

CITY OF NEWARK CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4266 • E-mail: city.clerk@newark.org

City Administration Building
7:30 p.m.
City Council Chambers

AGENDA

Thursday, February 26, 2015

- A. ROLL CALL

- B. MINUTES
 - B.1 Approval of Minutes of the regular City Council meeting of Thursday, February 12, 2015. (MOTION)

- C. PRESENTATIONS AND PROCLAMATIONS
 - C.1 Introduction of employees.

 - C.2 Proclaiming March as American Red Cross Month in Newark. (PROCLAMATION)

- D. WRITTEN COMMUNICATIONS

- E. PUBLIC HEARINGS
 - E.1 Hearing to consider: U-88-42, an amendment to a conditional use permit, for a remodel to the Salvation Army building at 36700 Newark Boulevard – from Assistant City Manager Grindall. (RESOLUTION)

 - E.2 Hearing to consider REPEAL of: Resolution No. 9745 certifying the Environmental Impact Report for the Newark Area 3 and 4 Specific Plan Project and approving the Mitigation Monitoring and Reporting Program; Resolution No. 9746 approving and adopting the Newark Area 3 and 4 Specific Plan Project and related General Plan Amendment; Ordinance No. 442 approving and adopting the Newark Area 3 and 4 Specific Plan

Development Agreement; and Ordinance No. 443 approving Z-10-17, a Map Amendment to Title 17 of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan – from Assistant City Manager Grindall and City Attorney Benoun.

(RESOLUTIONS-2) (INTRODUCTION OF ORDINANCES-2)

- E.3 MOTION TO CANCEL Public Hearing to consider: 1) Certifying a Recirculated Final Environmental Impact Report addressing and disclosing the Environmental Impacts of the Newark Areas 3 and 4 Specific Plan Project and approving a Mitigation Monitoring and Reporting Program; 2) Approving the Newark Specific Plan: Areas 3 and 4 of the General Plan and related General Plan amendments: A map amendment to the General Plan Diagram to change the General Plan land use designations for certain parcels of land; 3) Introducing an Ordinance approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and; 4) Introducing an Ordinance approving a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Newark Specific Plan: Areas 3 and 4 of the General Plan – from Assistant City Manager Grindall.**

(MOTION TO CANCEL PUBLIC HEARING)

- E.4 Hearing to consider adoption of a resolution clarifying the City Council's intent in certifying the 2013 General Plan Tune Up Environmental Impact Report – from Assistant City Manager Grindall. (RESOLUTION)**

F. CITY MANAGER REPORTS

(It is recommended that Items F.1 through F.3 be acted on simultaneously unless separate discussion and/or action is requested by a Council Member or a member of the audience.)

CONSENT

- F.1 Initiation of the 2015 Weed Abatement Program and setting a date for a public hearing - from Fire Marshal Guier/ Maintenance Supervisor Carey. (RESOLUTION)**
- F.2 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 "Zoning Map" by**

rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code) – from City Clerk Harrington. (ORDINANCE)

F.3 Approval of the 2014-2015 Pavement Maintenance Program and authorization to advertise for bids for 2015 Street Patch Paving Program, Project 1092; 2015 Street Asphalt Concrete Overlay Program, Project 1093; and 2015 Street Slurry Seal Program, Project 1094 – from Assistant City Engineer Fajeau. (MOTION)

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

J. CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

M. CLOSED SESSION

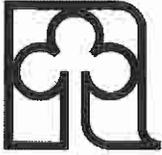
M.1 Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6. Agency designated representatives: Human Resources Director Abe and Community Development Director Grindall; Employee Groups: the Newark Police Association, the Newark Association of Miscellaneous Employees; City Officials and the Management, Supervisory, and Professional Employee Group; and the Confidential Employee Group – from City Attorney Benoun and Human Resources Director Abe.

- M.2 Closed session for conference with Legal Counsel on existing litigation Henneberry v. City of Newark, et al. United States District Court, Northern District of California Case No. C13-5238 MEJ pursuant to Section 54956.9(a) of the California Government Code: – from City Attorney Benoun.**

N. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and at the City Clerk's Office located at 37101 Newark Boulevard, 5th Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.

For those persons requiring hearing assistance, please make your request to the City Clerk two days prior to the meeting.



CITY OF NEWARK CITY COUNCIL

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City Administration Building
7:30 p.m.
City Council Chambers

AGENDA

Thursday, February 26, 2015

CITY COUNCIL:

Alan L. Nagy, Mayor
Socy Collazo, Vice Mayor
Luis L. Freitas
Michael K. Hannon
Mike Bucci

CITY STAFF:

John Becker
City Manager
Terrence Grindall
Assistant City Manager
Susie Woodstock
Administrative Services Director
Sandy Abe
Human Resources Director
Peggy A. Claassen
Public Works Director
Jim Leal
Police Chief
David Zehnder
Recreation and Community
Services Director
David J. Benoun
City Attorney
Sheila Harrington
City Clerk

Welcome to the Newark City Council meeting. The following information will help you understand the City Council Agenda and what occurs during a City Council meeting. Your participation in your City government is encouraged, and we hope this information will enable you to become more involved. The Order of Business for Council meetings is as follows:

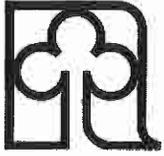
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|-------------------------------------|-------------------------|
| A. ROLL CALL | I. COUNCIL MATTERS |
| B. MINUTES | J. SUCCESSOR AGENCY |
| C. PRESENTATIONS AND PROCLAMATIONS | TO REDEVELOPMENT AGENCY |
| D. WRITTEN COMMUNICATIONS | K. ORAL COMMUNICATIONS |
| E. PUBLIC HEARINGS | L. APPROPRIATIONS |
| F. CITY MANAGER REPORTS | M. CLOSED SESSION |
| G. CITY ATTORNEY REPORTS | N. ADJOURNMENT |
| H. ECONOMIC DEVELOPMENT CORPORATION | |

Items listed on the agenda may be approved, disapproved, or continued to a future meeting. Many items require an action by motion or the adoption of a resolution or an ordinance. When this is required, the words **MOTION**, **RESOLUTION**, or **ORDINANCE** appear in parenthesis at the end of the item. If one of these words does not appear, the item is an informational item.

The attached *Agenda* gives the *Background/Discussion* of agenda items. Following this section is the word *Attachment*. Unless "none" follows *Attachment*, there is more documentation which is available for public review at the Newark Library, the City Clerk's office or at www.newark.org. Those items on the Agenda which are coming from the Planning Commission will also include a section entitled *Update*, which will state what the Planning Commission's action was on that particular item. *Action* indicates what staff's recommendation is and what action(s) the Council may take.

Addressing the City Council: You may speak once and submit written materials on any listed item at the appropriate time. You may speak once and submit written materials on any item not on the agenda during *Oral Communications*. To address the Council, please seek the recognition of the Mayor by raising your hand. Once recognized, come forward to the lectern and you may, but you are not required to, state your name and address for the record. Public comments are limited to five (5) minutes per speaker, subject to adjustment by the Mayor. Matters brought before the Council which require an action may be either referred to staff or placed on a future Council agenda.

No question shall be asked of a council member, city staff, or an audience member except through the presiding officer. No person shall use vulgar, profane, loud or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the presiding officer for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.



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Newark Pavilion
6430 Thornton Avenue, Hall 1
7:30 p.m.

Minutes

Thursday, February 12, 2015

A. ROLL CALL

Mayor Nagy called the meeting to order at 7:30 p.m. Present were Council Members Hannon, Freitas, Bucci, and Vice Mayor Collazo.

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, January 22, 2015.

Vice Mayor Collazo moved, Council Member Freitas seconded to approve the minutes of the regular City Council meeting. The motion passed, 5 AYES.

C. PRESENTATIONS AND PROCLAMATIONS

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

E.1 Hearing to consider: (1) adopting a resolution making certain findings and approving an Initial Study and Mitigated Negative Declaration (E-14-44); and (2) adopting a resolution approving ASR-14-45, an Architectural and Site Plan Review, for a commercial laundry facility (Mission Linen Supply) to be located at 6590 Central Avenue (APN: 92A-2165-13-1.

RESOLUTION NO. 10313
RESOLUTION NO. 10314

Assistant City Manager Grindall gave the report recommending approval of the construction of an 118,390 square foot commercial laundry facility (Mission Linen Supply) at 6590 Central Avenue (the former Guardian Packaging/American National Can/Alcan/Pechiney site).

At 7:39 p.m. Mayor Nagy opened the public hearing.

Scott Agee, Agee Engineering, Inc. stated that he read and agree to the conditions in the resolution.

Celmira Bléa asked what chemicals would be used at the location and if there was oversight on the materials.

Mr. Agee stated that there would not be dry cleaning at the facility. The same type of detergent used in homes would be used for washing mainly bed sheets and linens. He stated that regulations were followed for the wastewater.

Joe Carl asked about the fleet at the location and if it would be serviced on site.

Mr. Agree stated that 30 to 40 UPS type trucks and two axle bobtail type trucks would be used for deliveries. Fleet maintenance would be performed on site.

At 7:46 p.m. Mayor Nagy closed the public hearing.

The City Council discussed the employment that would be associated with this project.

Council Member Freitas moved, Council Member Bucci seconded to: (1) adopt a resolution making certain findings and approving an Initial Study and Mitigated Negative Declaration (E-14-44); and (2) adopt a resolution approving ASR-14-45, an Architectural and Site Plan Review, for a commercial laundry facility (Mission Linen Supply) to be located at 6590 Central Avenue (APN: 92A-2165-13-1). The motion passed, 5 AYES.

- E.2 Hearing to consider: (1) A resolution making certain findings and adoption of an Initial Study and Mitigated Negative Declaration; (2) Introduction of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 “Zoning Map” by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code); (3) A resolution approving Vesting Tentative Map 8212; and (4) A resolution for a planned unit development, and a conditional use permit, for a 77 lot single-family residential subdivision at 36120 Ruschin Drive.**

**RESOLUTION NO. 10315
RESOLUTION NO. 10316
RESOLUTION NO. 10317
INTRODUCTION OF ORDINANCE**

Assistant City Manager Grindall gave a powerpoint presentation (on file with the City Clerk) recommending approval. Classic Communities, Inc. has proposed building 77 detached homes at the Ruschin School site. Single story homes would be built adjacent to the existing homes with the remainder of the development consisting of two story

homes. The project will result in \$20 million to the Newark Unified School District, \$2 million to the City for affordable housing and \$500,000 to the City for parks.

Gary Black, Hexagon Transportation Consultants, Inc. presented a powerpoint on the traffic analysis (on file with the City Clerk). Mr. Black stated that the traffic study estimated the new traffic that would be added to the area and reviewed the added traffic against City policies. He estimated that the project would result in 733 new trips per day. This site used to be a school that would have generated substantially more traffic than the proposed project.

The City Council discussed the traffic in the area.

Mr. Black and Assistant Engineer Fajeau described what conditions would warrant a signal in the neighborhood.

Jim Pollart, Classic Communities gave a powerpoint presentation (on file with the City Clerk). The development would consist of 77 homes with 3 distinct home types. The homes would range from 1700 to 2300 square feet. There would be 18 unique home designs, all with 2 car garages and 2 car driveways. He stated that 1 story homes would be built around the perimeter of the development to minimize impacts to the existing neighbors. He noted that the majority of new development in the Bay Area consists of two and three story homes.

At 8:39 p.m. Mayor Nagy opened the public hearing.

Tim Jones stated that he was in favor of the project. He encouraged the audience to visit a local school to see the traffic jams. He did not think the new home traffic would be as bad as school traffic. He stated that property values will go up as a result of this project. He thought the current building was an eyesore that attracted crime.

Ricardo Corte stated that he lives in front of the development. He expressed his disappointment with the community meetings and his experience at the Planning Commission meeting. He stated his opinion that the project contradicted the General Plan. He proposed a compromise of 60 units. Mr. Corte submitted a petition against the project to the City Clerk.

Jack Burgess stated that he sent a detailed letter to the City Council outlining his concerns. He stated that the benefits described by Assistant City Manager Grindall were not benefits to the community. He requested that the City Council judge the project on its merits only, not on the payment to the school district.

Jacque Burgess stated that there was a misconception by supporters that all neighbors were against proposal. She stated that she felt shut out of the previous meetings. She wanted the school district to succeed, but that there were limitations on what the money could be used for. She proposed a compromise of 60 homes.

Dave Kiaski stated that he was not opposed to the development of the site, but he had problems with the way it has been proposed. He asked that the site not be developed to the detriment of the neighborhood.

Maria Rivas stated that she was shocked at the comments about the school district. She stated that the schools are old and need to be fixed for the children. The developer has been accommodating to the neighbors needs and the project will be wonderful.

Ron Katsanes proposed reducing the houses to 65, increasing the lot sizes and adding 24 parking spaces in a centralized location for visitors. He proposed a selling price of \$825,000 for the homes resulting in approximately \$4.4 million less than proposed \$20 million. He stated this would ease traffic congestion and still provide funding.

Celmira Bléa stated that she attended the Home Depot meeting and thought the traffic data presented for that project was skewed. She was concerned with the traffic for this project and thought that the City should plan for the traffic calming measures now. She would like people who serve Newark to be able to live in this development.

Connie King stated that traffic is bad in this area and cited her neighbor's recent auto accident. She requested that the City Council reduce the number of homes. She stated that she was told when the project was at 85 homes that reducing by one would end the project; now it is at 77 homes. She described the community meetings.

Allen Mikkelson stated that he was the driver involved in the auto accident described by Ms. King. He is also concerned with the traffic. He proposed 55 homes with lot sizes comparable to the existing neighborhood.

Lisa Haney stated that her backyard faces Ruschin School. She understood that the schools need money but thought 77 homes was too much. She proposed 45 to 60 homes. She stated that her property value will not increase because of the new homes.

Marguerite Durand stated that the school district needs the money to upgrade the schools. She thought that people moved out of Newark because of the schools. She stated that traffic is a fact of life in California; it is dealt with by taking different routes. She stated the homes that will benefit Newark.

Debbie Romero requested that the City Council approve the project as presented. She has been encouraged by the recent developments in the City. Jobs and new housing will bring more businesses. She stated that inconvenience is not a good enough reason to prevent the project.

Chuck Ontiveroz stated that it was a good project, but too many homes for the area. He asked a number of questions and requested that the City Council reconsider the size of the project.

Assistant City Manager Grindall responded to Mr. Ontiveroz's questions. Kennedy School would service this area. The homes driveways are 20 feet in length or more. The Fire Marshall reviewed the plans and the driveway access is adequate. The Public Works reviewed the plans for garbage truck access. He cited the Carter Station as a project with a similar lot size.

Council Member Bucci left the City Council Chambers.

At 9:26 p.m. Mayor Nagy called for a recess.

At 9:42 p.m. the City Council meeting resumed with all Council Members present.

Christine Herrera stated that she supported the project because this is what Newark needs. The City's future depends on growth. She asked the City Council to think of all of Newark, not just the neighborhood. She stated that the neighbors did not see Dr. Marken's passion for the schools and students.

Jennifer McMenemy stated that the benefits outweigh the inconvenience. New tax paying citizens need to be welcomed to the community. She requested that the City Council approve the plan as presented.

Tony Doot stated that new homes are inevitable due to the population growth in the Bay Area. The developer has already reduced the original project size by half. Developers are not building large lots anymore. The community needs a balance of building heights and a greenbelt around the City.

Victor Hernandez requested that the City Council approve the project to benefit the schools and the City. He stated that he is a volunteer coach for the Newark Soccer Club and they use the parks.

Dave Marken stated that that there are 595 homes in the current neighborhood. Adding 77 homes would be an increase of only 13 percent. He stated that if the school district thrives, then the city thrives and vice versa. The sale is needed for an infusion of funds to help propel the school district. He noted that school enrollment is down from 14 years ago so overcrowding is not an issue.

Adriana Lopez stated that she supports the project as presented. The experts have done their job. Equity will increase in the surrounding houses. The project will bring growth to the City.

Estela de Cardenas requested that the City Council approve the project as proposed. The development will improve the entire neighborhood.

Lucir Schlickmann stated that housing in the Bay Area is built up to 3 stories. This development is less than 3 stories. The school is abandoned and a magnet for crime. The development will be good for the City. Businesses will not leave if there are more

people to patronize them. She noted that people do not buy the house, they buy the school.

Art Lodewykx stated that traffic is a mess and the development will increase the traffic. He stated that the City is not responsive to traffic mitigation needs. He thought they were getting sold out and will have to live with the consequences of supporting the school district. The entire City should help with the burden.

Elisabeth Huffmaster stated that she was concerned about families who look at Newark schools and wonder if they should stay. She bought her home so her children could attend Bunker School and receive an enriched education. Companies are coming into Newark and their employees will be looking at our schools. She encouraged approval of the project.

Michelle Padilla stated that the Ruschin School site needs to be utilized. She has been impressed with the revisions made by the developer. Traffic is a fact of life in California. She requested approval of the project.

Hilary White stated that quality of teaching is wonderful, but the school facilities need to come up to par with the quality of teaching. She requested that the City Council approve the project as presented.

Julia Martinez stated that she supports the project. She asked that the City Council approve the project “as is” for the good of the children and the City.

Michelle Pimentel stated that she supports the development. Newark needs business and residential growth for the City and the School District. The number of homes has been reduced by the developer for a great compromise.

Cathreen Ingham Watters stated her support for the project. The number of homes has been reduced and it is time to move forward with the approval.

Donne Hanifin stated that she is pleased with the City for the changes at NewPark Mall. She noted a previous speaker’s comments about the whole community supporting the School District. The whole Newark community supports the school district through their taxes. She noted that she has lived in her Newark home for 38 years and the taxes are not very high.

Larry Simon stated that the project is good for the City. He stated that he thought Newark has been sagging over the last 10 years. The recent housing developments are good things for the community. New residents are the lifeblood for the community.

Noel Doot stated that children receive a fine education from Newark schools. The community recently passed a bond requiring all taxpayers to do their part. The Developer and the City has done its homework and a lot of compromise has been made. She supported the project as proposed.

Karena Guitierrez stated that she supports the development.

Jim Pollart, Classic Communities stated that he read and agreed to the conditions in the resolutions.

At 10:25 p.m. Mayor Nagy closed the public hearing.

Each of the City Council Members stated their reasons for supporting the development.

Council Member Hannon requested that the developer consider a credit or assistance to help public employees buy some of the homes.

Council Member Bucci moved, Vice Mayor Collazo seconded to: (1) approve a resolution making certain findings and adopting an Initial Study and Mitigated Negative Declaration for a 77 unit single-family subdivision on the former Ruschin School Site (APN:92A-775-46); (2) introduce an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 “Zoning Map” by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code); (3) approve a resolution approving Vesting Tentative Map 8212 and Subdivision and Zoning Variances Thereto; and (4) approve a resolution approving P-14-41, a planned unit development, and U-14-42, a conditional use permit, for a 77 lot single-family residential subdivision at 36120 Ruschin Drive. The motion passed, 5 AYES.

Mayor Nagy requested that staff work with the residents on Lafayette Avenue to mitigate the traffic issues.

At 10:42 p.m. Mayor Nagy called for a recess.

At 10:55 p.m. the meeting resumed.

F. CITY MANAGER REPORTS

Vice Mayor Collazo moved, Council Member Bucci seconded, to approve Consent Calendar Items F.1 through F.5, that the resolutions be numbered consecutively, and that the reading of the titles suffice for adoption of the resolutions. The motion passed, 5 AYES.

CONSENT

- F.1 Acceptance of contract with New Image Landscape Company for Park and Landscape Maintenance Services Project 1007B.**

RESOLUTION NO. 10318

- F.2 Approval of the allocation of anticipated Community Development Block Grant Jurisdiction Improvement Project Funds for Fiscal Year 2015-2016.
MOTION APPROVED**

- F.3 Authorization for the Mayor to sign an agreement with Joel Nelson Productions, Inc., for the 2015 Music at the Grove Program.
RESOLUTION NO. 10319
CONTRACT NO. 15003**

- F.4 Approval of an agreement for legal services with Silver & Wright, LLP.
RESOLUTION NO. 10320
CONTRACT NO. 15004**

- F.5 Approval of specifications, acceptance of bid, and award of agreement to Staples Contract and Commercial, Inc. for Silliman Activity and Family Aquatic Center Meeting Room Replacement Tables.
RESOLUTION NO. 10321
CONTRACT NO. 15005**

G. CITY ATTORNEY REPORTS

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

Mayor Nagy stated that he would adjourn the meeting in memory of former City Manager Richard Turnland and Planning Commissioner Janet Drews. The entire City Council extended their condolences to the families of Janet Drews and Richard Turnland.

Mayor Nagy stated that because there are two vacancies on the Planning Commission, the Council might want to consider reducing the membership to a 5 member commission.

City Manager Becker stated that staff would provide a report on the viability of reducing the number of planning commissioners at a future meeting.

J. CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

J.1 Resolution of the City of Newark acting as the Successor Agency to the Newark Redevelopment Agency adopting and endorsing the Recognized Obligation Payment Schedule for the period of July to December 2015 (ROPS 15-16A). RESOLUTION NO. SA 2015-1

Administrative Services Director Woodstock gave the staff report recommending approval. The only obligation remaining from the dissolution of the Newark Redevelopment Agency is the loan from the City to the Newark Redevelopment Agency. The outstanding debt on the loan is \$404,241. The Agency can request \$48,007 in Fiscal Year 2015-2016 for repayment of the loan. The Agency will request half of each of these amounts on ROPS 15-16A and the second half on ROPS 15-16B.

Council Member Collazo moved, Council Member Hannon seconded to adopt and endorse the Recognized Obligation Payment for the period of July to December 2015 (ROPS 15-16A). The motion passed, 5 AYES.

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

City Clerk Harrington read the Register of Audited Demands: Check numbers 103694 to 103889.

Council Member Freitas moved, Vice Mayor Collazo seconded, to approve the Register of Audited Demands. The motion passed, 5 AYES.

M. CLOSED SESSION

N. ADJOURNMENT

At 11:07 pm Mayor Nagy adjourned the meeting in memory of Janet Drews and Richard Turnland.

C.1 Introduction of employees.

Background/Discussion – Recently hired Public Safety Dispatcher Heidi Horner, Police Officer Natasha Stone, and Public Safety Clerk Wendy Walker will be at the meeting to be introduced to the City Council.

C.2 Proclaiming March as American Red Cross Month in Newark. (PROCLAMATION)

Background/Discussion – President Barack Obama has proclaimed March as American Red Cross Month across the United States. Helen Knudson, chair of the American Red Cross Leadership Council, will accept the City of Newark proclamation at the meeting.

E.1 Hearing to consider: U-88-42, an amendment to a conditional use permit, for a remodel to the Salvation Army building at 36700 Newark Boulevard – from Assistant City Manager Grindall. (RESOLUTION)

Background/Discussion – Mr. Michael Buschow, on behalf of the Salvation Army, has submitted an application for a remodel of the Salvation Army building located 36700 Newark Boulevard.

The subject site is zoned CN (Neighborhood Commercial) and has an OC (Office Commercial) General Plan land use designation. It is located on the east side of Newark Boulevard between Mayhews Lading Road and Fair Avenue. The Salvation Army obtained conditional use permit approval on July 14, 1988 to operate a church, classrooms, offices and provide community services to Newark residents and the Tri-Cities area. The applicant proposes to demolish the existing building and construct a new 11,513 square foot building occupying the same general footprint of the existing structure. The new facility would include a chapel, multipurpose room, commercial kitchen, classrooms, computer lab, teenage game room, social services offices, administrative offices, covered outdoor space, basketball courts and public restrooms. Proposed new services include a senior lunch program, emergency disaster services, nutrition, computer, and English as-a-second language classes.

The new building would have a contemporary design with a building mass that is broken up with wall articulation, varying rooflines, colored columns, and a decorative tower with a cross. Exterior materials include glass, concrete plaster, and metal and fiberglass panels. The facility is proposed to be LEED silver-certified with natural lighting, water efficiency, recycled materials, and thermal comfort incorporated within the building design. The existing wireless telecommunications facility pole at the front of the property will be removed and a monopine (cellular tower resembling a tree) would replace it at the rearmost corner of the parking lot. Access to the site would continue along Newark Boulevard and the parking lot would be reconfigured in coordination with the new building design.

On October 28, 2014, the applicant held a community meeting to discuss the project. Notices were sent to approximately 95 property owners within 300 feet of the project site. The four neighbors who attended the meeting raised questions regarding lighting, construction hours, maintenance and security of the property. Specific issues raised by the neighbors were: (a) if parking lot lighting would create glare onto the backyards of residences; (b) the time and duration construction would take place; (c) ensuring food remains from the food distribution program would not be left on property grounds; (d) ensuring overgrown trees wouldn't encroach onto adjacent properties; and (e) continuing to provide pedestrian access from the end of Birch Street onto the site. The applicant clarified that shielded lights, which project downward, would be used for building and parking lot lighting and thus, would not be a direct light source onto neighboring properties. Neighbors were informed that construction would take place Monday through Friday from 8:00 a.m. to 6:00 p.m, as required by the City, for approximately ten months. To address the security concern over access to the site, the applicant informed neighbors that a security gate would be provided at the driveway on the north end of the property. The applicant informed neighbors that Salvation Army staff would take measures to ensure that food remains are not left

on-site after food distribution. Staff believes that the project is configured to allow pedestrian access. A condition of approval has been incorporated into the resolution to ensure the site remains in a presentable condition.

Environmental Determination

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15301, Class 1, alteration of existing facilities.

Attachment

Update – At its meeting of February 10, 2015, the Planning Commission: approved Resolution No. 1899, for an amendment to a conditional use permit (U-88-42) for a remodel to the Salvation Army building at 36700 Newark Boulevard.

Action - It is recommended that the City Council, by resolution, approve an amendment to a conditional use permit (U-88-42) for a remodel to the Salvation Army building at 36700 Newark Boulevard.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK
APPROVING AN AMENDMENT TO A CONDITIONAL USE PERMIT
(U-88-42) FOR A REMODEL TO THE SALVATION ARMY
BUILDING AT 36700 NEWARK BOULEVARD

WHEREAS, Mr. Michael Buschow, on behalf of the Salvation Army, has filed with the City Council of the City of Newark an application for an amendment to a conditional use permit (U-88-42) for a remodel to the Salvation Army building at 36700 Newark Boulevard; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Argus on February 13, 2015 and mailed as required, and the City Council held a public hearing on said application at 7:30 p.m. on February 26, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve this application as shown on Exhibit A, pages 1 through 4, subject to compliance with the following conditions:

Planning Division

- a. This project is subject to all conditions of Planning Commission Resolution No's. 1107, 1537, and 1639 unless otherwise amended herein.
- b. Prior to the issuance of a building permit, the existing wireless telecommunication facility located at the front of the property shall be removed.
- c. All deliveries, including food, clothing, and materials to the site shall be limited to the hours of 9:00 a.m. to 6:00 p.m., Monday through Saturday. No delivery of donated materials shall occur outside of the building; during religious services; and/or before or after the delivery hours.
- d. If any complaint regarding noise is received from nearby residential properties, a noise analysis shall be prepared at the discretion of the Community Development Director and at the cost of the applicant. The applicant shall mitigate any problems identified by the noise study.
- e. If any complaint regarding traffic and/or parking is received, a traffic/parking analysis shall be prepared at the direction of the Community Development Director and at the cost of the applicant. The applicant shall mitigate any problems identified by the traffic/parking study.
- f. The drive aisles shall not be used by delivery trucks between the hours of 11:00 p.m. and

7:00 a.m. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted 11:00 p.m. and 7:00 a.m. No delivery truck or van shall be left overnight on any portion of the site.

- g. All lighting shall be directed on-site so as not to create glare off-site.
- h. There shall be no outdoor vending machines other than the sale of newspapers.
- i. Construction site trailers and buildings located on-site shall be used for office and storage purposes and shall not be used for living or sleeping quarters. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- j. 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 clean up shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- k. Prior to issuance of a demolition permit, the developer shall submit a recycling plan for the review and approval of the Community Development Director. The plan shall include provisions for dust control during the demolition and recycling phases.
- l. Prior to issuance of a grading permit, measures shall be put in place to respond to and track complaints pertaining to construction noise and shall include, at a minimum: (1) a procedure and phone numbers for notifying the City of Newark Building Inspection Division and Newark Police Department (during regular construction hours and off-hours); and (2) a sign posted on-site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign, to be approved by the City prior to installation, shall also include a list of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).
- m. 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.
- n. Prior to the issuance of a building permit, the elevations as submitted by the developer as part of this application, shall be reviewed and approved by the Planning Commission and City Council. The building elevations shall reflect all roof eaves, bay windows, greenhouse windows, chimneys, porches, and similar architectural features. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials. Final colors shall be submitted for the review and approval of the Community Development Director.

- o. 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.
- p. Prior to issuance of a building permit, a screening design shall be submitted to and approved by the Community Development Director. Roof equipment shall not be visible from the public streets. Roof equipment shall be fully screened within the context of each building's architecture. Said screening design shall be maintained to the satisfaction of the Community Development Director.
- q. Prior to the issuance of a building permit, the location and screening design for any centralized 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 enclosure shall be sited such that the enclosure's doors, when open, do not extend into drive aisles/back-up areas. No refuse, garbage or recycling shall be stored outdoors except within approved trash and recycling enclosures.

The enclosure shall utilize integral color, split-face block or a suitable durable material, and be provided with a roof for storm water quality purposes. A stucco band shall be placed around the top of the enclosure with a mortar cap on top to prevent the infiltration of water and leaching of materials from the block. The enclosure shall be treated with a waterproof finish approved by the Building Official. The doors of the enclosure shall be made of metal and painted to match the color of the enclosure's walls. The enclosure's materials, colors and roof design shall be subject to the review and approval of the Community Development Director.

- r. Prior to the issuance of a building permit, the applicant shall submit plans for the repair of the perimeter fencing and walls for the review and approval of the Community Development Director.
- s. 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.
- t. Prior to final inspection and utility release, the applicant shall provide all structures with roof gutters and downspouts along all horizontal eaves of each structure. Thru-curb drains shall not be installed in the public right-of-way.
- u. To reduce daytime noise impacts due to construction, the applicant shall implement the following measures:
 - 1. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy-duty mufflers designed to reduce noise impacts.
 - 2. Residents within 300 feet of the boundaries of the construction phase shall be notified by the project applicant at least 30 days in advance of the start of construction.

3. A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.
- v. Prior to the issuance of a sign permit, all signs, other than those referring to construction, sale, or future use of this site, shall be submitted to the Community Development Director for review and approval.
- w. If the project is developed in phases, the timing of improvements shown on the approved exhibits and required per the conditions of approval herein shall be subject to the review and approval of the Community Development Director.
- x. 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 applicant shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval. All time extensions for this amendment of a conditional use permit shall be approved by the Planning Commission and City Council.
- y. If any condition of this amendment of a conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this conditional use permit amendment shall terminate and be of no force and effect, at the election of the City Council on motion.
- z. Prior to the submittal for building permit review, all conditional use permit amendment development conditions of approval for this project, as approved by the City Council, shall be printed on the plans.
- aa. 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.
- bb. The Conditions of Project Approval set forth herein 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.

Engineering Division

- cc. Prior to the issuance of a building permit, the developer shall dedicate to the City of Newark an additional 2-foot wide (52 feet from centerline) easement for street purposes along the Newark Boule vard frontage with the limits of the development.
- dd. This site is subject to the State of California National Pollutant Discharge Elimination System (NPDES) Program General Permit for Storm Water Discharges Associated with Construction Activity. Prior to issuance of a grading permit or a building permit, the developer needs to provide evidence that the proposed site development work is covered by said General Permit for Construction Activity. This will require confirmation that a Notice of Intent (NOI) and the applicable fee were received by the State Water Resources Control Board and the submittal of the required Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the City Engineer. In addition the grading plans need to state: "All grading work shall be done in accordance with the Storm Water Pollution Prevention Plan prepared by the developer pursuant to the Notice of Intent on file with the State Water Resources Control Board."
- ee. The project must be designed to minimize the pollution or contamination of stormwater runoff from the site. Examples of control measures include, but are not limited to: no uncovered trash enclosures or storage of products and materials; minimization of impervious surfaces; separation of all car wash activities from the storm drain system; routing of pavement and roof runoff through vegetated swales or landscaped areas in-lieu of direct connections to the storm drain system; treatment controls for runoff from paved areas used for vehicle parking, repair and/or storage such as storm drain inlet filters, interceptors, separators or other acceptable treatment devices; installation of vegetated or turfed areas around storm water inlets, and other Best Management Practices to address the requirements of the NPDES permit issued to the City of Newark by the Regional Water Quality Control Board. The use of structural treatment controls for runoff quality requires the submittal of a maintenance agreement prior to the issuance of a Certificate of Occupancy.
- ff. Prior to the issuance of a building permit for this project, the developer shall submit a written Storm Water Pollution Prevention Plan 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 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 storm water runoff from this site including, but not limited to, trash and litter control, pavement

sweeping, periodic storm water inlet cleaning, landscape controls for fertilizer and pesticide applications, labeling of storm water inlets with the wording "No Dumping - Drains to Bay," and other applicable practices.

- gg. The project must be designed to include appropriate source control, site design, and stormwater treatment measures to prevent stormwater runoff pollutant discharges and increases in runoff flows from the site in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2009-0074, revised November 28, 2011, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region. Examples of source control and site design requirements include, but are not limited to: properly designed trash storage areas, sanitary sewer connections for all non-stormwater discharges such as fountains, trash enclosures and trash compactors, minimization of impervious surfaces, and treatment of all runoff with Low Impact Development (LID) treatment measures. A properly engineered and maintained biotreatment system will only be allowed if it is infeasible to implement other LID measures such as harvesting and re-use, infiltration, or evapotranspiration. The stormwater treatment design shall be completed by a licensed civil engineer with sufficient experience in stormwater quality analysis and design. The design is subject to review by the Regional Water Quality Control Board. The developer shall modify the site design to satisfy all elements of Provision C.3 of the MRP. The use of treatment controls for runoff requires the submittal of a Stormwater Treatment Measures Maintenance Agreement prior to the issuance of any Certificates of Occupancy.
- hh. 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 and stormwater treatment design as necessary to satisfy any imposed requirements from the District.
- ii. The developer shall submit a grading and drainage plan for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District. This plan must be based upon a City benchmark and needs to include pad and finish floor elevations of each proposed structure, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavement shall drain at a minimum of one percent. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer prior to issuance of a building permit in accordance with Alameda County criteria. The calculations shall show that City freeboard requirements will be satisfied (0.75 feet to grate or 1.25 feet to the top of curb under a 10-year storm duration).

- jj. Where a grade differential of more than one (1) foot is created along the boundary parcel 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.

- kk. Prior to issuance of a building permit, the developer shall submit a pavement maintenance program for the drive aisles and parking areas on the project site. The maintenance program shall be signed by the property owner and the property owner shall follow the maintenance program at the City Engineer's direction.
- ll. The property owner shall modify the existing 25-foot wide emergency access easement, if necessary, along the southern property line to ensure a clear unobstructed path for emergency vehicles as required by the Alameda County Fire Department. The easement documents, if necessary, must be reviewed and approved by the City Engineer prior to the issuance of a building permit.
- mm. Any new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground.
- nn. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked. Open street cuts will not be permitted across Newark Boulevard or Birch Street.
- oo. The developer shall repair and/or replace any public and private improvements damaged as a result of construction activity to the satisfaction of the City Engineer and adjoining property owners.
- pp. 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.

Landscape-Parks Division

- qq. Prior to the issuance of a building permit, the property owner shall dedicate to the City of Newark a minimum 10-foot wide landscape easement along the Newark Boulevard frontage. This easement shall incorporate all landscape areas beyond the minimum dimension to the nearest physical constraints.
- rr. Prior to the issuance of any building or grading permits, the property owners shall enter into a Landscape Maintenance Agreement with the City of Newark. Areas Agreement shall include all continuous landscaped areas contiguous to the site's public street frontage and all visible on-site landscaping. All landscape maintenance on-site and along the project frontage shall be the responsibility of the property owner. Landscape maintenance of these areas by the City under the terms of the Agreement would occur only in the event that City Council deems the owner's maintenance to be inadequate. Any project perimeter walls and adjoining landscape areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls. Any work

other than routine maintenance, including but not necessarily limited to, tree removal, tree pruning, or changes to the approved planting palette shall be approved in advance by the City Engineer. All tree pruning shall be performed by or under the direction of a certified arborist.

- ss. The developer shall retain a licensed landscape architect to prepare working drawings for landscape plans in accordance with City of Newark requirements, the approved Conceptual Landscape Plan, and the State of California Model Water Efficient Landscape Ordinance. The landscape plans shall be included with the building/site work permit application. The plans shall include detailed irrigation plans, details, water usage calculations, irrigation schedules, etc., for an automatic irrigation system. The associated Landscape Documentation Package must be approved by the City Engineer prior to the issuance of a building permit.
- tt. The developer shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to the issuance of a building permit, the developer shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project. A minimum three (3) inch thick layer of bark mulch shall be provided in all areas landscaped areas.
- uu. The plant species identified for any proposed biotreatment measures are subject to final approval of the City Engineer.
- vv. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- ww. Prior to the release of utilities or issuance of any Certificate of Occupancy, all landscaping and irrigation systems shall be completed or guaranteed by a cash deposit deposited with the City in an amount to cover the remainder of the work.
- xx. 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.

Building Inspection Division

- yy. Construction for this project, including site work and all structures, can occur only between the hours of 7:00 AM and 6:00 PM, Monday through Friday. The applicant may make a written request to the Building Official for extended working hours and/or days. In granting or denying any request, the Building Official will take into consideration the

nature of the construction activity which would occur during extended hours/days, the time duration of the request, the proximity to residential neighborhoods and input by affected neighbors. All approvals will be done so in writing.



2200 P Street, Suite 300
 Sacramento, CA 95811
 916 488-7900
 fax 488-7806



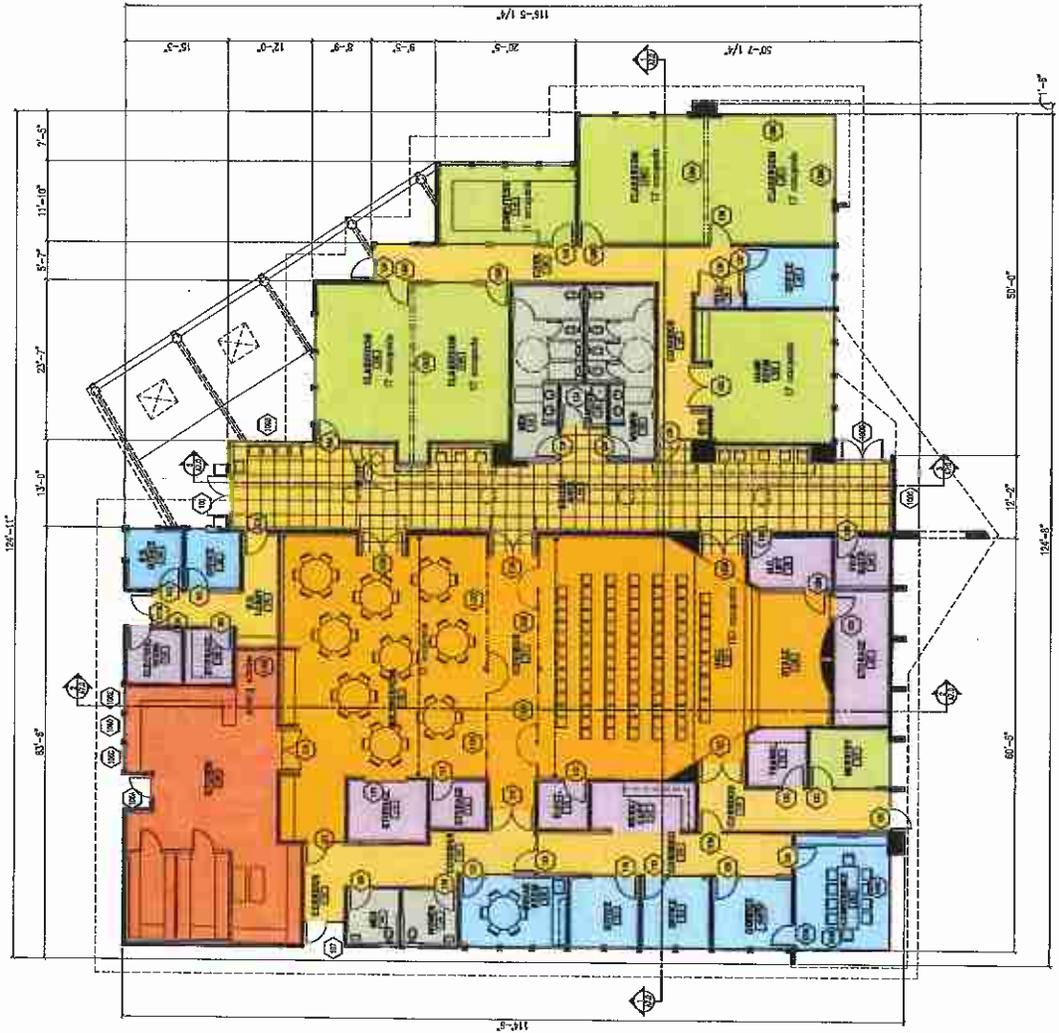
THE SALVATION ARMY
 NEWARK CORPS COMMUNITY CENTER
 3670D NEWARK BLVD
 NEWARK, CALIFORNIA 94560

FLOOR PLAN

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 SCALE: _____

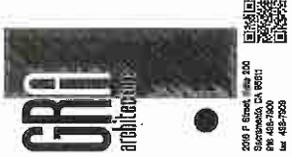
DATE: _____
 DEPARTMENT: _____
 PROJECT NO.: _____
 SHEET NO.: _____

A2.0



1 FLOOR PLAN
 1/8" = 1'-0"
 1/8" = 1'-0"

EXHIBIT A-2



NEWARK CORPS COMMUNITY CENTER
 36700 NEWARK BLVD
 NEWARK, CALIFORNIA 95811
 THE GALVATON ARMY

CONCEPTUAL
 LANDSCAPE
 PLAN

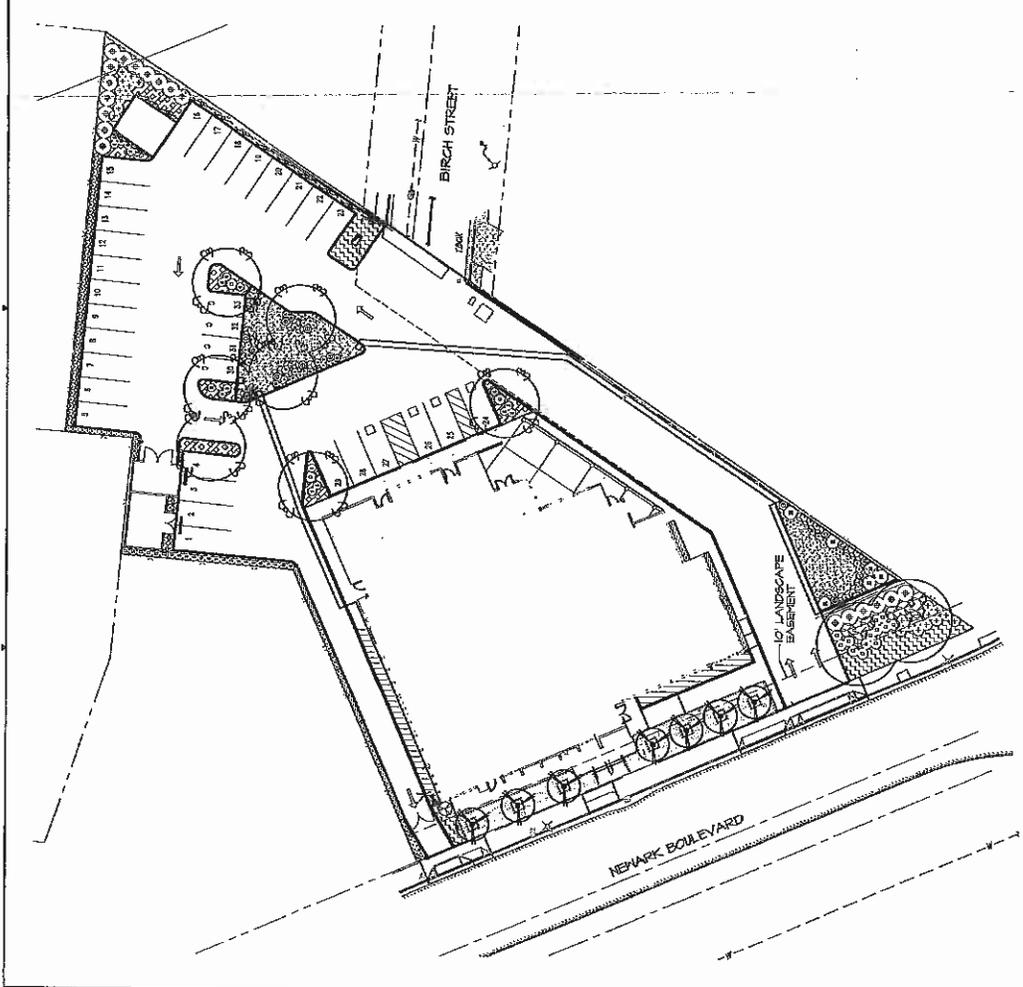
DATE: DECEMBER 17, 2004
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: AS SHOWN
 SHEET: 1 OF 1

L1.1

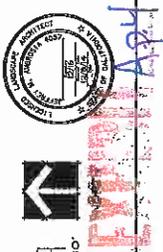
PLANT SCHEDULE

| SYMBOL | CODE | COL | BOTANICAL NAME / COMMON NAME | SIZE |
|--------|-------------|------|---|---------|
| ○ | PIS PE 1 | 1 | Passiflora ligularis / Yellow Doves / Yellow Doves Chinese Passionfruit | 15 gal |
| ○ | FRU CA 1 | 1 | Pyrus callidona 'Chandler' / Chandler Pear | 24" box |
| ○ | ULM SH 2 | 2 | Ulmus parvifolia 'Sampsonium' / Chinese Sampson Elm | 15 gal |
| ○ | COLL | COLL | BOTANICAL NAME / COMMON NAME | SIZE |
| ○ | ARJ PLS 3A | 3A | Arbutus menziesii / Purple Throat | 1 gal |
| ○ | IMP RD 12 | 12 | Impatiens glandulifera 'Purple Blue' / Purple Blue Butterfly Bush | 5 gal |
| ○ | GRS PRO 22 | 22 | Grass 'Pro' / [Name] | 5 gal |
| ○ | DRS BIC 25 | 25 | Dracaena bicolor / [Name] | 5 gal |
| ○ | GRS HOPE 18 | 18 | Grass 'Hope' / [Name] | 5 gal |
| ○ | LAV RD 43 | 43 | Lavandula angustifolia 'Yakope' / Yakope Lavender | 1 gal |
| ○ | MAN REP 6 | 6 | Manisotia repens / Creeping Manisotia | 5 gal |
| ○ | IMP SH 25 | 25 | Impatiens x [Name] / [Name] | 1 gal |
| ○ | MAN COM 47 | 47 | Manisotia communis / [Name] | 5 gal |
| ○ | MAN HVE 79 | 79 | Manisotia hirsuta 'Havenly' / Havenly Manisotia | 5 gal |
| ○ | PRO PAD 8 | 8 | Prostrata [Name] / [Name] | 5 gal |
| ○ | ROB COL 19 | 19 | Robinsonia [Name] / [Name] | 5 gal |
| ○ | SAL ALL 6 | 6 | Salix alba / [Name] | 5 gal |
| ○ | COLL | COLL | BOTANICAL NAME / COMMON NAME | SIZE |
| ○ | PIS PHL 15 | 15 | Passiflora [Name] / [Name] | 5 gal |
| ○ | COLL | COLL | BOTANICAL NAME / COMMON NAME | SIZE |
| ○ | GRS DIV 16 | 16 | Grass 'Div' / [Name] | 1 gal |
| ○ | IMP HOPE 18 | 18 | Impatiens [Name] 'Havenly' / Havenly Impatiens | 1 gal |
| ○ | LAV SH 43 | 43 | Lavandula [Name] / [Name] | 1 gal |
| ○ | LAV PER 64 | 64 | Lavandula [Name] / [Name] | 1 gal |
| ○ | COLL | COLL | BOTANICAL NAME / COMMON NAME | SIZE |
| ○ | TRF HOPE 18 | 18 | Trifolium [Name] / [Name] | 1 gal |

- NOTES:
- 1) AN AUTOMATIC IRRIGATION SYSTEM WILL BE INSTALLED ON THE PROJECT IN ACCORDANCE WITH THE CALIFORNIA MODEL WATER EFFICIENT LANDSCAPE ORDNANCE (MWELO).
 - 2) THE LANDSCAPE DESIGN SHALL BE IN ACCORDANCE WITH THE NEWARK MUNICIPAL CODE 104.040 FOR THE IMPLEMENTATION OF WATER FRIENDLY LANDSCAPING PRACTICES.
 - 3) A MINIMUM 5" LAYER OF BANKSLOTT SHALL BE INSTALLED IN ALL LANDSCAPE AREAS NOT COVERED BY PAVED SURF.



SITE PLAN
 SCALE: 1" = 20'-0"



RESOLUTION NO. 1899

RESOLUTION APPROVING AN AMENDMENT TO A
CONDITIONAL USE PERMIT (U-88-42) FOR A REMODEL TO THE
SALVATION ARMY BUILDING AT 36700 NEWARK BOULEVARD

WHEREAS, Mr. Michael Buschow, on behalf of the Salvation Army, has filed with the Planning Commission of the City of Newark application for an amendment to a conditional use permit (U-88-42) for a remodel to the Salvation Army building at 36700 Newark Boulevard; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Argus on January 31, 2015 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on February 10, 2015 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends that the City Council grant this application as shown on Exhibit A, pages 1 through 4, subject to compliance with the following conditions:

Planning Division

- a. This project is subject to all conditions of Planning Commission Resolution No's. 1107, 1537, and 1639 unless otherwise amended herein.
- b. Prior to the issuance of a building permit, the existing wireless telecommunication facility located at the front of the property shall be removed.
- c. All deliveries, including food, clothing, and materials to the site shall be limited to the hours of 9:00 a.m. to 6:00 p.m., Monday through Saturday. No delivery of donated materials shall occur outside of the building; during religious services; and/or before or after the delivery hours.
- d. If any complaint regarding noise is received from nearby residential properties, a noise analysis shall be prepared at the discretion of the Community Development Director and at the cost of the applicant. The applicant shall mitigate any problems identified by the noise study.
- e. If any complaint regarding traffic and/or parking is received, a traffic/parking analysis shall be prepared at the direction of the Community Development Director and at the cost of the applicant. The applicant shall mitigate any problems identified by the traffic/parking study.
- f. The drive aisles shall not be used by delivery trucks between the hours of 11:00 p.m. and 7:00 a.m. Parking lot cleaning with sweeping or vacuum equipment shall not be

permitted 11:00 p.m. and 7:00 a.m. No delivery truck or van shall be left overnight on any portion of the site.

- g. All lighting shall be directed on-site so as not to create glare off-site.
- h. There shall be no outdoor vending machines other than the sale of newspapers.
- i. Construction site trailers and buildings located on-site shall be used for office and storage purposes and shall not be used for living or sleeping quarters. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- j. 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 clean up shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- k. Prior to issuance of a demolition permit, the developer shall submit a recycling plan for the review and approval of the Community Development Director. The plan shall include provisions for dust control during the demolition and recycling phases.
- l. Prior to issuance of a grading permit, measures shall be put in place to respond to and track complaints pertaining to construction noise and shall include, at a minimum: (1) a procedure and phone numbers for notifying the City of Newark Building Inspection Division and Newark Police Department (during regular construction hours and off-hours); and (2) a sign posted on-site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign, to be approved by the City prior to installation, shall also include a list of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).
- m. 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.
- n. Prior to the issuance of a building permit, the elevations as submitted by the developer as part of this application, shall be reviewed and approved by the Planning Commission and City Council. The building elevations shall reflect all roof eaves, bay windows, greenhouse windows, chimneys, porches, and similar architectural features. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials. Final colors shall be submitted for the review and approval of the Community Development Director.
- o. 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.

p. Prior to issuance of a building permit, a screening design shall be submitted to and approved by the Community Development Director. Roof equipment shall not be visible from the public streets. Roof equipment shall be fully screened within the context of each building's architecture. Said screening design shall be maintained to the satisfaction of the Community Development Director.

q. Prior to the issuance of a building permit, the location and screening design for any centralized 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 enclosure shall be sited such that the enclosure's doors, when open, do not extend into drive aisles/back-up areas. No refuse, garbage or recycling shall be stored outdoors except within approved trash and recycling enclosures.

The enclosure shall utilize integral color, split-face block or a suitable durable material, and be provided with a roof for storm water quality purposes. A stucco band shall be placed around the top of the enclosure with a mortar cap on top to prevent the infiltration of water and leaching of materials from the block. The enclosure shall be treated with a waterproof finish approved by the Building Official. The doors of the enclosure shall be made of metal and painted to match the color of the enclosure's walls. The enclosure's materials, colors and roof design shall be subject to the review and approval of the Community Development Director.

r. Prior to the issuance of a building permit, the applicant shall submit plans for the repair of the perimeter fencing and walls for the review and approval of the Community Development Director.

s. 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.

t. Prior to final inspection and utility release, the applicant shall provide all structures with roof gutters and downspouts along all horizontal eaves of each structure. Thru-curb drains shall not be installed in the public right-of-way.

u. To reduce daytime noise impacts due to construction, the applicant shall implement the following measures:

1. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy-duty mufflers designed to reduce noise impacts.
2. Residents within 300 feet of the boundaries of the construction phase shall be notified by the project applicant at least 30 days in advance of the start of construction.
3. A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

- v. Prior to the issuance of a sign permit, all signs, other than those referring to construction, sale, or future use of this site, shall be submitted to the Community Development Director for review and approval.
- w. If the project is developed in phases, the timing of improvements shown on the approved exhibits and required per the conditions of approval herein shall be subject to the review and approval of the Community Development Director.
- x. 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 applicant shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval. All time extensions for this amendment of a conditional use permit shall be approved by the Planning Commission and City Council.
- y. If any condition of this amendment of a conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this conditional use permit amendment shall terminate and be of no force and effect, at the election of the City Council on motion.
- z. Prior to the submittal for building permit review, all conditional use permit amendment development conditions of approval for this project, as approved by the City Council, shall be printed on the plans.
- aa. 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.
- bb. The Conditions of Project Approval set forth herein 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.

Engineering Division

- cc. Prior to the issuance of a building permit, the developer shall dedicate to the City of Newark an additional 2-foot wide (52 feet from centerline) easement for street purposes along the Newark Boule vard frontage with the limits of the development.
- dd. This site is subject to the State of California National Pollutant Discharge Elimination System (NPDES) Program General Permit for Storm Water Discharges Associated with Construction Activity. Prior to issuance of a grading permit or a building permit, the developer needs to provide evidence that the proposed site development work is covered by said General Permit for Construction Activity. This will require confirmation that a Notice of Intent (NOI) and the applicable fee were received by the State Water Resources Control Board and the submittal of the required Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the City Engineer. In addition the grading plans need to state: "All grading work shall be done in accordance with the Storm Water Pollution Prevention Plan prepared by the developer pursuant to the Notice of Intent on file with the State Water Resources Control Board."
- ee. The project must be designed to minimize the pollution or contamination of stormwater runoff from the site. Examples of control measures include, but are not limited to: no uncovered trash enclosures or storage of products and materials; minimization of impervious surfaces; separation of all car wash activities from the storm drain system; routing of pavement and roof runoff through vegetated swales or landscaped areas in-lieu of direct connections to the storm drain system; treatment controls for runoff from paved areas used for vehicle parking, repair and/or storage such as storm drain inlet filters, interceptors, separators or other acceptable treatment devices; installation of vegetated or turfed areas around storm water inlets, and other Best Management Practices to address the requirements of the NPDES permit issued to the City of Newark by the Regional Water Quality Control Board. The use of structural treatment controls for runoff quality requires the submittal of a maintenance agreement prior to the issuance of a Certificate of Occupancy.
- ff. Prior to the issuance of a building permit for this project, the developer shall submit a written Storm Water Pollution Prevention Plan 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 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 storm water runoff from this site including, but not limited to, trash and litter control, pavement sweeping, periodic storm water inlet cleaning, landscape controls for fertilizer and pesticide applications, labeling of storm water inlets with the wording "No Dumping - Drains to Bay," and other applicable practices.

- gg. The project must be designed to include appropriate source control, site design, and stormwater treatment measures to prevent stormwater runoff pollutant discharges and increases in runoff flows from the site in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2009-0074, revised November 28, 2011, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region. Examples of source control and site design requirements include, but are not limited to: properly designed trash storage areas, sanitary sewer connections for all non-stormwater discharges such as fountains, trash enclosures and trash compactors, minimization of impervious surfaces, and treatment of all runoff with Low Impact Development (LID) treatment measures. A properly engineered and maintained biotreatment system will only be allowed if it is infeasible to implement other LID measures such as harvesting and re-use, infiltration, or evapotranspiration. The stormwater treatment design shall be completed by a licensed civil engineer with sufficient experience in stormwater quality analysis and design. The design is subject to review by the Regional Water Quality Control Board. The developer shall modify the site design to satisfy all elements of Provision C.3 of the MRP. The use of treatment controls for runoff requires the submittal of a Stormwater Treatment Measures Maintenance Agreement prior to the issuance of any Certificates of Occupancy.
- hh. 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 and stormwater treatment design as necessary to satisfy any imposed requirements from the District.
- ii. The developer shall submit a grading and drainage plan for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District. This plan must be based upon a City benchmark and needs to include pad and finish floor elevations of each proposed structure, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavement shall drain at a minimum of one percent. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer prior to issuance of a building permit in accordance with Alameda County criteria. The calculations shall show that City freeboard requirements will be satisfied (0.75 feet to grate or 1.25 feet to the top of curb under a 10-year storm duration).

- jj. Where a grade differential of more than one (1) foot is created along the boundary parcel 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.

- kk. Prior to issuance of a building permit, the developer shall submit a pavement maintenance program for the drive aisles and parking areas on the project site. The maintenance program shall be signed by the property owner and the property owner shall follow the maintenance program at the City Engineer's direction.
- ll. The property owner shall modify the existing 25-foot wide emergency access easement, if necessary, along the southern property line to ensure a clear unobstructed path for emergency vehicles as required by the Alameda County Fire Department. The easement documents, if necessary, must be reviewed and approved by the City Engineer prior to the issuance of a building permit.
- mm. Any new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground.
- nn. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked. Open street cuts will not be permitted across Newark Boulevard or Birch Street.
- oo. The developer shall repair and/or replace any public and private improvements damaged as a result of construction activity to the satisfaction of the City Engineer and adjoining property owners.
- pp. 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.

Landscape-Parks Division

- qq. Prior to the issuance of a building permit, the property owner shall dedicate to the City of Newark a minimum 10-foot wide landscape easement along the Newark Boulevard frontage. This easement shall incorporate all landscape areas beyond the minimum dimension to the nearest physical constraints.
- rr. Prior to the issuance of any building or grading permits, the property owners shall enter into a Landscape Maintenance Agreement with the City of Newark. Areas Agreement shall include all continuous landscaped areas contiguous to the site's public street frontage and all visible on-site landscaping. All landscape maintenance on-site and along the project frontage shall be the responsibility of the property owner. Landscape maintenance of these areas by the City under the terms of the Agreement would occur only in the event that City Council deems the owner's maintenance to be inadequate. Any project perimeter walls and adjoining landscape areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls. Any work other than routine maintenance, including but not necessarily limited to, tree removal, tree pruning, or changes to the approved planting palette shall be approved in advance by the City Engineer. All tree pruning shall be performed by or under the direction of a certified arborist.

- ss. The developer shall retain a licensed landscape architect to prepare working drawings for landscape plans in accordance with City of Newark requirements, the approved Conceptual Landscape Plan, and the State of California Model Water Efficient Landscape Ordinance. The landscape plans shall be included with the building/site work permit application. The plans shall include detailed irrigation plans, details, water usage calculations, irrigation schedules, etc., for an automatic irrigation system. The associated Landscape Documentation Package must be approved by the City Engineer prior to the issuance of a building permit.
- tt. The developer shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to the issuance of a building permit, the developer shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project. A minimum three (3) inch thick layer of bark mulch shall be provided in all areas landscaped areas.
- uu. The plant species identified for any proposed biotreatment measures are subject to final approval of the City Engineer.
- vv. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- ww. Prior to the release of utilities or issuance of any Certificate of Occupancy, all landscaping and irrigation systems shall be completed or guaranteed by a cash deposit deposited with the City in an amount to cover the remainder of the work.
- xx. 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.

Building Inspection Division

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

The Commission makes the findings prescribed in Newark Municipal Code Sections 17.40.050 and 17.72.070, and directs a Notice of Decision be mailed to the applicant and filed with the City Clerk who shall present said Notice to the City Council pursuant to Newark Municipal Code Section 17.72.080.

This Resolution was introduced at the Planning Commission's February 10, 2015 meeting by Commissioner Bridges, seconded by Commissioner Nillo, and passed as follows:

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

NOES: None.

ABSENT: None.

s/Terrence Grindall
TERRENCE GRINDALL, Secretary

s/William Fitts
WILLIAM FITTS, Chairperson



200 P Bank, Suite 100
 Newark, CA 94560
 PH: 415-750-1000
 FX: 415-750-1000



THE SALVATION ARMY
 NEWARK, CALIFORNIA 94560
 NEWARK CORP'S COMMUNITY CENTER
 38708 NEWARK BLVD

SITE PLAN

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 SCALE: _____

| | |
|------------|-----------|
| DATE | REVISIONS |
| SCALE | AS NOTED |
| DRAWN BY | |
| CHECKED BY | |
| SHEET | 1457 |

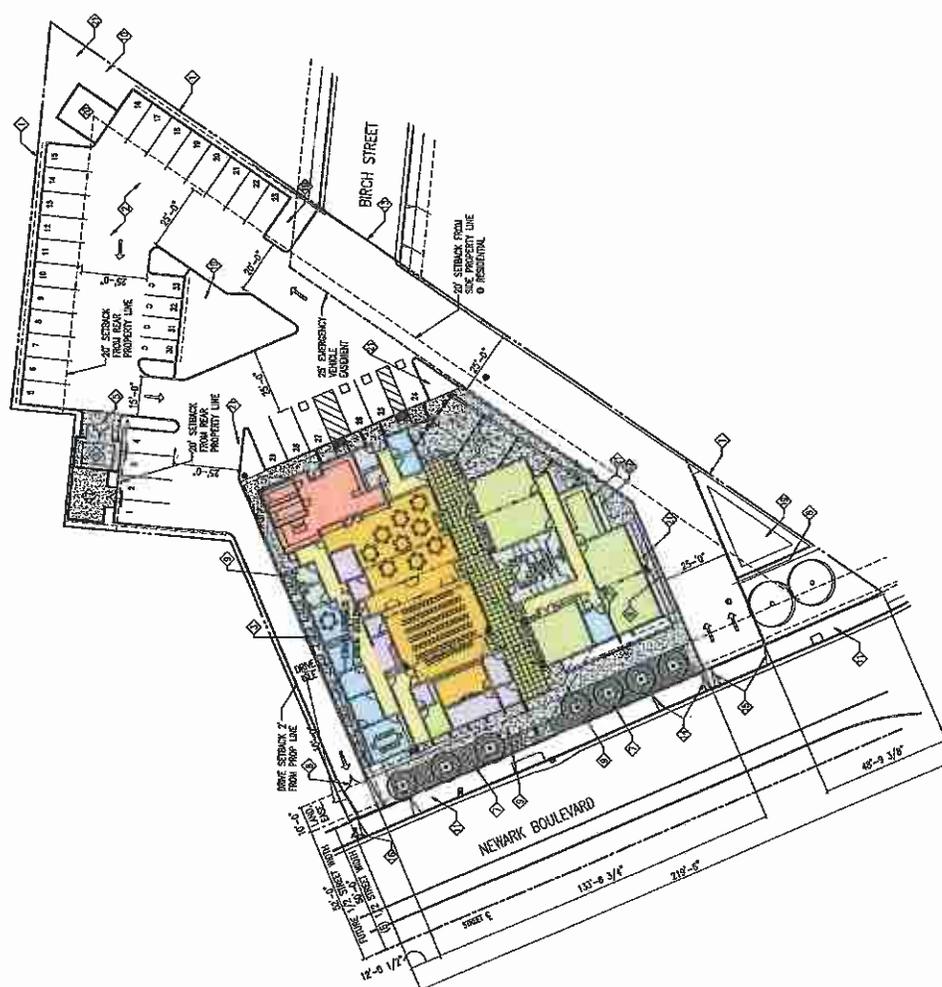
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KEYNOTES

- (1) PROMINENT FENCING
- (2) ASPHALT PAVING AREA
- (3) LANDSCAPE PLANTING - IMPROVISED AREA - SEE CIVIL
- (4) PAINTED CURB COVERED TRUCK ENCLOSURE
- (5) CONCRETE PAVEMENT
- (6) COVERED POND AREA
- (7) BRICK PAVING AND (8) LANDSCAPE TREE AREA WITH UNDERDRAIN - SEE CIVIL
- (9) CONCRETE VAULTING - SEE CIVIL
- (10) SECURITY GATE
- (11) CELLULAR CONCRETE BLOCK TOWER
- (12) ROOF OVERHANG
- (13) REMOVABLE WALLS
- (14) (15) REINFORCED CONCRETE CURB CUTS TO BE REMOVED
- (16) (17) FREE STANDING
- (18) (19) PAINTED CURB COVERED TRANSFORMER AREA
- (20) (21) PAINTED CURB COVERED TRANSDUCER EQUIPMENT AREA
- (22) (23) IMPROVISED AREA - SEE CIVIL
- (24) (25) PAINTED CURB COVERED EQUIPMENT AREA
- (26) (27) LANDSCAPE AREA - SEE LANDSCAPE PLANS

PROPERTY SIZE = 43,481 S.F.
 TOTAL IMPROVEMENTS = 87,102 S.F.
 IMPROVISED AREA = 1,000 S.F.

STANDARD PHONE SPACES = 8' X 20'
 COMPACT SPACES = 5' X 16'



1 SITE PLAN
 SCALE: 1/20

EXHIBIT A

**E.2 Hearing to consider REPEAL of: Resolution No. 9745 certifying the Environmental Impact Report for the Newark Area 3 and 4 Specific Plan Project and approving the Mitigation Monitoring and Reporting Program; Resolution No. 9746 approving and adopting the Newark Area 3 and 4 Specific Plan Project and related General Plan Amendment; Ordinance No. 442 approving and adopting the Newark Area 3 and 4 Specific Plan Development Agreement; and Ordinance No. 443 approving Z-10-17, a Map Amendment to Title 17 of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan – from Assistant City Manager Grindall and City Attorney Benoun.
(RESOLUTIONS-2) (INTRODUCTION OF ORDINANCES-2)**

Background/Discussion – In 2010, the City Council approved a development project known as the “Area 3 and 4 Specific Plan Project”. The project included approximately 1,260 housing units, five or more acres of parks, a school site, approximately 200 acres of open space, transportation improvements, and development of a golf course or other recreational amenity.

To implement the project, the Council, by a unanimous vote, adopted and enacted the following:

- Resolution No. 9745, which certified the Environmental Impact Report (“EIR”) for the Newark Area 3 and 4 Specific Plan Project and approved the Mitigation Monitoring and Reporting Program;
- Resolution No. 9746, which approved and adopted the Newark Area 3 and 4 Specific Plan and related General Plan Amendment.
- Ordinance No. 442, which approved and adopted the Newark Area 3 and 4 Specific Plan Project Development Agreement.
- Ordinance No. 443, which approved and adopted Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning parcels to be consistent with the Proposed Newark Area 3 & 4 Specific Plan.

In response to the project approval, the Citizen’s Committee to Complete the Refuge, a non-profit public benefit corporation, filed a legal challenge in Alameda County Superior Court, naming the City, the City Council, and the Planning Commission as the Respondents, as well as the applicant, Newark Partners, LLC. (Alameda County Superior Court Case No. RG10530015.)

The basis of the lawsuit, in summary, is that the environmental disclosures associated with the project failed to comply with the California Environmental Quality Act (“CEQA”) and that the City’s police powers were improperly contracted away in the Development Agreement. The case had a lengthy history, including several rounds of briefings and hearings with the trial court, as well as intervention from the California Court of Appeal. After nearly 4.5 years of litigation, the case has reached a final conclusion.

On October 17, 2014, the trial court Judge, the Honorable Evelio Grillo, issued a Statement of Decision, addressing and disposing all of the substantive points raised in the case by the Citizen’s

Committee. That Decision is attached to this staff report (Attachment 1). The issues raised by the Committee included allegations of improper baseline for traffic analysis, lack of discussion regarding construction traffic, lack of disclosure and analysis of the cumulative impacts of the project, deferral of mitigation of impacts, and others.

As to the CEQA component of the case, the Court sided with the City on the majority of the claims. However, the Court found merit in three arguments, specifically: (1) the EIR was not clear as to which portions of the project would require further environmental review and those that would not; (2) the EIR improperly deferred mitigation of impacts to trees; and (3) the EIR improperly deferred mitigation of impacts to sensitive habitats and special status species.

As to the Development Agreement (DA) component of the case, the Court denied all of the Citizen's claims, except the Court found merit in the argument that the last sentence in Section 4.02 unlawfully contracts away the City's police power. ("City shall not support, adopt, or enact any City Law, or take any other action which would violate the express provisions or intent of the Project Approvals or Subsequent Approvals.") The Court ruled that last sentence is unenforceable, but also found that the remainder of the DA *is* enforceable. (See Page 4 of the Decision.)

On November 25, 2014, the Court entered a Final Judgment (Attachment 2) and the Clerk of the Court issued a Peremptory Writ of Mandate (Attachment 3). Although the Court denied the majority of the Citizen's claims, the Judgment and Writ command the City to, within 90 days, void all of the resolutions and ordinances approving the project, including the ones that approve the DA and certify the EIR. Staff therefore recommends that the Council repeal the resolutions and ordinances that approved the project, specifically Resolutions 9745 and 9746 and Ordinances 442 and 443.

Attachments

Update – At its meeting on February 10, 2015, the Planning Commission, by unanimous vote, approved a Resolution that rescinded the Planning Commission certification of the EIR for the Area 3 and 4 Specific Plan (E-10-12) and recommended that the City Council repeal Resolutions 9745 and 9746 and Ordinances 442 and 443.

Action – Staff recommends that the City Council REPEAL the previous approvals by approving the following: 1) Resolution repealing Resolution No. 9745 certifying the Environmental Impact Report for the Newark Area 3 and 4 Specific Plan Project and approving the Mitigation Monitoring and Reporting Program; 2) Resolution repealing Resolution No. 9746 approving and adopting the Newark Area 3 and 4 Specific Plan Project and related General Plan Amendment; 3) Ordinance repealing Ordinance No. 442 approving and adopting the Newark Area 3 and 4 Specific Plan Development Agreement; and 4) Ordinance repealing Ordinance No. 443 approving Z-10-17, a Map Amendment to Title 17 of the Newark Municipal Code rezoning parcels to be consistent with the proposed Newark Area 3 and 4 Specific Plan.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK REPEALING RESOLUTION NO. 9745 CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE NEWARK AREA 3 AND 4 SPECIFIC PLAN PROJECT AND APPROVING THE MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, in 2010, the City Council approved a development project known as the "Area 3 and 4 Specific Plan Project" ("Project");and

WHEREAS, in 2010, the City Council approved the Project by adopting and enacting the following:

- Resolution No. 9745 Certifying the Environmental Impact Report ("EIR") for the Newark Area 3 and 4 Specific Plan Project and Approving the Mitigation Monitoring and Reporting Program;
- Resolution No. 9746 Approving and Adopting the Newark Area 3 and 4 Specific Plan and Related General Plan Amendment;
- Ordinance No. 442 Approving and Adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement; and
- Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark Area 3 & 4 Specific Plan.

WHEREAS, the Citizen's Committee to Complete the Refuge, Inc. filed a legal challenge in Alameda County Superior Court naming the City, the City Council, and the Planning Commission as Respondents and alleging that the environmental disclosures failed to comply with the California Environmental Quality Act and that the City's police powers were improperly contracted away in the Development Agreement entered into between Newark Partners and the City (Alameda County Superior Court Case No. RG10530015); and

WHEREAS, on October 17, 2014, the Court entered a Statement of Decision finding, in summary, that: (1) the last sentence of Section 4.02 of the Development Agreement is unenforceable; (2) all other provisions of the Development Agreement are enforceable; (3) the EIR was not clear as to which portions of the Project would require further environmental review and those that would not; (4) the EIR improperly deferred mitigation of impacts to trees; (5) the EIR improperly deferred mitigation of impacts to sensitive habitats and special status species; and (6) all other environmental disclosure and analysis in the EIR were performed in accordance with CEQA;and

WHEREAS, on November 25, 2014, the Court entered a Final Judgment and the Clerk of the Court issued a Peremptory Writ that commands the City to, within 90 days, void all resolutions and ordinances that were adopted and enacted by the City Council in order to approve the Project, including, but not limited to, Resolution No. 9745, certifying the EIR for the Project.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Newark that Resolution No. 9745 Certifying the Environmental Impact Report for the Newark Area 3 and 4 Specific Plan Project and approving the Mitigation Monitoring and Reporting Program is hereby REPEALED in its entirety.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK REPEALING RESOLUTION NO. 9746 APPROVING
AND ADOPTING THE NEWARK AREA 3 AND 4 SPECIFIC
PLAN AND RELATED GENERAL PLAN AMENDMENT

WHEREAS, in 2010, the City Council approved a development project known as the "Area 3 and 4 Specific Plan Project" ("Project"); and

WHEREAS, in 2010, the City Council approved the Project by adopting and enacting the following:

- Resolution No. 9745 Certifying the Environmental Impact Report ("EIR") for the Newark Area 3 and 4 Specific Plan Project and Approving the Mitigation Monitoring and Reporting Program;
- Resolution No. 9746 Approving and Adopting the Newark Area 3 and 4 Specific Plan and Related General Plan Amendment;
- Ordinance No. 442 Approving and Adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement; and
- Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark Area 3 & 4 Specific Plan.

WHEREAS, the Citizen's Committee to Complete the Refuge, Inc. filed a legal challenge in Alameda County Superior Court naming the City, the City Council, and the Planning Commission as Respondents and alleging that the environmental disclosures failed to comply with the California Environmental Quality Act and that the City's police powers were improperly contracted away in the Development Agreement entered into between Newark Partners and the City (Alameda County Superior Court Case No. RG10530015); and

WHEREAS, on October 17, 2014, the Court entered a Statement of Decision finding, in summary, that: (1) the last sentence of Section 4.02 of the Development Agreement is unenforceable; (2) all other provisions of the Development Agreement are enforceable; (3) the EIR was not clear as to which portions of the Project would require further environmental review and those that would not; (4) the EIR improperly deferred mitigation of impacts to trees; (5) the EIR improperly deferred mitigation of impacts to sensitive habitats and special status species; and (6) all other environmental disclosure and analysis in the EIR were performed in accordance with CEQA; and

WHEREAS, on November 25, 2014, the Court entered a Final Judgment and the Clerk of the Court issued a Peremptory Writ that commands the City to, within 90 days, void all resolutions and ordinances that were adopted and enacted by the City Council in order to approve the Project, including, but not limited to, Resolution No. 9746, approving the Newark Area 3 and 4 Specific Plan and related General Plan Amendment.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Newark that Resolution No. 9746 approving and adopting the Newark Area 3 and 4 Specific Plan and Related General Plan Amendment is hereby REPEALED in its entirety.

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWARK REPEALING ORDINANCE NO. 442 APPROVING
AND ADOPTING THE NEWARK AREA 3 AND 4 SPECIFIC
PLAN PROJECT DEVELOPMENT AGREEMENT

WHEREAS, in 2010, the City Council approved a development project known as the "Area 3 and 4 Specific Plan Project" ("Project"); and

WHEREAS, in 2010, the City Council approved the Project by adopting and enacting the following:

- Resolution No. 9745 Certifying the Environmental Impact Report ("EIR") for the Newark Area 3 and 4 Specific Plan Project and Approving the Mitigation Monitoring and Reporting Program;
- Resolution No. 9746 Approving and Adopting the Newark Area 3 and 4 Specific Plan and Related General Plan Amendment;
- Ordinance No. 442 Approving and Adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement; and
- Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark Area 3 & 4 Specific Plan.

WHEREAS, the Citizen's Committee to Complete the Refuge, Inc. filed a legal challenge in Alameda County Superior Court naming the City, the City Council, and the Planning Commission as Respondents and alleging that the environmental disclosures failed to comply with the California Environmental Quality Act and that the City's police powers were improperly contracted away in the Development Agreement entered into between Newark Partners and the City (Alameda County Superior Court Case No. RG10530015); and

WHEREAS, on October 17, 2014, the Court entered a Statement of Decision finding, in summary, that: (1) the last sentence of Section 4.02 of the Development Agreement is unenforceable; (2) all other provisions of the Development Agreement are enforceable; (3) the EIR was not clear as to which portions of the Project would require further environmental review and those that would not; (4) the EIR improperly deferred mitigation of impacts to trees; (5) the EIR Improperly deferred mitigation of impacts to sensitive habitats and special status species; and (6) all other environmental disclosure and analysis in the EIR were performed in accordance with CEQA; and

WHEREAS, on November 25, 2014, the Court entered a Final Judgment and the Clerk of the Court issued a Peremptory Writ that commands the City to, within 90 days, void all resolutions and ordinances that were adopted and enacted by the City Council in order to approve the Project, including, but not limited to, Ordinance No. 442, approving the Newark Area 3 and 4 Specific Plan Project Development Agreement.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWARK DOES ORDAIN AS FOLLOWS: that Ordinance No. 442 approving and adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement is hereby REPEALED in its entirety.

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWARK REPEALING ORDINANCE NO. 443 APPROVING Z-
10-17, A MAP AMENDMENT TO TILE 17 (ZONING) OF THE
NEWARK MUNICIPAL CODE REZONING PARCELS TO BE
CONSISTENT WITH THE PROPOSED NEWARK AREA 3 AND 4
SPECIFIC PLAN

WHEREAS, in 2010, the City Council approved a development project known as the "Area 3 and 4 Specific Plan Project" ("Project"); and

WHEREAS, in 2010, the City Council approved the Project by adopting and enacting the following:

- Resolution No. 9745 Certifying the Environmental Impact Report ("EIR") for the Newark Area 3 and 4 Specific Plan Project and Approving the Mitigation Monitoring and Reporting Program;
- Resolution No. 9746 Approving and Adopting the Newark Area 3 and 4 Specific Plan and Related General Plan Amendment;
- Ordinance No. 442 Approving and Adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement; and
- Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark Area 3 & 4 Specific Plan.

WHEREAS, the Citizen's Committee to Complete the Refuge, Inc. filed a legal challenge in Alameda County Superior Court naming the City, the City Council, and the Planning Commission as Respondents and alleging that the environmental disclosures failed to comply with the California Environmental Quality Act and that the City's police powers were improperly contracted away in the Development Agreement entered into between Newark Partners and the City (Alameda County Superior Court Case No. RG10530015); and

WHEREAS, on October 17, 2014, the Court entered a Statement of Decision finding, in summary, that: (1) the last sentence of Section 4.02 of the Development Agreement is unenforceable; (2) all other provisions of the Development Agreement are enforceable; (3) the EIR was not clear as to which portions of the Project would require further environmental review and those that would not; (4) the EIR improperly deferred mitigation of impacts to trees; (5) the EIR improperly deferred mitigation of impacts to sensitive habitats and special status species; and (6) all other environmental disclosure and analysis in the EIR were performed in accordance with CEQA; and

WHEREAS, on November 25, 2014, the Court entered a Final Judgment and the Clerk of the Court issued a Peremptory Writ that commands the City to, within 90 days, void all resolutions and ordinances that were adopted and enacted by the City Council in order to approve the Project, including, but not limited to, Ordinance No. 443, approving Z-10-17, a map amendment to the Newark Municipal Code.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWARK DOES
ORDAIN AS FOLLOWS: that Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title
17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed
Newark Area 3 & 4 Specific Plan is hereby REPEALED in its entirety.

Francisco (2014) 227 Cal.App.4th 1036 (“*Treasure Island*”). Respondent the City of Newark (the “City”) promptly brought the case to the court’s attention and asked that the court reconsider the order of February 19, 2014. CCCR filed a responsive letter on July 14, 2014. The court continued the matter to determine whether *Treasure Island* would remain a published case. Petitioner filed a petition for review in the Supreme Court on August 19, 2014, and filed a request for depublication on September 5, 2014.

On September 8, 2014, the court suggested that in the interest of resolving the case the court proceed and enter a final order and judgment. (Public Resources Code 21167.1(a).) Both CCCR and the City stated that the court could reconsider the order based on the the previously submitted letter briefs and neither party requested further briefing on how *Treasure Island* might apply to this case.

The Court having considered the pleadings and arguments submitted in support of and in opposition to the petition, it is hereby ORDERED: The Petition for a writ of mandate is GRANTED IN PART. The court directs the City of Newark City Council to vacate (1) Resolution 9745 (certifying E-10-12, the EIR); (2) Resolution 9746 (adopting GP-10-13, the Newark Area 3 and 4 Specific Plan and the related General Plan Amendment); (3) Ordinance 442 (approving and adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement; and (4) Ordinance 443 (approving a map amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning parcels to be consistent with the Newark Area 3 and 4 Specific Plan).

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STATEMENT OF DECISION

The tentative decision issued on December 18, 2013, was the court's proposed statement of decision. (CRC 3.1590(f).) The parties filed comments and objections on January 10, 2014. The parties filed letter briefs regarding *Treasure Island* on July 8 and July 14, 2014. This order and statement of decision resolves the merits of the petition.

FACTUAL BACKGROUND.

The City of Newark (the "City") revised its general plan in 1992 and under that revision Area 3 is to be used largely for light industrial and research and development facilities, plus Ohlone College, and Area 4 is to be used for low-density residential use, a golf course, and open space. (AR 6981-6985.) In 1999 a ballot measure proposed changing the general plan use designation for Area 4 to conservation, open space, and agricultural uses. The ballot measure failed. (AR 6981.)

By 2006, Newark Partners (the "Developer") had acquired title or options for title to 78 acres in Area 3 and 506 acres in Area 4. The Developer had plans to develop its property and on June 22, 2006, the City agreed in an MOU to prepare a Specific Plan for Areas 3 and 4. (AR 669, 6984.)

Before entering into the Development Agreement (the "DA"), the City began a two phase Specific Plan Process and solicited community input. The City's Planning Commission recommended a land use plan and the City Council approved the concept of the proposed plan on March 13, 2008. (AR 6833) The City then began the EIR process. The City published the Draft EIR on December 3, 2009. (AR 268-4704.) The City then held additional meetings. (AR 4710, 6728, 6730, 6734, and 6740-6774.) The City

published the Final EIR on April 7, 2010. (AR 4705-5258, 6834.) After additional meetings, the City approved the final EIR and the final DA on June 8, 2010. (Resolutions 9745 and 9746 and Ordinances 442 and 443.) (AR 62-73, 154-205, 7994-7996, 8002.)

EFFECT OF PRIOR APPELLATE PROCEEDING.

This court's order of November 20, 2012 reached many of the same conclusions on many of the same issues as this order and statement of decision. The Court of Appeal's decision in *Citizens Committee to Complete the Refuge v. Superior Court*, A137364 (7/31/13), concerned the order of November 20, 2012, but the Court of Appeal's review was limited to a procedural issue. (*People v. Superior Court*) (2000) 23 Cal.4th 183, 198 ["Cases are not authority for propositions not considered"].) Therefore, this court does not presume that the appellate decision compels any particular result on the merits of this case. (Compare *Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859-860.)

COMPLIANCE WITH DEVELOPMENT AGREEMENT STATUTE.

CCCR's challenge based on the DA's alleged failure to comply with the DA statute has merit to the extent that CCCR asserts that the last sentence in DA Section 4.02 (AR 164) unlawfully contracts away the City's police power. The court severs that sentence under DA Section 12.04 and finds that it is unenforceable. The remainder of the DA is enforceable. The court's rationale for this decision is stated in the Order of November 20, 2012, at pages 3-11.

COMPLIANCE WITH CEQA.

THE DESCRIPTION OF THE EIR AS A PROJECT OR PROGRAM EIR.

CEQA states that a "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub Res. Code 21065; Guidelines, §§ 15002, subd. (d), 15378, subd. (a); *Parchester Village Neighborhood Council v. City of Richmond* (2010) 182 Cal.App.4th 305, 313.) An EIR must include a project description. 14 CCR 15124(d) states:

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact. ...

(d) A statement briefly describing the intended uses of the EIR.

Thus case presents the general issue of whether the label on an EIR matters and the specific issue of whether it matters whether an EIR states that it is intended to be used as a sole-tier EIR or a first-tier EIR. The court concludes:

1. The public relies on an EIR as a disclosure document. An EIR's accuracy in disclosing whether the agency intends the EIR is complete by itself or anticipates further tiered environmental review affects the adequacy of the EIR as a disclosure document. This court resolves the legal question left open in *Treasure Island* – "whether the adequacy of a project's description is analyzed as a question of law or an issue of fact." (*Treasure Island*, 227 Cal.App.4th at 0155.) The court concludes that the accuracy of disclosure is a question of law but the specificity (or precision) of disclosure is a question of fact. The court finds that the EIR in

this case is deficient because it is inconsistent, and therefore inaccurate, in describing the intended uses of the EIR.

2. The court considers the actual nature of the EIR when reviewing an EIR. An EIR's timing, purpose, nature, and other circumstances affect the level of scrutiny the court will require when evaluating compliance with CEQA. The court follows the holding in *Treasure Island* that an EIR's label is immaterial for this analysis.
3. A public agency considers the scope of a previous EIR when evaluating the need for further environmental review. An EIR's scope and specificity will affect future agency decisions whether future yet-to-be-defined actions are covered by the EIR and whether the agency can, or is permitted to, conduct supplemental environmental review. The court does not reach this issue. The court notes, by way of dicta, that the holding in *Treasure Island* that the label of an EIR is immaterial eliminates some of the finality and certainty of a certified EIR because in the event of further development an agency and a reviewing court are permitted, if not required, to look beyond a prior EIR's label, to evaluate the prior EIR's scope and specificity, and to on that basis determine whether further environmental review is permitted or required.

Statements in the EIR. The draft EIR began with an "Introduction Overview" that quoted 14 CCR 15146 and 15151, which state, respectively, "An EIR is an informational document" and "The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." (AR 330.)

Under the heading "Uses of the EIR," the draft EIR states:

The information contained in this EIR will be used by the City of Newark (the CEQA Lead Agency) as it considers whether or not to approve the proposed Specific Plan project. If the project is approved, the EIR would be used by the City and possibly other agencies in conjunction with various approvals and permits. ...

According to the CEQA Guidelines (Section 15162) additional environmental review may be necessary if:

- 1) Substantial changes are proposed in the project ...;
- 2) Subsequent changes have occurred with regard to the circumstances under which the project is undertaken ...; or
- 3) New information of substantial importance becomes available

(AR331-332.) Under the heading "Project Overview," the EIR states:

The proposed project is a Specific Plan for Areas 3 and 4 in (south) western Newark, which is bound generally by Mowry Avenue, Cherry Street, Stevenson Boulevard, and the Mowry Slough. The proposed Areas 3 and 4 Specific Plan allows for development of up to 1,260 housing units of various densities, an up to 600-student elementary school, a golf course, open space areas, as well as retention of existing light industrial and institutional (Ohlone College, City fire station, park, and community activity center) uses.

(AR336.) The proposed project is in the nature of a "program EIR" in that it concerns planning and zoning and does not describe the demolition or construction of specific buildings or infrastructure. The draft EIR states that it anticipates future environmental review regarding:

1. The grading in residential areas and the golf course (AR 462 ["any actual development will require further entitlement processing and environmental review"]);
2. The acquisition and construction of the proposed elementary school (AR 549 ["School sites that will receive State funding for acquisition or construction are required to go through an environmental review and cleanup process under DTSC's oversight"]);
3. The specific design of the elementary school (AR 575 ["While this EIR evaluates the overall suitability of this site for an elementary school use, the specific design of the school has not yet been prepared and would be subject to individual environmental review and approval"]);
4. The design of residential noise barriers (AR 633 ["Final design of such barriers, including an assessment of their feasibility and reasonableness,

should be completed during project level review. ... The design of such would require additional analysis.”)].

In the comment period a member of the public stated, “Please clarify that this is a program-level EIR and that project-level CEQA reviews will be required for any subsequent nonexempt discretionary project approvals.” The City’s response was:

[N]o provision of CEQA or the CEQA Guidelines mandates that a lead agency prepare a programmatic EIR in any particular situation. (*See* CEQA Guidelines Section 15168) The EIR for this project as prepared in compliance with CEQA, as it analyzes the project-level and reasonably foreseeable cumulative impacts of the Specific Plan and other projects proposed in the vicinity of the Project. ...

To the extent that specific development plans are not proposed at this time, the analysis of geology, cultural resource and biological impacts in the Draft EIR is based upon a maximum, not-to-exceed, development envelope, with mitigation measures and performance criteria established to reduce and/or avoid, wherever feasible, significant impacts. ...

As explained on pages 2 – 3 of the Draft EIR, when future discretionary approvals related to the Project are sought from the City (as well as from any responsible agency) the City will consider whether there is a need for additional environmental review pursuant to CEQA Guidelines Section 15162.

(AR 4752-4753.) A few pages later and in response to a similar question, the City stated, “The EIR for the Specific Plan is a project-level EIR.” (AR 4765.)

Following that statement the City suggested there could be further environmental review regarding:

1. The design of the golf course (AR 4765) [“At the time a detailed golf course design or other form of recreation for the Specific Plan is proposed, the use will be evaluated by the City to determine what, if any, additional environmental review is necessary.”];
2. The selection of specific wetland mitigation components (AR 4765) [“Detailed design of the wetland mitigation components on site, and description of specific off-site wetlands for mitigation, if needed, will be required to meet the detailed and quantified mitigation standards contained in the Draft EIR, and will be identified as part of the future entitlement process

and environmental review. Wetland fill and mitigation will also require separate discretionary approvals from the various state and federal resource agencies, which through their separate permitting processes could require different and/or additional.”].

The City also stated that the Bay Trail is not part of the project and “will be subject to its own separate environmental review. (AR 4765.) (See also AR 348.)

Treasure Island. In *Treasure Island*, the court addressed two issues that are pertinent to this case. First, *Treasure Island* held that an agency has the discretion to determine the level of specificity of a project and whether to prepare a project or a program EIR. The court reasoned that the decision to prepare a project EIR, a program EIR, or some other form of EIR is “a discretionary decision that should properly be made by the lead agency,” that the courts do not “attach[] too much significance to titles in ascertaining whether a legally adequate EIR has been prepared for a particular project,” and “that the same substantial evidence standard applies to subsequent environmental review for a project reviewed in a program EIR or a project EIR.” (*Treasure Island*, 227 Cal.App.4th at 1048, 1049).

Second, *Treasure Island* confirmed the law that “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR,” that a “project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading,” and “Only through an accurate view of the project may affected outsiders and public decision-makers” evaluate the project (*Treasure Island*, 227 Cal.App.4th at 1052). The court then found that on the facts of that case that the project description was “accurate, stable, and finite.” *Treasure Island* expressly did not, however, address “whether the adequacy of a project's description is analyzed as a question of law or an issue of fact.”

Disclosure – Summary of Law. CEQA requires adequate public disclosures.

"The EIR process ... informs the public of the basis for environmentally significant decisions by public officials and thereby promotes accountability and informed self-government." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1998) 47 Cal.3d 376, 392; *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 466-467.) "An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Laurel Heights, supra*, 47 Cal.3d 376, 405; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 882-883.)

An EIR is a document for public consumption and must be written in plain English so lay readers can ascertain the scope of the project, the alternatives considered, the impediments to the alternatives and to any proposed mitigation, and the basis for the agency's proposed decision. (14 CCR 15020, 15140, and 15147; *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City* (2010) 190 Cal.App.4th 1351, 1389; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1987) 193 Cal.App.3d 1544, 1548-49.) The information in an EIR "must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. "Information scattered here and there in EIR appendices, or a report buried in an appendix, is not a substitute for a good faith reasoned analysis." (*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 493.)

Disclosure – Distinction between Review by Court and Disclosure to Public. In *Treasure Island*, the court indirectly addressed the question of whether different standards of accuracy apply to the title of an EIR depending on whether the court is reviewing an EIR for substantive compliance or the court is reviewing an EIR for adequate disclosure. *Treasure Island* held both (1) that courts do not “attach[] too much significance to titles in ascertaining whether a legally adequate EIR has been prepared for a particular project” (*Treasure Island*, 227 Cal.App.4th at 1048 and (2) that a “project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading,” and “Only through an accurate view of the project may affected outsiders and public decision-makers” evaluate the project (*Treasure Island*, 227 Cal.App.4th at 1052).

There is tension between these two statements of the law. This court reconciles the tension by focusing on the fact that the former concerns information as evaluated by the court and that latter concerns information disclosed to the public and to agency decision makers. This court holds that a court may disregard the title of the EIR when the court reviews an EIR for substantive CEQA compliance but that the court must consider whether the title of the EIR is accurate, gives conflicting signals, or is misleading when considering the adequacy of an EIR as a disclosure document.

The court starts with a presumption that an agency preparing an EIR makes a deliberate decision whether to prepare a negative declaration, a mitigated negative declaration, a project EIR, a program EIR, or some other form of environmental review document. The court makes this presumption because the law generally presumes that people express their intent with their words and that they intend others to understand the

words as having their usual and ordinary meaning. (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265 [statute]; *Rebolledo v. Tilly's, Inc.* (2014) 228 Cal.App.4th 900, 913 [contract].) Only if language in a document is ambiguous does a court consider extrinsic aids such as the context of the words, the intended effect of the document as a whole, or whether giving effect to the words would result in an absurdity. (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737-738 [statutes]; Civil Code 1635 et seq. [contracts].)

A court reviewing the adequacy of an EIR can, however, evaluate the substantive adequacy of an EIR based on its substance rather than on its label. (*Treasure Island*, 227 Cal.App.4th at 1048.) This is consistent with the established law that the court can look behind the words of a statute to give effect to poorly expressed legislative intent or look beyond the words of a contract to give effect to the economic reality of a contract. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 979 [statutes and propositions]; *Rando v. Harris* (2014) 228 Cal.App.4th 868, 880-881 [statutes]; *Steiner v. Thexton* (2010) 48 Cal.4th 411, 418 [contracts]; *Reiswig v. Department of Corporations for State of California* (2006) 144 Cal.App.4th 327, 335 [contracts].)

The court has found no authority for the proposition that when reviewing the adequacy of an EIR for disclosure purposes the court can presume that the public and agency decision makers can and will evaluate the EIR based on its “substance” or “nature” rather than on the label that the agency chose to use. To the contrary, case law on the adequacy of CEQA disclosures suggests that the court evaluates the effectiveness (accuracy and degree of specificity) of disclosures using a reasonable person standard.

(*Clower Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 228 [“A reasonable person would have understood ...”] .)

A “reasonable person” standard in matters of CEQA disclosures would be consistent with the law that “The determination as to whether a business practice is deceptive is based on the likely effect such practice would have on a reasonable consumer.” (*McKell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1471.) Explaining the standard, *Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 509-510, states, “We agree that a “reasonable consumer” need not be “exceptionally acute and sophisticated.” ... Nor need a reasonable consumer necessarily be wary or suspicious”

A reasonable person reviewing an EIR would presume there is some significance to an agency’s decision to label an EIR as a project EIR, a program EIR, a master EIR, or some other category of EIR. The CEQA guidelines identify and describe various categories of EIRs. (14 CCR 15160-15170.) A reasonable person would presume that where a statute or regulation has made distinctions between categories then there are material distinctions between the categories. A reasonable person with some knowledge of CEQA would presume that a “project EIR” is a sole-tier EIR and that a “program EIR” anticipates further tiered project EIRs.

In Pub. Res. Code 21090, the legislature drew a distinction between different categories of EIRs. Section 21090(a) states that an agency can prepare an EIR for a redevelopment plan that can be a master EIR, a program EIR, or a project EIR and “shall specify the type of environmental impact report that is prepared for the redevelopment plan.” Section 21090(b) states that if an agency decides to use a project EIR, then “all

public and private activities ... in furtherance of [the] redevelopment plan shall be deemed to be a single project.” More generally, the statutes, regulations, and case law distinguish between environmental review documents labeled negative declarations and labeled EIRs even though both describe a proposed project, show the location of the project, identify potential significant effects on the environment, and identify mitigation measures. (14 CCR 15071 [MND]; 14 CCR 15120-15132 [EIR].) (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 777-778 [noting legal distinctions].)

Based on the above, the court concludes that although the court may disregard the label of an EIR when conducting substantive review of the EIR, the court may not presume that the label of an EIR is immaterial to the public when the court is evaluating the accuracy and specificity of an EIR as a disclosure document.

Standard of Review – Distinction Between Accuracy and Specificity. In *Treasure Island* the court expressly left open the question of “whether the adequacy of a project's description is analyzed as a question of law or an issue of fact.” (*Treasure Island*, 227 Cal.App.4th at 1055.) This court starts with the principle that the adequacy of disclosure includes both the accuracy of the disclosure and the specificity (or precision or detail) of the disclosure. This court holds that the accuracy of a disclosure is an issue of law subject to independent review by the court but that the required specificity of a disclosure is an issue of fact subject to review for substantial evidence.

A project description must be accurate in that it must be a correct description of both the initial project and any potential future actions that are both “reasonably foreseeable” and is a “consequence” of the initial project. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222.) The court reviews the

accuracy of a project definition as a matter of law. (*Banning Ranch*, 211 Cal.App.4th at 1224 [court independently determines whether project description is improper piece mealing]; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 83, 98-99 [same].) (See also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-735.) “[W]hen a plaintiff asserts error based on the omission of information, independent review will apply if the information in question is required by CEQA and necessary to informed discussion.” (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 101-102.) If an EIR discloses inaccurate information, then no amount of specificity or detail can make that information accurate.

A project description is not required to have a high level of specificity (amount, precision, or detail of disclosure) in that it need not be an extensively detailed description. “The degree of specificity required depends on the type of project” and “The EIR must achieve a balance between technical accuracy and public understanding.” (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28) (See also 14 CCR 15140, 15146, 15147, 15151.) “[I]f the asserted error concerns the amount or type of information that is required by CEQA and necessary for an informed discussion, then the substantial evidence standard applies.” (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 101-102.) If an EIR discloses accurate information that could have been more specific or detailed, then the court must defer to the agency’s discretion regarding the EIR’s specificity and detail.

The distinction between accuracy and specificity can be illustrated with an example. Assume a project that is the construction of a shopping mall. An 84 page

description of the project stating that it is located in Newark at the northeast corner of exit 4 on parcel 123456, is 60 feet high, is 80,000 sft with a 40,000 sft parking lot, is white with a red sign, will house a Target store would be both accurate and specific. An 84 page description of the project stating that it is located in Newark at the northwest corner of exit 4 on parcel 456789, is 70 feet high, is 60,000 sft with a 60,000 sft parking lot, is white with a red sign, and will house a Target store would be inaccurate while still being specific. A 3 page description of the project stating that it is located in Newark at at the northeast corner of exit 4, is 6 stories high, is between 70,000 and 90,000 sft with a parking lot size of at 50% of retail space, and will house a retail store would be accurate but less specific. A 3 page description of the project stating that it is located in Newark at exit 4, is 7 stories high, is under 70,000 sft, and will house a retail store would be neither accurate nor specific.¹

Disclosure – Application of Law to Facts. The court finds that the EIR fails to meet its purpose as a disclosure document because it is inconsistent and therefore inaccurate.

The CEQA guidelines, 14 CCR 15124, require that a project description include “(d) A statement briefly describing the intended uses of the EIR.” A statement of “the intended uses of the EIR” reasonably requires an agency to state whether it intends the EIR to be the sole environmental review or whether the agency intends the EIR to be a first-tier document and the agency anticipates subsequent review.

¹ The distinction between accuracy and precision can also be illustrated with a mathematical example. In response to the question $2.4433 + 1.5567 = X$, the answer $X = 4.0000$ would be both accurate and specific, the answer of $X = 3.8034851$ would be specific, but not accurate, the answer of $X = 4$ would be accurate, but not specific, and the answer $X = 3.8$ would be neither accurate nor specific.

The City's EIR does not adequately inform the public whether the City intends the EIR to be sole-tier or first-tier in whole or in part. This concerns the accuracy of the information and the court applies its independent judgment.

The Project to be "approved" is defined in the Draft EIR at section 2.4 (AR 338-354.) The Project as defined includes non-specific planning elements: proposed land use changes in Area 3 (section 2.4.1); and proposed land use changes in Area 4 (section 2.4.2). (AR 338-341.) The Project does not, however, state exactly how Newark Partners will develop within Areas 3 and 4. The EIR states that the Project anticipates up to 1,260 residential units and an elementary school. The EIR acknowledges that the City has not decided what it plans to do on certain aspects of the project, stating:

The Specific Plan does not identify the exact location and configuration of residential lots, golf course, or other recreational uses, as that will be determined through subsequent entitlement processes and analyses. Consequently, the exact amount and location of wetlands which will be avoided/impacted by development, and the configuration of the remaining agricultural areas will be determined at the time of subdivision map approval.

(AR 341.) (See also AR 4727 (same statement in response to Dept. Fish & Game comment).) The EIR states that the Plan "may result in filling (impacting) wetlands" but that "The quantity of filled wetlands could range from zero acres to 86 acres" and "[t]he EIR will evaluate the full range of potentially impacted/filled wetlands." (AR 341.) The City has not yet evaluated the environmental impact of the Developer's plans to fill zero acres to 86 acres of wetlands, or the location and configuration of residential lots, or the plans for the golf course.

Despite these uncertainties, the final EIR states that the "Draft EIR is based upon a maximum, not-to-exceed, development envelope" and "The EIR for the Specific Plan is a project-level EIR."

The court finds that the EIR is inconsistent and therefore misleading. There is a significant gap between the EIR's statement that it is intended to be used as a sole-tier project-level EIR² and the reality that the EIR discloses substantial uncertainty about the specific development of the property.³ The EIR is inconsistent in purporting to address all impacts within "a maximum, not-to-exceed, development envelope" but also stating that significant portions of the project are yet to be determined and that there are four aspects of the project where future environmental review is anticipated. Furthermore, the disclosures about the possibility or certainty of subsequent environmental review are scattered throughout the EIR.

The materiality of stating that an EIR is intended to be sole-tier or first-tier is apparent in case law that relies on disclosures similar to the ones that are inconsistent in this case. In *In re Bay-Delta Programmatic Environmental Impact Report* (2008) 43 Cal.4th 1143, 1170, the court based its decision in part on the fact that the EIR stated clearly that it was the first tier of a multi-tier environmental review. The court stated:

The text of the CALFED PEIS/R itself explains its scope and purpose in the tiering scheme: "... This [PEIS/R] is structured to be used as a tiering document. Individual, second-tier projects can use this analysis as a basis from which to supplement and refine the level of detail and can incorporate by reference relevant provisions in the [PEIS/R], such as the cumulative impacts."

(See also *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 271 ("The Regents insist that, in accordance with CEQA, additional

² The final EIR stated that the "Draft EIR is based upon a maximum, not-to-exceed, development envelope" and "The EIR for the Specific Plan is a project-level EIR." (AR4752-4753 and AR4765.)

³ The draft EIR states, "The Specific Plan does not identify the exact location and configuration of residential lots, golf course, or other recreational uses, as that will be determined through subsequent entitlement processes and analyses." (AR 341).

EIRs will be prepared at a later date if the amount of detail provided for any of the other Integrated Projects proves inadequate. (See § 21166; Guidelines, § 15385.) This commitment is set forth in the EIR.”); *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 742 (the Board committed itself to “conduct individual environmental assessments in accordance with CEQA on a project-by-project basis for each of the indicated projects.”).

Two recent cases have noted that whether an EIR is intended to be sole-tier or first-tier affect whether the EIR can defer identifying and describing mitigation measures. In *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906-912, the court found that the proposed deferral of mitigation was appropriate because the EIR committed the agency to prepare more thorough site-specific investigations before issuance of the relevant construction permits. In contrast, in *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 200, the court found that a proposal to defer mitigation was improper because “Although programmatic, the final EIR purported to study the project as a whole and to implement sufficient mitigation measures to ameliorate the effects of urban decay. No further mitigation measures or EIR studies for the issue of urban decay are promised by the City.”

Disclosure – Prejudice. The City’s inconsistent and therefore inaccurate statements regarding whether the City anticipates further environmental review undermine informed public participation and are therefore prejudicial. (*Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 959-960). (Compare *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 926-927.)

The EIR's failure to state clearly whether it is intended to be used as a sole-tier EIR or a first-tier EIR is material for at least two reasons. First, the public and the agency decision makers cannot evaluate whether they have enough information to make an informed decision unless they know whether there will be an opportunity for further review and decision making as the project develops. In *Treasure Island* the court held that the agency had the discretion to proceed under a sole-tier or a first-tier EIR and then held that the EIR was an adequately specific sole-tier EIR. *Treasure Island* did not address directly the issue of whether an EIR must disclose to the public if or when the agency intends to undertake further environmental review. Instead, *Treasure Island* focused on whether an EIR's label affects the court's substantive review of the EIR.

Second, members of the public would reasonably want to know when to challenge agency decisions approving EIRs. The CEQA statute of limitations requires that a person bring an action within 30 days after an agency publishes its Notice of Determination. (Pub. Res. Code 21167(b).) If an EIR is unclear whether it is a sole-tier or first-tier document, then concerned citizens must assume that the EIR is a sole-tier EIR and file a petition to challenge any and all aspects of the EIR. If, however, an EIR states clearly that it is a first-tier environmental review for some or all aspects of the project and that the agency anticipates further environmental review as the details of project become more specific, then any concerned citizen knows that he or she can wait until the appropriate level of environmental review to express their concerns.

Disclosure – Prior case law on EIR labels. There is case law that addresses the import of the label that an agency attaches to an EIR. This court is, of course, required to follow that case law. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450,

455.) The court examined this case law and found that it developed in the context of the court's review of EIRs for compliance with CEQA's substantive requirements and the court's review of whether an EIR was sufficiently specific.

The case law on the effect of EIR labels started with *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, where the court held that CEQA requires a public agency to identify and evaluate alternatives to a project. (47 Cal.3d at 400-403.) *Laurel Heights* then held as a matter of CEQA disclosure that a public agency "must explain in meaningful detail ... a range of alternatives to the proposed project and, if [the public agency] finds them to be infeasible, the reasons and facts that [the public agency] claims support its conclusion." (47 Cal.3d at 403-407.) The Court concluded by stating: "Because a new EIR is required, we believe it necessary to provide brief guidance to the parties as to the level of analysis of alternatives that must be included. ... As with the range of alternatives that must be discussed, the level of analysis is subject to a rule of reason." (47 Cal.3d at 407.) In *Laurel Heights* the court's analysis concerned public disclosure and the reference to "the level of analysis" appears to be a reference to "the level of specificity."

In *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 741-742, the court held as a matter of CEQA substance that the public agency had adequately considered alternatives to the project. The EIR was ambiguous in whether the project was a five-year plan to increase Port cargo handling capacity through the means of the six "anticipated" projects or the approval of the six individual "anticipated" projects. In the context of holding that the project was the five-year plan, the court relied on *Laurel Heights* and stated, "The level of specificity of an EIR is

determined by the nature of the project and the “rule of reason” ..., rather than any semantic label accorded to the EIR.” In *Al Larson*, the court’s analysis concerned the project definition for purposes of the court’s substantive review of whether the public agency had considered alternatives to the overall five-year plan. (18 Cal.App.4th at 744.)

In *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 533, the court held as a matter of statutory interpretation that under Pub. Res. Code 21090 redevelopment plans are sole-tier EIRS and therefore must include as much environmental review as possible at the outset of the redevelopment process. In the context of this statutory interpretation, the court referenced *Al Larson* to support the court’s conclusion that “Designating an EIR as a program EIR also does not by itself decrease the level of analysis otherwise required in the EIR.” (82 Cal.App.4th at 533.) In *Friends of Mammoth*, the court’s observation that the level of specificity of an EIR is determined by “the nature of the project ... rather than any semantic label” was for purposes interpreting Pub. Res. Code 21090 and did not concern public disclosure.

In *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 271 fn 25, the court held as a matter of disclosure that the EIR’s description of the proposed project was adequate under 14 CCR 15124 because it had an appropriate level of specificity. In reaching that conclusion, the court stated:

Appellants next contend the EIR’s description of the Integrated Projects is inadequate because it lacks the degree of specificity CEQA requires for a “project-level” EIR. ...

“EIR requirements must be ‘sufficiently flexible to encompass vastly different projects with varying levels of specificity.’ ...

We conclude based on this record that the EIR’s project description of the proposed Maxwell Family Field parking structure and the Law and Business Connection Building meets the requirements of Guidelines

section 15124, particularly in light of its admonishment that such description should not “supply extensive detail beyond that needed for evaluation and review of the [project's] environmental impact.”^{FN25} (Guidelines, § 15124.) ...

FN25. The fact that this EIR is labeled a “project” rather than a “program” EIR matters little for purposes of this inquiry. “The level of specificity of an EIR is determined by the nature of the project and the ‘rule of reason’ (*Laurel Heights [I]*, *supra*, 47 Cal.3d at p. 407 [253 Cal.Rptr. 426, 764 P.2d 278]), rather than any semantic label accorded to the EIR.” (*Al Larson, supra*, 18 Cal.App.4th at pp. 741–742, 22 Cal.Rptr.2d 618. See also Guidelines, § 15146.)

The Regents insist that, in accordance with CEQA, additional EIRs will be prepared at a later date if the amount of detail provided for any of the other Integrated Projects proves inadequate. (See § 21166; Guidelines, § 15385.) This commitment is set forth in the EIR.

Given our previous conclusion that the EIR's project description meets the requirements of Guidelines section 15124, we believe the Regents' commitment to prepare additional EIRs in the future, if necessary, was not improper. ... CEQA permits a lead agency to use “tiering” to “defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval. ... Further, where an EIR covers several possible projects that are diverse and geographically dispersed, the agency has discretion to evaluate the potential environmental impacts of the individual projects in general terms in the EIR, while deferring more detailed evaluation of the projects for future EIRs.

In this case, the EIR contains sufficient detail to permit reasonable and meaningful environmental review of each of the Integrated Projects, but, in particular, of the Athlete Center project—the only project ready for the Regents' final approval in connection with the EIR's certification. At the same time, the EIR acknowledges further analysis may be required if new or different facts surface with respect to any of the individual projects. On this record, the Regents' deferral of additional environmental review is appropriate.

(188 Cal.App.4th at 270-272.) In *California Oak* the court's analysis concerned public disclosure. The court found that the project description contained adequate “specificity” or “detail.” The court did not address whether the EIR was deficient as a disclosure document because it failed to state clearly whether it was intended to be used as a sole-

tier EIR or a first-tier EIR. (14 CCR 15124(d).) Instead, the court cited the case law that the court can disregard an EIR's label (188 Cal.App.4th at 271, fn 25) and then held that the disclosure to the public was adequate because the EIR stated that the Regents would comply with CEQA's substantive requirements about the preparation of further EIRs (188 Cal.App.4th at 272).

In *Treasure Island*, supra, the court first held that an agency has the discretion to decide whether to prepare a project or a program EIR. (227 Cal.App.4th at 1047-1052.) It is in the context of this issue that the court in *Treasure Island* states repeatedly that the court is not bound by an EIR's label. The court's resolution of this issue does not, however, concern whether the EIR, however labeled, complies with CEQA's substantive or disclosure requirements or the whether the disclosures in the EIR are accurate or sufficiently specific.

In *Treasure Island*, supra, the court then turned to whether the project description was adequate. (227 Cal.App.4th at 1052-1055.) The court recited the law that a project description must be "accurate, stable and finite" and then found that on the facts of that case that the project description was adequate. The court focused on the specificity of the "general description of the project's technical, economic, and environmental characteristics." (14 CCR 15124(c).) Having found that the court is not bound by an EIR's label, the court appeared to then assume that the public does not rely on an EIR's label. The court did not address the accuracy of the "statement briefly describing the intended uses of the EIR." (14 CCR 15124(d).)

None of these cases directly addresses the issue of whether an agency is required to state clearly whether it intends to use the EIR as a sole tier or a first tier EIR. This

court's experience suggests that this is an important issue.⁴ For example, in an initial project approval and EIR, an agency can provide limited specificity because further review might be required at a later date and the court will review the initial EIR's compliance with CEQA's disclosure and substantive requirements for substantial evidence. Then, years later and after the statute of limitations has run on challenging the initial EIR, an agency can amend or alter the project, make a factual finding that the change is not significant (Pub Res. Code 21166), and the court will review that determination for substantial evidence. This gives appropriate deference to public agencies and permits them the ability to make changes to projects as events develop without the need for new environmental review at each step. This does, however, appear to shortchange CEQA's disclosure purpose because under the substantial evidence standard of review an agency can describe a project in terms that can simultaneously be both general enough to warrant a less rigorous review when the EIR is initially adopted (*Dry Creek, supra*, 70 Cal.4th at 28; 14 CCR 15146) and sufficiently specific so that years later there is substantial evidence to support an agency decision that the EIR considered the project specifics in enough detail and that a further EIR is not required or permitted. (Pub. Res. Code 21166.)⁵

⁴ The court requested additional briefing on this issue. (Order of 9/19/12). The court then issued an order, the case went to the Court of Appeal, the case returned to the trial court, the parties had the opportunity to address the issue again, and then *Treasure Island* gave the parties had the opportunity to address the issue further.

⁵ (See *Donley v. Davi* (2009) 180 Cal.App.4th 447, 456 [under substantial evidence standard the court "indulge[s] all presumptions and resolve[s] all conflicts in favor of the [agency's] decision"]; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315 ["If there was such substantial evidence the court has no power to set aside the judgment of the board even though such judgment was not supported by the weight of the evidence"].)

Current Substantive Review. The court's level of scrutiny in evaluating an EIR is determined by the EIR's timing, purpose, nature, and other circumstances. For the purpose of evaluating whether the City's reasoning and conclusions are supported by substantial evidence "The level of specificity of an EIR is determined by the nature of the project and the "rule of reason" ... rather than any semantic label accorded to the EIR." (*Al Larson Boat Shop, Inc, v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 741-742.) (See also *Treasure Island*, 227 Cal.App.4th at 1048.)

The court can decide the substantive CEQA issues presented in this case in light of the EIR's timing, purpose, nature, and other circumstances.

Future Effect of the EIR. If an EIR is approved, then the law is unclear regarding the degree to which the EIR insulates further proposed changes to the environment from environmental review and the nature of judicial review. The lack of clarity is related to CEQA's contradictory preferences for certainty following an EIR as reflected in Pub. Res. Code 21166 and for serial tiered EIRs as reflected in Pub. Res. Code 21093-21095.

The preference for certainty following an EIR is reflected in Pub. Res. Code 21166. Addressing the preference for certainty following a single EIR, 14 CCR 15168(c)(5) states:

A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

After an EIR has been certified, then if there is a further proposed change to the project the agency first makes a factual finding whether the proposed change was "addressed,

known, nor adequately covered” by the prior EIR. (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 203.) Stated otherwise, the agency makes a factual finding whether the proposed change was “specifically addressed” in the prior EIR. (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 285.)

If the agency makes the factual finding that the proposed subsequent activities are within the scope of the prior EIR, then Public Resources Code section 21166 *prohibits* an agency from requiring additional environmental review in an EIR on that project unless the agency makes a factual determination that there have been substantial changes in the project, substantial changes in the circumstances surrounding the project, or new information of substantial importance becomes available. (Pub Res. Code § 21166; 14 CCR 15162(a).) The court reviews both of these factual findings to determine whether “substantial evidence” supports the agency’s findings. (*Treasure Island*, 227 Cal.App.4th at 1049-1051; *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 202-204; *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1398.)

The contrary preference for sequential tiered EIRs is reflected in Pub. Res. Code 21093. Summarizing the law, *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1171-1172 (*County of El Dorado*), states:

“CEQA directs agencies to ‘tier’ EIR’s whenever feasible, in part to streamline regulatory procedures and eliminate repetitive discussions of the same issues in successive EIR’s. (§ 21093; [] Section 21068.5 defines ‘tiering’ as the ‘coverage of general matters and environmental effects in an [EIR] prepared for a policy, *plan*, *program* or ordinance followed by narrower or site-specific [EIR’s] which incorporate by reference the discussion in any prior [EIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed

as significant effects on the environment in the prior [EIR].’ (See Guidelines, § 15152, italics added.)

(See also Pub. Res Code 20168.5 and 21093-21095; 14 CCR 15385.) After an EIR has been certified, then if there is a further proposed change to the environment the agency first makes a factual finding whether the significant effects of the proposed change (1) will be mitigated or avoided as a result of the prior environmental impact report or (2) were examined at a sufficient level of detail in the prior environmental impact report. (Pub. Res. Code 20194(a).) If the significant effects of the proposed change are not within the scope of the first-tier EIR, then Public Resources Code section 21094 *requires* the lead agency to prepare an initial study to determine if the later project *may* cause significant environmental effects not examined in the first-tier EIR. If the later project may cause such effects, the lead agency must prepare another EIR. (Pub Res. Code § 21094(a) and (c); 14 CCR 15152(f).) Addressing this situation, *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320-1321, stated:

[The evidence does not support a determination that Syar's proposed site-specific project was either the same as or within the scope of the project, program, or plan described in the program EIR. ... Therefore, section 21166 was inapplicable, and the County was obligated by section 21094, subdivision (c), to consider whether Syar's site-specific new project might cause significant effects on the environment that were not examined in the prior program EIR. If there was substantial evidence in the record that the project may arguably have such effects, the County should have required preparation of a tiered EIR, notwithstanding the existence of contrary evidence, including contrary expert opinions.

(See *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 527-529 [“If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project-or another tiered EIR if it may have a significant effect on the environment”].) The court

determines whether a proposed new activity is a separate project as a matter of law, and “If a proposed new activity is a separate project, the “fair argument” test should apply to an agency's decision whether to require a tiered EIR for the later project. (*County of El Dorado, supra*, 202 Cal.App.4th at 1171-1172). (See also *Treasure Island*, 1050 fn 6.)

It is premature in this proceeding to consider whether the City can or must conduct further environmental review as the project proceeds, or whether the City’s decision will be evaluated under Pub. Res. Code § 21166 or Rub Res. Code § 21094. Therefore, the court does not address or resolve whether the City can or must conduct future environmental review of any activity that is within the scope of the project.

The two different approaches for evaluating the circumstances under which the City must undertake future environmental review highlights the importance of disclosing to the public whether the EIR is intended to be used as a sole-tier EIR or a first-tier EIR. (14 CCR 15124(d).) The public cannot participate meaningfully in the environmental evaluation unless the City discloses clearly what aspects of the evaluation the City is intending to address in full and what aspects the City is intending to defer to a subsequent tiered EIR.

Conclusion. The EIR fails to adequately inform the public about whether the EIR is intended to be used as a sole-tier EIR or a first-tier EIR. This is a material deficiency.

IMPROPER BASELINE

“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published from both a local and regional perspective. This environmental setting will normally

constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (14 CCR 15125(a).) “Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published ... as well as the potential future conditions discussed in the plan.” (14 CCR 15125(e).) *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 452-453, states:

[I]n appropriate circumstances an existing conditions analysis may take account of environmental conditions that will exist when the project begins operations; the agency is not strictly limited to those prevailing during the period of EIR preparation. An agency may, where appropriate, adjust its existing conditions baseline to account for a major change in environmental conditions that is expected to occur before project implementation. In so adjusting its existing conditions baseline, an agency exercises its discretion on how best to define such a baseline under the circumstance of rapidly changing environmental conditions. ... we find nothing precluding an agency from employing, under appropriate factual circumstances, a baseline of conditions expected to obtain at the time the proposed project would go into operation.

(See also *Communities For A Better Environment v. South Coast Air Quality*

Management Dist. (2010) 48 Cal.4th 310, 328.) In addressing the use of multiple alternative baselines, *Neighbors*, 57 Cal.4th at 457, later states:

[W]e stress that the burden of justification articulated above applies when an agency *substitutes* a future conditions analysis for one based on existing conditions, omitting the latter, and not to an agency's decision to examine project impacts on *both* existing and future conditions. ... [N]othing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project's significant adverse effects. ... The need for justification arises when an agency chooses to evaluate *only* the impacts on future conditions, foregoing the existing conditions analysis called for under the CEQA Guidelines.

The court reviews the City's selection of a baseline, or the use of multiple baselines, for substantial evidence. (*Neighbors for Smart Rail*, 57 Cal.4th at 457.)

CCCR asserts that the EIR uses an improper baseline for traffic analysis. The court finds substantial evidence supports the City's development and use of four separate baselines for examining traffic impacts: (1) "Existing Conditions" (current conditions); (2) "Background Conditions" (Existing Conditions plus traffic from approved but not yet completed developments); (3) "Project Conditions" (Background Conditions plus traffic from the Project); and (4) "Cumulative Conditions" (Project Conditions plus traffic from all other foreseeable developments). (AR378-379.) In *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1569-1574, the court expressly approved the use of similar baselines where the EIR disclosed the reasons for the baselines and the data that supported the baselines.

The draft EIR clearly discloses the use of four separate baselines (AR378-379) and discloses the supporting data for the existing and background baselines (AR 379-383). The draft EIR has a chart that permits a comparison between and among the "Existing Conditions," "Background Conditions" and "Project Conditions." (AR387-389.) The "Existing Conditions" were based on actual traffic counts. (AR378 fn 24.) The Alameda County Congestion Management Agency (CMA) long term modeling was based on the existing General Plan designation and the assumed growth in the CMA's Alameda County travel forecast model, but the CMA model was not the sole means of traffic measurement and the basis of the model was disclosed. (AR391.)

CCCR asserts that the EIR makes an improper comparison to the general plan. (AR 392, 399.) The court finds substantial evidence supports the City's comparisons of traffic impact. The traffic analysis includes detailed information about traffic conditions under the "Existing Conditions" (AR 379-381) and calculated estimates about

“Background Conditions” (AR 382-383) The traffic analysis also includes an analysis of anticipated traffic in 2015 and 2030 under the Alameda County Congestion Management Analysis (CMA”) modeling. (AR 391-396.) These comparisons permitted an informed and adequate evaluation of the impacts of the project.

NO DISCUSSION OF CONSTRUCTION TRAFFIC

CEQA requires an agency to consider “[a]ll phases of a project .. when evaluating its impact on the environment: planning, acquisition, development, and operation.” (14 CCR 15126.)

CCCR asserts that EIR failed to discuss the impact of the truck traffic in the construction of the project. CCCR asserts that the draft EIR contained no disclosures, the final EIR added disclosures (AR 4756, 4806, 4939-4940), the disclosures were an improper comparison to post-project instead of pre-project traffic (AR 4960, 4806, 4960), and the addition of information required recirculation of the EIR under 14 CCR 15088.5(a)(4.)

Regarding disclosure, the draft EIR disclosed that there would be daily truck trips during the construction phase of the project and that the related exhaust would affect air quality. (AR 420-422.) This did not disclose or analyze the traffic effect of the truck trips. In response to comments, the City added disclosures in the final EIR that compared the truck trips to post-project traffic. (AR 4756). This was reasonable given the City’s projection that the truck trips during the construction phase would have a lesser impact than resident trips after construction and that the City had already disclosed and analyzed the effect of post-development traffic. (AR 4960.) Because this concerns the

“amount or type of information that is not required by CEQA and necessary for an informed discussion, ... the substantial evidence standard applies.” (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 101-102.) The court finds substantial evidence that the disclosures were adequate.

Regarding the substance of the City’s analysis, the court finds the analysis is supported by substantial evidence. The City considered the truck trips during the construction phase, compared those trips to the anticipated resident trips after construction, and concluded that because the post-development traffic levels exceeded the construction phase levels that it had already effectively considered the effect of the construction traffic levels.

Regarding recirculation of the EIR, there is substantial evidence that the addition of this information was not “significant” because additional disclosures did not “deprive[] the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.” (14 CCR § 15088.5(a).) As a result, there was no need to recirculate the EIR. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1146-1147.)

DISCLOSURE AND ANALYSIS OF CUMULATIVE IMPACTS

An EIR must discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable. (14 CCR 15130(a).) “Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (14 CCR 15065(a)(3).) “The

discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness.” (14 CCR 15130(b).)

The court “review[s] an agency’s decision regarding the inclusion of information in the cumulative impacts analysis under an abuse of discretion standard. The primary determination is whether it was reasonable and practical to include the projects and whether, without their inclusion, the severity and significance of the cumulative impacts were reflected adequately.” (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 906.)

CCCR asserts the City did not explain the geographic scope of its cumulative impact analysis (AR 602-637, 7225) and that although the Final EIR added disclosures to the scope (AR 7199) the disclosures were too late and failed to explain why the EIR chose to use the geographic scope. The court finds that the City’s draft EIR described the geographic scope of the cumulative impact analysis by stating that the draft EIR considered pending projects in Newark and Fremont (AR 602), providing a map of the area considered (AR 603), and listing the specific projects the City considered in its analysis (AR 604). The City did not abuse its discretion when it chose Hayward and Fremont as the geographic scope of the cumulative impacts analysis given that they are in geographic proximity to the project. The City’s explanation of its reasoning in its response to comments is conclusory (AR 7198-7199), but is facially logical and is adequate to explain the City’s selection of the geographic area. (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 906.) The City complied

with 14 CCR 15130(b)(1) by including a “list of past, present, and probable future projects producing related or cumulative impacts.”

CCCR asserts the City did not adequately explain the cumulative water supply impacts and that the discussion was not in a logical location in the EIR. The court finds that the City’s draft EIR adequately explained cumulative water supply impacts both in the “Environmental Setting, Impacts, and Mitigation” section captioned “Water Supply ... Impacts” (AR577-587) and in Appendix I captioned “Water Supply Assessment” (AR 4409-4639). The Water Supply Assessment contains a chart that set out projected demand in the service area through 2030 for normal and dry years and the incremental demand anticipated by the project. (AR 4461-4465.)

CCCR notes that discussion of water availability is different from the required evaluation of the impact on the physical environment of obtaining water for the project. The draft EIR contains this analysis as well. First, the draft EIR states “ACWD determined that the project demands are consistent with previously assumed demands for the project areas; therefore, the project does not create new demand beyond what was already forecast in their Urban Water Management Plan.” (AR583.) The draft EIR later states, “the ACWD may require future developers of the Specific Plan project to fund conservation measures to reduce off-site water demand throughout the entire ACWD service area. Through this private funding of off-site conservation, the project could offset 100% of its water demand, thereby resulting in a net zero increase in water demand.” (AR 586.) The draft EIR concludes, “With the potential additional mitigation of off-site conservation funding, the Areas 3 and 4 Specific Plan project would not result in a

significant water supply impact.” (AR 587.) Therefore, the Draft EIR did discuss the impact on the environment and concluded that it was not significant.

CCCR asserts the City’s analysis of cumulative traffic impacts was inadequate because it used a “ratio approach” that impermissibly focuses on proportional increase rather than collective significance. (AR 606-607, 7227.) (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 116-121.). The court finds that the City’s draft EIR is adequate in that it defined the threshold of significance as either (1) a decrease in level of service from an acceptable to an unacceptable level or (2) an increased delay of 4 seconds where the level of service would be unacceptable without the project. (AR606.) The use of alternate measures of impact addresses the problem of relying entirely on the “ratio approach.”

CCCR asserts the City did not explain cumulative biological impacts, erred in not considering that Project is surrounded by development so animals have nowhere to go, erred in applying a ratio approach, and wrongly presumed that unspecified measures would mitigate harm. (AR 634-635, 7228-7229) The court finds that the City’s draft EIR adequately explained cumulative biological impacts both in the “Environmental Setting, Impacts, and Mitigation” section captioned “Biological Resources” (AR441-495), in the cumulative impacts section captioned “Biological Resources” (AR634-635), and in Appendix E captioned “Biological Resources Report” (AR 1876-2257). The draft EIR used disclosed thresholds of significance (AR461-462) and did not make the mistake of considering only a ratio approach. The City’s draft EIR explained cumulative biological impacts and concluded:

In the absence of project-specific mitigation, the impacts resulting from the Areas 3 and 4 Specific Plan project that are considered “less than

significant with mitigation” would all contribute to cumulatively significant impacts in the region. In particular, the cumulative losses of seasonal wetland habitat around the South Bay are significant, and both direct and indirect impacts resulting from the Areas 3 and 4 Specific Plan would be significant without mitigation.

(AR 634.) (See also AR 2009 and AR 7200.) The cumulative impacts analysis appropriately refers back to the “project-specific mitigation” described in the previous section (AR 464-491), without repeating a description of the mitigation measures. The analysis includes an evaluation of the cumulative effect on wildlife movement, whether by sea, air, or land (AR 486-487, 1972-1973).

CCCR asserts that the analysis is flawed because an aggregation of individually minimal impacts can still have a significant cumulative impact. The draft EIR acknowledges that “In the absence of project-specific mitigation, the impacts resulting from the Areas 3 and 4 Specific Plan project ... would all contribute to cumulatively significance impacts in the region.” The Draft EIR then states, “The mitigation measures prescribed for all of these impacts will, however, adequately mitigate the project’s contribution to these cumulative impacts.” (AR634-635.) This discussion is adequate. (14 CCR 15130(a) [Where a lead agency is examining a project with an incremental effect that is not “cumulatively considerable,” a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable].)

CCCR asserts City did not adequately explain cumulative hydrology impacts and erroneously presumed that compliance with laws is adequate. (AR 635, 4936, 7200.) (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 729-730.) The court finds that the City’s draft EIR adequately explained cumulative hydrological

impacts both in the “Environmental Setting, Impacts, and Mitigation” section captioned “Hydrology, Flooding, and Water Quality” (AR520-537), in the cumulative impacts section captioned “Hydrology and Water Quality” (AR635-636), and in Appendix G captioned “Hydrology and Water Quality Report” (AR2333-2386). These sections of the draft EIR contain adequate data to support the conclusion that the project will not have cumulative significant impact. (AR521-522, 526, 604, 635.) The City can rely on compliance with the law because compliance with environmental regulations can be an appropriate mitigation measure if (1) the existing regulations are sufficient to mitigate the anticipated impact to a level of insignificance and (2) the agency possesses “meaningful information” reasonably justifying an expectation of compliance. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236-237.) (See also *North Coast Rivers Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th 614, 647 [“[a] condition requiring compliance with environmental regulations is a common and reasonable mitigating measure”].)

CCCR asserts City did not consider the increasing effects of past projects in analyzing cumulative impacts. (Pub Res Code 21083(b); 14 CCR 15065(c); *Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 524 [“This historical information also may help to identify previous activities that have caused intensive environmental impacts in a given area, the full effects of which may not yet be manifested, thereby disclosing potential environmental vulnerabilities that would not be revealed merely by cataloging current conditions.”].)

The court finds that the City's draft EIR adequately included an analysis of the increasing effects of past projects. In the discussion of cumulative impacts, the draft EIR states that "The effects of past projects are generally reflected in the existing conditions described in the specific sections of this EIR." (AR602) This is adequate in the absence of any indication in the record that the City failed to account for the increasing and significant effects of previously completed projects. In responding to a comment from counsel for CCCR, the final EIR states, "The commenter does not point the City's attention to, nor is the City aware of, any past project's impacts that are not addressed by the Draft EIR's discussion of the existing environmental setting." (AR 7198.)

DEFERRAL OF MITIGATION OF IMPACTS.

An EIR must set out any required mitigation measures. (14 CCR 15126(e).) Although formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project, "Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. ... If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793.) *POET, LLC v. California Air Resources Board* (2013) 218 Cal.App.4th 681, 738, summarized the law as follows:

First, the deferral of the formulation of mitigation measures requires the agency to commit itself to *specific performance criteria* for evaluating the efficacy of the measures implemented. Second, the "activity" constituting the CEQA project may not be undertaken without mitigation measures

being in place “to minimize any significant adverse effect on the environment of the activity.

“Essentially, the rule prohibiting deferred mitigation prohibits loose or open-ended or performance criteria. Deferred mitigation measures must ensure that the applicant will be required to find some way to reduce impacts to less than significant levels. If the measures are loose or open-ended, such that they afford the applicant a means of avoiding mitigation during project implementation, it would be unreasonable to conclude that implementing the measures *will* reduce impacts to less than significant levels.” (*Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 525.) (See also 14 CCR 15126.4(a)(1)(B); *Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 945-946.) The court evaluates an agency’s deferral of mitigation efforts as a failure to comply with CEQA’s procedural requirements and therefore reviews the decision de novo.

The court finds that the City improperly deferred mitigation of impacts to trees. This issue was raised late in the administrative proceedings (AR7140) but is sufficient for administrative exhaustion. The draft EIR found that construction could have a significant impact on trees, stating:

Construction activities could damage these trees. In addition, the potential for preserved trees to continue to grow and thrive could be affected by the new more intense development. This intense development could adversely affect the long-term survival of trees to remain by restricting sunlight and root growth, and/or altering groundwater conditions.

(AR491, 495). The mitigation plan then states:

Prior to the issuance of any approval or development permit, a Tree Preservation Plan shall be prepared by a certified arborist to the satisfaction of the City’s Community Development Director for all areas with trees. Information in the Tree Preservation Plan shall include an

inventory of all trees on the subject development sites as to size, species, and eligibility for ordinance size status.

(AR 491.) The tree mitigation plan does not identify any “specific performance criteria.” The only specific requirement is the preparation of a tree inventory, which would identify trees subject to the City of Newark’s Tree Ordinance, which in turn “requires a permit for the removal or relocation of any tree with a trunk diameter of six inches or greater measured at four feet above ground level.” (AR 461.) Although that would mitigate tree loss from tree removal, it wholly fails to address the threats to the long-term survival of trees that remain from restrictions on sunlight and root growth, and/or altering groundwater conditions. The court has considered *North Coast Rivers Alliance v. Marin Municipal Water District Board of Directors* (2013) 216 Cal.App.4th 614, 645-648, and finds it distinguishable because in *North Coast* the regulatory bodies had the ability to limit identified harm to the environment whereas in this case there is no identified regulatory body and the City of Newark’s Tree Ordinance addresses only one aspect of the identified harm.

The court finds that the City improperly deferred mitigation of impacts to sensitive habitats and special status species. The draft EIR found that construction could have a significant impact on the spread of non-native species, stating:

Implementation of the project would result in significant impacts to sensitive habitats and special status species due to the potential spread of non-native, invasive plant species on the site.

(AR485, 1988-1990.) The mitigation plan then sets out two mitigation measures. The first, MM BIO-11.1, is not at issue in this case. The second, MM BIO 11.2 states:

MM BIO-11.2: The future development projects shall develop and implement an Invasive Species Management Plan to reduce the presence and spread of non-native, invasive plant species on the site prior to importing any fill material required to elevate building sites and prior to grading any areas on the Specific Plan site. This management plan will outline methods to remove the existing populations of non-native, invasive weed species from the accessible portion of the site to prevent the spread of their seed during and after construction and to prevent the invasion of graded area by invasive species. This will also prevent a decline in the function and values of natural habitat remaining on the site due to the proliferation of invasive species and the increased seed bank that would be present if invasive species spread to more extensive areas on the site (e.g., embankments of the fill). This management plan will contain details regarding the removal and treatment of these species (herbicide application, manual removal, mowing, etc), success criteria, and a seeding plan to encourage native species to grow within disturbed habitat. Because the Specific Plan site falls within the CDFG designated Alameda/Contra Costa County Weed Management Area, this Invasive Species Management Plan will be approved the CDFG and the City of Newark prior to issuance of a grading permit for implementation of the Specific Plan. (Less Than Significant with Mitigation)

MM BIO-11.2 states generalized performance criteria for the anticipated Invasive Species Management Plan and that the as yet undeveloped management plan “will contain details regarding ... success criteria.”

The City asserts that MM BIO-11.2 is adequate because it states that the site falls within the CDFG designated Alameda/Contra Costa County Weed Management Area and that the Invasive Species Management Plan must be approved the CDFG and the City of Newark prior to issuance of a grading permit. The City relies on case law that “deferring the formulation of the details of a mitigation measure [is authorized] where another regulatory agency will issue a permit for the project and is expected to impose mitigation requirements independent of the CEQA process so long as the EIR included performance criteria and the lead agency committed itself to mitigation.” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237) (See also *North Coast Rivers*

Alliance v. Marin Municipal Water District Board of Directors (2013) 216 Cal.App.4th 614, 647-648; *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 412-413.)

MM BIO-11.2 contains performance criteria similar to those in *North Coast*. Although not detailed, the performance criteria are sufficient to identify the desired goals of the required mitigation. MM BIO-11.2 states that the Invasive Species Management Plan will be approved the CDFG, which satisfies the criteria that “another regulatory agency will issue a permit for the project.”⁶ The City has not, however, identified the CDFG’s authority and criteria for reviewing Invasive Species Management Plans and issuing permits. The court has not been able to locate such authority or criteria in its independent research. In the absence of citation to authority that the CDFG has the authority for reviewing Invasive Species Management Plans and issuing permits and the criteria for such decisions, the court cannot find that the City properly deferred mitigation of impacts to sensitive habitats.

APPLICATION OF “THRESHOLDS OF SIGNIFICANCE” TO CUMULATIVE IMPACTS.

CEQA encourages public agencies to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. “A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance

⁶ The need for future approval of grading by the City is not pertinent because deferral is permissible only where “another regulatory agency will issue a permit for the project.” (Newark Ordinances 15.50.010 et seq.)

with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.” (14 CCR 15064.7(a).) CEQA only requires that a threshold be formally adopted if it is for “general use”—that is, for use in evaluating significance in all future projects. Because the City’s thresholds appear to be specific to this Report (and not for “general use”), no formal adoption was required. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.)

“[I]n preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect. Once the agency has determined that a particular effect will not be significant, however, the EIR need not address that effect in detail. Instead, the EIR need only “contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.” (*Protect The Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

CCCR asserts City failed to adequately evaluate cumulative land use impacts because it failed to evaluate the direct and cumulative impacts of the project against the defined “thresholds of significance.” The the City’s draft EIR section on “Environmental Setting, Impacts, and Mitigation” has a section captioned “Land Use” (AR356-367) that adequately identifies the “thresholds of significance” (AR361-362). In that portion of the EIR, there is adequate discussion that measures the project against the “thresholds of significance” and addresses whether the project would physically divide an established

community (AR362), would conflict with a habitat conservation plan or natural community conservation plan (AR362), would conflict with a land use plan, policy, or regulation (AR362-367), would convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (AR367), or would conflict with existing zoning for agricultural use, or a Williamson Act contract (AR367). In the cumulative impacts section, the Draft EIR revisits consistency with land use plan, policy, and regulations as well as the impact on agricultural resources. (AR605-606). This discussion is adequate.

CCCR asserts City failed to adequately evaluate cumulative biological resource impacts because it defined “thresholds of significance”, then failed to measure the cumulative impacts against those standards. The court finds substantial evidence that the City identified thresholds of significance (AR461-462) and evaluated the biological impacts against those thresholds of significance (AR462-495). The EIR’s analysis of the cumulative environmental impacts did not need to repeat the prior analysis and the EIR did not need to include an exhaustive explanation of its conclusions that “The mitigation measures prescribed for all of these impacts will, however, adequately mitigate the project’s contribution to these cumulative impacts” and “no cumulatively significant impacts will result from the Areas 3 and 4 Specific Plan project. (AR634-635.)

CCCR asserts City failed to adequately evaluate cumulative Hydrology, water quality, and water supply impacts because it defined “thresholds of significance,” then failed to measure the cumulative impacts against those standards. The court finds substantial evidence that the City identified thresholds of significance (AR526-527) and evaluated the hydrological impacts against those thresholds of significance (AR527-536). The EIR’s analysis of the cumulative environmental impacts (AR635-636) did not need

to repeat the prior analysis and the EIR did not need to include an exhaustive explanation of its conclusion that “Therefore, the proposed project, in conjunction with other planned and approved projects, would not have a cumulatively considerable impact on hydrology and water quality.” (AR635-636.)

THE REMEDY.

The EIR failed to state clearly whether it is intended to be a sole-tier or a first-tier EIR, or whether different parts are intended to be sole-tier or first-tier in nature. This is a material deficiency because clarity on this issue is necessary for an informed discussion. The EIR also contained some legally inadequate mitigation measures. As a result the court will order the City to vacate the EIR.

The City’s adoption of the Newark Area 3 and 4 Specific Plan and the related General Plan Amendment is invalid without CEQA certification. (AR 5.) (Pub. Res. Code 21081.) Similarly, the City’s adoption of Ordinances 442 and 442 approving and adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement and approving a map amendment to the Newark Municipal Code is invalid without CEQA certification. (AR 62; AR207.) (See *LandValue 77, LLC v. Board of Trustees of California State University* (2011) 193 Cal.App.4th 675, 681-683 [“the trial court’s determination that the final EIR was inadequate in certain respects requires an order directing the Board of Trustees to set aside its certification of the final EIR as well as its approval of the project”].)

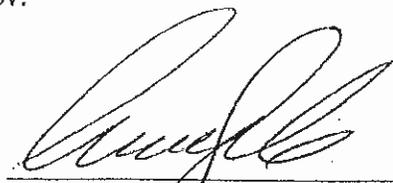
The court ORDERS the City of Newark City Council to vacate (1) Resolution 9745 (certifying E-10-12, the EIR); (2) Resolution 9746 (adopting GP-10-13, the Newark

Area 3 and 4 Specific Plan and the related General Plan Amendment); (3) Ordinance 442 (approving and adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement; and (4) Ordinance 443 (approving a map amendment to Title 17 (Zoning) of the Newark Municipal Code rezoning parcels to be consistent with the Newark Area 3 and 4 Specific Plan).

The court does not dictate how the City must meet its obligations under CEQA. (Pub. Res. Code § 21168.9(c).)

The Court ORDERS that Petitioner CCCR and the City meet and confer regarding a proposed judgment and submit an agreed form of judgment or competing forms within 5 court days of service of this statement of decision. If the parties exchange proposals, then the parties may file objections 5 court after service of the proposed judgments. The court asks the parties to both file their documents and to send MS Word versions to the court at Dept14.alameda.courts.ca.gov.

DATED: October 17, 2014



Evelio Grillo
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG10530015

Case Name: Citizens Committee to Complete the Refuge vs. City of Newark

1) ORDER AND STATEMENT OF DECISION GRANTING IN PART PETITION FOR WRIT OF MANDATE

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below by placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

October 22, 2014

Executive Officer/Clerk of the Superior Court
By M. Scott Sanchez, Deputy Clerk

Patricia J. Herbert
5012 Brophy Drive
Fremont, CA 94536

Wagner, Keith G
Keith G. Wagner, APC
129 "C" Street
Suite 2
Davis, CA 95616

Lanferman, David P
Rutan & Tucker, LLP
3000 El Camino Real
Suite 200 Bldg 5
Palo Alto, CA 94306

Benoun, David J.
Law Offices of David J. Benoun
39510 Paseo Padre Parkway
Ste 190
Fremont, CA 94538

Sabey, Andrew B.
COX CASTLE & NICHOLSON LLP
555 California Street,
10th Floor
San Francisco, CA 941041513

Pahl, Stephen D.
Pahl & McCay
225 West Santa Clara Street
Suite 1500
San Jose, CA 951131700

Elmer H. Herbert
5012 Brophy Drive
Fremont, CA 94536



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FILED
ALAMEDA COUNTY

11/25/14
CLERK OF THE SUPERIOR COURT
By Sally Ponce Deputy

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

CITIZENS COMMITTEE TO COMPLETE THE
REFUGE, INC. et al,

Petitioners and Plaintiffs,

vs.

CITY OF NEWARK et al.,

Respondents and Defendants,

NEWARK PARTNERS, LLP, et al.,

Real Parties in Interest and Defendants.

Case No. RG10-530015

FINAL JUDGMENT

Dept.: 14
Judge: Evelio M. Grillo

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FINAL JUDGMENT

Having considered the administrative record, all briefs filed by the parties, and oral arguments by counsel for all parties, and having issued its October 17, 2014, Final Statement of Decision as well as its April 24, 2014, Order on Form of Judgment, the Court enters its Final Judgment¹ in this matter as follows:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Judgment is entered in favor of Petitioner Citizens Committee to Complete the Refuge (Petitioner) and against Respondents and Real Parties in Interest on Petitioner's Petition for Writ of Mandate and Complaint for Injunctive Relief for the reasons set forth in this Court's October 17, 2014, "Order And Statement Of Decision Granting In Part Petition For Writ Of Mandate" and its November 20, 2012 Order (1) Issuing Interlocutory Remand; and (2) Suspending Resolutions, as incorporated by reference into the Court's February 19, 2014 Order and Statement of Decision (collectively "Order"), which are hereby incorporated by reference as if set forth in full in this Final Judgment.
2. Immediately upon entry of this Final Judgment, the Clerk of the Court shall issue and provide to Petitioner to serve upon Respondents and Real Parties within five (5) business days a Peremptory

¹ The First Amended Petition in this action, which is the operative pleading on file, named the City of Newark, and its City Council and Planning Commission as the Respondent agency, and twenty-six (26) individual Real Parties in Interest. A review of the subsequent papers on file in the action indicates that sixteen (16) of the named Real Parties in Interest were subsequently dismissed from this action pursuant to various stipulations and orders of the Court prior to trial. This Final Judgment is entered as to Respondents and the remaining ten (10) Real Parties in Interest, as follows, some of which did not appear at the trial on the merits, as indicated: RESPONDENTS: City of Newark; Newark City Council; Newark Planning Commission. REAL PARTIES IN INTEREST (appearing at trial on merits): Newark Partners, LLC. REAL PARTIES IN INTEREST (not appearing at trial on merits): Elmer H. Herbert; Patricia J. Herbert; Katy S. O'Connor, As Trustee Of The Katy S. O'Connor Revocable Trust; Katy S. O'Connor Revocable Trust; Katy S. O'Connor In Her Individual Capacity; Patricia J. Hebert As Trustee Of The Herbert Family Trust; Elmer H. Hebert As Trustee Of The Hebert Family Trust; SI XVIII, LLC; Arques Investment Company, LLC. The judgments against the parties that were served and appeared but that, following notice, did not appear at trial on merits are based on a failure to present evidence at trial (CCP 594) and not based on default (CCP 585). (*Garamendi v. Golden Eagle Ins. Co.* (2004) 116 Cal.App.4th 694, 705.)

1 Writ of Mandate directing Respondents to void their certification of the Environmental Impact
2 Report ("EIR") for the City of Newark Area 3 & 4 Specific Plan and their project approvals
3 issued in reliance on that certification (collectively "the Project") (Pub. Resources Code, §
4 21168.9, subd. (a)), as follows:
5

- 6 • Resolution No. 9745 Certifying the Environmental Impact Report (EIR) for the Newark
7 Area 3 and 4 Specific Plan Project and Approving the Mitigation Monitoring and
8 Reporting Program.
9
- 10 • Resolution No. 9746 Approving and Adopting the Newark Area 3 and 4 Specific Plan
11 and Related General Plan Amendment.
12
- 13 • Ordinance No. 442 Approving and Adopting the Newark Area 3 and 4 Specific Plan
14 Project Development Agreement.
15
- 16 • Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the
17 Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark
18 Area 3 & 4 Specific Plan.
19

20
21 3. The Peremptory Writ of Mandate shall further mandate that Respondents and Real Parties
22 suspend any and all Project activities in reliance on the above referenced actions and approvals
23 that may result in adverse change to the physical environment. (Pub. Resources Code, §
24 21168.9, subd. (a)(2).) This prohibition will be in effect until Respondents void the above
25 actions and approvals, and does not prohibit Respondents from considering or acting upon any
26 other project application.
27

28
29 4. Respondents shall file and serve a return to the peremptory writ within ninety (90) days of the
30 writ's issuance, which shall provide proof that the actions and approvals listed above in
31 Paragraph 2 have been voided.
32

1 5. Under Public Resources Code section 21168.9(b), this Court retains jurisdiction over this matter
2 to ensure Respondents' compliance with CEQA by voiding the above identified EIR certification
3 and project approvals. This judgment does not prematurely define or delimit the exact boundaries
4 of the court's continuing jurisdiction under section 21168.9(b). The April 24, 2014, Order on
5 Form of Judgment sets out the Court's thoughts on its continuing jurisdiction in this case.
6

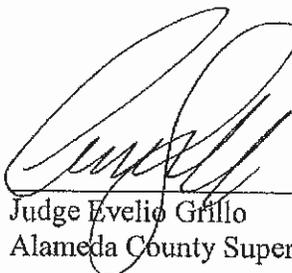
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8 6. Nothing in this Final Judgment is to be construed as compelling a revised project to be submitted
9 by Real Parties or requiring Respondents to take any particular action with regard to any such
10 future project. Respondents retain and can exercise their independent judgment to consider and
11 act (or not act) on any proposed project. (Pub. Resources Code, § 21168.9(c).)
12

13 7. Petitioner is the prevailing party in this action, and may recover its costs of suit by filing of a
14 memorandum of costs within 15 days of notice of entry of this Final Judgment, subject to any
15 timely motion to strike or tax costs subsequently filed by any Respondent, Defendant, or Real
16 Party.
17

18 8. Petitioner may seek an award of attorneys' fees pursuant to applicable statutes and rules of court
19 by filing such motion within 60 days of notice of entry of this Final Judgment.
20

21
22 **IT IS SO ORDERED,**

23
24 DATE: NOV 25 2014

25 
26 _____
27 Judge Evelio Grillo
28 Alameda County Superior Court
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FILED
ALAMEDA COUNTY

11/25/14

CLERK OF THE SUPERIOR COURT
By Ant. Manal Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CITIZENS COMMITTEE TO COMPLETE THE
REFUGE, INC. et al,

Petitioners and Plaintiffs,
vs.

CITY OF NEWARK et al.,

Respondents and Defendants,

NEWARK PARTNERS, LLP, et al.,

Real Parties in Interest and Defendants.

Case No. RG10-530015

PEREMPTORY WRIT OF MANDATE

Dept.: 14
Judge: Evelio M. Grillo

PEREMPTORY WRIT OF MANDATE

The Court has entered its Final Judgment in this case, which, *inter alia*, directs the issuance of a peremptory writ of mandate. By authority of the Court's Final Judgment:

1. Respondents are hereby commanded to void the following resolutions and ordinances adopted in furtherance of the City of Newark Area 3 & 4 Specific Plan project (the "Project"):

- Resolution No. 9745 Certifying the Environmental Impact Report (EIR) for the Newark Area 3 and 4 Specific Plan Project and Approving the Mitigation Monitoring and Reporting Program.
- Resolution No. 9746 Approving and Adopting the Newark Area 3 and 4 Specific Plan and Related General Plan Amendment.
- Ordinance No. 442 Approving and Adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement.
- Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark Area 3 & 4 Specific Plan.

2. Respondents and Real Parties are directed to suspend any and all Project activities in reliance on the above referenced actions and approvals that may result in adverse change to the physical environment. (Pub. Resources Code, § 21168.9, subd. (a)(2).) This prohibition will be in effect until Respondents void the above actions and approvals, and does not prohibit Respondents from considering or acting on any other project application.

3. Respondents are commanded to file a return to this Peremptory Writ within ninety (90) days of the Writ's issuance, which shall provide proof that the actions and approvals listed above in Paragraph 1 have been voided.

Leah T. Wilson

Clerk of the Court

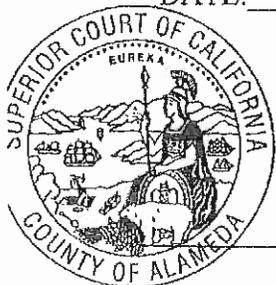
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And Kanase

Clerk of the Alameda County Superior Court





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CLERK OF THE SUPERIOR COURT
By Art Ponce Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CITIZENS COMMITTEE TO COMPLETE THE
REFUGE, INC. et al,

Petitioners and Plaintiffs,
vs.

CITY OF NEWARK et al.,

Respondents and Defendants,

NEWARK PARTNERS, LLP, et al.,

Real Parties in Interest and Defendants.

Case No. RG10-530015

PEREMPTORY WRIT OF MANDATE

Dept.: 14
Judge: Evelio M. Grillo

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 - Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark Area 3 & 4 Specific Plan.
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3. Respondents are commanded to file a return to this Peremptory Writ within ninety (90) days of the Writ's issuance, which shall provide proof that the actions and approvals listed above in Paragraph 1 have been voided.

Leah T. Wilson

Clerk of the Court

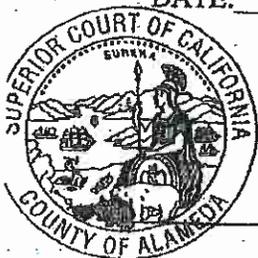
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11/25/14

Deputy

Ann Kanan

Clerk of the Alameda County Superior Court



RESOLUTION NO. 1900

RESOLUTION RESCINDING THE PLANNING COMMISSION'S CERTIFICATION OF THE AREA 3 AND 4 ENVIRONMENTAL IMPACT REPORT AND RECOMMENDING THE CITY COUNCIL REPEAL THOSE CERTAIN ORDINANCES AND RESOLUTIONS APPROVING THE AREA 3 AND 4 SPECIFIC PLAN PROJECT AND THE ENVIRONMENTAL IMPACT REPORT RELATED THERETO

WHEREAS, in 2010, the Planning Commission recommended that the City Council approve a development project known as the "Area 3 and 4 Specific Plan Project" ("Project"); and

WHEREAS, in 2010, the City Council approved the Project by adopting and enacting the following:

- Resolution No. 9745 Certifying the Environmental Impact Report ("EIR") for the Newark Area 3 and 4 Specific Plan Project and Approving the Mitigation Monitoring and Reporting Program.
- Resolution No. 9746 Approving and Adopting the Newark Area 3 and 4 Specific Plan and Related General Plan Amendment.
- Ordinance No. 442 Approving and Adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement.
- Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark Area 3 & 4 Specific Plan; and

WHEREAS, the Citizen's Committee to Complete the Refuge, Inc. filed a legal challenge in Alameda County Superior Court naming the City, the City Council, and the Planning Commission as Respondents and alleging that the environmental disclosures failed to comply with the California Environmental Quality Act and that the City's police powers were improperly contracted away in the Development Agreement entered into between Newark Partners and the City (Alameda County Superior Court Case No. RG10530015); and

WHEREAS, on October 17, 2014, the Court entered a Statement of Decision finding, in summary, that: (1) Section 4.02 of the Development Agreement is unenforceable; (2) all other provisions of the Development Agreement is enforceable; (3) the EIR was not clear as to which portions of the Project would require further environmental review and those that would not; (4) the EIR improperly deferred mitigation of impacts to trees; (5) the EIR Improperly deferred

mitigation of impacts to sensitive habitats and special status species; and (6) all other environmental disclosure and analysis in the EIR were performed in accordance with CEQA; and

WHEREAS, on November 25, 2014, the Court entered a Final Judgment and the Clerk of the Court issued a Peremptory Writ that command the City to, within 90 days, void all resolutions and ordinances that were adopted and enacted by the City Council in order to approve the Project; and

NOW THEREFORE, the Planning Commission rescinds its certification of the Area 3 and 4 EIR and recommends the City Council repeal the following:

- Resolution No. 9745 Certifying the EIR for the Newark Area 3 and 4 Specific Plan Project and Approving the Mitigation Monitoring and Reporting Program.
- Resolution No. 9746 Approving and Adopting the Newark Area 3 and 4 Specific Plan and Related General Plan Amendment.
- Ordinance No. 442 Approving and Adopting the Newark Area 3 and 4 Specific Plan Project Development Agreement.
- Ordinance No. 443 Approving Z-10-17, a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Proposed Newark Area 3 & 4 Specific Plan.

This Resolution was introduced at the Planning Commission's February 10, 2015 meeting by Commissioner Bridges, seconded by Commissioner Nillo, and passed as follows:

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

NOES: None.

ABSENT: None.

s/Terrence Grindall
TERRENCE GRINDALL, Secretary

s/William Fitts
WILLIAM FITTS, Chairperson

E.3 MOTION TO CANCEL Public Hearing to consider: 1) Certifying a Recirculated Final Environmental Impact Report addressing and disclosing the Environmental Impacts of the Newark Areas 3 and 4 Specific Plan Project and approving a Mitigation Monitoring and Reporting Program; 2) Approving the Newark Specific Plan: Areas 3 and 4 of the General Plan and related General Plan amendments: A map amendment to the General Plan Diagram to change the General Plan land use designations for certain parcels of land; 3) Introducing an Ordinance approving the Newark Areas 3 and 4 Specific Plan Project Development Agreement and; 4) Introducing an Ordinance approving a Map Amendment to Title 17 (Zoning) of the Newark Municipal Code Rezoning Parcels to be Consistent with the Newark Specific Plan: Areas 3 and 4 of the General Plan – from Assistant City Manager Grindall.

(MOTION TO CANCEL PUBLIC HEARING)

Background/Discussion – Staff is in the process of further reviewing the Areas 3 and 4 Specific Plan Project. At this time, staff anticipates that the project will be finalized and presented to the City Council in March or April at a duly noticed public hearing.

Action – Staff recommends that the City Council, by motion, CANCEL the public hearing.

E.4 Hearing to consider adoption of a resolution clarifying the City Council's intent in certifying the 2013 General Plan Tune Up Environmental Impact Report – from Assistant City Manager Grindall (RESOLUTION)

Background/Discussion – In December 2013, the City Council held a public hearing to consider adopting resolutions approving the update to the Newark General Plan and certification of the General Plan Tune Up Environmental Impact Report (“EIR”). After having received a considerable amount of testimony from the public, the Council, by a unanimous vote, adopted Resolution No. 10,145 approving the update to the General Plan and Resolution No. 10,146 certifying the EIR.

In response to the City's action, in January 2014 the Citizen's Committee to Complete the Refuge filed a legal challenge alleging that the EIR failed to comply with the California Environmental Quality Act (Alameda County Superior Court Case No. RG14709701). The only allegation in the lawsuit is that the City improperly referred to and relied upon prior environmental documents for the Area 3 and 4 Specific Plan Project that was approved by the City Council in 2010. (Those project approvals and environmental analysis were also subject to litigation from the Citizen's Committee in Alameda County Superior Court Case No. RG10530015.) The City denies the allegation and the court case has not been resolved.

The staff report to the City Council for the General Plan Update and EIR clearly stated that adoption of the General Plan Update “does not provide approval” for the Area 3 and 4 Project. Nonetheless, the Citizen's Committee filed the lawsuit referenced above and the City has been forced to defend itself in Court and incur defense costs.

In hopes of resolving this litigation, staff recommends that the Council adopt a Resolution that would clarify the intent of the resolutions approving the General Plan Tune Up EIR as follows: (1) that the adoption of the General Plan Tune Up EIR was not intended to provide environmental disclosure or compliance with CEQA or clearance for the Specific Plan Area 3 and 4 project; (2) that nothing contained in the General Plan Tune Up EIR was intended to affect, limit, or circumvent the then-judicial review of the Specific Plan Area 3 and 4 Project EIR; and (3) that the Specific Plan Area 3 and 4 Project does not rely on the General Plan Tune Up EIR to comply with CEQA.

Update – At its meeting on February 10, 2015, the Planning Commission, by unanimous vote, approved a Resolution that recommended that the City Council adopt a resolution clarifying the Council's intent in certifying the 2013 General Plan Tune Up Environmental Impact Report (EIR).

Action – Staff recommends that the City Council adopt a resolution clarifying the City Council's intent as to the certification of the City of Newark 2013 General Plan Tune Up Environmental Impact Report.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK CLARIFYING THE CITY COUNCIL'S INTENT AS TO
THE CERTIFICATION OF THE CITY OF NEWARK 2013
GENERAL PLAN TUNE UP ENVIRONMENTAL IMPACT
REPORT

WHEREAS, in December 2013, the City Council approved the Newark General Plan Update and certified the Newark General Plan Update EIR as being in compliance with the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City Council's certification of the Newark General Plan Update EIR was subsequently challenged in civil litigation by the Citizens Committee to Complete the Refuge (Alameda County Superior Court Case No. RG14709701), which contends that the City's approval of the Newark General Plan Update EIR in December 2013 erroneously incorporated or relied upon an earlier environmental document prepared in 2010, the Area 3 and 4 Specific Plan EIR, which was also challenged in civil litigation brought by the Citizens Committee to Complete the Refuge. The City has denied those allegations and is actively defending that action in court; and

WHEREAS, the Planning Commission and the City Council were informed prior to their consideration of the Newark General Plan Update and EIR in 2013 that the Area 3 and 4 Specific Plan EIR was being challenged in court and that the Newark General Plan Update EIR was an independent environmental review that did not rely on the validity of the Specific Plan EIR or on the outcome of the legal challenge to the Specific Plan EIR, and further that the City's responses to comments on the Newark General Plan Update EIR incorporated in the Final EIR for the Newark General Plan Update noted that the 2010 Area 3 and 4 Specific Plan EIR was being challenged in court, was not relied upon as the basis for the analysis and conclusions in the 2013 Newark General Plan Update EIR, and that the City's consideration, approval and certification of the 2013 Newark General Plan Update and Update EIR would not provide new approval for the 2010 Area 3 and 4 Specific Plan EIR or Project then being adjudicated in court; and

WHEREAS, based on the information in the record and summarized above it was the City staff's and City Council's understanding and intent (1) that the adoption of the General Plan Update EIR was not intended to provide environmental disclosure or compliance with CEQA or clearance for the Specific Plan Area 3 and 4 project; (2) that the 2013 Newark General Plan Update EIR was an independent environmental review under CEQA for the General Plan Update and did not rely on the 2010 Area 3 and 4 Specific Plan EIR to comply with CEQA; (3) that nothing contained in the 2013 Newark General Plan Update EIR or the Council certification of that EIR was intended to affect, limit, or circumvent the judicial review of the 2010 Specific Plan Area 3 and 4 Project; and

WHEREAS, the City's explicit statement and clarification of the above outlined understanding and intent may facilitate the resolution and disposition of that certain litigation challenging the City's certification of the 2013 Newark General Plan Tune Up EIR.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby declare as follows:

- (1) That the City Council's certification of the 2013 General Plan Tune Up Environmental Impact Report was not intended in any manner whatsoever to provide new environmental compliance with CEQA or clearance for the 2010 Specific Plan Area 3 and 4 Project;
- (2) That the 2010 Specific Plan Area 3 and 4 Project approvals have been rescinded and superseded by the 2015 Area 3 and 4 Specific Plan Recirculated Final Environmental Impact Report project approvals based thereon, so there is no longer any risk that the Area 3 and 4 Specific Plan and related project approvals can be misunderstood to rely on the update to the General Plan Tune Up EIR to comply with CEQA; and
- (3) That nothing contained in the City Council's certification of the 2013 Newark General Plan Tune Up Environmental Impact Report was intended to affect, limit, or circumvent the judicial review of the Specific Plan Area 3 and 4 EIR or Project in Alameda County Superior Court Case No. RG14709701 or otherwise.

F.1 Initiation of the 2015 Weed Abatement Program and setting a date for a public hearing - from Fire Marshal Guier/ Maintenance Supervisor Carey. (RESOLUTION)

Background/Discussion – The annual weed abatement program abates weeds on vacant commercial and industrial properties not maintained by the property owners as directed by the Fire Marshal. The abatement work consists of tractor mowing, supplemented with manual labor to clear weeds abutting fences and remove debris to facilitate the tractor work. There are 151 industrial, residential and commercial parcels that have large areas of vacant ground that host seasonal weeds that could become a fire hazard. These parcels are located throughout the City.

Property owners have the option to make their own arrangements for weed and debris removal. They must get the work completed prior to the schedule set for the City's contractor. The City's contractor is scheduled to perform weed abatement work in May and June. Property owners will be asked to return a pre-paid postcard to the City indicating that they will abate their own weeds. Alameda County Fire Department staff will inspect the properties prior to the abatement of the weeds. This provides sufficient opportunity for the property owners to perform their own work. All properties that the City performs the abatement work on will be assessed the full cost of that work, including administration costs.

If necessary, an additional fall program will be scheduled to abate seasonal weeds, like tumbleweeds and re-growth of weeds that occur during the summer months. Prior to any supplemental fall weed abatement work, the City will provide written notices to the affected property owners. A second public hearing for the fall program is not required.

Attachment

Action - It is recommended that the City Council, by resolution, initiate the 2015 Weed Abatement Program and set April 9, 2015, as the date for the public hearing.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK FINDING AND DECLARING THAT WEEDS GROWING ON SPECIFIED PROPERTIES ARE SEASONAL AND RECURRENT NUISANCES; AND RUBBISH, REFUSE, AND DIRT UPON PARKWAYS, SIDEWALKS, OR PRIVATE PROPERTY IN THE CITY OF NEWARK ARE PUBLIC NUISANCES AND MUST BE ABATED, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING

WHEREAS, the City Council of the City of Newark hereby finds and determines that weeds are growing upon the streets, sidewalks, or private property in the City of Newark as hereinafter described, and that rubbish, refuse, and dirt is upon its parkways, sidewalks, or private property hereinafter described in the City of Newark and that said City Council hereby declares that all weeds are growing upon the streets, sidewalks, or private property in said City and all rubbish, refuse, and dirt in parkways, or private property in the said City are a public nuisances and the same are hereby ordered abated in the manner provided in Section 39560 to Section 39586, inclusive, of the Government Code of the State of California: and

WHEREAS, the name of said streets, parkways, sidewalks, and private properties are contained in Schedule "A," attached hereto and incorporated herein by reference and made a part of this resolution as though set forth at length;

NOW, THEREFORE BE IT RESOLVED that the City Clerk is hereby directed to mail written notices of the proposed abatement to all persons owning property described in this resolution, said written notice to be mailed to each person to whom such described property is assessed in the last equalized assessment roll available on the date this resolution is adopted by the City Council. The City Clerk shall complete said mailing at least five (5) days prior to the time for hearing of objections by the legislative body. The notice shall be substantially in the form provided by Section 39566 of the Government Code of the State of California, except that notices shall be signed by the City Clerk and the heading of the notice need not comply with Section 39565 of the Government Code;

BE IT FURTHER RESOLVED that a public hearing to hear objections to the proposed removal of weeds, rubbish, refuse, and dirt will be held by the City Council at its regular meeting of April 9, 2015.

Schedule A

| MAP | APN | OWNER | LOCATION |
|-------|-----------------|--------------------------------|------------------------------------|
| 1 | 92A-0720-005-10 | PRESBYTERY OF SAN FRANCISCO | 35450 NEWARK BOULEVARD |
| 2 | 092-0005-029-09 | RAYLENE PIAZZO | 6844 MAYHEWS LANDING RD. |
| 3 | 092-0131-001-09 | FILBERT STREET DEVELOPMENT LLC | FILBERT STREET AT SNOW |
| 3.1 | 092-0131-002-04 | FILBERT STREET DEVELOPMENT LLC | 37243 FILBERT STREET |
| 3.2 | 092-0131-003-00 | FILBERT DEVELOPMENT LLC | 37257 FILBERT STREET |
| 4 | 092-0021-015-03 | BSL CORPORATION | SYCAMORE STREET NEAR GEORGE |
| 5 | 092-0024-010-00 | MARIA L. MARTINS | SYCAMORE STREET NEAR 7303 DAIRY |
| 6 | 092-0029-022-00 | ADELINE CALDEIRA TRS | 36952 MULBERRY STREET |
| 7 | 092-0045-011-00 | ENRIQUE & ESTHER GUERRERO | MAGNOLIA STREET NEAR RICH |
| 8 | 092-0030-014-03 | D & J MELVILLE & P & D CHANG | 6717 THORNTON AVENUE |
| 9 | 092-0030-018-04 | PAUL F. MERRILL | 6781 THORNTON AVENUE |
| 9.1 | 092-0030-017-02 | PAUL F. MERRILL | 6765 THORNTON AVENUE |
| 10 | 092-0032-003-00 | ALAN L DANG | DAIRY AVENUE BETWEEN 36805 & 36926 |
| 11 | 092-0041-008-03 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.1 | 092-0024-017-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.10 | 537-0521-008-01 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.11 | 537-0521-008-02 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.12 | 537-0521-009-02 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.13 | 092-0054-003-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.14 | 092-0200-015-01 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.15 | 092-0253-001-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.16 | 92A-2165-006-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.17 | 92A-2300-007-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.18 | 92A-2300-006-14 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.19 | 92A-2500-005-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.2 | 092-0021-016-01 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.20 | 92A-2500-004-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.21 | 537-0850-021-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.22 | 537-0850-020-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.23 | 537-0850-019-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.24 | 537-0850-018-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.25 | 537-0850-017-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.26 | 092-0054-002-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |

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| 11.27 | 092-0068-003-02 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.28 | 092-0069-002-02 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.29 | 092-0069-003-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.3 | 092-0021-016-02 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.30 | 092-0067-012-05 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.31 | 092-0067-014-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.32 | 092-0067-019-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.33 | 092-0067-020-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.34 | 092-0065-002-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.35 | 092-0064-010-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.36 | 92A-1095-129-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.37 | 92A-1100-058-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.38 | 92A-1105-014-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.39 | 92A-2000-004-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.4 | 092-0015-004-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.40 | 92A-2010-002-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.41 | 092-0127-021-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.42 | 092-0127-020-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.43 | 092-0067-012-05 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.5 | 92A-0506-107-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.6 | 92A-0506-106-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.7 | 92A-0501-030-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.8 | 92A-0502-090-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 11.9 | 92A-0620-061-00 | UNION PACIFIC - REAL ESTATE | SP RAILROAD R-O-W |
| 12 | 92A-2143-041-00 | AMELIA & LEONARD SILVEY | 6163 ROBERTSON AVENUE |
| 13 | 92A-2588-008-03 | SCHNEIDER KURT TR | 38959 TIMBER STREET |
| 14 | 537-0850-002-00 | PICK-N-PULL AUTO DISMANTLERS | 7400 MOWRY AVENUE |
| 15 | 537-0460-007-25 | H AZAD & B PIRGHIBI ETAL | 6953 JARVIS AVENUE |
| 16 | 92A-0919-010-02 | CASA BELLA HOMES | 6249 THORNTON AVENUE |
| 17 | 092-0145-011-00 | JASON B EGGERT ETAL | 7978 WELLS AVENUE |
| 18 | 901-0111-009-00 | A&P CHILDRENS INVESTMENTS LLC | 3970 CEDAR BOULEVARD |
| 19 | 092A-2165-009-04 | PABCO BUILDING PRODUCTS | REDEKER PLACE AT CHERRY |
| 20 | 92A-0501-034-13 | SF BAY WILDLIFE REFUGE c/o J. Bradley | CEDAR BOULEVARD |
| 21 | 092-0115-008-00 | WILLIAM LYON HOMES | 37555 WILLOW STREET HICKORY & WILLOW |
| 22 | 092-0075-001-09 | S & P TRETTIN FAMILY TRUST (Steve Trenton) | MULBERRY STREET AT CLARK |

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| 22.1 | 092-0075-001-03 | S & P TRETTIN FAMILY TRUST | MULBERRY STREET AT CLARK |
| 22.2 | 092-0074-001-04 | S & P TRETTIN FAMILY TRUST | MULBERRY STREET AT CLARK |
| 22.3 | 092-0074-001-09 | S & P TRETTIN FAMILY TRUST | CLARK AVENUE AT MULBERRY |
| 22.4 | 092-0074-001-08 | S & P TRETTIN FAMILY TRUST | CLARK AVENUE AT MULBERRY & OLIVE |
| 22.5 | 092-0074-001-01 | S & P TRETTIN FAMILY TRUST | CLARK AVENUE AT OLIVE |
| 24 | 092-0075-004-02 | SARWAT & COLETTE FAHMY TRS | CHERRY STREET |
| 24.1 | 092-0075-005-02 | SARWAT & COLETTE FAHMY TRS | CHERRY STREET |
| 25 | 092-0210-002-01 | MORTON SALT INC. - HARRY SHAH | CENTRAL AVENUE & MORTON |
| 26 | 537-0460-007-28 | FRANCISCAN GLASS COMPANY | 35255 FIRCREST STREET |
| 26.1 | 537-0460-021-01 | FRANCISCAN GLASS COMPANY | FIRCREST STREET |
| 27 | 092-0083-009-00 | CHAND KIRAN | 36915 LOCUST STREET |
| 28 | 92A-2300-006-12 | SKW MBT OPERATIONS INC . (BASF) | 38403 CHERRY STREET |
| 29 | 92A-0750-008-00 | HOLY REDEEMER LUTHERAN CHURCH | 35660 CEDAR BOULEVARD |
| 30 | 92A-2143-042-00 | FRANK & SUSAN CHEN | 6179 ROBERTSON AVENUE |
| 31 | 901-0185-018-00 | SI XVIII LLC | CHERRY STREET LOT 1 |
| 31.1 | 901-0185-023-00 | SI XVIII LLC | CHERRY STREET LOT 2 |
| 31.2 | 901-0185-024-00 | SI XVIII LLC | STEVENSON BOULEVARD |
| 32 | 92A-0462-125-00 | SATISH KUMAR & KESHI L. | 8215 THORNTON AVENUE |
| 33 | 901-0188-006-00 | LION NEWARK SHOPPING CNTR. | 39055 CEDAR BOULEVARD |
| 34 | 092-0126-019-00 | SMCTD | SMCTD RAILROAD R-O-W LOCUST & ELM |
| 34.1 | 092-0125-017-00 | SMCTD | SMCTD RAILROAD R-O-W WALNUT & LOCUST |
| 34.2 | 092-0124-022-00 | SMCTD | SMCTD RAILROAD R-O-W SPRUCE & WALNUT |
| 34.3 | 092-0119-099-00 | SMCTD | SMCTD RAILROAD R-O-W SPRUCE |
| 34.4 | 092-0100-008-02 | SMCTD | SMCTD RAILROAD R-O-W WILLOW |
| 34.5 | 092-0100-008-01 | SMCTD | SMCTD RAILROAD R-O-W WEST OF WILLOW |
| 35 | 537-0852-001-02 | FMC CORPORATION | 8787 ENTERPRISE DR. |
| 36 | 092-0115-011-00 | FMC CORPORATION | 37445 WILLOW STREET |
| 36.1 | 092-0100-004-02 | FMC CORPORATION | WILLOW STREET NORTH OF ENTERPRISE |
| 37 | 92A-0465-045-04 | RONALD MILLER ETAL | 7721 SUNSET AVENUE |
| 38 | 92A-0720-025-00 | MAURICE LADRECH LIVING TRUST | 35178 NEWARK BOULEVARD |
| 39 | 92A-2143-040-01 | ARBUTUS & DAVID MILANI | ROBERTSON AVENUE AND HONEYSUCKLE |
| 40 | 092-0116-060-00 | NEWARK ENTERPRISE JOINT VENTURE LLC | 8300 ENTERPRISE DRIVE |
| 40.1 | 092-0116-059-00 | NEWARK ENTERPRISE JOINT VENTURE LLC | WILLOW STREET |

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| 40.2 | 092-0116-058-00 | NEWARK ENTERPRISE JOINT VENTURE LLC | 8400 ENTERPRISE DRIVE |
| 41 | 92A-2143-039-00 | LEONARD S & A. M. SILVEY TRS | 6139 ROBERTSON AVENUE |
| 42 | 092-0115-010-00 | WILLIAM LYON HOMES | HICKORY STREET WILLOW & HICKORY |
| 43 | 537-0850-003-00 | NEWARK PARTNERS LLC | MOWRY AVENUE WEST OF TRACKS |
| 43.1 | 537-0850-004-00 | NEWARK PARTNERS LLC | MOWRY AVENUE WEST OF TRACKS |
| 44 | 092-0124-014-00 | TOMAS & CONCEPCION M. SIERRA | RAILROAD AVENUE SPRUCE & WALNUT |
| 45 | 092-0125-010-00 | STANLEY R. CHERRY TRS | 7843 RAILROAD AVE BETWEEN LOCUST & WALNUT |
| 46 | 901-0111-004-00 | SYUFY ENTERPRISES | BALENTINE DRIVE |
| 47 | 92A-1036-029-02 | ASHIT JAIN | 6214 THORNTON AVENUE |
| 48 | 092-0134-002-00 | LOUIE FAY TR | RAILROAD AVE BETWEEN LOCUST & ELM |
| 49 | 092-0135-023-00 | SEAMONKEY LLC | WALNUT STREET CORNER LOT |
| 51 | 092-0119-015-00 | ROSE L BERNARDO TRUST/Carol Ann Davis | 8084 THORNTON AVE. |
| 52 | 537-0460-013-00 | SANTA RITA INVESTMENTS | 6800 OVERLAKE PL. |
| 53 | 92A-1036-031-02 | JOHN JR & SHIRLEY ELIZARREY TRS | 6152 THORNTON AVENUE |
| 54 | 092A-1036-041-00 | JOSEPH & LILY AU TRS | NEWARK BOULEVARD AND CIVIC TERR |
| 55 | 092-0252-001-00 | NORDSTROM, INC. | 37599 FILBERT STREET |
| 56 | 092A-2141-032-00 | LEI CHEN | 37802 LOBELIA DRIVE |
| 57 | 092-0030-016-02 | CLARENCE & DOROTHY MARTIN TRS | 6749 THORNTON AVENUE |
| 58 | 092-0041-002-01 | SIMON TANIOS | 36964 ASH STREET |
| 59 | 901-0195-039-00 | NEWARK ATRIUM LLC | 39850 & 39888 CEDAR BLVD |
| 60 | 92A-2165-013-01 | MILPRINT PACKAGING | 6590 CENTRAL AVENUE |
| 61 | 92A-2586-076-00 | YU-JEH L. WANG | BIRCH STREET ON CEDAR |
| 62 | 092-0100-007-05 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62 | 092-0100-007-05 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.1 | 092-0140-003-02 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.10 | 92A-2357-031-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.11 | 92A-2416-015-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.12 | 92A-2416-013-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.13 | 92A-2585-002-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.14 | 92A-2585-027-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.15 | 92A-2588-002-01 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.2 | 092-0116-004-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.3 | 092-0145-010-01 | CITY & CO SF WATER DEPT | WILLOW STREET |

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| 62.4 | 092-0146-023-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.5 | 092-0068-001-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.6 | 092-0074-002-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.7 | 092-0074-002-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.8 | 092-0075-007-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 62.9 | 92A-2141-002-00 | CITY & CO SF WATER DEPT | WILLOW STREET |
| 63 | INFO BELOW | | |
| 65 | 092-012701-300 | PHARMACEUTICAL INC. & YANG YANHUA | 37079 ASH ST. |
| 66 | 537-085201-100 | DUMBARTON AREA 2 LLC | ENTERPRISE DR. AT HICKORY |
| 67 | 92011500500 | ASHLAND | 8610 ENTERPRISE DR. |
| 68 | 092 014000600 | ENTERPRISE DR. LLC | 8333 ENTERPRISE DR. |
| 69 | 092 003001300 | 36951 MULBERRY ST. | 36951 MULBERRY ST. |
| 70 | 092A258800704 | COUNTY OF ALAMEDA | TIMBER ST. AT CEDAR CT. |
| | | | |
| | | ALTERNATE MAILING ADDRESSES | |
| 63 | 92A-0623-043-00 | STEPHEN SCHIRLE | 36569 NEWARK BLVD |
| 63 | 92A-0623-043-00 | EDWARD LEWIS | 36569 NEWARK BLVD |
| 63 | 92A-0623-043-00 | SHARON RAAB | 36569 NEWARK BLVD |
| 29 | 92A-0750-008-00 | HOLY REDEEMER CHURCH c/o J. Schaefer | 35660 CEDAR BOULEVARD |

F.2 Second reading and adoption of an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code) – from City Clerk Harrington. (ORDINANCE)

Background/Discussion – On February 12, 2015, the City Council introduced an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code). The zoning change is for 36120 Ruschin Drive (the former Ruschin Elementary School).

Attachment

Action –Staff recommends that the City Council adopt an ordinance amending Title 17 (Zoning) of the Newark Municipal Code, Section 17.44.010 "Zoning Map" by rezoning all that real property shown on Vesting Tentative Map 8212 (APN: 92A-775-46) from R6000 (Single Family Residential) to LDR-FBC (Low Density Residential-Form Based Code).

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 VESTING TENTATIVE MAP 8212 (APN: 92A-775-46) FROM R6000 (SINGLE FAMILY RESIDENTIAL) TO LDR-FBC (LOW DENISTY RESIDENTIAL-FORM BASED CODE)

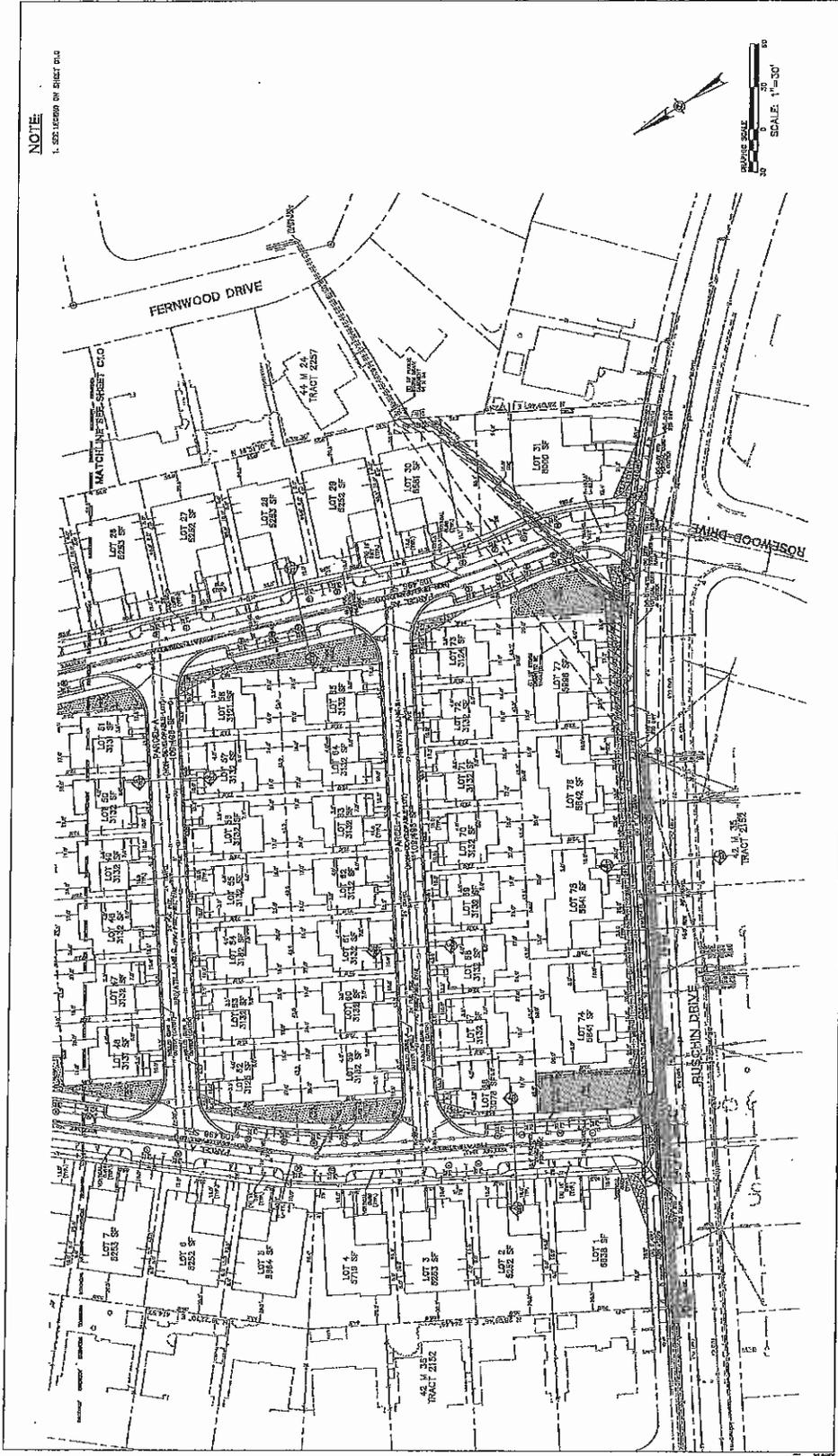
The City Council of the City of Newark does ordain as follows:

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 R-6000 (Single Family Residential) to LDR-FBC (Low Density Residential – Form Based Codes) hereinafter described as follows:

All that real property designated as Vesting Tentative Map 8212 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.



NOTE:
1. SEE LEGEND ON SHEET D-10

VESTING TENTATIVE MAP
 SUBMITTED 1/28/04 BY THE MAPPER
 BKF



BKF
 10551 TAYLOR STREET, SUITE 200
 SAN JOSE, CA 95128
 408-972900 408-972599

NEWARK, CALIFORNIA

CLASSICS AT NEWARK, TRACT 8212
 CLASSIC COMMUNITIES

C1.1

EXHIBIT A

F.3 Approval of the 2014-2015 Pavement Maintenance Program and authorization to advertise for bids for 2015 Street Patch Paving Program, Project 1092; 2015 Street Asphalt Concrete Overlay Program, Project 1093; and 2015 Street Slurry Seal Program, Project 1094 – from Assistant City Engineer Fajeau. (MOTION)

Background/Discussion – The 2014-2016 Biennial Budget for the 2014-2015 Pavement Maintenance Program includes \$1,000,000 for this year’s patch paving, asphalt concrete overlay, and slurry seal projects. Based on the current Pavement Condition Index (PCI) determined by visual assessment of the streets in the City, staff recommends the following scope of work for these three projects.

2015 Street Patch Paving Program, Project 1092

Patch paving consists of the removal and replacement of localized pavement failures. The project includes work on streets that will be resurfaced with slurry seal. It also includes streets where a failure is too severe to correct with a surface (skin) patch, but the entire street does not need structural upgrading with an asphalt concrete overlay. This year’s work locations are shown on the attached location map. There may be additional locations requiring repair work that will be revealed as this rainy season progresses. If necessary, these locations will be added to the project before it is advertised for bids in April. The Preliminary Engineer’s Estimate for this project is \$100,000.

Staff recommends combining the 2015 Street Patch Paving Program with the 2015 Street Asphalt Concrete Overlay Program to result in better unit prices.

2015 Street Asphalt Concrete Overlay Program, Project 1093

Asphalt concrete overlays involve the placement of an additional layer of asphalt concrete on those streets showing a relatively uniform distress pattern over most of the pavement surface. This condition indicates that the pavement needs structural upgrading to accommodate current and future traffic loads. A structural upgrade will prevent complete failure of the street pavement and avoid the very expensive process of complete reconstruction. The increased structural strength extends the life of the streets at least ten years.

The streets recommended for asphalt concrete overlay this year are shown on the attached location map. The Preliminary Engineer’s Estimate for this project is \$650,000.

Bid results will be presented to the City Council in May or June 2015, with the actual work anticipated to be done in July and August 2015.

2015 Street Slurry Seal Program, Project 1094

Slurry seal is the application of a thin layer of sand, aggregate, and asphalt emulsion mixture to those streets that show surface wear and minor cracking. This surface seal is not a structural upgrade but minimizes water intrusion into the pavement base, thereby extending the life of the street. This preventative maintenance process is a cost-effective measure to prolong the life of City streets and maximize the value of previous investments. Work locations for 2015 are shown

on the attached location map. The inclusion of a street in this project depends on the extent of surface wear or other distress conditions. The preliminary Engineer's Estimate for this project is \$250,000.

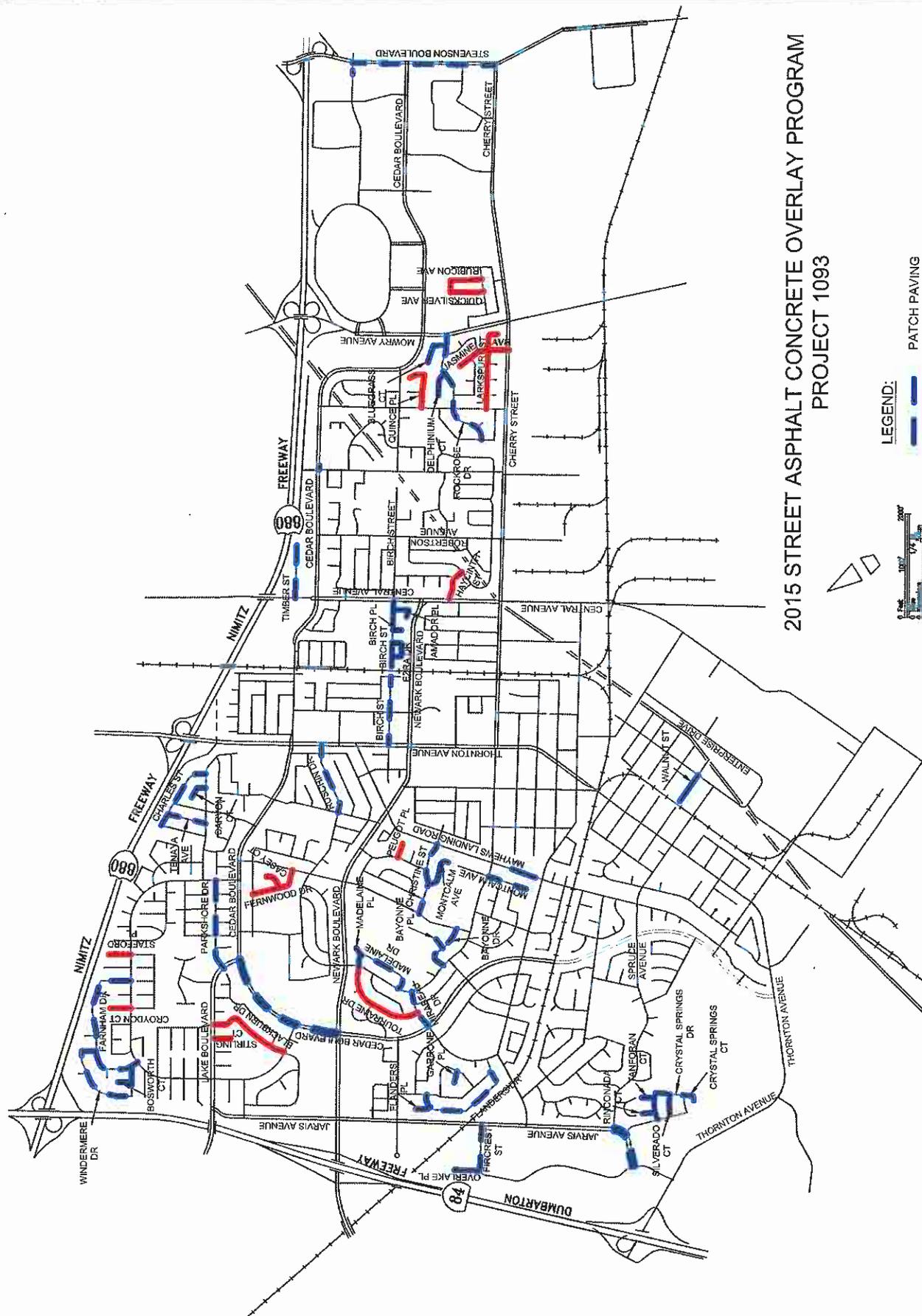
Bid results will be presented to the City Council in June 2015, with the actual resurfacing work to be done during August 2015.

Approval of the plans and specifications for each project will be requested at the time the bid results are presented to the City Council. As in previous years the restriping of pavement center and lane lines, crosswalks, and pavement legends will be included in the slurry seal contract. The restriping will again be an application of thermoplastic material, sprayable for striping and extruded for crosswalks and legends.

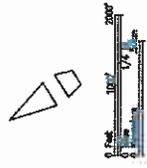
Attachment

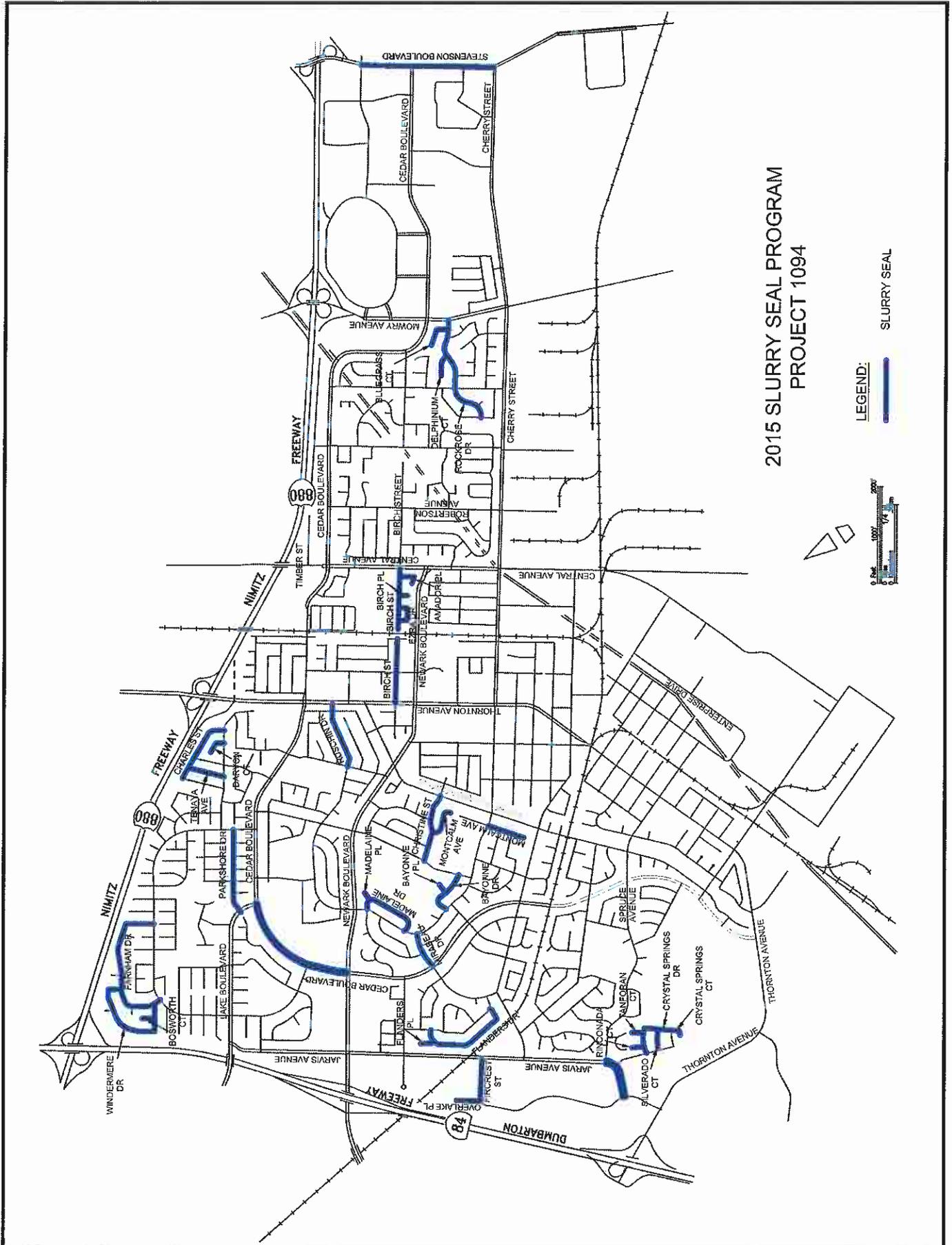
Action - It is recommended that the City Council, by motion, approve the 2014-2015 Pavement Maintenance Program and authorize advertising for bids for 2015 Street Patch Paving Program, Project 1092; 2015 Street Asphalt Concrete Overlay Program, Project 1093; and 2015 Street Slurry Seal Program, Project 1094.

2015 STREET ASPHALT CONCRETE OVERLAY PROGRAM PROJECT 1093



- LEGEND:**
- ASPHALT CONCRETE OVERLAY
 - PATCH PAVING





2015 SLURRY SEAL PROGRAM
PROJECT 1094

LEGEND:
 SLURRY SEAL



L. APPROPRIATIONS



City of Newark

MEMO

DATE: February 12, 2015

TO: City Council

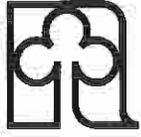
FROM: Sheila Harrington, City Clerk *A.H.*

SUBJECT: Approval of Audited Demands for the City Council Meeting of February 26, 2015.

REGISTER OF AUDITED DEMANDS

Bank of America General Checking Account

| <u>Check Date</u> | | <u>Check Numbers</u> | |
|-------------------|-----------|----------------------|-----------|
| February 6, 2015 | Pages 1-2 | 103890 to 103943 | Inclusive |
| February 13, 2015 | Pages 1-2 | 103944 to 104026 | Inclusive |



City of Newark

MEMO

DATE: February 12, 2015
TO: Sheila Harrington, City Clerk
FROM: Susie Woodstock, Administrative Services Director *SW*
SUBJECT: Approval of Audited Demands for the City Council Meeting of February 26, 2015.

The attached list of Audited Demands is accurate and there are sufficient funds for payment.

RECEIVED
FEB 12 2015
CITY CLERK

Final Disbursement List. Check Date 02/06/15, Due Date 02/16/15, Discount Date 02/16/15, Computer Checks.
 Bank 1001 BANK OF AMERICA

| MICR Check# | Vendor Number | Payee | Check Date | Check Amount | Description |
|-------------|---------------|--|------------|--------------|--|
| 103890 | 7922 | AAP ATTN ANNETTE PAREDES | 02/06/15 | 110.00 | MATURE DRIVING COURSE |
| 103891 | 10027 | AD SERVICES | 02/06/15 | 65.00 | COURIER SERVICES |
| 103892 | 10449 | AFLAC ATTN: REMITTANCE PROCESSING SERVIC | 02/06/15 | 1,679.90 | PAYROLL PREMIUMS |
| 103893 | 1396 | ALAMEDA COUNTY FIRE DEPARTMENT ATTN: ACC | 02/06/15 | 9,047.84 | FIRE TRUCK SERVICE & REPAIRS |
| 103894 | 2036 | ALAMEDA COUNTY SHERIFF'S OFFICE REGIONAL | 02/06/15 | 580.00 | PATROL POST TRAINING |
| 103895 | 344 | ALAMEDA COUNTY WATER DISTRICT | 02/06/15 | 29.92 | FY14-15 WATER CHARGES |
| 103896 | 5821 | ALL CITY MANAGEMENT SERVICES, INC | 02/06/15 | 3,099.38 | CROSSING GUARD SVCS |
| 103897 | 348 | AT&T | 02/06/15 | 77.70 | ANNUAL TELECOM FY2014-15 |
| 103898 | 134 | BATTERY SYSTEMS | 02/06/15 | 364.77 | FY14-15 VEHICLE BATTERIES |
| 103899 | 4534 | BAY AREA BARRICADE SERVICE INC | 02/06/15 | 1,629.01 | STREET SIGNS |
| 103900 | 9680 | BAY CENTRAL PRINTING | 02/06/15 | 106.82 | BUSINESS CARDS |
| 103901 | 3046 | BEELINE GLASS CO INC | 02/06/15 | 180.52 | FY14-15 GLASS REPAIRS |
| 103902 | 10301 | MARTHA G BRONITSKY | 02/06/15 | 465.50 | PAYROLL WITHHOLDING |
| 103903 | 9888 | BUREAU VERTAS NORTH AMERICA INC FILE 59 | 02/06/15 | 4,603.05 | BLDG INSPECTION SERVICES |
| 103904 | 9150 | CAL-WEST LIGHTING & SIGNAL MAINTENANCE I | 02/06/15 | 15,038.45 | FY14-15 TRAFFIC SIGNAL AND STREET LIGHT |
| 103905 | 447 | CALIFORNIA HYDRONICS CORP | 02/06/15 | 1,171.65 | FY14-15 ELECTRIC MOTORS & PUMPS |
| 103906 | 5337 | CDW GOVERNMENT INC | 02/06/15 | 118.81 | INK CARTRIDGE |
| 103907 | 6304 | CLASSIC GRAPHICS T & J LEWIS INC | 02/06/15 | 1,137.52 | INVOICE# 32984 |
| 103908 | 10060 | COMCAST | 02/06/15 | 75.73 | CABLE SVCS |
| 103909 | 1109 | CAPITAL ONE COMMERCIAL | 02/06/15 | 642.36 | PROGRAM SUPPLIES |
| 103910 | 10794 | DUKE DE LEON | 02/06/15 | 540.00 | VIDEO SERVICES |
| 103911 | 7631 | DELTA DENTAL | 02/06/15 | 6,836.25 | PAYROLL PREMIUMS |
| 103912 | 7641 | DELTA DENTAL INSURANCE COMPANY ATTN: ACC | 02/06/15 | 494.25 | PAYROLL PREMIUMS |
| 103913 | 184 | DEPARTMENT OF TRANSPORTATION CASHIER HQ | 02/06/15 | 861.97 | FY14/15 SHARED ENERGY/MAINTENANCE |
| 103914 | 5012 | DIT SOLUTIONS INC | 02/06/15 | 1,017.66 | AUTODRSK AUTOCAD RENEWAL FOR 2015 |
| 103915 | 9796 | DRAEGER SAFETY DIAGNOSTICS INC | 02/06/15 | 112.87 | PAS MACHINE PARTS |
| 103916 | 10904 | EAST BAY REFRIGERATION | 02/06/15 | 311.84 | REFRIGERATOR MAINT |
| 103917 | 4731 | EWING IRRIGATION PRODUCTS INC | 02/06/15 | 835.30 | IRRIGATION PARTS |
| 103918 | 1733 | FIRST BAPTIST CHURCH | 02/06/15 | 80.00 | PAYROLL CONTRIBUTION |
| 103919 | 5106 | CITY OF FREMONT FINANCIAL SERVICES OFFIC | 02/06/15 | 5,730.30 | SHELTER OPERATING EXPS |
| 103920 | 11224 | FREMONT RECYCLING & TRANSFER STATION | 02/06/15 | 27,404.59 | TRANSFER STATION FEES |
| 103921 | 7783 | GOLDEN WEST TRAVEL INC | 02/06/15 | 2,816.00 | SR TRIP 1/20/15 |
| 103922 | 10707 | GYM DOCTORS | 02/06/15 | 150.00 | FITNESS EQUIPMENT MTC |
| 103923 | 2802 | HAYWARD POLICE DEPARTMENT C/O CAPTAIN JA | 02/06/15 | 80.00 | COUNTY COMMANDERS RETREAT |
| 103924 | 1762 | IACP | 02/06/15 | 1,935.90 | INT'L ASSOC POLICE CHIEF MEMB |
| 103925 | 7618 | METLIFE SBC | 02/06/15 | 67.54 | PAYROLL WITHHOLDING |
| 103926 | 2460 | PERS LONG-TERM CARE PROGRAM | 02/06/15 | 421.52 | MAIL MACHINE SUPPLIES |
| 103927 | 10683 | PITNEY BOWES GLOBAL FINANCIAL SVCS | 02/06/15 | 3,327.18 | OUTFITTING OF VEHICLE #2 |
| 103928 | 3674 | PRIORITY 1 PUBLIC SAFETY EQUIPMENT INSTA | 02/06/15 | 2,814.61 | COPIER RENTAL AGREEMENT RESO#10263 |
| 103929 | 11234 | RAY MORGAN COMPANY | 02/06/15 | 235,157.29 | P1065 AND P1095 CURB, GUTTER, AND SIDEWA |
| 103930 | 9547 | ROSAS BROTHERS CONSTRUCTION | 02/06/15 | 200.00 | MUSIC FOR CHILD CARE 2/26/15 |
| 103931 | 9870 | KATHLEEN RUSHING | 02/06/15 | 730.00 | LITIGATION AND CONSULTING |
| 103932 | 11074 | RUTAN & TUCKER LLP | 02/06/15 | 275.99 | ELECTRICAL SUPPLIES |
| 103933 | 112 | WILLE ELECTRICAL SUPPLY CO INC | 02/06/15 | 2,194.33 | OFFICE SUPPLIES |
| 103934 | 40 | STAPLES ADVANTAGE DEPT LA | 02/06/15 | 150.00 | PAYROLL WITHHOLDING |
| 103935 | 2778 | STATE OF CALIFORNIA FRANCHISE TAX BOARD | 02/06/15 | 135.00 | PAYROLL WITHHOLDING |
| 103936 | 2778 | STATE OF CALIFORNIA FRANCHISE TAX BOARD | 02/06/15 | 1,004.77 | LOIB AREA IMPROVEMENT DIST#34 |
| 103937 | 3930 | UNION BANK OF CALIFORNIA N.A. CORPORATE | 02/06/15 | 388.98 | PAYROLL PREMIUMS BCN#R0246926 |
| 103938 | 8751 | PROVIDENT LIFE & ACCIDENT INSURANCE COMP | 02/06/15 | 16,886.66 | ANNUAL TELECOM FY2014-15 |
| 103939 | 10968 | UTILITY TELEPHONE | 02/06/15 | 562.70 | CELLULAR SERVICE & EQUIPMENT FY2014-15 |
| 103940 | 5623 | VERIZON WIRELESS | 02/06/15 | | |

| Check# | Vendor Number | Payee | Check Date | Check Amount | Description |
|--------|---------------|---------------------------|------------|--------------|--------------------------|
| 103941 | 5050 | WEST COAST ARBORISTS INC | 02/06/15 | 9,137.50 | STREET/PARK TREE PRUNING |
| 103942 | 143 | WILCO SUPPLY P O BOX 3047 | 02/06/15 | 145.52 | FY14-15 LOCKS & SUPPLIES |
| 103943 | 3245 | ZUMAR INDUSTRIES INC | 02/06/15 | 2,519.25 | FY14-15 STEEL POSTS |
| | | | | Total | 365,699.70 |

Final Disbursement List. Check Date 02/13/15, Due Date 03/02/15, Discount Date 03/02/15. Computer Checks.

| MICR check# | Vendor Number | Payee | Check Date | Check Amount | Description |
|-------------|---------------|--|------------|--------------|--|
| 03944 | 10736 | ARACUS PRODUCTS INC | 02/13/15 | 384.96 | PRINTING SVCS |
| 03945 | 10223 | LEXISNEXIS RISK DATA MANAGEMENT INC | 02/13/15 | 435.00 | BACKGROUND CHECKS |
| 03946 | 11094 | ACME AUTO LEASING, LLC | 02/13/15 | 1,909.44 | ARMORED RESCUR VEH LEASE |
| 03947 | 332 | ADAMSON POLICE PRODUCTS PROFESSIONAL POL | 02/13/15 | 18.54 | MISCELLANEOUS PURCHASES |
| 03948 | 1396 | ALAMEDA COUNTY FIRE DEPARTMENT ATTN: ACC | 02/13/15 | 568,052.84 | FIRE SERVICES CONTRACT |
| 03949 | 3853 | COUNTY OF ALAMEDA INTERNAL AUDIT UNIT RI | 02/13/15 | 1,014.50 | CITATION PROCESSING |
| 03950 | 287 | ALAMEDA COUNTY SHERIFF'S OFFICE HUMAN RE | 02/13/15 | 175.00 | ALCO COURTHOUSE SECURITY CLEARANCE |
| 03951 | 284 | TREASURER OF ALAMEDA COUNTY INFORMATION | 02/13/15 | 2,923.09 | AMS ACCESS FEES |
| 03952 | 11209 | ASSOCIATED RIGHT OF WAY SVCS | 02/13/15 | 375.00 | CONSULTING AND APPRAISALS |
| 03953 | 147 | AT&T MOBILITY | 02/13/15 | 1,971.99 | CELL SVC FOR MDT'S |
| 03954 | 6900 | BARTEL ASSOCIATES LLC | 02/13/15 | 2,600.00 | ACTUARIAL REPORTS |
| 03955 | 134 | BATTERY SYSTEMS | 02/13/15 | 152.60 | FY14-15 VEHICLE BATTERIES |
| 03956 | 9680 | BAY CENTRAL PRINTING | 02/13/15 | 106.82 | BUSINESS CARD IMPRINTING |
| 03957 | 1131 | BAY ISLAND OFFICIALS ASSOCIATION ATTN FR | 02/13/15 | 510.00 | GAME OFFICIALS |
| 03958 | 23 | FRANK BONETTI PLUMBING INC | 02/13/15 | 1,333.75 | FY 14-15 PLUMBING REPAIRS |
| 03959 | 2970 | MICHAEL BONNIE COMPUTER CONSULTING GROUP | 02/13/15 | 375.00 | BLDG PERMIT MAINTENANCE AND SUPPORT |
| 03960 | 10301 | MARTHA G BRONITSKY | 02/13/15 | 465.50 | PAYROLL WITHHOLDING |
| 03961 | 9150 | CAL-WEST LIGHTING & SIGNAL MAINTENANCE I | 02/13/15 | 6,541.26 | FY14-15 TRAFFIC SIGNAL AND STREET LIGHT |
| 03962 | 214 | CENTRAL VETERINARY HOSPITAL | 02/13/15 | 63.00 | K9 VET SVCS |
| 03963 | 11026 | CINTAS DOCUMENT MANAGEMENT | 02/13/15 | 112.94 | SHREDDING SVCS |
| 03964 | 806 | CLASSIC SIGNS | 02/13/15 | 32.50 | NAVETAGS FOR 3 COUNCIL AND CITY MANAGER |
| 03965 | 3751 | BRYAN COBB | 02/13/15 | 31.70 | MILEAGE/MISC EXPENSE |
| 03966 | 10970 | COCA COLA REFRESHMENTS UNION CITY SALES | 02/13/15 | 548.30 | CAFE PURCHASES |
| 03967 | 10060 | COMCAST | 02/13/15 | 13.90 | CABLE FOR SERVICE CENTER |
| 03968 | 11264 | CORNERSTONE EARTH GROUP INC | 02/13/15 | 17,225.00 | CONTRACT |
| 03969 | 10649 | STAR ROOPER & PLUMBING INC | 02/13/15 | 1,000.00 | PERFORMANCE BOND RTN |
| 03970 | 10649 | KING TRENCHLESS INC | 02/13/15 | 1,000.00 | PERFORMANCE BOND RTN |
| 03971 | 10649 | GARY TURNER | 02/13/15 | 2,000.00 | PERFORMANCE BOND RTN |
| 03972 | 10649 | DR HORTON ATTN: JULIE NEBOZUK | 02/13/15 | 264.00 | PLAN FEE REFUND |
| 03973 | 10793 | THERESA RICHARD | 02/13/15 | 285.00 | RENTAL DEPOSIT RTN |
| 03974 | 10793 | CHARLES MORROW | 02/13/15 | 60.00 | TRIP CANCELLATION |
| 03975 | 10793 | GLENDIA TIWANA | 02/13/15 | 203.00 | SR TRIP WITHDRAWAL |
| 03976 | 10793 | JOYCE JURUKOV | 02/13/15 | 145.00 | COURSE CANCELLATION REFUND |
| 03977 | 7183 | DEMARAY'S GYMNASTICS ACADEMY | 02/13/15 | 778.05 | RECREATION CONTRACT |
| 03978 | 3728 | DEPARTMENT OF JUSTICE ACCOUNTING OFFICE | 02/13/15 | 128.00 | FINGERPRINTING FEE ANNUAL PURCHASE ORDER |
| 03979 | 309 | EMBLEM ENTERPRISES, INC. | 02/13/15 | 574.61 | PATCHES |
| 03980 | 904 | EMPLOYMENT DEVELOPMENT DEPARTMENT ATTN: | 02/13/15 | 1,689.00 | STATE UNEMPLOYMENT INSURANCE DUES |
| 03981 | 11132 | SEAN ERIKSEN | 02/13/15 | 863.49 | EDUCATIONAL REIMBURSEMENT FOR ETHICS IN |
| 03982 | 7663 | FIDELITY SECURITY LIFE INSURANCE/EYEMED | 02/13/15 | 674.65 | PAYROLL PREMIUMS |
| 03983 | 1120 | FORENSIC ANALYTICAL SCIENCES, INC | 02/13/15 | 622.00 | LAB TESTS |
| 03984 | 5106 | CITY OF FREMONT FINANCIAL SERVICES OFFIC | 02/13/15 | 2,500.00 | CASE MGMT SERVICES |
| 03985 | 11224 | FREMONT RECYCLING & TRANSFER STATION | 02/13/15 | 11,193.21 | GARBAGE SERVICES CY2015 |
| 03986 | 550 | FREMONT RUBBER STAMP CO INC | 02/13/15 | 52.81 | STAMPERS |
| 03987 | 10857 | FREMONT TILE & CARPET LLC | 02/13/15 | 3,717.30 | TILE REPAIR AT SILLIMAN |
| 03988 | 313 | FREMONT URGENT CARE CENTER | 02/13/15 | 54.00 | PRE-EMPLOYMENT AND DOT PHYSICAL SERVICES |
| 03989 | 2215 | FREMONT WHEEL & BRAKE | 02/13/15 | 832.83 | WHEEL ALIGNMENT AND REPAIR |
| 03990 | 11219 | APRIL HARRIS | 02/13/15 | 187.50 | RECREATION CONTRACT |
| 03991 | 167 | HARRIS COMPUTER SYSTEMS | 02/13/15 | 970.20 | ANNUAL WINEGRATE SUPPORT |
| 03992 | 2268 | HORTSCIENCE INC | 02/13/15 | 1,219.75 | ARBORIST REVIEW OF EUCALYPTUS TREE |
| 03993 | 10663 | HOSE & FITTING ETC | 02/13/15 | 88.66 | FY14-15 HYDRAULIC HOSES, PARTS, REPAIR |
| 03994 | 11123 | I PIZZA | 02/13/15 | 1,073.40 | CAFE PIZZAS |

ICS-AP Accounts Payable Release 8.3.0 R*APZCKREG*FDL

BY SHEILA GROCH (SGROCH)

Final Disbursement List. Check Date 02/13/15, Due Date 03/02/15, Discount Date 03/02/15. Computer Checks.

Bank 1001 BANK OF AMERICA

| MICR check# | Vendor Number | Payee | Check Date | Check Amount | Description |
|----------------|--|-------|---------------|-----------------|---|
| 10889 | BRITAIN JACKMAN | | 02/13/15 | 178.35 | K-9 MEDICATIONS/SUPPLIES |
| 6009 | JT2 INTEGRATED RESOURCES ATTN: CLAIMS AC | | 02/13/15 | 21,642.70 | WORKER'S COMPENSATION REIMBURSEMENT ANNUA |
| 579 | ALICE M KROPA | | 02/13/15 | 50.44 | WATER REIMBURSEMENT |
| 711 | LEXISNEXIS | | 02/13/15 | 160.00 | LEGAL ONLINE RESOURCE |
| 11246 | LOOMIS ARMORED | | 02/13/15 | 577.25 | ARMORED CAR SERVICE |
| 6596 | CHOMVAN LOYH | | 02/13/15 | 659.87 | SLI GRADUATION EXPENSES. |
| 3005 | JEFFREY WAPES | | 02/13/15 | 1,018.50 | PATROL TRAINING EXPENSES |
| 11205 | MARINA ZEPEDA TRI COUNTY BLDG MAINT | | 02/13/15 | 19,342.80 | FY14-15 JANITORIAL SERVICES |
| 11089 | NEWARK AUTO SERVICE | | 02/13/15 | 1,391.71 | FY14-15 SMOGS AND REPAIRS |
| 4603 | CHLONE VETERINARY EMERGENCY CLINIC | | 02/13/15 | 199.23 | CANINE PROGRAM |
| 349 | PACIFIC GAS & ELECTRIC | | 02/13/15 | 48.59 | FY14-15 STREET/TRAFFIC LIGHT ENERGY |
| 2460 | PERS LONG-TERM CARE PROGRAM | | 02/13/15 | 67.54 | PAYROLL PREMIUMS |
| 1935 | PREFERRED ALLIANCE INC ATTN: ACCOUNTS RE | | 02/13/15 | 1,239.36 | ANNUAL DOT DRUG TESTING PROGRAM FEE |
| 10668 | PRUDENTIAL OVERALL SUPPLY | | 02/13/15 | 1,307.40 | FY14-15 MATS/TOWELS/UNIFORMS |
| 4346 | QUALITY SIGN & BANNER | | 02/13/15 | 160.95 | FY14-15 SIGNS & BANNERS |
| 4176 | MICHAEL QUEBEC | | 02/13/15 | 770.60 | RECREATION CONTRACT |
| 11203 | R.F. MACDONALD | | 02/13/15 | 500.00 | FY 14-15 BOILER REPAIRS/SERVICE |
| 11074 | RUTAN & TUCKER LLP | | 02/13/15 | 3,783.00 | LITIGATION AND CONSULTING |
| 654 | SFPUC-WATER DEPARTMENT CUSTOMER SERVICE | | 02/13/15 | 2,878.05 | FY14-15 HET HETCHY RENT |
| 112 | WILLE ELECTRICAL SUPPLY CO INC | | 02/13/15 | 623.59 | ELECTRICAL SUPPLIES |
| 11098 | SILVER & WRIGHT LLP | | 02/13/15 | 1,966.48 | CONSULTING AND LITIGATION SERVICES |
| 377 | SIMON & COMPANY INC | | 02/13/15 | 1,956.66 | LEGISLATIVE SERVICES |
| 1683 | S.B.R.P.S.T.C. | | 02/13/15 | 355.00 | RECORDS POST TRAINING |
| 2778 | STATE OF CALIFORNIA FRANCHISE TAX BOARD | | 02/13/15 | 150.00 | PAYROLL WITHHOLDING |
| 2778 | STATE OF CALIFORNIA FRANCHISE TAX BOARD | | 02/13/15 | 135.00 | PAYROLL WITHHOLDING |
| 7517 | U S FOODS INC SAN FRANCISCO | | 02/13/15 | 1,093.87 | CAFE PURCHASES |
| 10944 | UNIFORMS 2U, INC. | | 02/13/15 | 73.02 | SET SUPPLIES |
| 1161 | THE UNITED STATES CONFERENCE OF MAYORS | | 02/13/15 | 3,489.00 | MEMBERSHIP DUES |
| 853 | VALLEY OIL COMPANY DEPT# 35101 | | 02/13/15 | 14,559.62 | FUEL FOR CITY YARD PUMPS |
| 5623 | VERIZON WIRELESS | | 02/13/15 | 2,647.66 | CELL SVC FOR IPHONES |
| 7684 | WARNACO SWIMWEAR GRP/AFC | | 02/13/15 | 877.36 | RETAIL GOGGLES AND SWIM CAPS |
| 8714 | WESTERN PACIFIC SIGNAL LLC | | 02/13/15 | 11,730.70 | TRAFFIC SIGNAL PARTS |
| Total | | | | | 735,183.39 |

M.1 Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6. Agency designated representatives: Human Resources Director Abe and Community Development Director Grindall; Employee Groups: the Newark Police Association, the Newark Association of Miscellaneous Employees; City Officials and the Management, Supervisory, and Professional Employee Group; and the Confidential Employee Group – from City Attorney Benoun and Human Resources Director Abe.

Background/Discussion – The City Attorney has requested a closed session to discuss: labor negotiations with the Newark Police Association; the Newark Association of Miscellaneous Employees; City Officials and the Management, Supervisory, and Professional Employee Group; and the Confidential Employee Group pursuant to California Government Code Section 54957.6.

Action - It is recommended that the City Council hold a closed session to discuss labor negotiations with the employee groups.

M.2 Closed session for conference with Legal Counsel on existing litigation Henneberry v. City of Newark, et al. United States District Court, Northern District of California Case No. C13-5238 MEJ pursuant to Section 54956.9(a) of the California Government Code: – from City Attorney Benoun.

Background/Discussion – The City Attorney has requested a closed session to discuss existing litigation: *Henneberry v. City of Newark, et al.*; United States District Court, Northern District of California Case No. C13-5238 MEJ.

Action - It is recommended that the City Council hold a closed session to discuss the existing litigation.