1) Adopt a resolution making certain findings and adopting a Supplemental Environmental Impact Report (E-12-30) to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development Specific Plan;

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK MAKING CERTAIN FINDINGS AND ADOPTING A SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (E-12-30) TO THE ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NUMBER 2010042012) FOR THE DUMBARTON TRANSIT ORIENTED DEVELOPMENT SPECIFIC PLAN

WHEREAS, the City of Newark caused an Environmental Impact Report (State Clearinghouse Number 2010042012) to be prepared to assess the potential environmental impacts of the proposed Dumbarton Transit Oriented Development Specific Plan; and

WHEREAS, the Environmental Impact Report consists of a Draft Environmental Impact Report document as well as the Final Environmental Impact Report document, which in turn consists of all comments received by the City of Newark regarding the Draft Environmental Impact Report during the mandatory public review period and responses to those comments; and

WHEREAS, the City Council held a duly noticed public hearing on September 8, 2011, and certified the Environmental Impact Report (State Clearinghouse Number 2010042012) for the Dumbarton Transit Oriented Development Specific Plan after finding it complete and adequate pursuant to the California Environmental Quality Act; and

WHEREAS, the Planning Commission held a duly notice public hearing on March 11, 2014, and recommended that the City Council approve a Supplemental Environmental Impact Report (E-12-30) to the Dumbarton Transit Oriented Development Specific Plan Environmental Impact Report (State Clearinghouse Number 2010042012) after finding it complete and adequate pursuant to the California Environmental Quality Act, and;

WHEREAS, the proposed rezoning (RZ-12-27) and Vesting Tentative Map (TM-12-28) concern the development of the property within the Dumbarton Transit Oriented Development Specific Plan project area, and the proposed development is within the residential density limits analyzed by the Environmental Impact Report (State Clearinghouse Number 2010042012) and the Supplemental Environmental Impact Report (E-12-30) for the Dumbarton Transit Oriented Development Specific Plan; and

WHEREAS, the Planning Commission held a duly noticed public hearing on March 11, 2014, took testimony from the public, and upon fully considering all documents in the record, the Planning Commission determined that the Environmental Impact Report (State Clearinghouse Number 2010042012) and the Supplemental Environmental Impact Report (E-12-30) for the Dumbarton Transit Oriented Development Specific Plan specifically considered and fully analyzed all environmental impacts of the proposed amendment to TM-12-28, Vesting Tentative Map 8110, pursuant to Public Resources Code section 21000 *et seq.*

NOW, THEREFORE, the City Council finds and resolves as follows:

1. That the Environmental Impact Report and the Supplemental Environmental Impact Report (E-12-30) for the Dumbarton Transit Orientated Development Specific Plan analyzed the impacts of the proposed development pursuant to the Specific Plan; and

2. That, as concluded by the Environmental Impact Report and the Supplemental Environmental Impact Report (E-12-30) for the Dumbarton Transit Oriented Development Specific Plan, the proposed rezoning and Vesting Tentative Map will not have a significant impact on the environment once the proposed mitigation measures in the Environmental Impact Report and the Supplemental Environmental Impact Report have been applied except for impacts related to traffic and hazards; and

3. That the Environmental Impact Report and the Supplemental Environmental Impact Report for the Dumbarton Transit Orientated Development Specific Plan fully analyze and cover all environmental impacts of the proposed rezoning and adoption of the Vesting Tentative Map; and

NOW, THEREFORE, the City Council;

a. Adopts the findings of fact and a Statement of Overriding Considerations pursuant to CEQA Guidelines Sections 15091 and 15126.6, as set forth in Exhibit A to this Resolution and incorporated herein by reference;

b. Adopts the Mitigation Monitoring and Reporting Program, as set forth in Exhibit B to this Resolution and incorporated herein by reference;

c. Based on the evidence and oral and written testimony presented at public hearings, and based on all the information contained in the Community Development Department's files on the project, including, but not limited to, the SEIR, the Planning Commission's and City Council's staff reports, certifies in accordance with CEQA Guidelines section 15090 that:

    1. The SEIR was prepared in compliance with CEQA and the CEQA Guidelines;

    2. The City Council has reviewed and considered the information contained in the SEIR prior to approving the project;

    3. The SEIR adequately describes the project, its environmental impacts, reasonable alternatives and appropriate mitigation measures;

    4. The SEIR reflects the independent judgment and analysis of the City Council.

RESOLUTION NO. ____
EXHIBIT A

TRUMARK DUMBARTON TRANSIT ORIENTED DEVELOPMENT RESIDENTIAL PROJECT

SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT
(State Clearinghouse No. 2010042012

FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

_____ 2014

1.0 INTRODUCTION

This statement of findings addresses the potentially significant environmental impacts associated with the project located in Alameda County, California and is made pursuant to Section 15091 of the California Environmental Quality Act ("CEQA") Guidelines, which provide that:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

Section 15092 of the CEQA Guidelines further stipulates that:

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

According to Section 15093 of the CEQA Guidelines:

a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the Notice of Determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

As required by CEQA, the City of Newark ("City"), in adopting these findings, must also adopt adequate mitigation for the project. Mitigation here includes measures provided in the Dumbarton Transit Oriented Development ("TOD") Specific Plan MMRP, which is incorporated by reference and made a part of these findings, and the measures adopted by the Supplemental Environmental Impact Report ("SEIR") for the Trumark Dumbarton TOD Residential Development. These measures together meet the requirements of Section 15097 of the CEQA Guidelines by providing for the implementation and monitoring of measures intended to mitigate potentially significant effects of the project.

1.1 PROJECT SUMMARY

The project would involve (1) preparation of Site A (APN 092-0140-008, owned by Trumark Properties, as Enterprise Drive LLC) and Site B (APNs 092-0116-060, -058, and -059, owned by Jones-Hamilton Co., as Newark Enterprise Joint Venture LLC) for residential developments, and (2) the construction of 244 single-family homes and associated streets, sidewalks, open space, and utilities on the sites (the "Project").

The Project is located on two sites at 8375 and 8400 Enterprise Drive in the Dumbarton TOD area. The parcel extends from Enterprise Drive north to the DRC and includes a portion of the Hetch Hetchy pipeline right-of-way. The site is bounded by vacant land to the west and industrial property immediately to the east, and single-family homes further east of the industrial property.

1.2 ENVIRONMENTAL REVIEW PROCESS

In accordance with the requirements of CEQA and the CEQA Guidelines, a Notice of Preparation (NOP) of a Draft SEIR was filed with the State Clearinghouse (SCH) Office of Planning and Research (OPR) on February 8, 2013. The NOP was distributed to public agencies and interested parties for a 30-day public review period, which extended from February 11, 2013 to March 12, 2013.

The Draft SEIR was filed with the SCH OPR on December 24, 2013. The Draft SEIR was circulated for a 45-day public review period, which ended on February 6, 2014. During this public review period, the City received written comments on the Draft SEIR. Section 15088 of the CEQA Guidelines requires that the lead agency responsible for the preparation of an EIR evaluate comments on environmental issues received from parties who reviewed the Draft SEIR and prepare a written response addressing each of the comments. A Final SEIR was prepared for the Project, which assembles in one document all of the environmental information and analysis prepared for the Project, including comments on the information and analysis contained in the Draft SEIR and responses by the City to those comments.

Pursuant to Section 15132 of the CEQA Guidelines, the Final SEIR consists of the following:

(a) The Draft SEIR, including all of its appendices.

(b) A list of persons, organizations, and public agencies commenting on the Draft SEIR.

(c) Copies of all letters received by the City during the Draft SEIR public review period and responses to significant environmental points concerning the Draft SEIR raised in the review and consultation process.

(d) Revisions to the Draft SEIR.

(e) Any other information added by the lead agency.

2.0 CEQA FINDING OF INDEPENDENT JUDGMENT

The City is the lead agency with respect to the Trumark Dumbarton TOD Residential Project pursuant to the Section 15367 of the CEQA Guidelines. As noted above, Section 15091 of the CEQA Guidelines requires that the lead agency prepare written findings for identified significant impacts, accompanied by a brief explanation for the rationale for each finding. The Final SEIR for the Project identified potentially significant effects that could result from Project implementation. However, the City finds that the inclusion of certain mitigation measures as part of the Project approval will reduce most, but not all, of those effects to less than significant levels. Those impacts that are not reduced to less than significant levels are overridden due to specific Project benefits identified in a Statement of Overriding Considerations provided below in Section 7.0.

In accordance with CEQA and the CEQA Guidelines, the City adopts these findings as part of its approval of the Project. Pursuant to Section 21082.1(c)(3) of the Public Resources Code, the City

also finds that the Final SEIR reflects the City's independent judgment as the lead agency for the Project.

3.0 ADMINISTRATIVE RECORD

The record, upon which all findings and determinations related to the approval of the Project are based, includes the following:

- The SEIR and all documents referenced in or relied upon by the SEIR.
- All prior and present information (including written evidence and testimony) provided by City staff to the Planning Commission and City Council relating to the SEIR, the approvals, and the Project.
- All prior and present information (including written evidence and testimony) presented to the Planning Commission and City Council by the Project sponsor and consultants.
- All final applications, letters, testimony, exhibits, and presentations presented by the Project sponsor and consultants to the City in connection with the Project.
- All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the SEIR.
- For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation the general plan, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
- The Dumbarton TOD Specific Plan, the EIR for the Specific Plan, the Specific Plan MMRP, and all other documents relevant to the Specific Plan.
- All other documents composing the record pursuant to Public Resources Code section 21167.6(e).
- The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is Terrence Grindall, Community Development Director, or his designee. Such documents and other materials are located at the Newark Community Development Department, 37101 Newark Boulevard, Newark, CA 94560.

4.0 FINDINGS OF FACT

The following sections make detailed findings with respect to the potential effects of the Project and refer, where appropriate, to the mitigation measures set forth in the Final SEIR and the Dumbarton TOD Specific Plan MMRP to avoid or substantially reduce potentially significant adverse impacts of the Project. The SEIR and the administrative record concerning the Project provide additional facts in support of the findings herein. The Findings of Fact and Statement of Overriding Considerations for the Dumbarton TOD Specific Plan EIR, attached as Exhibit 1, are

hereby incorporated into these findings in their entirety and readopted by the City. To the extent any finding in Exhibit 1 is inconsistent with a finding specific to the SEIR stated below, the finding specific to the SEIR controls.

4.1 POTENTIALLY SIGNIFICANT BUT MITIGABLE IMPACTS

Pursuant to CEQA Guidelines Sections 15091(a)(1) and 15092(b), and to the extent reflected in the SEIR, the City finds that changes or alterations have been required to, or incorporated into, the components of the Project to mitigate or avoid potentially significant effects on the environment. Based on the analysis contained in the SEIR, the following impacts have been determined to fall within the category of impacts that can be reduced to less than significant levels with implementation of the mitigation measures set forth below.

- Air Quality (potential impacts resulting from air pollutant emissions during short-term construction activities and long-term Project operations)
- Biological Resources (potential impacts to salt marsh harvest mouse, western burrowing owl, nesting raptors, passerine birds, special-status plant species, wetlands, and trees)
- Cultural Resources (potential impacts to historical, archaeological and paleontological resources and human remains)
- Greenhouse Gas Emissions (potential impacts associated with greenhouse gas emissions)
- Hazards and Hazardous Materials (potential impacts associated with exposure to hazardous materials, except for the potential impact of exposure to the accidental release of hazardous materials)
- Noise (potential impacts resulting from short-term increases in noise and ground-borne vibration during construction, exposure of future residential uses to noise from future commuter train service, and long-term increases in traffic noise)

4.1.1 Air Quality

Summary of Potential Impacts

An evaluation of potential impacts from air pollutant emissions during construction activities and long-term Project operations is found in Section 4.1 of the Draft SEIR.

The proposed Project is consistent with the Specific Plan land use designations for the site and proposes residential development envisioned in the Dumbarton TOD Specific Plan. As such, it would not conflict with applicable air quality plans or cause new impacts related to odors or carbon monoxide, beyond those already mitigated to less than significant levels by measures adopted by the Specific Plan EIR.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the Project, which would mitigate or avoid potential impacts from air pollutant emissions during construction activities and long-term Project operations as identified in the SEIR. The. City further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Consistent with Specific Plan EIR Mitigation Measure 4.2-2, a Community Health Risk Assessment was completed for the Project, which shows that the Project would not expose future sensitive receptors to substantial pollutant concentrations associated with operation of the Dumbarton Rail Corridor ("DRC"). The Assessment also found that site remediation and construction would not expose nearby receptors to substantial increases in cancer and non-cancer health hazards.

Operational and construction-related criteria pollutant emissions would not exceed BAAQMD screening levels and significance thresholds, respectively. Therefore, the Project would not result in a cumulatively considerable increase in criteria pollutants for which the Bay Area is in non-attainment.

With implementation of Specific Plan EIR Mitigation Measures 4.2-1a and 4.2-1b, the proposed Project would not result in significant impacts related to fugitive dust emissions during construction.

The proposed Project is consistent with the Specific Plan land use designations for the site and would not conflict with applicable air quality plans or result in new impacts related to odors or carbon monoxide.

4.1.2 Biological Resources

Summary of Potential Impacts

An evaluation of potential impacts to salt marsh harvest mouse, western burrowing owl, nesting raptors, passerine birds, special-status plant species, wetlands, and trees is found in Section 4.2 of the Draft SEIR.

The Dumbarton TOD Specific Plan EIR assessed existing biological resources within the Specific Plan area, analyzed potential impacts to biological resources resulting from implementation of the Specific Plan, and identified measures to avoid impacts or reduce impacts to less than significant levels. The Specific Plan EIR's analysis of biological impacts was based in part on a 2010 Jurisdictional Delineation (wetlands and waterways delineation) and a 2011 Special-Status Species Assessment that were prepared for development of the Torian property prior to City adoption of the Dumbarton TOD Specific Plan, and a program-level Biological Resources Analysis prepared specifically for the Specific Plan.

The Dumbarton TOD Specific Plan EIR concluded that implementation of the Specific Plan could result in significant impacts to nesting raptors, special-status animal species including the

Salt Marsh harvest mouse, the Western burrowing owl, the Tricolored blackbird, Saltmarsh common yellowthroat, and other nesting passerine birds. Significant impacts to special-status plants and to seasonal wetlands were also identified. The Dumbarton TOD Specific Plan EIR included mitigation measures consisting primarily of pre-construction surveys to reduce potential impacts to biological resources to a less than significant levels through avoidance of special status species.

Because the mitigation measures identified in the Dumbarton TOD Specific Plan EIR apply to the Project, Project-level surveys for special status plant and animal species and for regulated habitats were completed for Sites A and B. Based on site-specific surveys for biological resources prepared for the proposed Project, Project impacts to biological resources would be the same or less than those identified in the Dumbarton TOD Specific Plan EIR.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the Project, which mitigate or avoid potential impacts to special-status species, nesting birds and raptors, wetlands and waters of the U.S./State, and protected trees as identified in the Final SEIR. The City further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Field surveys for potential Salt Marsh Harvest Mouse ("SMHM") habitat determined that neither Site A nor Site B contain suitable SMHM habitat. The proposed Project therefore would not impact any SMHM or habitat potentially suitable for SMHM.

The breeding season survey for Western burrowing owls found that no owls were present on site nor nesting on site, although owls could occupy the site in the future prior to Project implementation and therefore the Project will implement pre-construction survey mitigation identified in the Specific Plan FPEIR. The proposed Project would not impact burrowing owl nesting habitat, therefore no mitigation for burrowing owl habitat is required.

The Project would impact 0.24 acres of seasonal fresh water wetland habitat. Because avoidance of wetland habitat is infeasible, the Project will provide mitigation for this impact by purchasing mitigation credits from an approved mitigation bank or an approved in-lieu fee mitigation entity at a minimum 1:1 ratio, as approved by the USACE and the RWQCB.

The Project would impact Congdon's tarplant, a California Native Plant Society 1B.1-listed plant that is located on the southeast portion of Site B. Because site remediation must meet regulatory standards intended to protect the health of future residents, it would not be feasible to leave contaminants in place in areas where Congdon's tarplant occurs, therefore avoidance of the plant and its habitat on the site would be infeasible. The Project would implement Dumbarton TOD Specific Plan EIR Mitigation Measure 4.3-5 for mitigation of impacts to special status plants.

4.1.3 Cultural Resources

Framework on January 28, 2010 to document the City's baseline GHG emissions and to set emissions reduction goals.

Certified in September 2011, the Specific Plan EIR identifies measures that future development in the Specific Plan area would implement to reduce GHG emissions. The Specific Plan is consistent with applicable climate change plans and policies and meets the criteria laid out in CEQA Guidelines Section 15183.5 for programmatic GHG reduction plans. It includes measures that, if implemented by the proposed Project, would contribute to the achievement of the specified emissions reductions. Individual development Projects in the Specific Plan area that incorporate the Project features outlined in the Specific Plan EIR can be determined to have a less than significant cumulative GHG impact under CEQA. The Project here would incorporate the required features.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the Project, which mitigate or avoid potential impacts related to GHG emissions as identified in the Final SEIR. The City further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

The Project is located in an urban setting close to construction supplies and would implement the BAAQMD-recommended BMPs where feasible to reduce construction GHG emissions. The proposed Project would not be vulnerable to the hazards and environmental impacts caused by climate change.

The proposed Project would implement the applicable mitigation measures identified in the Specific Plan EIR to reduce GHG emissions below the BAAQMD threshold of significance. In doing so, the Project would be consistent with applicable plans, policies, and regulations to reduce GHG emissions.

4.1.5 Hazards and Hazardous Materials

Summary of Potential Impacts

An evaluation of potential impacts associated with hazardous materials sites and accidental release of hazardous materials is found in Section 4.5 (Hazards and Hazardous Materials) of the Draft SEIR.

The Specific Plan EIR identified eight different "Hazardous Materials Sites" within the specific plan area that had hazardous material impacts or hazardous natural features (e.g. naturally occurring asbestos). Most of these properties were impacted by previous businesses operating on the site that stored and processed chemicals. For the purposes of this SEIR, hazards and hazardous materials impacts affecting Site A and Site B only were evaluated.

Summary of Potential Impacts

An evaluation of potential impacts on historical, archaeological, and paleontological resources and human remains is found in Section 4.3 (Cultural Resources) of the Draft SEIR.

The Dumbarton TOD Specific Plan EIR identified both pre-construction and construction-period measures to avoid significant impacts to cultural resources. The Project would implement construction-period mitigation measures to avoid impacts to buried cultural resources if present, as specified in the Dumbarton TOD Specific Plan EIR. The Project has completed a preconstruction evaluation of potential Project impacts to potential historic resources, and has therefore satisfied the mitigation requirement for avoidance of historic resources specified in the Dumbarton TOD Specific Plan EIR.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the Project, which mitigate or avoid the potential impacts on historical, archaeological and paleontological resources and human remains as identified in the Final SEIR. The City further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Based on the impact evaluation prepared for the proposed Project, the Project would not result in a significant impact to the Southern Pacific Railroad Dumbarton Cutoff Linear Historic District (Dumbarton Cutoff) which is the only known historic resource in the Specific Plan area.

With implementation of Dumbarton TOD Specific Plan EIR Mitigation Measure 4.4-1 the proposed Project would not result in any new or more significant impacts to buried cultural artifacts, including historic resources and human remains, than those previously-disclosed in the Specific Plan EIR.

4.1.4 Greenhouse Gas Emissions

Summary of Potential Impacts

An evaluation of potential impacts related to GHG emissions is found in Section 4.4 (Greenhouse Gas Emissions) of the Draft SEIR.

As outlined in Section 15183.5 of the CEQA Guidelines (Tiering and Streamlining the Analysis of Greenhouse Gas Emissions), public agencies may analyze and identify mitigation for GHG emissions in a program-level plan such as a General Plan, Specific Plan, or a GHG reduction plan that has been adopted in a public process following environmental review. Project-specific GHG emissions analysis can tier from the EIR completed for such plans, and the Project may be determined to have a less than significant GHG impact if it is consistent with and implements the measures of the program-level plan. The City of Newark adopted a Climate Action Plan Initial

A discussion of the principles of noise and vibration along with an overview of the regulations governing noise and vibration can be found in Dumbarton TOD Specific Plan EIR. Further, an evaluation of the potential impacts resulting from short-term increases in noise any ground-born vibration during construction, exposure of future residential uses to noise from future commuter train service, and long-term increases in traffic noise is found in Section 4.6 of the Draft SEIR.

The Dumbarton TOD Specific Plan EIR evaluated the existing noise and vibration environment within the Specific Plan area, and analyzed the potential short- and long-term noise and vibration impacts resulting from build-out of the Specific Plan. Noise measurements were taken at four locations within and adjacent to the Specific Plan area, and measures were included to reduce potentially significant noise impacts to a less than significant level.

The Noise Element of the City of Newark General Plan identifies noise and land use compatibility standards for various land uses. These standards are intended to ensure compatible land uses throughout the community with regards to environmental noise. Residential land uses are considered "normally acceptable" in an exterior noise environment of 60 dBA or less. Interior noise levels attributable to exterior noise sources shall be maintained at or below 45 dBA. The proposed residential use of Site A and Site B would not cause vibration impacts to buildings or nearby sensitive receptors.

Noise sources affecting the Project sites include vehicular traffic on Enterprise Drive and Willow Street and mechanical equipment from nearby industrial uses. The railroad adjacent to the northern boundary of Site A, though not currently in operation, is planned for operation as part of the DRC project. The Dumbarton TOD Specific Plan EIR found that implementation of the Specific Plan would not cause on-site ambient noise levels to increase substantially. However, ambient noise impacts from surrounding uses to future residential development under the Specific Plan were found to be potentially significant but capable of mitigation to less than significant levels with implementation of Specific Plan EIR MM 4.10-3.

The speed limit on Willow Street would be reduced from 40 miles per hour to 25 miles per hour prior to or concurrent with operation of the proposed Project. The traffic generated by the proposed Project would be consistent with the trip generation estimates made in the Specific Plan EIR, therefore implementation of the Mitigation Measure 4.10-4 would reduce traffic noise impacts to a less than significant level.

The Dumbarton TOD Specific Plan EIR does not discuss potential vibration levels from railroad trains, and information regarding future vibration levels resulting from the DRC project were not available at the time of this study. The Noise and Vibration Assessment prepared for the Project estimates vibration levels based on recent experience and vibration assessments prepared for a Caltrain station in Morgan Hill, California. Data gathered along the Union Pacific Railroad in Morgan Hill indicated that vibration levels are typically 70 VdB or less at a distance of 100 feet from the center of the near track. Vibration levels within 50 feet of the near track may exceed 75 VdB, and vibration levels within 25 feet of the near track may exceed 80 VdB. Vibration levels from the DRC project, assuming operational characteristics similar to those of Caltrain in Morgan Hill, are anticipated to be less than 80 VdB at a distance of 60 feet from the nearest railroad track. Vibration levels are not anticipated to exceed the FTA guidelines at the nearest

The Dumbarton TOD Specific Plan EIR identified the Project sites as being impacted by hazardous materials. As such, Dumbarton TOD Specific Plan EIR Mitigation Measures 4.7-1a through 4.7-1c would be implemented by the Project to address the potential hazardous material impacts on the sites.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the Project, which mitigate or avoid potential impacts associated with hazardous materials sites and accidental release of hazardous materials as identified in the Final SEIR. The City further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Site A is impacted by VOCs in soil and groundwater that originate from the adjacent Honeywell site. VOC concentrations found in an HHRA performed in 2013 exceed health risk levels acceptable to the RWQCB for on-grade (slab on grade) residential units. A remediation plan approved by the RWQCB that would reduce VOC concentrations in soil and groundwater on Site A to acceptable risk levels will be implemented prior to residential use of the site. RWQCB approval of the remediation and additional health protection measures would be required prior to the issuance of grading or building permits, consistent with Dumbarton TOD Specific Plan EIR Mitigation Measures 4.7-1a.

Site B is impacted by soil contamination and groundwater contamination associated with past uses of the site. A remediation plan, as approved by the RWQCB, shall be prepared and implemented to reduce groundwater contaminants on Site B to acceptable risk levels for residential use. Compliance with the RWQCB conditions of approval of the remediation plan and RWQCB acceptance of the remediation results will be required prior to the issuance of grading or building permits for development of Site B, consistent with Dumbarton TOD Specific Plan EIR Mitigation Measures 4.7-1a.

Remediation of soil and groundwater contamination on Site B could expose workers and the general public to contaminants in soil and groundwater. A Health and Safety Plan prepared in accordance with all Federal OSHA and California Division of Occupational Safety and Health that addresses the safety of workers and the general public during remediation of the site shall be implemented by the Project.

Soil imported to the site for backfill could contain contaminants. Imported soils shall be sampled for toxic or hazardous materials exceeding applicable Environmental Screening Levels for residential use of the site, and only clean soil shall be used that is consistent with RWQCB cleanup goals for the site.

4.1.6 Noise

Summary of Potential Impacts

proposed residential units to the railroad. Therefore, the Project would not expose sensitive receptors to significant levels of vibration.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the Project, which mitigate or avoid potential impacts resulting from short-term increases in noise and ground-borne vibration during construction, exposure of future residential uses to noise from future commuter train service, and long-term increases in traffic noise as identified in the Final SEIR. The City further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

The proposed Project would develop residences adjacent to the DRC, where sensitive receptors would be exposed to interior noise levels in excess of the City of Newark standards. Site-specific acoustical analyses, resulting in a specific determination of what treatments are necessary on a unit-by-unit basis, would reduce these impacts to a less than significant level. Vibration generated by the DRC would not result in a significant impact to buildings or to sensitive receptors.

The proposed Project would place sensitive receptors in an environment in which ambient noise levels exceed the City of Newark standards. Sound walls and Good Neighbor fences would be included as part of the Project and would attenuate exterior noise to less than significant levels.

Implementation of the Specific Plan EIR mitigation measure 4.10-4, to reduce the speed limit of Willow Street, would occur prior to or concurrent with Project development and would reduce traffic noise impacts to a less than significant level.

Implementation of Dumbarton TOD Specific Plan EIR mitigation measures 4.10-1a and 4.10-1b would reduce construction-related noise and vibration impacts to nearby sensitive receptors to a less than significant level.

4.2 ENVIRONMENTAL EFFECTS THAT ARE CONSIDERED SIGNIFICANT AND UNAVOIDABLE IMPACTS

This section identifies the significant and unavoidable impacts that require a Statement of Overriding Considerations to be issued by the City, pursuant to Section 15093 of the CEQA Guidelines, if the Project is approved. Based on the analysis contained in the SEIR, the following impacts would be significant and unavoidable:

- Accidental release of hazardous materials: a survey of hazardous material users in the vicinity of the Project and modeling of accidental releases of hazardous materials found that future residents of the Project would be affected by airborne hazardous materials in the event of an accidental release from industrial facilities located approximately one mile from the Project sites. There are no feasible mitigation measures to protect the site

or inhabitants of the site from exposure to airborne hazardous materials in the event of an accidental release.

4.2.1 Accidental Release of Hazardous Materials

Summary of Significant and Unavoidable Impacts

An evaluation of the potential for an accidental release of hazardous materials is analyzed in Section 4.5.2.3 of the SEIR.

Findings

The City finds that, pursuant to Section 15091(a)(3) of the CEQA Guidelines, specific economic, legal, social, technological, or other considerations make infeasible the use of mitigation measures to reduce the risk of accidental release of hazardous materials to less than significant levels.

Facts in Support of Findings

The Dumbarton TOD Specific Plan EIR did not identify a potential impact from nearby facilities that store and use hazardous materials to adversely affect the health of future residents of the Project sites in the event of an accidental release of hazardous materials. A survey of hazardous material users in the vicinity of the Project and modeling of accidental releases of hazardous materials found that future residents of the Project would be affected by airborne hazardous materials in the event of an accidental release from industrial facilities located approximately one mile from the Project sites. There are no feasible mitigation measures to protect the site or inhabitants of the site from exposure to airborne hazardous materials in the event of an accidental release, and therefore, future residents would be exposed to a significant and unavoidable risk of exposure to airborne hazardous materials.

Overriding Considerations

The environmental, economic, legal, social, technological, and other benefits of the Project outweigh and override these potentially significant adverse impacts as more fully described in the Statement of Overriding Considerations, set forth in Section 7.0 below.

5.0 FINDINGS REGARDING CONSIDERATIONS THAT MAKE ALTERNATIVES ANALYZED IN SEIR INFEASIBLE

Based on the entire record, the City finds that the SEIR identified and considered a reasonable range of feasible alternatives to the proposed Project which are capable, to varying degrees, of reducing identified impacts. The SEIR evaluated three alternatives in accordance with the CEQA Guidelines, including:

- Alternative 1: No Project/No Development
- Alternative 2: No Project – Existing Plan

- Alternative 3: Location Alternative
- Alternative 4: Reduced Development
- Alternative 5: Project Design

5.1 NO PROJECT/NO BUILD

Sites A and B have a General Plan designation of Medium Density (DTOD Specific Plan) 14-25 du/acre. Under the No Project Alternative, the sites would remain vacant and would not be developed to effectuate residential development under the Dumbarton TOD Specific Plan. Remediation of soil contaminants to regulatory standards for residential use of Site B would not be implemented. Remediation of VOCs in groundwater beneath Site A would likely still occur as part of the on-going cleanup of VOC-impaired groundwater associated with the Honeywell property.

Under the No Project Alternative, the Project sites would presumably remain vacant as other nearby properties were developed under the Dumbarton TOD Specific Plan, unless or until the Plan was amended to specify other uses of the sites. Alternative use of the sites for purposes other than residential would also require an amendment to the Newark General Plan and rezoning.

5.1.1 Environmental Effects

Under the No Project Alternative, disturbance of seasonal wetlands and Condon's tarplant would be avoided since existing habitat would be not disturbed by site remediation and residential development. This alternative would avoid the significant unavoidable impact to future residents of the site resulting from an accidental release of hazardous substances from hazardous material users in the vicinity of the Project. Remediation of soil contaminants to regulatory standards for residential use of Site B also would not be implemented.

5.1.2 Relation to Project Objectives

While the No Project Alternative would avoid the identified environmental impacts of the Project, it would not support the objectives of the Dumbarton TOD Specific Plan and could be detrimental to successful implementation of the Dumbarton TOD Specific Plan. The No Project Alternative would not support the City's goals for developing a sustainable community within the Specific Plan area, nor would it accomplish the highest and best use of the sites by leaving them vacant. This alternative would not meet any of the Project proponent's objectives of developing residential uses as identified in the Dumbarton TOD Specific Plan and it would not remediate soil contamination on Site B.

5.1.3 Feasibility

While the No Project Alternative would be feasible in the sense that no further action, including expensive remediation, would be taken to develop the Project sites, this alternative would not achieve any of the Project objectives and would hinder implementation of the adopted Dumbarton TOD Specific Plan.

5.2 NO PROJECT – EXISTING PLAN ALTERNATIVE

The No Project – Existing Plan Alternative assumes the Project is not approved or is not implemented, but that another future project is built consistent with existing plans and policies. In this case, what can be reasonably expected to occur in the foreseeable future, based on current plans and consistent with available infrastructure and community services is another residential project, at a density consistent with the Specific Plan designation for the site, Medium Density Residential (DTOD Specific Plan) 14-25 du/acre. As the current Project is proposed at the lower end of the allowed density range, it is foreseeable that a future alternative project on the site consistent with the Specific Plan could have a similar number (244) or perhaps more single family units, or, if developed with townhomes (or other attached unit product type) at the upper end of the specified density range, could approach 400 or so units.

5.2.1 Environmental Effects

Regardless of the residential unit type ultimately developed under this alternative, remediation of soil contaminants on Site B and remediation of VOCs on Site A would also have to occur prior to residential development. Extensive grading and excavation necessary to prepare Site B for residential use would still affect seasonal wetlands and Congdon's tarplant on the site to the same extent as the proposed Project. A townhome residential project could potentially avoid some seasonal wetland impacts on Site A by employing a more compact site design, and establishing appropriate buffer areas around the wetlands to maintain the hydrologic conditions to sustain the wetlands. The potential to avoid seasonal wetlands on Site A is discussed in more detail below in the Reduced Development Alternative and the Design Alternative.

5.2.2 Relation to Project Objectives

The No Project – Existing Plan Alternative would not avoid the significant unavoidable impact from the potential exposure of future residents on Site A and Site B to airborne hazardous substances. The No Project – Existing Plan Alternative would not avoid the significant impacts of the proposed Project on Site B, however, residential development on Site A in a more compact form could potentially reduce or avoid impacts to wetlands on Site A.

5.2.3 Feasibility

While the No Project – Existing Plan Alternative may be feasible, this alternative would not avoid the significant unavoidable impact from the potential exposure of future residents on Site A and Site B to airborne hazardous substances. Under this alternative, residential development on Site A in a more compact form could potentially reduce or avoid impacts to wetlands on Site A.

5.3 LOCATION ALTERNATIVE

Under the Location Alternative, the Project would be developed on either the Cargill or FMC properties. As noted in the Dumbarton TOD Specific Plan EIR, these sites are known to be impaired by hazardous materials, generally in the form of soil and/or groundwater contamination.

5.3.1 Environmental Effects

It is likely that the remediation actions needed to prepare these sites for residential development would involve similar remediation as the Project proposes for Site B. As noted in the Specific Plan EIR, portions of the FMC and Cargill site support wetland plant communities, and have the potential to also contain Condon's tarplant and other biotic resources. These sites may also support special status species such as Western Burrowing Owl, or Salt Marsh Harvest Mouse. Given the extensive site work typically associated with remediation and site development, it is unlikely that implementation of the Project on one of these alternative sites would avoid potential impacts to biotic resources present on these sites, although impacts on Site A and Site B would be avoided.

The Location Alternative could reduce the potential exposure of future residents to airborne hazardous substances in the event of an accidental release from either of two facilities located in the vicinity of the Project. As described in SEIR Section 4.4, Hazards and Hazardous Materials, under the alternative accidental release scenario (the accidental release of a portion of a hazardous substance as compared to a total release), the area of exposure to toxic levels of Nitrogen Dioxide would not extend to the FMC or Cargill properties.

Thus, the Location Alternative would avoid the significant unavoidable impact under an alternative hazardous substance release scenario. Under a worst-case release scenario, the Location Alternative sites would be subject to a significant unavoidable impact from the potential exposure of future residents to airborne hazardous substances.

5.3.2 Relation to Project Objectives

While development of the Project on either the Cargill or FMC properties would result in a reduced risk from the accidental release of hazardous substances, all other impacts would be similar to those of the proposed Project.

5.3.3 Feasibility

Because none of the potential alternative locations are controlled by the Project proponent, implementation of the Project on an alternative location would not be feasible unless and until controlled by the applicant. Further, the City, by adopting the Dumbarton TOD Specific Plan made the policy decision that Site A and Site B should be developed with residential uses. Leaving these sites vacant would and developing alternative sites would be inconsistent with the Specific Plan vision and therefore infeasible for policy reasons.

5.4 REDUCED DEVELOPMENT ALTERNATIVE

The Reduced Development Alternative would have the purpose of developing fewer units to avoid disturbing areas of the site with wetlands and Congdon's tarplant. This would entail a reduction of residential units on Site A to avoid seasonal wetlands by locating residences and streets away from mapped wetland areas. However, on Site B, remediation of soil contaminants to prepare it for residential uses would continue to necessitate disturbance of the entire site, thereby impacting wetlands and Congdon's tarplant on that area of the Project.

5.4.1 Environmental Effects

The Reduced Development Alternative would establish appropriate buffer areas around the Site A wetlands to maintain the hydrologic conditions needed to sustain the wetlands. This is estimated to require approximately 0.5 acres of the 2.2 acre Site A. Additionally, the internal roadway would need to wind through the site in an inefficient, circuitous manner to avoid the wetlands and buffer areas. These restrictions in combination are estimated to reduce the number of units that could be developed on Site A by roughly half (12-15 units).

5.4.2 Relation to Project Objectives

Given the proposed Project at 244 total units narrowly achieves the minimum Specific Plan residential density of 14 units per acre, this reduced development alternative with roughly 12-15 fewer units would not meet the minimum density specified in the Specific Plan for the two sites. As noted above, one of the objectives of the Dumbarton TOD Specific Plan is to provide a sufficient number of residential units within walking distance of the planned transit station to generate the ridership necessary to support the planned station and public transit service. The Reduced Development Alternative would provide fewer residential units on site A than planned and therefore would fail to meet this objective.

5.4.3 Feasibility

The Reduced Development Alternative is not considered feasible because it would not be consistent with the General Plan designation for the site and would not achieve the objectives of the Specific Plan.

5.5 PROJECT DESIGN ALTERNATIVE

This alternative would avoid development in areas of Site A containing seasonal wetlands. This alternative assumes the same number of units (244 total on both sites) as proposed by the Project. It also assumes that streets and sidewalks would be provided for access, and that public open space areas would be included for Site B.

This alternative could redistribute the lost Site A units (estimated at roughly 12-15 units) to Site B. The site plan for Site B could not readily accommodate another 12-15 single-family detached units, and so this alternative would involve modifying some of the Site B units to a more compact, efficient form, likely either townhomes or stacked units. This alternative could impair the Project's ability to meet the design standards and objectives established in the Specific Plan, such as those addressing neighborhood scale and architectural compatibility.

Relocating these units would allow the Project as a whole (Site A and Site B) to maintain the 244 unit count to achieve the minimum residential density for the Medium Density Residential land use designation across both sites, but would not achieve the minimum density of 14 units per acre specified for Site A. Thus, Site A would not conform to its General Plan land use designation under this alternative.

Resources Code 21001.1[b]). In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than under CEQA (Public Resources Code 21004). The City has specific powers to mitigate effects that occur within its jurisdiction, namely within the City.

Section 21081.6 of the Public Resources Code requires the City to adopt a monitoring or compliance program regarding the changes in the Project and mitigation measures imposed to lessen or avoid significant effects on the environment. The MMRP for the Dumbarton TOD Specific Plan and SEIR mitigation measures fulfill the CEQA mitigation monitoring requirements, as follows:

- The MMRP and SEIR are designed to ensure compliance with the changes in the Project and mitigation measures imposed on the Project during Project implementation

- Measures to mitigate or avoid significant effects on the environment are fully enforceable through conditions of approval, permit conditions, agreements or other measures.

7.0 STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA requires decision makers to balance, as applicable, the economic, legal, social, technological or other benefits of a project against its significant and unavoidable environmental impacts when determining whether to approve the Project. If the specific economic, legal, social, technological or other benefits of the Project outweigh the significant and unavoidable impacts, those impacts may be considered "acceptable" (CEQA Guidelines Section 15093(a)). When significant impacts are not avoided or lessened, CEQA requires the agency to state, in writing, the specific reasons for considering a project acceptable. Those reasons must be based on substantial evidence in the Final SEIR or elsewhere in the administrative record (CEQA Guidelines Section 15093(b)).

In accordance with the requirements of CEQA and the CEQA Guidelines, the City finds that the mitigation measures identified in the Final SEIR and the Mitigation Monitoring and Reporting Program for the Trumark Dumbarton TOD Residential Project, when implemented, will avoid or substantially lessen virtually all of the significant impacts identified in the Final SEIR. However, certain significant impacts of the Project are unavoidable even after incorporation of all feasible mitigation measures. In addition to the significant and unavoidable impacts identified in the Dumbarton TOD Specific Plan EIR, the Project would result in a significant and unavoidable risk of accidental release of hazardous materials impacts. The Final SEIR provides detailed information regarding this impact.

The City finds that all feasible mitigation measures identified in the Final SEIR within the purview of the City will be implemented with the Project, and that the remaining significant and unavoidable impacts are outweighed and are found to be acceptable due to the following specific overriding economic, legal, social, technological or other benefits based upon the facts set forth above in the Findings of Fact, the Final SEIR and the administrative record. Each of the following specific overriding economic, legal, social, technological or other benefits (overriding considerations) set forth below constitutes a separate and independent ground for finding that the Project benefits outweigh its significant adverse environmental impacts and, alone, is an

5.5.1 Environmental Effects

Preparation of Site B for residential use would still require extensive grading for soil removal as would be required under the proposed Project. Because the areas of seasonal wetlands and Congdon's tarplant are dispersed across Site B, it would not be feasible to avoid them during Site B remediation, nor would it be feasible to leave "pockets" of contaminated soil on Site B in areas where wetlands and tarplant occur. Alternative siting of streets and roads would not feasibly avoid wetland and tarplant impacts since the remediation of Site B required preceding any residential development would disturb areas in which these sensitive biological resources are present.

A Project Design Alternative to avoid seasonal wetlands impacts on Site A would involve reconfiguring the public street providing access from Enterprise Drive to avoid direct impacts to wetlands, and providing an adequate buffer around wetlands (estimated at requiring roughly 0.5 acres to be left alone) to maintain the hydrologic conditions needed to sustain Site A wetlands. Under this scenario, the main public street would meander from the east to west side of the site to avoid direct wetlands impacts, which would likely require that secondary streets be curvilinear. Parcels would be arranged around the modified street plan and in a way to avoid wetlands and provide appropriate buffer areas.

5.5.2 Relation to Project Objectives

The Project Design Alternative would not avoid the significant unavoidable impact from the potential exposure of future residents on Sites A and B to airborne hazardous substances. Avoidance of impacts to seasonal wetlands and Congdon's tarplant on Site B under the Project Design Alternative would not be feasible since remediation of soil impacts during preparation of the Site for residential development would still result in direct impacts to them. The Project Design Alternative would avoid seasonal wetlands impacts on Site A, but would require that some number of units be instead constructed on Site B, and as attached units, to maintain the Project's overall residential density specified in the General Plan. While the Project, across both sites, could maintain the specified minimum residential density, Site A alone would not meet the minimum required and therefore would not be consistent with the General Plan.

5.5.3 Feasibility

The Project Design Alternative would be infeasible because it would not be consistent with the General Plan and may also conflict with the Specific Plan.

6.0 FINDINGS WITH RESPECT TO MITIGATION OF SIGNIFICANT IMPACTS

Based on the entire record before the City, and having considered the significant and unavoidable impacts of the Project, the City hereby determines that all feasible mitigation within the responsibility and jurisdiction of the City has been adopted to reduce or avoid the potentially significant impacts identified in the SEIR, and that no additional feasible mitigation is available to further reduce significant impacts.

CEQA provides that each public agency shall mitigate or avoid the significant effects on the environment of Projects it approves or carries out whenever it is feasible to do so (Public

consideration associated with the Project that outweigh the Project's significant and unavoidable impacts and are, therefore, considered acceptable, warranting approval of the Project.

RESOLUTION NO. 9886
EXHIBIT A

DUMBARTON TRANSIT ORIENTED DEVELOPMENT SPECIFIC PLAN

FINAL ENVIRONMENTAL IMPACT REPORT
(State Clearinghouse No. 2010042012)

FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS

August 2011

adequate overriding consideration associated with the Project that outweigh the Project's significant and unavoidable impacts and are, therefore, considered acceptable, warranting approval of the Project.

- The Trumark Dumbarton TOD Residential Project will be a critical component of developing a sustainable community that includes a variety of residential, retail, employment generating, and park and recreational opportunities in close proximity to each other.

- The Trumark Dumbarton TOD Residential Project is consistent with and effectuates the City of Newark's General Plan and other applicable planning and zoning goals, policies, objectives and requirements.

- The Trumark Dumbarton TOD Residential Project will foster compact, connected, safe and walkable neighborhoods with convenient access to a future, planned transit station along the DRC, existing employment centers, including Silicon Valley, parks and open space, and commercial services.

- The Trumark Dumbarton TOD Residential Project is consistent with principles of sustainability. It is intended to be a community that meets the needs of people and the environment by providing energy efficient buildings, walkable streets, parks, open space, habitat protection, and a diversity of housing opportunities.

- Mixed-use communities, such as the one in which the Trumark Dumbarton TOD Residential Project will be constructed, typically generate fewer auto trips per unit of land use than single-use suburban developments, which in turn reduce automobile dependence, gasoline consumption, greenhouse gas emissions and emissions of other pollutants associated with automobile use. Fewer automobile trips associated with mixed-use developments also reduce noise pollution and improve congestion on local roadways.

- The Trumark Dumbarton TOD Residential Project will provide convenient pedestrian access to local businesses in the area, further facilitating reduced automobile dependence, gasoline consumption, greenhouse gas emissions and emissions of other pollutants associated with automobile use, noise pollution and improved congestion on local roadways.

- The Trumark Dumbarton TOD Residential Project will provide 244 single-family residential units, which will help the City meet its regional housing needs allocation.

- The Trumark Dumbarton TOD Residential Project, when compared to the other alternatives analyzed in the Final SEIR (including the No Project Alternative), provides the best available balance between maximizing the attainment of the Project objectives while minimizing significant environmental impacts.

Considering all factors, the City finds that each of the above-referenced overriding considerations constitutes a separate and independent ground for finding that the Project benefits outweigh its significant adverse environmental impacts and, alone, is an adequate overriding

1.0 INTRODUCTION

This statement of findings addresses the potentially significant environmental impacts associated with the Dumbarton Transit Oriented Development (TOD) Specific Plan located in Alameda County, California and are made pursuant to Section 15091 of the California Environmental Quality Act (CEQA) Guidelines, which provide that:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

Section 15092 of the CEQA Guidelines further stipulates that:

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

According to Section 15093 if the CEQA Guidelines:

a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in

the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the Notice of Determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

As required by CEQA, the City of Newark (City), in adopting these findings, must also adopt a Mitigation Monitoring and Reporting Program (MMRP) for the project. The MMRP, which is incorporated by reference and made a part of these findings, meets the requirements of Section 15097 of the CEQA Guidelines by providing for the implementation and monitoring of measures intended to mitigate potentially significant effects of the project.

Whenever these findings specifically refer to and adopt a mitigation measure that will avoid or mitigate a potentially significant impact, that specific mitigation measure is hereby made a Condition of Approval of the Dumbarton TOD Specific Plan project.

1.1 PROJECT SUMMARY

The Dumbarton TOD Specific Plan provides a comprehensive policy and regulatory framework to guide future development and redevelopment within the approximately 205-acre Dumbarton TOD Specific Plan area. The Specific Plan establishes the allowable land uses, development regulations, design guidelines, necessary infrastructure improvements, and an implementation plan to direct future development and redevelopment of the Dumbarton TOD Specific Plan area. Implementation of the Specific Plan will result in a mix of residential, office, retail, parks and recreational open space uses. The following table provides a summary of the land use distribution within the Specific Plan area.

Land Use/Zoning Designation	Total
Maximum Residential Units	2,500 units
Low Density Residential (LDR)	16.8 acres
Medium Density Residential (MDR)	67.9 acres
Medium High Density Residential (MHDR)	59.3 acres
High Density Residential (HDR)	5.0 acres
Retail (R)	5.0 acres (35,000 square feet)
Commercial (C)	7.2 acres (195,000 square feet)
Transit Station (TS)	6.1 acres (including parking areas)
Parks and Open Space (POS)	16.3 acres (including parkland provided through the City's Parks Ordinance)
Miscellaneous (M)	23.1 acres
TOTAL	**206.7 acres**

- The EIR and all documents referenced in or relied upon by the EIR.
- All prior and present information (including written evidence and testimony) provided by City staff to the Planning Commission and City Council relating to the EIR, the approvals, and the project.
- All prior and present information (including written evidence and testimony) presented to the Planning Commission and City Council by the project sponsor and consultants.
- All final applications, letters, testimony, exhibits, and presentations presented by the project sponsor and consultants to the City in connection with the project.
- All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the project and the EIR.
- For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation the general plan, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
- The MMRP for the project.
- All other documents composing the record pursuant to Public Resources Code section 21167.6(e).
- The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is Terrence Grindall, Community Development Director, or his designee. Such documents and other materials are located at the Newark Community Development Department, 37101 Newark Boulevard, Newark, CA 94560.

4.0 FINDINGS OF FACT

The following sections make detailed findings with respect to the potential effects of the project and refer, where appropriate, to the mitigation measures set forth in the Final EIR and the MMRP to avoid or substantially reduce potentially significant adverse impacts of the project. The EIR and the administrative record concerning the project provide additional facts in support of the findings herein. The Final EIR is hereby incorporated into these findings in its entirety. Furthermore, the mitigation measures set forth in the Final EIR and the MMRP are incorporated by reference in these findings. The MMRP was developed in compliance with Section 15097 of the CEQA Guidelines and is provided under separate cover.

4.1 POTENTIALLY SIGNIFICANT BUT MITIGABLE IMPACTS

Pursuant to CEQA Guidelines Sections 15091(a)(1) and 15092(b), and to the extent reflected in the EIR and the MMRP, the City finds that changes or alterations have been required to, or incorporated into, the components of the project to mitigate or avoid potentially significant effects on the environment. Based on the analysis contained in the EIR, the following impacts have been determined to fall within the category of impacts that can be reduced to less than significant levels with implementation of the mitigation measures set forth below.

- Air Quality (potential impacts resulting from air pollutant emissions during short-term construction activities and long-term project operations)
- Biological Resources (potential impacts to salt marsh harvest mouse, nesting raptors, western burrowing owl, tricolored blackbird, salt marsh common yellowthroat and other nesting passerine birds, special-status plant species, wetlands and waters of the U.S./State, and protected trees)
- Cultural Resources (potential impacts to historical, archaeological and paleontological resources and human remains)

1.2 ENVIRONMENTAL REVIEW PROCESS

In accordance with the requirements of CEQA and the CEQA Guidelines, a Notice of Preparation (NOP) of a Draft Environmental Impact Report (Draft EIR) was filed with the State Clearinghouse (SCH) Office of Planning and Research (OPR) on March 31, 2011. The NOP was distributed to public agencies and interested parties for a 30-day public review period, which extended from March 31 to April 30, 2011.

A Notice of Completion (NOC) of the Draft EIR was filed with the SCH OPR on May 18, 2011. The Draft EIR was circulated for a 45-day public review period, which ended on July 1, 2011. During this public review period, the City received written comments on the Draft EIR. Section 15088 of the CEQA Guidelines requires that the lead agency responsible for the preparation of an EIR evaluate comments on environmental issues received from parties who reviewed the Draft EIR and prepare a written response addressing each of the comments. A Final EIR was prepared for the project, which assembles in one document all of the environmental information and analysis prepared for the project, including comments on the information and analysis contained in the Draft EIR and responses by the City to those comments.

Pursuant to Section 15132 of the CEQA Guidelines, the Final EIR consists of the following:

(a) The Draft EIR, including all of its appendices.

(b) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(c) Copies of all letters received by the City during the Draft EIR public review period and responses to significant environmental points concerning the Draft EIR raised in the review and consultation process.

(d) Revisions to the Draft EIR.

(e) Any other information added by the lead agency.

2.0 CEQA FINDING OF INDEPENDENT JUDGMENT

The City is the lead agency with respect to the Dumbarton TOD Specific Plan pursuant to the Section 15367 of the CEQA Guidelines. As noted above, Section 15091 of the CEQA Guidelines requires that the lead agency prepare written findings for identified significant impacts, accompanied by a brief explanation for the rationale for each finding. The Final EIR for the project identified potentially significant effects that could result from project implementation. However, the City finds that the inclusion of certain mitigation measures as part of the project approval will reduce most, but not all, of those effects to less than significant levels. Those impacts that are not reduced to less than significant levels are overridden due to specific project benefits identified in a Statement of Overriding Considerations provided below in Section 7.0.

In accordance with CEQA and the CEQA Guidelines, the City adopts these findings as part of its approval of the project. Pursuant to Section 21082.1(c)(3) of the Public Resources Code, the City also finds that the Final EIR reflects the City's independent judgment as the lead agency for the project.

3.0 ADMINISTRATIVE RECORD

The record, upon which all findings and determinations related to the approval of the project are based, includes the following:

- Geology and Soils (potential impacts resulting from seismic risk, soil erosion, unstable soil and expansive soil)
- Greenhouse Gas Emissions (potential impacts associated with greenhouse gas emissions)
- Hazards and Hazardous Materials (potential impacts associated with accidental release or exposure to hazardous materials)
- Hydrology and Water Quality (potential impacts associated with erosion and/or siltation, on or offsite flooding, exceedance of storm drainage system capacity and additional sources of polluted runoff)
- Noise (potential impacts resulting from short-term increases in noise and ground-borne vibration during construction, exposure of future residential uses to noise from future commuter train service, and long-term increases in traffic noise)
- Public Services, Utilities and Service Systems (potential impacts to existing wastewater conveyance facilities)
- Recreation (potential impacts resulting from the construction of recreational facilities)
- Traffic (potential impacts resulting from the deterioration of the level of service at several intersections)

4.1.1 Air Quality

Summary of Potential Impacts

An evaluation of potential impacts from air pollutant emissions during construction activities and long-term project operations is found in Section 4.2 (Air Quality) of the Draft EIR.

Construction activities during development allowed by the Dumbarton TOD Specific Plan would result in fugitive dust (PM_{10} and $PM_{2.5}$) emissions, exhaust from the operation of vehicles and equipment on the project site, and additional dust from grading and hauling activities associated with site preparation. It is possible that asbestos-containing materials exist in buildings that may be modified or demolished and naturally occurring asbestos (NOA) has been identified within the project area.

The Dumbarton TOD Specific Plan includes space for a future multi-modal transit station that would include commuter train service. Based on the land use plan, residential uses have the potential to be located in proximity to the transit station. Diesel trains are a common source of toxic air contaminants (TACs) and $PM_{2.5}$ emissions and require adequate buffers and/or other mitigation.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which would mitigate or avoid potential impacts from air pollutant emissions during construction activities and long-term project operations as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Short-term air quality impacts during construction will be less than significant with implementation Mitigation Measures 4.2-1a and 4.2-1b, which require implementation of Bay Area Air Quality Management District (BAAQMD) "basic" and "additional" measures to reduce air pollutant emissions during construction. Long-

term impacts associated with the proximity of the future transit station to residential uses will be mitigated to less than significant with implementation of Mitigation Measure 4.2-2, which requires a minimum of 1,000 feet between the future transit station and residential uses or filtered air supply systems.

4.1.2 Biological Resources

Summary of Potential Impacts

An evaluation of potential impacts to special-status species, nesting birds and raptors, wetlands and waters of the U.S./State, and protected trees is found in Section 4.3 (Biological Resources) of the Draft EIR.

The salt marsh harvest mouse is a federal and state listed endangered species. It is found in salt marsh habitats that are dominated by pickleweed. Parcels within the project area that will be developed contain pickleweed that could support the salt marsh harvest mouse. Suitable nesting habitat for white-tailed kite, red-tailed hawk, northern harrier and western burrowing owl occurs within the project area. Common passerine birds and other birds with special-status, such as the tricolored blackbird and salt marsh common yellowthroat, could be impacted by future development activities within the project area, including loss of nesting habitat, disturbance to nesting birds and death of adults and/or young. The project area provides suitable habitat for special-status plants, which could be impacted by the project. Future development within the project area will result in the fill of wetlands and waters of the U.S./State, and the removal of trees protected by the City's Municipal Code. Project-related impacts would be cumulatively considerable when combined with other projects in the region.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential impacts to special-status species, nesting birds and raptors, wetlands and waters of the U.S./State, and protected trees as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Potential impacts to the salt marsh harvest mouse will be less than significant with implementation of Mitigation Measure 4.3-1, which requires preparation of a Habitat Assessment to determine presence of suitable habitat and pre-construction measures. Implementation of Mitigation Measures 4.3-2 through 4.3-4 requiring pre-construction nesting surveys, appropriate non-disturbance buffers and a Mitigation Plan (for the western burrowing owl), if nests are identified, will reduce impacts to nesting raptors, the western burrowing owl and nesting passerine birds to less than significant. Potential impacts to special-status plant species will be less than significant with implementation of Mitigation Measure 4.3-5, which requires pre-construction plant surveys and implementation of specific measures, if special-status plants are found. Implementation of Mitigation Measure 4.3-6, requiring a wetland delineation, if not already completed, verification of the delineation by the Army Corps of Engineers (ACOE), authorization of any fill of wetlands and/or waters of the U.S./State, and mitigation compensation, will reduce impacts to wetlands and/or waters of the U.S./State to less than significant. Potential impacts to protected trees will be less than significant with implementation of Mitigation Measure 4.3-8, which requires a tree permit, tree replacement at a 1:1 ratio and a Tree Management Plan. Implementation of mitigation for project-related impacts would reduce cumulative impacts to less than significant.

4.1.3 Cultural Resources

Summary of Potential Impacts

An evaluation of potential impacts on historical, archaeological and paleontological resources and human remains is found in Section 4.4 (Cultural Resources) of the Draft EIR.

There are no recorded archaeological resources, including prehistoric sites and no recorded, reported or known Native American sites located in, adjacent or near the project area. In addition, no historic resources have been formally recorded or reported. Nevertheless, given the location of the project area adjacent to historic salt marshlands at the edge of San Francisco Bay, the area is considered to be moderately sensitive for archaeological resources, including historic resources and human remains. Thus, ground disturbing activities have the potential to damage or destroy unknown cultural resources. Although no paleontological resources are known to exist in the project area and it has a low sensitivity for such resources, the presence of unknown paleontological resources cannot be ruled out. Ground disturbing activities have the potential to damage or destroy unknown paleontological resources. Project-related impacts would be cumulatively considerable when combined with other projects in the region.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid the potential impacts on historical, archaeological and paleontological resources and human remains as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Potential impacts to archaeological and paleontological resources and human remains will be less than significant level with implementation of Mitigation Measures 4.4-1a, which requires training of construct crews on the mechanisms used to identify cultural resources and to caution them on the implications of knowingly destroying cultural resources or removing artifacts or human remains from the project area. This mitigation measure also includes specific steps to take should subsurface deposits believed to be cultural and human in origin are discovered. Implementation of Mitigation Measure 4.4-1b, requiring the evaluation of existing buildings or structures or the Union Pacific Railroad corridor that will be affected by the project for inclusion on the National Register of Historic Places, will reduce impacts to historical resources to less than significant. Implementation of mitigation for project-related impacts would reduce cumulative impacts to less than significant.

4.1.4 Geology and Soils

Summary of Potential Impacts

An evaluation of potential impacts associated with seismic risk, soil erosion, unstable soil and expansive soil is found in Section 4.5 (Geology and Soils) of the Draft EIR.

Future development within the Dumbarton TOD Specific Plan area will involve construction of structures in a seismically active region. Consequently, the project area will likely experience moderate ground shaking during earthquakes occurring on offsite faults and secondary events such as liquefaction or landslides that

could expose people or structures to the risk of loss, injury or death. Vegetation removal and grading associated with future development within the project area will expose soil and increase the potential for soil erosion from wind or stormwater runoff. Soil conditions within the project area have the potential for differential settlement that could damage structures. In addition, the project area is underlain by clayey, expansive soil that has a high shrink/swell potential that could damage structures.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential impacts associated with seismic risk, soil erosion, unstable soil and expansive soil as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Potential impacts associated with ground shaking, seismic-related liquefaction and landslides, soil erosion, unstable soil and expansive soil will be less than significant with implementation of Mitigation Measure 4.5-1, which requires preparation of a design-level geotechnical investigation for individual properties within the project area prior to their development and implementation of recommended construction measures identified in the investigation. In addition, Mitigation Measures 4.5-2 and 4.5-3 require coordination with the Alameda County Water District (ACWD) to ensure compliance with ACWD Ordinance No. 2010-01

4.1.5 Greenhouse Gas Emissions

Summary of Potential Impacts

An evaluation of potential impacts related to greenhouse gas (GHG) emissions is found in Section 4.6 (Greenhouse Gas Emissions) of the Draft EIR.

The Dumbarton TOD Specific Plan is part of a regional effort to reduce vehicle trips and GHG emissions, support transit and enhance the quality of life in the region. It is a Priority Development Area as a part of the Sustainable Communities Strategy development. Although the project will generate GHG emissions, sustainable practices will be incorporated into the project design, including water, energy, solid waste, and transportation efficiency measures to reduce project GHG emissions to 27.92 percent below the business as usual scenario.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential impacts related to GHG emissions as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Implementation of Mitigation Measure 4.6-1, which will ensure that proposed project design features are incorporated in future development plans, will reduce impacts to less than significant.

4.1.6 Hazards and Hazardous Materials

Summary of Potential Impacts

An evaluation of potential impacts associated with hazardous materials sites and accidental release of hazardous materials is found in Section 4.7 (Hazards and Hazardous Materials) of the Draft EIR.

Eight properties within the Dumbarton TOD Specific Plan area are known to have contaminated groundwater and soils. For all eight properties, soil and water sampling have been performed through contaminant testing and disclosure documentation. Mitigations associated with remediation of properties have been identified and appropriate pollutant thresholds that need to be achieved prior to development have been established. In addition, use of hazardous materials in the project area after construction may create a hazard if accidentally released into the environment.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential impacts associated with hazardous materials sites and accidental release of hazardous materials as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Potential impacts associated with development on sites with known contaminated groundwater and soil and accidental release of hazardous materials into the environment will be reduced to less than significant with adherence to federal, state and local standards and implementation of Mitigation Measures 4.7-1a through 4.7-1e. Mitigation Measure 4.7-1a requires the property owner to: 1) summarize available information regarding soil and groundwater contamination; 2) perform a data gap analysis; 3) determine whether any additional investigation is needed; 4) provide either a Health Risk Assessment (HRA) or Feasibility Study (FS); 5) based on the HRA or as set forth in the FS, develop remedial options to address the identified risks; and 6) submit a report to the Oversight Agency. Remedial action plans, risk management plans and health and safety plans will be required as determined by the Oversight Agency for a given property, if not already completed, to prevent an unacceptable risk to human health, including workers during and after construction.

Mitigation Measure 4.7-1b requires areas that will be graded to be cleared of debris, significant vegetation, pre-existing abandoned utilities, buried structures and asphalt concrete and Mitigation Measure 4.7-1c requires testing of import soil needed for future development for toxic substances. Mitigation Measure 4.7-1d requires areas within the project area with NOA to be confirmed, any necessary permits obtained from the BAAQMD, and implementation of dust control measures and an NOA air monitoring program. Mitigation Measure 4.7-1e provides guidance for development of properties where NOA is known to occur.

4.1.7 Hydrology, Drainage and Water Quality

Summary of Potential Impacts

An evaluation of potential impacts associated with erosion and/or siltation, on or offsite flooding, exceedance of storm drainage system capacity and additional sources of polluted runoff is found in Section 4.8 (Hydrology, Drainage and Water Quality) of the Draft EIR.

Future development within the Dumbarton TOD Specific Plan area will involve vegetation removal, grading, and the construction of buildings, roads, sidewalks, driveways and parking lots, which will alter existing drainage patterns and increase the potential for erosion and/or siltation. The project will also result in changes to absorption rates, drainage patterns, and the corresponding rate and amount of surface runoff that could cause flooding on or offsite, exceed the capacity of the existing storm drainage system and provide additional sources of polluted runoff. Portions of the project area that are located north of the San Francisco Public Utilities Commission (SFPUC) right-of-way will likely require crossings of the Hetch Hetchy Pipeline. Any proposed crossings will need to be verified to ensure that there is sufficient depth to allow the storm drainage lines to pass over the pipeline.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential impacts associated with erosion and/or siltation, on or offsite flooding, exceedance of storm drainage system capacity and additional sources of polluted runoff as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts In Support of Findings

Implementation of Mitigation Measure 4.8-4a, which requires preparation of detailed site-specific hydrology reports, and compliance with the requirements of the General Permit and other federal, state and local policies and regulations, will reduce impacts associated with on or offsite flooding or increased amounts of polluted runoff to less than significant. New development will need to construct adequately sized storm drainage facilities to convey onsite surface water runoff to existing storm drainage facilities. These facilities will be designed to carry stormwater at buildout of the individual development sites, and will be subject to City and Alameda Flood Control District review to verify that they are designed to accommodate increased flows, which will reduce potential impacts associated with the capacity of the existing storm drainage system to less than significant. Implementation of Mitigation Measure 4.8-4b, which requires future projects requiring storm drainage lines and water mains that cross the Hetch Hetchy Pipeline to include measures to ensure that there is sufficient room for the storm drainage lines to pass over the pipeline (i.e., placement of additional fill), will reduce impacts to less than significant.

4.1.8 Noise

Summary of Potential Impacts

An evaluation of the potential impacts resulting from short-term increases in noise and ground-borne vibration during construction, exposure of future residential uses to noise from future commuter train service, and long-term increases in traffic noise is found in Section 4.10 (Noise) of the Draft EIR.

Construction activities during future development allowed by the Dumbarton TOD Specific Plan will expose surrounding sensitive receptors to noise and ground-borne vibration. The project will provide space for a multi-modal transit station that will include commuter train service. Trains have the potential produce noise levels in excess of the normally acceptable land use compatibility standards for residential uses that will be located adjacent to the transit corridor. During operation, development within the project area will result in additional traffic on adjacent roadways, thereby increasing vehicular noise in the vicinity of the existing and proposed land uses and resulting in offsite noise impacts. When combined with other projects, the increase in traffic noise will be cumulatively considerable.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential impacts resulting from short-term increases in noise and ground-borne vibration during construction, exposure of future residential uses to noise from future commuter train service, and long-term increases in traffic noise as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Implementation of Mitigation Measures 4.10-1a and 4.10-1b will reduce construction noise impacts to less than significant, while vibration associated with construction will be reduced to less than significant by Mitigation Measure 4.10-2. Mitigation Measure 4.10-1a requires construction contractors to implement a noise reduction program, including limitations on the hours of construction, noise control techniques for equipment and trucks, use of hydraulically or electronically powered impact tools wherever possible, stationary noise sources located as far from adjacent receptors as possible, and the noisiest phases of construction limited to ten days at a time, when feasible. Mitigation Measure 4.10-1b requires submission to the City Building Inspection Division of a list of measures to respond to and track complaints pertaining to construction noise, ongoing throughout demolition, grading and construction. Mitigation Measure 4.10-2 requires noise control measures if pile driving is necessary for building construction.

Potential noise impacts from commuter trains on future residential uses will be less than significant with implementation of Mitigation Measure 4.10-3, which requires preparation of an Acoustical Assessment to demonstrate that exterior and interior noise levels are consistent with applicable land use compatibility standards. Measures (e.g., attenuation barriers, acoustically rated windows, upgraded insulation, etc.) will be implemented where conditions exceed the normally acceptable noise exposure level. Implementation of Mitigation Measure 4.10-4, requiring the posted speed limit on Willow Street to be 35 miles per hour, will reduce offsite vehicular noise impacts to less than significant.

4.1.9 Public Services and Utilities

Summary of Potential Impacts

An evaluation of potential impacts on existing wastewater conveyance facilities is found in Section 4.12 (Public Services and Utilities) of the Draft EIR.

Existing sewer pipelines that will serve the Dumbarton TOD Specific Plan area may not be sized to accommodate project buildout. In addition, dual 33-inch sewage force mains under the project area will likely

require structural upgrades or relocation as a result of future development. A 14-inch gravity sewer line in Enterprise Drive may also require structural upgrades.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential impacts on existing wastewater conveyance facilities as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Impacts to existing wastewater conveyance facilities will be less than significant with implementation of Mitigation Measure 4.12-2, which requires installation of any necessary improvements, beyond those already included in the Union Sanitary District Master Plan and updated fee program.

4.1.10 Recreation

Summary of Potential Impacts

An evaluation of potential impacts potential impacts resulting from the construction of recreational facilities is found in Section 4.13 (Recreation) of the Draft EIR.

The construction of proposed recreational facilities could result in temporary increases in air emissions, dust, noise and erosion from a variety of construction activities, including excavation, grading, vehicle travel on unpaved surfaces, and vehicle and equipment exhaust.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential impacts resulting from the construction of recreational facilities as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Implementation of Mitigation Measures 4.2-1a and 4.2-1b and Mitigation Measures 4.10-1a, 4.10-1b and 4.10-2 will reduce temporary construction impacts to less than significant, as described above in Sections 4.1.1 and 4.1.8.

4.1.11 Traffic

Summary of Potential Impacts

An evaluation of the potential traffic impacts is found in Section 4.14 (Traffic) of the Draft EIR.

The addition of project traffic to the existing roadway network will cause operations to degrade from an acceptable level of service (LOS) (i.e., LOS C or better) to unacceptable LOS D, E or F, or it would exacerbate unacceptable operations by increasing the average intersection delay by four or more seconds at the following three intersections:

1. Willow Street/Thornton Avenue
2. Willow Street/Enterprise Drive
3. Cherry Street/Mowry Avenue

In addition, the Willow Street/Enterprise Drive intersection also meets peak-hour signal warrants during the AM and PM peak hours.

The addition of project traffic under future year 2035 (cumulative) conditions will cause intersection LOS to degrade from acceptable to unacceptable or exacerbate operations by increasing the average delay by four or more seconds at the following five intersections:

1. Gateway Boulevard/Thornton Avenue
2. Willow Street/Thornton Avenue
3. Willow Street/Enterprise Drive
4. Cherry Street/Mowry Avenue
5. I-880 NB Ramps/Mowry Avenue

The Willow Street/Enterprise Drive intersection also meets peak-hour signal warrants during the AM and PM peak hours.

Findings

The City finds that, pursuant to Section 15091(a)(1) of the CEQA Guidelines, changes or alterations have been required in or incorporated into the project, which mitigate or avoid potential traffic impacts as identified in the Final EIR. The City further finds that the change or alteration in the project or the requirement to impose the mitigation as a condition of project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible.

Facts in Support of Findings

Impacts to the intersections of Willow Street/Thornton Avenue, Willow Street/Enterprise Drive and Cherry Street/Mowry Avenue under existing plus project conditions will be less than significant with implementation of Mitigation Measure 4.14-1, which requires construction of specific improvements identified in the Final EIR at each intersection. Implementation of Mitigation Measures 4.14-6, which requires construction of specific improvements identified in the Final EIR at the intersections of Gateway Boulevard/Thornton Avenue, Willow Street/Thornton Avenue, Willow Street/Enterprise Drive, Cherry Street/Mowry Avenue and I-880 NB Ramps/Mowry Avenue, will reduce impacts at each intersection under future year 2035 conditions to less than significant.

4.2 ENVIRONMENTAL EFFECTS THAT ARE CONSIDERED SIGNIFICANT AND UNAVOIDABLE IMPACTS

This section identifies the significant and unavoidable impacts that require a Statement of Overriding Considerations to be issued by the City, pursuant to Section 15093 of the CEQA Guidelines, if the project is

approved. Based on the analysis contained in the EIR, the following impacts would be significant and unavoidable:

- Traffic (degrade an acceptable intersection LOS to an unacceptable LOS under existing plus project conditions at one intersection, increase demand on transit service, degrade acceptable LOS at five intersections to unacceptable LOS under future year 2035 conditions, and degrade operations on five roadway segments under future year 2035 conditions.

4.2.1 Traffic

Summary of Significant and Unavoidable Impacts

An evaluation of potential traffic impacts is found in Section 4.14 (Traffic) of the Draft EIR.

The addition of project traffic to existing conditions would cause the intersection LOS at Cedar Boulevard/Thornton Ave to degrade from acceptable to unacceptable during the PM peak hour and exacerbate operations by increasing the average delay by four or more seconds during the AM peak hour. The project's increased demand for transit service may not be met by Dumbarton Rail Corridor (DRC) project, as the future of the DRC project is uncertain and improved bus service to the Specific Plan area cannot be guaranteed, as it is under the jurisdiction of Alameda County (AC) Transit.

The addition of project traffic under future year 2035 conditions will cause intersection LOS to degrade from acceptable to unacceptable or exacerbate operations by increasing the average delay by four or more seconds at the following five intersections:

1. SR-84 Eastbound Ramps/Thornton Avenue
2. Cherry Street/Thornton Avenue
3. Newark Boulevard/Thornton Avenue
4. Cedar Boulevard/Thornton Avenue
5. Cherry Street/Central Avenue

The addition of project traffic under future year 2035 conditions will also degrade operations on the following five roadway segments:

1. I-880, from SR 84 Eastbound to Thornton Avenue
2. I-880, from Mowry Avenue to Stevenson Boulevard
3. Thornton Avenue, from Willow Street to Spruce Street
4. Thornton Avenue, from Spruce Street to Cherry Street
5. Thornton Avenue, from Cedar Boulevard to I-880 Southbound Ramps

Findings

The City finds that, pursuant to Section 15091(a)(3) of the CEQA Guidelines, specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures identified in the Final EIR.

Facts in Support of Findings

Impacts to the intersection of Cedar Boulevard/Thornton Avenue would be less than significant with implementation of Mitigation Measure 4.14-1 requiring an additional westbound left turn lane from Thornton

obtain the right-of-way, resulting in impacts to the land owner on the southwest corner of the intersection. Additionally, potential secondary impacts (such as increased pedestrian crossing distances and impacts to bicyclists in the corridor) would occur with the improvement. Therefore, this improvement is not feasible and the impact is significant and unavoidable.

Mitigation for impacts to the five roadway segment listed above would require adding travel lanes and widening roadways throughout the City. As the City is built out, there is little opportunity to widen roadways within the available right-of-way. Therefore, any widening would require property acquisition. Widening of Thornton Avenue could also result in secondary impacts to bicyclists and pedestrians by creating longer crossing distances and creating a less comfortable environment for walking or bicycling. Additionally, four of the impacted roadway segments (on I-880 and SR 84) are Caltrans facilities, and not within the City's jurisdiction. Funding and construction of any necessary improvements is uncertain. Due to the number of affected properties and financial implications, along with the fact that the project cannot legally be conditioned upon the construction of improvements over land over which neither the applicant or the City has control, mitigation for roadway segment impacts is infeasible. Mitigation Measure 4.14-8 requiring the payment of all applicable transportation-related fees will partially mitigate the impacts of the Specific Plan. However, since the fee programs will not fully fund all the mitigation necessary, the impact to roadway segments is significant and unavoidable.

Overriding Considerations

The environmental, economic, legal, social, technological, and other benefits of the project outweigh and override these potentially significant adverse impacts as more fully described in the Statement of Overriding Considerations, set forth in Section 7.0 below.

5.0 FINDINGS REGARDING CONSIDERATIONS THAT MAKE ALTERNATIVES ANALYZED IN EIR INFEASIBLE

Based on the entire record, the City finds that the EIR identified and considered a reasonable range of feasible alternatives to the proposed project which are capable, to varying degrees, of reducing identified impacts. The EIR evaluated three alternatives in accordance with the CEQA Guidelines, including:

- Alternative 1: No Project/No Build
- Alternative 2: High Density Residential
- Alternative 3: Medium-High Density Residential

5.1 NO PROJECT/NO BUILD

Under the No Project/No Build Alternative (Alternative 1), the development and redevelopment which would be established by the Specific Plan, namely, a mix of residential, office, retail, public/quasi-public and park and open space uses would not occur. The General Plan would not be amended, the Dumbarton TOD Specific Plan would not be adopted, and the site would not be rezoned. The zoning designations for the land comprising the Specific Plan area would remain a combination of High Technology Park District, Limited Industrial District and General Industrial District. Therefore, under Alternative 1, there would be no immediate physical or operational changes within the Specific Plan area and existing conditions would remain unchanged.

Avenue to Cedar Boulevard. While no project traffic is added directly to this movement, the addition of this lane would improve overall intersection operations. However, due to the limited right-of-way available along Thornton Avenue and potential secondary impacts (such as increased pedestrian crossing distances), this is not feasible. Therefore, this impact is significant and unavoidable.

Implementation of Mitigation Measure 4.14-2 requiring the City to coordinate with AC Transit to improve bus service to the Specific Plan area would reduce impacts to less than significant. However, ultimate implementation would be under AC Transit's jurisdiction and cannot be guaranteed. Thus, the impact is significant and unavoidable.

An additional eastbound right turn lane on the SR 84 Eastbound Off-Ramp at the intersection of SR 84 Eastbound Ramps/Thornton Avenue would mitigate the impact at this intersection to less than significant. However, this intersection is outside of the City's jurisdiction. SR 84 is a Caltrans-controlled facility, and implementation of this mitigation measure cannot be guaranteed. Therefore, this impact is significant and unavoidable.

As identified in Mitigation Measure 4.14-6, the following improvements would mitigate impacts under future year 2035 conditions at the five intersections list above but are infeasible for the reasons stated:

- An additional eastbound right turn lane on Thornton Avenue would mitigate the impact at the intersection of Cherry Street/Thornton Avenue. However, due to the built out nature of the City, limited right-of-way is available at the intersection. The City would need to exercise eminent domain to obtain the right-of-way, resulting in impacts to the land owner on the southwest corner of the intersection. Additionally, potential secondary impacts (such as increased pedestrian crossing distances and impacts to bicyclists in the corridor) would occur with the improvement. Therefore, this improvement is not feasible and the impact is significant and unavoidable.

- An additional northbound left turn lane on Newark Boulevard to accommodate the heavy left turn movement would mitigate the impact at the intersection of Newark Boulevard/Thornton Avenue. While no project traffic is added directly to this movement, the addition of this lane would improve overall intersection operations. However, due to the built out nature of the City, limited right-of-way is available at the intersection. The City would need to exercise eminent domain to obtain the right-of-way, resulting in impacts to the land owners on the southeast and southwest corners of the intersection. Additionally, potential secondary impacts (such as increased pedestrian crossing distances and impacts to bicyclists in the corridor) would occur with the improvement. Therefore, this improvement is not feasible and the impact is significant and unavoidable.

- An additional westbound left turn lane on Thornton Avenue to accommodate the high left turn demand would mitigate the impact at the intersection of Cedar Boulevard/Thornton Avenue. While no project traffic is added directly to this movement, the addition of this lane would improve overall intersection operations. However, due to the built out nature of the City, limited right-of-way is available at the intersection. The City would need to exercise eminent domain to obtain the right-of-way, resulting in impacts to the land owners on the northeast and southeast corners of the intersection. Additionally, potential secondary impacts (such as increased pedestrian crossing distances and impacts to bicyclists in the corridor) would occur with the improvement. Therefore, this improvement is not feasible and the impact is considered significant and unavoidable.

- An additional eastbound right turn lane on Central Avenue would mitigate the impact at the intersection of Cherry Street/Central Avenue. However, due to the built out nature of the City, limited right-of-way is available at the intersection. The City would need to exercise eminent domain to

5.1.1 Environmental Effects

Implementation of Alternative 1 would avoid the project's significant and unavoidable traffic impacts as well as potentially significant impacts associated with air quality, biological resources, cultural resources, geology and soil, GHG emissions, hydrology, drainage and water quality, noise, and public services and utilities. Because the project site would remain largely as vacant, weedy industrial land and fields and would not be replaced by more complimentary land uses which enhance the existing aesthetic values of the area, the aesthetic impacts under Alternative 1 would generally be greater in comparison to the proposed project. In addition, without new residential and commercial uses, land values would not increase to help absorb the cost of remediation and there would not be incentives to facilitate the remediation of Specific Plan area. Thus, Alternative 1 would result in a greater impact from hazards and hazardous materials in comparison to the proposed project. Under Alternative 1, current land use conflicts between the project area and existing residences would remain and result in greater land use impacts than the proposed project

5.1.2 Relation to Project Objectives

Alternative 1 would not meet the primary project objectives of developing a sustainable community that includes a variety of residential, retail, employment generating and recreational opportunities in close proximity to each other; providing a mix of housing opportunities at a range of densities from single-family detached to multi-family housing to meet the varied housing needs of the community; creating compact, connected, safe and walkable neighborhoods with convenient access to a future, planned transit station along the DRC, existing employment centers, including Silicon Valley, parks and open space, and commercial services; and providing a sufficient number of residential units within walking distance of the future planned transit station to generate the ridership necessary to support the station if and when the DRC project is implemented.

5.1.3 Feasibility

Alternative 1 is infeasible because it would not meet the project objectives. This alternative would not provide any of the specific social, economic, and other project benefits outlined above or in the Statement of Overriding Considerations.

5.2 HIGH DENSITY RESIDENTIAL

Under the High Density Residential Alternative (Alternative 2), development would be concentrated around the space provided for the future DRC transit station. The mix of residential, office, retail, public/quasi-public, and park and open space uses would remain the same, along with the maximum of 2,500 residential units. However, housing would consist of high density (60 units/acre) development on approximately 42 acres, rather than a variety of residential housing types on approximately 147.2 acres. The acreage proposed for office, retail and public/quasi-public uses would remain the same with approximately 35,000 square feet of retail use and 195,000 square feet of office use. Under Alternative 2, the amount of park and open space uses would increase from 16.31 acres to 121.5 acres. Thus, substantially less area of the Specific Plan area would be developed with housing; however, the same number of units would be construction.

5.2.1 Environmental Effects

Implementation of Alternative 2 would reduce impacts related to: aesthetics, air quality, biological resources, cultural resources, GHG emissions, hydrology, drainage, and water quality, public services and utilities, population and housing, recreation, and noise because less of the project area would be developed. Similar or

greater impacts would result in areas of geology and soils, hazards and hazardous materials, land use and planning, and traffic under Alternative 2.

5.2.2 Relation to Project Objectives

Alternative 2 would satisfy some of the project objectives, including creating compact, connected, safe and walkable neighborhoods with convenient access to a future, planned transit station along the DRC, existing employment centers, including Silicon Valley, parks and open space, and commercial services; and providing a sufficient number of residential units within walking distance of the future planned transit station to generate the ridership necessary to support the station if and when the DRC project. However, this alternative would not meet the project objectives of implementing strategies to ensure success for the Specific Plan area developers, homebuilders, and the City; providing a mix of housing opportunities at a range of densities from single-family detached to multi-family housing to meet the varied housing needs of the community; effectuating the City's General Plan goals, policies and programs that require a mix of housing types at a range of densities and for a range of income levels; and encouraging the development of a predominantly vacant area of land for its highest and best use.

5.2.3 Feasibility

Alternative 2 is infeasible because it would not meet the project objectives. This alternative would not provide the mix of housing opportunities needed to ensure success of Specific Plan developers, homebuilders and the City.

5.3 MEDIUM-HIGH DENSITY RESIDENTIAL

Under the Medium High Density Residential Alternative (Alternative 3), residential development would be concentrated away from sensitive biological resources. The mix of residential, office, retail, public/quasi-public and park and open space uses would remain the same, along with the maximum of 2,500 residential units. However, housing types would consist of medium high density (30 units/acre) development on approximately 83 acres, rather than a variety of residential types on approximately 147.2 acres. The acreage proposed for office, retail and public/quasi-public uses would remain the same and approximately 35,000 square feet of retail use and 195,000 square feet office use would be developed.

Under Alternative 3, the remainder of the Specific Plan area (not developed for residential, office and retail uses) would be rezoned from the current industrial/R&D/office zoning to park and open space; the amount of park and protected open space uses would, therefore, increase from 16.31 acres to approximately 80.5 acres. Thus, substantially less of the Specific Plan area would be developed with housing.

5.3.1 Environmental Effects

Implementation of Alternative 3 would reduce impacts related to: aesthetics, air quality, biological resources, cultural resources, GHG emissions, hydrology, drainage, and water quality, public services and utilities, population and housing, recreation, and noise because less of the project area would be developed. Similar or greater impacts would result in areas of geology and soils, hazards and hazardous materials, land use and planning, and traffic under Alternative 3.

5.3.2 Relation to Project Objectives

Alternative 3 would satisfy some of the project objectives, including creating compact, connected, safe and walkable neighborhoods with convenient access to a future, planned transit station along the DRC, existing

employment centers, including Silicon Valley, parks and open space, and commercial services; and providing a sufficient number of residential units within walking distance of the future planned transit station to generate the ridership necessary to support the station if and when the DRC project. However, this alternative would not meet the project objectives of implementing strategies to ensure success for the Specific Plan area developers, homebuilders, and the City of Newark; providing a mix of housing opportunities at a range of densities from single-family detached to multi-family housing to meet the varied housing needs of the community; effectuating the City's General Plan goals, policies and programs that require a mix of housing types at a range of densities and for a range of income levels; and encouraging the development of a predominantly vacant area of land for its highest and best use.

5.3.3 Feasibility

Alternative 3 is infeasible because it would not meet the project objectives. This alternative would not provide the mix of housing opportunities needed to ensure success of Specific Plan developers, homebuilders and the City.

6.0 FINDINGS WITH RESPECT TO MITIGATION OF SIGNIFICANT IMPACTS AND ADOPTION OF MITIGATION MONITORING AND REPORTING PROGRAM

Based on the entire record before the City, and having considered the significant and unavoidable impacts of the project, the City hereby determines that all feasible mitigation within the responsibility and jurisdiction of the City has been adopted to reduce or avoid the potentially significant impacts identified in the EIR, and that no additional feasible mitigation is available to further reduce significant impacts. The feasible mitigation measures are discussed in Section 4.1 and are set forth in the MMRP.

CEQA provides that each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out whenever it is feasible to do so (Public Resources Code 21001.1[b]). In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than under CEQA (Public Resources Code 21004). The City has specific powers to mitigate effects that occur within its jurisdiction, namely within the City.

Section 21081.6 of the Public Resources Code requires the City to adopt a monitoring or compliance program regarding the changes in the project and mitigation measures imposed to lessen or avoid significant effects on the environment. The MMRP for the Dumbarton TOD Specific Plan is hereby adopted by the City because it fulfills the CEQA mitigation monitoring requirements, as follows:

- The MMRP is designed to ensure compliance with the changes in the project and mitigation measures imposed on the project during project implementation
- Measures to mitigate or avoid significant effects on the environment are fully enforceable through conditions of approval, permit conditions, agreements or other measures.

7.0 STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA requires decision makers to balance, as applicable, the economic, legal, social, technological or other benefits of a project against its significant and unavoidable environmental impacts when determining whether to approve the project. If the specific economic, legal, social, technological or other benefits of the project outweigh the significant and unavoidable impacts, those impacts may be considered "acceptable" (CEQA

Guidelines Section 15093(a)). When significant impacts are not avoided or lessened, CEQA requires the agency to state, in writing, the specific reasons for considering a project acceptable. Those reasons must be based on substantial evidence in the Final EIR or elsewhere in the administrative record (CEQA Guidelines Section 15093(b)).

In accordance with the requirements of CEQA and the CEQA Guidelines, the City finds that the mitigation measures identified in the Final EIR and the Mitigation Monitoring and Reporting Program, when implemented, will avoid or substantially lessen virtually all of the significant impacts identified in the Final EIR for the Dumbarton TOD Specific Plan. However, certain significant impacts of the project are unavoidable even after incorporation of all feasible mitigation measures. The project would result in significant and unavoidable traffic impacts. The Final EIR provides detailed information regarding these impacts.

The City finds that all feasible mitigation measures identified in the Final EIR within the purview of the City will be implemented with the project, and that the remaining significant and unavoidable impacts are outweighed and are found to be acceptable due to the following specific overriding economic, legal, social, technological or other benefits based upon the facts set forth above in the Findings of Fact, the Final EIR and the administrative record. Each of the following specific overriding economic, legal, social, technological or other benefits (overriding considerations) set forth below constitutes a separate and independent ground for finding that the project benefits outweigh its significant adverse environmental impacts and, alone, is an adequate overriding consideration associated with the project that outweigh the project's significant and unavoidable impacts and are, therefore, considered acceptable, warranting approval of the project.

- The Dumbarton TOD Specific Plan will develop a sustainable community that includes a variety of residential, retail, employment generating, and park and recreational opportunities in close proximity to each other.
- The Dumbarton TOD Specific Plan is consistent with and effectuates the City of Newark's General Plan and other applicable planning and zoning goals, policies, objectives and requirements.
- The Dumbarton TOD Specific Plan will create compact, connected, safe and walkable neighborhoods with convenient access to a future, planned transit station along the Dumbarton Rail Corridor, existing employment centers, including Silicon Valley, parks and open space, and commercial services.
- The Dumbarton TOD Specific Plan will facilitate development based on the principles of sustainability. It is intended to be a community that meets the needs of people and the environment by providing energy efficient buildings, walkable streets, parks, open space, habitat protection, and a diversity of housing opportunities.
- Mixed-use developments, such as proposed by the Dumbarton TOD Specific Plan, typically generate fewer auto trips per unit of land use than single-use suburban developments, which in turn reduce automobile dependence, gasoline consumption, greenhouse gas emissions and emissions of other pollutants associated with automobile use. Fewer automobile trips associated with mixed-use developments also reduce noise pollution and improve congestion on local roadways.
- The Dumbarton TOD Specific Plan will provide employment and shopping opportunities in a centralized location, surrounded by housing, which provides the benefits of reduced automobile dependence, gasoline consumption, greenhouse gas emissions and emissions of other pollutants associated with automobile use, noise pollution and improved congestion on local roadways.
- The Dumbarton TOD Specific Plan will provide a maximum of 2,500 residential units, which will help the City meet its regional housing needs allocation.

- The Dumbarton TOD Specific Plan, when compared to the other alternatives analyzed in the Final EIR (including the No Project Alternative), provides that best available balance between maximizing the attainment of the project objectives while minimizing significant environmental impacts.

Considering all factors, the City finds that each of the above-referenced overriding considerations constitutes a separate and independent ground for finding that the project benefits outweigh its significant adverse environmental impacts and, alone, is an adequate overriding consideration associated with the project that outweigh the project's significant and unavoidable impacts and are, therefore, considered acceptable, warranting approval of the project.

MITIGATION MONITORING AND REPORTING PROGRAM
Trumark Dumbarton Transit Oriented Development Residential Project

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	Dust and Emissions			
Dust would be generated during remediation, grading, and construction activities. Nearby sensitive receptors could be exposed to this dust, resulting in temporary increases in cancer risk and respiratory health hazards.	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.2-1a: Prior to issuance of any Grading Permit, the Public Works Director and the Building Official shall confirm that the Grading Plan, Building Plans, and specifications stipulate that, in compliance with the BAAQMD *CEQA Air Quality Guidelines*, the following basic construction mitigation measures shall be implemented for all construction projects: • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 mph. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California Airborne Toxics Control Measures, Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. • All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in	Applicant and City of Newark Public Works Director, Building Official.	Include BAAQMD basic dust control and enhanced dust control and air quality measures on project plans; implement measures during site remediation and project construction.	Prior to issuance of Grading and Building Permits, and during site remediation and project construction.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	proper condition prior to operation. • Post a publicly visible sign with the 24-hour telephone number and person to contact at the construction firm regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. *Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.2-1b: Prior to issuance of any Grading Permit, the Public Works Director and the Building Official shall confirm that the Grading Plan, Building Plans, and specifications stipulate that, in compliance with the BAAQMD *CEQA Air Quality Guidelines*, the following additional construction mitigation measures shall be implemented for all construction projects: • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph. • Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity. • Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. • The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time. • All trucks and equipment, including their tires, shall be washed off prior to leaving the site.	(See Above)	(See Above)	(See Above)

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	• Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent. • Minimizing the idling time of diesel powered construction equipment to two minutes. • The project shall develop a plan demonstrating that off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NO_x reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. • Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings). • Require that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM. • Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engines.	(See Above)	(See Above)	(See Above)

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
Biological Resources- Burrowing Owls				
The Specific Plan area contains suitable nesting habitat for the western burrowing owl and development on the proposed project has the potential to disturb owls and cause nest abandonment if owls are present during construction.	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.3-3b-3e: A breeding season presence/absence survey for burrowing owls will be completed in conformance with the CDFW 2012 protocol to determine whether burrowing owls nest in the study area. A qualified biologist will conduct the survey during the burrowing owl peak nesting season (April 15 through July 15). During the initial site visit, the qualified biologist will survey the entire project site and (to the extent that access allows) the area within 500 feet of the site for burrowing owl habitat (i.e., burrows). Because suitable burrows are known to be present in the project area; a qualified biologist will visit the site an additional three times, with each visit separated by a minimum of three weeks, to investigate each burrow for signs of owl use and to determine whether owls are present in areas where they could be affected by the proposed activities. A pre-construction survey for burrowing owls will be completed in conformance with the CDFW 2012 protocol directly preceding project construction. The initial survey will be conducted no less than 14 days (e.g., 2-4 weeks) prior to the initiation of construction. During the initial site visit, a qualified biologist will survey both Site A and Site B and (to the extent that access allows) the area within 500 feet of the sites for suitable burrows that could be used by burrowing owls for nesting or roosting. If no suitable burrowing owl habitat is present, no additional surveys will be required. If suitable burrows are determined to be present on the site, a qualified biologist will visit the site an additional three times to investigate each burrow for signs of owl use and to determine whether owls are present in areas where they could be affected by the proposed activities. The final survey shall be conducted within the 24 hour-period prior to the initiation of construction. If burrowing owls are present during the non-breeding season (generally 1 September to 31 January), a 150-ft buffer zone shall be maintained around the occupied burrow(s) if practicable. If maintaining such a buffer is not feasible, then the buffer must be great enough to avoid injury or mortality	Applicant and City of Newark Community Development Director.	Retain a qualified biologist to conduct pre-construction Burrowing Owl surveys in conformance with CDFW 2012 protocols; submit survey results to City. If Burrowing Owls are present on or near the site, implement buffer zones or conduct relocation and nesting habitat impacts as specified in the Mitigation Measure, in coordination with CDFW.	Conduct Initial Survey no less than 14 days prior to the commencement of initial construction (e.g. grading and excavation for soil remediation).

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	of individual owls, or else the owls should be passively relocated as described below. During the breeding season (generally 1 February to 31 August), a 250-ft buffer, within which no new activity will be permissible, will be maintained between Project activities and occupied burrows. Owls present on site after 1 February will be assumed to be nesting on or adjacent to the site unless evidence indicates otherwise. This protected area will remain in effect until 31 August, or at the CDFW's discretion and based upon monitoring evidence, until the young owls are foraging independently. If construction will directly impact occupied burrows, eviction of owls, by a qualified biologist, should occur outside the nesting season. No burrowing owls will be evicted from burrows during the nesting season (1 February through 31 August) unless evidence indicates that nesting is not actively occurring (e.g., because the owls have not yet begun nesting early in the season, or because young have already fledged late in the season). If the surveys determine that owls are present in the study area, compensatory mitigation for Project impacts on nesting habitat will be provided in the form of habitat preservation and management. Mitigation will consist of providing 6.5 ac of suitable habitat off-site for every pair (or single owl, if unpaired) of owls displaced by the Project. The protected lands shall be adjacent to occupied burrowing owl habitat if possible, and at a location selected in collaboration with CDFW. Land identified to offset impacts on burrowing owls shall be protected in perpetuity by a suitable property instrument (e.g., a conservation easement or fee title acquisition). A Mitigation Plan shall be prepared in consultation with CDFW for review and approval by the City. The Mitigation Plan shall identify the mitigation site and any activities proposed to enhance the site, including the construction of artificial burrows and maintenance of California ground squirrel populations on the mitigation site. In addition, for each pair of burrowing owls found in the study area, two artificial nesting burrows shall be created at the mitigation site. The Plan shall also include a description of monitoring and management methods proposed at	(See Above)	(See Above)	(See Above)

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	the mitigation site. Monitoring and management of any lands identified for mitigation purposes shall be the responsibility of the applicant for at least five years. An annual report shall be prepared for submittal to CDFW and the City by December 31 of each monitoring year. Contingency measures for any anticipated problems will be identified in the plan.			
Biological Resources-Nesting Raptors				
The project could result in disturbance to the nesting birds, loss of nesting habitat, and even bird death from construction activity occurring near active raptor nests.	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.3-2: In order to avoid impacts on nesting raptors, a nesting survey shall be conducted on individual project site parcels prior to commencing with earth-moving or construction work if this work would occur during raptor nesting season, that is, between February 1 and August 31. The raptor nesting survey shall include examination of all trees on or within 300 feet of the entire project site, not just trees slated for removal, since ground vibrations and noise from earth-moving equipment can disturb nesting birds and potentially result in nest abandonment. Since northern harriers are ground nesting raptors, the nesting survey shall also include systematic walking transects across all suitable ground on the project site parcels. If nesting raptors are identified during the surveys, orange construction fence shall be installed to establish a 300-foot radius around the nest unless a qualified biologist determines that a lesser distance will adequately protect the nest (refer to discussion below for more detail). If the tree or nest is located off the project site, then the buffer shall be demarcated per the above where the buffer intersects the project site. The size of the non-disturbance nesting buffer may be altered if a qualified raptor biologist conducts behavioral observations and determines the nesting raptors are well acclimated to disturbance. If this occurs, the raptor biologist shall prescribe a modified buffer that allows sufficient room to prevent undue disturbance/harassment to the nesting raptors. If the buffer is reduced, the qualified raptor biologist shall remain onsite to monitor the raptors' behavior during heavy construction in order to ensure that the reduced buffer doesn't result in take of eggs or nestlings. No construction	Applicant and City of Newark Community Development Director	Retain a qualified biologist to conduct pre-construction nesting raptor surveys; submit survey results to City. If raptors are nesting on or near the site, establish and maintain buffer zones as specified in the Mitigation Measure.	For work commencing between February 1 and August 31, conduct pre-construction nesting raptor surveys prior to the beginning of any construction work (e.g. grading and excavation for soil remediation, and/or tree removal).

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	or earth-moving activity shall occur within the established buffer until it is determined by a qualified raptor biologist that the young have fledged (that is, left the nest) and have attained sufficient flight skills to avoid project construction zones. This typically occurs by August 1. This date may be earlier or later, and would have to be determined by a qualified raptor biologist. If a qualified biologist is not hired to monitor the nesting raptors then the full 300-foot buffers shall be maintained in place from February 1 through the month of August. The buffer may be removed and work may proceed as otherwise planned within the buffer on September 1.			
Biological Resources- Nesting Birds				
The Specific Plan area contains suitable habitat for common passerine nesting birds as well as the San Francisco common yellowthroat and the Tricolored blackbird. Pursuant to the Migratory Bird Treaty Act and the findings of the *Dumbarton TOD Specific Plan EIR*, project impacts to nesting birds, their young, or their eggs, would be considered a significant impact.	In order to avoid impacts on nesting passerines, a nesting survey shall be conducted on individual project site parcels prior to commencing initial earth-moving or construction work on that parcel if this work would occur during the passerine nesting season, that is, between March 1 and September 1. The nesting survey shall also survey lands within 100 feet of the parcel being developed. The nesting surveys shall be completed approximately 15 days prior to commencing with the work. If special-status birds, such as tricolored blackbirds and/or salt marsh common yellow throat, are identified nesting on or near the project site, a 100-foot radius around all identified active nests shall be demarcated with orange construction fencing to establish a non-disturbance buffer. If an active nest is found offsite, the intersecting portion of the buffer that is onsite shall be fenced. No construction or earth-moving activity shall occur within this 100-foot staked buffer until it is determined by a qualified biologist that the young have fledged (that is, left the nest) and have attained sufficient flight skills to avoid project construction zones. If common (that is, not special-status) birds, for example, red-winged blackbird, are identified nesting on or adjacent to the project site, a non-disturbance buffer of 75 feet shall be established or as otherwise prescribed by a qualified ornithologist. The buffer shall be demarcated with orange construction fencing. Disturbance around an active nest shall be postponed until it is determined by the qualified wildlife biologist that	Applicant and City of Newark Community Development Director	Retain a qualified biologist to conduct pre-construction nesting bird surveys; submit survey results to City. If birds are nesting on site, implement buffer zones as specified.	For work commencing between March 1 and September 1, conduct pre-construction surveys for nesting birds prior to the begining of any construction.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	the young have fledged and have attained sufficient flight skills to leave the area. Typically, most birds in the region of the project site are expected to complete nesting by August 1. However, in the region many species can complete nesting by the end of June or in early to mid-July. Regardless, nesting buffers shall be maintained until August 1 unless a qualified wildlife biologist determines that young have fledged and are independent of their nests at an earlier date. If buffers are removed prior to August 1st, the biologist conducting the nesting surveys shall prepare a report that provides details about the nesting outcome and the removal of buffers. This report shall be submitted to the City prior to the time that buffers are removed if the date is before August 1.			
Biological Resources-Congdon's Tarplant				
Site B contains Congdon's tarplant, a California Native Plant Society List 1B species. Remediation of soil contaminants on Site B will impact Congdon's tarplant.	The project proposes on-site mitigation for Congdon's tarplant impacts. The project's mitigation plan for Congdon's tarplant shall be consistent with *Dumbarton TOD EIR* Mitigation Measure 4.3-5 for CNPS List 1B species, as follows: Prior to the commencement of grading on Site B, a qualified botanist shall collect the seeds, propagules, and top soils, or other parts of the individual Congdon's tarplant existing on the project site that will ensure successful replanting of the population elsewhere. The seeds, propagules, or other plantable portion of all plants shall be collected at the appropriate time of the year. Half of the seeds and top soils collected shall be appropriately stored in long-term storage at a botanic garden or museum (for example, Rancho Santa Ana Botanic Garden). The other half of the seeds, propagules, or other plantable portion of all plants shall be planted at the appropriate time of year (late-fall months) in an area of the subject property or off-site, protected property that will not be impacted by the project (if the project has a designated off-site mitigation site for impacts on other special-status species, the plants can be seeded on the mitigation site). This area shall be fenced with permanent fencing (for	Applicant and City of Newark Community Development Director	The applicant shall submit a Congdon's Tarplant mitigation plan, consistent with *Dumbarton TOD EIR* Mitigation Measure 4.3-5 for CNPS List 1B species for City review and approval. Applicant shall implement the approved Condon's	Submit mitigation plan prior to issuance of building permits; conduct and document monitoring annually for three years after implementation.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	example, chain link fencing) to ensure protection of the species. The applicant shall hire a qualified biologist to conduct annual monitoring surveys of the transplanted plant population for a five year period and shall prepare annual monitoring reports reporting the success or failure of the transplanting effort. These reports shall be submitted to the City and appropriate resource agency (CDFW and/or USFWS) no later than December 1st each monitoring year. These steps shall be implemented prior to site disturbance. If the seeding/transplanting effort fails, the stored seeds and top soils can be taken out of long-term storage and sown in another location (either onsite or offsite) deemed suitable by CDFW. This seeding effort shall then be monitored for an additional three year period to ensure survivorship of the new population. Annual monitoring reports shall be submitted to the City for the three year period. A CNDDB form shall be filled out and submitted to CDFW for any special-status plant species identified within the project site. Any mitigation plan developed in consultation with CDFW shall be implemented prior to the initiation of grading or issuance of a development permit. In lieu of the above prescribed mitigation, as allowed in writing by the City (for CEQA protected species only) and/or CDFW (for CEQA and/or state listed species), mitigation requirements may be satisfied via the purchase of qualified mitigation credits or the preservation of offsite habitat. If the species in question is federally listed, then USFWS would also have to agree in writing typically through issuance of a Biological Opinion that the purchase of qualified mitigation credits or the preservation of offsite habitat would constitute satisfactory mitigation compensation.		tarplant mitigation plan, monitor and document plant survival annually as specified in the Mitigation Measure to demonstrate successful establishment Congdon's tarplant.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	Biological Resources-Wetlands			
A preliminary delineation of wetlands on the project sites identified a total of 0.24 acres of mapped seasonal freshwater wetlands in the project area (on both Sites A and B). Remediation of soil contamination and other development activity will impact all of the 0.24 acres of wetlands on the project sites.	The project proposes the purchase of wetlands mitigation impacts through an established wetland mitigation bank. Per *Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.3-6: wetland mitigation shall, to the extent not already completed, require a wetland delineation conducted according to the 1987 USACE Wetland Delineation Manual (U.S. Army Corps of Engineers 1987) and the Regional Supplement to the USACE Wetland Delineation Manual: Coast Region (Corps 2008) prior to City approval of any specific development proposal. This delineation shall be submitted to the USACE for verification. Once that map is "verified," the full extent of waters of the U.S./State would be known and the extent of impacts on regulated areas ascertained. Authorization from the Corps and the RWQCB (for example, a Nationwide Permit and a Certification of Water Quality) shall be obtained as necessary/required by these agencies prior to filling any waters of the U.S./State on the project site. Impacts shall also be minimized by the use of Best Management Practices (BMPs) to protect preserved waters of the U.S./State and to ensure that water quality standards are not compromised in preserved wetlands and other waters within the watershed. These practices can include installing orange construction fencing buffers, straw waddles to keep fill from entering preserved/avoided wetlands and other waters, and other protective measures. During project construction, a biological monitor shall be onsite to monitor the integrity of any preserved wetlands and other waters during mass grading or filling of the project site. For those wetland areas that are not avoided, mitigation compensation wetlands shall be completed. As approved by the USACE and the RWQCB, the project sponsor may purchase mitigation credits from an approved mitigation bank or an approved in-lieu fee mitigation entity at a minimum 1:1 ratio. As an alternative to the purchase of credits in a mitigation bank, wetlands	Applicant and City of Newark Community Development Director	The applicant shall complete a USACE delineation of wetlands on the project sites; obtain authorization from USACE and RWQCB approval for wetland impacts; and purchase mitigation credits at a 1:1 ratio for the verified area of wetlands impacted by the project at an USACE and RWQCB approved wetland mitigation bank. The City shall verify that wetland mitigation credits have been purchased	Complete wetland delineation, prepare mitigation plan and obtain authorization for wetland impacts prior to the issuance of grading permits for either Site A or Site B. Submit documentation of wetland mitigation credits prior to issuance of Certificates of Occupancy.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	may be created onsite and, if so, shall have an equal or higher functional value than those wetlands affected by the project (known as in-kind replacement). If wetlands cannot be created in-kind and onsite, other alternatives shall include off-site and/or out-of-kind. In any case, mitigation requirements for wetland areas that are not avoided shall be that all impacted wetlands are replaced at a minimum 1:1 ratio (for each square foot of impact, one square foot of wetland would be restored/created) or at a ratio determined by the RWQCB and USACE at the time permits are issued. Mitigation requirements would be based upon the existing conditions of the wetlands impacted. Where practicable, wetland plant/animal populations shall be relocated from the wetlands that would be impacted to any re-created wetlands. Top soils shall also be removed from wetlands that would be impacted if practicable, and placed into the re-created wetlands. These top soils would contain a seed bank of the impacted plant species which would germinate with fall/winter hydration of the re-created wetlands. If wetlands are restored/created, adequate compensation shall include creating wetlands at a suitable location that meet the following performance standards: • The wetlands shall remain inundated or saturated for sufficient duration to support a predominance of hydrophytic vegetation. • The wetlands shall exhibit plant species richness comparable to existing wetlands. • The wetlands shall replace the lost wetlands at a minimum ratio of one acre created for each acre, or fraction thereof, permanently impacted. • The developer shall provide for the protection of the mitigation areas in perpetuity either through deed restrictions or conservation		prior to issuance of certificate of occupancy.	

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	easements. • The developer shall establish a five-year program to monitor the progress of the wetland mitigation toward these standards. At the end of each monitoring year, an annual report shall be submitted to the City, the RWQCB, and the USACE. This report shall document the hydrological and vegetative condition of the mitigation wetlands, and shall recommend remedial measures as necessary to correct deficiencies.			
Biological Resources-Tree Removal				
Removal of trees protected under the City of Newark Municipal Code could result in a potentially significant impact.	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.3-8: A tree permit shall be obtained from the City prior to the removal of any tree protected by City ordinance on project site parcels. To offset impacts resulting from the removal of these trees, replacement trees shall be planted in designated open space areas on the subject parcel. Tree replacement shall be at a 1:1 ratio (that is, for each tree removed, one tree shall be planted as a replacement). Replacement trees shall be native California species that are native to the Newark area (for example, redwood trees are native to California but not to Newark). A Tree Management Plan shall be prepared for any project on any project site parcel where tree removal occurs. Preparation of this plan and subsequent planting and monitoring shall be a condition of project approval and shall be tied to a security bond or cash deposit posted by the developer with the City. This plan shall include a planting detail that specifies where all trees would be planted on the subject parcel. The methods used to plant trees shall also be specified. Adequate measures shall be established to minimize predation of planted trees by rodents including, but not limited to, pocket gophers (*Thomomys bottae*) and/or California ground squirrels (*Spermophilus beecheyi*). All planted trees shall be provided with a buried, irrigation system that	Applicant and City of Newark Community Development Director	The applicant shall submit a Tree Management Plan for review and approval by the City. The applicant shall monitor and document tree survival and health and submit reports annually to the City to demonstrate successful tree establishment, as specified in the Mitigation Measure.	Submit Tree Management Plan prior to the issuance of Building Permits.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	shall be maintained over a minimum three-year establishment period. The irrigation system shall be placed on automatic electric or battery operated timers so that trees are automatically watered during the dry months of the establishment period. At the end of the three-year establishment period, the irrigation system could be removed, if necessary. The planted trees' health shall be monitored annually for five years by a qualified biologist or arborist. Annual monitoring reports shall be submitted to the City. At the end of a five-year monitoring period, at least 80 percent of planted trees shall be in good health. If the numbers of planted trees falls below an 80 percent survival rate, additional trees shall be planted to bring the total number of planted trees up to 100 percent of the original number of trees planted. Irrigation and follow-up monitoring shall be established over an additional three year period after any replanting occurs. Any replanting and follow-up monitoring shall be reported in annual reports prepared for the City, Community Development Department. A performance bond, letter of credit, or other financial instrument shall be established to pay for any remedial work that might need to occur, if the prior effort fails.			
	Cultural Resources			
The Dumbarton TOD Specific Plan area is moderately sensitive for buried cultural resources, which could be impacted by construction activites.	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.4-1: Prior to the issuance of grading permits for future development allowed within the Dumbarton TOD Specific Plan area, project sponsors shall retain qualified archaeologists meeting the Secretary of the Interior's Professional Qualification Standards to train the construction crew on the mechanisms used to identify cultural resources and to caution them on the legal and/or regulatory implications of knowingly destroying cultural resources or removing artifacts or human remains from the project sites. If subsurface deposits believed to be cultural or human in origin are discovered during the construction of future development projects within the Dumbarton TOD Specific Plan area, then all work shall halt within a 200-foot radius of the discovery and they shall be evaluated by a professional archaeologist. If a potentially-eligible resource is encountered, then the archaeologist, lead agency, and project sponsor shall	Applicant and City of Newark Community Development Director	The applicant shall submit verification to the City that a qualified archeologist has been retained to train construction crews on the identification of and legal protection for cultural resources, as	Prior to issuance of Grading Permits.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	arrange for either: 1) total avoidance of the resource, if possible; or 2) test excavations to evaluate eligibility and, if eligible, data recovery as mitigation. If human remains of any kind are found during construction activities, all activities shall cease immediately and the Alameda County Coroner shall be notified as required by State law (Section 7050.5 of the Health and Safety Code). If the coroner determines the remains to be of Native American origin, he or she shall notify the Native American Heritage Commission (NAHC). The NAHC shall then identify the most likely descendant(s) (MLD) to be consulted regarding treatment and/or reburial of the remains.		specified in the Mitigation Measure.	
	Greenhouse Gas Emissions			
The proposed project would contribute to the GHG emissions calculated in the Specific Plan EIR.	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.6-1: The Specific Plan shall include, but not be limited to, the following list of potential design features. These features shall be incorporated into the Specific Plan and future buildings to ensure consistency with adopted Statewide plans and programs. The project applicant shall demonstrate the incorporation of project design features prior to the issuance of building permits. <u>Energy Efficiency</u> • Increase Energy Efficiency Beyond Title 24 Requirements • Plant shade trees within 40 feet of the south side or within 60 feet of the west sides of properties • Require cool roof materials (albedo $\geq$ 30) • Install green roofs. • Require smart meters and programmable thermostats • Install solar or tank-less water heaters • Make residential and commercial buildings solar ready. • Incorporate design guidelines for transit oriented development and	Applicant and City of Newark Community Development Director	The applicant shall identify greenhouse gas reduction features included in the project design for review and approval by the City.	Prior to the issuance of Building Permits.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	complete street standards • Implement HVAC duct sealing • Maximize interior day light in residential uses • Increase roof/ceiling insulation Transportation • Provide a minimum of 15 percent affordable housing • Provide secure bike parking (at least one space per 20 vehicle spaces) • Provide information to the public (i.e., bike maps and transit schedules) on transportation alternatives • Provide free or preferential parking for carpool, vanpool, low emission vehicles, and car share vehicles			
Hazardous Materials-Site A				
Site A is impacted by VOCs in soil and groundwater that originate from the adjacent Honeywell site. VOC concentrations exceed residential health risk levels acceptable to the RWQCB.	*Trumark Dumbarton TOD SEIR* Mitigation Measure HAZ-1: Prior to the issuance of grading permits or building permits for development of Site A, a remediation plan and a risk management plan, with monitoring and reporting requirements, must be prepared and submitted for review by the RWQCB. The RWQCB will review the plans to confirm that implementation of the plans should achieve risk management standards applied by the RWQCB for residential use. RWQCB will also review any amendment of such plans to confirm that implementation of the plans should achieve risk management standards applied by the RWQCB for residential use. In addition, a Construction Risk Management Plan (CRMP) with protocols for the handling, evaluation and appropriate disposal of excavated soil and pumped water in accordance with regulatory agency requirements, and protocols governing worker health and safety, will be either integrated into other plans or will be developed as a stand-alone document, and will address on-site and off-site development and maintenance of utilities. The	Applicant and City of Newark Community Development Director	1. The applicant shall submit to the City verification from RWQCB that the remediation and risk management plan achieve the risk management standards applied by the RWQCB for residential use of the site.	Prior to the issuance of building permits for Site A.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	CRMP shall be provided to RWQCB, City and ACWD for review and comment. The City shall provide the CRMP to all contractors performing subsurface work in the areas covered by the CRMP. Also, remediation plan and risk management plan construction phase components (as opposed to ongoing monitoring and reporting requirements) shall be implemented prior to occupancy. Prior to issuance of occupancy permits, a risk management plan consistent with DTSC's Vapor Intrusion Mitigation Advisory shall be approved by the RWQCB or other oversight agency. Such plans shall address the potential migration of vapors laterally along utility conduits and into residences through physical controls. The extent of such physical controls shall be determined in response to soil vapor data generated prior to construction and designed to control migration of vapors to avoid significant risk to human health or structures. Such physical controls could include the installation of low-permeability backfill "plugs," or through an equally effective technique, adjacent to residences and along subsurface utilities beneath Sites A.		2. The applicant shall submit a Construction Risk Management Plan (CRMP) to the RWQCB, the City and Alameda County Water District for review and comment. The City shall provide the CRMP to all contractors performing subsurface work in the areas covered by the CRMP.	
(Same as Above)	Certificates of Occupancy for the residences will not be issued until the developer submits to RWQCB documentation on the installation and performance testing of vapor intrusion mitigation measures and the light industrial uses on the Gallade Parcel have ceased operations.	Applicant and City of Newark Community Development Director	1. The applicant shall submit to the City verification from RWQCB of acceptance of performance testing of vapor intrusion mitigation.	Prior to the issuance of Certificates of Occupancy for residences on Site A.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
			2. The City shall verify that industrial use of the Gallade property has ceased.	
Hazardous Materials-Site B				
Site B is impacted by soil contamination associated with past uses of the site.	*Trumark Dumbarton TOD SEIR* Mitigation Measure HAZ-2: Prior to the issuance of building permits for development of Site B, all pre-construction elements of the Remedial Action Plan conditionally approved by the RWQCB on July 30, 2013, as it may be amended, and any addenda, must be met, including required pre-construction contingent submittals listed in the RWQCB conditional approval.	Applicant and City of Newark Community Development Director	The applicant shall submit to the City evidence that pre-construction elements of the Remedial Action Plan have been met to the satisfaction of the RWQCB.	Prior to the issuance of building permits for residential development of Site B
Site B is impacted by groundwater contamination associated with past uses of the site.	*Trumark Dumbarton TOD SEIR* Mitigation Measure HAZ-3: Prior to the issuance of building permits for development of Site B, all pre-construction elements of the Remedial Action Plan conditionally approved by the RWQCB on July 30, 2013, as it may be amended, and any addenda, must be met, including required pre-construction contingent submittals listed in the RWQCB conditional approval. Prior to issuance of occupancy permits, a risk management plan consistent with DTSC's Vapor Intrusion Mitigation Advisory shall be approved by the RWQCB or other oversight agency. Such plan shall address the potential migration of vapors laterally along utility conduits and into residences through physical controls. The extent of such physical controls	Applicant and City of Newark Community Development Director	1. The applicant shall submit to the City evidence that pre-construction elements of the Remedial Action Plan have been met to the satisfaction of the RWQCB. 2. The applicant	Prior to the issuance of building permits for development of Site B for pre-construction elements of the Remedial Action Plan. Prior to issuance of Certificate of Occupancy for

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	shall be determined in response to soil vapor data generated prior to construction and designed to control migration of vapors to avoid significant risk to human health or structures. Such physical controls could include the installation of low-permeability backfill "plugs," or through an equally effective technique, adjacent to residences and along subsurface utilities beneath Sites B. In addition, a Construction Risk Management Plan (CRMP) with protocols for the handling, evaluation and appropriate disposal of excavated soil and pumped water in accordance with regulatory agency requirements, and protocols governing worker health and safety, will be either integrated into other plans or will be developed as a stand-alone document, and will address on-site and off-site development and maintenance of utilities. The CRMP shall be provided to RWQCB, City and ACWD for review and comment. The City shall provide the CRMP to all contractors performing subsurface work in the areas covered by the CRMP.		shall submit to the City evidence that a risk management plan has been prepares, as specified in the Mitigation Measure. 3.The applicant shall submit a Construction Risk Management Plan (CRMP) to the RWQCB, the City and Alameda County Water District for review and comment. The City shall provide the CRMP to all contractors performing subsurface work in the areas covered by the CRMP.	the RWQCB - approved risk management plan.
Remediation of soil	*Trumark Dumbarton TOD SEIR* Mitigation Measure HAZ-4: A Health and	Applicant and	The applicant	During site

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
and groundwater contamination on Site B could expose workers and the general public to contaminants in soil and groundwater.	Safety Plan prepared in accordance with all Federal OSHA and California Division of Occupational Safety and Health that addresses the safety of workers and the general public during remediation of the site shall be implemented by the project.	City of Newark Community Development Director	shall implement a Health and Safety Plan as specified in the Mitigation Measure during site remediation.	remediation.
Hazardous Materials-Imported Soil				
Soil imported to the site for backfill could contain contaminants.	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.7-1c: Imported soils shall be sampled for toxic or hazardous materials exceeding applicable Environmental Screening Levels for residential use of the site, and only clean soil shall be used that is consistent with RWQCB cleanup goals for the site.	Applicant and City of Newark Community Development Director	The applicant shall included in construction documents the requirement that imported soil will be tested and verified to meet screening levels specified in the Mitigating Measure. Verification of this requirement shall be provided to the City.	Verification prior to the issuance of grading permits.
Noise-Residential Units				
The residences proposed at the northern portion of Site A would be exposed to maximum instantaneous noise	*Trumark Dumbarton TOD SEIR* Mitigation Measure NOISE-1.1: Project-specific acoustical analyses shall be completed for residential land uses exposed to noise levels exceeding 60 dBA L_{dn}. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City for review and approval prior to or during the building permit process. The analyses shall meet the	Applicant, City of Newark Building Official	During Building Permit review, the applicant shall submit a noise analysis demonstrating compliance with	Concurrent with plan review for Building Permits for Site A.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
levels in excess of City standards by train operations.	following noise reduction requirements: • Interior noise levels shall be reduced to 45 dBA L_{dn} or lower. Sound insulation requirements would likely need to include the provision of forced-air mechanical ventilation for all units, so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques (e.g., sound-rated windows and building facade treatments) may be required for new residential uses adjacent to the DRC. • Maximum instantaneous noise levels (Lmax) shall be reduced to 50 dBA in bedrooms and 55 dBA in other habitable rooms. The design of mitigation at properties adjoining the railroad shall consider the best available methods. These treatments include, but are not limited to, sound rated windows and doors, sound rated wall construction, acoustical caulking, insulation, acoustical vents, etc. Large windows and doors should be oriented away from the railroad where possible.		the noise levels specified in the Mitigation Measure.	
	Noise-Operational			
Build-out of the Specific Plan would result in significant noise increases from traffic on Willow Street.	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.10-4: Prior to building permit issuance, the project applicant shall coordinate with the City's Public Works Director to change the posted speed limit along Willow Street (between Thornton Avenue and Central Avenue) to 25 miles per hour.	Applicant, City of Newark Public Works Director.	Implementation of this measure shall be indicated on all project plans and specifications.	Prior to the issuance of Building Permits.
	Noise-Construction			
Noise generated by site remediation, site improvements, grading, infrastructure improvements, and	*Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.10-1a: To reduce noise impacts due to construction, project applicants shall require construction contractors to implement a site-specific noise reduction program, subject to City review and approval, which includes the following measures, ongoing through demolition, grading, and/or construction:	Applicant and City of Newark Community Development Director	Construction plans and documents shall include the noise reduction measures	Confirm prior to the issuance of Grading Permits; implemented during grading

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
the construction of residences could result in noise levels exceeding 60 dBA L_{eq} and the ambient noise environment by 5 dBA L_{eq} for a period greater than one year.	• Restrict noise-generating activities at the construction site or in areas adjacent to the construction site to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and between 8:00 a.m. to 5:00 p.m. on Saturdays. • Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds, wherever feasible). • Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electronically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible. • Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporated insulation barriers, or other measures to the extent feasible. • If feasible, the noisiest phases of construction shall be limited to less than 10 days at a time. *Dumbarton TOD Specific Plan EIR* Mitigation Measure 4.10-1b: Prior to the issuance of each grading permit, project applicants shall submit to the City Building Inspection Division a list of measures to respond to and track complaints pertaining to construction noise, ongoing throughout demolition, grading, and/or construction. These measures shall include the following:	(See Above)	specified in the Mitigation Measure. (See Above)	and project construction. (See Above)

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance

	• A procedure and phone numbers for notifying the City Building Inspection Division staff and Newark Police Department (during regular construction hours and off-hours);
	• A sign posted onsite pertaining the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
	• The designation of an onsite construction complaint and enforcement manager for the project. The manager shall act as a liaison between the project and its neighbors (including onsite residents). The manager's responsibilities and authority shall include the following:
	  ○ An active role in monitoring project compliance with respect to noise;
	  ○ Ability to reschedule noisy construction activities to reduce effects on surrounding noise sensitive receivers;
	  ○ Site supervision of all potential sources of noise (e.g., material delivery, shouting, debris box pick-up and delivery) for all trades; and,
	  ○ Intervening or discussing mitigation options with contractors.
	• Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of construction activities regarding the details and estimated duration of the activity; and,
	• A preconstruction meeting shall be held with the job inspectors and the general contractor/onsite project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.			