E.2 Hearing to consider the development of approximately 217 residential units (Trumark Homes) on a 21.4 acre site (Jones Hamilton) located on the south side of Enterprise Drive east of Willow Street by: (1) Adopting a resolution making certain findings and adopting a Supplemental Environmental Impact Report to the Environmental Impact Report for the Dumbarton Transit Oriented Development; (2) Introducing an ordinance rezoning (RZ-12-31) a 21.4 acre area (092-0116-058; 092-0116-059; 092-0116-060; and 092-0116-014) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); (3) Adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and approve the Affordable Housing Implementation Agreement; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; (5) By resolution, approving Vesting Tentative Map 8098 to construct approximately 217 residential units; (6) By motion, approving an Architectural and Site Plan Review; (7) By motion, approving Exhibit B, Schedule of Impact Fees – from Assistant City Manager Grindall. (CONTINUED FROM MAY 8, 2014)

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

Background/Discussion – This project proposes 217 housing units as outlined in the Dumbarton Transit Oriented Development Specific Plan. The project is consistent with the Specific Plan and meets the Specific Plan's requirements for public improvements that support a walkable, transit friendly neighborhood. The project includes the replacement of an incompatible industrial use, Gallade Chemical, with a 2.3 acre public park as designated in the Specific Plan. Together with the adjacent Enterprise project, the Gallade Chemical property will be acquired, cleaned of soil contamination and constructed as a public park. No unit will be allowed to be occupied until the Gallade Chemical use permanently ceases and the park must be completed and offered for dedication to the City before the 121st unit of this development is occupied.

This project was on the City Council agenda on May 8, 2014, at that time the item was continued in order to allow the developer and the Gallade property owner time to work out issues for the acquisition of the site. It is understood that the developer and property owner have reached an understanding that will allow the project to proceed. The project will result in the removal of the incompatible use without cost to the public or contention.

Trumark Homes has submitted an application for the development of 217 single-family residential homes. The project site is an approximately 21.4-acre parcel located within the City's Dumbarton Transit-Oriented Development Specific Plan Area. The applicant proposes to rezone the site in order to be consistent with the Specific Plan and obtain approval for a tentative map and an Architectural and Site Plan Review. The rezoning would be from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes.

The contamination on this property would be remediated to the satisfaction of the relevant agencies prior to occupancy.

The Architectural and Site Plan Review

Two and three-story single-family detached homes are proposed, consisting of three different products, nine floor plans and multiple designs. The number and layout of the three home types will be divided almost equally throughout the project site. The homes will include three and four bedrooms and range from 1509 square feet to 2312 square feet in size. Larger homes will provide additional living area and will include a den, loft, or a bonus room. All homes will provide two-car covered parking; the three-story homes will provide rear-loaded two-car garages. On-street guest parking will also be scattered throughout the site. Outdoor amenities for the project include picnic tables, barbeque grills, benches, a shaded sitting area and a children's play structure. In addition, a large recreational turf area will be adjacent to the children's play structure. All of the amenities will be centrally located within the site.

Community Financing Agreement

The Dumbarton TOD Specific Plan contains critical elements necessary to implement the Plan. To ensure that the City's fiscal health is sustained, developers are required to contribute to the provision of public improvements and city services. As, such, the applicant has agreed to enter into the attached Community Financing Agreement. Under the terms of the agreement a contribution of $2,500 per unit is required. However, due to the extraordinary cost of acquiring and building the public park, the developer would be allowed to utilize this fee, if necessary, to offset the cost of park acquisition and development.

Affordable Housing

Chapter 17.18 of the Newark Municipal Code (NMC) generally required developers to set-aside a minimum of 15% of the total number of dwelling units. This has now been superseded by the Affordable Housing Fee. This project's application preceded the effectiveness of the new fee and thus is subject to the provisions of the now superseded ordinance. The Chapter 17.18 authorized alternative means of compliance with the City's Affordable Housing Program. An alternative means of compliance was negotiated with the developers of this project which requires the payment of a $25,000 fee for each unit within the Project. Enterprise Drive LLC intends to meet its affordable housing obligations by entering into an "Affordable Housing Implementation Agreement".

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. 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. Furthermore 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 development of the Gallade parcel as a public park was analyzed in the TOD Specific Plan EIR. The approval and execution of the Community Financing Agreement and conditions related to the development of a neighborhood park are further approvals related to the development of the Gallade Parcel as a public park as anticipated by the TOD EIR. 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. As is true for other portions of the TOD Specific Plan, further CEQA review may be appropriate if and when future discretionary actions by the City or other agency occur related to the development of the Gallade parcel as a public park, including the required rezoning of the Gallade Parcel or the removal of the Department of Toxic Substances Control (DTSC) covenant encumbered on the property, if any of the thresholds found in CEQA Guideline § 15162 is met at the time of that potential future approval. No further environmental review is required prior to the City's approval of the Projects Conditions and Community Financing Agreement.

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.

Attachments

Update – At its meeting of April 22, 2014, the Planning Commission: 1) Adopted Planning Commission Resolution No. 1870 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. 1871 recommending rezoning (RZ-12-31), a 21.4-acre area (APN's 092-0116-058, 092-0116-059, 092-0116-060; and 092-0116-014) from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes); 3) adopted Planning Commission Resolution No. 1872 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-12-32, Vesting Tentative Map 8098 to construct approximately 217 residential units; 5) By motion, recommended that the City Council approve ASR-12-33, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 69; and 6) By motion, approved Exhibit B, Schedule of Impact Fees.

Action – It is recommended that the City Council: (1) Adopt a resolution making certain findings and adopt 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 rezoning (RZ-12-31) a 21.4 acre area (092-0116-058; 092-0116-059; 092-0116-060; and 092-0116-014) 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 approve the Affordable Housing Implementation Agreement for the Jones Hamilton Project; (4) By resolution, authorize the Mayor to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC; (5) By resolution approve TM-12-32, Vesting Tentative Map 8098 to construct approximately 217 residential units on the Jones Hamilton Property; (6) By Motion, approve ASR-12-33, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 79; and (7) By motion, approve Exhibit B, Schedule of Impact Fees.

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 Planning Commission held a duly notice public hearing on August 23, 2011, and recommended that the City Council certify the Environmental Impact Report (State Clearinghouse Number 2010043012) for the Dumbarton Transit Oriented Development Specific Plan; 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 April 22, 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 development concerns 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 April 22, 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 development, 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 Oriented 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 development 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 development; 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.

In addition, an analysis of the truck emissions from the transport of contaminated soil to the nearest Class 1 facility in Buttonwillow, CA was prepared. This analysis assumes 25,000 cubic yards of soil would be transported to the Buttonwillow facility, which is located in the San Joaquin Air Basin. As noted in the SEIR, the exact amount of soil requiring disposal at a Class I facility is unknown until remediation on Site B is underway and testing of excavated soils determines pollutant concentrations, however the 25,000 cubic yard assumption is believed to be reasonably conservative and it is unlikely the amount of material to be transported would exceed that amount. The analysis found that emissions from 2,500 truck trips to the San Joaquin Air Basin (1,250 trips to the facility plus 1,250 return trips) would generate an estimated 0.10 tons Reactive Organic Gasses (ROG) and 5.49 tons of nitrous oxide (NOx). Compared to the San Joaquin Valley Air Pollution Control District (SJVAPCD) significance thresholds of 10 tons/year for both ROG and NOx, respectively, emissions from potential contaminated soil hauling within the SJVAPCD would be less than significant.

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 EIR. 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

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 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. Further, an April, 2014 Environ Report provides evidence that the Project will not result in significant greenhouse gas impacts. Using the assumed Trumark Project's service population of 796 residents yields an operational GHG emissions efficiency of 4.2 MT CO2e/year per service population, which is below the BAAQMD CEQA significance threshold of 4.6 MT CO2e/year per service population. There are no thresholds of significance for GHG emissions from construction equipment but the Project construction emissions of 898 MT CO2e over two years are below the one-year bright line threshold of significance for GHG emissions of 1,100 MT CO2e/year.

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.

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 Baron-Blakeslee/Honeywell site. VOC concentrations found in an HHRA performed in 2013 exceeded health risk levels acceptable to the RWQCB for on-grade (slab on grade) residential units.

Implementation of SEIR Mitigation Measure HAZ-1 would require "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 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. Certificates of Occupancy for the residences will not be issued until the developer submits to the RWQCB documentation on the installation and performance testing of vapor intrusion mitigation measures and the light industrial uses on the Gallade Parcel have ceased.

Site B is impacted by soil contamination and groundwater contamination associated with past uses of the area. A remediation plan, as approved by the RWQCB, shall be prepared and implemented to reduce soil contaminants on Site B to acceptable risk levels for residential use.

Implementation of SEIR Mitigation Measure HAZ-2 would require "prior to the issuance of building permits for development of Site B, all preconstruction 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.

Implementation of SEIR Mitigation Measure HAZ-3 would require "prior to the issuance of building permits for development of Site B, all preconstruction 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 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.

Remediation of soil and groundwater contamination on Site B could expose workers and the general public to contaminants in soil and groundwater. Implementation of SEIR Mitigation Measure HAZ-4 would require "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. Implementation of SEIR Mitigation Measure HAZ-5 would require "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

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 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. It is not reasonably foreseeable that the Gallade facility would continue to be in operations when the project would be occupied due to the Specific Plan's park designation for the Gallade parcel, because of the conditions of approval that prohibit the issuance of certificates of occupancy until Gallade ceases operations, and because of the current status of negotiations with Gallade regarding relocating its operations in the proposed Purchase and Sale Agreement with the applicant. The analysis would be misleading and/or of little informational value if it assumed the continuation of operations of the Gallade facility after implementation of the Project and/or the TOD Specific Plan. It is reasonable to assume, given the current rate of development within the Specific Plan Area and the current negotiations related to the purchase of the Gallade parcel by the applicant, that Gallade will elect to relocate so that the parcel may be developed as a public park as analyzed in the Specific Plan EIR. 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 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.

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 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 FINDINGS WITH RESPECT TO RECIRCULATION

In light of the entire administrative record for the Project, the City finds that there is no significant new information (within the meaning of CEQA) that requires recirculation of the SEIR. (See CEQA Guideline 15088.5.)

Gallade Chemical, Inc. has previously asserted that it intends to continue operations into the indefinite future. Gallade's assertion that it will remain in operation is not new information that would require recirculation of the SEIR because even if Gallade's assertion was accurate, as further explained below, it would not result in a substantially increased environmental impacts, including a substantially increased risk of accidental release. Furthermore, this assertion predates current negotiations between the applicant and Gallade related to the purchase of the Gallade Property. Furthermore the proposed conditions of approval prohibit the issuance of certificates of occupancy until Gallade ceases operation.

CEQA Section 15088.5 requires an EIR to be recirculated when "significant new information" is added to the EIR prior to certification. "Significant new information" requiring recirculation can include a disclosure showing that a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; or a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

Numerous laws and regulations at the federal, state, and local levels regulate the management of hazardous materials. In California, the U.S. EPA has granted most enforcement authority over federal hazardous materials regulations to the Cal/EPA. In turn, a local agency, Alameda County Department of Environmental Health has been granted responsibility for implementation and enforcement of many hazardous materials regulations in the County under the Certified Unified Program Agency (CUPA) Program. The CUPA program was established under California Senate Bill 1082 to reduce the cost and improve the efficiency of hazardous materials regulations. The CUPA program encompasses several hazardous materials programs, including Hazardous Materials Management Plans (HMMP) program, California Accidental Release Prevention (CalARP) program, underground storage tank (UST) programs, aboveground storage tank (AST) programs, and hazardous waste generation and disposal.

Businesses that store hazardous materials in excess of specified quantities must report their chemical inventories to Alameda County Department of Environmental Health by preparing a Hazardous Materials Management Plan (HMMP), also known as a Business Plan. This information informs the community on chemical use, storage, handling, and disposal practices. It is also intended to provide essential information to fire fighters, health officials, planners, elected officials, workers, and their representatives so that they can plan for and respond to potential exposures to hazardous materials.

Under the California Accidental Release Prevention (CalARP) Program, businesses that use large quantities of acutely hazardous materials must prepare a detailed engineering analysis of the potential accident factors present at a business and the mitigation measures that can be implemented to reduce this accident potential.

The City has reviewed the documents submitted by Gallade to the County in compliance with these programs and finds that the Gallade facility does not pose a significant risk to the surrounding community, and therefore even if Gallade were to continue to operate indefinitely, despite the substantial evidence to the contrary, Impact HAZ-6 as analyzed in the SEIR would not be substantially increased. Gallade does not assert that it does not comply with applicable regulations or that the materials involved in its operations would pose any greater risk to Newark residents than the materials analyzed in the SEIR.

Any risk that Gallade posed to existing residences and to future residents in surrounding neighborhoods is also addressed by Alameda County's Emergency Operation Plan (EOP) intended to provide a comprehensive emergency response document for natural disasters and man-made events. The EOP includes detailed emergency management procedures designed for prevention, preparedness, response, and recovery, including related to the accidental release of hazardous materials.

Although the potential for hazardous materials releases cannot feasibly be eliminated and the potential risk of exposure to sensitive receptors cannot be reduced to zero (which is why Impact HAZ-.6 was determined to be significant and unavoidable) implementation of existing regulations and policies reduces the likelihood of such event to an acceptable level. Gallade's assertion that it may continue to operate adjacent to already existing residences as well as new residences would not substantially increase the significant and unavoidable impact already disclosed by the SEIR, therefore recirculation is not required.

8.0 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 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 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

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

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:

- 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)

- 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

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

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.

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.

EXHIBIT B

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
	Air Quality 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 ≥ 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 <u>Transportation</u> • 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.		specified in the Mitigation Measure.	and project construction.
	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)	(See Above)	(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:
	  o An active role in monitoring project compliance with respect to noise;
	  o Ability to reschedule noisy construction activities to reduce effects on surrounding noise sensitive receivers;
	  o Site supervision of all potential sources of noise (e.g., material delivery, shouting, debris box pick-up and delivery) for all trades; and,
	  o 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.			

PEGGY CLAASSEN

From: PEGGY CLAASSEN
Sent: Tuesday, April 14, 2015 5:07 PM
To: TRANG TRAN; SOREN FAJEAU; SUE CAREY; TONYA CONNOLLY; ROBERT COSTA
Cc: MYVAN KHUU-SEEMAN; ROYA GONZALEZ
Subject: Contractors - Prevailing Wages - DIR Registration
Attachments: SB 854.docx

Attached please find a copy of a memo concerning the provisions of Senate Bill 854 that I had previously distributed In February to provide more context to this e-mail. A key paragraph in that memo is the definition of a public work project.

I have updated the templates in the Master Forms file on the shared drive(with the exception of the Wulfsberg-Reese-Firstman ones – only partially done) to incorporate the changes summarized below - (F:\Shared\PUBWRKS\0MASTERFORMS).

By law, as an awarding agency, we have the following obligations or duties under this legislation:

- Include notice of contractor and subcontractor DIR registration requirements in all bid & contract documents
- **Not** to accept or enter into a contract without proof of a contractor's DIR registration
- Specify in all bid & contract documents that the contract is subject to compliance monitoring and enforcement by the DIR
- Post or require the prime contractor to post job site notices
- Provide Notice to the DIR of any public works contract within 5 days of the award

Following is the link to the Department of Industrial Relations (DIR) web-site that managers of public works projects (see definition in attached memo) **must** check after bids are opened to verify if contractors and subcontractors are registered per SB 854:

https://efiling.dir.ca.gov/PWCR/Search.action

Within 5 days after award, using the online PWC-100 form, project managers **must** complete and submit the following online form:

https://www.dir.ca.gov/pwc100ext/

Just for your information, what the DIR requires of the contractor to register:

- $
- Worker's compensation coverage
- Contractors State License Board license
- No unpaid wage or penalty assessments owed to an employee or enforcement agency
- No debarment – federal or state
- No violations of DIR registration requirements

Contractors will be required to submit certified payrolls for all projects; a copy to us and one directly to the DIR.

Note: DIR Registration is in addition to being licensed as a California contractor.

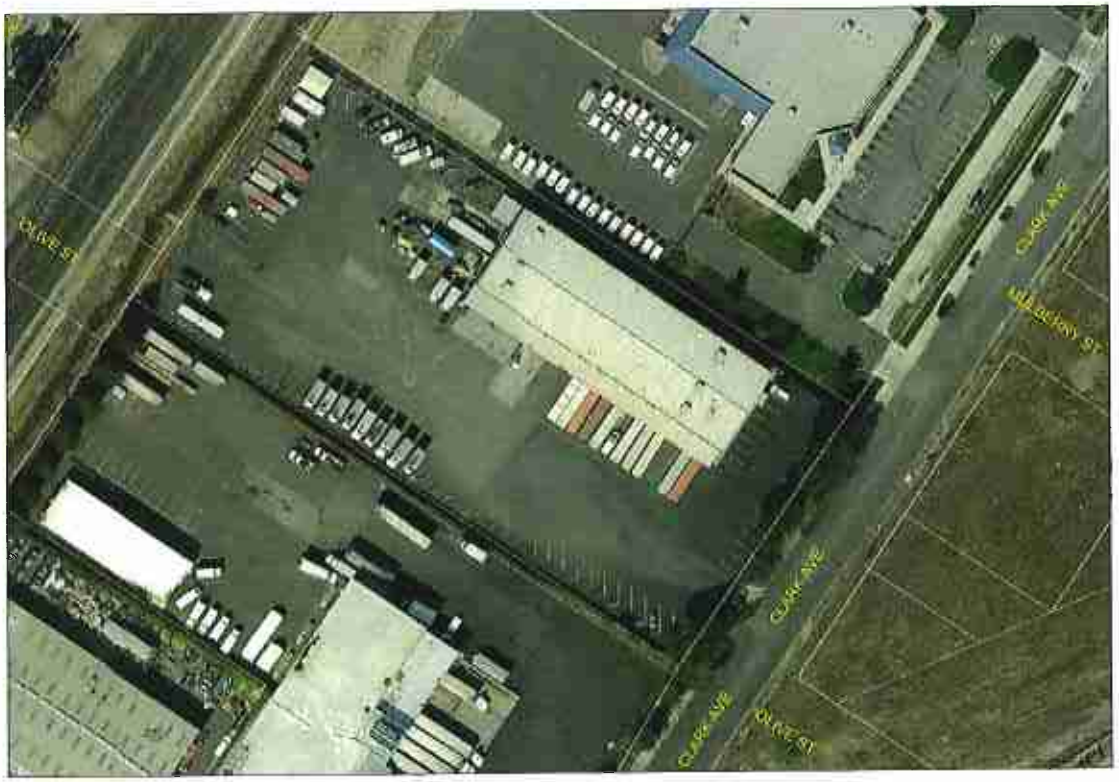
On the bright side, this process should be a help for us in assuring that we have qualified contractors.

If in doubt or if you have questions, please see me.

Peggy

GIS Online

- City Limits
- Street Names
- Parcel Lines
- 2009 - ALCO 6 Inch Color



SCALE 1 : 1,781

100 0 100 200 300

FEET

N

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING TITLE 17 (ZONING) OF THE NEWARK MUNICIPAL CODE SECTION 17.44.010 "ZONING MAP" BY REZONING ALL THAT REAL PROPERTY SHOWN ON THE VESTING TENTATIVE MAP 8098 FROM ML (LIMITED INDUSTRIAL) TO MDR-FBC (MEDIUM DENSITY RESIDENTIAL – FORM BASED CODES)

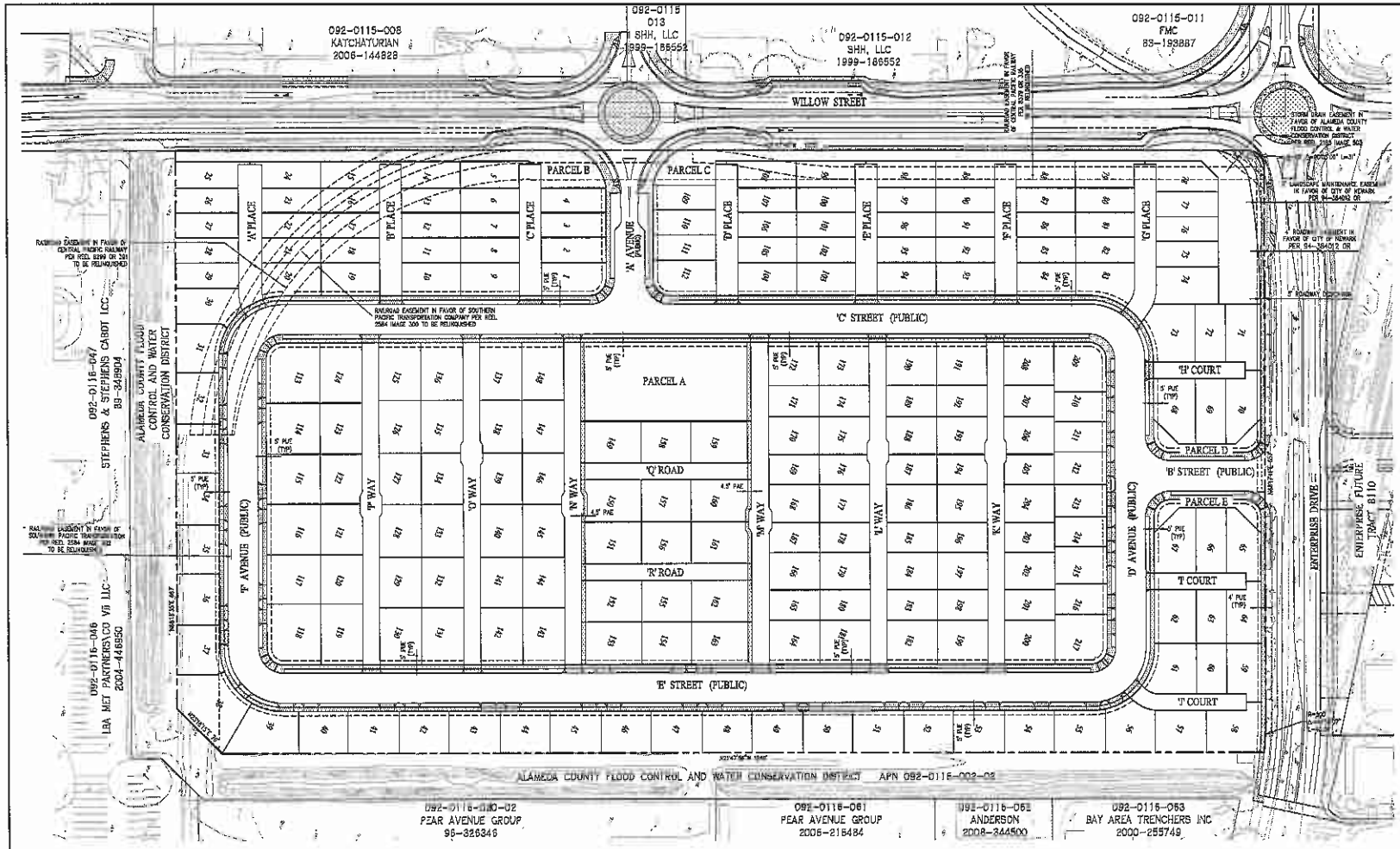
The City Council of the City of Newark does ordain as follows:

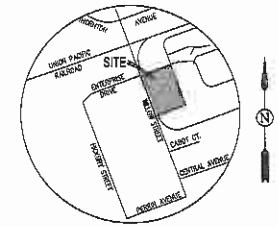
Section 1: Pursuant to Section 17.80.070 of Title 17 (Zoning) of the City of Newark Municipal Code, the City Council of the City of Newark does hereby find that the zoning change embodied in this ordinance is necessary and desirable to achieve the purposes of Title 17 (Zoning) of the Newark Municipal Code; is consistent with the policies, goals, and objectives of the General Plan; and promotes the public health, safety, morals, comfort, convenience, and general welfare of the residents of the City of Newark.

Section 2: Title 17 (Zoning) and Section 17.44.010 "Zoning Map" thereof, being the City of Newark Zoning Regulations, are hereby amended by rezoning and redistricting the territory in the City of Newark, County of Alameda, State of California, from ML (Limited Industrial) to MDR-FBC (Medium Density Residential – Form Based Codes), hereinafter described as follows:

> All that real property designated as the project area for Vesting Tentative Map 8098 in the City of Newark, County of Alameda, State of California as shown on Exhibit A attached hereto and incorporated herein by reference

Section 3: Effective Date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in The Argus, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.





VICINITY MAP

NOT TO SCALE

GENERAL NOTES:

1. OWNER: JONES HAMILTON CO. 90 POST STREET #401 SAN FRANCISCO, CA 94108
2. DEVELOPER: TRUMARK HOMES 4185 BLACKHAWK PLAZA, SUITE 200 DANVILLE, CA 94506 CONTACT: VERONICA VARGAS (925) 309-2400 (925) 848-3530 (FAX)
3. ENGINEER: CARLSON, BARBEE & GIBSON, INC. 2633 CAMINO RAMON, SUITE 350 SAN RAMON, CA 94583 CONTACT: GREG MILLER (925) 866-0322 (925) 866-8575 (FAX)
4. SOILS ENGINEER: CORNERSTONE EARTH 1220 SPRINGBROOK ROAD, SUITE 101 WALNUT CREEK, CA. 94597 CONTACT: PETER KANOTRY (925) 906-8500
5. EXISTING USE: LIGHT INDUSTRIAL
6. SUBDIVISION AREA: 21.4±
7. THE SUBDIVISION CONSISTS OF PARCELS 1, 2, 3 OF PARCEL MAP 5016 AND ALL OF APN 092-0116-014.
8. NUMBER OF UNITS: 237 UNITS
9. THIS PROPERTY LIES IN THE JURISDICTION OF:

FIRE PROTECTION:	ALAMEDA COUNTY FIRE DEPARTMENT
DOMESTIC WATER:	ALAMEDA COUNTY WATER DISTRICT (ACWD)
SANITARY SEWER:	UNION SANITARY DISTRICT
STORM DRAIN WITHIN PUBLIC STREETS:	CITY OF NEWARK
STORM DRAIN WITHIN PRIVATE STREETS, YARDS AND PARCELS:	OWNED & MAINTAINED BY THE HOA
COMMON OPEN SPACE:	OWNED & MAINTAINED BY THE HOA
GAS & ELECTRIC SERVICE:	PACIFIC GAS & ELECTRIC
TELEPHONE SERVICE:	AT&T

10. ROADWAYS & PARCELS: UNLESS OTHERWISE NOTED (I.E. PUBLIC) ALL ROADWAYS AND PARCELS ARE TO BE MAINTAINED BY THE HOA ESTABLISHED WITH THE PROJECT.
11. PROPOSED LAND USE SUMMARY: SEE TABLE (SHEET 2)
12. ASSESSORS PARCEL NUMBERS: 092-0116-058, 092-0116-059, 092-0116-060, 092-0116-014
13. BENCHMARK: CITY OF NEWARK OFFICIAL BENCHMARK NO. 62, ALSO BEING AN ALAMEDA COUNTY BENCHMARK, THE TOP OF CURB AT STORM WATER INLET AT THE NORTH-EAST CORNER OF DIXIRIDGE AVENUE AT WILLOW STREET. ELEVATION TAKEN AS 11.38 (NAVD 88) (8.58) NGVD 29 PER CITY OF NEWARK RECORDS).
14. BASIS OF BEARINGS: THE BASIS OF BEARINGS FOR THIS BOUNDARY DETERMINED BY FOUND MCS MONUMENTS 97445 PIS H72440 AND FALBERT DORBBS, THE BEARING BEING N30°10'33"W (CALCULATED).
15. TOPOGRAPHY: PREPARED BY AEROMETRIC SURVEYS, MAY 23, 2001
16. FLOOD ZONE: ZONED X AND AE FLOOD INSURANCE RATE MAP (FIRM) ALAMEDA COUNTY, CA PANEL: 443 OF 725 MAP NUMBER: 06001C0443G EFFECTIVE DATE: AUGUST 3, 2009
17. THIS PROJECT MAY BE BUILT IN PHASES AND MULTIPLE FINAL MAPS MAY BE FILED. A PHASING PLAN WILL BE PROVIDED TO THE CITY OF NEWARK PRIOR TO FINAL MAP APPROVAL.
18. ALL BUILDINGS SHALL BE EQUIPPED WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM AS REQUIRED BY CHAPTER 15.06.020.D OF THE NEWARK MUNICIPAL CODE.
19. FRONTYARD LANDSCAPING FOR ALL UNITS SHALL BE MAINTAINED BY THE HOA. THE HOA WILL ALSO MAINTAIN AREAS OUTSIDE OF PRIVATE YARD FENCING (PASEOS) FOR PRODUCT A.

SHEET INDEX

1 TITLE SHEET
2 SITE PLAN
3 GRADING AND DRAINAGE PLAN
4 UTILITY PLAN AND STREET SECTIONS
5 STORMWATER CONTROL PLAN

VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

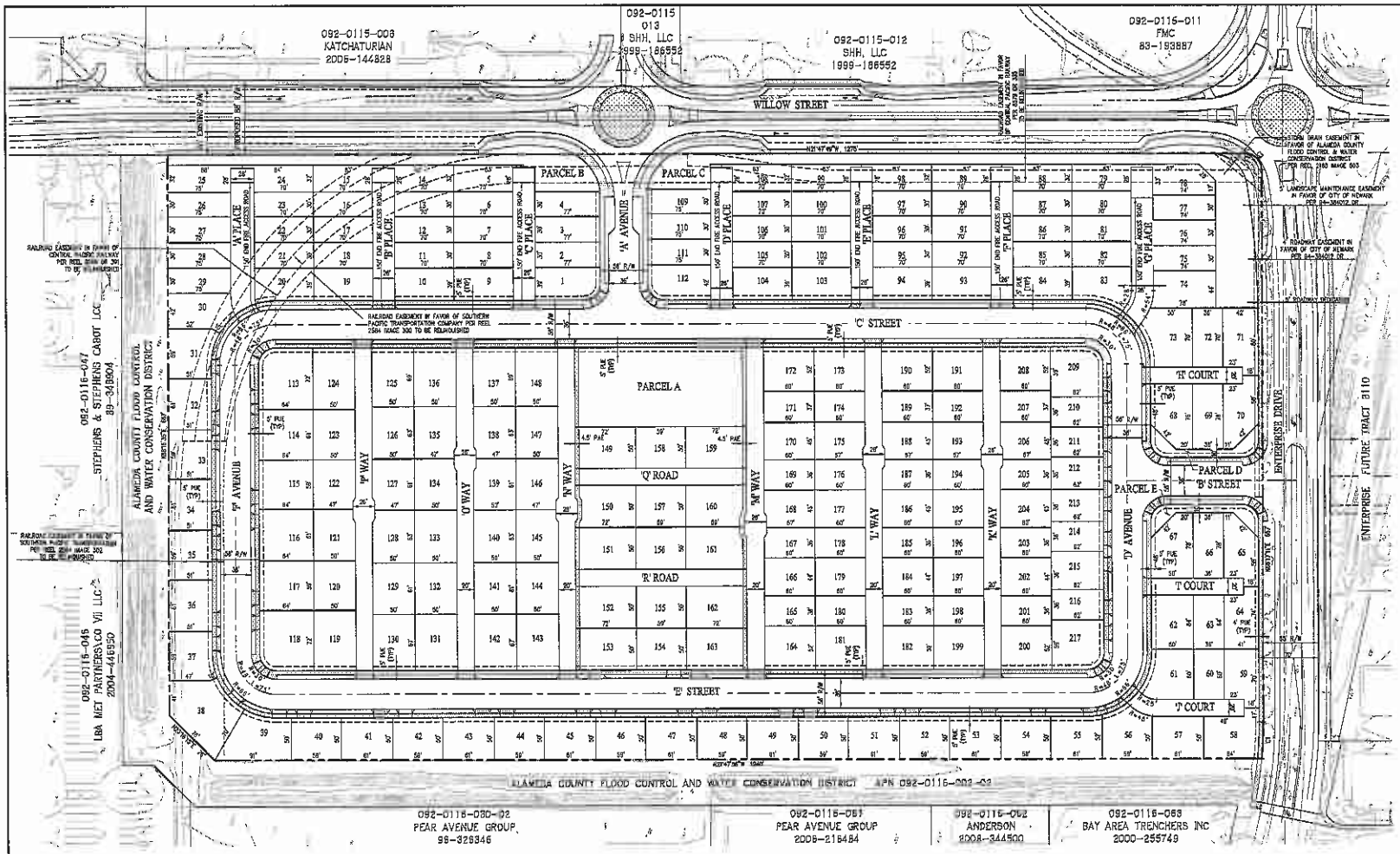
0' 50' 150' 250'

SCALE: 1" = 50' DATE: FEBRUARY 10, 2014

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA 94583
(925) 866-0322
FAX (925) 866-8575

SHEET NUMBER
TM-1
OF 5 SHEETS

EXHIBIT A



LEGEND

EXISTING	PROPOSED	DESCRIPTION
		PROPERTY LINE
		CURB, GUTTER AND SIDEWALK
		CENTERLINE
	SD	STORM DRAIN LINE (PUBLIC)
	SD-UT	STORM DRAIN LINE (UNTREATED)
	SD-T	STORM DRAIN LINE (TREATED)
		PUMP STATION & SD FORCEMAIN
	SS	SANITARY SEWER (PUBLIC)
	W	WATER (PUBLIC)
		SANITARY SEWER MANHOLE
		STORM DRAIN MANHOLE
		CURB INLET
		FIELD INLET
		FIRE HYDRANT
		STREETLIGHT
1710.0		SPOT ELEVATIONS
20		LOT NUMBER
EX		EXISTING
1%		STREET SLOPE
		STAIR WAY
		DRAINAGE MANAGEMENT AREAS (DMA)
		WATER QUALITY SWALE/ BIORETENTION
		AREA TO BE ACQUIRED (STEPPENISH PROPERTY)

ABBREVIATIONS:

AC	ACRES
A/C	ASPHALT CONCRETE
ACWD	ALAMEDA COUNTY WATER DISTRICT
EX	EXISTING
CB	CATCH BASIN
DG	DECOMPOSED GRANITE
DW	DRIVEWAY
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
FI	FIELD INLET
FF	FINISHED FLOOR ELEVATION
HP	HIGH POINT
JT	JOINT TRENCH (BY OTHERS)
LL	LOT LINE
L/S	LANDSCAPE AND IRRIGATION
MH	MANHOLE
OHE	OVERHEAD ELECTRICAL
P	PAD ELEVATION
PAE	PRIVATE ACCESS EASEMENT
PL	PROPERTY LINE
PUE	PUBLIC UTILITY EASEMENT
PDSE	PRIVATE STORM DRAIN EASEMENT
PVAW	PRIVATE VEHICLE ACCESS WAY
R/W	RIGHT OF WAY
SF	SQUARE FEET
SS	SANITARY SEWER
SSE	SANITARY SEWER EASEMENT
SD	STORM DRAIN
SDE	PUBLIC STORM DRAIN EASEMENT
S/W	SIDEWALK
TC	TOP OF CURB
USD	UNION SANITARY DISTRICT
W	WATER
WLE	WATER LINE EASEMENT
WQ	WATER QUALITY

LAND USE SUMMARY	
LAND USE	AREA (AC)
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

LOT SUMMARY TABLE													
LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

PARCEL SUMMARY				
PARCEL	DESCRIPTION	AREA	OWNERSHIP	MAINTENANCE
[illegible]	[illegible]	0.44	HOA	HOA
[illegible]	[illegible]	0.20	HOA	HOA
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL		[illegible]		

NOTES:

SMALLEST LOTS: 2,100 SQ. FT. (LOTS 6-8, 11-13, 16-18, 21-23, 86-92, 95-97, 80-82, 85-87, 100-102, & 105-107)

LARGEST LOT: 5,284 SQ. FT. (LOT 38)

AVERAGE LOT: 2,776 SQ. FT.

LINE TABLE		
NO.	BEARING	LENGTH
L1	N21°47'35"W	15.00'

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	500.00'	04°55'07"	43.36'
C2	30.00'	60°35'10"	31.48'

SITE PLAN
VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

0' 50' 150' 200'

SCALE: 1" = 50' DATE: FEBRUARY 10, 2014

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2630 CAMINO RAMON, SUITE 200
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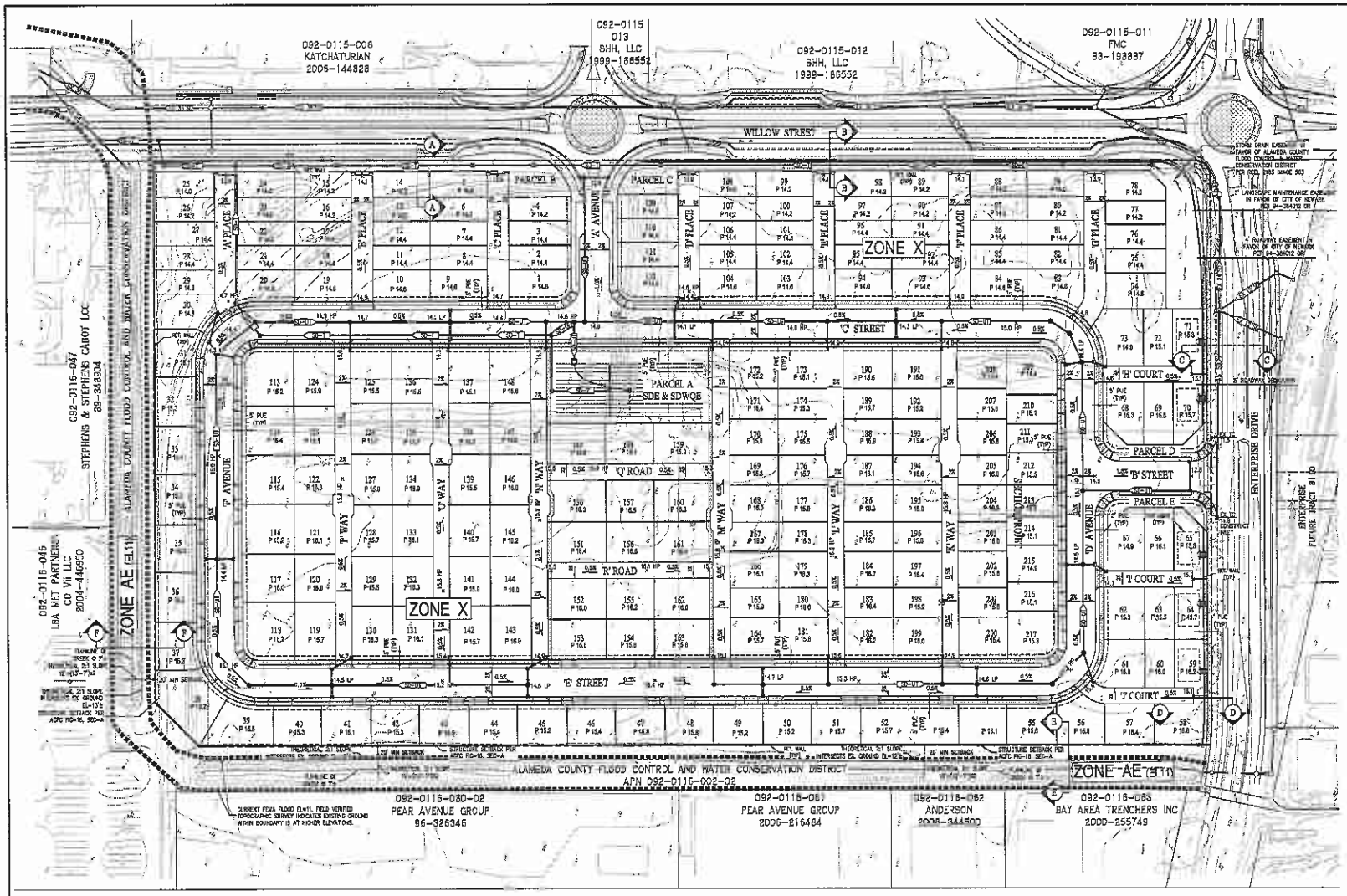
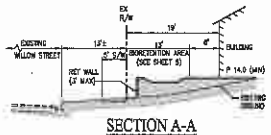
SHEET NUMBER
TM-2
OF 5 SHEETS





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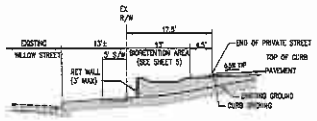

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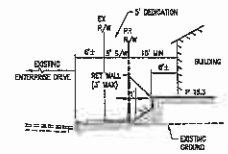

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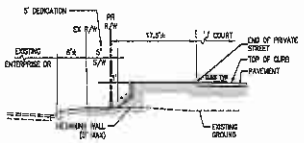

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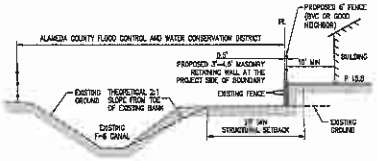

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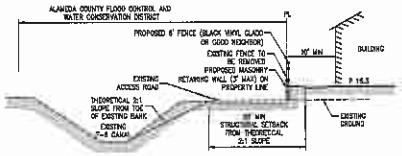

SECTION F-F
NOT TO SCALE

GRADING AND DRAINAGE PLAN
VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

0' 50' 150' 200'
SCALE: 1" = 50'
DATE: FEBRUARY 10, 2014

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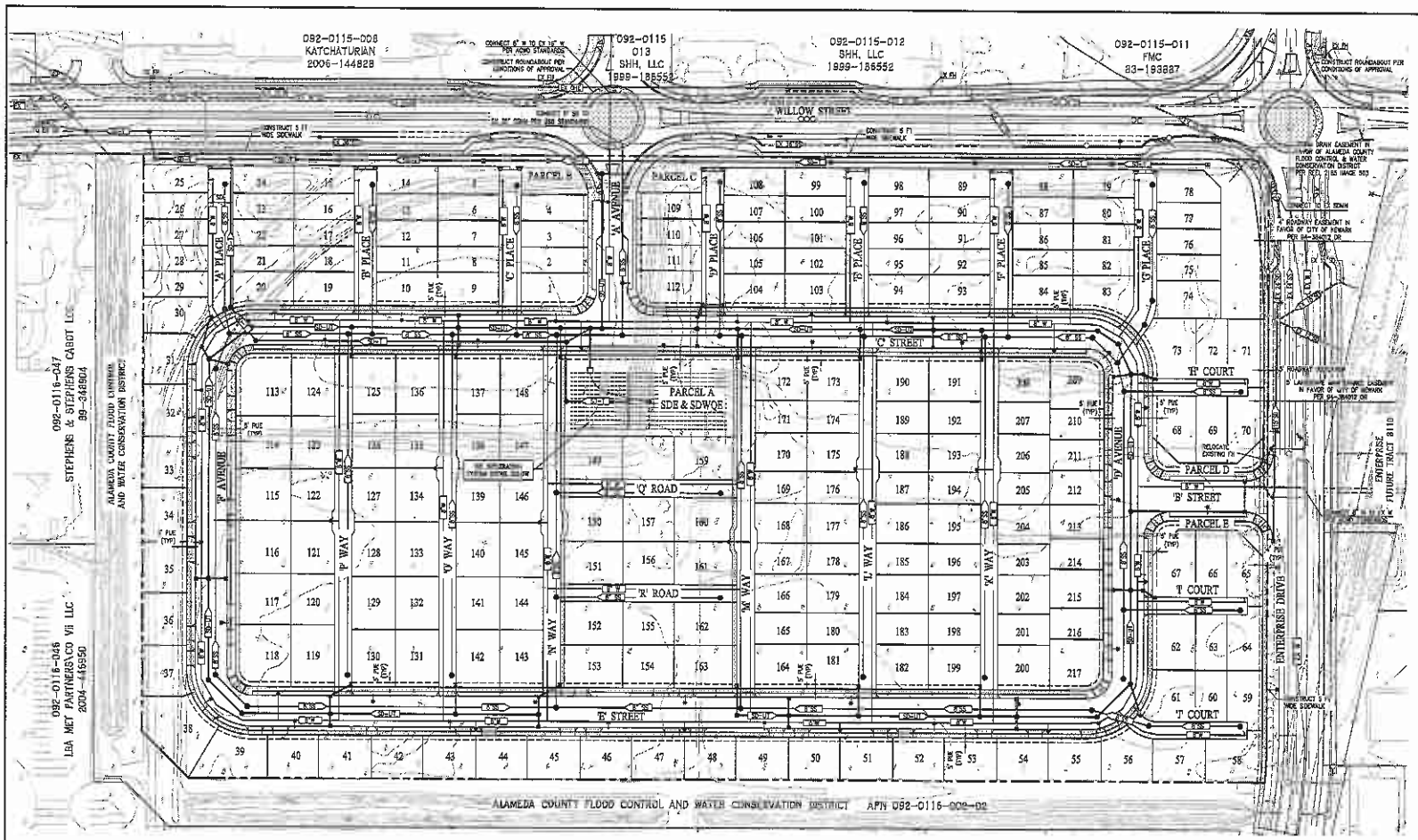
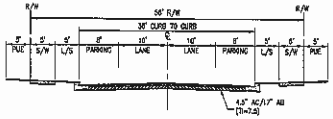
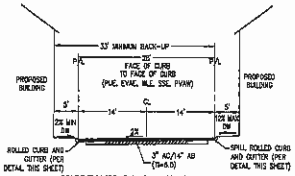
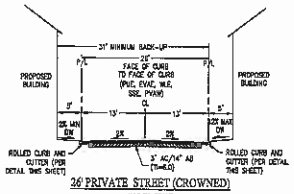
CIVIL ENGINEERS • SURVEYORS • PLANNERS

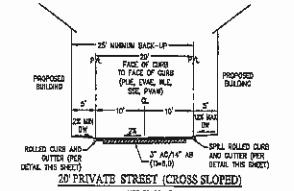
SHEET NUMBER
TM-3
OF 5 SHEETS

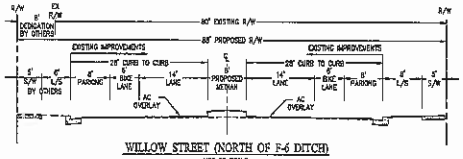


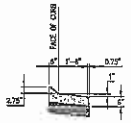


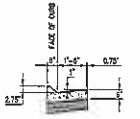


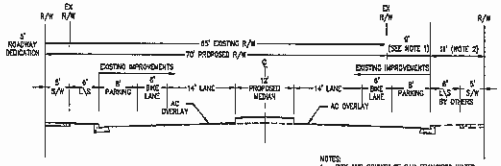












NOTES:
1. CITY AND COUNTY OF SAN FRANCISCO WATER DISTRICT PROPERTY EXISTING LICENSE AGREEMENT.
2. CITY AND COUNTY OF SAN FRANCISCO WATER DISTRICT PROPERTY ADDITIONAL LICENSE AGREEMENT TO BE ACQUIRED.

1. THE STRUCTURAL SECTIONS SHOWN ARE PRELIMINARY AND ARE BASED ON AN ASSUMED R VALUE OF 5. PAVEMENT RECOMMENDATIONS WILL BE PROVIDED BY THE GEOTECHNICAL ENGINEER PRIOR TO STARTING FINAL DESIGN.

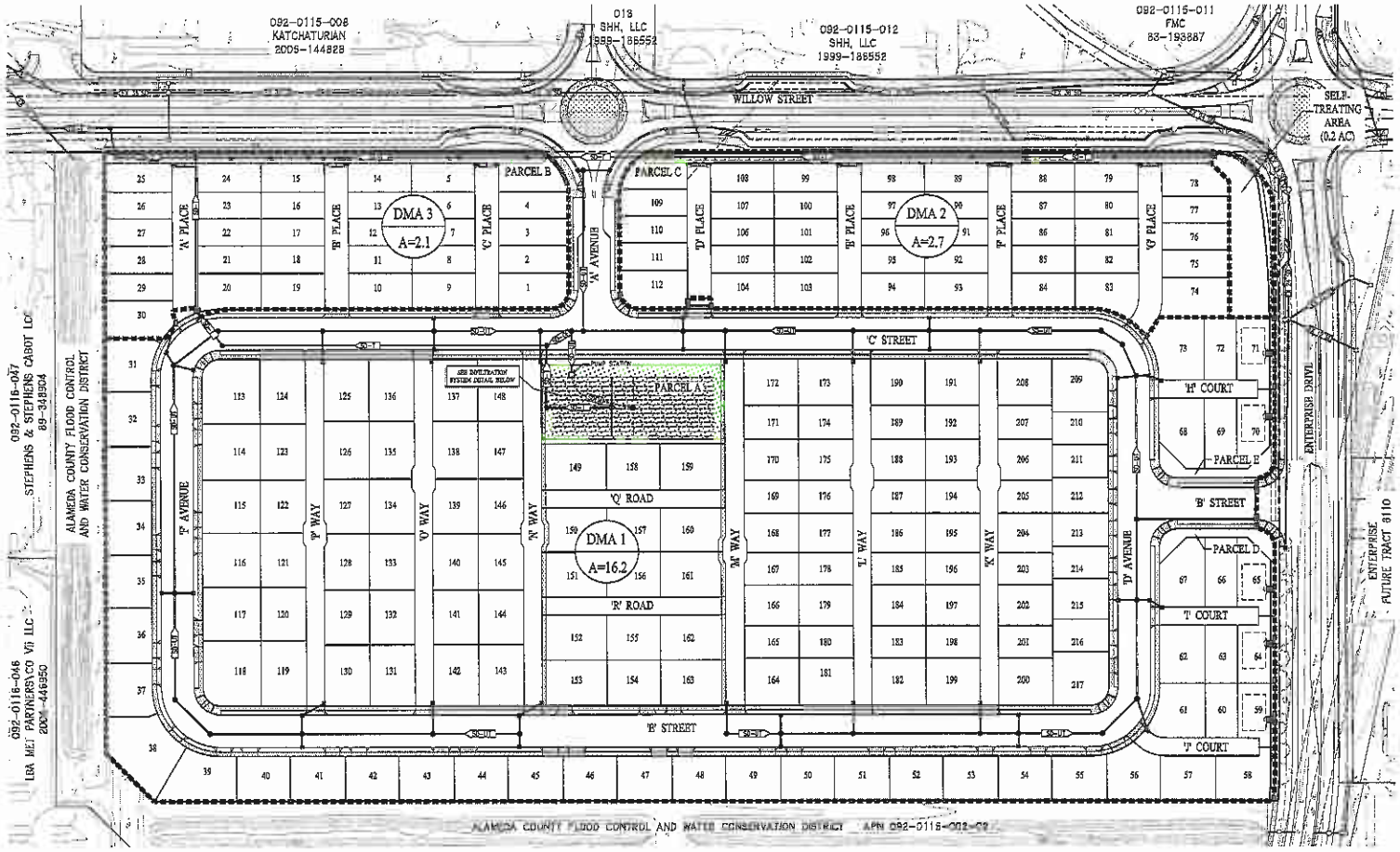
UTILITY PLAN AND STREET SECTIONS
VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

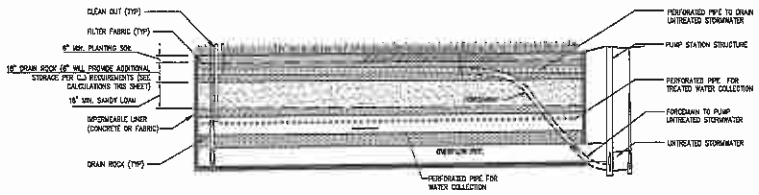
CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

SCALE: 1" = 50' DATE: FEBRUARY 10, 2014

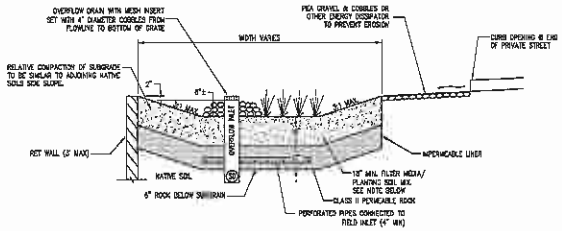
Carlson, Barbee & Gibson, Inc
CIVIL ENGINEERS • SURVEYORS • PLANNERS

SHEET NUMBER
TM-4
OF 5 SHEETS

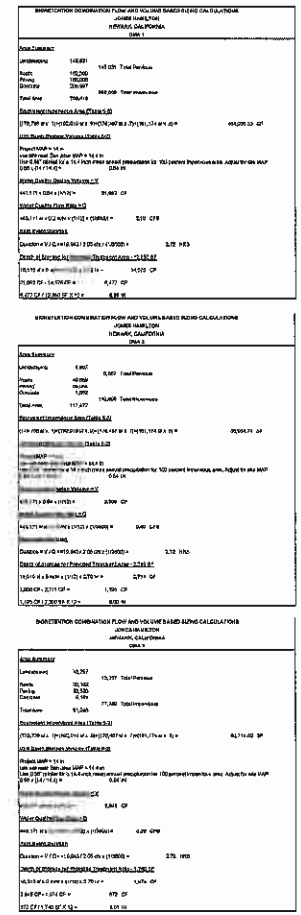




INFILTRATION SYSTEM PROFILE (DMA 1)
SCALE: 1" = 40'



BIORETENTION AREA (DMA 2&3)
NOT TO SCALE



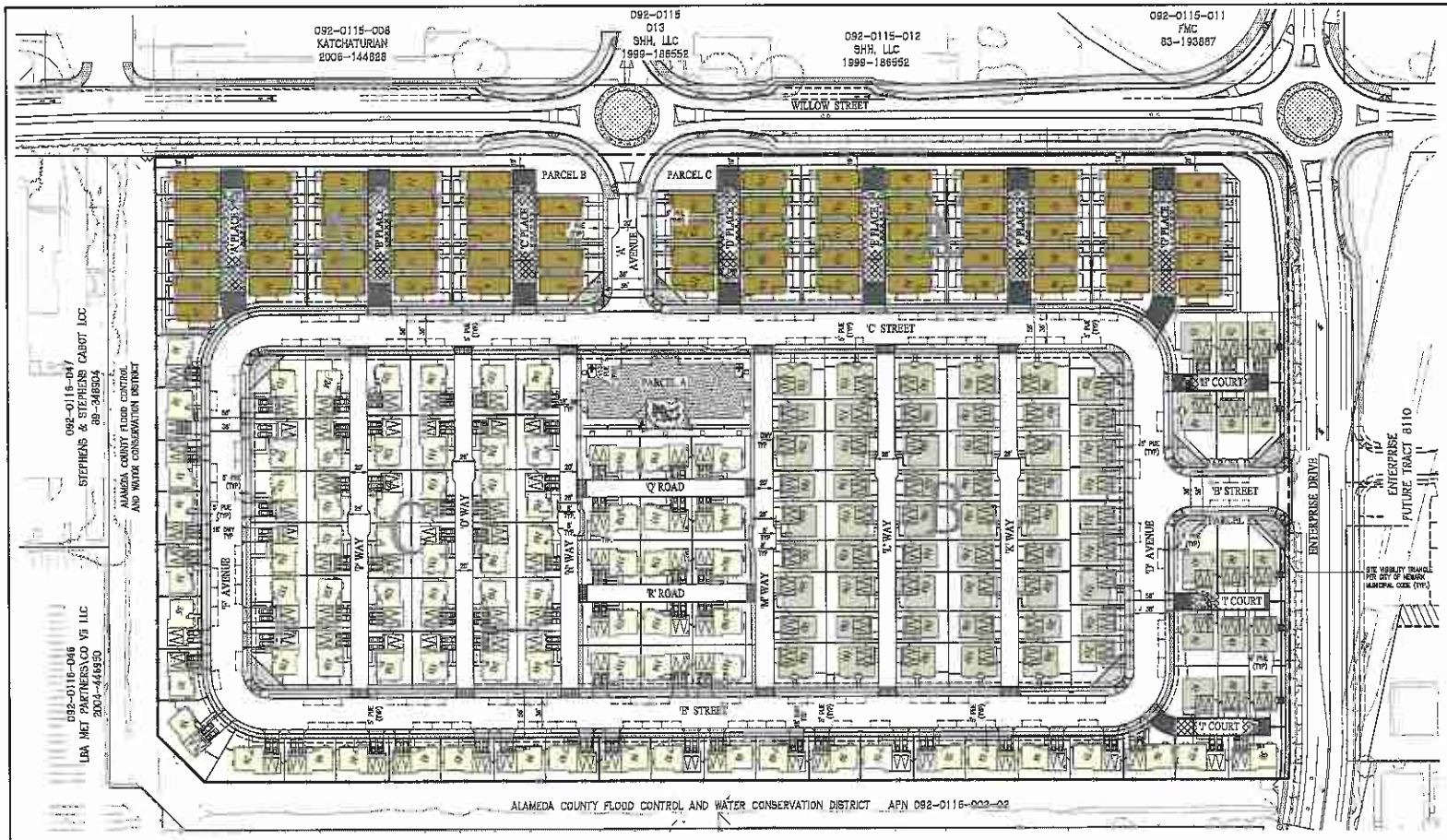
STORM WATER CONTROL PLAN
VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

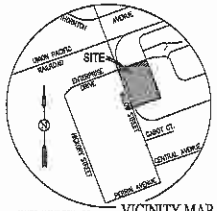
CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

0' 50' 150' 200'
SCALE: 1" = 50'
DATE: FEBRUARY 10, 2014

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS

SHEET NUMBER
TM-5
OF 5 SHEETS





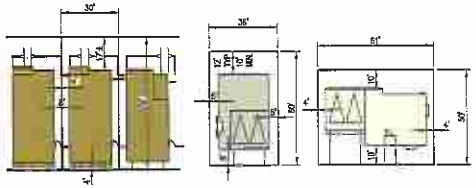
VICINITY MAP
NOT TO SCALE

GENERAL NOTES:

1. OWNER: JONES HAMILTON, CO. 60 POST STREET #401 SAN FRANCISCO, CA 94108
2. DEVELOPER: TRUMARK HOMES 4185 BLACKHAWK PLAZA, SUITE 200 DANVILLE, CA 94506 CONTACT: VERONICA VARGAS (925) 309-2408 (925) 648-3130 (FAX)
3. ENGINEER: CARLSON, BARBEE & GIBSON, INC. 2633 CAMINO RAMON, SUITE 350 SAN RAMON, CA 94583 CONTACT: DOUG MILLER (925) 866-0322 (925) 866-0575 (FAX)
4. SOILS ENGINEER: CORNERSTONE EARTH 1270 SPRINGBROOK ROAD, SUITE 101 WALNUT CREEK, CA. 94597 CONTACT: PETER LANDTRY (925) 988-9300
5. EXISTING USE: LIGHT INDUSTRIAL
6. SUBDIVISION AREA: 21.4±
7. THE SUBDIVISION CONSISTS OF PARCELS 1, 2, 3 OF PARCEL MAP 5019 AND ALL OF APN 092-0116-014.
8. NUMBER OF UNITS: 217 UNITS
9. THIS PROPERTY LIES IN THE JURISDICTION OF:

FIRE PROTECTION:	ALAMEDA COUNTY FIRE DEPARTMENT
DOMESTIC WATER:	ALAMEDA COUNTY WATER DISTRICT (ACWD)
SANITARY SEWER:	UNION SANITARY DISTRICT
STORM DRAIN WITHIN PUBLIC STREETS:	CITY OF NEWARK
STORM DRAIN WITHIN PRIVATE STREETS, YARDS AND PASEOS:	OWNED & MAINTAINED BY THE HOA
COMMON OPEN SPACE:	OWNED & MAINTAINED BY THE HOA
GAS & ELECTRIC SERVICE:	PACIFIC GAS & ELECTRIC
TELEPHONE SERVICE:	AT&T

10. ROADWAYS & PARCELS: UNLESS OTHERWISE NOTED (I.E. PUBLIC) ALL ROADWAYS AND PARCELS ARE TO BE MAINTAINED BY THE HOA ESTABLISHED WITH THE PROJECT.
11. PROPOSED LAND USE SUMMARY: SEE TABLE THIS SHEET.
12. ASSESSORS PARCEL NUMBERS: 092-0116-058, 092-0116-059, 092-0116-060, 092-0116-014
13. BENCHMARK: CITY OF NEWARK OFFICIAL BENCHMARK NO. 62. ALSO BEING AN ALAMEDA COUNTY BENCHMARK, THE TOP OF CURB AT STORM WATER INLET AT THE NORTH-EAST CORNER OF THORNTON AVENUE AT WILLOW STREET. ELEVATION TAKEN AS 11.32 (NAVD 88) (3.861 NGVD 29 PER CITY OF NEWARK RECORDS).
14. BASIS OF BEARINGS: THE BASIS OF BEARINGS FOR THIS BOUNDARY DETERMINED BY FOUND NGS MONUMENTS W146 PID HT2440 AND FILBERT DG6883. THE BEARING BEING N30°18'32"W (CALCULATED).
15. TOPOGRAPHY: PREPARED BY AEROMETRIC SURVEYS, MAY 23, 2011
16. FLOOD ZONE: ZONED X (UNSHADED) FLOOD INSURANCE RATE MAP (FIRM) ALAMEDA COUNTY, CA PANEL 443 OF 725 MAP NUMBER: 06001C0443G EFFECTIVE DATE: AUGUST 3, 2009
17. THIS PROJECT MAY BE BUILT IN PHASES AND MULTIPLE FINAL MAPS MAY BE FILED. A PHASING PLAN WILL BE PROVIDED TO THE CITY OF NEWARK PRIOR TO FINAL MAP APPROVAL.
18. ALL BUILDINGS SHALL BE EQUIPPED WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM AS REQUIRED BY CHAPTER 15.09.020.0 OF THE NEWARK MUNICIPAL CODE.
19. FRONTYARD LANDSCAPING FOR ALL UNITS SHALL BE MAINTAINED BY THE HOA. THE HOA WILL ALSO MAINTAIN AREAS OUTSIDE OF PRIVATE YARD FENCING (PASEOS) FOR PRODUCT A.



TYPICAL LOT SETBACKS
1" = 30'

PARKING SUMMARY

UNIT TYPE	NUMBER OF UNITS	ON-STREET PARKING SPACES REQUIRED	ON-STREET PARKING SPACES PROVIDED	OFF-STREET PARKING SPACES REQUIRED	OFF-STREET PARKING SPACES PROVIDED	TOTALS REQUIRED	TOTALS PROVIDED
PRODUCT A	69	35 [1]	22	138 [2]	138 [3]	173	160
PRODUCT B	69	35 [1]	36	138 [2]	144 [4]	173	180
PRODUCT C	79	40 [1]	66	158 [2]	316 [5]	198	382
WILLOW STREET			35				35
WILLOW STREET			21				21
TOTAL	217	110	180	434	598	544	778 [6]

1. PER DUMBARTON TOD FORM BASED CODE. VISITOR REQUIREMENT IS 0.5 SPACES / UNIT.
2. PER DUMBARTON TOD FORM BASED CODE. TWO OFF-STREET PARKING SPACES ARE REQUIRED FOR EVERY UNIT WITH AT LEAST 1 COVERED SPACE.
3. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT.
4. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT FOR ALL UNITS AND AN ADDITIONAL 6 SPACES FOR THE 3 UNITS WHICH HAVE DRIVEWAY APRONS WITH PROVISION FOR 2 PARKING SPACES.
5. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT AND A DRIVEWAY APRON WITH PROVISION FOR 2 PARKING SPACES FOR ALL UNITS.
6. OVERALL SITE PARKING PROVIDED AT 3.59 SPACES / UNIT.

LAND USE SUMMARY

LAND USE	AREA (AC)
LOT AREAS	13.61
PARCEL AREAS	1.16
STREET AREAS	4.13
LINE AREAS	2.18
ENTERPRISE DRIVE DEDICATION	0.12
TOTAL PROJECT AREA	21.32

0' 60' 180' 240'
SCALE: 1" = 60'
DATE: FEBRUARY 10, 2014

VESTING SITE PLAN
TRACT 8098
JONES - HAMILTON PROPERTY
CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
2633 CAMINO RAMON, SUITE 350 SAN RAMON, CALIFORNIA 94583
(925) 866-0322 FAX (925) 866-0575

SHEET NUMBER
C-1

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK MAKING FINDINGS SUPPORTING THE USE OF AN ALTERNATIVE MEANS OF COMPLIANCE WITH THE INCLUSIONARY HOUSING ORDINANCE AND APPROVING THE AFFORDABLE HOUSING IMPLEMENTATION AGREEMENT FOR THE JONES HAMILTON PROJECT

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

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

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

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

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

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

WHEREAS, the Planning Commission recommended that the City Council approve the Affordable Housing Implementation Agreement and made findings in support of the alternative means of compliance with the Inclusionary Housing Ordinance.

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

a. The Affordable Housing Implementation Agreement for the Jones Hamilton project, said agreement being on file with the City Clerk is approved and the Mayor is authorized to sign the Agreement.

b. That the City Council does find that:

i) The proposed alternative means of compliance fulfills the purposes of this, the Inclusionary Housing Ordinance, as set forth in Section 17.18.010; and

ii) The proposed alternative means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Section 17.18.030; and

iii) The proposed alternative means of compliance would better address the City's needs than compliance with the requirements of Section 17.18.030; and

iv) The proposed alternative means of compliance will not unduly concentrate below market rate housing in one geographic area.

RECORDING FEES
EXEMPT PURSUANT TO
GOVERNMENT CODE §27383

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO:

Terrence Grindall
Assistant City Manager
City of Newark
37101 Newark Blvd.
Newark, CA 94560-3796

APN: 092-116-060, -058 and -059

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AFFORDABLE HOUSING IMPLEMENTATION AGREEMENT

THIS AFFORDABLE HOUSING IMPLEMENTATION AGREEMENT ("**Agreement**") is made as of _____, 2015, by and between the CITY OF NEWARK, a California municipal corporation (the "**City**"), and NEWARK ENTERPRISE JOINT VENTURE LLC, a California limited liability company (the "**Developer**"). The City and Developer may be referred to herein individually as the "Party" or collectively as the "Parties." This Agreement shall become operative and commence upon the date on which this Agreement has been both (i) executed by Developer, and (ii) signed by the Mayor or his or her designee (the "**Effective Date**").

RECITALS

A. Developer is the owner of an approximately 21-acre site that is located at 8400 Enterprise Drive, comprised of three parcels (APNs 092-116-014, -060, -058 and -059), and commonly referred to as the Jones-Hamilton site and more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by this reference (the "**Properties**").

B. On _____, the City Council of the City (the "**City Council**") approved or certified the following land use approvals and entitlements to construct 217 single family homes on the Properties, subject to conditions of approval, including (without limitation) conditions requiring compliance with the City's Affordable Housing Program: Supplemental Environmental Impact Report for the Trumark Dumbarton Transit Oriented Development Residential Project ("**SEIR**") under the California Environmental Quality Act ("**CEQA**"); a Zoning Amendment zoning the Properties as Medium Density Residential; a Vesting Tentative Tract Map; and Architectural and Site Plan Review (collectively, the "**Previous Approvals**").

C. Developer plans to develop up to 217 dwelling units on the Properties, consisting of single family homes (the "**Project**"), as depicted on the Site Plan attached hereto as Exhibit B and incorporated herein by this reference ("**Site Plan**").

D. The City's approvals of the Previous Approvals included a condition of approval that "Payment by developer to the City of an in-lieu fee for each residential unit within the project at the time of issuance of a certificate of occupancy in the amount shown on Exhbit B to these conditions will constitute the project's compliance with the City's Affordable Housing Program, as set forth in Chapter 17.18 of the Newark Municipal Code" and the Developer voluntarily accepted those conditions and freely agreed to comply with the City's Affordable Housing Program, and to waive any right to protest or challenge such conditions, requirements, fees, or exactions pursuant to the City's Affordable Housing Program.

E. Chapter 17.18 of the Newark Municipal Code (the "**Code**") generally requires developers to set-aside a minimum of 15% of the total number of dwelling units in a project as inclusionary units for very low, low, and moderate income households. The Code also authorizes alternative means of compliance with the City's Affordable Housing Program, including land dedication, payment of in-lieu fees, or approval of an alternative housing program consisting of any combination of alternative means of compliance, set forth and confirmed in a binding and written agreement and recordable instrument in a form acceptable to the City Attorney.

F. The Parties have freely negotiated and the Developer has voluntarily proposed and intends to comply with the City's Affordable Housing Program and to satisfy the agreed affordable housing obligations for the Project and Properties by entering into this "Affordable Housing Implementation Agreement" which is intended as the binding and written agreement and recordable instrument providing for alternative means of compliance with the Affordable Housing Program contemplated by the Code, pursuant to which it is proposed that the Developer agree to pay to the City, an in-lieu fee in the amount of Twenty-Five Thousand Dollars ($25,000.00) for each dwelling unit within the Project (the "**Fee**"), which shall be payable to the City no later than issuance of the certificate of occupancy for each dwelling unit (the "**Alternative Means of Compliance**"), and that the City agree to allow and accept such payment as compliance with the Code.

G. On April 22, 2014, the Planning Commission of the City (the "**Planning Commission**") reviewed the Alternative Means of Compliance for consistency with the Code. The Planning Commission made the following findings and recommended approval of the Alternative Means of Compliance to the City Council: (i) the Alternative Means of Compliance fulfills the purposes of Chapter 17.18 as set forth in Code Section 17.18.010; (ii) the Alternative Means of Compliance will further affordable housing opportunities in the City to an equal or greater extent than other potential forms of compliance with the requirements of Code Section 17.18.030; (iii) the Alternative Means of Compliance would better address the City's needs than compliance with the requirements of Code Section 17.18.030; (iv) the Alternative Means of Compliance will not unduly concentrate below market rate housing in one geographic area; and (v) the Alternative Means of Compliance meets the conditions set forth in Code Section 17.18.050(D).

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

I. The City and Developer now desire to set forth the specific terms and conditions of the Alternative Means of Compliance, the timely and complete performance of which without reservation or objection will be deemed to fully satisfy the Project's and Properties' inclusionary housing obligations under the Code and in connection with development of the Project.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into the operative provisions of this Agreement by this reference as covenants, and for other good and valuable consideration, including without limitation the City's consent to the Previous Approvals and agreement to accept alternative means of compliance with its Affordable Housing Program, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

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

2. **Alternative Means of Compliance**. Developer's inclusionary housing obligations for the Project and the Properties shall be fully satisfied by timely and full payment to the City of the agreed in-lieu fees to the City, in the amount of Twenty-Five Thousand Dollars ($25,000.00) per Project dwelling unit for which a building permit is sought by Developer. The Developer's obligation to pay the Fee for each Project dwelling unit shall arise upon the issuance of a building permit for that Project dwelling unit. However, Developer is not obligated to pay such Project unit Fee until the time for issuance of certificates of occupancy for that Project dwelling unit. In no event shall the Fee be paid more than once for any Project dwelling unit.

3. **Voluntary Agreement for Compliance and Waiver of Protest or Rights to Challenge the Agreed In-Lieu Fees.** The Developer affirms and agrees that this Agreement represents the Developer's proposal to pay affordable housing in lieu fees as an Alternative Means of Compliance with the City's Affordable Housing Program and for satisfaction in part of

conditions included in the Previous Approvals, and that the amount of the fees as well as the basis for determining the amount of the fees provided by this Agreement is the result of voluntary agreement and negotiation. The Developer, for itself and its successors or assigns, hereby waives and disclaims any right to contest, protest, or challenge the fees and obligations to pay the fees as provided by this Agreement, including any rights or remedies that might otherwise by claimed under Sections 66020 or 66021 of the California Government Code.

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

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

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

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

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

5.1 **Default By the Developer**.

5.1.1 **Default**. If the Developer fails to pay the agreed fees in full and timely manner when due, or delays, protests or contests its fee payment obligations, then the City shall have no obligation to issue certificates of occupancy or other approvals for development, use, or occupancy of the Project, unless and until such payment default or dispute is cured. If the Developer does not perform its payment obligations or any other obligations under this Agreement in a timely manner, the City may exercise all other rights and remedies provided in this Agreement, provided the City complies with the notice and cure provisions in this Agreement.

5.1.2 **Notice of Default**. If the Developer does not perform its obligations under this Agreement in a timely manner, the City through the City Manager may submit to the Developer a written notice of default in the manner prescribed in Section 8(a) identifying with specificity those obligations of the Developer under this Agreement which have not been timely performed. Upon receipt of any such written notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of any such written notice of default and shall complete the cure of any such default(s) no later than sixty (60) days after receipt of any such written notice of default, or if such default(s) is not capable of being cured within sixty (60) days, no later than one hundred twenty (120) days after receipt of any such written notice of default, provided the Developer commences the cure of any such default(s) within such sixty (60) day period and thereafter diligently pursues such cure at all times until any such default(s) is cured.

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

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

5.1.5 **Lender Protection Provisions**.

5.1.5.1 **Notice of Default**. In addition to the notice provisions set forth in Section 4.1.2, the City shall send a copy of any notice of default sent to the Developer or any of its successors or assigns to any lender that has made a loan then secured by a deed of trust against the Properties, or a portion thereof, provided such lender shall have (a) delivered to the City written notice in the manner provided in Section 8(a) of such lender's election to receive a copy of any such written notice of default and (b) provided to the City a recorded copy of any such deed of trust. Any such lender that makes a loan secured by a deed of trust against the Properties, or a portion thereof, and delivers a written notice to the City and provides the City with a recorded copy of any such deed of trust in accordance with the provisions of this Section 4.1.5.1 is herein referred to as a "**Qualified Lender.**"

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

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

5.2 **Default by the City**.

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

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

5.3 **Monetary Damages**. The Developer and City acknowledge that neither the City nor the Developer would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application thereof. Both the City and the Developer agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the City and the Developer agree that neither shall be liable for monetary damages under or with respect to this Agreement or the application thereof and the City and the Developer covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement. This foregoing waiver shall not be deemed to apply to any fees or other monetary amounts specifically required to be paid by the Developer to the City or to be paid by the City to the Developer pursuant to this Agreement, including, but not limited to, any amounts due pursuant to Section 8(g). This foregoing waiver is not intended to prohibit Developer from bringing any legal claim that Developer otherwise would have against City in the absence of this Agreement (i.e., non-contract claims and causes of action), nor to prevent the City from exercising any of its other remedies, authority, or police power under California law.

6. **Administration of Agreement and Resolution of Disputes**. The Developer shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project, the Alternative Means of Compliance or the interpretation and administration of this Agreement. All City Council decisions or determinations regarding the Project, the Alternative Means of Compliance or the administration of this Agreement shall also be subject to judicial review pursuant to Code of Civil Procedure section 1094.5, provided that, pursuant to Code of Civil Procedure section 1094.6, any such action must be filed in a court of competent jurisdiction not later than ninety (90) days after the date on which the City Council's decision becomes final. In addition, in the event the Developer and the City cannot agree whether a default on the part of the Developer, or any of its successors or assigns, under this Agreement exists or whether or not any such default has been cured, then the City or the Developer may submit the matter to negotiation/mediation pursuant to Section 8(n).

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

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

9. **Miscellaneous**.

(a) Notices. All notices which are allowed or required to be given hereunder shall be in writing and (1) shall be deemed given and received when personally delivered or (2) shall be sent by registered or certified mail or overnight mail service, addressed to the applicable designated person by one Party to the other in writing, and shall be deemed received on the second business day after such mailing.

If to City:

City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attn: City Manager
Tel. No.: (510) 578-4000
Fax No.: _____

If to Developer:	Newark Enterprise Joint Venture LLC c/o Trumark Homes LLC 4185 Blackhawk Plaza Circle, Suite 200 Danville, CA 94506 Attn: Veronica Vargas Tel. No.: (925) 309-2514 Fax No.: (925) 648-3130
Copy to:	Cox Castle & Nicholson Attn: Clark Morrison 555 California Street, 10th Floor San Francisco, CA 94104 Tel. No.: (415) 262-5113 Fax. No.: (415) 262-5199

(b) Severability. If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement unless the invalid provision is a material part of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part.

(c) Entire Agreement. This Agreement represents the entire agreement between the City and the Developer with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the City and the Developer with respect to the matters contained in this Agreement.

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

(e) Assignment. This Agreement shall inure to the benefit of and bind the successors and assigns of the City and the Developer, and may be assigned by either the City or the Developer to any party or parties purchasing all or any part of the fee interest in the Properties. The provisions of this Section 7(e) shall be self-executing and shall not require the execution or recordation of any further document or instrument. Upon the conveyance, transfer or assignment of all or a portion of the Properties to a party that acquires fee title to the Properties or any portion thereof, Developer shall be released of all obligations under this Agreement as to such portion of the Properties transferred or assigned; provided, however, that Developer shall not be released from any obligation incurred or liability for any default of Developer committed prior to the date of the transfer.

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

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

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

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

(j) Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that anyone or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the reasonable control of the Party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor, subcontractor, or consultant to timely perform (so long as Developer is not otherwise in default of any obligation under this Agreement and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform), riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, or unusually severe weather. An extension of time for any such cause (a "**Force Majeure Delay**") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of actual knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

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

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

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

(n) Alternative Dispute Resolution Procedure.

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

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

(3) Mediation.

(i) Within 15 days following the designated persons' meeting described in Section 8(n)(2), above, either Party may initiate non-binding mediation (the "**Mediation**"), conducted by Judicial Arbitration & Mediation Services, Inc. ("**JAMS**") or other agreed upon mediator. Either Party may initiate the Mediation by written notice to the other Party.

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

(iii) If the Dispute is not fully resolved by mutual agreement of the Parties within 15 days after completion of the Mediation, then either Party may institute legal proceedings.

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

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

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

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

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

[signatures on next page]

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

"City":

CITY OF NEWARK,
a municipal corporation

By:_____
Alan L. Nagy, Mayor City of Newark

Approved as to Form:

By: _____
City Attorney

"Developer":

Newark Enterprise Joint Venture LLC, a California limited liability company

By: NMW Newark LLC
a California limited liability company
its Manager

By: Winter & Associates, LLC,
a California limited liability company
its Managing Member

By:_____
Ronald Winter
its Managing Member

EXHIBIT "A" TO AFFORDABLE HOUSING AGREEMENT

LEGAL DESCRIPTION OF PROPERTIES

LEGAL DESCRIPTION

Real property in the City of Newark , County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCELS 1, 2 AND 3 OF PARCEL MAP NO. 5019 FILED OCTOBER 22, 1987 IN BOOK 172 OF PARCEL MAPS, AT PAGE 32, ALAMEDA COUNTY RECORDS.

PARCEL TWO:

A PORTION OF LOTS 14 TO 19, INCLUSIVE, BLOCK 23 (LYING SOUTH AND SOUTHWEST OF THE RAILROAD), AND PORTIONS OF CHESTNUT STREET AND LAUREL STREET, MAP OF TOWN OF NEWARK, FILED MAY 6, 1878, MAP BOOK 17, PAGE 10, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

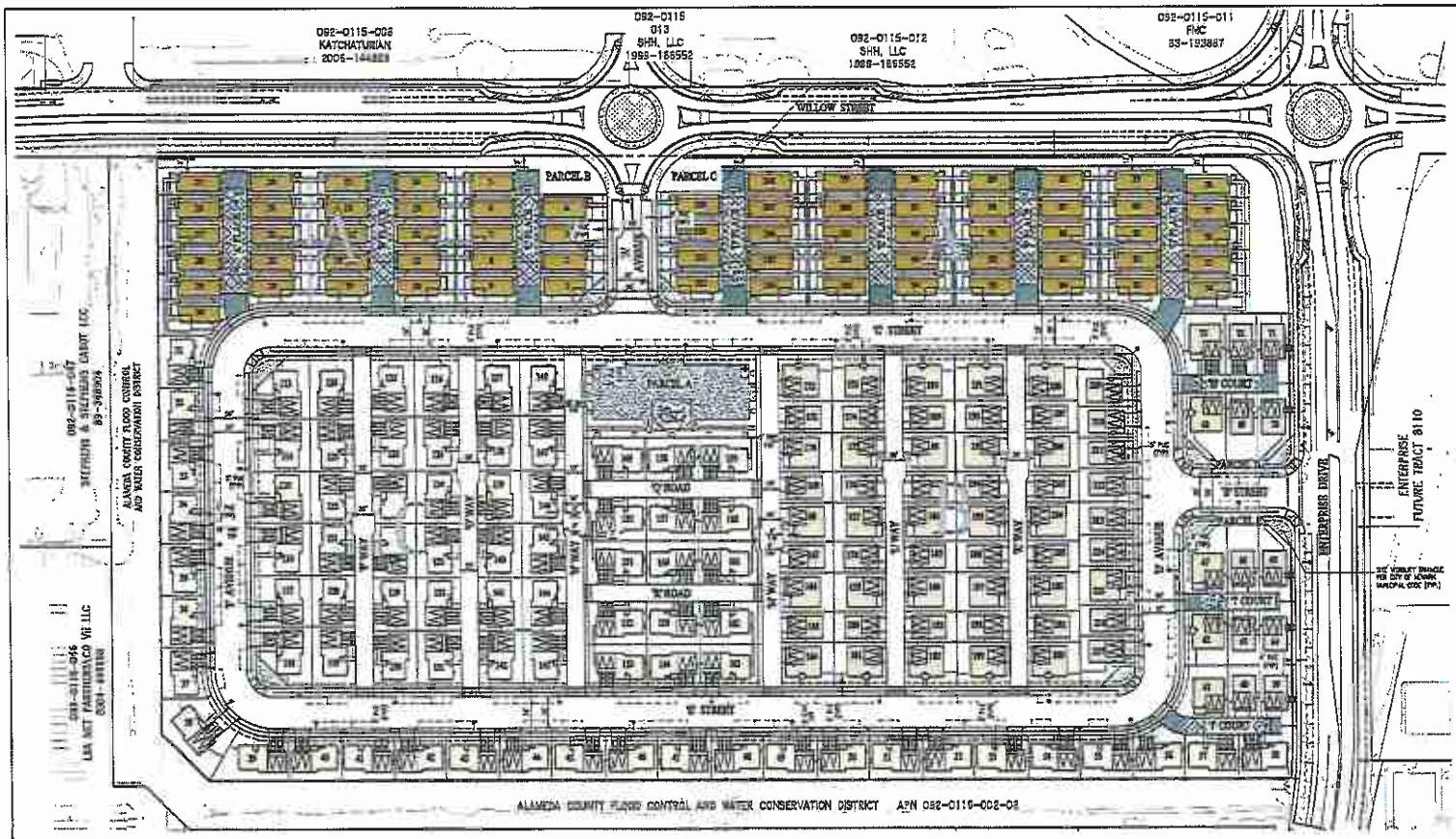
BEGINNING AT A POINT ON THE CENTERLINE OF CHESTNUT STREET DISTANT THEREON NORTH 22° 39' WEST 55.00 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE CENTERLINE OF CLARK AVENUE (80.00 FEET WIDE, AS SHOWN ON SAID MAP), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM FRANK STEFFENSEN TO JONES-HAMILTON CO., RECORDED JANUARY 7, 1966, REEL 1679 OR, IMAGE 723, SERIES NO. AY 2085, ALAMEDA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING ALONG THE SOUTHEASTERN BOUNDARY LINE OF THE LAST MENTIONED PARCEL OF LAND NORTH 67° 23' 20" EAST 341.69 FEET TO A POINT ON THE WESTERN LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM FRANK STEFFENSEN TO ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, RECORDED APRIL 19, 1967, REEL 1949 OR, IMAGE 849, SERIES NO. AZ 35608, ALAMEDA COUNTY RECORDS; THENCE ALONG THE WESTERN AND NORTHWESTERN LINES THEREOF, THE TWO FOLLOWING COURSES AND DISTANCES: SOUTH 22° 23' WEST 21.21 FEET AND SOUTH 67° 23' 20" WEST 326.69 FEET TO THE POINT OF INTERSECTION WITH THE CENTERLINE OF CHESTNUT STREET; THENCE ALONG SAID CENTERLINE OF CHESTNUT STREET NORTH 22° 39' WEST 15.00 FEET MORE OR LESS TO THE POINT OF BEGINNING.

092-0116-058 (Affects Parcel 1), 092-0116-059 (Affects Parcel 2) and 092-0116-060 (Affects Parcel 3), as to Parcel One
092-0116-014, as to Parcel Two

EXHIBIT "B" TO AFFORDABLE HOUSING IMPLEMENTATION AGREEMENT

SITE PLAN

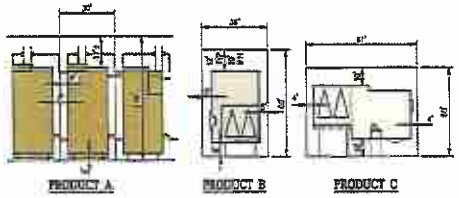
[to be inserted]



VICINITY MAP
NOT TO SCALE

GENERAL NOTES:

1. OWNER: JONES HAMILTON, CO. 69 POST STREET #401 SAN FRANCISCO, CA 94103
2. DEVELOPER: TRIMARK HOMES 4185 BLACKHAWK PLAZA, SUITE 200 DANVILLE, CA 94506 CONTACT: VERONICA VARGAS (925) 319-2468 (925) 648-3130 (FAX)
3. ENGINEER: CARLSON, BARBEE & GIBSON, INC. 2633 CAMINO RAMON, SUITE 350 SAN RAMON, CA 94583 CONTACT: GREG MILLER (925) 895-0322 (925) 866-8575 (FAX)
4. SOILS ENGINEER: CORNERSTONE EARTH 1270 SPRINGBROOK ROAD, SUITE 101 WALNUT CREEK, CA. 94597 CONTACT: PETER LANGTRY (925) 962-0920
5. EXISTING USE: LIGHT INDUSTRIAL
6. SUBDIVISION AREA: 21.6±
7. THE SUBDIVISION CONSISTS OF PARCELS 1, 2, 3 OF PARCEL MAP 5069 AND ALL OF APN 092-0116-004.
8. NUMBER OF UNITS: 217 UNITS
9. THE PROPERTY LIES IN THE JURISDICTION OF:
   - FIRE PROTECTION: ALAMEDA COUNTY FIRE DEPARTMENT
   - DOMESTIC WATER: ALAMEDA COUNTY WATER DISTRICT (ACWD)
   - SANITARY SEWER: UNION SANITARY DISTRICT
   - STORM DRAIN & NON PRIVATE STREETS: CITY OF NEWARK
   - STORM DRAIN & NON PRIVATE STREETS, YARDS AND PARKING: OWNED & MAINTAINED BY THE HOA
   - COMMON OPEN SPACE: OWNED & MAINTAINED BY THE HOA
   - GAS & ELECTRIC SERVICE: PACIFIC GAS & ELECTRIC
   - TELEPHONE SERVICE: AT&T
10. ROADWAYS & PARCELS: UNLESS OTHERWISE NOTED (I.E. PUBLIC) ALL ROADWAYS AND PARCELS ARE TO BE MAINTAINED BY THE HOA ESTABLISHED WITH THE PROJECT.
11. PROPOSED LAND USE SUMMARY: SEE TABLE THIS SHEET.
12. ASSESSORS PARCEL NUMBERS: 092-0116-008, 092-0116-003, 092-0116-002
13. BENCHMARK: CITY OF NEWARK OFFICIAL BENCHMARK NO. 22, ALSO BEING AN ALAMEDA COUNTY BENCHMARK. THE TOP OF CURB AT STORM WATER INLET AT THE NORTH-EAST CORNER OF NEWPORT AVENUE AT WILLOW STREET. ELEVATION TAKEN AS 11.29 (NAVD 88) (8461 NGVD 29 PER CITY OF NEWARK RECORDS).
14. BASIS OF BEARINGS: THE BASIS OF BEARINGS FOR THIS BOUNDARY DETERMINED BY FOUND NGS MONUMENTS W446 PID KT2442 AND FLORIST BASE1, THE BEARING BEING N30°19'32"W (CALCULATED).
15. TOPOGRAPHY: PREPARED BY ACROMETRIC SURVEYS, MAY 23, 2001
16. FLOOD ZONE: ZONES X (UNSHADED) FLOOD INSURANCE RATE MAP (FIRM) ALAMEDA COUNTY, CA PANEL: 443 OF 725 MAP NUMBER: 06001C0443G EFFECTIVE DATE: AUGUST 3, 2009
17. THIS PROJECT MAY BE BUILT IN PHASES AND MULTIPLE FINAL MAPS MAY BE FILED. A PHASING PLAN WILL BE PROVIDED TO THE CITY OF NEWARK PRIOR TO FINAL MAP APPROVAL.
18. ALL BUILDINGS SHALL BE EQUIPPED WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM AS REQUIRED BY CHAPTER 15.08.020(C) OF THE NEWARK MUNICIPAL CODE.
19. FRONTYARD LANDSCAPING FOR ALL UNITS SHALL BE MAINTAINED BY THE HOA. THE HOA WILL ALSO MAINTAIN AREAS OUTSIDE OF PRIVATE YARD FENCING (PATIOS) FOR PRODUCT A.



TYPICAL LOT SETBACKS
1" = 30'

PARKING SUMMARY							
		ON-STREET PARKING SPACES		OFF-STREET PARKING SPACES		TOTALS	
UNIT TYPE	NUMBER OF UNITS	REQUIRED	PROVIDED	REQUIRED	PROVIDED	REQUIRED	PROVIDED
PRODUCT A	69	35 [1]	22	138 [2]	138 [3]	173	160
PRODUCT B	69	35 [1]	36	138 [2]	144 [4]	173	180
PRODUCT C	79	40 [1]	66	158 [2]	316 [5]	198	382
WILLOW STREET			35				35
WILLOW STREET			21				21
TOTAL	217	110	180	434	598	544	778 [6]

1. PER BOMBARDIER TOD FORM BASED CODE. VISITOR REQUIREMENT IS 0.5 SPACES / UNIT.
2. PER BOMBARDIER TOD FORM BASED CODE. TWO OFF-STREET PARKING SPACES ARE REQUIRED FOR EVERY UNIT WITH AT LEAST 1 COVERED SPACE.
3. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT.
4. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT FOR ALL UNITS AND AN ADDITIONAL 6 SPACES FOR THE 3 UNITS WHICH HAVE DRIVEWAY APRONS WITH PROVISION FOR 2 PARKING SPACES.
5. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT AND A DRIVEWAY APRON WITH PROVISION FOR 2 PARKING SPACES FOR ALL UNITS.
6. OVERALL SITE PARKING PROVIDED AT 3.59 SPACES / UNIT.

LAND USE SUMMARY	
LAND USE	AREA (AC)
LOT AREAS	13.01
PARCEL AREAS	1.12
STREET AREAS	4.37
LANE AREAS	2.35
EASEMENT DRAINAGE AREA	0.37
TOTAL PROJECT AREA	21.30

VESTING SITE PLAN
TRACT 8098
JONES - HAMILTON PROPERTY
CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

0' 60' 180' 240'
SCALE: 1"=60'
DATE: FEBRUARY 10, 2014

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA 94583
(925) 866-0322
FAX (925) 866-8575

SHEET NUMBER
C-1

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2015, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Signature of the Notary Public

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE MAYOR TO SIGN A COMMUNITY FINANCING AGREEMENT WITH NEWARK ENTERPRISE DRIVE JOINT VENTURE, LLC

BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark be and is hereby authorized to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC. regarding provision of certain public facilities and services for the Dumbarton Transit Oriented Project Specific Plan, said agreement on file in the Office of the City Clerk.

(FAresENT)

RECORDING FEES
EXEMPT PURSUANT TO
GOVERNMENT CODE §27383

RECORDING REQUESTED BY and
WHEN RECORDED MAIL TO:

Terrence Grindall
Assistant City Manager
City of Newark
37101 Newark Blvd.
Newark, CA 94560-3796

APN: 092-116-060, -058 and -059

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COMMUNITY FINANCING AGREEMENT BY AND AMONG THE CITY OF NEWARK AND NEWARK ENTERPRISE JOINT VENTURE LLC, REGARDING PROVISION OF CERTAIN PUBLIC FACILITIES AND SERVICES FOR THE DUMBARTON TOD PROJECT SPECIFIC PLAN

This Agreement dated _____, 2015, (the "**Effective Date**") is entered into by and among the CITY OF NEWARK, a California municipal corporation (hereinafter "**City**") and NEWARK ENTERPRISE JOINT VENTURE LLC, a California limited liability company (**"Developer"**). City and Developer are, from time to time, hereinafter referred to individually as a "**Party**" and collectively as the "**Parties.**" This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

RECITALS

A. In September, 2011, the City Council adopted the Dumbarton Transit Oriented Development ("TOD") Specific Plan ("**Specific Plan**"). The real property that is the subject of this Agreement is the entirety of the approximately 205-acre Specific Plan area, which is depicted and described on **Exhibit A** to this Agreement ("**Specific Plan Property**"), excluding certain governmental property located therein. Developer owns the 21-acre site that is located at 8400 Enterprise Drive, comprised of three parcels (APNs 092-116-014, -060, -058 and -059), and commonly referred to as the Jones-Hamilton site, legally described on **Exhibit B** to this Agreement and is referred to herein as "**Property**." It is the intent of the City, through the Specific Plan, to provide a comprehensive, long-term plan that guides future development of the Specific Plan Property in concert with and in response to the needs of the marketplace. The Specific Plan establishes a policy and a regulatory framework to guide future development, including allowable land uses, development regulations, design guidelines, necessary

infrastructure improvements, and an implementation plan to direct future development of the Specific Plan Property.

B. In accordance with the California Environmental Quality Act (Pub. Res. Code Sections 21000 *et seq.*) and its Guidelines (C.C.R., Title 14 Sections 15000, *et seq.*), as each is amended from time to time (**"CEQA"**) (defined herein), City certified as adequate and complete an Environmental Impact Report (**"EIR"**) for the Specific Plan, and the development envisioned within the Specific Plan. The various property owners may propose to plan, develop, construct, operate and maintain a mix of residential, commercial, entertainment, retail, office, recreation and related uses and structures on the Specific Plan Property, as more particularly described in the EIR (**"TOD Project"**).

C. The City and Developer affirm and agree that the City is not committing or agreeing to take any particular action(s) or make any particular decision(s) regarding potential acquisition of the Neighborhood Park (whether by eminent domain or otherwise or any issues raised by the City's consideration of possible acquisition of the Park Site, the Project Approval Documents or the Project, whether such action(s) or decision(s) would customarily be made by the City Council, the Planning Commission or any department of the City. Nor is the City making any representation about any such particular action(s) or decision(s) concerning any Project Approval Documents, the Project, any Project-related issues, or the possible acquisition or development of the Park Site.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other consideration, the value, legality, and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1.01 **Agreed Upon Developer Obligations** In order to implement the Specific Plan and to contribute to the provision of appropriate public improvements and services, the City and Developer hereby agree to the following contributions by Developer related to the TOD Project:

(1) Developer has agreed to contribute toward the estimated costs of the anticipated TOD Project-wide improvements, including the development of a neighborhood park . Developer's contribution for each dwelling unit on the Property shall be payable by Developer to the City at the time of the issuance of the building permit for such dwelling unit, at the rate and in the fixed amount of Two Thousand Five Hundred Dollars ($2,500.00) per dwelling unit (without adjustment) (the "Fee"). City agrees that such funds shall only be used towards the development of the approximately two-acre park (on the Gallade parcel) depicted in Figure 8.3 of the City's Dumbarton TOD Specific Plan (the "Neighborhood Park") as further described in that certain Updated Park Funding Agreement By and Among the City of Newark and Newark Enterprise Joint Venture LLC (the "Park Agreement"). Because the timing of development of the Neighborhood Park is uncertain, the Fees shall be earmarked for development of the Neighborhood Park and not expended on other improvements, as further described in the Park Agreement. Any fees remaining or collected after completion of construction of the Neighborhood Park may be used for other infrastructure improvements within the Specific Plan Area for TOD Project-wide improvements as further described in the Park Agreement. In no event shall the Fee be paid more than once per dwelling unit.

(2) Developer hereby consents to the imposition, creation, or funding of a duly-established financing district (including but not limited to a Communities Facilities District pursuant to the Mello Act) on the Property to fund services or facilities, or shall arrange for an alternative permanent annuity to provide equivalent revenue. The maximum amount of the assessment, special tax, or annuity shall not exceed Two Hundred Twenty Dollars ($220.00) per year per residential housing unit, which amount will be adjusted annually to reflect inflation, based on changes in the United States Bureau of Labor Statistics Cost of Living Index for the SF Bay Area.

1.02 Amendments of this Agreement.

This Agreement may be amended from time to time only upon the unanimous written consent of City and Developer.

1.03 Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

1.04 Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Alameda County. Developer shall be responsible for all recordation fees, if any.

1.05 Governing Law. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

1.06 Entire Agreement. This Agreement may be executed in multiple originals, each of which is deemed to be an original. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

1.07 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

1.08 Successors. This Agreement is intended to run with the land and bind Developer's successors-in-interest in the Property. Upon transfer, any success-in-interest shall be deemed to have accepted the terms and conditions of this Agreement and shall be deemed the "Developer" and any transferring Developer shall be released under this Agreement for any obligations arising after the date of transfer.

1.09 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Specific Plan Property

Exhibit B Legal Description of Property

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first hereinabove written.

"City":

CITY OF NEWARK,
a municipal corporation

By:_____
Alan L. Nagy, Mayor City of Newark

Approved as to Form:

By: _____
City Attorney

"Developer":

Newark Enterprise Joint Venture LLC, a California limited liability company

By: NMW Newark LLC
a California limited liability company
its Manager

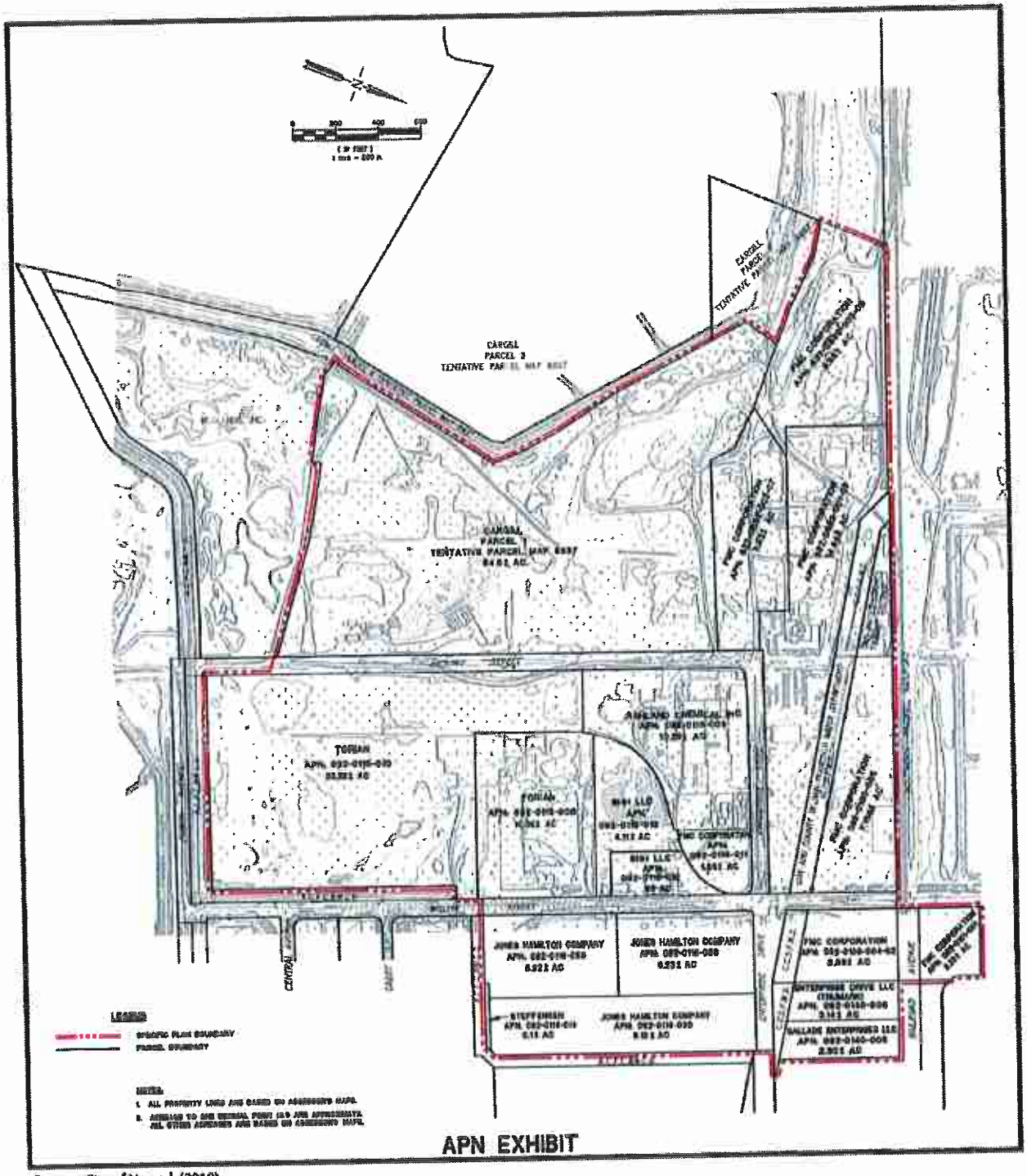
By: Winter & Associates, LLC,
a California limited liability company
its Managing Member

By:_____
Ronald Winter
its Managing Member

Exhibit A

Legal Description

205-acre Dumbarton TOD Specific Plan area



Source: City of Newark (2010)

Not to scale

JN 40-100380

Dumbarton TOD Specific Plan EIR

Property Ownership Map

Figure 3-3

Exhibit B

Legal Description of Property

LEGAL DESCRIPTION

Real property in the City of Newark , County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCELS 1, 2 AND 3 OF PARCEL MAP NO. 5019 FILED OCTOBER 22, 1987 IN BOOK 172 OF PARCEL MAPS, AT PAGE 32, ALAMEDA COUNTY RECORDS.

PARCEL TWO:

A PORTION OF LOTS 14 TO 19, INCLUSIVE, BLOCK 23 (LYING SOUTH AND SOUTHWEST OF THE RAILROAD), AND PORTIONS OF CHESTNUT STREET AND LAUREL STREET, MAP OF TOWN OF NEWARK, FILED MAY 6, 1878, MAP BOOK 17, PAGE 10, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE CENTERLINE OF CHESTNUT STREET DISTANT THEREON NORTH 22° 39' WEST 55.00 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE CENTERLINE OF CLARK AVENUE (80.00 FEET WIDE, AS SHOWN ON SAID MAP), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM FRANK STEFFENSEN TO JONES-HAMILTON CO., RECORDED JANUARY 7, 1966, REEL 1679 OR, IMAGE 723, SERIES NO. AY 2085, ALAMEDA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING ALONG THE SOUTHEASTERN BOUNDARY LINE OF THE LAST MENTIONED PARCEL OF LAND NORTH 67° 23' 20" EAST 341.69 FEET TO A POINT ON THE WESTERN LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM FRANK STEFFENSEN TO ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, RECORDED APRIL 19, 1967, REEL 1949 OR, IMAGE 849, SERIES NO. AZ 35608, ALAMEDA COUNTY RECORDS; THENCE ALONG THE WESTERN AND NORTHWESTERN LINES THEREOF, THE TWO FOLLOWING COURSES AND DISTANCES: SOUTH 22° 23' WEST 21.21 FEET AND SOUTH 67° 23' 20" WEST 326.69 FEET TO THE POINT OF INTERSECTION WITH THE CENTERLINE OF CHESTNUT STREET; THENCE ALONG SAID CENTERLINE OF CHESTNUT STREET NORTH 22° 39' WEST 15.00 FEET MORE OR LESS TO THE POINT OF BEGINNING.

092-0116-058 (Affects Parcel 1), 092-0116-059 (Affects Parcel 2) and 092-0116-060 (Affects Parcel 3), as to Parcel One
092-0116-014, as to Parcel Two

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2015, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Signature of the Notary Public

068293\6030949v7

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING TM-12-32 VESTING TENTATIVE MAP 8098 TO CONSTRUCTION APPROXIMATELY 217 RESIDENTIAL UNITS ON THE JONES HAMILTON PROPERTY

WHEREAS, Newark Enterprise JV LLC has submitted TM-12-32, Vesting Tentative Map 8098, to the City Council of the City of Newark for a 217-unit residential subdivision on an approximately 21.4-acre project site (Jones Hamilton Property) generally located on the south side of Enterprise Drive east of Willow Street, which is within the Dumbarton Transit-Oriented Development (TOD) Specific Plan project area; and

WHEREAS, TM-12-32, Vesting Tentative Map 8098, includes off-site improvements consistent with the Specific Plan;

NOW, THEREFORE, pursuant to California Government Code Sections 66473 *et seq.*, the City Council and as a result of the studies and investigations made by the City Council and on its behalf, the oral and written testimony presented at the public hearings, the information contained in the Community Development Department's files, the Dumbarton Transit-Oriented Development (TOD) Specific Plan Environmental Impact Report ("EIR"), the Supplemental Environmental Impact Report for the Dumbarton Transit-Oriented Development (TOD) Specific Plan ("SEIR"), finds and resolves as follows:

1. That TM-12-32, Vesting Tentative Map 8098 is consistent with the City's General Plan and the Dumbarton Transit-Oriented Development (TOD) Specific Plan and as such is compatible with the objectives, policies, general land uses, and programs specified therein. TM-12-32, Vesting Tentative Map 8098 calls for the construction of 217 residential units and implements the Specific Plan's objective of providing residential units in the Specific Plan project area. TM-12-32, Vesting Tentative Map 8098 is an implementation of the City's previously adopted policies.

2. That the Jones Hamilton Property is physically suitable for the construction of 217 residential units. The EIR (State Clearinghouse Number 2010042012) certified by the City Council on September 8, 2011 drafted pursuant to CEQA Guidelines 15162 and 15164 and the Supplemental Environmental Impact Report recommended by the Planning Commission on April 22, 2014, analyze all physical impacts of TM-12-32, Vesting Tentative Map 8098 on the Jones Hamilton Property. The impacts on the Jones Hamilton Property of both a residential use generally and the density envisioned by TM-12-32, Vesting Tentative Map 8098 was fully analyzed by the EIR, Addendums, and Supplemental Environmental Impact Report. These previously approved documents conclude the Jones Hamilton Property is physically suitable for construction of 217 residential units.

3. That TM-12-32, Vesting Tentative Map 8098 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The

EIR (State Clearinghouse Number 2010042012) certified by the City Council on September 8, 2011 drafted pursuant to CEQA Guidelines 15162 and 15164 and the Supplemental Environmental Impact Report recommended by the Planning Commission on April 22, 2014, analyze all the environmental impacts of TM-12-32, Vesting Tentative Map 8098. Despite the City Council determining that the TOD Specific Plan and the project authorized by Vesting Tentative Map 8098 would result in several significant and avoidable impacts, the City Council finds that such impacts will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

4. That TM-12-32, Vesting Tentative Map 8098 is not likely to cause serious health problems. The EIR (State Clearinghouse Number 2010042012) certified by the City Council on September 8, 2011 drafted pursuant to CEQA Guidelines 15162 and 15164 and the Supplemental Environmental Impact Report, recommended by the Planning Commission on April 22, 2014, analyze all the environmental impacts of TM-12-32, Vesting Tentative Map 8098 on public health and safety. Despite the City Council determining that the TOD Specific Plan and the project authorized by Vesting Tentative Map 8098 would result in several significant and avoidable impacts, the City Council finds that such impacts will not cause serious health problems.

5. That TM-12-32, Vesting Tentative Map 8098 does not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. TM-12-32, Vesting Tentative Map 8098 simply implements the Dumbarton Transit-Oriented Development (TOD) Specific Plan, which was previously approved by the City.

6. That as provided by the California Environmental Quality Act ("CEQA"), That TM-12-32, Vesting Tentative Map 8098 will result in significant impacts on the environment as discussed in the EIR and SEIR and a Statement of Overriding Considerations was reviewed and approved by the City Council pursuant to Resolution 9886. The other potentially significant project impacts will be reduced to less than significant levels with the mitigation measures imposed and set forth in the Mitigation Monitoring and Reporting Program as approved by Resolution No. 9886.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby approve TM-12-32, Vesting Tentative Map 8098 as shown on Exhibit A, pages 1 through 69 and made a part hereof by reference, subject to the following conditions:

Planning Division

a. Approval of TM-12-32, Vesting Tentative Map 8098 shall be effective at such time RZ-12-31, the Rezoning of the property within the boundary of Vesting Tentative Map 8098, takes effect.

b. The project shall be subject to the environmental mitigation measures as described in the Dumbarton Transit Oriented Specific Plan and the Dumbarton Transit Oriented Development Residential Supplemental Environmental Impact Report.

c. There shall be no roof-mounted equipment other than satellite dishes, other similar television or radio antennas, and solar equipment. AC units shall not be mounted on the roof.

d. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.

e. Construction site trailers and buildings located on-site shall be used for office and storage purposes only, and shall not be used for living or sleeping quarters. Any vehicle or portable building brought on the site during construction shall remain graffiti free.

f. The covenants, conditions and restrictions (CC&Rs) filed for this development shall include a provision requiring that that garages shall only be used for automobile parking.

g. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 7:00 p.m. and 8:00 a.m.

h. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti removal/repainting and site cleanup shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.

i. All exterior utility pipes and meters shall be painted to match and/or complement the color of the adjoining building surface, as approved by the Community Development Director.

j. Prior to the issuance of a building permit, the elevations as submitted by the developer as part of this application shall be reviewed and approved by the Planning Commission and City Council. The building elevations shall reflect all architectural projections such as roof eaves, bay windows, greenhouse windows, chimneys and porches. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials. Final color elevations shall be submitted for the review and approval of the Community Development Director.

k. Prior to the issuance of a building permit, the floor plans as submitted by the developer as part of this application shall be reviewed and approved by the Planning Commission and City Council.

l. Prior to the issuance of a building permit, roof material as submitted by the developer as part of this application shall be reviewed and approved by the Planning Commission and City Council. All roof material shall consist of fire retardant shake roof, concrete tile, or a roof of similar noncombustible material. Mansard roofs with the above material may be used to screen tar and gravel roofs. All roofs shall be of Class C fire resistant construction or better. Composition shingles shall be Presidential-style or of comparable quality, subject to the review and approval of the Community Development Director.

m. Prior to the issuance of a building permit, the location and screening design for garbage, refuse and recycling collection areas for the project shall be submitted for the review and

approval of Republic Services of Alameda County and the Community Development Director, in that order. The approved garbage, refuse and recycling areas shall be provided prior to the issuance of a Certificate of Occupancy, as required by the Community Development Director. No refuse, garbage or recycling shall be stored outdoors except within the approved trash and recycling enclosures.

n. Prior to issuance of building permit, an Acoustical Assessment shall be prepared to demonstrate that the exterior and interior noise levels are consistent with the City's land use compatibility standards and Title 25, Section 1092 of the California Code of Regulations. The Acoustical Assessment shall be prepared by a qualified Acoustical Consultant and submitted to the Community Development Director for review and approval. Measures (e.g., attenuation barriers, acoustically rated windows [i.e. appropriate STC or OITC ratings, upgraded insulation, etc.] shall be implemented where conditions exceed the Noise and Land Use Compatibility Criteria of "Normally Acceptable" noise exposure levels.

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

o. Payment by developer to the City of an in-lieu fee for each residential unit within the project at the time of issuance of a certificate of occupancy in the amount shown on Exhibit B to these conditions will constitute the project's compliance with the City's Affordable Housing Program as set forth in Chapter 17.18 of the Newark Municipal Code.

p. Prior to the issuance of a building permit, the developer shall enter into an agreement with the City Council to address Community Services fiscal support of $2,500 per unit for the Map Area specific to this project.

q. Prior to issuance of a grading permit, the developer shall hire a qualified biologist to: (1) determine if occupied Burrowing Owl habitat(s) exist on the site, and (2) implement a plan to protect the owls and to excavate the site around any active burrows using hand tools to assure that the owls are not buried during grading in the event Burrowing Owl habitat(s) is found on the site. The occupied Burrowing Owl habitat(s), if found, shall not be disturbed during the nesting season. The Burrowing Owl study shall be conducted not more than 30 days prior to the time site grading activities will commence.

r. Prior to the transfer of title, the developer shall provide disclosure notices to buyers of individual dwellings in the subdivision as to all of the conditions of project approval and environmental determination approved for this project. This information shall include,

but is not limited to the anticipated commuter rail service along the Dumbarton Rail Bridge between the East Bay and Santa Clara/San Mateo Counties, as well as the presence of loud train horns using the railroad tracks to the north of the property.

s. Prior to the transfer of title for any lot in the development, the developer shall provide disclosure notices to the buyers as to the possibility of ground borne vibration from trains using the railroad tracks on the north side of the subdivision. The method of disclosure shall be subject to the review and approval of the Community Development Director.

t. During project construction, if historic, archeological or Native American materials or artifacts are identified, work within a 50-foot radius of such find shall cease and the City shall retain the services of a qualified archeologist and/or paleontologist to assess the significance of the find. If such find is determined to be significant by the archeologist and/or paleontologist, a resource protection plan conforming to CEQA Section 15064.5 shall be prepared by the archeologist and/or paleontologist and approved by the Community Development Director. The plan may include, but would not be limited to, removal of resources or similar actions. Project work may be resumed in compliance with such plan. If human remains are encountered, the County Coroner shall be contacted immediately and the provisions of State law carried out.

u. Prior to their installation, mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster. The mailbox compartments of centralized mailboxes shall identify the individual dwelling units with permanent, easily legible lettering.

v. Prior to the issuance of a Certificate of Occupancy, the parking areas, aisles and access drives shall be installed and striped as shown on the approved site plan.

w. Prior to the issuance of a Certificate of Occupancy, roll-up garage doors with automatic garage door openers shall be provided for each unit.

x. Prior to final inspection and utility release for each unit, the developer shall pre-wire each unit for satellite and cable television connections, as required by the Community Development Director.

y. Prior to the issuance of a sign permit, all signs, other than those referring to construction, sale, or future use of this site, shall be submitted for the review and approval of the Community Development Director.

Engineering Division

z. The project shall conform to Vesting Tentative Map – Tract 8098, Sheets 1 through 5, and all conditions of approval set forth herein. Approval of this Vesting Tentative Map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Newark Municipal Code consistent with the State Subdivision Map Act. This tentative map provides a preliminary design for the

infrastructure improvements associated with the proposed subdivision. The developer shall be responsible for any required changes to this preliminary design as determined necessary by the City of Newark to satisfy applicable design requirements of the City or any other public agencies or utilities with jurisdictional authority.

aa. Prior to the approval of any final maps, detailed design review applications must be processed for all proposed building and landscaping improvements within each designated final map boundary. These design reviews may result in required modifications to the infrastructure improvements shown on this tentative map, including but not necessarily limited to public street layout, street widths, utility system design, and the total scope of public improvements; private street layout, widths, and scope of improvements; lot sizes, lot patterns, and the total number of lots; stormwater drainage design and stormwater treatment improvements; solid waste management facilities; and other public improvements. The developer shall be responsible for any and all required changes to the preliminary infrastructure design.

bb. This development will require approval of final tract maps filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. Any necessary parcel maps or lot line adjustments to acquire lands beyond the current property boundary of the tentative map shall be recorded prior to the first final map or issuance of any model home permits. The final map(s) must be approved prior to the issuance of any building permits. Permission to grade on adjacent private properties shall be obtained prior to approval of the first final map. Evidence of such agreements must be furnished to the City as part of the approval. All required easement dedications as shown on the tentative map and as determined necessary with future design review shall be dedicated on the appropriate final map(s).

cc. The final map(s) and complete tract improvement plans shall be submitted to the Engineering Division for review to ensure conformance with relevant codes, policies, and other requirements of the Newark Municipal Code and City of Newark street improvement standards. Prior to approval of the final map(s), the developer shall guarantee all necessary public and private street improvements and other infrastructure improvements within the subdivision map boundary as required by the City of Newark Subdivision Ordinance and this tentative map and all conditions herein, in accordance with tract improvement plans to be approved by the City Engineer. Improvement plans for on-site common areas and all private streets in the development shall be included with the tract improvement plans to ensure that the improvements are designed and constructed to City standards. The developer shall not be required to submit improvement plans for, or any guarantee(s) with respect to, the Willow Street improvements described in condition dd if, at the time of final map submission for Jones Hamilton, another developer has already provided such guarantee(s) (or other appropriate improvement security under the Subdivision Map Act) for the Willow Street improvements.

These plans must be prepared by a qualified person licensed by the State of California to do such work. Public improvements shall include, but may not be limited to all required improvements as indicated on the tentative map on Willow Street, Enterprise Drive, all in-tract public streets, all private streets, water, sanitary sewer, and joint trench utilities, storm drain systems and all stormwater treatment systems, street lighting systems including the replacement of all existing street lights in the plan area, all landscaping including median improvements and walls, off-site traffic mitigation measures, and other improvements consistent with the Dumbarton Transit Oriented Development Specific Plan.

dd. The length of Willow Street along the project frontage shall be improved concurrent with the first proposed phase of work within the vesting tentative map boundary and completed prior to the issuance of the first Certificate of Occupancy. Improvements on Willow Street include, but are not limited to the following between the southerly property line extension of the Alameda County Flood Control and Water Conservation District Line F-6 channel and Enterprise Drive: construction of Willow Street intersection improvements to the extent necessary to address traffic flow issues as determined by the public works director, placement of all utility main lines and utility stub-outs for future developments, a full width pavement grind and an asphalt concrete pavement overlay of 0.25' minimum thickness or greater, or replacement structural sections, that will result in a traffic index of not less than 9.0, curb and gutter, minimum 5-foot wide sidewalk, back-up landscaping, street light system replacement, pavement restriping, bike lane placement, street signage, any required traffic calming measures, and additional improvements as necessary to integrate with the existing roadway facility. The foregoing improvements to Willow Street are included as a condition to an approved adjacent project. This condition dd shall be deemed satisfied if another developer provides assurances for the completion of such improvements."

ee. The full length of Enterprise Drive east of Willow Street and west of the Specific Plan Area boundary shall be improved concurrent with the first proposed phase of work within the tentative map boundary and completed prior to the issuance of the first Certificate of Occupancy. Improvements on Enterprise Drive include, but are not limited to the following between Willow Street and the eastern property line extension of the Alameda County Flood Control and Water Conservation District Line F-6 channel: construction of all intersection improvements proposed in the plan area, construction of all center medians including all landscaping improvements, placement of all utility main lines and utility stub-outs for future developments, a full width pavement grind and an asphalt concrete pavement overlay of 0.25' minimum thickness or greater, or replacement structural sections, that will result in a traffic index of not less than 9.0, curb and gutter, minimum 5-foot wide sidewalk, back-up landscaping, street light system replacement, pavement restriping, bike lane placement, street signage, any required traffic calming measures, modifications as necessary to transition from a two-lane to four-lane configuration, and additional improvements as necessary. All right-of-way necessary for these required improvements must be obtained prior to approval of the first final map. Final intersection improvements and other traffic calming measures, including roundabout configuration, are subject to modifications from the preliminary design as shown on the tentative map or

other tentative maps in the plan area, at the developer's expense, to satisfy code and other design requirements to the satisfaction of the City Engineer.

ff. All traffic mitigation measures along the project frontage identified under existing plus project conditions in the Dumbarton Transit Oriented Development Specific Plan Environmental Impact Report that were not determined to be significant and unavoidable shall be completed or guaranteed prior to the approval of any final maps. All additional traffic mitigation measures along the project frontage under the future year 2035 plus project conditions not considered significant and unavoidable should be completed or guaranteed concurrent with other off-site improvements. The full scope of recommended improvements shall be incorporated into the tract improvement plans.

gg. Prior to approval of any final map(s), any proposed project phasing shall be submitted for the review and approval of the City Engineer. Phase 1 shall include all right-of-way dedications for the entire development and all public improvements necessary for streets providing access to all Phase 1 dwellings. Phase 1 will need to include all required improvements on Willow Street and Enterprise Drive, all in-tract street improvements to provide access from Phase 1 lots to Willow Street via "A" Avenue and to Enterprise Drive via "B" Street, and all proposed private streets within the Phase 1 area.

hh. All improvements must conform to the City's Sight Visibility Ordinance, Newark Municipal Code Chapter 10.36. Prior to any final map approval all building architecture and other improvements on proposed lots within a given phase of the development shall be sited as necessary to comply with this ordinance. If necessary, the proposed lot pattern shown on the tentative map shall be modified to accommodate a future desired building product.

ii. Prior to approval of the final map(s), the developer shall cause all existing railroad and/or other unnecessary easement encumbrances to Tract 8098 to be eliminated from the site. The tract improvement plans shall provide for the removal of any and all existing railroad tracks from the project site.

jj. This site is subject to the State of California National Pollutant Discharge Elimination System (NPDES) Program General Permit for Storm Water Discharges Associated with Construction Activity. Prior to issuance of a grading permit or a building permit, the developer needs to provide evidence that the proposed site development work is covered by said General Permit for Construction Activity. This will require confirmation that a Notice of Intent (NOI) and the applicable fee were received by the State Water Resources Control Board and the submittal of the required Stormwater Pollution Prevention Plan (SWPPP). In addition the grading plans need to state: "All grading work shall be done in accordance with the Storm Water Pollution Prevention Plan prepared by the developer pursuant to the Notice of Intent on file with the State Water Resources Control Board."

kk. Prior to the issuance of the initial grading or any building permits for this project, the developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for the review and approval of the City Engineer. The plan shall include sufficient details to show how

storm water quality will be protected during both: (1) the construction phase of the project and (2) the post-construction, operational phase of the project. The SWPPP shall be prepared by a Qualified SWPPP Developer (QSD) in the State of California. The construction phase plan shall include Best Management Practices from the California Storm Water Quality Best Management Practices Handbook for Construction Activities. The specific storm water pollution prevention measures to be maintained by the contractor shall be printed on the plans. The operational phase plan shall include Best Management Practices appropriate to the uses conducted on the site to effectively prohibit the entry of pollutants into stormwater runoff from the project site including, but not limited to, low impact development stormwater treatment measures, trash and litter control, pavement sweeping, periodic storm water inlet cleaning, landscape controls for fertilizer and pesticide applications, labeling of storm water inlets with a permanent thermoplastic stencil with the wording "No Dumping - Drains to Bay," and other applicable practices.

ll. The project must be designed to include appropriate source control, site design, and stormwater treatment measures to prevent stormwater runoff pollutant discharges and increases in runoff flows from the site in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2009-0074, revised November 28, 2011, issued to the City of Newark by the Regional Water Quality Control Board (RWQCB), San Francisco Bay Region. Examples of source control and site design requirements include, but are not limited to: properly designed trash storage areas, sanitary sewer connections for all non-stormwater discharges, minimization of impervious surfaces, and treatment of all runoff with Low Impact Development (LID) treatment measures. A properly engineered and maintained biotreatment system will only be allowed if it is infeasible to implement other LID measures such as harvesting and re-use, infiltration, or evapotranspiration. The stormwater treatment design shall be completed by a licensed civil engineer with sufficient experience in stormwater quality analysis and design. The Storm Water Control Plan (Sheet TM-5) on this tentative map would be approved as a conceptual plan only. Final approval is subject to the developer providing the necessary plans, details, worksheets, and calculations that demonstrate the plan complies with Provision C.3 of the MRP, subject to final review by the City Engineer prior to the recording of any final maps. The developer is responsible for any and all necessary modifications to the site design to comply with MRP requirements. Public drainage easements shall be dedicated on the final map(s) over properties to be owned by the homeowner's association to allow for conveyance of runoff from public streets through the stormwater treatment systems. The use of treatment controls for runoff requires the submittal of a completed Stormwater Treatment Measures Maintenance Agreement prior to the approval of any final maps.

mm. All stormwater treatment measures are subject to review and approval by the Alameda County Mosquito Abatement District. The developer shall modify the grading and drainage design and the stormwater treatment design as necessary to satisfy any and all imposed requirements from this District.

nn. The preliminary Grading and Drainage Plan provided on Sheet TM-3 of the tentative map has not yet been supported with a detailed drainage feasibility analysis. This analysis, including initial drainage calculations, shall be completed and submitted by the developer for review by the City Engineer and the Alameda County Flood Control and Water Conservation District (ACFC&WCD) for determination of the general feasibility of the proposed design prior to development of detailed grading and drainage plans. The ACFC&WCD will not allow the design capacity of the existed flood control channel to be exceeded. The developer shall be responsible for any and all changes to the preliminary drainage design as shown on the tentative map as necessary to satisfy ACFC&WCD and City of Newark storm drain system requirements. The developer shall provide a watershed analysis and back-up calculations to show that storm runoff from the site will not exceed the design capacity of the channel and/or to show that the sizing of the in-tract storm drain lines will have adequate volume to detain any augmented storm runoff.

oo. The developer shall submit detailed grading and drainage plans for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District (ACFC&WCD). These plans must be based upon a City benchmark and need to include pad and finish floor elevations of each proposed structure, all rear yard drainage designs and surface treatments, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing and proposed drainage patterns. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility. All mitigation measures identified in the Hydrology, Drainage, and Water Quality section of the Environmental Impact Report shall be properly addressed with the detailed grading and drainage plans.

Hydrology and hydraulic calculations based on ACFC&WCD criteria shall be submitted for review and approval by the City Engineer and the ACFC&WCD prior to approval of any final maps. The hydrology and hydraulic calculations shall comply with the Western Alameda County Criteria Summary manual. The calculations shall show that City and ACFC&WCD freeboard requirements will be satisfied (0.75 feet to grate or 1.25 feet to the top of curb under a 10-year storm event design).

pp. Prior to doing any work within the Alameda County Flood Control and Water Conservation District (ACFC&WCD) right-of-way or connection or modification to any ACFC&WCD facilities, an encroachment permit must be obtained from the ACFC&WCD. Improvement plans for construction in and over the District right-of-way shall be reviewed and approved by the ACFC&WCD and all workmanship, equipment, and materials shall conform to ACFC&WCD standards and specifications.

qq. The developer shall remove the existing temporary barb wire fencing along the entire easterly and southerly site boundary of the development adjacent to ACFC&WCD's Line F-6 channel and replace it with a black vinyl clad chain link fence, with an effective height of 6 feet, either as per Alameda County Design Guideline *SD-800*, or an acceptable

alternative. This new fence shall be designed and constructed in such a way that it will not act as a "retaining wall" for the earth material and/or landscaping placed along the project site boundary of the right-of-way line. New 16-foot wide double hung access gates shall be provided during construction at the Willow Street and Enterprise Drive egress/ingress points.

rr. Where a grade differential of more than a 1-foot is created along the boundary lot lines between the proposed development and adjacent property, the developer shall install a masonry retaining wall unless a slope easement is approved by the City Engineer. Said retaining wall shall be subject to review and approval of the City Engineer. A grading permit is required by the Building Inspection Division prior to starting site grading work.

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

tt. An independent Project Geotechnical Engineer shall be retained to review the final grading plans and specifications and provide construction inspection review at the developer's expense. The Project Geotechnical Engineer shall approve the grading plans prior to approval by the City of Newark for issuance of a grading permit.

uu. Prior to approval of any final maps, the developer shall satisfy Alameda County Water District (ACWD) requirements for the proposed development as specified in previous correspondence with ACWD during the specific plan and tentative map review process. The Utility Plan provided on Sheet TM-4 of the tentative map includes a preliminary water supply system layout that is subject to a complete review by ACWD at such time as formal, detailed utility plans are developed for construction. Any necessary site and utility design changes necessary to satisfy ACWD's design requirements shall be the developer's responsibility.

vv. Prior to approval of any final maps, the developer shall satisfy Union Sanitary District (USD) requirements for the proposed development. This includes, but is not necessarily limited to: (1) the entire sanitary sewer system designed to serve the development and future development surrounding the tentative map boundary and (2) any existing sanitary sewer infrastructure modifications beyond the tentative map boundary determined by USD as necessary to serve the development. The Utility Plan provided on Sheet TM-4 of the tentative map includes a preliminary sanitary sewer system layout that is subject to a complete review by USD at such time as formal utility plans are developed for

construction. Any necessary site and utility design changes necessary to satisfy USD's design requirements shall be the developer's responsibility.

ww. Prior to approval of any final map(s), the developer shall obtain and submit a Land Use Permit from the San Francisco Public Utilities Commission for any proposed improvements over the City and County of San Francisco's Hetch-Hetchy right-of-way, and pay all associated costs therewith. A note to this effect shall appear on the improvements plans for work on Enterprise Drive and Willow Street. aaa. Prior to approval of any final map(s), the developer shall obtain approval from the San Mateo County Transit District (SamTrans) and the Public Utilities Commission for any improvements within the Willow Street railroad right-of-way crossing. bbb. Prior to approval of any final map(s), the developer shall acquire the Steffensen property located adjacent to the flood control channel and shall incorporate this property into the development.

xx. The developer shall incorporate a Homeowner's Association consisting of all property owners of lots in the development at the time of incorporation and in the future for the purpose of owning and maintaining the association's property, including but not limited to all private streets and common drive aisles, parking areas, landscape areas, stormwater treatment areas, storm drain systems, public access areas, and for paying for security lighting, any common garbage collection services, any security patrol services, if provided, and other functions of a Homeowner's Association. All common areas within the development shall be owned and maintained by the Homeowner's Association. The Homeowner's Association's CC&R's shall require the perpetual maintenance of all common front yard, side yard and back-up area landscaping within the development by the Homeowner's Association. At the City's discretion, the developer shall enter into a Landscape Maintenance Agreement with the City to be transferred to the Homewoner's Association to ensure a satisfactory level of maintenance. Any and all necessary easements shall be dedicated over individual lots to allow for perpetual access and maintenance of landscaping. The full extent of landscape maintenance shall be determined with future landscape improvements plans. Landscaping by the City at the expense of the Homeowner's Association in these areas will only occur in the event the City Council deems the Homeowner's Association maintenance to be inadequate. Each property owner shall automatically become a member of the association and shall be subject to a proportionate share of the maintenance expenses. The Homeowner's Association shall be incorporated prior to the sale of any individual lots and/or prior to acceptance of tract improvements, whichever occurs first.

The City of Newark shall be provided with subordinate agreements to ensure that the position of the landscaping lien shall be superior to any liens or encumbrances other than taxes.

yy. Prior to City Council approval of any final maps, the proposed bylaws governing the property owner's association and any proposed declaration of covenants, conditions and restrictions (CC&Rs) associated with the development shall be reviewed to determine consistency with these conditions by the Community Development Director and the City Attorney. Recording of the CC&Rs shall not occur until approval by the Bureau of Real Estate, which may require revisions to the CC&Rs after City review. Said covenants, conditions and restrictions shall be prominently displayed in the project sales office at all times. The City's consistency determination related the covenants, conditions and restrictions shall not make the City a party to enforcement of same. The CC&Rs shall apply equally to both owners and renters. The CC&Rs shall be written to require renters to comply with the regulations of the CC&Rs, and a copy of the CC&Rs shall be given to each renter. The CC&Rs shall be written to allow less than a majority of owners to have pavement or landscape maintenance done and the cost thereof assessed to all owners in the project. The CC&Rs shall include a pavement maintenance program for all private streets and common drive aisles.

zz. The Homeowner's Association CC&Rs shall prohibit the on-site parking of non-self-propelled recreational vehicles, including boats, and any self-propelled recreational vehicles not used for transportation unless separate storage facilities are provided. The CC&Rs shall regulate the provision of any on-site parking of self-propelled recreational vehicles used for transportation.

aaa. The CC&Rs for the project shall include a disclosure statement to all property owners indicating that the project site is located within a seismic hazard zone for liquefaction. The disclosure statement shall indicate that the buildings have been designed to current code requirements. The statement shall further indicate that the buildings, site improvements, and utilities are subject to damage during an earthquake and that the buildings may be uninhabitable after an earthquake. This CC&R disclosure statement is subject to review and approval of the City Engineer prior to final map approval.

bbb. The developer shall also assist the Homeowner's Association by having a management consultant firm review the maintenance and operating functions of the association. The management consulting firm shall be responsible to prepare a written report with recommendations to the association for managing the association's obligations and setting initial monthly assessment costs for each lot in the development. Membership and assessment cost shall be mandatory for all property owners of property in the development and shall run with the land. The developer shall pay all costs of incorporation and initial management review and reports.

ccc. Prior to approval of the final map, the developer shall petition the City Council to participate in an active Landscaping and Lighting District for the perpetual maintenance of future median landscaping and lighting systems on Enterprise Drive along the project frontage, all public street trees, all public street lighting systems, and storm drain trash capture devices within public rights-of-way within the limits of the development, and

shared costs for the maintenance of all proposed public parks, and all median landscaping, including roundabout areas on Willow Street within the limits of the Dumbarton Transit Oriented Development Plan Area. Maintenance activities will be performed by the City of Newark or its contractors through the Landscaping and Lighting District. All property owners within the tentative map boundary shall be assessed annually in accordance with requirements established with the Landscaping and Lighting District. The developer shall pay all associated costs in the City's Master Fee Schedule for establishment of the Landscaping and Lighting District. The developer shall record an indenture advising all prospective property owners in the project that their properties are included in a Landscaping and Lighting District for maintenance of landscaping, lighting, and related improvements installed as part of this project.

ddd. All storm drain inlets within the entire development, located in both public and private areas, shall be equipped with full-capture trash devices approved by the Regional Water Quality Control Board that satisfy Provision C.10 requirements under the Municipal Regional Stormwater NPDES Permit. In-tract trash capture may be satisfied with appropriate devices in advance of the pump stations. Trash capture device selection is subject to approval by the City Engineer. All trash capture device maintenance within public rights-of-way shall be completed through the Landscaping and Lighting District. All trash capture device maintenance within private areas shall be completed by the Homeowner's Association. The Homeowner's Association shall be responsible for trash and litter control and sweeping of all private streets within the development. All private storm drain systems and all associated trash capture devices shall be cleaned on a regularly scheduled basis as detailed in the required Stormwater Treatment Measures Maintenance Agreement.

eee. The Homeowner's Association shall be required to contract with a professional management firm to handle all necessary maintenance operations. Documentation of such contract shall be submitted to the City of Newark. All commonly owned facilities shall be properly maintained in a manner consistent with the CC&Rs and project requirements.

fff. The Homeowner's Association shall periodically provide educational materials on stormwater pollution prevention to all residents.

ggg. Each buyer shall sign an acknowledgment that he/she has read the constitution and bylaws of the Homeowner's Association and the CC&Rs applied to the development.

hhh. The developer shall provide a complete set of construction plans in electronic format and reproducible paper (mylar) format to the Homeowner's Association at the time of its formation.

iii. All existing overhead utilities within the development and along the fronting street rights-of-way to the centerline of the street shall be undergrounded to the nearest riser

beyond the development's limits in accordance with the City of Newark Subdivision Standards. Undergrounding shall include all existing and proposed service drops.

jjj. All new utilities including, but not limited to, electric and communication services shall be provided underground for all buildings in the development in accordance with the City of Newark Subdivision Standards. Electrical transformers shall be installed in underground vaults with an appropriate public utility easement or within the public right-of-way.

kkk. Fire hydrants are to be located along public and private streets as determined by the Alameda County Fire Department.

lll. A streetlight plan and joint trench plan shall be submitted by the applicant with the first tract improvement plan check and approved prior to final map approval. All existing street lights on the tract's frontage on Enterprise Drive and the tract's frontage on Willow Street shall be replaced with street lights consistent with the approved Dumbarton Transit Oriented Development Specific Plan. LED lighting shall be utilized on all public and private streets and other common areas.

mmm. Safety lighting shall be provided on all private streets, walkways, and other common areas. Lights shall utilize vandal-resistant enclosures and shall have sufficient power and spacing to provide a minimum maintained foot-candle level of0.12.

nnn. A signpost with a sign having an area of at least 15-inches by 21-inches shall be installed at or near each private street entrance. The name of each private street shall be placed on this sign in clearly legible 4-inch letters. The signs shall have painted, in at least 1-inch letters, "Private Property. Not dedicated for public use."

ooo. Private Streets shall be posted for "No Parking."

ppp. The connection between private streets and public streets shall be by a City of Newark standard driveway.

qqq. Garbage, trash, or recycling containers shall be suitably concealed in an area dedicated within the garage of each unit, except such features may be placed at curbside on the designated garbage pick-up day.

rrr. Public Utility Easements (PUE), Water Line Easements (WLE), Storm Drain Easements (SDE), and Sanitary Sewer Easements (SSE) shall be dedicated over all private streets in the development. The PUE, WLE, SDE and SSE dedication statements on the final map shall state that the PUE, WLE, SDE and SSE are available for, but not limited to, the installation, access and maintenance of water supply sanitary and storm sewers, and gas, electrical, and communication facilities.

sss. Emergency Vehicle Access Easements (EVAE) shall be dedicated over the full pavement width on private streets in the development. The final easement geometry shall be subject to the approval of the City Engineer.

ttt. Easements for public access shall be dedicated over those parcels intended for public uses unless those parcels are otherwise dedicated to the public on a final map. aaaa. The developer shall request Pacific, Gas & Electric Co. to commence with the design of the underground utility improvements for the proposed development as soon as practical following tentative map approval.

uuu. The developer shall ensure that a water vehicle for dust control operations is kept readily available at all times during construction at the City Engineer's direction. A pick-up or vacuum type street sweeper shall be available at all times at the direction of the City Engineer to removed tracked dirt and debris from adjacent streets.

vvv. All existing buildings within the proposed division of land shall be completely demolished prior to recording the first final map.

www. Street names and an addressing scheme shall be developed during the final map and improvement plan review process in accordance with the City of Newark's Street Numbering and Naming Ordinance (Chapter 12.12). This area of Newark has a "tree" theme for street names. Available street names will need to be determined. All addressing is based on the Alameda County grid pattern with streets running generally northerly and southerly having 5-digit addresses and streets running generally westerly and easterly having 4-digit addresses.

xxx. The developer shall repair and/or replace any public improvements (pavement, curb, gutter, etc.) damaged as a result of construction activity to the satisfaction of the City Engineer.

yyy. Prior to issuance of a Certificate of Occupancy or release of utilities for any residential units, private streets, common vehicle accessways and parking facilities serving said units shall be paved in accordance with the recommendation of a licensed engineer, but not less than a Traffic Index of 6.0 unless otherwise approved by the City Engineer.

zzz. Prior to issuance of a Certificate of Occupancy or release of utilities for each dwelling unit, the on-site drive aisles and uncovered parking facilities shall be installed and striped as shown on the approved site plan. All on-site uncovered parking facilities and drive aisles shall be drained at a minimum cross-slope of 1.0% for asphalt concrete surfaces and 0.3% for Portland cement concrete surfaces.

aaaa. Prior to occupancy of any buildings within any special flood hazard area or acceptance of any public improvements, the developer shall apply for and receive approval of a letter of map revision, if applicable, based on fill (LOMR-F) from the Federal Emergency Management Agency. The LOMR-F shall be based upon the as-built grades of the building pads and shall determine that the pads and all public and private streets are no longer within the special flood hazard area as indicated on the current Flood Insurance Rate Map for the City of Newark, Community Panel No. 06001C 0443G, dated August 3, 2009.

bbbb. The developer shall provide all required paper and digital submittals of the project final map, tract improvements plans, and as-built plans as required by the City Engineer, including, but not necessarily limited to the following: (1) One full-size reproducible copy and one reduced reproducible copy of the approved tentative map; (2) Two electronic copies of the approved final map and improvement plans in a format approved by the City Engineer; (3) One full-size mylar copy and one reduced copy of the recorded final map; (4) One reproducible set and four blue-line or photocopied sets of the approved tract improvement plans; (5) Two electronic copies and one mylar set of the as-built tract improvement plans. The City will require a digital submittal of all final maps and improvements plans. All CAD work must be prepared in a manner consistent with the Union Sanitary District's digital submittal requirements for layering conventions. This can be found on the web at: http://www.unionsanitary.com/digitalSubmittal.htm. Digital files submitted shall be based on accurate coordinate geometry calculations and the NAD83 State Plane Coordinate System (Zone III) and NGVD29 (USD requires NAVD88) as vertical datum. A deposit of $5,000 shall be provided by the developer to the City to ensure submittal of all required documents.

cccc. The developer shall provide as-built record drawings in both electronic format and on mylar paper based on full and complete review and inspection by the developer's project civil engineer, landscape architect, and other design professionals of all public improvements and all improvements on private streets and property included in the tract improvement plan set.

dddd. If any terms or provision(s) of these conditions is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of these conditions shall may remain in full force and effect unless amended or modified subject to amendments or modifications by mutual consent of the City and developer. If, in the opinion of the City or developer, the invalidation, voiding or lack of enforceability would deprive either City or developer of material benefits of this Vesting Tentative Map, or make performance of these conditions unreasonably difficult, then City and developer shall meet and confer and shall make good faith efforts to amend or modify these conditions in a manner that is mutually acceptable to City and developer.

Landscape-Parks Division

eeee. Concurrent with final map approval, the property owner shall dedicate to the City of Newark sufficient landscape easements to ensure the ongoing and perpetual maintenance of all common front yard, side yard, and back-up area landscaping along Willow Street and Enterprise Drive and on the entry streets, 'A' Avenue and 'B' Street, to the development. These easements shall incorporate all landscape areas beyond a specified minimum dimension to the nearest physical constraints. Landscape easements shall be dedicated across Parcels B adjacent to Willow Street, Parcel C adjacent to Willow Street and Enterprise Drive, the proposed landscape frontage areas of Lots 58, 59, 64, 65, 70, and 71 abutting Enterprise Drive, Lots 1 through 4 and 109 through 112 on 'A' Avenue, and Parcels D and E on 'B' Street. The extent of additional landscape easement dedications adjacent to public streets shall be determined concurrent with the development of final tract improvement plans prior to final map approval for a given project phase.

ffff. Prior to approval of the final map, the developer shall submit detailed tract improvements plans that include all required off-site landscaping within the Willow Street and Enterprise Drive rights-of-way, and all on-site landscaping within designated private streets, common areas, and designated landscape easements. The improvement plans are subject to the review and approval of the City Engineer.

Prior to approval of the final map, the developer shall prepare and submit a Park Master Plan for the park adjacent to Tract 8110 (i.e. 8333 Enterprise Drive) for the review and approval of the City Engineer. The master plan shall incorporate turf, trees, shrubs, groundcover material, irrigation systems, stormwater treatment facilities, pathways, play equipment, benches, picnic tables and related improvements consistent with the Conceptual Park Plan attached as Exhibit A. Developer and City intend that the total costs of the improvements in the Park Master Plan not exceed $1,000,000.

The developer shall retain a licensed landscape architect to prepare working drawings for tract improvement landscape plans in accordance to with the approved Conceptual Landscape Plan for the project, City of Newark requirements, and the State of California Model Water Efficient Landscape Ordinance. The associated Landscape Documentation Package must be approved by the City Engineer prior to approval of any final maps.

gggg. No later than 30 days after this Resolution is adopted, Developer shall deposit with the City funds in an amount to be determined by the City (estimated at $15,000) for use by the City for the retention of an environmental consultant to prepare a Phase I Environmental Site Assessment Report ("Initial Phase I Report") for the property at 8333 Enterprise Drive ("Park Property") that is consistent with All Appropriate Inquiry ("AAI") requirements under that Final Rule adopted by the United States Environmental Protection Agency ("EPA") (found at 40 CFR Part 312) and that is consistent with the most current ASTM requirements governing phase I environmental assessments. Within 45 days of the completion of the Initial Phase I Report, the City will advise Developer, in the City's sole discretion, but based on recognized environmental conditions documented in the Initial Phase Report, that the City (i) has approved the Initial Phase I Report and will accept dedication of the Park Property upon Developer's satisfaction of the conditions stated in these conditions of approval or (ii) based on the Initial Phase I Report will decline to accept the offer for dedication of the Park Property. If the City advises Developer that the City is declining to accept the offer of dedication, the City will promptly provide Developer with a statement of the City's reasons for disapproving the Initial Phase I Report. Where, in the City's reasonable discretion, the reasons for disapproval are curable, the City's written statement shall include the actions that must be taken prior to the City's acceptance of the Park Property. The City shall return any portion of the $15,000 deposit not paid to the Initial Phase I Report consultant, and will provide Developer with reasonable documentation confirming the actual cost paid for the Initial Phase I report. In the event that the City may determine, in the reasonable exercise of its discretion, after reviewing the Initial Phase I

Report, that the environmental condition(s) of the Park Property are such that it would be infeasible to reasonably remediate or otherwise cure such conditions sufficient to allow the development and use of the Park Property as a public park consistent with generally-accepted standards for public health and safety ("Incurable Condition"), then in such instance the City shall give written notification of this determination to Developer within 45 days of the completion of the Initial Phase I Report, and the Developer shall, in turn, be required, prior to the issuance of any certificates of occupancy for residential units in the project (except for model units), to (1) take such actions as necessary for Developer to acquire and take title to the Park Property; (2) cause the industrial use on the Park Property to permanently cease, and the existing buildings on said property to have been demolished and all structures, facilities and equipment thereon removed; (3) maintain the Park Property as open space, and for such other uses as may be permitted by the City; and (4) pay to the City the sum of $1,000,000 for public park improvements for use in other areas of the City. If such an Incurable Condition is found to exist by the City, the Developer shall then (i) have no further obligation under this Resolution to provide: a Second Phase I Report; the "No Further Action" letter or "Closure Letter" (described below); the "Gallade Assignment" (defined below); any "Enforcement Release" (defined below); and/or the "Gallade Indemnity" (defined below); and (ii) be permitted to obtain all its certificates of occupancy without any park-related limitations except items (1)-(4) above.

hhhh. All front yards shall be landscaped by the developer. The developer shall provide recommendations for rear-yard landscaping to all property owners and constraints for implementation, modifications and maintenance of both front- rear-yard landscaping shall be included in the project CC&Rs.

iiii. The developer shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to approval of any final maps, the developer shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project.

jjjj. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All street and park trees shall be minimum 24-inch box specimens. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.

kkkk. Prior to the release of utilities or issuance of any Certificates of Occupancy, all landscaping and irrigation systems shall be completed or guaranteed by a cash deposit deposited with the City in an amount to cover the remainder of the work.

llll. Prior to issuance of Certificate of Occupancy or release of utilities, the developer shall guarantee all trees for a period of 6 months and all other plantings and landscape for 60 days after completion thereof. The developer shall insure that the landscape shall be installed properly and maintained to follow standard horticultural practices. All plant replacements

shall be to an equal or better standard than originally approved subject to approval of the City Engineer.

mmmm. Landscaping adjacent to the public right-of-way must conform to the City's visibility requirements in accordance with Newark Municipal Code, Chapter 10.36.

nnnn. Prior to issuance of a Certificate of Occupancy or release of utilities for any of the final 25 dwelling units for each phase, all on-site landscaping and irrigation systems for each phase shall be completed or guaranteed by a cash deposit filed with the City in an amount to cover the remainder of the work..

oooo. Any above ground utility structures, including backflow prevention devices, and appurtenances shall be installed within the developer's property line and a minimum of 10 feet behind street face of curbs. The backflow prevention devices shall have a green painted security cage to protect it from vandalism. These locations shall be screened with landscaping to the satisfaction of the City Engineer. The landscape screen shall not interfere with the utility companies' or City Fire Department's access.

General

pppp. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval.

qqqq. The developer hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.

rrrr. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of RZ-12-31, TM-12-32, ASR-12-33, and E-12-30 (the Dumbarton Transit Oriented Development Residential Project Supplemental Environmental Impact Report), the developer shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the developer (which shall be the same counsel used by developer) and reasonably approved by the City. Developer's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.

ssss. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

tttt. Only the specific Impact Fees listed in Exhibit B shall apply to the Project. No change to an Impact Fee in Exhibit B resulting in an increase in dollar amounts charged to the Project that is adopted after the effective date of the Vesting Tentative Map shall apply to the Project. If, after the effective date of this Vesting Tentative Map, City decreases the rate of any of its Impact Fees, Developer shall pay the reduced Impact Fee in effect at the time of payment. Any Impact Fees levied against or applied to the project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 et seq. ("AB 1600"). Developer retains all rights set forth in California Government Code Section 66020. "Impact Fees" means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the project individually or as part of a class of projects, that are imposed by City on the project in connection with any project approval for the project for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. Impact Fees do not include "Processing Fees." "Processing Fees" mean fees charged on a citywide basis to cover the cost of City review of applications for any permit or other review by City departments.

uuuu. City shall not issue any certificates of occupancy (except for model units and for such limited purpose only) until the industrial use on the Park Property has permanently ceased; the existing buildings on the site have been demolished; and all structures, facilities, and equipment related to the industrial use have been removed.

In lieu of payment of Park Impact fees, prior to the issuance of the certificate of occupancy for the 121st residential unit, Developer shall offer for dedication to the City in fee, the Park Property and the park improvements required by Condition ffff, above, free of liens and determined by the San Francisco Regional Water Quality Control Board ("Regional Board") to be acceptable for park uses. Confirmation of the Regional Board's approval shall be established through the issuance of a "No Further Action" letter, "Closure Letter" or other equivalent document confirming that site assessment and remediation involving prior operations on the Park Property, such that no further additional environmental assessment, investigation, monitoring, mitigation, treatment, removal work, remediation and/or cleanup work or other similar work or corrective action, is necessary for soils at the Park Property "site" (as defined by the Regional Board) for use of the Park Property as a public park. Ongoing groundwater remediation and monitoring shall be deemed permissible by the City, and a deed restriction prohibiting residential use, but allowing all uses generally associated with a public park, and containing other standard Regional Board requirements consistent with a No Further Action Letter or Closure Letter of soils for non-residential use (park

usage), shall also be deemed permissible by the City. City and Developer shall cooperate in good faith, and take such other and further acts as may be reasonably necessary, to accomplish both of the following: (1) completion of the Park Master Plan improvements and (2) the City's acceptance of Developer's offer for dedication of the Park Property.

If, prior to Developer's request for the issuance of the certificate of occupancy for the 121st residential unit, Developer has (i) completed the park improvements as required in condition ffff, (ii) the Regional Board has confirmed (through a "No Further Action" letter, "Closure Letter" or other equivalent document) that site assessment and remediation activities for soils at the Park Property have resulted in the Park Property being acceptable for park usage, but (iii) the City declines to accept Developer's offer of dedication for any reason(s) other than an Incurable Condition, Developer may fulfill its park-related obligations by retaining the Park Property in private ownership and ensuring public access to the Park property for park usage and park maintenance through an Assessment District or Home Owners Association. If Developer makes this election and has otherwise fulfilled any non-park-related requirements for obtaining certificates of occupancy 121-217, the City shall issue those additional certificates of occupancy as requested in due course by Developer.

No more than 120 days before submitting its offer for dedication and prior to the issuance of the certificate of occupancy for the 121st residential unit, Developer shall deposit with the City additional funds in an amount to be determined by the City (estimated at $15,000) for use by the City for the retention of the same or a different environmental consultant to prepare a second (or updated) Phase I Environmental Site Assessment Report ("Second Phase I Report") for the Park Property that is consistent with All Appropriate Inquiry ("AAI") requirements under that Final Rule adopted by the United States Environmental Protection Agency ("EPA") (found at 40 CFR Part 312) and that is consistent with the most current ASTM requirements governing phase I environmental assessments. Within 60 days of Developer's deposit, the City will notify Developer whether, in the City's sole discretion (but limited to a REC or RECs that was/were either not fully identified in the Initial Phase Report and/or are based on additional or newly discovered information or conditions disclosed in the Second Phase I Report) the City (i) has approved the Second Phase I Report and will accept dedication of the Park Property (upon Developer's satisfaction of conditions ffff, gggg, and uuuu) or (ii) will decline to accept the offer for dedication of the Park Property. If the City advises Developer that the City is declining to accept the offer of dedication, the City will promptly provide Developer with a written statement of the City's reasons for disapproving the Second Phase I Report. Where, in the City's reasonable discretion, the reasons for disapproval are curable, the City's written statement shall include the actions that must be taken prior to the City's acceptance of the Park Property. Upon satisfaction of such actions, as determined by City in its reasonable discretion, and the Developer's satisfaction of conditions ffff, gggg, and the other conditions in uuuu, the City shall accept the Park Property. The City shall return any portion of the deposit not paid to the Second Phase I consultant, and will provide Developer with reasonable documentation confirming the actual cost paid for the Initial Phase I report. In the event the City may determine, in the reasonable exercise of its discretion, after reviewing the Second Phase I Report, that new or more fully-identified environmental condition(s) or newly discovered information or more severe conditions of the Park Property as documented in the Second Phase 1 Report, are such that an Incurable Condition exists, then in such instance the City

shall give written notification of this determination to Developer within 45 days of the completion of the Initial Phase I Report, and the Developer shall, in turn, be required, prior to the issuance of any further certificates of occupancy for residential units in the project (except for model units), to (1) take such actions as necessary for Developer to acquire and take title to the Park Property; (2) cause the industrial use on the Park Property to permanently cease, and the existing buildings on said property to have been demolished and all structures, facilities and equipment thereon removed; (3) maintain the Park Property as open space, and for such other uses as may be permitted by the City; and (4) pay to the City the sum of $1,000,000 for public park improvements for use in other areas of the City. If such an Incurable Condition is found to exist by the City, the Developer shall then (i) have no further obligation under this Resolution to provide: the "No Further Action" letter or "Closure Letter" (described below); the "Gallade Assignment" (defined below); any "Enforcement Release" (defined below); and/or the "Gallade Indemnity" (defined below); and (ii) be permitted to obtain all its certificates of occupancy without any park-related limitations except items (1)-(4) above.

In addition to funding the Second Phase I Report, no more than 90 days before submitting its offer for dedication, Developer shall submit the following to the City for review and approval by the City, in the City's reasonable discretion. First, Developer shall submit an agreement (or two separate agreements) or other comparable legal document (or two separate documents) (hereafter, the "Enforcement Release or Releases")that accomplish the following: (i) is in accordance with California Land Reuse and Revitalization Act (California Health and Safety Code section 25395.60 et. seq. and/or other similar statutes, regulations, policies or guidelines, (ii) has terms reasonably acceptable to the City, and (iii) is approved by, and ready for execution by, the Regional Board and the Department of Toxic Substances Control ("DTSC") , (iii) confirms that, other than complying with a deed restriction (which may prohibit residential use and certain other uses but must permit park usage consistent with this Resolution) and/or a soil management plan (that is reasonable under the circumstances and allows the Park Property to be used and maintained as a public park without unreasonable limitations), the Park Property is safe for use as a public park, and all uses generally associated with public parks; (iv) neither DTSC nor the Regional Board will seek to compel the City to conduct (or pay any agency oversight costs associated with) any environmental assessment, investigation, inspection, monitoring, mitigation, treatment, removal work, remediation and/or cleanup work, or other similar work or corrective action, with respect to the soil, soil vapors, groundwater and/or surface waters on and/or migrating to or from the Park Property (collectively, "Corrective Action Work"), as a result of the existence or potential existence of any hazardous materials, wastes or substances (as such terms are defined under federal and State laws, hereafter collectively, "Hazardous Substances") existing or potentially existing on, in, around or migrating to or from the Park Property as of the date of the City's acceptance of the offer for dedication; and (v) the City shall not have any liability or responsibility under any hazardous waste facility permit or hazardous waste post-closure facility permit involving the Park Property. To the extent the DTSC determines to defer all decisions regarding the need for Corrective Action Work to the Regional Board, and is unwilling to provide an Enforcement Release directly to the City, the City will accept, in place of and instead of a specific Enforcement Release from the DTSC, written confirmation from the DTSC that, in sum and substance, provides that DTSC has deferred all decisions regarding the need and responsibility for Corrective Action Work,

to the Regional Board, and that the DTSC concurs with the particular Enforcement Release provided by the Regional Board to the City.

Second, Developer shall provide to the City, on terms reasonable acceptable to the City, to be effective upon the City accepting the offer of dedication of the Park Property, a binding written agreement/assignment from Gallade Enterprises to the City ("Gallade Assignment"), conveying to the City all rights, title and interests in those certain indemnities provided by AlliedSignal Inc., to Gallade Enterprises, as set forth in that certain written agreement entered into by and between AlliedSignal, Inc. and Gallade Enterprises in 1998, and involving the Park Property, but with the City accepting none of the liabilities or responsibilities set forth in said agreement. The Gallade Assignment must contain the express written consent of Honeywell International (as the successor in interest to AlliedSignal Inc.) to its terms.

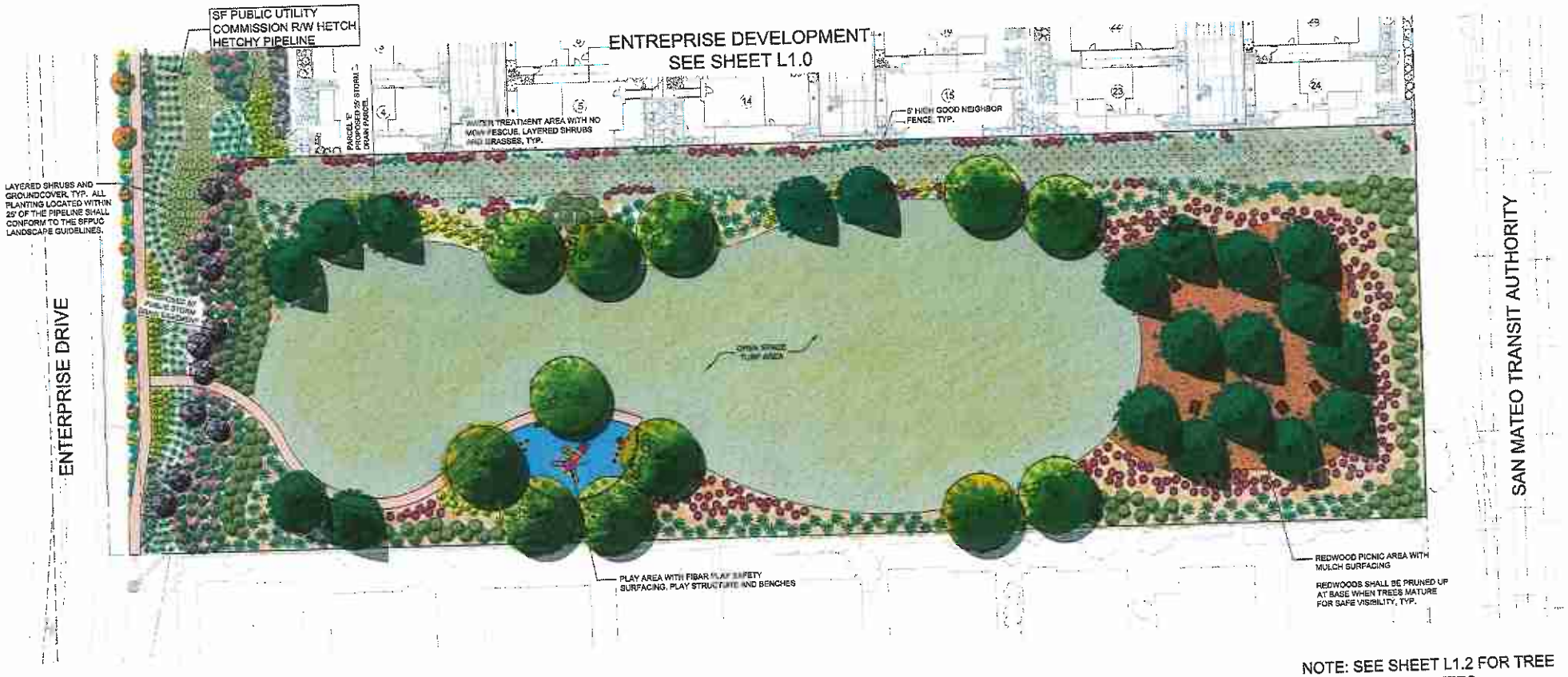
Third, Developer shall provide to the City, on terms reasonably acceptable to the City, a signed Purchase/Sale Agreement to be entered into by and between the Developer and Gallade Enterprises, for the sale of the Park Property from Gallade Enterprises to the Developer, and containing a defense and indemnity, either specifically or generally, from Gallade Enterprises ("Gallade Indemnity"), defending, reimbursing and indemnifying Developer and the City (as to the City, effective upon the City accepting the offer of dedication of the Park Property), from and against any and all claims, causes of action, rights of action, damages, injuries, costs, expenses, attorney's fees, consultant fees, oversight costs, or liabilities of whatever kind or nature, including, but not limited to, any liability for Corrective Action Work, that concern or relate to the existence or potential existence of any Hazardous Substances in, on, under, within or migrating to or from the Park Property, and resulting from the actions, inactions and/or omissions of Gallade Enterprises (other than passive migration of Hazardous Substances released by operations pre-dating Gallade's ownership of the Park Property.)

Developer shall advance (at the City's request) or reimburse the City's costs for consultants, engineers, attorneys, and other third party service providers engaged by the City for the ongoing reviews and analyses of environmental conditions relating to the Park project, or the performance of any of the evaluations or determinations as provided by this section uuuu relating to the condition and feasibility of using the Park property as a public park, until the Park property is developed, and approved by the City to be opened for use as a public park (whether publicly-owned or otherwise)."

City shall reimburse Developer for Eligible Park-Related Costs as provided in the remainder of condition uuuu. Developer's "Eligible Park-Related Costs" shall include all costs reasonably incurred by Developer in connection with the acquisition of the Gallade parcel, planning for the development of improvements on the Park Site, and constructing the public park improvements. The Eligible Park-related Costs shall also include all deposits and advances made by the Developer under the Cost Payment Agreement previously entered into by Developer and City and future payments made for City's consulting and legal fees for the ongoing reviews of environmental issues. From time to time, but no more frequently than quarterly, Developer will provide the City with a spreadsheet and reasonable supporting documentation indicating the Developer's Eligible Park-Related Costs.

Developer shall be entitled to reimbursement as provided below for its Reimbursable Park-Related Costs. Developer's Reimbursable Park-Related Costs shall be calculated by subtracting the following sums from Developer's Eligible Park-related Costs: (a) One Million Six Hundred Eighteen Thousand, Eight Hundred Twenty Dollars ($1,618,820), representing the Seven Thousand Four Hundred Sixty Dollar ($7,460) per residential unit park impact fee that would otherwise be paid by Developer at the time each building permit for a unit within the Project was issued) and (b) Developer's Fiscal Impact Fees for the Project, as referenced in Condition p, which are Two Thousand Five Hundred Dollars ($2,500) per residential unit.

Developer's Reimbursable Park-Related Costs shall be reimbursed as other land owners within the TOD Specific Plan area pursue development approvals from the City, and pay park impact fees for their parcels within the Specific Plan area, and from the $2,500 per unit Fiscal Impact Fees paid in connection with Tract 8110. Until Developer's Reimbursable Park-Related Costs have been reimbursed in full, the City shall (a) condition the issuance of building permits for all other property owners within the TOD Specific Plan Area that seek approvals for residential development on payment to the City of park impact fees that are no less (on a per unit basis) than the fees applied to the Project; (b) require full payment of all such fees at the time and in the manner customarily required by the City (i.e., no later than the issuance of building permits); (c) grant no discounts, credits, or offsets of any type against such fees (other than those, if any, except as provided below for land owners that develop park(s) on their own property within the TOD Specific Plan Area); (d) account for such fees through unique account and/or project codes so that they can be easily distinguished; and (e) on a quarterly basis, transfer all such fees to Developer. The City and Developer recognize that some of the property owners within the TOD Specific Plan area may satisfy some or all of their park impact obligation by constructing park space within the property they develop residentially, and in so doing satisfy some or all of their obligation to pay park impact fees. Nothing in these conditions prevents such owners from satisfying their park impact obligation through the construction of park space within their development project(s) and under the City's generally applicable procedures, but any park impact fees paid by them will be used to reimburse Developer's Reimbursable Park-Related Costs until those costs are reimbursed in full as provided above.



NOTE: SEE SHEET L1.2 FOR TREE AND SHRUB PALETTES.

Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

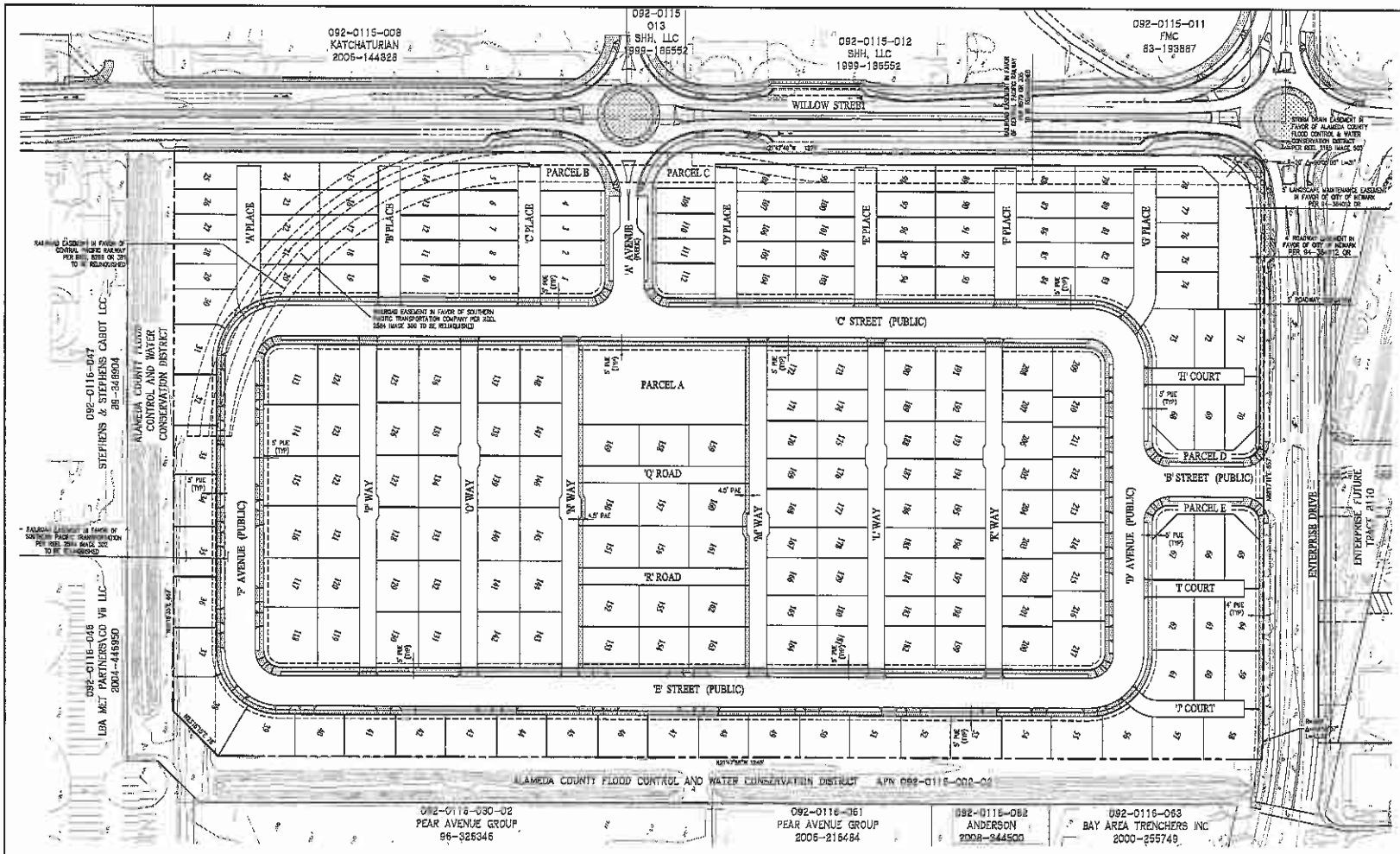
VAN DORN ABED
LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

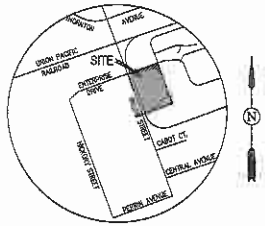
ENTERPRISE SITE

Newark, California

GALLADE CONCEPTUAL PARK PLAN
L1.1
2/5/14

EXHIBIT C





VICINITY MAP
NOT TO SCALE

GENERAL NOTES:

1. OWNER: JONES HAMILTON, CO. 50 POST STREET #401 SAN FRANCISCO, CA 94108
2. DEVELOPER: TRUMARK HOMES 4985 BLACKHAWK PLAZA, SUITE 200 DANVILLE, CA 94506 CONTACT: VERONICA VARGAS (925) 202-2488 (925) 648-3150 (FAX)
3. ENGINEER: CARLSON, BARBEE & GIBSON, INC. 5633 CAMINO RAMON, SUITE 350 SAN RAMON, CA 94583 CONTACT: GREG MILLER (925) 866-0322 (925) 866-1276 (FAX)
4. SOILS ENGINEER: CORNERSTONE EARTH 1270 SPRINGBROOK ROAD, SUITE 101 WALNUT CREEK, CA. 94597 CONTACT: PETER LANCTOT (925) 968-1500
5. EXISTING USE: LIGHT INDUSTRIAL
6. SUBDIVISION AREA: 21.44±
7. THE SUBDIVISION CONSISTS OF PARCELS 1, 2, 3 OF PARCEL MAP 5016 AND ALL OF APN 092-0115-014.
8. NUMBER OF UNITS: 217 UNITS
9. THIS PROPERTY LIES IN THE JURISDICTION OF:

FIRE PROTECTION:	ALAMEDA COUNTY FIRE DEPARTMENT
DOMESTIC WATER:	ALAMEDA COUNTY WATER DISTRICT (ACWD)
SANITARY SEWER:	UNION SANITARY DISTRICT
STORM DRAIN WITHIN PUBLIC STREETS:	CITY OF NEWARK
STORM DRAIN WITHIN PRIVATE STREETS, YARDS AND PARKING:	OWNED & MAINTAINED BY THE HOA
COMMON OPEN SPACE:	OWNED & MAINTAINED BY THE HOA
GAS & ELECTRIC SERVICE:	PACIFIC GAS & ELECTRIC
TELEPHONE SERVICE:	AT&T

10. ROADWAYS & PARCELS: UNLESS OTHERWISE NOTED (I.E. PUBLIC) ALL ROADWAYS AND PARCELS ARE TO BE MAINTAINED BY THE HOA ESTABLISHED WITH THE PROJECT.
11. PROPOSED LAND USE SUMMARY: SEE TABLE (SHEET 2)
12. ASSESSORS PARCEL NUMBERS: 092-0115-008; 092-0115-013; 092-0115-012; 092-0115-014
13. BENCHMARK: CITY OF NEWARK OFFICIAL BENCHMARK NO. 62. ALSO BEING AN ALAMEDA COUNTY BENCHMARK. THE TOP OF SURD AT STORM WATER INLET AT THE NORTH-EAST CORNER OF THORNTON AVENUE AT WILLOW STREET. ELEVATION TAKEN AS 11.39 (NAVD 88) (BL661 REVD 29 PER CITY OF NEWARK RESURVEY).
14. BASIS OF BEARINGS: THE BASIS OF BEARINGS FOR THIS BOUNDARY DETERMINED BY FOUND NGS MONUMENTS W1446 PID HT2441 AND FILBERT DORBAS, THE BEARING BEING N30°10'30"W (CALCULATED).
15. TOPOGRAPHY: PREPARED BY AERIOMETRIC SURVEYS, MAY 23, 2011
16. FLOOD ZONE: ZONED X AND AE FLOOD INSURANCE RATE MAP (FIRM) ALAMEDA COUNTY, CA PANEL: 443 OF 725 MAP NUMBER: 06001C0443G EFFECTIVE DATE: AUGUST 3, 2009
17. THIS PROJECT MAY BE BUILT IN PHASES AND MULTIPLE FINAL MAPS MAY BE FILED. A PHASING PLAN WILL BE PROVIDED TO THE CITY OF NEWARK PRIOR TO FINAL MAP APPROVAL.
18. ALL BUILDINGS SHALL BE EQUIPPED WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM AS REQUIRED BY CHAPTER 15.08.020.0 OF THE NEWARK MUNICIPAL CODE.
19. FRONTYARD LANDSCAPING FOR ALL UNITS SHALL BE MAINTAINED BY THE HOA. THE HOA WILL ALSO MAINTAIN AREAS OUTSIDE OF PRIVATE YARD FENCING (PA2E30) FOR PRODUCT A.

SHEET INDEX

1 TITLE SHEET
2 SITE PLAN
3 GRADING AND DRAINAGE PLAN
4 UTILITY PLAN AND STREET SECTIONS
5 STORMWATER CONTROL PLAN

VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

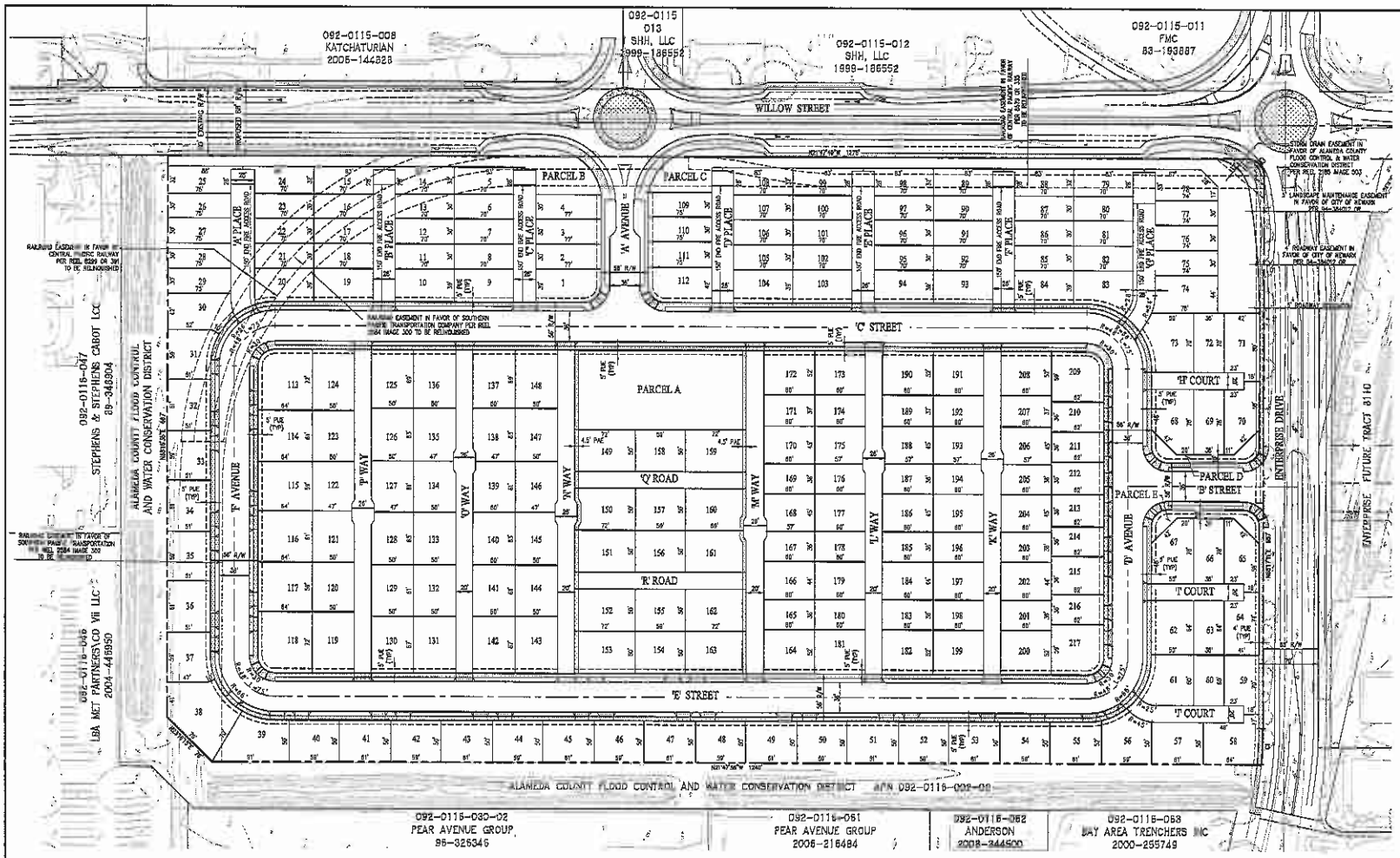
CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

0' 50' 150' 200'
SCALE: 1" = 50'
DATE: FEBRUARY 10, 2014

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERING • SURVEYING • PLANNING
5111 BOLLINGER CANYON ROAD, SUITE 100
SAN RAMON, CALIFORNIA 94583
(925) 866-0322
FAX (925) 866-1276

SHEET NUMBER
TM-1
OF 5 SHEETS

EXHIBIT A p.1



LEGEND

EXISTING	PROPOSED	DESCRIPTION
		PROPERTY LINE
		CURB, GUTTER AND SIDEWALK
		CENTERLINE
		STORM DRAIN LINE (PUBLIC)
		STORM DRAIN LINE (UNTREATED)
		STORM DRAIN LINE (TREATED)
		PUMP STATION & SD FORCEMAIN
		SANITARY SEWER (PUBLIC)
		WATER (PUBLIC)
		SANITARY SEWER MANHOLE
		STORM DRAIN MANHOLE
		CURB INLET
		FIELD INLET
		FIRE HYDRANT
		STREETLIGHT
170.0		SPOT ELEVATIONS
20		LOT NUMBER
EX		EXISTING
		STREET SLOPE
		STAIR WAY
		DRAINAGE MANAGEMENT AREAS (DMA)
		WATER QUALITY SWALE/ BIORETENTION
		AREA TO BE ACQUIRED (STITFENDER PROPERTY)

ABBREVIATIONS:

AC	ACRES
A/C	ASPHALT CONCRETE
ACWD	ALAMEDA COUNTY WATER DISTRICT
EX	EXISTING
CB	CATCH BASIN
DG	DECOMPOSED GRANITE
DW	DRIVEWAY
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
FI	FIELD INLET
FF	FINISHED FLOOR ELEVATION
HP	HIGH POINT
JT	JOINT TRENCH (BY OTHERS)
LL	LOT LINE
L/S	LANDSCAPE AND IRRIGATION
MH	MANHOLE
OHE	OVERHEAD ELECTRICAL
P	PAD ELEVATION
PAE	PRIVATE ACCESS EASEMENT
PL	PROPERTY LINE
PUE	PUBLIC UTILITY EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PVAW	PRIVATE VEHICLE ACCESS WAY
R/W	RIGHT OF WAY
SF	SQUARE FEET
SS	SANITARY SEWER
SSE	SANITARY SEWER EASEMENT
SD	STORM DRAIN
SDE	PUBLIC STORM DRAIN EASEMENT
S/W	SIDEWALK
TC	TOP OF CURB
USD	UNION SANITARY DISTRICT
W	WATER
WLE	WATER LINE EASEMENT
WQ	WATER QUALITY

LAND USE SUMMARY	
LAND USE	AREA (AC)
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

LOT SUMMARY TABLE															
LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA	LOT NO	AREA
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

PARCEL SUMMARY				
PARCEL	DESCRIPTION	AREA	OWNERSHIP	MAINTENANCE
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL		[illegible]		

NOTES:

SMALLEST LOT: 2,100 SQ. FT. (LOTS 6-10, 11-13, 15-18, 21-23, 80-82, 85-87, 90-93, 95-97, 100-102, & 105-107)

LARGEST LOT: 5,384 SQ. FT. (LOT 38)

AVERAGE LOT: 2,778 SQ. FT.

LINE TABLE		
NO.	BEARING	LENGTH
L1	[illegible]	15.00'

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	300.00'	84°56'01"	44.46'
C2	20.00'	90°00'00"	31.42'

SITE PLAN
VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

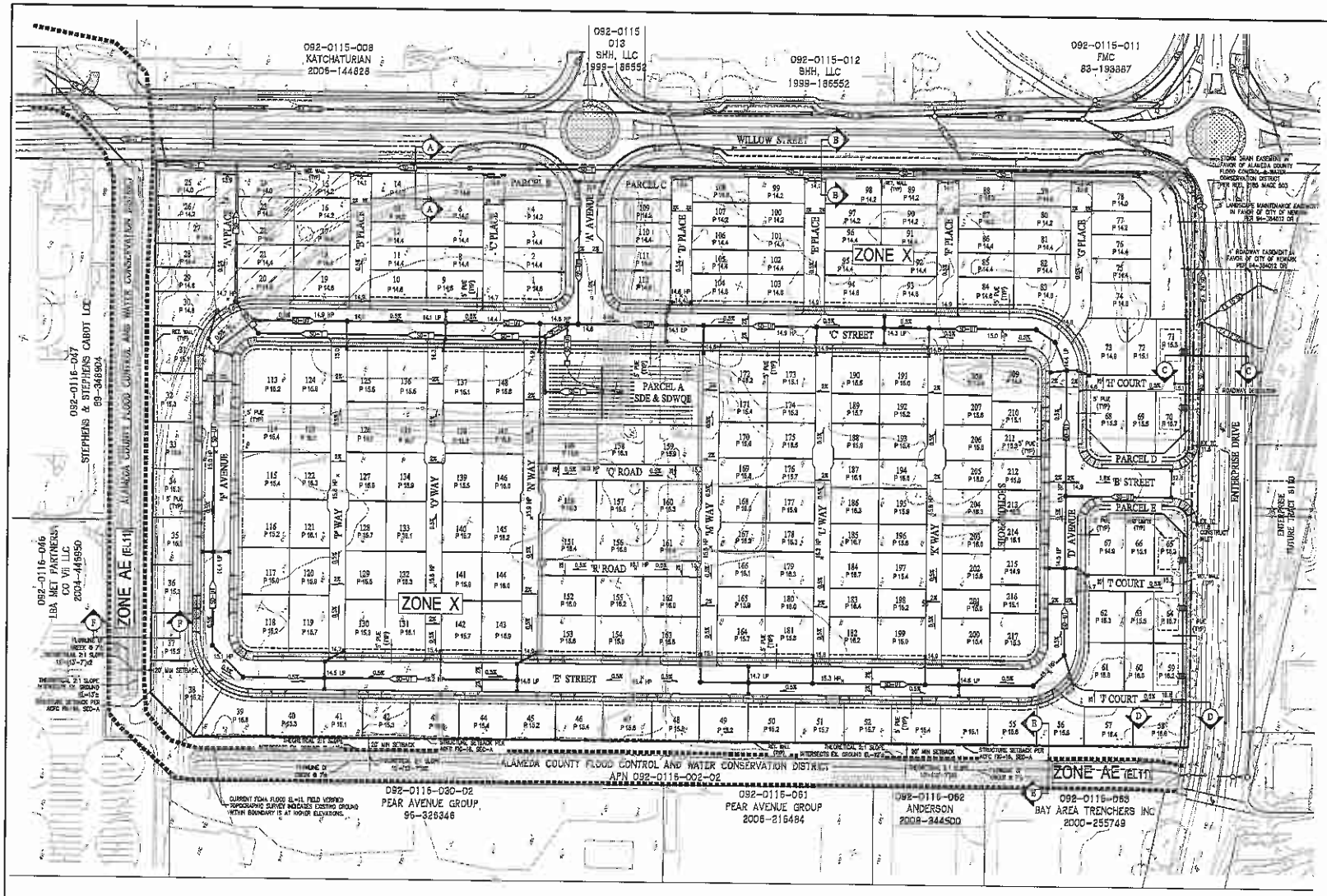
0' 50' 150' 200'

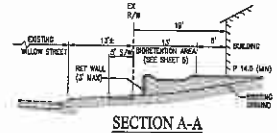
SCALE: 1"=50' DATE: FEBRUARY 10, 2014

Carlson, Barbee & Gibson, Inc
CIVIL ENGINEERS • SURVEYORS • PLANNERS
7000 CAMINO RAMON, SUITE 200
SAN RAMON, CALIFORNIA 94583
(925) 866-0322
FAX (925) 866-1677

SHEET NUMBER
TM-2
OF 5 SHEETS

EXHIBIT Ap2





SECTION A-A
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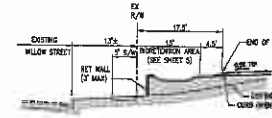

SECTION B-B
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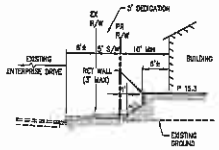

SECTION C-C
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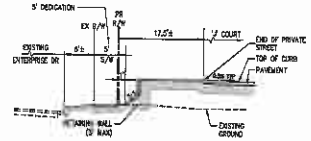
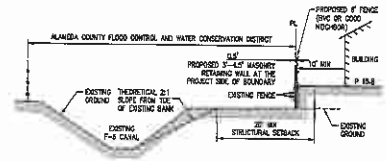


SECTION D-D
NOT TO SCALE



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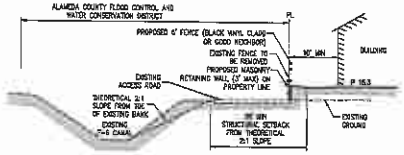


SECTION F-F
NOT TO SCALE

GRADING AND DRAINAGE PLAN
VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

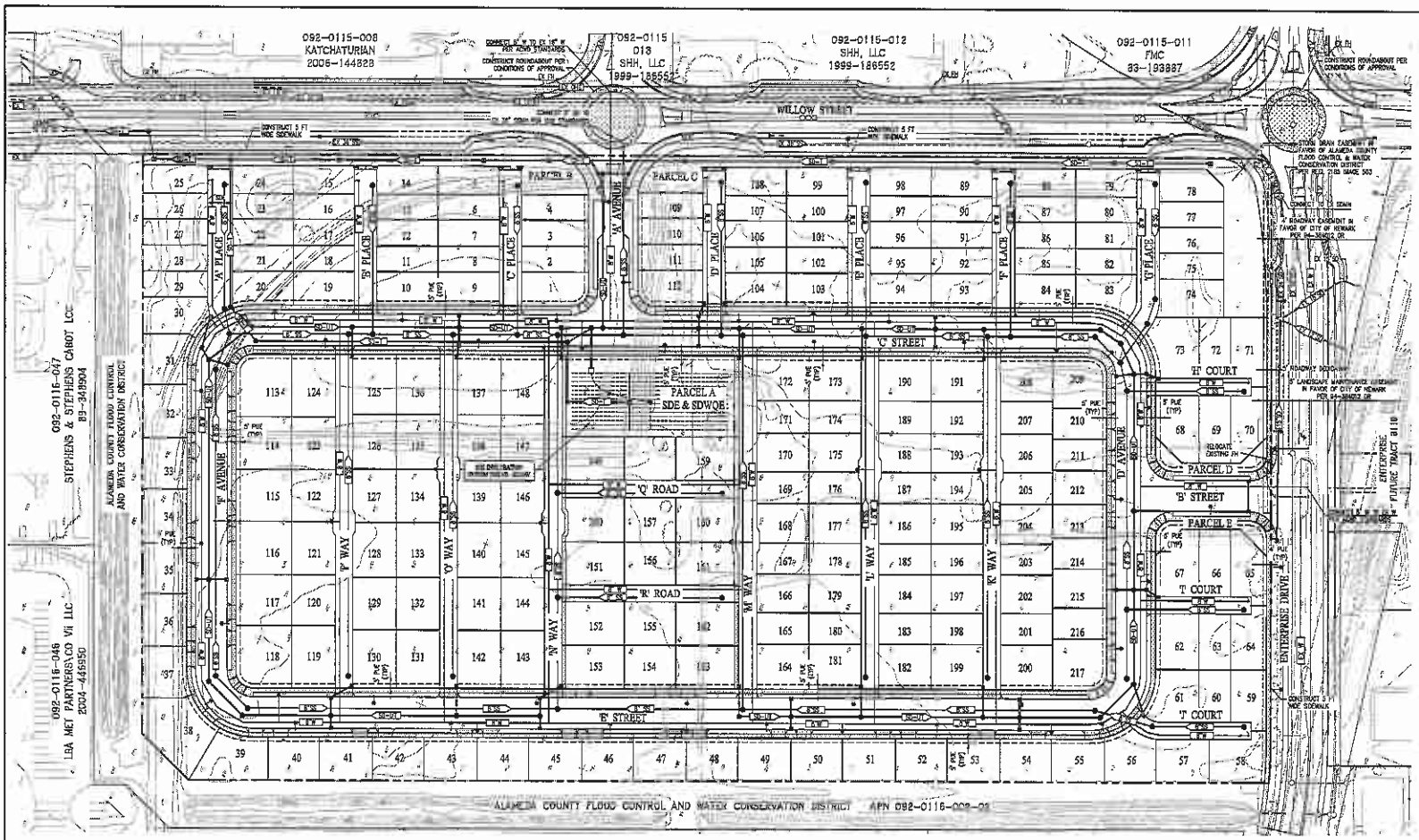
CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

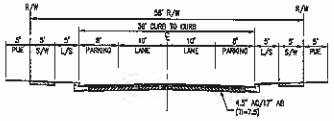
SCALE: 1" = 50' DATE: FEBRUARY 10, 2014

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • PLANNERS
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA 94583
(925) 866-0322
FAX (925) 866-1825

SHEET NUMBER
TM-3
OF 5 SHEETS

EXHIBIT A3





NEIGHBORHOOD STREET (PUBLIC)
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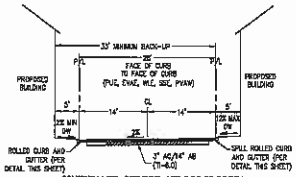
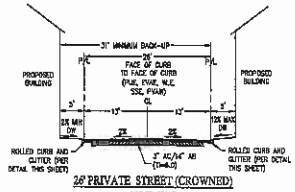
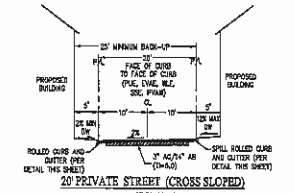


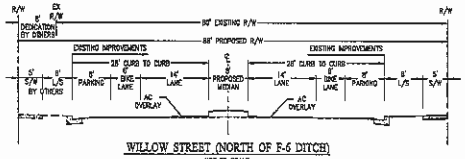
28' PRIVATE STREET (CROSS SLOPED)
NOT TO SCALE



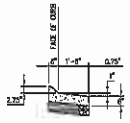
26' PRIVATE STREET (CROWNED)
NOT TO SCALE



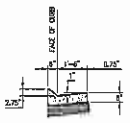
20' PRIVATE STREET (CROSS SLOPED)
NOT TO SCALE



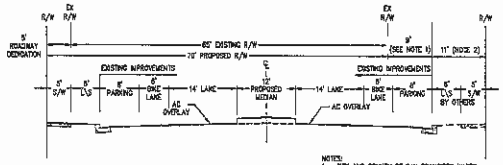
WILLOW STREET (NORTH OF F-6 DITCH)
NOT TO SCALE



PRIVATE STREET
SPILL ROLLED CURB & GUTTER
NOT TO SCALE



PRIVATE STREET
ROLLED CURB & GUTTER
NOT TO SCALE



ENTERPRISE DRIVE
NOT TO SCALE

NOTES:
1. CITY AND COUNTY OF SAN FRANCISCO WATER DISTRICT PROPERTY EXISTING LICENSE AGREEMENT.
2. CITY AND COUNTY OF SAN FRANCISCO WATER DISTRICT PROPERTY ADDITIONAL LICENSE AGREEMENT TO BE ACQUIRED.

1. THE STRUCTURAL SECTIONS SHOWN ARE PRELIMINARY AND ARE BASED ON AN ASSUMED R VALUE OF 5. PAVEMENT RECOMMENDATIONS WILL BE PROVIDED BY THE GEOTECHNICAL ENGINEER PRIOR TO STARTING FINAL DESIGN.

UTILITY PLAN AND STREET SECTIONS
VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

0' 50' 150' 200'

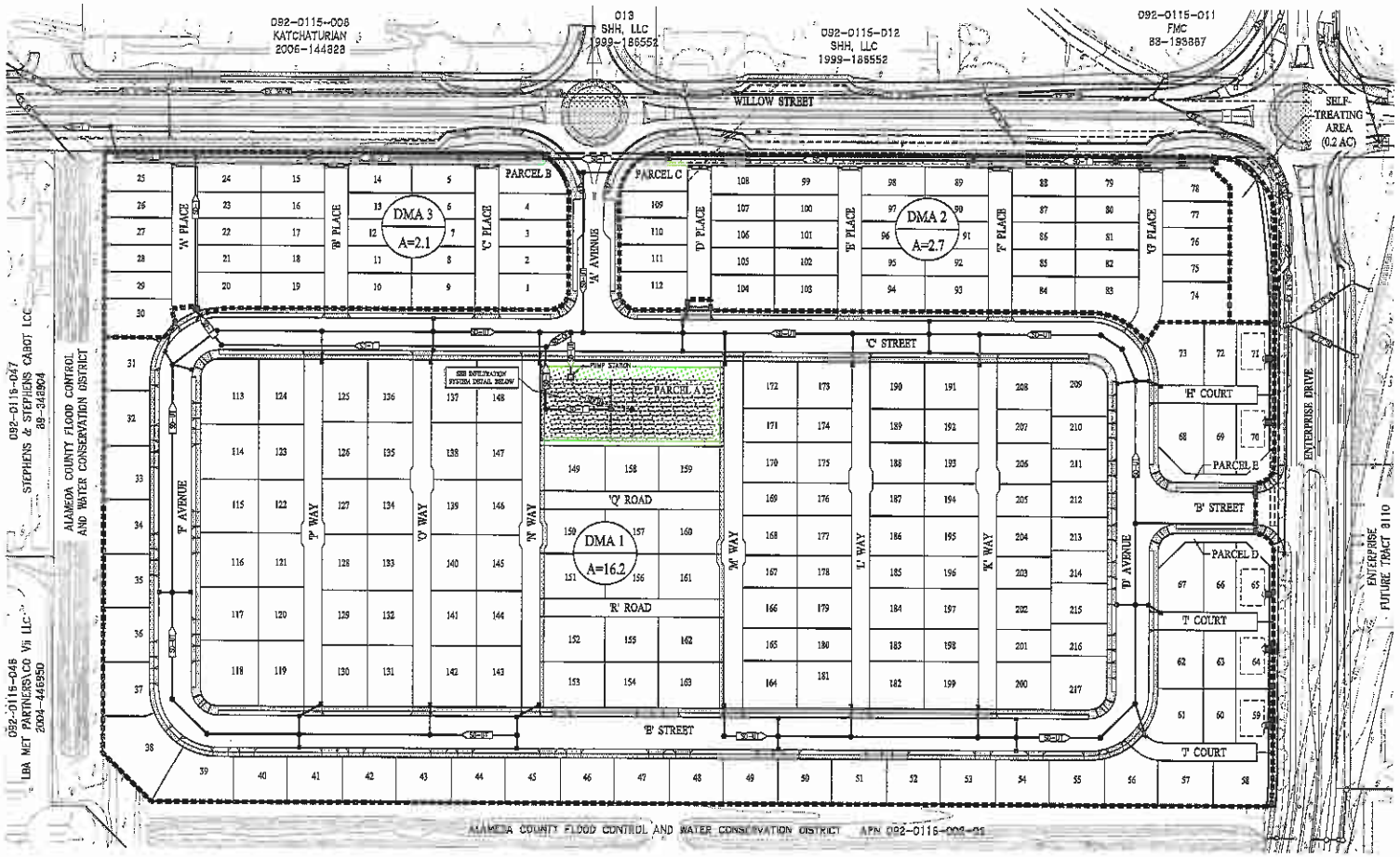
SCALE: 1" = 50'

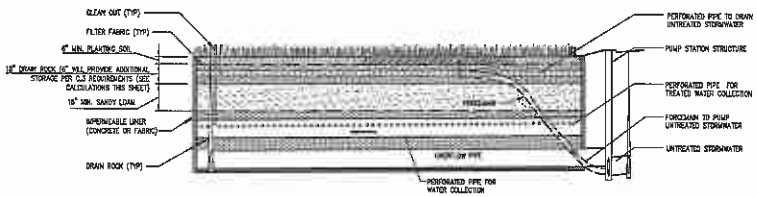
DATE: FEBRUARY 10, 2014

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS

SHEET NUMBER
TM-4
OF 5 SHEETS

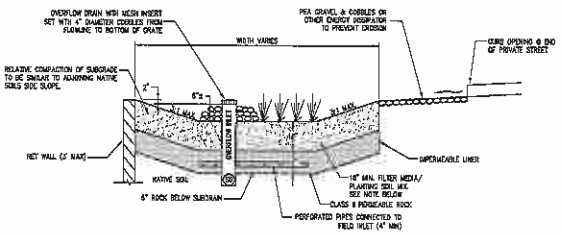
EXHIBIT A-4





INFILTRATION SYSTEM PROFILE (DMA 1)

SCALE: 1" 40'



BIORETENTION AREA (DMA 2&3)

NOT TO SCALE

BIORETENTION COMBINATION FLOW AND VOLUME BASED SIZING CALCULATIONS
JONES HAMILTON
NEWARK, CALIFORNIA
DMA 1

Area Summary

Landscaping	148,001	
		148,001 Total Pervious
Roofs	182,240	
Paving	186,000	
Sidewalks	206,667	
		596,908 Total Impervious
Total Area	744,909	

Calculation Impervious Area Filter Sizing

[illegible]

Unit Basin Method Volume Filter Sizing

Phased MAP = 14 in
Use 100 year Rain event MAP = 14.0 in
Use 0.90" rainfall for a 24-4 inch design storm and precipitation for 100 percent impervious area. Adjusted by MAP 0.90 x 14.0 / 14 in = 0.90 in

Filter Quality Design Volume V1

[illegible] = 51,062 CF

Filter Quality Flow Rate Q

[illegible] = 0.15 CFS

Flow Based Sizing

Duration = V / Q = [illegible] = 8.72 HRS

Check of Volume for Provided Treatment Area = 12,000 SF

[illegible] = 16,070 CF

[illegible] = 4,179 CF

[illegible] = 0.09 IN

BIORETENTION COMBINATION FLOW AND VOLUME BASED SIZING CALCULATIONS
JONES HAMILTON
NEWARK, CALIFORNIA
DMA 2

Area Summary

Landscaping	9,602	
		9,602 Total Pervious
Roofs	40,450	
Paving	59,000	
Sidewalks	1,000	
		110,450 Total Impervious
Total Area	119,472	

Calculation Impervious Area Filter Sizing

[illegible]

Unit Basin Method Volume Filter Sizing

Phased MAP = 14 in
Use 100 year Rain event MAP = 14.0 in
Use 0.90" rainfall for a 24-4 inch design storm and precipitation for 100 percent impervious area. Adjusted by MAP 0.90 x 14.0 / 14 in = 1.04 IN

Filter Quality Design Volume V1

[illegible] = 3,866 CF

Filter Quality Flow Rate Q

[illegible] = 0.48 CFS

Flow Based Sizing

Duration = V / Q = [illegible] = 2.22 HRS

Check of Volume for Provided Treatment Area = 2,300 SF

[illegible] = 0,714 CF

[illegible] = 1,166 CF

[illegible] = 0.50 IN

BIORETENTION COMBINATION FLOW AND VOLUME BASED SIZING CALCULATIONS
JONES HAMILTON
NEWARK, CALIFORNIA
DMA 3

Area Summary

Landscaping	19,757	
		19,757 Total Pervious
Roofs	30,150	
Paving	38,000	
Sidewalks	9,150	
		77,300 Total Impervious
Total Area	97,058	

[illegible]

Unit Basin Method Volume Filter Sizing

[illegible]

Filter Quality Design Volume V1

[illegible] = 5,940 CF

Filter Quality Flow Rate Q

[illegible] = 0.28 CFS

Flow Based Sizing

Duration = V / Q = [illegible] = 2.78 HRS

Check of Volume for Provided Treatment Area = 1,743 SF

[illegible] = 1,874 CF

[illegible] = 472 CF

[illegible] = 0.01 IN

STORM WATER CONTROL PLAN
VESTING TENTATIVE MAP
TRACT 8098
JONES HAMILTON PROPERTY

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

0' 50' 150' 200'

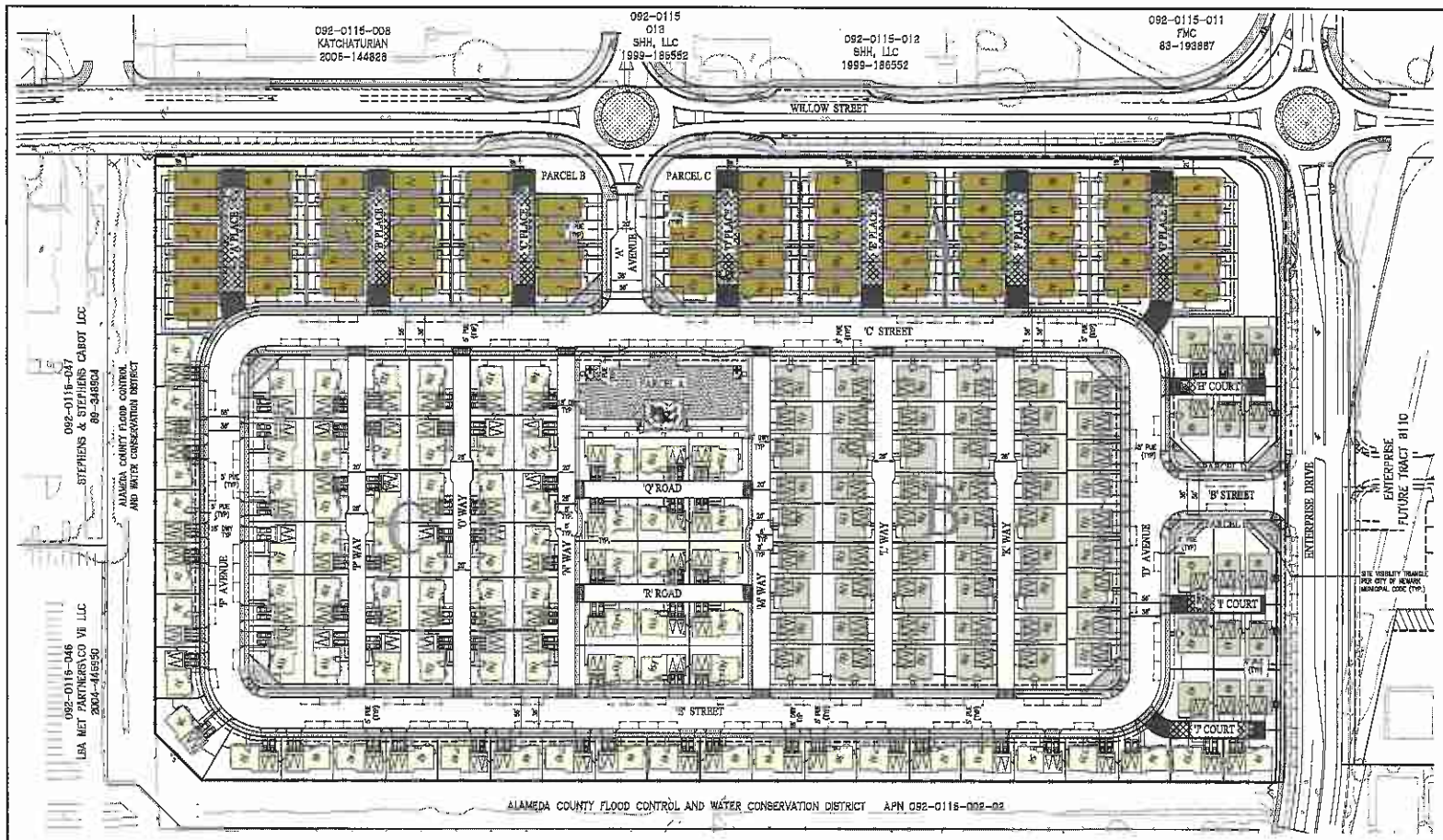
SCALE: 1" = 50'

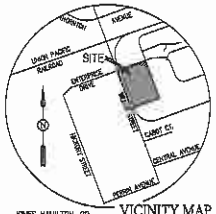
DATE: FEBRUARY 10, 2014

Carlson, Barbee & Gibson, Inc
CIVIL ENGINEERS • SURVEYORS • PLANNERS
7535 Gateway Boulevard, Suite 100
Newark, California 94560
(510) 790-0222
FAX (510) 796-2179

SHEET NUMBER
TM-5
OF 5 SHEETS

EXHIBIT A-5

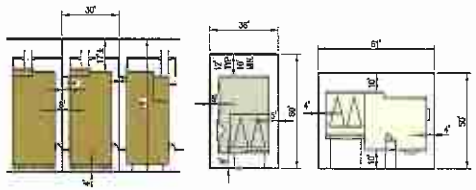




VICINITY MAP
NOT TO SCALE

GENERAL NOTES:

1. OWNER: JONES HAMILTON, CO.
   50 POST STREET #401
   SAN FRANCISCO, CA 94108
2. DEVELOPER: TRUMARK HOMES
   4185 BLACKHAWK PLAZA, SUITE 200
   DANVILLE, CA 94506
   CONTACT: VERONICA VARGAS
   (925) 308-2488
   (925) 648-3130 (FAX)
3. ENGINEER: CARLSON, BARBEE & GIBSON, INC.
   2633 CAMINO RAMON, SUITE 350
   SAN RAMON, CA 94583
   CONTACT: CHRIS MILLER
   (925) 866-0322
   (925) 866-2575 (FAX)
4. SOILS ENGINEER: CORNERSTONE EARTH
   1270 SPRINGBROOK ROAD, SUITE 101
   WALNUT CREEK, CA. 94597
   CONTACT: PETER LANGTRY
   (925) 935-9500
5. EXISTING USE: LIGHT INDUSTRIAL
6. SUBDIVISION AREA: 21.44
7. THE SUBDIVISION CONSISTS OF PARCELS 1, 2, 3 OF PARCEL MAP 5018 AND ALL OF APN 092-0115-014.
8. NUMBER OF UNITS: 217 UNITS
9. THIS PROPERTY LIES IN THE JURISDICTION OF:
   FIRE PROTECTION: ALAMEDA COUNTY FIRE DEPARTMENT
   DOMESTIC WATER: ALAMEDA COUNTY WATER DISTRICT (ACWD)
   SANITARY SEWER: UNION SANITARY DISTRICT
   STORM DRAIN WITHIN PUBLIC STREETS: CITY OF NEWARK
   STORM DRAIN WITHIN PRIVATE STREETS, YARDS AND PARCELS: OWNED & MAINTAINED BY THE HOA
   COMMON OPEN SPACE: OWNED & MAINTAINED BY THE HOA
   GAS & ELECTRIC SERVICE: PACIFIC GAS & ELECTRIC
   TELEPHONE SERVICE: AT&T
10. ROADWAYS & PARCELS: UNLESS OTHERWISE NOTED (I.E. PUBLIC) ALL ROADWAYS AND PARCELS ARE TO BE MAINTAINED BY THE HOA ESTABLISHED WITH THE PROJECT.
11. PROPOSED LAND USE SUMMARY: SEE TABLE THIS SHEET.
12. ASSESSORS PARCEL NUMBERS: 092-0115-058
    092-0115-059
    092-0115-060
    092-0115-014
13. BENCHMARK: CITY OF NEWARK OFFICIAL BENCHMARK NO. 62, ALSO BEING AN ALAMEDA COUNTY BENCHMARK, THE TOP OF CURB AT STORM WATER INLET AT THE NORTH-EAST CORNER OF THORNTON AVENUE AT WILLOW STREET, ELEVATION TAKEN AS 11.39 (NAVD 88) (8.691 NGVD 29 PER CITY OF NEWARK RECORDS).
14. BASIS OF BEARINGS: THE BASIS OF BEARINGS FOR THIS BOUNDARY DETERMINED BY FOUND NGS MONUMENTS W1446 PID HT2440 AND FILBERT DS6883, THE BEARING BEING N32°16'22"W (CALCULATED).
15. TOPOGRAPHY: PREPARED BY AEROMETRIC SURVEYS, MAY 23, 2011
16. FLOOD ZONE: ZONED X (UNSHADED)
    FLOOD INSURANCE RATE MAP (FIRM)
    ALAMEDA COUNTY, CA
    PANEL: 445 OF 725
    MAP NUMBER: 06001C0445G
    EFFECTIVE DATE: AUGUST 3, 2009
17. THIS PROJECT MAY BE BUILT IN PHASES AND MULTIPLE FINAL MAPS MAY BE FILED. A PHASING PLAN WILL BE PROVIDED TO THE CITY OF NEWARK PRIOR TO FINAL MAP APPROVAL.
18. ALL BUILDINGS SHALL BE EQUIPPED WITH AN AUTOMATIC FIRE SPRINKLER SYSTEM AS REQUIRED BY CHAPTER 15.09.020.G OF THE NEWARK MUNICIPAL CODE.
19. FRONTYARD LANDSCAPING FOR ALL UNITS SHALL BE MAINTAINED BY THE HOA. THE HOA WILL ALSO MAINTAIN AREAS OUTSIDE OF PRIVATE YARD FENCING (PASEOS) FOR PRODUCT A.

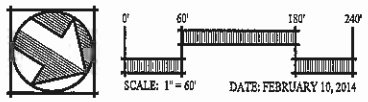


TYPICAL LOT SETBACKS
1" = 30'

PARKING SUMMARY							
		ON-STREET PARKING SPACES		OFF-STREET PARKING SPACES		TOTALS	
UNIT TYPE	NUMBER OF UNITS	REQUIRED	PROVIDED	REQUIRED	PROVIDED	REQUIRED	PROVIDED
PRODUCT A	69	35 [1]	22	138 [2]	138 [3]	173	160
PRODUCT B	69	35 [1]	36	138 [2]	144 [4]	173	180
PRODUCT C	79	40 [1]	66	158 [2]	316 [5]	198	382
WILLOW STREET			35				35
WILLOW STREET			21				21
TOTAL	217	110	180	434	598	544	778 [6]

1. PER DUMBARTON TOD FORM BASED CODE. VISITOR REQUIREMENT IS 0.5 SPACES / UNIT.
2. PER DUMBARTON TOD FORM BASED CODE. TWO OFF-STREET PARKING SPACES ARE REQUIRED FOR EVERY UNIT WITH AT LEAST 1 COVERED SPACE.
3. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT.
4. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT FOR ALL UNITS AND AN ADDITIONAL 6 SPACES FOR THE 3 UNITS WHICH HAVE DRIVEWAY APRONS WITH PROVISION FOR 2 PARKING SPACES.
5. INCLUDES 2 CAR GARAGE WITH SIDE BY SIDE ARRANGEMENT AND A DRIVEWAY APRON WITH PROVISION FOR 2 PARKING SPACES FOR ALL UNITS.
6. OVERALL SITE PARKING PROVIDED AT 3.58 SPACES / UNIT.

LAND USE SUMMARY	
LAND USE	AREA (AC)
LOT AREAS	13.83
PARCEL AREAS	1.75
STREET AREAS	4.12
LANE AREAS	2.16
ENTERPRISE DRIVE DEDICATION	0.12
TOTAL PROJECT AREA	21.38



SCALE: 1" = 60'

DATE: FEBRUARY 10, 2014

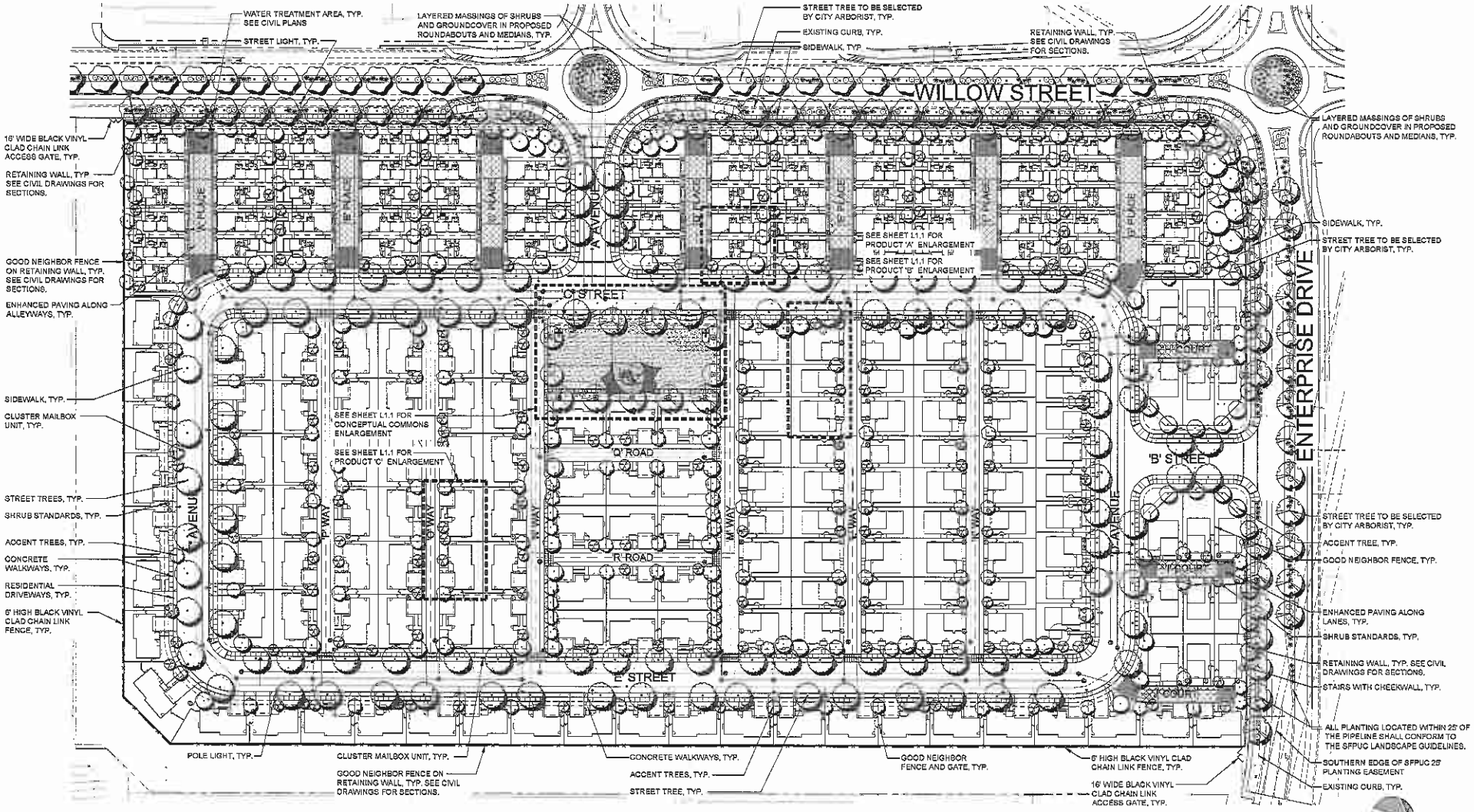
VESTING SITE PLAN
TRACT 8098
JONES - HAMILTON PROPERTY

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
2633 CAMINO RAMON, SUITE 350
SAN RAMON, CALIFORNIA 94583
(925) 866-0322
FAX (925) 866-1079

SHEET NUMBER
C-1

EXHIBIT A-26



NOTE: SEE SHEET L1.2 FOR WILLOW STREET IMPROVEMENTS.

Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

VAN DORN ABED LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

JONES-HAMILTON SITE

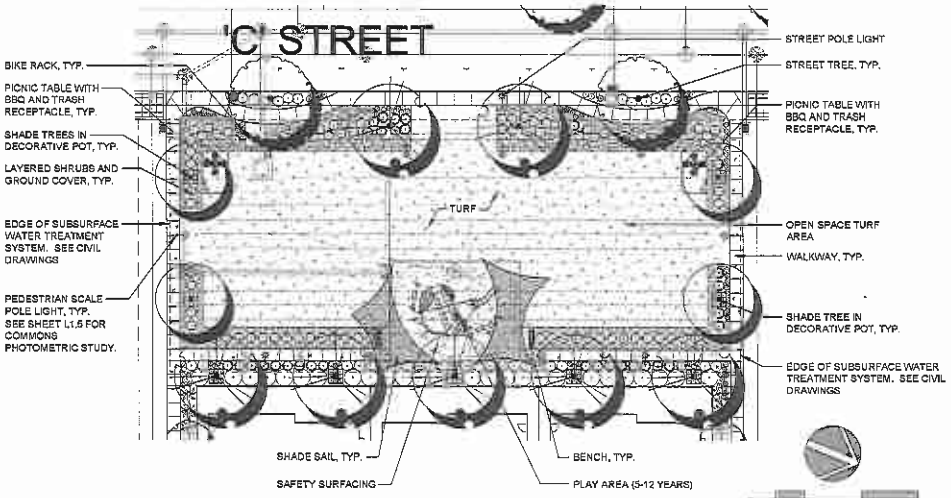
Newark, California

CONCEPTUAL SITE PLAN

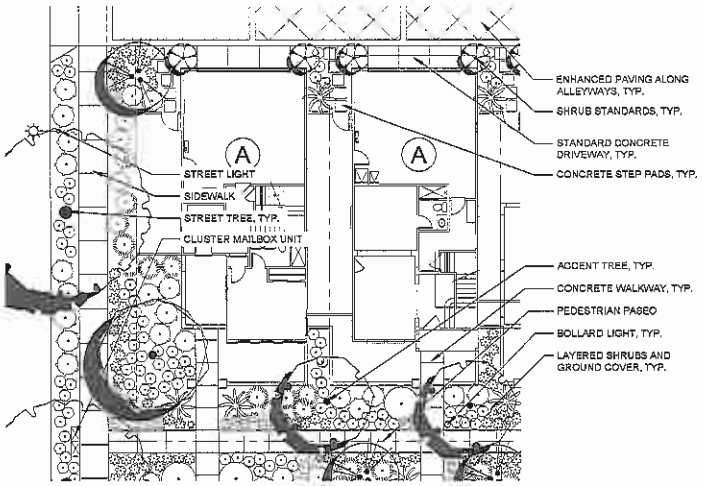
L1.0

5/30/13

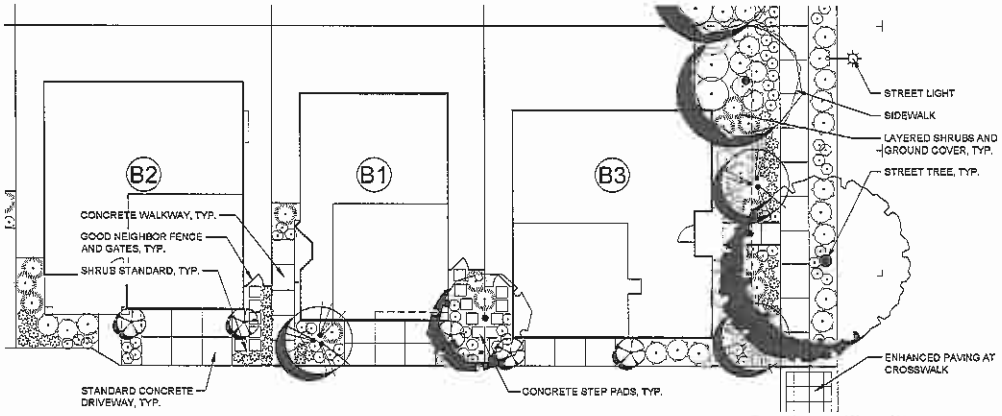
EXHIBIT A-7



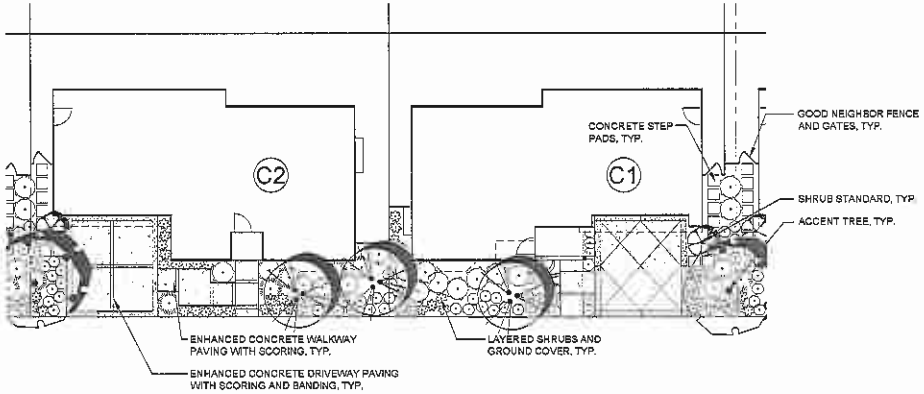
COMMONS AT WILLOW STREET ENTRANCE



PRODUCT 'A'



PRODUCT 'B'



PRODUCT 'C'

NOTE: SEE SHEET L1.6 FOR PLANTING PALETTE.

Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

VAN DORN ABED
LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

JONES-HAMILTON SITE

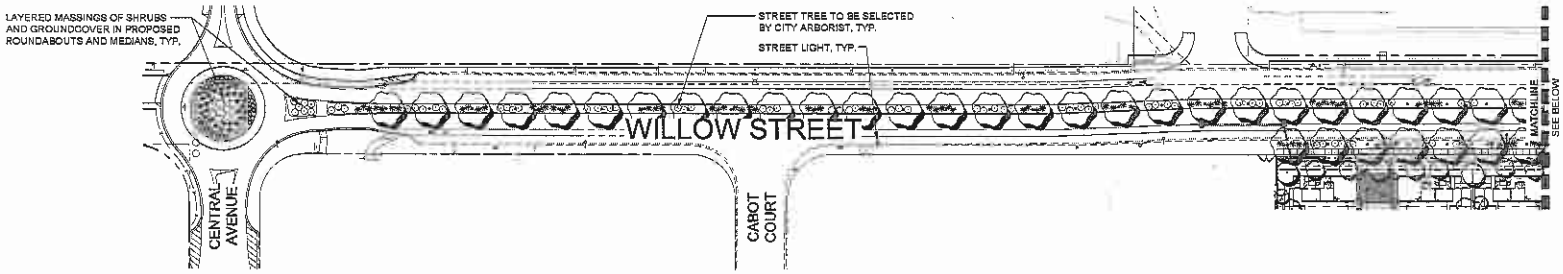
CONCEPTUAL COMMONS & PRODUCTS ENLARGEMENTS

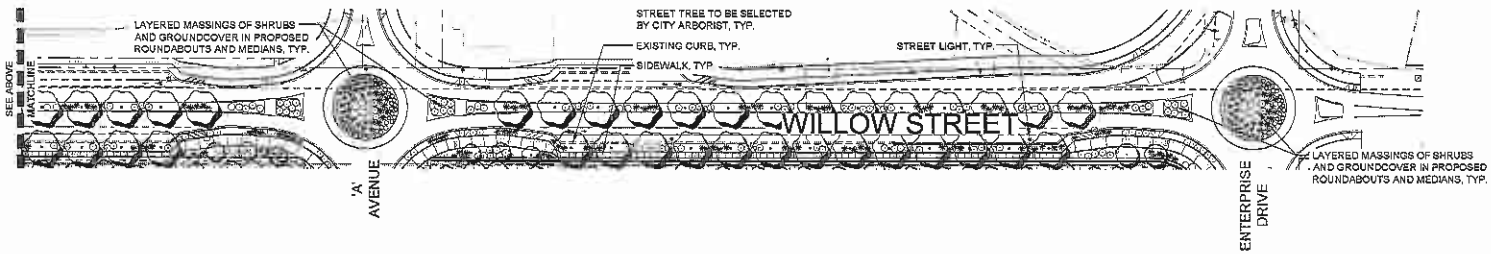
Newark, California

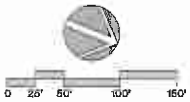
L1.1

5/30/13

EXHIBIT Ap8







Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
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VAN DORN ABED
LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

JONES-HAMILTON SITE

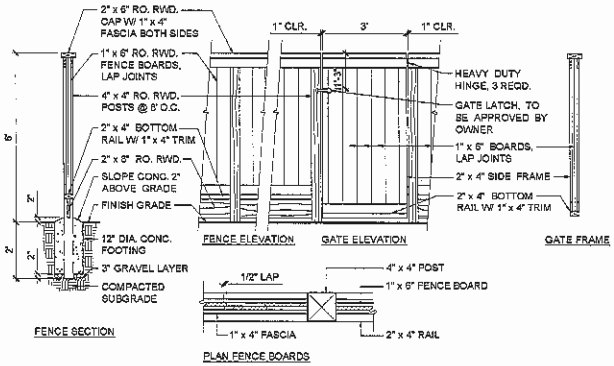
Newark, California

WILLOW STREET IMPROVEMENTS

L1.2

5/30/13

EXHIBIT A p 9



GOOD NEIGHBOR FENCE AND GATE
NTS

ENHANCED PAVING
NTS

RETAINING WALL
NTS

POLE LIGHT

MODEL: UrbanScape

COLORS: Bronze

www.lumec.com

BOLLARD LIGHT

MODEL: Hawthorne

COLORS: Bronze

www.landscapeforms.com

SITE LIGHTING
NTS

BIKE RACK

MATERIAL: Aluminum

MODEL: Emerson

COLORS: Bronze

www.landscapeforms.com

BIKE RACK
NTS

CLUSTER MAILBOX UNIT

MATERIAL: Aluminum

MODEL: Regency Decorative Series, Type 1 (8 door), Type 2 (12 door), Type 3 (16 door)

COLORS: Bronze

www.mailboxes.com

CLUSTER MAILBOX UNIT
NTS

TRASH RECEPTACLE

MATERIAL: Cast Iron and Aluminum

MODEL: Poe

COLORS: Bronze

www.landscapeforms.com

TRASH RECEPTACLE
NTS

DECORATIVE POT

MATERIAL: Glass Fiber Reinforced Concrete

MODEL: 60" Urban Collection

COLORS: Caramel and Shadow (Acid-Etch)

www.tournesolsiteworks.com

DECORATIVE POT
NTS

PICNIC TABLE

MATERIAL: Steel and Aluminum

MODEL: Carousel

COLORS: Bronze

www.landscapeforms.com

PICNIC TABLE
NTS

GRILL

MATERIAL: Stainless Steel

MODEL: American Outdoor 24" In-Ground Post Gas Grill

SIZE: 50"W X 24.5"D X 56"H

www.outdoorgourmetgrills.org

BBQ
NTS

BENCH

MATERIAL: Aluminum

MODEL: Melville, backed with aluminum seat

COLORS: Bronze

www.landscapeforms.com

BENCH
NTS

Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

VAN DORN ABED
LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

JONES-HAMILTON SITE

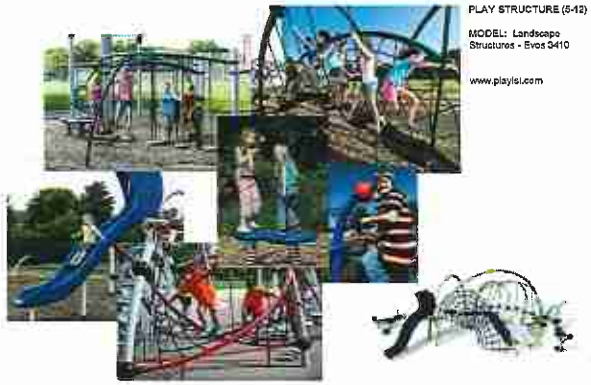
Newark, California

CONCEPTUAL SITE AMENITIES

L1.3

5/30/13

EXHIBIT A p10



PLAY STRUCTURE (5-12)

MODEL: Landscape Structures - Evos 3410

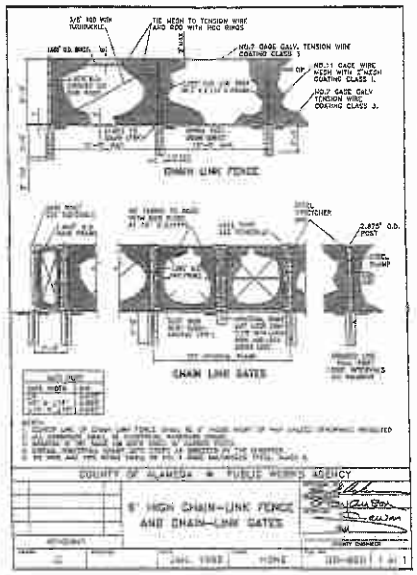
www.playlsi.com

PLAY STRUCTURE (5-12)
NTS

SHADE SAILS

www.shadesails.com

SHADE SAIL
NTS



6' HIGH BLACK VINYL CHAIN LINK FENCE AND GATE
NTS

Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506 (925) 648-8300

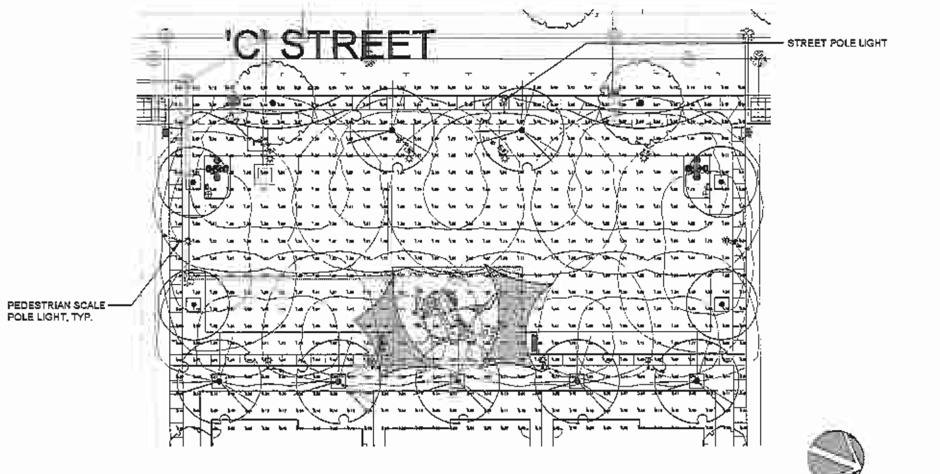
VAN DORN ABED
LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

JONES-HAMILTON SITE

Newark, California

CONCEPTUAL SITE AMENITIES
L1.4
5/30/13

EXHIBIT A p11



COMMONS AT WILLOW STREET ENTRANCE

Luminaire Schedule										
Project: JONES - HAMILTON PARK										
Symbol	Qty	Label	Arrangement	Lum. Lumens	LLF	LDD	LLD	BF	Description	Filename
	6	A	SINGLE	2777	0.850	0.900	0.944	1.000	LUMEC MPTC-55W48LED4K-ES-LE4-HS-VOLT-XX-X-XXX - 16' POLE	MPTC(MPTR)-55W48LED4K-ES-LE4-HS (S1205091m).ies
	4	B	SINGLE	4064	0.850	0.900	0.944	1.000	LUMEC MPTC-55W48LED4KES-LE4-VOLT-XX-X-XXX - 16' POLE	MPTC(MPTR)-55W48LED4KES-LE4 (S1108151m).ies

Calculation Summary									
Project: JONES - HAMILTON PARK									
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min	# Pts	Description
SA	Illuminance	Fc	1.38	2.11	0.86	1.62	2.45	339	PARK AREA

ASSOCIATED LIGHTING REPRESENTATIVES, INC
7777 PARDEE LANE
P.O BOX 2265
OAKLAND, CA 94621
PHONE (510) 638-0158 - FAX (510) 638-2908

ALL VALUES SHOWN ARE MAINTAINED HORIZONTAL FOOTCANDLES AT GRADE

* *

PHOTOMETRIC DATA USED AS INPUT FOR THESE CALCULATIONS IS BASED ON ESTABLISHED IES PROCEDURES AND PUBLISHED LAMP, RATINGS, FIELD PERFORMANCE WILL DEPEND ON ACTUAL LAMP, BALLAST, ELECTRICAL AND SITE CHARACTERISTICS

* *

Calculations have been performed according to IES standards and good practice. Some differences between measured values and calculated results may occur due to tolerances in calculation methods, testing procedures, component performance, measurement techniques and field conditions such as voltage and temperature and temperature variations. Input data used to generate the attached calculations such as room dimensions, reflectances, furniture and architectural elements significantly affect the lighting calculations. If the real environment conditions do not match the input data, differences will occur between measured values and calculated values.

REPORT FOR: VAN DORN ABED LANDSCAPE ARCHITECTS, INC., WHITNEY MILLER
BY: APPLICATIONS ENGINEERING, GILBERTO J. RODRIGUEZ
SALES REPRESENTATIVE: ALR, TIM HALEY

Trumark Companies
4185 Blackhawk Plaza Circle, Suite 200
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VAN DORN ABED
LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-1921 FAX (415) 864-4796

JONES-HAMILTON SITE

Newark, California

COMMONS PHOTOMETRIC STUDY

L1.5

5/30/13

EXHIBIT Ap12

TREE PALETTE

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE
STREET TREE				
	ACER RUBRUM	MAPLE	24" BOX	M
	CELTIS CHINENSIS	CHINESE HACKBERRY	24" BOX	L
	MAGNOLIA GRANDIFLORA	SOUTHERN MAGNOLIA	24" BOX	M
	QUEROUS ILEX	HOLLY OAK	24" BOX	L
	ROBINIA 'PURPLE ROBE'	LOCUST	24" BOX	L
	ULMUS PARVIFOLIA	ELM	24" BOX	M
MEDIUM ACCENT TREE				
	ACER PALMATUM 'SANGO KAKU'	CORAL BARK MAPLE	15 GAL	M
	CARPINUS BETULUS 'FRANS FONTAINE'	EUROPEAN HORNBEAM	15 GAL	M
	CHITALPA TASHKENTENSIS	CHITALPA	15 GAL	L
	HYMENOSPORUM FLAVUM	SWEETSHADE	15 GAL	M
	LOPHOSTEMON LAURINA	SMALL-LEAF TRISTANIA	15 GAL	M
	MAGNOLIA VIRGINIANA	SWEET BAY	15 GAL	M
	OLEA EUROPAEA 'SWAN HILL'	FRUITLESS OLIVE	15 GAL	VL
	PRUNUS YEDOENSIS 'AKEBONO'	FLOWERING CHERRY	15 GAL	M
	PYRUS CALLERYANA 'CHANTICLEER'	CHANTICLEER PEAR	15 GAL	M
SMALL ACCENT TREE				
	ARBUTUS 'MARINA'	STRAWBERRY TREE	15 GAL	L
	GINKGO BILOBA 'PRIGETON SENTRY'	MAIDENHAIR TREE	15 GAL	M
	LAGERSTROEMIA 'MUSKOGEE'	CRAPE MYRTLE	15 GAL	L
	MAGNOLIA GRANDIFLORA 'EDITH BOGUE'	EDITH BOGUE MAGNOLIA	15 GAL	M
	MAGNOLIA X SOULANGEANA 'LILLIPUTIAN'	SAUCER MAGNOLIA	15 GAL	M

SHRUB AND GROUNDCOVER PALETTE

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE
SHRUB STANDARD				
	CAMELLIA JAPONICA	CAMELLIA STANDARD	15 GAL	M
	PODOCARPUS MACROPHYLLUS 'MAKI'	SHRUBBY YEW PINE	15 GAL	M
	RHAPHIOLEPIS 'MAJESTIC BEAUTY'	RHAPIOLEPIS STANDARD	15 GAL	L
	SOLANUM RANT. 'ROYAL ROBE'	PARAGUAY NIGHTSHADE STANDARD	15 GAL	M
	TIBUCHINA URVILLEANA	PRINCESS FLOWER STANDARD	15 GAL	M
LARGE				
	ABELIA X GRANDIFLORA	GLOSSY ABELIA	5 GAL	L
	ABUTILON HYBRIDUM 'VESUVIUS RED'	RED FLOWERING MAPLE	5 GAL	M
	BAMBUSA SPECIES	BAMBOO	5 GAL	L
	CEANOTHUS X 'JULIA PHELPS'	CALIFORNIA LILAC	5 GAL	VL
	LAVATERA ASSURGENTIFLORA	MALLOW	5 GAL	L
	LEONOTIS LEONURUS	LION'S TAIL	5 GAL	L
	LIGUSTRUM JAPONICA 'TEXANUM'	TEXAS PRIVET	5 GAL	M
	NANDINA DOMESTICA	HEAVENLY BAMBOO	5 GAL	L
	PHOTINIA X FRASERI	PHOTINIA	5 GAL	M
	PITTOSPORUM TOBIRA 'VARIAGATA'	VARIAGATED TOBIRA	5 GAL	L
	PRUNUS CAROLINIANA 'BRIGHT 'N TIGHT'	CAROLINA LAUREL	5 GAL	L
	RHAPIOLEPIS INDICA 'SPRINGTIME'	INDIAN HAWTHORN	5 GAL	L
MEDIUM				
	ANIGOZANTHOS HYBRIDS 'BIG RED'	BIG RED KANGAROO PAW	5 GAL	L
	ANISODONTEA X HYPOMANDARUM	CAPE MALLOW	5 GAL	M
	ASPIDISTRA ELATIOR	CAST IRON PLANT	1 GAL	L
	BUXUS MICROPHYLLA JAPONICA	JAPANESE BOXWOOD	1 GAL	M
	COLEONEMA PULCHRUM	PINK BREATH OF HEAVEN	5 GAL	M
	COTONEASTER MICROPHYLLUS	ROCKSPRAY COTONEASTER	1 GAL	L
	CORREA PULCHELLA	AUSTRALIAN FUCHSIA	1 gal	L
	DIETES BICOLOR	FORTNIGHT LILY	1 GAL	L
	ERYSIMUM HYBRIDS 'BOWLES MAUVE'	LAVENDER WALLFLOWER	5 GAL	L
	FESTUCA MAIREI	ATLAS FESCUE	1 GAL	L
	GREVILLEA 'NOBLI'	GREVILLEA	5GAL	L
	HEBE 'VERONICA LAKE'	HEBE	5 GAL	M
	HELICTOTRICHON SEMPERVIRENS	BLUE OAT GRASS	1 GAL	L
	KNIPHOFIA UVARIA 'SPRINGTIME'	RED HOT POKER	1 GAL	M
	LAVANDULA ANGUSTIFOLIA	ENGLISH LAVENDER	1 GAL	L
	LIMONIUM PEREZII	STATICE	1 GAL	L
	MUHLENBERGIA RIGENS	DEER GRASS	1 GAL	L
	NEPHROLEPIS CORDIFOLIA	SOUTHERN SWORD FERN	1 GAL	M
	OSMANTHUS HETEROPHYLLUS 'GOSHIKI'	GOSHIKI HOLLY OLIVE	1 GAL	M
	PHORMIUM HYBRIDS	FLAX	1 GAL	L
	PITTOSPORUM TOBIRA 'TURNER'S DWARF'	VARIGATED DWARF TOBIRA	1 GAL	L
	ROSA 'FLOWER CARPET PINK'	GROUNDCOVER ROSE	2 GAL	M
	ROSA FLORIBUNDAS 'ICEBERG'	ICEBERG ROSE	2 GAL	M
	ROSMARINUS OFFICINALIS 'TUSCAN BLUE'	ROSEMARY	5 GAL	L
	SALVIA SPECIES	SAGE	5 GAL	L
	VIBURNUM DAVIDII	DAVID VIBURNUM	5 GAL	M
	WESTRINGIA FRUTICOSA 'MORNING LIGHT'	COASTAL ROSEMARY	5 GAL	L
SMALL				
	AGAPANTHUS SPECIES	LILY OF THE NILE	1 GAL	M
	ARCTOSTAPHYLOS 'EMERALD CARPET'	EMERALD CARPET MANZANITA	1 GAL	L
	ERIGERON KARVINSKIANUS	FLEABANE	1 GAL	L
	ERODIUM REICHARDII	ALPINE GERANIUM	1 GAL	L
	FESTUCA IDAHOENSIS	IDAHOE FESCUE	1 GAL	VL
	FESTUCA OVINA GLAUCA	BLUE FESCUE	1 GAL	L
	HEMEROCALLIS HYBRID	DAYLILY	1 GAL	M
	HEUCHERA SANGUINEA 'SANTA ANA CARDINAL'	CORAL BELLS	1 GAL	M
	LANTANA 'DWARF YELLOW	DWARF LANTANA	1 GAL	L
	LIMONIUM PEREZII	STATICE	1 GAL	L
	LIRIOPE GIGANTEA	GIANT LIRIOPE	1 GAL	M
	LIRIOPE MUSCARI	LILYTURF	1 GAL	M
	MENTHA SPECIES	SPEARMINT	1 GAL	L
	NEPETA X FAASSENII	CATMINT	1 GAL	L
	OPHIOPOGON JAPONICUS	MONDO GRASS	1 GAL	M
	PHORMIUM HYBRIDS 'TONEY TIGER'	FLAX	1 GAL	L
	SANTOLINA PINNATA 'EDWARD BOWLES'	LAVENDER COTTON	1 GAL	L
	SISYRINCHIUM BELLUM	BLUE-EYED GRASS	1 GAL	VL
	VERBENA TENUISECTA 'EDITH'	EDITH MOSS VERBENA	1 GAL	L
VINES				
	CLEMATIS ARMANDII	EVERGREEN CLEMATIS	15 GAL	M
	CLYTOSTOMA CALLISTEGIOIDES	VIOLET TRUMPET VINE	15 GAL	M
	HARDENBERGIA VIOLACEA 'HAPPY WANDERER'	LILAC VINE	15 GAL	M
	JASMINUM POLYANTHUM	JASMINE	15 GAL	M
STORMWATER TREATMENT				
	ACHILLEA MILLEFOLIUM	COMMON YARROW	1 GAL	L
	CAREX PRAEGACILIS	FIELD SEDGE	1 GAL	M
	DESCHAMPSIA C. 'NORTHERN LIGHTS'	TUFTED HAIRGRASS	1 GAL	L
	FESTUCA CALIFORNIA	CALIFORNIA FESCUE	1 GAL	L
	FESTUCA IDAHOENSIS	IDAHOE FESCUE	1 GAL	VL
	FESTUCA CALIFORNICA	CALIFORNIA FESCUE	1 GAL	L
	FESTUCA 'NO MOW'	NO MOW FESCUE	SOD	H
	LEYMUS TRITICOIDES	CREEPING WILDRYE	1 GAL	VL
	NASELLA PULCHRA	PURPLE NEEDLEGRASS	1 GAL	VL

TURF

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE
	FESTUCA ELATOR 'MEDALLION'	DWAFT TALL FESCUE	SOD	H

PLANTING AND WATER USE DESIGN INTENT STATEMENT

The planting design utilizes primarily drought tolerant, low and medium water use plant materials located in seperate hydrozones. Shade tolerant, medium water use plants will be utilized on the North facing sides of the project. Low and medium water use plants will be used in all other perimeter plant areas and in the paseos. The plants will be selected utilizing the State of California's Model Water Efficient Landscape Ordinance plant list and ET Calc water management computer software. A minimum of 3" of bark mulch will be placed in all shrub and groundcover areas.

WATER USE DESIGN INTENT STATEMENT

The irrigation system will comply with the State of California's Model Water Efficient Landscape Ordinance. System will be a fully automatic, low gallon system with matched precipitation rate heads or emitters on each circuit. This system will design with head to head coverage and minimum overspray. The low, medium and high water use hydrozones will be on separate valve circuits. All new trees will have separate drip or bubbler circuits. The remote control valves will have integral pressure regulators to prevent fluctuations and ensure constant application rates to minimize over or under watering. The electronic irrigation controller will be weather based and make automatic adjustments based on current climate along with multiple programs and application cycles/start times. A rain switch will be installed to prevent irrigation during rainy periods. A flow sensor and master valve will be connected to the controller to allow automatic shut off of any valve circuit or main line in the event of a pipe brake to prevent water waste.

BAY FRIENDLY LANDSCAPING

This project shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.060.

LANDSCAPE EASEMENTS

Concurrent with the final map approval, the property owner shall dedicate to the City of Newark sufficient landscape easements to ensure the ongoing and perpetual maintenance of all common front yard, side yard, and back-up area landscaping along Willow Street and Enterprise Drive, and on the entry streets, 'A' Avenue and 'B' Street, to the development. These easements shall incorporate all landscape areas beyond a specified minimum dimension to the nearest physical constraint. Landscape easements shall be dedicated across Parcel B adjacent to Willow Street, Parcel C adjacent to Willow Street and Enterprise Drive, the proposed landscape frontage areas of Lots 58, 59, 64, 65, 70, and 71 abutting Enterprise Drive, Lots 1 through 4 and 106 through 112 on 'A' Avenue, and Parcels D and E on 'B' Street. The extent of additional landscape easement dedication adjacent to the public streets shall be determined concurrent with the development of final tract improvements plans prior to final map approval for a given project phase.

MAINTENANCE

All front yard and common area maintenance shall be by the Home Owners Association.

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JONES-HAMILTON SITE

Newark, California

CONCEPTUAL PLANTING PALETTE

L1.6

5/30/13

EXHIBIT Ap13

Plan 1 Front Elevations

A1.1

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KTGY NO. 2012-0079
2012-0103 February 26, 2013

Jones / Hamilton

Newark, CA

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Architecture+Planning
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ktgy.com

EXHIBIT A-14

FARMHOUSE PLAN 2

CRAFTSMAN PLAN 2

AGRARIAN RURAL PLAN 2

Plan 2 Front Elevations

A2.1

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2012-0103 February 26, 2013

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EXHIBIT Ap15

FARMHOUSE PLAN 3

CRAFTSMAN PLAN 3

AGRARIAN RURAL PLAN 3

Plan 3 Front Elevations

A3.1

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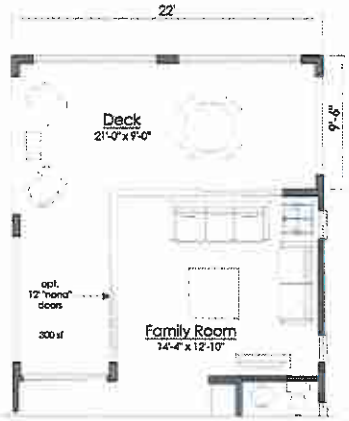
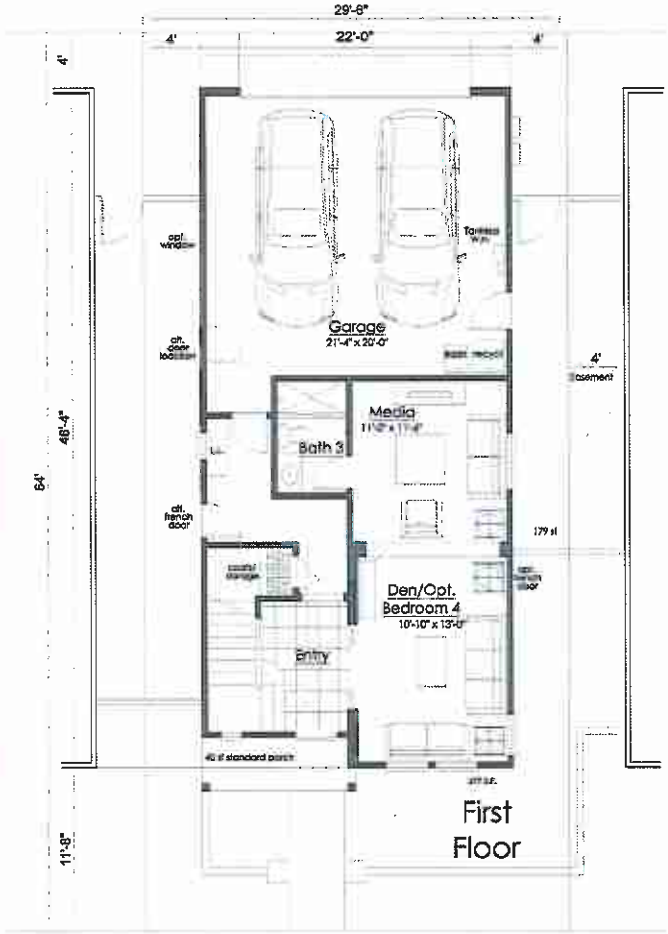
EXHIBIT A-16

Third Floor



Optional "Nana" doors

Second Floor



First Floor

Floor Plan
3 Bedrooms + Den + Loft
3.5 Baths
2282 sf

Plan 1 Floor Plan

0 2 4 8 16

A1.0

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510.272.2910
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EXHIBIT A p17

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Cementitious Siding
* Shutters
* Decorative Brackets at Wood Posts

FARMHOUSE PLAN 1

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Cementitious Siding
* Wood Railing
* Wood Potshelves
* Stone Veneer

CRAFTSMAN PLAN 1

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Board and Batten Siding
* Wood Potshelves

AGRARIAN RURAL PLAN 1

0 2 4 8 16

A1.1

Plan 1 Front Elevations

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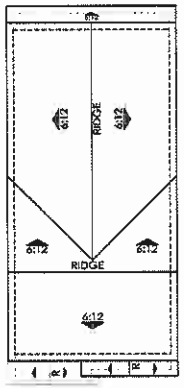
EXHIBIT Ap18

LEFT CRAFTSMAN

RIGHT CRAFTSMAN

REAR CRAFTSMAN



ROOF PLAN

0 4 8 16

0 2 4 8 16

A1.2

PLAN 1 CRAFTSMAN

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Newark, Ca

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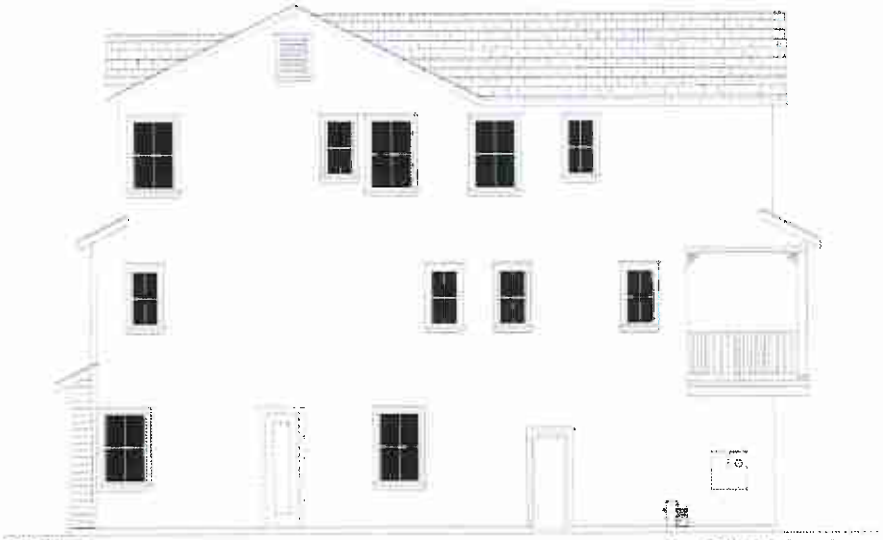
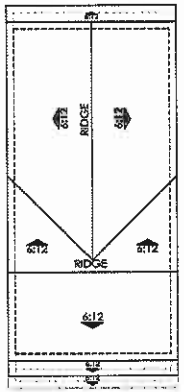
EXHIBIT Ap 19

LEFT FARMHOUSE



RIGHT FARMHOUSE

REAR FARMHOUSE



ROOF PLAN

0 4 8 16

0 2 4 8 16

A1.3

PLAN 1 FARMHOUSE

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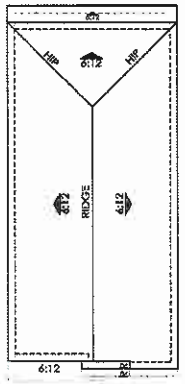
EXHIBIT A-20

LEFT AGRARIAN RURAL

RIGHT AGRARIAN RURAL

REAR AGRARIAN RURAL



ROOF PLAN

0 4 8 16

0 2 4 8 16

A1.4

PLAN 1 AGRARIAN RURAL

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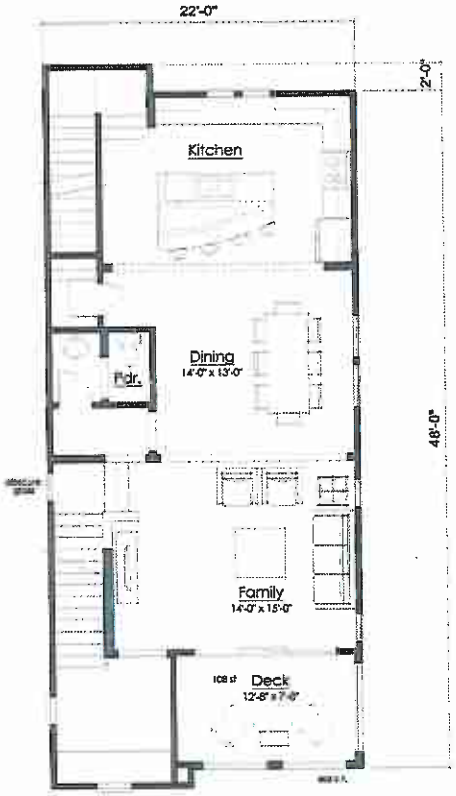
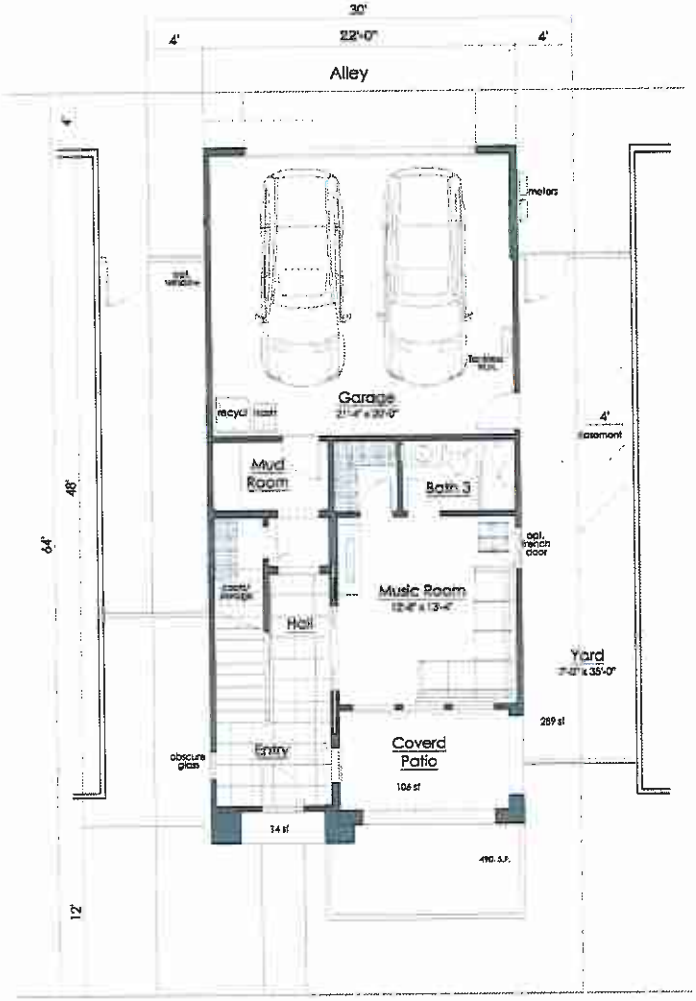
EXHIBIT Ap21





Floor Plan
3 Bedrooms + Den
+ Loft
3.5 Baths
2279 sf

Plan 2 Floor Plan

0 2 4 8

A2.0

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2012-0103 February 26, 2013

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EXHIBIT Ap22

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Cementitious Siding
* Shutters
* Decorative Brackets at Wood Posts

FARMHOUSE PLAN 2

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Cementitious Siding Shingle Wall
* Wood Railing
* Wood Potshelves
* Stone Veneer

CRAFTSMAN PLAN 2

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Board and Batten Siding
* Wood Potshelves

AGRARIAN RURAL PLAN 2

0 2 4 8 16

A2.1

Plan 2 Front Elevations

Jones / Hamilton

Newark, Ca

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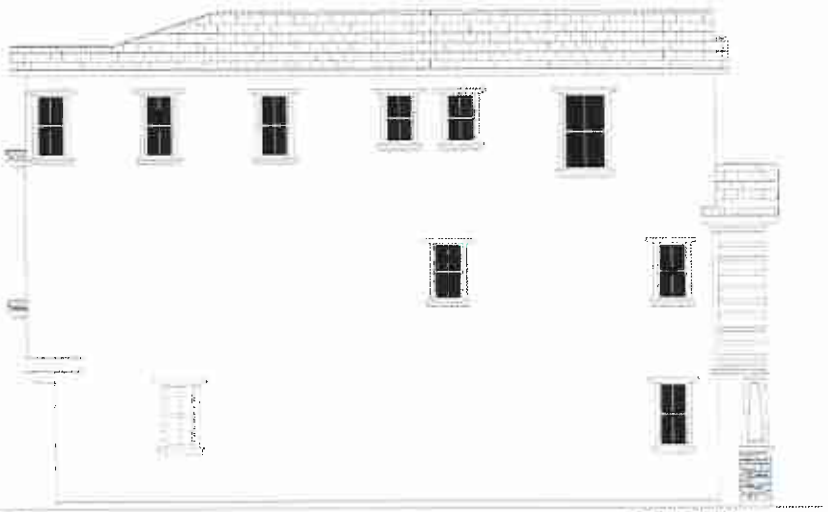
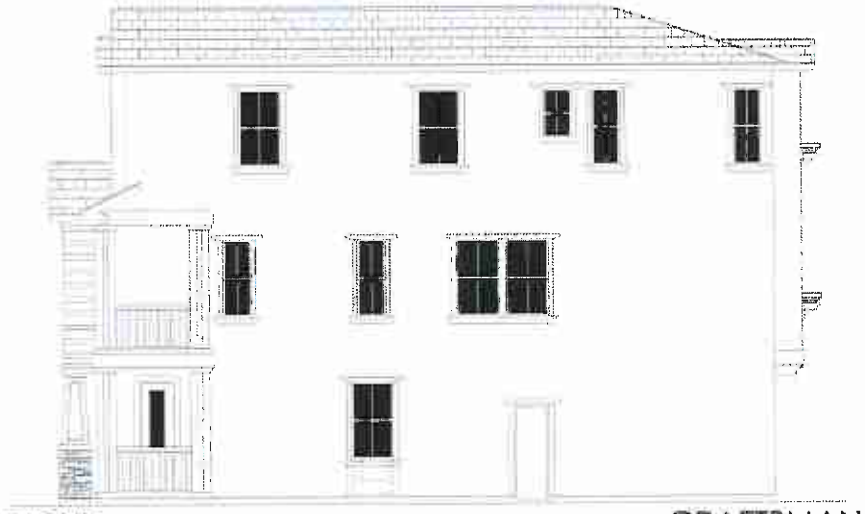
EXHIBIT Ap23

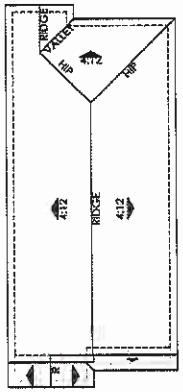


LEFT CRAFTSMAN



RIGHT CRAFTSMAN

REAR CRAFTSMAN



ROOF PLAN

0 4 8 16

0 2 4 8 16

A2.2

PLAN 2 CRAFTSMAN

Jones / Hamilton

Newark, Ca

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2012-0103 February 28, 2013

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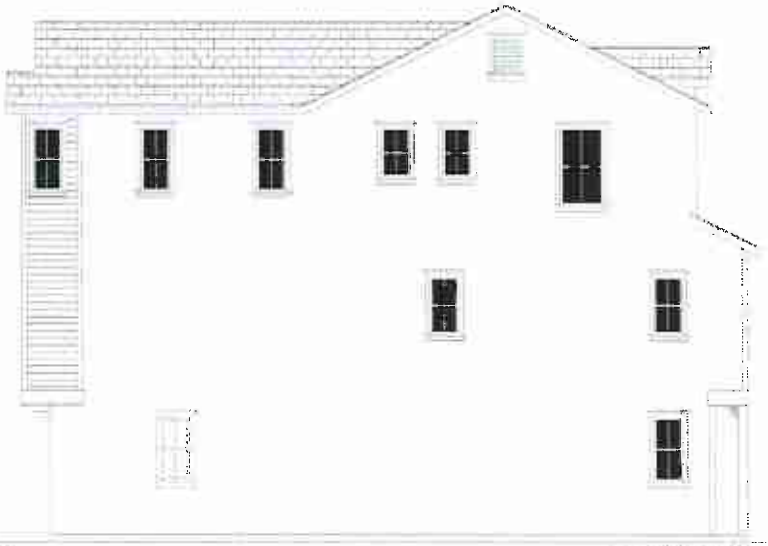
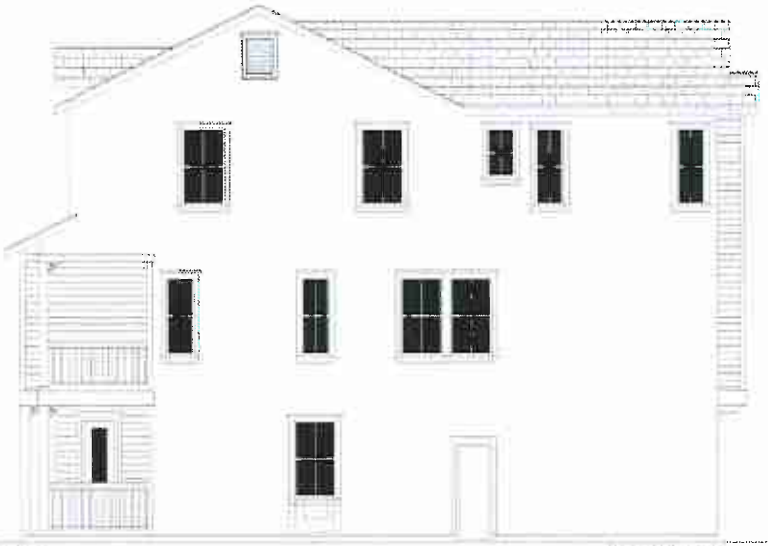
EXHIBIT Ap24

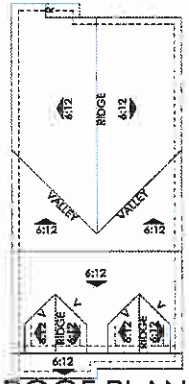


LEFT FARMHOUSE



RIGHT FARMHOUSE

REAR FARMHOUSE



ROOF PLAN

0 4 8 16

0 2 4 8 16

A2.3

PLAN 2 FARMHOUSE

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KTGY NO. 2012-0029
2012-0103 February 26, 2013

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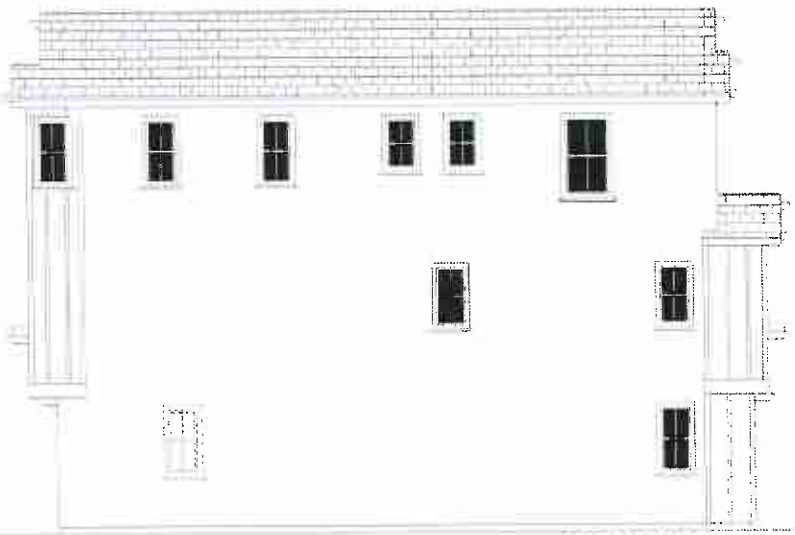
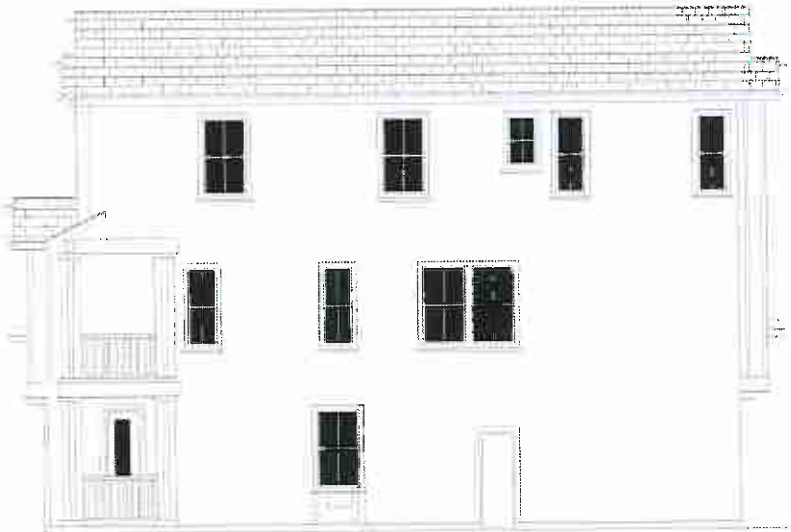
EXHIBIT Ap25



LEFT AGRARIAN RURAL



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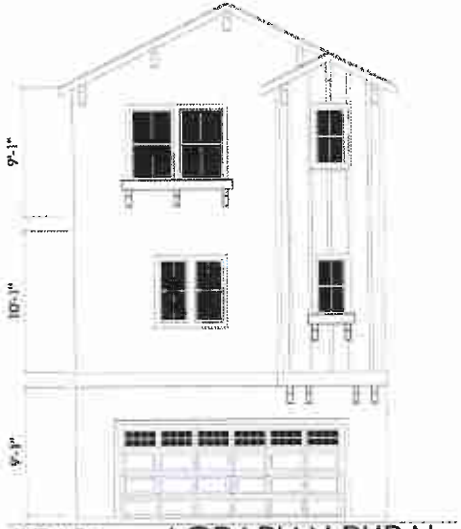
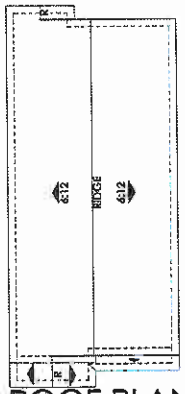


REAR AGRARIAN RURAL



ROOF PLAN

0 4 8 16

0 2 4 8 16

A2.4

PLAN 2 AGRARIAN RURAL

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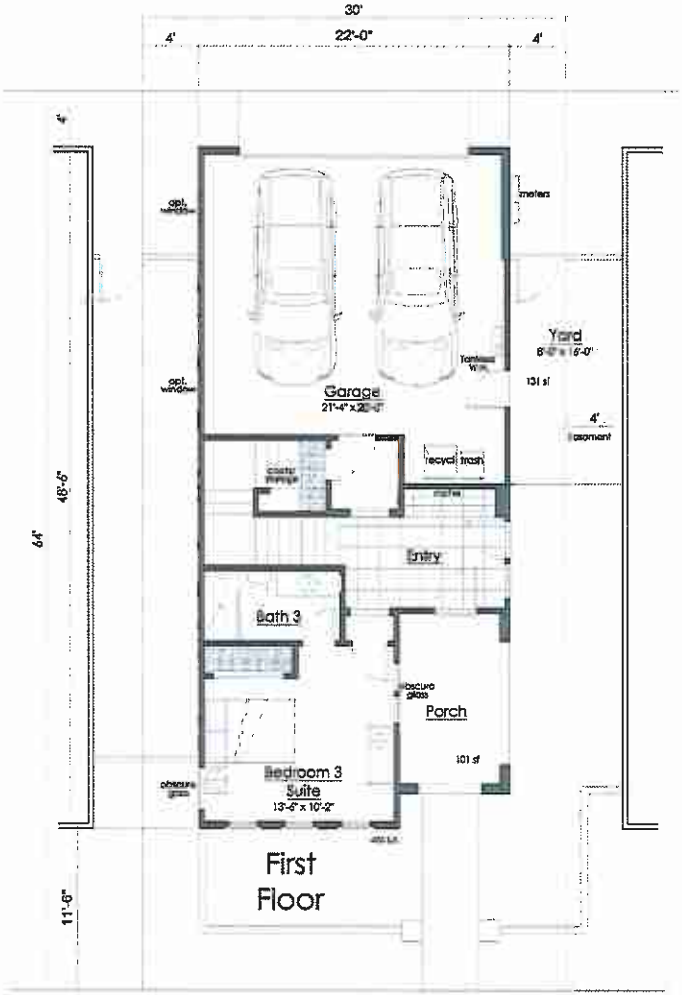
EXHIBIT A p26

Third Floor

Second Floor

Optional Nana Doors



First Floor

Plan 3 Floor Plan

Floor Plan
4 Bedrooms
3.5 Baths
2312 sf

0 2 4 8

A3.0

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EXHIBIT Ap27

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Cementitious Siding/ Shingles
* Shutters
* Decorative Brackets at Wood Posts

FARMHOUSE PLAN 3

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Cementitious Siding/ Shingle Wall
* Wood Railing
* Wood Potshelves
* Stone Veneer

CRAFTSMAN PLAN 3

Material Legend:
* Stucco Finish
* Flat Concrete Tile Roofing
* Cementitious Siding
* Wood Railing
* Wood Potshelves

AGRARIAN RURAL PLAN 3

0 2 4 8 16

A3.1

Plan 3 Front Elevations

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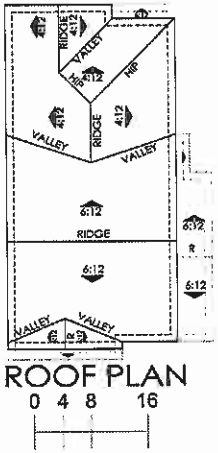
EXHIBIT Ap28



ROOF PLAN

0 2 4 8 16

A3.2

PLAN 3 CRAFTSMAN

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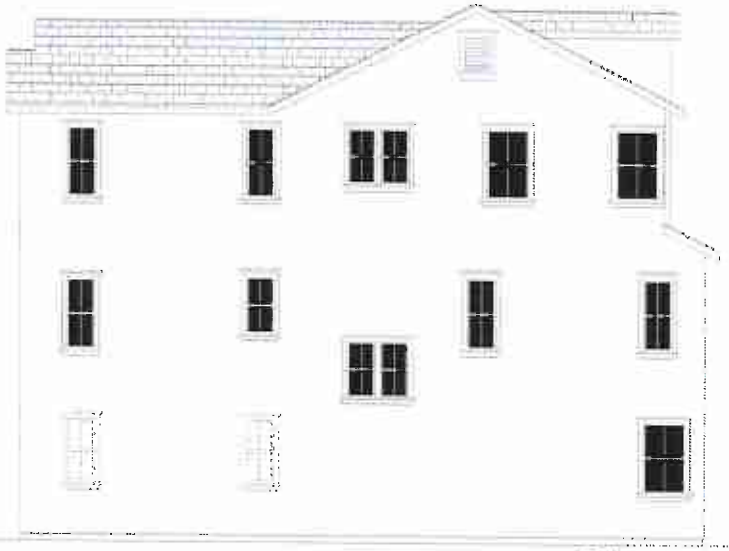
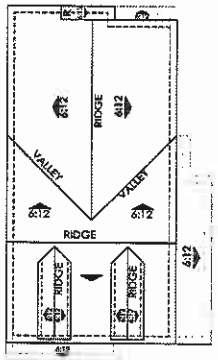
EXHIBIT Ap29



LEFT FARMHOUSE

RIGHT FARMHOUSE

REAR FARMHOUSE



ROOF PLAN

0 4 8 16

0 2 4 8 16

PLAN 3 FARMHOUSE

A3.3

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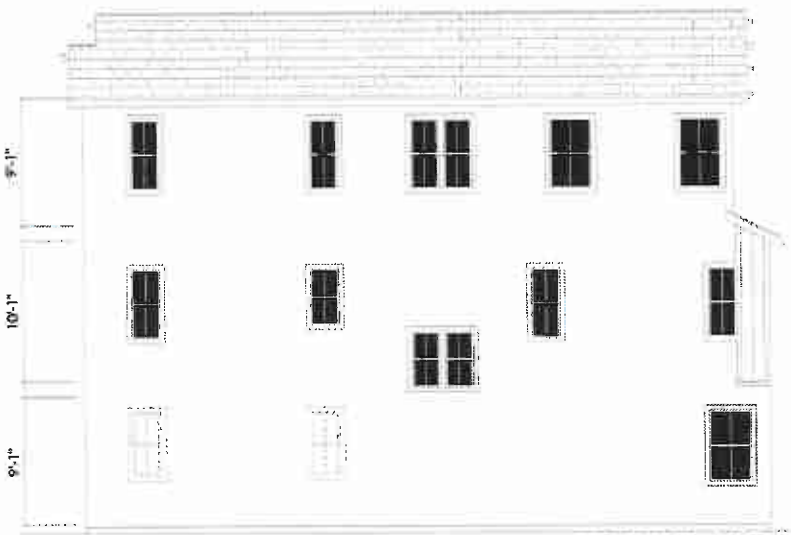
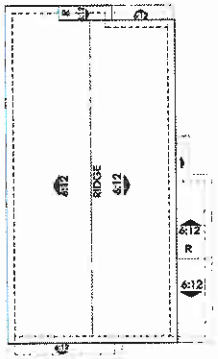
EXHIBIT Ap30



LEFT AGRARIAN RURAL

RIGHT AGRARIAN RURAL

REAR AGRARIAN RURAL



ROOF PLAN

0 4 8 16

0 2 4 8 16

A3.4

PLAN 3 AGRARIAN RURAL

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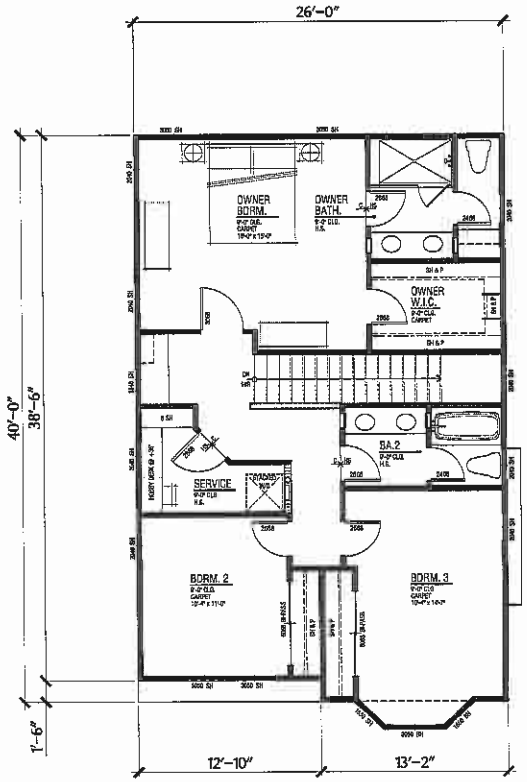
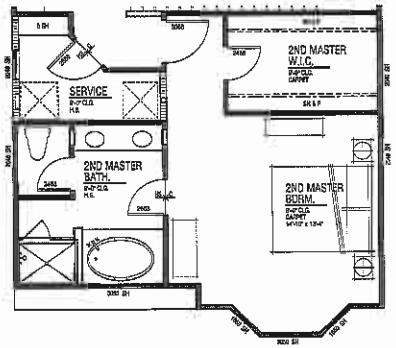
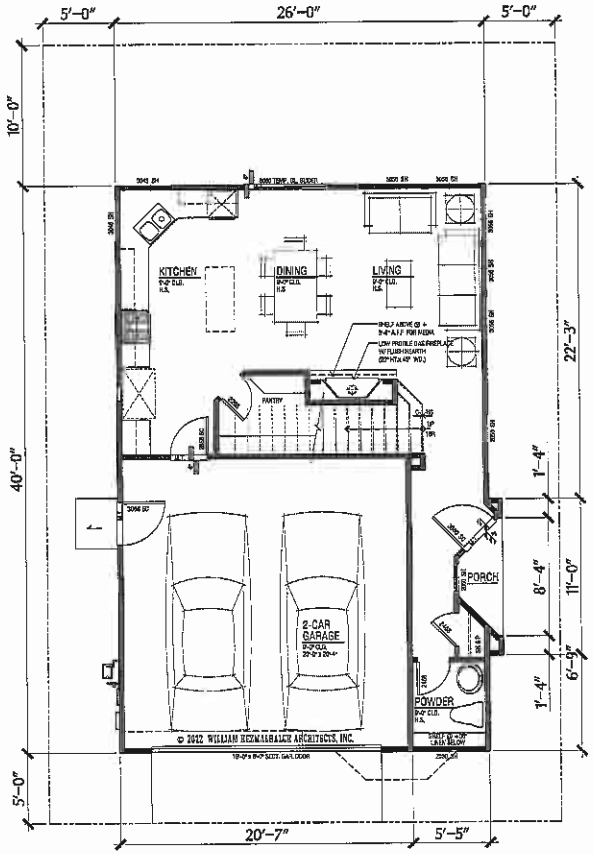
EXHIBIT Ap31



Second Level: 959 SF



Optional 2nd Master



First Level: 550 SF

Plan 1

Elevation A
Total: 1,509 SF
Garage: 423 SF
3 Bdrm / 2 ½ Ba
2 Car Garage

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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4.1

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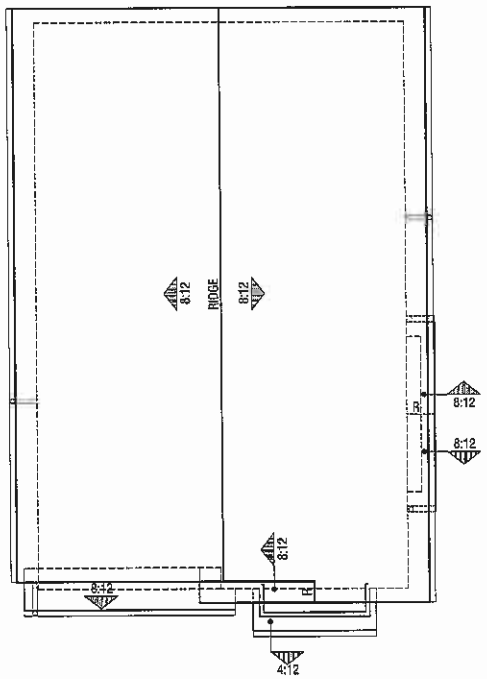
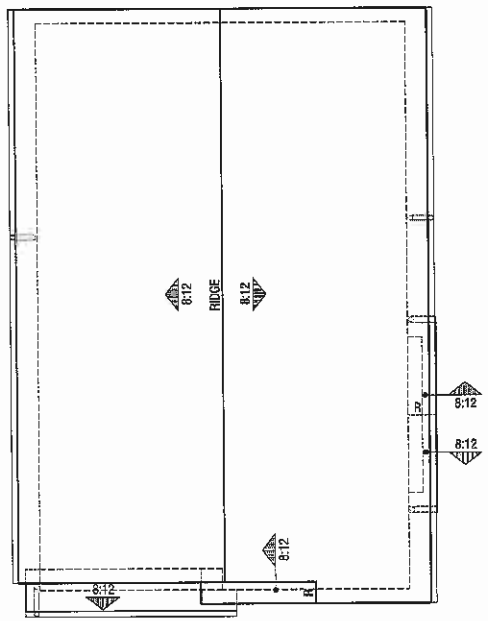
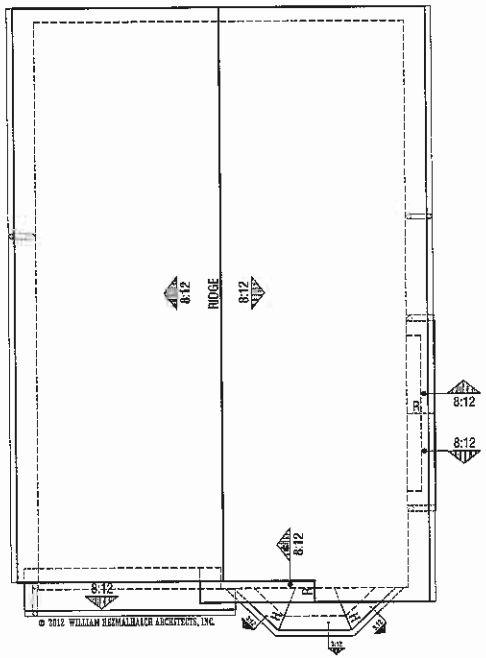
EXHIBIT A p32



Elevation C



Elevation B



Elevation A

Plan 1

Roof Plans

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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4.2

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EXHIBIT A p33

Elevation C

Elevation B

Elevation A

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Plan 1

Front Elevations

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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4.3

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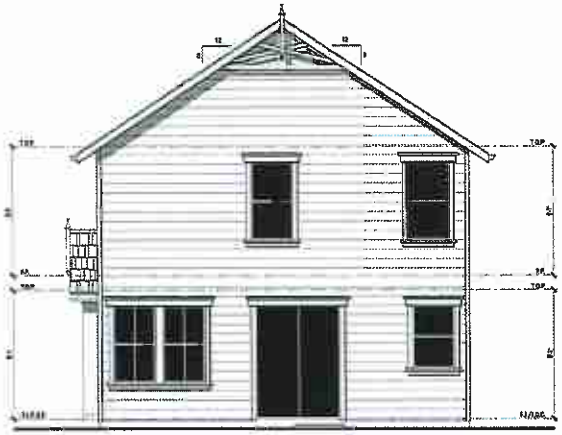
EXHIBIT Ap34

Left Elevation

Right Elevation



Rear Elevation

Front Elevation

Plan 1

Elevation A

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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4.4

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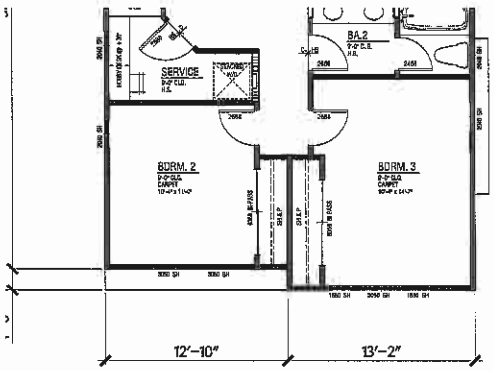
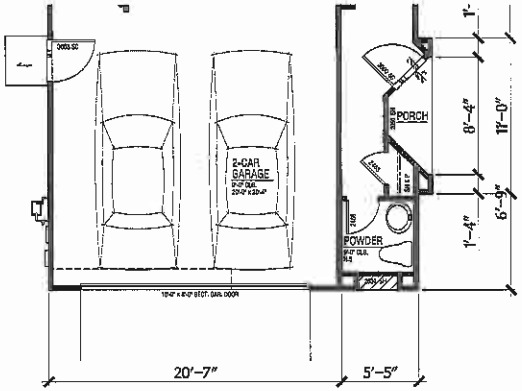
EXHIBIT Ap35



Partial Upper Plan
@ Elevation B



Partial Lower Plan
@ Elevation B

Rear Elevation

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Front Elevation

Plan 1

Elevation B

Dumbarton - T.O.D.

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Trumark Companies

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4.5

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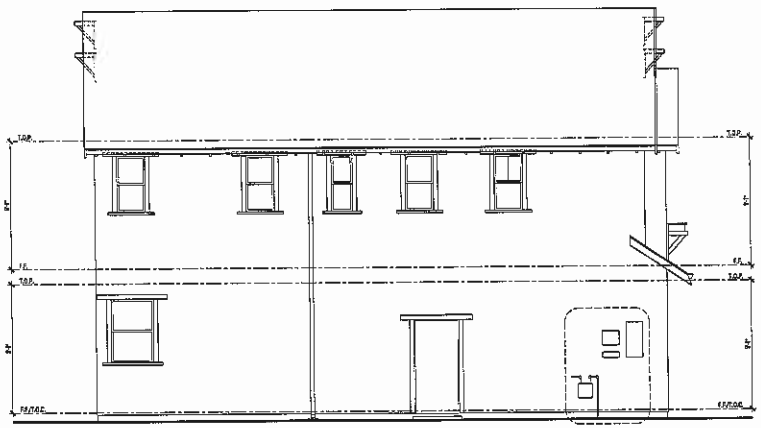
EXHIBIT A p36



Left Elevation

Right Elevation

Plan 1

Elevation B

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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4.5.1

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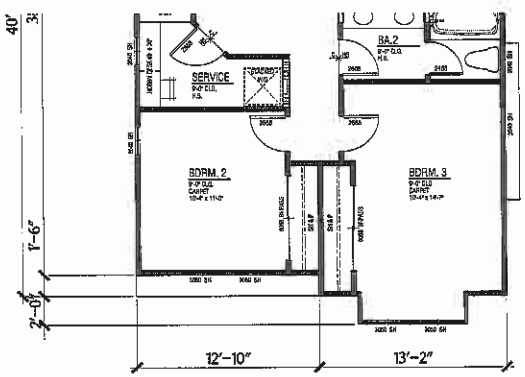
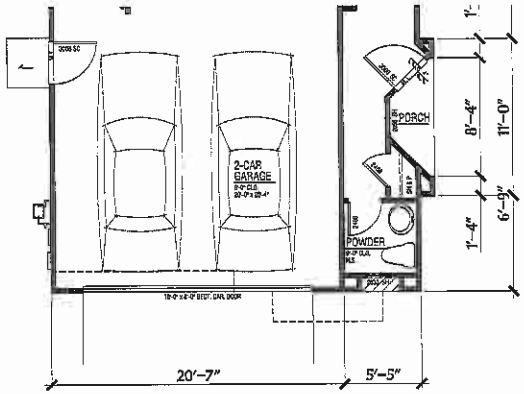
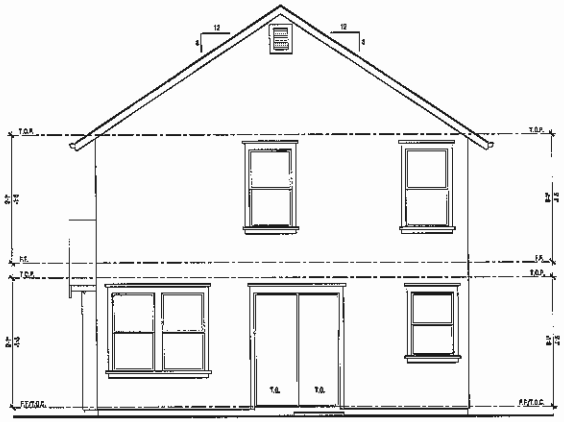
EXHIBIT A p37



Partial Upper Plan
@ Elevation C



Partial Lower Plan
@ Elevation C



Rear Elevation

Front Elevation

Plan 1

Elevation C

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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4.6

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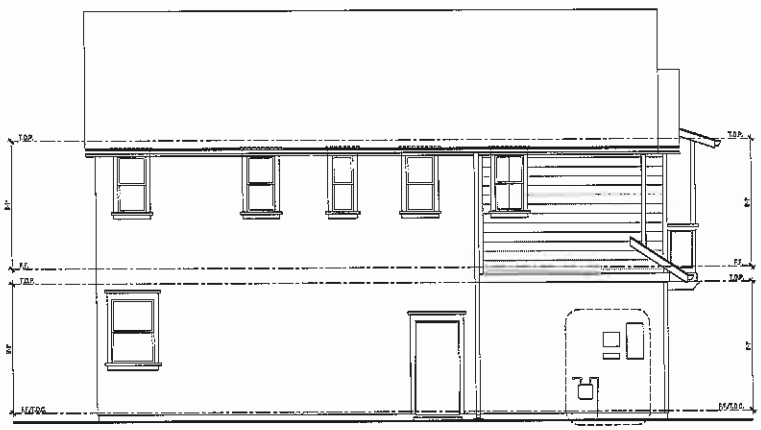
EXHIBIT A p38



Left Elevation

Right Elevation

Plan 1

Elevation C

Dumbarton - T.O.D.

Product B
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Trumark Companies

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4.6.1

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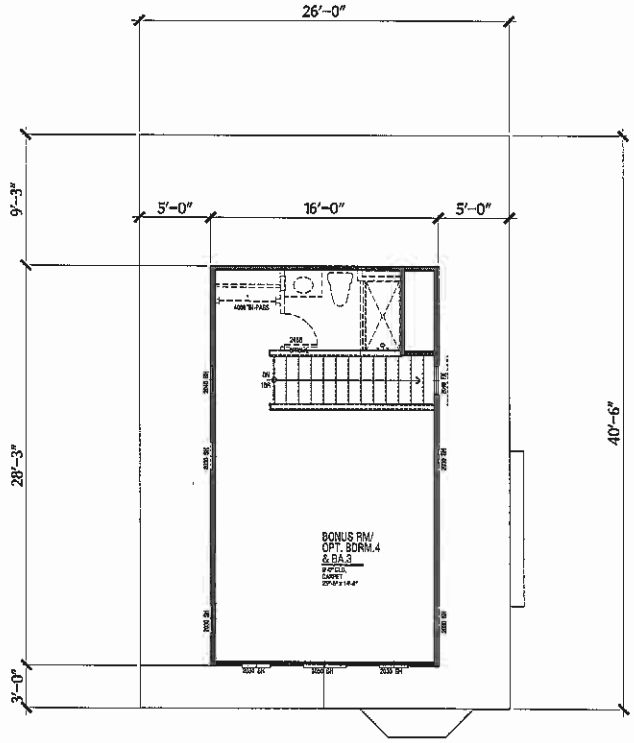
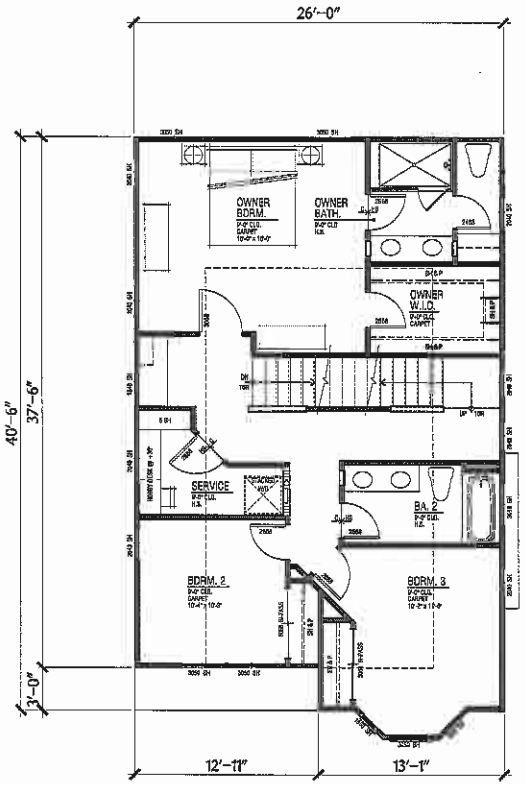
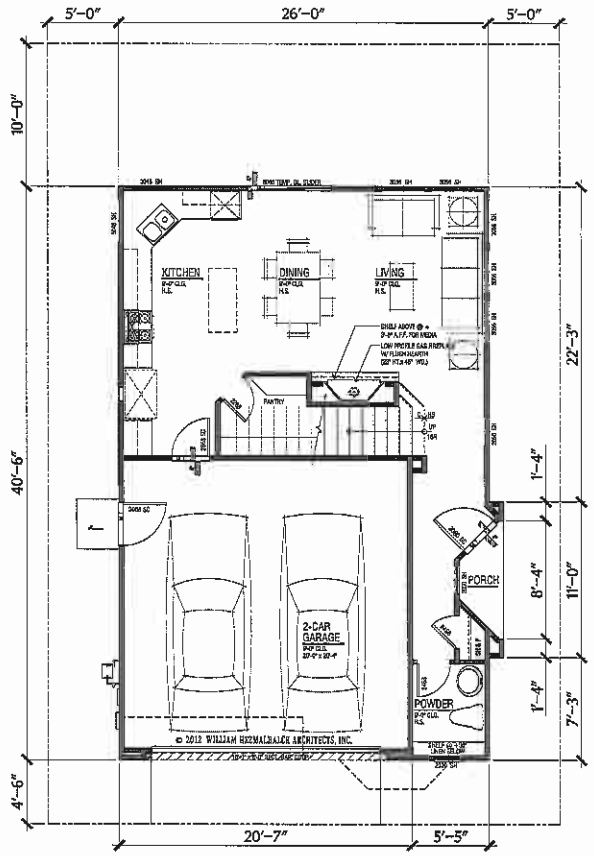
EXHIBIT A p39



Third Level: 394 SF



Second Level: 954 SF



First Level: 550 SF

Plan 1X

Elevation A

Total: 1,898 SF
Garage: 423 SF
3 Bdrm / Bonus Rm / 2 ½ Ba
2 Car Garage

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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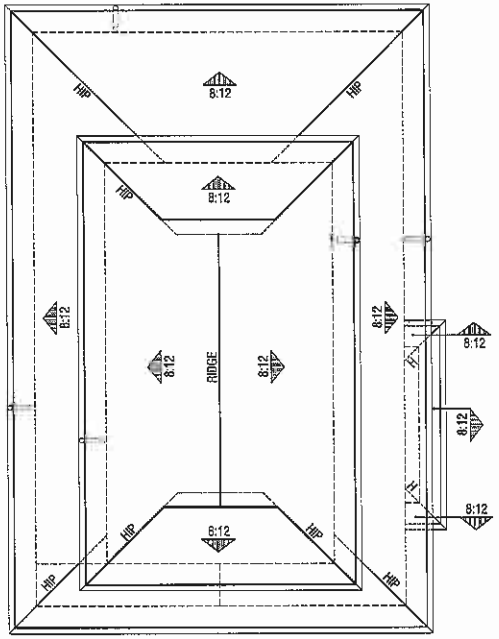
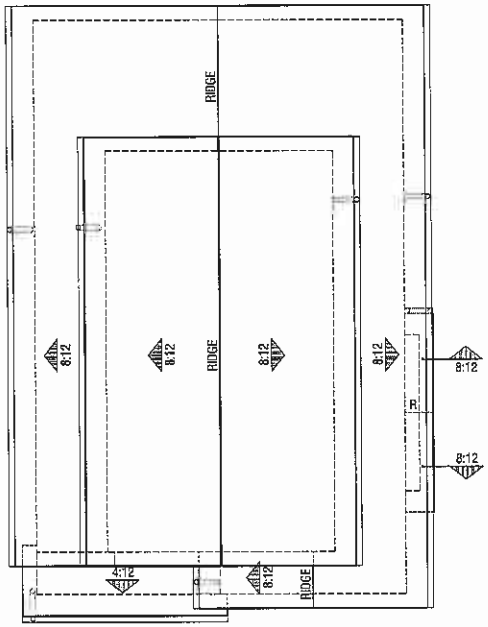
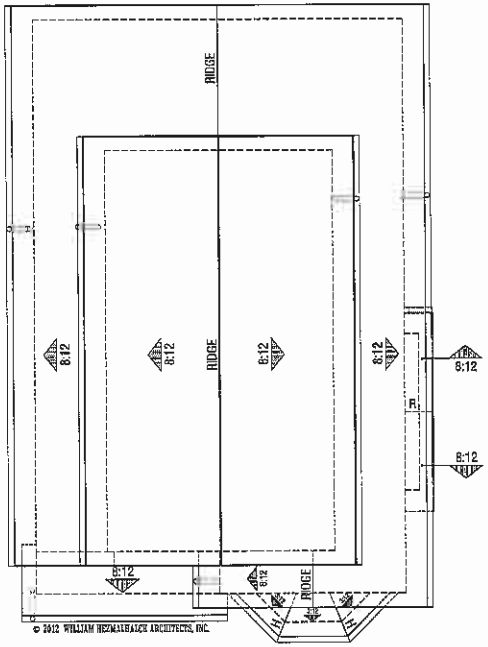
EXHIBIT Ap 40



Elevation C



Elevation B



Elevation A

Plan 1X

Roof Plans

Dumbarton - T.O.D.

Product B
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Trumark Companies

0 4 8 12

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5.2

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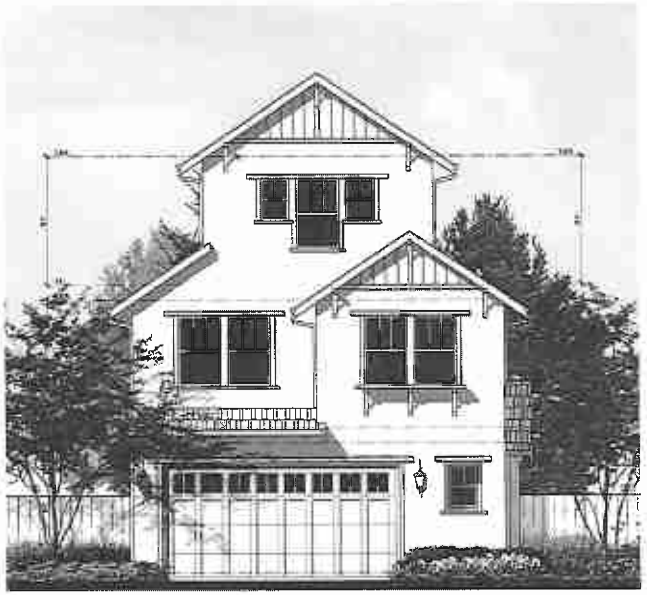
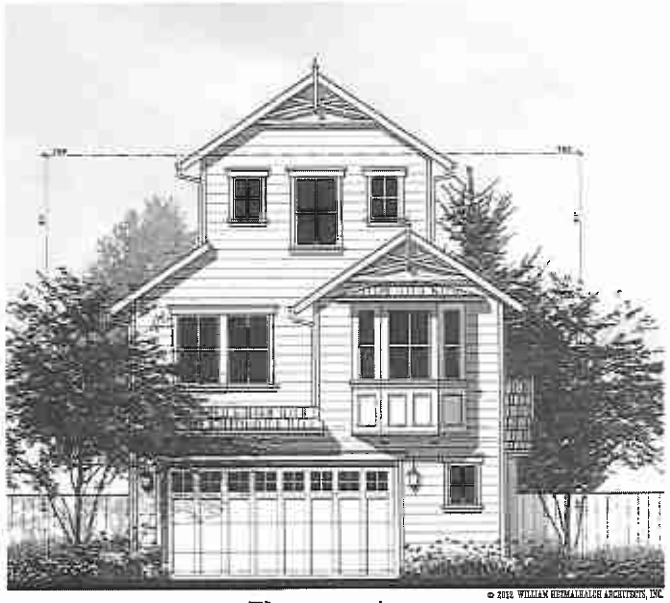
EXHIBIT A p41

Elevation C



Elevation B



Elevation A

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Plan 1X

Front Elevations

Dumbarton - T.O.D.

Product B
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Trumark Companies

0 4 8 12

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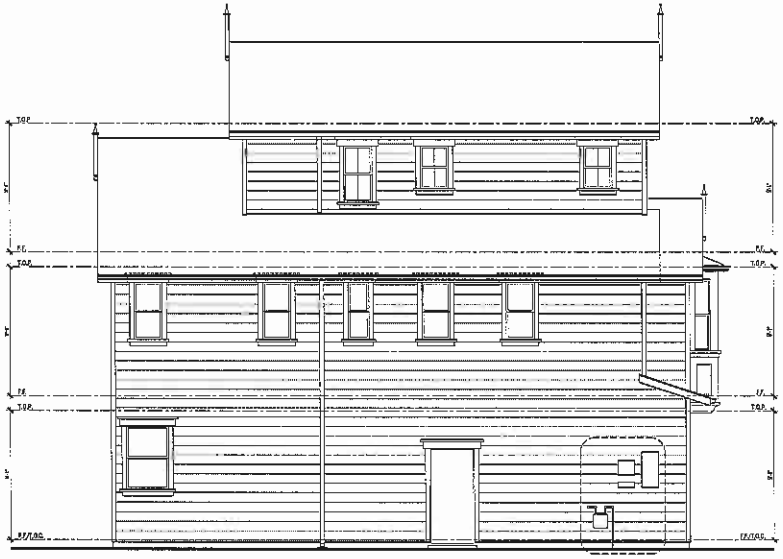
5.3

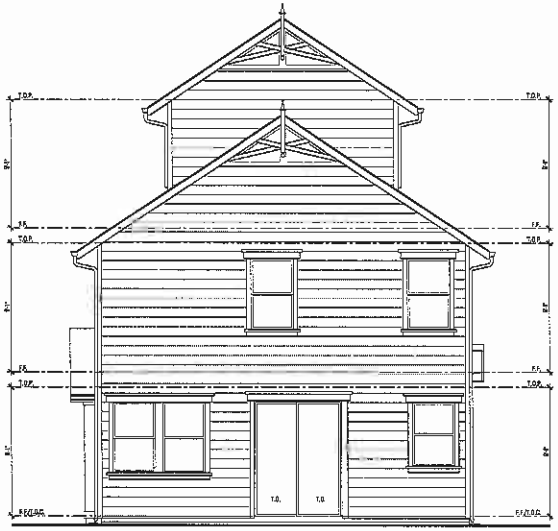
2011000 Dumbarton - T.O.D. - Newark, CA

EXHIBIT Ap42



Left Elevation

Right Elevation



Rear Elevation

Front Elevation

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Plan 1X

Elevation A

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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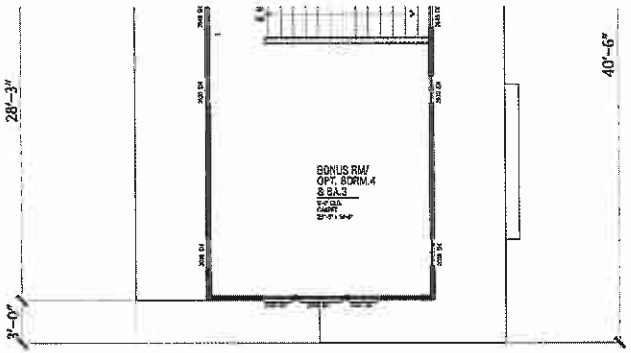
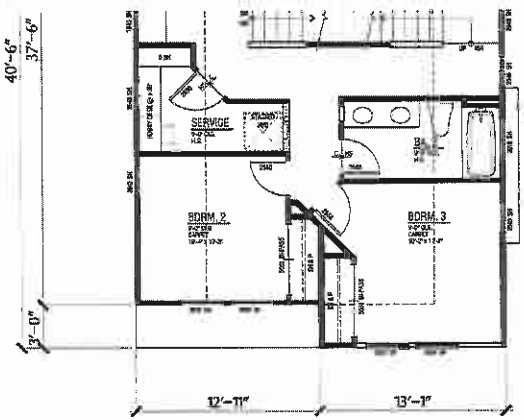
5.4

2011060 Dumbarton - T.O.D. - Newark, CA

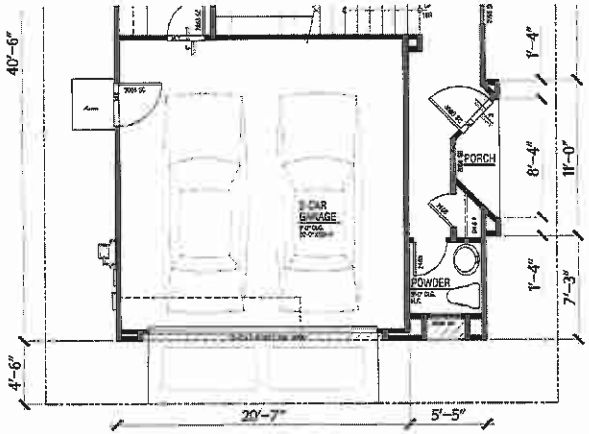
EXHIBIT Ap43



Partial Third Level Plan
@ Elevation B



Partial Second Level Plan
@ Elevation B



Partial First Level Plan
@ Elevation B

Rear Elevation

Front Elevation

Plan 1X

Elevation B

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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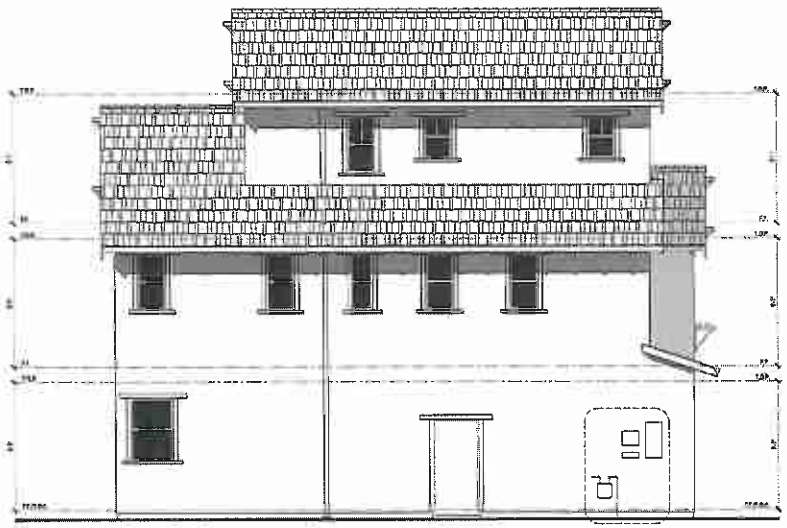
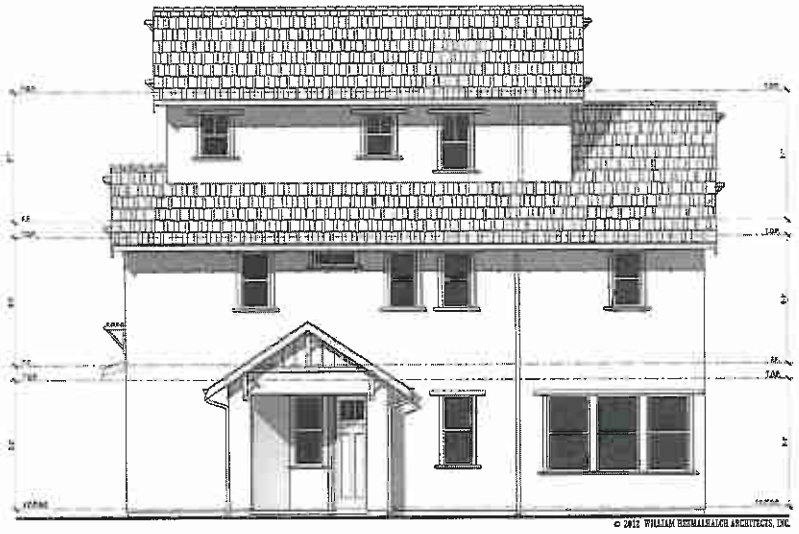
5.5

2011090 Dumbarton - T.O.D. - Newark, CA

EXHIBIT Ap44



Left Elevation



Right Elevation

Plan 1X

Elevation B

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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5.5.1

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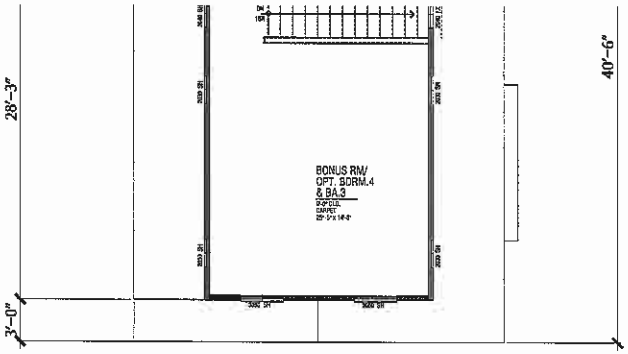
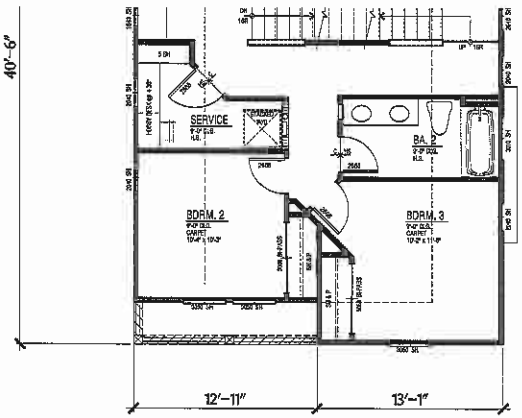
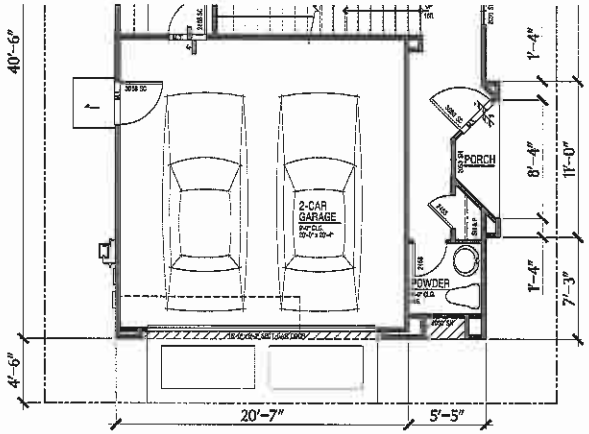
EXHIBIT Ap45



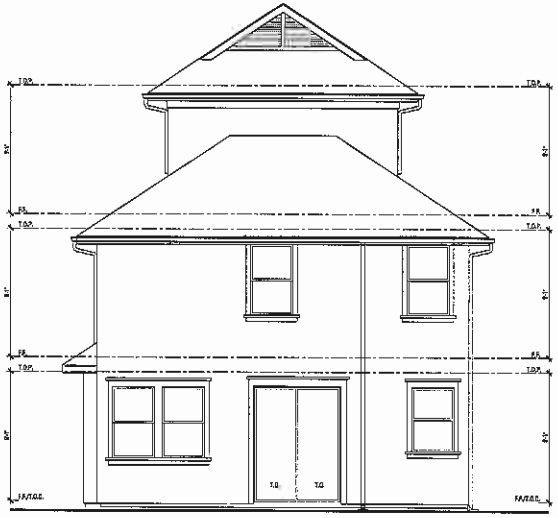
Partial Third Level Plan
@ Elevation C



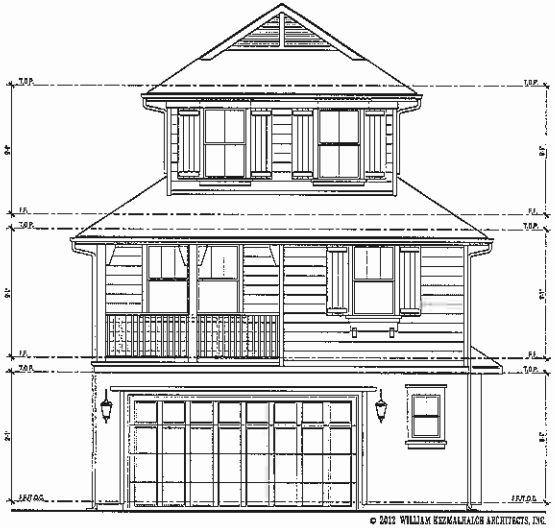
Partial Second Level Plan
@ Elevation C



Partial First Level Plan
@ Elevation C



Rear Elevation



Front Elevation

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Plan 1X

Elevation C

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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5.6

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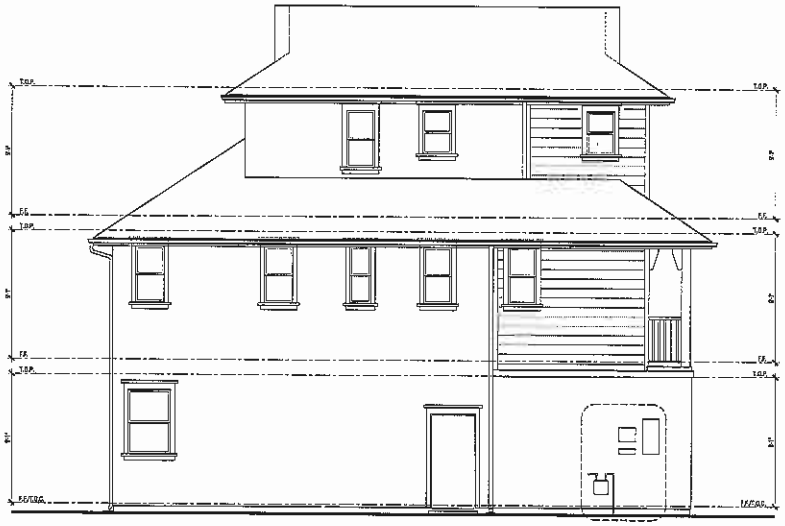
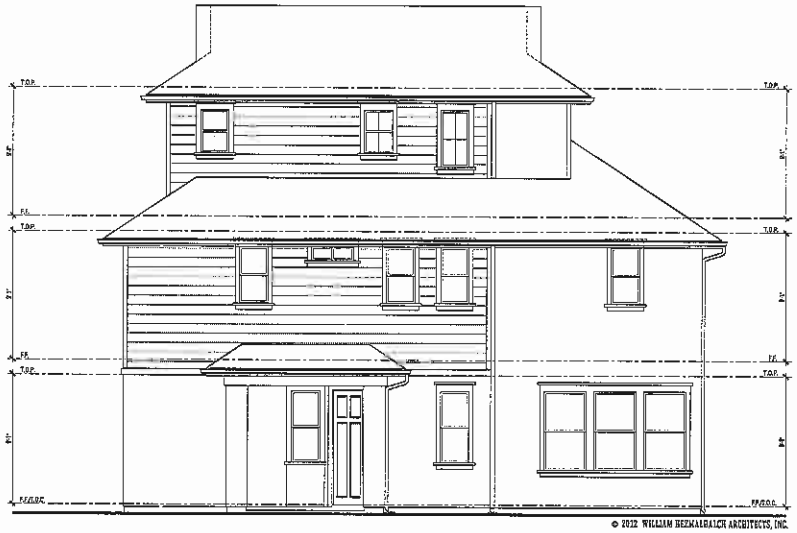
EXHIBIT Ap46



Left Elevation



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Right Elevation

Plan 1X

Elevation C

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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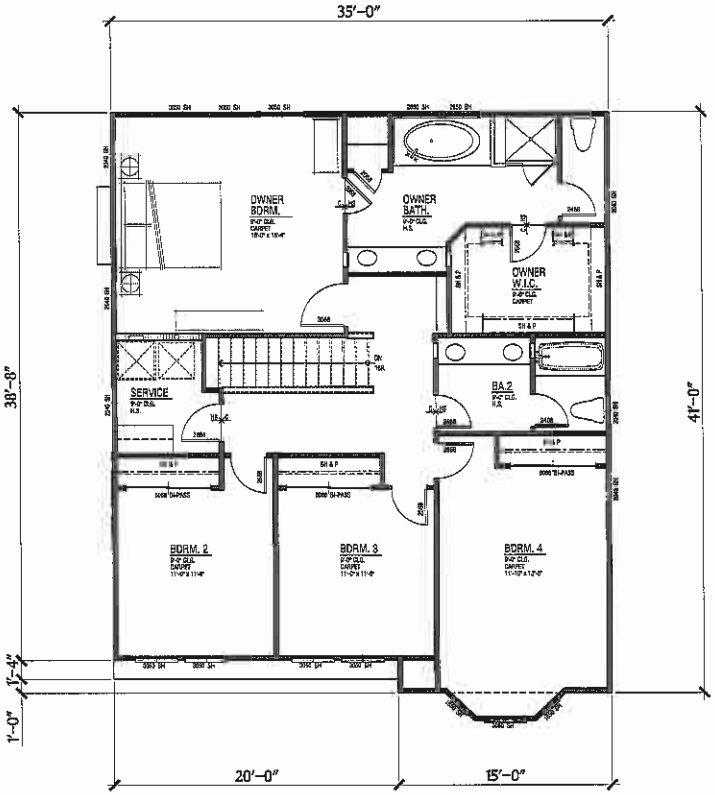
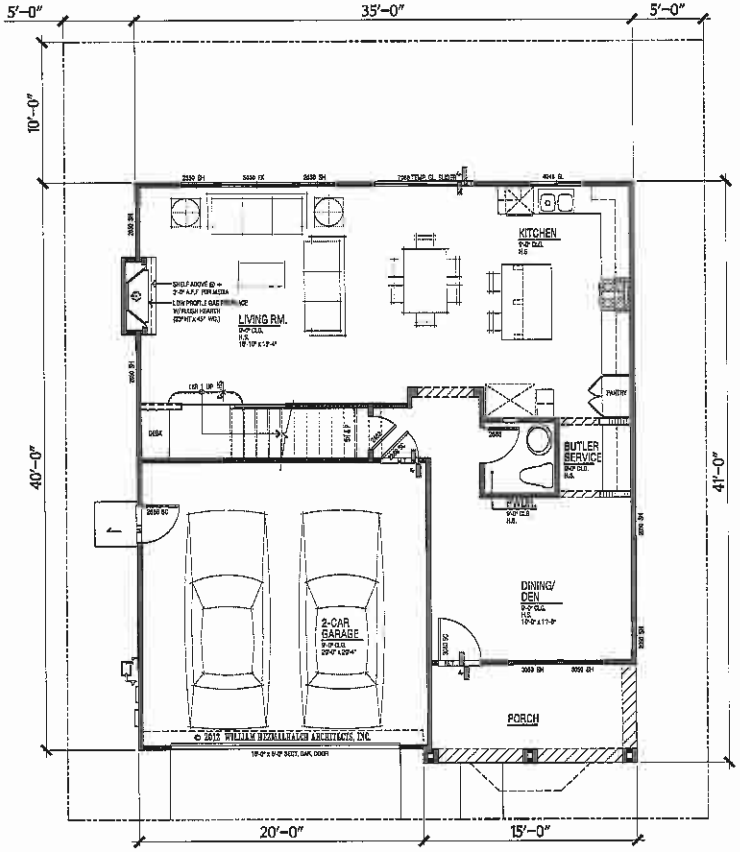
EXHIBIT A-47



Second Level: 1,304 SF



First Level: 895 SF

Plan 2

Elevation A
Total: 2,199 SF
Garage: 424 SF
4 Bdrm / Dining/Den / 2 ½" Ba
2 Car Garage

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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6.1

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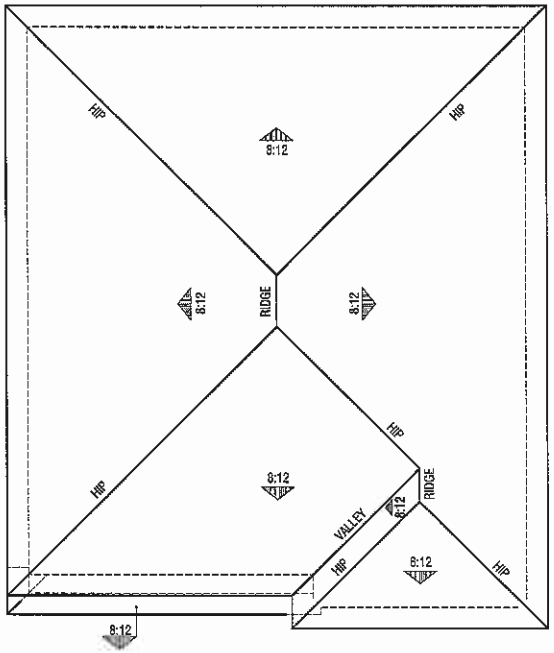
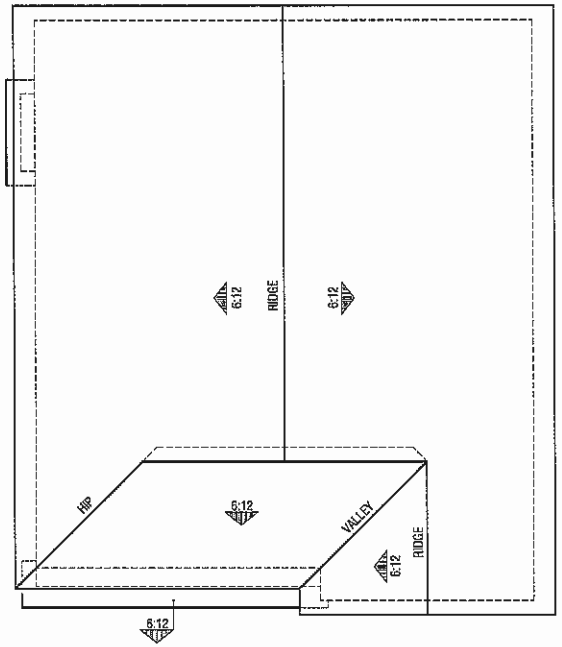
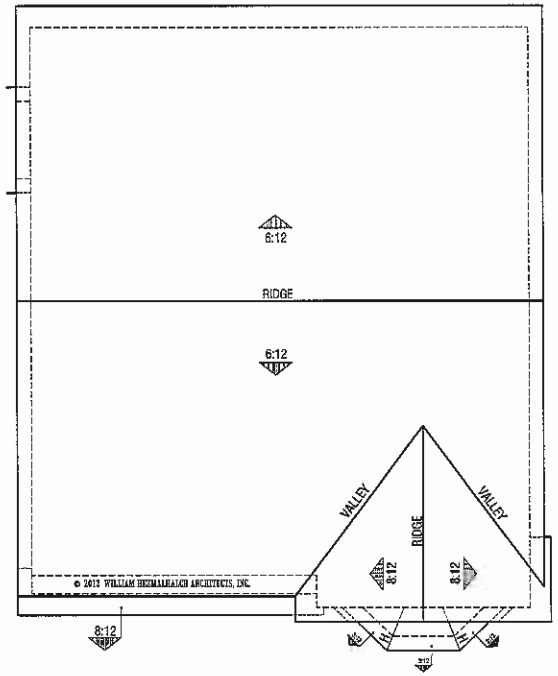
EXHIBIT A p48



Elevation C



Elevation B



Elevation A

Plan 2

Roof Plans

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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6.2

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EXHIBIT Ap19

Elevation C

Elevation B

Elevation A

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Plan 2

Front Elevations

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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[illegible] 0607 [illegible] fax 949 259 1509

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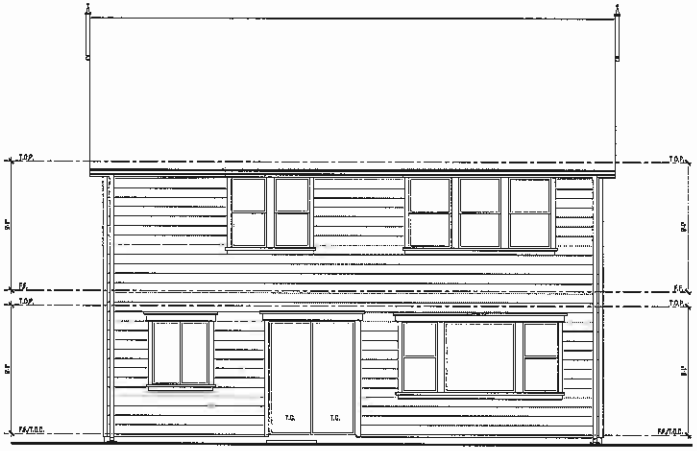
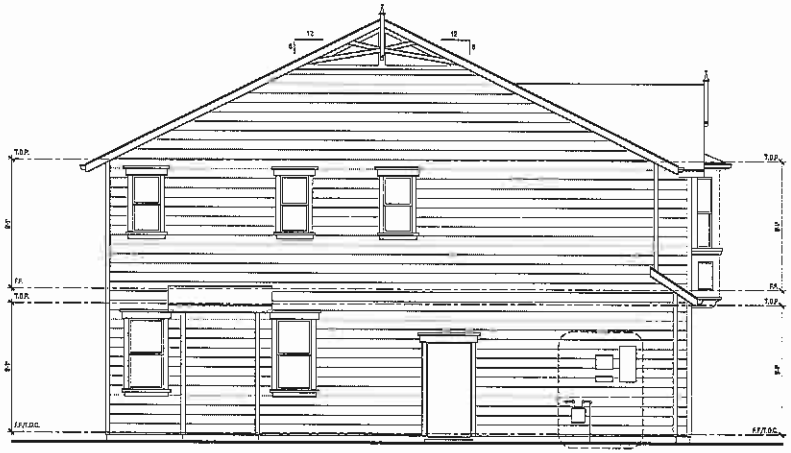
6.3

2011090 Dumbarton - T.O.D. - Newark, CA

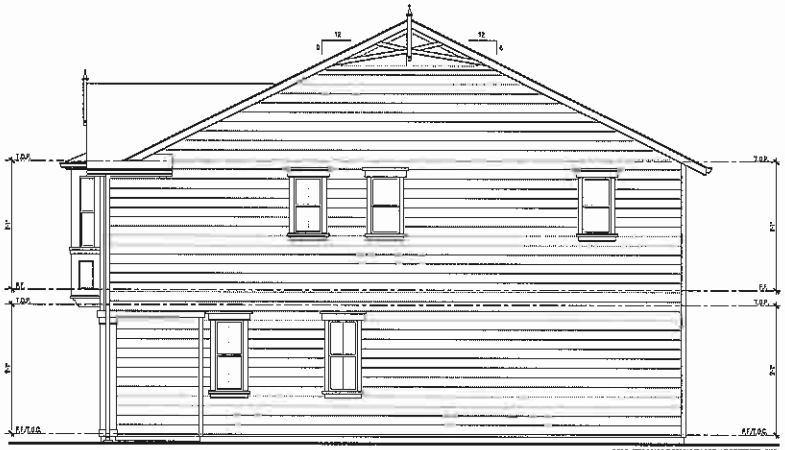
EXHIBIT A p50



Rear Elevation



Left Elevation



Right Elevation

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Plan 2

Elevation A

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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6.4

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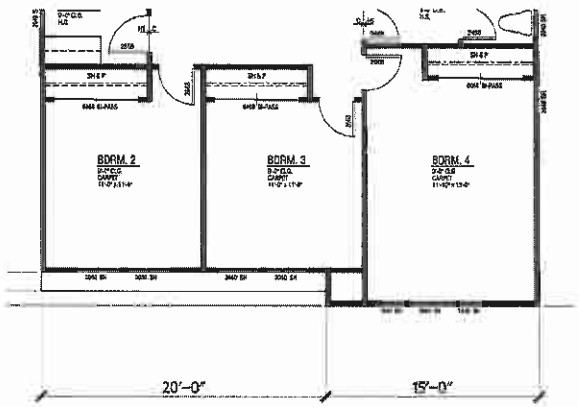
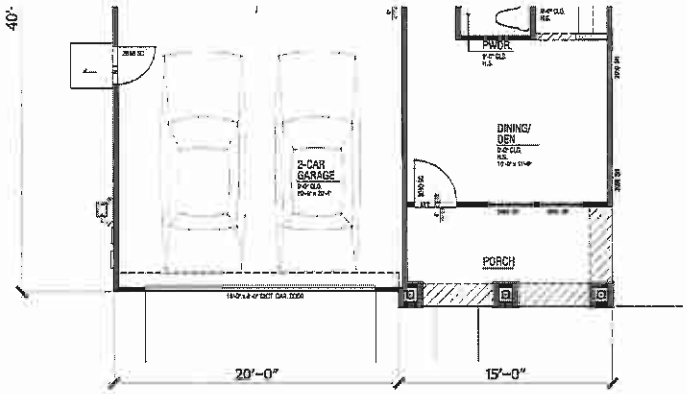
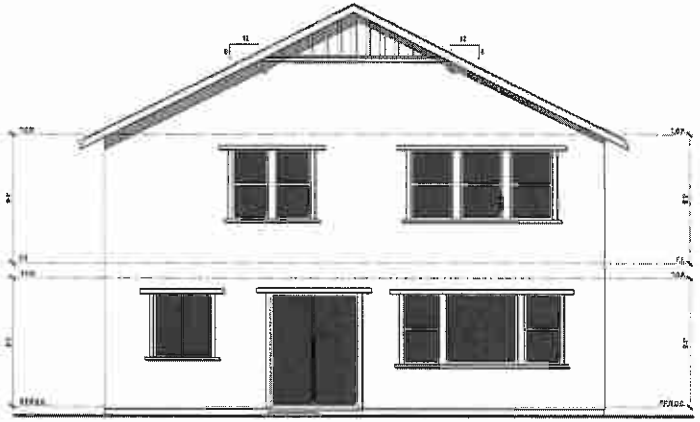
EXHIBIT A p51



Partial Upper Plan
@ Elevation B



Partial Lower Plan
@ Elevation B



Rear Elevation

Front Elevation

Plan 2

Elevation B

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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6.5

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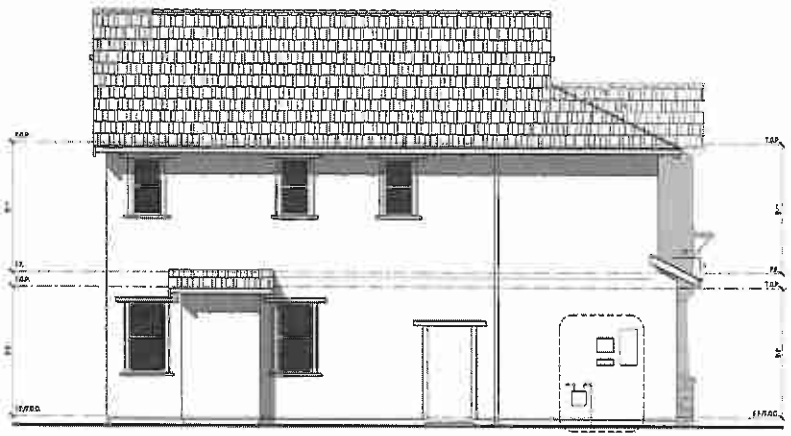
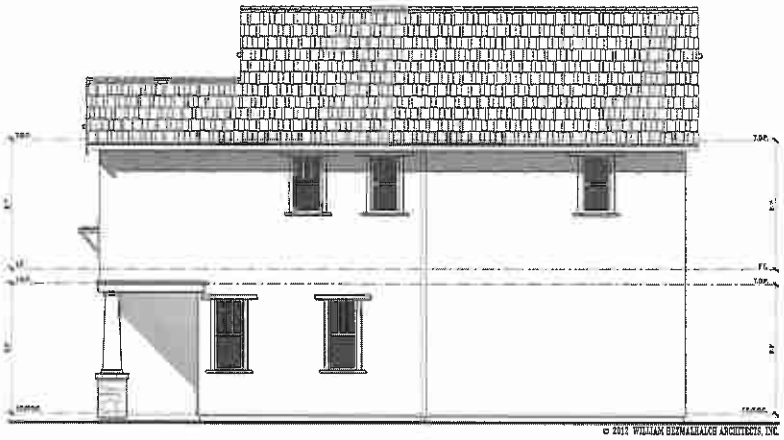
EXHIBIT A p52



Left Elevation



Right Elevation

Plan 2

Elevation B

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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6.5.1

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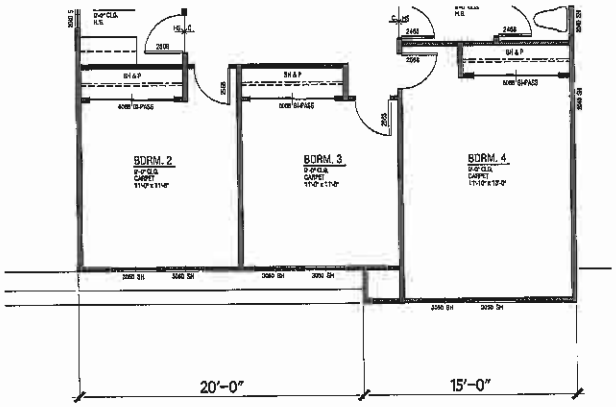
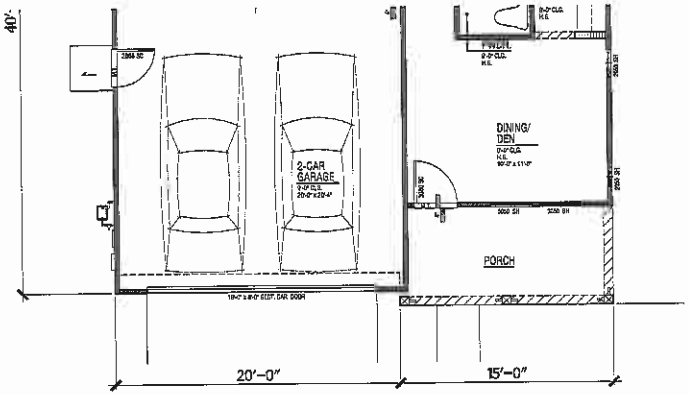
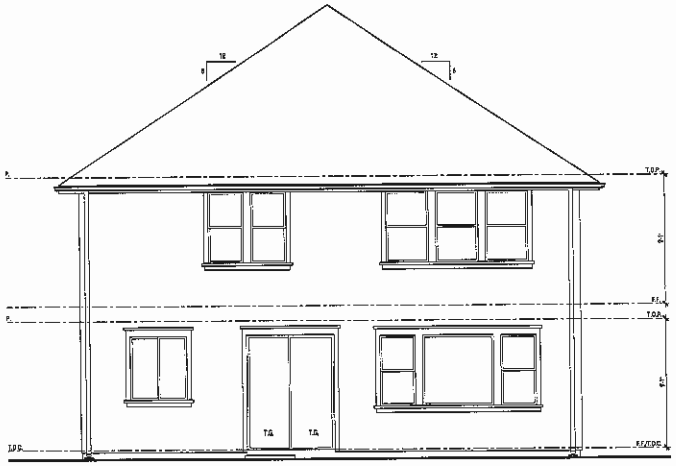
EXHIBIT AD53



Partial Upper Plan
@ Elevation C



Partial Lower Plan
@ Elevation C



Rear Elevation

Front Elevation

Plan 2

Elevation C

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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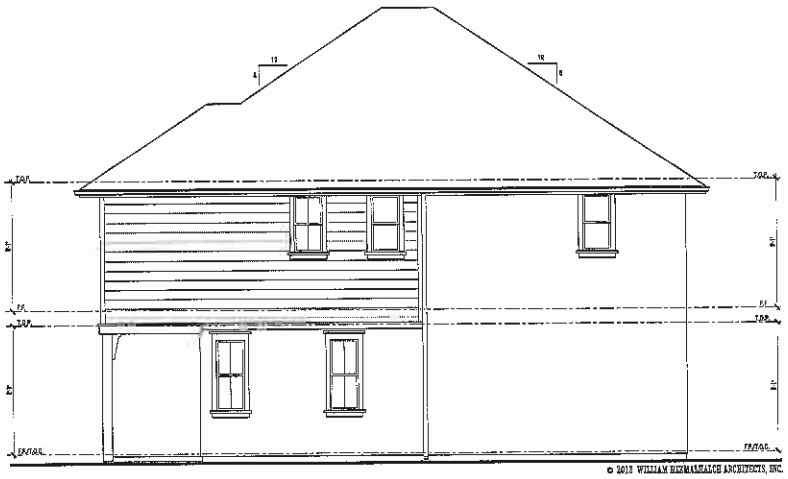
6.6

2011050 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p54

Left Elevation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Right Elevation

Plan 2

Elevation C

Dumbarton - T.O.D.

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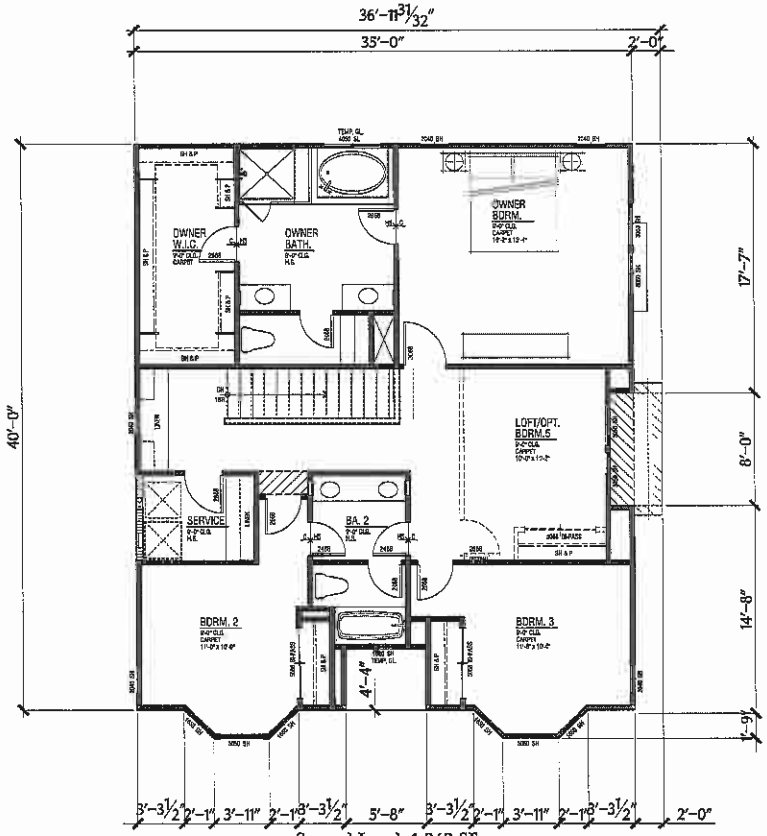
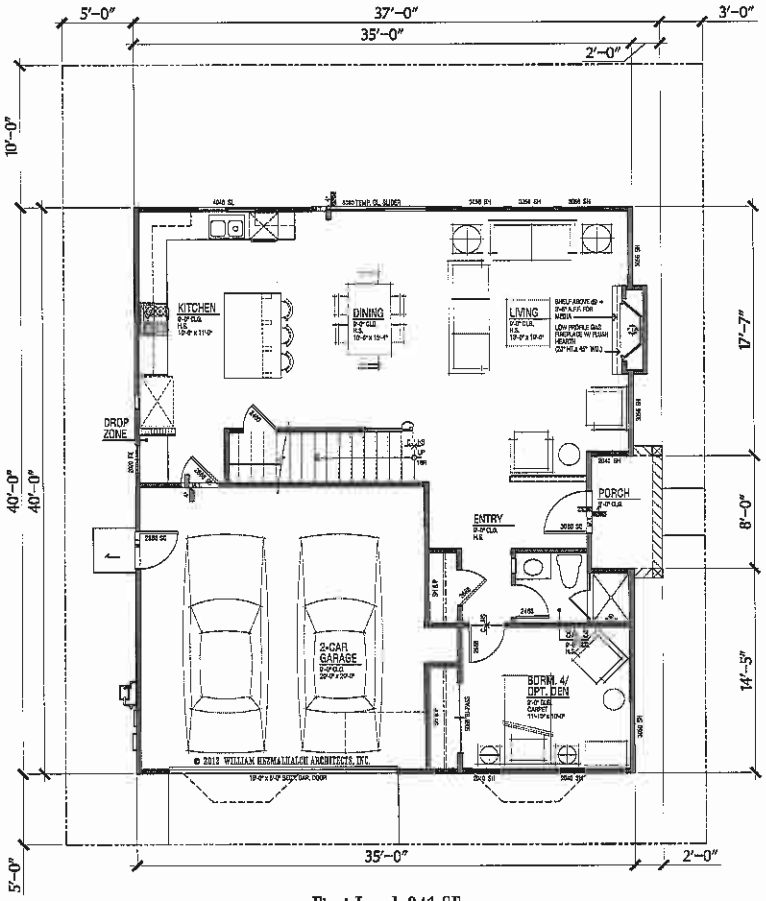
6.6.1

2011099 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p55



Second Level: 1,262 SF



First Level: 941 SF

Plan 3

Elevation A

Total: 2,203 SF
Garage: 414 SF
4 Bdrm /Flex Room / 3 Ba
2 Car Garage

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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7.1

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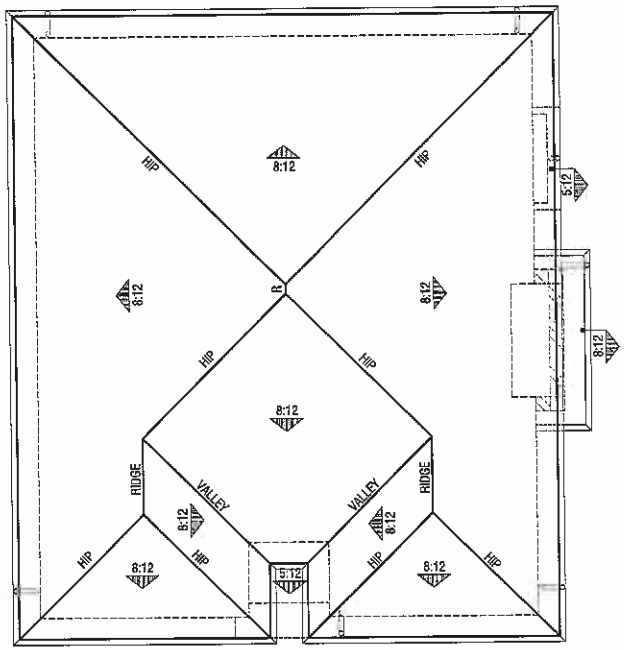
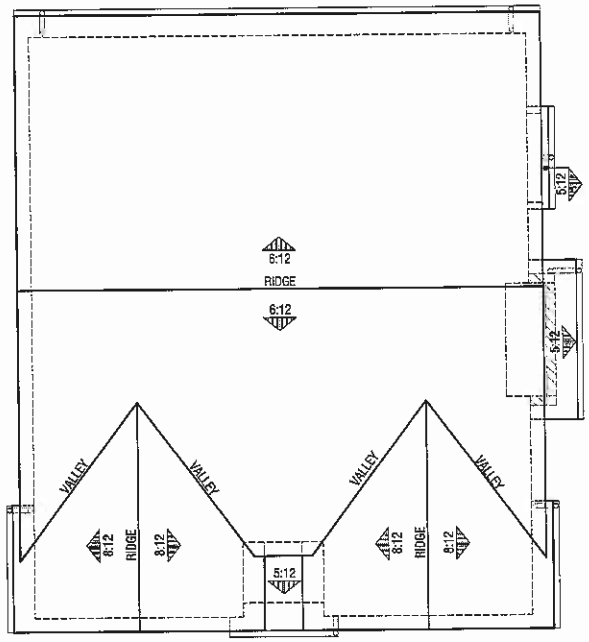
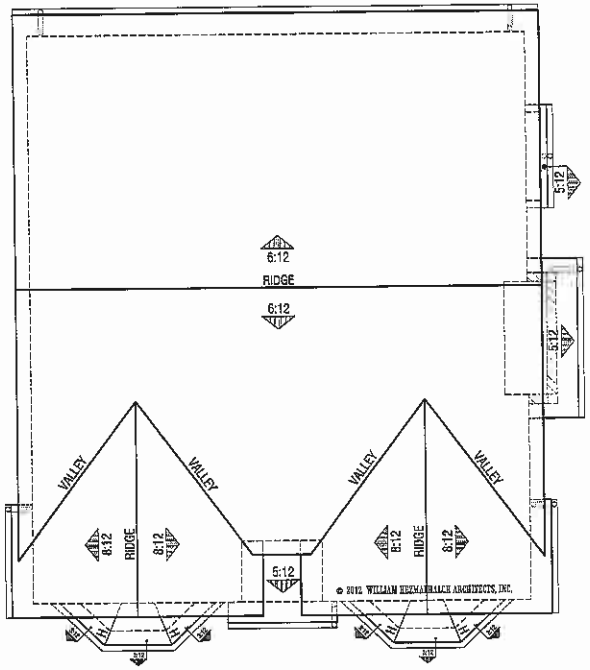
EXHIBIT A p56



Elevation C



Elevation B



Elevation A

Plan 3

Roof Plans

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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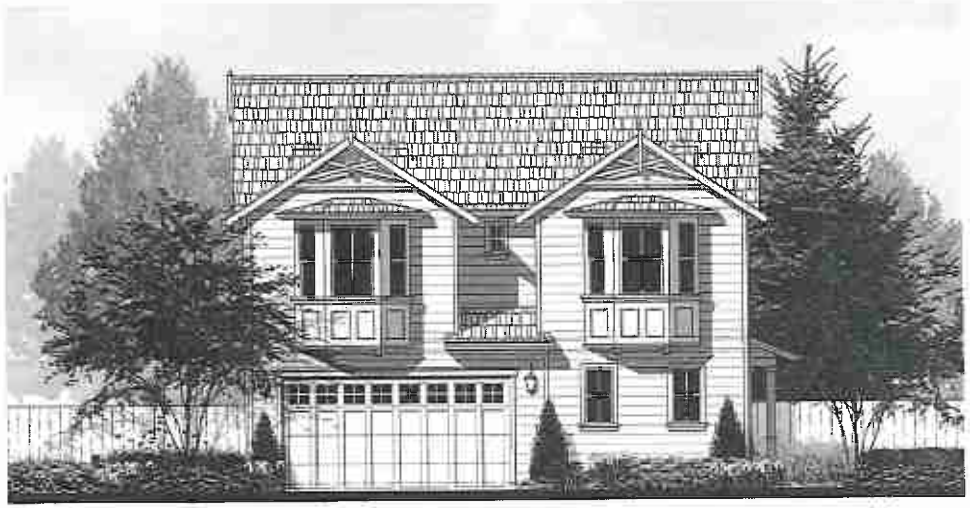
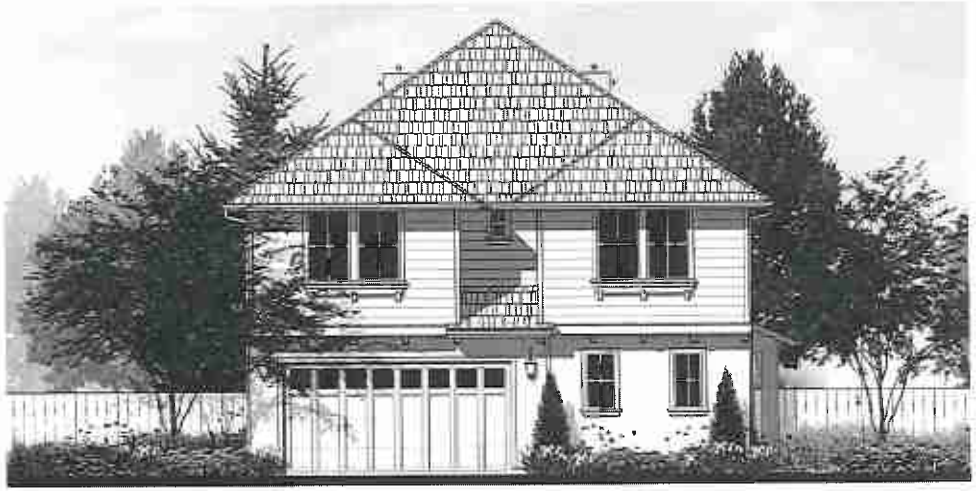
7.2

2011.090 Dumbarton - T.O.D. - Newark, CA

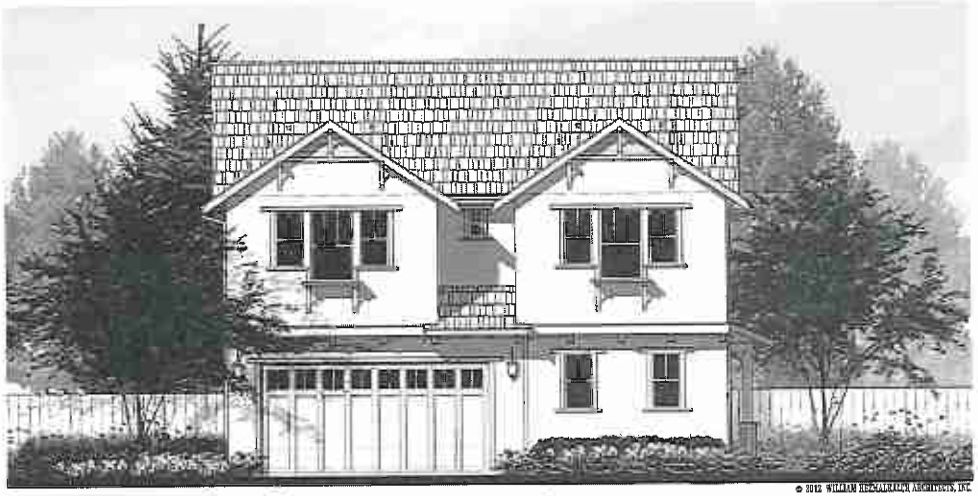
EXHIBIT A p57



Elevation A



Elevation C



Elevation B

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Plan 3

Front Elevations

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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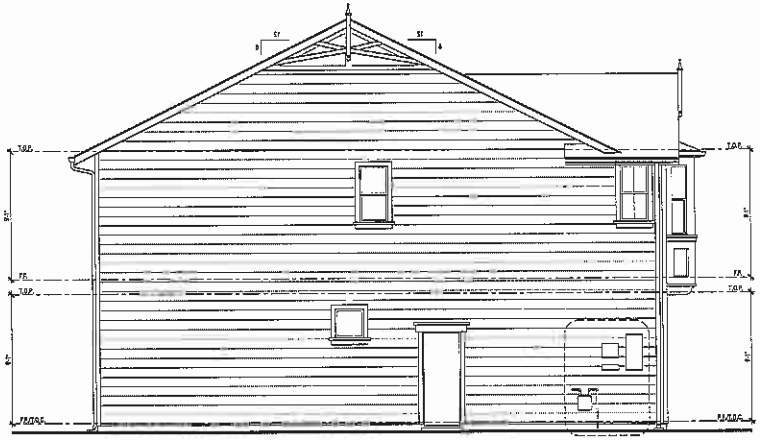
February 21, 2012

7.3

2011090 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p58

Rear Elevation



Left Elevation

Right Elevation

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Plan 3

Elevation A

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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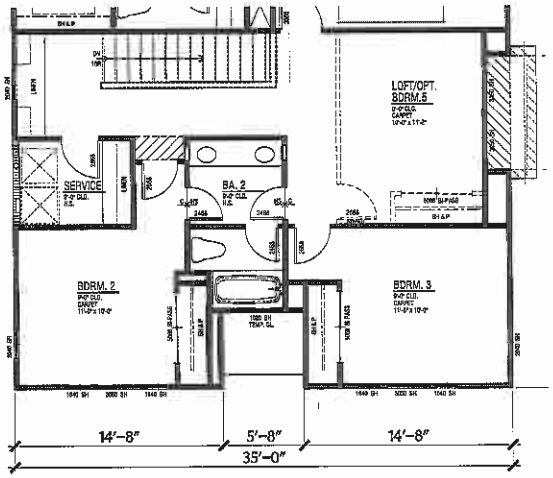
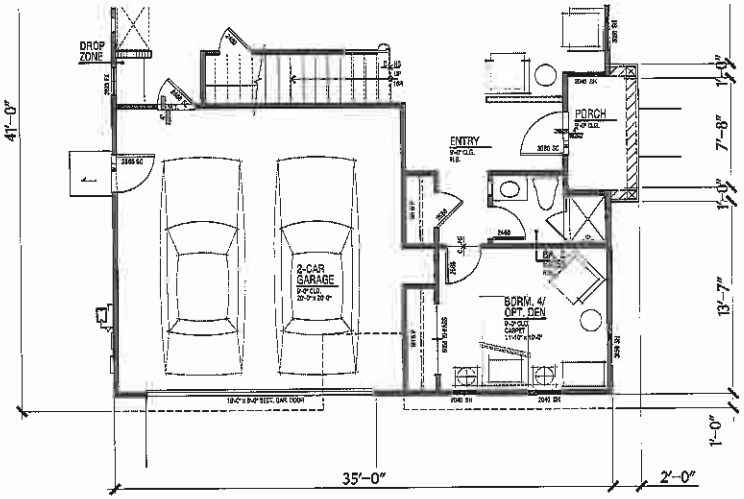
7.4

2011090 Dumbarton - T.O.D. - Newark, CA

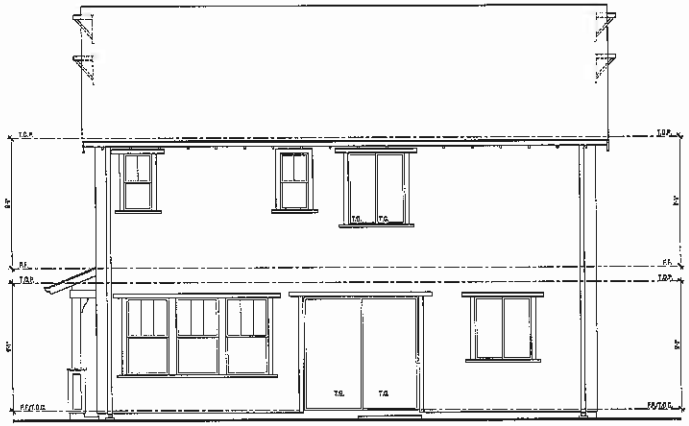
EXHIBIT Ap59



Partial Upper Plan
@ Elevation B



Partial Lower Plan
@ Elevation B



Rear Elevation

Front Elevation

Plan 3

Elevation B

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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7.5

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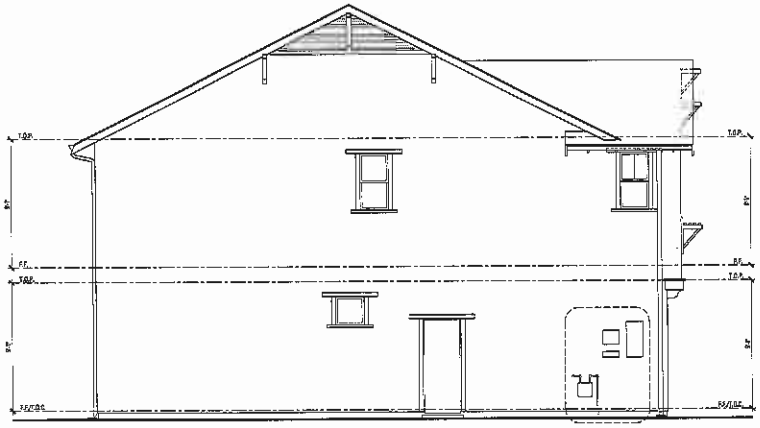
EXHIBIT A p60



Left Elevation

Right Elevation

Plan 2

Elevation B

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

0 4 8 12

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7.5.1

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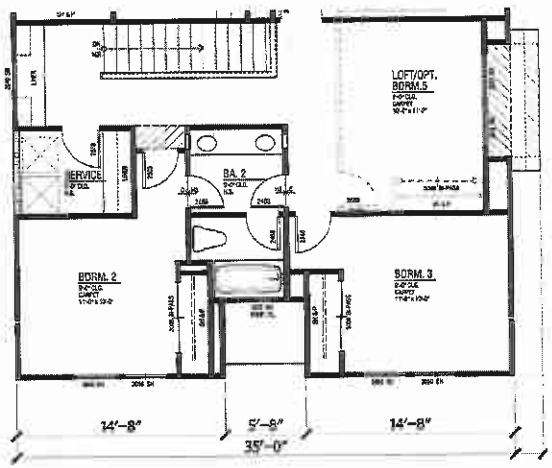
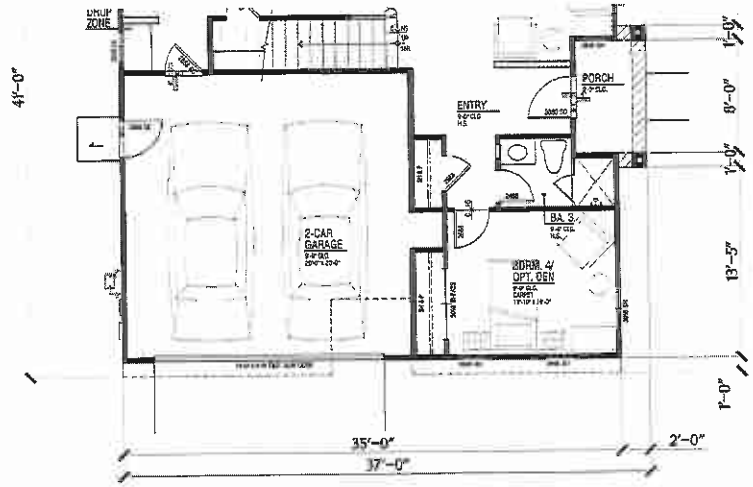
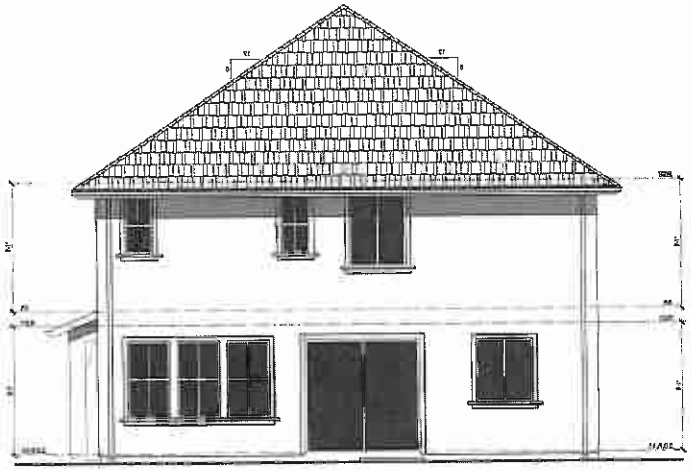
EXHIBIT A p61



Partial Upper Plan
@ Elevation C



Partial Lower Plan
@ Elevation C



Rear Elevation

Front Elevation

Plan 3

Elevation C

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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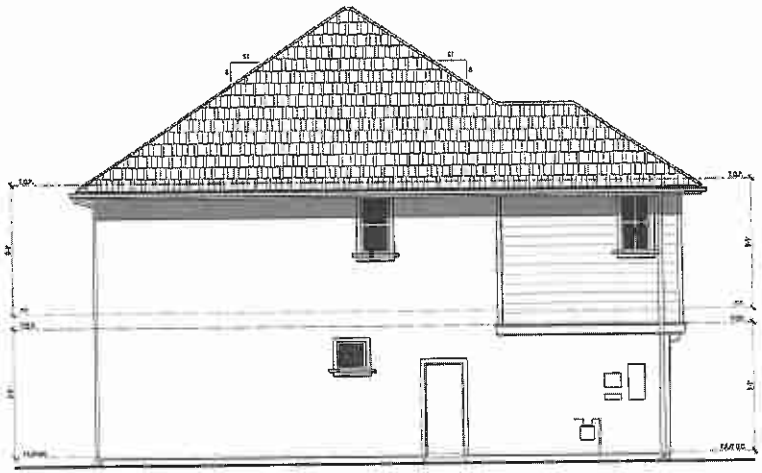
7.6

2011060 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p62



Left Elevation

Right Elevation

Plan 3

Elevation C

Dumbarton - T.O.D.

Product B
Newark, CA
Trumark Companies

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7.6.1

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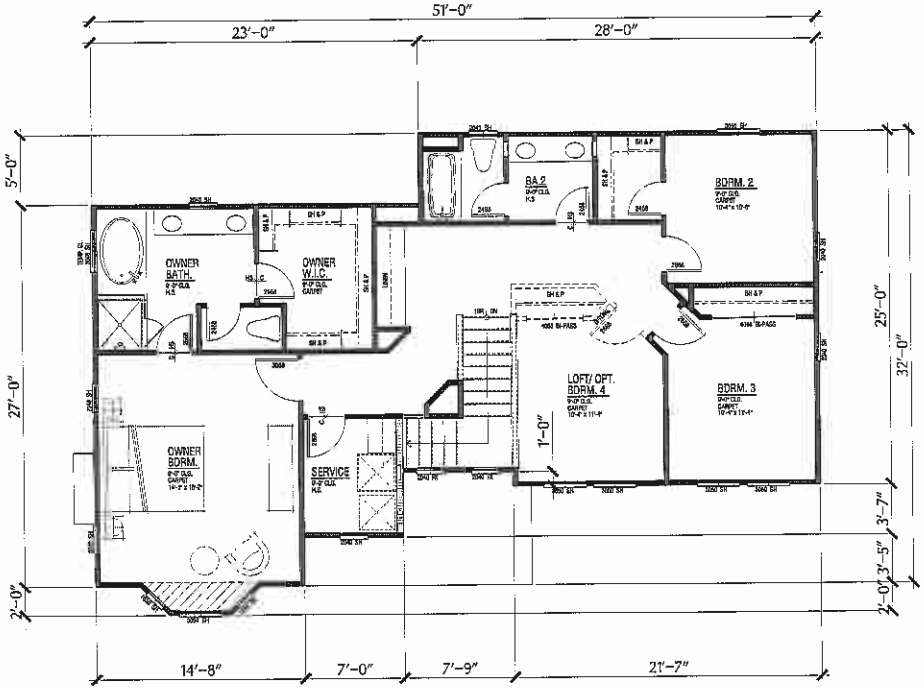
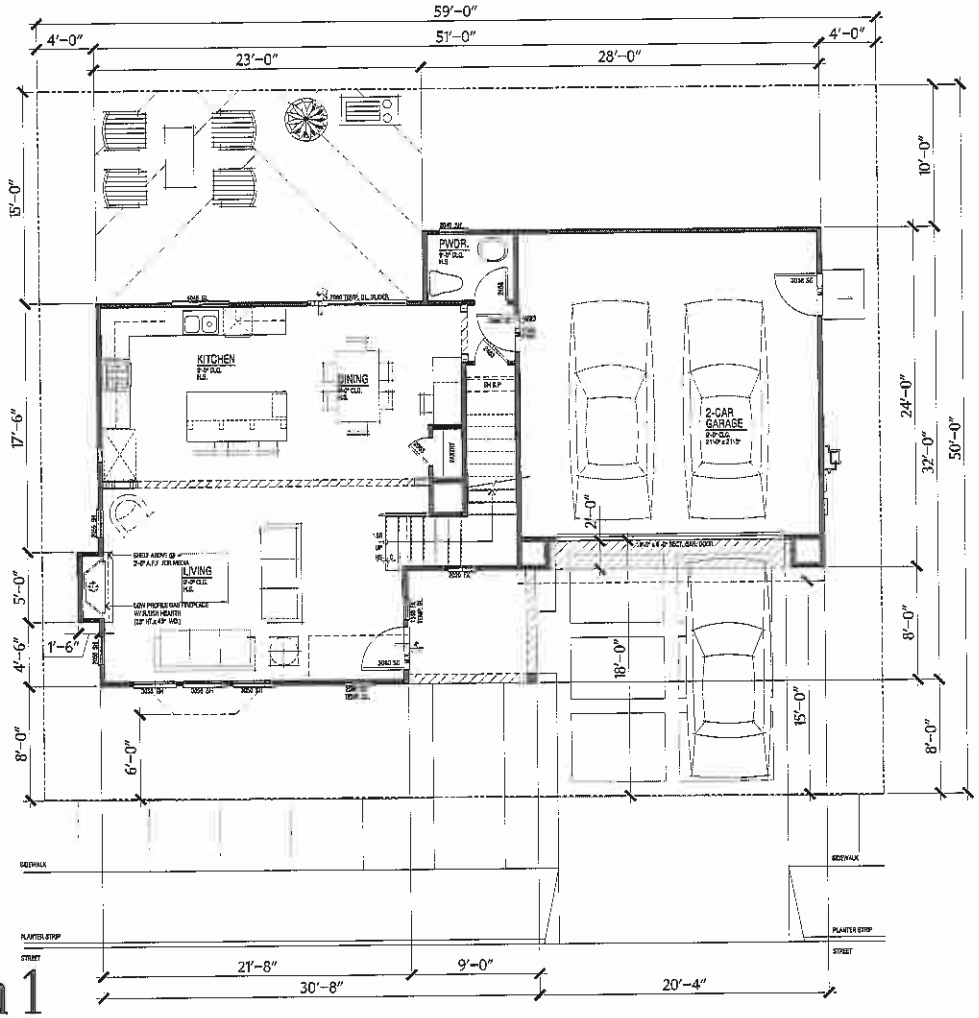
EXHIBIT A p63



Second Level: 1,227 SF



First Level: 774 SF

Lot width	59'
Lot depth	50'
Porch/stoop setback	8'
Front building face setback	8'
Front second story bay window setback	6'
Rear building setback	10'
Side building setback	4'

Plan 1

Total: 2,001 SF
Garage: 468 SF
3 Bdrm / Loft /2 ½ Ba
2 Car Garage

Dumbarton - T.O.D.

Product C
Newark, CA
Trumark Companies

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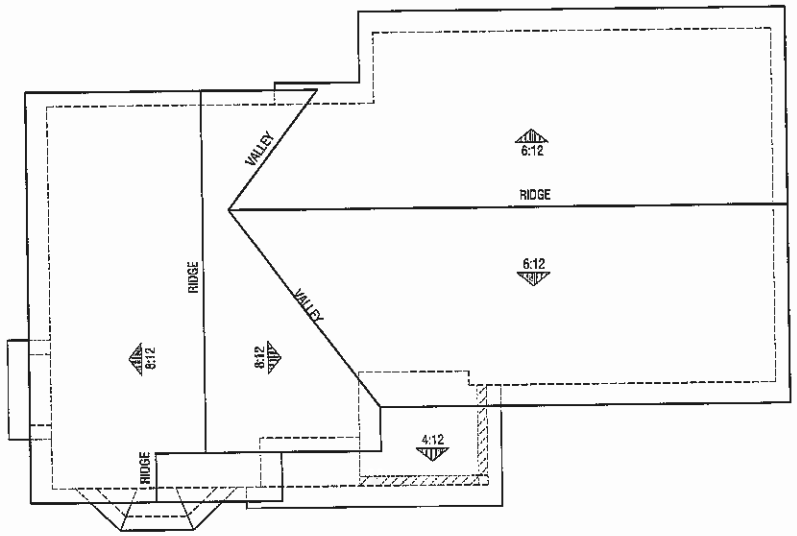
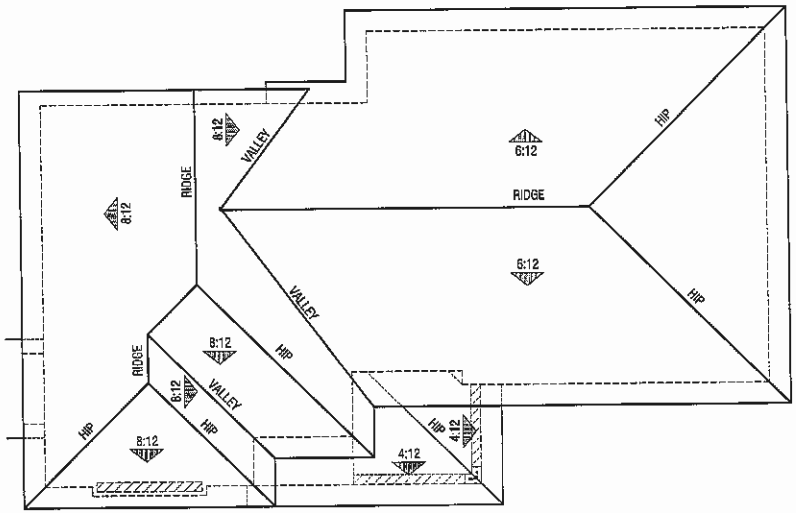
8.1

2011690 Dumbarton - T.O.D. - Newark, CA

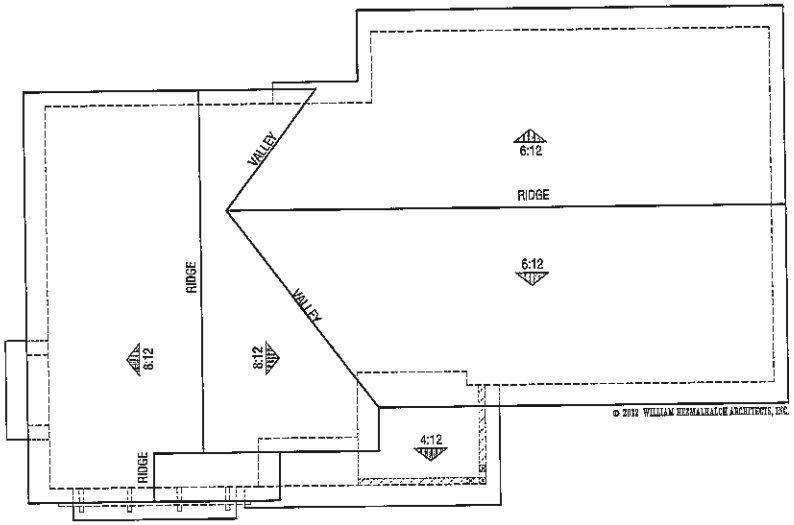
EXHIBIT A p64



Elevation A



Elevation C



Elevation B

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Plan 1

Roof Plans

Dumbarton - T.O.D.

Product 'C'
Newark, CA
Trumark Companies

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February 17th, 2012

8.2

2011081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p65

Elevation A

Elevation C

Elevation B

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Plan 1

Front Elevations

Dumbarton - T.O.D.

Product 'C'
Newark, CA
Trumark Companies

0 4 8 12

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8.3

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EXHIBIT A p66

Left Elevation

Rear Elevation

Right Elevation

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Front Elevation

Plan 1

Elevation A

Dumbarton - T.O.D.

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Newark, CA
Trumark Companies

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8.4

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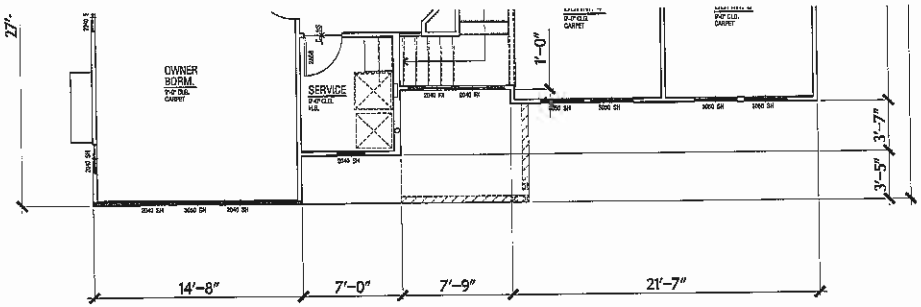
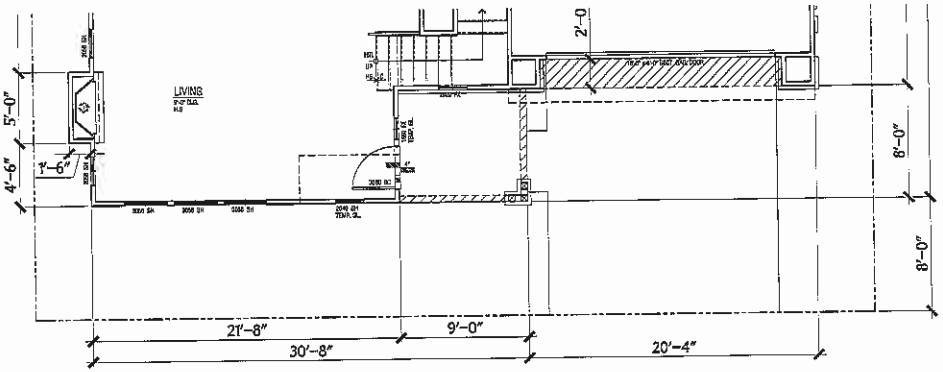
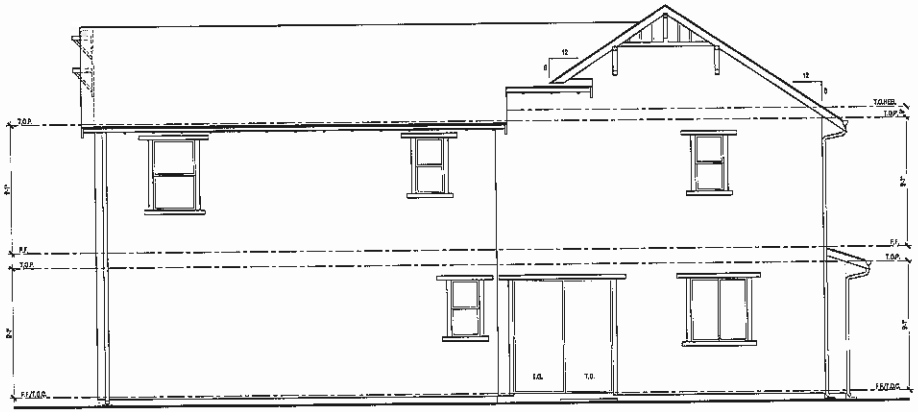
EXHIBIT A p67



Partial Upper Plan
@ Elevation B



Partial Lower Plan
@ Elevation B



Rear Elevation

Front Elevation

Plan 1

Elevation B

Dumbarton - T.O.D.

Product 'C'
Newark, CA
Trumark Companies

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8.5

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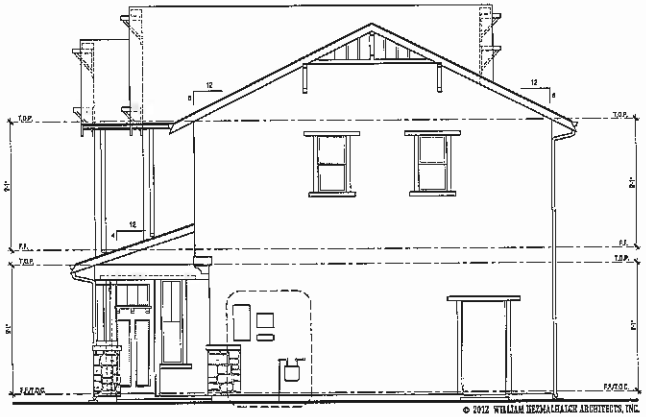
EXHIBIT A p68

Right Elevation



Right Elevation

Plan 1

Elevation B

Dumbarton - T.O.D.

Product 'C'
Newark, CA
Trumark Companies

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8.5.1

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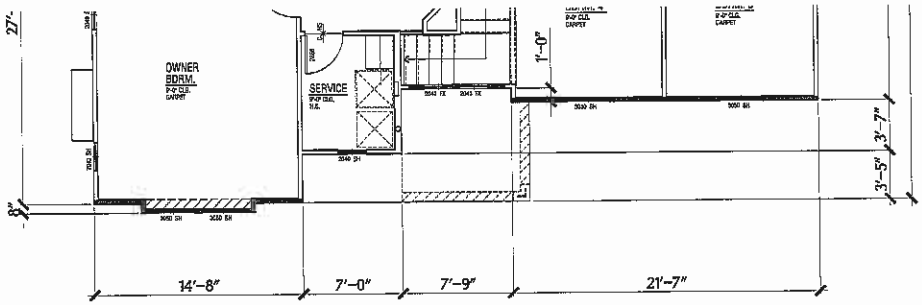
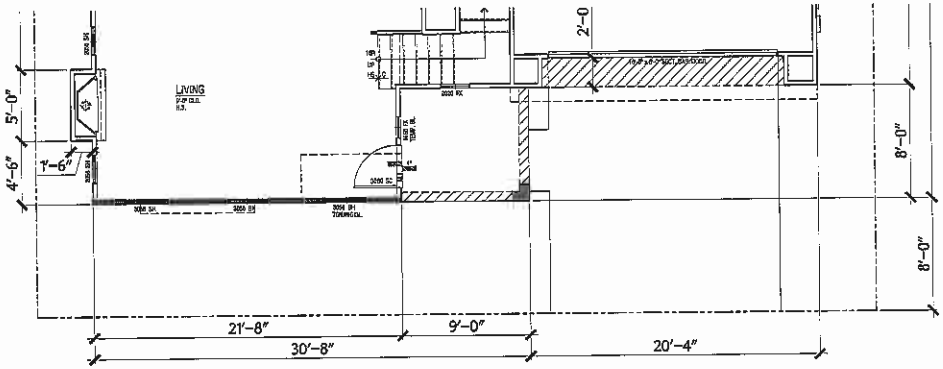
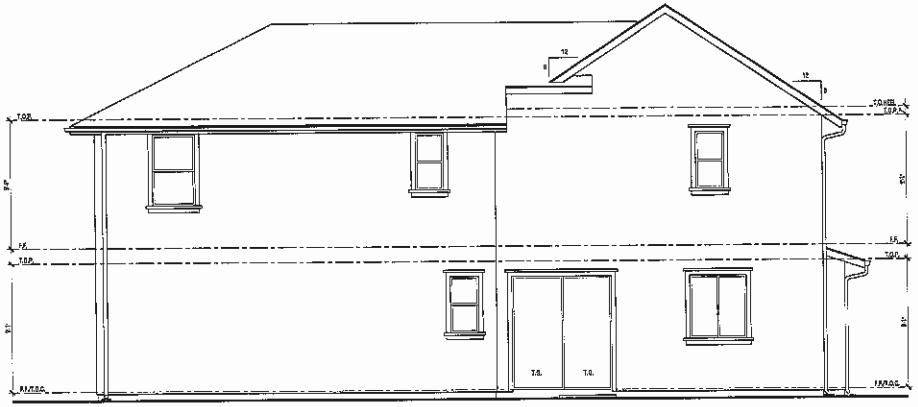
EXHIBIT A p69



Partial Upper Plan
@ Elevation C



Partial Lower Plan
@ Elevation C



Rear Elevation

Front Elevation

Plan 1

Elevation C

Dumbarton - T.O.D.

Product 'C'
Newark, CA
Trumark Companies

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8.6

2011081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p10

Right Elevation

Right Elevation

Plan 1

Elevation C

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Newark, CA
Trumark Companies

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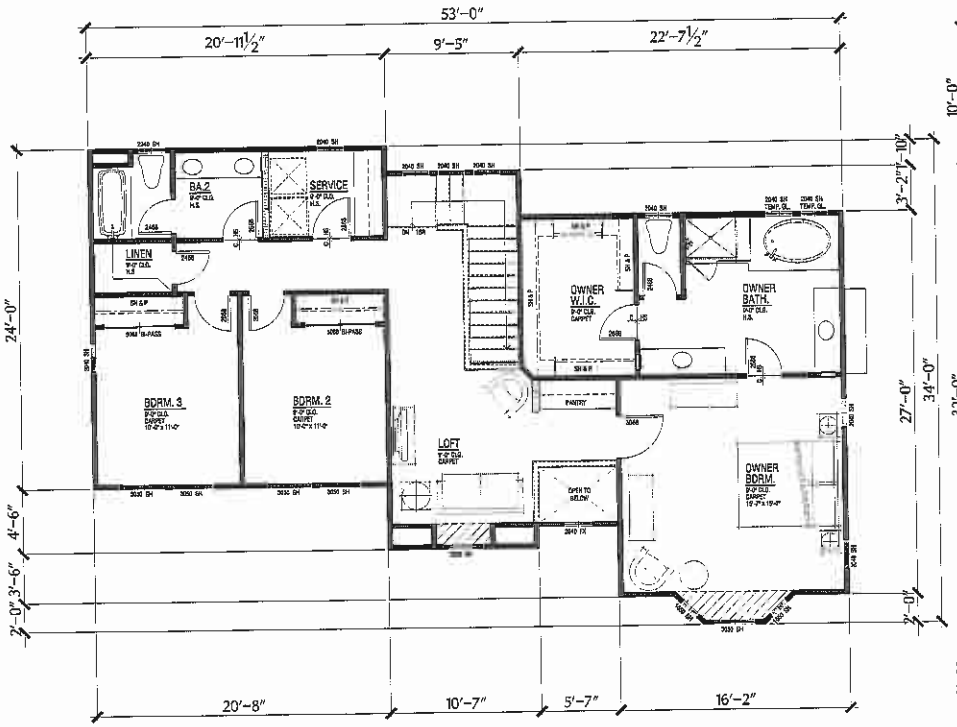
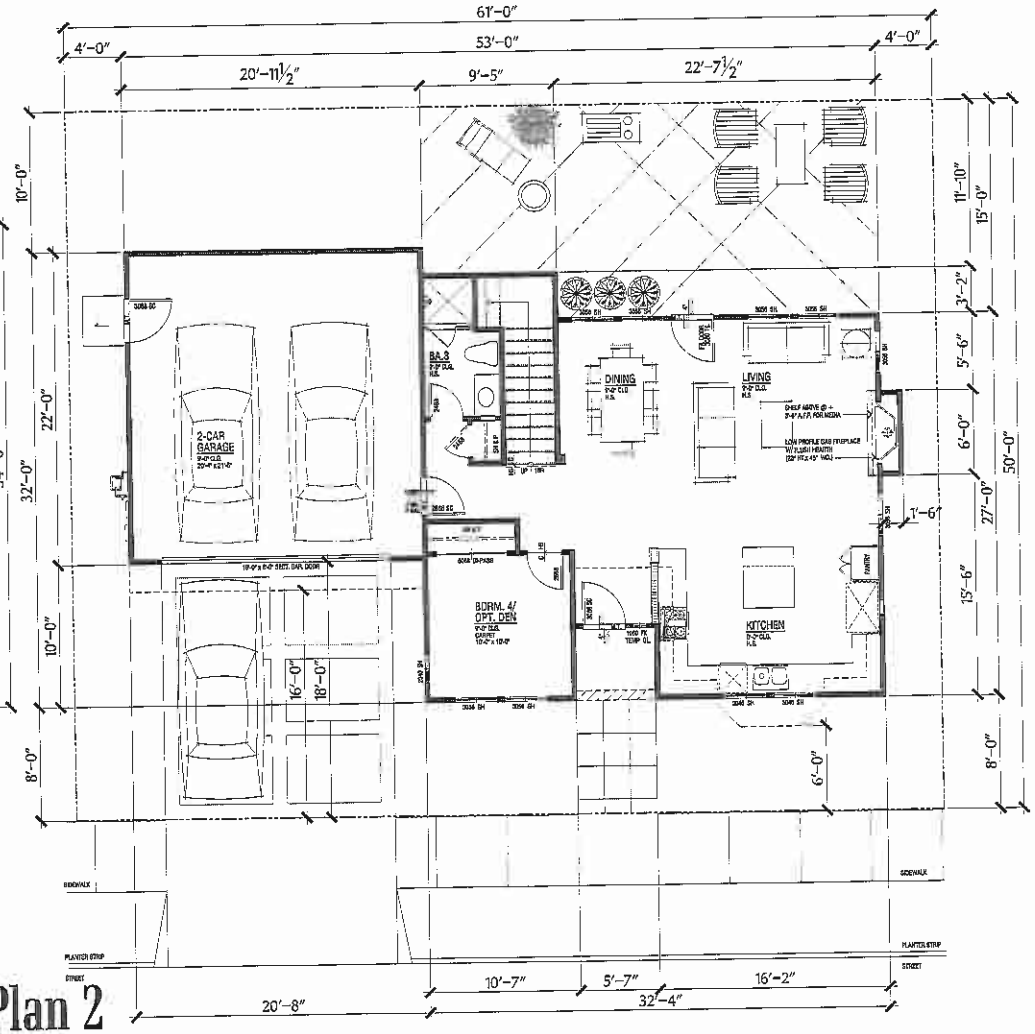
8.6.1

2011.081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p71



Second Level: 1,225 SF



First Level: 876 SF

Lot width	61'
Lot depth	50'
Porch/stoop setback	8'
Front building face setback	8'
Front second story bay window setback	6'
Rear building setback	10'
Side building setback	4'

Plan 2

Total: 2,101 SF
Garage: 455 SF
4 Bdrm / Loft / 3 Ba
2 Car Garage

Dumbarton - T.O.D.

Product C
Newark, CA
Trumark Companies

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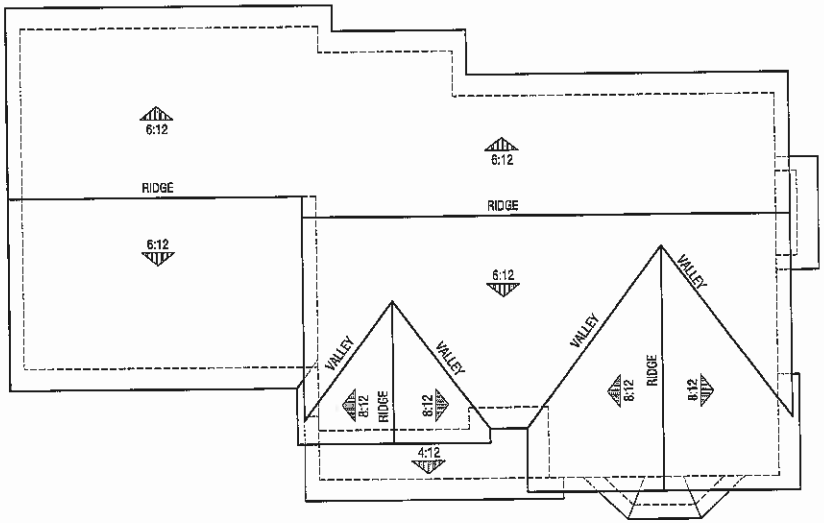
February 21, 2012

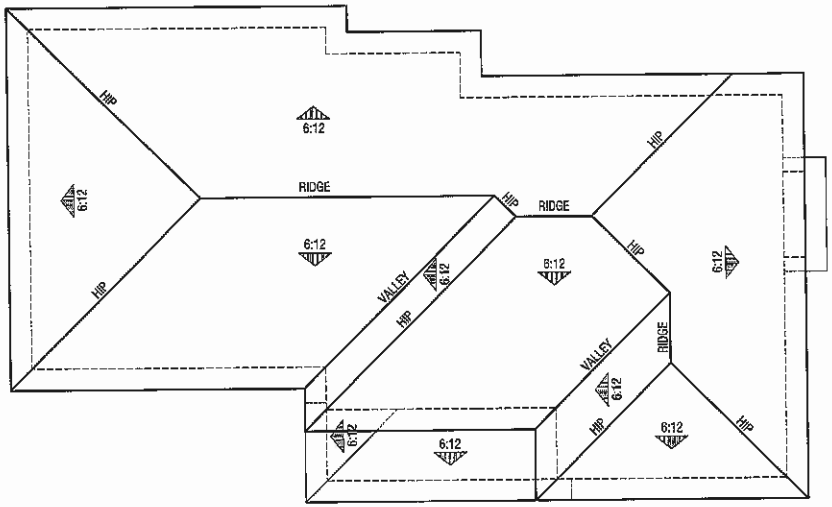
9.1

2011090 Dumbarton - T.O.D. - Newark, CA

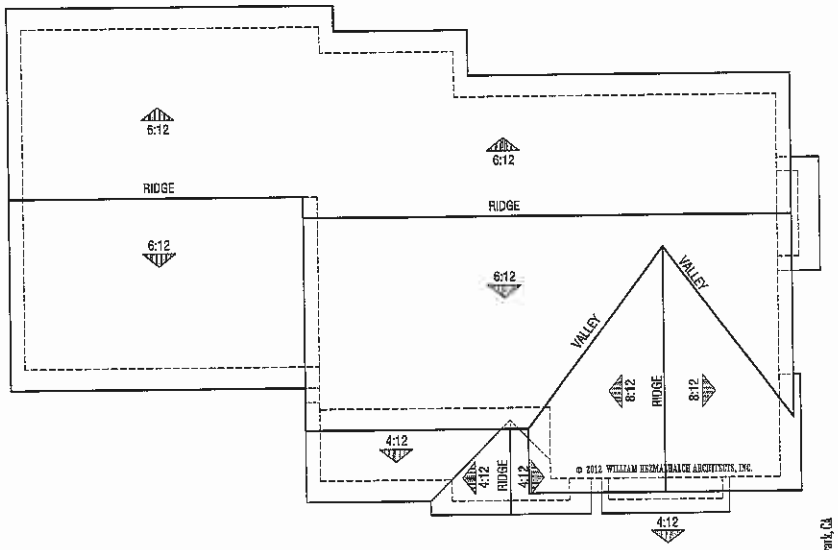
EXHIBIT A p72



Elevation A



Elevation C



Elevation B

Plan 2

Roof Plans

Dumbarton - T.O.D.

Product 'C'
Newark, CA
Trumark Companies

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February 17th, 2012

9.2

2011081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p73

Elevation A

Elevation C

Elevation B

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Plan 2

Front Elevations

Dumbarton - T.O.D.

Product 'C'
Newark, CA
Trumark Companies

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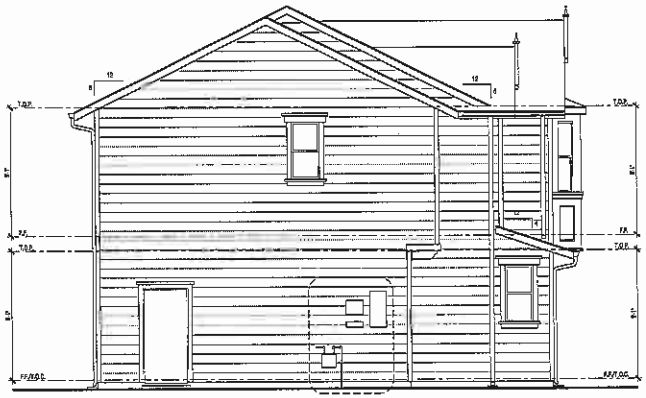
February 17th, 2012

9.3

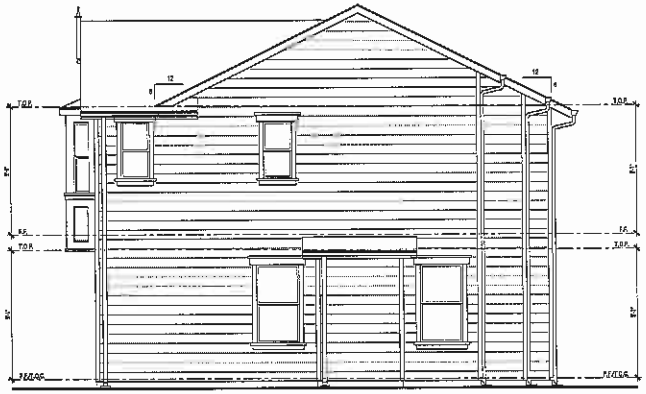
2011081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p74



Left Elevation

Rear Elevation



Right Elevation

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Front Elevation

Plan 2

Elevation A

Dumbarton - T.O.D.

Product 'C'

Newark, CA

Trumark Companies

0 4 8 12

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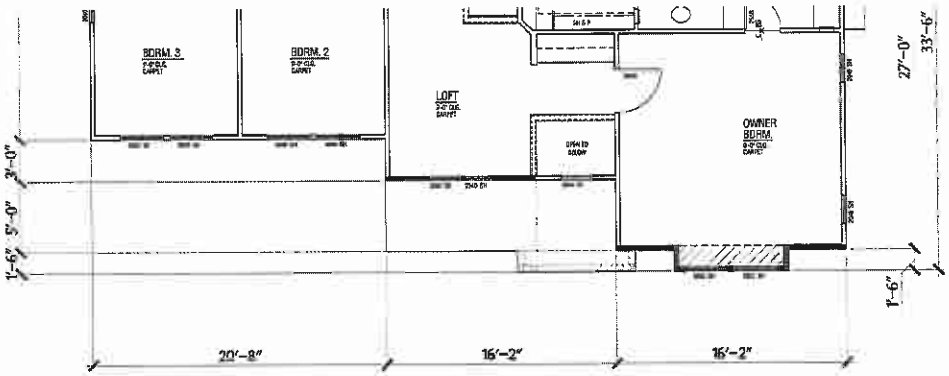
February 17th, 2012

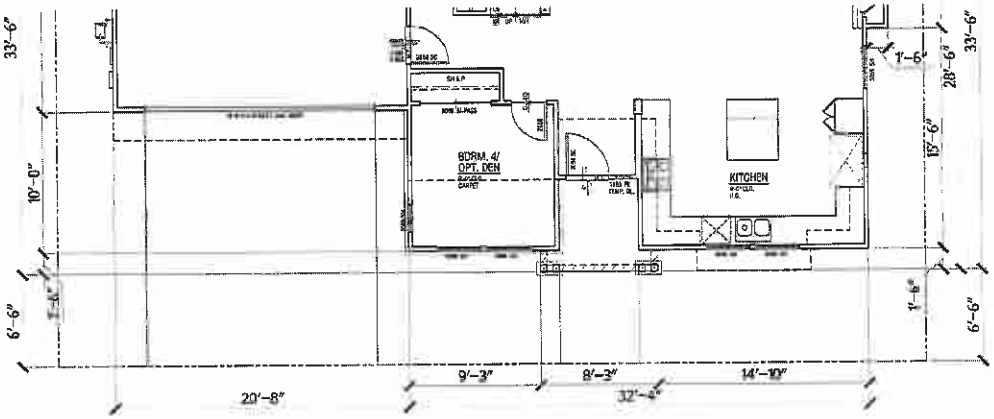
9.4

2011081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p 75



Partial Upper Plan
@ Elevation B



Partial Lower Plan
@ Elevation B

Rear Elevation

Front Elevation

Plan 2

Elevation B

Dumbarton - T.O.D.

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February 17th, 2012

9.5

2011081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p 76

Left Elevation

Right Elevation

Plan 2

Elevation B

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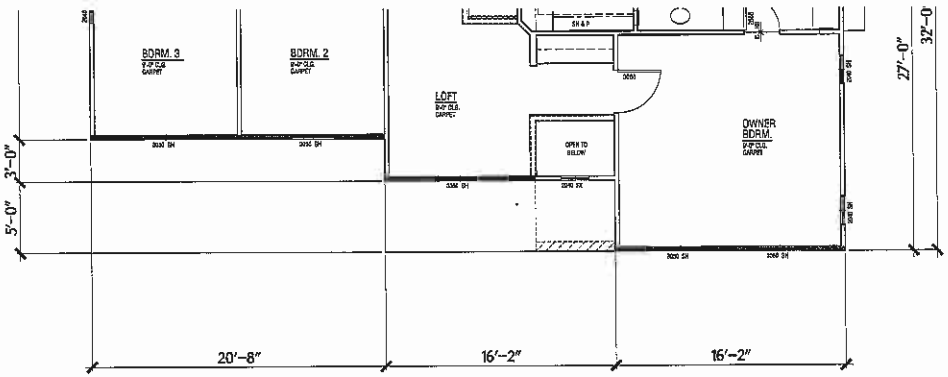
February 17th, 2012

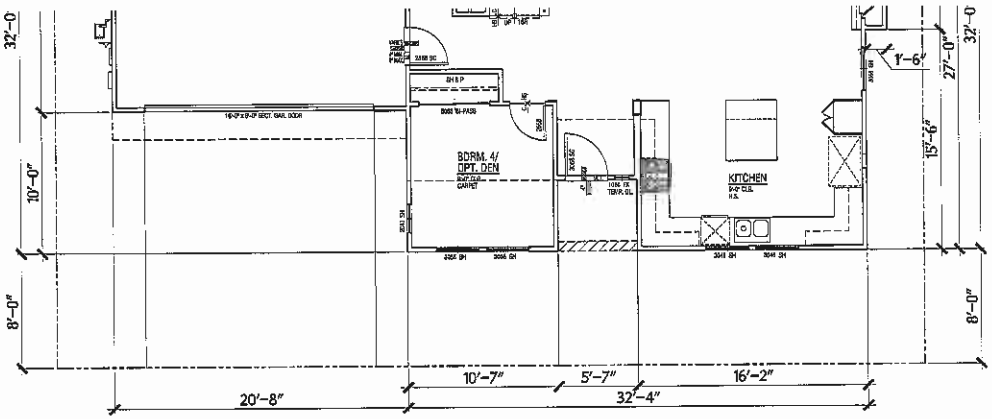
9.5.1

2011081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p77



Partial Upper Plan
@ Elevation C



Partial Lower Plan
@ Elevation C

Rear Elevation

Front Elevation

Plan 2

Elevation C

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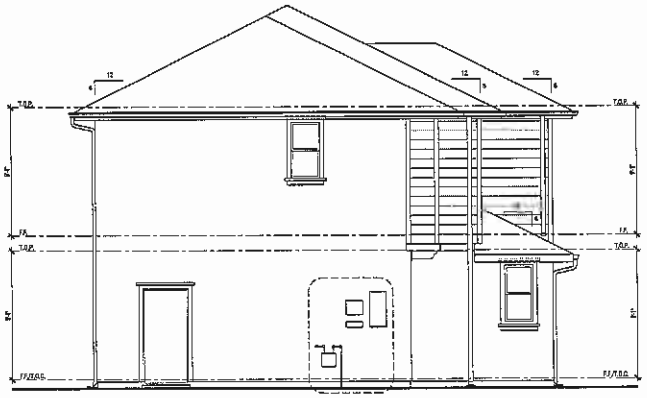
February 17th, 2012

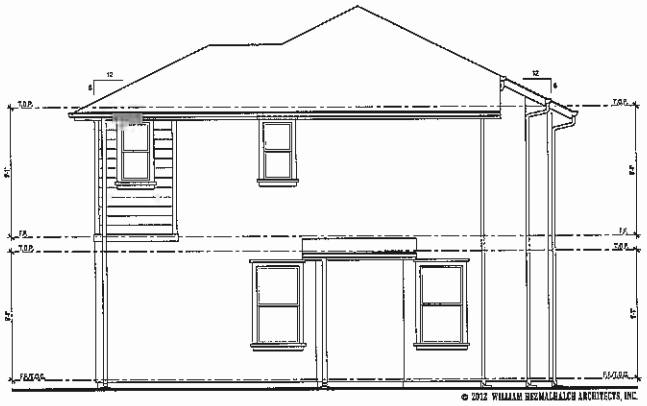
9.6

2011081 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p78



Left Elevation



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Right Elevation

Plan 2

Elevation C

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February 17th, 2012

9.6.1

2011061 Dumbarton - T.O.D. - Newark, CA

EXHIBIT A p79

Vesting TM 8098 Resolution Exhibit B
Schedule of Impact Fees

	Impact Fee	Amount	Timing
1	Park Impact Fee	$7,460/du	Each Building Permit
2	Art in Public Places and Private Development Policy Fee	$270/du	Each Building Permit
3	Capital Facilities - Public Safety	$1,989/du	Each Building Permit
4	Community Services/Facilities	$1,942/du	Each Building Permit
5	Transportation	$801/du	Each Building Permit
6	Community Development Maintenance Fee	0.5% of construction valuation	First Building Permit
7	Affordable Housing-In-Lieu	$25,000/du	Each Certificate of Occupancy
8	Special Fiscal Support	$2,500/du	Each Building Permit

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March 27, 2014

Terrence Grindall
Community Development Director
City of Newark
Fax: 510-578-4265
Email: Terrence.grindall@newark.org

Re: Comments on Trumark Dumbarton Transit Oriented Development Residential Project; SCH #2010042012

Dear Mr. Grindall,

These comments are submitted on behalf of Gallade Chemical, Inc. ("Gallade") regarding the City Council's proposed action on the proposed Trumark Dumbarton Transit Oriented Development Residential Project ("Project"), scheduled for March 27, 2014. For the reasons discussed in more detail below, the City cannot take action on the proposed Project at this time. Among other legal inadequacies, approval of the Project is improper because the City has failed to provide proper notice and because the Supplemental Environmental Impact Report ("SEIR") for the Project fails to meet the requirements of the California Environmental Quality Act ("CEQA").[1]

I. The City Cannot Take Action on the Project Because It Failed to Provide Proper Notice to Gallade

By failing to deliver personal notice of both the Planning Commission and City Council hearings to Gallade, the City has violated local, state, and constitutional laws, all of which require notice of a hearing on a rezone or subdivision be given to neighbors adjacent to the project area.

[1] In addition, Gallade incorporates by reference and reiterates the comments submitted by the San Francisco Bay Regional Water Quality Control Board, California Department of Toxic Substances Control, Alameda County Water District, San Francisco Public Utilities Commission, Margaret Lewis, CH2M Hill, and Cargill.

Alaska California Idaho
Minnesota Oregon Utah Washington
and Washington, D.C.

Gallade has not received notice required by law, and in fact, was unaware of the pending actions by the City until March 25, 2014, after the Planning Commission hearing had already been held, and only two days prior to the City Council hearing. The lack of required notice has deprived Gallade of the ability to provide comments to the Planning Commission, and allows for only cursory comments on the Project to the City Council. Based on its violations of notification requirements, the City cannot take any further action on the Project until proper notice is given to all parties, and the matter remanded to the Planning Commission for further public comment and consideration.

State law requires a City to deliver personal notice of a hearing on any zoning amendment before the Planning Commission and City Council to all owners of real property within 300 feet of the property that is the subject of the hearing. (Gov. Code §§ 65854, 65091(a)(4); *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 893.) The Newark City Code has a similar requirement. (Newark City Code §§ 17.44.010, 17.80.050.B., 17.80.070.A.) A zoning ordinance adopted without the required notice and hearing is void. (*See Sounhein v. City of San Dimas* (1992) 11 CA4th 1255, 1260.)

Personal notice of a hearing on a tentative map is also required to be delivered to neighbor's within 300 feet of the subdivision pursuant to both Subdivision Map Act and the City Code. (Gov. Code § 66451.3, 65091(a)(4); Newark City Code § 16.08.020.A.) And as with failure to notify neighbors of a rezone, the failure to provide proper notice to affected parties of a proposed subdivision is also fatal. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605.)

Gallade's property is located directly adjacent to the Enterprise Drive Project, and thus, zoning and subdivision laws require personal notice of the Planning Commission and City Council hearings, notice which was never delivered. Therefore, the Project cannot be approved until proper notice and opportunity for comment at both the Planning Commission and City Council hearings is provided.

In addition to the legislative mandates requiring notice to neighbors, procedural due process, guaranteed by both the California and United States constitutions, requires adequate notice and an opportunity to be heard before a governmental action affecting an individual's property. (*See Goldberg v. Kelly* (1970) 397 US 254, 267.) As explained by the court in *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541:

> To hold, under these circumstances, that defendant city may zone the land within its border without any concern for adjacent landowners would indeed "make a

> fetish out of invisible municipal boundary lines and a mockery of the principles of zoning." "[C]ommon sense and wise public policy ... require an opportunity for property owners to be heard before ordinances which substantially affect their property rights are adopted..." Indeed, the due process clause of the Fourteenth Amendment requires "at a minimum ... that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing..." Zoning does not deprive an adjacent landowner of his property, but it is clear that the individual's interest in his property is often affected by local land use controls, and the "root requirement" of the due process clause is "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest ... justifies postponing the hearing until after the event...

(*Scott*, 6 Cal.3d 541, 548-49 (citations omitted).) The court in *Horn v County of Ventura* (1979) 24 Cal.3d 605, 617, held that an agency failed to give proper notice when it had provided notice only by posting within central public buildings and direct mailing to persons who had specifically requested notice, and failed to give notice to adjacent property owners that may have been affected by the subdivision. The *Horn* court explained that

> [D]epending on the magnitude of the project, and the degree to which a particular landowner's interests may be affected, acceptable techniques might include notice by mail to owners of record of property situated within a designated radius of the subject property, or by posting of notice at or near the project site, or both. Notice must, of course, occur sufficiently prior to a final decision to permit a "meaningful" predeprivation hearing to affected landowners.

(*Horn*, 24 Cal.3d at 618; *see also Mennonite Bd. of Missions v. Adams* (1983) 462 US 791, 800 ("Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.").)

Here, not only will Gallade's property interest be affected by a rezone and subdivision directly next door, but the Project also contemplates an actual "taking" of Gallade's property, by requiring that it be acquired prior to the issuance of a certificate of occupancy for any proposed homes within the Project. Because the City has committed itself to exercise its power of eminent domain to acquire Gallade's property in the event it cannot be acquired via negotiations, it was required to give notice of the hearings directly to Gallade. (*See Conejo Recreation & Park Dist.*

v. Armstrong (1981) 114 Cal.App.3d 1016.) At a bare minimum, due process required mailed notice to Gallade of the hearings on the proposed Project before both the Planning Commission and the City Council. The City's failure to provide notice to Gallade is unlawful, and this matter must be remanded to the Planning Commission with proper notice and an opportunity for affected property owners to provide comments.

II. The City Actions Regarding Proposed Agreements Are Premature and Violate CEQA

A. Park Funding Agreement

The City proposes to approve a Resolution authorizing a Park Funding Agreement, affecting the Gallade property. (Item E.1, Att. 5.) The proposed Agreement satisfies Condition uuuu of the Tentative Map, which requires the Developer and the City to enter an agreement to address funding for a public park on the Gallade property. Condition uuuu provides that the Agreement shall "obligate" the Developer to construct or fund construction of improvements on the Park Site. (Item E.1, Att. 6, condition uuuu; see also, Item E.2, Staff Report ("Vesting Tentative Map includes numerous conditions and includes a requirement for the Gallade Chemical property to be acquired and developed as a park.").) Thus, the Condition commits the City to actions requiring development of the Park Site, which have not been evaluated under CEQA.

The proposed Agreement conditions the City's action on future compliance with CEQA (para. 1.04) in direct violation of CEQA. (*Save Tara v. City of W. Hollywood* (2008) 45 Cal.4th 116; CEQA Guidelines, § 15352(a).) Although the Agreement attempts to assert that the City is not committed to any future actions, the Agreement <u>requires</u> the City to initiate efforts to acquire the Gallade site unless the developer terminates the Agreement. (Agreement, para. 1.04(4) ("City <u>shall</u> make a written offer to purchase the Park Site"), para. 1.04(5) ("City <u>shall</u> take all steps required … to acquire the Park Site through the exercise of eminent domain").) The environmental impacts associated with acquisition of the Park Site have not been evaluated, and approval of the Agreement violates CEQA. (*Save Tara, supra,* 45 Cal.4th 116.)

Moreover, the Agreement provides that the park-related conditions of the Project shall be waived if the Park Site is not acquired by June 30, 2015. (Agreement, para. 1.04(7).) There has been no CEQA analysis of the potential impacts associated with waiving the park-related requirements. The City acknowledges that the acquisition of the Park Site is necessary to achieve the goals of the transit-oriented development (Item E.1, Staff Report). If the park-related conditions are waived, the Project will not meet these requirements and there is a potential for significant impacts that have not been evaluated in the SEIR. In particular, the SEIR must evaluate the

potentially significant traffic, air, noise, greenhouse gas and other environmental impacts that would result if the project does not achieve its transit oriented goals. Additionally, the staff report is misleading on this point as it represents that no certificate of occupancy can be issued until the Gallade site is acquired (Item E.2, Staff Report), but the Park Agreement allows for this requirement to be waived (Agreement, para. 1.04(7)).

The Agreement also commits the City to a conceptual site plan, including construction related activities, for the Park Site, which have not been evaluated under CEQA. (Agreement, para. 1.05(5) & (6).) Further, the City's proposed actions authorize the Developer to make improvements to property that it does not own (see, Item E.1, Staff Report), and under circumstances where the property owner has not been notified (see, infra re lack of notice). The Developer has no authority to obtain approvals related to property that it does not own or control.

Finally, the Park Agreement commits the City to initiating eminent domain proceedings if certain conditions are met. (Agreement, para. 1.04(5).) This is a pre-commitment to take a discretionary action requiring a public hearing, for which no notice or hearing has occurred and no CEQA review has been conducted.

B. Community Financing Agreements

Similarly, the proposed Resolutions authorizing a Community Financing Agreements (Items E.1, Att. 5; E.2, Att. 5), commits the City to certain actions regarding a park on the Gallade site prior to completion of CEQA. Again, while the proposed Agreement purports not to commit the City to any action (para. C), the specific terms of the Agreement (as well as the evidence in the record) make clear that the City has already committed to the actions associated with acquisition and development of a park on the Gallade property. (Item E.1, Att. 4, para. 1.01; Item E.2, Att. 5, para. 1.01 ("funds shall only be used towards the development of the [] approximately two-acre park (on the Gallade parcel)").) Those commitments precede required CEQA review. (*Save Tara, supra*, 45 Cal.4th 116.)

III. The SEIR Is Wholly Inadequate

A. The Project Description Is Misleading and Results in Improper Segementation

The project description fails to include conversion of the Gallade site to a park as part of the overall Project. The Project is defined in section 3.5.1 of the SEIR as preparation of Site A and Site B for residential development, and construction of homes and other facilities "on those sites." (SEIR, p. 40.) Yet, as noted above, the Project requires the acquisition of the Gallade site and conversion to a

park. The failure to include the conversion of the Gallade site to a park as part of the fundamental project description is misleading. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) A "finite project description is indispensable to an informative, legally adequate EIR." (*Id.* At 199.)

This failure also results in segmentation in violation of CEQA. The City may not split a project into small pieces so as to avoid environmental review of the entire project. (*Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.) Yet, that is precisely what has occurred with the SEIR's failure to include converting the Gallade site to a park as part of the project. Moreover, the characterization of the park requirement as a condition of the Project, rather than part of the originally proposed Project, does not excuse the requirement to evaluate impacts associated with the park requirement. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376; see also, CEQA Guidelines, §§ 15126.2, 15126.4; *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

In addition, the baseline for consideration of environmental impacts assumes, as a pre-condition, that Gallade would no longer be in operation. This is an inappropriate baseline as it does not reflect existing conditions, but rather future changes that have not occurred (and have not been evaluated). (CEQA Guidelines, § 15125.)

B. The Approvals Contemplate Actions With Impacts That Have Not Been Evaluated Under CEQA

Because the SEIR fails to include the park as part of the Project, there is no analysis of the potential environmental impacts of converting the Gallade site to a park. The SEIR notes: "The Specific Plan EIR provided a program-level analysis of the environmental effects of converting the former industrial land in the Specific Plan area to residential, retail and community uses and the environmental impacts of the construction and operation of the entire Specific Plan project. As such, the EIR <u>did not</u> analyze the project-level environmental impacts resulting from the development of specific parcels other than the Torian project site in the Specific Plan area." (SEIR, p. 38.)

With respect to the park specifically, the SEIR notes, "Use of this property as a public park was evaluated in the Specific Plan EIR <u>only at a program level</u> given the final cleanup activities to allow use of the site as a park were not sufficiently defined." (SEIR, section 3.5.3, p. 44.) The SEIR goes on to acknowledge that there isn't sufficient info for a project level analysis of the park, but that the park will be subject to further environmental review when plans for its development are prepared. (*Id.*) Thus, while the Project is contingent on the park, there is no analysis of the impacts of constructing the park, including but not limited to impacts on the existing Gallade

operation, and impacts resulting to industrial site relocation, clean up and remediation of the site, and construction of a park.

In addition to committing the City to take certain actions regarding the Park Site prior to CEQA analysis of review of those actions, the proposed approvals include various entitlements and conditions that have not been evaluated under CEQA. The SEIR focused only on six environmental impact areas (air quality, biological resources, cultural resources, greenhouse gas emissions, hazards and hazardous materials, and noise), and failed to evaluate the potentially significant impacts that could result to other environmental areas. The Specific Plan EIR did not evaluate impacts associated with the park at a project-level and conversion of the Gallade site to a park has the potential to result in significant impacts to biology, air quality, traffic, noise, greenhouse gas emissions, hazards, public health and safety, utilities, hydrology, and geology.

Moreover, impacts resulting from the residential projects themselves are truncated and insufficient. For example, Item E.1, Att. 6 (proposed approval of TM-12-32) includes numerous conditions requiring road improvements (see, e.g., conditions dd through gg), but the SEIR does not even evaluate potential traffic impacts of the Project or impacts associated with the construction of those traffic improvements.

C. The SEIR Inadequately Addresses Biological Resources

The SEIR fails to commit to any mitigation measure for nesting raptors. The SEIR is based on surveys that were conducted for one month during the nesting season (although nesting season is from February 1 - August 31) and concluded there was no observation of white-tailed kites and red-tailed hawks. The mitigation measure incorporates Dumbarton TOD Specific Plan EIR MM 4.3-4 which states that a construction fence shall be installed if nesting raptors are identified. Because no nesting raptors were identified during the survey, it is assumed that the project proponent will not incorporate this mitigation measure. This is insufficient analysis - the Biological Resources Report found that there is potential for white-tailed kites and red-tailed hawks to nest in trees on or adjacent to the project sites and one month of surveying during the first month of nesting season is insufficient to determine the impact. The project proponent needs to engage in longer surveying and the mitigation measure needs to be revised to commit the project proponent to the measure. (SEIR, p. 62 - 4.2.2.3 Nesting Raptors.)

D. The Alternatives Analysis Is Flawed

The project objectives are too narrowly drawn and are designed to minimize or avoid CEQA's requirement for an EIR to identify a reasonable range of alternatives. Specifically, the SEIR

identifies the applicant's primary objectives to include: 1) "Develop an economically viable, high-quality residential project consistent with the Dumbarton TOD Specific Plan"; 2) "Develop single family detached residences consistent with the project sites' (sic) Medium High Density Residential land use designation"; and 3) "Prepare Site B for residential development by addressing soil and groundwater contaminants to achieve established regulatory standards for residential use of the property." These artificially narrow objectives are then applied in the alternatives analysis as a basis for constraining the Location Alternative (off-site alternative) to possible sites within the extremely tight physical confines of the 205 acre Specific Plan area. This is contrary to the intent of CEQA, and forcibly truncates what should have been a broader analysis of a reasonable range of alternatives, including an honest review of legitimate off-site locations. Achieving the City's goals of sustainable development, mixed use housing, and transit-oriented development should never be artificially constrained to the Specific Plan area, and should instead require meaningfully be examination through consideration of a range of other legitimate locations. Though the Specific Plan's state of readiness may arguably be more advanced than other off-site locations around the City, this is not a legal basis for limiting the range of alternatives analysis in direct violation of CEQA.

The No Project Alternative wrongly concludes that in the absence of the project, development would not occur, and therefore, impacts of the project would be avoided. This determination is inconsistent with the existence of an approved Specific Plan that has designated development for the sites. Specifically, the SEIR states:

> 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. [ ]
>
> 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.
>
> 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.

(SEIR, p. 118.)

It is a fiction for the SEIR to conclude that an area within an approved Specific Plan will not develop if the immediate project proposal does not go forward. Additionally, as stated in the SEIR excerpt above, the assumption that the site would remain vacant until both the Specific Plan and General Plan are amended, and the sites are rezoned to accommodate uses other than residential is completely fabricated and entirely lacking in evidentiary support. This approach is a deliberate attempt to avoid a true assessment of the viability and legitimacy of the No Project Alternative, and violates CEQA. The alternatives analysis is further flawed with regard to continued claims that the "No Project Alternative would avoid the identified environmental impacts of the proposed project, [and] would not support the objectives of the Dumbarton TOD Specific Plan and could be detrimental to successful implementation of the Plan… nor would it accomplish the highest and best use of the sites by leaving them vacant." (SEIR, p. 118.) Again, there is no evidence to support these flawed conclusions, which are themselves inconsistent with the City's adopted planning scheme, which remains in place regardless of whether or not the proposed project proceeds.

Finally, in what can only be described as a mysterious internal inconsistency, the No Project Alternative analysis summarized above is entirely at odds with the Summary section presented in the SEIR at pages xxv and xxvi, which clearly states that the No Project Alternative will neither limit development of the site under the Specific Plan, or avoid the key environmental impacts of the proposed project. The Summary provides:

> The No Project – Existing Plan Alternative assumes the proposed 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.
>
> 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 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. The potential to avoid seasonal wetlands on Site A is discussed in more detail below in the Reduced Development Alternative and the Design Alternative.
>
> 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… .

(SEIR, p. xxvi.)

This glaring inconsistency cannot be reconciled and presents a clear flaw in the document. It would appear that the alternatives analysis was drafted by one individual, and the summary of the alternatives analysis by another, and that for whatever reason, neither bothered to check what the other was saying. This extremely casual approach to preparing and drafting an EIR for a major urban infill project permeates the alternatives analysis and the SEIR in general, and violates CEQA's requirements for a clear and consistent presentation of the environmental effects of the project to enable the public to understand and evaluate that which is proposed.

E. The SEIR Provides an Inadequate Analysis of the Project's Impacts and Proposed Mitigation of Greenhouse Gas Emissions

1. Operational Greenhouse Gas Emissions Impacts

The SEIR fails to provide substantial evidence to support its conclusion that the Project's operational greenhouse gas ("GHG") emissions will have a less than significant impact. Specific Plan EIR MM 4.6-1 requires that listed design features "shall be incorporated into … 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." (SEIR, p. 77 (emphasis added).) The SEIR's conclusion of less than significance related to operational long-term GHG emissions is premised entirely on the Project being "consistent with the Specific Plan land use designations and assumed densities" and whether "the applicable emissions reductions measures identified in the Specific Plan EIR are implemented." (*Id.* at p. 76.) Yet, the SEIR provides that the Project would implement only the "majority" of the Specific Plan EIR mitigation measures and only those "applicable" to the Project, while simultaneously concluding that potentially significant operational emissions would be reduced to a less than significant level. (*Id.* at p. 79.)

The City cherry picks which of Specific Plan EIR MM 4.6-1 GHG reduction measures the Project will implement. In some instance the Project does not propose to implement listed reduction measures at all, in other instances it gives residents the "option" of purchasing the design feature specified in the reduction measure, thus ensuring no guarantee of implementation. (SEIR, p. 78.)

With regards to the GHG reduction measure to provide a minimum of 15 percent affordable housing, the SEIR states that the Project would provide in-lieu fees to the City to fund affordable housing development. (SEIR, p. 78.) No information is given on the amount of in-lieu fees to be provided, nor whether the proposed amount would be adequate to implement affordable housing equivalent to 15 percent of the Project's units. Nor does the City explain how it would ensure that the in-lieu fees would be used to provide these affordable housing units near transportation networks, the key component that makes the affordable housing requirement a source of GHG reductions.

To implement the GHG reduction measure "incorporate design guidelines for transit oriented development and complete street standards," the SEIR states that the Project "will construct or contribute to reconstruction of Enterprise Drive and Willow Street consistent with Specific Plan Complete Street designs." (SEIR, p. 78.) The SEIR fails to provide any explanation of how the reconstruction of these two streets will fully implement the GHG reduction measure, given that there are other streets surrounding the project. More importantly, no explanation is provided on what level of "contribution" the Project would assume, nor how the remainder of the funding presumably necessary to realize the GHG reduction measure for these streets would be available.

In addition, the GHG reduction measures outlined in Specific Plan EIR MM 4.6-1 are only some of the potential design features the Project could utilize to demonstrate and ensure consistency with the adopted statewide plans and programs related to climate change. (SEIR, p. 77.) Yet, the SEIR proposes no other, alternative GHG emission reduction measures to ensure that its emissions impacts are sufficiently mitigated. The SEIR does not quantify the Project's GHG emissions, so the impact of the SEIR's failure to incorporate all design features in accordance with Specific Plan EIR MM 4.6-1, or propose and implement alternative measures, cannot be evaluated. The SEIR even fails to provide a *qualitative* analysis of how the Project's failure to implement certain GHG reduction measures affects the assumption that operational GHG emissions impacts are lowered to less than significant.

2. Construction GHG Emissions Impacts

The SEIR provides three best management practices ("BMPs") from the Bay Area Air Quality Management District ("BAAQMD") for the reduction of construction GHG emissions and ambiguously discusses the Project's implementation of two of the three BMPs. (SEIR, p. 79.) Compliance with the City's Municipal Code would ensure the implementation of one of the BMPs, recycling or reusing at least 50 percent of construction waste and demolition materials. However, the SEIR provides no assurance that the Project would abide by, or even attempt to implement, the remaining two BMPs. The SEIR ambiguously states that the Project site is located in an urban location within close distance of construction supplies and equipment, which would help minimize GHG emissions generated from transport of construction materials and waste. (*Ibid.*) The SEIR provides no assurance, however, that the Project will actually implement the BMP to use at least 10 percent local building materials, much less providing an enforceable mitigation measure to that effect. The impacts analysis does not address the feasibility or the Project's intention to implement the remaining specified BMP to use alternative-fueled construction vehicles/equipment for at least 15 percent of the fleet. The SEIR only states it will implement recommended BMPs "where feasible" to reduce construction GHG emissions. (*Id.* at 81.) Finally, similarly to the operational GHG emission reduction measures, the Project is not limited to *only* the specified GHG reduction strategies; the Project could specify other measures to mitigate emissions. Yet, the SEIR does not even attempt to outline other construction GHG BMPs or emissions reductions that could be implemented to mitigate impacts.

Despite the Project's lack of sufficient, or enforceable, measures to mitigate construction GHG emissions, the SEIR concludes that the Project will have a less than significant impact with respect to construction GHG emissions impacts. (SEIR, p. 80.) With the potential implementation of one or two BAAQMD BMPs, the SEIR lacks substantial evidence to support this conclusion. There is no qualitative or quantitative discussion of construction emissions, their impacts, or the reduction in emissions with the (potential) implementation of the BMPs. The lack of a quantified threshold of significance from BAAQMD or the City related to impacts resulting from construction GHG emissions does not excuse the City from quantifying the Project's emissions and analyzing their impact and whether the proposed mitigation would lower that impact to below significance. The lack of enforceable mitigation measures (assuming the mitigation proffered would be sufficient to lower impacts) also renders the conclusion of less than significant invalid.

3. Consistency with Plans and Policies

The SEIR's conclusion that the Project would not conflict with any applicable GHG reduction plans, policies or regulations is supported only by the statement that the Project will incorporate "most" of the Specific Plan EIR's applicable GHG reduction measures. (SEIR, p. 80.) As discussed above, picking and choosing those GHG reduction measures that the Project finds convenient to incorporate into the Project does not provide substantial evidence to support the conclusion that operational GHG emissions impacts are mitigated to a less than significant level. The incorporation of some GHG emissions reduction measures is similarly insufficient to conclude that the Project is consistent with all applicable GHG reduction plans, policies, and regulations, particularly where the Project's actual consistency with the unnamed "plans, policies, and regulations" is absent from the SEIR discussion.

F. The SEIR Analysis of Air Quality Impacts is Flawed and Insufficient

1. Analysis of Construction Emissions Impacts

In its discussion of impacts of fugitive dust emissions associated with construction, the SEIR states that the Project would not exceed the BAAQMD significance threshold for construction-related criteria pollutants, even though the only figures in the SEIR for particulate matter ("PM") are for construction vehicle exhaust emissions only and do not include any emissions from fugitive dust. (SEIR, pp. 55-56.) The SEIR then goes on to provide that mitigation measures related to fugitive dust will be implemented "even though the proposed project would not exceed those thresholds." (*Id.* at p. 56.) With no quantification of construction fugitive dust emissions, or analysis of how these emissions would be reduced with the implementation of BAAQMD's standard mitigation measures, the SEIR improperly concludes that the Project would not result in significant impacts related to fugitive dust emissions during construction. (*Id.* at 57.) In fact, the SEIR goes so far as to state that the impact related to construction fugitive dust emissions is the same impact as in the Specific Plan EIR, despite the fact that the Specific Plan EIR did not include any project-specific emissions data. (*Ibid.*)

Related to the SEIR's analysis of exhaust emissions during construction of the Project, the SEIR states that "emissions generated in other air basins associated with transport of [contaminated] soil would be attributed to the facilities receiving the soil." (SEIR, p. 54.) It is impermissible under CEQA to ignore a direct environmental impact on the basis that the impact will occur at a certain distance from the Project. Air quality impacts that are a direct result of the Project must be analyzed, regardless of the impact potentially occurring in an adjacent air basin.

While the mitigation of these impacts may be outside the jurisdiction of the City or BAAQMD, there is no basis on which to shift the analysis of the impact outside of the SEIR, particularly where there is no forum for analysis of that impact by another jurisdiction.

The SEIR states that "[e]xhaust emissions of criteria pollutants during construction would not exceed BAAQMD thresholds, therefore the project would not result in a cumulatively considerable increase in criteria pollutants for which the Bay Area is in non-attainment." (SEIR, p. 55.) CEQA requires that a cumulative impacts analysis consider not only the impacts of the Project, but also the impacts of the Project *in combination* with all other cumulative projects. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 117-121.) The SEIR has failed to undertake this analysis in support of the statement that the Project "would not result in a cumulatively considerable increase." (SEIR, p. 55.) CEQA forbids the City from looking solely at the magnitude of the Project-specific impact in order to determine whether the impact would be cumulatively considerable. That the Project emissions will remain below BAAQMD significance thresholds goes only to the question of whether there is a Project-specific impact from construction emissions.

2. Community Health Risk Assessment of Operational Impacts

The SEIR's determination of a less than significant impact associated with toxic air contaminants ("TACs") is predicated on the number of daily commuter train pass-by events per day. (SEIR, p. 53.) The SEIR states that Dumbarton Rail Corridor train operations "was anticipated to be twelve events per day," citing a 2004 San Mateo County Transit Authority *Summary of the Dumbarton Rail Corridor Project Study Report*. (*Ibid.*) No explanation is provided with regards to the accuracy of this estimate, given that the *Project Study Report* is now a decade old. With a maximum increased cancer risk at the Project of 8.4 million cases in one million, approaching the significance threshold of 10 cases or greater per million, reliance on an outdated *Project Study Report* to conclusively determine TAC impacts are less than significant is inappropriate and in violation of CEQA.

3. Consistency with Air Quality Plans and Impacts related to Odors and Carbon Monoxide

The SEIR concludes that the Project would not conflict with applicable air quality plans or cause new impacts related to odors or carbon monoxide, based on the Project's consistency with Specific Plan land use designations for the site and residential development envisioned in the Specific Plan. (SEIR, p. 51, 58.) The SEIR fails to provide any explanation of how the Project-specific emissions of criteria pollutants, including carbon monoxide, or TACs and odors

associated with the Project - none of which could have been described or analyzed in the programmatic Specific Plan EIR - are consistent with what was provided for in the Specific Plan EIR. For instance, if the City does not describe or specify what odors would be emitted during Project construction or operation, the SEIR cannot determine whether these types or levels of odors are consistent with the "residential development envisioned" in the Specific Plan EIR.

G. The SEIR Fails to Adequately Analyze Impacts related to Hazards and Hazardous Materials Associated with the Project

1. Site A Remediation

The SEIR explains that the remediation of Site A of the Project is proceeding under the San Francisco Bay Regional Water Quality Control Board's ("Regional Board") Final Site Cleanup Requirements Order No. R22007-0005 ("Order") and an Alternate Cleanup Plan ("ACP") approved by the Regional Board. (SEIR, pp. 86-87.) However, the SEIR then provides that Specific Plan EIR MM 4.7-1a and MM HAZ-1 will be implemented to address the soil and groundwater contamination that is known to affect Site A, by requiring the preparation of a remediation plan and a risk management plan, to be reviewed by the Regional Board. (*Id.* at p. 88.) These plans would supposedly achieve Cal-EPA approved risk management standards for residential use of Site A. (*Ibid.*)

First, no information is provided on the relationship between the Order and ACP, already approved by the Regional Board, and the "remediation plan" and "risk management plan" provided for in MM HAZ-1. Whether these are additional, separate plans is unclear. In addition, any standards under which these plans would be drafted or evaluated for sufficiency are entirely missing from the mitigation measure and the SEIR discussion. More importantly, the SEIR provides that Specific Plan EIR Mitigation Measure 4.7-1a is amended by MM HAZ-1 to address the specific conditions of Site A. (*Ibid.*) MM HAZ-1 provides that the Regional Board will "review" the remediation plan and risk management plan, but does not require the plans to be approved, rendering this mitigation measure a meaningless requirement without any force and without any guarantee of mitigating the significant danger the Site's contamination poses to future residents. Despite these flaws, the SEIR concludes that with implementation of the mitigation measure, the Project would have a less than significant impact on human health.

2. Site B Remediation

The SEIR notes that the Regional Board issued a conditional approval of a Remedial Action Plan ("RAP") for Site B of the Project, contingent on the Project's preparation of a RAP

Addendum. (SEIR, p. 90.) The RAP Addendum must include (1) either a rationale for the grid-based sampling plan for dioxins or present an alternative sampling methodology, and (2) a post-remediation monitoring plan for soil, soil vapor, and groundwater. (*Ibid.*) The SEIR does not provide any information on the status of preparation of the RAP Addendum, nor whether the Project has determined which sampling methodology to seek approval of.

Estimated excavation quantities for Site B specify that approximately 94,000 cubic yards ("CY") of soil will be excavated in total, with approximately 60,350 CY removed from site for disposal. (SEIR, p. 90, Table 4-3.) The SEIR provides that excavated soil will be tested to determine whether additional excavation is necessary and to determine what soils may be reused onsite. Therefore, the SEIR provides only rough estimates of the total quantities of soil to be excavated, disposed of, and reused. Yet, the SEIR uses these estimates to determine the significance of impacts associated with the removal and disposal of these soils. For instance, construction emissions are calculated based on truck trips necessary to transport 60,350 CY of soil, and based on those calculations, the SEIR made a determination of a less than significant impact. Traffic estimates and related impacts similarly rely on the number of truck trips associated with soil removal from the site. The SEIR gives no information on how it came up with the purportedly conservative estimates of necessary soil excavation, given that testing sufficient to determine the actual extent of contamination has not been conducted.

The SEIR also specifies that a portion of the estimated 29,000 CY, containing metals, dioxins/furans, and VOCs, removed from the former evaporation ponds, would be reused on site. (SEIR, pp. 90-91.) The City also anticipates that almost half of the soil removed from the former chemical processing facility at the northwest corner of the site, contaminated with metals, VOCs, and PCBs, will be reused, for a total of approximately 15,000 CY. (*Id.* at 91-92.) The SEIR fails to provide any explanation on how the risk associated with this reuse will be evaluated to ensure the protection of human health. The SEIR merely states that these soils "could be clean enough" to be used as backfill on the site. (*Id.* at p. 92.)

Given the extensive contamination and remediation needed for these Project Sites to approach a level of safety for the proposed residential uses that the City is seeking to approve, the SEIR needs to provide full disclosure and analysis of the proposed remediation solutions, to meet the requirements and intention of CEQA to allow decisionmakers and the public to fully evaluate and consider the potential impacts of the Project prior to setting the City on an irreversible course of permitting housing to be built on and adjacent to contaminated land.

3. Offsite Hazardous Material Releases

The SEIR analyzes the potential impacts associated with an accidental release of hazardous substances from nearby industrial facilities. (SEIR, pp. 95-97.) This analysis is inadequate, as it improperly excludes the potential for a release from the Gallade facility. The City attempts to exclude this potential impact "since the proposed project would not be occupied with Gallade Chemical operating at its current location. The Specific Plan identifies this parcel as a future park, and the project will be pre-conditioned such that units will not be occupied while Gallade Chemical remains in operation at the current location." (*Id.* at 96.) The SEIR ignores the potential impact to construction workers who would face exposure in the event of an accidental release from the Gallade site during construction and prior to occupation of the proposed housing units. Furthermore, Gallade intends to remain operating at its current location indefinitely, despite the City's intentions to strip Gallade of its vested rights to do so.

4. Failure to Analyze the Hazardous Material Impacts Associated with the Use of the Gallade Site as a Park

The City states its intention to turn the current site of Gallade operations into a park as an aside in the SEIR, but fails to analyze this action by the City as part of the Project, nor the potential for impacts to human health associated with use of the parcel for recreation. (SEIR, p. 96.) As discussed in more detail *supra*, this omission from both the Specific Plan EIR and the SEIR, including the hazards and hazardous materials analyses, is a fatal flaw under CEQA.

IV. The Proposed Affordable Housing Findings Are Not Supported

In order to approve an in-lieu fee as satisfying the requirements of the City's affordable housing ordinance, the City must make very specific findings required under Sections 17.18.050.D and G of the City Code. The findings contained in the Projects' staff reports and proposed resolutions regarding affordable housing are not supported by substantial evidence, and are insufficient to support allowance of in-lieu fees rather than building inclusionary units.

Approval of the Projects' alternative means of compliance with the affordable housing requirements must be supported by findings that: 1) bridge the analytical gap between the raw evidence and the ultimate decision, 2) are supported by substantial evidence, and 3) meet the requirements set forth in state and local law. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.)

The requirement to render findings serves to induce the City to draw legally relevant sub-conclusions supportive of its ultimate decision. (*Id.* at 515.) The intended effect is to facilitate orderly analysis and minimize the likelihood that the City will randomly leap from evidence to conclusions. In addition, findings enable the reviewing court to trace and examine the City's analysis. (*Id.* at 516.) They also serve to demonstrate to the public that the City's decision-making is careful, reasoned, and equitable. (*Id.* at 516-17.)

The findings requirement cannot be satisfied by a mere recitation of statutory language. (*City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; *see also*, *Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328 ("Our Supreme Court expressly disapproved 'the practice of setting forth findings solely in the language of the applicable legislation.'") (*quoting Topanga*, 11 Cal. 3d at 517, fn 16).)

Here, the findings proposed in the staff reports and proposed resolutions merely parrot the findings as stated in the City Code. The staff reports and proposed resolutions provide no analysis nor evidence to support the findings required by the City's housing ordinance. For example, there is no explanation as to how an in-lieu fee would be equal to or better than actually building affordable housing. Further, the staff report finds that proposed alternative means of compliance will not unduly concentrate below market rate housing in one geographic area because the City can monitor this concern when particular affordable housing developments are proposed. This required finding, in essence, is punted to future City Councils, with no guarantee that affordable housing will not be concentrated in a single geographic area. Deferring this particular consideration to future legislative bodies does not satisfy the requirements of the City's affordable housing ordinance.

Moreover, there is no evidence in the record that demonstrates that the proposed in-lieu fees will adequately mitigate the impact caused by market-rate housing. For an in-lieu fee system to satisfy the duty to mitigate, either that system must be evaluated by CEQA or the in-lieu fees or other mitigation must be evaluated on a project-specific basis. (*California Native Plant Society v. County of El Dorado* (2009) 170 Cal. App.4th 1026, 1055.) There is no evidence in the record to support the determination that payment of a $25,000 per/unit in-lieu fee would adequately mitigate the impact of the market rate housing, or otherwise be equivalent to the actual construction of the required inclusionary housing.

V. CONCLUSION

Because the Projects cannot satisfy the City's affordable housing requirements, they must be denied.

Gallade would welcome the opportunity to meet with the City to discuss these issues and identify an acceptable course of action. In that regard, please contact the undersigned or Greg Trimarche of Wrenn Bender at (949) 232-1210, who is serving as co-counsel in this matter (and will be appearing on Gallade's behalf at the City Council meeting tonight).

Very truly yours,

Kristen T. Castaños

KTC:ms

cc: Greg Trimarche, Esq.
Jeff Ring, Esq.

ENVIRON

April 16, 2014

Ms. Veronica Vargas
Project Manager
Trumark Homes LLC
4185 Blackhawk Plaza Circle, Suite 200
Danville, California 94506

Re: Greenhouse Gas Analysis for the Proposed Trumark Homes Residential Development, Newark, California

Dear Ms. Vargas:

At your direction, ENVIRON International Corporation (ENVIRON) prepared this technical memorandum of an evaluation of greenhouse gas (GHG) impacts associated with the proposed Trumark Homes Residential Development located in Newark, California (herein referred to as the "Project" or the "Site").

This memorandum provides a description of the assumptions used for model estimates, the modeling results for both operational and construction emissions, and a comparison to the May 2011 Bay Area Air Quality Management District (BAAQMD) California Environmental Quality Act (CEQA) thresholds of significance for GHG emissions.

Project Description

We understand that the Project consists of approximately 244 single-family homes located on two, non-contiguous parcels at 8333 and 8300 Enterprise Drive in Newark, California. One parcel is 2.14 acres to be divided into approximately 27 units; the larger parcel, which is 21.27 acres, will comprise of 217 units.

Regulatory Framework

The May 2011 Bay Area Air Quality Management District (BAAQMD) California Environmental Quality Act (CEQA) Guidelines suggests consistency with a qualified Climate Action Plan (CAP) or achievement of GHG significance thresholds for either the bright line (1,100 MT CO_2e/yr) or service population metrics (4.6 MT CO_2e/SP/yr).[1] BAAQMD has not established construction-related thresholds, but recommends quantifying and disclosing associated emissions. The City of Newark adopted a CAP[2] in January 2010.

[1] A March 2012 Alameda County Superior Court judgment determined that the BAAQMD had failed to evaluate the environmental impacts of the land use development patterns that would result from adoption of the thresholds and ordered the thresholds set aside. The Court of Appeal reversed that judgment and the California Supreme Court is currently reviewing the limited issue of whether CEQA requires an analysis of the environment's impact on a project. Regardless of the status of that litigation, the thresholds are supported by substantial evidence, including a comprehensive study and analysis as documented in Appendix D to the May 2011 BAAQMD CEQA Air Quality Guidelines.

[2] City of Newark. 2010. City of Newark Climate Action Plan January 2010 Initial Framework. January. Available online at http://www.ci.newark.ca.us/images/uploads/pubwks/pdfs/greenhouse/Climate%20Action%20Plan.pdf.

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Approach and Assumptions

Project operational-related GHG emissions were calculated with the California Emission Estimator Model (CalEEMod®), version 2013.2.2.[3] CalEEMod® is a state-specific program designed to calculate both criteria and GHG emissions from development projects in California and approved for use by the BAAQMD.[4]

CalEEMod® utilizes widely accepted models for emission estimates combined with appropriate default data that can be used if site-specific information is not available. These models and default estimates use sources such as the United States Environmental Protection Agency (USEPA) AP-42 emission factors,[5] California Air Resources Board's (ARB's) on-road and off-road equipment emission models such as the EMFAC and the Offroad Emissions Inventory Program model (OFFROAD), and studies commissioned by California agencies such as the California Energy Commission (CEC) and CalRecycle. CalEEMod includes all of the GHG emission source categories required for a comprehensive GHG impacts analysis, along with updated vehicle emission factors that incorporate recent regulations such as Pavley I and the Low Carbon Fuel Standard (LCFS).

For operational emissions, default values from CalEEMod® were used with the following specifications:

- ENVIRON analyzed construction emissions beginning in year 2014 with operational emissions beginning at the close of construction.
- ENVIRON modeled 244 single-family homes based on the data provided. The average household size of 3.26 residents per dwelling unit is from the Dumbarton Transit Oriented Development Specific Plan and consistent with 2010 US Census Data for Newark.[6,7]
- For energy use, ENVIRON used a CO_2 intensity factor based on Pacific Gas and Electric (PG&E) data,[8] which incorporates the 20% Renewable Portfolio Standard (RPS) requirement for 2010.
- ENVIRON used non-default CalEEMod® inputs to include 2013 Title 24 building efficiency standards, which took effect January 1, 2014. The default values in CalEEMod® incorporate the 2008 Title 24 standards, which ENVIRON adjusted to reflect the new standards that are currently in effect and would apply to the Project. The 2013 Title 24 standards exceed the current energy efficiency standards in CalEEMod® by 25%, according to the California Energy Commission.[9]

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3 Available at: http://www.caleemod.com/.

4 BAAQMD, 2013. CEQA Guidelines website. August 5 update. See http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES.aspx.

5 The USEPA maintains a compilation of Air Pollutant Emission Factors and process information for several air pollution source categories. The data is based on source test data, material balance studies, and engineering estimates. More information is available at http://www.epa.gov/ttnchie1/ap42/.

6 US Census 2010. Available online at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1.

7 Dahlin Group Architecture Planning in association with the BKF Engineers. *Dumbarton Transit Oriented Development Specific Plan*. Available at http://www.newark.org/images/uploads/comdev/pdfs/DumbartonTOD/FinalDraftSpecificPlan/11_0908_DumbartonTOD_SpecificPlan_FinalDraft.pdf.

8 PG&E's Power/Utility Protocol (PUP) Reports available at: https://www.climateregistry.org/CARROT/public/reports.aspx.

9 California Energy Commission website http://www.energy.ca.gov/releases/2012_releases/2012-05-31_energy_commission_approves_more_efficient_buildings_nr.html, according to which the 2013 Building Energy Efficiency Standards for residential construction are 25% more efficient than previous standards. The Standards will take effect on January 1, 2014 and include more efficient insulation, windows, ventilation systems and other features that reduce energy consumption.

- Mobile mitigation factors from the Dumbarton Transit Oriented Development (TOD) Draft Environmental Impact Report (DEIR)[10] and the Supplemental Environmental Impact Report (SEIR)[11] were applied to evaluate the change in emissions from operational use of the proposed project. These mitigation factors include proximity to transit, addition of pedestrian networks, and construction of high-density housing, at 10.4 dwelling units per acre.

For construction emissions, default values from CalEEMod® were used.

Results

Operational emissions from the Project are estimated to be 3,347 metric tons of carbon dioxide equivalent (MT CO_2e), with mobile emissions contributing about 64% of the total emissions. Emissions from energy consumption contribute about 29% of the total emissions. The remaining 7% result from area sources, water usage, and waste generation. Details of the operational emissions are presented in Table 1.

Total construction emissions from the Project, in Table 2, are estimated to be 898 MT CO_2e over the entire construction period (2014 to 2015).

Comparison to Thresholds of Significance

The Project's estimated operational emissions exceed the BAAQMD adopted CEQA bright line threshold of significance for GHG emissions of 1,100 MT CO_2e/year. However, using the assumed Project service population (SP) of 796 residents yields an operational GHG emissions efficiency of 4.2 MT CO_2e/SP/year, which is below the BAAQMD CEQA significance threshold of 4.6 MT CO_2e/SP/year.

There are no thresholds of significance for GHG emissions from construction equipment; however BAAQMD recommends that these emissions be quantified and disclosed. For reference, the project construction emissions of 898 MT CO_2e over two years are below the one-year bright line threshold of significance for GHG emissions of 1,100 MT CO_2e/year.

Closing

Please feel free to contact Michael at 415.796.1934 if you have any questions about this analysis. Thank you for the opportunity to assist you with this matter.

Sincerely,

Michael Keinath, PE
Principal

Catherine Mukai, PE
Manager

[10] Newark, California. *Dumbarton TOD – Draft Supplemental Environmental Impact Report.* Available at http://www.newark.org/departments/planning-and-economic-development/on-going-projects/dumbarton-transit-devlopment-area-2/.

[11] RBF Consulting for the City of Newark. *Dumbarton Transit Oriented Development Specific Plan: Draft Environmental Impact Report.* Available at http://www.newark.org/departments/planning-and-economic-development/on-going-projects/dumbarton-transit-devlopment-area-2/

Table 1
Greenhouse Gas Emissions - Operation
Trumark Homes Residential Development
Newark, California

Type	Source	GHG Emissions	Units
Yearly Operational Emissions	Area[1]	48	MT CO_2e/yr
	Energy[1]	968	
	Mobile[1]	2,127	
	Waste[1]	152	
	Water[1]	52	
Total Operational[2]		**3,347**	
Total Service Population[3]		**796**	--
Total Operational per Service Population		**4.2**	MT CO_2e/SP/yr
BAAQMD May 2011 CEQA GHG threshold		**4.6**	
Exceeds Threshold?		**NO**	--

Notes:
1. Emissions estimated using CalEEMod version 2013.2.2.
2. Total operational emissions include yearly emissions from area, energy, mobile, waste, and water sources.
3. The service population is assumed to be a total of 796 residents, a density of 3.26 residents per dwelling unit, for consistency with the Dumbarton Transit Oriented Development Specific Plan, and confirmed by the US 2010 Census, which shows the population density in Newark to be 3.27 people per dwelling.

Abbreviations:
BAAQMD = Bay Area Air Quality Management District
CalEEMod = California Emissions Estimator Model
CEQA = California Environmental Quality Act
CO_2e = carbon dioxide equivalents
GHG = greenhouse gases
MT = metric tonnes
SP = service population
USEPA = United States Environmental Protection Agency
yr = year

Sources:
BAAQMD. 2011. CEQA Air Quality Guidelines. May.
CalEEMod version 2013.2.2. Available online at: www.CalEEMod.com
Dumbarton Transit Oriented Development Specific Plan. Available at http://www.newark.org/images/uploads/comdev/pdfs/DumbartonTOD/FinalDraftSpecificPlan/11_0908_DumbartonTOD_SpecificPlan_FinalDraft.pdf
US Census 2010. Available online at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1.

Table 2
Greenhouse Gas Emissions - Construction
Trumark Homes Residential Development
Newark, California

Type	Source	GHG Emissions	Units
One-Time Emissions	Construction	898	MT CO_2e

Notes:
1. Emissions estimated using CalEEMod version 2013.2.2.

Abbreviations:
CO_2e = carbon dioxide equivalents
MT = metric tonne (1,000 kilograms)

Sources:
http://www.caleemod.com

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4/18/2014

Michael Rhoades
David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200
San Jose, CA 95126

Re: Trumark TOD Project - Response to Stoel Rives LLP Air Basin Comment:

Stoel Rives LLP Comment F-1: Related to the SEIR's analysis of exhaust emissions during construction of the Project, the SEIR states that "emissions generated in other air basins associated with transport of [contaminated] soil would be attributable to the facilities receiving the soil." (SEIR, p. 54) It is impermissible under CEQA to ignore a direct environmental impact on the basis that the impact will occur at a certain distance from the Project. Air quality impacts that are a direct result of the Project must be analyzed, regardless of the impact potentially occurring in an adjacent air basin. While the mitigation of these impacts may be outside the jurisdiction of the City or BAAQMD, there is no basis on which to shift the analysis of the impact outside of the SEIR, particularly where there is no forum for analysis of that impact by another jurisdiction.

I&R: Truck hauling of contaminated soil due to project construction may result in air emissions in the jurisdiction of the San Joaquin Valley Air Pollution Control District (SJVAPCD). Thresholds of significance for construction activities have been developed by the SJVAPCD and are 10 tons per year for ROG and NO_X.[1] At this time, the volume of contaminated soil on site is not known, but was conservatively estimated to be 25,000 CY by the project applicant. As a reasonable worst-case scenario, all truck hauling of contaminated soil was assumed to occur within the same year.

Emissions of ROG and NO_X from diesel-fueled trucks hauling to the Buttonwillow Class 1 hazardous waste facility were calculated using 2014 emission factors from the California Air Resources Board (CARB) EMFAC2011 emissions model. The default EMFAC2011 vehicle fleet age distribution for the San Joaquin Valley was assumed for heavy-duty T7 trucks. An average speed of 55 mph was assumed. It was assumed that each haul truck would hold 20 CY of contaminated soil. This would result in approximately 2,500 total one-way trips (or 1,250 round trips) from the BAAQMD boundary to Buttonwillow, a distance of approximately 210 miles one-way within the SJVAPCD. Estimated total construction period hauling emissions within the SJVAPCD are 0.10 tons ROG and 5.49 tons NO_X.

[1] SJVAPCD, 2002. *Guidance for Assessing and Mitigating Air Quality Impacts*. Revised January, 2002.

Compared to the SJVAPCD significance thresholds of 10 tons/year for both ROG and NOx, respectively, project construction hauling emissions from potential contaminated soil hauling within the SJVAPCD would be less than significant.

If contaminated soil was removed by rail, hauling would be expected to have less of an adverse impact than hauling by truck. Hauling by rail is generally much more efficient than with trucks. At this time, a rail hauling route and total number of train trips required is not known. However, this volume of material would not be expected to add additional train trips on top of existing freight schedules and operations.

* * *

Joshua D. Carman

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Attachment: EMFAC2011 calculations

Response to Comments on the Trumark Dumbarton Transit Oriented Development Residential Project submitted by Stoel Rives LLP on behalf of Gallade Chemical, Inc.

Comment II.A: Park Funding Agreement

The City proposes to approve a Resolution authorizing a Park Funding Agreement, affecting the Gallade property. (Item E.1, Att. 5.) The proposed Agreement satisfies Condition uuuu of the Tentative Map, which requires the Developer and the City to enter an agreement to address funding for a public park on the Gallade property. Condition uuuu provides that the Agreement shall "obligate" the Developer to construct or fund construction of improvements on the Park Site. (Item E.1, Att. 6, condition uuuu; see also, Item E.2, Staff Report ("Vesting Tentative Map includes numerous conditions and includes a requirement for the Gallade Chemical property to be acquired and developed as a park.").) Thus, the Condition commits the City to actions requiring development of the Park Site, which have not been evaluated under CEQA.

The proposed Agreement conditions the City's action on future compliance with CEQA (para. 1.04) in direct violation of CEQA. *(Save Tara v. City of W Hollywood* (2008) 45 Cal.4th 116; CEQA Guidelines, § 15352(a).) Although the Agreement attempts to assert that the City is not committed to any future actions, the Agreement requires the City to initiate efforts to acquire the Gallade site unless the developer terminates the Agreement. (Agreement, para. 1.04(4) ("City shall make a written offer to purchase the Park Site"), para. 1.04(5) ("City shall take all steps required ... to acquire the Park Site through the exercise of eminent domain").) The environmental impacts associated with acquisition of the Park Site have not been evaluated, and approval of the Agreement violates CEQA. *(Save Tara, supra,* 45 Cal.4th 116.)

Moreover, the Agreement provides that the park-related conditions of the Project shall be waived if the Park Site is not acquired by June 30, 2015, (Agreement, para. 1.04(7).) There has been no CEQA analysis of the potential impacts associated with waiving the park-related requirements. The City acknowledges that the acquisition of the Park Site is necessary to achieve the goals of the transit-oriented development (Item E.1, Staff Report). If the park-related conditions are waived, the Project will not meet these requirements and there is a potential for significant impacts that have not been evaluated in the SEIR. In particular, the SEIR must evaluate the potentially significant traffic, air, noise, greenhouse gas and other environmental impacts that would result if the project does not achieve its transit oriented goals. Additionally, the staff report is misleading on this point as it represents that no certificate of occupancy can be issued until the Gallade site is acquired (Item E.2, Staff Report), but the Park Agreement allows for this requirement to be waived (Agreement, para. 1.04(7)).

The Agreement also commits the City to a conceptual site plan, including construction related activities, for the Park Site, which have not been evaluated under CEQA. (Agreement, para. 1.05(5) & (6).) Further, the City's proposed actions authorize the Developer to make improvements to property that it does not own (see, Item E.1, Staff Report), and under circumstances where the property owner has not been notified (see, infra re lack of notice). The Developer has no authority to obtain approvals related to property that it does not own or control.

Finally, the Park Agreement commits the City to initiating eminent domain proceedings if certain conditions are met. (Agreement, para. 1.04(5).) This is a pre-commitment to take a discretionary action requiring a public hearing, for which no notice or hearing has occurred and no CEQA review has been conducted.

Response II.A: This comment states the proposed Park Funding Agreement between the City and the project applicant commits the City to actions which have not been evaluated under CEQA, namely the acquisition and future development of a park on the Gallade Chemical parcel. The comment cites relevant case law in which the California Supreme Court found a lead agency had impermissibly committed to implement a proposed action prior to conducting the required environmental review. The current situation involving the Gallade parcel, however, is quite different and the City has complied with CEQA.

The Dumbarton Specific Plan proposed, and the related Dumbarton TOD Specific Plan EIR analyzed, the acquisition, future development, and ongoing use of 16.3 acres of parks and open space, including the Gallade parcel, which is depicted on the approved Specific Plan land use plan (Specific Plan Figure 8.3) as one of two new public parks to be developed within the Specific Plan. Therefore, the use of the Gallade parcel as a park was evaluated in a certified EIR. The Specific Plan EIR disclosed 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.

The purpose of the current Trumark Dumbarton TOD Residential Project SEIR is to evaluate the specific impacts of the two pending residential development applications (neither of which are located on the Gallade parcel), based on additional project detail that did not exist when the Specific Plan DR was prepared. The City, in imposing conditions that contemplate the development of the Gallade parcel as a park, is not committing to an activity that exceeds the Specific Plan EIR's level of environmental analysis of the future park on the Gallade parcel. The City has yet to proceed to the detailed park planning and design phase to determine precisely what specific physical changes would be made to the Gallade parcel to implement the future park. The draft funding agreement provides that the developer shall prepare and submit a master plan for the park site for review and consideration by the City Council, at which point the City will determine what, if any, additional project-level environmental review is appropriate, tiering from the certified Specific Plan EIR. The certified Specific Plan EIR provides adequate information at this stage of the City's decision-making with respect to the future park planned on the Gallade parcel.

Comment II.B: <u>Community Financing Agreements</u>

Similarly, the proposed Resolutions authorizing a Community Financing Agreements (Items E.1, Att. 5; E.2, Att. 5), commits the City to certain actions regarding a park on the Gallade site prior to

completion of CEQA. Again, while the proposed Agreement purports not to commit the City to any action (para. C), the specific terms of the Agreement (as well as the evidence in the record) make clear that the City has already committed to the actions associated with acquisition and development of a park on the Gallade property. (Item E.1, Att. 4, para. 1.01; Item E.2, Att. 5, para. 1.01 ("funds shall only be used towards the development of the [1 approximately two- acre park (on the Gallade parcel)").) Those commitments precede required CEQA review. *(Save Tara, supra,* 45 Ca1.4th 116.)

Response II.B: As discussed in the prior **Response II.A** above, the Dumbarton Specific Plan proposed, and the related Specific Plan EIR analyzed, the acquisition, future development, and ongoing use of the Gallade Chemical parcel as a park, as depicted on the approved Specific Plan land use plan (Specific Plan Figure 8.3) as one of two new public parks to be developed within the Specific Plan. Therefore, the use of the Gallade parcel as a park was evaluated in a certified EIR. The certified Specific Plan EIR provides adequate information at this stage of the City's decision-making with respect to the future park planned on the Gallade parcel.

Comment III.A: <u>The Project Description is Misleading and Results in Improper Segmentation</u>

The project description fails to include conversion of the Gallade site to a park as part of the overall Project. The Project is defined in section 3.5.1 of the SEIR as preparation of Site A and Site B for residential development, and construction of homes and other facilities "on those sites." (SEIR, p. 40.) Yet, as noted above, the Project requires the acquisition of the Gallade site and conversion to a park. The failure to include the conversion of the Gallade site to a park as part of the fundamental project description is misleading. *(County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) A "finite project description is indispensable to an informative, legally adequate EIR." *(Id.* At 199.)

This failure also results in segmentation in violation of CEQA. The City may not split a project into small pieces so as to avoid environmental review of the entire project. *(Orinda Ass 'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.) Yet, that is precisely what has occurred with the SEIR's failure to include converting the Gallade site to a park as part of the project. Moreover, the characterization of the park requirement as a condition of the Project, rather than part of the originally proposed Project, does not excuse the requirement to evaluate impacts associated with the park requirement. *(Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Ca1.3d 376; see also, CEQA Guidelines, §§ 15126.2, 15126.4; *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

In addition, the baseline for consideration of environmental impacts assumes, as a pre-condition, that Gallade would no longer be in operation. This is an inappropriate baseline as it does not reflect existing conditions, but rather future changes that have not occurred (and have not been evaluated). (CEQA Guidelines, § 15125.)

Response III.A: This comment states the SEIR's project description is misleading by not including the planned conversion of the Gallade parcel to a public park as a related action, and therefore, the SEIR's analysis has not accounted for all aspects of the proposed project, thereby

leading to a segmented environmental review. This comment appears to misunderstand the purpose of the SEIR and what has already been disclosed in the Specific Plan EIR. The purpose of the current Trumark Dumbarton TOD Residential Project SEIR is to evaluate the specific impacts of the two pending residential development applications (neither of which are located on the Gallade parcel), based on additional project detail that did not exist when the Specific Plan EIR was prepared. The Supplemental EIR is just that, a supplemental document to the original Specific Plan EIR that focuses its analysis on the physical changes planned for the two residential sites, and the SEIR was not written to address anticipated physical changes to other properties within the Specific Plan. The holistic project description and environmental impact analysis the comment is requesting encompassing the planned park on the Gallade parcel is to be found in the Specific Plan EIR. Therefore, the City has not segmented its environmental review of the various Specific Plan components. The current SEIR is supplementing the Specific Plan EIR's analysis of the two Trumark residential project sites, it is not attempting to supplement the certified EIR's analysis of the Specific Plan as a whole, nor specifically the planned park on the Gallade parcel.

The comment further disagrees with the selection of an environmental baseline that does not include the current Gallade Chemical operations for purposes of evaluating the two Trumark residential development applications. The SEIR employed a baseline with the Gallade Chemical Co. no longer in operation, as the TOD Specific Plan identifies that parcel as a planned park and based on the proposed conditions of approval. Substantial evidence in the record supports the SEIR's approach, including the current status of negotiation with the Gallade parcel owner for the acquisition of the parcel through a purchase and sale agreement.

Comment III.B: <u>The Approvals Contemplate Actions With Impacts That Have Not Been Evaluated Under CEQA</u>

Because the SEIR fails to include the park as part of the Project, there is no analysis of the potential environmental impacts of converting the Gallade site to a park. The SEIR notes: "The Specific Plan EIR provided a program -level analysis of the environmental effects of converting the former industrial land in the Specific Plan area to residential, retail and community uses and the environmental impacts of the construction and operation of the entire Specific Plan project. As such, the DR <u>did not</u> analyze the project-level environmental impacts resulting from the development of specific parcels other than the Torian project site in the Specific Plan area." (SEIR, p. 38.)

With respect to the park specifically, the SEIR notes, "Use of this property as a public park was evaluated in the Specific Plan EIR <u>only at a program level</u> given the final cleanup activities to allow use of the site as a park were not sufficiently defined." (SEIR, section 3.5.3, p. 44.) The SEIR goes on to acknowledge that there isn't sufficient info for a project level analysis of the park, but that the park will be subject to further environmental review when plans for its development are prepared. *(Id.)* Thus, while the Project is contingent on the park, there is no analysis of the impacts of constructing the park, including but not limited to impacts on the

existing Gallade operation, and impacts resulting to industrial site relocation, cleanup and remediation of the site, and construction of a park.

In addition to committing the City to take certain actions regarding the Park Site prior to CEQA analysis of review of those actions, the proposed approvals include various entitlements and conditions that have not been evaluated under CEQA. The SEIR focused only on six environmental impact areas (air quality, biological resources, cultural resources, greenhouse gas emissions, hazards and hazardous materials, and noise), and failed to evaluate the potentially significant impacts that could result to other environmental areas. The Specific Plan EIR did not evaluate impacts associated with the park at a project-level and conversion of the Gallade site to a park has the potential to result in significant impacts to biology, air quality, traffic, noise, greenhouse gas emissions, hazards, public health and safety, utilities, hydrology, and geology.

Moreover, impacts resulting from the residential projects themselves are truncated and insufficient. For example, Item E.1, Att. 6 (proposed approval of TM-12-32) includes numerous conditions requiring road improvements (see, e.g., conditions dd through gg), but the SEIR does not even evaluate potential traffic impacts of the Project or impacts associated with the construction of those traffic improvements.

Response III.B: The first part of this comment reiterates previous comments that the City has not conducted appropriate environmental review for the Trumark residential project decisions that are pending related to the planned park on Gallade parcel. This issue has been addressed in the prior responses above.

The second part of this comment states the SEIR's analysis of the environmental impacts associated with the Trumark residential projects only focused on six impact areas (air quality, biological resources, cultural resources, greenhouse gases, hazards and hazardous materials, and noise), and should have also evaluated other topics. The City concluded, in determining that an SEIR was necessary to disclose significant new information relating to the six impact areas noted in the comment, that the certified Specific Plan EIR adequately addressed the two Trumark residential projects' impacts in all other environmental topic areas. As stated in the Draft SEIR (pg.50), other topics and potential impact areas such as aesthetics, traffic, land use, and geology are not analyzed further in the SEIR because the proposed Trumark residential developments would result in impacts consistent with the Specific Plan EIR's analysis.

Comment III.C: <u>The SEIR Inadequately Addresses Biological Resources</u>

The SEIR fails to commit to any mitigation measure for nesting raptors. The SEIR is based on surveys that were conducted for one month during the nesting season (although nesting season is from February 1 - August 31) and concluded there was no observation of white-tailed kites and red-tailed hawks. The mitigation measure incorporates Dumbarton TOD Specific Plan EIR MM 4.3-4 which states that a construction fence shall be installed if nesting raptors are identified. Because no nesting raptors were identified during the survey, it is assumed that the project proponent will not incorporate this mitigation measure. This is insufficient analysis - the Biological Resources Report found that there is potential for white-tailed kites and red-tailed hawks to nest in trees on or adjacent

to the project sites and one month of surveying during the first month of nesting season is insufficient to determine the impact. The project proponent needs to engage in longer surveying and the mitigation measure needs to be revised to commit the project proponent to the measure. (SEIR, p. 62 - 4.2.2.3 Nesting Raptors.)

Response III.C: This comment states that the SEIR does not specify appropriate mitigation measures for impacts to nesting raptors, and that a nesting raptor survey conducted during preparation of the Biological Resources Report (included as Appendix B-1 of the SEIR) is inadequate to determine the presence or absence of nesting raptors. The SEIR includes the results of a nesting raptor survey conducted during February 2013 to determine if nesting raptors were present *at the time of preparation of the SEIR* to establish the environmental baseline; none were observed. However the comment is incorrect in its assumption that no additional surveys for nesting raptors would be required or that the project would not be required to implement appropriate buffer areas (through the installation of construction fencing) if nesting raptors are present at commencement of construction. As described on Pages 62-63 of the SEIR and as identified in the Mitigation Monitoring and Reporting Program (MMRP) for the project, the project would implement Specific Plan EIR Mitigation Measure 4.3-2, which requires that pre-construction surveys for nesting raptors be conducted on each project site if initial earth moving or construction work is to occur during the raptor nesting season of February 1-August 31. If nesting raptors are identified during the surveys, appropriate buffer areas around the nest would be established and maintained. The size and duration of the buffer area are described in detail in the SEIR and the MMRP.

The SEIR provides updated information about the status of nesting raptors on the site at the time of its preparation, and appropriately identifies that Specific Plan EIR Mitigation Measure 4.3-2 would apply to the project to prevent impacts to nesting raptors if they are present at commencement of construction.

Comment III.D: <u>The Alternatives Analysis Is Flawed</u>

The project objectives are too narrowly drawn and are designed to minimize or avoid CEQA 's requirement for an EIR to identify a reasonable range of alternatives. Specifically, the SEIR identifies the applicant's primary objectives to include: 1) "Develop an economically viable, high-quality residential project consistent with the Dumbarton TOD Specific Plan"; 2) "Develop single family detached residences consistent with the project sites' (sic) Medium High Density Residential land use designation"; and 3) "Prepare Site B for residential development by addressing soil and groundwater contaminants to achieve established regulatory standards for residential use of the property." These artificially narrow objectives are then applied in the alternatives analysis as a basis for constraining the Location Alternative (off-site alternative) to possible sites within the extremely tight physical confines of the 205 acre Specific Plan area. This is contrary to the intent of CEQA, and forcibly truncates what should have been a broader analysis of a reasonable range of alternatives, including an honest review of legitimate off-site locations. Achieving the City's goals of sustainable development, mixed use housing, and transit-oriented development should never be artificially constrained to the Specific Plan area, and should instead

require meaningfully be examination through consideration of a range of other legitimate locations. Though the Specific Plan's state of readiness may arguably be more advanced than other off-site locations around the City, this is not a legal basis for limiting the range of alternatives analysis in direct violation of CEQA.

The No Project Alternative wrongly concludes that in the absence of the project, development would not occur, and therefore, impacts of the project would be avoided. This determination is inconsistent with the existence of an approved Specific Plan that has designated development for the sites. Specifically, the SEIR states:

> 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.
>
> 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.
>
> 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.

(SEIR, p. 118.)

It is a fiction for the SEIR to conclude that an area within an approved Specific Plan will not develop if the immediate project proposal does not go forward. Additionally, as stated in the SEIR excerpt above, the assumption that the site would remain vacant until both the Specific Plan and General Plan are amended, and the sites are rezoned to accommodate uses other than residential is completely fabricated and entirely lacking in evidentiary support. This approach is a deliberate attempt to avoid a true assessment of the viability and legitimacy of the No Project Alternative, and violates CEQA. The alternatives analysis is further flawed with regard to continued claims that the "No Project Alternative would avoid the identified environmental impacts of the proposed project, [and] would not support the objectives of the Dumbarton TOD Specific Plan and could be detrimental to successful implementation of the Plan ... nor would it accomplish the highest and best use of the sites by leaving them vacant." (SEIR, p. 118.) Again, there is no evidence to support these flawed conclusions, which are themselves inconsistent with the City's adopted planning scheme, which remains in place regardless of whether or not the proposed project proceeds.

Finally, in what can only be described as a mysterious internal inconsistency, the No Project Alternative analysis summarized above is entirely at odds with the Summary section presented in the SEIR at pages xxv and xxvi, which clearly states that the No Project Alternative will

neither limit development of the site under the Specific Plan, or avoid the key environmental impacts of the proposed project. The Summary provides:

> The No Project-Existing Plan Alternative assumes the proposed 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.
>
> 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 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. The potential to avoid seasonal wetlands on Site A is discussed in more detail below in the Reduced Development Alternative and the Design Alternative.
>
> 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.

(SEIR, p. xxvi.)

This glaring inconsistency cannot be reconciled and presents a clear flaw in the document. It would appear that the alternatives analysis was drafted by one individual, and the summary of the alternatives analysis by another, and that for whatever reason, neither bothered to check what the other was saying. This extremely casual approach to preparing and drafting an EIR for a major urban infill project permeates the alternatives analysis and the SEIR in general, and violates CEQA's requirements for a clear and consistent presentation of the environmental effects of the project to enable the public to understand and evaluate that which is proposed.

Response III.D: This comment states the project objectives are too narrow and have improperly constrained the SEIR's analysis of off-site location alternative(s). The SEIR's objectives are appropriately focused on implementing the Dumbarton TOD Specific Plan, and have not unduly constrained the consideration of other potential off-site location alternatives. The CEQA Guidelines do not require consideration of an off-site location alternative (per Guideline §15126.6(a), "An EIR shall describe a reasonable range of alternatives to the project or to the location of a project...", *emphasis added),* and the City elected to include, among the SEIR's range of alternatives, discussion of a location alternative within the Specific Plan itself in an attempt to avoid the hazardous materials release impact affecting the two Trumark residential sites while still implementing a component of the Specific Plan. CEQA does not require that the SEIR include location alternatives outside the Specific Plan, as it does not require that the SEIR include any particular location alternative.

The comment further states that the SEIR's discussion of the No Project — No Development Alternative assumes an artificial scenario using flawed assumptions that the two sites would not otherwise be developed (i.e., the two Trumark sites would remain undeveloped if the current proposed Trumark applications are not implemented). The SEIR's discussion of this alternative (pg.117) starts by referencing relevant language from the CEQA Guidelines (per Guideline §15126.6(e)(2)), that states that the No Project Alternative should address both the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved. The SEIR addresses both conditions. The No Project — No Development Alternative is focused on the former condition (i.e. existing conditions) per the Guidelines, while the No Project - Existing Plan Alternative discusses the latter condition. The comment expresses an opinion that the SEIR's discussion of the No Project — No Development Alternative provides little apparent value since it is reasonably foreseeable that other development would be implemented consistent with the Specific Plan, which does not require further response.

The comment concludes by describing a perceived (albeit non-existent) inconsistency that the SEIR Summary includes a discussion of the No Project - Existing Plan Alternative, while the SEIR Alternatives chapter discusses a different No Project — No Development Alternative. As stated above, **Section 7.0 Project Alternatives** of the SEIR includes discussion of two variations of the No Project Alternative (as suggested by Guideline §15126.6(e)(2)); the first of which assumes, should the current Trumark developments not be implemented, no development occurs on the two sites, while the second no project alternative assumes other development consistent with the Specific Plan ultimately is implemented on each site. As noted in the comment, the latter alternative scenario may be more likely, and therefore given its increased informational value, this No Project - Existing Plan Alternative was discussed in the SEIR Summary, while the No Project — No Development Alternative (in which the comment finds little apparent informational value) was not included in the Summary and instead is discussed solely in the SEIR Alternatives section.

Comment III.E: <u>The SEIR Provides an Inadequate Analysis of the Project's Impacts and Proposed Mitigation of Greenhouse Gas Emissions</u>

1. Operational Greenhouse Gas Emissions Impacts

The SEIR fails to provide substantial evidence to support its conclusion that the Project's operational 'greenhouse gas ("MG") emissions will have a less than significant impact. Specific Plan EIR MM 4.6-1 requires that listed design features "shall be incorporated into 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." (SEIR, p. 77 (emphasis added).) The SEIR's conclusion of less than significance related to operational long-term GHG emissions is premised entirely on the Project

being "consistent with the Specific Plan land use designations and assumed densities" and whether lithe applicable emissions reductions measures identified in the Specific Plan EIR are implemented. " (Id. at p. 76.) Yet, the SEIR provides that the Project would implement only the "majority" of the Specific Plan EIR mitigation measures and only those "applicable" to the Project, while simultaneously concluding that potentially significant operational emissions would be reduced to a less than significant level. (Id. at p. 79.)

The City cherry picks which of Specific Plan EIR MM 4.6-1 GHG reduction measures the Project will implement. In some instance the Project does not propose to implement listed reduction measures at all, in other instances it gives residents the "option" of purchasing the design feature specified in the reduction measure, thus ensuring no guarantee of implementation. (SEIR, p. 78.)

With regards to the GHG reduction measure to provide a minimum of 15 percent affordable housing, the SEIR states that the Project would provide in-lieu fees to the City to fund affordable housing development. (SEIR, p. 78.) No information is given on the amount of in- lieu fees to be provided, nor whether the proposed amount would be adequate to implement affordable housing equivalent to 15 percent of the Project's units. Nor does the City explain how it would ensure that the in-lieu fees would be used to provide these affordable housing units near transportation networks, the key component that makes the affordable housing requirement a source of GHG reductions.

To implement the GHG reduction measure "incorporate design guidelines for transit oriented development and complete street standards," the SEIR states that the Project "will construct or contribute to reconstruction of Enterprise Drive and Willow Street consistent with Specific Plan Complete Street designs." (SEIR, p. 78.) The SEIR fails to provide any explanation of how the reconstruction of these two streets will fully implement the GHG reduction measure, given that there are other streets surrounding the project. More importantly, no explanation is provided on what level of "contribution" the Project would assume, nor how the remainder of the funding presumably necessary to realize the GHG reduction measure for these streets would be available.

In addition, the GHG reduction measures outlined in Specific Plan ELE MM 4,6-1 are only some of the potential design features the Project could utilize to demonstrate and ensure consistency with the adopted statewide plans and programs related to climate change. (SEIR, p. 77.) Yet, the SEIR proposes no other, alternative GHG emission reduction measures to ensure that its emissions impacts are sufficiently mitigated. The SEIR does not quantify the Project's GHG emissions, so the impact of the SEIR's failure. to incorporate all design features in accordance with Specific Plan EIR MM 4.6-1, or propose and implement alternative measures, cannot be evaluated. The SEIR even fails to provide *a qualitative* analysis of how the Project's failure to implement certain GHG reduction measures affects the assumption that operational GHG emissions impacts are lowered to less than significant.

2. Construction GHG Emissions Impacts

The SEIR provides three best management practices ("BMPs") from the Bay Area Air Quality Management District ("BAAQMD") for the reduction of construction GHG emissions and

ambiguously discusses the Project's implementation of two of the three BMPs. (SEIR, p. 79.) Compliance with the City's Municipal Code would ensure the implementation of one of the BMPs, recycling or reusing at least 50 percent of construction waste and demolition materials. However, the SEIR provides no assurance that the Project would abide by, or even attempt to implement, the remaining two BMPs. The SEIR ambiguously states that the Project site is located in an urban location within close distance of construction supplies and equipment, which would help minimize GHG emissions generated from transport of construction materials and waste. *(Ibid.)* The SEIR provides no assurance, however, that the Project will actually implement the BMP to use at least 10 percent local building materials, much less providing an enforceable mitigation measure to that effect. The impacts analysis does not address the feasibility or the Project's intention to implement the remaining specified BMP to use alternative-fueled construction vehicles/equipment for at least 15 percent of the fleet. The SEIR only states it will implement recommended BMPs "where feasible" to reduce construction GHG emissions. *(Id.* at 81.) Finally, similarly to the operational GHG emission reduction measures, the Project is not limited to *only* the specified GHG reduction strategies; the Project could specify other measures to mitigate emissions. Yet, the SEIR does not even attempt to outline other construction GHG BMPs or emissions reductions that could be implemented to mitigate impacts.

Despite the Project's lack of sufficient, or enforceable, measures to mitigate construction GHG emissions, the SEIR concludes that the Project will have a less than significant impact with respect to construction GHG emissions impacts. (SEIR, p. 80.) With the potential implementation of one or two BAAQMD BMPs, the SEIR lacks substantial evidence to support this conclusion. There is no qualitative or quantitative discussion of construction emissions, their impacts, or the reduction in emissions with the (potential) implementation of the BMPs. The lack of a quantified threshold of significance from BAAQMD or the City related to impacts resulting from construction GHG emissions does not excuse the City from quantifying the Project's emissions and analyzing their impact and whether the proposed mitigation would lower that impact to below significance. The lack of enforceable mitigation measures (assuming the mitigation proffered would be sufficient to lower impacts) also renders the conclusion of less than significant invalid.

3. Consistency with Plans and Policies

The SEIR's conclusion that the Project would not conflict with any applicable 01-16 reduction plans, policies or regulations is supported only by the statement that the Project will incorporate "most" of the Specific Plan MR's applicable GHO reduction measures. (SEIR, p. 80) As discussed above, picking and choosing those GHG reduction measures that the Project finds convenient to incorporate into the Project does not provide substantial evidence to support the conclusion that operational GHG emissions impacts are mitigated to a less than significant level. The incorporation of some GHG emissions reduction measures is similarly insufficient to conclude that the Project is consistent with all applicable GHG reduction plans, policies, and regulations, particularly where the Project's actual consistency with the unnamed "plans, policies, and regulations" is absent from the SEIR discussion.

Response III.E.1: The comment states that the SEIR does not support its conclusion that the project would have less than significant operational GHG impacts, and that the project is

not consistent with Specific Plan EIR Mitigation Measure 4.6-1, which identifies potential GHG emission reduction design features for development under the Specific Plan.

The SEIR summarizes the Specific Plan EIR's GHG impact analysis, which includes a calculation of GHG emissions resulting from build out and operation of all development under the Specific Plan. The Specific Plan EIR estimated that the Specific Plan project would generate 25,600 Metric Tons of Carbon Dioxide equivalent emissions per year (MT CO2e/year) before implementation of the energy efficiency and emission reduction design features identified in Mitigation Measure 4.6-1. The SEIR reiterates the Specific Plan EIR's calculation that implementation of the reduction measures is estimated to reduce Specific Plan emissions by 27.92% resulting in GHG emissions of approximately 18,500 MT CO2e/year, which equates to approximately 2.26 MT CO2e/year per service population. This rate of emission is less than half that of the BAAQMD threshold of significance for GHG emissions of 4.6 MT CO2e/year per service population.

If none of the energy efficiency and emission reduction design features were implemented by the Specific Plan project, the Specific Plan area's annual GHG emissions of 25,600 CO2e/year for the service population of 8,150 persons within the Specific Plan area would be approximately 3.14 MT CO2e/year per service population, which is still well below the BAAQMD threshold of 4.6 MT CO2e/year per service population. Therefore, if the Specific Plan EIR had identified no GHG reduction measures, Specific Plan GHG emissions, including those from the two Trumark residential projects, would still be less than significant.

This list of potential energy efficiency and emission reduction design features identified in Specific Plan EIR Mitigation Measure 4.6-1 apply to various development facets of the Specific Plan area, including residential, commercial and community serving land uses. As such, not all design measures would apply to all land uses within the Specific Plan area (i.e., single family residential development would not be expected to implement cool roof or green roof features). The SEIR appropriately identifies which of the potential design features would be implemented by the proposed project and therefore demonstrates the project's compliance with Specific Plan EIR Mitigation Measure 4.6-1.

CEQA provides discretion to the Lead Agency to determine whether to assess a project's emissions quantitatively or qualitatively (Guideline §15064.4(a)). Nonetheless, to accommodate the commenter's request for a quantified analysis for the Trumark Residential Project, a greenhouse gas analysis was prepared by Environ Corp. (Attachment B). That analysis is additional substantial evidence that the Project will not result in significant greenhouse gas impacts. Using the assumed Trumark Project's service population of 796 residents yields an operational GHG

emissions efficiency of 4.2 MT CO_2e/year per service population, which is below the BAAQMD CEQA significance threshold of 4.6 MT CO_2e/year per service population. There are no thresholds of significance for GHG emissions from construction equipment.

CEQA Guidelines Section 15088.5 requires an EIR to be recirculated when "significant new information" is added to the EIR prior to certification. "Significant new information" requiring recirculation can include a disclosure showing that a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; or a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

"New information" is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse effect (including a feasible project alternative) that the project's proponents have declined to implement. Recirculation is not required where new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. Recirculation of the SEIR would not be required for this Project because the quantified GHG emissions report is not evidence that the Project would result in any new significant impacts, nor does it show that there would be a substantial increase in the severity of an already identified impact. Instead, the report merely amplifies the SEIR' s conclusion that the Project would not result in significant greenhouse gas impacts.

2. The comment suggests that the SEIR should identify mitigation measures for reducing construction period GHG emissions. See **Response III. E. 1,** above.

3. The comment states that the project is not consistent with applicable GHG reduction plans and policies. See **Response III. E. 1,** above.

Comment III.F: <u>The SEIR Analysis of Air Quality Impacts is Flawed and Insufficient</u>

1. Analysis of Construction Emissions Impacts

In its discussion of impacts of fugitive dust emissions associated with construction, the SEIR states that the Project would not exceed the BAAQMD significance threshold for construction-related criteria pollutants, even though the only figures in the SEIR for particulate matter ("PM") are for construction vehicle exhaust emissions only and do not include any emissions from fugitive dust. (SEIR, pp. 55-56.) The SEIR then goes on to provide that mitigation measures related to fugitive dust will be implemented "even though the proposed project would not exceed those thresholds." *(Id.* at p. 56.) With no quantification of construction fugitive dust emissions, or analysis of how these emissions would be reduced with the implementation of BAAQMD's standard mitigation measures, the SEIR improperly concludes that the Project would not result in significant impacts related to fugitive dust emissions during construction. *(Id.* at 57.) In fact, the SEIR goes so far as to state that the impact related to construction fugitive dust emissions is the same impact as in the

Specific Plan EIR, despite the fact that the Specific Plan EIR did not include any project-specific emissions data. *(Ibid.)*

Related to the SEIR's analysis of exhaust emissions during construction of the Project, the SEIR states that "emissions generated in other air basins associated with transport of [contaminated] soil would be attributed to the facilities receiving the soil." (SEIR, p. 54.) It is impermissible under CEQA to ignore a direct environmental impact on the basis that the impact will occur at a certain distance from the Project. Air quality impacts that are a direct result of the Project must be analyzed, regardless of the impact potentially occurring in an adjacent air basin. While the mitigation of these impacts may be outside the jurisdiction of the City or BAAQMD, there is no basis on which to shift the analysis of the impact outside of the SEIR, particularly where there is no forum for analysis of that impact by another jurisdiction.

The SEIR states that "[e]xhaust emissions of criteria pollutants during construction would not exceed BAAQMD thresholds, therefore the project would not result in a cumulatively considerable increase in criteria pollutants for which the Bay Area is in non-attainment." (SEIR, p. 55.) CEQA requires that a cumulative impacts analysis consider not only the impacts of the Project, but also the impacts of the Project in *combination* with all other cumulative projects. *(Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 117-121.) The SEIR has failed to undertake this analysis in support of the statement that the Project "would not result in a cumulatively considerable increase." (SEIR, p. 55.) CEQA forbids the City from looking solely at the magnitude of the Project-specific impact in order to determine whether the impact would be cumulatively considerable. That the Project emissions will remain below BAAQMD significance thresholds goes only to the question of whether there is a Project-specific impact from construction emissions.

2. Community Health Risk Assessment of Operational Impacts

The SEIR's determination of a less than significant impact associated with toxic air contaminants ("TACs") is predicated on the number of daily commuter train pass-by events per day. (SEIR, p. 53.) The SEIR states that Dumbarton Rail Corridor train operations "was anticipated to be twelve events per day," citing a 2004 San Mateo County Transit Authority *Summary of the Dumbarton Rail Corridor Project Study Report. (Ibid.)* No explanation is provided with regards to the accuracy of this estimate, given that the *Project Study Report* is now a decade old. With a maximum increased cancer risk at the Project of 8.4 million cases in one million, approaching the significance threshold of 10 cases or greater per million, reliance on an outdated *Project Study Report* to conclusively determine TAC impacts are less than significant is inappropriate and in violation of CEQA.

3. Consistency with Air Quality Plans and Impacts related to Odors and Carbon Monoxide

The SEIR concludes that the Project would not conflict with applicable air quality plans or cause new impacts related to odors or carbon monoxide, based on the Project's consistency with Specific Plan land use designations for the site and residential development envisioned in the Specific Plan. (SEIR, p. 51, 58.) The SEIR fails to provide any explanation of how the Project-specific emissions of criteria pollutants, including carbon monoxide, or TACs and

odors associated with the Project none of which could have been described or analyzed in the programmatic Specific Plan EIR - are consistent with what was provided for in the Specific Plan EIR. For instance, if the City does not describe or specify what odors would be emitted during Project construction or operation, the SEIR cannot determine whether these types or levels of odors are consistent with the "residential development envisioned" in the Specific Plan EIR.

Response III.F.1: This comment states that the SEIR should analyze fugitive dust generated during construction as a construction emission. The BAAQMD CEQA Guidelines do not establish a numeric significance threshold for construction-related fugitive dust, therefore no quantification of construction period dust generation is required. Additionally, due to the variability of site and meteorological conditions during construction, quantification of construction fugitive dust generation is not technically feasible. Accordingly, the BAAQMD Guidelines recommend basic dust control practices Best Management Practices (BMPs) for all construction projects and additional dust and emission control BMPs for projects that exceed BAAQMD criteria pollutant construction emissions thresholds. As shown in Table 4-1 of the SEIR, the project would not exceed BAAQMD thresholds for criteria pollutant construction emissions. The project would however implement both basic dust control BMPs and the enhanced dust and emission reduction BMPs for projects that exceed criteria pollutant construction emission thresholds since the Specific Plan EIR established that all projects built under the Specific Plan would implement both the basic dust control BMPs and the enhanced dust and emission reduction BMPs. As described on Pages 55-57 of the SEIR and as identified in the Mitigation Monitoring and Reporting Program prepared for the project, the project would implement Specific Plan EIR Mitigation Measures 4.2-1.(a) for the basic fugitive dust control BMPs and 4.2-1.(b) for enhanced dust and emissions BMPs, respectively. Therefore, as stated in the SEIR, impacts from dust would be reduced to less than significant levels.

The comment further asserts that the SEIR should include an analysis of construction emissions (from the transport of contaminated soil to receiving facilities) outside of the Bay Area Air Basin. The City has chosen a reasonable and practical geographic scope for measuring criteria pollutants, and has provided a reasonable explanation for its selection. The chosen geographic scope allows for proper analysis of the severity and significance of the project's air quality impacts. The SEIR appropriately states that emissions associated with the project's truck trips outside of the Bay Area Air Basin are associated with the transportation infrastructure being used (whether trucks on highways or railcars) and the facility receiving the material (i.e. the ordinary operations of that receiving facility are already accounted for in the Clean Air Plan for that air basin and should be considered part of the baseline for that air basin). Only if the receiving facility was needing to expand or a new facility was needed to accommodate the material from the Trumark project would there truly be an increase in emissions compared to current baseline conditions with the receiving facility operating today at its normal

amount of activity. Further, including emissions outside the Project's air basin could serve to confuse the results of the EIR's analysis because a determination of the location and amount of emissions in other air basins would be speculative (it will be up to the soil remediation contractor to determine the location of disposal and mode of transportation, based on a variety of factors) and provide limited informational value to the public and decision-makers.

Nonetheless, to address the commenter's request for an analysis of the truck emissions from the transport of contaminated soil to receiving facilities outside the Bay Area Air Basin, an analysis of truck emissions to the nearest Class I facility in Buttonwillow, CA, is provided in Appendix C. This analysis assumes 25,000 cubic yards of soil would be transported to the Buttonwillow facility, which is located in the San Joaquin Air Basin. As noted in the SEIR, the exact amount of soil requiring disposal at a Class I facility is unknown until remediation on Site B is underway and testing of excavated soils determines pollutant concentrations, however the 25,000 cubic yard assumption is believed to be reasonably conservative and it is unlikely the amount of material to be transported would exceed that amount. The analysis found that emissions from 2,500 truck trips to the San Joaquin Air Basin (1,250 trips to the facility plus 1,250 return trips) would generate an estimated 0.10 tons Reactive Organic Gasses (ROG) and 5.49 tons of nitrous oxide (NOx). Compared to the San Joaquin Valley Air Pollution Control District (SJVAPCD) significance thresholds of 10 tons/year for both ROG and NOx, respectively, emissions from potential contaminated soil hauling within the SJVAPCD would be less than significant.

The comment additionally states that the SEIR does not adequately address cumulative construction-period emissions of criteria pollutants. The SEIR appropriately concludes that the project would not result in a cumulatively considerable increase in criteria pollutants because the project's construction-period emissions of criteria pollutants would be less than significant. The BAAQMD thresholds of significance identified in the SEIR are the basis for determining whether a project's emissions would constitute a cumulatively considerable contribution of temporary, construction-period criteria pollutant emissions. As noted in the **Response III.F.1,** above, the project would implement BAAQMD enhanced dust and emission control BMPs during construction to minimize its construction period emissions.

2. The comment questions the number of daily train pass-bys that are assumed to occur when the Dumbarton Rail Corridor service is operational. The San Mateo County Transportation Authority (SMCTA) initiated and currently oversees the planning effort for the Dumbarton Rail Corridor (DRC) project. As such, it is appropriate for the City to rely on the most recently available information from the SMCTA to serve as the basis for its analysis of the potential impact of DRC operation emissions on the proposed project. The SMCTA did not provide new information regarding the planned service of the DRC during the public review and comment period for SEIR, nor has it published new planning documents that indicate a more frequent DRC service than that used in the SEIR's analysis. The City has,

acting in good faith, relied upon the most recent publicly available information about the planned operation of a rail service by another public agency.

3. The comment states the SEIR does not explain how project emissions and odors are consistent with those analyzed in the Specific Plan EIR. The certified Specific Plan EIR *does* include an analysis of air quality impacts, including those for carbon monoxide based on Specific Plan vehicle traffic generation, and includes an analysis of potential odor impacts based on the proposed land uses in the Specific Plan and stationary odor sources in the vicinity of the Plan area. The SEIR includes an analysis of project-specific operational criteria pollutants that determined those emissions would be less than significant (Page 52). The project would not introduce a new permanent source of odors, and single family residential development is not considered an odor source, therefore no additional analysis for odors was required.

Comment III.G: <u>The SEIR Fails to Adequately Analyze Impacts related to Hazards and Hazardous Materials Associated with the Project</u>

1. Site A Remediation

The SEIR explains that the remediation of Site A of the Project is proceeding under the San Francisco Bay Regional Water Quality Control Board's ("Regional Board") Final Site Cleanup Requirements Order No. R22007-0005 ("Order") and an Alternate Cleanup Plan ("ACP") approved by the Regional Board. (SEIR, pp. 86-87.) However, the SEIR then provides that Specific Plan EIR MM 4.7-1 a and MM HAZ-1 will be implemented to address the soil and groundwater contamination that is known to affect Site A, by requiring the preparation of a remediation plan and a risk management plan, to be reviewed by the Regional Board. *(Id.* at p. 88.) These plans would supposedly achieve Cal-EPA approved risk management standards for residential use of Site A. *(Ibid.)*

First, no information is provided on the relationship between the Order and ACP, already approved by the Regional Board, and the "remediation plan" and "risk management plan" provided for in MM HAZ-1. Whether these are additional, separate plans is unclear. In addition, any standards under which these plans would be drafted or evaluated for sufficiency are entirely missing from the mitigation measure and the SEIR discussion. More importantly, the SEIR provides that Specific Plan EIR Mitigation Measure 4.7-la is amended by MM HAZ-1 to address the specific conditions of Site A. (Ibid.) MM HAZ-1 provides that the Regional Board will "review" the remediation plan and risk management plan, but does not require the plans to be approved, rendering this mitigation measure a meaningless requirement without any force and without any guarantee of mitigating the significant danger the Site's contamination poses to future residents. Despite these flaws, the SEIR concludes that with implementation of the mitigation measure, the Project would have a less than significant impact on human health.

2. Site B Remediation

The SEIR notes that the Regional Board issued a conditional approval of a Remedial Action Plan ("RAP") for Site B of the Project, contingent on the Project's preparation of a RAP Addendum. (SE1R, p. 90.) The RAP Addendum must include (1) either a rationale for the grid-based sampling plan for dioxins or present an alternative sampling methodology, and (2) a post-remediation monitoring plan for soil, soil vapor , and groundwater. *(Ibid.)* The SEIR does not provide any information on the status of preparation of the RAP Addendum, nor whether the Project has determined which sampling methodology to seek approval of.

Estimated excavation quantities for Site B specify that approximately 94,000 cubic yards ("CY") of soil will be excavated in total, with approximately 60,350 CY removed from site for disposal. (SEIR, p. 90, Table 4-3,) The SEIR provides that excavated soil will be tested to determine whether additional excavation is necessary and to determine what soils may be reused onsite. Therefore, the SEIR provides only rough estimates of the total quantities of soil to be excavated, disposed of, and reused. Yet, the SEIR uses these estimates to determine the significance of impacts associated with the removal and disposal of these soils. For instance, construction emissions are calculated based on truck trips necessary to transport 60,350 CY of soil, and based on those calculations, the SEIR made a determination of a less than significant impact. Traffic estimates and related impacts similarly rely on the number of truck trips associated with soil removal from the site. The SEIR gives no information on how it came up with the purportedly conservative estimates of necessary soil excavation, given that testing sufficient to determine the actual extent of contamination has not been conducted.

The SEIR also specifies that a portion of the estimated 29,000 CY, containing metals, dioxinsffurans, and VOCs, removed from the former evaporation ponds, would be reused on site. (SEIR, pp. 90-91.) The City also anticipates that almost half of the soil removed from the former chemical processing facility at the northwest corner of the site, contaminated with metals, VOCs, and PCBs, will be reused, for a total of approximately 15,000 CY. (*Id.* at 9142.) The SEIR fails to provide any explanation on how the risk associated with this reuse will be evaluated to ensure the protection of human health, The SEIR merely states that these soils "could be clean enough" to be used as backfill on the site. (*Id.* at p. 92.)

Given the extensive contamination and remediation needed for these Project Sites to approach a level of safety for the proposed residential uses that the City is seeking to approve, the SEIR needs to provide full disclosure and analysis of the proposed remediation solutions, to meet the requirements and intention of CEQA to allow decision-makers and the public to fully evaluate and consider the potential impacts of the Project prior to setting the City on an irreversible course of permitting housing to be built on and adjacent to contaminated land.

3. Offsite Hazardous Material Releases

The SEIR analyzes the potential impacts associated with an accidental release of hazardous substances from nearby industrial facilities, (SEIR, pp. 95-97.) This analysis is inadequate, as it improperly excludes the potential for a release from the Gallade facility. The City attempts to exclude this potential impact "since the proposed project would not be occupied with Gallade Chemical operating at its current location. The Specific Plan identifies this parcel as a future park, and the project will be pre-conditioned such that units will not be occupied while Gallade Chemical

remains in operation at the current location." (*Id* . at 96.) The SEIR ignores the potential impact to construction workers who would face exposure in the event of an accidental release from the Gallade site during construction and prior to occupation of the proposed housing units. Furthermore, Gallade intends to remain operating at its current location indefinitely, despite the City's intentions to strip Gallade of its vested rights to do so.

4. Failure to Analyze the Hazardous Material Impacts Associated with the Use of the Gallade Site as a Park

The City states its intention to turn the current site of Gallade operations into a park as an aside in the SEIR, but fails to analyze this action by the City as part of the Project, nor the potential for impacts to human health associated with use of the parcel for recreation. (SEIR, p. 96.) As discussed in more detail *supra,* this omission from both the Specific Plan EIR and the SEIR, including the hazards and hazardous materials analyses, is a fatal flaw under CEQA.

Response III.G.1: The comment claims that there is no explanation in the SEIR of the relationship of the RWQCB Order No. 2007-0005 and the remediation and risk management plans that are required to be prepared under to that Order. The comment also questions whether RWQCB review of plans prepared pursuant the Order is protective of human health. The Final SEIR provides the status of the Alternative Cleanup Plan (ACP) that was submitted to the RWQCB pursuant to the Order at the time of preparation of the SEIR. The ACP is a remediation plan, and is identified as an "alternative" plan as it is an alternative to the original plan to remediate shallow ground water to residential cleanup goals per the Order's remediation standards. Any remediation plan submitted to the Water Board pursuant to the Order requires Water Board review and approval, however the RWQCB does not have a formal process for approval (i.e. granting of a permit) for actions taken to comply with the active Order, therefore SEIR Mitigation Measure HAZ-1 has been modified to not specify RWQCB "approval". Because residential cleanup goals for shallow ground water are not likely to be achieved before occupancy of the homes, a risk management plan will be prepared that presents engineering, maintenance and management controls to eliminate the risk of vapor intrusion into the residences, as required by the RWQCB. Finally, as described in the City's response to comments on the SEIR (See Final SEIR Response A-25, and *Revisions to the Text of the Draft SEIR)* contained in the Final SEIR, the City has modified SEIR Mitigation Measure HAZ-1 to address the concerns of the RWQCB and those of the Alameda County Water District with regard to the protection of public and worker health.

Additionally, while the Commenter claims that "MM HAZ-1 provides that the Regional Board will "review" the remediation plan and risk management plan, but does not require the plans to be approved, rendering this mitigation measure a meaningless requirement without any force and without any guarantee of mitigating the significant danger the Site's contamination poses to future residents." However, the Commenter is selectively presenting only part of MM HAZ-1, in a manner that is

misleading. MM HAZ-1 actually provides that the Water Board "will review the plans to confirm that implementation of the plans should achieve risk management standards applied by the RWQCB for residential use." Accordingly, MM HAZ- I ensures that the plans will be appropriate to eliminate any significant risk.

2. This comment seeks an update of the status of the Remedial Action Plan Addendum that was being prepared at the time of circulation of the Draft SEIR and additional information about sampling and monitoring methodologies included in the RAP Addendum. The RWQCB maintains all technical documents addressing remediation of the Jones-Hamilton site (Site "B" in the SEIR) at the following website:

http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL20226844

The SEIR described the status of the regulatory approvals for remediation of the site at the time of preparation of the document and reflects a good faith effort at describing the regulatory approvals and remediation actions necessary to prepare the site for residential development, as well as the remediation standards the project must achieve. The SEIR is not obligated, however, to provide a continual update of ongoing regulatory actions or technical considerations that result from refinement of the remediation plan. The SEIR, as was required by CEQA, has disclosed the current known condition of each of the two sites, the anticipated physical change (i.e. remediation) necessary to prepare each site for residential use, and the environmental effects of implementing the remediation.

This comment also questions the SEIR's estimate of the amount of soil that could be reused on the site and/or would be removed from the site. Existing analytical data was used to estimate the extent of excavation required to meet residential cleanup goals and to estimate the volume of soil that may be removed for off-site disposal. As noted in the SEIR, the actual volume of soil to be removed will be based on laboratory analyses of verification samples collected during the remediation process. This comment erroneously states that the SEIR's analysis of construction-period air quality impacts assumes that 60,350 cubic yards of soil would be removed from the site. As described on Page 54 of the SEIR, the analysis of construction exhaust emissions modeled a "worst case" scenario of 109,850 cubic yards removed from the site, as well as maximum of 59,500 cubic yards of soil imported to the site if soil reuse fell below estimates. Even under the maximum, or "worst case" scenario of soil export and import, construction emissions were determined be the less than significant.

3. This comment asserts the analysis of potential hazardous materials releases included in the SEIR should have included potential releases from Gallade Chemical. The comment additionally claims that an accidental release of hazardous substances from Gallade during project construction could affect construction workers. The hazardous release analysis appropriately excluded the potential for hazardous material releases from Gallade Chemical to affect future residents of the project sites since it is not reasonably foreseeable that operations on the Gallade parcel will exist at the time residences are occupied on Site A and Site B. The SEIR's analysis did not evaluate

the potential hazardous material releases from Gallade Chemical to affect construction workers during site remediation and project development since their presence on the site is transient and the risk of exposure is de minimus and similar to all other workers in the project area.

4. The comment states that the SEIR should include an analysis of the potential environmental impacts associated with the development of the Gallade Chemical Company parcel into a park site. This comment is addressed in Response III.A.

Response.IIIG.3:This comment asserts the analysis of potential hazardous materials releases included in the SEIR should have included potential releases from Gallade Chemical. Please see response to comment III.A above. The SEIR's analysis did not evaluate the potential hazardous material releases from Gallade Chemical to affect construction workers during site remediation and project development since their presence on the site is transient and the risk of exposure is de minimus and similar to all other workers in the project area.

Comment IV: <u>The Proposed Affordable Housing Findings are Not Supported</u>

In order to approve an in-lieu fee as satisfying the requirements of the City's affordable housing ordinance, the City must make very specific findings required under Sections 17.18.050D and G of the City Code. The findings contained in the Projects' staff reports and proposed resolutions regarding affordable housing are not supported by substantial evidence, and are insufficient to support allowance of in-lieu fees rather than building inclusionary units.

Approval of the Projects' alternative means of compliance with the affordable housing requirements must be supported by findings that: 1) bridge the analytical gap between the raw evidence and the ,ultimate decision, 2) are supported by substantial evidence, and 3) meet the requirements set forth in state and local law. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.)

The requirement to render findings serves to induce the City to draw legally relevant sub-conclusions supportive of its ultimate decision. *(Id.* at 515.) The intended effect is to facilitate orderly analysis and minimize the likelihood that the City will randomly leap from evidence to conclusions. In addition, findings enable the reviewing court to trace and examine the City's analysis. *(Id.* at 516.) They also serve to demonstrate to the public that the City's decision-making is careful, reasoned, and equitable. *(Id.* at 516-17.)

The findings requirement cannot be satisfied by a mere recitation of statutory language. *(City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; *see also, Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328 ("Our Supreme Court expressly disapproved 'the practice of setting forth findings solely in the language of the applicable legislation. "') *(quoting Topanga, 11* Cal. 3d at 517, fn 16).)

Here, the findings proposed in the staff reports and proposed resolutions merely parrot the findings as stated in the City Code. The staff reports and proposed resolutions provide no

analysis nor evidence to support the findings required by the City's housing ordinance. For example, there is no explanation as to how an in-lieu fee would be equal to or better than actually building affordable housing. Further, the staff report finds that proposed alternative means of compliance will not unduly concentrate below market rate housing in one geographic area because the City can monitor this concern when particular affordable housing developments are proposed. This required finding, in essence, is punted to future City Councils, with no guarantee that affordable housing will not be concentrated in a single geographic area. Deferring this particular consideration to future legislative bodies does not satisfy the requirements of the City's affordable housing ordinance. Moreover, there is no evidence in the record that demonstrates that the proposed in-lieu fees will adequately mitigate the impact caused by market-rate housing. For an in. lieu fee system to satisfy the duty to mitigate, either that system must be evaluated by CEQA or the in-lieu fees or other mitigation must be evaluated on a project-specific basis. (*California Native Plant Society v. County of El Dorado* (2009) 170 Cal. App.4th 1026, 1055.) There is no evidence in the record to support the determination that payment of a $25,000 per/unit in-lieu fee would adequately mitigate the impact of the market rate housing, or otherwise be equivalent to the actual construction of the required inclusionary housing.

Response IV:

See staff report.

Response to Comments on the Trumark Dumbarton Transit Oriented Development Residential Project submitted by Stoel Rives LLP on behalf of Gallade Chemical, Inc.

Comment II.A: Park Funding Agreement

The City proposes to approve a Resolution authorizing a Park Funding Agreement, affecting the Gallade property. (Item E.1, Att. 5.) The proposed Agreement satisfies Condition uuuu of the Tentative Map, which requires the Developer and the City to enter an agreement to address funding for a public park on the Gallade property. Condition uuuu provides that the Agreement shall "obligate" the Developer to construct or fund construction of improvements on the Park Site. (Item E.1, Att. 6, condition uuuu; see also, Item E.2, Staff Report ("Vesting Tentative Map includes numerous conditions and includes a requirement for the Gallade Chemical property to be acquired and developed as a park.").) Thus, the Condition commits the City to actions requiring development of the Park Site, which have not been evaluated under CEQA.

The proposed Agreement conditions the City's action on future compliance with CEQA (para. 1.04) in direct violation of CEQA. *(Save Tara v. City of W Hollywood* (2008) 45 Cal.4th 116; CEQA Guidelines, § 15352(a).) Although the Agreement attempts to assert that the City is not committed to any future actions, the Agreement requires the City to initiate efforts to acquire the Gallade site unless the developer terminates the Agreement. (Agreement, para. 1.04(4) ("City shall make a written offer to purchase the Park Site"), para. 1.04(5) ("City shall take all steps required ... to acquire the Park Site through the exercise of eminent domain").) The environmental impacts associated with acquisition of the Park Site have not been evaluated, and approval of the Agreement violates CEQA. *(Save Tara, supra,* 45 Cal.4th 116.)

Moreover, the Agreement provides that the park-related conditions of the Project shall be waived if the Park Site is not acquired by June 30, 2015. (Agreement, para. 1.04(7).) There has been no CEQA analysis of the potential impacts associated with waiving the park-related requirements. The City acknowledges that the acquisition of the Park Site is necessary to achieve the goals of the transit-oriented development (Item E.1, Staff Report). If the park-related conditions are waived, the Project will not meet these requirements and there is a potential for significant impacts that have not been evaluated in the SEIR. In particular, the SEIR must evaluate the potentially significant traffic, air, noise, greenhouse gas and other environmental impacts that would result if the project does not achieve its transit oriented goals. Additionally, the staff report is misleading on this point as it represents that no certificate of occupancy can be issued until the Gallade site is acquired (Item E.2, Staff Report), but the Park Agreement allows for this requirement to be waived (Agreement, para. 1.04(7)).

The Agreement also commits the City to a conceptual site plan, including construction related activities, for the Park Site, which have not been evaluated under CEQA. (Agreement, para. 1.05(5) & (6).) Further, the City's proposed actions authorize the Developer to make improvements to property that it does not own (see, Item E.1, Staff Report), and under circumstances where the property owner has not been notified (see, infra re lack of notice). The Developer has no authority to obtain approvals related to property that it does not own or control.

Finally, the Park Agreement commits the City to initiating eminent domain proceedings if certain conditions are met. (Agreement, para. 1.04(5).) This is a pre-commitment to take a

discretionary action requiring a public hearing, for which no notice or hearing has occurred and no CEQA review has been conducted.

Response II.A: This comment states the proposed Park Funding Agreement between the City and the project applicant commits the City to actions which have not been evaluated under CEQA, namely the acquisition and future development of a park on the Gallade Chemical parcel. The comment cites relevant case law in which the California Supreme Court found a lead agency had impermissibly committed to implement a proposed action prior to conducting the required environmental review. The current situation involving the Gallade parcel, however, is quite different and the City has complied with CEQA.

The Dumbarton Specific Plan proposed, and the related Dumbarton TOD Specific Plan EIR analyzed, the acquisition, future development, and ongoing use of 16.3 acres of parks and open space, including the Gallade parcel, which is depicted on the approved Specific Plan land use plan (Specific Plan Figure 8.3) as one of two new public parks to be developed within the Specific Plan. Therefore, the use of the Gallade parcel as a park was evaluated in a certified EIR. The Specific Plan EIR disclosed 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.

The purpose of the current Trumark Dumbarton TOD Residential Project SEIR is to evaluate the specific impacts of the two pending residential development applications (neither of which are located on the Gallade parcel), based on additional project detail that did not exist when the Specific Plan EIR was prepared. The City, in reaching the proposed Park Funding Agreement with the project applicant, is not committing to an activity that exceeds the Specific Plan EIR's level of environmental analysis of the future park on the Gallade parcel. The City has yet to proceed to the detailed park planning and design phase to determine precisely what specific physical changes would be made to the Gallade parcel to implement the future park. The draft funding agreement provides that the developer shall prepare and submit a master plan for the park site for review and consideration by the City Council, at which point the City will determine what, if any, additional project-level environmental review is appropriate, tiering from the certified Specific Plan EIR. The certified Specific Plan EIR provides adequate information at this stage of the City's decision-making with respect to the future park planned on the Gallade parcel.

Comment II.B: <u>Community Financing Agreements</u>

Similarly, the proposed Resolutions authorizing a Community Financing Agreements (Items E.1, Att. 5; E.2, Att. 5), commits the City to certain actions regarding a park on the Gallade site prior to completion of CEQA. Again, while the proposed Agreement purports not to commit the City to any action (para. C), the specific terms of the Agreement (as well as the evidence in the record) make clear that the City has already committed to the actions associated with acquisition and development of a park on the Gallade property. (Item E.1, Att. 4, para. 1.01; Item E.2, Att. 5,

para. 1.01 ("funds shall only be used towards the development of the [] approximately two- acre park (on the Gallade parcel)").) Those commitments precede required CEQA review. *(Save Tara, supra,* 45 Cal.4th 116.)

Response II.B: As discussed in the prior **Response II.A** above, the Dumbarton Specific Plan proposed, and the related Specific Plan EIR analyzed, the acquisition, future development, and ongoing use of the Gallade Chemical parcel as a park, as depicted on the approved Specific Plan land use plan (Specific Plan Figure 8.3) as one of two new public parks to be developed within the Specific Plan. Therefore, the use of the Gallade parcel as a park was evaluated in a certified EIR. The certified Specific Plan EIR provides adequate information at this stage of the City's decision-making with respect to the future park planned on the Gallade parcel.

Comment III.A: <u>The Project Description is Misleading and Results in Improper Segmentation</u>

The project description fails to include conversion of the Gallade site to a park as part of the overall Project. The Project is defined in section 3.5.1 of the SEIR as preparation of Site A and Site B for residential development, and construction of homes and other facilities "on those sites." (SEIR, p. 40.) Yet, as noted above, the Project requires the acquisition of the Gallade site and conversion to a park. The failure to include the conversion of the Gallade site to a park as part of the fundamental project description is misleading. *(County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) A "finite project description is indispensable to an informative, legally adequate EIR." *(Id.* At 199.)

This failure also results in segmentation in violation of CEQA. The City may not split a project into small pieces so as to avoid environmental review of the entire project. *(Orinda Ass 'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.) Yet, that is precisely what has occurred with the SEIR's failure to include converting the Gallade site to a park as part of the project. Moreover, the characterization of the park requirement as a condition of the Project, rather than part of the originally proposed Project, does not excuse the requirement to evaluate impacts associated with the park requirement. *(Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376; see also, CEQA Guidelines, §§ 15126.2, 15126.4; *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

In addition, the baseline for consideration of environmental impacts assumes, as a pre-condition, that Gallade would no longer be in operation. This is an inappropriate baseline as it does not reflect existing conditions, but rather future changes that have not occurred (and have not been evaluated). (CEQA Guidelines, § 15125.)

Response III.A: This comment states the SEIR's project description is misleading by not including the planned conversion of the Gallade parcel to a public park as a related action, and therefore, the SEIR's analysis has not accounted for all aspects of the proposed project, thereby leading to a segmented environmental review. This comment appears to misunderstand the purpose of the SEIR and what has already been disclosed in the Specific Plan EIR. The purpose of the current Trumark Dumbarton TOD Residential Project SEIR is to evaluate the specific impacts of the two pending residential development applications (neither of which are located on the Gallade parcel), based on additional project detail that did not exist when the Specific Plan EIR was prepared. The Supplemental EIR is just that, a supplemental document to the original Specific Plan EIR that focuses its analysis on the physical changes planned for the two residential sites, and the SEIR was

not written to address anticipated physical changes to other properties within the Specific Plan. The holistic project description and environmental impact analysis the comment is requesting encompassing the planned park on the Gallade parcel is to be found in the Specific Plan EIR. Therefore, the City has not segmented its environmental review of the various Specific Plan components. The current SEIR is supplementing the Specific Plan EIR's analysis of the two Trumark residential project sites, it is not attempting to supplement the certified EIR's analysis of the Specific Plan as a whole, nor specifically the planned park on the Gallade parcel.

The comment further disagrees with the selection of an environmental baseline that does not include the current Gallade Chemical operations for purposes of evaluating the two Trumark residential development applications. The SEIR employed a baseline with the Gallade Chemical Co. no longer in operation, as the TOD Specific Plan identifies that parcel as a planned park and based on the proposed conditions of approval. Substantial evidence in the record supports the SEIR's approach.

Comment III B: The Approvals Contemplate Actions With Impacts That Have Not Been Evaluated Under CEQA

Because the SEIR fails to include the park as part of the Project, there is no analysis of the potential environmental impacts of converting the Gallade site to a park. The SEIR notes: "The Specific Plan EIR provided a program -level analysis of the environmental effects of converting the former industrial land in the Specific Plan area to residential, retail and community uses and the environmental impacts of the construction and operation of the entire Specific Plan project. As such, the EIR did not analyze the project-level environmental impacts resulting from the development of specific parcels other than the Torian project site in the Specific Plan area." (SEIR, p. 38.)

With respect to the park specifically, the SEIR notes, "Use of this property as a public park was evaluated in the Specific Plan EIR only at a program level given the final cleanup activities to allow use of the site as a park were not sufficiently defined." (SEIR, section 3.5.3, p. 44.) The SEIR goes on to acknowledge that there isn't sufficient info for a project level analysis of the park, but that the park will be subject to further environmental review when plans for its development are prepared. *(Id.)* Thus, while the Project is contingent on the park, there is no analysis of the impacts of constructing the park, including but not limited to impacts on the existing Gallade operation, and impacts resulting to industrial site relocation, cleanup and remediation of the site, and construction of a park.

In addition to committing the City to take certain actions regarding the Park Site prior to CEQA analysis of review of those actions, the proposed approvals include various entitlements and conditions that have not been evaluated under CEQA. The SEIR focused only on six environmental impact areas (air quality, biological resources, cultural resources, greenhouse gas emissions, hazards and hazardous materials, and noise), and failed to evaluate the potentially significant impacts that could result to other environmental areas. The Specific Plan EIR did not evaluate impacts associated with the park at a project-level and conversion of the Gallade site to a park has the potential to result

in significant impacts to biology, air quality, traffic, noise, greenhouse gas emissions, hazards, public health and safety, utilities, hydrology, and geology.

Moreover, impacts resulting from the residential projects themselves are truncated and insufficient. For example, Item E.1, Att. 6 (proposed approval of TM-12-32) includes numerous conditions requiring road improvements (see, e.g., conditions dd through gg), but the SEIR does not even evaluate potential traffic impacts of the Project or impacts associated with the construction of those traffic improvements.

Response III.B: The first part of this comment reiterates previous comments that the City has not conducted appropriate environmental review for the Trumark residential project decisions that are pending related to the planned park on Gallade parcel. This issue has been addressed in the prior responses above.

The second part of this comment states the SEIR's analysis of the environmental impacts associated with the Trumark residential projects only focused on six impact areas (air quality, biological resources, cultural resources, greenhouse gases, hazards and hazardous materials, and noise), and should have also evaluated other topics. The City concluded, in determining that an SEIR was necessary to disclose significant new information relating to the six impact areas noted in the comment, that the certified Specific Plan EIR adequately addressed the two Trumark residential projects' impacts in all other environmental topic areas. As stated in the Draft SEIR (pg.50), other topics and potential impact areas such as aesthetics, traffic, land use, and geology are not analyzed further in the SEIR because the proposed Trumark residential developments would result in impacts consistent with the Specific Plan EIR's analysis.

Comment III.C: <u>The SEIR Inadequately Addresses Biological Resources</u>

The SEIR fails to commit to any mitigation measure for nesting raptors. The SEIR is based on surveys that were conducted for one month during the nesting season (although nesting season is from February 1 - August 31) and concluded there was no observation of white-tailed kites and red-tailed hawks. The mitigation measure incorporates Dumbarton TOD Specific Plan EIR MM 4.3-4 which states that a construction fence shall be installed if nesting raptors are identified. Because no nesting raptors were identified during the survey, it is assumed that the project proponent will not incorporate this mitigation measure. This is insufficient analysis - the Biological Resources Report found that there is potential for white-tailed kites and red-tailed hawks to nest in trees on or adjacent to the project sites and one month of surveying during the first month of nesting season is insufficient to determine the impact. The project proponent needs to engage in longer surveying and the mitigation measure needs to be revised to commit the project proponent to the measure. (SEIR, p. 62 - 4.2.2.3 Nesting Raptors.)

Response III.C: This comment states that the SEIR does not specify appropriate mitigation measures for impacts to nesting raptors, and that a nesting raptor survey conducted during preparation of the Biological Resources Report (included as Appendix B-1 of the SEIR) is inadequate to determine the presence or absence of nesting raptors. The SEIR includes the results of a nesting raptor survey conducted during February 2013 to determine if nesting raptors were present *at the time of preparation of the SEIR* to establish the environmental baseline; none were observed. However the

comment is incorrect in its assumption that no additional surveys for nesting raptors would be required or that the project would not be required to implement appropriate buffer areas (through the installation of construction fencing) if nesting raptors are present at commencement of construction. As described on Pages 62-63 of the SEIR and as identified in the Mitigation Monitoring and Reporting Program (MMRP) for the project, the project would implement Specific Plan EIR Mitigation Measure 4.3-2, which requires that pre-construction surveys for nesting raptors be conducted on each project site if initial earth moving or construction work is to occur during the raptor nesting season of February 1-August 31. If nesting raptors are identified during the surveys, appropriate buffer areas around the nest would be established and maintained. The size and duration of the buffer area are described in detail in the SEIR and the MMRP.

The SEIR provides updated information about the status of nesting raptors on the site at the time of its preparation, and appropriately identifies that Specific Plan EIR Mitigation Measure 4.3-2 would apply to the project to prevent impacts to nesting raptors if they are present at commencement of construction.

Comment III.D: <u>The Alternatives Analysis Is Flawed</u>

The project objectives are too narrowly drawn and are designed to minimize or avoid CEQA's requirement for an EIR to identify a reasonable range of alternatives. Specifically, the SEIR identifies the applicant's primary objectives to include: 1) "Develop an economically viable, high-quality residential project consistent with the Dumbarton TOD Specific Plan"; 2) "Develop single family detached residences consistent with the project sites' (sic) Medium High Density Residential land use designation"; and 3) "Prepare Site B for residential development by addressing soil and groundwater contaminants to achieve established regulatory standards for residential use of the property." These artificially narrow objectives are then applied in the alternatives analysis as a basis for constraining the Location Alternative (off-site alternative) to possible sites within the extremely tight physical confines of the 205 acre Specific Plan area. This is contrary to the intent of CEQA, and forcibly truncates what should have been a broader analysis of a reasonable range of alternatives, including an honest review of legitimate off-site locations. Achieving the City's goals of sustainable development, mixed use housing, and transit-oriented development should never be artificially constrained to the Specific Plan area, and should instead require meaningfully be examination through consideration of a range of other legitimate locations. Though the Specific Plan's state of readiness may arguably be more advanced than other off-site locations around the City, this is not a legal basis for limiting the range of alternatives analysis in direct violation of CEQA.

The No Project Alternative wrongly concludes that in the absence of the project, development would not occur, and therefore, impacts of the project would be avoided. This determination is inconsistent with the existence of an approved Specific Plan that has designated development for the sites. Specifically, the SEIR states:

> 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.

> 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.
>
> 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.

(SEIR, p. 118.)

It is a fiction for the SEIR to conclude that an area within an approved Specific Plan will not develop if the immediate project proposal does not go forward. Additionally, as stated in the SEIR excerpt above, the assumption that the site would remain vacant until both the Specific Plan and General Plan are amended, and the sites are rezoned to accommodate uses other than residential is completely fabricated and entirely lacking in evidentiary support. This approach is a deliberate attempt to avoid a true assessment of the viability and legitimacy of the No Project Alternative, and violates CEQA. The alternatives analysis is further flawed with regard to continued claims that the "No Project Alternative would avoid the identified environmental impacts of the proposed project, [and] would not support the objectives of the Dumbarton TOD Specific Plan and could be detrimental to successful implementation of the Plan ... nor would it accomplish the highest and best use of the sites by leaving them vacant." (SEIR, p. 118.) Again, there is no evidence to support these flawed conclusions, which are themselves inconsistent with the City's adopted planning scheme, which remains in place regardless of whether or not the proposed project proceeds.

Finally, in what can only be described as a mysterious internal inconsistency, the No Project Alternative analysis summarized above is entirely at odds with the Summary section presented in the SEIR at pages xxv and xxvi, which clearly states that the No Project Alternative will neither limit development of the site under the Specific Plan, or avoid the key environmental impacts of the proposed project. The Summary provides:

> The No Project-Existing Plan Alternative assumes the proposed 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.
>
> 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 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. The potential to

avoid seasonal wetlands on Site A is discussed in more detail below in the Reduced Development Alternative and the Design Alternative.

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.

(SEIR, p. xxvi.)

This glaring inconsistency cannot be reconciled and presents a clear flaw in the document. It would appear that the alternatives analysis was drafted by one individual, and the summary of the alternatives analysis by another, and that for whatever reason, neither bothered to check what the other was saying. This extremely casual approach to preparing and drafting an EIR for a major urban infill project permeates the alternatives analysis and the SEIR in general, and violates CEQA's requirements for a clear and consistent presentation of the environmental effects of the project to enable the public to understand and evaluate that which is proposed.

Response III.D: This comment states the project objectives are too narrow and have improperly constrained the SEIR's analysis of off-site location alternative(s). The SEIR's objectives are appropriately focused on implementing the Dumbarton TOD Specific Plan, and have not unduly constrained the consideration of other potential off-site location alternatives. The CEQA Guidelines do not require consideration of an off-site location alternative (per Guideline §15126.6(a), "An EIR shall describe a reasonable range of alternatives to the project or to the location of a project...", *emphasis added*), and the City elected to include, among the SEIR's range of alternatives, discussion of a location alternative within the Specific Plan itself in an attempt to avoid the hazardous materials release impact affecting the two Trumark residential sites while still implementing a component of the Specific Plan. CEQA does not require that the SEIR include location alternatives outside the Specific Plan, as it does not require that the SEIR include any particular location alternative.

The comment further states that the SEIR's discussion of the No Project – No Development Alternative assumes an artificial scenario using flawed assumptions that the two sites would not otherwise be developed (i.e. the two Trumark sites would remain undeveloped if the current proposed Trumark applications are not implemented). The SEIR's discussion of this alternative (pg.117) starts by referencing relevant language from the CEQA Guidelines (per Guideline §15126.6(e)(2)), that states that the No Project Alternative should address both the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved. The SEIR addresses both conditions. The No Project – No Development Alternative is focused on the former condition (i.e. existing conditions) per the Guidelines, while the No Project – Existing Plan Alternative discusses the latter condition. The comment expresses an opinion that the SEIR's discussion of the No Project – No Development Alternative provides little apparent value since it is reasonably foreseeable that other development would be implemented consistent with the Specific Plan, which does not require further response.

The comment concludes by describing a perceived (albeit non-existent) inconsistency that the SEIR Summary includes a discussion of the No Project - Existing Plan Alternative, while the SEIR Alternatives chapter discusses a different No Project – No Development Alternative. As stated above, **Section 7.0 Project Alternatives** of the SEIR includes discussion of two variations of the No Project Alternative (as suggested by Guideline §15126.6(e)(2)); the first of which assumes, should the current Trumark developments not be implemented, no development occurs on the two sites, while the second no project alternative assumes other development consistent with the Specific Plan ultimately is implemented on each site. As noted in the comment, the latter alternative scenario may be more likely, and therefore given its increased informational value, this No Project - Existing Plan Alternative was discussed in the SEIR Summary, while the No Project – No Development Alternative (in which the comment finds little apparent informational value) was not included in the Summary and instead is discussed solely in the SEIR Alternatives section.

Comment III.E: The SEIR Provides an Inadequate Analysis of the Project's Impacts and Proposed Mitigation of Greenhouse Gas Emissions

1. Operational Greenhouse Gas Emissions Impacts

The SEIR fails to provide substantial evidence to support its conclusion that the Project's operational greenhouse gas ("GHG") emissions will have a less than significant impact. Specific Plan EIR MM 4.6-1 requires that listed design features "shall be incorporated into ... 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." (SEIR, p. 77 (emphasis added).) The SEIR's conclusion of less than significance related to operational long-term GHG emissions is premised entirely on the Project being "consistent with the Specific Plan land use designations and assumed densities" and whether "the applicable emissions reductions measures identified in the Specific Plan EIR are implemented. " (*Id.* at p. 76.) Yet, the SEIR provides that the Project would implement only the "majority" of the Specific Plan EIR mitigation measures and only those "applicable" to the Project, while simultaneously concluding that potentially significant operational emissions would be reduced to a less than significant level. (*Id.* at p. 79.)

The City cherry picks which of Specific Plan EIR MM 4.6-1 GHG reduction measures the Project will implement. In some instance the Project does not propose to implement listed reduction measures at all, in other instances it gives residents the "option" of purchasing the design feature specified in the reduction measure, thus ensuring no guarantee of implementation. (SEIR, p. 78.)

With regards to the GHG reduction measure to provide a minimum of 15 percent affordable housing, the SEIR states that the Project would provide in-lieu fees to the City to fund affordable housing development. (SEIR, p. 78.) No information is given on the amount of in- lieu fees to be provided, nor whether the proposed amount would be adequate to implement affordable housing equivalent to 15 percent of the Project's units. Nor does the City explain how it would ensure that the in-lieu fees would be used to provide these affordable housing units near transportation networks, the key component that makes the affordable housing requirement a source of GHG reductions.

To implement the GHG reduction measure "incorporate design guidelines for transit oriented development and complete street standards," the SEIR states that the Project "will construct or contribute to reconstruction of Enterprise Drive and Willow Street consistent with Specific Plan Complete Street designs." (SEIR, p. 78.) The SEIR fails to provide any explanation of how the reconstruction of these two streets will fully implement the GHG reduction measure, given that there are other streets surrounding the project. More importantly, no explanation is provided on what level of "contribution" the Project would assume, nor how the remainder of the funding presumably necessary to realize the GHG reduction measure for these streets would be available.

In addition, the GHG reduction measures outlined in Specific Plan EIR MM 4.6-1 are only some of the potential design features the Project could utilize to demonstrate and ensure consistency with the adopted statewide plans and programs related to climate change. (SEIR, p. 77.) Yet, the SEIR proposes no other, alternative GHG emission reduction measures to ensure that its emissions impacts are sufficiently mitigated. The SEIR does not quantify the Project's GHG emissions, so the impact of the SEIR's failure to incorporate all design features in accordance with Specific Plan EIR MM 4.6-1, or propose and implement alternative measures, cannot be evaluated. The SEIR even fails to provide a *qualitative* analysis of how the Project's failure to implement certain GHG reduction measures affects the assumption that operational GHG emissions impacts are lowered to less than significant.

2. Construction GHG Emissions Impacts

The SEIR provides three best management practices ("BMPs") from the Bay Area Air Quality Management District ("BAAQMD") for the reduction of construction GHG emissions and ambiguously discusses the Project's implementation of two of the three BMPs. (SEIR, p. 79.) Compliance with the City's Municipal Code would ensure the implementation of one of the BMPs, recycling or reusing at least 50 percent of construction waste and demolition materials. However, the SEIR provides no assurance that the Project would abide by, or even attempt to implement, the remaining two BMPs. The SEIR ambiguously states that the Project site is located in an urban location within close distance of construction supplies and equipment, which would help minimize GHG emissions generated from transport of construction materials and waste. *(Ibid.)* The SEIR provides no assurance, however, that the Project will actually implement the BMP to use at least 10 percent local building materials, much less providing an enforceable mitigation measure to that effect. The impacts analysis does not address the feasibility or the Project's intention to implement the remaining specified BMP to use alternative-fueled construction vehicles/equipment for at least 15 percent of the fleet. The SEIR only states it will implement recommended BMPs "where feasible" to reduce construction GHG emissions. *(Id.* at 81.) Finally, similarly to the operational GHG emission reduction measures, the Project is not limited to *only* the specified GHG reduction strategies; the Project could specify other measures to mitigate emissions. Yet, the SEIR does not even attempt to outline other construction GHG BMPs or emissions reductions that could be implemented to mitigate impacts.

Despite the Project's lack of sufficient, or enforceable, measures to mitigate construction GHG emissions, the SEIR concludes that the Project will have a less than significant impact with respect to construction GHG emissions impacts. (SEIR, p. 80.) With the potential implementation of one or two BAAQMD BMPs, the SEIR lacks substantial evidence to support this conclusion. There is no qualitative or quantitative discussion of construction emissions, their impacts, or the reduction in emissions with the (potential) implementation of the BMPs. The lack of a quantified threshold of significance from BAAQMD or the City related to impacts resulting from construction GHG emissions does not excuse the City from quantifying the Project's emissions and analyzing their

impact and whether the proposed mitigation would lower that impact to below significance. The lack of enforceable mitigation measures (assuming the mitigation proffered would be sufficient to lower impacts) also renders the conclusion of less than significant invalid.

3. Consistency with Plans and Policies

The SEIR's conclusion that the Project would not conflict with any applicable GHG reduction plans, policies or regulations is supported only by the statement that the Project will incorporate "most" of the Specific Plan EIR's applicable GHG reduction measures. (SEIR, p. 80.) As discussed above, picking and choosing those GHG reduction measures that the Project finds convenient to incorporate into the Project does not provide substantial evidence to support the conclusion that operational GHG emissions impacts are mitigated to a less than significant level. The incorporation of some GHG emissions reduction measures is similarly insufficient to conclude that the Project is consistent with all applicable GHG reduction plans, policies, and regulations, particularly where the Project's actual consistency with the unnamed "plans, policies, and regulations" is absent from the SEIR discussion.

Response III.E.1: The comment states that the SEIR does not support its conclusion that the project would have less than significant operational GHG impacts, and that the project is not consistent with Specific Plan EIR Mitigation Measure 4.6-1, which identifies potential GHG emission reduction design features for development under the Specific Plan.

The SEIR summarizes the Specific Plan EIR's GHG impact analysis, which includes a calculation of GHG emissions resulting from build out and operation of all development under the Specific Plan. The Specific Plan EIR estimated that the Specific Plan project would generate 25,600 Metric Tons of Carbon Dioxide equivalent emissions per year (MT CO_2e/year) before implementation of the energy efficiency and emission reduction design features identified in Mitigation Measure 4.6-1. The SEIR reiterates the Specific Plan EIR's calculation that implementation of the reduction measures is estimated to reduce Specific Plan emissions by 27.92% resulting in GHG emissions of approximately 18,500 MT CO_2e/year, which equates to approximately 2.26 MT CO_2e/year per service population. This rate of emission is less than half that of the BAAQMD threshold of significance for GHG emissions of 4.6 MT CO_2e/year per service population.

If none of the energy efficiency and emission reduction design features were implemented by the Specific Plan project, the Specific Plan area's annual GHG emissions of 25,600 CO_2e/year for the service population of 8,150 persons within the Specific Plan area would be approximately 3.14 MT CO_2e/year per service population, which is still well below the BAAQMD threshold of 4.6 MT CO_2e/year per service population. Therefore, if the Specific Plan EIR had identified no GHG reduction measures, Specific Plan GHG emissions, including those from the two Trumark residential projects, would still be less than significant.

This list of potential energy efficiency and emission reduction design features identified in Specific Plan EIR Mitigation Measure 4.6-1 apply to various development facets of the Specific Plan area, including residential, commercial and community serving land uses. As such, not all design measures would apply to all

land uses within the Specific Plan area (i.e., single family residential development would not be expected to implement cool roof or green roof features). The SEIR appropriately identifies which of the potential design features would be implemented by the proposed project and therefore demonstrates the project's compliance with Specific Plan EIR Mitigation Measure 4.6-1.

CEQA provides discretion to the Lead Agency to determine whether to assess a project's emissions quantitatively or qualitatively (Guideline §15064.4(a)). Nonetheless, to accommodate the commenter's request for a quantified analysis for the Trumark Residential Project, a greenhouse gas analysis was prepared by Environ Corp. (Attachment B). That analysis is additional substantial evidence that the Project will not result in significant greenhouse gas impacts. Using the assumed Trumark Project's service population of 796 residents yields an operational GHG emissions efficiency of 4.2 MT CO_2e/year per service population, which is below the BAAQMD CEQA significance threshold of 4.6 MT CO_2e/year per service population. There are no thresholds of significance for GHG emissions from construction equipment.

CEQA Guidelines Section 15088.5 requires an EIR to be recirculated when "significant new information" is added to the EIR prior to certification. "Significant new information" requiring recirculation can include a disclosure showing that a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; or a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

"New information" is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse effect (including a feasible project alternative) that the project's proponents have declined to implement. Recirculation is not required where new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. Recirculation of the SEIR would not be required for this Project because the quantified GHG emissions report is not evidence that the Project would result in any new significant impacts, nor does it show that there would be a substantial increase in the severity of an already identified impact. Instead, the report merely amplifies the SEIR's conclusion that the Project would not result in significant greenhouse gas impacts.

2. The comment suggests that the SEIR should identify mitigation measures for reducing construction period GHG emissions. See **Response III. E. 1**, above.

3. The comment states that the project is not consistent with applicable GHG reduction plans and policies. See **Response III. E. 1**, above.

Comment III.F: <u>The SEIR Analysis of Air Quality Impacts is Flawed and Insufficient</u>

1. Analysis of Construction Emissions Impacts

In its discussion of impacts of fugitive dust emissions associated with construction, the SEIR states that the Project would not exceed the BAAQMD significance threshold for construction-related criteria pollutants, even though the only figures in the SEIR for particulate matter ("PM") are for construction vehicle exhaust emissions only and do not include any emissions from fugitive dust. (SEIR, pp. 55-56.) The SEIR then goes on to provide that mitigation measures related to fugitive dust will be implemented "even though the proposed project would not exceed those thresholds." *(Id.* at p. 56.) With no quantification of construction fugitive dust emissions, or analysis of how these emissions would be reduced with the implementation of BAAQMD's standard mitigation measures, the SEIR improperly concludes that the Project would not result in significant impacts related to fugitive dust emissions during construction. *(Id.* at 57.) In fact, the SEIR goes so far as to state that the impact related to construction fugitive dust emissions is the same impact as in the Specific Plan EIR, despite the fact that the Specific Plan EIR did not include any project-specific emissions data. *(Ibid.)*

Related to the SEIR's analysis of exhaust emissions during construction of the Project, the SEIR states that "emissions generated in other air basins associated with transport of [contaminated] soil would be attributed to the facilities receiving the soil." (SEIR, p. 54.) It is impermissible under CEQA to ignore a direct environmental impact on the basis that the impact will occur at a certain distance from the Project. Air quality impacts that are a direct result of the Project must be analyzed, regardless of the impact potentially occurring in an adjacent air basin. While the mitigation of these impacts may be outside the jurisdiction of the City or BAAQMD, there is no basis on which to shift the analysis of the impact outside of the SEIR, particularly where there is no forum for analysis of that impact by another jurisdiction.

The SEIR states that "[e]xhaust emissions of criteria pollutants during construction would not exceed BAAQMD thresholds, therefore the project would not result in a cumulatively considerable increase in criteria pollutants for which the Bay Area is in non-attainment." (SEIR, p. 55.) CEQA requires that a cumulative impacts analysis consider not only the impacts of the Project, but also the impacts of the Project *in combination* with all other cumulative projects. *(Communities for a Better Environment* v. *California Resources Agency* (2002) 103 Cal.App.4th 98, 117-121.) The SEIR has failed to undertake this analysis in support of the statement that the Project "would not result in a cumulatively considerable increase." (SEIR, p. 55.) CEQA forbids the City from looking solely at the magnitude of the Project-specific impact in order to determine whether the impact would be cumulatively considerable. That the Project emissions will remain below BAAQMD significance thresholds goes only to the question of whether there is a Project-specific impact from construction emissions.

2. Community Health Risk Assessment of Operational Impacts

The SEIR's determination of a less than significant impact associated with toxic air contaminants ("TACs") is predicated on the number of daily commuter train pass-by events per day. (SEIR, p. 53.) The SEIR states that Dumbarton Rail Corridor train operations "was anticipated to be twelve events per day," citing a 2004 San Mateo County Transit Authority *Summary of the Dumbarton Rail Corridor Project Study Report. (Ibid.)* No explanation is provided with regards to the accuracy of this estimate, given that the *Project Study Report* is now a decade old. With a maximum increased cancer risk at the Project of 8.4 million cases in one million, approaching the significance threshold of 10 cases or greater per million, reliance on an outdated *Project Study Report* to conclusively determine TAC impacts are less than significant is inappropriate and in violation of CEQA.

3. Consistency with Air Quality Plans and Impacts related to Odors and Carbon Monoxide

The SEIR concludes that the Project would not conflict with applicable air quality plans or cause new impacts related to odors or carbon monoxide, based on the Project's consistency with Specific Plan land use designations for the site and residential development envisioned in the Specific Plan. (SEIR, p. 51, 58.) The SEIR fails to provide any explanation of how the Project-specific emissions of criteria pollutants, including carbon monoxide, or TACs and odors associated with the Project - none of which could have been described or analyzed in the programmatic Specific Plan EIR - are consistent with what was provided for in the Specific Plan EIR. For instance, if the City does not describe or specify what odors would be emitted during Project construction or operation, the SEIR cannot determine whether these types or levels of odors are consistent with the "residential development envisioned" in the Specific Plan EIR.

Response III.F.1: This comment states that the SEIR should analyze fugitive dust generated during construction as a construction emission. The BAAQMD CEQA Guidelines do not establish a numeric significance threshold for construction-related fugitive dust, therefore no quantification of construction period dust generation is required. Additionally, due to the variability of site and meteorological conditions during construction, quantification of construction fugitive dust generation is not technically feasible. Accordingly, the BAAQMD Guidelines recommend basic dust control practices Best Management Practices (BMPs) for all construction projects and additional dust and emission control BMPs for projects that exceed BAAQMD criteria pollutant construction emissions thresholds. As shown in Table 4-1 of the SEIR, the project would not exceed BAAQMD thresholds for criteria pollutant construction emissions. The project would however implement both basic dust control BMPs and the enhanced dust and emission reduction BMPs for projects that exceed criteria pollutant construction emission thresholds since the Specific Plan EIR established that all projects built under the Specific Plan would implement both the basic dust control BMPs and the enhanced dust and emission reduction BMPs. As described on Pages 55-57 of the SEIR and as identified in the Mitigation Monitoring and Reporting Program prepared for the project, the project would implement Specific Plan EIR Mitigation Measures 4.2-1.(a) for the basic fugitive dust control BMPs and 4.2-1.(b) for enhanced dust and emissions BMPs, respectively. Therefore, as stated in the SEIR, impacts from dust would be reduced to less than significant levels.

The comment further asserts that the SEIR should include an analysis of construction emissions (from the transport of contaminated soil to receiving facilities) outside of the Bay Area Air Basin. The City has chosen a reasonable and practical geographic scope for measuring criteria pollutants, and has provided a reasonable explanation for its selection. The chosen geographic scope allows for proper analysis of the severity and significance of the project's air quality impacts. The SEIR appropriately states that emissions associated with the project's truck trips outside of the Bay Area Air Basin are associated with the transportation infrastructure being used (whether trucks on highways or railcars) and the facility receiving the material (i.e. the ordinary operations of that receiving facility are already accounted for in the Clean Air Plan for that air basin and should be considered part of the baseline for that air basin). Only if the receiving facility was

needing to expand or a new facility was needed to accommodate the material from the Trumark project would there truly be an increase in emissions compared to current baseline conditions with the receiving facility operating today at its normal amount of activity. Further, including emissions outside the Project's air basin could serve to confuse the results of the EIR's analysis because a determination of the location and amount of emissions in other air basins would be speculative (it will be up to the soil remediation contractor to determine the location of disposal and mode of transportation, based on a variety of factors) and provide limited informational value to the public and decision-makers.

Nonetheless, to address the commenter's request for an analysis of the truck emissions from the transport of contaminated soil to receiving facilities outside the Bay Area Air Basin, an analysis of truck emissions to the nearest Class 1 facility in Buttonwillow, CA, is provided in Appendix C. This analysis assumes 25,000 cubic yards of soil would be transported to the Buttonwillow facility, which is located in the San Joaquin Air Basin. As noted in the SEIR, the exact amount of soil requiring disposal at a Class I facility is unknown until remediation on Site B is underway and testing of excavated soils determines pollutant concentrations, however the 25,000 cubic yard assumption is believed to be reasonably conservative and it is unlikely the amount of material to be transported would exceed that amount. The analysis found that emissions from 2,500 truck trips to the San Joaquin Air Basin (1,250 trips to the facility plus 1,250 return trips) would generate an estimated 0.10 tons Reactive Organic Gasses (ROG) and 5.49 tons of nitrous oxide (NOx). Compared to the San Joaquin Valley Air Pollution Control District (SJVAPCD) significance thresholds of 10 tons/year for both ROG and NOx, respectively, emissions from potential contaminated soil hauling within the SJVAPCD would be less than significant.

The comment additionally states that the SEIR does not adequately address cumulative construction-period emissions of criteria pollutants. The SEIR appropriately concludes that the project would not result in a cumulatively considerable increase in criteria pollutants because the project's construction-period emissions of criteria pollutants would be less than significant. The BAAQMD thresholds of significance identified in the SEIR are the basis for determining whether a project's emissions would constitute a cumulatively considerable contribution of temporary, construction-period criteria pollutant emissions. As noted in the **Response III.F.1**, above, the project would implement BAAQMD enhanced dust and emission control BMPs during construction to minimize its construction period emissions.

2. The comment questions the number of daily train pass-bys that are assumed to occur when the Dumbarton Rail Corridor service is operational. The San Mateo County Transportation Authority (SMCTA) initiated and currently oversees the planning effort for the Dumbarton Rail Corridor (DRC) project. As such, it is appropriate for the City to rely on the most recently available information from the SMCTA to serve as the basis for its analysis of the potential impact of DRC operation emissions on the proposed project. The SMCTA did not provide new information regarding the planned service of the DRC during the public review and

comment period for SEIR, nor has it published new planning documents that indicate a more frequent DRC service than that used in the SEIR's analysis. The City has, acting in good faith, relied upon the most recent publicly available information about the planned operation of a rail service by another public agency.

3. The comment states the SEIR does not explain how project emissions and odors are consistent with those analyzed in the Specific Plan EIR. The certified Specific Plan EIR *does* include an analysis of air quality impacts, including those for carbon monoxide based on Specific Plan vehicle traffic generation, and includes an analysis of potential odor impacts based on the proposed land uses in the Specific Plan and stationary odor sources in the vicinity of the Plan area. The SEIR includes an analysis of project-specific operational criteria pollutants that determined those emissions would be less than significant (Page 52). The project would not introduce a new permanent source of odors, and single family residential development is not considered an odor source, therefore no additional analysis for odors was required.

Comment III.G: <u>The SEIR Fails to Adequately Analyze Impacts related to Hazards and Hazardous Materials Associated with the Project</u>

1. Site A Remediation

The SEIR explains that the remediation of Site A of the Project is proceeding under the San Francisco Bay Regional Water Quality Control Board's ("Regional Board") Final Site Cleanup Requirements Order No. R22007-0005 ("Order") and an Alternate Cleanup Plan ("ACP") approved by the Regional Board. (SEIR, pp. 86-87.) However, the SEIR then provides that Specific Plan EIR MM 4.7-1 a and MM HAZ-1 will be implemented to address the soil and groundwater contamination that is known to affect Site A, by requiring the preparation of a remediation plan and a risk management plan, to be reviewed by the Regional Board. *(Id.* at p. 88.) These plans would supposedly achieve Cal-EPA approved risk management standards for residential use of Site A. *(Ibid.)*

First, no information is provided on the relationship between the Order and ACP, already approved by the Regional Board, and the "remediation plan" and "risk management plan" provided for in MM HAZ-1. Whether these are additional, separate plans is unclear. In addition, any standards under which these plans would be drafted or evaluated for sufficiency are entirely missing from the mitigation measure and the SEIR discussion. More importantly, the SEIR provides that Specific Plan EIR Mitigation Measure 4.7-la is amended by MM HAZ-1 to address the specific conditions of Site A. *(Ibid.)* MM HAZ-1 provides that the Regional Board will "review" the remediation plan and risk management plan, but does not require the plans to be approved, rendering this mitigation measure a meaningless requirement without any force and without any guarantee of mitigating the significant danger the Site's contamination poses to future residents. Despite these flaws, the SEIR concludes that with implementation of the mitigation measure, the Project would have a less than significant impact on human health.

2. Site B Remediation

The SEIR notes that the Regional Board issued a conditional approval of a Remedial Action Plan ("RAP") for Site B of the Project, contingent on the Project's preparation of a RAP Addendum. (SEIR, p. 90.) The RAP Addendum must include (1) either a rationale for the grid- based sampling plan for dioxins or present an alternative sampling methodology, and (2) a post- remediation monitoring plan for soil, soil vapor , and groundwater. *(Ibid.)* The SEIR does not provide any information on the status of preparation of the RAP Addendum, nor whether the Project has determined which sampling methodology to seek approval of.

Estimated excavation quantities for Site B specify that approximately 94,000 cubic yards ("CY") of soil will be excavated in total, with approximately 60,350 CY removed from site for disposal. (SEIR, p. 90, Table 4-3.) The SEIR provides that excavated soil will be tested to determine whether additional excavation is necessary and to determine what soils may be reused onsite. Therefore, the SEIR provides only rough estimates of the total quantities of soil to be excavated, disposed of, and reused. Yet, the SEIR uses these estimates to determine the significance of impacts associated with the removal and disposal of these soils. For instance, construction emissions are calculated based on truck trips necessary to transport 60,350 CY of soil, and based on those calculations, the SEIR made a determination of a less than significant impact. Traffic estimates and related impacts similarly rely on the number of truck trips associated with soil removal from the site. The SEIR gives no information on how it came up with the purportedly conservative estimates of necessary soil excavation, given that testing sufficient to determine the actual extent of contamination has not been conducted.

The SEIR also specifies that a portion of the estimated 29,000 CY, containing metals, dioxins/furans, and VOCs, removed from the former evaporation ponds, would be reused on site. (SEIR, pp. 90-91.) The City also anticipates that almost half of the soil removed from the former chemical processing facility at the northwest comer of the site, contaminated with metals, VOCs, and PCBs, will be reused, for a total of approximately 15,000 CY. *(Id.* at 91-92.) The SEIR fails to provide any explanation on how the risk associated with this reuse will be evaluated to ensure the protection of human health. The SEIR merely states that these soils "could be clean enough" to be used as backfill on the site. *(Id.* at p. 92.)

Given the extensive contamination and remediation needed for these Project Sites to approach a level of safety for the proposed residential uses that the City is seeking to approve, the SEIR needs to provide full disclosure and analysis of the proposed remediation solutions, to meet the requirements and intention of CEQA to allow decision-makers and the public to fully evaluate and consider the potential impacts of the Project prior to setting the City on an irreversible course of permitting housing to be built on and adjacent to contaminated land.

3. Offsite Hazardous Material Releases

The SEIR analyzes the potential impacts associated with an accidental release of hazardous substances from nearby industrial facilities. (SEIR, pp. 95-97.) This analysis is inadequate, as it improperly excludes the potential for a release from the Gallade facility. The City attempts to exclude this potential impact "since the proposed project would not be occupied with Gallade Chemical operating at its current location. The Specific Plan identifies this parcel as a future park, and the project will be pre-conditioned such that units will not be occupied while Gallade Chemical remains in operation at the current location." *(Id* . at 96.) The SEIR ignores the potential impact to construction workers who would face exposure in the event of an accidental release from the Gallade site during construction and prior to occupation of the proposed housing units. Furthermore, Gallade

intends to remain operating at its current location indefinitely, despite the City's intentions to strip Gallade of its vested rights to do so.

4. Failure to Analyze the Hazardous Material Impacts Associated with the Use of the Gallade Site as a Park

The City states its intention to turn the current site of Gallade operations into a park as an aside in the SEIR, but fails to analyze this action by the City as part of the Project, nor the potential for impacts to human health associated with use of the parcel for recreation. (SEIR, p. 96.) As discussed in more detail *supra,* this omission from both the Specific Plan EIR and the SEIR, including the hazards and hazardous materials analyses, is a fatal flaw under CEQA.

Response III.G.1: The comment claims that there is no explanation in the SEIR of the relationship of the RWQCB Order No. 2007-0005 and the remediation and risk management plans that are required to be prepared under to that Order. The comment also questions whether RWQCB review of plans prepared pursuant the Order is protective of human health. The Final SEIR provides the status of the Alternative Cleanup Plan (ACP) that was submitted to the RWQCB pursuant to the Order at the time of preparation of the SEIR. The ACP is a remediation plan, and is identified as an "alternative" plan as it is an alternative to the original plan to remediate shallow ground water to residential cleanup goals per the Order's remediation standards. Any remediation plan submitted to the Water Board pursuant to the Order requires Water Board review and approval, however the RWQCB does not have a formal process for approval (i.e. granting of a permit) for actions taken to comply with the active Order, therefore SEIR Mitigation Measure HAZ-1 has been modified to not specify RWQCB "approval". Because residential cleanup goals for shallow ground water are not likely to be achieved before occupancy of the homes, a risk management plan will be prepared that presents engineering, maintenance and management controls to eliminate the risk of vapor intrusion into the residences, as required by the RWQCB. Finally, as described in the City's response to comments on the SEIR (See Final SEIR Response A-25, and *Revisions to the Text of the Draft SEIR*) contained in the Final SEIR, the City has modified SEIR Mitigation Measure HAZ-1 to address the concerns of the RWQCB and those of the Alameda County Water District with regard to the protection of public and worker health.

Additionally, while the Commenter claims that "MM HAZ-1 provides that the Regional Board will "review" the remediation plan and risk management plan, but does not require the plans to be approved, rendering this mitigation measure a meaningless requirement without any force and without any guarantee of mitigating the significant danger the Site's contamination poses to future residents." However, the Commenter is selectively presenting only part of MM HAZ-1, in a manner that is misleading. MM HAZ-1 actually provides that the Water Board "will review the plans to confirm that implementation of the plans should achieve risk management standards applied by the RWQCB for residential use." Accordingly, MM HAZ-1 ensures that the plans will be appropriate to eliminate any significant risk.

2. This comment seeks an update of the status of the Remedial Action Plan Addendum that was being prepared at the time of circulation of the Draft SEIR and additional information about sampling and monitoring methodologies included in the RAP Addendum. The RWQCB maintains all technical documents addressing remediation of the Jones-Hamilton site (Site "B" in the SEIR) at the following website:
http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL20226844

The SEIR described the status of the regulatory approvals for remediation of the site at the time of preparation of the document and reflects a good faith effort at describing the regulatory approvals and remediation actions necessary to prepare the site for residential development, as well as the remediation standards the project must achieve. The SEIR is not obligated, however, to provide a continual update of ongoing regulatory actions or technical considerations that result from refinement of the remediation plan. The SEIR, as was required by CEQA, has disclosed the current known condition of each of the two sites, the anticipated physical change (i.e. remediation) necessary to prepare each site for residential use, and the environmental effects of implementing the remediation.

This comment also questions the SEIR's estimate of the amount of soil that could be reused on the site and/or would be removed from the site. Existing analytical data was used to estimate the extent of excavation required to meet residential cleanup goals and to estimate the volume of soil that may be removed for off-site disposal. As noted in the SEIR, the actual volume of soil to be removed will be based on laboratory analyses of verification samples collected during the remediation process. This comment erroneously states that the SEIR's analysis of construction-period air quality impacts assumes that 60,350 cubic yards of soil would be removed from the site. As described on Page 54 of the SEIR, the analysis of construction exhaust emissions modeled a "worst case" scenario of 109,850 cubic yards removed from the site, as well as maximum of 59,500 cubic yards of soil imported to the site if soil reuse fell below estimates. Even under the maximum, or "worst case" scenario of soil export and import, construction emissions were determined be the less than significant.

3. This comment asserts the analysis of potential hazardous materials releases included in the SEIR should have included potential releases from Gallade Chemical. The comment additionally claims that an accidental release of hazardous substances from Gallade during project construction could affect construction workers. The hazardous release analysis appropriately excluded the potential for hazardous material releases from Gallade Chemical to affect future residents of the project sites since no residential units on Site A or Site B would be occupied with Gallade in operation, as discussed in greater detail in a prior response above. The City would ensure that occupancy would not occur with Gallade in operation through project conditions of approval. The SEIR's analysis did not evaluate the potential hazardous material releases from Gallade Chemical to affect construction workers during site remediation and project development since their presence on the site is transient.

4. The comment states that the SEIR should include an analysis of the potential environmental impacts associated with the development of the Gallade Chemical Company parcel into a park site. This comment is addressed in **Response III.A.**

Response.IIIG.3: This comment asserts the analysis of potential hazardous materials releases included in the SEIR should have included potential releases from Gallade Chemical. Please see response to comment III.A above. The SEIR's analysis did not evaluate the potential hazardous material releases from Gallade Chemical to affect construction workers during site remediation and project development since their presence on the site is transient.

Comment IV: <u>The Proposed Affordable Housing Findings are Not Supported</u>

In order to approve an in-lieu fee as satisfying the requirements of the City's affordable housing ordinance, the City must make very specific findings required under Sections 17.18.050.D and G of the City Code. The findings contained in the Projects' staff reports and proposed resolutions regarding affordable housing are not supported by substantial evidence, and are insufficient to support allowance of in-lieu fees rather than building inclusionary units.

Approval of the Projects' alternative means of compliance with the affordable housing requirements must be supported by findings that: 1) bridge the analytical gap between the raw evidence and the ultimate decision, 2) are supported by substantial evidence, and 3) meet the requirements set forth in state and local law. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.)

The requirement to render findings serves to induce the City to draw legally relevant sub-conclusions supportive of its ultimate decision. (*Id.* at 515.) The intended effect is to facilitate orderly analysis and minimize the likelihood that the City will randomly leap from evidence to conclusions. In addition, findings enable the reviewing court to trace and examine the City's analysis. (*Id.* at 516.) They also serve to demonstrate to the public that the City's decision- making is careful, reasoned, and equitable. (*Id.* at 516-17.)

The findings requirement cannot be satisfied by a mere recitation of statutory language. (*City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; *see also, Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328 ("Our Supreme Court expressly disapproved 'the practice of setting forth findings solely in the language of the applicable legislation. '") (*quoting Topanga,* 11 Cal. 3d at 517, fn 16).)

Here, the findings proposed in the staff reports and proposed resolutions merely parrot the findings as stated in the City Code. The staff reports and proposed resolutions provide no analysis nor evidence to support the findings required by the City's housing ordinance. For example, there is no explanation as to how an in-lieu fee would be equal to or better than actually building affordable housing. Further, the staff report finds that proposed alternative means of compliance will not unduly concentrate below market rate housing in one geographic area because the City can monitor this concern when particular affordable housing developments are proposed. This required finding, in essence, is punted to future City Councils, with no guarantee that affordable housing will not be concentrated in a single geographic area. Deferring this particular consideration to future legislative bodies does not satisfy the requirements of the City's affordable housing ordinance.

Moreover, there is no evidence in the record that demonstrates that the proposed in-lieu fees will adequately mitigate the impact caused by market-rate housing. For an in-lieu fee system to satisfy the duty to mitigate, either that system must be evaluated by CEQA or the in-lieu fees or other mitigation must be evaluated on a project-specific basis. (*California Native Plant Society v. County of El Dorado* (2009) 170 Cal. App.4th 1026, 1055.) There is no evidence in the record to support the determination that payment of a $25,000 per/unit in-lieu fee would adequately mitigate the impact of the market rate housing, or otherwise be equivalent to the actual construction of the required inclusionary housing.

Response IV:

See revised Planning Commission Memorandum.