

**E.3 Hearing to consider the development of approximately 27 residential units (Trumark Homes) on an approximately 2.14-acre project site (Enterprise Property) located on the north side of Enterprise Drive east of Willow Street: (1) Resolution making certain findings and adopting a Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development Specific Plan; (2) Introduction of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 “Zoning Map” by rezoning all that real property shown on vesting tentative map 8110 from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approving the Affordable Housing Implementation Agreement; (4) Resolution approving Vesting Tentative Map 8110; (5) Resolution authorizing the Mayor to sign a Community Financing Agreement with Enterprise Joint Venture, LLC; (6) By motion, approving an Architectural and Site Plan Review; and (7) By motion, approving the Schedule of Impact Fees – from Assistant City Manager Grindall.**

**(RESOLUTIONS- 4)(INTRODUCTION OF ORDINANCE)(MOTIONS-2)**

**Background/Discussion** – In collaboration with the landowners, the City of Newark began a planning effort in the Fall of 2007 to explore potential development around the planned Newark Dumbarton Rail Station. The Project Area includes approximately 205 acres of land that has previously contained various industrial, manufacturing, and chemical processing land uses since the early twentieth century. Most of the land is currently vacant.

Enterprise Drive, LLC has now submitted a proposed Vesting Tentative Map and building plans for 27 units to be located on approximately 2.14 acres along Enterprise Drive. It is proposed to rezone a portion of the Dumbarton TOD to be consistent with the Specific Plan. RZ-12-27 is a rezoning of an approximately 2.14-acre area (Assessor’s Parcel Number 092-0140-006); an area generally located on the north side of Enterprise Drive east of Willow Street. The rezoning would be from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes which is consistent with the Specific Plan.

#### The Architectural and Site Plan Review

Three building designs are proposed, each with three different floor plans. All three designs will accommodate three stories that provide two covered parking spaces, a mid-level living area with dining room, family room, and kitchen, and a third story living area with three bedrooms. The ground floor will provide either a media/living room and/or an option for an additional bedroom.

Although these homes are somewhat narrow (22-feet wide), they provide a nice variation in design and offer balconies, dormers, several window treatments, recessed features, and wall treatments. The average lot size in this development is 2,177 square feet.

#### Community Financing Agreement and Park Agreement

The acquisition of the Gallade parcel would be required prior to the issuance of a Certificate of Occupancy for any of the proposed homes (Condition c). The Applicant will be required as a

condition of approval to enter into a Park Agreement with the City. The proposed Park Agreement does not obligate the City to take any action related to the Gallade parcel (see Park Agreement § 1.02), but in the event the City does seek to acquire that parcel, the Park Agreement would require the Applicant to fund certain costs related to the acquisition of the Gallade parcel and its development as a public park in conformance with its designation under the TOD Specific Plan. The applicant has agreed to enter into a Community Financing Agreement that would provide additional financing for a neighborhood park. The development of the Gallade parcel as a neighborhood park was analyzed in the TOD Specific Plan EIR. The TOD Specific Plan EIR provides the required CEQA compliance for the approval of the Park Agreement and Community Financing Agreement. As explained in the FEIR (e.g., Response to Comment A-3) and the staff report's attachment, staff has determined that there is no new information, changes in the development contemplated in the TOD Specific Plan EIR, or changes in circumstances since the certification of the TOD Specific Plan EIR that would require further environmental review under CEQA of the potential development of the Gallade parcel as a public park. However, the timing of the development of the Gallade parcel is currently uncertain. Further CEQA review may be appropriate if and when future discretionary actions by the City occur related to the development of the Gallade parcel as a public park, including the potential decision to acquire the Gallade parcel, if any of the thresholds found in CEQA Guideline § 15162 is met at the time of that potential future approval.

#### Affordable Housing

Chapter 17.18 of the Newark Municipal Code (NMC) generally requires developers to set-aside a minimum of 15% of the total number of dwelling units in a project as inclusionary units for very low, low, and moderate income households. Nine percent of the units are required to be affordable to moderate income households (earning 110% or less of the median income) and 6% to be affordable to lower income households earning (80% or less of the median income). The NMC also authorizes alternative means of compliance with the City's Affordable Housing Program (AHP), including land dedication, payment of in-lieu fees, or approval of an alternative housing program consisting of any combination of alternative means of compliance. Enterprise Drive LLC intends to provide an alternative means of compliance with the City's Affordable Housing Program by entering into an "Affordable Housing Implementation Agreement". Per the agreement the Developer will pay the City a fee in the amount of \$25,000 for each unit within the Project.

The fee will allow the City to address the need for affordable housing more effectively than compliance with the ordinance. The fee will allow for the purchase of property in appropriate locations and the flexibility to leverage the funds with public and private sources to provide the type of housing that the community most needs. Generally regional, State and Federal affordable housing funding or financing programs need an identified site to be competitive in the funding process. Without resources to acquire appropriate properties it is highly unlikely that the City would be able to effectively compete for these funds. Furthermore, this fee would allow the City to focus our housing efforts on areas of particular need in the community and to tailor the level of housing affordability to have the greatest positive impact on those needing housing assistance. The funding provided by this development would allow the City to advance project readiness of potential sites thus further improving the likelihood of receiving funding from regional, state and federal sources. The alternative means of compliance fulfills the purposes of the Inclusionary Housing Ordinance, and will further affordable housing opportunities in the City to an equal or

greater extent than compliance with the requirements of the Ordinance. The alternative means of compliance will not unduly concentrate below market rate housing in one geographic area, because no particular project is now envisioned and the Planning Commission and City Council can monitor this concern when particular affordable housing developments are proposed.

#### The Supplemental Environmental Impact Report (SEIR)

The SEIR prepared for this project and the adjacent Jones-Hamilton property project was completed by David J. Powers & Associates, Inc. The key issues analyzed by the SEIR were air quality, biological resources, cultural resources, greenhouse gas emissions, hazards and hazardous materials, and noise.

Of these six issues, the only new significant impacts resulting from this project would include biological impacts and hazardous material impact. These represent project-specific impacts that are specific to the location of the project sites and the development proposed by the project.

As described in Section 4.2 of the SEIR, *Biological Resources*, the project would result in impacts to seasonal wetlands and Cogdon's tarplant. These impacts would be mitigated to less than significant levels through mitigation measures identified in the SEIR, specifically the purchase of off-site mitigation credits for habitat impacts or alternatively, on-site propagation of Cogdon's tarplant on the Jones-Hamilton project site.

As described in Section 4.5 of the SEIR, *Hazards and Hazardous Materials*, the project could be affected by airborne hazardous substances in the event of an accidental release from facilities located approximately one mile from the project. Given the extensive area potentially impacted by a hazardous substance release, and the lack of feasible protective measures for single-family homes in the affected area, there is no feasible mitigation measure to protect future residents of the project from the hazard. This potential impact is therefore considered significant and unavoidable. It's important to note that chemicals in the quantities evaluated for the project are routinely transported by rail and truck on public roadways, including Interstate 880 and State Route 84. The potential risk to the site from the accidental release of hazardous materials is, therefore, similar to that of other areas in Newark near industrial or transportation facilities.

The review period for the SEIR ended on February 7, 2014. During the review period, the City received letters from both the Alameda County Water District and the Department of Toxic Substances Control (DTSC). These letters have been addressed in the Final SEIR provided to the Planning Commission previously. In addition, the City received a letter via email on March 27, 2014 from legal counsel representing the Gallade Property. Though there is no obligation to respond to comments submitted after the close of the comment period on the SEIR, a response to this letter is nonetheless included in the attachments.

**Update** – At its meeting of April 22, 2014, the Planning Commission: 1) Adopted Planning Commission Resolution No. 1867 making certain findings and recommending City Council adoption of a Supplemental Environmental Impact Report to the Environmental Impact Report (State Clearinghouse No. 2010042012) for the Dumbarton Transit Oriented Development; (2) adopted Planning Commission Resolution No. 1868 recommending rezoning (RZ-12-27), a 2.14-acre area (APN 92-140-6) from ML (Limited Industrial) to MDR-FBC (Medium Density

Residential – Form Based Codes); 3) adopted Planning Commission Resolution No. 1869 making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommended City Council approve the attached Affordable Housing Implementation Agreement; 4) By motion recommended that the City Council approve TM-12-28, Vesting Tentative Map 8110; 5) By motion, recommended that the City Council approve ASR-12-29, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 29; and 6) By motion approved Exhibit B, Schedule of Impact Fees.

### **Attachments**

**Action** – It is recommended that the City Council: (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; (2) Introduce an ordinance amending Title 17 (Zoning) of the Newark Municipal Code and Section 17.44.010 “Zoning Map” by rezoning all that real property shown on vesting tentative map 8110 from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Adopt a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and authorizing the Mayor to sign the Affordable Housing Implementation Agreement for the Enterprise Drive Project; (4) Adopt a resolution approving TM-12-28, Vesting Tentative Map 8110, Enterprise Property; (5) Adopt a resolution authorizing the Mayor to sign a Community Financing Agreement with Enterprise Joint Venture, LLC; (6) By motion, approve ASR-12-29, an Architectural and Site Plan Review; and (7) By motion, approve Exhibit B, Schedule of Impact Fees.