



CITY OF
HAYWARD
HEART OF THE BAY

PLANNING COMMISSION

JUNE 28, 2012

Table of Contents

Agenda	2
Zone Change Application No. PL-2012-0524 PD – JMJ Development LLC (formerly Wittek Development)/Eden Housing Inc. (Applicants) - Request for Approval of Precise Development Plan, for Development of Phase I of a Mixed-Use Development Consisting of 357 Multi-Family Residential Units	
Staff Report	4
Attachment I - Original Project	10
Attachment II - Revised Project	11
Attachment III - Preliminary Development Plan Excerpts	12
Attachment IV - Precise Development Plan.	28
Attachment V - Preliminary Plan Conditions of Approval	29
Attachment VI - Precise Plan Conditions of Approval.	60
Attachment VII - Findings for Approval	64
Approval of Minutes	
May 10, 2012	66
May 31, 2012	76



CITY OF HAYWARD
777 B STREET, HAYWARD, CA 94541-5007
(510) 583-4205 / www.hayward-ca.gov
LIVE BROADCAST – LOCAL CABLE CHANNEL 15

**REVISED AGENDA
HAYWARD PLANNING COMMISSION
Thursday, June 28, 2012 , AT 7:00 PM
COUNCIL CHAMBERS**

MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:

Obtain a speaker's identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. The Chair may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens for organization. Speakers are expected to honor the allotted time.

ROLL CALL

SALUTE TO FLAG

PUBLIC COMMENT: (The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action).

ACTION ITEMS: (The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item).

PUBLIC HEARINGS: For agenda item No. 1 the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.

1. Zone Change Application No. PL-2012-0524 PD – JMJ Development LLC (formerly Wittek Development)/Eden Housing Inc. (Applicants) - Request for Approval of Precise Development Plan, for Development of Phase I of a Mixed-Use Development Consisting of 357 Multi-Family Residential Units. The Project Site is Located at 28850 Dixon Street and 28901-28937 Mission Boulevard; APNs 078C-0441-001-16, -17, -23, -24 and -28

[Staff Report](#)

[Attachment I - Original Project](#)

[Attachment II - Revised Project](#)

[Attachment III - Preliminary Development Plan Excerpts](#)



Assistance will be provided to persons requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact Sonja Dal Bianco 48 hours in advance of the meeting at (510) 583-4204, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

- [Attachment IV - Precise Development Plan](#)
- [Attachment V - Preliminary Plan Conditions of Approval](#)
- [Attachment VI - Precise Plan Conditions of Approval](#)
- [Attachment VII - Findings for Approval](#)

COMMISSION REPORTS:

2. Oral Report on Planning and Zoning Matters
3. Commissioners' Announcements, Referrals

APPROVAL OF MINUTES

4. [May 10, 2012](#)
[May 31, 2012](#)

ADJOURNMENT

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. **PLEASE TAKE FURTHER NOTICE** that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

NOTE: Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.

DATE: June 28, 2012

TO: Planning Commission

FROM: Richard E. Patenaude, AICP, Planning Manager

SUBJECT: **Zone Change Application No. PL-2012-0524 PD – JMJ Development LLC (formerly Wittek Development)/Eden Housing Inc. (Applicants) - Request for Approval of Precise Development Plan for Development of Phase I of a Mixed-Use Development Consisting of 357 Multi-Family Residential Units**

The Project Site is Located at 28850 Dixon Street and 28901-28937 Mission Boulevard; APNs 078C-0441-001-16, -17, -23, -24 and -28

RECOMMENDATION

Staff recommends that the Planning Commission find that there is no change in circumstances of the project requiring additional environmental review under the California Environmental Quality Act and determine that the Precise Development Plan is in substantial conformance with the Modified Preliminary Development Plan, and approve it subject to the attached findings (Attachment VII) and conditions of approval (Attachments V & VI).

SUMMARY

This project is significant for the City of Hayward, especially the South Hayward BART/Mission Boulevard corridor, as its development would serve as a catalyst for further development in the area. The project will fulfill goals and policies of the General Plan and Mission-Garin Neighborhood Plan by providing high-density residential uses in the vicinity of the BART station and by adding to the mixture of housing types available. Although the Project's phasing has been changed from that originally approved, staff believes that the current Project is designed attractively and is consistent with the revised Preliminary Development Plan.

BACKGROUND

On March 17, 2009, upon recommendation by the Planning Commission, the City Council approved a change of zone from Station Area Residential (SAR) District to Planned Development (PD) District (PL-2008-0547), including a Preliminary Development Plan by Wittek Development, LLC, and Montana Properties, Inc. (Wittek & Montana), who have since assigned their project rights to a new entity, JMJ Development, LLC, to develop the South Hayward BART Station

parking lots and the former Perry & Key site along Mission Boulevard. The first phase of this project to be developed will be the portion on the Perry & Key site and the BART east parking lot. The Developers have submitted a Precise Development Plan for this phase. Since the Preliminary Plan is limited in the information provided, the Zoning Ordinance requires approval of a Precise Plan. Typically, the Planning Director approves a Precise Plan, as the process is primarily ministerial and involves determining that it is in substantial conformance with the Preliminary Plan. In this case, because of the scope of the project, the conditions of approval of the Planned Development District require the Planning Commission to approve the Precise Plan.

The project, as originally approved in 2009, is a mixed-use transit village development that includes 788 units of housing, including 206 units of affordable housing, and a 58,500-square-foot grocery store. Included in the development is a 910-space parking garage for BART to replace its surface parking lots. The project comprises a total site area of approximately 12 acres, generally bordered by Tennyson Road to the north, Mission Boulevard to the east, and the BART trackway and station to the west. (See Attachment I)

Market conditions, and the need to assure adequate BART parking throughout the development period, necessitated that the project be developed in four phases. The original Preliminary Development Plan indicated the first phase of the project would be the development of Parcels 1 and 2, as shown on Attachment I, to include the Safeway grocery store. Directly above the store, on Parcel 1, would be 125 units of affordable family apartments by Eden Housing. Proposed on Parcel 2 were 81 affordable senior apartments, also by Eden Housing, over a three-level parking structure that would serve both affordable housing projects. Phase II proposed a seven-level BART parking garage, to replace all existing surface parking for BART patrons, on Parcel 4.

Phase III would have consisted of 241 rental apartment housing (parcels 3N and 3S) in two buildings on what is now a portion of the BART main surface parking lot, between Dixon Street and the BART station. Subterranean parking would be provided under the two buildings, with one access point to each parcel off Dixon Street. Phase IV included development of the Perry & Key site and the BART satellite parking lot (the east lot), developed with 341 units of ownership housing over a podium and subterranean parking. A small commercial space and live work units were shown along Mission Boulevard.

The long-term economics of the project have been also contingent upon the ability to fund the affordable housing and major infrastructure improvements associated with reuse of the station parking lots. In the spring of 2009, the City, the Redevelopment Agency, BART, and the Developers joined forces to apply for State Housing & Community Development (HCD) Department Proposition 1-C grant monies to develop the South Hayward BART transit village. The two Proposition 1-C applications were successful and the City and the Developers were awarded a total of \$47 million in HCD monies for the project as it was originally envisioned. Of the award, \$30 million was a grant from the Infill Infrastructure Grant Program (IIG) and \$17 million was a permanent loan for the affordable housing (TOD). Additional public funding had been conditionally committed by the Hayward Redevelopment Agency in the form of up to \$7.1 million from Housing set-aside funds, and up to \$12.7 million for infrastructure and site improvements.

In early 2011, the Developers advised City staff that the project may no longer be feasible and asked the City to consider approving modifications to the project. The feasibility of the project was challenged by several factors, including (1) the difficulty in locating a full-service grocery, (2) the elimination of redevelopment agencies, eliminating the ability to bond for future tax increment, which was to be a core component to financing the project, and (3) the inability of the City Redevelopment Agency to commit funds toward construction costs.

The Developers, therefore, proposed a re-phasing and rearrangement of the project, which would entail development of the project site east of Dixon Street first (the new Phase I site), and development of the main BART parking lot portion of the project at some future time, most likely by another developer (new Phase II). The Developers proposed to “move” approximately 151 affordable units and 195 market rate units from Parcels 1 and 2 to the Phase I site. Then, at some future time, another developer could come into the project and construct housing, retail, and a BART replacement garage. (See overall revised site plan, Attachment II)

On June 8, 2011, the Planning Director approved the Developers’ request for a Minor Modification to the Preliminary Development Plan for the Planned Development District (the “Modified Preliminary Development Plan”). The modifications included (1) minor revisions to the site plan/layout, including the provision of two access points (rather than one) into the future BART parking garage and relocation of the main access to the Phase II project site to the southerly side of the property; and (2) rephasing of the project that will see development of the Perry & Key site and the BART east lot as Phase I, including 151 affordable housing units and 206 market rate units, and redevelopment of the main BART parking lot west of Dixon Street as Phase II.

As the Developers are proceeding only with Phase I of the project at this time as described above, the HCD financing has been reduced to approximately \$18 million for the IIG construction work and \$7 million for the TOD permanent loan. There are no Redevelopment funds being used for the project (as the Agency has been dissolved). The Housing Authority has entered into loan agreements to provide \$5.9 million to Eden for the affordable housing component of the Project. Additionally, as authorized by the City Council, the City and the Developers have entered into an Owner Participation Agreement (similar to a development agreement) and related documents, which establishes the respective rights and obligations of the parties for the project.

The Planning Commission is required to review future Phase II Precise Plan(s). Phase I of the project, the subject of this report, includes the BART east lot (the satellite BART overflow lot fronting Dixon Street), and a property currently owned by the City of Hayward (acquired from Caltrans) for the park site.

DISCUSSION (Refer to Attachments II, III & IV)

Staff recommends that the Planning Commission determine that the Precise Development Plan for Phase I is in substantial conformance to the Modified Preliminary Development Plan for this site.

Site Plan – While the orientation of the individual buildings on this site as indicated on the Preliminary and Precise Development Plans slightly differs, the placement of the buildings to

create significant edges along both the street frontages and the side property lines create a similar outward presence. The individual buildings remain organized to form internal open spaces. Vehicular access points and driveways, and the entries to the sub-grade parking garages, remain in locations, as originally approved. The proposed park along the southerly property line provides the pedestrian circulation between Dixon Street and Mission Boulevard as anticipated by the Preliminary Plan.

Massing – The Preliminary Plan anticipated that all buildings on this site would consist of five residential levels above a podium over the sub-grade parking garages. The Eden Housing portion of the project retains a five-level configuration; however, the Wittek-Montana portion has been reduced to four residential levels. The height relationship between the two portions remains similar to that indicated on the Preliminary Plan as the parking garage under the Wittek-Montana portion is daylighted to a greater degree, sits higher, than the Eden Housing portion. All buildings remain compliant with the 60-foot height limit standard.

Architectural Design – The architectural design indicated in the Precise Plan retains the same style, although articulated differently, as that indicated in the Preliminary Plan; colors and materials remain of the same palette. While the Mission Boulevard frontage is no longer inhabited by retail commercial spaces, the street level retains larger scale architectural elements that are more appropriate for its relationship to a frontage on a street. The Dixon Street frontage also is not occupied by retail commercial uses; however, the street-level retains a commercial appearance with access provided to group use area such as a bicycle shop and a business center primarily for the residents.

Open Space Amenities – The Planned Development District requires that open space be provided such that (a) at least 40 percent of the units include a minimum of 100 square feet of usable private open space in the form of a private yard, patio, porch, deck or balcony, and (b) group open space be provided in the amount of 20 percent of the lot area plus 100 square feet for each residence not provided private open space. The Developers are proposing private open space that exceeds the minimum requirement. The total group open space proposed and required as recommended conditions of approval by staff would comprise an area of 66,829 square feet, while an area of 59,024 square feet is required.

The JMJ Development (Wittek-Montana) portion of the project would provide 40,423 square feet of group open space, while an area of 36,674 square feet is required. The group open space would consist of 35,025 square feet of outdoor area, including a swimming pool and an outdoor fireplace, and 5,398 square feet of interior space, including a business center, fitness center and a recreation room. The Eden Housing portion would provide 26,406 square feet, while 22,350 square feet is required. The Eden Housing group open space would consist of 22,602 square feet of outdoor area, including a play structure, and 3,804 square feet of interior space, including community rooms, computer rooms, a library and fitness room. Eden Housing will also have its service coordination staff provide programming that helps build community and support the residents, including after-school, summer, and technology programs for youth, and financial management and homebuyer training for adults.

Two vacant parcels, approximately 0.64-acre (27,878 square-foot), owned by the City (acquired recently from Caltrans for the project), adjacent to, and southerly of, the site, are shown on the project plans as open space area, although not shown in the open space calculations. Since such area is necessary for the entire Project (including Phase II) to meet the minimum group open space requirements, the conditions of approval of the Preliminary Development Plan require the applicant to improve and dedicate this park for public use (or provide the funding for the Hayward Area Recreation & Park District to do so). As agreed by the Developers, the City will form a landscape and lighting assessment district (LLD) to provide for the financing of the maintenance costs of the park. As the parcels are not contiguous, the Developers and the City have agreed to a land swap of a parcel of equal size contiguous to the larger parcel. The two parcels (to become a single larger parcel) will also provide opportunity for a pedestrian link between Mission Boulevard and Dixon Street, midway between Tennyson Road and Valle Vista Avenue. Staff has included a recommended condition of approval in Attachment VI indicating a more-detailed landscape plan incorporating more amenities and active areas, shall be developed and submitted with improvement plans and the final subdivision map.

Parking – Phase I will provide a total of 380 parking spaces, which is consistent with the standards considered at the time of approval of the original Preliminary Development Plan (1.0 space maximum for each studio and 1-bedroom unit; 1.3 spaces maximum for each unit with 2 or more bedrooms). Parking standards are typically expressed as minimum ratios; however, the parking standards for the South Hayward BART/Mission Boulevard Form-Based Code were established at maximum ratios to encourage the use of pedestrian and bicycle circulation around the BART station, as well as use of BART and AC Transit.

For the JMJ Development (Wittek-Montana) portion of the project, all spaces will be housed in a subterranean parking garage beneath the proposed housing units. An additional nine surface visitor parking spaces are shown along the driveway providing access to the parking garage along the southerly edge of the project. The 206-unit market-rate development will include 223 parking spaces for a mix of one- and two-bedroom units, resulting in an average parking ratio of 1.1 spaces per unit. The Form-Based Code sets a maximum of 1.8 parking spaces per unit (371 spaces).

For the Eden Housing portion of the project (87 one- to three-bedroom family units, and 64 one- and two-bedroom senior units), there will be a total of 138 parking spaces for resident parking in a subterranean garage. An additional eight surface visitor parking spaces are shown along the driveway along the northerly edge of the project. The parking spaces provided for the affordable housing average approximately 0.97 space per unit. The Form-Based Code sets a maximum rate of 1.5 parking spaces per unit (207 spaces).

ENVIRONMENTAL REVIEW (CEQA)

On March 17, 2009, the City Council adopted a Mitigated Negative Declaration (MND) and a Mitigation Monitoring & Reporting Program (MMRP) for the South Hayward BART Mixed-Use Project. With the request for a Minor Modification to the Preliminary Development Plan associated with the Planned Development District for the Project, an Addendum to the MND was prepared on June 8, 2011, addressing the proposed modifications to the project and potential environmental impacts associated with those modifications. The fundamental conclusion of the

Addendum was that the proposed changes to the Project would not result in new environmental effects, nor substantially increase the severity of previously disclosed impacts beyond those already identified in the previously-adopted MND.

PUBLIC NOTICE

On June 15, 2012, a Notice of Public Hearing was mailed to property owners and occupants within 300 feet of the project boundaries., Notice was also provided to interested parties and appropriate public agencies. At the time of completion of this report, the Planning Division had not received any correspondence related to such notice.

NEXT STEPS

The plans submitted as part of the proposed project constitute a Precise Development Plan. Approval of the Precise Plan entitles the Developer to commence the process towards construction of Phase I of the Project. This will include the processing of any subdivision maps required for the 206 residential condominium units in the JMJ Development (Wittek-Montana) portion of the project. A subdivision map will require later review and approval by the Planning Commission, for which a tentative subdivision map application has been submitted.

Prepared by:



Richard E. Patenaude, AICP, Planning Manager

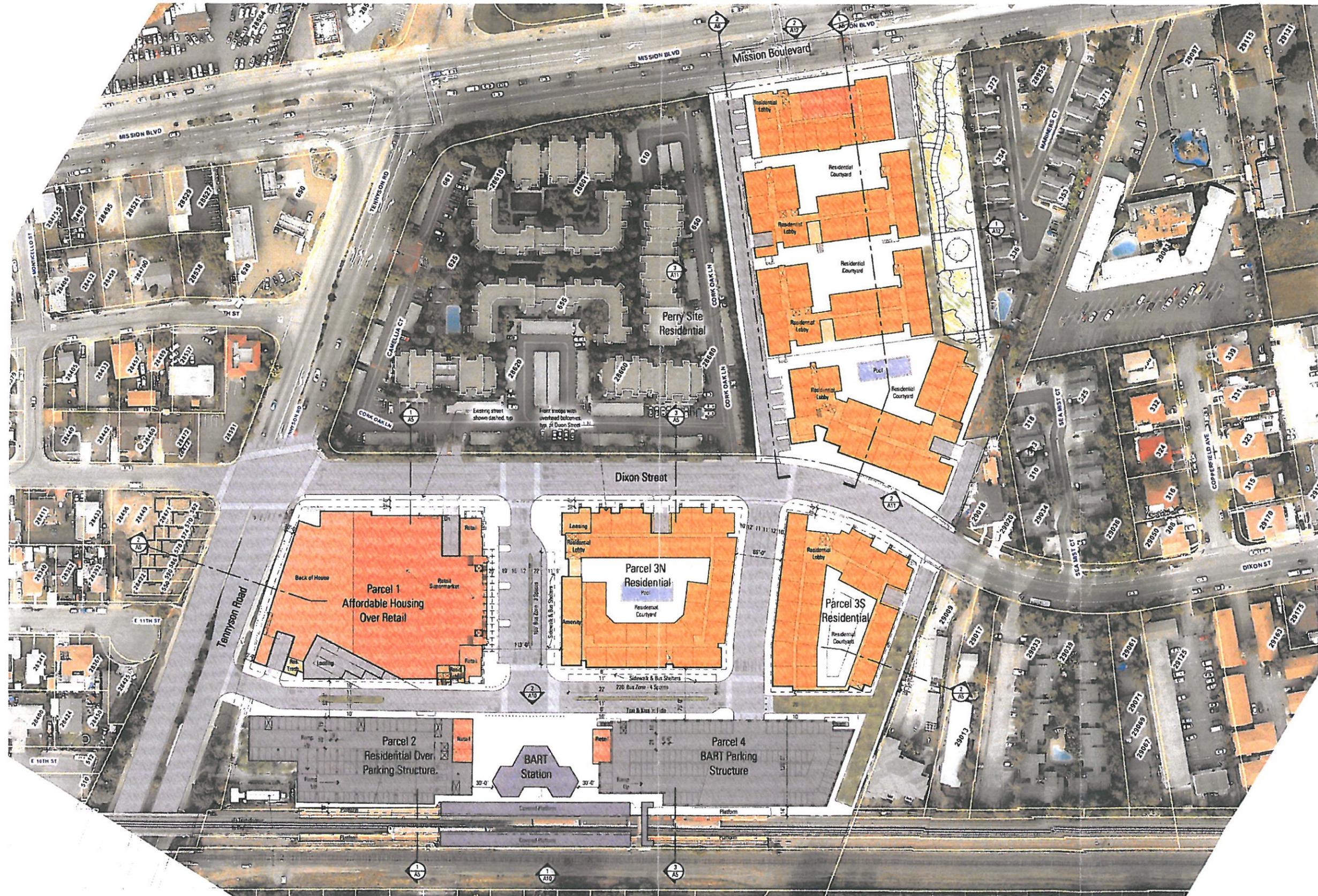
Approved by:



David Rizk
Development Services Director

Attachments:

Attachment I:	Original Project
Attachment II:	Revised Project
Attachment III:	Preliminary Development Plan Excerpts
Attachment IV:	Precise Development Plan
Attachment V:	Conditions of Approval – Preliminary Plan
Attachment VI:	Recommended Conditions of Approval – Precise Plan
Attachment VII:	Findings for Approval



South Hayward MU | Hayward, California

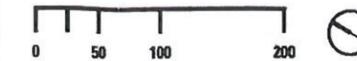
Conceptual Site Plan

BAR ARCHITECTS

543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM

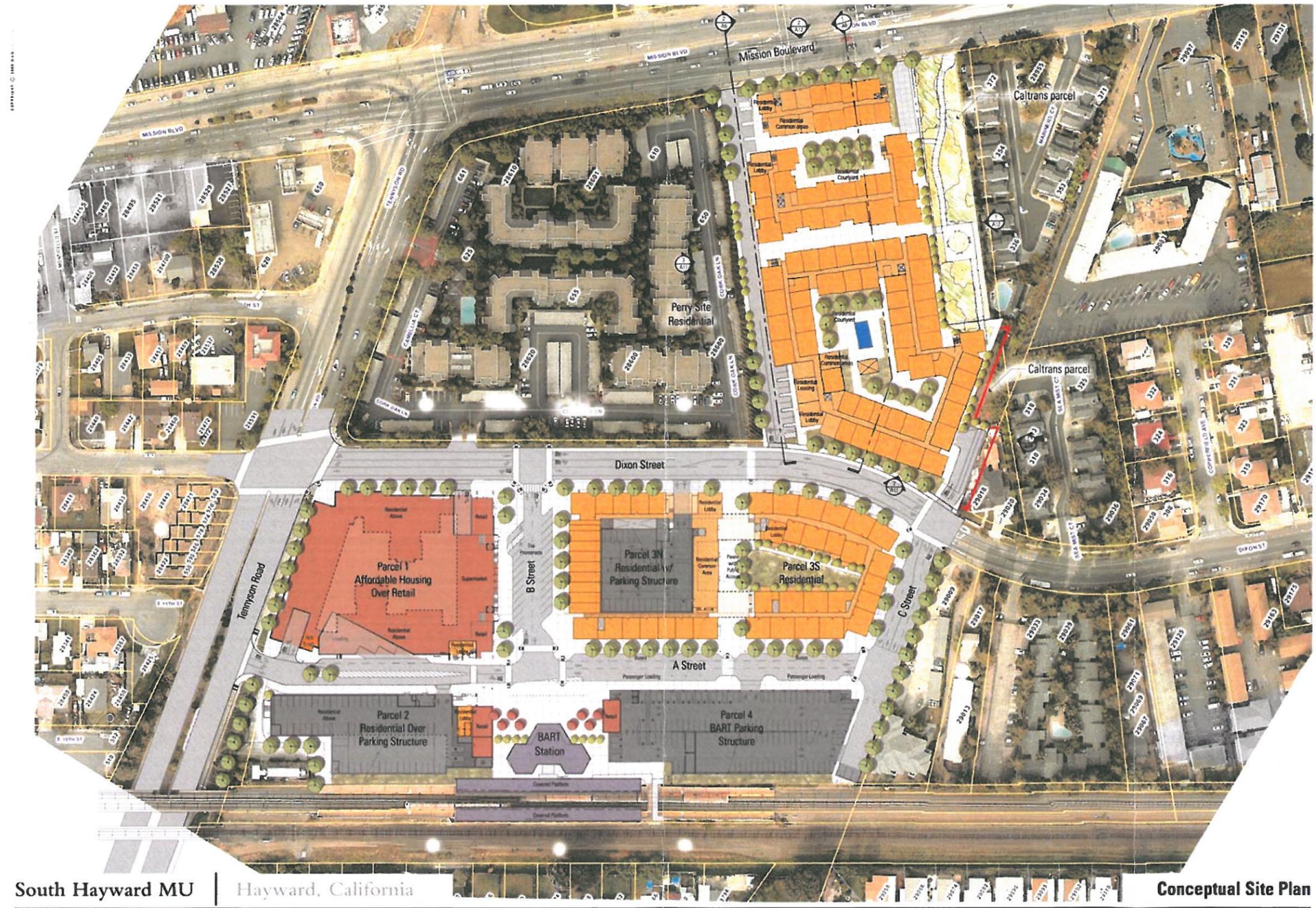
08062

01.26.09



A1

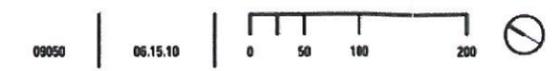
ORIGINAL PROJECT APPROVED MARCH 17, 2009



South Hayward MU | Hayward, California

Conceptual Site Plan

BAR ARCHITECTS
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM



A1

REVISED PROJECT



South Hayward Mixed Use

Planned Development Resubmittal

January 26, 2009

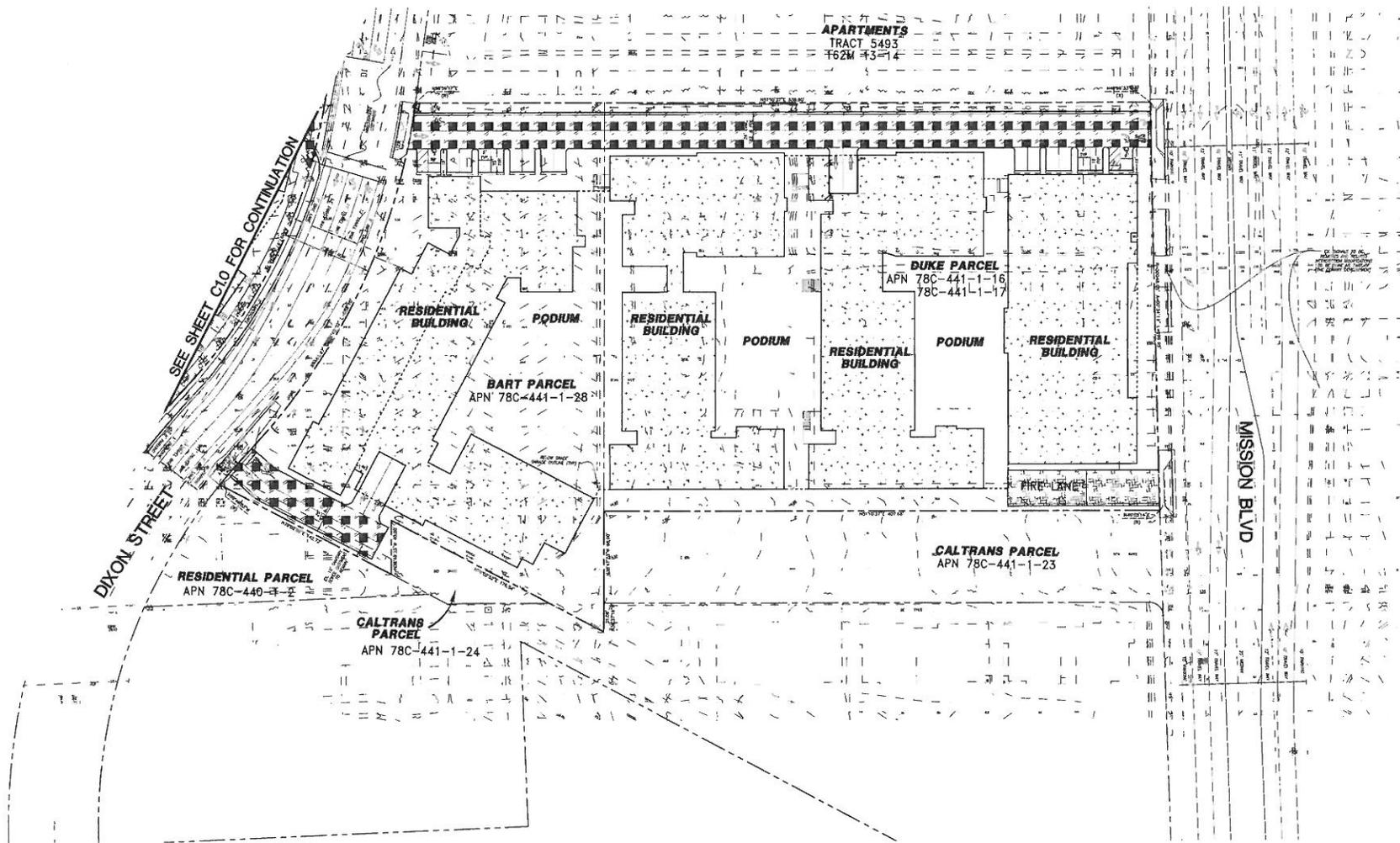
PROJECT DATA							PROJECT DIRECTORY		SHEET INDEX		
Total No. of Dwelling Units	788										
Total Gross Lot Area (Acres)	17.07						Density:	65	per Acre		
Total Net Lot Area (Acres)	9.43						Net Density:	84	per Acre		
<small>Note: Density calculations include 0.40% coverage for parking.</small>											
West of Dixon							East of Dixon				
Residential Density Calculation	Parcel 1	Parcel 2	Parcel 3N	Parcel 3S	Parcel 4	Parry/Key					
No. of Dwelling Units	125	81	139	107	0	341					
Gross Lot Area (Acres)*	2.61	1.25	2.24	1.52	1.57	4.29					
Density per Gross Lot Area	48	65	59	68	0	78					
Net Lot Area (Acres)**	1.98	0.98	1.46	1.07	1.10	2.93					
Density per Net Lot Area	63	83	98	96	0	87					
Gross Lot Area, excluding BART station & Parcel 4 BART parking (Acres)	7.72						4.35				
No. of Dwelling Units	447						341				
Total Density per Gross Lot Area, at either side of Dixon	58						78				
Net Lot Area, excluding BART station, R.O.W.s & Parcel 4 BART parking (Acres)	5.49						3.93				
No. of Dwelling Units	447						341				
Total Density per Net Lot Area, at either side of Dixon	81						87				
<small>* Gross Lot Area: The total lot area within the subdivision, with the exception of any proposed lot when the lot is still to be established according to the map of the project. <small>** Net Lot Area: The net area of the project, excluding the area of the BART station and Parcel 4 BART parking. <small>*** Density per Net Lot Area: Calculated based on the net lot area of the project.</small> </small> </small>											
Retail Calculation	Parcel 1	Parcel 2	Parcel 3N	Parcel 3S	Parcel 4	Parry/Key					
Retail Area (Sq Ft)	58,500	1,500	0	0	1,260	3,000					
Parking Calculation	Parcel 1	Parcel 2	Parcel 3N	Parcel 3S	Parcel 4	Parry/Key					
Retail Requirements*	186	6	0	0	0	3					
Retail Provided	190	0	0	0	0	3					
Residential Requirements**	163	41	159	119	0	404					
Residential Provided	0***	204	159	119	0	417					
BART Parking							910				
<small>* Parking calculated at 1.5% of retail area. <small>** Density per Net Lot Area: Calculated based on the net lot area of the project. <small>*** Parking provided at 2.0% of residential units. </small> </small> </small>											
Open Space Calculation	Parcel 1	Parcel 2	Parcel 3N	Parcel 3S	Parcel 4	Parry/Key					
Units with 100sf Private Open Space Required*	50	22	55	41	0	139					
Units with 100sf Private Open Space Provided	52	22	55	41	0	139					
Public Open Space Required (Sq. Ft)**	24,539	11,445	21,056	15,517	0	54,867					
Public Open Space Provided (Sq. Ft)**	18,000	11,200	12,400	9,800	0	42,500					
<small>* Density per Net Lot Area: Calculated based on the net lot area of the project. <small>** Total Open Space: Calculated based on the net lot area of the project. <small>*** The area of the project that is open space. </small> </small> </small>											

- ARCHITECT:**
 BAR ARCHITECTS
 541 HOWARD STREET
 SAN FRANCISCO, CA 94105
 TEL: 415.293.5700
 CONTACT: PAULA LURICHMEIER
 EMAIL: PAULA@BARARCH.COM
- DEVELOPER:**
 WITTEK DEVELOPMENT, LLC
 200 N. ALA FARIAS ROAD
 WESTPORT, CT 06890
 TEL: 353.992.2000
 CONTACT: KURT WITTEK
 EMAIL: KURT@WITTEKDEVELOPMENT.COM
- CIVIL ENGINEER:**
 BKF ENGINEERS
 1850 TELEGRAPH DRIVE, SUITE 850
 SAN JOSE, CALIFORNIA
 TEL: 408.487.9120
 CONTACT: SCOTT SHORR
 EMAIL: SSC@BKF.COM
- DEVELOPER - AFFORDABLE HOUSING:**
 ETON HOUSING, INC.
 22615 GRAND STREET
 HAYWARD, CALIFORNIA
 TEL: 510.992.1810
 CONTACT: KATIE LAUGHT
 EMAIL: KLA@MONTGOMERIEHOUSING.ORG
- LANDSCAPE ARCHITECT:**
 BRUCE JETT ASSOCIATES
 155 TRIDENT STREET
 GARDEN, CA 94530
 TEL: 510.628.0998
 CONTACT: BRUCE JETT
 EMAIL: BRUCE@BRUCEJETT.COM

- PROJECT INFORMATION
- A1 CONCEPTUAL SITE PLAN
- A2a CONCEPTUAL CIRCULATION PLAN
- A2b CONCEPTUAL PERESTRADA AND BIWAYS & CIRCULATION PLAN
- A3 CONCEPTUAL BASEMENT GARAGE PLAN
- A4 CONCEPTUAL PODIUM LEVEL PLAN
- A5 CONCEPTUAL SITE SECTIONS
- A6 PERRY SITE CONCEPTUAL SITE SECTIONS
- A7 PERRY SITE CONCEPTUAL SITE PLAN
- A8 PERRY SITE UPPER FLOOR PLAN
- A9 PARCEL 1 - CONCEPTUAL ELEVATIONS
- A10 PARCELS 2 & 4 - CONCEPTUAL ELEVATIONS
- A11 PERRY SITE - CONCEPTUAL ELEVATIONS
- A12 PERRY SITE - CONCEPTUAL ELEVATIONS
- A13 PHOTO SIMULATIONS
- A14 PERRY SITE PERSPECTIVE - DIXON STREET VIEW
- A15 PERRY SITE PERSPECTIVE - MISSION STREET VIEW
- C1.0 PRELIMINARY SITE LAYOUT PLAN
- C1.1 PRELIMINARY SITE LAYOUT PLAN
- C1.2 PRELIMINARY GRADING AND UTILITY PLAN
- C1.3 PRELIMINARY GRADING AND UTILITY PLAN
- L1 CONCEPTUAL SITE LANDSCAPE PLAN
- L2 PARCEL ONE COURTYARD CONCEPTUAL LANDSCAPE PLAN
- L3 PERRY SITE CONCEPTUAL LANDSCAPE PLAN

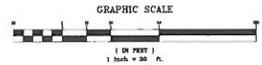
South Hayward MU | Hayward, California

Project Information



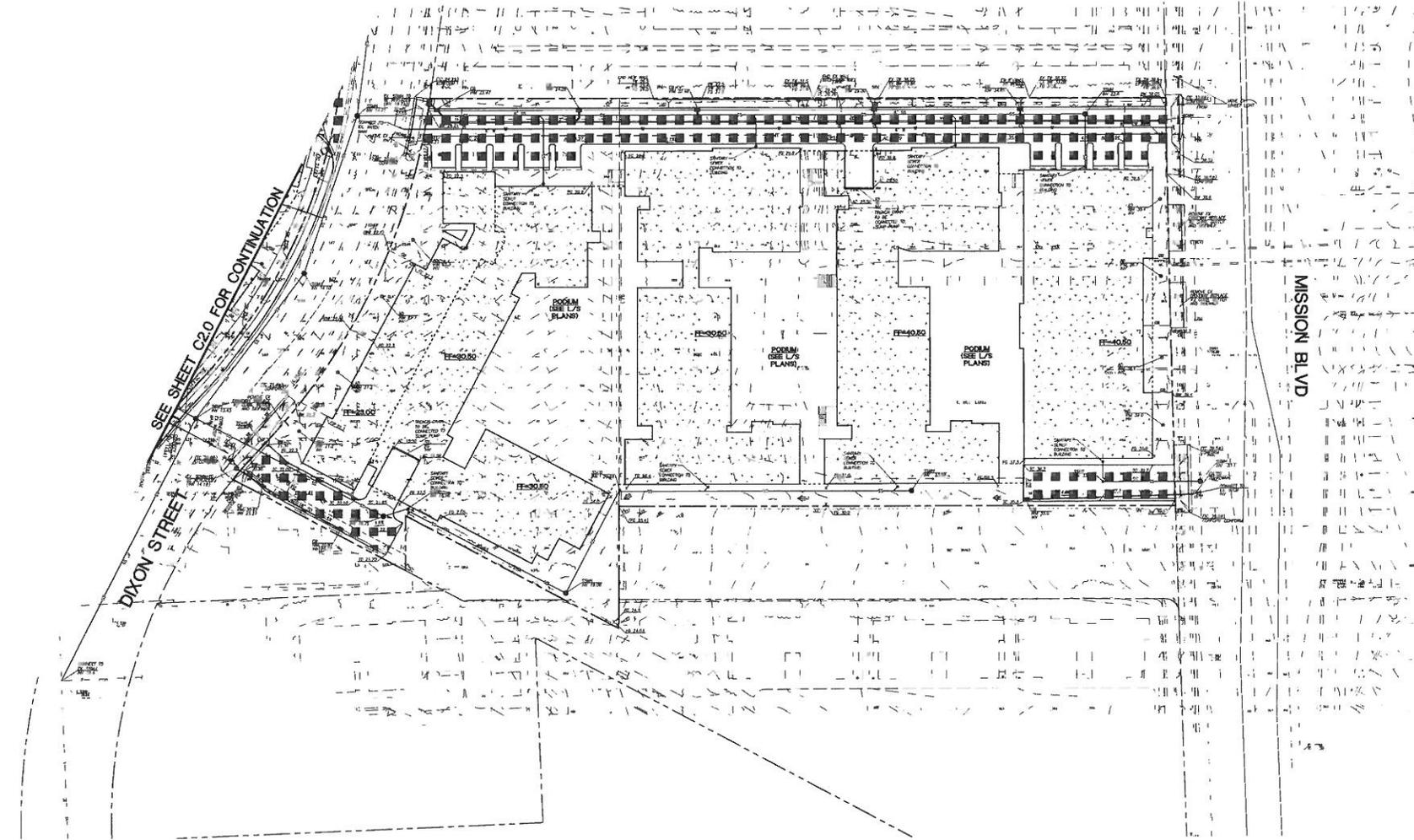
LEGEND

- | | | | |
|-----------|-----------------------------|--|--|
| — — — — — | = PROPERTY LINE | | = EAVE |
| - - - - - | = PROPOSED BUILDING OUTLINE | | = VALLEY GUTTER |
| - - - - - | = BELOW GRADE GARAGE | | = VERTICAL CURB & GUTTER |
| - - - - - | = EASEMENT | | = ADA RAMP |
| | = ICE | | = PROPOSED BUILDING |
| | = EAVE/ICE | | = BOLLARDS |
| | = EAVE/PUR/ICE | | = CROSSWALK/LANE STRIPING/LOADING ZONE |
| | = EAVE/PUR | | |



South Hayward MU | Hayward, California

PRELIMINARY SITE LAYOUT PLAN

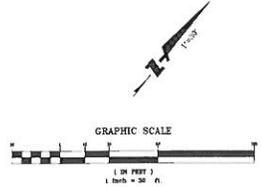


LEGEND

	= CATCH BASIN		= GRADE BREAK
	= AREA DRAIN		= VALLEY GUTTER
	= STORM DRAIN LINE		= VERTICAL CURB & OUTTER
	= STORM DRAIN MANHOLE		= CURB
	= SANITARY SEWER LINE		= ASPHALT CONCRETE
	= SANITARY SEWER MANHOLE		= PAVED WALKWAY
	= SANITARY SEWER CLEANOUT		= PROPOSED BUILDING
	= WATER LINE		= TURF BLOCK
	= SPOT ELEVATION		= PROPERTY LINE
	= PROPOSED BUILDING OUTLINE		= SLOPE ARROW
	= BELOW GRADE GARAGE		= OVERLAND RELEASE ARROW

NOTES:

1. THE PW ENGINEERING COMMENTS RELATED TO C-3 STORM WATER TREATMENT AND RELATED CALCULATIONS SHOULD ALSO BE STANDARD FOR ITEMS, ALTHOUGH WE UNDERSTAND THE WOULD BE NEEDED AS PART OF A NORMAL SITE PLAN REVIEW. FOR THE HOPED LIST OF REQUIRED ITEMS, STORM WATER TREATMENT AND RELATED CALCS WERE NOT INCLUDED. WE WILL SHOW ON OUR PLANS A NOTE STATING OUR COMMITMENT TO ADHERE TO ALL C-3 REQUIREMENTS, BUT WILL NOT BE ABLE TO PROVIDE EXHIBITS SHOWING TREATMENT LOCATIONS.
2. NEW FIRE HYDRANTS WILL BE SPACED PER CITY REQUIREMENTS.



South Hayward MU | Hayward, California

PRELIMINARY GRADING AND UTILITY PLAN

BKF ENGINEERS
1650 TECHNOLOGY DRIVE, SUITE 650 SAN JOSE CA 95110 T:408.467.9100

20076125 | 1/26/09

C2.1



South Hayward MU | Hayward, California

Perry Site Conceptual Landscape Plan

LANDSCAPE OFFICE LTD.
265R BRIDGEWAY #203, SAUSALITO, CA 94965

080620

01.26.09

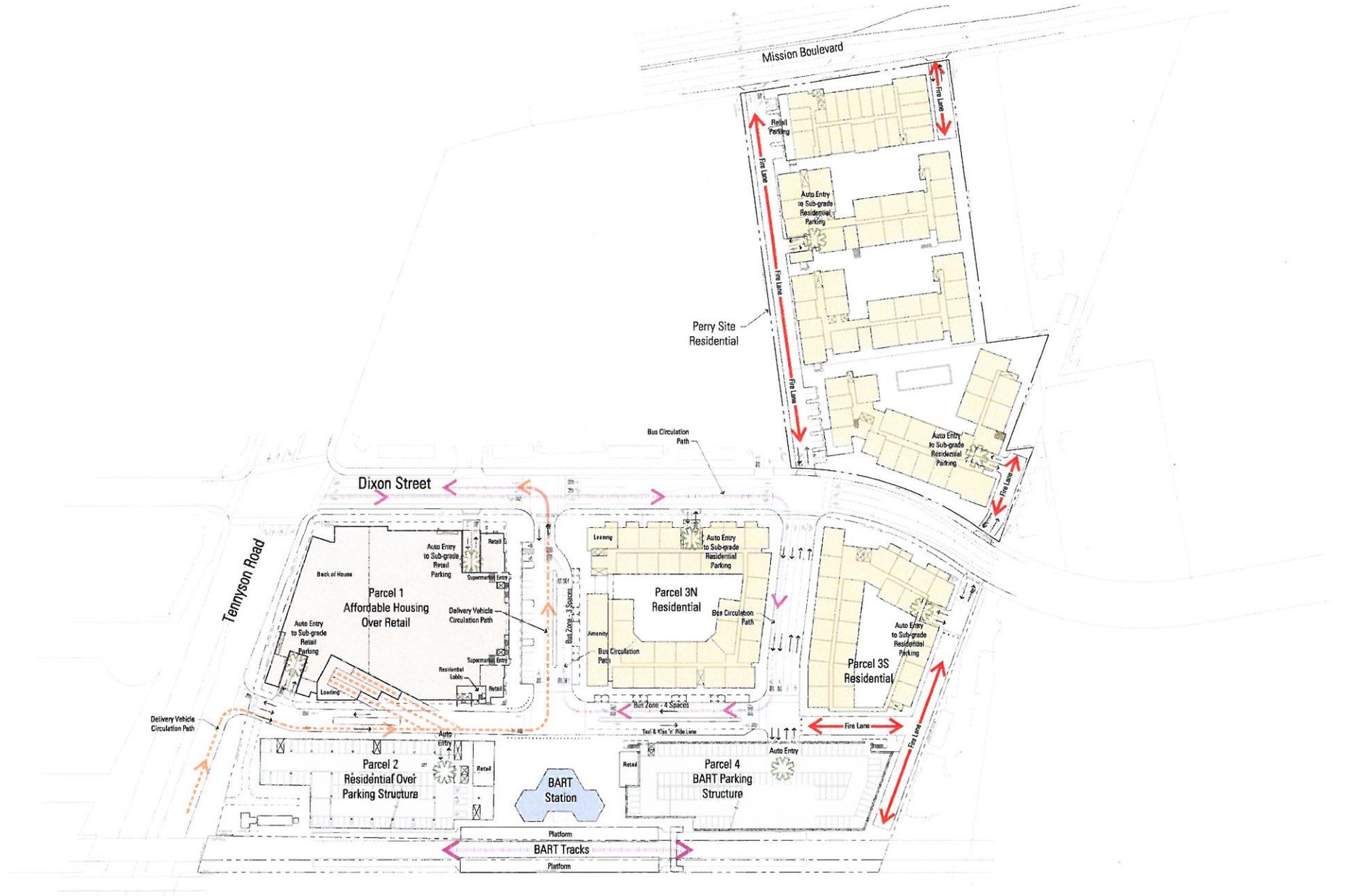


L3



South Hayward MU | Hayward, California

Conceptual Site Plan



South Hayward MU | Hayward, California

Conceptual Circulation Plan



South Hayward MU | Hayward, California

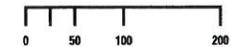
Conceptual Pedestrian and Bicycle Circulation Plan

BAR ARCHITECTS

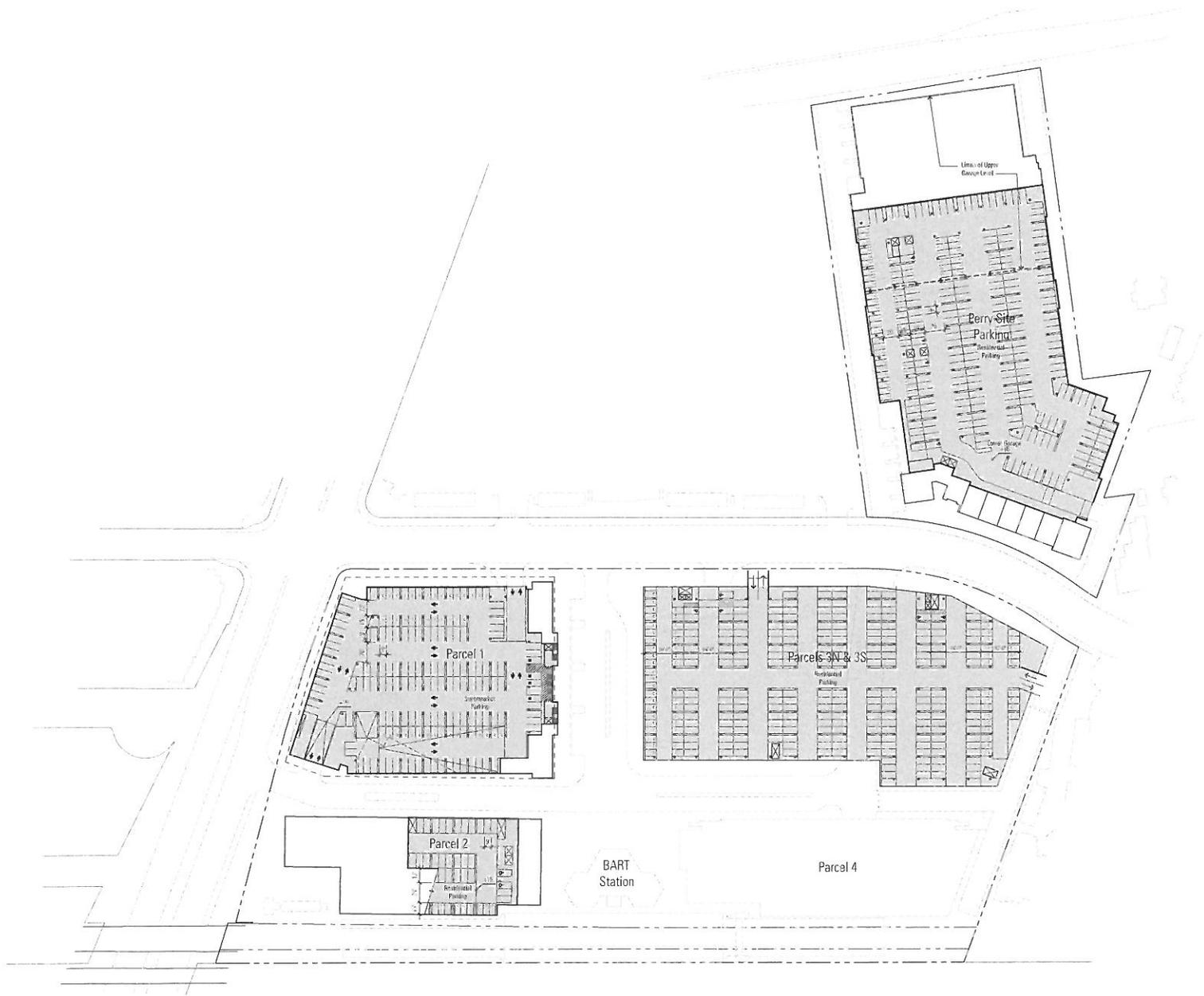
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM

08062

01.26.09



A2.b



South Hayward MU | Hayward, California

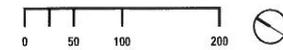
Conceptual Basement Garage Plan

BAR ARCHITECTS

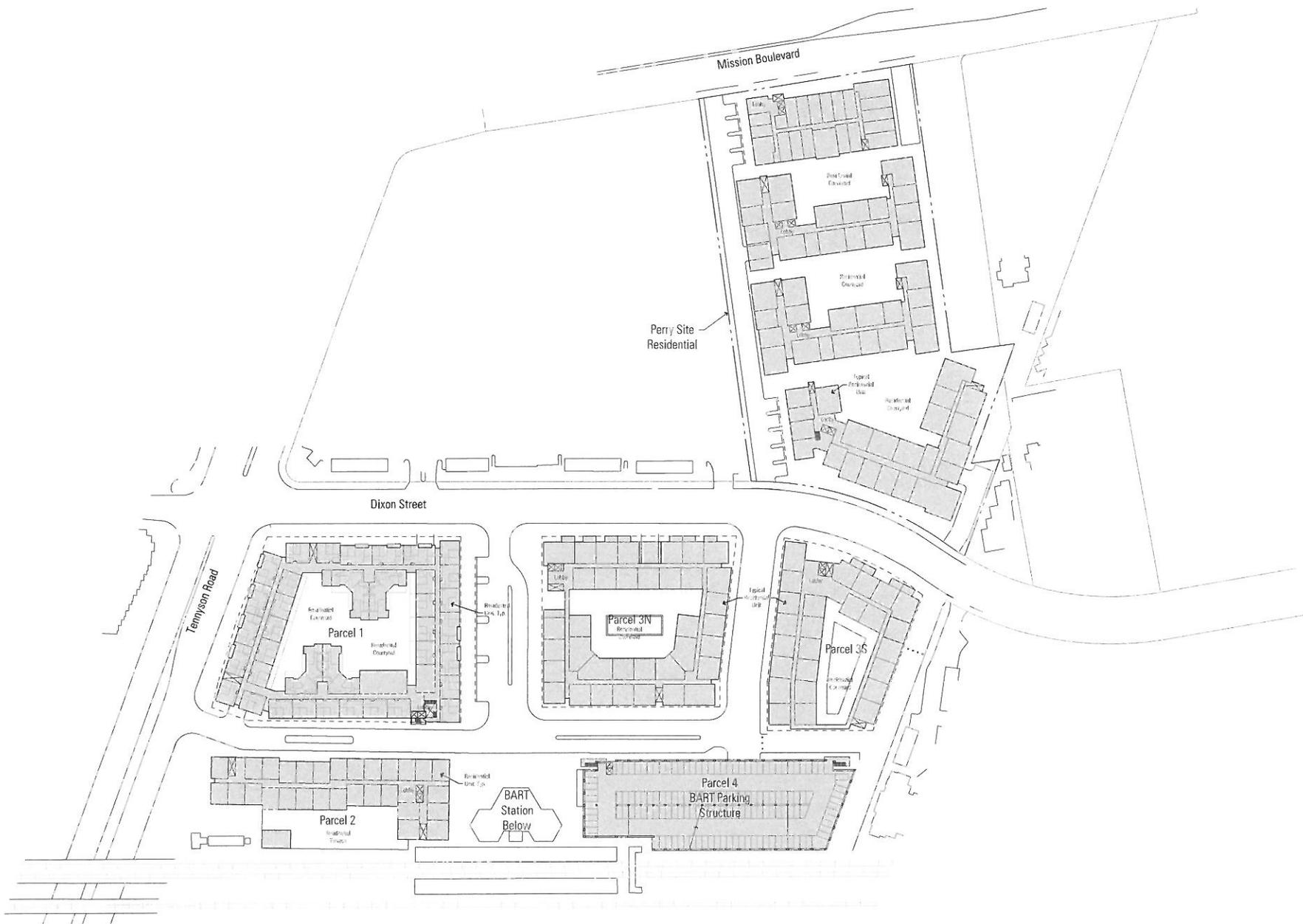
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM

08062

01.26.09



A3



South Hayward MU | Hayward, California

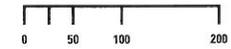
Conceptual Upper Floor Plan

BAR ARCHITECTS

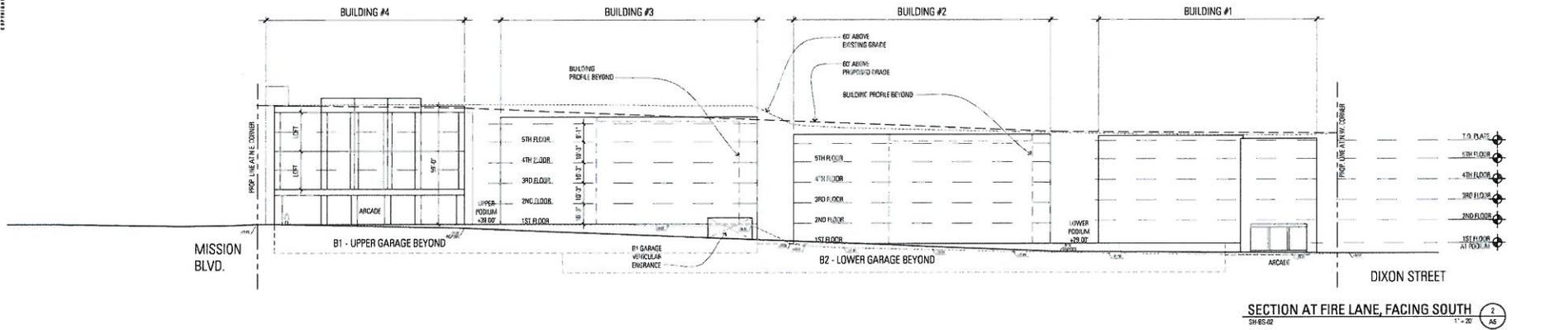
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM

08062

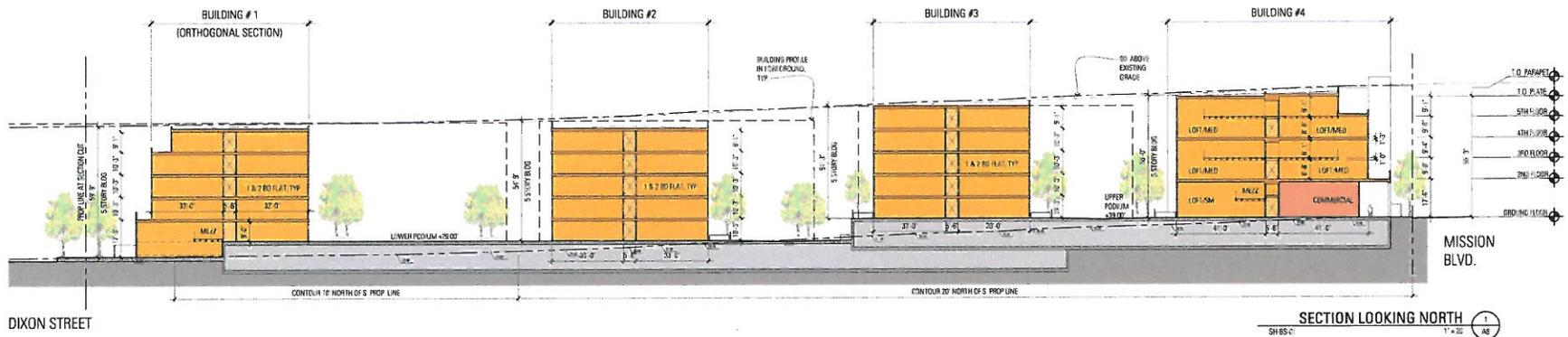
01.26.09



A4



SECTION AT FIRE LANE, FACING SOUTH 2
SH-85-02 1" = 20'

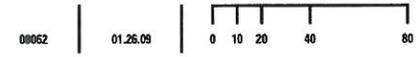


SECTION LOOKING NORTH 1
SH-85-01 1" = 20'

NOTE: PERRY SITE SECTIONS ARE SCALED TO MATCH PERRY SITE PLANS. THESE DRAWINGS ARE AT A LARGER SCALE THAN PARCELS 1-4 SECTIONS.

South Hayward MU | Hayward, California

BAR ARCHITECTS
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM



DATE: 01.26.09



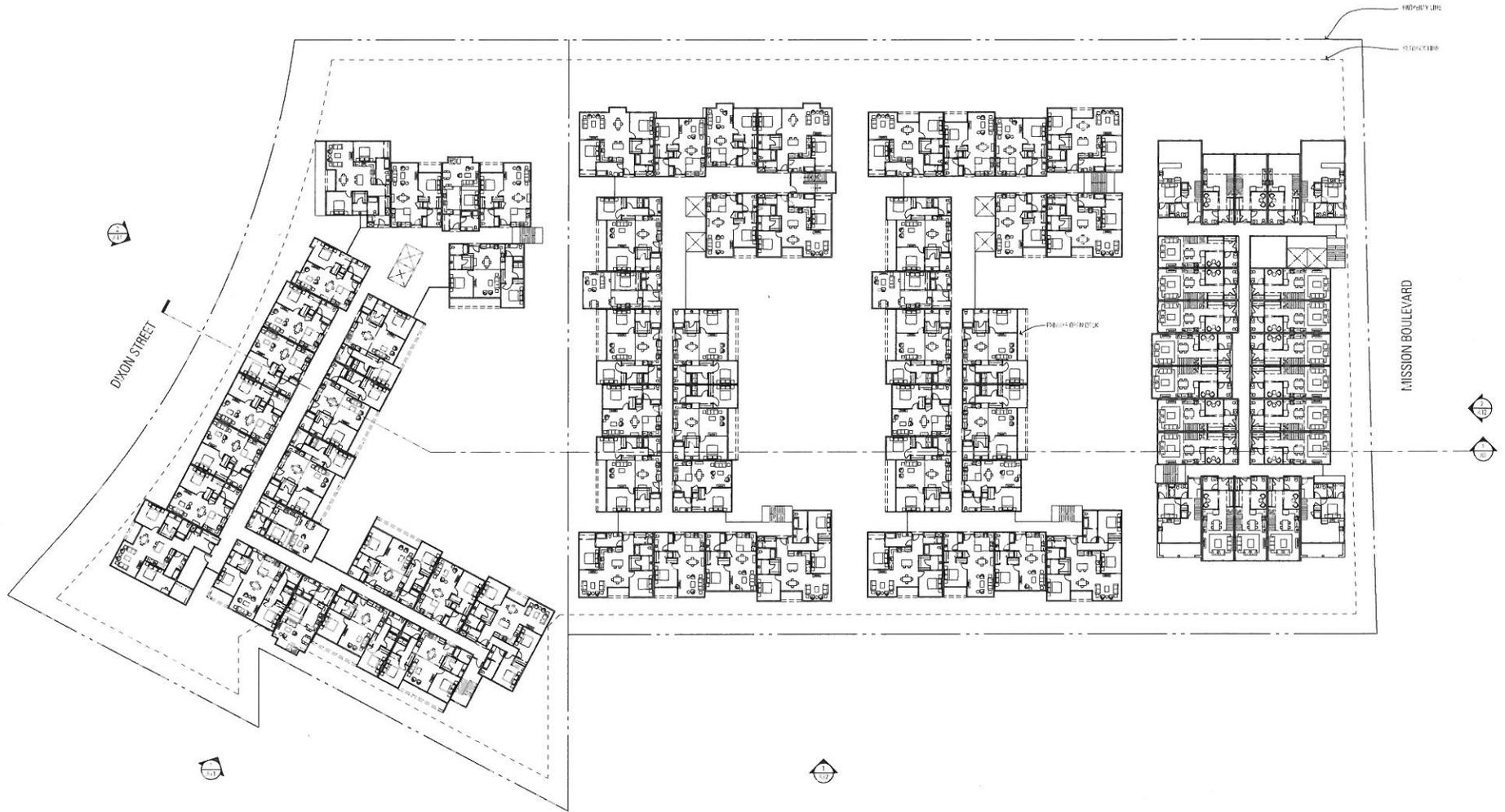
Perry Enlarged Site Plan
1" = 20'

South Hayward MU | Hayward, California

Perry Site Conceptual Site Plan

BAR ARCHITECTS
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM

08062 | 01.26.09 | 0 10 20 40 80 | [North Arrow] | A7



Perry Third and Fourth Floor Plans
T2.25

South Hayward MU | Hayward, California

Perry Site Upper Floor Plan

BAR ARCHITECTS
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM

08062 | 01.26.09 | 0 10 20 40 80



A8



South Hayward MU | Hayward, California

Perry Site - Conceptual Elevations

BAR ARCHITECTS
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM



A11



BUILDING 4

East Elevation 7

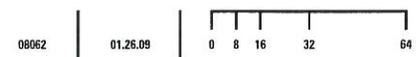


South Elevation 1
If new Caltrans Approved

South Hayward MU | Hayward, California

Perry Site - Conceptual Elevations

BAR ARCHITECTS
543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM



A12



South Hayward MU | Hayward, California

Perry Site Perspective - Dixon Street View

BARARCHITECTS

543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM

08062

01.26.09

A14



South Hayward MU | Hayward, California

Perry Site Perspective - Mission Street View

BARARCHITECTS

543 Howard Street, San Francisco, CA 94105, T. 415 293 5700, F. 415 293 5701 WWW.BARARCH.COM

08062

01.26.09

A15

PRECISE DEVELOPMENT PLAN

Due to the size (680 mb) of this attachment, this document is available on the City's website at the following link:

http://www.hayward-ca.gov/blogdocs/attachment_iv-precise_development_plan.pdf.

To view a hard copy, please contact the Office of the City Clerk or the Planning Division

CONDITIONS OF APPROVAL**SOUTH HAYWARD BART MIXED USE PROJECT
28601 & 28850 DIXON STREET
28901-28953 MISSION BOULEVARD****MINOR MODIFICATION OF
ZONE CHANGE APPLICATION NO. PL-2008-0547 PD****Wittek Development LLC/The Montana Property Group/Eden Housing (Applicants)
Revisions Approved by the Planning Director on June 8, 2011 and
by the Hayward City Council on July 26, 2011**

Planned Development District No. PL-2008-0547 PD, to accommodate construction of a mixed-use development consisting of 788 multi-family residential units, including 206 units of affordable housing, a grocery store and other miscellaneous retail uses, and a 910-space BART parking garage, was approved by the City Council on March 17, 2009. The Planned Development District shall be developed according to the originally-approved conditions of approval and in substantial conformance with the preliminary development plan labeled in the City files as “Exhibit A,” except as modified herein and per the attached revised Preliminary Development Plan.

A Minor Modification related to revisions to the Preliminary Development Plan (see attached original and revised site plans, original and revised project details tables, and overall revised project phasing plans) was approved by the Planning Director on June 8, 2011. Phase I now consists of construction of a residential development consisting of 354 multi-family residential units, including 151 units of affordable housing, on the former Perry & Key Auto Body Repair Shop site and the BART overflow parking lot (together referred to as the Perry & Key site), located between Mission Boulevard and Dixon Street. Phase II consists of development of 434 multi-family residential units, including 55 units of affordable housing, a grocery store and other miscellaneous retail uses, a 910-space BART parking garage, and reconfigured AC Transit bus transfer facility on the BART-owned property located between Dixon Street and the South Hayward BART station.

Prior to final inspection, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.

The Minor Modification of the Planned Development District by the Planning Director on June 8, 2011, and a Modification by the City Council on July 26, 2011, become void one year following the effective dates of such approvals unless, before that time, a Precise Development Plan is submitted. A one-year extension, approval of which is not guaranteed, may be granted by the Planning Director, provided the request for such extension is submitted at least 30 days prior to the expiration of the original approval. A request for a second one-year extension, approval of which is not guaranteed, may also be granted by the Planning Director, provided the request for such second extension is submitted at least 30 days prior to the expiration of the first extension.

The permittee shall enter into an agreement with the City to assume the defense of, and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.

Any proposals for minor alterations to the proposed site plan and/or design that do not require a variance to the Zoning Ordinance standards must be approved by the Planning Director prior to implementation.

Unless otherwise stated, all necessary easements shall be dedicated, and all improvements shall be designed and installed at no cost to the City of Hayward. The applicant/developer's engineer shall perform all design work unless otherwise indicated.

All improvements shall be designed and constructed in accordance with the City of Hayward Municipal Code – Chapter 10, Article 3, and Standard Specifications and Details – unless otherwise indicated hereinafter.

The following conditions were revised by the Planning Director on June 8, 2011, reflected with bolded text, to reflect a Minor Modification to the March 17, 2009 City Council-approved Preliminary Development Plan for the Planned Development District. Also, conditions #18, #33, #113, and #121 were further revised by the City Council on July 26, 2011, and the subsequent text for those conditions reflects such action. Also, all conditions are applicable to both Phase I and Phase II of the project, unless otherwise noted.

PRIOR TO APPROVAL OF THE PRECISE DEVELOPMENT PLAN

1. Prior to submittal of improvement plans and/or final map(s) for **each phase of the development**, a Precise Development Plan consistent with the approved Preliminary Development Plan shall be submitted for approval by the Planning Commission, and shall include detailed landscaping and irrigation plans, detailed plans for all site amenities, including decorative paving, decorative electroliers, fencing, sign and entry features, detailed architectural and lighting plans, samples of exterior colors and building materials, and screening of all above-ground utilities, transformers and utility meters. **Each** Precise Plan shall also reflect the ultimate configuration of the streets and other public improvements. **Each** Precise Development Plan shall include/address the following:
 - a. A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
 - b. A color and materials board, consistent with that proposed with the preliminary development plan, shall be submitted for Planning Commission review and approval. No changes to colors shall be made after construction unless previously approved by the Planning Director.
 - c. Decorative pavement shall be installed at the project entrances and at all interior private street intersections within the project. The Planning Director shall approve the material, color and design, and the City Engineer shall approve the pavement section.
 - d. Mitigation Measure 1: Exterior lighting shall be erected and maintained so that adequate lighting is provided in all common areas, including pathways. The Planning Commission shall approve the design and location of lighting fixtures, which shall

reflect the architectural style of the building(s). Exterior lighting shall be shielded and deflected away from neighboring properties and from windows of homes within the project. Lighting within the BART station plaza shall conform to BART standards.

- e. Regarding the architectural details/plans for submittal with the Precise Development Plan(s):
- i. For the building proposed on Parcel 2 **in Phase II**, which is shown to exceed 60 feet in height, building design must be such that the Planning Commission makes the following findings: 1) the additional height makes a positive contribution to the overall character of the area and will be compatible with its surroundings in terms of site planning, scale, building design, color, exterior materials, roof styles, lighting, landscaping and signage; 2) the additional height will not result in unreasonable restrictions of light and air to adjacent properties or the public right-of-way; and 3) the additional height will support the policies and standards of the South Hayward BART/Mission Boulevard Concept Design Plan and will result in a better project. The following items **from the developer of that building** would contribute to the ability to make these findings: 1) the provision of public art; and 2) a contribution towards the proposed community center at Mission Boulevard and Valle Vista Avenue, or at another location within the South Hayward BART/Mission Boulevard Concept Design Plan area.
 - ii. The ground floor of each mixed-use building should be proportionately higher and architecturally distinguished from the upper façade to afford generous and inviting commercial uses and to distinguish the change in use.
 - iii. Buildings on corner lots, **or where fronting streets or pedestrian ways**, should give architectural emphasis to the building corner by incorporating a tower, plaza recess, or other architectural and urban design elements. Such elements should be well-proportioned in relation to the height of the building.
 - iv. Auto entries into buildings should be designed with articulation and detail similar to other window and door openings, such as jambs and headers.
 - v. Building form should provide a “base” and a “top” that are human-scaled.
 - vi. **Phase II only:** Amenities shall be provided within the street/pedestrian corridor, connecting Dixon Street and the BART station, to support a pedestrian-oriented lifestyle, including, but not limited to, wireless access, tables and umbrellas.
 - vii. Store entries in retail sections should be spaced no farther than 50 feet apart. Entries should be recessed to enhance circulation space for pedestrians.
 - viii. Ground-floor residential units facing a street should be designed to ensure privacy, such as raised windowsill heights and elevated interior floor elevations.
 - ix. Residential lobby entries should be clearly defined and directly accessible from the main thoroughfare.
 - x. Where appropriate, accent lighting should be used to highlight interesting architectural features, signs, storefront displays, landscape features, and public art.
 - xi. Public art features, at a value of 1% of project construction costs, not including transit facilities and infrastructure improvements, shall be required and installed prior to build-out of **each phase of** the project. The design of

- such feature(s) shall be submitted with the Precise Development Plan **for each phase. (The developer of Phase I of the project may contribute a cash amount equal up to 50% of the required Phase I public art value, to be held by the City in an interest-bearing account for use in the Phase II development.)**
- xii. **Phase I only:** The senior housing **building** shall include multi-function rooms for passive recreation, which with on-site group open space, would total to an area of at least 20% of the building footprint.
- f. A street tree plan and landscape and irrigation plans shall be submitted **for each project phase** for review and approval by the City, which shall include:
- i. An overall landscape concept statement addressing the quality of the proposed landscape design, the quality of the pedestrian environment, safety, water conservation and stormwater treatment. Consult the South Hayward BART/Mission Boulevard Concept Design Plan for guidelines regarding development street landscape treatments and the quality of pedestrian environments.
 - ii. A comprehensive arborist report for all existing trees. The report shall be prepared by a licensed arborist and shall include the health, species, caliper, approximate height, canopy diameter and value using the latest edition of “Guide for Plant Appraisal” by the International Society of Arboriculture. Provide an ISA worksheet for each tree.
 - iii. Information providing the preliminary soil volume and structural support for the raised planters on the podium levels for trees and other planting.
 - iv. A 24-inch box street tree provided at every 20-40 linear feet of street frontage.
 - v. A table showing 1) total required and provided common open space for each parcel, and 2) total area of irrigated landscape area for each parcel.
 - vi. Conceptual plans for project entry monuments and identification signs.
 - vii. Plan showing the locations, types and description of enhanced paving throughout the project, as shown on the preliminary landscape plan.
 - viii. Conceptual plan showing linkages with nearby open space/park areas.
 - ix. Screening for all above-ground utility equipment with either architectural or landscape features.
 - x. **Phase II only:** Conceptual plan for BART plaza improvements.
 - xi. **Phase II only:** Conceptual plan to “soften” the appearance of the structures on Parcels 2 and 4 with landscaping or alternative materials.
 - xii. Screening for all above-ground utility equipment with either architectural or landscape features.
- g. Landscape plans shall specify site amenities such as, benches, tables, fencing, play equipment and barbecues, and public art for the common open space areas. The two Caltrans-owned properties adjacent to and south of the Perry & Key/BART overflow parking sites for **Phase I, and the pedestrian connection between buildings on Parcel 3 in Phase II**, shall include pedestrian walkways and benches, and, **where appropriate**, shall otherwise be developed to allow free-style play and recreation to meet the project’s group open space requirements.
- h. Details of address numbers shall be provided. Address number shall be decorative. Building addresses shall be minimum 4-inch self-illuminated or 6-inch on

- contrasting background. Address numbers shall be installed so as to be visible from the street.
- i. All air conditioners and utility connections for air conditioners shall be located such that all external equipment is located within an area that can be screened, and located so as to minimize noise impacts on adjacent properties. Infrastructure for air conditioning systems is required to be installed as a standard feature.
 - j. All above-ground utility meters, mechanical equipment and water meters shall be enclosed within the buildings or shall be screened from the streets with minimum five-gallon shrubs and/or an architectural screen, to be approved by the Planning Director.
 - k. No mechanical equipment shall be placed on the roof unless it is completely screened from view by the proposed roof structure. Roof apparatus, such as vents, shall be painted to match the roof color. All roof vents shall be shown on roof plans and elevations. Vent piping shall not extend higher than required by Building Code.
 - l. In accordance with the City’s Tree Preservation Ordinance, trees shall be provided to mitigate for any protected trees that are removed, with such trees to be at least equal in value to the trees that are being removed. These mitigation trees are required to be in addition to any required street trees, screening trees, or parking lot trees.
 - m. A phasing plan shall be submitted with **each** Precise Plan, for approval by the Planning Commission, which shall include the possible phasing of common area improvements.
 - n. Regarding circulation:
 - i. **Phase II only:** The plan must include a designated paratransit stop adjacent to the BART faregates, consistent with ADA standards.
 - ii. The placement of bollards may not interfere with the effective movement of vehicles or persons.
 - iii. The plan must indicate on-site bicycle circulation and its access to the City’s existing and/or planned bicycle route network, particularly access from the station to the bicycle lanes on Dixon Street.
 - iv. **Phase II only:** Indicate how the planned future pedestrian/bicycle bridge across Tennyson Road would connect with pedestrian/bicycle access to the BART Station.
 - v. **Phase II only:** The driveway into the grocery store parking garage off Dixon Street shall be improved to ensure that right-in/right-out-only movements will be available for entering and exiting.
 - vi. **Phase II only:** Indicate how adequate provision of the kiss-and-ride and taxi area will be maintained to avoid conflicts.
 - vii. Where pedestrian paths cross auto lanes, the path must be clearly delineated by contrasting color, pavement pattern, lighted pedestrian crosswalks and/or raised slightly to form a raised crosswalk.
 - o. A subdivision map application shall be submitted in concurrence with **each** Precise Development Plan consistent with the approved/**modified** Preliminary Development Plan for approval by the Planning Director and the City Engineer.
 - p. A geotechnical report shall be submitted for review and approval by the City Engineer prior to approval of any tentative map or building permit applications. The report shall investigate the potential hydrostatic pressure exerted onto the underground parking structures and provide necessary mitigation measures.

- q. Mitigation Measure 10: Prior to approval of **each** Precise Plan, the applicant shall submit a noise study, prepared by a qualified acoustical engineer, that makes recommendations for construction techniques to be implemented within the residential units that face Mission Boulevard on the Perry and Key property **for Phase I**, and on Parcel 2 for **Phase II**.
- r. Mitigation Measure 11: A site-specific acoustic report shall be prepared for **each phase of the project**. The report shall include a summary of existing noise levels, an analysis of potential noise exposure levels, consistent with City of Hayward noise exposure levels, and specific measures to reduce exposure levels of indoor spaces and required outdoor open spaces to City of Hayward noise standards. The acoustical report shall be submitted as part of **each** Precise Plan application. Implementation of this mitigation measure will reduce impacts to a less than significant level.
- s. Mitigation Measure 13: The formation of a Community Facility District (CFD) shall be formed to pay for the cost of providing public services prior to occupancy of any residence. The developer shall post a deposit in the amount of \$10,000 with the City in concurrence with the submittal of **each** Precise Development Plan application to cover the City's costs for the formation of the CFD. The exact extent of the responsibilities and public services of the CFD shall be determined during the formation of the District. Formation shall be completed prior to occupancy of the first residential unit of each phase of the project.
- t. **Each** Precise Plan shall incorporate features encouraged to discourage crime, such as adequate lighting, visible and accessible areas, etc., and shall be reviewed and approved by the Hayward Police Department staff.
- u. Agreements between the developer(s), BART, the City, and Eden Housing, as appropriate, shall be executed **for each phase of the project** regarding the consequences of partial or non-development of the project. Such agreements shall include requirements for project **phases'** completion and timing. **If the developer(s) receive State Proposition 1C funds, developers must comply with requirements of the State Housing and Community Development Department for project completion and timing.**
- v. Concurrence by BART and, **for Phase II**, AC Transit, via formal agreements, that their service needs will be met by the Plan and during construction shall be executed and submitted to the City prior to start of construction **of each phase of the project**.
- w. Agreements between the developer(s) and BART shall be executed regarding the land transaction elements, replacement parking and the Community Facilities District for **each phase of the project, as applicable**.
- x. Regarding solid waste:
 - I. General Comments
 - 1. Trash Enclosures: Trash enclosures with a roof are required (Federal Clean Water Act) and must be able to be serviced at street level, not below grade. Storage space for recyclables is required by state law and City regulations.
 - 2. Collection Requirements: Collection vehicles will only service enclosures by following the direction of traffic and making right turns. Trucks will not make left turns on a street that would result in the truck obstructing on-coming traffic while servicing a trash enclosure.

3. Servicing Containers Inside Enclosures: Residential buildings will receive service between 6:00 a.m. and 6:00 p.m., Monday – Friday. If trash enclosures are sited close to residential units, residents must be apprised of the collection schedule since the hauler may not be able to accommodate a request for a later collection time. Trash containers at retail sites more than 200 feet from residences may be serviced between 5:00 a.m. and 7:00 p.m., Monday – Friday.
4. To facilitate service, on-site staff may remove and return all carts or bins for garbage or recyclables from trash enclosures, or the City’s franchisee, Waste Management of Alameda County (WMAC), may do so. If on-site staff removes the containers, time-certain collection services would need to be scheduled with the City’s franchisee to ensure that the containers are returned to the enclosure as soon as possible. If WMAC retrieves the bins from trash enclosures, WMAC will require a key or card key if enclosures are locked. Either arrangement will need to be made by calling (510) 537-5500. Locks are available from WMAC for a nominal fee. Bins can be serviced provided that curbs are collapsed.
5. Trash Enclosure Dimensions & Layout for Retail and Residential Premises
 - a. Dimensions of trash enclosures for various bin sizes, including equivalent storage space for recyclables:
 - 2cy bin: 10 feet deep x 10 feet long
 - 3cy bin: 10 feet deep x 12 feet long
 - 4cy bin: 10 feet deep x 15 feet long
 - b. If compactor bin(s) are proposed for some sites, then a larger trash enclosure will be needed to accommodate the larger space required for that bin type. The architect will need to obtain specifications for compactor bins from a leasing company and provide for City review.
6. Layout
 - a. A six-inch-wide curb or bumper along the interior perimeter of the enclosure walls to protect them from damage by containers.
 - b. A six-inch-wide curb or bumper, at least three feet long, between the garbage and recycling containers, in order to secure each container in its designated area.
 - c. A minimum space of 12 inches between the garbage and recycling containers and the walls of the enclosure to allow for maneuvering the containers.
 - d. Enclosure gates that hinge from the right and left corners of the enclosure and open straight out to allow the bin(s) to be pulled straight out and returned to their original location.
 - e. Enclosures constructed on a flat area with no more than a 2% grade to ensure that the driver can adequately maneuver the bin(s) in and out of the enclosure.
 - f. Signage indicating that one-half of each enclosure is for “Recyclables Only”, while the other half is for “Garbage Only”. Signs must be posted at eye-level on the exterior gates, on the interior walls (if the

- enclosure fronts on public property), or both, or other highly visible place.
- g. A concrete pad located just outside each enclosure is recommended in order to accommodate the weight of the truck while servicing the containers, since asphalt can fail over time at these locations.
7. Placement and Size of Trash Enclosures: Factors that were considered in determining number, size and general location of enclosures for garbage and recyclables include convenience to residents and businesses and space constraints due to the proposed layout. Regular collection services can be accommodated using bins that are smaller than those proposed but would require collection as often as 6x/week (Monday – Saturday; the maximum available), though increased services would result in more noise and increased use of the streets.
8. **Phase II only - Retail Garbage and Recyclables Service**
- a. Trash enclosures are required for each of the retail sites. Occasionally, businesses share a trash container, though most prefer not to do so.
- b. Recommended garbage service for restaurants (fast-food or some combination of sit-down services): 4cy bin serviced 3-6x/week; book stores, gift/print shops and similar services assumed for the sites shown typically require a 2 or 3cy bin serviced one or more times weekly.
- c. Each enclosure must allow equivalent storage space for recyclables.
9. Residential Garbage and Recyclables Service
- a. Recommended Options for On-Site Storage of Trash and Recyclables
- i. Require Residents to Deliver Trash and Recyclables to Designated Trash Enclosures using Steps or Elevators. Trash enclosures located equidistant from one another provide convenience and help to reinforce good habits to properly dispose of unwanted items.
- ii. Storage Rooms on Each Floor for Garbage & Recyclables Serviced by On-Site Maintenance Staff: On-site staff would empty the carts containing garbage into compactor bin(s), or if only one trash enclosure is provided, for each parcel to minimize the inconvenience created for residents' units that are the most distant from the single enclosure. Storage rooms would use 96-gallon carts for trash and recyclables provided by WMAC. All carts would have decals provided by WMAC indicating proper use.
- b. Options **NOT** Recommended for On-Site Storage of Trash and Recyclables
- i. Install Compactor Bin(s) or Roll-off Compactor(s) for Garbage: If a compactor bin or compactor is proposed, on-site staff would be required to retrieve the carts and empty the contents into the compactor to eliminate access by residents to this equipment. This option may not be required if changes to the site plans can be made to accommodate the recommended number of enclosures and collection vehicles. Doing so would avoid the additional expense to construct, install and maintain the compactors. It is also very

difficult to visually evaluate effective recycling programs when using compactor bins since the storage units may not be opened.

- ii. Construct Chutes for Garbage Collection Accessible to Residents on Each Floor: The door to each chute would need to have signage provided by the property manager indicating acceptable and unacceptable items. Chutes must be three feet in diameter to avoid obstructions. On-site staff would remove obstructions from the chutes, secure the bins so that they remain at the bottom of each chute, monitor the fill-rates of the trash bins, remove bins filled with trash and replace with empty bins, and push the filled bins to the trash enclosure. Chutes may only be used to collect garbage, not recyclables, since bins are not available to store and collect recyclables. If chutes are installed, storage areas on each floor would be required for recyclables and would need to be serviced by on-site staff.

II. **Phase II only** - Parcel 1: Housing Over Retail

1. Retail Garbage and Recyclables Collection: Includes proposed grocer, and two other retail stores with square footage from 1,500 - 2,000 SF.
 - a. Compactor for grocer: Maximum capacity to ensure that it can be serviced: 30cy; loading height required: 30 feet since the compactor will be serviced at a below-grade loading dock.
 - b. Large supermarket chains typically install a downstroke baler to bale cardboard boxes for backhaul to their distribution centers for recycling. State law also requires that such stores accept plastic grocery bags from the public for recycling, if they provide such bags to customers (See <http://www.ciwmb.ca.gov/LGCENTRAL/Basics/PlasticBag.htm>). Such material may also be backhauled, either in large plastic bags or in bales. Balers should be installed indoors with adequate fire suppression features for storage of loose and baled materials. Baled materials may not be stored outside. Some supermarket chains, including Safeway, are backhauling waste produce, which is composted in Southern California (See <http://www.jgpress.com/archives/free/001527.html>).
2. Residential Garbage and Recyclables Collection: **125** Units
 - a. Recommend four trash enclosures, each measuring 10x12 feet, two for each of the two, three-story residential complexes and located near each of the four ends of the multi-family complex. Residents would carry their trash and recyclables to the designated enclosures.
 - b. All bins for trash would be 3cy and would require service 2x/week. Layout would be as described in 5.b.

III. **Phase II only** - Parcel 2: Residential Over Parking Structure

1. Residential Garbage and Recyclables Collection: **81** Units
 - a. Recommend two trash enclosures, each measuring 10x12 feet, one near each end of the three-story residential complex. Residents

- would carry their trash and recyclables to the designated enclosures.
- b. All bins for trash would be 3cy and would require service 2x/week. Layout would be as described in 5.b. *Trash Enclosure Dimensions & Layout*.
2. **Retail Garbage and Recyclables Collection:** One 1,920 SF retail – Trash enclosure dimensions and layout are described under General Comments, 5.a. and b. *Trash Enclosure Dimensions & Layout*.
- IV. **Phase II only - Parcel 3N: Residential – 125 Units**
1. Recommend four trash enclosures, each measuring 10x15 feet, two located near each end of the two, three-story residential complexes. Residents would carry their trash and recyclables to the designated enclosures.
 2. Trash bins would be 4cy and would require service 2x/week. Layout would follow 5.b. *Trash Enclosure Layout*.
- V. **Phase II only - Parcel 3S: Residential – 103 Units**
1. Recommend three trash enclosures each of which would measure 10x12 feet.
 2. Two on the street between Dixon and the BART parking structure; both enclosures should be near but not at each end of the complex for residents' convenience.
 3. Enclosure #3 should be located near the intersection of Dixon and the entrance to the below-grade parking. Recommend enclosure not be visible from Dixon to avoid illegally-dumped trash.
 4. Residents would carry their trash and recyclables to the designated enclosures.
 5. Trash bins would be 3cy and would require service 3x/week. Layout would follow 5.b. *Trash Enclosure Dimensions & Layout*.
- VI. **Phase I only - Parcel 4: Perry Site Residential – 354 Units**
1. **Building 1 (203 Units)**
 - a. **Recommend five enclosures each measuring 10x15 feet. To store the significant amount of trash generated, the only other option would be to require on-site staff to remove trash from storage areas (located on each floor of each building) and empty the contents into a compactor bin, as described in 6.B., Options Not Recommended for On-Site Storage.**
 - b. **Residents would carry their trash and recyclables to the designated enclosures. Layout would follow 5.b. *Trash Enclosure Dimensions & Layout*.**
 - c. **The five 4cy bins for trash would require service 2x/week. Layout would follow 5.b. *Trash Enclosure Dimensions & Layout*.**
 2. **Building 2 (87 Units):**

- a. **Recommend two enclosures, each measuring 10x12 feet, and located at opposite ends of the building. To store the significant amount of trash generated, the only other option would be to require on-site staff to remove trash from storage areas (located on each floor of each building) and empty the contents into a compactor bin, as described in 9.b., *Options Not Recommended for On-Site Storage*.**
 - b. **Residents would carry their trash and recyclables to the designated enclosures.**
 - c. **The two 3cy bins for trash would require service 3 times each week. Layout would follow 5.b. *Trash Enclosure Dimensions & Layout*.**
- 3. Building 3 (64 Units):**
- a. **Recommend two enclosures, each measuring 10x10 feet, and located at opposite ends of the building. To store the significant amount of trash generated, the only other option would be to require on-site staff to remove trash from storage areas (located on each floor of each building) and empty the contents into a compactor bin, as described in 9.b., *Options Not Recommended for On-Site Storage*.**
 - b. **Residents would carry their trash and recyclables to the designated enclosures.**
 - c. **The two 2cy bins for trash would require service 3 times each week. Layout would follow 5.b. *Trash Enclosure Layout*.**

PRIOR TO APPROVAL OF, OR RECORDATION OF, THE FINAL MAP(S)

Phase II only - Prior to initiating construction of the BART replacement garage, the developer of Phase II shall pay for development and implementation of an attendant parking program, to be approved by BART, that would accommodate vehicles of BART commuters that would normally park in the 349 parking spaces that would not be available due to the construction of the BART garage.

IMPROVEMENTS

Improvement plans **for each phase of the project**, including a hydrology map and drainage calculations, and erosion and sediment control plan, a landscaping and irrigation plan, and street lighting plan, shall be submitted to the City Engineer for review and approval. Subject plans shall, in addition to the standard improvements, incorporate the following special design requirements:

Streets

1. An Encroachment Permit must be obtained prior to the start of any construction within the City of Hayward rights-of-way.

2. An Encroachment Permit must be obtained from the California Department of Transportation (CalTrans) prior to the start of any construction within their right-of-way.
3. Any damaged and/or broken sidewalks along the property frontages shall be removed and replaced as determined by the City inspector.
4. Upon any necessary repairs to the facilities under the on-site decorative paved areas, the City shall not be responsible for the replacement cost of the decorative paving. The replacement cost shall be borne by the homeowners association or commercial property owners association established to maintain the common areas within the subdivision boundary.
5. The site plan shall be reviewed with the Fire Department and Engineering and Transportation Division to ensure that the street and driveway layout is adequate to provide access for emergency, service and utility vehicles, and other commercial trucks. Changes may be necessary including increasing corner radii, driveway widths or intersection alignments.
6. The developer shall implement the signing and striping for the interior streets as shown on the **approved Precise Development Plan for each phase**. Signing and striping plans shall be approved by the City Engineer.

Phase I only - Mission Boulevard

7. Existing utilities shall be placed underground.
8. Mission Boulevard frontage improvements shall be consistent with the City's Route 238 Corridor Improvement Project plans. Required improvements, including streetlights, shall be installed, and paid for, by the developer at the time of construction on **the Perry and Key site. Developer shall enter into a separate agreement to reimburse the City for work along the Mission Boulevard frontage required for the project that must be done by the City's Rte 238 Corridor Improvement Project to meet its schedule.**
9. New decorative street lights shall be installed along the Mission Boulevard street frontage. The design and location shall be shown on the improvement plans, **consistent with the Route 238 Corridor Improvement Project**, and approved by both the Planning Director and City Engineer.

Tennyson Road

10. **Phase I only - Mitigation Measure 14**: The following improvements to the Dixon Street/Tennyson Road intersection shall be made to reduce impacts to an acceptable level: (1) provide split phasing on the Northbound and southbound approaches; (2) provide a right turn overlap (green arrows when the cross-street protected left phases are active) on the Southbound right turn; (3) restripe the northbound approach to provide an exclusive left turn lane and a shared through/right turn lane and prohibit on-street parking; (4) prohibit on-street parking on the southbound approach between the intersection and the

driveway for the adjacent townhouses, a distance of about 100 feet back from the crosswalk; **and (5) create an exclusive right-turn pocket and shared through/left-turn lane in the southbound direction.** Implementation of this mitigation measure will reduce impacts to a less than significant level. Prior to construction, the design will be approved by the City Engineer. The developer will be responsible for 100% of the design and construction costs for this mitigation.

11. **Phase II only** - Handicap ramps shall be installed where required by the City Engineer.
12. **Phase II only** - Existing utilities shall be placed underground.
13. **Phase II only** - Decorative pavements shall be capable of supporting a 50,000 lb. gross vehicle weight load. Curb returns shall have a minimum radius of 30 feet at the curb face, except as otherwise permitted by the City Engineer to allow for truck and bus turning movements.
14. **Phase II only** - The entry features, signs and monuments shall be designed to not impede sight distances.
15. **Phase II only** - New decorative streetlights shall be installed along the Tennyson Road street frontage. The design and location shall be shown on the improvement plans and approved by both the Planning Director and City Engineer.

Dixon Street

16. New decorative street lights shall be installed along the Dixon Street frontage **related to each phase of the project.** The design and location shall be shown on the improvement plans **for each phase** and approved by both the Planning Director and City Engineer. **Developer(s) shall enter into separate agreements to reimburse the City for work identified in this condition, if such work is not performed by the developer(s).**
17. Existing curb, gutter and sidewalks shall be replaced as determined by the City Engineer. **Developer(s) shall enter into separate agreements to reimburse the City for work identified in this condition, if such work is not performed by the developer(s).**
18. **Phase I only** - The developer **shall participate in the construction** at the intersection of Dixon Street and the southern entrance into the project (BART parking structure). The design of the traffic signal shall be approved by the City Engineer. **The developer is responsible for paying its prorata share of the cost of design and construction of this signal, unless other funding sources acceptable to the City and developer become available. The details concerning the payment of the developer's prorated share shall be set forth in the Owner Participation Agreement to be entered into by the Developer and the City for Phase I. Phase II – Upon commencement of Phase II construction, the remaining cost of design and construction of the signal will be due unless the traffic signal was constructed during Phase I.**

19. **Phase II only** - Signage at the signalized intersection shall indicate the direction to the BART parking structure.

Interior Public Streets

20. Street intersections shall be designed and constructed per City Standard Detail SD-110A.
21. All interior streets within the development shall be private. The curb return radius shall be 30 feet from the face of the curb, except as otherwise permitted by the City Engineer to allow for truck and bus turning movements.
22. **Phase II only** - The sidewalk segments on either side of the northwesterly auto entrance to the grocery store parking garage shall be eliminated, as well as the crosswalk at that entrance, except to allow for access to required exits and service entries.
23. Decorative on-site private streetlights shall be installed along all interior streets. Pedestrian lighting shall be provided throughout the development, including interior walkways, to enhance safe pedestrian movement. The location of the lights shall be shown on the improvement plans **for each phase of the project** and shall be approved by the City. Selected fixtures shall minimize “spill-over” lighting on adjacent properties that are not part of the development. Streetlights and pedestrian lighting shall be owned and maintained by the homeowners association and shall have a decorative design approved by the Planning Director and the City Engineer.
24. The party/parties responsible for the maintenance of all interior streets, traffic control, signage and amenities shall be identified.
25. A reciprocal agreement for ingress and egress, and parking, shall be executed between all involved parties, and that document shall be provided to the City for review and approval prior to approval of improvement plans.

Parking and Driveways

26. The applicant/developer shall provide sufficient parking spaces for each phase of the development to meet the requirements of the City of Hayward Municipal Code, and of BART for its parking structure **for Phase II**. Parking stall dimensions and driveways shall meet City requirements as approved by the Planning Director and City Engineer, or as approved by BART for its parking structure.
27. The applicant/developer shall provide a deposit equal to the cost of funding a neighborhood parking survey, as determined by the Director of Public Works, to determine if adequate parking has been provided and whether any deficiency in parking has created parking impacts outside of the project area.
28. ADA compliant parking stalls and loading areas, and handicap ramps and accessible pathways shall be provided throughout the project, per federal and state standards and exceptions.

29. **Phase II only** - The entry drives of the grocery store and BART parking garage shall be designed to eliminate conflicts with movements into and out of parking spaces, as approved by the City Engineer.
30. Parking for residential uses shall not exceed one space per studio or one-bedroom unit, or 1.3 spaces for units with two or more bedrooms.
31. **Phase II only** - Parking for non-residential uses shall be provided at a minimum of one space per 315 square feet of gross floor area. **Bicycle parking shall be provided at a number equal to at least 5% of the number of motorized vehicle spaces. Designated parking spaces shall be provided for low-emitting, fuel-efficient and carpool/vanpool vehicles per Section 5.106.8 of the California Green Building Standards Code.**

Landscaping and Irrigation

32. Prior to the approval of the improvement plans **for each phase of the project**, a detailed landscaping and irrigation plan for all common areas, front yard areas to fence lines and all rear slope areas shall be prepared by a licensed landscape architect and submitted for review and approval by the City's Landscape Architect. Planting and irrigation plans shall comply with the City's *Hayward Environmentally Friendly Landscape Designs & Checklist*.
33. **For Phase I, the Developer shall form a Landscape and Lighting District (LLD), prior to the framing inspection of the market rate units building, in order to fund the operation and maintenance of the Phase I park and the walkway public access easement connecting the park and Dixon Street. The details concerning the implementation and cost of such LLD shall be set forth in the Owner Participation Agreement, to be entered into by the Developer and the City. For Phase II -** Prior to issuance of building permits, the developer shall form a **LLD** to fund operation and maintenance of common areas within **this** phase of the development. **Phases I and II -** Prior to approval of final maps, **each** developer shall provide a **\$7,500** deposit to the City to cover the costs associated with formation of **each** District **for each phase**. The exact limits of responsibility for the Districts will be determined during processing of the Precise Plan for each phase of the development.
34. Within all required landscape areas, a complete automatic sprinkler system with an automatic on/off mechanism shall be installed. A hose bib shall be provided within each private open space area.

Storm Drainage

35. The on-site storm drain system within the development, excluding that located within the public right-of-way, shall be a private system owned and maintained by the homeowners association or property owners.

36. The Hydrology and Hydraulics Criteria Summary, Alameda County Flood Control and Water Conservation District, latest edition shall be used to determine storm drainage runoff. A detailed grading and drainage plan with supporting calculations and a completed Drainage Review Checklist shall be reviewed and approved by the Alameda County Flood Control and Water Conservation District and the City Engineer. Development of this site is not to augment runoff to the District flood control facility downstream, Zone 3A, Line D. The hydrology study shall substantiate that there will be no net increase in the quantity of runoff from the site versus the flow rate derived from the original design of Line D and any augmented runoff will need to be mitigated on-site.
37. **Phase II only** - The proposed realignment of Alameda County Flood Control & Water Conservation District (Flood Control District), Zone 3A, Line D project, a 72-inch storm drain pipe traversing BART's parking lot, shall be reviewed and approved by the Flood Control District prior to the approval of improvement plans by the City.
38. **Phase II only** - An encroachment permit shall be obtained from ACFC&WCD prior to commencement of any work within the Flood Control District right-of-way and for the construction, modification or connection to District-maintained facilities. All workmanship, equipment and materials shall conform to District standards and specifications.
39. Mitigation Measure 8: The applicant shall prepare a storm drainage report that includes storm drain calculations associated with expected runoff and downstream drainage facilities and remediate if necessary, to determine adequacy to serve **each phase of the proposed development**. The storm drainage report shall be reviewed and approved by the Hayward Public Works Department staff and Alameda Flood Control and Water Conservation District staff prior to approval of the improvement and grading plans **for each phase of the development**. Implementation of this mitigation measure will reduce impacts to a less than significant level.
40. Mitigation Measure 9: A site-specific drainage plan shall be prepared for **each phase of the project area** prior to approval of the associated grading and improvement plans. The report shall include a summary of existing (pre-project) drainage flows from the project site, anticipated increases in the amount and rate of stormwater flows from the site and an analysis of the ability of downstream facilities to accommodate peak flow increases. The analysis shall also include a summary of new or improved drainage facilities needed to accommodate stormwater increases. The drainage plan shall be reviewed and approved by the Hayward Public Works Department staff and Alameda Flood Control and Water Conservation District staff prior to approval of the improvement and grading plans for each phase of the development. Implementation of this mitigation measure will reduce impacts to a less than significant level.
41. The developer shall provide a copy of the Notice of Intent filed with the State Water Resources Control Board, prior to the issuance of a grading permit for the project site.
42. The project plans shall include storm water measures for the operation and maintenance of **each phase of the project**, to be approved by the City Engineer. The project plans shall

identify and incorporate Best Management Practices (BMPs) appropriate to the uses conducted onsite to effectively prevent the entry of pollutants into storm water runoff. Roof leaders shall discharge into a landscaped area, where available, prior to storm runoff entering a pipe system. Mitigation Measure 2: The applicant shall employ the following basic and enhanced control measures during site construction to address potential temporary air quality impacts: (a) water all active construction areas at least twice daily; (b) cover all trucks hauling soil, sand, and other loose materials; (c) pave, apply water three times daily, or apply soil stabilizers on all unpaved access roads, parking areas and staging areas; (d) sweep daily all paved access roads, parking areas and staging areas; (e) sweep streets daily if visible soil material is carried onto adjacent public streets; (f) hydro seed or apply soil stabilizers to inactive construction areas or previously graded areas that are inactive for ten or more days; (g) enclose, cover, water twice daily or apply soil binders to exposed stockpiles of dirt, or sand; (h) limit traffic speeds on unpaved roads to 15mph; (i) install sandbags or other erosion control measures to prevent silt runoff to public roadways; (j) replant vegetation in disturbed areas as quickly as possible; (k) install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site; and (l) suspend excavation and grading activity when winds exceed 25mph. Implementation of this mitigation measure will reduce the impact to a less than significant level.

43. The developer shall prepare a Maintenance Agreement for storm water BMP's constructed as part of **each phase of** this project. The Maintenance Agreement shall be reviewed and approved by the City prior to recordation with the Alameda County Recorder's Office. The Agreement shall be recorded to ensure that the responsibility for maintenance is bound to the property in **each phase in** perpetuity.
44. The project streets, driveways and parking areas shall be designed to facilitate street sweeping, including the layout of the tree and handicap ramp bulb-outs.
45. The project plan measures shall also include erosion control measures to prevent soil, dirt, debris and contaminated materials from entering the storm drain system, in accordance with the regulations outlined in the ABAG Erosion and Sediment Control Handbook.
46. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction BMPs will result in the issuance of correction notices, citations or a project stop work order.
47. The project shall not block runoff from, or augment runoff to, adjacent properties. The drainage area map developed for the hydrology design shall clearly indicate all the areas tributary to the project area. The developer is required to mitigate augmented runoffs with off-site and/or on-site improvements **for each phase of the project**.
48. All storm drain inlets must be labeled "No Dumping - Drains to Bay" using City approved methods.

49. Storm water inlets shall be installed at the curb face per the City of Hayward Standard Details. The design and location shall be approved by the City Engineer.

Sanitary Sewer System

50. Sanitary sewer service is available subject to standard conditions and fees in effect at the time of application.
51. The development's sanitary sewer mains and manholes, where located on BART or State owned parcels, shall be public, owned and maintained by the City. **For Phase I**, the sewer main and manholes in the roadway along the northwest property line shall also be public. Where public sewer mains and manholes are located in an unpaved easement, an all-weather utility truck accessible surface must be provided.
52. All public sewer mains, building court mains, building sewers and appurtenances, shall be constructed in accordance with the City's "Specifications for the Construction of Sewer Mains and Appurtenances (12" Diameter or Less)," latest revision at the time of permit approval.
53. The proposed development will impact the existing City of Hayward Wastewater Collection System. **The developer(s) for each phase of the development** shall be responsible for its share of upsizing downstream sewer mains that have been identified by City staff as having inadequate capacity as a result of **each phase of** the development's impact, and such share shall be determined by the City.
54. **Phase II only** - Per Section 11-3.501, "Parcel Frontage Extension for Sewer Mains," of the City Municipal Code, the applicant/developer is required to construct roughly 830 lf of 8" sewer main in Dixon St., from the existing manhole at Sea Mist Ct. towards Tennyson Rd. **The developer of each phase will be responsible for its required portion.**
55. To better distribute the impact the development will have on the City's Wastewater Collection System, the development's sewer system shall be designed to discharge wastewater to both the existing sewer main in Tennyson Rd. and the new sewer main to be constructed in Dixon St.
56. Each building and retail or commercial space with wastewater shall have an individual sanitary sewer lateral, at a minimum.
57. **Phase II only** - Any food service establishment shall install a grease control device to control the discharge of fat, oil and grease (grease trap or grease interceptor), unless this requirement is expressly waived by the Director of Public Works. The type, size and location of the device shall be approved by the Deputy Director of Public Works.

Water System

58. Water service is available from the City and is subject to standard conditions and fees in effect at the time of application.
59. All public water mains shall be constructed in accordance with the City's "Specifications for the Construction of Water Mains (12" Diameter or Less) and Fire Hydrants," latest revision at the time of permit approval.
60. The existing South Hayward BART station site is currently served by an 8" water main that connects to the 8" water main in Dixon St. and dead ends at a fire hydrant near the middle of the site. This existing water main will be insufficient for the proposed development. The proposed development will impact the existing City water system. **To mitigate this impact and provide the area with sufficient fire flows for the proposed structures, the applicant/developer of Phase I shall construct a 12" public water main from Mission Boulevard to the 8" line in Dixon Street. The applicant/developer of Phase II shall construct a new 12" public water main that connects to the existing 12" water main in Tennyson Road, heads southeast across the South Hayward BART site, turns and heads northeast and connects to the existing 8" water main in Dixon Street at the Phase I 12" junction point. Additional public water mains may be needed to provide water service to other areas of the development, as determined by the Public Works Director and the Fire Chief.**
61. **Phase II only** - The existing South Hayward BART 8" water main shall be abandoned and removed where it connects to the existing 8" water main in Dixon St, by City Water Distribution personnel at the applicant's/developer's expense. The existing on-site 8" and 6" asbestos cement water mains shall be removed and disposed of by the applicant/developer in accordance with State and Federal (EPA) requirements.
62. The development's water mains shall be public, owned and maintained by the City. The water mains shall be configured in a looped system and located 5 feet from the face of curb.
63. Where a public water main is in an unpaved easement or under decorative, stamped, or colored concrete (including turf-blocks), the water main shall be constructed of ductile iron. Shut-off valves are required where a water main transitions from a paved area to an unpaved easement.
64. Each dwelling unit and retail or commercial space shall have an individual domestic water meter.
65. Separate irrigation water meters shall be installed for landscaping purposes.
66. The applicant/developer shall install a Reduced Pressure Backflow Prevention Assembly on each commercial and irrigation water meter, per City Standard SD-202.
67. All fire services shall have a Double-Detector Check and Trim/Fire meter installed by City Water Distribution Personnel at the applicant's/developer's expense, per City Standard SD-204. Minimum sizing shall be per Fire Dept. requirements.
68. All domestic, commercial and irrigation water meters shall be Radio-Read type.

69. Water meters and services shall be located a minimum of two feet from the top of driveway flairs, per City Standard Detail SD-213 thru SD-218.
70. Water mains and services, including the meters, must be located at least 10 feet horizontally from and one foot vertically above, any parallel pipeline conveying untreated sewage (including a sanitary sewer laterals), and at least four feet horizontally from and one foot vertically above any parallel pipeline conveying storm drainage, per the current California Waterworks Standards, Title 22, Chapter 16, Section 64572. The minimum horizontal separation distances can be reduced by using higher grade piping materials.

Utilities

71. All utility services shall be "underground service" designed and installed in accordance with the Pacific Gas and Electric Company, AT&T, and Comcast regulations. Transformers, and switch gear cabinets, shall be placed underground unless otherwise approved by the Planning Director and the City Engineer. Underground utility plans must be submitted for City approval prior to installation.
72. The developer shall submit conceptual undergrounding plans with the Precise Plan submittal **for each phase of the project.**
73. The developer shall provide and install the appropriate facilities, conduit, junction boxes, etc., to allow for installation of a City-owned and –maintained fiber optic network within the subdivision.
74. All proposed surface-mounted hardware (fire hydrants, electroliers, etc.) along the proposed streets shall be located outside of the sidewalk within the proposed Public Utility Easement in accordance with the requirements of the City Engineer or, where applicable, the Fire Chief.
75. All utilities shall be designed in accordance with the requirements of the City of Hayward and applicable public agency standards.

Fire Protection

76. Areas where access is restricted or ladder operations and aerial ladder operations are not possible shall provide features matching the high rise requirements of the 2007 CFC and CBC, in order to make fire fighting operations possible including rescue and evacuation of the building. A request has been made to omit the installation of an emergency generator as one of the construction features matching the high rise requirements of the 2007 CFC and CBC. The request will be entertained at the time of construction plans submittal with an official AMP request to the Fire chief.
77. Fire Department operations required to use a 26' access roadway with a 13'-6" vertical clearance in areas where the building exceeds 35' in height. All finished surface of fire department access roadways shall be designed and engineered to withstand the GVW of 50,000 lbs. Fire department access from the podium shall be in such way as to present a safe access way from grade level, up through the exterior stairwell to the podium to allow

firefighters for safe laddering operations at the podium level. Roof firefighting operations will be performed from the 26' fire department access, providing the roof line of all buildings is accessible from the fire department access roadways.

78. Existing fire hydrants and fire flows need to be noted on improvement plans **for each phase of the project**. Fire flows of the total square footage of the buildings will be verified at the time of submittal to identify the need for the fire hydrant spacing requirements. Fire hydrants on Commercial/High density projects need to be spaced within 300 feet of each other. The fire hydrants shall be capable of delivering a fire flow of 5000 GPM @ 20 PSI. (50% reduction of the fire flow is allowed due to the buildings being protected with an automatic fire sprinkler system thus the fire flow per fire hydrant shall be 2500GPM @ 20 PSI). New private fire hydrants shall be Modified Double steamer with (1) 4-1/2" outlet and (1) 2-1/2" outlet. Public fire hydrants shall be equipped with (2) 4-1/2" outlets and (1) 2-1/2" outlet. Blue reflective fire hydrant blue dot markers shall be installed on the roadways indicating the location of the fire hydrants. Vehicular protection may be required for the fire hydrants.
79. Underground fire service lines shall be reflected on the plans, establishing the locations of each underground fire service line for the commercial structures as well as the multi-family buildings, including underground fire sprinkler laterals, locations of PIV, FDC and fire hydrants. Installation of underground fire service line shall be installed as per NFPA 24 and COH Standard Requirements. Underground fire service lines shall be looped.
80. The proposed structures within this development shall be protected with an automatic fire sprinkler system as per NFPA 13 Standards. Buildings shall be provided with not less than one standpipe for use during construction. Such standpipe shall be provided with fire department hose connections at accessible locations adjacent to such usable stairs. Standpipe systems shall be extended as construction progresses. At each floor landing a 2-1/2" valve outlet shall be provided for fire department use as well as inside the corridors of every floor. Where construction height requires the installation of class 1 standpipe, fire pumps and water main connections shall be provided to serve the standpipes. Standpipes shall be accessible in the finished building in the stairwells and interior corridors. Design and installation of the class -1 wet standpipe systems shall be in conformance with NFPA-14 Standards. Underground fire service laterals for fire sprinkler systems as well as fire department connections and post indicators valves shall be installed in acceptable locations as approved per the fire department.
81. Fire alarm system shall be provided as per NFPA 72 Standards for all buildings within the complex. Individual buildings shall be provided with their own designated fire alarm and each fire sprinkler system riser shall have exterior local alarm bell(s). Interior notification device(s) shall be installed within each living unit and within the commercial spaces. The alarm shall be activated upon any fire sprinkler system waterflow activity.
82. A manual and automatic fire alarm (evacuation) system shall be required for the buildings. The system shall include common areas, smoke detectors, manual pull stations and audible and visual devices. The system shall also meet ADA compliance and elevator recall system.

83. Each building with residential units shall have its own fire alarm addressing and its own fire control center tied into a PA system/ alarm enunciator system/ evacuation system.
84. Each building with residential units shall have its own fire alarm addressing and its own fire control center tied into a PA system/ alarm enunciator system/ evacuation system.
85. Pressurization/smoke removal/ rated corridors or any other building features that would be provided for high rise buildings would have to be incorporated to any floors where fire department ladder operations are not possible due to building construction features that would impede the deployment of the ladders or aerial ladder operations for rescue or fire fighting operations. These features may include any part of the building exceeding 30' (Feet) in height from a fire apparatus access where the Fire Marshal feels it is essential to the safe evacuation of residents and firefighting operations during an actual fire situation.
86. Building exiting requirements shall meet the latest adopted edition of the 2007 CBC, Chapter 10, or such code in effect at the time of submittal of building permit applications.
87. Extinguisher placement shall conform to CFC, Chapter 9.
88. Address and premise identification approved numbers shall be placed on all buildings in such a position as to be plainly visible and legible from the road or street fronting the property. Dimensions of address numbers or letters on the front of the buildings shall be approved by the Fire Department.

Dedications, Easements and Deed Restrictions

89. The final map(s) shall reflect:
 - a. Six-foot-wide public utility easements (PUE) along the edge of the public/private streets where necessary as determined by the City Engineer.
 - b. Dedication of all right-of-way and easements for the new water main extension, including access roads.

Subdivision Agreement

90. Execute subdivision agreement(s) and post bonds with the City that shall secure the construction of the public improvements per Section 10-3.332, Security for Installation of Improvements, of the Municipal Code. Insurance shall be provided per the terms of the subdivision agreement(s).

PRIOR TO ISSUANCE OF GRADING PERMITS

91. Mitigation Measure 4: Prior to any grading or site earthwork, the applicant shall submit an Erosion and Sediment Control Plan to the City for review and approval, as part of improvement plans. The Plan shall incorporate measures consistent with the City's Grading Ordinance and Best Management Practices for construction projects.

Implementation of this mitigation measure will reduce impacts to a less than significant level.

92. Mitigation Measure 6: Prior to construction/grading permits being issued and a certificate of occupancy being granted, the applicant shall obtain environmental and health based clearances from the department of Toxic Substances and Hayward Fire Department-Hazardous Materials Section. Some allowances for grading or construction may be granted if specifically requested in writing and allowed by the Department of Toxic Substances Control and the Hayward Fire Department.
93. Mitigation Measure 7: The applicant shall submit an erosion and sediment control plan and a stormwater pollution prevention plan (SWPPP) **for each phase of the project**, as part of the Grading and Improvement Plan application submittal, utilizing best management practices in accordance with the Alameda County Clean Water Program NPDES Permit Section C.3, including but not limited to limiting periods during which grading occurs.
94. Mitigation Measure 12: A Construction Noise Management Plan shall be prepared **for each phase of the project**. The plans shall specify measures to be taken to minimize construction noise on surrounding developed properties. The Noise Management Plan **for each phase** shall be approved by City staff prior to issuance of grading or building permits and shall contain, at minimum, a listing of hours of construction operations, a requirement for the use of mufflers on construction equipment, limitation on on-site speed limits, identification of haul routes to minimize travel through residential areas and identification of noise monitors. Specific noise management measures shall be included in appropriate contractor plans and specifications. Implementation of this mitigation measure will reduce impacts to a less than significant level.
95. The developer shall complete a Development Building Application Form Information comprised of 1) Impervious Material Form and 2) Operation and Maintenance Information Form.
96. A copy of the Notice of Intent (NOI) from the State Water Resources Control Board shall be provided to the City.
97. Prior to the issuance of a grading permit, the developer shall provide a tree preservation bond, surety or deposit, equal in value to the trees to be preserved on the site that are within 50 feet of any grading or construction. The bond, surety or deposit shall be returned when the tract is accepted if the trees are found to be in a healthy, thriving and undamaged condition, as determined by the City's Arborist.
98. Trees shall be preserved in accordance with the Tree Preservation Ordinance. Prior to the issuance of a grading or building permit, all trees to be preserved or removed shall be indicated on the grading, site and landscape plans, and trees to remain in place shall be noted and provided with tree protection measures in compliance with City codes and per tree preservation guidelines, including installation of tree protection fencing prior to the start of grading, as recommended by the project consulting arborist. A tree removal permit

is required prior to the removal of any tree. Replacement trees shall be required for any trees removed, as determined by the City Landscape Architect.

99. **Phase II only** - A formal agreement with BART shall be delivered to the City for its review and approval regarding the construction of the BART parking structure, which shall identify project phasing and construction coordination to ensure that there is no disruption of bus service.
100. **Phase II only** - A formal agreement with AC Transit shall be delivered to the City for its review and approval regarding the construction of the bus transfer facilities, which shall identify project phasing and construction coordination to ensure that there is no disruption of bus service.

PRIOR TO ISSUANCE OF BUILDING PERMITS

101. Prior to the approval of improvement plans or issuance of the first building permit **for each phase**, detailed landscaping and irrigation plans for all common areas shall be prepared by a licensed landscape architect and submitted for review and approval by the City. Landscaping and irrigation plans shall comply with the City's Hayward Environmentally Landscape Designs & Checklist.
102. Prior to issuance of the first building permit, the **corresponding** final map shall be approved by the City and filed with the County Clerk-Recorder Office.
103. Mitigation Measure 3: The applicant shall have prepared a geotechnical investigation by a licensed geotechnical engineer **for each phase of the project**, which will outline recommendations for construction given the location of the project site near the Hayward fault. Submittal of the geotechnical report shall be submitted as part of building permit applications. Implementation of this mitigation measure will reduce impacts to a less than significant level.
104. Mitigation Measure 5: The applicant shall submit a detailed soils report, prepared by a licensed geotechnical engineer, as part of the building permit application that demonstrates the type of construction suitable for the project site **for each phase**, based on recommendations in the soils present. Implementation of this mitigation measure will reduce impacts to a less than significant level.

PRIOR TO CONSTRUCTION WITH COMBUSTIBLE MATERIALS

105. Required water system improvements shall be completed and operational prior to the start of combustible construction **for each phase**, to the satisfaction of the Fire Chief.

DURING CONSTRUCTION

106. The following control measures for construction noise, grading and construction activities shall be adhered to, unless otherwise approved by the Planning Director or City Engineer:

- a. Grading and construction activities shall be limited to the hours 7:00 AM to 6:00 PM on weekdays and Saturdays; there shall be no grading or construction activities on Sundays or holidays;
- b. Grading and construction equipment shall be properly muffled;
- c. Unnecessary idling of grading and construction equipment is prohibited;
- d. Stationary noise-generating construction equipment, such as compressors, shall be located as far as practical from occupied residential housing units;
- e. Applicant/developer shall designate a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise. Letters shall be mailed to surrounding property owners and residents within 300 feet of the project boundary with this information, including the residents/owners at properties in the Beatron Way neighborhood and within Spanish Ranch II Mobilehome Park **for Phase II.**
- f. The developer shall post the property with signs that shall indicate the names and phone number of individuals who may be contacted, including those of staff at the Bay Area Air Quality Management District, when occupants of adjacent residences find that construction is creating excessive dust or odors, or is otherwise objectionable. Letters shall also be mailed to surrounding property owners and residents with this information prior to commencement of construction.
- g. The developer shall participate in the City's recycling program during construction;
- h. Daily clean-up of trash and debris shall occur on Dixon Street, Tennyson Road and Mission Boulevard and other neighborhood streets utilized by construction equipment or vehicles making deliveries.
- i. The site shall be watered twice daily during site grading and earth removal work, or at other times as may be needed to control dust emissions;
- j. All grading and earth removal work shall follow remediation plan requirements, if soil contamination is found to exist on the site;
- k. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
- l. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
- m. Apply (non-toxic) soil stabilizers or hydroseed to inactive construction areas (previously graded areas inactive for 10-days or more);
- n. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
- o. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to storm water pollution;
- p. Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work;
- q. Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping;
- r. No site grading shall occur during the rainy season, between October 15 and April 15, unless approved erosion control measures are in place.

- s. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to: 1) start of the rainy season; 2) site dewatering activities; or 3) street washing activities; and 4) saw cutting asphalt or concrete, or in order to retain any debris or dirt flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash;
 - t. Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides or any other materials used on the project site that have the potential for being discharged to the storm drain system through being windblown or in the event of a material spill;
 - u. Never clean machinery, tools, brushes, etc., or rinse containers into a street, gutter, storm drain or stream. See "*Building Maintenance/Remodeling*" flyer for more information;
 - v. Ensure that concrete/gunite supply trucks or concrete/plasters finishing operations do not discharge washwater into street gutters or drains; and
 - w. The applicant/developer shall immediately report any soil or water contamination noticed during construction to the City Fire Department Hazardous Materials Division, the Alameda County Department of Health and the Regional Water Quality Control Board.
107. A representative of the soils engineer shall be on the site during grading operations and shall perform such testing as deemed necessary by the City Engineer. The representative of the soils engineer shall observe grading operations with recommended corrective measures given to the contractor and the City Engineer.
108. The minimum soils sampling and testing frequency shall conform to Chapter 8 of the Caltrans Construction Manual. The subdivider shall require the soils engineer to daily submit all testing and sampling and reports to the City Engineer.
109. The developer shall be responsible to adhere to all aspects of the Storm Water Pollution Prevention Plan (SWPPP) as approved per conditions of approval above.
110. Construction Administration services shall be provided by the project landscape architect. Services to include:
- a. Observation of irrigation system before burying pipes;
 - b. Observation of plant material upon delivery to the site;
 - c. Observation of layout and placement of plant material upon delivery to the site;
 - d. Observation for maintenance period commencement; and
 - e. Observation for final acceptance.

PRIOR TO CONNECTION OF UTILITIES AND ISSUANCE OF CERTIFICATES OF OCCUPANCY

111. The **applicable** final map shall be filed and approved by the City and recorded in the County Recorder's Office prior to the issuance of a Certificate of Occupancy of any **associated** unit.

112. The developer shall pay all required fees, including those indicated below, with the amount of such fees to be in accordance with the fee schedule in effect at the time of issuance of the building permits, unless otherwise specified:
- a. Supplemental Building Construction and Improvement Tax;
 - b. Building Construction and Improvement Tax;
 - c. School Impact Fee;
 - d. Water facilities Fee (payable prior to final inspection);
 - e. Sewer Connection Fee for each dwelling unit at the rate in effect when the utility service permit for the dwelling unit is issued; and
 - f. Park dedication in-lieu fees for each dwelling unit shall be calculated at the rate in effect when the building permit for unit is issued.
113. **Condition 113 has been Intentionally Omitted (per action by the Hayward City Council on July 26, 2011).**
114. Any damaged curb, gutter and/or sidewalk along the Tennyson Road, Dixon Street and Mission Boulevard property frontages shall be repaired or replaced to the satisfaction of the City Engineer.
115. All common area landscaping, irrigation and other required improvements in the current phase shall be installed according to the approved plans.
116. The on-site street light electroliers shall be in operating condition as approved by the Planning Director and the City Engineer.
117. **Phase II only** - Prior to occupancy of all the **residential** units on Parcels 1 and 2, the grocery store shall be occupied and open for business to the public.

PRIOR TO CITY APPROVAL OF THE TRACT IMPROVEMENTS AS BEING COMPLETED

118. All tract improvements, including the complete installation of all improvements relative to streets, fencing, sanitary sewer, storm drainage, water system, underground utilities, etc., shall be completed and attested to by the City Engineer before approval of occupancy of any unit **for each phase**. Where facilities of other agencies are involved, such installation shall be verified as having been completed and accepted by those agencies.
119. The developer shall submit a final statement of water main extension costs and notarized bill of sale to the Utilities Administration prior to application for water service.
120. All common area landscaping, irrigation and other required improvements shall be installed prior to acceptance of tract improvements **for each phase**, or occupancy of 80% of the dwelling units **for each phase**, whichever first occurs. All individual lot landscaping shall be installed prior to occupancy of each unit and prior to the final acceptance of tract improvements.
121. **Phase I only** - Prior to completion of tract improvements for the development proposed east of Dixon Street, **and assuming acquisition and improvements by other means has**

not occurred, the City and developer shall acquire, improve, and offer for dedication for public use **and provide for ongoing maintenance of** the adjacent Caltrans parcels, **as discussed in detail in the Owner Participation Agreement for the Project.**

122. **Developers for each phase of construction may be required to pay for** an AC overlay along Tennyson Road, Dixon Street and Mission Boulevard, **if** required by the City Engineer, if it is determined **by the City Engineer** that **such overlay** is necessary due to deterioration resulting from heavy traffic during the construction of **each phase of** the development.
123. The improvements associated with the Pacific Gas and Electric Company, EBMUD, Comcast and SBC shall be installed to the satisfaction of the respective companies.
124. Landscape improvements and street trees shall be installed according to the approved plans and a Certificate of Substantial Completion **for each project phase**, and an Irrigation Schedule shall be submitted prior to the issuance of a Certificate of Occupancy for each unit.
125. The subdivider shall submit an "as built" plan **for each phase** indicating the following:
 - a. All the underground facilities, sanitary sewer mains and laterals, water services (including meter locations), Pacific Gas and Electric Company, SBC and Comcast, etc; and
 - b. All the site improvements, except landscaping species, buildings and appurtenant structures.

Homeowners Association

126. Prior to the sale of any parcel, or prior to the acceptance of site improvements **for each phase of the project**, whichever first occurs, a homeowners' association shall be created to maintain the common area landscaping and open space amenities as depicted on the approved tentative tract map. The exact limits of responsibility for the Association will be determined during processing of the Precise Development Plan for **each phase of** the development.
127. Prior to the sale of any parcel, or prior to the acceptance of site improvements **for each phase of the project**, whichever first occurs, Covenants, Conditions and Restrictions (CC&R's) shall be prepared for the project which shall be reviewed and approved by the Planning Director and City Attorney that shall include the following provisions:
 - a. Each owner shall automatically become a member of the association and shall be subject to a proportionate share of maintenance expenses.
 - b. A reserve fund shall be maintained to cover the costs of improvements and landscaping to be maintained by the Association.
 - c. The association shall be managed and maintained by a professional property management company.
 - d. The homeowners' association shall maintain the common area irrigation system and maintain the common area landscaping in a healthy, weed-free condition at all times. The homeowner's association representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% die-back) shall be replaced within 14 days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to the Hayward Municipal Code.

- e. A provision that if the homeowners' association fails to maintain the landscaping and irrigation in all common areas for which it is responsible so that owners, their families, tenants, or adjacent owners will be impacted in the enjoyment, use or property value of the project, the City shall have the right to enter upon the project and to commence and complete such work as is necessary to maintain the common areas and private streets, after reasonable notice, and lien the properties for their proportionate share of the costs, in accordance with Section 10-3.385 of the Hayward Subdivision Ordinance.
- f. A requirement that the building exteriors and amenities shall be maintained free of graffiti. The owner's representative shall inspect the premises on a weekly basis and any graffiti shall be removed within 48 hours of inspection or within 48 hours of notification by the City.
- g. A tree removal permit is required prior to the removal of any protected tree, in accordance with the City's Tree Preservation Ordinance.
- h. Utility meters, when not enclosed in a cabinet, shall be screened by either plant materials or decorative screen, allowing sufficient access for reading.
- i. Any transformer shall be located underground and shall be located outside any front or side street yard.
- j. Any future major modification to the approved site plan shall require review and approval by the Planning Commission.
- k. The CC&Rs shall specify the outdoor collection locations of trash and recycle containers. In addition, trash and recycle containers shall not be moved to the collection location more than 24 hours prior to collection and shall be removed within 24 hours after collection.
- l. Upon any necessary repairs to the facilities under the on-site decorative paved areas, the City shall not be responsible for the replacement cost of the decorative paving. The replacement cost shall be borne by the homeowners association established to maintain the common areas within the subdivision boundary.
- m. Streetlights and pedestrian lighting shall be owned and maintained by the homeowners association and shall have a decorative design approved by the Planning Director and the City Engineer.
- n. Contribution to the Community Facilities District to pay for proportionate share of the cost for public services, including police services.
- o. Contributions to fully fund implementation of measures to relieve potential overflow parking impacts, including such measures as implementing, funding and administering of a residential parking permit program according to City requirements, increasing the on-street parking supply through implementation of angled parking on appropriate streets, or managing the existing on-street parking, using time restrictions to improve turnover and provide a pool of short-term parking.

Phase II only - Commercial Property Owners' Association

128. Prior to the acceptance of site improvements, a Commercial Property Owners' Association (CPOA) shall be created to maintain the frontage landscaping and other amenities as depicted on the approved tentative tract map. The exact limits of responsibility for the Association will be determined during processing of the Precise Development Plan for **each phase of** the development. The City shall have the ability to place liens on all private properties within the development if the CPOA fails to fulfill its maintenance obligations.

129. Prior to the sale of any parcel, or prior to the acceptance of site improvements **for each phase of the project**, whichever first occurs, Covenants, Conditions and Restrictions (CC&R's) shall be prepared for **each phase of** the project, which shall be reviewed and approved by the Planning Director and City Attorney that shall include the following provisions:
130. Each owner shall automatically become a member of the association and shall be subject to a proportionate share of maintenance expenses.
- a. A reserve fund shall be maintained to cover the costs of improvements and landscaping to be maintained by the Association.
 - b. The association shall be managed and maintained by a professional property management company.
 - c. The association shall maintain the common area irrigation system and maintain the common area landscaping in a healthy, weed-free condition at all times. The homeowner's association representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% die-back) shall be replaced within 14 days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to the Hayward Municipal Code.
 - d. A provision that if the association fails to maintain the landscaping and irrigation in all common areas for which it is responsible so that owners, their families, tenants, or adjacent owners will be impacted in the enjoyment, use or property value of the project, the City shall have the right to enter upon the project and to commence and complete such work as is necessary to maintain the common areas and private streets, after reasonable notice, and lien the properties for their proportionate share of the costs, in accordance with Section 10-3.385 of the Hayward Subdivision Ordinance.
 - e. A requirement that the building exteriors and amenities shall be maintained free of graffiti. The owner's representative shall inspect the premises on a weekly basis and any graffiti shall be removed within 48 hours of inspection or within 48 hours of notification by the City.
 - f. A tree removal permit is required prior to the removal of any protected tree, in accordance with the City's Tree Preservation Ordinance.
 - g. Utility meters, when not enclosed in a cabinet, shall be screened by either plant materials or decorative screen, allowing sufficient access for reading.
 - h. Any transformer shall be located underground and shall be located outside any front or side street yard.
 - i. Any future major modification to the approved site plan shall require review and approval by the Planning Commission.
 - j. The CC&Rs shall specify the outdoor collection locations of trash and recycle containers. In addition, trash and recycle containers shall not be moved to the collection location more than 24 hours prior to collection and shall be removed within 24 hours after collection.
 - k. Upon any necessary repairs to the facilities under the on-site decorative paved areas, the City shall not be responsible for the replacement cost of the decorative paving. The replacement cost shall be borne by the association established to maintain the common areas within the subdivision boundary.

- l. Streetlights and pedestrian lighting shall be owned and maintained by the association and shall have a decorative design approved by the Planning Director and the City Engineer.
- m. Contribution to the Community Facilities District to pay for proportionate share of the cost for public services, including police services.

ONE YEAR AFTER PROJECT BUILDOUT

131. **Phase II only - Mitigation Measure 15: The developer shall post a deposit in the amount of \$10,000, so that** one year after build out and occupancy of the project, the **City may** conduct a neighborhood parking survey to determine if adequate parking has been provided. If the results of the survey indicate substantial impacts to the surrounding areas, as determined by Hayward Engineering and Transportation Planning staff, then the developer or the developer's designee shall incorporate measures to reduce impacts to a less than significant level. The City of Hayward Traffic Regulations Section 3.95 indicates that a significance threshold for a residential parking permit program would be met if 75% of all on-street parking spaces within six adjacent block faces are occupied during any two one-hour periods between 8am and 6pm. Such measures to address potential impacts may include, but are not limited to: implementing, funding and administering a residential parking permit program according to City requirements, increasing the on-street parking supply through implementation of angled parking on appropriate streets, or managing the existing on-street parking, using time restrictions to improve turnover and provide a pool of short-term parking. Implementation of this mitigation measure will reduce impacts to a less than significant level.

Attachments:

- Attachment A1: Original Project Site Plan
- Attachment A2: Revised Project Site Plan
- Attachment B1: Original Project Details Table
- Attachment B2: Revised Project Details Table
- Attachment C: Revised Project Phasing Plans (3)

**CONDITIONS OF APPROVAL
PRECISE PLAN**

**SOUTH HAYWARD BART MIXED USE PROJECT
PHASE I
28601 & 28850 DIXON STREET
28901-28953 MISSION BOULEVARD**

ZONE CHANGE APPLICATION NO. PL-2008-0547 PD

June 28, 2012

Phase I of Planned Development District No. PL-2008-0547 PD, to accommodate construction of a residential development consisting of 357 multi-family residential units, including 151 units of affordable housing and 206 market-rate units (to be mapped as condominiums), on the former Perry & Key Auto Body Repair Shop site and the BART east lot (the overflow parking lot across Dixon Street from the main BART lot), located between Mission Boulevard and Dixon Street. Phase I of the Planned Development District shall be developed according to the conditions of approval listed below and applicable conditions of approval approved for the modification to the Planned Development District approved by the Planning Director on June 8, 2011 (the “Modified Conditions of Approval”),, and by the City Council on July 26, 2011, and in substantial conformance with the Precise Development Plan labeled in the City files as “Exhibit A,” except as modified herein.

Prior to final inspection, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.

The Precise Plan shall become void one year following the effective date of approval unless, before that time, a building permit application is accepted for processing by the Building Official. A one-year extension, approval of which is not guaranteed, may be granted by the City Council, provided the request for such extension is submitted at least 30 days prior to the expiration of the original approval. A request for a second one-year extension, approval of which is not guaranteed, may also be granted by the City Council, provided the request for such second extension is submitted at least 30 days prior to the expiration of the first extension.

The permittee shall enter into an agreement with the City to assume the defense of, and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.

Any proposals for minor alterations to the proposed site plan and/or design that do not require a variance to the Zoning Ordinance standards must be approved by the Planning Director prior to implementation.

Unless otherwise stated herein or in the Owners Participation Agreement (OPA) executed by the Developers and the City on June 18, 2012,, all necessary easements shall be dedicated, and all improvements shall be designed and installed at no cost to the City of Hayward. The applicant/developer’s engineer shall perform all design work unless otherwise indicated.

All improvements shall be designed and constructed in accordance with the City of Hayward Municipal Code – Chapter 10, Article 3, and Standard Specifications and Details – unless otherwise indicated hereinafter.

PRIOR TO APPROVAL OF, OR RECORDATION OF, THE FINAL MAPS

IMPROVEMENTS

Landscape

Park:

1. Additional park amenities, to include additional active group areas, park benches and pedestrian scale lighting, as well as irrigation system details, shall be added to the landscape plans for the park, particularly in the proposed playground area, to be approved by City staff.
2. Redwood tree planting shall be relocated to the areas indicated as “rain gardens” in the southern portion of the park property, and replaced with smaller trees placed along the building edges so as not to impede fire rescue missions.
3. Remove shrub planting in the 20-foot fire access road at the east end of the JMJ Development parking access driveway.

Wittek-Montana:

4. Provide additional access to the park/playground from the building at the southeastern corner of the property.
5. Remove the label “artificial turf” from the plan.
6. Revise irrigation water meter size to two (2) inches to match the size indicated in the utility plan.
7. Replace granite cobbles in street tree wells with permeable/pervious pavers.

Eden Housing:

6. Street tree planting must be done within the private property because of the location of underground utilities. Provide additional trees along the building frontage to provide continuous street tree canopy coverage.
7. Provide a reference to Sheet L2.3, the Planting Legend, Images and Notes, on Sheet L2.0.
8. A single type of pavers for the entire podium creates monotony; provide relief by using different colors and/or sizes as bandings that coordinate with the architecture.
9. Community Gardens: Each 4’x15’ planter may serve only small numbers of residents. Provide at least one large communal raised planter to encourage group gathering and shared activities.

Water

1. The development's water mains shall be public, owned and maintained by the City. The water mains shall be configured in a looped system and located five feet from the face of curb.
2. All public water mains shall be constructed in accordance with the City's "Specifications for the Construction of Water Mains (12" Diameter or Less) and Fire Hydrants," latest revision at the time of permit approval.
3. As it is impractical for each dwelling unit to have its own domestic water meter, each building shall have an individual domestic water meter. Based on the number of dwelling unit and the water fixture units, each building shall be served by a six-inch domestic water meter. The current facilities fee for a six-inch water meter is \$304,623.
4. Private water submeters shall be installed for each dwelling unit in the JMJ Development building, per the City of Hayward's Indoor Water Use Efficiency Standards. This requirement is waived for the Eden Housing building.
5. Separate irrigation water meters shall be installed for landscaping purposes. The plans indicate that a two-inch irrigation meter will be installed for the JMJ Development property. The current facilities fee for a 2-inch irrigation meter is \$48,746. The plans indicate that a one-inch irrigation meter will be installed for the Eden Housing property. The current facilities fee for a one-inch irrigation meter is \$15,236. The plans indicate that a one-inch irrigation meter will be installed for the park parcel. This irrigation service line meter must be installed by City Water Distribution personnel. The cost is currently \$18,736, which includes an installation fee of \$3,500 and a facilities fee of \$15,236.
6. The applicants/developers shall install a Reduced Pressure Backflow Prevention Assembly on each irrigation water and domestic meter, per City Standard SD-202.
7. All domestic and irrigation water meters shall be radio-read type.

Fire

1. All fire services shall be installed by City Water Distribution Personnel at the applicant's/developer's expense, per City Standard SD-204. Minimum sizing shall be per Fire Department's requirements. The current facilities fee for a fire service meter is \$6,094.
2. Water meters and services to be located a minimum of two feet from top of driveway flare as per City Standard Details SD-213 thru SD-218. Water meters shall not be located in setback areas or private driveways or roadways unless approved otherwise.
3. Water mains and services, including the meters, must be located at least 10 feet horizontally from and one foot vertically above any parallel pipeline conveying untreated sewage (including sanitary sewer laterals), and at least six feet from and one foot vertically above any parallel pipeline conveying storm drainage, per the current California Waterworks Standards, Title 22, Chapter 16, Section 64572. The minimum horizontal separation distances can be reduced by using higher grade piping materials.

Sewer

1. All public sewer mains and appurtenances shall be constructed in accordance to the City's "Specifications for the Construction of Sewer Mains and Appurtenances (12" Diameter or Less)," latest revision at the time of permit approval.

2. The sanitary sewer laterals shall have cleanouts and be constructed per City Standard Detail SD-312.
3. The current Sanitary Sewer Connection fee for a multi-family residential unit is \$6,853 per unit.

Engineering(Refer to Sheets C1.0 TO C5.0)

The preliminary plans, prepared by the project Civil Engineer, are acceptable for the approval of the Precise Plan. Subject plans shall, in addition to the standard improvements, incorporate the following special design requirements:

1. Two public water mains shall be configured in a looped system and shall be constructed for this development as follows: an eight-inch water main shall be installed in the proposed private street along the northerly boundary and another eight-inch water main shall be installed traversing the proposed park and the proposed driveway along the southerly boundary.
2. Two public Double Steamer fire hydrants shall be installed within the proposed park and shall be equipped with two 4-1/2" outlets and one 2-1/2" outlet. Vehicular protection may be required for the fire hydrants. Locations of fire hydrants shall be approved by the Fire Chief.
3. Required water system improvements shall be completed and operational prior to the start of combustible construction to the satisfaction of the Fire Chief.
4. The project engineer shall coordinate with the City project managers from Public Works – Engineering and Transportation Department regarding any changes along Mission Boulevard and Dixon Street to accommodate the development so that improvements can be done in a timely manner to meet the schedules of the City's Route 238 Corridor Improvement Project and Dixon Street Improvement Project.
5. The sewer main and manholes in the proposed private street along the northerly property boundary shall be public.
6. The sewer main and manholes in the proposed driveway along the southerly property boundary shall be private sewer main and shall be maintained by the Homeowner's Association.
7. Improvement Plans prepared by a Registered Civil Engineer shall be reviewed and approved by the City Engineer prior to the issuance of any construction permits.

FINDINGS FOR APPROVAL
PRECISE PLAN

SOUTH HAYWARD BART MIXED-USE PROJECT
PHASE I
28601 & 28850 DIXON STREET
28901-28953 MISSION BOULEVARD

ZONE CHANGE APPLICATION NO. PL-2008-0547 PD

June 28, 2012

1. On March 17, 2009, the Hayward City Council adopted a Mitigated Negative Declaration (MND), pursuant to the California Environmental Quality Act, and a Mitigation Monitoring Reporting Program (MMRP) for the South Hayward BART Mixed-Use Project. In conjunction with the request for a Minor Modification to the Preliminary Development Plan associated with a Planned Development District for the Project, an Addendum to the MND was prepared and approved on June 8, 2011, addressing the proposed modifications to the project and potential environmental impacts associated with those modifications. The fundamental conclusion of the Addendum was that the proposed minor modifications to the Preliminary Development Plan would not result in new environmental effects or substantially increase the severity of impacts already identified in the previously-adopted Mitigated Negative Declaration. The Precise Development Plan for Phase I is in substantial conformance to the Modified Preliminary Development Plan and there is no change in circumstances that would subject the Precise Development Plan for Phase I to additional environmental review. The Precise Development Plan for Phase I will not result in new environmental effects or substantially increase the severity of impacts already analyzed in the previously-adopted Mitigated Negative Declaration associated with the Preliminary Development Plan approved as part of the approval of Zone Change No. PL-2008-0547 PD and no further environmental review is required.
2. As required by the Hayward Zoning Ordinance, the Precise Development Plan for Phase I is in substantial conformance to the Modified Preliminary Development Plan.
 - While the orientation of the individual buildings slightly differs when comparing the Preliminary and Precise Development Plans, the placement of the buildings to create significant edges along the property edges 1) creates a similar outward presence, 2) forms internal open spaces, and 3) retains vehicular access points, driveways, and garage entries. For these reasons, the minor reorientation substantially conforms to the Modified Preliminary Development Plan.
 - The height relationship between the two primary building masses remains substantially similar to that approved under the Preliminary Development Plan.

- The architectural design retains the same style, and the same colors and materials palette, as that approved under the Preliminary Development Plan.
- The amount of open space provided exceeds the minimum required.
- The amount of parking spaces provided for the project is in conformance with the standards in place at the time of adoption of the associated Planned Development District.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 10, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Acting Chair Faria.

ROLL CALL

Present:	COMMISSIONERS:	Lamnin, Lavelle, Loché, McDermott, Mendall
	ACTING CHAIRPERSON:	Faria
Absent:	COMMISSIONER:	
	CHAIRPERSON:	Márquez

Acting Chair Faria led in the Pledge of Allegiance.

Staff Members Present: Conneely, Fakhrai, Patenaude, Philis, Strojny

General Public Present: 0

PUBLIC COMMENTS

Chuck Horner, Lyford Street resident, representing Hayward Coalition for Healthy Youth, said the priority of the coalition was the health and safety of youth so kids could reach their full potential. He explained that the group was a collaboration of groups specifically targeting tobacco abuse by minors. He mentioned that next week a problem analysis would be held at Hayward High School. Mr. Horner invited all to join him in protecting youth, creating policies and enforcements, and making Hayward a safe community.

Commissioner Loché suggested Mr. Horner meet with the Hayward Youth Commission for input and Mr. Horner thanked him and said he would be more diligent about working with the Commission.

Janice Louie, also representing the Coalition and an employee with Alameda County Public Health Department, mentioned that Mayor Sweeney suggested the Coalition approach the Planning Commission because the City's Smoking Ordinance was scheduled for review. Ms. Louie said the Surgeon General's report released in March looked specifically at preventing tobacco use among youth and young adults. According to the report, 1,200 people a day die from smoking-related illnesses, she said, and for every death, two new young people under the age of 18 start smoking. Ms. Louie said the tobacco industry attracts young smokers by keeping prices down, marketing to youth, and using packaging that appeals to youth. She noted that cigars were unregulated, unlike cigarettes, and 1 in 5 high school kids smoked cigars. She said the tobacco industry spends \$1 million every hour marketing products and 80% of young smokers choose the top three brands advertised. Ms. Louie asked the Commission to limit access to youth-friendly cigars.

Commissioner Lamnin asked staff when the Smoking Ordinance was coming back to the Commission and Planning Manager Richard Patenaude said review of a proposed ordinance was scheduled for May 31st, but noted the proposed changes to the ordinance limited zone districts, possibly placed some distance restrictions on the retail sales of tobacco, and defined the phrase "retail tobacco sale." Mr. Patenaude explained that the changes were limited in scope.

PUBLIC HEARINGS

1. Recommended FY13-FY22 Capital Improvement Program

Administrative Analyst II Todd Strojny gave a synopsis of the report noting the FY13 CIP was more detailed than the FY12 CIP, was consistent with the new two-year cycle for the City's Operating Budget, and included many new projects.

Commissioner Loché asked staff if costs related to proposed upgrades under Technology Services would come back to the City through energy savings. Director of Public Works-Engineering and Transportation Morad Fakhrai said the upgrades would save time and improve efficiency. As an example, Mr. Fakhrai mentioned the new ERP financial system that would produce complex reports that staff used to generate manually.

Commissioner Mendall asked if the mural funding, \$100K in FY 2013, \$50K every year after that, was just for large murals or included utility boxes too. Director Fakhrai explained that the City had received a one-time grant for FY 2013, otherwise the funding amount would consistently be \$50K and included both large and small mural projects. Mr. Fakhrai noted that some of the large murals along Mission were funded by the Route 238 Corridor Improvement Project and that staff would continue to look for additional funding. Director Fakhrai said the mural program had been very successful with a marked reduction in graffiti on utility cabinets and walls. For frequently tagged utility boxes, Commissioner Mendall asked how quickly the City recouped the \$300 cost per utility box mural and if there was any accounting of these savings. Director Fakhrai said the reduction of graffiti allowed the City to commission more murals but didn't create any cost savings. Commissioner Mendall asked if the City could potentially recoup the cost of abatement if graffiti was reduced enough and Mr. Fakhrai said potentially there could be a cost savings, but pointed out that most graffiti was on walls, not utility boxes, and the City needed permission from the property owner before painting a wall mural and wasn't always successful in receiving approval.

Commissioner Mendall noted that last year's CIP mentioned investigating a 7-megawatt expansion of the solar array at the Waste Water Treatment Facility, but this year's CIP only budgets for a 1-megawatt expansion and he asked why. Director Fakhrai explained that staff conducted an analysis and found the area required to accommodate a 7-megawatt expansion was prohibitive both in terms of land and cost. He said staff was proposing another 1-megawatt expansion and would continue to expand as land becomes available. Commissioner Mendall confirmed that the 1-megawatt expansion proposed for FY13 was incremental and not the last of the expansions and Mr. Fakhrai said that was correct.

Commissioner Mendall asked if the City Hall sound system improvement proposed in the CIP was for the rotunda and Director Fakhrai said yes. Commissioner Mendall noted that an improved sound system might allow the City to rent the space more often and for more uses and gain that cost back.

Regarding the criteria for street repairs, Commissioner Mendall said he noticed some neighborhoods needed a lot of street repair, but in the last year only a few of the streets had been repaved. He said that raised questions from residents who wondered why their street wasn't repaved when it was just as bad. Director Fakhrai said clearly the City didn't have nearly enough funding needed for street repair and that staff was doing the best they could with what they had. He said the City was doing well noting a score of 70 on the Street Pavement Condition Index. Mr. Fakhrai noted the City had pavement districts, which were different from sidewalk districts, and the City focused on those areas. He also said the City won't repair some really bad streets because the money available would not come close to being enough to pay for the reconstruction of the street. Director Fakhrai said the City has a computerized pavement management program that identifies the streets most appropriate to repair depending on cost and recommends the best type of treatment. Mr. Fakhrai added that the City frequently protects past investments by doing a slurry seal on roads paved six



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 10, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

or seven years ago, noting that a slurry seal can add 10-15 years to the life of a street. Commissioner Mendall asked the cost difference between repaving a road and doing a slurry seal and Mr. Fakhrai said the cost was 20 times less to do a slurry seal. Commissioner Mendall confirmed with Mr. Fakhrai that the City may repair a road in better condition because it can be saved rather than a road right next to it that cannot. Director Fakhrai said that was correct and explained that streets must need the minimum level of repair for a slurry seal.

Commissioner Mendall asked how the approximately \$400,000 in annual savings from installing LED streetlights would come back to the City. Director Fakhrai explained that the City had obtained a low-interest loan from the California Energy Commission available specifically for the conversion to LED. The savings from the first six to seven years, he said, would go toward paying back the loan and after that all savings would go to the City's General Fund. Commissioner Mendall asked if it was true that the City had a by-streetlight contract with PG&E and asked if the rate would go down. Mr. Fakhrai said the City had a fixed electrical rate based on the number of streetlights rather than the amount of usage, but would pay a lower rate for LED.

Regarding a project to repair leaks in the water system, Commissioner Mendall asked how much water had been leaking and how much money would be saved. Director Fakhrai said it was a significant amount of leakage determined over the last few years by comparing the amount of water purchased from the San Francisco Public Utilities Commission to the amount of water sold. The difference, he said, was between 5-10% of the total. Mr. Fakhrai said a system-wide program was put in place to detect and repair the leaks. To date, he said, 50% of the leaks had been repaired and staff hoped to complete all repairs by the next fiscal year. Commissioner Mendall asked if the City had seen the savings and Mr. Fakhrai said yes.

Regarding the number of fleet take-home vehicles, Commissioner Mendall asked how many the City had now and Director Fakhrai said between 15-20 vehicles, but added the City was looking to further reduce that number to only vehicles that were absolutely essential. When Commissioner Mendall asked what vehicles were considered essential, Mr. Fakhrai listed vehicles used by members of Fire, Public Safety, Utilities, and the Airport.

Commissioner Lavelle asked Mr. Strojny to introduce himself to the Planning Commission and after he did so, Director Fakhrai added that Mr. Strojny was one of the key staff persons who put the CIP together. Commissioner Lavelle said the CIP binder itself was incredibly heavy and said in the future, she would be happy to look at the report on the web. Commissioner Lavelle noted that the City's pavement index rating of 70, as cited earlier by Mr. Fakhrai, was very good noting that the cities of Fremont and San Jose had ratings in the 60s. She said she was happy to see street maintenance was one of the primary CIP projects and she commented that maintaining streets was important and in a City the size of Hayward it was easy to feel when the streets weren't up to par. As a cyclist, Commissioner Lavelle said riding her bike on a road that had been slurry sealed was really nice.

Among the projects in the CIP, Commissioner Lavelle said she was intrigued to see a disaster preparedness exercise included and she asked if the inclusion was unusual. Director Fakhrai said it was not unusual and explained that the last preparedness exercise was over 10 years ago and it should be repeated every five to seven years. Because technology and staff change, he said, the City needed to bring the plan up to speed. Commissioner Lavelle said she was pleased the project was added and agreed a preparedness exercise was critical since Hayward was located on a known earthquake fault zone.

Commissioner Lavelle thanked staff for the improvements made to City streets and commented that street maintenance was one of the most critical portions of the CIP. She said she was very thankful for the work done on 2nd street, which she uses as a thoroughfare from downtown to her home. Although the repairs seemed to take forever, she said the road is really smooth, much more attractive and safe.

Commissioner Lavelle commented that she was impressed with Hayward's proactive efforts to save on energy costs with projects like the solar panels at the Waste Water Pollution Control Facility and using reclaimed waste water for landscaping. She said these kinds of projects keep the focus on remembering the goals of the Climate Action Plan were possible, despite the lower level of funding.

Commissioner McDermott thanked staff, giving special recognition to Mr. Strojny for his work on the CIP, and noted she was a proponent of the General Plan because it provided a road map towards a vision for the future and helped the City stay focused on what needed to be done. Commissioner McDermott commented that as she was going through the plan she was reminded of Xmas lists from her childhood and the adjustments that had to be made after reality set in. She said essential priorities needed to be determined and the safety and welfare of Hayward's citizens was of the utmost importance. Commissioner McDermott said she didn't know how often priorities were reevaluated, but after reading the CIP she said it seemed apparent that funds earmarked for other uses may be needed to balance the City's budget. She suggested the City stay focused on projects that received subsidiary funds to offset some costs.

Director Fakhrai explained that part of the lengthy process of preparing the CIP was meeting with departments several times to identify needs that were absolutely essential. Because of current economic difficulties, he explained that every need of every department couldn't be met, but the complete list was included in the back of the book and he noted that in the past, projects had been successfully moved from the back of the binder to the funded category. Director Fakhrai noted that the dollar amount of "Identified Unfunded Projects" almost equaled the funded projects and a significant number of the pending projects were expensive transportation projects, including highway interchanges. Mr. Fakhrai said staff was hoping that during the next cycle of Measure B funding, some of these projects could be implemented. Commissioner McDermott said putting together a 10 year plan was difficult because assumptions change and she thanked Mr. Fakhrai for his comments.

Commissioner Lamnin also thanked staff and said the report was very readable, clearly included the goals discussed by the Commission, and that she would also be willing to read the report online. Needing clarification on some of the priorities, Commissioner Lamnin asked how the automated materials handling project would benefit the library and Director Fakhrai explained that the state-of-the-art system would automatically sort books being returned. Besides saving staff time, he said, another critical component of this new system was it could be packed and moved to a new location if a new library was built.

Commissioner Lamnin also asked about the new carpeting and interior painting projects included in the report. Director Fakhrai explained that various facilities around the City were heavily used every day and the locations in the report had been identified by the City's Facilities staff as needing upkeep. Commissioner Lamnin said repairs that maintained safety should come first.

Commissioner Lamnin said she was excited about the planned upgrades to the sound system in the rotunda and hoped the City would market the improvement noting City Hall was a lovely facility for holding events and meeting space was always needed, especially with the closure of Centennial Hall.

Regarding Commissioner Lamnin's question about proposed upgrades to cameras in the Council Chamber, Director Fakhrai said the cameras were working but that several of them were being held together with tape. The new cameras would be more reliable and provide more quality visuals, he said.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 10, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Commissioner Lamnin asked about the status of new website, noting she didn't see any mention of it in the CIP. Director Fakhrai said the City's new website should be online within weeks and beta testing was already occurring at the department level.

Acting Chair Faria asked why the City chose to go with LED streetlights instead of solar. Director Fakhrai said several different types of lighting were considered, including solar, but solar did not provide as much luminance as LED. Mr. Fakhrai said the lack of lighting was a problem throughout the City and he had never heard the complaint that there was too much light in any neighborhood. He said the City's goal was to reduce energy usage and incrementally improve lighting levels; however, he emphasized that the proposed lighting project would not improve lighting or completely correct all known problems, but it would somewhat improve lighting and save energy.

Acting Chair Faria asked if there were any other technological improvements under the proposed CIP. Director Fakhrai said the new ERP system would help all departments having any interaction with Finance, Purchasing or timecard processing. Acting Chair Faria asked about a database for building permits that would track records regarding improvements such as window replacement and Mr. Fakhrai said the same ERP system came in different modules. He said the finance module would be installed first with the permit module scheduled for inclusion in future.

Acting Chair Faria opened and closed the Public Hearing at 7:49 p.m.

Commissioner Loché made a motion per staff recommendation to find the Recommended FY13-FY22 Capital Improvement Program consistent with the City's General Plan. Commissioner McDermott seconded the motion.

Commissioner Lamnin commented that she would like to see murals outside of the downtown area prioritized. She also requested that the City utilize community partners for projects like the disaster preparedness plan, noting they were available and eager to help.

The motion passed 6:0:1.

AYES: Commissioners Lamnin, Lavelle, Loché, McDermott, Mendall
Acting Chair Faria
NOES:
ABSENT: Chair Márquez
ABSTAINED:

2. Conditional Use Permit Application PL-2012-0035 – Cash For Gold Express, Maurice Younes (Applicant) / Southland Office Investors, LLC (Owner) – Request to Operate a Cash for Precious Metals Store. The Property is Located at 24303 Southland Drive, in the Commercial Business (CB-B20) Zoning District.

Planning Manager Richard Patenaude gave a synopsis of the report noting that Hayward Police Department (HPD) Detective Ryan Cantrell was available to answer any questions and that the Police Department was in support of the stricter regulations that came with a Conditional Use Permit. Mr. Patenaude also noted that due to the increase in requests to operate this type of business, and the need for enforcement and regulation, staff

would be reviewing provisions for this, and other types of uses, and making revisions to the Zoning Ordinance.

Commissioner Lavelle said the report included a map and descriptions of three other Cash for Gold locations, but noted this location was the first to go through the CUP process. She asked if the other businesses would also go through the process. Planner Manager Patenaude said one of the businesses predated the CUP requirement, but the other two were not acting in accordance to regulations and would be notified that they needed to apply for a CUP. Commissioner Lavelle noted the proliferation of these kinds of businesses and asked if staff had any concerns about how long the business would last or if it would close when the economy picked up. Mr. Patenaude said that was possible, but similar types of businesses, like pawn shops, had always been around. He noted downtown recently had one pawn shop close on Mission Boulevard, but that another was still open and there always seemed to be some desire for that type of business.

Commissioner Loché asked if the businesses already operating had security guards. Planning Manager Patenaude reiterated that two of the locations were operating without a CUP and when staff members visited earlier that day did not see any evidence of security officers or even staff readily available. Commissioner Loché noted that the staff report said video cameras would record all operations and a security guard would be present and he asked if that would be a requirement for as long as the establishment was open and Mr. Patenaude said yes. Commissioner Loché asked if that language was included in the conditions of approval and Mr. Patenaude said the conditions could be clarified to include that requirement. Commissioner Loché said he didn't see the condition and he wanted to be clear whether it was a requirement or a suggestion. Planning Manager Patenaude said Condition number 6 required that prior to operation a security plan be submitted to HPD and he noted PD could require the presence of a security guard.

Commissioner McDermott said the report stated that enforcement of regulations had lagged due to limited HPD resources and she asked if any consideration had been given to using reserve officers to handle this type of investigation. Detective Cantrell said that option had never been discussed and noted that because reserve officers were volunteers, it was difficult to schedule specific task work. Commissioner McDermott said it was worth considering noting reserve officers were all scheduled and she had found them to be dependable. Detective Cantrell commented that the reserve officers were familiar with compliance work.

Commissioner McDermott asked if thumbprints were required for this type of business and Detective Cantrell said yes, thumbprints were required by law. She also asked if holding the property for 30 days was a requirement so that police could make sure the items weren't stolen and Detective Cantrell said that was exactly the reason. He said the current system was archaic, but noted there was an assembly bill currently being considered to create a statewide database system that would allow agencies to check if the item being pawned was consistent with any stolen goods inventories. Thinking from a business perspective, McDermott wondered how business owners felt about having to wait 30 days before moving on an item and Detective Cantrell pointed out that was "the price of doing business."

Commissioner McDermott asked if the applicant was affiliated with any other Cash for Gold franchises and Planning Manager Patenaude said yes, this location was part of a larger operation. Commissioner McDermott said she would hold all further questions for the applicant.

Commissioner Mendall said he was glad staff was taking a higher-level look at the Zoning Ordinance and he asked if the result would be available after the August recess. Planning Manager Patenaude said most likely and noted staff would be looking at a number of uses that had been questioned. Commissioner Mendall said any new application for this type of business should be heard quickly, but noted it made sense to wait until the Ordinance had been revised before processing the CUPs for the two existing businesses. Mr. Patenaude commented that he couldn't tell the Commission how many businesses had not followed through with an application. In response to that comment, Commissioner Mendall asked if the list included in the report of establishments known by the City was complete and Mr. Patenaude said the list included businesses with a



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 10, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

second-hand dealer license, not necessarily just Cash for Gold type of operations. Mr. Patenaude explained that even Kay Jewelers was on the list because they trade jewelry. Detective Cantrell said the majority of second-hand dealer licenses that come through PD were for Cash for Gold businesses or associated with jewelry stores. Commissioner Mendall said there was one Cash for Gold business on the corner of Clawiter and Highway 92 that was not on the list. Detective Cantrell said there were many businesses not on the list.

Detective Cantrell explained that with the price of gold at around \$1,800 per ounce, although overall crime was down, burglaries and theft of jewelry was up because there were so many places to cash it in. In an effort to get more businesses licensed, Detective Cantrell said he sent out 7,500 mailers to unlicensed businesses asking them to come forward and go through the licensing process and he received only two responses. He said “the fruits of the crime” were quickly being trafficked. Detective Cantrell said the licensing process was simple and estimated there was two dozen businesses or individuals working out of their homes in the City. He said HPD was also trying to get people to turn in their pawn slips and while HPD advertised having a pawn unit, they really did not.

After the Zoning Ordinance is updated, Commissioner Mendall asked if every business would have to come before the Planning Commission or could applicants receive Administrative Approval from the Planning Director. Planning Manager Patenaude said any new establishment would go thru the review process and the Planning Commission would review the CUP. Mr. Patenaude said if the City receives a lot of applications staff would evaluate how closely clustered the businesses were and as part of the findings may determine how many the City really needs.

Commissioner Mendall asked if the 30-day hold was a state law requirement and Detective Cantrell said yes. Commissioner Mendall suggested that holding items for 30 days would make the business a greater target for crime. Detective Cantrell said the CUP process would assist with that by requiring a facility to have security with alarms and additionally, would take some of the burden off of police. Detective Cantrell also mentioned that most stores don’t keep the items on-site, most send them to a facility somewhere else, but noted that site must be identified to the Department of Justice.

Commissioner Loché asked if the word “express” in the applicant’s business name “Cash for Gold Express” meant anything special. Planning Manager Patenaude said that was just the applicant’s business name and Detective Cantrell said they were all pretty fast and confirmed it was just the company name.

Commissioner Lamnin asked if the customer got paid right away or did they have to wait 30 days. Detective Cantrell said he believed they got paid right away. Commissioner Lamnin asked, given proliferation of these types of businesses in the community and the historical increase in property crimes, was there any advantage or disadvantage to approving the application at this time. She also asked if it would be helpful to have an example of what the City wanted and if it would be a disadvantage to have another Cash for Gold business in the City. Planning Manager Patenaude said a business operating legally with a set of conditions that could be enforced would be a big benefit to the City and he noted that Detective Cantrell and HPD worked closely with staff to develop the conditions. Mr. Patenaude said staff wanted to use this application as a model for future applications. Planning Manager Patenaude said the City was “really happy” to receive an application from someone who wanted to legitimately go through the process.

Commissioner McDermott said Commissioner Lamnin brought up an important question of how many of these types of businesses did the City want in Hayward and she noted that the CUP process gave the City the opportunity to consider that question. Planning Manager Patenaude said staff would certainly consider that

point when updating the Zoning Ordinance, but he noted the Planning Commission could make the finding that there are too many similar businesses in one area and that it was not beneficial to approve any more applications. Commissioner McDermott asked why, if the City set a limit on how many and where these businesses are located in Hayward, the Planning Commission would have to review any other applications. Planner Manager Patenaude said the Zoning Ordinance text amendment would consider that.

Commissioner Mendall asked if the business was already open and Planning Manager Patenaude said no. Commissioner Mendall asked if there was another Cash for Gold business in the area and Detective Cantrell said there were several jewelry stores in area that offered Cash for Gold.

Acting Chair Faria indicated her questions had already been answered, opened the Public Hearing at 8:21 p.m. and called property owner Kevin Kaseff to the podium. Mr. Kaseff indicated that he did not want to speak; he was there to support the applicant.

Maurice Younes, applicant and Fremont resident, introduced himself and indicated he was available to answer any questions. Acting Chair Faria asked Mr. Younes if he felt he could make a good business of this with all the other Cash for Gold businesses functioning in Hayward. Mr. Younes said if he didn't think the business would be viable, he wouldn't invest the money. He said his business had helped people in other cities and he thought Hayward would be a very good place to open another business.

Commissioner Lamnin thanked Mr. Younes for considering Hayward and asked him about his experience in either second-hand or Cash for Gold businesses. Mr. Younes said he only had experience with other Cash for Gold businesses and offered to explain how he got started. He said three years ago his family was having financial problems so his wife gave their son a necklace to sell so he could pay the rent. His son and his wife went to a Cash for Gold business at the mall and during the transaction his daughter-in-law spoke to the owners who suggested she apply for a job because she was bi-lingual in Spanish. She got the job, he said, and that gave him the idea to start his own business, so he did some research and set it all up. Mr. Younes said this would be their 8th store. Mr. Younes said he had helped a lot of people do things like pay their rent, make a car payment, even put a down payment on a house. Commissioners Lamnin asked if he'd ever had any problem finding buyers for the gold and Mr. Younes said no.

Commissioner McDermott asked if his eight stores were part of a chain from Orange County and he said he had stores in Newark, Stockton, San Bruno and one opening in Modesto. Commissioner McDermott said she did some online research and found a ranking and rating system for Cash for Gold businesses and that many businesses were also members of the Better Business Bureau. Besides the A and A+ rating, Commissioner McDermott said the approximate price the business was willing to pay for ounce of gold was included and she asked if any of his stores were registered with the Better Business Bureau and Mr. Younes said not yet. Commissioner McDermott asked him if he had plans to register pointing out it would be a good idea and would help customers feel like it was a reputable business with fair pricing. Commissioner McDermott asked Mr. Younes how he determined the value of an item. Mr. Younes explained that the "Spot Value" of gold changed every day and could drop a lot in 30 days; that was his risk. Commissioner McDermott asked if he paid a percentage of the Spot Value and Mr. Younes said yes, anywhere from 60-90% depending on what he was buying. He said coins had more value, whereas jewelry was weighed with the stones, so the percentage was less.

Commissioner Loché asked if the hours of operation listed in the report (Sun-Thu 9am-6pm, Fri-Sat 9am-10pm) were the same for his other stores and Mr. Younes explained that most of his other stores were in a mall so he had to follow mall hours. His store in Newark was open 10am to 7pm daily, he said. Mr. Younes said the Hayward store would be open the hours the City allowed. Commissioner Loché asked if he would stay open until 10pm on Friday and Saturday and Mr. Younes said yes. Commissioner Loché asked if any other items were bought or sold at his other locations and Mr. Younes said no, just Cash for Gold.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 10, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Commissioner Faria asked Mr. Younes if he had security guards at his other locations and he said no because most were located inside the mall and the mall had their own security. He added that he would have numerous cameras at the Hayward location and he had also installed a bullet-proof wall for protection.

Chair Faria closed the Public Hearing at 8:32 p.m.

Commissioner Lavelle wished Mr. Younes well and made a motion per staff recommendation to find the proposed project Categorical Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15301: Existing Facilities, and approve the conditional use permit subject to the findings and conditions of approval. Commissioner Mendall seconded the motion.

Commissioner Lamnin suggested some minor changes to Condition 12 for clarification. Under Condition 12A she asked that "person" be changed to "seller" or "customer" in regards to taking a photocopy of their driver's license at the time of the transaction. Planning Manager Patenaude said "customer" would be preferable if the makers of the motion approved. Commissioner Lamnin also suggested that Condition 12C include the word "secured" in regards to the storage of property for 30 days. Detective Cantrell pointed out that the store's security plan would contain language about how items were stored, but said specific language could be added. Commissioner Lamnin suggested adding "security maintained," and Commissioner Lavelle agreed with the changes.

Commissioner Mendall thanked Mr. Younes for applying and going through the correct process unlike many of his competitors. Commissioner Mendall also said he was glad to hear that Mr. Younes operated eight other stores and that this wasn't his first time running a Cash for Gold business. He said he was pleased to support the motion.

Commissioner Loché applauded staff and HPD for developing stricter regulations and putting these establishments through the CUP process. He said that was a good move and the right direction for Hayward.

The motion passed 6:0:1.

AYES: Commissioners Lamnin, Lavelle, Loché, McDermott, Mendall
Acting Chair Faria

NOES:

ABSENT: Chair Márquez

ABSTAINED:

COMMISSION REPORTS

3. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude said two commissioners would be absent on May 31st but noted the Commission would be looking at the tobacco sales ordinance and a use permit application for an auto repair shop adjacent to residential. He noted that because neighbors had expressed some concerns the matter went from an administrative action to being referred to the Commission. He also announced that the Public Works Department would be giving a presentation about the proposed new administration building at the airport.

4. Commissioners' Announcements, Referrals

DRAFT

9

Commissioner McDermott asked when the Walmart conditional use permit appeal would be heard by Council and Planning Manager Patenaude said May 22.

APPROVAL OF MINUTES

5. April 5, 2012 approved unanimously with Chair Márquez absent.

ADJOURNMENT

Acting Chair Faria adjourned the meeting at 8:38 p.m.

APPROVED:

Sara Lammin, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Márquez.

ROLL CALL

Present: COMMISSIONERS: Faria, Lamnin, Lavelle, Loché, McDermott, Mendall
CHAIRPERSON: Márquez
Absent: COMMISSIONER:
CHAIRPERSON:

Commissioner Lavelle led in the Pledge of Allegiance.

Staff Members Present: Conneely, Emura, Koonze, Patenaude, Philis

General Public Present: 20

PRESENTATION

Hayward Airport Administration Building – Presentation was withdrawn

PUBLIC COMMENTS

None

PUBLIC HEARINGS

1. Administrative Use Permit PL-2011-0298 – Adwin Pratap (Applicant) / Michael and Richard Silva (Owners) – Request to operate an auto body shop with a spray paint booth in an existing warehouse adjacent to single-family residential properties. The site is located at the 29225 Sims Court in the Industrial (I) District (APN 464-0100-015-03)

Associate Planner Carl Emura gave a brief synopsis of the report noting that during the public notice period six objections were received from surrounding residential property owners regarding noise, paint fumes, toxic paint, property values, and the number of existing auto repair businesses in the area. Associate Planner Emura stated that within a half-mile radius there were 18 auto repair businesses. In the vicinity of the proposed business, he said, there were 11 auto repair businesses. Mr. Emura also noted that although the applicant had indicated he would keep the doors of the warehouse closed to control noise, for the health of the workers the door would need to remain open to allow for air circulation.

Associate Planner Emura explained that due to the size of the warehouse, 5,700 square feet, the potential to expand beyond what was proposed was great. He also pointed out that if the business was sold, the new owner might maximize the use of the facility. Therefore, Associate Planner Emura said staff was not supportive of the application and was recommending that the Commission find the project exempt from California Environmental Quality Act (CEQA) review and deny the administrative use permit.

Commissioner Loché asked how close the nearest residence was from the paint booth exhaust vents and Mr. Emura said approximately 50 feet.

Commissioner Lamnin asked if there had been any reports of crime since the building had been vacant and Associate Planner Emura said he didn't know and suggested she ask the applicant. Commissioner Lamnin asked staff how operating hours were enforced under a conditional use permit (CUP) and Associate Planner Emura responded that it would be very difficult and staff might have to rely on adjacent property owners who would be supplied with a copy of the conditions of approval. Associate Planner Emura cited a similar situation on Jackson where the business expanded beyond what was approved and he noted enforcement has been a problem.

Commissioner Loché asked how long ago the prior business (an ice cream truck company) left the location and Associate Planner Emura suggested he ask the applicant.

Commissioner Mendall asked if the proposed paint booth was inside the building and staff said yes. Regarding the four findings that must be made to approve the project, Commissioner Mendall asked if staff had found that the business didn't meet any of the conditions. Associate Planner Emura said the proposed business primarily didn't meet the first finding: The proposed use is desirable for the public convenience or welfare. Associate Planner Emura pointed out that this business would not be open to the public and that the used car facility it supported was located in San Leandro. Any improvements made to the cars, he said, would benefit the City of San Leandro.

Planning Manager Patenaude said all four findings needed to be found favorable for staff to recommend the project, and with residents already expressing concern about their welfare and there being a sufficient number of this type of business in the neighborhood, the purpose of an administrative use permit (AUP) was to minimize the impact as much as possible. Commissioner Mendall asked if the project met the other three findings. Planning Manager Patenaude said the applicant had shown he could mitigate the concerns related to the other findings, but pointed out his responses were a one-sided look at the information. Mr. Patenaude agreed that the other findings might not be negative.

Commissioner Mendall asked if any sales tax would be collected by the City of Hayward from the proposed business since orders would be going through the office in San Leandro. Planning Manager said the only tax the City would receive would be from business to business sales, or when the business owner purchased supplies with local transactions. Commissioner Mendall asked if any fees would be collected by the City of Hayward such as the business license fee and Planning Manager Patenaude confirmed that would only be a couple hundred a year at most. He said he couldn't think of any other fees to be collected.

Commissioner McDermott said it was her understanding that the location would be used to repair cars for the San Leandro sales site and wouldn't be a traditional auto body repair shop. Associate Planner Emura said the applicant had indicated that repairs would only be made on cars that would be sold in San Leandro.

Based on her experience in real estate, Commissioner McDermott said the business being proposed would cause "external obsolesce," which would cause the value of the nearby homes to decline in value for reasons beyond their control.

Commissioner Mendall pointed out that the property was zoned industrial and had been zoned industrial for a long time, even before the homes were built. Planning Manager Patenaude confirmed that and noted the zoning had changed to allow more home construction. Mr. Patenaude added that across the street, on the other side of Sims Court, no use permit would be required because the back of those lots did not abut with residential.

Chair Márquez opened the Public Hearing at 7:18 p.m.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Bruce Finley, Bowhill Road resident, thanked the Commissioners for looking at the project and Mr. Emura for working hard and recommending denial. Speaking for neighbors who couldn't make it to the meeting, he said none of them wanted this business, not because of taxes or how much money the City was going to make, but because of the welfare of the residents who lived there. Mr. Finley said there were elderly people, small children and people with medical conditions. One of his neighbors said he could smell paint from some of the other shops, Mr. Finley said, and he wondered if that would be the case if the business followed standards. Bottom line, he said, "we all know over time things change." Mr. Finley said when he moved in he knew there was an ice cream truck factory behind his home, but he didn't know they had a compressor and there was noise generated from that, but nothing ever happened. He implored the Commissioners to take a hard look at this business and "do what's right" for the citizens, which was to deny the application. He said the property owner could find something else that would work for all parties.

Commissioner Lamnin asked Mr. Finley if he received the letter from the applicant that was included with the staff report. Mr. Finley said he received the letter in January, but only remembered it when a neighbor showed him his letter. Once the neighbors received information from the City, he said, that's when they reached out to Mr. Emura and other staff members. He pointed out that many of his neighbors didn't speak English and were hesitant to speak up either by letter or speaking at a meeting.

Commissioner Mendall asked Mr. Finley how this proposed use compared to the other businesses already in the area. Commissioner Mendall pointed out the zoning was Industrial so they weren't going to get a park, they were going to get an industrial use and he asked how would the proposed business compared to what was there and what could be there. Mr. Finley said he hasn't noticed anything from any of the other businesses except for the construction lot behind his house and he said knew it was there when he moved in and he was "hoping and praying" it wouldn't make too much noise. He said he did hear noise at the ice cream truck business late at night, but he said he never had to call police. Regarding the proposed business, Mr. Finley pointed out they have a 500 square foot painting booth to do minor work, and if he owned a car lot in San Leandro, he wouldn't be building something in Hayward; he would want it closer. He concluded by saying the applicant may have the best of intentions, but things change and he's afraid the business would just get bigger over time and create noise and fumes.

Commissioner Faria thanked Mr. Finley for coming and said she drove past the site and although the building was attractive, she saw that the wall was right in his backyard. She pointed out that the homes were new and that young or multiple families probably lived there, and she said she could see how they could be exposed by this business and the other businesses in the area. Mr. Finley said in the past, residents had packed the Council Chambers to speak in favor of the businesses coming into the industrial area, and he emphasized that neighbors were not anti-business, they just wanted what was right for everybody and this was not it.

Commissioner Loché asked Mr. Finley how long the ice cream truck company had been gone and Mr. Finley said approximately 6 months, maybe slightly longer. Commissioner Loché agreed with Commissioner Faria that the property was beautiful and he asked Mr. Finley if the noise and/or appearance of that business was a problem. Mr. Finley said appearance wasn't the issue for him, just the noise and fume factors, but said the people who lived right behind the building might have a problem with appearance.

Adwin Pratap, applicant and Meek Avenue resident, introduced his architect Patrick Burger, a Banbury Street resident, who said he was hired last fall by Mr. Pratap to review his business plan, measure the property, and make an initial submittal to Planning. Since then, he said, the City had sent two letters citing concerns and

both times they had responded to staff and felt at that time, and through the process until around March, that they had met the conditions that Planning had required to approve the project. Mr. Burger explained that what he thought happened was that neighbors either did not read the letters, or understand the letters, or believe the letters, and saw the word “body shop” and went to City Hall and put pressure on Planning. In response to that pressure, he said, although Planning had found that the business had met the criteria for the zoning, staff was not approving the application.

In light of the issues the neighbors were concerned with, Mr. Burger said Mr. Pratap responded via letter that he was going to use low VOC fume paint and an optional filter for the paint booth that would capture 99% of any over-spray. Mr. Burger said that remaining 1%, for the approximately three cars a week Mr. Pratap planned to paint, would generate a minuscule amount of odor; the neighbors would not smell any vapors. He said neighbors didn’t understand why Mr. Pratap needed 500 square feet to paint and he explained that Mr. Pratap might need to paint a pick-up truck or parts from several different vehicles.

Mr. Burger said all businesses want to grow and expand, but Mr. Pratap’s business plan was not to convert to a body shop. Maybe in one or two years Mr. Pratap would graduate to six vehicles a week, he said, but that would not be all of a sudden. Part of the terms and conditions, Mr. Burger said, was that vehicles be kept inside the building so at night there would be no cars in the parking lot.

Regarding noise, Mr. Burger said he conducted an acoustical survey with the warehouse doors both opened and closed and found the proposed business would be below guidelines and standards for a business located next to a residential property. One of the conditions of approval required that doors be closed during operations, he said, even though they were within guidelines when the doors were open, but they would be in even better condition with them shut. Mr. Burger displayed a sign that would be posted at the business that would remind employees to shut the doors when using the paint compressor.

Mr. Burger said in good faith the applicant had done everything he could to meet the conditions from Planning and at some point there needed to be a demarcation line between a residential neighborhood and an industrial use. Mr. Burger concluded that the applicant had dealt with fume and noise concerns, so the only thing that might be applicable was the fact that the business was in San Leandro but the shop was in Hayward. He pointed out that Mr. Pratap would be purchasing parts and materials; that Mr. Pratap lived in Hayward; and he noted that the worker who would be doing the painting also lived in Hayward.

Commissioner Mendall asked the applicant why he was locating the painting and repair business in Hayward. Mr. Pratap explained that it was closer to his home and his worker’s home, and mentioned his worker would be able to walk to work. Commissioner Mendall asked if Mr. Pratap would be driving the cars from San Leandro to the Hayward shop and Mr. Pratap said yes. Commissioner Mendall asked him why he needed such a large building if he was only going to paint two or three cars a week. Mr. Pratap said he looked at a number of locations and liked this one best because it was in the back corner where he wouldn’t get public walk-ins. He acknowledged the building was big, but explained he would be working on semi-trucks and bobtails.

Commissioner Lamnin asked Mr. Pratap if the cars would be drivable when they were brought to the shop and he said yes. She asked if any engine work would be done and Mr. Pratap said only body work and paint. Commissioner Lamnin asked if any engines would be running and Mr. Pratap said only to move the vehicles in and out of the shop and paint booth. Commissioner Lamnin asked if it made more sense to contract with a paint shop in San Leandro and Mr. Pratap said he thought having a shop of his own would be more economical. Commissioner Lamnin asked him to speak more on why he selected this particular location. Mr. Pratap said he noticed the property before and said it had been vacant for about a year and half. He said he noticed a lot of illegal dumping and he thought by moving in he could help the owner by maintaining the property and the City of Hayward by deterring dumping and vandalism. Commissioner Lamnin said she saw



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

the landscape plan for the property and she asked if he had any plans for the existing fence. Mr. Pratap said he would repair the fence.

Chair Márquez asked about the proposed business hours of three days a week for a set number of hours a day and Mr. Pratap said those were his standard business hours. Chair Márquez asked what the maximum number of employees on site would be and Mr. Pratap said one.

Narendra Pratap, a Meek Avenue resident and father of Adwin, said he had run a body shop for many years and the State of California required fumeless paints, like a water-based paint, adding that the proposed paint booth would also have a vent filter so there shouldn't be any problems.

Doug Ligibel, Mesa Circle resident, said this was a "no-brainer," noting with several residential windows within 50 feet of the industrial property nobody could convince him that industrial painting wouldn't have hazardous fumes. He pointed out that Hayward had one of the highest default, foreclosure, and short sell rates in Northern California, and said downtown had 10 foreclosures in the last 30 days, two within 25 feet of his front door. He agreed with Commissioner McDermott that property values were plummeting, especially in industrial areas. Mr. Ligibel said he agreed with the staff recommendation based on potential health hazards and that the proposed business would be a property value "destroyer."

Maria Penafiel, a Bowhill Road resident, said her property was adjacent to the proposed business. Ms. Penafiel explained that she was in the health care industry and was very familiar with the health risks associated with auto body spray paint. As part of an assessment, she said, patients were asked if they had been exposed to any fumes. Doctors don't ask how close they were to the exposure, she said, just *if* they had been exposed to fumes. Ms. Penafiel said patients have a variety of lung ailments related to exposure. She said the City should be careful with these kinds of issues as they were hazardous to residents' health.

Chair Márquez closed the Public Hearing at 7:44 p.m.

Chair Márquez asked staff if any other letters, emails or phone calls had been received after the meeting packet had been distributed and staff said no.

Commissioner McDermott asked staff if the proposed business would trigger a Bay Area Air Quality Management District (BAAQMD) requirement to obtain an air permit and Associate Planner Emura explained that the applicant had indicated that he would be using less than the 30 gallons or more of paint or solvent in a year. Commissioner McDermott asked how that would be monitored and Mr. Emura said that was something the Air Quality District would monitor, not the City.

Commissioner Lamnin asked how the BAAQMD would monitor that and Associate Planner Emura said he thought the proposed business would have to complete an application stating how many gallons they would be using, but he wasn't sure. Commissioner Lamnin asked if any OSHA or other type of monitoring or training was triggered by the purchase of certain equipment and Mr. Emura said not that he was aware of, but he noted that the BAAQMD recommended a certain type of sprayer and the training to go with it.

Commissioner McDermott made a motion per staff recommendation to find the project exempt from California Environmental Quality Act (CEQA) review and deny the administrative use permit. Commissioner Loché seconded the motion commenting that if operated as indicated on the application, the business could operate without having a significant impact on the neighboring residences, but with the potential to increase

operations beyond what was being proposed, if he lived on the street, he would share the expressed concerns. He said there were a lot of factors that could easily change over time. Working on the vehicles with the warehouse doors closed would be difficult to maintain over time and who would address that, he asked. The neighbors shouldn't have to, he said. Commissioner Loché said with industrial and residential this close together, just 50 feet away; the proposed business wasn't a good fit for this location. He concluded that he would rather not put the residents at risk.

Commissioner Lavelle said she would not be supporting the motion because the City should be able to support the business as it had applied to the City. She said she agreed with one comment made by Mr. Ligibel: that this was very straight-forward. Commissioner Lavelle pointed out this was an industrial parcel, in an industrial part of Hayward, very close to the freeway, with a very limited industrial use with limited hours. With the proposed limited hours, Commissioner Lavelle said the business was an improvement to the property.

Commissioner Lavelle said she drove around the area and saw that Sims Street had car tires everywhere and that might be reduced if there was a business operating there. She said the parcel next door was a dead equipment yard, and if it was operating, would be ten times louder than the proposed part-time auto body use. Commissioner Lavelle said it was extremely fortunate for the neighbors that the equipment yard was not in use at the moment. Located next door to the proposed business, she said, was Roto-Rooter, which must have trucks coming and going at least 10 to 12 hours a day plus weekends.

Commissioner Lavelle said the residential street was lovely and she complimented the homeowners for beautifully maintaining their homes, but she pointed out there was a tradeoff when moving to an area between the freeway and an industrial area. She said she didn't see any reason why the findings could not be made for a paint/auto use, which was much different from an auto repair shop. She said she found it impressive that the applicant said he would be willing to close the doors during the day and she pointed out this would help limit any exposure to any chemicals. Commissioner Lavelle noted that the applicant had addressed each and every comment made by the residents in his letter of response to the City. And having no or low VOC paint and using water-based chemicals would nearly exhaust any opportunity for neighbors to be concerned about health issues, she said.

Hours would be limited, Commissioner Lavelle continued, and the benefits would include the business license fees paid by the applicant, the property taxes paid by the land owner, that the property would be even more improved than it already was, and that the applicant would replace the fence. She said these benefits would increase the value of the property on Sims Street and therefore the residences behind. Commissioner Lavelle said neighbors would have every opportunity, and had every right, to monitor the noise and if issues developed, complain to whoever was necessary just as they would for existing businesses like the Roto-Rooter. She concluded that she would not vote against a new business coming to Hayward and leave a property undeveloped.

Commissioner Lamnin said she also would not be supporting the motion. She noted that the purpose of the administrative use permit was to give the community an opportunity to voice their concerns and she emphasized that she was aware of health issues including that Hayward had one of the highest asthma rates in the country. Commissioner Lamnin said the City must pay attention to issues such as fumes, noise, and property values, and in this case, she said, the applicant had done his best to address those concerns. She said she didn't want to penalize the applicant for problems that might happen and she cited the ME Lounge as an example of how the City had created comprehensive conditions for approval and the restaurant had met them. Commissioner Lamnin agreed that the City did have to be careful, but she pointed out that if the proposed business were to operate across the street, there would be no opportunity to control the fumes, noise, or what happens in the future. She said this business could be used as a model and noted the Commission could request a review if need be. She emphasized there were mechanisms in place to deal with any concerns.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Although she appreciated that this would be a business occupying a currently vacant space, Commissioner Faria said the City owed the residents who were paying property taxes to take into account the potential for creating problems in the future. She acknowledged what the business would be bringing to the City, but she asked what about what the residents were bringing to the City including property tax and taking care of the City's neighborhoods and making it a better place to live. Commissioner Faria said she would be supporting the motion.

Commissioner Mendall commented that this was a tough one because this was a Hayward resident who wanted to open a business in Hayward; he wanted to support that. Commissioner Mendall said that concerns like noise and fumes were concerns that could be mitigated. He said he was trying to imagine how he would feel if he lived there and he asked how this use would compare to other potential uses for the site. He said the Commission could add conditions of approval to help mitigate concerns and if the business began operating in a way they didn't want, they could deal with those things. He said the one finding that had him stuck was how this business would be good for the City; it would not be providing a business service to the residents of Hayward. Commissioner Mendall asked for a Commissioner opposing the motion to articulate a good reason why that finding fits, he said he'd like to hear it.

Commissioner Lamnin said because this was Hayward resident and the employee was a Hayward resident. She said she didn't know if the property owner was a Hayward resident, but said the rental fees would benefit Hayward, the reduction in blight to the property, the increase in trees; all of these could be Hayward benefits. She agreed it was a fine line, but she said the space was big enough to help make sure there was enough space for the all cars to be worked on inside the shop with the doors closed, as would be required.

Chair Márquez asked staff, if the application was improved, would the Conditional Use Permit stay with the property if it was sold to somebody else, and Planning Manager said any new owner with the same business use with the same intensity, the permit would carry forward. Any intensity of use and the new owner would have to come back to the Commission for modification of the use permit, he explained.

Chair Márquez clarified the motion and said she would not be supporting the motion because the applicant had worked with staff to mitigate concerns. She said of any type of business use, this was ideal because it was so restricted and limited and the applicant had been very clear he wasn't going to increase the number of hours or days. Chair Márquez said she understood the neighbors' concerns, but said the applicant had done a really good job of trying to minimize that and that he was willing to close the doors while working was impressive. She expressed concern about the health of the applicant and his worker, but said the limited hours would help protect them, too. She said she wished the proposed business would generate sales tax, but noted it was a beautiful building and she was glad the applicant wanted to make upgrades to the landscaping. She concluded that she would rather see a reduction in dumping, loitering and graffiti in the area than have a building stay vacant for a longer period of time, and that she would not be supporting the motion.

The motion failed 3:4:0.

AYES: Commissioners Faria, Loché, McDermott
NOES: Commissioners Lamnin, Lavelle, Mendall
Chair Márquez

ABSENT:
ABSTAINED:

Assistant City Attorney Maureen Conneely advised the Commission to make a final action or at least steps toward a final action. She pointed out there were no conditions of approval or findings for approval, but said it would be appropriate for the Commission to direct staff to prepare both since it appeared a majority of the Commission was inclined to approve the business.

Commissioner Mendall said he wanted to make that motion and he asked that staff to be very strict with the conditions of approval. He said he wanted to see conditions that constrained the use by limiting the number of cars that could be painted, limit the hours of operation, and that staff monitor the fumes, if possible, so the City ended up with a fairly mild, innocuous use that would not effect the neighbors. Commissioner Lamnin seconded the motion, agreed with the restrictions, and asked staff to make the revised staff report available to the neighbors so they would be ensured that they were safe and property values protected. She emphasized that the Commission had heard their concerns.

Commissioner Lavelle said she would be supporting the motion and she asked staff if the decision would be made administratively or if the conditions of approval and the findings for approval would come back for Commission review. Planning Manager said the matter would come back to the Commission and confirmed for Commissioner Lavelle that it could take four to six weeks for that to happen. Commissioner Lavelle said she wanted to make sure the applicant understood that the business would have to wait for final approval before opening.

Commissioner Mendall urged neighbors to remain involved and if there were conditions that they thought would make the proposed business a good neighbor, to express those to staff and to the applicant so when the matter came back in four weeks everyone could be comfortable with the conditions and everyone could move forward and feel good about the decision.

The motion passed 4:3:0.

AYES: Commissioners Lamnin, Lavelle, Mendall
Chair Márquez
NOES: Commissioners Faria, Loché, McDermott
ABSENT:
ABSTAINED:

2. Text Amendment Application PL-2012-0140 / City of Hayward (Applicant) – Establish zoning regulations regarding the retail sale of tobacco.

Associate Planner Tim Koonze gave a synopsis of the report.

Commissioner Lamnin asked if there had been any response from the Chamber of Commerce or any other businesses and Associate Planner Koonze said no, but Planning Manager Patenaude interjected saying that during discussions with 7-11, representatives had expressed concern. The proposed regulations wouldn't apply to current 7-11 locations, which would be entitled to continue selling tobacco, but would impact several planned future locations. Mr. Patenaude said that representatives had indicated that tobacco sales comprised 25% of total sales dollars and with alcohol sales of approximately 12-13%, together almost 40% of 7-11's total dollar sales. Representatives had indicated to staff that they would be unlikely to open any new stores in Hayward if the regulations were approved, he said.

Commissioner Lamnin asked if there was a fee for a Conditional Use Permit (CUP) and Planning Manager Patenaude said currently there was a fee deposit of \$5,000 to apply and fees for time and materials were added to that for a total of around \$8-9,000. He noted that the deposit amount was going up July 1st to start at



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

around \$8-9,000. Commissioner Lamnin asked if all that money went to planning and development staff and not to enforcement efforts and Planning Manager Patenaude said that was correct. Commissioner Lamnin asked if there was any mechanism to recoup enforcement costs and Mr. Patenaude said no. Commissioner Lamnin asked if the proposed regulations would have any impact on hookah bars and Planning Manager Patenaude said any new establishment would need a CUP in a General Commercial District, existing hookah bars would be a legal non-conforming use.

Commissioner Mendall asked why allow tobacco sales at a large store but not a small store. He asked what the logic or reasoning was behind that. Planning Manager said it was a policy issue and followed the direction given to staff to restrict the sale of tobacco. Commissioner Mendall made the point that the impact to smaller stores would be greater because tobacco sales comprised a larger percentage of total sales. He said if the City was trying to limit the number of places tobacco was sold, why not limit sales at the businesses that would be less likely to be impacted. Planning Manager Patenaude said that was another approach that could be taken, but noted that in other cities restricting the sale of tobacco at larger stores had created legal issues. Commissioner Mendall asked if the same legal issues wouldn't apply to smaller stores and then he asked if it was just that the smaller stores didn't have the money to sue. Planning Manager Patenaude said the one particular case was a suit by pharmacies, which would fall in the store size range of 10,000 square feet and above.

Assistant City Attorney Conneely explained that the City of San Francisco enacted a ban on the sale of tobacco products at pharmacies and the tobacco industry sued the City and ultimately the case was disposed before it went to trial. The matter was going to be heard, she said, because the court had found there was a rational basis for banning tobacco products at pharmacies where, they said, sales should benefit health, not hurt it. Ms. Conneely explained that the tobacco industry asked for a restraining order and the District Court Judge denied it. That was the only recorded case that she was aware of, she said, that dealt with at which establishments the sale of tobacco was appropriate.

Commissioner Mendall said it felt like an arbitrary recommendation on where tobacco should be sold, and if there was a lawsuit, there should be a rational basis to support the restriction. Restricting tobacco sales at a pharmacy made sense, he said, but if the City was going to restrict sales at gas stations then the City better have a good reason for allowing sales at the grocery store next door. Planning Manager Patenaude said one rational for the zone district limitation was to limit sales to new establishments along major corridors rather than in neighborhoods. Commissioner Mendall said that was a sound basis to limit sales to General Commercial zoning districts, but not to single out certain types of businesses. He asked the Assistant City Attorney if he was off-base with wanting a logical, defensible argument for saying "yes here, no there," and Ms. Conneely said she didn't think he was off-base.

Before expanding regulations, Commissioner Faria asked about enforcement and how much time and effort it took to enforce current regulations. Planning Manager Patenaude said he wasn't clear about the question because there was no ordinance in place regulating sales and Commissioner Faria said not sales, but the smoking ordinance already in place that prohibited smoking on the sidewalk and in public areas. She asked how much enforcement effort that was taking and could the City handle the extra burden of expanded regulations. Planning Manager Patenaude said enforcement of the current ordinance wasn't the City's highest priority, although he knew of some citations issued, and he said Hayward police was not capable of fully enforcing the ordinance. Mr. Patenaude pointed out that the difference was a control of uses and sales and where they were to take place rather than a behavioral issue. By limiting the sale of tobacco to the General

Commercial District, he said, Community Preservation could deal with businesses selling tobacco in other districts more effectively and enforcement rates would be higher.

Commissioner McDermott asked if an existing business that sold tobacco changed ownership would it still be grandfathered in and Planning Manager Patenaude said yes, a change of ownership would not affect use. Based on a previous matter that came before the Commission, Commissioner McDermott said the City should have a clear definition so there no question of interpretation of the ordinance. She said it appeared to her that police had had some confusion about enforcement and changes were made to make the ordinance clearer. Commissioner McDermott said this report seemed to be a working document.

Commissioner Loché said that the City did not list the sale of tobacco as a permitted use wasn't good and he said he applauded that the Commission was having this discussion. In the presentation, he said, staff mentioned that there were 150 locations where tobacco sales occur. He asked staff how many were within 500 feet of sensitive receptors and Planning Manager Patenaude said existing businesses would not be subject to that limitation and that he didn't know what percentage would fall within that radius. Commissioner Loché said he was trying to imagine what stores were 10,000 square feet and above and he said he knew 7-11 was under and Lucky was over, but what about a Fresh & Easy. Planning Manager Patenaude said stores less than 10,000 square feet would include typical convenience markets and gas stations, while larger would include Trader Joes and Fresh & Easy. Commissioner Loché asked if there had been any research conducted that showed smaller businesses were more likely to sell to minors and Mr. Patenaude said that would certainly be something to look into. Commissioner Loché said when looking at an ordinance that would effect small businesses in such a major way, there would need to be a clear understanding of why the City would go down that road.

Commissioner Mendall asked if the 500 foot restriction to sensitive receptors would apply to large stores as well as small and staff said no. Commissioner Mendall commented that there could be a Lucky right next to a school or a park selling cigarettes and staff said yes. He said Union City passed something similar to the proposed regulations in the last year or so and he asked staff if they had spoken to representatives and what they learned. Associated Planner Koonze said Union City adopted a 1,000 foot restriction to sensitive receptors and according to a planner at Union City, pretty much rendered the city a non-tobacco sale area. Mr. Koonze said nine gas stations that already sold tobacco products in the City were grandfathered in and the modification Commissioner Mendall mentioned allowed a tenth station, that was under construction at the time the restriction was original put in place, to also sell tobacco products.

Chair Márquez asked if staff had had any discussion with COMPRE about local businesses selling tobacco products to minors and staff said no.

Chair Márquez opened the Public Hearing at 8:39 p.m.

Francesca Lomotan, with business address on Second Street, spoke on behalf of the Hayward Coalition for Healthy Youth which was comprised of diverse set of community members striving to make the City of Hayward a safer and healthier place for kids to live. She said the coalition was excited that regulations restricting the sale of tobacco to minors were being established and the definition of tobacco sales was being included. Ms. Lomotan said the coalition was especially happy that in the definition of "a tobacco sales establishment" the sale of kid-friendly items was being prohibited. While the coalition was supportive of the proposed ordinance, she said, they had a few suggestions including requiring 500 feet between tobacco retailers and a 1,000 foot radius from sensitive receptors because their research had determined that there was already a high concentration of retailers located near to three middle schools and two high schools in Hayward. She mentioned that in Alameda County, five cities had already adopted ordinances restricting tobacco retailers within a certain distance of schools including Albany (500 feet), Union City and Oakland (1,000 feet), Berkeley (1,400 feet) and San Leandro (1,500 feet). Ms. Lomotan said lastly, the coalition asked



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

for the prohibition of single cigars sales and that the coalition appreciated the City's continuing efforts to make Hayward a healthy city.

Janice Louie, with the Coalition as well as the Alameda County Public Health Department, said she was there to support the proposed ordinance. She provided materials for the Commissioners from the Center of Tobacco Policy that included a matrix of local ordinances that restricted tobacco sales within a certain distance of schools and summarized policies from 24 cities in California. She noted that 14 out of 24 cities had a 1,000 foot restriction of tobacco sales from schools. Ms. Louie said studies had shown that the density of tobacco retailers in neighborhoods near schools had been associated with an increase in smoking and that one-third of illegal sales occurred within a 1,000 feet of schools. She also mentioned that many of the ordinances limited how close retailers could be to each other. She concluded by saying the coalition supported the staff recommendation and asked the Commission to consider a 1,000 foot distance from sensitive receptors and 500 feet between retailers. Ms. Louie mentioned that at the May 10th Planning Commission meeting she distributed information regarding teen-friendly cigars and she asked that language be included in the proposed ordinance limiting the sale of single cigarettes and cigars.

Commissioner Mendall asked Ms. Louie if she had any opinion or comment about restricting sales at small businesses rather than large businesses or if there was any evidence that showed a gas station was a riskier place for children to buy cigarettes than a grocery store. Ms. Louie asked for clarification and Commissioner Mendall asked if it was the number of the places that sold tobacco products that was dangerous or the type of place that sold tobacco and Ms. Louie said the data she had read had indicated that it was the type of store; smaller stores were more likely to sell single purchase items like kid-friendly cigars that cost less than a candy bar. She said Alameda County was going to do a survey to find out how accessible these items were. Commissioner Mendall said that was a good argument to limit the sale of that particular product, but not necessarily that a mini mart was more dangerous than a Lucky and Ms. Louie said it came down to product availability and she noted that small grocery stores located near schools carried more single-sale items.

Commissioner Lamnin asked Ms. Louie if there was any difference or impact on enforcement efforts by cities that had use permits versus tobacco retailer licenses and Ms. Louie said the State of California had been encouraging local jurisdictions to adopt their own ordinances and she said those that do had more leverage against retailers that sold tobacco products than those that did not.

Doug Ligibel, Mesa Circle resident, speaking as a retired state-certified addiction professional, a nationally-certified rehab counselor, and a member of the Coalition, said that he wanted to focus on tobacco industry specifically targeting youth. He said the tobacco industry spent a million dollars an hour marketing their products, and 80% of underage smokers chose brands from the top three most heavily advertised products. Mr. Ligibel said that restricting the sale of tobacco was a good direction for the City to take, but that he agreed with the Coalition that the City needed to look at schools and how far the City was willing to have tobacco retailers able to operate, he said he supported 1,000 feet away from schools. Mr. Ligibel concluded that the City of Hayward had an over-saturation of tobacco sales just as it did alcohol retail sales, specifically in the downtown area, and he encouraged the Commission to listen to the Coalition because they made some really good points.

Deisy Bates, Ambrose Court resident, said she was there as a parent leader in the community and that her three children were born, raised and educated in Hayward. As part of her interest in the community, Ms. Bates said she was a member of the Coalition since inception because she cares for Hayward youth. She said she picked up her youngest son from school every day (he's a junior at Mt. Eden High School), because she

didn't want him to walk by the gas station and houses on Hesperian Boulevard at Panama because of the debris. She pointed out that most middle schools students didn't have the privilege of being picked up by their parents and by walking to and from school they had access to tobacco. She also said those kids were not going to go to Lucky or Safeway or Costco they were going to go to gas stations and small retailers that sell tobacco. She said it was very concerning how accessible these items were and how low the price. Ms. Bates, as a parent in the community, urged the Commission to consider the staff recommendation and in addition, adding a 1,000 foot radius from sensitive receptors and requiring 500 feet between tobacco retailers.

Sanjiv Patel, Starboard Lane resident, asked the City to consider the goal of the proposed ordinance saying he thought it was to reduce smoking in the general population and to reduce underage smoking. He said the goal was not to increase bureaucracy, but as written, the ordinance did exactly that. Mr. Patel pointed out that it was already illegal to sell cigarettes to minors regardless of whether the establishment was located opposite the school or 10,000 feet away. He said by not allowing the sale of tobacco near schools the only thing that was being achieved was not additional laws, but just the implementation of existing laws. Mr. Patel asked what the proposed ordinance did about the implementation of the existing law and he concluded: nothing. How do you make sure young kids do not get their hands on tobacco, he asked; remove the radius requirement and increase the enforcement of the existing law by having additional decoy operations. Mr. Patel said that would require additional funds so he suggested charging a fee for a tobacco license. He said he was a tobacco retailer and he was requesting the City add more fees so the Hayward could limit underage smoking. He also asked what the logic was behind allowing large businesses to sell tobacco and not small businesses. Mr. Patel said the third concern the City should have was the unintentional consequence of the proposed ordinance and he gave this example: in the last couple of years three gas stations closed in Hayward and if this ordinance was in place they would still be closed because no business owner would take the chance to reopen without a tobacco license. He reiterated what happened in Union City and asked if the City Hayward wanted to implement the ordinance right away or think it through first. Mr. Patel urged the City to not pass the proposed ordinance, but instead do more research and come back with a more comprehensive plan that would actually reduce smoking, underage smoking and second-hand smoke.

Commissioner Lamnin thanked Mr. Patel for coming and after confirming he was a business owner asked what business and Mr. Patel said he owned a gas station at Mission and Garin. He noted that the gas station had been closed but they he was able to reopen because the proposed ordinance was not in place.

Nick Patel, Starboard Lane resident, asked if anyone had thought about the impact of a 500 foot radius limit and he said after a quick search of the Mission Boulevard/Tennyson Road area, taking into consideration the school and church, it would pretty much cover the entire area allowing no new tobacco retailer to come in. He said when he expanded the search to City-wide, what was left was probably a very small area. With so many vacant properties, Mr. Patel pointed out that if the regulation passed there would be no new gas stations, convenience stores, or grocery stores less than 10,000 square feet that could come in and start a business. He asked if the City wanted to discourage businesses from coming in to these vacant properties that were basically magnets for crime and other unwanted activities, or did the City want to support business. Mr. Patel said he was not a smoker and was all for discouraging smoking and underage smoking but he said there were other ways to do this. He agreed with Commissioner Mendall that a law that restricted the sell of small cigars would have an impact and would be the right thing to do rather than just a distance limitation. He also suggested a restriction on signs that attract youth to tobacco retailers. Mr. Patel concluded by asking that the City revisit the ordinance and come up with a better solution that would actually help reduce smoking.

Ronald Gruel, parent and longtime Hayward resident living in the Jackson Triangle, said he commuted by local schools and saw small shops and the accessibility students had to tobacco products. Mr. Gruel asked what would be a healthy thing to do for Hayward and he said setting boundaries was perfect. He mentioned one gas station was closed because an underground tank was leaking and after a pump was installed it still "burst up" once in a while and dissipated toxins into the air. He said a new business couldn't move in because



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

the site was still cleaning. Mr. Gruel said it was critical that youth have new facilities at which to play, have healthy activities, and to be engaged.

Julie Waters, with the American Lung Association with offices in Oakland, thanked the Commission for taking the issue on. She said tobacco had a devastating effect on all communities, but disproportionately on the communities in Hayward. Ms. Waters said CUPs were one of the most effective ways to get people to quit smoking or not start smoking in the first place. She said looking at the map presented by staff, Hayward's "main drag" had nothing but back to back retailers and when looking at a community where the prevalence of smoking was around 15%, she said the City already had an abundance of existing retailers. Ms. Waters said she heard the Commissioners discussing increasing the radius from sensitive receptors to 1,000 feet and she explained that this was important because in her experience, a large parking lot could take up the entire 500 feet and allow the business to come in right next to a school without any notice. She said a CUP was an effective method to prevent kids from smoking and that was the ultimate goal. Ms. Waters said the tobacco industry was well aware that the younger a person is when they start smoking, the more addicted they will become and they specifically target youth. She said studies show that if someone starts smoking after age 19 they won't become addicted. Younger kids will develop sensation-seeking brain receptors that make them even more addicted to cigarettes, she said, and that was why the tobacco industry targeted youth. She concluded by saying the city should take any measure necessary to prevent youth access to tobacco.

Commissioner Lamnin asked Ms. Waters how a CUP would limit youth access versus some other enforcement method. Ms. Waters said a CUP limited the number of establishments where tobacco would be available. She said unlike alcohol retailers that had been in business longer, businesses like donut shops and gas stations were applying for retail licenses and when looking at state statistics, these were the kinds of places with the highest buy rate. She said liquor stores were better because they had more to lose; they didn't want to lose their liquor license. Gas stations had a buy rate of around 20%, she said, and donut shops had the highest rate at about 30%.

Chair Márquez closed the Public Hearing at 9:06 p.m.

Commissioner Loché said under definitions "stash cans" and "single cigarette" were mentioned but not "single cigars." Associate Planner Koonze said that language could be added as part of the definition.

Commissioner Lamnin said the single cigar issue needed to be addressed because, as was noted in the report, tobacco manufacturers work around current restrictions and make cigars so small they look like cigarettes. She also suggested candy flavors, flavors in general, and candy shaped packaging be prohibited to counteract the trend of smoking addiction starting in youth. Commissioner Lamnin thanked staff for their research, clarity and the desire for consistency, but said she wasn't sure if the CUP piece of the ordinance addressed all of the issues. She heard there was an over saturation of tobacco retailers in Hayward, but she said she was really concerned about the high concentration of retailers near middle schools. Commissioner Lamnin acknowledged concerns about the need for 1,000 foot radius near sensitive receptors, but said notification would have to be made and training may be needed so carding takes place and youth don't have access. She said she also had concerns about where tobacco was located at stores; was it stored next to candy displays or was it kept up high. Said she wasn't quite ready to make a motion because she wasn't sure how all the information fit together.

Commissioner Mendall said the goal of reducing smoking by underage children was the right one, and he was glad the City was working on an ordinance to do that, but said he wasn't sure if what he had in front of

him was the most effective way to do that. He said requiring a CUP if a retailer was within 1,000 feet of school was great because the matter would come before the Planning Commission and they would have to make a conscious decision to allow it, but the density of uses and proximity to kids was what mattered and the degree of compliance from those businesses. Commissioner Mendall said Mr. Patel's suggestion to double fees and use the money to increase enforcement was a good idea because it was the businesses violating the existing law that were the biggest part the problem. Creating a definition that eliminated the kid-friendly stuff was a "no brainer," he said, and using a broad definition would be good. He noted that cigars were usually sold individually so he suggested creating a minimum price that was high enough to eliminate the 49 cent cigars and the ones the kids might buy. Commissioner Mendall concluded by saying the ordinance needed more work and that logical arguments were needed to back the recommendations. He said in his opinion, the proposed ordinance was not defensible and he wanted to kick it back to staff for additional work focusing on keep tobacco products away from teens rather than picking establishments that can and cannot sell tobacco in what felt like an arbitrary way.

Commissioner Loché mentioned that he worked less than a mile away from the gas station on Hesperian mentioned by Mr. Gruel, and his daughter attended school right around the corner, and he said he could see exactly what Mr. Gruel was referring too. He said there should definitely be a restriction on tobacco sales within at least 500 feet of schools. He noted that when he said "sensitive receptors," he meant schools in particular. Commissioner Loché said there should be no single cigar sales even if it made it more difficult to purchase cigars. He said he wasn't against stiff restrictions on some of these tobacco sales. Regarding the size of the business where tobacco was being sold, he said the focus should be on the type of the tobacco sold and agreed that more work was needed on the proposed ordinance. Commissioner Loché said requiring a CUP was a good thing, and having the item come before the Commission was a step in the right direction.

Commissioner Lavelle said they all knew that smoking was a significant public health issue; smoking cigarettes was dangerous to one's health, and the Commission didn't want to do anything that would thwart the processes to reduce the number of youth who start smoking. But she said she was opposed to the ordinance philosophically because society can't legislate everything away including the negative influences or all the things that young people can't do. Kids do a lot of things they aren't supposed to, she said, including smoking marijuana which was against the law and police have great difficulty enforcing laws about that issue among others. She said she considered cigarette smoking as being lower down on the list of negative influences and didn't require such strict restrictions included in the ordinance. She said she agreed with many of the pronged approaches especially through public education and through the state's efforts citing that California was behind only Utah in the fewest number of adults who smoked.

Commissioner Lavelle said Commissioner Mendall got right to the issue that concerned her when she read the report and that was restricting sales of cigarettes at small businesses in favor of the large ones. She said that was not fair and noted there were already many small businesses in Hayward that sold these products. She said she understood that requiring a CUP for tobacco sales was one of four approaches that have worked in other locations, but she said that would create more government process in the City that, in her opinion, they didn't need. Commissioner Lavelle said the City had a lot of issues it needed to deal with and had CUPs for a lot of other uses and adding the proposed ordinance would make it extremely difficult to sell one product among many. She said she just didn't agree with that philosophically.

Commissioner Lavelle said that she passed an Arco gas station that she had bought gas at many times and it was boarded up. She said that added to the many businesses that were boarded up along Mission Boulevard and she said she didn't want to thwart a potential new owner at that location from doing business here by requiring that he go through a CUP process just to sell cigarettes. That just doesn't seem right, she said.

Commissioner Lavelle said she heard the comments made about approaches to reduce smoking by youth, but in her opinion, parents had the most significant influence on their children. She said she wished parents had more time to be more involved with their children's lives, however, the economy made that very difficult. As



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

a non-parent she acknowledged she didn't have to deal with this issue in her own home, but she reiterated that parents were the number one influence to get kids not to smoke. As a society, as a community, as churches, as business people, as responsible citizens, she said all of us needed to get the message out to youth that they should not take up smoking and that it was dangerous. She concluded that she didn't think this ordinance was the way to go about doing that.

Commissioner McDermott agreed with Commissioner Mendall that more work needed to be done on the ordinance and she said she was leaning toward kicking it back to staff. She said it needed to be more definitive and in some cases, a little more broad based regarding the description of tobacco products. She said she had the highest respect for Commissioner Lavelle, and agreed that parents played a role in their children's lives, but when they are teenagers, she said, the peer pressure is very, very strong. She noted that her mother was a smoker who started at the age of 16 and died of cancer. Commissioner McDermott said she and her siblings constantly told her mom "Don't smoke," but she was so addicted that even when she was diagnosed with lung cancer she wasn't able to stop. She said she wished as parents they did have that much of an influence on kids in regards to smoking specifically, but unfortunately the truth of the matter was, she said, we don't. Commissioner McDermott said sometimes government did need to take measures to provide certain restrictions so kids could be protected because they were so easily influenced, especially in junior high and high school.

Commissioner Faria agreed with Commissioner McDermott that peer groups had a lot of influence on teens and she also agreed that additional clarification was needed regarding the small businesses versus the larger businesses. She said smoking was a public health issue and she saw the impact of smoking on a daily basis not only on the smokers themselves, but on their families. Commissioner Faria said an ordinance was needed, but the proposed ordinance needed more work and some clarification.

Commissioner Lamnin noted that many members of her family smoked, some still did, but it was the images of black lungs that she saw in kindergarten that kept her from starting. She said more than a CUP process, they needed an education process and she made a recommendation to send the proposed ordinance back to staff to include members of the coalition, business owners, Chamber of Commerce members, and community members who may not have known the City was addressing this issue, to determine if the City needed a CUP, a tobacco retailers license, an administrative use permit, or strictly an educational program. She asked what the City should do to address the asthma rates and safety of youth in the community and what could the City do to make the biggest impact on the folks who were here. She also expressed concern about the consistency of the ordinance and the question of why this store and not that store. Research shows, she said, that restrictions on tobacco reduced tobacco use and not just for existing users, so she concluded by asking staff to get some more voices involved.

Commissioner Mendall seconded the recommendation and asked that staff come back with a clear recommendation that targeted sales to youth and built out from there. He mentioned he was a parent too and acknowledged that while parents had a lot of power, if kids were walking by a store right next to their school every day to buy a candy bar on their way home from school and they see the cigarettes, that mattered too. Commissioner Mendall said if the City could just make it a little bit easier for parents that would be a good thing. Rather than try to craft a specific set of recommendations, Commissioner Mendall asked staff to use what they had heard to bring the issue back.

Chair Márquez clarified the motion and commented that she when she read the report she found it confusing because it mentioned collaboration with the Healthy Program and employees and the City and then it moved

to tobacco. She said when she thought of “healthy living” she thought of more physical activity and education, and while she agreed with many of the comments made by the other Commissioners, she said she would like to see more on enforcement and what the community could do to create more healthy activities for youth and their families in the community. Chair Márquez mentioned there were a lot of underutilized facilities, and education about tobacco and alcohol use could be tied into after school and sports programs. She said it was a great discussion with a lot of good points, but she questioned how the City could enforce the proposed ordinance and what the difference was between selling tobacco products at locations under 10,000 square feet versus above. She said she would like to know if the Coalition had a survey of how many outlets were actually selling to youth and said the City should target those outlets and work with them to reduce sales and the signage and advertisements. She concluded by saying that a lot of work needed to be done and while she admired the work that had already been done, the Commission wanted to dig into this a little bit deeper.

The motion passed 7:0:0.

AYES: Commissioners Faria, Lamnin, Lavelle, Loché, McDermott, Mendall
Chair Márquez

NOES:

ABSENT:

ABSTAINED:

COMMISSION REPORTS

3. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude discussed future meeting topics and as a follow-up to past discussions, mentioned that the appeal to bring a Walmart grocery store into the former Circuit City site was denied by Council and the proposed condo project on Maple Court with a change to add some live/work units on the groundfloor was approved by Council.

4. Commissioners’ Announcements, Referrals

Commissioner Lamnin said she had the honor of being one of the representatives from the Planning Commission on the Sustainability Committee as well as the development review process focus group and she said as a Planning Commission it had been really valuable, but due to work commitments she asked that someone else take her place. The Sustainability Committee needed three representatives and the focus group needed one, she said.

Commissioner Mendall said that was a great idea and said he had been to two of the meetings himself and found them very informative. He said the discussions between staff and the architects touched on what the Commission did and agreed that one or two Commissioners should attend or at least they should read the minutes. The Commissioners discussed when and where the groups met and Chair Márquez said she was interested in participating and would look into it.

Commissioner Lavelle reminded all registered voters to participate in the election on June 5, 2012.

APPROVAL OF MINUTES

5. April 12, 2012 approved unanimously

April 26, 2012 approved unanimously with one minor change and Commissioners Lavelle and McDermott abstaining



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

ADJOURNMENT

Chair Márquez adjourned the meeting at 9:36 p.m.

APPROVED:

Sara Lamnin, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk