ordinance. The associated Landscape Documentation Package must be approved by the City Engineer prior to the issuance of a building permit.
- fff. The developer shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to the issuance of a building permit, the developer shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project.
- ggg. The plant species identified for any proposed landscape-based treatment measures are subject to final approval of the City Engineer.
- hhh. 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.
- iii. 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.
- jjj. 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.
- kkk. Landscaping adjacent to the public right-of-way must conform to the City's visibility requirements in accordance with Newark Municipal Code, Chapter 10.36

#### Fire Department

- III. Prior to the issuance of a building permit, the end of the Fire Department access road shall be marked with a sign that states "End of Fire Lane".

mmm. Prior to the issuance of a building permit, field measurement shall confirm that the Fire Department access road extends to within 200 feet of all portions of the exterior walls of the first story of the buildings as measured by an approved route around the exterior of the building.

### Building Division

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

### General

ooo. 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.

ppp. 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.

qqq. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of TM-13-27, U13-28, P-13-29, or E-13-30 (the IS/MND) the developer shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the developer (which shall be the same counsel used by developer) and reasonably approved by the City. Developer's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.

# BIRCH STREET

## PLANNED UNIT DEVELOPMENT

CITY OF NEWARK, CALIFORNIA

**PROJECT TEAM:**

**ARCHITECT:**

MISSION PEAK HOMES  
JOHN WONG  
4708 MISSION FALLS COURT  
FREMONT, CA 94538  
(510) 754-8888

**CIVIL ENGINEER:**

CAROLYN BARBER & GIBSON, INC.  
GREG WELLES  
353 CHAMBERLAIN, SUITE 230  
SAN RAMON, CA 94583  
(925) 866-0322

**ARCHITECT:**

RTSY GROUP, INC.  
ALLO WILLIAMS  
50 SECOND STREET, SUITE 208  
OAKLAND, CA 94612  
(510) 777-2910

**LANDSCAPE ARCHITECT:**

VAN DORN ARBED LANDSCAPE ARCHITECTS INC.  
SHARI VAN DORN  
81 14TH STREET  
SAN FRANCISCO, CA 94111  
(415) 764-1701

**SOILS ENGINEER:**

CONSULTING EARTH GROUP  
JIMMIE DYE  
1270 SPRINGBROOK ROAD, SUITE 201  
WALNUT CREEK, CA 94597  
(925) 948-8800



**PROJECT INFORMATION:**

EXISTING SITE AREA:  
A 7H  
EXISTING ZONING: R-700 LOW DENSITY RESIDENTIAL  
PROPOSED ZONING: PLANNED UNIT DEVELOPMENT (PUD)  
PROPOSED LAND USE: U.S. SINGLE FAMILY DETACHED RESIDENTIAL LOTS

**SHEET INDEX:**

- T-1 COVER SHEET
- L-1 SITE ILLUSTRATIVE
- CIVIL PLANS - SITE PLANS
- PD-1 ARCHITECTURAL SITE PLAN
- CIVIL PLANS - TENTATIVE MAP
- TN-1 TITLE STREET & SITE PLAN
- TN-2 PRELIMINARY GRADING, DRAINAGE & UTILITY PLAN
- TN-3 PRELIMINARY STORMWATER MANAGEMENT PLAN
- CONCEPTUAL LANDSCAPE PLANS
- L1-0 CONCEPTUAL LANDSCAPE PLAN
- L1-1 CONCEPTUAL LANDSCAPE DETAILS
- L1-2 CONCEPTUAL PLANT LIST
- L1-3 CONCEPTUAL PLANT IMAGE
- L1-4 CONCEPTUAL HYDROLOGIC PLAN
- ARCHITECTURAL PLANS
- A1-00 PLAN 1 FLOOR PLANS
- A1-11 PLAN 1 - 'X' EXTERIOR ELEVATIONS
- A1-12 PLAN 1 - 'E' EXTERIOR ELEVATIONS
- A1-20 PLAN 1 - 'W' EXTERIOR ELEVATIONS
- A1-31 PLAN 1 - 'S' EXTERIOR ELEVATIONS
- A2-00 PLAN 2 FLOOR PLANS
- A2-11 PLAN 2 - 'X' EXTERIOR ELEVATIONS
- A2-12 PLAN 2 - 'E' EXTERIOR ELEVATIONS
- A2-20 PLAN 2 - 'W' EXTERIOR ELEVATIONS
- A2-31 PLAN 2 - 'S' EXTERIOR ELEVATIONS
- A3-00 PLAN 3 FLOOR PLANS
- A3-11 PLAN 3 - 'X' EXTERIOR ELEVATIONS
- A3-12 PLAN 3 - 'E' EXTERIOR ELEVATIONS

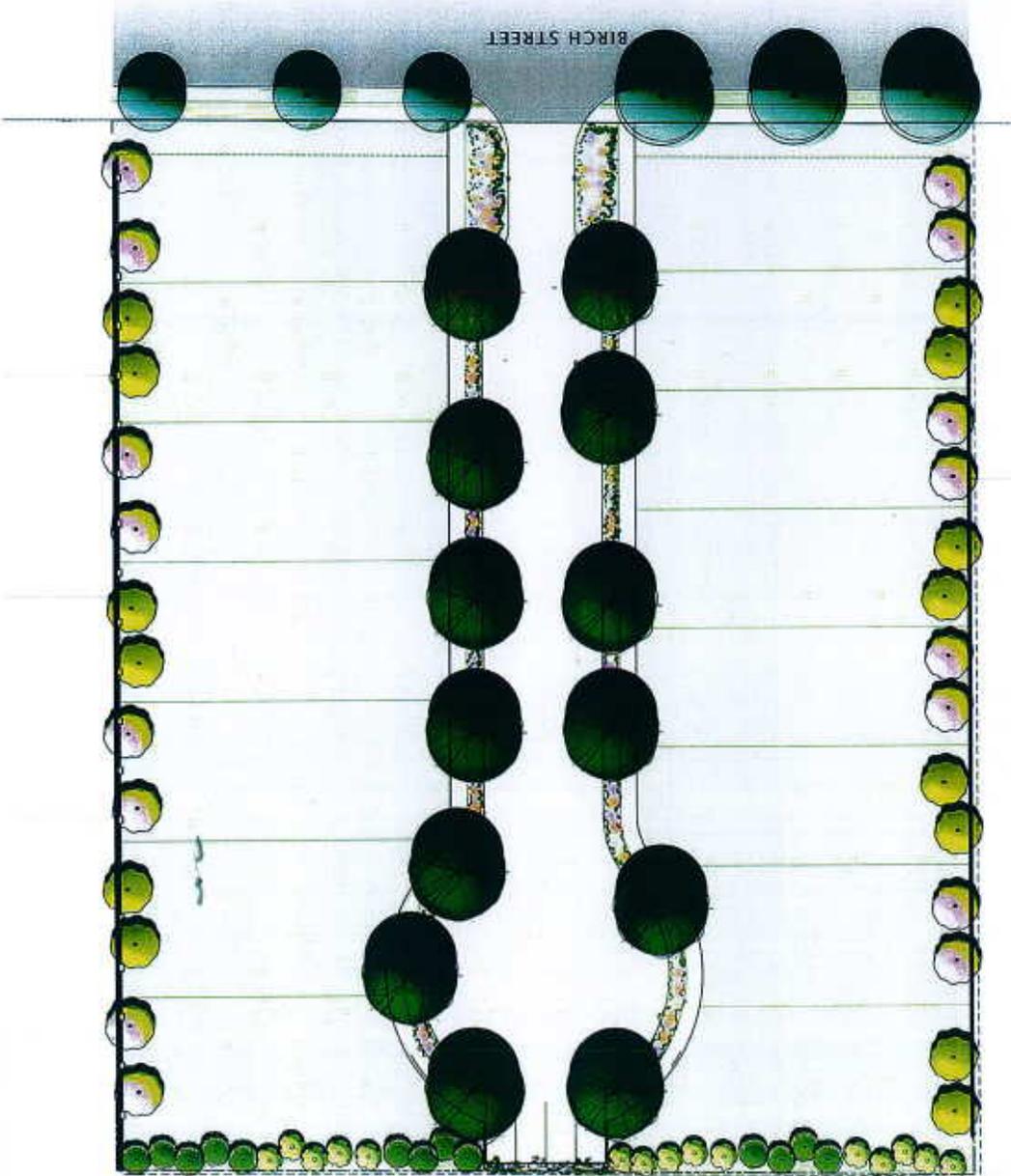


VAN DORN ARBED  
LANDSCAPE ARCHITECTS, INC.  
81 14TH STREET, SAN FRANCISCO, CA  
94111  
PH: (415) 764-1701 FAX: (415) 944-1704



T-1

MAY 2014



**M VAN DORN ABED**  
 LANDSCAPE ARCHITECTS, INC.  
 101 N. HEBBARD AVE. SUITE 100  
 ANAHEIM, CA 92805

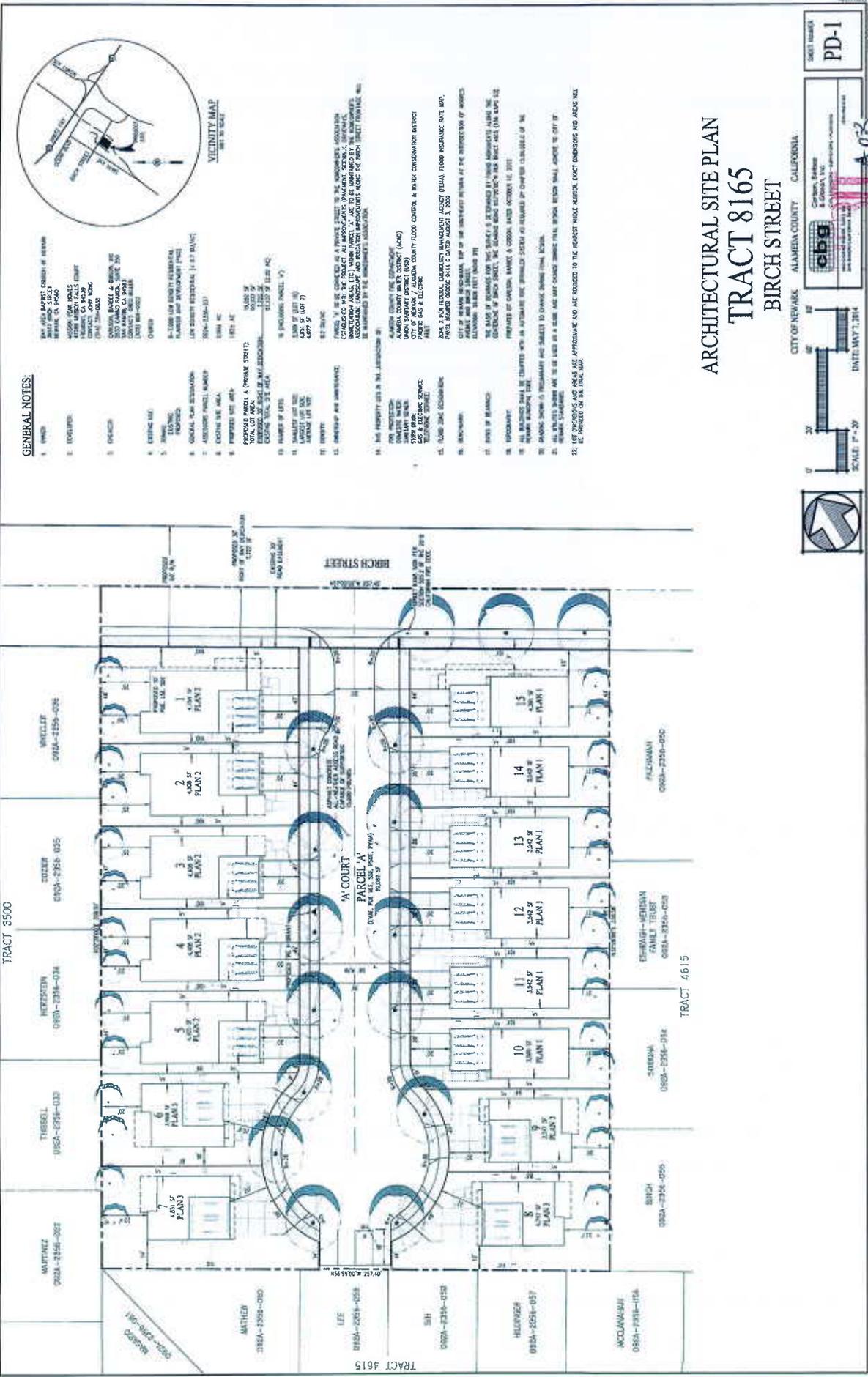
MISSION PEAK HOMES  
 BIRCH STREET  
 NEWARK, CALIFORNIA

SITE ILLUSTRATIVE  
 SCALE: 1/16" = 1'-0"

DATE: 05/07/14



L1.0



**GENERAL NOTES:**

1. OWNER: SAN JUAN BAPTIST CHURCH OF NEWARK, NEWARK, CA 94602
2. CONTRACT: MASON, CLARK, LONG, 1000 LAW STREET, BERKELEY, CA 94704
3. DESIGNER: MASON, CLARK, LONG, 1000 LAW STREET, BERKELEY, CA 94704
4. EXISTING LOT: 1000 LAW STREET, BERKELEY, CA 94704
5. EXISTING: 1000 LAW STREET, BERKELEY, CA 94704
6. GENERAL PLAN REQUIREMENTS: 1. 10' FRONT YARD SETBACK; 2. 10' SIDE YARD SETBACK; 3. 10' REAR YARD SETBACK
7. ADJACENT PARCEL NUMBER: 1000 LAW STREET, BERKELEY, CA 94704
8. EXISTING USE AREA: 1000 SQ FT
9. PROPOSED USE AREA: 1000 SQ FT
10. PROPOSED PARCEL A (COURT STREET): 1000 SQ FT
11. TOTAL LOT AREA: 1000 SQ FT
12. EXISTING TOTAL SITE AREA: 1000 SQ FT
13. NUMBER OF LOTS: 15
14. NUMBER OF PARCELS: 15
15. NUMBER OF UNITS: 15
16. NUMBER OF STORIES: 1.5
17. NUMBER OF GARAGES: 15
18. NUMBER OF DRIVEWAYS: 15
19. NUMBER OF DRIVEWAYS: 15
20. NUMBER OF DRIVEWAYS: 15
21. NUMBER OF DRIVEWAYS: 15
22. NUMBER OF DRIVEWAYS: 15
23. NUMBER OF DRIVEWAYS: 15
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27. NUMBER OF DRIVEWAYS: 15
28. NUMBER OF DRIVEWAYS: 15
29. NUMBER OF DRIVEWAYS: 15
30. NUMBER OF DRIVEWAYS: 15
31. NUMBER OF DRIVEWAYS: 15
32. NUMBER OF DRIVEWAYS: 15

**ARCHITECTURAL SITE PLAN  
TRACT 8165  
BIRCH STREET**

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

**cbg**  
Carter, Burtner & Gilman, Inc.  
Architects

DATE: MAY 1, 2014

SCALE: 1" = 20'

DATE: MAY 1, 2014

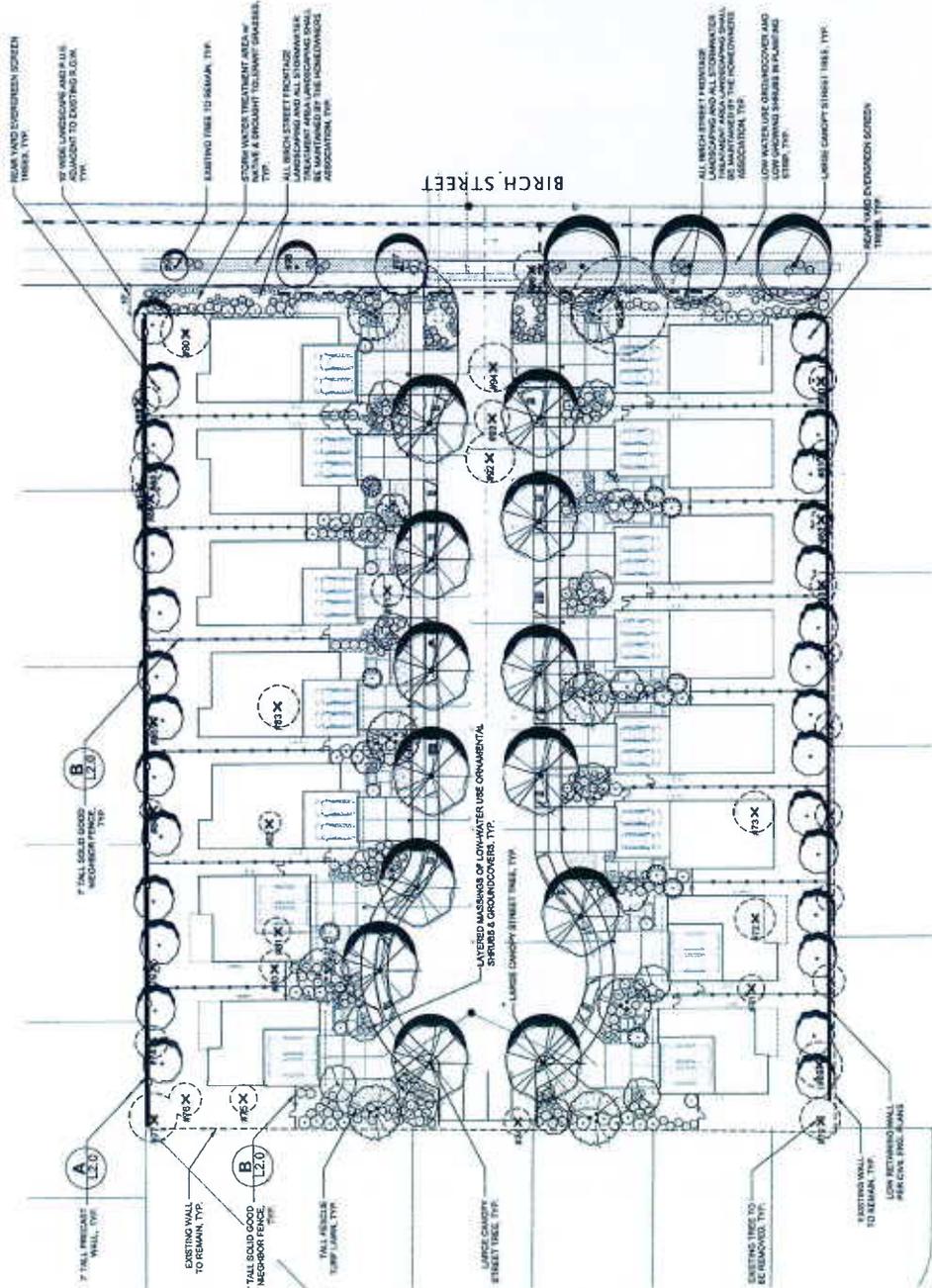
PROJECT NUMBER: PD-1

AP-3









**LEGEND**

- X ○ REMOVING TREES (GREATER THAN 10" DBH) TO BE REMOVED
- ○ EXISTING TREES TO REMAIN
- ○ PROPOSED TREES (COUNCILMAN NUMBER TREES)

**PLANTING & WATER EFFICIENCY DESIGN INTENT STATEMENT**

THE LANDSCAPE DESIGN INTENT STATEMENT FOR THIS PROJECT IS TO PROVIDE A HIGH-QUALITY, WATER-EFFICIENT, AND SUSTAINABLE LANDSCAPE THAT ENHANCES THE ARCHITECTURAL AND ENVIRONMENTAL QUALITY OF THE PROJECT. THE DESIGN INTENTIONS ARE TO:

- PROVIDE A LANDSCAPE THAT IS WATER-EFFICIENT AND SUSTAINABLE.
- ENHANCE THE ARCHITECTURAL AND ENVIRONMENTAL QUALITY OF THE PROJECT.
- PROVIDE A LANDSCAPE THAT IS VISUALLY APPEALING AND FUNCTIONAL.
- PROVIDE A LANDSCAPE THAT IS EASY TO MAINTAIN AND MANAGE.
- PROVIDE A LANDSCAPE THAT IS ADAPTED TO THE LOCAL CLIMATE AND SOIL CONDITIONS.
- PROVIDE A LANDSCAPE THAT IS ACCESSIBLE AND SAFE FOR ALL USERS.
- PROVIDE A LANDSCAPE THAT IS IN ACCORDANCE WITH ALL APPLICABLE REGULATIONS AND STANDARDS.

**BUILD IT GREEN LANDSCAPE ITEMS:**

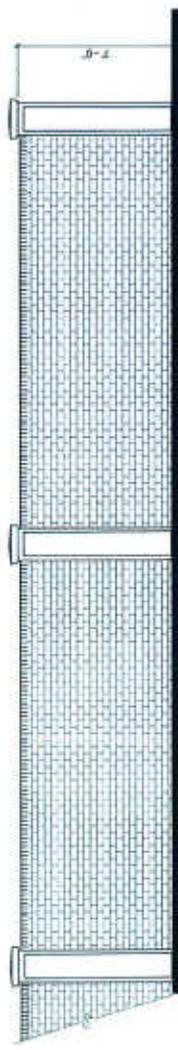
- THE LANDSCAPE DESIGN WILL INCORPORATE THE FOLLOWING "BUILD IT GREEN" ITEMS TO SUPPORT WATER CONSERVATION:
  - 40% REDUCED IRRIGATION WATER CONSUMPTION
  - 40% REDUCED FERTILIZER USE ON PROJECT
  - 40% REDUCED PESTICIDE USE ON PROJECT
  - 40% REDUCED TRAVEL AND LOGGING
  - 40% REDUCED WASTE
  - 40% REDUCED WATER CONSUMPTION
  - 40% REDUCED FERTILIZER USE ON PROJECT
  - 40% REDUCED PESTICIDE USE ON PROJECT
  - 40% REDUCED TRAVEL AND LOGGING
  - 40% REDUCED WASTE



AP7



**NOTE:**  
 7' TALL PRECAST SOUNDWALL "SLUMPSTONE" BY  
 OLD CASTLE PRECAST (FORMERLY SIERRA  
 PRECAST)  
 COLOR: TO MATCH ARCHITECTURE.



**A** 7' TALL PRECAST WALL  
INTS



**NOTE:**  
 POSTS AND KICKBOARD TO BE PRESSURE  
 TREATED CEDAR/TONE. ALL OTHER WOOD TO BE  
 CLEAR HEART REDWOOD OR BELCOT RED CEDAR.  
 TO BE SELECTED & APPROVED BY OWNER.



**B** 7' TALL SOLID GOOD NEIGHBOR FENCE  
INTS



MISSION PEAK HOMES  
 BIRCH STREET  
 NEWARK, CALIFORNIA

CONCEPTUAL LANDSCAPE DETAILS

SCALE: AS NOTED

DATE: 05/07/14

L2.0

AP 8





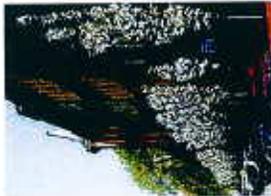
PISTACIA CHINENSIS



LAGERSTROEMIA



CHIRAZO BILLOBA



PRUNUS S. YAMAGODAWA



PYRUS CALLERYANA



CERISE OCCIDENTALIS



MAGNOLIA STELLATA



LAURUS NOBILIS



RHAMNUS ALTERNUS



CLEA LITTLE OLLIE



TAMBELO



DWARF CITRUS TREES



MYTEL LEMON



HEMEROCALLIS



ROSA FLOWER CARPET PINK



COLEDREMA



WESTRINGIA FRUTICOSA



LAVATERA THURINGIACA



HELICHEIA BANANA



GALLISTEMON CITRINUS



DIETES BICOLOR



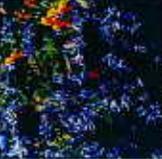
ROSA FLOWER CARPET APPLE BLOSSOM



DWARF PHORNIUM



PITTOSPORUM TOBIRA VANDATA



SALVA CLEVELANDI



GREVILLEA



ERIGERON GLAUCUS



ROSA ICEBURG



PHORNIUM HOE



PITTOSPORUM TOBIRA WHEELERS DWARF



FESTUCA



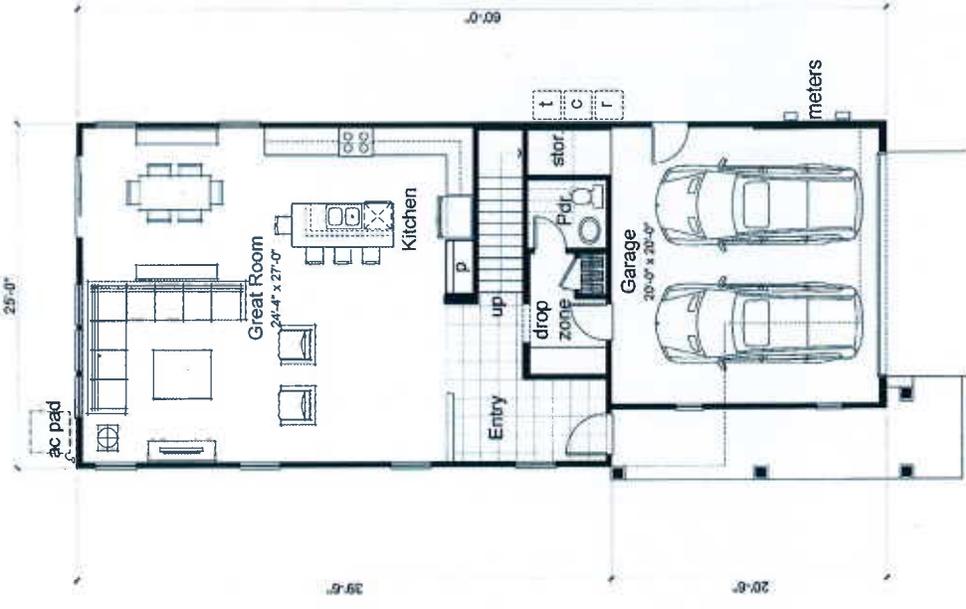
FRAGARIA CHLIDENSI



HEBE SPECIOSA

APR 10





First Floor Plan  
4 Bedrooms/2.5 Baths  
Opt. Loft  
2,250 sf

AI-00



Second Floor Plan

PLAN 1 FLOOR PLANS

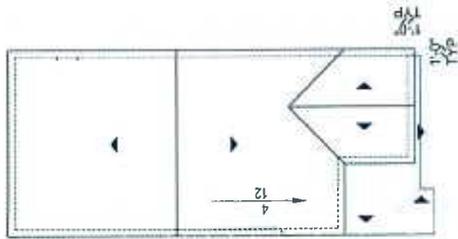
NEWARK, CA

BIRCH STREET



MISSION PEAK HOMES

0.0000



Front

**Material Legend**

1. Stucco with Screen
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Right

Rear

Left



AI-11

**PLAN 1 - 'A' EXTERIOR ELEVATIONS**

**BIRCH STREET**



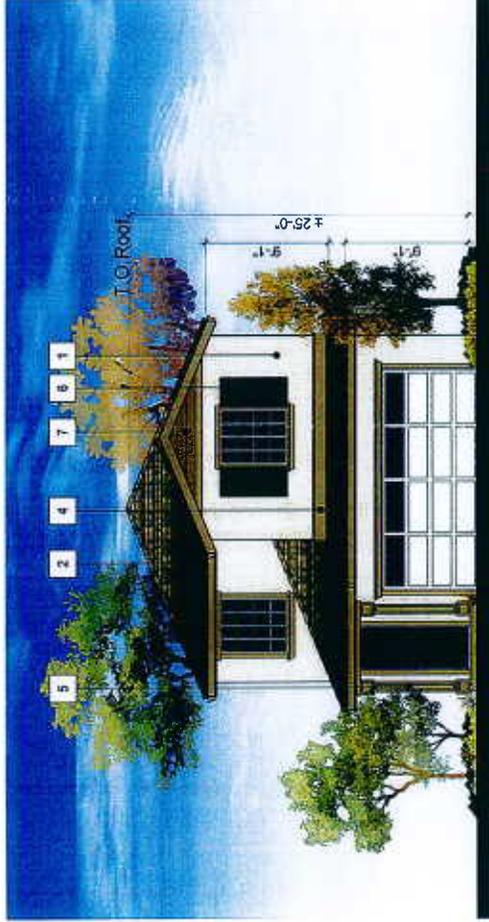
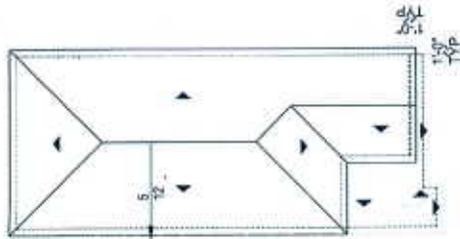
MISSION PEAK HOMES

NEWARK, CA  
409 N. 10TH  
FLOOR 2

KTGY Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA 94607  
510.272.2910  
ktgy.com



AP13



**Material Legend**

1. Stucco with Screen
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding

Roof

Front



Right

Rear

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN I - 'B' EXTERIOR ELEVATIONS**

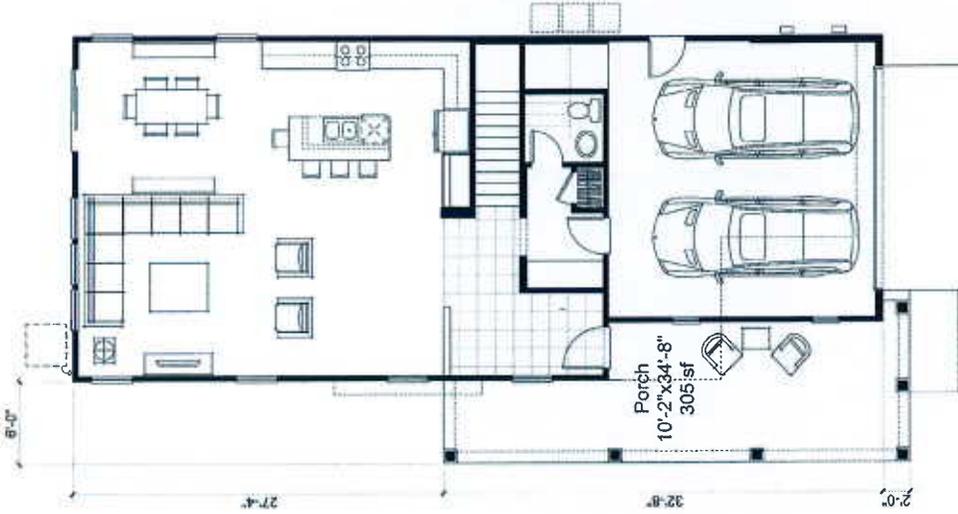
**AI-12**

NEWARK, CA  
 950 S. 10TH  
 SUITE 200

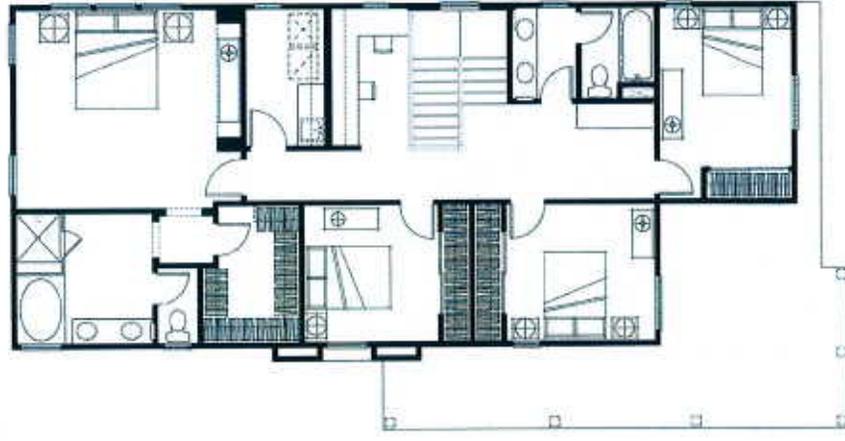
KTGY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com



AP14



First Floor Plan



Second Floor Plan

AI-02



KTGY Group, Inc.  
 Architecture+Planning  
 590 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 kgy.com *NA5*

PLAN | ALT FLOOR PLANS

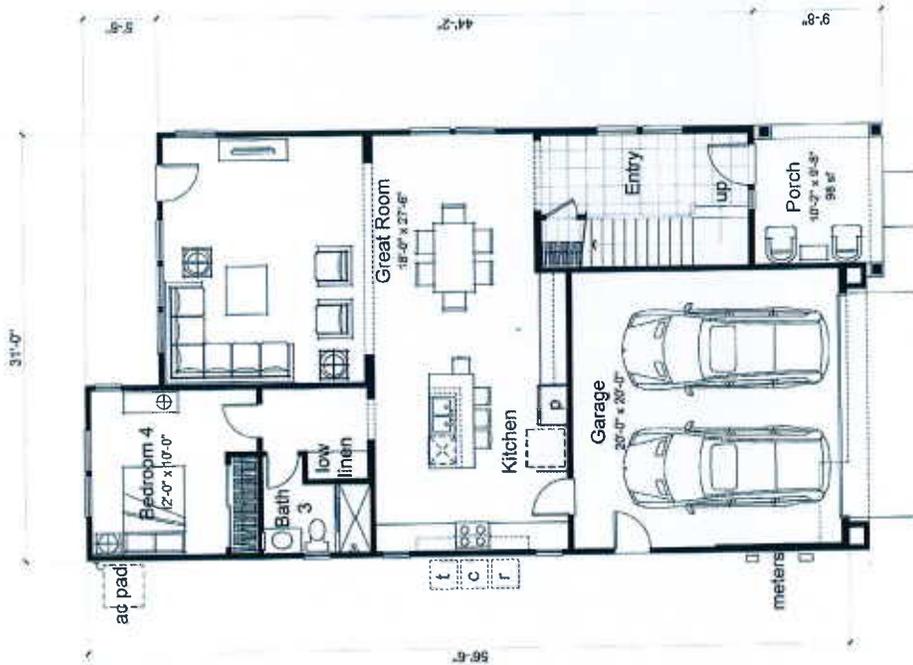
NEWARK, CA  
 1000 P. DRIVE  
 JERSEY CITY, NJ

BIRCH STREET



MISSION PEAK HOMES





First Floor Plan  
 4 Bedrooms + Loft  
 3 Baths  
 2,489 sf

A2-00

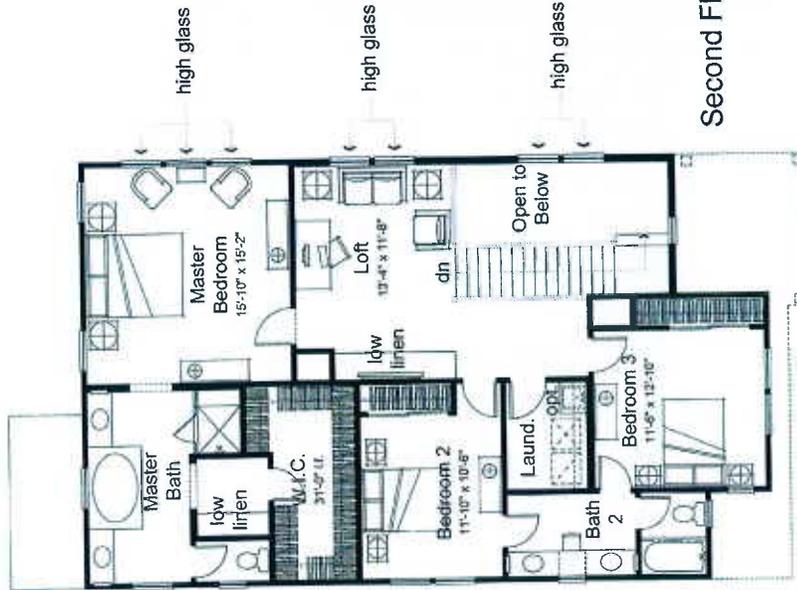


KTGY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com

*APL*

PLAN 2 FLOOR PLANS

NEWARK, CA

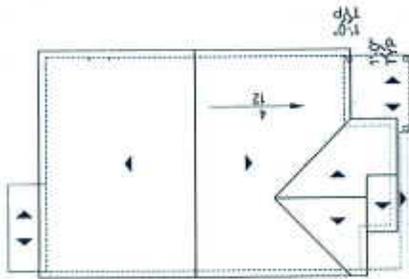


Second Floor Plan

BIRCH STREET



MISSION PEAK HOMES



Roof



Front

**Material Legend**

1. Stucco with Sereed
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Right

Rear

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN 2 - 'A' EXTERIOR ELEVATIONS**

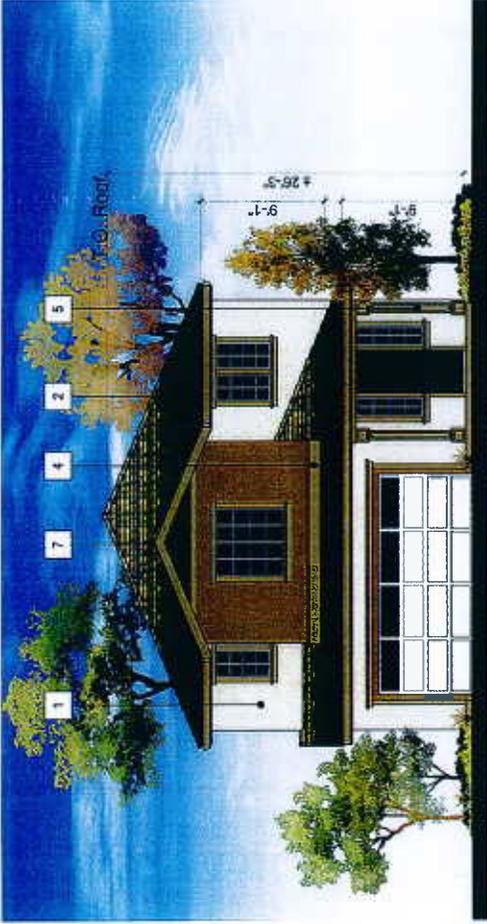
NEWARK, CA  
 950 N. 11TH ST.  
 SUITE 100

KTGY, Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA, 94607  
 510.272.2910  
 ktgy.com



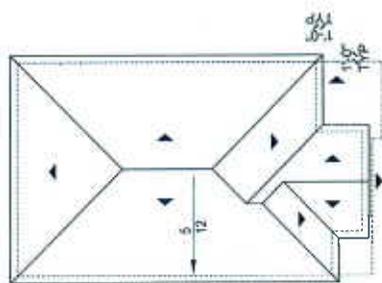
**A2-11**





**Material Legend**

1. Stucco with Screenshot
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Roof



Rear

Right

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN 2 - 'B' EXTERIOR ELEVATIONS**

NEWARK, CA

DATE: 11/11/11

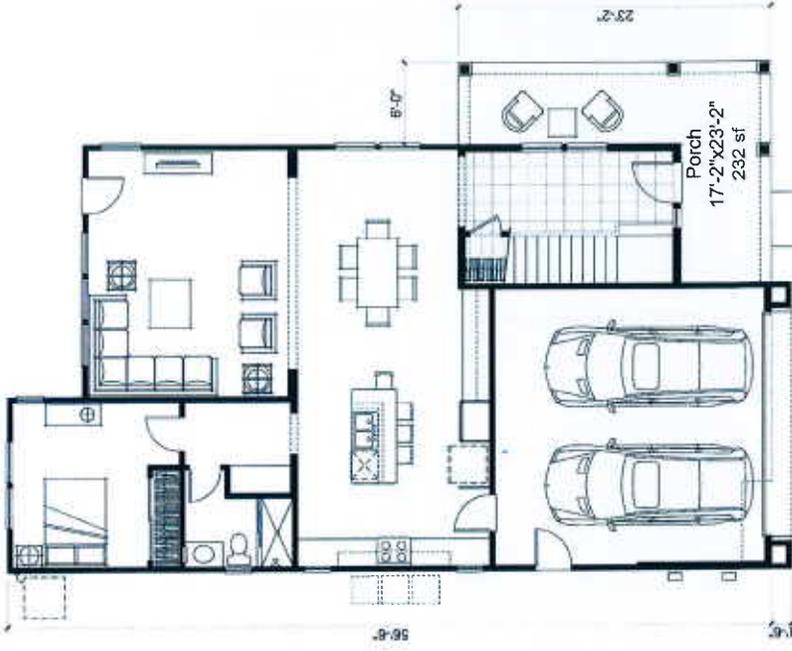
REVISION

KTCY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktcy.com



**A2-12**





A2-02

PLAN 2 ALT FLOOR PLANS

BIRCH STREET



MISSION PEAK HOMES

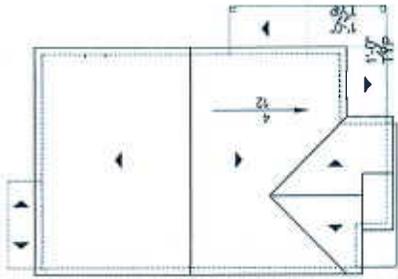
NEWARK, CA  
OFFICE OF THE  
CITY ENGINEER

REVISION

KTGY Group, Inc.  
Architecture+Planning  
580 Second St., Suite 200  
Oakland, CA, 94607  
510.272.2910  
ktgy.com



A 20



Roof

Front

**Material Legend**

1. Stucco with Screenshot
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Right

Rear

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN 2 - ALT 'A' EXTERIOR ELEVATIONS**

NEWARK, CA  
 1000 N. COLLE  
 PARKWAY #

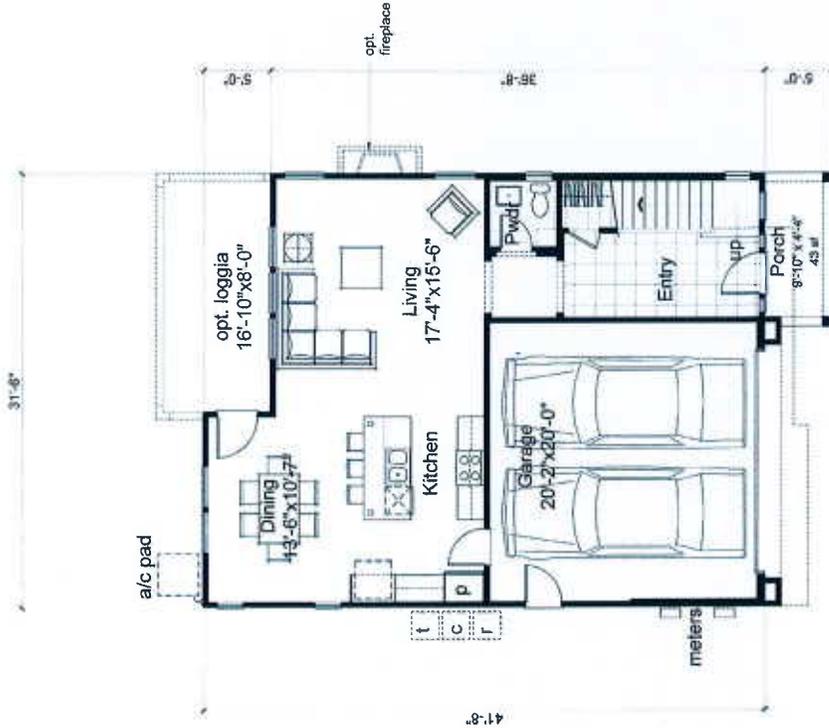
KTGY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com

*Handwritten signature*

*Handwritten signature*

**A2-13**





First Floor Plan  
4 Bedrooms/2.5 Baths  
1,971 sf

A3-00

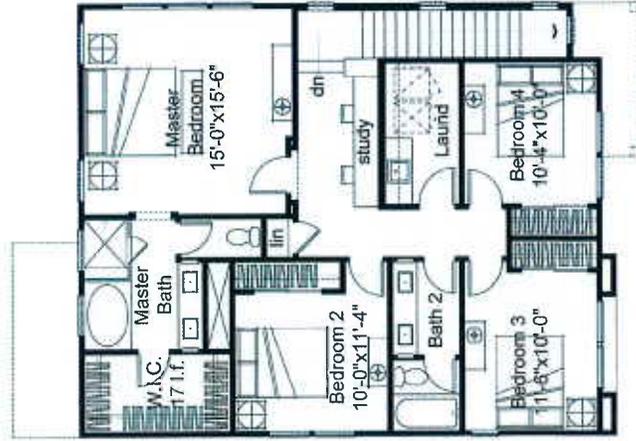
PLAN 3 FLOOR PLANS

NEWARK, CA  
1000 1/2 BUSH



KTGY Group, Inc.  
Architecture+Planning  
560 Second St., Suite 200  
Oakland, CA 94607  
510.272.2910  
ktgy.com

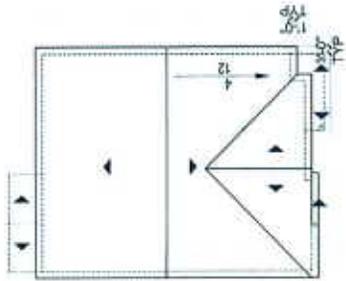
A 222



BIRCH STREET



MISSION PEAK HOMES



Roof



Front

**Material Legend**

1. Stucco with Sreced
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Right

Rear

Left

**BIRCH STREET**



MISSION PEAK HOMES

**PLAN 3 - 'A' EXTERIOR ELEVATIONS**

**A3-11**

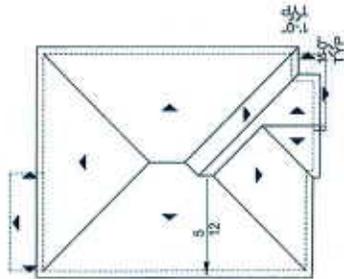
NEWARK, CA  
 510.272.2510

KTGY

KTGY Group, Inc.  
 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA, 94607  
 510.272.2510



*Handwritten signature and initials*



Roof



Front

**Material Legend**

1. Stucco with Soreed
2. Concrete Flat Roof tile
3. Foam Corbels
4. Foam Trim
5. Wood Columns
6. Decorative Shutters
7. Fiber Cement Lap Siding



Right

Rear

Left



**A3-12**

**PLAN 3 - 'B' EXTERIOR ELEVATIONS**



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 Architecture+Planning  
 580 Second St., Suite 200  
 Oakland, CA 94607  
 510.272.2910  
 ktgy.com

NEWARK, CA  
 2020 W. 12TH  
 SUITE 200

MISSION

**BIRCH STREET**  
  
 MISSION PEAK HOMES

*Handwritten signature*

## **Planning Commission Actions**

Chairperson Nillo opened the Public Hearing.

Applicant Shirley Sisk, LOV, 8440 Central Avenue, Newark, CA 94560, stated she has read and agrees with the conditions listed in Resolution 1873.

Chairperson Nillo closed the Public Hearing.

Motion made by Commissioner Fitts, seconded by Commissioner Drews, to approve Resolution 1873, with Exhibit A, Pages 1 through 3, approving P-14-12, a planned unit development, and U-14-13, a conditional use permit, to have a circus at the NewPark Mall parking lot (APNS: 901-111-20 & 21) with performances from August 7 through August 11, 2014. Motion passed 7 AYES.

- E.2 Hearing to consider: (1) Adopting a resolution making certain findings and recommending City Council approval of E-14-6, an Initial Study/Mitigated Negative Declaration; (2) adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommend the City Council approve the attached Affordable Housing Implementation Agreement; (3) adopting a resolution recommending City Council approval of GP-14-7, a General Plan Amendment to change the land use designation from CC (Community Commercial) to HR (High Density Residential); (4) adopting a resolution recommending the City Council approve RZ-14-8, a rezoning from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500); (5) recommending the City Council approve TTM-14-11, Tentative Tract Map 8166; and (6) recommending that the City Council approve ASR-14-9, an Architectural and Site Plan Review, with Exhibit A pages 1 to 33, to construct a 85-unit residential townhome development (Integral Communities) on an approximately 4.3 acre site (APN: 901-0195-039) on the northeast corner of Cedar Boulevard and Mowry School Road.**

ACM Grindall informed the Planning Commission that staff and the Applicant are requesting continuing this item to the May 27, 2014 Planning Commission Meeting.

Chairperson Nillo opened the Public Hearing. No one from the public spoke on this item at this time.

Motion made by Commissioner Bridges, seconded by Commissioner Otterstetter, to continue this hearing to the May 27, 2014 Planning Commission Meeting. Motion passed 7 AYES.

- 
- E.3 Hearing to consider: (1) Adopting a resolution making certain findings and recommending City Council approval of E-13-30, an Initial Study/Mitigated Negative Declaration; (2) adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommend the City Council approve the attached Affordable Housing Implementation Agreement; (3) By motion, approving P-13-29, a planned unit development, and U-13-28, a conditional use permit with Exhibit**

**A, pages 1-24; (4) By motion recommending the City Council approve TTM-13-27, Tentative Tract Map 8165 to create 15 single family lots with the construction of a detached dwelling on each lot (Mission Peak Homes) on an approximately 1.82 acre site (APN: 092A-2356-037) at 38517 Birch Street, on the west side of Birch Street north of Moores Avenue.**

Assistant Planner Jimenez gave the staff report.

Answering Commissioner Aguilar, ACM Grindall stated the major concerns brought up at the first neighborhood meeting included privacy, traffic and construction noise issues. ACM Grindall stated those concerns were addressed by the Developer at the second neighborhood meeting.

Answering Vice-Chairperson Hannon, staff explained why a CUP is required.

Discussion ensued on funding of Capital Improvements and the amount negotiated as the alternative means of compliance with the Affordable Housing Implementation Agreement which was based on the completed Nexus Study.

Answering Commissioner Fitts, ACM Grindall confirmed the proposed private streets conform to Fire Department standards.

Chairperson Nillo opened the Public Hearing.

Pastor Jeremy Stalnecker, 37971 Ballard Drive, Fremont, CA, stated the Bay Area Baptist Church had decided to relocate due to changes in the neighborhood and feels the location would be ideal for new housing and stated the Church supports this project.

Pastor Stalnecker stated he has read and agrees with all conditions in Resolutions 1874 and 1875.

Mr. Tom Quaglia, Mission Peak Homes, 47289 Mission Falls Court, Fremont, CA 94539, gave background information on the two neighborhood meetings and described in detail the proposed plans.

Mr. Quaglia stated he also agrees with all conditions in Resolutions 1874 and 1875.

Chairperson Nillo closed the Public Hearing.

Motion made by Commissioner Bridges, seconded by Commissioner Fitts, to adopt Resolution 1874, making certain findings and recommending City Council approval of E-13-30, an Initial Study/Mitigated Negative Declaration. Motion passed 7 AYES.

Motion made by Commissioner Bridges, seconded by Commissioner Otterstetter, to adopt Resolution 1875, making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and

recommending the City Council approve the Affordable Housing Implementation Agreement; approving P-13-29, a planned unit development, and U-13-28, a conditional use permit with Exhibit A, pages 1-24; recommending the City Council approve TTM-13-27, Tentative Tract Map 8165 to create 15 single family lots with the construction of a detached dwelling on each lot (Mission Peak Homes) on an approximately 1.82 acre site (APN: 092A-2356-037) at 38517 Birch Street, on the west side of Birch Street north of Moores Avenue. Motion passed 7 AYES.

## **F. STAFF REPORTS**

### **F.1 Presentation of the 2014-2015 and 2015-2016 Capital Improvement Plan and finding in conformance with the General Plan.**

Senior Civil Engineer Fajeau gave the staff report.

Commissioner Bridges highlighted items on the Unfunded Projects List that she would like be given consideration for funding in the near future.

Answering Commissioner Drews, SCE Fajeau stated there are no formal procedures in place to receive public suggestions for CIPs but most requests are made via telephone calls to the City.

Answering Vice-Chairperson Hannon, SCE Fajeau confirmed that there were no operating budget surpluses to transfer to the Capital Improvement Fund since 2004.

Discussion ensued on various CIP Projects highlighted by Vice-Chairperson Hannon.

Commissioner Drews commented that she likes the new and improved street name signs.

Motion made by Commissioner Bridges, seconded by Commissioner Fitts, finding the 2014-2015 and 2015-2016 Capital Improvement Plan is in conformance with the General Plan. Motion passed 7 AYES.

## **G. COMMISSION MATTERS**

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

None.

RESOLUTION NO. 1874

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 15 SINGLE FAMILY DWELLING UNITS ON AN APPROXIMATELY 1.82 ACRE PROJECT SITE

WHEREAS, the Birch Street Project (“Project”), consists of the construction of 15 single family dwelling units on approximately 1.82 acres (APN 092A-2356-37); and

WHEREAS, the entitlements requested include Tentative Tract Map 8165 (TTM-13-27), a planned unit development, and 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 light or glare, air quality, biological resources, hazards and hazardous materials; 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 April 8, 2014 and ending on April 28, 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 April 8, 2014; and

WHEREAS, as of the date of this resolution, May 13, 2014, not comment letters have been received; and

WHEREAS, on May 13, 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 May 13, 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 approving the Mitigated Negative Declaration of environmental impact for Tentative Tract Map 8165 (TTM-13-27), the 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 May 13, 2014 meeting by Commissioner Bridges, seconded by Commissioner Fitts, and passed as follows:

AYES: Aguilar, Bridges, Drews, Fitts, Hannon, Nillo and Otterstetter.

NOES: None.

ABSENT: None.

s/Terrence Grindall  
TERRENCE GRINDALL, Secretary

s/Bernie Nillo  
BERNIE NILLO, Chairperson

RESOLUTION NO. 1875

RESOLUTION OF THE NEWARK PLANNING COMMISSION  
RECOMMENDING THAT THE CITY COUNCIL APPROVE  
AN ALTERNATIVE MEANS OF COMPLIANCE WITH THE  
INCLUSIONARY HOUSING ORDINANCE FOR THE BIRCH  
STREET PROJECT AND MAKING FINDINGS RELATED TO  
THE USE OF AN ALTERNATIVE MEANS OF COMPLIANCE

WHEREAS, the Birch Street Project includes a condition that the project comply with the City's Inclusionary Housing Ordinance (Municipal Code Section 17.18); and

WHEREAS, the Inclusionary Housing Ordinance includes provisions for the application of an alternative means of compliance; and

WHEREAS, the payment of a \$25,000 Affordable Housing Fee per housing unit completed in the Birch Street project would provide funds to develop or preserve affordable housing in Newark and would be an alternative means of compliance with the Inclusionary Housing Ordinance; and

WHEREAS, the flexibility provided by the payment of the Affordable Housing Fee will allow the City to leverage funds with State and Federal programs to better address the needs of the Newark Community for affordable housing; and

WHEREAS, the funds from the Affordable Housing Fee will allow the City to target investment so that the achievement of affordable housing objectives can be coupled with the achievement of other Community objectives;

WHEREAS, the fee will allow the City to address the need for affordable housing more effectively than compliance with the ordinance and allow for the purchase of property in appropriate locations and the flexibility to leverage the funds with public and private sources to provide the type of housing that the community most needs;

WHEREAS, generally regional, State and Federal affordable housing funding or financing programs need an identified site to be competitive in the funding process. Without resources to acquire appropriate properties it is highly unlikely that the City would be able to effectively compete for these funds. Furthermore, this fee would allow the City to focus housing efforts on areas of particular need in the community and to tailor the level of housing affordability to have the greatest positive impact on those needing housing assistance.

WHEREAS, the funding provided by this development would allow the City to advance project readiness of potential sites thus further improving the likelihood of receiving funding from Regional, State and Federal sources., the alternative means of compliance fulfills the purposes of the Inclusionary Housing Ordinance, and will further affordable housing

opportunities in the City to an equal or greater extent than compliance with the requirements of the Ordinance.

WHEREAS, the alternative means of compliance will not unduly concentrate below market rate housing in one geographic area, because no particular project is now envisioned and the Planning Commission and City Council can monitor this concern when particular affordable housing developments are proposed; and

WHEREAS, the issue of concentration of future development of affordable housing is addressed because projects developed using the funds from the Affordable Housing Fee will be consistent with the General Plan and will require Planning Commission review and City Council approval.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission:

- a. Recommends that the City Council approve an Affordable Housing Agreement for the Birch Street project, said agreement being on file with the Secretary of the Planning Commission; and
- b. That the Planning Commission does find that:
  - i) The proposed alternative means of compliance fulfills the purposes of this, the Inclusionary Housing Ordinance, as set forth in Section 17.18.010; and
  - ii) The proposed alternative means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Section 17.18.030; and
  - iii) The proposed alternative means of compliance would better address the City's needs than compliance with the requirements of Section 17.18.030; and
  - iv) The proposed alternative means of compliance will not unduly concentrate below market rate housing in one geographic area.

This Resolution was introduced at the Planning Commission's May 13, 2014 meeting by Commissioner Bridges, seconded by Commissioner Otterstetter, and passed as follows:

AYES: Aguilar, Bridges, Drews, Fitts, Hannon, Nillo and Otterstetter.

NOES: None.

ABSENT: None.

s/Terrence Grindall  
TERRENCE GRINDALL, Secretary

s/Bernie Nillo  
BERNIE NILLO, Chairperson