



CITY OF  
**HAYWARD**  
HEART OF THE BAY

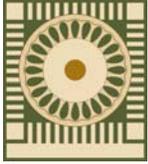
## **PLANNING COMMISSION**

**SEPTEMBER 20, 2012**

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## Table of Contents

|  |     |
|--|-----|
| Agenda . . . . .   | 2   |
| Administrative Use Permit PL-2011-0298 - Adwin Pratap<br>(Applicant)/ Michael and Richard Silva (Owners) - Request to<br>operate an auto body shop with a spray paint booth in an<br>existing warehouse adjacent to single-family residential<br>properties.   |     |
| Staff_Report[1] . . . . .  | 5   |
| Attachment I - Findings for Approval[1] . . . . .  | 9   |
| Attachment II - Conditions_of_Approval[1] . . . . .  | 11  |
| Attachment III - PC staff report May 31, 2012. . . . .   | 15  |
| Attachment IV - PC Minutes May 31, 2012 . . . . .  | 37  |
| Attachment V - Email from Villeroy July 10, 2012. . . . .  | 45  |
| Conditional Use Permit No. PL-2012-0174 – Darren W.<br>Guillaume for Doc’s Wine & Cheese Revival LLC<br>(Applicant)/Lydia Chen (Owner) – Request to Operate a Retail<br>Wine and Cheese Shop with Instructional Wine Tasting at<br>22570 Foothill Boulevard – Central City – Commercial<br>Subdistrict   |     |
| Staff Report . . . . .   | 46  |
| Attachment I . . . . .   | 51  |
| Attachment II . . . . .  | 52  |
| Attachment III . . . . .   | 53  |
| Attachment IV . . . . .  | 55  |
| Attachment V . . . . .   | 60  |
| Attachment VI . . . . .  | 65  |
| Attachment VII . . . . .   | 67  |
| Development Agreement No. PL-2010-0235, General Plan<br>Amendment No. PL-2010-0236, Zone Change No. PL-2010-<br>0237, and Parcel Map No. PL-2010-0431 – Westlake<br>Development LLC (Applicant)/ Chang Income Partnership L.P.<br>(Owner) - Amend the General Plan designation from Low<br>Density Residential to Medium Density Residential; Rezone<br>from Single-Family Residential to Open Space and Planned<br>Development; a Parcel Map for the park expansion and future<br>development lots; and a related Development Agreement |     |
| Agenda Report . . . . .  | 69  |
| Attachment I Area Map . . . . .  | 79  |
| Attachment II Findings for Approval. . . . .   | 81  |
| Attachment III Conditions of Approval. . . . .   | 87  |
| Attachment IV Mitigated Neg Dec and Initial Study . . . . .  | 101 |
| Attachment V MMRP . . . . .  | 124 |
| Attachment VI Draft Development Agreement . . . . .  | 126 |
| Attachment VII Plans . . . . .   | 169 |
| Approval of Minutes  |     |
| July 26, 2012 . . . . .  | 176 |



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

**AGENDA**  
**HAYWARD PLANNING COMMISSION**  
**Thursday, September 20, 2012 , AT 7:00 PM**  
**COUNCIL CHAMBERS**

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**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.

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**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 and No. 2, 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. For agenda item No. 3, the Planning Commission may make a recommendation to the City Council.

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 29225 Sims Court in the Industrial (I) District (APN 464-0100-015-03)

[Staff Report\[1\]](#)

[Attachment I - Findings for Approval\[1\]](#)

[Attachment II - Conditions of Approval\[1\]](#)



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 III - PC staff report May 31, 2012](#)  
[Attachment IV - PC Minutes May 31, 2012](#)  
[Attachment V - Email from Villeroy July 10, 2012](#)

2. Conditional Use Permit No. PL-2012-0174 – Darren W. Guillaume for Doc’s Wine & Cheese Revival LLC (Applicant)/Lydia Chen (Owner) – Request to Operate a Retail Wine and Cheese Shop with Instructional Wine Tasting at 22570 Foothill Boulevard – Central City – Commercial Subdistrict

[Staff Report](#)  
[Attachment I](#)  
[Attachment II](#)  
[Attachment III](#)  
[Attachment IV](#)  
[Attachment V](#)  
[Attachment VI](#)  
[Attachment VII](#)

3. Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236, Zone Change No. PL-2010-0237 and Parcel Map No. PL-2010-0431 – Westlake Development LLC (Applicant)/Chang Income Partnership L.P. (Owner) - Amend the General Plan designation from Low Density Residential to Medium Density Residential; Rezone from Single-Family Residential to Open Space and Planned Development; Approve a Parcel Map for the Park Expansion and Future Development Lots; and Approve a Related Development Agreement. The Property is Located at the Northeast Corner of Eden and Denton Avenues

[Agenda Report](#)  
[Attachment I Area Map](#)  
[Attachment II Findings for Approval](#)  
[Attachment III Conditions of Approval](#)  
[Attachment IV Mitigated Neg Dec and Initial Study](#)  
[Attachment V MMRP](#)  
[Attachment VI Draft Development Agreement](#)  
[Attachment VII Plans](#)

#### **COMMISSION REPORTS:**

4. Oral Report on Planning and Zoning Matters  
Presentation of ABAG’s Draft Regional Housing Needs Allocation (RHNA) and Update on Preparation of Priority Development Area Investment and Growth Strategy
5. Commissioners’ Announcements, Referrals

#### **APPROVAL OF MINUTES**

6. [July 26, 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:** September 20, 2012

**TO:** Planning Commission

**FROM:** Carl Emura, Associate Planner

**SUBJECT:** 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 29225 Sims Court in the Industrial (I) District (APN 464-0100-015-03)

## **RECOMMENDATION**

That the Planning Commission finds that the project is exempt from California Environmental Quality Act (CEQA) review and approve the administrative use permit, subject to the attached findings and conditions of approval.

## **BACKGROUND**

The applicant proposes to operate an auto body and paint shop adjacent to residential properties to service vehicles sold at his used auto sales business in San Leandro. All work would be conducted inside the building. Staff had recommended denial of the application due to potential impacts of the business on the adjacent residents and the availability of numerous auto repair facilities in the immediate area.

On May 31, 2012, the Planning Commission, after a duly-noticed public hearing and with a staff recommendation for denial, expressed favor toward approving the application and directed staff to prepare the findings and conditions for approval (see attached staff report and minutes, Attachments III and IV). Commissioners supportive of the application noted that the property is an allowed use in the Industrial District and the applicant had adequately addressed the concerns of the surrounding residential property owners. Furthermore, Commissioners in support of the project opined that the proposed landscaping and the presence of the business on Sims Court might help reduce the graffiti and illegal dumping occurring in the area.

Commissioners in opposition were concerned about the proximity of the exhaust vents to the single-family dwellings, the potential decline in property values, and the potential to expand operations beyond that being proposed.

## DISCUSSION

The adjacent neighbors had expressed concerns regarding three particular issues: noise, paint fumes and toxicity, and property values. Staff believes that potential impacts to the neighborhood have been mitigated such that there would be no impact on the adjacent owners.

Noise – The proposed business would be operated only between the hours of 9:30am and 2:30pm, and would not be open on weekends. The business would not be open to the general public, which would limit vehicle trips to employee vehicles and to delivery of the vehicles to be serviced. All vehicle servicing would be performed indoors and the two garage doors would remain closed while work is performed. The applicant prepared an acoustical study (see Attachment III of the May 31, 2012 staff report, Attachment III of this report) that indicates the noise level at the property line would be 56.6 dB, below the 70 dB level allowed by the City’s Noise Regulations (Municipal Code Section 4--1.03.1a).

Paint Fumes and Toxicity – Only water-based, low-volume Volatile Organic Compound (VOC) paints would be used to paint the vehicles. All painting would be performed within a spray booth, located within the building, which would capture all paint film not deposited on the vehicle itself. The venting system incorporates an exhaust filter rated at 99% efficiency, above that required (98%) by the Bay Area Air Quality Management District (BAAQMD) in the removal of paint overspray. The applicant expects that the level of paint activity would remain under the BAAQMD threshold of 30 gallons per year. Should the level of activity exceed this threshold, an Air Permit from the BAAQMD would be required, involving monitoring of all paint activity.

Property Values – Staff believes that additional business activity at this location should reduce the incidences of graffiti and illegal dumping that occur presently on this dead-end street. The reduction of these negative impacts because of additional “eyes on the street” should help offset current economic conditions that impact property values.

### Administrative Use Findings

**A. *The proposed use is desirable for the public convenience or welfare.***

The proposed auto body shop and spray booth facility is desirable for the public welfare in that there is an ongoing need for used cars in good condition. The proposed facility will allow the applicant to restore used cars to meet that need. In addition, with its presence on the cul-de-sac, it will deter dumping in the public right-of-way. It will also provide income to the City in the way of business license fees and sales tax from supplies purchased in the City.

**B. *The proposed use will not impair the character and integrity of the zoning district and surrounding area.***

The applicant proposes to operate in a manner that does not impair the character and integrity of the zoning district and surrounding area in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emissions

regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses.

***C. The proposed use will not be detrimental to the public health, safety, or general welfare.***

The applicant proposes to operate in a manner that would not be detrimental to the public health, safety, or general welfare in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. In addition, as conditioned, the auto body repair and paint spraying would be limited to only cars and trucks sold by the applicant at his off-site use car lot and not more than six cars could be worked on per week. Furthermore, the facility would not be opened to the general public and the hours of operation would be limited to 9:30 am to 2:30 pm, Monday through Friday.

***D. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.***

The proposed auto body shop and spray booth facility as conditioned is in harmony with applicable City policies and the intent and purpose of the zoning district involved in that the facility will operate in a manner that would mitigate impacts to the adjacent residential properties.

## **ENVIRONMENTAL REVIEW**

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15303, New Construction or Conversion of Small Structures.

## **PUBLIC CONTACT**

On July 16, 2012, a Notice of Public Hearing was sent to every property owner and occupant within 300 feet of the subject site. Staff since received one email from a resident, Brian Villeroy, opposing the application because of health and safety concerns; most of the concerns are addressed in the Discussion section above. Mr. Villeroy also comments on the poor maintenance conditions of other nearby business. Many of the businesses in the area have been in operation for a number of years, predating annexation to the City. It is expected that, over time, conditions will improve as replacement business will be subject to current City requirements. The subject property is developed with a modern building, separated from the residential properties by a masonry wall; the conditions of approval require appropriate property maintenance. This hearing was rescheduled from July 26, 2012, per the applicant's request, and another Notice of Public Hearing was sent out on September 7, 2012. Staff has not received any further comments at the time of completion of this report.

## NEXT STEPS

Following the Planning Commission decision, a 10-day appeal period begins. If the decision is appealed, the application would be scheduled for a public hearing before the City Council.

Prepared by: Carl Emura, ASLA, Associate Planner

Recommended by:



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Richard Patenaude, AICP  
Planning Manager

Approved by:



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David Rizk  
Development Services Director

Attachments:

- Attachment I Findings for Approval
- Attachment II Conditions of Approval
- Attachment III Planning Commission Report with attachments dated May 31, 2012
- Attachment IV Minutes of May 31, 2012 Planning Commission hearing
- Attachment V Email from Brian Villeroy dated July 10, 2012

**CITY OF HAYWARD  
PLANNING DIVISION  
ADMINISTRATIVE USE PERMIT  
September 20, 2012**

**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 residential properties.

The site is located at 29225 Sims Court in the Industrial (I) District (APN: 464-0100-015-03).

**FINDINGS FOR APPROVAL**

- A. Approval of Administrative Use Permit PL-2011-0298 to operate an auto body shop with a spray paint booth in an existing warehouse adjacent to residential properties is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15303, New Construction.
- B. The proposed auto body shop and spray booth facility is desirable for the public welfare in that there is an ongoing need for used cars in good condition. The proposed facility will allow the applicant to restore used cars to meet that need. In addition, with its presence on the cul-de-sac, it will deter dumping in the public right-of-way. It will also provide income to the City in the way of business license fees and sales tax from supplies purchased in the City.
- C. The proposed auto body and spray booth facility as conditioned does not impair the character and integrity of the zoning district and surrounding area in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses.
- D. The proposed auto body and spray booth facility as conditioned would not be detrimental to the public health, safety, or general welfare in that the operations would take place within an enclosed building to control noise levels; air quality would be maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. In addition, as conditioned, the auto body repair and paint spraying would be limited to only cars and trucks sold by the applicant at his off-site use car lot and not more than 6 cars could be worked on per week. Furthermore, the facility would not be opened to the general public and the hours of operation would be limited to 9:30 am to 2:30 pm, Monday through Friday.
- E. The proposed auto body shop and spray booth facility as conditioned is in harmony with applicable City policies and the intent and purpose of the zoning district

involved in that the facility will operate in a manner that would mitigate impacts to the adjacent residential properties. The noise level, use of water-based paint, landscaping and limited hours of operation mitigate the impact to the adjacent single family residential dwellings.

**CITY OF HAYWARD  
PLANNING DIVISION  
ADMINISTRATIVE USE PERMIT  
September 20, 2012**

**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 residential properties.

The site is located at 29225 Sims Court in the Industrial (I) District (APN: 464-0100-015-03).

This approval is void three years after the effective date of approval unless substantial improvements have been made as determined by the Planning Director. Improvements shall be installed per the approved plan labeled Exhibit “A”. Any modification to this permit shall require previous review and approval by the Planning Director.

**CONDITIONS OF APPROVAL**

1. Prior to the commencement of the auto body shop and spray paint boot, the conditions of approval are to be completed by the business owner.
2. All signs shall comply with the Sign Ordinance regulations for the Industrial Zoning District.
3. The facility shall not be open to the general public. Only automobiles to be sold at the owner’s used car dealership shall be allowed to be worked on at this facility. The number of vehicles to be serviced is limited to six per week.
4. The hours of operation shall be limited to Monday to Friday from 9:30 am to 2:30 pm.
5. The building’s roll-up doors shall remain closed whenever any auto body work or paint spraying is conducted.
6. The operation of the facility shall comply with the City of Hayward Municipal Code, Chapter 4 Public Welfare, Morals and Conduct, Article 1 Public Nuisances, Residential Noise Limitations.
7. Only water-based paint shall be used to paint the automobiles. All repaint, paint match or paint repairs to automobiles shall be in compliance with the Bay Area Air Quality Management District’s Regulation 8, Rule 45, Motor Vehicle and Mobile Equipment Coating Operations (8-45).
8. Violation of conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.

## **Landscape**

9. Landscape Plan requirements:
  - a. Detailed landscape and irrigation improvement plans shall be approved by the City. The plans shall be prepared by a licensed landscape architect on an accurately surveyed base plan and shall comply with the City's *Bay-Friendly Water Efficient Landscape Ordinance, Hayward Environmentally Friendly Landscape Guidelines and Checklist for the landscape professional, and Municipal Codes*. Dripline of the existing trees to be saved shall be shown on the plan.
  - b. No spray heads shall be located within two (2) feet of paved surfaces or structure. Detailed irrigation plan shall show all spray head location and irrigation method for the first two feet of planting next to hardscape.
  - c. Use PVC Class 200 for sleeving under the pavement and bury it 36" under roadways and driveways and 24" under walkways.

## **Fire Department**

10. Due to the change of building use and the building area exceeding 5,000 square feet, a fire sprinkler system is required in accordance with NFPA 13 Standard prior to occupancy of the building.

## **Utilities**

The parcel currently has an existing commercial sewer service, with a permitted discharge capacity of approximately 210 gallons per day of domestic strength wastewater. Based on the information provided by the applicant that the business will have one employee, no additional sewer capacity will need to be purchased. It also has an existing 1" domestic water meter.

11. Water & Sewer Service are available and subject to standard conditions and fees in effect at time of application and payment of fees.
12. If the existing water service line and meter cannot be reused, it must be abandoned by City Water Distribution Personnel at the owner's/applicant's expense.
13. A separate water service line to supply the fire sprinkler system shall be installed. 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.
14. Any modifications needed to the water service and/or water meter (upsized, downsized, relocate, etc.) must be performed by City Water Distribution Personnel at the owner's/applicant's expense.
15. All domestic & irrigation water meters must have Reduced Pressure Backflow Prevention Assemblies, per City of Hayward Standard Detail 202.

## **Development Review Services**

16. A van-accessible handicapped parking space shall be provided. The proposed handicap parking stall shall meet CalTrans 2006 Standard Plan A90A.

17. The on-site parking stall design shall meet the City of Hayward's Off-Street Parking Regulation standards and Standard Detail 110B.

### **Water Pollution Control**

18. A Standard Industrial Waste Monitoring Structure (Dwg. No. SD-309 filed 6-15-93) shall be installed end of pipe if not existing.

19. Automotive Body Repair Activities:

#### **A. Dry Sanding**

1. Conduct all sanding indoors.
2. Sweep, vacuum, or use other dry cleanup methods routinely to pick up dust from dry sanding of primer, metal, or body filler. Make extra efforts to thoroughly sweep or vacuum dust prior to mopping.
3. Use vacuum sanding equipment whenever possible in order to reduce the amount of airborne dust.

#### **B. Wet Sanding**

1. Conduct all sanding indoors.
2. Do not wet sand in a wash rack or in an area with a floor drain.
3. If possible, reduce or eliminate need for a sanding bucket:
  - a. Use dent repair tools whenever practical for small dents.
  - b. Use vacuum sanding equipment whenever practical (for larger panels) in order to minimize the amount of wastewater.
  - c. Use spray bottle to squirt water onto the panel. This eliminates sanding bucket wastewater and also minimizes drips and spills.
  - d. Place a pan under the car panel being sanded to catch drips. Pour the collected water back into the wet sanding bucket.
  - e. Clean up drips with a rag, or let the drips dry and then sweep or vacuum up the dust.

#### **C. Cleaning Floors**

Sanding dust and wet-sanding drips often end up on the shop floor. If the shop floor is mopped and the mop water is discharged to the sanitary sewer, the mop water alone can cause a violation of local sanitary sewer discharge limits for zinc.

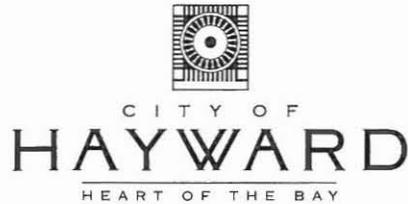
Instead of mopping, sweep the floors.

1. If mopping must be done, follow this three-step procedure:
  - a. Clean up all drips and spills with rags or other absorbent materials.
  - b. Sweep or vacuum to pick up dust. (This should be a frequent routine.)
  - c. Mop with a minimal amount of water. Do not let water run outside.

- d. Dispose of the mop water to the sanitary sewer through a drain or permitted treatment system. As an additional precaution, let the mop water settle overnight or longer (in a bucket or settling unit) prior to discharge.

D. Miscellaneous:

1. When receiving damaged vehicles, inspect for leaks. Use drip pans if necessary.
2. Conduct all body repair and painting work indoors.
3. When cleaning wheels, avoid the use of acid-based wheel cleaners if soap and elbow grease will do.
4. Never use spray-on, acid-based wheel cleaners in areas where rinse water may flow to a street, gutter, or storm drain.



**DATE:** May 31, 2012

**TO:** Planning Commission

**FROM:** Carl Emura, Associate Planner

**SUBJECT:** 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 29225 Sims Court in the Industrial (I) District (APN 464-0100-015-03)

## RECOMMENDATION

That the Planning Commission finds the project exempt from California Environmental Quality Act (CEQA) review and denies the administrative use permit, subject to the attached findings.

## SUMMARY

The applicant proposes to operate an auto body shop adjacent to residential properties that would not be open to the general public to serve his used auto sales business in San Leandro. The shop would include a spray paint booth and all work is proposed to be conducted inside the building. Residents in proximity to the property oppose the application, citing concerns about noise, paint fumes, toxic paints and property values. The neighborhood (½-mile radius) currently contains 18 auto or truck repair establishments. Staff is not supporting the proposed use, given staff's inability to make the required findings to support an administrative use permit, particularly due to the inability to determine this use, which would serve a business in San Leandro, would benefit the community of Hayward.

## BACKGROUND

The applicant operates a used car sales lot, Absolute Auto Sales, in San Leandro and would like to convert an existing warehouse into an auto body facility, including a spray paint booth, to do minor body work and touch-up painting for vehicles sold at his car sales lot in San Leandro. The property, previously occupied by an ice cream truck company, is zoned Industrial (I) District. With the exception of the properties to the west, which are zoned Single Family Residential (RSB4) District, the surrounding properties are also zoned Industrial District. The property to the south contains a construction equipment storage yard; the property to the east, across Sims Court, contains an

office/warehouse; the property to the north is occupied by Roto-Rooter; and the properties immediately to the west contain small-lot, single-family homes.

The facility would initially operate three days a week from 9:30 a.m. to 2:30 p.m. and later expand operations to five days a week. According to the applicant, no work would be performed on the weekends and only minor automobile bodywork would be performed consisting of touch-ups or partial paint jobs; no collision repairs or extensive bodywork would be performed. All bodywork and painting would be done inside the building with the two roll-up doors closed. No automobile detailing would be done at this location. No work would be done outside the building.

Automobile repair is a primary use in the Industrial District, however, when a primary use abuts a residential property, approval of an Administrative Use Permit is required. During the public notice period, staff received six responses from the residents along the west side of the property opposing the facility. Concerns were raised about noise, paint fumes, toxic paint and chemicals, and impacts to property values. Because of the significant concern of the adjacent residents, the Planning Director referred this matter to the Planning Commission.

## **DISCUSSION**

The concerns from the surrounding neighbors focused on three major issues: noise, paint fumes and toxicity, and property values.

*Noise* – One of the residents made reference to the noise from the ice cream truck business, previously operating on this site, emanating from their refrigeration units, trucks and workers, and was concerned about the noise from the proposed use. The applicant states that their operation would not adversely affect the adjacent residences closest to the property in that there would be a maximum of two staff members, the hours of operation would be limited to 9:30 a.m. to 2:30 p.m., they would not be open on the weekends or to the general public, and the two garage doors would remain closed when they are working on the vehicles.

The City of Hayward Municipal Code (Sec. 4-1.03.1) states that no person shall produce or allow to be produced noise that exceed 70 dBA (the level when close to a main road by day) between the hours of 7:00 a.m. and 9:00 p.m. or 60 dBA (a noisy lawn mower at a 10-meter distance) between the hours of 9:00 p.m. and 7:00 a.m. According to a report “Sims Court Acoustical Study” (Attachment III), dated February 10, 2012, and prepared by Patrick Burger, Architect, the noise level would be 56.6 dB at the concrete masonry wall on the property line adjacent to the residences with the doors closed, and 66.9 dB with the doors open. Therefore, the noise level would be consistent with the Municipal Code standards.

However, the property contains a significant amount of outdoor parking area with two garage doors that face some of the adjacent residences. Vehicle movements would take place in the outdoor area adjacent to the residences. It is also likely that it would be inconvenient to the operations to leave the garage doors closed at all times. As the business grows, the noise impact could increase. While the applicant proposes to limit the use to the day-time hours, some of the adjacent residents have expressed that they are home during the day.

Paint Fumes and Toxicity – Only water-based low volume Volatile Organic Compounds (VOC) paint would be used to paint the vehicles. Outdoor emissions of VOC contribute to the formation of ozone. The Bay Area Quality Management District (BAAQMD) requires obtaining an Air Permit if 30 gallons or more of paint or solvent is used per year. The Air Permit limits the amount of paint and solvent that can be used and requires that records of the date, quantity of paint sprayed, mixture ratio and vehicle license number be kept. Other requirements are to install a filter on the spray booth to achieve at least 98% capture efficiency and the spray booth should be fully enclosed and ventilated.

The applicant would be using a state-of-the-art Col-Met Spray Booth ([www.colmetsb.com](http://www.colmetsb.com)), a 15' x 34'-6" (518 square feet) self-contained enclosed structure, which will be located within the building. According to the applicant, all work (limited to mirror bodywork and the partial spray painting of cars) will be performed inside the spray booth, or in the building, and not outside the building, or exterior parking area. This self-contained spray booth captures all paint film not deposited on the car body itself. The venting system exits through the roof of the building and incorporates an exhaust filter manufactured by Columbus Industries. The paint arrestor filter is rated at 99% efficiency for the removal of paint overspray.

However, there is no guarantee that emissions from the spray booth would be consistently controlled. Adjacent residents have expressed concern about the health impacts related to the spray painting operations, especially affecting those with asthma. Persons who are exposed to toxic air pollutants have increased chance of developing cancer and other serious health problems.

Property Values – The applicant would be planting a line of evergreen shrubs, along the rear and south property lines, to aid in the screening of their facility from the adjacent residential parcels, as well as new plantings and street trees along the front property line. The applicant believes his facility would be less visually and acoustically intrusive, than the property might otherwise be subjected to by any other potential full-time, more intensive use or any other existing use abutting the residential properties and therefore does not believe that his facility would detract from those existing values.

However, the proposed use would contribute to a large number of auto and truck repair establishments within a ½-mile radius of the project site that have the potential to negatively impact the health and welfare of nearby residents, thereby potentially affecting property values.

#### Administrative Use Findings

While the applicant may be able to mitigate the operational impacts of the business on the adjacent residential properties, staff does not believe that all the required findings, as follow, can be made.

#### ***A. The proposed use is desirable for the public convenience or welfare.***

The proposed auto body shop and spray booth facility is not desirable for the public welfare in that the proposed business does not provide service to the Hayward community while having the potential for causing negative impacts to adjacent local residents. The surrounding area (1/2-mile radius from the site) already contains at least 18 auto or truck repair establishments.

***B. The proposed use will not impair the character and integrity of the zoning district and surrounding area.***

The applicant claims that the proposed auto body shop and spray booth facility could operate in a manner that does not impair the character and integrity of the zoning district and surrounding area in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. However, it has been the experience of the City of Hayward that auto-oriented uses often find it convenient to perform certain operations outside of an enclosed building. The proposed use also has the potential to increase operations beyond that proposed. The potential intensity of this use is of special concern given the small-lot, single-family residential uses adjacent to the industrial properties along the westerly side of Sims Court. Residents have expressed concern regarding health impacts caused by pollutants and disruption of the neighborhood's peace and quiet.

***C. The proposed use will not be detrimental to the public health, safety, or general welfare.***

The applicant claims that the proposed auto body shop and spray booth facility will not be detrimental to the public health, safety, or general welfare in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. However, it is not possible to consistently monitor the operations of individual businesses, and potential impacts of the proposed use to the, at least, 18 auto and truck repair establishments within one-half mile of the site could be detrimental to public health and general welfare of the immediately adjacent neighborhood.

***D. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.***

The purposes for requiring an administrative use permit when an industrial use abuts a residential district includes assuring that the use is permitted where there is a community need. In this case, the surrounding area (1/2-mile radius from the site) already contains at least 18 auto or truck repair establishments. Therefore, community need cannot be established for this use, which would serve a business in San Leandro, that has the potential to negatively impact the adjacent residential neighborhood.

## **ENVIRONMENTAL REVIEW**

Disapproved projects are exempt from CEQA review when the public agency determines that the application for project approval will not be approved. Should the Planning Commission decide to approve the administrative use permit, staff will be required to make an environmental assessment and will develop findings in support of the project and recommended conditions of approval for Commission consideration.

## PUBLIC CONTACT

On September 28, 2011, an Official Notice of the request was sent to every property owner and occupant within 300 feet of the subject site. As a result of the notice, staff received six responses opposing the auto body shop from the residential property owners along the west side of the property. They expressed concerns about noise, health and property values. The applicant distributed a letter dated January 12, 2012 (See Attachment V) to the residents along the west property line addressing their concerns. On May 11, 2012 a Notice of Public Hearing for the Planning Commission meeting was mailed. No responses have been received by the time this report was prepared.

## NEXT STEPS

Following the Planning Commission decision begins a 10-day appeal period. If denied, the decision could be appealed and the application would be scheduled for a public hearing before the City Council.

Prepared by: Carl T. Emura, ASLA, Associate Planner

Recommended by:



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Richard Patenaude, AICP  
Planning Manager

Approved by:



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David Rizk  
Development Services Director

Attachments:

Attachment I Area Map

Attachment II Findings for Denial

Attachment III Sims Court Acoustical Study dated 2/10/12

Attachment IV Email from Maria Penafiel dated 9/26/11

Attachment V Email from Bruce Finley dated 9/26/11

Attachment VI Letter from Yusuf Ali dated 9/27/11

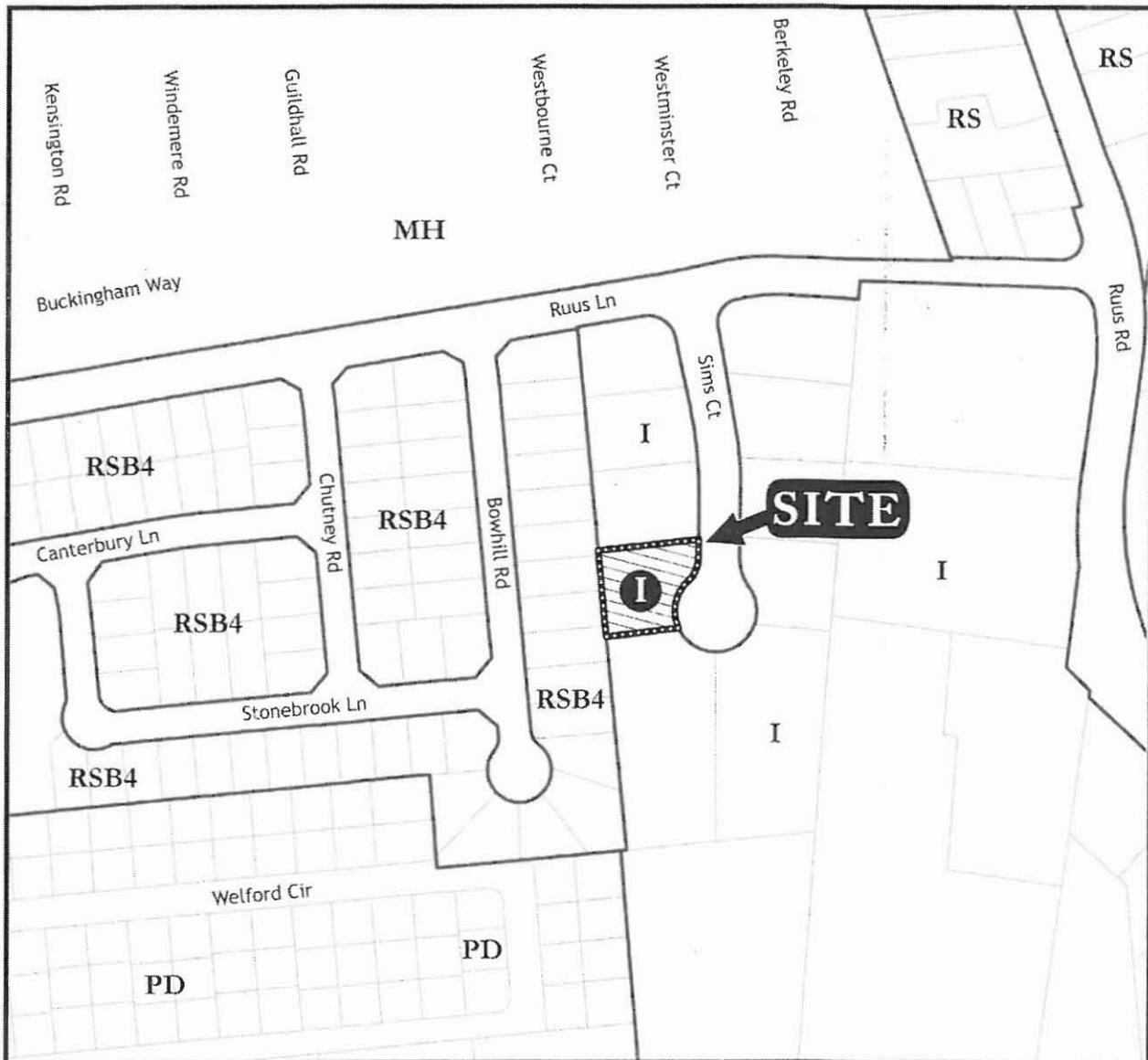
Attachment VII Email from Delnis Miranda dated 9/28/11

Attachment VIII Email from resident of 29298 Bowhill Road dated 10/3/11

Attachment IX Letter to Neighbors from Applicant dated 1/12/12

Attachment X Plan

**Attachment I: Area and Zoning Map**



**Area & Zoning Map**

PL-2011-0298 AUP

Address: 29225 Sims Court

Applicant: Adwin Pratap

Owner: Micharel or Richard Silva

**Zoning Classifications**

**RESIDENTIAL**

MH Mobile Home Park

RS Single Family Residential, min lot size 5000 sqft

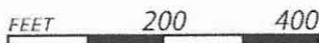
RSB4 Single Family Residential, min lot size 4000 sqft

**INDUSTRIAL**

I Industrial

**OTHER**

PD Planned Development



Report Title  
Report Date

**CITY OF HAYWARD  
PLANNING DIVISION  
ADMINISTRATIVE USE PERMIT  
May 31, 2012**

**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 residential properties.

The site is located at the 29225 Sims Court in the Industrial (I) District, (APN: 464-0100-015-03)

**FINDINGS FOR DENIAL**

- A. Denial of Use Permit Application No. PL-2011-0298 to request to operate an auto body shop and a spray paint booth in an existing warehouse adjacent to residential properties in the Industrial (I) Zoning District is exempt from the provisions of California Environmental Quality Act guidelines pursuant to Section 15270 (a), *Projects that are Disapproved*.
- B. The proposed auto body shop and spray booth facility is not desirable for the public welfare in that the proposed business does not provide service to the Hayward area while having the potential for causing negative impacts to adjacent local residents. The surrounding area (1/2-mile radius from the site) already contains at least 18 auto or truck repair establishments.
- C. The proposed auto body shop and spray booth facility will impair the character and integrity of the zoning district and surrounding area. In spite of the applicant claims that the proposed auto body shop and spray booth facility could operate in a manner that does not impair the character and integrity of the zoning district and surrounding area in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emission regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. It has been the experience of the City of Hayward that auto-oriented uses often find it convenient to perform certain operations outside of an enclosed building. The proposed use also has the potential to increase operation beyond that proposed. The potential intensity of this use is of special concern given the small-lot, single-family residential uses adjacent to the industrial properties along the westerly side of Sims Court. Residents have expressed concern regarding health impacts caused by pollutants and disruption of the neighborhood's peace and quiet.
- D. The proposed auto body shop and spray booth facility will be detrimental to the public health, safety, or general welfare. In spite of the applicant claims that the operations would take place within an enclosed building to control noise levels; air quality would be

maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. It is not possible to consistently monitor the operations of individual businesses, and potential impacts of the proposed use to the, at least, 18 auto and truck repair establishment within one-half mile of the site could be detrimental to public health and general welfare of the immediately adjacent neighborhood.

- E. The proposed auto body shop and spray booth facility in harmony with applicable City policies and the intent and purpose of the zoning district involved in that the purposes for requiring an administrative use permit when an industrial use abuts a residential district includes assuring that the use is permitted where there is a community need. In this case, the surrounding area (1/2-mile radius from the site) already contains at least 18 auto or truck repair establishments. Therefore, community need cannot be established for this use that has the potential to negatively impact the adjacent residential neighborhood.

**SIMS COURT ACOUSTICAL STUDY**

Subject Property: 29225 Sims Court  
 Date of Study: February 10, 2012  
 Time of Study: 4:30 PM to 5:30 PM  
 Weather: Clear, 56°, Wind >5 mph

**Acoustical Study Parameters:**

The Acoustical Study was performed while operating the loudest piece of equipment to be employed in Applicants operation of the facility: A Portable Air Compressor, manufactured by Schrader-Bridgeport. Model: NAC82-4256-VAT

The instrument used for the Study was a Center Technologies Model 325, with a range of 35-130dB, accuracy of +/- 1.5dB, and resolution of 0.1dB. A windscreen was employed during the testing. The device is a rated IEC 651 TYPE II device, OSHA Compliant, and calibrated to NIST (National Institute of Standards & Technology) Standards. The device employs an Electret condenser microphone, with a frequency range of 31.5Hz to 8KHz, and a dynamic range of 50dB.

Readings were taken using a Frequency Weighting of A; and a Time Weighting of FAST

For each location several readings were obtained, and for purposes of this study, the highest reading was taken, and is noted below.

The following are the results of the study:

|   |         |
|---|---------|
| @ 5' inside buildings south wall, with doors closed:  | 80.4 dB |
| @ 5' inside buildings south wall, with doors open:  | 79.1 dB |
| @ 5' outside buildings south wall, with doors closed:   | 66.4 dB |
| @ 5' outside buildings south wall, with doors open:<br>(@ door closest to West property line) | 72.9 dB |
| @ 5' outside buildings south wall, with doors open:<br>(@ door closest to East property line) | 77.9 dB |
| @ 2' from West property lines CMU wall, with doors closed:                                    | 56.6 dB |
| @ 2' from West property lines CMU wall, with doors open:                                      | 66.9 dB |

**Summary of Findings:**

The results of the study confirm that the generated noise level is below 70dBA at the property lines, within the allowable limits requirements of the City's Residential Property Noise Restrictions. The existing 6' high CMU wall must further reduce the noise levels beyond the property line, although no readings were taken on the opposite side of the wall, from the neighboring properties. Based on these findings, Applicant believes his proposed use of the facility conforms to the requirements of the City's Residential Property Noise Restrictions.

I certify that the above Acoustical Study was conducted by me, on the date and at the time first noted above, and the instrument used and readings obtained, are those as outlined and stated above.

Patrick J. Burger  
 Architect



**Carl Emura**

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**From:** Maria Penafiel [maritesiel@yahoo.com]  
**Sent:** Monday, September 26, 2011 11:12 AM  
**To:** Carl Emura  
**Subject:** 29225 Sims Court auto body shop adjacent to single family homes

Dear Mr Carl Emura

This letter is in reference to PL-2011-0298 AUP . I am a property owner located at 29270 Bowhill Road Hayward CA 94544.

I am totally not agreeable to having someone operate an autobody shop with a spray paint booth because this is close to residential homes.

As you enter Ruus lane there will be a different traffic flow in that area plus the fumes that the residents can inhale. I know that this people just want to be competitive in their business that's why they want to be confined in one place so that when people want to bargain they can just go from one body shop to another . People can just walk from one body shop to another. Please not at our own expense, this is not a flea market . If they want to establish a business pls be considerate of others and the surroundings too and how it will affect others.

Hoping that you will not approve of this and I am also speaking in behalf of the residents of Georgia Manor, a residential facility for the elderly which is just across the street.

Thank you.

Sincerely  
Maria Penafiel

**From:** Bruce Finley [bfbusiness@comcast.net]  
**Sent:** Monday, September 26, 2011 8:04 PM  
**To:** Carl Emura  
**Subject:** Opposition to PL-2011-0298-AUP

**Importance:** High

Dear Mr. Emura,

I'm writing in reference to the Official Notice I received concerning Adwin Pratap, Micharel or Richard Silva's request to operate a auto body shop with a spray paint boot at 29225 Sims Court in Hayward.

I am adamantly opposed to having this facility so close to residential homes. Among the many reasons I have, is the fact that the noise level is sure to go up in the neighborhood. I'm very concerned about the potential noise level, not only during the day, but when they work outside normal business hours.

The use of chemicals and paints so close to homes is unconscionable. Everyone, especially the young, seniors, and those with medical conditions in the neighborhood are at risk for chemical exposure through airborne particles.

I implore you not to approve this request for the sake of the residents.

Please reply acknowledging receipt of this email.

Thank you,

Bruce Finley  
29278 Bowhill Rd.  
Hayward, CA 94544

September 27, 2011

RECEIVED  
SEP 29 2011  
PLANNING DIVISION

Carl T. Emura, ASLA  
Planning Division  
777 B Street  
Hayward, CA, 94541-5007

Re: PL-2011-0298AUP  
Address: 29225 Simms Court, Hayward, CA  
Applicant: Adwin Pratap  
Owner: Micharel or Richard Silva

Mr. Carl T. Emura,

Thank you for the opportunity to respond to the proposed auto body shop at 29225 Simms Ct. I reside on Bowhill Rd. My home is located along the south west edge of the proposed auto body shop. Auto body repair and paint facilities already exist within the community and I do not see the need for another. My home will directly be impacted by this facility.

There is what appears to be a heavy equipment storage facility within the court. There are more than a dozen auto repair and paint facilities from Ruus Lane to Industrial Parkway on Ruus Road and from Ruus Road to Stratford Road. on Industrial Parkway. There is a truck repair facility as well as a tire and brake repair facility on Industrial Parkway between Russ Road and Stratford Road and a very large auto auction wholesale center on Addison Way and Stratford Road. Though these shops and locations are all different they all have one thing in common, toxic and hazardous chemical waste and conditions. How often are the businesses checked for compliance?

According to the Department of Labor of the United States\*\*, "auto body shops are potentially exposed to a variety of chemical and physical hazards. Chemical hazards may include volatile organics from paints, fillers and solvents; diisocyanates, polyisocyanates and hexavalent chromium from spray painting operations; silica from sandblasting operations; dusts from sanding; and metal fumes from welding and cutting."

According to the United States Environmental Protection Agency\*\*\*, " People who are exposed to toxic air pollutants at sufficient concentrations, for sufficient durations, may increase their chances of getting cancer or experiencing other serious health effects, such as reproductive problems, birth defects, and aggravated asthma. Auto body shops repair, repaint, and customize cars, trucks, and other vehicles. Their activities include sanding, cleaning, and painting, all of which may release pollutants into the air and may contribute to health concerns in the shop and in the community."

All of these services also bring about noise within the community. The service doors of the building face my home. The noise from power tools and metal work will travel directly into my home. A food service business was there for several years (Hayward Wholesale Ice Cream). The refrigeration units would go on at all hours of the night not to mention all the ice cream vendor trucks and the loud yelling and ice cream truck music during business hours.

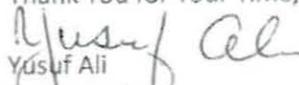
I am retired and spend most of my time at home during the day also my six grandchildren (3,4,4,5,10,12) are often at my home. They love to play in the backyard and I am now afraid that they will be subjected to the harsh and often caustic chemicals used in the auto body industry.

I understand that the auto body industry does use precautions to minimize the hazards of the industry. The equipment used such as a spray booth will contain paint fumes and toxic paints. This will minimize the impacts of pollution in the area, non-the-less, more pollution and hazardous materials will be introduced. Even at a minimized level, pollution, both toxic and noise, that was not present before will be now be present. Body shops work well into the evening hours to meet scheduled completion times. They may have official hours of business, but when quitting time comes, they don't drop their tools and walk away for the night.

The addition of the auto body shop so close to the home will also decrease property values in the area. With today's economic woes, the last thing the community needs is a decrease in property values. The decrease in value may increase the number of home owners who once had equity in their home to now owe more money than the home is worth, thus leading to the possibility of an increase in foreclosures or short sales. With this in mind home prices can drop by as much as 15%.\*\*\*\*

I received my notice on the 24th of September. I am sure that a lot of home owners might not have the time to respond to this notice. Please give them more time to voice their opinions. Thank you for your time, your consideration in this matter will be greatly appreciated. I would like to see our neighborhood remain as it is. I do not believe another auto body repair and paint shop is needed in this area.

Thank You for Your Time,

  
Yusuf Ali  
Bowhill Rd.,  
Hayward, CA, 94544  
(510)786-1974

\*\*<http://www.osha.gov/SLTC/autobody/index.html>

\*\*\*[http://pubweb.epa.gov/oar/toxicair/community/guide/autobody\\_comm\\_info.pdf](http://pubweb.epa.gov/oar/toxicair/community/guide/autobody_comm_info.pdf)

\*\*\*\*<http://realestate.msn.com/7-neighborhood-threats-to-your-homes-value>

**From:** Del Miranda [miranda@tensilica.com]  
**Sent:** Wednesday, September 28, 2011 6:55 PM  
**To:** Carl Emura  
**Subject:** 29225 Simms Court

Attachment VII

Dear Carl Emura,

My name is Delnis Miranda and I live at 29236 Bowhill Road in Hayward. I recently received your mail notification regarding the property located at 29225 Simms Court, which is located directly in back of my home. I understand that you received a request to operate an autobody shop at that property. I would like to express concern over this decision.

From my understanding of Autobody shops, they are relatively high in terms of air, noise, and visual pollution. My primary concern is the health of my wife and two young children. My youngest daughter has severe asthma. The pollutants from excessive automotive exhausts and paint contaminants from the spray paint booth may result in dire consequences to my daughter's health. Second to that, the noise pollution resulting from operating an autobody repairing vehicles often exceed safe decibel levels and require the use of protective gear to prevent hearing loss. Such noise, especially in the early morning and late afternoon hours, will disturb the much needed tranquility and quietness of the neighborhood and cause a significant increase in stress levels for surrounding neighbors. Autobody shops also tend to collect wrecked cars in various stages of repair, leading to visual pollution and overall loss of property values. All in all, having an Autobody shop next to my home will be very troublesome for my family.

It is my belief that AutoBody shops should be located in areas that is a reasonable distance away from residential areas due to health risks due to pollution.

I hope that you will deny approval for this request and continue to do what's best for the people of Hayward and keep Hayward, the Heart of the Bay, a great place to live.

Feel free to contact me if you have any questions. I would appreciate if you keep me informed of what happens next.

Regards,  
del

**From:** denfisherman@comcast.net  
**Sent:** Monday, October 03, 2011 3:19 PM  
**To:** Carl Emura  
**Subject:** autobody shop at 29225 sims court

Attachment VIII

The body shop is too close to residential area to have a spray paint booth. We already have about six body shop in the area. If wind blow in the direction of the house the paint fume would be loud smelling. I disapprove of this location for a body shop. I am a homer at 29298 bow hill road. Thank you

Adwin Pratap  
 Absolute Auto Sales  
 16500 E 14<sup>th</sup> Street  
 San Leandro, CA 94578  
 (Office) 510-363-8705 (Cell) 510-274-9850

January 12, 2012

Subject: **29225 Sims Court – Proposed Minor Bodywork and Spray Paint Booth Within Existing Building**

To My Bowhill Road Neighbors,

We have received your comments regarding our proposed use of the subject site. We fully understand and appreciate your concerns and wanted to take this opportunity to further clarify our proposed use of the property.

We are not a business dedicated to automobile bodywork, and/or the repair of vehicles that have been seriously damaged. I own a car dealership, Absolute Auto Sales, located in San Leandro, which is my primary business. I intend on using this location, 29225 Sims Court, solely for minor bodywork, and the partial, touch-up painting of cars. I will not be completely painting any cars. There will never be more than 3 cars on site, and cars will generally be parked within the building. Three days a week, there will only be one employee's car in the parking lot. Any given car to be painted will be on site, within the building, for 1 to 2 days only. My use of this facility will be fairly limited.

The previous comments from the neighborhood to the City focused on four major concerns: Noise, Paint Fumes, Toxic Paints, and, Property Values. I address these issues below.

#### **NOISE**

**My proposed hours of operation will be limited to 9:30 AM to 2:30 PM, on Mondays, Wednesdays and Fridays, for a total of no more than 15 work hours per week.** There is no work proposed on Tuesdays, Thursdays or weekends. Although an eventual expansion of my business may entail extending operating days to include Tuesday and eventually Thursday, the hours of operation would always be limited, as noted above, and no work would be performed on weekends. There will be a maximum of 2 employees, normally one employee, and on occasion, one helper or myself. There will be only minor automobile bodywork performed – no collision repairs or extensive bodywork. The spray painting performed will occur within a self-contained spray booth, within the building. The two roll-up doors to the building will be closed during the painting process. The compressor used for the spray painting is a Schrader-Bridgeport, 30 gallon, 2HP Running – 5HP Peak, Model NAC 82 – 4256, which generates approximately 85dB @ 3 meters. Audible noise level, in dB, outside the roll-up doors would be approximately <80dBA, and well below 70dBA at the property lines, well within the requirements of the City's Residential Property Noise Restrictions. As an example, normal conversation at a distance of 3-5 feet ranges from 60 to 70dB. **The limited hours of operation, and the low dB ('noise') generated, will not be an issue adversely affecting any of the adjacent residences closest to the subject building.**

#### **PAINT FUMES**

**The spray paint booth I will be using (a Col-Met Spray Booth, [www.colmetsb.com](http://www.colmetsb.com)) is a state of the art, self-contained and enclosed structure, which will be located within the building.** All work – limited to minor bodywork and the partial spray painting of cars - will be performed inside the spray booth, or in the building, and not outside the building, or in any outdoor parking area. This self-contained spray booth structure captures all paint film not deposited on the car body itself. The venting system exits through the roof of the building and incorporates an **exhaust filter manufactured by Columbus Industries. It is a paint arrestor filter rated at 99% efficiency for the removal of paint overspray.** Underwriters Laboratory file number: R5277 **Paint fumes will not adversely affect the neighborhood.**

#### **TOXIC PAINTS & CHEMICALS**

**We will be using only water-based paints.** There will be no VOC (Volatile Organic Compound) type paint products used at this facility. **There will be no toxic paints employed in my operations. We will not be detailing or washing any cars on site. I subcontract out to another off-site company – authorized for such work – all detailing and car washing. There will be no toxic chemicals used in our proposed operations.**

#### **PROPERTY VALUES**

**We will be planting a line of evergreen shrubs, along the rear and left side property lines, to aid in the screening of our facility from the adjacent residential parcels, as well as new plantings and street trees along the front property line.** As a condition of use, the City requires appropriate landscaping and an approved sprinkler system, to maintain the landscaping in optimal condition. My proposed use of this facility is a lot less intrusive visually and acoustically, than the property might otherwise be subjected to by any other potential full-time, more intensive use, tenant. **I propose that the above elements, in combination, act to increase the areas property values,** and not detract from those existing values. The view from any neighboring residential properties will be enhanced by the landscaping proposed, and my occupancy of the property.

In summary, **there will be no hazardous or toxic chemicals whatsoever released into the neighborhood. Sound pollution will also not be an issue.** There will be no late afternoon, evening or nighttime operations at this facility. I believe my use of the property will enhance your sightlines, vis-à-vis the landscape screening proposed, and not infringe on your privacy, either visually or acoustically – especially given the limited hours of operation. I hope I have satisfactorily addressed all of the issues that may be of concern to you, my residential neighbors, and hope to have your support as I proceed through Planning Review.

Should you have any questions or concerns you feel are not sufficiently addressed in this letter please feel free to contact me directly at 510-274-9850, or, for technical questions, my Architect, Patrick Burger at 415-595-5457.

Thank you for your time and your consideration of my proposal and planned use of the property.

Sincerely,

Adwin Pratap

**REVISIONS**

Revised 04/24/18  
 2018 City of Hayward  
 Planning Department  
 Planning Section  
 Planning Staff  
 Central

Patrick J. Burger, Architect  
 441 Bakun Street  
 Hayward, CA 94544  
 (415) 595-5457

Project # PL-2011-0298 AUP  
 Owner: Adwin Pralap  
 Address: 29225 Sims Court Hayward, CA 94544

**TITLE SHEET & SITE PLAN**

**PROJECT INFORMATION**  
 ADDRESS: 29225 SIMS COURT  
 Hayward, CA 94544  
 A.P. # 404010001503

**Owner:** Adwin Pralap  
 590 Meek Ave 94541  
 Hayward, CA 94541  
 Ph 510-363-8705

**Architect:** Patrick J. Burger  
 441 Bakun Street  
 Hayward, CA 94544  
 Ph 415-595-5457

**ZONING:** I - Industrial

**Proposed Use:**  
 Auto Spray Paint Booth  
 Hours of Operation: 9:30 AM to 2:30 PM  
 ALL Bodywork, Detailing and Car Washes to be performed on site - at the Applicants Used Car Dealership.

**Absolute Auto Sales**  
 1800 E 14th Street  
 San Leandro, CA 94578

**NOT OPEN TO THE PUBLIC**  
 (Limited to cars for the Applicants Used Car Dealership)

**WATER SERVICE**  
 Existing 1" Domestic Meter  
 Account # 40-44300-03

Water fixtures served by (6) 1" meter  
 (1) Wash Cabinet  
 (1) Floor Sink

Only City Water Distribution Personnel shall perform repairs of valves on the Hayward Water System

**SOLID WASTE REQUIREMENTS:**  
 74 lbs per person 1 employee = 74 lbs  
 74/120 = .612 cfs/wk  
 (4) US gallons = 0.2103 cubic yds/wk  
 Total AS CY provided = .5 CY required  
 (1) 65 gallon Container - garbage  
 (1) 65 gallon Container - recyclable  
 64 gal = 28" w x 36" d x 45" h

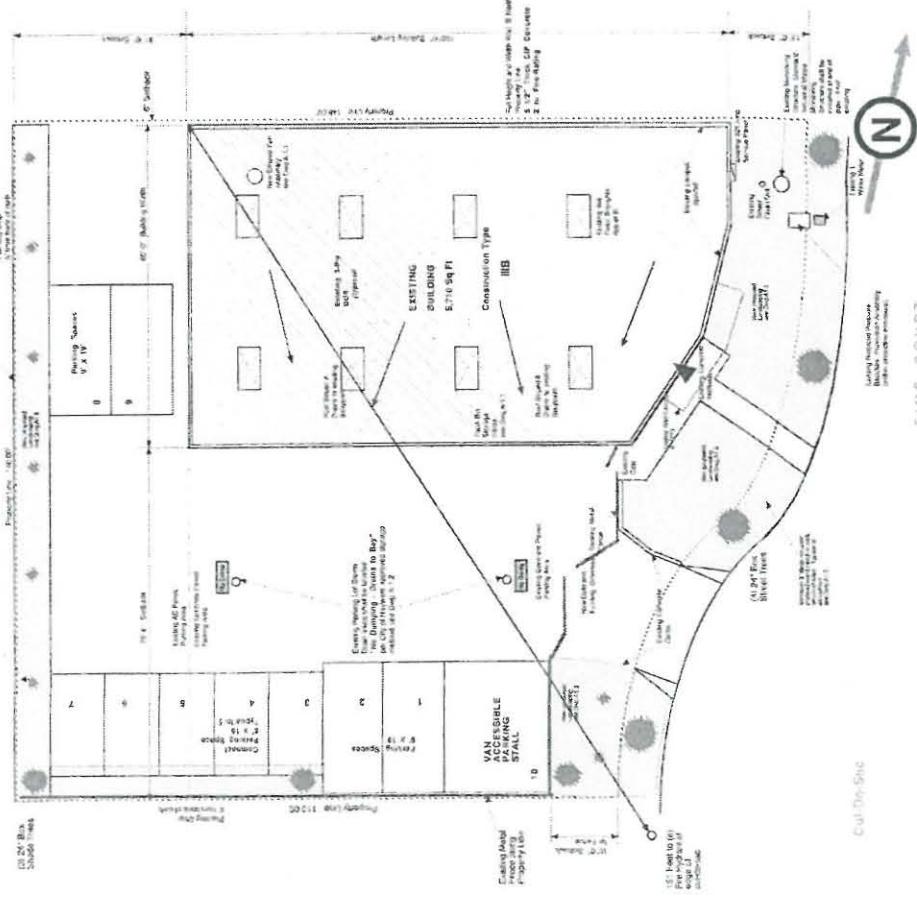


- DRAWING LEGEND**
- A-1.0 TITLE SHEET & SITE PLAN
  - A-1.1 FLOOR PLANS
  - A-1.2 ELEVATIONS & SECTION
  - A-1.3 LANDSCAPE PLAN & DETAILS

**PREVIOUS USE**  
 Hayward Wholesale Ice Cream Co. (2000's)  
 Inland Industrial The N. Inc. (1990's)

**SPRAY BOOTH INFORMATION**  
 Existing Spray Booths have an approved automatic fire extinguishing system.  
 Spray Booth Size each be 15'0" x 7'6"  
 Total sq ft = 518 sf < 571 sf (15% of Ring Size)

**SEWER SERVICE**  
 Water and Sewer Service are available with 2" 15' High, CIP Sewerline at the time of application and layout.  
 Sewer Capacity Fee Due and Payable Prior to Final Inspection





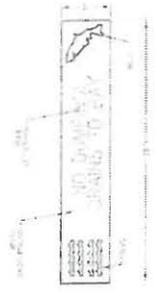
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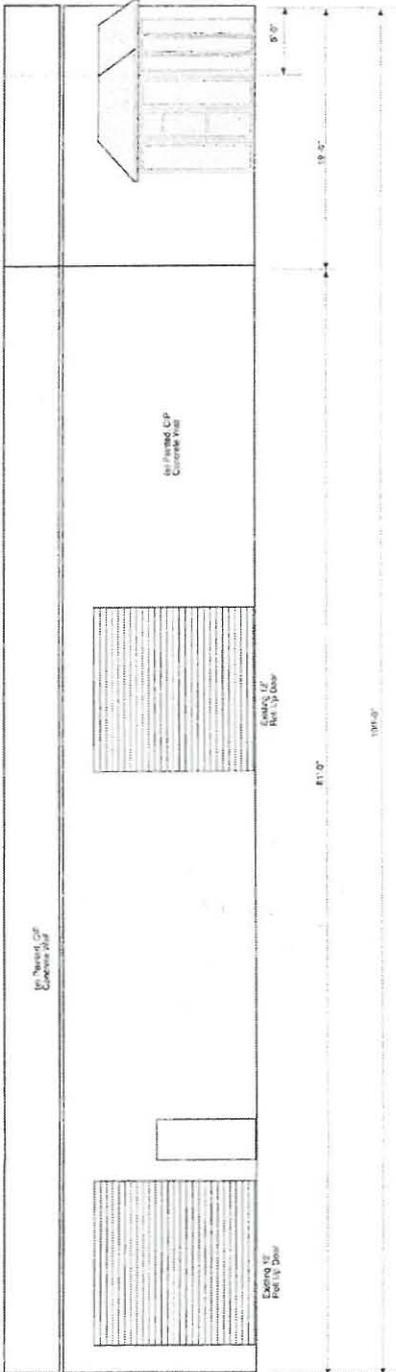
Patrick J. Burger, Architect  
 441 Battery Street, Hayward, CA 94544  
 (415) 555-5457

**ELEVATION SECTION & DETAILS**  
 Project: Auto Spray Paint Booth  
 Address: 2925 Sims Court Hayward, CA 94544  
 Project # PL-2011-0298 AUP  
 Owner: Adwin Plasteq

DATE: 11/13/13  
 SCALE: 1/8" = 1'-0"  
 SHEET NO. A-1.2  
 PROJECT: Auto Spray Paint Booth

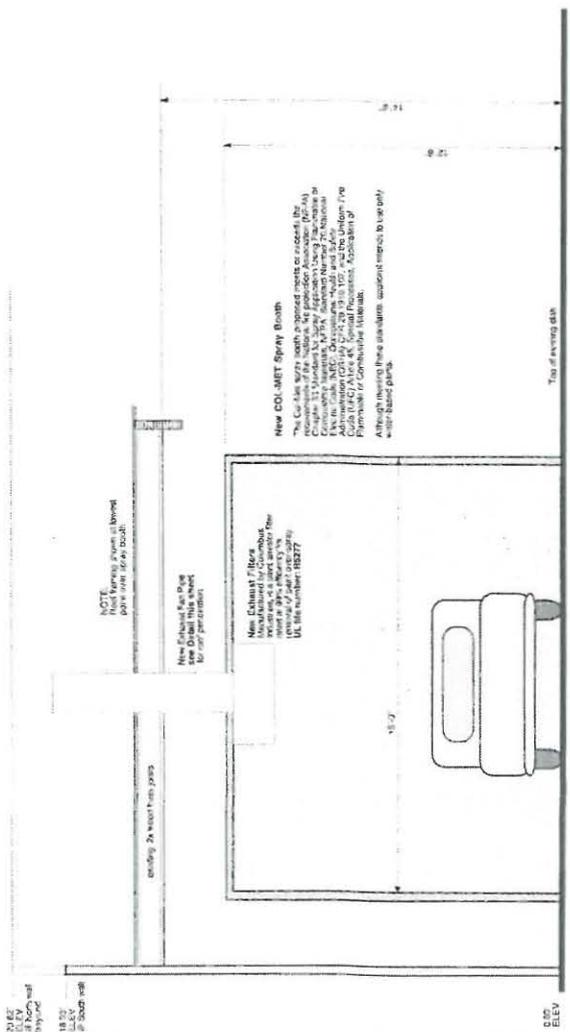


- DETAIL OF DRAIN SIGNAGE @ Storm Drains**
1. The drain cover shall be finished up with chrome pipe.
  2. The drain cover shall be finished up with chrome pipe.
  3. The drain cover shall be finished up with chrome pipe.
  4. The drain cover shall be finished up with chrome pipe.
  5. The drain cover shall be finished up with chrome pipe.
  6. The drain cover shall be finished up with chrome pipe.
  7. The drain cover shall be finished up with chrome pipe.
  8. The drain cover shall be finished up with chrome pipe.
  9. The drain cover shall be finished up with chrome pipe.
  10. The drain cover shall be finished up with chrome pipe.



**BUILDING ELEVATION - South Wall (North and West Walls - Solid Walls - No Openings) No Change to Bldg Exterior**

Scale: 1/8" = 1'-0"



**SECTION "A - A"**

Scale: 1/8" = 1'-0"



NOTE: New Colmet Spray Booth  
 The Colmet spray booth is a portable unit and is not intended for permanent installation. It is designed for use in a temporary location and is not intended for use in a permanent location. It is not intended for use in a permanent location and is not intended for use in a permanent location.

NOTE: New Exhaust Fan Pipe  
 The exhaust fan pipe is to be installed in accordance with the manufacturer's instructions. It is not intended for use in a permanent location and is not intended for use in a permanent location.

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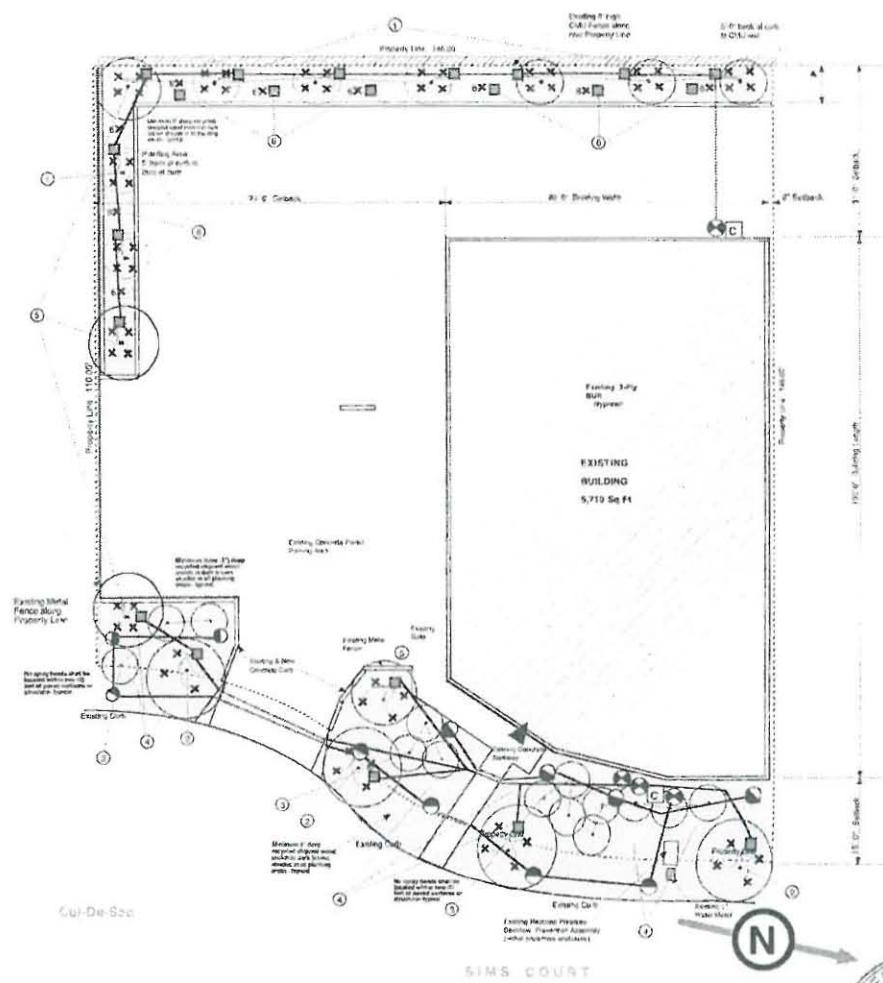
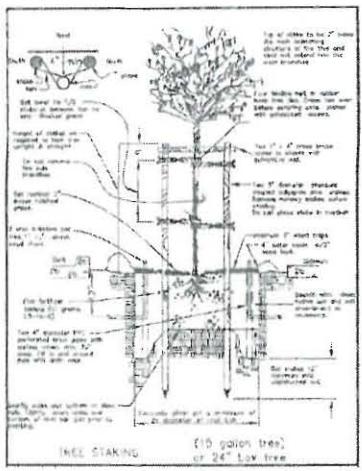
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| PLANT, TREE & SHRUB SCHEDULE |                        |                                  |                   |      |
|------------------------------|------------------------|----------------------------------|-------------------|------|
| Sym                          | Common Name            | Botanical Name                   | Size              | Quan |
| 1                            | Arborvitae - Evergreen | Thuja occidentalis               | 15 gal.           | 8    |
| 2                            | Swamp Myrtle           | Tristania laurina                | 24" box           | 4    |
| 3                            | Creeping Juniper       | Juniperus Horizontalis 'Plumosa' | 15 gal.           | 14   |
| 4                            | Sunrise Yellow Gazania | Gazania rigens luecolaena        | 12" o.c. each way |      |
| 5                            | Trident Maple          | Acer buergerianum                | 24" box           | 4    |
| 6                            | Gazania, Kiss Bronze   | Gazania splendens, kiss bronze   | 12" o.c. each way |      |

| IRRIGATION SCHEDULE |   |
|---------------------|---|
| Sym                 | Component Description                     |
| ☐                   | Water Meter                               |
| ⓐ                   | Irrigation Controller, weather based      |
| ⓑ                   | 3/4" Control Valves - Rainbird 'E' Series |
| Ⓒ                   | Rainjet 852c (half circle)                |
| —                   | Class 160 PVC (12" deep)                  |
| ---                 | Class 160 PVC (12" deep - under paving)   |
| Ⓧ                   | Rainbird MultiOutlet Xenbug               |
| x                   | Rainbird Xenbug Drip Emitters             |



**LANDSCAPE & IRRIGATION PLAN**  
Scale: 1" = 10'



**REVISIONS**  
 1/8/12  
 Revised per Doc 18  
 (see comments) by  
 City of Hayward  
 Landscape Architect  
 Schedule 10/0

**Patrick J. Burger, Architect**  
 441 Barbary Street, Hayward, CA 94541  
 pat@pkjba.com  
 Architect, California Lic # C-19886 (415) 365-1457

**LANDSCAPE PLAN & DETAILS**  
 Project: Auto Spray Paint Booth  
 Address: 29225 Sims Court, Hayward, CA 94544  
 Owner: Adam Pralao  
 Project # PL-2011-0298 AUP

Checked by: [Signature]  
 Date: 11/13/12  
**A-1.3**



**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 obsolescence," 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.



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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



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CITY OF HAYWARD PLANNING COMMISSION  
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Thursday, May 31, 2012, 7:00 p.m.  
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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.



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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 approved, 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<br>Chair Márquez |
| NOES:      | Commissioners Faria, Loché, McDermott                   |
| ABSENT:    |   |
| ABSTAINED: |   |

**From:** Brian Villeroy  
**To:** Carl Emura;  
**Subject:** PL-2011-"0298 AUP Paint shop at 29225 Sims Court  
**Date:** Tuesday, July 10, 2012 12:36:44 PM

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I cannot imagine what would prompt anyone to consider placing a car painting shop at this location and would like to voice my objection at this time.

1. TOXICITY- paint produces fumes and regardless of how many filters are put on it some of it will escape and pollute the adjacent residential community. Is there not a mandatory tower of a certain height to keep toxic components out of the air?
  2. MULTIPLICITY- there are many other auto body shops in the adjacent area. What possible reason could there be for adding one more? Are there going to be more accidents planned?. A fleet maintenance facility is being planned for the corner of RUUS RD. & INDUSTRIAL ROAD. Do these two facilities have anything to do with each other?
  3. PROXIMITY- The proposed paint shop on SIMS COURT is exactly 46 feet from the upstairs bedroom window of one of the houses directly behind it. This would seem to be a thumb in the eye of the owners. Are they going to have to live with all windows closed in the future.? Are there going to be fences installed to close off view of car carnage? The existing view of rusting construction machinery is already an eyesore. Is this permitted by the city.? It would seem that the city is moving in the direction of beautification. Why now do we have a counter move toward creating a toxic waste dump?
  4. FIRE & EXPLOSION - Having recently lived through the four days of HELL created by the setting off of fireworks by certain individuals who think this is a wonderful way to live, I ask you to consider damage that could be caused by accidental fire and explosion at a paint shop. The houses in this community are built in such proximity that 300 or more houses would burn.
- BEAUTIFY HAYWARD. DON'T DESTROY IT.

**DATE:** September 20, 2012

**TO:** Planning Commission

**FROM:** Richard E. Patenaude, AICP, Planning Manager

**SUBJECT:** Conditional Use Permit No. PL-2012-0174 – Darren W. Guillaume for Doc’s Wine & Cheese Revival LLC (Applicant)/Lydia Chen (Owner) – Request to Operate a Retail Wine and Cheese Shop with Instructional Wine Tasting at 22570 Foothill Boulevard – Central City – Commercial Subdistrict

**RECOMMENDATION**

That the Planning Commission finds that the project is categorically exempt from review under the California Environmental Quality Act, Section 15301, Existing Facilities, and approves the Conditional Use Permit, subject to the attached findings and conditions of approval.

**SUMMARY**

The applicant, Darren Guillaume, requests a Conditional Use Permit to operate Doc’s Wine Shop, a specialty retail shop offering the sale of fine European wines and high-end Belgian beers. The shop would also offer instructional wine tasting and carry related specialty retail items such as crystal stemware, wine openers and decanters.

A Conditional Use Permit is required to operate an off-sale alcoholic beverage establishment. The Zoning Ordinance does not limit the number of off-sale establishments either by number or distance required between establishments within the Downtown Entertainment Area (Attachment II), which is defined as the area generally between A and D Streets, and between Second and Grand Streets. However, consideration for the impact on nearby uses, such as residences, schools, parks, and other similar uses, is to be considered. With the recommended conditions of approval (see Attachment IV), staff is of the opinion that the wine shop will be an asset to the Downtown Entertainment Area by providing an additional retail offering associated with fine wines and cheeses that is not found within 16 miles of the proposed location, and it will not have a negative impact on surrounding uses or the downtown community.

**BACKGROUND**

Doc’s Wine Shop would occupy an approximately 1,020-square-foot tenant space within a multi-tenant commercial building, located at the northeast corner of Foothill Boulevard and B Street (Attachment I). The building, to which the owner has recently undertaken façade improvements in cooperation with the City, contains three tenant spaces, with only the middle space occupied (New Life Massage). The more northerly space would be occupied by the proposed wine shop;

the southerly space, at the corner of B Street, was most-recently occupied by Sugar Shack, a frozen yogurt shop. The building is surrounded primarily by retail and service commercial uses. CinemaPlace and Buffalo Bill's are located just southwest. Within a five-hundred-foot radius, there are three single-family residences on C and Second Streets; and a church and a mortuary on B Street. Ample nearby parking is located in Municipal Parking Lot 2, with 184 spaces located within the block across Foothill Boulevard; Municipal Parking Lot 4, with 97 spaces located across B Street; and at the three-level CinemaPlace Garage, with 244 spaces behind the theaters.

The proposed facility would be a retail, off-sale wine shop that would specialize in the sale of fine European wines and high-end Belgian beer. An assortment of cheeses from Europe would also be made available to be paired with the wines. The shop would sell associated wares, such as crystal stemware, wine openers and decanters designed for home use. A Certified Sommelier would provide instructional wine tastings. The shop would operate daily from 10:00 am to 9:00 pm. A Type 20 license (Off-Sale Beer and Wine) from the Department of Alcoholic Beverage Control (ABC) would be required for the wine shop, with a Type 86 license required for the instructional tasting. The tastings would be limited to the wines available for sale in the shop, and the tasting area would be required to be separated from the sales area.

Similar shops in the East Bay are The Wine Steward in downtown Pleasanton (<http://thewinesteward.com>), Du Vin Fine Wines in Alameda ([www.duvinfinewines.com](http://www.duvinfinewines.com)), Premier Cru in Berkeley ([www.premiercru.net/premier/home/Welcome.do](http://www.premiercru.net/premier/home/Welcome.do)), Kermit Lynch Wine Merchant in Berkeley (<http://kermitlynch.com>), and Farmstead Cheeses & Wines at Alameda Marketplace ([www.farmsteadcheesesandwines.com](http://www.farmsteadcheesesandwines.com)). The closest of these establishments is 16 miles from the proposed shop. The applicant expects to draw customers from a seven-mile radius, which would include Castro Valley and San Leandro.

## **DISCUSSION**

Doc's Wine Shop would be in the Downtown Entertainment Area, which encourages a mix of businesses and activities, and will enhance the economic vitality of the downtown area. The block face of Foothill Boulevard, between A and B Streets, in which this establishment would be located, is seeing a resurgence of activity with property owners participating with the City in making façade improvements and with opening of new uses, including Julian's, a BBQ restaurant. However, a Retail Site Assessment, completed in March 2009 by Buxton Company, indicated that Downtown Hayward remains underserved by food and beverage stores. Vibrant downtowns are composed of eclectic boutique-type destination uses that may not be found in other parts of a city, such as in a regional mall or neighborhood shopping center. The City is looking to provide uses and amenities in Downtown Hayward that would serve Hayward and surrounding residents and represent an attraction and stimulus for future development opportunities.

According to the California Department of Alcoholic Beverage Control (ABC), the downtown is within a census tract with an over-concentration of alcohol licenses due to the large number of restaurants downtown and to the fact that the number of licenses allowed is based on resident population within any given census tract. While the subject census tract has a relatively low population, typical for downtowns, the downtown area is that part of the City where eating and

entertainment establishments are encouraged. The Downtown Design Plan recognizes that consumption of alcohol in the downtown is part of community life and policy makers have the opportunity to review and impose conditions of approval for certain alcohol-related outlets to ensure such uses are not a detriment to the downtown. The Plan states: *“The consumption of alcohol is a part of community life. As we look to the future of downtown Hayward, preventive planning to avoid alcohol-related problems must be recognized as an essential element in the revitalization process. It is important to manage alcohol availability in our downtown in a positive way that enhances the economic and social character of this vital area of our City...”*

The City can override the over-concentration status by making the determination that the sale of alcoholic beverages is necessary for the public convenience or necessity. Approval of the Conditional Use Permit would constitute such override. Each proposed alcohol outlet must be reviewed for its merits and, when desired, conditions are imposed to ensure such uses are not detrimental to the Downtown Entertainment Area.

In this case, staff believes that Doc’s Wine Shop would be a beneficial addition to Downtown Hayward as it would add a new retail offering and further increase pedestrian traffic along the east side of Foothill Boulevard between A and B Streets. Hayward Police Department staff does not have a concern with approval of this permit, provided that the recommended conditions of approval are adopted regarding requiring Licensee Education on Alcohol and Drugs (LEAD) training, the installation of a digital surveillance system, and maintaining views into the store (Attachment IV, 16-20). The limited hours of operation also ensure the continued operation of the establishment as a retail shop only. Staff believes that the recommended conditions will provide the framework for the business to be managed properly and to minimize alcohol-related problems. The conditions include restricting the hours of operation to between 10:00am and 9:00pm, limiting the tastings to three one-ounce pours per person per day, and prohibiting the sale of refrigerated beverages.

*Applicant Experience* – Darren Guillaume is a Certified Sommelier from the Court of Master Sommeliers, trained at the French Culinary Institute. He brings 20 years of wine expertise and executive skills, including military medical assignments and 15 years in orthopedic medicine. Mr. Guillaume has been involved in community activities, especially in the management of youth sports programs.

*Findings* - In order to support the proposed establishment, the Planning Commission must make certain findings to approve the Conditional Use Permit. Below, and in Attachment III, are the required findings and the reasons staff believes such findings can be made.

***A. The proposed use is desirable for the public convenience or welfare.***

The Buxton Retail Site Assessment (2009) indicates that Downtown Hayward remains underserved by food and beverage stores. No other facility within 16 miles provides the same retail offering as that being proposed. The proposed use would enhance the economic and social character of the Downtown Entertainment Area by providing a unique retail opportunity that would draw customers from not only Hayward but also Castro Valley and San Leandro, which would provide for an increased number of potential customers for other

Downtown Hayward businesses.

**B. *The proposed use will not impair the character or integrity of the zoning district and surrounding area.***

While there are three single-family residences, a church, and a mortuary in the immediate vicinity, staff believes that the nature of the business and the conditions of approval will provide the framework for the business to be managed properly and to minimize alcohol-related problems. Conditions of approval require the licensee and employees to complete Licensee Education on Alcohol and Drugs (LEAD) training, to install a digital surveillance system, and maintain views into the store. The limited hours of operation also ensure the continued operation of the establishment as a retail shop only.

**C. *The proposed use will not be detrimental to the public health, safety, or general welfare.***

The proposed establishment would operate as a retail establishment, a use that is encouraged in the Downtown as part of a mix of businesses that will enhance its economic vitality, and not as a wine bar, tavern or liquor store. The limited hours of operation would discourage turnover from a retail shop to an on-site alcohol-serving establishment. The use is governed by regulations of the Alcohol Beverage Control Board, and the conditions of approval of this permit, and all employees will be required to have Licensee Education on Alcohol and Drugs LEAD training. The cost of the alcoholic beverages to be offered would be prohibitive to daily consumption and would not be attractive to clientele whose purpose would be to drink to excess.

**D. *The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.***

The proposed establishment complies with the intent of City development policies and regulations in that the Downtown Design Plan recognizes that consumption of alcohol in the downtown is part of community life and policy makers have the opportunity to review and impose conditions of approval for certain alcohol-related outlets to ensure such uses are not a detriment to the downtown. Vibrant downtowns are composed of eclectic boutique-type destination uses that may not be found elsewhere and the City is looking to provide uses and amenities in Downtown Hayward that would serve as an attraction and stimulus for future development opportunities. The proposed use would fulfill a void in the type of retail offerings in the Downtown and would attract consumers from the surrounding market area, including Castro Valley and San Leandro. These consumers would also likely frequent surrounding stores and restaurants.

## **ENVIRONMENTAL REVIEW**

It has been determined that the proposed use, as conditioned, will not cause a significant impact on the environment, and is categorically exempt from review under the California Environmental Quality Act (CEQA) guidelines, Section 15301, Existing Facilities.

## **PUBLIC CONTACT**

On June 6, 2012, a Referral Notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest County Assessor's records. Planning staff received four e-mail responses in support of the application (Attachment VII).

On September 7, 2012, a Notice of this Public Hearing was mailed. At the time of the writing of this report, no responses had been received.

## **NEXT STEPS**

The Planning Commission decision begins a 10-day appeal period. If approved, and there is no appeal of the Planning Commission decision to the City Council within that time period, the applicant may proceed with acquiring building permits for tenant improvements for the approved use. If denied, the Planning Commission decision could be appealed and the application would be scheduled for a public hearing before the City Council.

Prepared and recommended by:



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Richard E. Patenaude, AICP  
Planning Manager

Approved by:

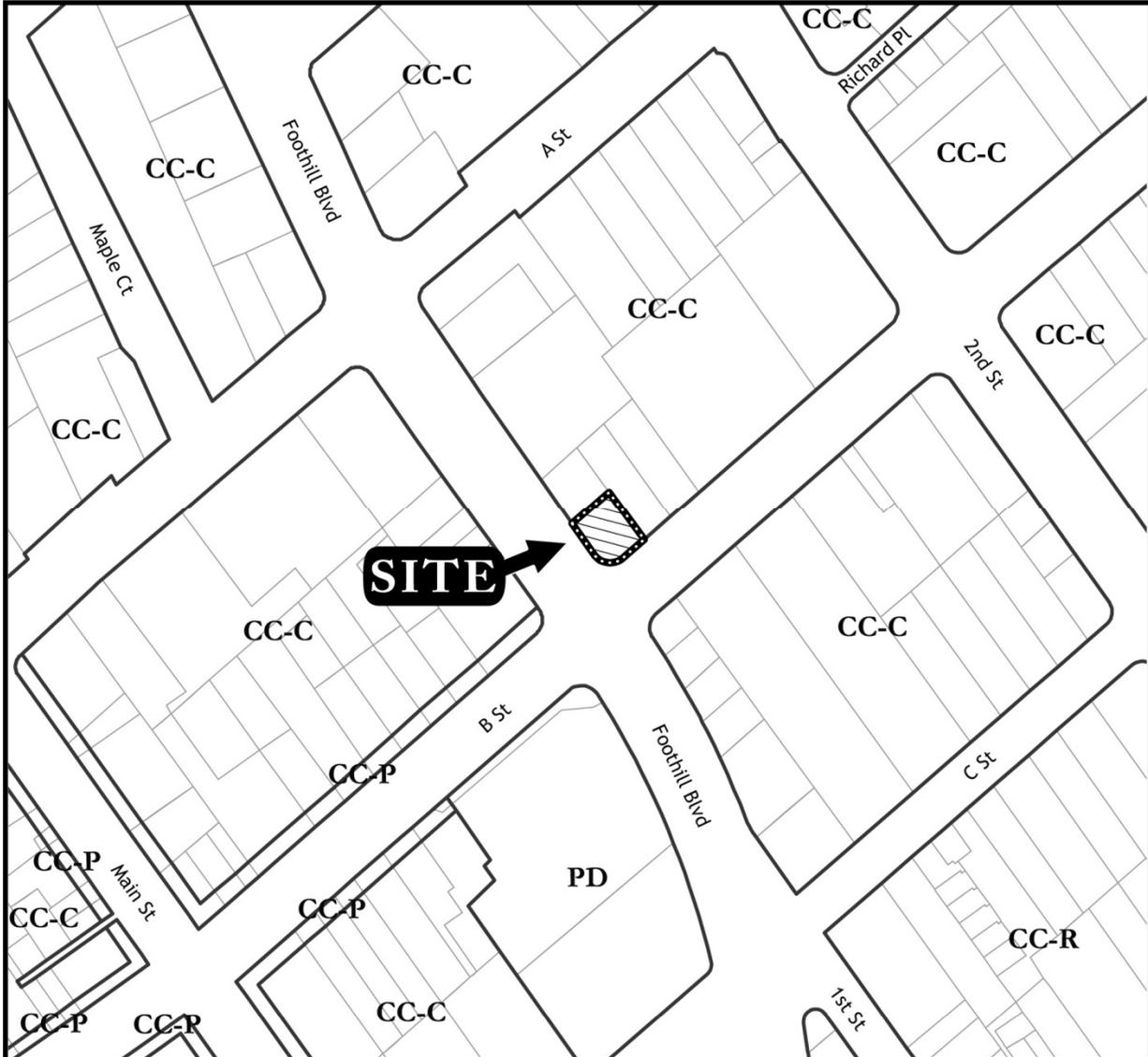


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David Rizk, AICP  
Development Services Director

### **Attachments:**

|                 |   |
|-----------------|---|
| Attachment I:   | Area and Zoning Map                                   |
| Attachment II:  | Map of Downtown Entertainment Area                    |
| Attachment III: | Findings for Approval for the Conditional Use Permit  |
| Attachment IV:  | Conditions of Approval for the Conditional Use Permit |
| Attachment V:   | Supporting Information from Applicant                 |
| Attachment VI:  | Floor/Storefront Plans                                |
| Attachment VII: | E-Mails of Support                                    |



### Area & Zoning Map

PL-2012-0117 AUP

Address: 22570 Foothill Blvd

Applicant: Darren Guillaume

Owner: Lydia Chen

### Zoning Classifications

#### CENTRAL CITY

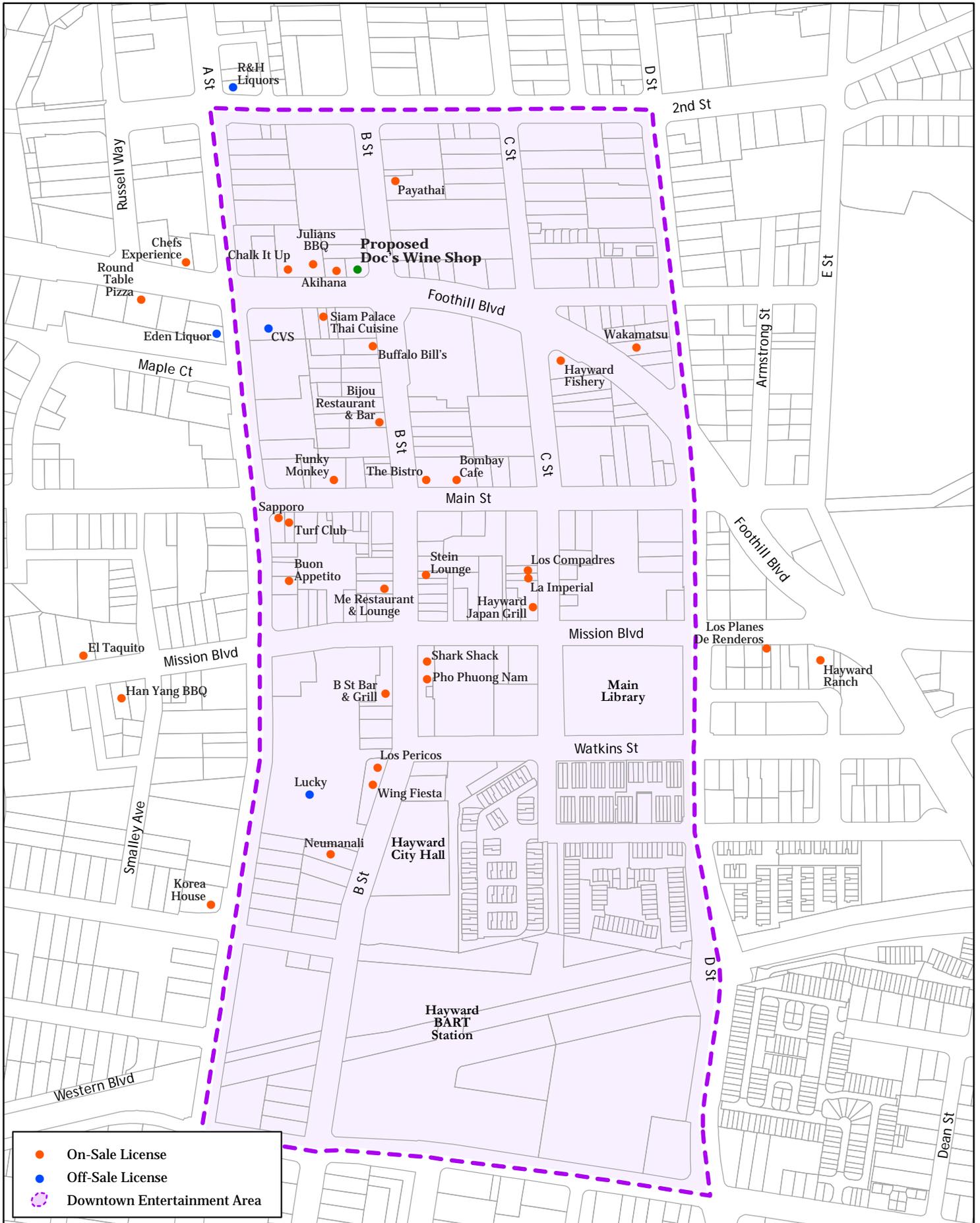
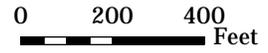
CC-C Central City - Commercial

CC-P Central City - Plaza





# ABC Licenses Downtown



**FINDINGS FOR APPROVAL**

**USE PERMIT APPLICATION NO. PL-2012-0174  
Darren Guillaume for Doc's Wine Shop (Applicant)  
Lydia Chen (Owner)**

**Request to Operate a Wine and Cheese Shop with Instructional Wine Tasting**

**A.** The approval of Conditional Use Permit No. 2012-0174, as conditioned, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is exempt from CEQA under section 15301 (Existing Facilities).

**B.** *The proposed use is desirable for the public convenience or welfare.*

The Buxton Retail Site Assessment (2009) indicates that Downtown Hayward remains underserved by food and beverage stores. No other facility within 16 miles provides the same retail offering as that being proposed. The proposed use would enhance the economic and social character of the Downtown Entertainment Area by providing a unique retail opportunity that would draw customers from not only Hayward but also Castro Valley and San Leandro.

**C.** *The proposed use will not impair the character or integrity of the zoning district and surrounding area.*

The proposed establishment would operate as a retail establishment, a use that is encouraged in the Downtown as part of a mix of businesses that will enhance its economic vitality, and not as a wine bar, tavern or liquor store. The limited hours of operation would discourage turnover from a retail shop to an on-site alcohol-serving establishment. The use is governed by regulations of the Alcohol Beverage Control Board, and the conditions of approval of this permit, and all employees will be required to have LEAD training. The cost of the alcoholic beverages to be offered would be prohibitive to daily consumption and would not be attractive to clientele whose purpose would be to drink to excess. While there are three single-family residences, a church, and a mortuary in the immediate vicinity, staff believes that the nature of the business and the conditions of approval will provide the framework for the business to be managed properly and to minimize alcohol-related problems.

**D.** *The proposed use will not be detrimental to the public health, safety, or general welfare.*

The proposed establishment would operate as a retail establishment, a use that is encouraged in the Downtown core, and not as a wine bar, tavern or liquor store. The use is governed by regulations of the Alcohol Beverage Control Board, and all employees will be required to have LEAD training. The cost of the alcoholic beverages to be offered would be prohibitive to daily consumption and would not be attractive to clientele whose purpose would be to drink to excess.

**E.** *The proposed use is in harmony with applicable City policies and the intent and purpose of*

*the zoning district involved.*

The proposed establishment complies with the intent of City development policies and regulations in that the Downtown Design Plan recognizes that consumption of alcohol in the downtown is part of community life and policy makers have the opportunity to review and impose conditions of approval for certain alcohol-related outlets to ensure such uses are not a detriment to the downtown. Vibrant downtowns are composed of eclectic boutique-type destination uses that may not be found elsewhere and the City is looking to provide uses and amenities in Downtown Hayward that would serve as an attraction and stimulus for future development opportunities. The proposed use would fulfill a void in the type of retail offerings in the Downtown and would attract consumers from the surrounding market area, including Castro Valley and San Leandro. These consumers would also likely frequent surrounding stores and restaurants.

**CONDITIONS OF APPROVAL**

**USE PERMIT APPLICATION NO. PL-2012-0174  
Darren Guillaume for Doc's Wine Shop (Applicant)  
Lydia Chen (Owner)**

**Request to Operate a Wine and Cheese Shop with Instructional Wine Tasting**

The project shall conform substantially to the related exhibits (Attachments V and VI) on file with Use Permit No. PL-2012-0174, and is approved subject to the conditions listed below. The permit authorizes only those uses and activities proposed in the application, and excludes other uses and activities. The business shall in no way operate as a "wine bar," pub, tavern or liquor store. This permit becomes void three years after the effective date of approval, unless prior to that time a building permit has been issued, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the expiration date.

If a building permit is issued for construction of improvements authorized by the use permit approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the use permit approval.

**General**

1. The permittee shall 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.
2. A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.
3. Violation of any of the conditions of approval of this conditional use permit may constitute grounds for revocation pursuant to Section 10-1.3260 of the Zoning Ordinance.

**General Operations**

4. The exterior of the premises, including adjacent public sidewalks and all parking lots under control of licensee(s), shall be illuminated during all hours of darkness during which the premises are open for business in a manner so persons standing in those areas are identifiable by law enforcement personnel. Lighting shall meet Chapter Title 24 of the California Building Code.

5. The premises shall be kept in a clean, well-maintained condition. Paint and windows shall be kept clean and cracked or broken glass shall be replaced promptly. The licensee(s) shall be responsible for removing graffiti from the premises under the control of the licensee(s) within 48 hours. Public sidewalks adjacent to the establishment shall be cleaned daily. The management shall ensure that no trash or litter originating from the establishment is deposited on neighboring properties or the street.
6. There shall be no promotional signs of any kind affixed on the interior or exterior of the windows of the business, except for one information area with a maximum area of six square feet providing hours of operation, emergency contact information, etc. The storefront glass shall not be tinted.
7. Per the California Building Code and Fire Code, occupant load signage shall be installed as required.

### **Alcoholic Beverage Sales and Instructional Tasting**

8. The establishment shall operate only with License Types 20 and 86 per the state Department of Alcoholic Beverage Control regulations.
9. The sale and tasting of alcoholic beverages may be permitted only between the hours of 10:00am and 9:00pm each day.
10. No person under the age of 21 shall sell alcoholic beverages. No person under 21 years of age shall be allowed in the instructional tasting area.
11. Consumption of alcoholic beverages, and open beverage containers, shall be permitted only inside the designated tasting area on the approved plans, Exhibit A, unless prior approval for consumption in other areas is granted by the Planning Director and the Police Chief. A cordon or barrier shall be maintained the perimeter of the designated tasting area, with clearly visible signage instructing patrons not to leave the tasting area with alcoholic beverages. Employees shall be responsible for ensuring that patrons remain inside the tasting area while consuming alcoholic beverages. The designated tasting area shall not exceed 120 square feet.
12. Instructional pours shall be furnished only as incidental to the operation of the business as a wine and beer retailer. No alcohol shall be served aside from the furnishing of instructional pours. Alcoholic beverages shall be served only in recyclable containers. Alcohol shall not be served in its original bottle or can.
13. Customers will be limited to no more than one (1) series of tasting, which consists of no more than three one-ounce servings of wine or a total of eight ounces of beer per person per day. No reduced-price or no-cost alcoholic beverage tasting promotion shall be allowed.
14. No refrigerated or otherwise chilled beverages shall be sold on the premises.

15. Violation of Department of Alcohol Beverage Control regulations is grounds for revocation of this permit.

### **Police Department and Safety**

16. The permittee shall discourage patrons and visitors from loitering and/or consuming alcoholic beverages in adjacent public rights-of-way, parking areas, and properties. Licensee(s) shall post and maintain on the premises and in the facility's parking lot notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the facility and to persons on the public sidewalk stating in 2-inch block lettering the following:

*NO LOITERING OR OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON OR IN FRONT OF THESE PREMISES*

17. The permittee, before operation begins, and all employees, within three months from the date of hire, who are engaged in the dispensing of alcoholic beverages shall attend the Department of Alcoholic Beverage Control's LEAD Training. Any employee hired after this permit is approved shall attend such Training within three months of his/her date of hire. As proof of attending the Training, the Department of Alcoholic Beverage Control certificate of completion shall be submitted by the permittee for each employee upon completion of such training to the Hayward Police Department.
18. The business shall have a fully functioning digital surveillance system that is secured on the premise and available for viewing at all times by the Hayward Police Department or agents of the California Department of Alcoholic Beverage Control. Specifically this system should meet the following minimum standards:
  - a. Digital Recording Storage of 60 days (minimum)
  - b. Cameras must cover all points of sales (cash registers), all entrances/exits and common areas
  - c. The system must have a way to immediately transfer data to an external source (i.e. thumb drive/DVD)
19. Premise must have on display a valid ABC license at all times.
20. Not more than 25 percent of the store front windows and doors shall be obstructed by signs, which may not advertise alcoholic beverages. Interior displays shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises.

### **Pre-Operations**

21. At the time of submission for a Building Permit for tenant improvements, a copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set. Final

occupant loads shall be identified on the plans by the architect in accordance with applicable codes and shall reflect both a seating factor and a standing factor.

22. Prior to final inspection/occupancy, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director, Building Official, Police Chief, and Fire Chief.
23. All exterior signs shall require a separate Sign Permit and shall comply with the Sign Ordinance of the City of Hayward.
24. No mechanical equipment, television or satellite reception antennas may be placed on the roof unless it is adequately screened from view by the roof structure. Prior to installation, documentation shall be provided that the roof-mounted mechanical equipment is adequately screened.

### **Public Works, Utilities**

25. Water and Sewer Service are available and subject to standard conditions and fees in effect at time of application and payment of fees.
26. If the existing water service line and meter cannot be reused, they must be abandoned by City Water Distribution Personnel at the owner's/applicant's expense.
27. Any modifications needed to the water services and/or water meters (upsized, downsized, relocate, etc.) must be performed by City crews at the owner's/applicant's expense.
28. All domestic water meters must have Reduced Pressure Backflow Prevention Assemblies, per City of Hayward Standard Detail 202.

### **Solid Waste**

29. Adequate indoor and outdoor storage space for recyclables is required by state law. No materials of any kind may be stored outside the building and the frequency of trash and recyclable collection shall be sufficient to prevent overflow. The business owner shall participate in the Commercial Recycling and Organics Collections program. Please call Vera Dahle-Lacaze, Solid Waste Manager, at (510) 583-4700 for more information.

### **Fire Department**

30. Individual containers of alcohol for sale shall not exceed 1.3 gallons.
31. This building is not currently approved for high piled storage. A building permit is required for the installation of storage racks greater than 6 feet in height. A Fire Department annual operation permit is required for any combustible storage (floor and/or rack) which exceeds 12 feet in height (Class I-IV type commodities), AND/OR any high hazard storage which includes commodities such as hazardous materials, flammable

liquids, plastics, foam and rubber products, or any other classified commodity as dictated by the California Fire Code and NFPA 13 Standards, which exceeds 6 feet in height.

32. Install portable fire extinguishers having a minimum size of five pounds and a minimum rating of 2A:10BC in centrally located and accessible locations (as approved by the Fire Department) with maximum travel distance of 75 feet within the tenant space.
33. A minimum 6-inch address shall be installed on the front of the building/tenant spaces on a contrasting background so as to be visible from the street.

## Supporting information for application of Conditional Use Permit

Doc's Wine & Cheese Revival, LLC dba Doc's Wine Shop  
22570 Foothill Blvd., Hayward, CA 94541 APN: 427001101400

Doc's Wine Shop (DWS) will be a retail off-sale wine shop that will specialize in sale of fine European wines. No alcohol over 24% by volume will ever be sold or provided by this store per ABC 20. DWS will also sell high-end beer from Belgium as well as crystal stemware, and wine openers and decanters designed for fine dining experiences at the homes of our patrons.

In addition to wine, an assortment of cheeses from Europe will also be made available that they may be paired with the wines being sold, as well as European recipes. Our philosophy will be to take a tour through Europe in our wine shop.

A Certified Sommelier will also provide instructional tasting in order to instruct the populous regarding terroir (special characteristics); and instruct from a trade perspective, once and ABC 86 has been obtained.

### Findings:

The proposed use of Doc's Wine & Cheese Revival, LLC will be desirable for the public convenience because no other facility within 16 miles provides the same service that is being proposed. It will also be an avenue for the customers to become more educated about fine wines.

The proposed use will enhance the character and charm of the Entertainment District of Downtown Hayward by providing a cultural setting and a go to location bringing members from Castro Valley and San Leandro into the area that will also shop and explore the area.

The proposed use will not be detrimental to the public health or safety or general welfare because it will not operate, nor does it ever intend to operate as a wine bar or tavern or liquor store. All ABC laws will be adhered to the strictest form. And all employees will be required to have LEADS training from ABC prior to working. Sale of alcohol to minors is abhorrent, and will not occur. Nor will service to any adult who appears intoxicated or who appears to have problems with alcohol use. Cost of fine wine is also prohibitive to daily use consumption and will not attract clientele whose purpose is to drink to excess, which we also frown upon. Alcohol abuse contact information will be available and in public view at our POS station.

The proposed use will also be in harmony with the purpose of the zoning district. It is my hope that fulfilling the void of a high end wine retail shop will bring in consumers in the surrounding 7 mile radius of Castro Valley and San Leandro. That

these consumers will frequent surrounding stores and restaurants, and business will improve along the Foothill area.

Listed below are the web addresses of fine European wine merchants in Alameda County that Doc's Wine & Cheese Revival, LLC is based off of:

<http://thewinesteward.com/>

<http://www.duvinfinewines.com/>

<http://www.premiercru.net/premier/home/Welcome.do>

<http://kermitylynch.com/>

<http://www.farmsteadcheesesandwines.com>

It is my hope and intention that visibility of this shop will bring in members to the surrounding area, and that cooperation with surrounding retailers will enable increased business for all in the immediate area. This will help increase tax revenue for the city, and increased foot traffic will also attract more business into the Downtown Hayward Entertainment District. This is an opportunity that everyone can benefit from. Foothill Boulevard will no longer be a place to drive through, but to stop at, and stay. This will bring money into the area, by attracting clients with a specific income level, and provide a service that currently is not available.

Conditions:

Site plan: see attachment.

Activities: 10% of retail space will be set-aside for scheduled Instructional Tasting by a Certified Sommelier. No wine sales will take place in this location, nor will anyone under the age of 21 allowed in the roped off area. No more than a 1 oz pour will be provided or more than three tastings allowed as established by ABC regulation. ABC will be provided with P&L statements on a quarterly basis upon request once ABC86 are obtained. No open containers will be removed from site, and will only be disposed of by qualified designated individual per ABC regulation. Operation times will not be prior to 10 am and will end by 9 pm promptly or within these time constraints.

Particulars are available upon request  
510-461-0756

## **ORGANIZATION & MANAGEMENT**

### **Management Summary**

Doc's Wine Shop will be owned and managed by Darren W. Guillaume CS. After the launch of the business, as sales volumes increase, an associate manager may be hired to help with day-to-day store operations with a required education in wine trade.

### **Legal Structure:**

Doc's Wine Shop is formed as an LLC.

ABC 20 and ABC 86 licenses will be obtained for off site beer and wine sales and instructional wine tasting.

Conditional use permit will be applied for prior to application for ABC license.

### **Management Team**

#### **Darren W. Guillaume, CS: Managing Partner**

Darren Guillaume brings over 20 years of wine expertise and executive skills to our company. He is currently a Certified Sommelier from the Court of Master Sommeliers, trained at the French Culinary Institute. He has served as a Commissioned Officer in the Armed Forces with two tours of duty in Iraq assigned to CFLCC Surgeons Cell responsible for management and procurements necessary for mission requirements. He is fully capable of managing and dealing with all issues. His knowledge in the immediate community, wine, and beverages will also enable him to enhance the overall experience of the local customer. He also has over 15 years experience in Orthopedic Medicine, and has managed and coached children in the Castro Valley Independent Sports League youth programs as well as sponsored many youth events.

## **BUSINESS DESCRIPTION & VISION**

### **MISSION:**

Our mission is to develop into the best location to buy European wines in Historic Downtown Hayward, which will be measured by our growth in sales, and in the opinions and ratings published in the media. Inventory and sales records will be computerized, to allow the company to identify and exploit best selling products, match volumes and profitability to service levels, anticipate demand, manage cash flows, assist with revenue growth plans, and optimize supplier/distributor relationships.

### **COMPANY VISION:**

Doc's Wine Shop will provide a service that no other wine shop in the region provides. We will educate the consumer and provide them with the best possible experience that Old World Wines can provide. They will have the opportunity to experience the 'terroir' and climates of the regions of Europe and know how it can enhance their meals.

### **BUSINESS GOALS & OBJECTIVES:**

- Earn and maintain Doc's Wine Shop rating as one of the best stores in tri-city (Hayward, San Leandro, Castro Valley) wine retail trade.
- Establish 30% minimum gross profit margins (retail price less wholesale cost) from inception with less than 2% accountable for shrinkage.
- Achieve a return on investment within 3 years.
- Provided instructional tasting to enable the average citizen to know and appreciate European Wine.
- Attract talented and motivated staff educated in wine sales and service.
- Create a marketing plan that will involve the Hayward, San Leandro and Castro Valley communities.

## **DESCRIPTION OF PRODUCTS AND SERVICES**

### **Sales Programs**

Sales staff will have a level of wine and spirits knowledge that will position Doc's Wine Shop to address customer needs better than our local competition. The company will support high potential sales staff with education tuition assistance, and we will recruit our sales staff from students of wine education institutes.

Graphic art and retail storefront development with background music will be selected to enhance store ambience and stimulate sales. This music will have the potential to be copyrighted and tested as a stand-alone marketable product; similar to CD's sold by Starbucks and Pottery Barn. The store layout will be planned with a commercial interior designer, to present an upscale, festive, cosmopolitan and culturally sophisticated image.

A proprietary website address has been registered, and a website will be built to enhance customer service, supplier commerce, and direct sales. Doc's Wine Shop will take advantage of this opportunity as much as possible within budgetary limits.

Peripheral sales and marketing collaterals will be used to expand product lines and customer awareness of our store: wine glasses, recipes (that match wine with food), corkscrews, umbrellas, and calendars.

A sophisticated proprietary software tool will be developed to enhance the customer buying experience with product knowledge matched to our customers' tastes and preferences.

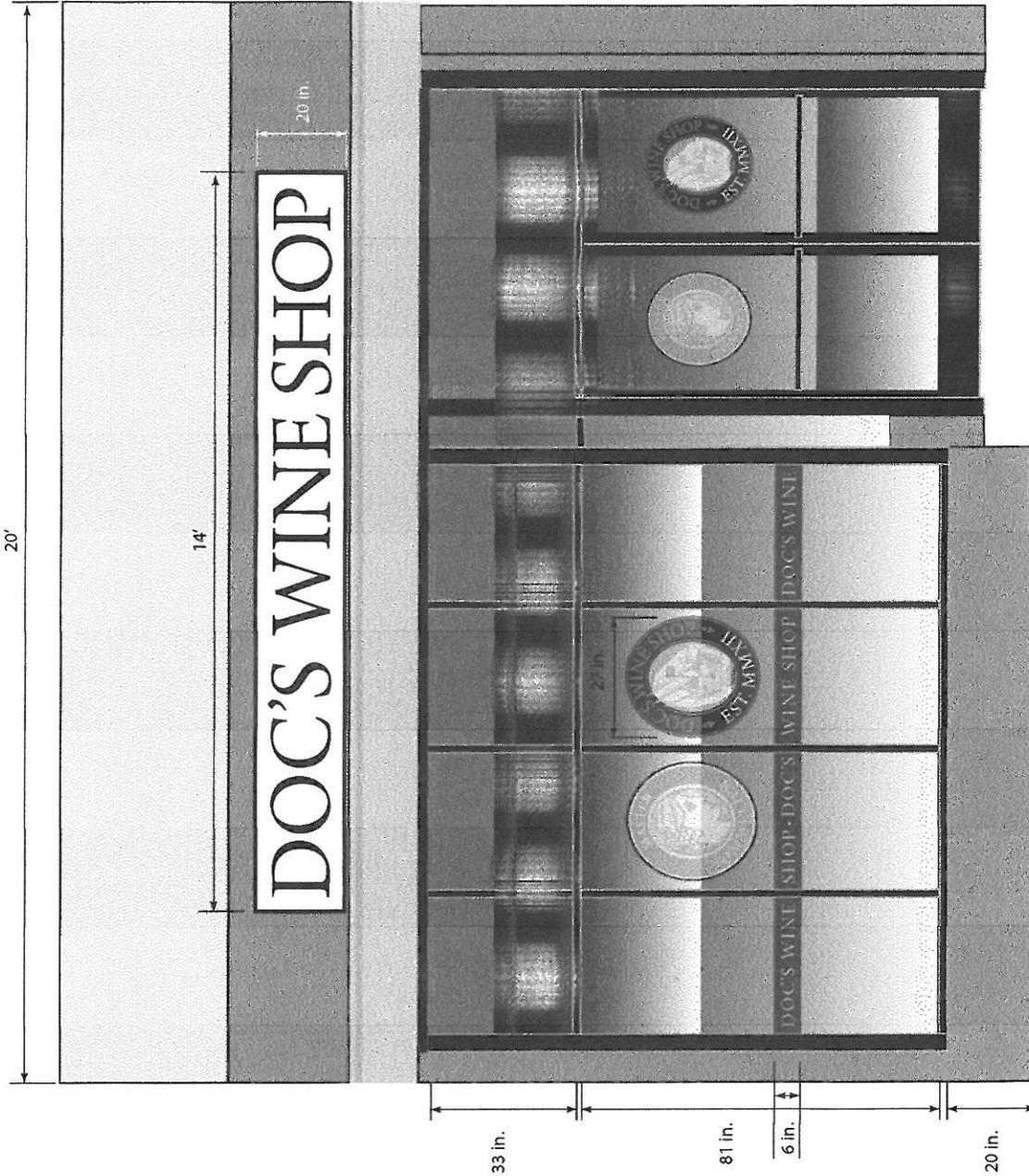
### **Strategic Alliances**

Doc's Wine Shop will seek out opportunities to establish viable strategic alliances, such as co-marketing with gourmet food operations, wine and cheese distributors, importers, and producers. Coordinating gift baskets with wine orders in a single delivery package presents another compelling co-marketing opportunity. Information specific to pairing wines with food can be used to stimulate sales as well.

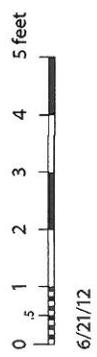


Doc's Wine Shop  
22570 Foothill Blvd., Hayward, Calif.

Signage



Front  
Window graphic signage will appear as Frosted Glass



Attachment VII

**From:** j.jhu@comcast.net  
**Sent:** Thursday, June 07, 2012 6:38 PM  
**To:** Arlyne Camire  
**Subject:** Doc's Wine & Cheese Revival, LLC

Hello,

I am writing to support Mr Guillaume's application for a conditional use permit. Please feel free to contact me if you need any further information.

Thank you,  
Jeannie Jhu

**From:** craig ponkey [restuwantcatering@gmail.com]  
**Sent:** Saturday, June 09, 2012 1:05 PM  
**To:** Arlyne Camire  
**Cc:** darren.guillaume@gmail.com  
**Subject:** Doc's Wine Shop Ref#pl2012-0174

I look forward to visiting and I am in support of Doc's Wine Shop in the city of Hayward ,Ca, I am a Certified Sommelier who is always looking for a new place to further my education and appreciation of wine. Hayward is a city with a lot to offer and by letting this wine store open for business will increase the draw to shop in your wonderful city.. Sincerely Craig Ponkey C.S. Chef/owner of Rest-u-want Catering ([restuwantcatering.com](http://restuwantcatering.com))

From: Ben Schweng [ben@cyclepathhayward.com]  
Sent: Thursday, June 07, 2012 11:46 AM  
To: Arlyne Camire  
Subject: Doc's Wine and Cheese Revival

Hi,

I am the owner of Cyclepath, the bicycle shop at 22510 Foothill Blvd and I just received the notice regarding the Wine and Cheese shop opening on our block.

I believe it is a great idea, and we are in full support of the project.

Thanks

--

Ben Schweng  
Cyclepath Hayward  
22510 Foothill Blvd  
Hayward CA 94501  
510.881.5177

[Type text]

**From:** Jim Gilheany [jimgilheanyjr@hotmail.com]  
**Sent:** Monday, June 18, 2012 7:03 AM  
**To:** Arlynn Camire  
**Subject:** Doc's Wine & Cheese Revival, LLC

Arlynn,

I think Darren's Wine and Cheese business is a good opportunity for downtown Hayward. I live in Hayward (unincorporated) and would like to see a more thriving downtown and Darren's business can help our downtown as I'm not aware of any specialty wine and cheese shops. Darren coached my son's baseball team last year and I know this is a business that he loves and would like to share the enjoyment of wine and food with others. Please support Darren's permit request for his business.

Sincerely,  
Jim Gilheany  
2484 Centennial Lane  
Hayward, CA 94541  
(510) 537-9165

**DATE:** September 20, 2012

**TO:** Planning Commission

**FROM:** Sara Buizer, AICP, Senior Planner

**SUBJECT:** **Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236, Zone Change No. PL-2010-0237, and Parcel Map No. PL-2010-0431 – Westlake Development LLC (Applicant)/ Chang Income Partnership L.P. (Owner) - Amend the General Plan designation from Low Density Residential to Medium Density Residential; Rezone from Single-Family Residential to Open Space and Planned Development; Approve a Parcel Map for the park expansion and future development lots; and Approve a related Development Agreement.**

The property is located at the northeast corner of Eden and Denton Avenues.

## **RECOMMENDATION**

That the Planning Commission recommends approval to the City Council of the proposed project, including the adoption of the attached Mitigated Negative Declaration (MND) and associated Mitigation Monitoring and Reporting Program; approval of the General Plan Amendment, Zone Change, and a Parcel Map to create a park expansion lot and a parcel for future development lots; and a Development Agreement to identify the allowable density of future development in exchange for dedicating a fee interest in land for the expansion of Greenwood Park.

## **SUMMARY**

The applicant is proposing to enter into a Development Agreement (Attachment VI) with the City to provide a vested right to develop the eastern portion of the site with thirty-six single-family homes during the ten-year term of the Development Agreement in exchange for dedicating a fee interest in a one-acre portion of the property at the corner of Eden Avenue and Denton Avenue for the purposes of expanding Greenwood Park. Staff supports the project because without the Planned Development Zone Change and associated Development Agreement, the potential amount of park land dedication for the future project would only be 0.6 acres, as opposed to the one-acre proposed for the Greenwood Park Expansion, which is more consistent with the approximately 1.25 acre park expansion envisioned in the Mt Eden Neighborhood Plan. In addition, the City is being offered the land at a value of almost 40% less than the applicant has been offered by other developers.

## BACKGROUND

The KB Home Development of 149 single-family attached and detached homes in the Mt. Eden area, located just west of the project site and bounded by Eden Avenue, Saklan Road and Middle Lane, was approved in 2006. At that time, to help mitigate the lack of on-site group open space for that project, KB Home attempted to purchase the designated land for the park expansion. These attempts were unsuccessful and, instead, KB Home paid park in-lieu fees, which have remained earmarked for use by the City to purchase land for an expansion of Greenwood Park and allow for improvements within the existing and newly-expanded portions of the park. The applicant for this project has shown interest in developing the subject property with 36 single-family homes and would dedicate a fee interest in the one acre of land for the expansion of Greenwood Park, as part of the proposed development. Such expansion is in accordance with the adopted 1990 Mt. Eden Neighborhood Plan, which indicated a 1.25-acre expansion. Negotiations with the project applicant began in August 2011, which has resulted in a draft Development Agreement (Attachment VI), to allow future development of a portion of the site in exchange for a one-acre expansion of Greenwood Park.

## DISCUSSION AND STAFF ANALYSIS

Project Description - The project requires:

- a. a General Plan Amendment to modify the designation of the site from Low Density Residential to Medium Density Residential (the western portion of the property where the park expansion is envisioned has a General Plan Land Use designation of Open Space – Parks and Recreation);
- b. a Zone Change from RS (Single-Family Residential) to OS (Open Space) and PD (Planned Development);
- c. a Parcel Map to reconfigure the existing five lots that comprise the property into a park expansion lot and a future development lot; and
- d. a Development Agreement to identify the allowable density of development in exchange for land for the expansion of Greenwood Park.

The project site is located at the corner of Eden and Denton Avenues within an existing single-family residential neighborhood that includes a mix of one-, two-, and three-story single-family residential homes. The western portion of the project site is adjacent to and south of Greenwood Park (see Location Map, Attachment I).

The applicant will ultimately pursue a Vesting Tentative Tract Map and Site Plan Review to develop thirty-six, two-story, single-family homes on the future development site. Through approval of the Development Agreement, the developer will have ten years to pursue the necessary entitlements to develop those homes; however, the one-acre park expansion land will be transferred within 90 days of the Development Agreement execution, allowing for the park to be expanded sooner.

General Plan Amendment - The applicant has requested to modify the General Plan land use designation for the eastern portion of the site from Low Density Residential to Medium Density

Residential. This modification will allow for additional density on the residential portion of the property, in exchange for transferring land for the expansion of Greenwood Park. Future development of this site, under a Medium Density land use designation, would be allowed a maximum of 17.4 dwelling units per net acre. The resultant density for the proposed residential development would be 17.1 dwelling units per net acre. Staff is supportive of the request to modify the General Plan land use designation from Low Density to Medium Density, as this is the designation of properties located just south and west of the project site. A masonry wall separates the residential neighborhood to the north and east of the project site that has a Low Density residential designation (see Attachment I). Also, a roadway barrier exists and will remain on Denton Avenue that further separates this neighborhood, including this parcel, from the established residential neighborhood to the east. In addition, the City will gain approximately one acre of land at the corner of Eden Avenue and Denton Avenue for the purposes of expanding Greenwood Park as was envisioned in the Mt. Eden Neighborhood Plan, adopted in 1990.

Findings for General Plan Amendment Application - In order to support the changes proposed to the General Plan, the Planning Commission must make the following findings. Staff's responses to the findings are indicated below.

**(1) Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.**

The increase in land use density for the site will allow the development of additional two-story, single family homes, consistent with density and massing of development located just east and south of the site, as well as allow for a one-acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of the surrounding community.

**(2) The proposed change is in conformance with the purposes of the General Plan and all applicable, officially adopted policies and plans.**

The General Plan modification will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site, and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

**(3) Streets and public facilities existing or proposed are adequate to serve all uses permitted when property is reclassified.**

The project site is located at the corner of Eden and Denton Avenues and has adequate public facilities to serve the proposed use. The future development of thirty-six single family homes will generate thirty-six peak hour PM trips or the equivalent of less than one trip per minute,

which is considered less than significant so the existing streets will be adequate to serve the future development.

**(4) All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.**

The proposed uses are single-family residences and a park, which are compatible with surrounding uses. In exchange for the General Plan land use designation modification for the future residential development, the City will obtain a one-acre portion of the property for the expansion of Greenwood Park. The benefit to the City is that the City typically cannot require dedication of parkland (only payment of in-lieu park fees) for projects of this size (less than 50 residential units). Also, even if parkland could typically be required to be dedicated for a project of this size, the dedicated size of the land is approximately 16,000 square feet larger than what otherwise would be required for a 36-unit development. In addition, the City is being offered the land at a value of almost 40 percent less than the applicant has been offered by developers.

Rezoning to Open Space and Planned Development District - The proposal involves a modification of the current zoning designation from Single Family Residential to Open Space and Planned Development. Under the current designation, the project would not be feasible without modifications to some of the development standards. The purpose of the Open Space designation is to support the future use of the one-acre portion at the corner of Eden and Denton Avenues for the Greenwood Park expansion. The purpose of the Planned Development designation is to encourage development through efficient and attractive space utilization that might not be achieved through strict application of the development standards. The future single-family residential development proposed for the balance of the property consists of single-family homes on smaller lots with reduced setbacks, compared with traditional single-family home developments. The product type is a hybrid between traditional single-family detached homes and multi-family developments. For instance, although the conceptual plan layout for the development shows a reduction in typical rear yard area of single-family homes from 20 feet to 10 feet, the minimum group open space area of 3,600 square feet is being provided as well as allowing for approximately 350 square feet of private open space for each residential unit, which is consistent with open space requirements for multi-family projects. The conceptual plan also shows 19 on-site guest parking spaces, in addition to each unit providing two covered parking spaces. An additional 14 parking spaces can be provided on the project side of Denton Avenue. The parking provided meets the City's standards for multi-family projects and is consistent with similarly designed small lot single family developments approved by the City. Future development approvals will be required for the residential development, including Vesting Tentative Tract Map and Site Plan Review applications.

Findings for Zone Change Application - In order for a Zone Change to be approved, certain findings must be made as shown below. Staff's responses to the findings follows.

**(1) The development is in substantial harmony with the surrounding area and conforms to the General Plan and applicable City policies.**

The Zone Change will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood. A masonry wall separates the residential neighborhood to the north and east of the project site that has a Low Density residential designation (see Attachment I). Also, a roadway barrier exists and will remain on Denton Avenue that further separates this neighborhood, including this property, from the established residential neighborhood to the east.

**(2) Streets and utilities, existing or proposed, are adequate to serve the development.**

The project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development. Utilities are underground in this area and any new connections to serve the future development would also be required to be placed underground.

**(3) The development creates a residential environment of sustained desirability and stability, that sites proposed for public facilities, such as playgrounds and parks, are adequate to serve the anticipated population and are acceptable to the public authorities having jurisdiction thereon, and the development will have no substantial adverse effect upon surrounding development.**

The future development of thirty-six two-story homes is a residential development that will be sustainable over time, especially located adjacent to an existing park that will be expanded and improved as a result of this project. In addition, the future development of the homes will be required to incorporate additional green features such that each home achieves a minimum 75 points on the GreenPoint Rated checklist to ensure additional sustainability over time.

**(4) Any latitude or exception(s) to development regulations or policies is adequately offset or compensated for by providing functional facilities or amenities not otherwise required or exceeding other required development standards.**

The development is seeking a zone change to Open Space and Planned Development to allow for the one-acre park expansion and modified lot sizes and setbacks for the future residential development. Staff is supportive of the request as the one-acre portion of the property located along Eden Avenue and Denton Avenue will be transferred to the City for the purposes of expanding Greenwood Park, consistent with the Mt. Eden Neighborhood Plan adopted in July 1990. A development of thirty-six homes (less than 50 homes) would not normally be required to dedicate park land to meet the developer's park obligations

(only payment of in-lieu fees). Also, and acknowledging proponents for projects of this size would not typically be required to dedicate parkland the amount of land proposed for dedication exceeds the development's requirement under the City's regulations by over 16,000 square feet.

Parcel Map - The project involves a Parcel Map to reconfigure the property, which currently consists of five separate parcels, into two separate parcels. The two parcels that will be created with the Parcel Map are a one-acre park parcel, which will be transferred to the City for expanding Greenwood Park, and a future residential development parcel. Prior to developing on the residential parcel, a Tentative Tract Map and Site Plan Review application will be required.

Findings for a Parcel Map Application - In order for a Parcel Map to be approved, certain findings must be made as shown below. Staff believes the findings can be made, as indicated below.

**(1) The proposed subdivision is not in conflict with the General Plan and applicable specific plans and neighborhood plans.**

The proposed Parcel Map is consistent with the both the General Plan and Mt. Eden Neighborhood Plan which call for residential development and for the expansion of Greenwood Park to Denton Avenue.

**(2) The proposed subdivision meets the requirements of the City Zoning Ordinance.**

The Parcel Map meets all requirements of the City Zoning Ordinance in that the resultant parcels meet the minimum lot size requirements and each parcel has adequate access and utilities are available to serve the future development.

**(3) No approval of variances or other exceptions are required for the approval of the subdivision.**

No variances or exceptions are required for the Parcel Map.

Development Agreement - The applicant is seeking approval of a Development Agreement. Development Agreements are typically used for large multi-phase developments or developments involving the installation of public facilities or improvements. Development Agreements have an initial term of ten years with a potential for a five-year extension in unusual circumstances. In this particular case, the proposed Development Agreement will provide the developer some time flexibility and assurances regarding density of future development of single-family homes, and the public will realize the benefits of expansion and development of Greenwood Park at a price that is almost 40% less than the applicant has been offered by other developers, within 90 days of the Development Agreement execution.

Key components of the Development Agreement are as follows:

- (1) A one-acre portion of property at the corner of Eden Avenue and Denton Avenue will be transferred to the City within 90 days following the effective date of the Development

Agreement. The property will be delivered to the City in a condition meeting health and environmental standards as determined by the City of Hayward Hazardous Materials Section of the Fire Department, State of California Department of Toxic Substances Control and Regional Water Quality Control Board.

- (2) The acquisition of the Park Expansion property may occur in a number of ways, including (a) dedication by the property owner and associated credit for that value given toward future development fees, including the park obligation; (b) purchase of the land outright by the City based upon the agreed upon price of \$15.00 per square feet for the land; or (c) a combination of dedication/development fee credit and purchase by the City.
- (3) The Developer is provided a vested right to proceed with the future development of thirty-six single family homes for the ten-year term of the Development Agreement, subject to review of future Vesting Tentative Tract Map and Site Plan Review applications.

Findings for a Development Agreement Application - In order for a Development Agreement to be approved, certain findings must be made as shown below. Staff's response to each finding follows.

- (1) The proposed development agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.**

The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

- (2) The proposed development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.**

The Development Agreement will allow for the future construction of new homes in an area already developed with residential uses and simultaneously allow for the expansion of Greenwood Park.

- (3) The proposed development agreement is in conformity with public convenience, general welfare and good land use practice**

The Development Agreement will allow the future development of additional two-story single family homes, consistent with density and massing of development located in the KB Home development just west of the site, as well as allow for a one-acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of

the surrounding community by providing an expanded park that the entire community can utilize.

**(4) Existing or proposed public facilities have sufficient capacity to accommodate the proposed development.**

The project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development.

**(5) The public health, safety, and general welfare will be promoted and advanced by the proposed development.**

The one -acre expansion of Greenwood Park outlined in the Development Agreement will promote public health and contribute to the general welfare of the surrounding community by providing an expanded park that the entire community can utilize. The Development Agreement also requires the developer to pay the cost of providing public safety services to the property through formation of or annexation to a Community Facilities District, should the future development generate a need for additional public safety services.

**(6) The orderly development of property or the preservation of property values will be promoted and advanced by the proposed development.**

With the future development of the single-family homes as well as the expanded park, property values will be promoted in the area. In addition, the future development of the homes, as conditioned, will be required to incorporate additional green features such that each home achieves a minimum 75 points on the GreenPoint Rated checklist to ensure additional sustainability over time.

## **ENVIRONMENTAL REVIEW**

This proposal is defined as a “project” under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines. Staff has prepared a Mitigated Negative Declaration and Initial Study (Attachment IV), which indicates there will be no significant environmental impacts resulting from the project provided the mitigation measures are incorporated into the project, including coordination with the Hazardous Materials Division of the Hayward Fire Department, the State of California Department of Toxic Substances Control and Regional Water Quality Control Board to receive clearance that the site meets all health and environmental standards for future residential and park development. The environmental document also indicates there will not be any significant traffic impacts resulting from the future development of the thirty-six single family homes since this development would generate thirty-six peak hour PM trips, equivalent to less than one trip per minute, and is considered less than significant. Any mitigation measures have been incorporated into a Mitigation Monitoring and Reporting Program (Attachment V) and have been incorporated into Conditions of Approval (Attachment III). The environmental document was made available for public review from August 18, 2012 through September 17, 2012.

## **PUBLIC CONTACT**

Initial notice of the proposed project was sent to property owners within a 300-foot radius as well as interested parties in the neighborhood on August 19, 2011. Subsequently, the applicant held a community meeting at Chabot College on September 28, 2011. Most of the comments raised at that community meeting were related to whether parking would be allowed on the internal streets and whether there would be guest parking provided and whether or not Denton Avenue would remain blocked. Notice of the Planning Commission hearing and availability of the Mitigated Negative Declaration was sent on August 17, 2012 to all property owners within a 300-foot radius as well as those who have expressed an interest in the project. No responses to that notice were received as of the writing of this staff report.

## **NEXT STEPS**

Following the Planning Commission hearing and assuming the Commission recommends approval of the project, the City Council will hear the item along with the Planning Commission's recommendation and render a decision on the proposed Mitigated Negative Declaration, General Plan Amendment, Zone Change, Parcel Map, and Development Agreement applications. Should the Council approve the project, the Development Agreement would be signed and recorded, followed by the recordation of the Parcel Map, creating the park parcel and future development Parcel, and lastly the transfer of the one-acre portion of the property to the City for the expansion of Greenwood Park. Once the park expansion property has been transferred to the City, the Hayward Area Recreation and Park District would then follow its process for design and construction of the park enlargement. At some point during the term of the Development Agreement, the applicant would submit for Tentative Tract Map and Site Plan Review applications for the development of the residential homes.

Prepared by: Sara Buizer, AICP, Senior Planner

Recommended by:



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Richard Patenaude, AICP  
Planning Manager

Approved by:



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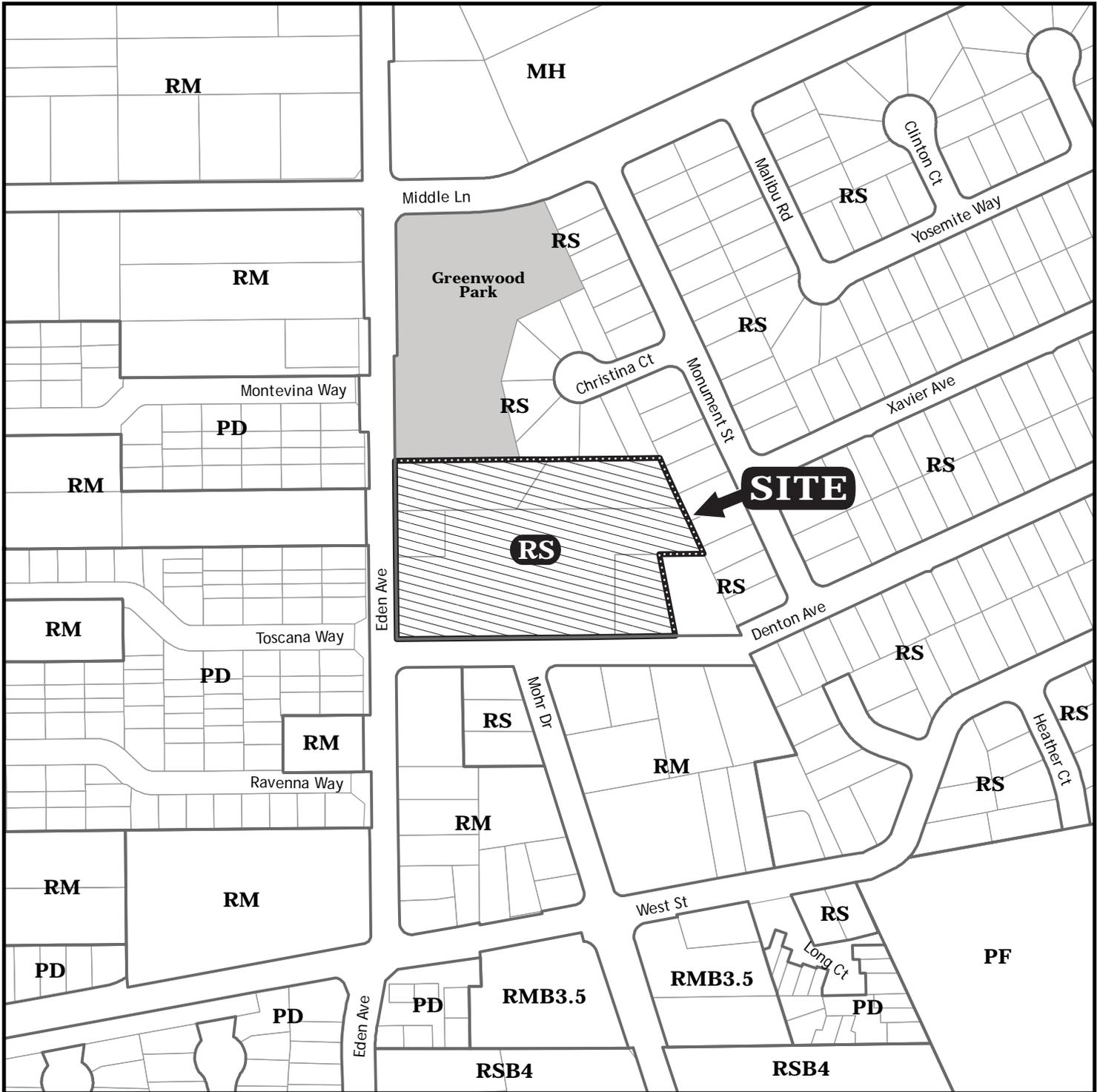
David Rizk, AICP  
Development Services Director

Attachments:

- Attachment I** Location Map
- Attachment II** Findings for Approval
- Attachment III** Conditions of Approval
- Attachment IV** Mitigated Negative Declaration and Initial Study
- Attachment V** Mitigation Monitoring and Reporting Program
- Attachment VI** Draft Development Agreement
- Attachment VII** Plans



# Area & Zoning Map



PL-2010-0235 DA  
 PL-2010-0236 GPA  
 PL-2010-0237 ZC  
 PL-2010-0431 PM

Address:  
 Eden & Denton Avenues

Applicant:  
 Sunny Tong

Owner:  
 Chang Income Property Partnership L.P.

**Zoning Classifications**

**RESIDENTIAL**

- MH Mobile Home Park
- RM Medium Density Residential, min lot size 2500 sqft
- RMB3.5 Medium Density Residential, min lot size 3500 sqft
- RS Single Family Residential, min lot size 5000 sqft
- RSB4 Single Family Residential, min lot size 4000 sqft

**Zoning Classifications**

**OTHER**

- PD Planned Development
- PF Public Facilities





# General Plan Map



PL-2010-0235 DA  
 PL-2010-0236 GPA  
 PL-2010-0237 ZC  
 PL-2010-0431 PM

Address:  
 Eden & Denton Avenues

Applicant:  
 Sunny Tong

Owner:  
 Chang Income Property Partnership L.P.

## General Plan Land Use Designations

### Residential

- Rural Estate Density 0.2-1.0 units/net acre
- Suburban Density 1.0-4.3 units/net acre
- Low Density 4.3-8.7 units/net acre
- Mobile Home Park 8.7-12.0 units/net acre
- Limited Medium Density 8.7-12.0 units/net acre
- Medium Density 8.7-17.4 units/net acre
- High Density 17.4-34.8 units/net acre
- Sustainable Mixed Use 17.4-100.0 units/acre

### Commercial

- Retail and Office
- General Commercial
- Commercial/High Density Residential
- High Density Residential
- Retail and Office Commercial

### Downtown—City Center

- Industrial Corridor
- Mixed Industrial

### Open Space

- Parks and Recreation
- Limited Open Space
- Baylands

### Public & Quasi-Public

- Public and Quasi Public



**FINDINGS FOR APPROVAL****Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236,  
Zone Change No. PL-2010-0237, and Parcel Map No. PL-2010-0431***Findings for Approval – California Environmental Quality Act:*

- (1) The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project, with the recommended mitigation measures, could not result in significant effects on the environment.
- (2) The project will not adversely affect any scenic resources. A lighting plan will be required to ensure that light and glare do not affect area views. Also, compliance with the City's Design Guidelines will ensure visual impacts are minimized. Landscape plans will also be required to ensure that structures are appropriately screened.
- (3) The project will not have an adverse effect on agricultural land since the subject site is not used for such purposes, does not contain prime, unique or Statewide important farmland.
- (4) The project will not result in significant impacts related to changes in air quality. When the property is developed the City will require the developer to submit a construction Best Management Practice (BMP) program prior to the issuance of any grading or building permit.
- (5) The project, proposed on properties surrounded by other residential development and within an urbanized area, will not result in significant impacts to biological resources, including protected trees.
- (6) The project will not result in significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.
- (7) The project will not result in significant impacts to geology and soils. The project is located west of the Hayward fault, which poses potential risk to any development in the City of Hayward. Recommendations of the project geotechnical engineer will be required to be incorporated into project design and implemented throughout construction, to address such items as seismic shaking. Construction will also be required to comply with the California Building Code standards to minimize seismic risk due to ground shaking.
- (8) The project will not lead to the exposure of people to hazardous materials as any arsenic, lead or pesticides found on the site were considered below California Human

- Health Screening Levels (CHHSL). In addition, prior to issuance of a grading permit, the installation of park improvements and development of any single family homes, the property must meet all health and environmental standards as determined by the State of California Department of Toxic Substances Control and the California Regional Water Quality Control Board.
- (9) The project will be required to meet all water quality standards as part of the normal development review and construction process, to be addressed in a Stormwater Pollution Prevention Plan and Erosion Control Plan that utilize best management practices. Drainage improvements will be required to accommodate stormwater runoff, so as not to negatively impact the existing downstream drainage system of the Alameda County Flood Control and Water Conservation District.
  - (10) The project proposes amendments to the Hayward zoning designation and General Plan designation for the site, but overall is not a significant increase in allowable density. In exchange, the applicant will be dedicating land to be used for the expansion of Greenwood Park, a community resource.
  - (11) The project will not result in any long-term noise impacts. Construction noise will be mitigated through restriction on construction hours, mufflers, etc., to be approved as part of the future building permits for the homes.
  - (12) The project will not result in significant impacts related to population and housing in that the amount of development proposed is within the range of development contemplated by the Hayward General Plan.
  - (13) The project will not result in a significant impact to public services in that development is at least as intensive as that proposed was analyzed in the Hayward General Plan EIR and found to have less-than-significant impacts.

***Findings for Approval – General Plan Amendment:***

- (1) Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.

The increase in land use density for the site will allow the development of additional two-story single family homes, consistent with density and massing of development located just west and south of the site, as well as allow for a one -acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of the surrounding community.

- (2) The proposed change is in conformance with the purposes of the General Plan and all applicable, officially adopted policies and plans.

The General Plan modification will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site, and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding

neighborhood. The homes located just east of the site that were part of the KB Home development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

- (3) Streets and public facilities existing or proposed are adequate to serve all uses permitted when property is reclassified.

The project site is located at the corner of Eden and Denton Avenues and has adequate public facilities to serve the proposed use. The future development of thirty-six single family homes will generate thirty-six peak hour PM trips or the equivalent of less than one trip per minute, which is considered less than significant so the existing streets will be adequate to serve the future development.

- (4) All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

The proposed uses are single-family residences and a park, which are compatible with surrounding uses. In exchange for the General Plan land use designation modification for the future residential development, the City will obtain a one-acre portion of the property for the expansion of Greenwood Park. The benefit to the City is that the City typically cannot require dedication of parkland (only payment of in-lieu park fees) for projects of this size (less than 50 residential units). Also, even if parkland could typically be required to be dedicated for a project of this size, the dedicated size of the land is approximately 16,000 square feet larger than what otherwise would be required for a 36-unit development. In addition, the City is being offered the land at a value of almost 40 percent less than the applicant has been offered by developers.

***Findings for Approval – Zone Change:***

- (1) The development is in substantial harmony with the surrounding area and conforms to the General Plan and applicable City policies.

The Zone Change will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood. A masonry wall separates the residential neighborhood to the north and east of the project site that has a Low Density residential designation (see Attachment I). Also, a roadway barrier exists and will remain on Denton Avenue that further separates this neighborhood, including this parcel, from the established residential neighborhood to the east.

- (2) Streets and utilities, existing or proposed, are adequate to serve the development.

The project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development. Utilities are underground in this area and any new connections to serve the future development would also be required to be placed underground.

- (3) The development creates a residential environment of sustained desirability and stability, that sites proposed for public facilities, such as playgrounds and parks, are adequate to

serve the anticipated population and are acceptable to the public authorities having jurisdiction thereon, and the development will have no substantial adverse effect upon surrounding development.

The future development of thirty-six two-story homes is a residential development that will be sustainable overtime, especially located adjacent to an existing park that will be expanded and improved as a result of this project. In addition, the future development of the homes will be required to incorporate additional green features such that each home achieves a minimum 75 points on the GreenPoint Rated checklist to ensure additional sustainability over time.

- (4) Any latitude or exception(s) to development regulations or policies is adequately offset or compensated for by providing functional facilities or amenities not otherwise required or exceeding other required development standards.

The development is seeking a zone change to Open Space and Planned Development to allow for the one-acre park expansion and modified lot sizes and setbacks for the future residential development. Staff is supportive of the request as the one-acre portion of the property located along Eden Avenue and Denton Avenue will be transferred to the City for the purposes of expanding Greenwood Park, consistent with the Mt. Eden Neighborhood Plan adopted in July 1990. A development of thirty-six homes (less than 50 homes) would not normally be required to dedicate park land to meet the developer's park obligations (only payment of in-lieu fees). Also, and acknowledging proponents for projects of this size would not typically be required to dedicate parkland the amount of land proposed for dedication exceeds the development's requirement under the City's regulations by over 16,000 square feet.

***Findings for Approval – Parcel Map:***

- (1) The proposed subdivision is not in conflict with the General Plan and applicable specific plans and neighborhood plans;

The proposed Parcel Map is consistent with the both the General Plan and Mt. Eden Neighborhood Plan which call for residential development and for the expansion of Greenwood Park to Denton Avenue and the Parcel Map will create two parcels, one of which will be utilized for the future development of single-family homes and one for the Greenwood Park expansion.

- (2) The proposed subdivision meets the requirements of the City Zoning Ordinance.

The Parcel Map meets all requirements of the City Zoning Ordinance in that the resultant parcels meet the minimum lot size requirements and each parcel has adequate access and utilities are available to serve the future development.

- (3) No approval of variances or other exceptions are required for the approval of the subdivision.

No variances or exceptions are required for the Parcel Map.

*Findings for Approval – Development Agreement:*

- (1) The proposed development agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.

The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

- (2) The proposed development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.

The Development Agreement will allow for the future construction of new homes in an area already developed with residential uses and simultaneously allow for the expansion of Greenwood Park.

- (3) The proposed development agreement is in conformity with public convenience, general welfare and good land use practice

The Development Agreement for the site will allow the future development of additional two-story single family homes, consistent with density and massing of development located in the KB Home development just west of the site, as well as allow for a one - acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of the surrounding community by providing an expanded park that the entire community can utilize.

- (4) Existing or proposed public facilities have sufficient capacity to accommodate the proposed development.

The project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development.

- (5) The public health, safety, and general welfare will be promoted and advanced by the proposed development.

The one -acre expansion of Greenwood Park outlined in the Development Agreement will promote public health and contribute to the general welfare of the surrounding community by providing an expanded park that the entire community can utilize. The Development Agreement also requires the developer to pay the cost of providing public safety services to the property through formation of or annexation to a Community Facilities District should the future development generate a need for additional public safety services.

- (6) The orderly development of property or the preservation of property values will be promoted and advanced by the proposed development.

With the future development of the single-family homes as well as the expanded park, property values will be promoted in the area. In addition, the future development of the homes, as conditioned, will be required to

incorporate additional green features such that each home achieves a minimum 75 points on the GreenPoint Rated checklist to ensure additional sustainability over time.

**CONDITIONS OF APPROVAL****Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236,  
Zone Change No. PL-2010-0237, and Parcel Map No. PL-2010-0431****Sunny Tong for Westlake Development LLC (Applicant)**Planning Division

1. Development Agreement Application No. PL-2010-0235, General Plan Amendment Application No. PL-2010-0236, Zone Change Application No. PL-2010-0237, and Parcel Map Application No. PL-2010-0431 is approved subject to the preliminary plans labeled Exhibit "A" and the conditions listed below. The Development Agreement and Preliminary Development Plan Approval becomes void ten years after the effective date of approval, unless prior to that time a Precise Development Plan, Site Plan Review Application and Tentative Tract Map Application has been submitted for review and processing in accordance with all conditions of the Preliminary Development Plan approval. A request for a five-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 45 days prior to the expiration date.
2. The applicant shall submit for annual review of the Development Agreement and pay the applicable Development Agreement Annual Review Fee. This review shall occur every 12 months from the effective date of the agreement. The applicant shall provide proof of compliance with the terms and conditions of the Development Agreement with each review. Failure to comply with the terms and conditions of the Development Agreement will result in the matter being scheduled before the Planning Commission at a noticed public hearing.
3. If a building permit is issued for construction of improvements authorized by the Development Agreement, General Plan Amendment and Zone Change approvals, said approvals shall be void two years after issuance of the building permit, or three years after approval of the Precise Development Plan Approval, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the Precise Plan approval.
4. The permittee shall 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.
5. Per the approved Development Agreement, the dedication to the City a fee interest in the Park Expansion Property shall occur within 90 days following the effective date of the agreement.

6. Prior to the dedication and the City's acceptance of the park expansion parcel, the applicant shall demonstrate to the satisfaction of the Hayward Fire Department that the property meets all health and environmental standards for park use as determined by the State of California Department of Toxic Substances Control and the Regional Water Quality Control Board.
7. Prior to application for a Building Permit or a Grading Permit for the future development parcel, Precise Development Plan, Site Plan Review and Tentative Tract Map Applications shall be submitted for review and approval.
8. The Precise Plan shall be submitted for approval by the Planning Director and shall include detailed landscaping and irrigation plans, detailed plans for all site amenities, details for decorative paving, decorative lighting, details for fencing, walls, architectural plans, sign details (if applicable), samples of exterior colors and building materials, and screening of all above-ground utilities, transformers and utility meters. The precise plan shall also reflect the design of other public improvements.
9. The Precise Plan shall also include provisions for project staging, designated areas for construction employee parking (on- and off-site), construction office, sales office (if any), hours of construction, provisions for noise and dust control, and common area landscaping.
10. The Precise Plans shall include/incorporate the following:
  - a) A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
  - b) The plan should incorporate more architectural variety at the Precise Plan stage.
  - c) 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.
  - d) Details and locations of any fencing, decorative walls and any retaining walls shall be included and approved by the Planning Director.
  - e) Show an exterior hose bib for each patio, or porch area.
  - f) The pavement at the private driveway entries of the development shall be enhanced by the use of decorative pavement materials such as colored, stamped concrete (bomanite or equal), brick, concrete interlocking pavers or other approved materials. The location, design and materials shall be approved by the Planning Director.
  - g) Pedestrian walkways fronting the building(s) shall be enhanced with decorative materials such as inset brick, exposed aggregate, bomanite stamped concrete or other approved material.
  - h) Grouped mailbox design and locations, subject to Post Office approval, shall be approved by the Planning Director.
  - i) A lighting plan prepared by a qualified illumination engineer shall be included to show exterior lighting design. Exterior lighting shall be erected and maintained so

that adequate lighting is provided in all common areas. The Planning Director 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 houses within the project.

- j) All air conditioners and utility connections for air conditioners shall be located such that all external equipment is located behind solid board fences or stuccoed walls not to exceed the height of the air conditioner unless otherwise approved by the Planning Director. Infrastructure for air conditioning systems is required to be installed as a standard feature.
- k) All parking spaces are to meet minimum City of Hayward on-street and off-street parking standards.
- l) Each unit shall have and maintain a minimum of 90 cubic feet of dedicated storage area, above standard closets and bedroom wardrobes, accessible from the exterior of the unit. Any area of a garage, in excess of the required 11 feet by 19 feet or 20 feet by 20 feet parking area, can be counted toward the minimum requirement.
- m) An area within each garage for individual garbage and recycling receptacles, an area measuring 3' by 9', shall be provided and shall be clear of the required area for two cars. Alternatively the garbage and recycling can be located behind a solid fence in a side yard.
- n) A color and materials board shall be submitted to the Planning Director for review and approval. No changes to colors shall be made after construction unless approved by the Planning Director.
- o) All above-ground utility meters, mechanical equipment and water meters shall be enclosed within the buildings or shall be screened with shrubs and/or an architectural screen, to be approved by the Planning Director.
- p) No mechanical equipment, other than solar panels, shall be placed on the roof unless it is completely screened from view by the proposed roof structure. All roof vents shall be shown on roof plans and elevations. Vent piping shall not extend higher than required by building Code. Roof apparatus, such as vents, shall be painted to match the roof color.
- q) One identification sign per development shall be permitted. The signs shall conform to Section 10-7.403(b)(2) of the Sign Ordinance regulations, with the location to be approved by the Planning Director. Sign design, colors, and materials shall reflect the architectural style of the project and shall be approved by the Planning Director.
- r) Rooflines shall be articulated to break up bulky facades. Dormer elements are acceptable. Large expanses of blank wall are not allowed. Articulate such expanses to avoid bulkiness.
- u) All decorative window treatments shall be extended to all elevations.
- v) All rear and side entries shall be protected by roofs with rooflines to match the pitch of roof of the front porch.

- w) All parking stall dimensions shall conform to the City's Off-street Parking Ordinance. All tandem two car garages shall have the minimum interior dimension of 11 feet by 38 feet. All two car garages shall have the interior dimensions of 20-foot width by 19-foot depth. The dimensions shall be shown on plans. No doors, stairs, landings, laundry facilities, trash/recycle containers or HVAC shall project within the required interior parking areas.
11. Prior to the sale of any lot to an individual owner (and not another developer or builder) or prior to the acceptance of site improvements on the future development parcel, whichever first occurs, a homeowners' association shall be created to maintain the private streets, common area landscaping and open space amenities. The developer shall prepare the CC&R's prepared for the project and the CC&R's shall be reviewed and approved by the Planning Director. The CC&R's shall include the following conditions:
- a) Each owner shall automatically become a member of the association and shall be subject to a proportionate share of maintenance expenses.
  - b) The pocket parks, interior "paseos," and the driveways shall be maintained by the HOA.
  - c) A statement regarding all HOA fees shall be provided to homeowners on bright paper.
  - d) A reserve fund shall be maintained to cover the costs of replacement and repair of the private streets, driveways and private common area landscaping including the "paseos."
  - e) The association shall be managed and maintained by a professional property management company.
  - f) The homeowners' association shall be responsible for maintaining all private streets and other privately owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing all stormwater BMPs associated with improvements and landscaping. The CC&R's shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association.
  - g) The private streets, driveways entries, and common landscaped areas shall be maintained in good repair, and free of debris at all times.
  - h) A requirement that the building exteriors, fences, and walls 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 72 hours of inspection or within 72 hours of notification by the City's Community Preservation Officer.
  - i) 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 representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30 percent dieback) shall be replaced within 10 days.

- j) Landscaping and irrigation shall be maintained in all common areas or the City shall have the right to enter upon the property to maintain the exterior portions of the common area at the expense of the homeowners association pursuant to and to the extent authorized by Section 10-3.385 of the Subdivision Ordinance.
- k) Trees shall not be severely pruned, topped, or pollarded and any trees that are pruned in this manner shall be replaced with a tree species selected by, and size determined by the Landscape Architect, within the timeframe established by the City and pursuant to the Municipal code.
- l) Pursuant to and to the extent authorized by Section 10-3.385 of the Subdivision Ordinance, a provision that if the homeowners' association fails to maintain the common area or private streets, so that owners, their families, tenants, guests or adjacent owners suffer or will suffer substantial diminution in the enjoyment, use or property value of the project, the City of Hayward 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.
- m) The garage of each unit shall be maintained for off-street parking and shall not be converted to living or storage areas. An automatic garage door opening mechanism shall be provided for all garage doors.
- n) The homeowners association shall maintain in good repair all fencing, parking and street surfaces, common landscaping, lighting, trash enclosures, drainage facilities, project signs, etc. The homeowners' association shall maintain in good repair the building exteriors. The CC&Rs shall include provisions as to a reasonable time period that a unit shall be repainted, the limitations of work (modifications) allowed on the exterior of the building, the formation of a design review committee and its power to review changes proposed on a building exterior and its color scheme, and the right of the homeowners association to have necessary work done and to place a lien upon the property if maintenance and repair of the unit is not executed within a specified time frame. The premises shall be kept clean.
- o) The open parking spaces within parking bays or on the street shall be provided for and maintained as visitors' spaces and shall not be used for recreational vehicles, camper shells, boats or trailers. These spaces shall be clearly marked and monitored by the homeowners association. Parking stalls shall be used only for vehicles in operating condition. The on-street parking shall be limited to 24 hour parking. The homeowners association shall remove vehicles parked contrary to this provision. The developer shall include in the CC&Rs authority to tow illegally-parked vehicles.
- p) Utility meters, when not enclosed in a cabinet, shall be screened by either plant materials or decorative screen, allowing sufficient access for reading.
- q) Future additions to units are prohibited.
- t) 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.

12. The developer shall pay the cost of providing public safety services to the property through formation of, or annexation to, a Community Facilities District, should the property generate the need for additional public safety services. The Developer shall post an initial deposit of \$20,000 with the City prior to or concurrently with the submittal of the final subdivision map and improvement plans, to offset the City's cost of analyzing the property's need for additional public safety services. If the analysis determines that the property creates a need for additional public safety services warranting the formation of, or annexation to, a Community Facilities District, the Developer shall pay all costs of formation or, or annexation to, the district, which costs may be paid from the Developer's deposit to the extent that funds remain after payment of the City's costs of analysis as described above.
13. The applicant shall ensure that all homes constructed on the future development parcel achieve a minimum 75 points on the GreenPoint rated checklist to ensure their long-term sustainability.

#### Development Services

14. A Benefit District Fee in the amount of \$10,008.00 per unit shall be paid prior to the recordation of the Final Map, or prior to the issuance of any building permit.
15. All necessary easements shall be dedicated, and all improvements shall be designed and installed at no cost to the City of Hayward.
16. The applicant/developer's Professional Engineers registered to practice in the State of California shall perform all design work shown on the Civil Engineer's Improvement Plans.
17. Prior to commencing grading and construction, the Civil Engineer's Improvement Plans including drainage water quality treatment plans shall be approved by the City Engineer, and the Landscape plans shall be approved by the City Landscape Architect.
18. If a tentative map is filed and approved, the Final Map shall be approved by the City Council and the Improvement Plan shall be approved by the City Engineer. The developer shall execute a subdivision agreement and post bonds with the City that shall secure the construction of the public improvements per Section 10-3.332 of the Municipal Code: Security for Installation of Improvements. Insurance shall be provided per the terms of the subdivision agreement.
19. The project is subject to the new Municipal Regional Stormwater Permit (MRP) became effective Dec. 1, 2009. The drainage system, water quality treatment system and landscape plan shall be designed to those new requirements stipulated in the MRP.
20. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted with a design to reduce discharge of pollutants and sediments into the downstream storm drain system for review and approval of the City Engineer.

Landscape Division

21. Prior to the approval of improvement plans or issuance of grading permit, detailed landscape and irrigation plans shall be approved by the City and shall be a part of approved improvement plans and the building permit submittal. The plans shall be prepared by a licensed landscape architect, wet stamped and signed, on an accurately surveyed base plan and shall comply with the City's Bay-Friendly Water Efficient Landscape Ordinance, Hayward Environmentally Friendly Landscape Guidelines and Checklist for the landscape professional, and Municipal Codes. Dripline of the existing trees to be saved shall be shown on the plan.
22. Trees shall be preserved in accordance with the Tree Preservation Ordinance. Prior to the commencement of clearing and grading operations, 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. A tree removal permit is required prior to the removal of any tree trunk diameter is 10 inches or larger measured at 24 inches from the ground unless the trees are identified as "Heritage Trees" in the Tree Preservation Ordinance.
23. Mylar of the approved landscape and irrigation improvement plans, wet stamped and signed, shall be submitted to the City's Engineering Department. The size of Mylar shall be 22" x 34" without an exception. Upon completion of installation, As-built/Record Mylar shall be submitted to the Engineering Department by the developer.
24. Project information including total square footage of the irrigated landscape area, turf and non-turf areas, and open space calculation shall be provided on the title/cover sheet.
25. A separate irrigation meter shall be required for the common landscape areas.
26. Provide a comprehensive arborists report by a licensed arborist on all existing trees within the limit of project area including 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 ISA worksheet per each trees are subjected for valuation. The arborists report and valuation shall be reviewed and approved by the City.
27. A bond will be required for all trees that are to remain. If any trees that are designated as saved are removed or damaged during construction shall be replaced with trees of equal size and equal value.
28. Provide a tree mitigation summary chart on the landscape plan listing trees to be removed, value of trees to be removed, trees with assigned identification numbers in the arborists report, total value of mitigation, and proposed tree sizes and their value equaling the mitigation value.
29. Street Trees. Provide one 24-inch box street tree per 20 to 40 lineal feet in the front and side landscape setback areas or fraction thereof. All trees shall be planted a minimum of 5-foot

away from any underground utilities, a minimum of 15 feet from a light pole, and a minimum 30 feet from the face of a traffic signal, or as otherwise specified by the city. Trees shall be planted according to the City Standard Detail SD-122 and the detail shall be included in the landscape plans.

30. If parkway strip exists between the curb and sidewalk in city right-of-way, the landscape and irrigation must be provided in the parkway strip. The landscape in the parkway strip includes Street Tree planting in addition to the trees planted in the front landscape setback areas.
31. All areas that are not utilized for structure, permitted driveways and walkways shall be landscaped with water-efficient trees, shrubs, turf grass and groundcovers, or a combination thereof.
32. Landscaped areas adjoining driveways and/or parking areas shall be separated by a 6" high class "B" Portland Cement concrete curb.
33. If any setback area would be used for bio-swale to meet the Alameda County Clean Water Program requirements; do not plant trees or shrubs on the bottom of the swale, 2 feet of flow area, that will impede drainage flow. Tree planting requirements shall not be compromised because of implementing storm water treatment areas. Provide wider landscape areas, if need to be, to accommodate both bio-swale and required tree planting.
34. There shall be minimum 12 inches of flat and leveled area adjacent to all hardscape before side slopes of bio-swale begins, and finished grade for mulch shall be flushed with the grades at hardscape.
35. Root barriers shall be installed linearly against the paving edge in all instances where a tree is planted within 7' of pavement or buildings, and as directed by the landscape architect.
36. Required common open spaces shall not be located in the required setback/sideyard areas; must meet noise level of not exceeding 65 decibels; must be centrally located for all residents; must not exceed 5 percent slope to all directions; shall have no dimension less than 20 feet to all directions; and must provide amenities.
37. Required private open space shall have no dimension less than 10 feet.
38. Masonry walls, solid building walls, trash enclosures, and/or fences facing a street or driveway shall be buffered with continuous shrubs or vines. Minimum plant size shall be 5 gallon.
39. The portion that the project property abuts existing single family residential neighboring properties shall be screened with 15 gallon evergreen trees at 20 feet on center, or equivalent to the total quantity with variable spacing upon approval by the City Landscape Architect.

40. The minimum dimension for all planting areas in all directions shall be minimum 5 feet measured from edge to edge of paving or back of curb.
41. All above ground utilities and mechanical equipment shall be screened from the street with 5 gallon shrubs.
42. Prior to the issuance of Certificate of Occupancy, all landscape and irrigation shall be completed in accordance to the approved plan and accepted by the project landscape architect prior to completing Appendix C. Certificate of Completion in the Bay-Friendly Water Efficient Landscape Ordinance. Completed Certificate of Completion package must be submitted in prior to requesting an inspection to the City Landscape Architect.
43. Landscaping shall be maintained in a healthy, weed-free condition at all times and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% dieback) shall be replaced within ten 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 selected by, and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to the Municipal Code.

#### Public Works – Engineering Division

44. The Project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit the entry of pollutants into storm water runoff to the maximum extent practicable. It is highly recommended that grassy swale be installed to intercept the surface runoff and using an engineered soil fill with a minimum infiltration rate of 5" per hour.
45. The proposed BMPs shall be designed to comply with the hydraulic sizing criteria listed in Provision C.3 of the Alameda County Clean Water Program (ACCWP) NPDES permit (page 22). In addition, the California Stormwater Quality Association's Subsection 5.5 on pages 5-12 has a section titled "BMP Design Criteria for Flow and Volume." These materials are available on the internet at [www.cabmphandbooks.com](http://www.cabmphandbooks.com).
46. Prior to the issuance of a grading permit and/or the beginning of any construction activity on-site, the Developer's Engineer shall complete a Development Building Application Form Information comprising of: 1) Impervious Material Form, and 2) Operation and Maintenance Information Form.
47. The owner/developer shall execute a Storm Treatment Measures Maintenance Agreement (as prepared by the City of Hayward and is available in the Engineering and Transportation Division); the Maintenance Agreement shall be recorded with the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity.

48. The storm drain shall be a private system. All storm drain inlets shall be labeled with “No Dumping – Drains to Bay” or equivalent, using methods approved by the City.
49. A property owners association shall be created and shall be responsible for maintaining all private streets and private utilities and other privately-owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing and maintaining stormwater BMPs associated with improvements and landscaping. CC&R’s creating the association shall be reviewed and approved by the City Attorney prior to the recordation of the Final Map and recorded prior to the sale of the first residential unit. The CC&R’s shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association.
50. The water main shall be a public system owned and maintained by the City. All proposed water mains shall be a looped system and located 5’ from the face of curb. The water main shall have a 4 foot minimum cover.
51. All sanitary sewer mains shall be 8 inches and a public system. All sanitary sewer mains shall be installed with a straight grade and alignment between manholes.
52. The minimum separation distances for water main and sewer main shall be 10 feet horizontally and one foot vertically measured from the outside edge of each pipe barrel.
53. The minimum separation distances for water main and storm drainage shall be 4 feet horizontally and one foot vertically measured from the outside edge of each pipe barrel.
54. Interior streets shall be private.
55. Dedicate the private streets as Public Utility Easement, Emergency Vehicle Access Easement, Water Main Easement and Sanitary Sewer Easement.
56. The interior streets shall have decorative lighting.

#### Public Works – Utilities Division

57. 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.
58. 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.
59. All water mains must be looped. Dead end water mains will not be allowed. They create future water quality problems. They must be connected to other water mains.
60. 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.

61. Each dwelling unit shall have its own domestic water meter. Based on the submitted plans, the number of fixture units in each unit range from 27 to 30, which will require a minimum  $\frac{3}{4}$ " water meter.
62. Each structure shall have its own fire service, sized per the requirements of the Fire Department. Fire services shall have an above ground Double Check Valve Assembly, per City Standards SD-201 and SD-204.
63. Residential combined domestic and fire services are allowed, per City Standard SD-216. The minimum size for a residential fire service connection is 1".
64. Separate irrigation water meters shall be installed for landscaping purposes.
65. The applicant/developer shall install a Reduced Pressure Backflow Prevention Assembly on each irrigation water meter, per City Standard SD-202.
66. All water meters shall be radio-read type.
67. Water meters shall be located a minimum of two feet from top of driveway flare as per City Standard Details SD-213 thru SD-218.
68. 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 four feet from and on 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, with the City's approval.
69. All water services from existing water mains shall be installed by City Water Distribution Personnel at the applicant's/developer's expense. The developer may only construct new services in conjunction with their construction of new water mains.
70. Provide keys/access code/automatic gate opener to utilities for all meters enclosed by a fence/gate as per Hayward Municipal Code 11-2.02.1.
71. Only Water Distribution Personnel shall perform operation of valves on the Hayward Water System.
72. Water service available and subject to standard conditions and fees in effect at time of application and payment.
73. For all meters enclosed by a locked fence/gate, the needed keys/access code/automatic gate opener shall be provided to Water Distribution at the developer's expense, per Hayward Municipal Code 11-2.02.1.

74. The development's sanitary sewer mains and manholes shall be public, owned and maintained by the City.
75. 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.
76. Each dwelling unit shall have an individual sanitary sewer lateral. The sanitary sewer laterals shall have cleanouts and be constructed per City Standard Detail SD-312.
77. Sewer service is available and subject to the standard conditions and fees in effect at time of application and payment. The current Sanitary Sewer Connection fee for a single-family residential unit is \$7,255 per unit. Please note that this fee will increase on October 1, 2011 to \$7,700. Sewer Connection fees are due and payable prior to final inspection.

#### Public Works – Solid Waste Division

78. The total space required for the standard service for one dwelling unit is approximately 3 feet x 9 feet. Trash and recycle containers should be stored out of public view on non-pickup days.
79. Future Residents are required to place their garbage, recycling, and organics carts in the enclosures for weekly collection service by contracted service providers.
80. If side-yard service (any distance greater than five feet from the curb) is planned rather than curbside service, then the resident must pay Waste Management of Alameda County (WMAC) an additional fee per month for that service unless the resident is disabled, or 65 years of age or older, and has no able-bodied adults living in their home. Service from the enclosure is not considered side-yard service.
81. The applicant must ensure that any gates and paved pathways allow a resident to easily move a 96-gallon cart to their back or side yard to allow use of their carts for weekend projects, for example.
82. The applicant must ensure that there is adequate space for collection vehicles to service each enclosure. A 40-foot turning radius is sufficient for collection vehicles, and is in accordance with the requirements of the City's Public Works Department.
83. The applicant must ensure that there is adequate access into, on, and out of the property to allow collection of garbage, recyclables and yard trimmings. For safety reasons, a turnaround that will accommodate vehicle size must be provided for any street that would otherwise require the collection vehicle to back up a distance greater than 150 feet. Site plans received March 14, 2011 show sufficient turnaround space if the two parking spaces on the left-hand curb of the road are vacant during collection hours.
84. If collection vehicles must enter under a building or gate, the height of the entrance must be 14 feet minimum. If a collection vehicle must travel on a private drive to service the

containers, then the applicant must construct the driveway to accommodate a 52,000 pound truck on a weekly basis. The truck width is 8.5 feet.

85. If gates with locks are planned to limit access to the property, then the applicant must provide keys or cards to the service providers: WMAC (510-537-5500) for garbage and yard trimmings and Tri-CED (510-537-9963) for recycling. If keys or cards are not provided, then the applicant must ensure that all secured gates are open from 6:00 a.m. to 6:00 p.m. for collection.
86. For all projects with a valuation of \$75,000 or more (valuation as determined by the City Building Official), the applicant must submit for review by Solid Waste Program staff a *Construction and Demolition Debris Recycling Statement*, a *Construction and Demolition Debris Recycling Summary Report*, and weight tags for all materials disposed during the entire term of the project.
87. The applicant shall provide an estimate of debris that the project will generate (in tons or cubic yards) and to be either recycled, salvaged, or landfilled. Please note that City regulations require 100% of concrete and asphalt and 50% of all other materials be recycled at approved facilities.
88. Please indicate the facility that you *plan* to send the materials to. It is important to send the materials to the approved sites, which are listed in the Builder's Guide or page 2 of the C&D Packet. Please note that mixed construction & demolition should only be sent to the facilities listed in the C&D Packet.

#### Fire Department

89. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire access apparatus access road shall extend to within 150 feet of all portion of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. Identify fire apparatus road on the site plan.
90. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches.
91. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet.
92. When buildings or portion of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access, fire apparatus roads shall have unobstructed width of 26 feet in the immediate vicinity of the building. At least one of the required access routes shall be located within a minimum of 15 feet and a maximum of 30 feet from the building and shall be positioned parallel to one entire side of the building.

93. Fire apparatus access roads shall be designed and maintained to support the imposed load of fire apparatus 75,000 lbs and shall be surfaced so as to provide all-weather driving capability.
94. Fire apparatus access roads 20 to 26 feet wide shall be posted on both sides as a fire lane, 26 feet to 32 feet shall be posted on one side of the road as a fire lane. "No Parking" sign shall meet the City of Hayward Fire Department fire lane requirements.
95. According to the Ordinance Table C105.1, in High Density Residential area, the fire flow requirement is 4,500gpm. A reduction in required fire flow of up to 50 percent, as approved by the fire chief, is allowed when the building is provided with an approved automatic sprinkler system. The resulting fire flow shall not be less than 1,500gpm.
96. The minimum number of hydrants is 5 and average spacing between hydrants is 300 feet. Any portion of the building or facility shall be within 400 feet of a fire hydrant.
97. Fire hydrants shall be placed at least 50 feet from the building to be protected. Where it is not feasible to place them at that distance, they may be in closer proximity in approved locations
98. Identify the location of fire department connection. Fire department connection shall be so located that fire apparatus and hose connected to supply the system will not obstruct access to the building for other fire apparatus. It shall be located on the street side of buildings, fully visible and recognizable from the street or nearest point of fire department vehicle access.
99. Buildings shall be constructed in accordance with the 2007 California Building Code and California Fire Code.
100. Automatic sprinkler systems are required in all residential units in accordance with NFPA 13 or NFPA 13D, depending on fire separation construction between dwelling units in the buildings.
101. Submit for proper building permits for the construction of the buildings to the Building Department. Separate submittals and additional permits are required for the installation of fire protection systems.



**CITY OF HAYWARD  
MITIGATED NEGATIVE DECLARATION**

Notice is hereby given that the City of Hayward finds that the proposed project could not have a significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended.

***I. PROJECT DESCRIPTION:***

Project title: Greenwood Homes; Development Agreement Application No. PL-2010-0235, General Plan Amendment Application No. PL-2010-0236, Zone Change Application No. PL-2010-0237 and Parcel Map Application No. PL-2010-0431.

Description of project: The project involves a General Plan Amendment to modify the General Plan designation of the site from Low Density Residential to Medium Density Residential; a Zone Change from RS (Single Family Residential) to OS (Open Space) and PD (Planned Development); a parcel map to reconfigure the lots into a park expansion lot and a future development lot; and a Development Agreement to identify the allowable density of development in exchange for land for the expansion of Greenwood Park.

The site is currently a vacant lot that was previously developed with a nursing home. The site is surrounded by residential developments east, west and south of the project site and is bounded by Greenwood Park to the north.

***II. FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT:***

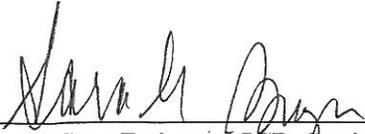
The proposed project, with the mitigation measures identified in the attached initial study checklist, will not have a significant effect on the environment.

***FINDINGS SUPPORTING DECLARATION:***

1. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project, with the recommended mitigation measures, could not result in significant effects on the environment.
2. The project will not adversely affect any scenic resources. A lighting plan will be required to ensure that light and glare do not affect area views. Also, compliance with the City's Design Guidelines will ensure visual impacts are minimized. Landscape plans will also be required to ensure that structures are appropriately screened.
3. The project will not have an adverse effect on agricultural land since the subject site is not used for such purposes, does not contain prime, unique or Statewide important farmland.

4. The project will not result in significant impacts related to changes in air quality. When the property is developed the City will require the developer to submit a construction Best Management Practice (BMP) program prior to the issuance of any grading or building permit.
5. The project, proposed on properties surrounded by other residential development and within an urbanized area, will not result in significant impacts to biological resources, including protected trees.
6. The project will not result in significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.
7. The project will not result in significant impacts to geology and soils. The project is located west of the Hayward fault, which poses potential risk to any development in the City of Hayward. Recommendations of the project geotechnical engineer will be required to be incorporated into project design and implemented throughout construction, to address such items as seismic shaking. Construction will also be required to comply with the California Building Code standards to minimize seismic risk due to ground shaking.
8. The project will not lead to the exposure of people to hazardous materials as any arsenic, lead or pesticides found on the site were considered below California Human Health Screening Levels (CHHSL). In addition, prior to issuance of a grading permit, the installation of park improvements and development of any single family homes, the property must meet all health and environmental standards as determined by the State of California Department of Toxic Substances Control and the California Regional Water Quality Control Board.
9. The project will be required to meet all water quality standards as part of the normal development review and construction process, to be addressed in a Stormwater Pollution Prevention Plan and Erosion Control Plan that utilize best management practices. Drainage improvements will be required to accommodate stormwater runoff, so as not to negatively impact the existing downstream drainage system of the Alameda County Flood Control and Water Conservation District.
10. The project proposes amendments to the Hayward zoning designation and General Plan designation for the site, but overall is not a significant increase in allowable density. In exchange, the applicant will be dedicating land to be used for the expansion of Greenwood Park, a community resource.
11. The project will not result in any long-term noise impacts. Construction noise will be mitigated through restriction on construction hours, mufflers, etc., to be approved as part of the future building permits for the homes.
12. The project will not result in significant impacts related to population and housing in that the amount of development proposed is within the range of development contemplated by the Hayward General Plan.
13. The project will not result in a significant impact to public services in that development is at least as intensive as that proposed was analyzed in the Hayward General Plan EIR and found to have less-than-significant impacts.

**III. PERSON WHO PREPARED INITIAL STUDY:**



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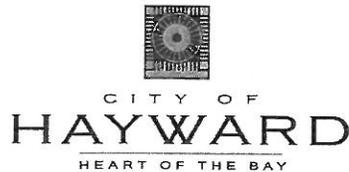
Sara Buizer, AICP, Senior Planner  
Dated: July 31, 2012

**I. COPY OF ENVIRONMENTAL CHECKLIST IS ATTACHED**

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For additional information, please contact the City of Hayward, Planning Division, 777 B Street, Hayward, CA 94541-5007, telephone (510) 583-4200

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**DEPARTMENT OF DEVELOPMENT SERVICES  
Planning Division**

**INITIAL STUDY CHECKLIST**

**Project Title:** Greenwood Homes

**Lead agency name/address:** City of Hayward / 777 B Street

**Contact person:** Sara Buizer, AICP, Senior Planner

**Project location:** Northeast corner of Eden Avenue and Denton Avenue, adjacent to Greenwood Park

**Project sponsors**

**Name and Address:** Chang Income Partnership L.P., Barrett Community Hospital Series (R14), a Delaware limited partnership c/o Westlake Development Partners; 520 South El Camino Real, 9<sup>th</sup> Floor, San Mateo, CA 94402

**Existing General Plan Designation:** Parks and Recreation and Low Density Residential

**Existing Zoning:** RS (Single Family Residential)

**Project description:** The project involves a General Plan Amendment to modify the General Plan designation of the site from Low Density Residential to Medium Density Residential; a Zone Change from RS (Single Family Residential) to OS (Open Space) and PD (Planned Development); a parcel map to reconfigure the lots into a park expansion lot and a future development lot; and a Development Agreement to identify the allowable density of development in exchange for land for the expansion of Greenwood Park.

**Surrounding land uses**

**and setting:** The site is currently a vacant lot that was previously developed with a nursing home. The site is surrounded by residential developments east, west and south of the project site and is bounded by Greenwood Park to the north.

**Other public agencies whose approval is required:** None

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

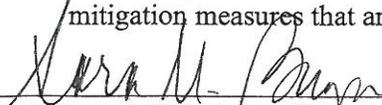
The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Aesthetics               | <input type="checkbox"/> Agriculture and Forestry Resources       | <input type="checkbox"/> Air Quality                                   |
| <input type="checkbox"/> Biological Resources     | <input type="checkbox"/> Cultural Resources                       | <input type="checkbox"/> Geology /Soils                                |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input checked="" type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality                     |
| <input type="checkbox"/> Land Use / Planning      | <input type="checkbox"/> Mineral Resources                        | <input type="checkbox"/> Noise   |
| <input type="checkbox"/> Population / Housing     | <input type="checkbox"/> Public Services                          | <input type="checkbox"/> Recreation                                    |
| <input type="checkbox"/> Transportation/Traffic   | <input type="checkbox"/> Utilities / Service Systems              | <input checked="" type="checkbox"/> Mandatory Findings of Significance |

**DETERMINATION: (To be completed by the Lead Agency)**

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

  
 Sara Buizer, AICP, Senior Planner

7/31/12  
 Date

**EVALUATION OF ENVIRONMENTAL IMPACTS:**

**ENVIRONMENTAL ISSUES:**

|   | Potentially<br>Significant<br>Impact | Less Than<br>Significant with<br>Mitigation<br>Incorporated | Less Than<br>Significant<br>Impact  | No<br>Impact                        |
|---|--------------------------------------|---|-------------------------------------|-------------------------------------|
| <b>I. AESTHETICS -- Would the project:</b>  |                                      |   |                                     |                                     |
| a) Have a substantial adverse effect on a scenic vista? <b>Comment</b> <i>There are no designated scenic vistas in the vicinity of the project; thus, no impact.</i>  | <input type="checkbox"/>             | <input type="checkbox"/>                                    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? <b>Comment</b> <i>The project is not located within a state scenic highway; thus, no impact.</i>   | <input type="checkbox"/>             | <input type="checkbox"/>                                    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c) Substantially degrade the existing visual character or quality of the site and its surroundings? <b>Comment</b> <i>The existing site is currently undeveloped, but had previously been developed with a nursing home. The proposed single family homes and the land for park expansion will improve the visual character of the area; thus, no impact.</i> | <input type="checkbox"/>             | <input type="checkbox"/>                                    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? <b>Comment</b> <i>The new residential units will add some additional light to this area, but the amount is considered less than significant given the surrounding developed area; no mitigation is required.</i>                        | <input type="checkbox"/>             | <input type="checkbox"/>                                    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

|                                      |   |                                    |              |
|--------------------------------------|---|------------------------------------|--------------|
| Potentially<br>Significant<br>Impact | Less Than<br>Significant with<br>Mitigation<br>Incorporated | Less Than<br>Significant<br>Impact | No<br>Impact |
|--------------------------------------|---|------------------------------------|--------------|

**II. AGRICULTURE AND FOREST**

**RESOURCES:** In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state’s inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. -- Would the project:

- |  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <p>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? <b>Comment</b> <i>The project does not involve any Prime Farmland, Unique Farmland or Farmland of Statewide Importance; thus, no impact.</i></p>               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? <b>Comment</b> <i>The project site is not zoned for agricultural uses nor under a Williamson Act contract; thus, no impact.</i></p>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))? <b>Comment</b> <i>The project does not involve the rezoning of forest land or timberland; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>d) Result in the loss of forest land or conversion of forest land to non-forest use? <b>Comment</b> <i>The project does not involve the loss of forest land or involve conversion of forest land; thus, no impact.</i></p>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

|  | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|--|--------------------------------|--|------------------------------|-------------------------------------|
| e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use? <b>Comment</b> <i>The project does not involve changes to the environment that could result in conversion of Farmland or forest land; thus no impact.</i> | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |

**III. AIR QUALITY** -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Conflict with or obstruct implementation of the applicable air quality plan? <b>Comment</b> <i>The project is a residential in-fill project and will not conflict with the goals of the air quality plan; thus no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

|  |                          |                          |                                     |                          |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|
| b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? <b>Comment</b> <i>The Bay Area Air Quality Management District (BAAQMD) has established screening criteria as part of their CEQA guidance to assist in determining if a proposed project could result in potentially significant air quality impacts. Based on the District's criteria, the anticipated future project screens below what would require additional evaluation; thus the proposed project will not violate any air quality standard and the impact is less than significant.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|

|  |                          |                          |                                     |                          |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|
| c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? <b>Comment</b> <i>The anticipated future project meets the screening criteria in Table 3-1 of the Air District's CEQA Guidelines; thus, it can be determined that the project would result in a less-than-significant cumulative impact to air quality from criteria air pollutants and precursor emissions.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|

|   |                          |                          |                                     |                          |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|
| d) Expose sensitive receptors to substantial pollutant concentrations? <b>Comment</b> <i>The project is an in-fill development located in an already developed area that will not involve exposing sensitive receptors to substantial pollutant concentrations; thus the impact is less than significant.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|

|   | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| e) Create objectionable odors affecting a substantial number of people? <b>Comment</b> <i>The project is an in-fill residential development that will not create any objectionable odors; thus no impact.</i> | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |

**IV. BIOLOGICAL RESOURCES --** Would the project:

|   |                          |                          |                          |                                     |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? <b>Comment</b> <i>The project site is located in an area that is largely developed and does not contain plant or wildlife special-status species; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

|   |                          |                          |                          |                                     |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? <b>Comment</b> <i>The project area is largely developed and does not contain any riparian habitat or sensitive natural communities; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? <b>Comment</b> <i>The project site, located in an urban setting, contains no wetlands; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? <b>Comment</b> <i>The project site, located in an urban setting, and will not interfere with the movement of any migratory fish or wildlife species; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

|   | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? <b>Comment</b> <i>The project site does not contain any significant stands of trees; thus, no impact.</i> | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? <b>Comment</b> <i>The project site is not located in an area covered by an adopted Habitat Conservation Plan or Natural Community Conservation Plan; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

**V. CULTURAL RESOURCES** -- Would the project:

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5? <b>Comment:</b> <i>There are no known historical resources in the vicinity of the project; thus no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5? <b>Comment</b> <i>There are no known archaeological resources in the vicinity; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? <b>Comment</b> <i>There are no known paleontological resources or unique geological features on or near the site; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| d) Disturb any human remains, including those interred outside of formal cemeteries? <b>Comment</b> <i>There are no known human remains nor cemeteries nearby the project site; however, standard procedures for grading operations would be followed during the future development, which require that if any such remains or resources are discovered, grading operations are halted and the resources/remains are evaluated by a qualified professional and, if necessary, mitigation plans are formulated and implemented. These standard measures would be conditions of approval should the project be approved.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

|  | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact        | No Impact                           |
|--|--------------------------------|--|-------------------------------------|-------------------------------------|
| <b>VI. GEOLOGY AND SOILS -- Would the project:</b>   |                                |  |                                     |                                     |
| a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:   |                                |  |                                     |                                     |
| i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. <b>Comment:</b> <i>The project site is not within the State's Earthquake Fault Zone. Therefore, impacts related to fault rupture are not anticipated.</i>   |                                |  |                                     |                                     |
|  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ii) Strong seismic ground shaking? <b>Comment:</b> <i>An earthquake of moderate to high magnitude could cause considerable ground shaking at the site; however, all future structures will be designed using sound engineering judgment and adhere to the latest California Building Code (CBC) requirements, thus the impact is considered less than significant.</i>   |                                |  |                                     |                                     |
|  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| iii) Seismic-related ground failure, including liquefaction? <b>Comment:</b> <i>The site is located within an area that may be susceptible to liquefaction. A design level geotechnical evaluation shall be conducted and submitted for review and approval prior to issuance of building permits for the future homes and if liquefaction is determined to be probable, measures as recommended by the project geotechnical consultant shall be implemented. Such measures, such as special foundation construction, will reduce the significance of liquefaction-related impacts to a level of insignificance.</i> |                                |  |                                     |                                     |
|  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| iv) Landslides? <b>Comment:</b> <i>Due to the relatively flat site topography, landslides are not likely; thus no impact.</i>  |                                |  |                                     |                                     |
|  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| b) Result in substantial soil erosion or the loss of topsoil? <b>Comment:</b> <i>Although the project would result in an increase in impervious surface, the project site is relatively flat and erosion control measures that are typically required for such projects, including but not limited to graveling construction entrances and protecting drain inlets will address such impacts. Therefore, the potential for substantial erosion or loss of topsoil is considered insignificant.</i>   |                                |  |                                     |                                     |
|  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

|   | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact        | No Impact                           |
|---|--------------------------------|--|-------------------------------------|-------------------------------------|
| <p>c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? <b>Comment:</b> <i>The site is relatively flat and such impacts are not anticipated.</i></p>  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <p>d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? <b>Comment:</b> <i>There are expansive clay soils in the area which may have impacts on the construction of future homes on the project site. Prior to development of the single family homes, the applicant will be required to have a site specific geotechnical investigation performed which will identify mitigation measures should expansive soils be found on the site. Implementation of the recommendations into the project design will reduce impacts to a less than significant level.</i></p> | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| <p>e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? <b>Comment:</b> <i>The project will be connected to an existing sewer system with sufficient capacity and does not involve septic tanks or other alternative wastewater; thus, no impact.</i></p>   | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

**VII. GREENHOUSE GAS EMISSIONS --**

Would the project:

|   |                          |                          |                                     |                          |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|
| <p>a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? <b>Comment:</b> <i>The Bay Area Air Quality Management District (BAAQMD) has established screening criteria as part of their CEQA guidance to assist in determining if a proposed project could generate greenhouse gas emissions that would have a significant impact. Based on the District's criteria, the anticipated future project screens below what would require additional evaluation; thus the proposed project will not exceed established levels and the impact is less than significant.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|

|  | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|--|--------------------------------|--|------------------------------|-------------------------------------|
| b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? <b>Comment</b> <i>As discussed in VIIa above, the project screens below the threshold for operation greenhouse gases. In addition, the project will be in compliance with the City of Hayward Green Building Ordinance; thus no impact.</i> | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |

**VIII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:**

|   |                          |                          |                          |                                     |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? <b>Comment</b> <i>The project is an in-fill residential project that does not involve the transport or use of hazardous materials; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

|  |                          |                                     |                          |                          |
|--|--------------------------|-------------------------------------|--------------------------|--------------------------|
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? <b>Comment</b> <i>The project site has been evaluated with a Phase I Environmental Analysis by Protech and a summary report by the Source Group Inc., which has determined that arsenic and lead was detected in six each of the six samples collected, but at concentrations below regional background levels. Pesticides were detected in two of the six samples located on the development portion of the property, but at concentrations below residential California Human Health Screening Levels (CHHSL). In order to off-set any potential impacts, the applicant must coordinate with the Hayward Fire Department, the California Regional Water Quality Control Board and the California Department of Toxic Substances Control to be sure the property meets all health and environmental standards for both the park expansion property and the future development site.</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|-------------------------------------|--------------------------|--------------------------|

**Mitigation Measure 1:** *Prior to issuance of a grading permit, the installation of park improvements and the development of the single family homes site, the applicant shall provide documentation that the property is in a condition that meets health and environmental standards as determined by the State of California Department of Toxic Substances Control and the California Regional Water Quality Control Board.*

|   | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact        | No Impact                           |
|---|--------------------------------|--|-------------------------------------|-------------------------------------|
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? <b>Comment:</b> <i>The project is an in-fill residential project that does not involve the use of hazardous materials; thus, no impact.</i>   | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? <b>Comment:</b> <i>The project site is not on a list of hazardous materials sites; thus, no impact.</i>  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? <b>Comment:</b> <i>Although the site is located within two miles of the Hayward Executive Airport, development is proposed that is consistent with the Hayward General Plan and the Airport Land Use Compatibility Plan, consisting of two-story residential units. Therefore, impacts related to the airport as a result of the project are considered to be less than significant.</i> | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? <b>Comment:</b> <i>The site is not located within the vicinity of a private air strip and therefore, no such impacts would occur as a result of the project.</i>  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? <b>Comment:</b> <i>The project would not interfere with an adopted emergency response plan or emergency evacuation plan. In fact, the project would result in extension of the City's public water system to the area, thereby improving fire-fighting capabilities in the area.</i>  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

|  | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|--|--------------------------------|--|------------------------------|-------------------------------------|
| h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? <b>Comment:</b> <i>The project site is located within a suburban setting, away from areas with wildland fire potential. Therefore, no such impacts related to wildland fires are anticipated.</i> | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |

**IX. HYDROLOGY AND WATER QUALITY**

-- Would the project:

|  |                          |                          |                          |                                     |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Violate any water quality standards or waste discharge requirements? <b>Comment:</b> <i>The project will comply with all water quality and wastewater discharge requirements of the city; thus, no impact.</i>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? <b>Comment:</b> <i>The project will be connected to the existing water supply and will not involve the use of water wells and will not deplete groundwater supplies or interfere with groundwater recharge; thus, no impact.</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? <b>Comment:</b> <i>The project site is an infill site. All drainage from the site is required to be treated before it enters the storm drain system and managed such that post-development run-off rates do not exceed pre-development run-off rates; thus, no impact.</i>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

|   | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact                           |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? <b>Comment</b> <i>The project site is an infill site. All drainage from the site is required to be treated before it enters the storm drain system and managed such that post-development run-off rates do not exceed pre-development run-off rates; thus, no impact.</i> | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? <b>Comment</b> <i>The project site is an infill site. All drainage from the site is required to be treated before it enters the storm drain system and there is sufficient capacity to handle any drainage from the property; thus, no impact.</i>  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| f) Otherwise substantially degrade water quality? <b>Comment</b> <i>The project site is an infill. All drainage from the site is required to be treated before it enters the storm drain system; thus, no impact.</i>   | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? <b>Comment</b> <i>The project site is not located within a 100-year flood hazard area; thus, no impact.</i>  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? <b>Comment</b> <i>The project site is not located within a 100-year flood hazard area; thus, no impact.</i>   | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? <b>Comment</b> <i>The project site is not located within a 100-year flood hazard area; thus, no impact.</i>  | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |
| j) Inundation by seiche, tsunami, or mudflow? <b>Comment</b> <i>The project site is not located within a 100-year flood hazard area; thus, no impact.</i>   | <input type="checkbox"/>       | <input type="checkbox"/>                           | <input type="checkbox"/>     | <input checked="" type="checkbox"/> |

| Potentially<br>Significant<br>Impact | Less Than<br>Significant with<br>Mitigation<br>Incorporated | Less Than<br>Significant<br>Impact | No<br>Impact |
|--------------------------------------|---|------------------------------------|--------------|
|--------------------------------------|---|------------------------------------|--------------|

**X. LAND USE AND PLANNING --** Would the project:

a) Physically divide an established community?  
**Comment:** *The development is proposed in a developed suburban setting and would not divide an established community.*

|                          |                          |                          |                                     |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
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b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? **Comment:** *The project does involve a modification of the General Plan designation to allow for a higher density; however, the increase is relatively minimal and the project involves land dedication to expand Greenwood Park which is consistent with the adopted Mt. Eden neighborhood plan; thus the impact is considered less than significant.*

|                          |                          |                                     |                          |
|--------------------------|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|--------------------------|-------------------------------------|--------------------------|

c) Conflict with any applicable habitat conservation plan or natural community conservation plan? **Comment:** *The project site is not covered by any habitat conservation plan or natural community conservation plan; thus, no impact.*

|                          |                          |                          |                                     |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

**XI. MINERAL RESOURCES --** Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? **Comment:** *There are no known mineral resources on the project site; thus no impact.*

|                          |                          |                          |                                     |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? **Comment:** *There are no known mineral resources on the project site; thus no impact.*

|                          |                          |                          |                                     |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

**XII. NOISE --** Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? **Comment** *The project site is located within an already developed neighborhood and will not generate any noise levels in excess of standards established in the General Plan; thus, no impact.*

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? **Comment** *The project site is not located in an area where people will be exposed to groundborne vibrations nor will the project generate any groundborne vibrations; thus no impact.*

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? **Comment** *The project is a residential development and will not involve an increase in the ambient noise levels in the area; thus, no impact.*

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? **Comment** *Existing residential development will experience a slight increase in ambient noise levels during the construction of the proposed project; construction is limited to the allowable hours per the City's Noise Ordinance; thus the impact is considered less-than-significant and no mitigation is required.*

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? **Comment:** *As indicated in the Mt. Eden Annexation Final EIR, based on Figure 7.3 in the General Plan EIR, the Project area is not impacted by significant noise levels from Oakland International Airport or Hayward Executive Airport. Concerns with nuisance issues associated with touch and go aircraft flights will be addressed with project conditions of approval, which will require that aviation easements be recorded that would ensure disclosure and notification to future property owners of touch and go aircraft operations in the vicinity.*

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? **Comment** *The project is not located within the vicinity of a private air strip; thus, no impact*

**XIII. POPULATION AND HOUSING --**  
Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? **Comment** *The future project involves the construction of thirty-six new residential units and while the application involves a modification to the General Plan designation to increase the density, the increase is minimal. In exchange, the project proposes land dedication for the enlargement of Greenwood Park; thus the impact is considered less than significant.*

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? **Comment** *The project involves the development of additional housing on a vacant lot and no housing will be displaced as a result of this project; thus, no impact.*

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? **Comment** *The project involves the development of additional housing on a vacant lot and no housing will be displaced as a result of this project; thus, no impact.*

**XIV. PUBLIC SERVICES --**

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection? **Comment:** *No such facilities are required and therefore, no such impacts are expected to occur.*

Police protection? **Comment:** *No such facilities are required and therefore, no such impacts are expected to occur.*

Schools? **Comment:** *The project site is within the Eden Gardens Elementary School, Ochoa Middle School and Mt. Eden High School attendance areas of the Hayward Unified School District. The developer will be required to pay school impact mitigation fees, which, per State law, is considered full mitigation.*

Parks? **Comment:** *The applicant proposes to dedicate approximately one acre to allow for the expansion of Greenwood Park as envisioned in the Mt. Eden Neighborhood Plan; thus no impact.*

Other public facilities? **Comment** *Approval of the project may impact long-term maintenance of roads, streetlights and other public facilities; however, the future project density increase is minimal as compared with the existing General Plan designation; thus, the impact is considered less than significant.*

**XV. RECREATION --**

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? **Comment:** *The project proposes thirty-six new residential units and the proposal does include community open space within the developed area; however, the project also proposes to dedicate approximately one acre to allow for the expansion of Greenwood Park; which will provide additional community parkland; thus no impact.*

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? **Comment:** *The project proposes thirty-six new residential units and the proposal does include community open space within the developed area; however, the project also proposes to dedicate approximately one acre to allow for the expansion of Greenwood Park; which will provide additional community parkland; thus no impact.*

**XVI. TRANSPORTATION/TRAFFIC --**

Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? **Comment** *The project will not conflict with any plan regarding effective performance of the circulation system. The project is an in-fill residential project located near services; thus, no impact.*

b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways? **Comment:** *The project involves the future construction of thirty-six single family homes and would not generate more than 100 peak hour trips, and therefore, would not be expected to generate such impacts.*

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? **Comment** *The project involves no change to air traffic patterns; thus, no impact.*

d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? **Comment** *The project has been designed to meet all City requirements, including site distance and will not increase any hazards; thus no impact.*

e) Result in inadequate emergency access? **Comment** *The project is on an in-fill site completely accessible and will not result in inadequate emergency access; thus, no impact.*

f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities? **Comment** *The project does not involve any conflicts or changes to policies, plans or programs related to public transit, bicycle or pedestrian facilities; thus, no impact.*

**XVII. UTILITIES AND SERVICE SYSTEMS**

-- Would the project:

- |   |                          |                          |                          |                                     |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <p>a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? <b>Comment</b> <i>The project will not exceed wastewater treatment requirements; thus no impact.</i></p>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? <b>Comment</b> <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p>                            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? <b>Comment</b> <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p>                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? <b>Comment</b> <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? <b>Comment</b> <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? <b>Comment</b> <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>g) Comply with federal, state, and local statutes and regulations related to solid waste? <b>Comment</b> <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --**

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

**Comment:** *The project will not have any impacts on wildlife or fish habitat nor eliminate a plant or animal community; thus, no impact.*

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

**Comment:** *The future project involves the construction of thirty-six new residential units and while the application involves a modification to the General Plan designation to increase the density, the increase is minimal. In exchange, the project proposes land dedication for the enlargement of Greenwood Park; thus the impact is considered less than significant.*

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

**Comment:** *Based on the checklist above, it has been determined that the project has the potential to have an impact on Hazardous Materials due to the presence of arsenic, lead and pesticides. Mitigation Measures have been identified to reduce such impacts to levels of insignificance.*

# **Greenwood Homes – Westlake Development Mitigation Monitoring and Reporting Program**

**General Plan Amendment Application No. PL-2010-0236;  
Zone Change Application No. PL-2010-0237 PD;  
Parcel Map Application No. PL2010-0431 (PM 10014);  
Development Agreement Application No. PL-2010-0235  
Westlake Development Partners (Applicant)  
Chang Income Property Partnership L.P., Barrett Community Hospital Series (R 14), a  
Delaware limited partnership (Owner)**

July 31, 2012

| <p><b>Significant Environmental Impact</b></p>   | <p><b>Mitigation Measure</b></p>   | <p><b>Implementing Responsibility</b></p>                | <p><b>Monitoring Responsibility</b></p>  | <p><b>Timing</b></p>  |
|--|--|--|--|---|
| <p><b><u>Impact VIII-b (Hazards and Hazardous Materials):</u></b> <i>The project site has been evaluated with a Phase I Environmental Analysis by Protech and a summary report by the Source Group Inc., which has determined that arsenic and lead was detected in six each of the six samples collected, but at concentrations below regional background levels. Pesticides were detected in two of the six samples located on the development portion of the property, but at concentrations below residential California Human Health Screening Levels (CHHSL). In order to off-set any potential impacts, the applicant must coordinate with the California Regional Water Quality Control Board and the California Department of Toxic Substances Control to be sure the property meets all health and environmental standards for both the park expansion property and the future development site.</i></p> | <p><b><u>Mitigation Measure 1:</u></b> <i>Prior to issuance of a Grading permit, the installation of park improvements and the development of the single family homes site, the applicant shall provide documentation that the property is in a condition that meets health and environmental standards as determined by the State of California Department of Toxic Substances Control and the California Regional Water Quality Control Board.</i></p> | <p>Project developers, including project contractor.</p> | <p>City of Hayward Planning Division, Hazardous Materials Section of the Hayward Fire Department and DTSC and RWQCB.</p> | <p>Prior to issuance of a Grading Permit, installation of park improvements, and development of the single-family homes</p> |

Development Agreement

By and Between

Chang Income Property Partnership L.P., Barrett Community Hospital Series (R14),

a Delaware limited partnership

and the City of Hayward.

|   | <u>Page</u> |
|---|-------------|
| 1. SECTIONS, DEFINITIONS, AND EXHIBITS.....                                 | 5           |
| 2. MUTUAL BENEFITS AND ASSURANCES.....                                      | 10          |
| 3. DEVELOPER’S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS.....               | 11          |
| 4. VESTED RIGHT TO DEVELOP AND OTHER CITY OBLIGATIONS.....                  | 14          |
| 5. PERIODIC REVIEWS.....  | 19          |
| 6. TRANSFERS AND ASSIGNMENTS.....   | 20          |
| 7. TERM OF AGREEMENT.....   | 22          |
| 8. AMENDMENT.....   | 23          |
| 9. PROCESSING OF REQUESTS AND APPLICATION; OTHER<br>GOVERNMENT PERMITS..... | 24          |
| 10. DEFAULT AND REMEDIES.....   | 25          |
| 11. THIRD PARTY LITIGATION.....   | 26          |
| 12. EFFECT OF AGREEMENT ON TITLE.....                                       | 28          |
| 13. HOLD HARMLESS.....  | 29          |
| 14. MISCELLANEOUS PROVISIONS.....   | 30          |

**GREENWOOD PARK TOWNHOMES PROJECT**  
**DEVELOPMENT AGREEMENT**

This Development Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the “Effective Date”) by and between Chang Income Property Partnership L.P., Barrett Community Hospital Series (R14), a Delaware limited partnership (“DEVELOPER”), and the City of Hayward, a municipal corporation, organized and existing under the Hayward City Charter and laws of the State of California (“CITY”).

**RECITALS**

This Agreement is entered into based upon the following facts:

- A. When used in these Recitals, each of the terms defined in Section 1 of this Agreement shall have the meaning given to it therein.
  
- B. Government Code Sections 65864-65869.5 authorize CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: strengthen the planning process; encourage and provide for the development of public facilities in order to support the development of new housing; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer; encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; and, to provide assurance to developers that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval.
  
- C. DEVELOPER is the holder of a legal or equitable interest in the “Property” as described below. DEVELOPER desires and intends to dedicate to the CITY a

portion of the Property for extension of the existing Greenwood Park and DEVELOPER intends to develop the remainder of the Property as a planned development, medium density residential project comprised of thirty-six (36) single family detached homes with associated infrastructure and public facilities. Development of the Property requires substantial early and major capital expenditures and investments with respect to the construction and installation of infrastructure and facilities, both on-site and off-site, including, without limitation, street, utility and drainage infrastructure and facilities. The development of the thirty-six (36) single family detached homes along with all associated infrastructure, site improvements, and public facilities, including the dedication of the Park Expansion Property, is referred to as the "Project." The Project is proposed to serve existing and/or anticipated residents of the CITY as anticipated by the General Plan, as amended; the Existing Development Approvals (as defined in recital paragraph F and listed in Exhibit B hereto); and this Agreement.

D. CITY has determined that the Project implements the goals and policies of CITY's General Plan (as referenced in Government Code Sections 65450 et seq.) applicable to the Project, as amended, and implements land uses and development standards appropriate to the Property so as to maintain the overall quality of life and of the environment within CITY.

E. Pursuant to Government Code Section 65865, CITY has adopted the CITY Development Agreement Ordinance, establishing procedures and requirements for the consideration of proposed development agreements.

F. DEVELOPER has applied for, and CITY has approved, certain development entitlements listed on Exhibit B, including General Plan Amendment No. \_\_\_\_\_ (amending the designation for the Project Site from Low Density Residential to Medium Density Residential); approval of Planned Development (PD) District zoning pursuant to Zone Change No. \_\_\_\_\_ with an associated Preliminary Development Plan (hereafter "Existing Development

Approvals”); and Greenwood Park Parcel Map (adjusting lot lines to allow for dedication of the Park Expansion Property to CITY pursuant to this Agreement). In addition to the Existing Development Approvals, the Project will require several additional discretionary and ministerial approvals from the CITY, including but not limited to those listed in Exhibit C to this Agreement (the “Future Development Approvals”).

G. As part of the process of approving the Existing Development Approvals and this Agreement, the CITY has analyzed the environmental effects of this Project, adopted a Mitigated Negative Declaration on \_\_\_\_\_, 2012, and made the necessary findings required by the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (“CEQA”) and adopted a mitigation monitoring and reporting program (“MMRP”) pursuant to Resolution No. \_\_\_\_\_.

H. The CITY’s staff has reviewed this Agreement, has deemed it to be complete, and has prepared a report to the Planning Commission pursuant to CITY Municipal Code Section 10-9.05. The Hayward Planning Commission held a noticed public hearing on \_\_\_\_\_, 2012; made the findings required by the CITY’s Municipal Code Section 10-9.08; and recommended that the Hayward City Council authorize execution of a Development Agreement. The Hayward City Council held a noticed public hearing on \_\_\_\_\_, 2012 and subsequently found and determined that this Agreement: (i) is consistent with CITY’s General Plan, as amended; (ii) is consistent with the Mt. Eden Neighborhood Plan; (iii) is in the best interests of the health, safety and general welfare of CITY, its residents and the public; (iv) is entered into pursuant to and constitutes a present exercise of the police power by CITY; and (v) is entered into pursuant to and complies with the requirements of both Section 65867 of the Development Agreement Statute and the CITY’s Development Agreement Ordinance.

I. The Hayward City Council introduced Ordinance No. \_\_\_\_\_ approving this Agreement and its execution in accordance with the provisions of the Development Agreement Statute and the Development Agreement Ordinance on \_\_\_\_\_, 2012, and adopted it on \_\_\_\_\_, 2012.

J. Based on the foregoing, DEVELOPER and CITY desire to enter into this Agreement on the terms set forth below.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

#### **1. SECTIONS, DEFINITIONS, AND EXHIBITS.**

**1.1 Sections and Subsections.** Any reference in this Agreement to a “Section” is a reference to the indicated numbered section or sub-section of this Agreement and a reference to a “subsection” is a reference to the indicated subsection of a Section.

**1.2 Definitions.** The following terms when used in this Agreement shall be defined as follows:

**1.2.1 “Building and Improvement Standards”** means City Regulations which are of general application and which establish building code standards for structures and associated improvements and shall include, without limitation, CITY’s building, plumbing, mechanical, fire, green building (for private development), recycling and water conservation regulations.

**1.2.2 “CITY”** means the City of Hayward, a charter city located within the County of Alameda, State of California.

**1.2.3** “City Regulations” means the laws, statutes, ordinances, codes, resolutions, rules, regulations, orders, or approvals adopted or to be adopted by CITY which govern permitted uses of land, density and intensity of use and the design, improvement, and construction standards and specifications otherwise applicable to the Property, including, but not limited to, green building regulations; zoning ordinances and zoning reclassifications, development moratoria, ordinances implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, establishment of a Communities Facilities District (CFD), and any other similar or related codes and Building and Improvement Standards. City Regulations do not include, however, regulations relating to the conduct of business, professions and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; and, any exercise of the power of eminent domain.

**1.2.4** “DEVELOPER” means Chang Income Property Partnership L.P., Barrett Community Hospital Series (R14), a Delaware limited partnership.

**1.2.5** “DEVELOPER’s Obligations” means the obligations of DEVELOPER to pay sums, convey property, build and construct improvements, dedicate lands and improvements and undertake and perform the other actions as described in Section 3.

**1.2.6** “Development” means the improvement of the Property for purposes of building the residential structures, improvements and facilities comprising the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of structures and buildings, the dedication of the Park Expansion Property to become part of Greenwood Park; the installation of landscaping; and the payment of

fees, including, but not limited to, development impact fees and in lieu fees satisfying DEVELOPER's obligations (all of which fees are collectively referred to herein as "Development Fees"), including any below market rate housing obligation; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof, except as otherwise specifically provided herein.

**1.2.7** "Development Agreement Ordinance" means Ordinance 84-015 C.S. (CITY Municipal Code Sections 10-9.01 through 10-9.15) which was adopted on July 10, 1984, establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Statute.

**1.2.8** "Development Agreement Statute" means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

**1.2.9** "Effective Date" means \_\_\_\_\_, 2012.

**1.2.10** "Existing City Regulations" means those certain City Regulations in effect on the Effective Date, including but not limited to the Existing Development Approvals.

**1.2.11** "Existing Development Approvals" means those certain approvals in effect on the Effective Date necessary for Development of the Project, specifically the General Plan Amendment No. \_\_\_\_\_ (redesignating the Property from Low Density Residential to Medium Density Residential); Zone Change No. \_\_\_\_\_ (reclassifying the Property as a Planned Development District) along with the related approval of the associated Preliminary Development Plan; and Greenwood Park Parcel Map (adjusting lot lines to enable dedication of land to CITY pursuant to this Agreement). The Existing Development Approvals are attached hereto as Exhibit B.

**1.2.12** "Future Development Approvals" include site specific plans, maps, permits and other entitlements to use of every kind and nature required to be approved or granted by CITY for the Development of the Property, excluding the Existing Development Approvals, and including but not limited to: any required amendments to specific plan(s), precise development plans, vesting tentative and final subdivision tract maps and related agreements, development and building permits, road improvements, water system upgrades, recreational amenities, development allotments, and grading, building and other similar permits. Future Development Approvals, include, but are not limited to those listed in Exhibit C to this Agreement.

**1.2.13** "General Plan" means the Hayward General Plan adopted by the CITY, as amended by Resolution No. \_\_\_\_\_.

**1.2.14** "Greenwood Park Parcel Map" means the parcel map required for creation of the Park Expansion Property as a legal parcel to be dedicated by DEVELOPER to CITY pursuant to the Terms of this Agreement.

**1.2.15** "Park Expansion Property" means those portions of the Property depicted on Exhibit E which are proposed to be conveyed to CITY for CITY's expansion and improvement of Greenwood Park as provided in this Agreement. The Park Expansion Property consists of a 1.003 acre portion of the Property, as shown on Exhibit E.

**1.2.16** "Project" means development of thirty-six (36) single family detached homes on approximately 2.52 acres of the Property along with all associated on-site and off-site improvements, infrastructure, and facilities, including but not limited to internal roadways; water, sewer, and drainage systems; and open space areas, consistent with the Development Approvals.

**1.2.17** “Property” means the 3.52 acres within the CITY in which DEVELOPER has a legal or equitable interest on the Effective Date, as more particularly described in the legal description attached as Exhibit A, which, upon dedication of the Park Expansion Property, will be comprised of the remaining 2.52 acres of land.

**1.2.18** “Public Facilities” means those certain lands and facilities to be improved, constructed and dedicated or conveyed to the public in conjunction with or prior to Development of the Project.

**1.2.19** “Reservations of Authority” means that the Agreement shall not prevent the CITY, in subsequent actions applicable to the Project, from applying new rules, regulations, and policies applicable to the Property as permitted in Section 4 and allowed by applicable law, nor prevent the CITY from denying or conditionally approving any subsequent application that is consistent with the Project on the basis of Existing Land Use Regulations.

**1.3** **Exhibits**. The reference to a specified “Exhibit” in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

| <u>Exhibit</u> | <u>Description</u>   |
|----------------|--|
| A              | Legal Description of Property                                    |
| B              | List of Existing Development Approvals                           |
| C              | List of Future Development Approvals                             |
| D              | Development Impact Fees and Assessments to Be Applied to Project |
| E              | Park Expansion Property  |

## **2. MUTUAL BENEFITS AND ASSURANCES.**

**2.1 Purposes of Agreement.** This Agreement is entered into for the purpose of Development of the Project on the Property in a manner that will: (a) ensure certain anticipated benefits to both CITY (including, without limitation, the existing and future residents of CITY) and DEVELOPER as described in the RECITALS; (b) result in conveyance to CITY of property required for expansion of Greenwood Park; and (c) provide to DEVELOPER assurances regarding the City Regulations that will be applicable to the Development of the Project on the Property, including but not limited to those relating to timing, density and intensity of development, that will justify the undertakings and commitments of DEVELOPER described above and the substantial and early investment in major on-site and off-site infrastructure needed for the Project.

**2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation.** The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of CITY and DEVELOPER and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, the effective and efficient development of infrastructure and facilities supporting development and the mitigation of the impacts of development on the community which was contemplated and promoted by the Development Agreement Statute.

**2.3 Bargained For; Reliance by Parties.** The assurances provided to DEVELOPER in Section 4 are provided pursuant to and as contemplated by the Development Agreement Statute and are bargained for and in consideration of the undertakings of DEVELOPER set forth in Section 3 of this Agreement.

### 3. **DEVELOPER'S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS.**

**3.1 In General.** DEVELOPER shall be obligated to, and shall, perform all of the duties and obligations provided for or required by any provisions of the General Plan, the Existing Development Approvals, and the conditions of approval attached thereto, and this Agreement in connection with the Development of the Property; provided, however, notwithstanding any contrary provision of this Agreement, DEVELOPER shall have no obligation under this Agreement to proceed with development of the Project, if it decides, in its sole discretion, that it is unable or unwilling to construct the Project; provided, further, however, whether or not DEVELOPER proceeds with development of the Project, DEVELOPER shall be required to convey to CITY its interest in the Park Expansion Property as provided in this Agreement.

**3.2 Dedication of Land for Greenwood Park Expansion.** DEVELOPER hereby agrees to dedicate to CITY a fee interest in the Park Expansion Property, free of all liens and encumbrances other than those shown as exceptions to title in Schedule B of that certain Preliminary Report for such property, as issued by First American Title Insurance Company, dated June 27, 2012, Order No. NCS-5052556-SM, such dedication to occur within ninety (90) days following the Effective Date of this Agreement. It is understood and agreed that DEVELOPER shall be required, as a condition of the CITY's acceptance of dedication of the Park Expansion Property, to deliver such property in a condition that meets health and environmental standards for park use as determined by the State of California Department of Toxic Substances Control and California Regional Water Quality Control Board (herein "***Environmental Standards***"). DEVELOPER has previously provided to CITY the following written reports on the environmental condition of the Property (collectively the "***Environmental***

**Reports**”): (i) Phase I Environmental Site Assessment, prepared by ProTech Consulting and Engineering (“**ProTech**”), dated May, 2007; (ii) reports of Soil Sampling and Analysis, Interpretation and Documentation, prepared by ProTech, dated May, 2007, and May 16, 2012, respectively; and (iii) Summary Report, Shallow Soil Characterization, prepared by The Source Group, Inc., dated August 9, 2012, which Environmental Reports confirm that the Park Expansion Property currently satisfies Environmental Standards. Should DEVELOPER be unable to dedicate the Park Expansion Property in a condition that satisfies Environmental Standards, CITY reserves the right to refuse dedication of the Park Expansion Property and to terminate this Agreement. In consideration for DEVELOPER's dedication of the Park Expansion Property, CITY shall, at its election, as provided in Section 4.9 hereof, either provide to DEVELOPER a credit toward Development Fees otherwise payable by DEVELOPER in connection with the Project or pay for the Park Expansion Property in cash or cash equivalent.

**3.3 Dedication, Construction, and Conveyance of Public Facilities.** Any Public Facilities to be dedicated (in the case of lands) and/or constructed by DEVELOPER and dedicated or conveyed to CITY shall be completed in accordance with the Existing City Regulations and Existing Development Approvals and shall be dedicated and conveyed to CITY in fee, free of all liens and encumbrances other than as specified in Section 3.2. In order to effectuate the purposes of this Agreement, DEVELOPER and CITY may enter into one or more agreements (hereinafter jointly “Implementation Agreement(s)”) prior to the filing and recording of a final subdivision map on the Property. Such Implementation Agreement(s) may include, but not be limited to a Subdivision Improvement Agreement. Implementation Agreement(s)

provide the specific terms and set forth standards and deadlines for the construction and completion of the Public Facilities and their conveyance to CITY as provided for in this Agreement, transfer of the Park Expansion Property and/or construction of privately owned infrastructure and common facilities necessary for Development of the Project.

**3.4 Relationship of Parties.** In performing its obligations, DEVELOPER is acting under this Agreement as an independent contractor and is not acting as the agent or employee of CITY nor shall anything in this Agreement be construed as creating between DEVELOPER and CITY a partnership or joint venture for any purpose.

**3.5 Public Works.** If DEVELOPER is required by this Agreement, Existing Development Approvals, or Future Development Approvals to finance and either design or construct any public works facilities which will be dedicated or conveyed to CITY or any other public agency upon completion, and if required by applicable laws to do so, DEVELOPER shall perform such design or construction work in accordance with Existing City Regulations.

**3.6 Obligations Regarding Public Facilities.** In any instance where DEVELOPER is required to construct any Public Facilities on lands within City not owned by DEVELOPER, DEVELOPER agrees to use its best efforts to acquire any rights-of-way, easements, or other property rights or interests within City which CITY reasonably determines to be necessary for such Public Facilities. In the event that DEVELOPER is unable to acquire any such property right or interest, CITY shall utilize its power of eminent domain, as appropriate and to the extent consistent with law, to acquire any real property rights or interests necessary for the construction of such Public Facilities. DEVELOPER shall be obligated to pay for the costs of acquiring such

rights or interests, including but not limited to relocation costs, costs of suit and attorney's fees.

**3.7 Benefit Assessment District/Reimbursement Agreement.** Upon DEVELOPER's request and payment of all of CITY's processing charges (which may be offset by the Dedication Credit as provided in Section 4.9), the CITY shall initiate proceedings to establish a benefit assessment district or a reimbursement agreement to the extent that the off-site system improvements constructed or financed by DEVELOPER benefit other properties which are hereafter developed, and DEVELOPER has not been reimbursed for such costs.

**3.8 Community Facilities District.** DEVELOPER shall pay the cost of providing public safety services to the Property through formation of, or annexation to, a Community Facilities District, should the Property generate the need for additional public safety services. DEVELOPER shall post an initial deposit of \$20,000 with the City prior to or concurrently with the submittal of the final subdivision map and improvement plans, to offset the CITY's cost of analyzing the Property's need for additional public safety services. If the analysis determines that the Property creates a need for additional public safety services warranting the formation of, or annexation to, a Community Facilities District, DEVELOPER shall pay all costs of formation of, or annexation to, the district, which costs may be paid from the DEVELOPER's deposit to the extent that funds remain after payment of the CITY's costs of analysis as described above.

#### **4. VESTED RIGHT TO DEVELOP AND OTHER CITY OBLIGATIONS.**

**4.1 Vested Right to Develop the Project.** DEVELOPER shall have the vested right for the Term of this Agreement to proceed with Development of the Project pursuant to the Existing City Regulations, including but not limited to the Existing

Development Approvals. Notwithstanding any future action of CITY, whether by ordinance, resolution, initiative or otherwise, the City Regulations applicable to and governing the Development of the Property during the term hereof shall be the Existing City Regulations, subject only to CITY's Reservations of Authority as set forth in Section 4.2, the limitations set forth in Section 4.3, and the terms of this Agreement. The subsections below further define, without limitation, those features and characteristics of the Project into which this Agreement vests DEVELOPER's rights to develop.

(a) Permitted Uses. The uses permitted on the Property shall be those allowed under the Existing Development Approvals, including but not limited to residential, open space, public and private recreation facilities, as more specifically described in and subject to the limitations of the General Plan, as amended by Resolution No. \_\_\_\_; Zone Change No. \_\_\_\_ and the accompanying approved Preliminary Development Plan, per Ordinance No. \_\_\_\_\_.

(b) Number of Dwelling Units, Density, and Intensity. DEVELOPER may develop thirty-six (36) single family detached homes on the Property, consistent with the Existing City Regulations and any variances therefrom approved by CITY as described in the Existing Development Approvals. At DEVELOPER's option, DEVELOPER may develop fewer units than the number identified in this subsection.

(c) Maximum Height and Size of Buildings. Maximum height and size of Project buildings are as permitted in accordance with the Existing City Regulations, including the Existing Development Approvals.

(d) Moratoria. Phasing of Development. No moratorium, ordinance, resolution, or other land use regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the Term of this Agreement whether

affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by CITY. In the event of any such action, whether initiated by ordinance, resolution, initiative, or some other process, DEVELOPER shall continue to be entitled to apply for and receive Future Development Approvals and to proceed with Development of the Project in accordance with the Existing City Regulations, subject only to CITY's Reservation of Authority set forth in Section 4.2, limitations described in Section 4.3, and the terms of this Agreement.

(e) Development Fees and Assessments. Subject to the provisions of Section 3.3 hereof, CITY may impose upon DEVELOPER in connection with the Project only those Development Fees and assessments provided for by Existing City Regulations, as identified in Exhibit D, not to exceed the amounts applicable as of the Effective Date of this Agreement, as reflected in Exhibit D, subject to the credit to be provided DEVELOPER as described in Section 4.9 hereof, except as provided for in Section 3.8, herein.

**4.2 Reservation of Authority.** Notwithstanding anything to the contrary set forth in Section 4.1 above, in addition to the Existing City Regulations, only the following new City Regulations adopted or amended by CITY after the Effective Date may be applied to the Project. The contents of this Section 4.2 are referred to as the CITY's "Reservations of Authority".

(a) Public Health and Safety. City Regulations adopted after the Effective Date of this Agreement that are necessary in order to prevent a condition dangerous to the health or safety of the residents of the Project or adjoining properties may be applied to the Project.

(b) Building and Improvement Standards. Current and future Building and Improvement Standards may be applied to the Project, except that any future amendment thereto which reduces the amount of land within the Property which can be utilized for structures and improvements or increases the amount of open space within the Project beyond what is shown in the Existing Development Approvals, including the Preliminary Development Plan, shall not be considered a provision of any of the Building and Improvement Standards included within the exception provided by this subsection 4.2(b) and shall not apply to the Project unless it complies with another exception under this Section 4.2.

(c) Processing Fees and Charges. Legally allowed processing fees and charges of every kind and nature imposed or required by CITY to cover the actual costs to CITY of (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of DEVELOPER hereunder; may be imposed on the Project, even if adopted or increased after the Effective Date, provided such fees are applied consistently to all comparable applications or projects Citywide.

(d) Voter-Approved Taxes. Voter-approved taxes may be imposed on the Project, in accordance with the provisions of any such tax.

#### **4.3 State and Federal Laws; Regulation by Other Public Agencies.**

**4.3.1 State and Federal Laws.** Existing and future state and federal laws and regulations may be applied to the Project. In the event that state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to

comply with such state and federal laws and regulations, in which event this Agreement shall remain in full force and effect to the extent that the Agreement, as modified, is not inconsistent with such laws and regulations and performance of the remaining provisions would not be inconsistent with the intent and purposes of this Agreement.

**4.3.2 Regulation by Other Public Agencies.** It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the Development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies.

**4.4 CITY Cooperation and Grant of Future Development Approvals.** CITY will cooperate with DEVELOPER and take such additional actions as may be reasonably requested by DEVELOPER to implement this Agreement, including but not limited to consideration and approval of all Future Development Approvals required for Development of the Project and formation of a special benefit assessment district(s) for the financing of the construction, improvement, or acquisition of any component of the Project. CITY shall perform any and all of its obligations under this Agreement in a timely manner and CITY's failure to carry out any of its obligation under this Agreement in a timely manner shall relieve DEVELOPER from compliance with any reasonably related requirement or obligation under this Agreement.

**4.5 Sewer and Water Capacity.** DEVELOPER shall design, construct and fund, or, alternatively, if permitted by the CITY, contribute 100% of the cost of constructing the water system improvements to serve the Project. For any off-site water system improvements that the DEVELOPER is obligated to design and fund and CITY is obligated to construct, CITY shall use its best efforts to complete such improvements in an expeditious and timely manner to enable timely issuance of Project building permits and certificates of occupancy. Any failure by CITY to construct or complete any

such Public Facility necessary for operation of the Project, or any phase thereof that makes it impossible for DEVELOPER to comply with the Existing Development Approvals and Future Development Approvals, to comply with this Agreement, or to develop the Project, shall not constitute a breach or default by DEVELOPER under this Agreement. CITY acknowledges that, provided those water and sewer improvements to be constructed by DEVELOPER are developed, there is adequate water and sewer capacity to serve the Project.

**4.6 Acceptance of Dedications.** CITY shall accept in a timely manner all dedications and conveyances of Public Facilities by DEVELOPER.

**4.7 Credit and Reimbursement Generally.** At the time of filing of a final subdivision map for any portion of the Project, CITY shall reimburse DEVELOPER, to the extent that CITY has received contributions defraying the cost of such improvements from other benefited property owners, or consider establishment of a benefit assessment district or reimbursement agreement, or grant a credit for, all funds expended, costs incurred or improvements made by DEVELOPER to the extent that DEVELOPER'S contributions or improvements directly benefit other development.

**4.8 Credit for Infrastructure.** City agrees to condition approval of any project that would rely on DEVELOPER-funded or DEVELOPER-constructed Public Facilities upon payment of such other project's fair share of the cost of such Public Facilities improvements to be calculated on a per-unit basis.

**4.9 Payment for Park Expansion Property.**

**4.9.1 Calculation of Dedication Credit.** CITY and DEVELOPER agree that in consideration of DEVELOPER's dedication of the Park Expansion Property, as provided in Section 3.2 hereof, DEVELOPER shall receive a credit

toward any and all Development Fees in an amount equal to the “Fair Market Value” (as specified below) of the Park Expansion Property (1.003 acres or 43,691 sq.ft.), reduced by the square footage of the land the Project is required to dedicate for park and recreational facilities pursuant to Municipal Code § 10-16.21 (36 x 748 sq.ft./unit = 26,928 sq.ft.). The Fair Market Value of the net square footage of the Park Expansion Property as described in the preceding sentence (i.e., 16,763 sq.ft.) is referred to herein as the “Dedication Credit;” provided, however, the foregoing notwithstanding, DEVELOPER shall have the right, at its election, to pay in cash the in-lieu fees for park and recreational facilities that the Project is required to pay under Municipal Code § 10-16.30, at the current rates as specified in Exhibit D, and if such fees are so paid or agreed to be paid the Dedication Credit shall be calculated on the basis of the Fair Market Value of the entire Park Expansion Property (i.e., 1.003 acres or 43,691 sq.ft.).

**4.9.2 Fair Market Value.** The “Fair Market Value” is Fifteen and no/100 Dollars (\$15.00) per square foot of land area.

**4.9.3 Affordable Unit In Lieu Fee.** Based on findings by the City Council included in the recitals to this Agreement, the CITY has determined that the City Council finds and determines pursuant to Municipal Code § 10-17.500 that application of the Affordable Unit in Lieu Fee (“AUIL Fee”) is appropriate for the Project; provided, however, notwithstanding any contrary provision of this Agreement, the AUIL Fee shall not be included as part of the Development Fees to which the Dedication Credit may be applied; provided, further, however, DEVELOPER shall have the right, at its election, in lieu of paying the AUIL Fee in cash, to construct and offer for sale as part of the Project the number of Affordable Units required pursuant to Municipal Code § 10-17.205.

**4.9.4 Payment in Cash.** Notwithstanding any contrary provision of Section 4.9.1, CITY shall have the right, at its election, in lieu of providing to DEVELOPER a credit toward Development Fees, to pay DEVELOPER in cash or cash equivalent for the Park Expansion Property an amount equal to the Dedication Credit. If CITY elects to pay in cash, it shall so notify DEVELOPER of such election in writing within one hundred twenty (120) days following the dedication (the "Cash Payment Notice"). If CITY does not give the Cash Payment Notice before the end of said 120-day period, CITY shall be deemed to have waived its right to pay in cash and DEVELOPER shall thereafter be entitled to the credit toward Development Fees in the amount of the Dedication Credit. If CITY gives the Cash Payment Notice in a timely manner, DEVELOPER shall be required within ten (10) days of receipt of such notice to notify CITY in writing whether it will pay the in-lieu fees for park and recreational facilities for the Project in cash, and the amount of the Dedication Credit shall then be calculated as described in Section 4.9.1. Within thirty (30) days following DEVELOPER's receipt of the Cash Payment Notice, CITY shall pay to DEVELOPER in cash an amount equal to the Dedication Credit. Irrespective of the CITY's decision to provide the Dedication Credit or pay for the Park Expansion Property in cash, CITY shall pay the recording fees for the dedication deed and the Greenwood Park Parcel Map and all other costs associated with the closing of such transaction.

## **5. PERIODIC REVIEWS.**

**5.1 Annual Review.** CITY and DEVELOPER shall review the performance of this Agreement, and the Development of the Project, once each year on the anniversary of the Effective Date. The CITY's reasonable costs of monitoring this Agreement shall be

paid by DEVELOPER. As part of such annual monitoring review, within thirty (30) days after each anniversary of this Agreement: (1) DEVELOPER shall deliver to CITY: (a) a then current build-out phasing plan for the Project; and (b) all information reasonably requested by CITY regarding DEVELOPER's performance under this Agreement demonstrating that DEVELOPER has complied in good faith with terms of this Agreement; and (2) DEVELOPER shall deliver to CITY: (a) all information reasonably requested by CITY regarding DEVELOPER's performance under this Agreement demonstrating that DEVELOPER has complied in good faith with the terms of this Agreement. If as a result of such periodic review, CITY finds and determines, on the basis of substantial evidence, that DEVELOPER has not complied in good faith with any of the terms or conditions of this Agreement, CITY may terminate this Agreement as provided in Section 10.1.

## **6. TRANSFERS AND ASSIGNMENTS.**

### **6.1 Transfers and Assignments of Rights and Interests.**

**6.1.1 General.** Neither party shall assign or transfer any of its interests, rights or obligations under this Agreement to a third party without the written consent of the other, which consent shall not be unreasonably withheld. The CITY shall promptly consent to any proposed assignment provided that: (1) assigning party is not in default of this Agreement; and (2) the purchaser or assignee has executed any document reasonably requested by the CITY with respect to the assumption of the assigning party's obligations under this Agreement. In the event DEVELOPER assigns or transfers its interest in the Project, the assigning party shall ensure that any such assignment or transfer includes an assignment or transfer of the assigning party's obligations under this Agreement. DEVELOPER shall also provide CITY with sufficient documentation of such assignment or transfer of the assigning party's duties and obligations. The term "assignment" as used in

this Agreement shall include successors-in-interest to the CITY and DEVELOPER that may be created by operation of law. Notwithstanding the foregoing, CITY shall have the right to sell, assign or transfer to another public agency CITY's interest in the Park Expansion Property provided such property continues to be used for public park purposes. Any attempt to assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6, shall be null and void and of no force and effect.

**6.1.2 Subject to Terms of Agreement.** Following any assignment or transfer of any of the rights and interests of DEVELOPER under this Agreement pursuant to this Section, all exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the DEVELOPER.

**6.1.3 Release of DEVELOPER.** Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this Agreement, DEVELOPER shall each continue to be obligated under this Agreement unless released or partially released by CITY pursuant to this Section 6.1.(c), which release or partial release shall be provided by CITY upon the full satisfaction of the following conditions by the party to be released:

(a) The party to be released is not then in default under this Agreement;

(b) The party to be released has obtained the consent of CITY to the assignment as provided in Section 6.1.1; and

(c) The assignee or transferee has assumed those duties and obligations as to which the party to be released is requesting to be released and such assignee or transferee has provided CITY with any security or assurances equivalent to

those provided by the party to be released designed to ensure the duties and obligations of the party to be released will be fully and strictly performed as provided in this Agreement.

## **7. TERM OF AGREEMENT.**

**7.1 Initial Term.** This Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for ten (10) years (“Term”).

**7.2 Discretionary Extension of Term.** In addition to the Initial Term, in the event that the parties determine that a longer period is necessary to achieve the purposes of this Agreement, the term of the Agreement may be extended an additional five (5) years in the discretion of the City Council and upon agreement by DEVELOPER, its successors or assigns.

**7.3 Rights and Duties Following Termination or Expiration.** Upon the termination or expiration of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligations to have been performed prior to said termination or which survive such termination pursuant to the Existing Development Approvals, Implementation Agreement(s) or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination.

## **8. AMENDMENT.**

**8.1 Amendment.** Except as otherwise specifically provided in this Agreement, this Agreement may be amended or canceled only by the mutual agreement of the parties in accordance with Government Code § 65868 and the Development Agreement Ordinance in a writing executed by the parties and recorded in the official records of the County of Alameda.

**8.2 Amendment of Existing Development Approvals.** Except as otherwise expressly provided, the Project shall proceed in accordance with the Existing Development Approvals, which may be amended by the City Council only upon application by DEVELOPER or an approved assignee. Additionally, Existing Development Approvals and Future Development Approvals may be amended or modified only in the following manners:

(a) Solely upon application by DEVELOPER or an approved assignee, in which case the Planning Director may administratively amend or modify the Preliminary Development Plan if the Director determines that the requested amendment or modification is substantially consistent with this Agreement.

(b) Except as provided herein, amendment to or modification of any Existing Development Approval shall comply with the procedural provisions of the Existing City Regulations. Any amendment to or modification of any Future Development Approval, once granted, shall comply with the procedural provisions of the City Regulations in effect on the date of application for such amendment or modification.

**9. PROCESSING OF REQUESTS AND APPLICATION; OTHER GOVERNMENT PERMITS.**

**9.1 Processing.** Upon approval and execution of this Agreement, DEVELOPER and CITY shall promptly commence and diligently proceed, respectively, to complete all required steps necessary for the implementation of this Agreement, consideration and approval of Future Development Approvals, and Development of the Project, including but not limited to the following: processing and checking of all applications, maps, site plans, development plans, land use plans, grading plans, building plans and specifications and environmental assessments and reports and holding all required public hearings for permits, entitlements or approvals relating to the

development of the Project, including, but not limited to, all site plan approvals, final development plans, parcel maps, subdivision maps, subdivision improvement agreements, grading permits, building permits, lot line adjustments, encroachment permits and related matters as necessary for the completion of development of all lots comprising the Project. DEVELOPER shall provide to CITY, in a timely manner, all documents, applications, plans and other information necessary for the CITY to carry out its obligations hereunder. DEVELOPER shall cause its planners, engineers and all other consultants to similarly provide such materials in a timely manner. It is the express intent of this Agreement that the parties cooperate and diligently work to secure approval of all Future Development Approvals and to implement Development of the Project in accordance with the Existing Development Approvals and Future Development Approvals. DEVELOPER and CITY each shall use their best efforts to effectuate the purposes of this Agreement.

**9.2 Other Governmental Permits.** DEVELOPER shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for Development of, or provision of services to, the Project. CITY shall cooperate with DEVELOPER in its endeavors to obtain such permits and approvals.

## **10. DEFAULT AND REMEDIES.**

**10.1 Termination of Agreement for Default of DEVELOPER.** CITY in its reasonable discretion may terminate this Agreement for any failure by DEVELOPER either to perform any material duty or obligation hereunder or to comply in good faith with the material terms of this Agreement (hereinafter referred to as “default”); provided, however, CITY may terminate this Agreement pursuant to this Section only: (1) after providing written notice to DEVELOPER setting forth the nature of the default and the actions, if any,

required by the defaulting party to cure such default; and (2) (a) where the default can be cured, the defaulting party has failed to take such actions and cure such default within ninety (90) days after the date of such notice; or (b) where the default cannot be cured within such ninety (90) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such ninety (90) day period and to diligently proceed to complete such actions and cure such default.

**10.2 Default by CITY.** CITY shall be “in default” in performance of its obligations hereunder only: (1) after DEVELOPER has provided written notice to CITY setting forth the nature of the default and the actions, if any, required by CITY to cure such default; and (2) (a) where the default can be cured, CITY has failed to take such actions and cure such default within ninety (90) days after the date of such notice; or (b) where the default cannot be cured within such ninety (90) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such ninety (90) day period and to diligently proceed to complete such actions and cure such default.

**10.3 Remedies.** In any proceeding relating to any issue arising under this Agreement, the parties may mutually agree to mediation or non-binding arbitration of their dispute. Alternatively, either party may, in addition to any other rights or remedies it may have at law or in equity institute an action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto, after exhaustion of administrative remedies.

## **11. THIRD PARTY LITIGATION.**

**11.1 Limitation.** As set forth above, CITY has determined that this Agreement is consistent with the Existing City Regulations (including the General Plan) and all legal requirements of State law. The parties acknowledge that:

(a) in the future there may be challenges to legality, validity and adequacy of the Existing City Regulations; and

(b) if successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 11, CITY shall have no liability under this Agreement for any failure of CITY to perform under this Agreement or the inability of DEVELOPER to develop the Property as contemplated by this Agreement which results from a judicial determination that, on the Effective Date, or at any time thereafter, the City Regulations, or portions thereof, are invalid or inadequate or not in compliance with law.

**11.2 Future Amendments to General Plan.** If for any reason the City Regulations or any part thereof is hereafter judicially determined as provided above to be out of compliance with the state or federal Constitutions, laws or regulations, this Agreement shall remain in full force and effect. Upon the adoption or amendment of any City Regulations which are necessary in order to comply with State or federal Constitutions, laws or regulations to cure such invalidity or inadequacy, together with any amendments to the Existing Development Approvals which are necessary in order to comply with such new or revised City Regulations, the reference in Section 4 to the General Plan shall thereafter mean and refer to such new or amended General Plan, Existing Development Approvals, and such new or revised City Regulations.

**11.3 Suspension of Obligations.** In the event that Development of the Property is enjoined or prevented from proceeding by any judicial order or determination in connection with the determinations regarding the City Regulations referred to above and the subsequent proceedings with respect thereto referred to in subsection (b) of this

Section, the time for performance of the obligations of the parties hereunder shall be extended as provided in Section 14.12.

**11.4 Opportunity to Intervene.** In the event of a challenge to the General Plan or other City Regulation that would affect the Development of the Property, CITY shall provide notice of such action to DEVELOPER and DEVELOPER may elect to intervene in such action as a real party in interest. CITY agrees not to oppose such intervention.

**11.5 Contingent Payment for Park Expansion Property.** Any provision of this Agreement to the contrary notwithstanding, if as a result of any judicial determination CITY is unable to perform its obligations hereunder relating to the Project, and if as a consequence of such judicial determination the number of residential units DEVELOPER may construct is reduced, or if there is any material alteration of the timing or sequencing of phasing of development of the Project, or if for any other reason DEVELOPER is unable to develop the Property as contemplated by this Agreement, Developer shall notify CITY of such problem. If within ninety (90) days of CITY's receipt of such notice DEVELOPER and CITY are unable to reach agreement on modifications of the Project that conform to the requirements of such judicial determination or on an alternative project involving other property elsewhere in the CITY to which the Dedication Credit may be applied that are/is satisfactory to DEVELOPER in its sole and absolute discretion, CITY shall be required to pay to DEVELOPER in cash an amount equal to the Dedication Credit, which payment shall be made within thirty (30) days following the end of said 90-day period.

**12. EFFECT OF AGREEMENT ON TITLE.**

**12.1 Covenants Run With The Land.** Subject to the provisions of Sections 6 and 14:

(a) All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns;

(b) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

(c) Each covenant to do or refrain from doing some act on the Property hereunder (A) is for the benefit of and is a burden upon every portion of the Property, (B) runs with such lands and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

**12.2 No Dedication or Lien.** Nothing herein shall be construed as constituting a dedication or transfer of any right or interest in, or as creating a lien with respect to, the

title to the Property. Any dedication or transfer of any right or interest in the Property shall be made only in accordance with this Agreement.

### **13. HOLD HARMLESS**

**13.1 Hold Harmless: DEVELOPER's Activities.** DEVELOPER hereby agrees to, and shall defend, indemnify and hold harmless CITY and its elected and appointed boards, commissions, officers, agents, and employees from any and all claims, costs and liability for any damages personal injury or death, which may arise, directly or indirectly, from DEVELOPER's or DEVELOPER's contractors', subcontractors', agents', or employees' operations under this Agreement, whether such operations be by DEVELOPER or by any of DEVELOPER's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for DEVELOPER or any of DEVELOPER's contractors or subcontractors.

**13.2 Hold Harmless: Challenge of Agreement.** DEVELOPER further agrees to indemnify, hold harmless, pay all costs, including costs of suit and attorneys' fees, and provide a defense for CITY, upon CITY's tender, in any action challenging the validity of this Agreement or relating to any of the Existing Development Approvals, including, but not limited to compliance with any requirement of law, approval or action which is a condition precedent to Development of any portion of the Property.

### **14. MISCELLANEOUS PROVISIONS.**

**14.1 CITY Acceptance of Mitigation.** CITY acknowledges and agrees that the dedication of the Park Expansion Property and Development of the Project consistent with the Existing Development Approvals shall constitute full and complete satisfaction of required mitigation of impacts on recreational facilities and parkland, and public open space and meets all CITY requirements regarding same.

**14.2 Recordation of Agreement.** The City Clerk of City shall cause this Agreement to be recorded within ten (10) business days after the execution of this Agreement by DEVELOPER and by CITY's City Manager pursuant to Ordinance No. \_\_\_ in the Official Records of the County of Alameda. Any amendment or cancellation of this Agreement shall be immediately recorded in the Official Records of the County of Alameda.

**14.3 Entire Agreement.** This Agreement sets forth and contains the entire understanding and agreement of the parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

**14.4 Severability.** If any term, provision, covenant or condition of this Agreement, including but not limited to the Exhibits to this Agreement, shall be determined invalid, void or unenforceable by a final determination by a court of competent jurisdiction, the remainder of, this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

**14.5 Integration and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

**14.6 Section Headings.** All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

**14.7 Singular and Plural.** As used herein, the singular of any word includes the plural.

**14.8 Joint and Several Obligations.** If any obligation of DEVELOPER to CITY is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

**14.9 Time of Essence.** Time is of the essence in:

(a) The performance of the provisions of this Agreement as to which time is an element; and

(b) The resolution of any dispute which may arise concerning the obligations of DEVELOPER and CITY as set forth in this Agreement.

**14.10 Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

**14.11 No Third Party Beneficiaries.** The only parties to this Agreement are DEVELOPER and CITY. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

**14.12 Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations other than

CITY's, litigation (including challenges to this Agreement, the Existing Development Approvals, or the Future Development Approvals) or other causes beyond such party's control. If any such events shall occur, the Term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

**14.13 Attorneys' Fees.** In any action or undertaking between the parties hereto to enforce the provisions of this Agreement, the prevailing party in such action shall be entitled to recover from the losing party its attorneys' fees and costs of suit.

**14.14 Mutual Covenants.** The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

**14.15 Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent certified mail, postage prepaid and addressed as follows:

If to CITY:                   **[CITY NOTICE ADDRESS?]**

With a copy to:

Michael Lawson  
City Attorney  
City of Hay ward  
777 "B" Street Hayward, CA 94541-5007

If to  
DEVELOPER:               Sunny Tong  
Chang Income Property Partnership LP,

Barrett Community Hospital Series (R14), a  
Delaware limited partnership  
520 South El Camino Real, 9th Floor  
San Mateo, CA 94402-1722

With a copy to: J. David Shields, Esq.  
974 Rolling Woods Way  
Concord, CA 94521-5403

Any notice given as required herein shall be deemed given seventy-two (72) hours after deposit in the United States mail or upon receipt. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

**14.16 Successors and Assigns.** Subject to the provisions of Section 6, the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

**14.17 Counterparts.** This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**DEVELOPER:**

Chang Income Property Partnership LP, Barrett Community Hospital Series (R14), a Delaware limited partnership

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY:**

City of Hayward

By: \_\_\_\_\_

Its: \_\_\_\_\_

City Manager

Approved as to Form:

By: \_\_\_\_\_

Its: \_\_\_\_\_

City Attorney

- Exhibits:
- A Legal Description of Property
  - B Existing Development Approvals
  - C List of Future Development Approvals
  - D Development Impact Fees and Assessments to Be Applied to Project
  - E. Park Expansion Property

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**

**LIST OF EXISTING DEVELOPMENT APPROVALS**

1. General Plan Amendment
2. Zone Change (Planned Development District and associated Preliminary Development Plan)
3. Park Expansion Parcel Map

**EXHIBIT C**

**LIST OF FUTURE DEVELOPMENT APPROVALS**

1. Vesting Tentative Subdivision Map
2. Precise Development Plan
3. Improvement and Grading Plans
4. Final Subdivision Maps
5. Subdivision Agreements
6. Building Permits
7. Subdivision Improvements Acceptance
8. Certificates of Occupancy

**EXHIBIT D**

**DEVELOPMENT IMPACTS FEES AND ASSESSMENTS TO BE APPLIED TO PROJECT**

**EXHIBIT E**

**PARK EXPANSION PROPERTY**



(N) PARK  
43,704 SF (1.003 ACRES)

EDEN AVENUE

DENTON AVENUE

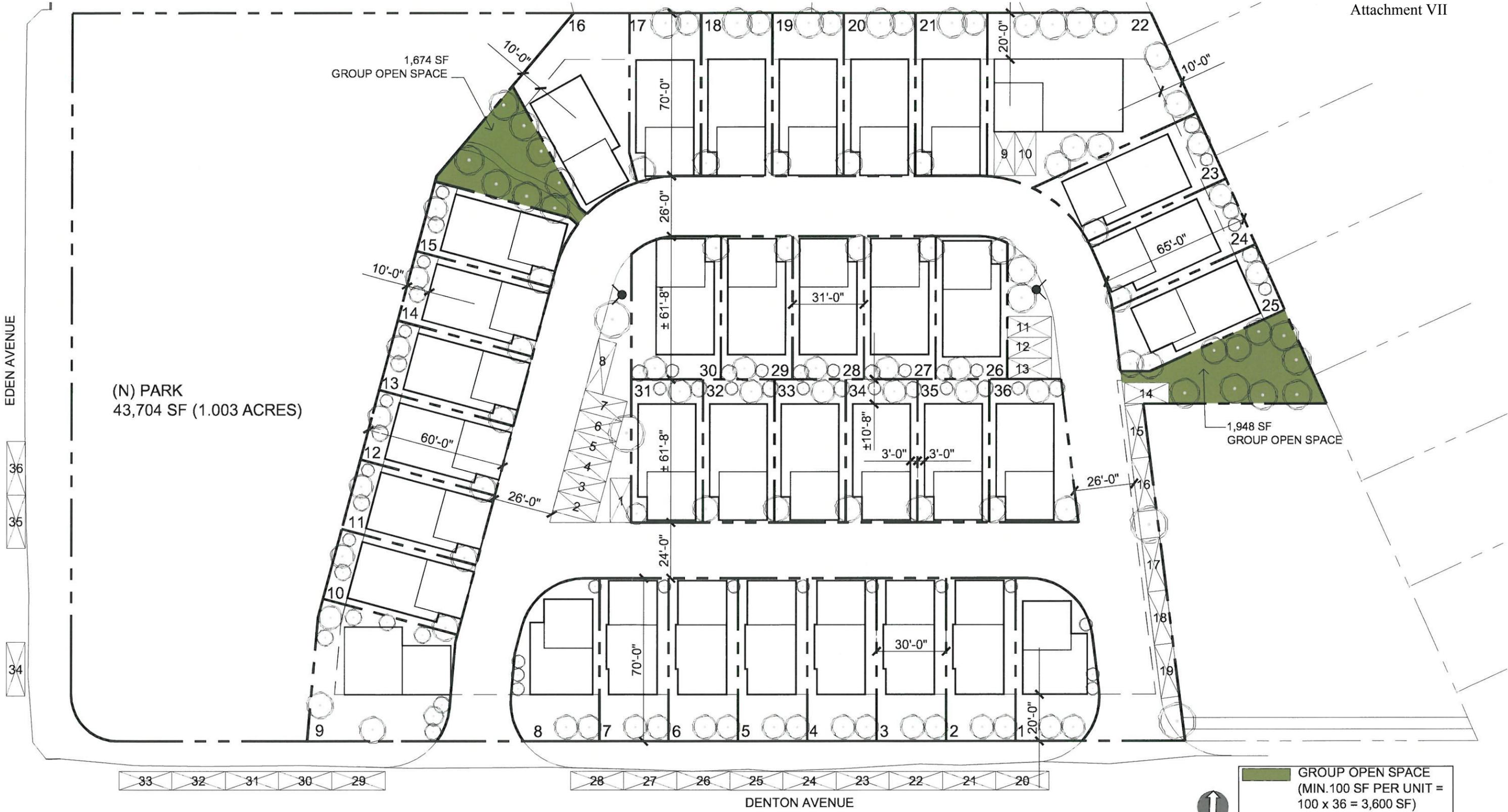
1 SITE PLAN  
1/40" = 1'-0"

ILLUSTRATIVE SITE PLAN



**GREENWOOD HOMES**  
24250 EDEN AVENUE, HAYWARD, CA

**A-02**  
AUGUST 08, 2011



1 SITE PLAN  
1/40" = 1'-0"

**SITE PLAN ILLUSTRATING GROUP OPEN SPACE**



1 SITE PLAN  
1/40" = 1'-0"

SITE PLAN ILLUSTRATING PRIVATE OPEN SPACE



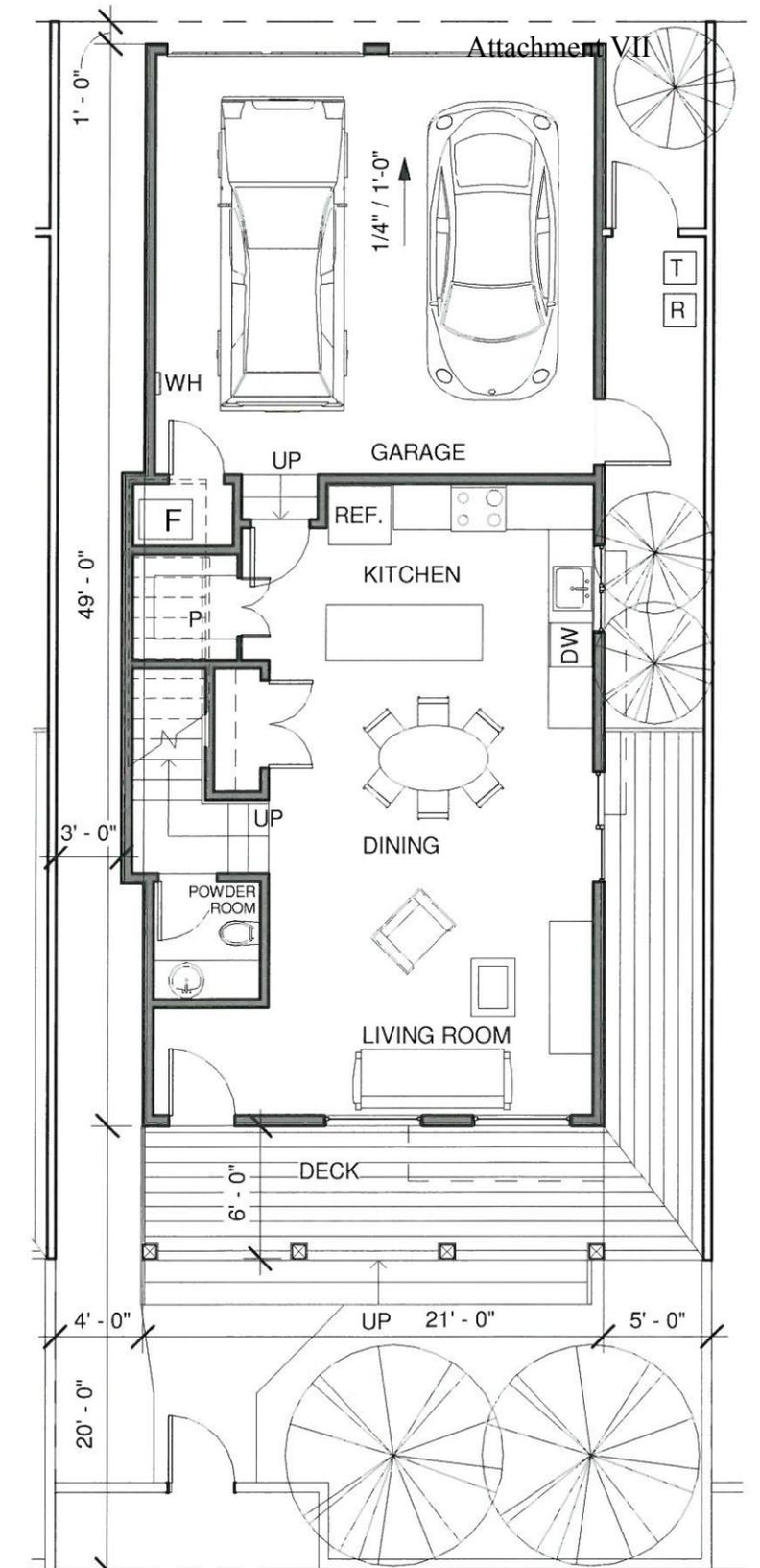
4 WEST ELEVATION  
1/8" = 1'-0"



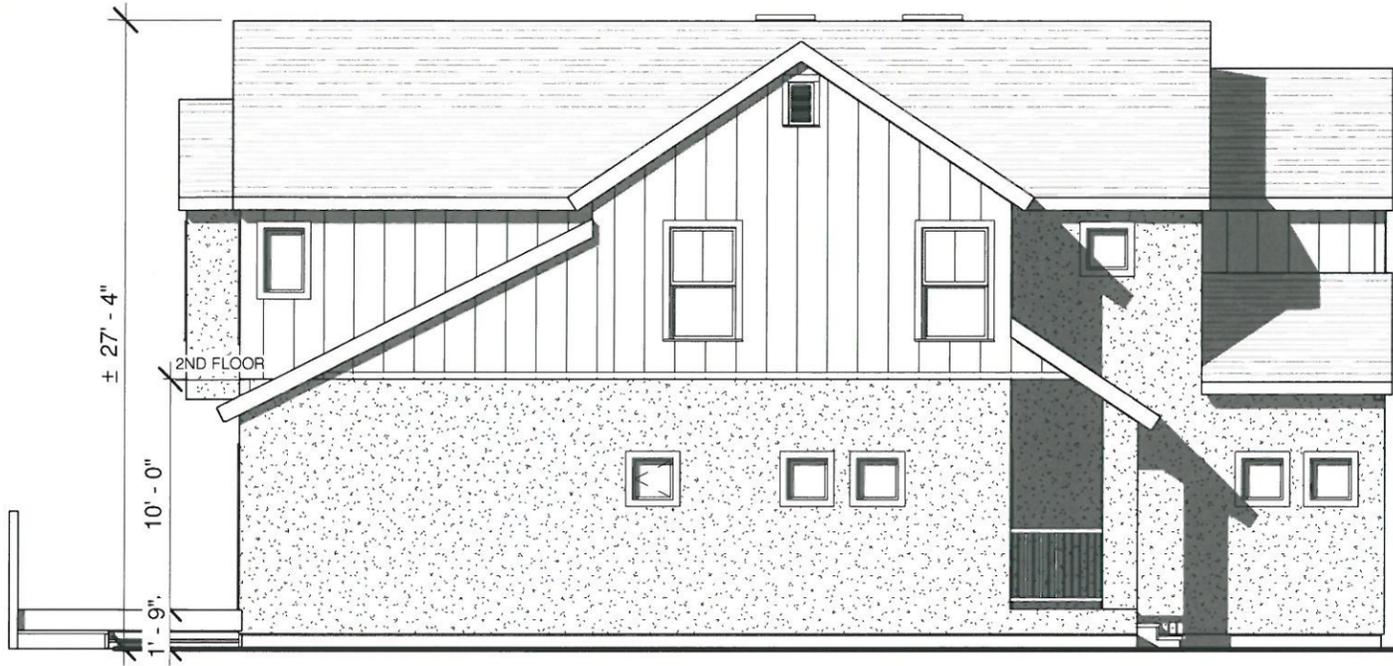
3 SOUTH ELEVATION  
1/8" = 1'-0"



2 SECOND FLOOR  
1/8" = 1'-0"



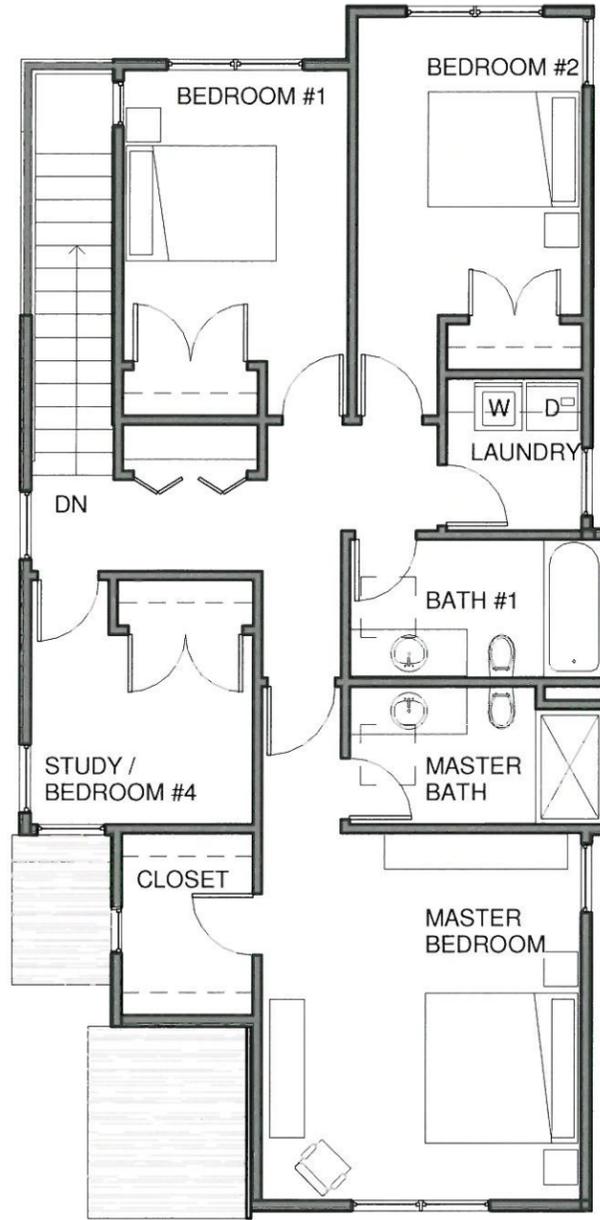
1 FIRST FLOOR  
1/8" = 1'-0"  
UNIT A - PLANS & ELEVATIONS



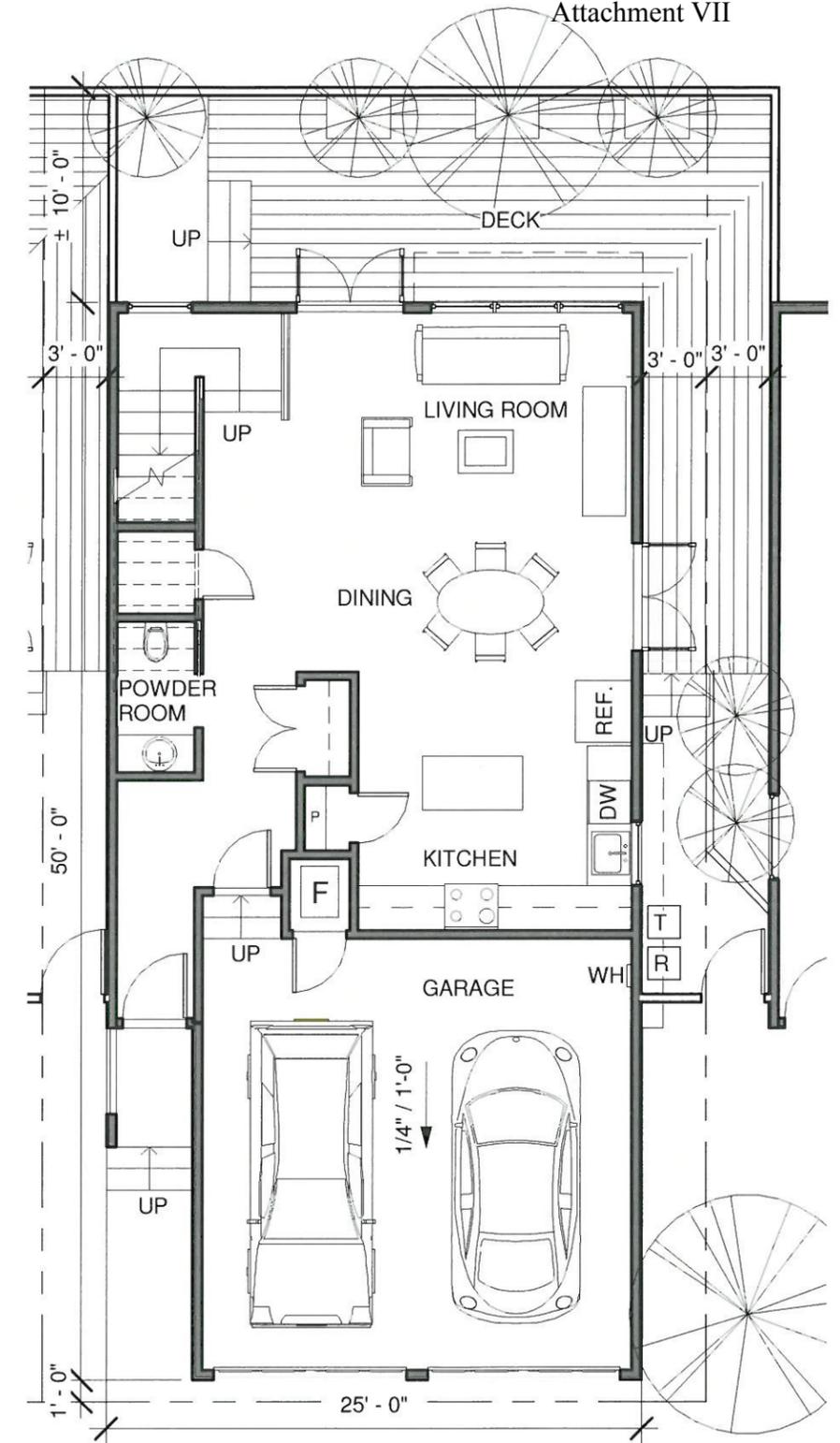
④ WEST ELEVATION  
1/8" = 1'-0"



③ SOUTH ELEVATION  
1/8" = 1'-0"

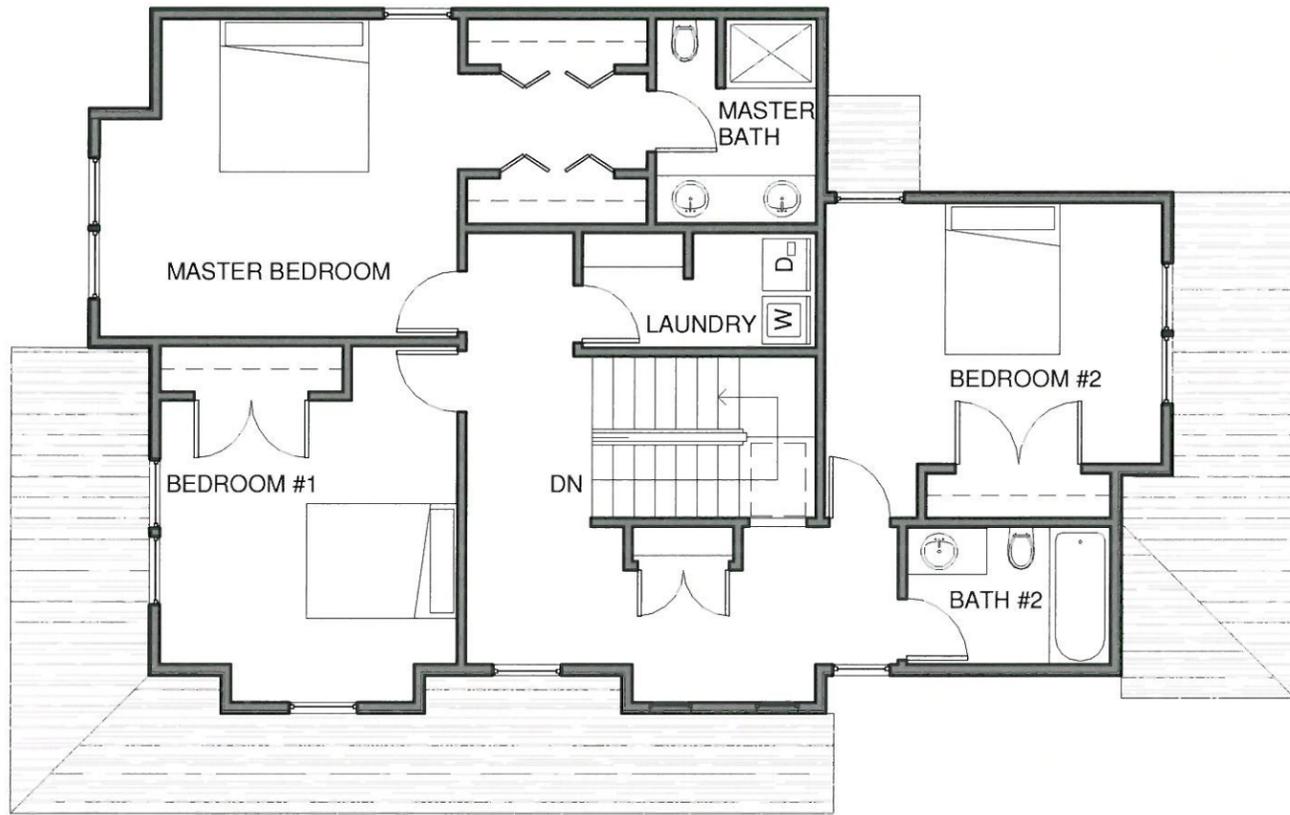


② SECOND FLOOR  
1/8" = 1'-0"

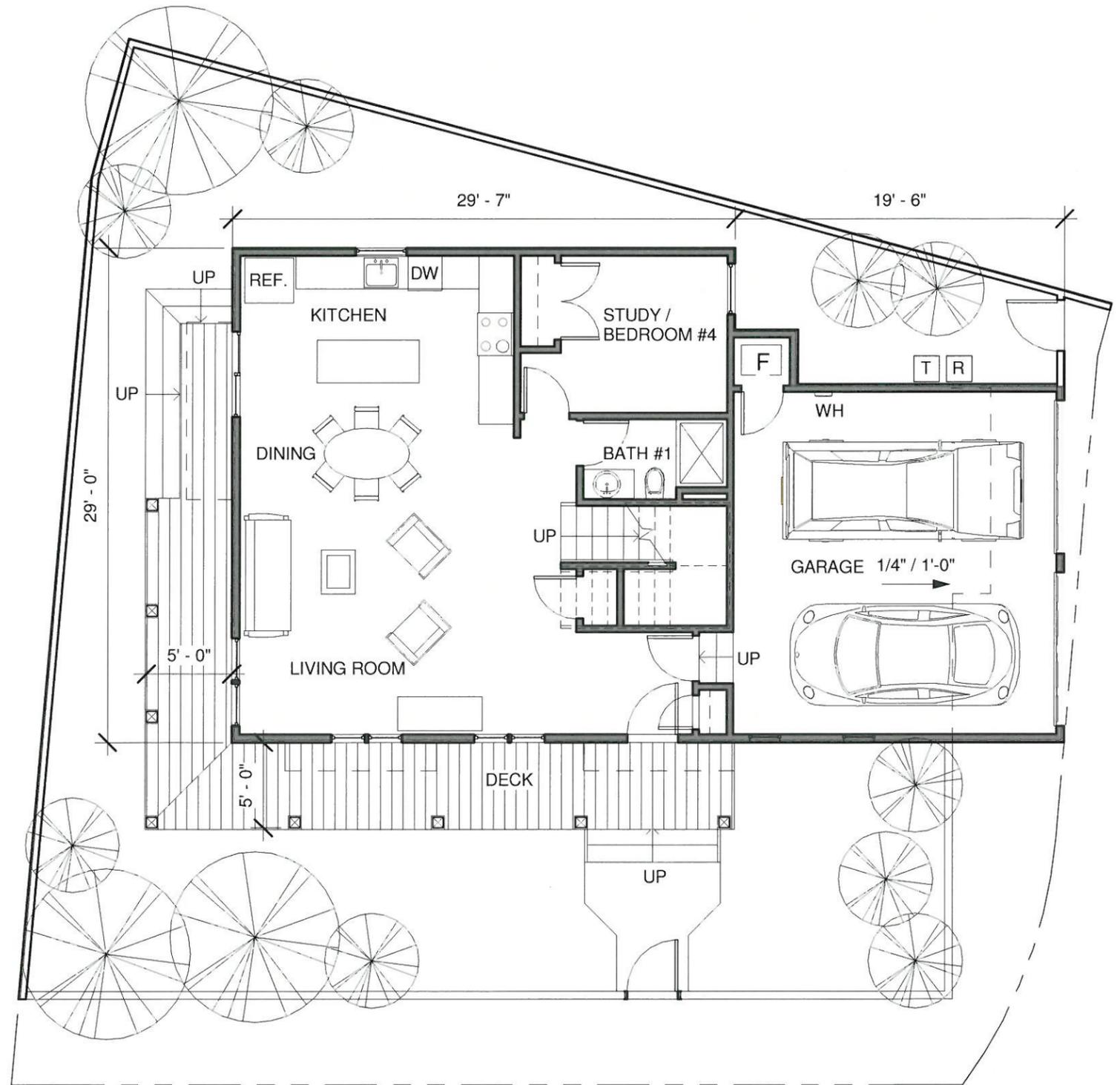


① FIRST FLOOR  
1/8" = 1'-0"

**UNIT B - PLANS & ELEVATIONS**



2 SECOND FLOOR  
1/8" = 1'-0"



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

UNIT C - PLANS



② EAST ELEVATION  
1/8" = 1'-0"



① SOUTH ELEVATION  
1/8" = 1'-0"

**UNIT C - ELEVATIONS**



**GREENWOOD HOMES**  
24250 EDEN AVENUE, HAYWARD, CA

**A-09**

**AUGUST 08, 2011**



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, July 26, 2012, 7:00 p.m.  
777 B Street, Hayward, CA94541**

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**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  
(One vacancy)  
CHAIRPERSON: Márquez  
Absent: COMMISSIONER: McDermott  
CHAIRPERSON:

Commissioner Loché led in the Pledge of Allegiance

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

General Public Present: 16

**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 29225 Sims Court in the Industrial (I) District (APN 464-0100-015-03).

Chair Márquez noted that the applicant had requested to continue the item to Sept. 20<sup>th</sup> and that staff had granted the request.

2. Zone Change Application PL-2010-0372 / Tentative Tract Map Application PL-2010-0373 – John Weber (Applicant/Owner) – Request for a Zone Change from Light Manufacturing District to Planned Development District and a Tentative Tract Map to create 14 parcels. The project is located at 3596 Baumberg Avenue at the southerly terminus of Baumberg Avenue and Bridge Road in a Light Manufacturing District.

Associate Planner Tim Koonze gave a synopsis of the report noting he had distributed a revised set of Conditions of Approval to the Commissioners and staff. Conditions 1, 2 and 93 were amended to add a Conservation Easement for the mitigated wetlands and a Deed Restriction for the remaining open space. Mr. Koonze also noted that a reference in the report regarding the vacation of cultivation on the property by the owner was incorrect and that cultivation would continue as well as the maintenance of foraging lands for the burrowing owl.

Commissioner Lavelle asked for more information about the urban limit line identified on one of maps in the staff report. Associate Planner Koonze said the City set the line and no urban development could take place

**DRAFT**

1

outside of the line. He pointed out that the proposed development would fall within the limit line already established by the South of 92 Specific Plan. Commissioner Lavelle confirmed that the line did not correspond with the boundaries of the City and Mr. Koonze said that was correct.

Regarding the fill that would be used to raise the proposed development five feet above the 100-year flood line, Commissioner Lavelle asked what “engineered fill” was and why a rocky, natural material wouldn’t be used. Associate Planner Koonze explained that using pieces of broken concrete with dirt on top as fill could create pockets that would not meet compression tests; engineered fill was approved for the site because it could be compacted and made stable.

Commissioner Lavelle said the report mentioned streets both proposed and existing, and that the fire department would require access to the farthest portion of the new, private “Street A” and she asked staff to show her on a map where this street would be located and if it would connect with the existing Baumberg Avenue. Staff showed her the street on a map and noted that the road would be for emergency vehicles only. Commissioner Lavelle confirmed that the fence at the end of Baumberg Avenue would remain.

Commissioner Lavelle asked why the project developer was required, under Condition of Approval 18, to use decorative pavers (and the POA—Property Owners Association, to maintain them), when a new street was going in and the area was primarily industrial. Associate Planner Koonze explained that it was a combination area with some residential on both Bridge Road and Baumberg Avenue and the pavers were just a way to spruce up the area as residents passed through. Commissioner Lavelle asked if the property owner was agreeable to the condition and when staff confirmed he was, said it seemed like overkill to add pavers when the development bordered an industrial area, but concluded that if the owner was agreeable then she didn’t have a problem with it either.

Commissioner Lavelle said she appreciated the responses by staff regarding the concerns identified in a letter from the Hayward Area Shoreline Planning Agency (HASPA), but she noted there were no other comments from residents or the public. She pointed out that the public comment period was open through August 6<sup>th</sup>, and she asked if the Planning Commission could be made aware of any new comments or concerns received. Associate Planner Koonze assured Commissioner Lavelle that could be arranged and noted that staff had received two phone calls from neighbors since distributing the report packet. The first caller asked if the developer’s intent was to buy-out all residents on Bridge and Baumberg, tear everything down, and build there. Mr. Koonze said once he explained that that was not the plan, the neighbor was agreeable to the proposal. The other question was from a person with both a home and business in the area, and he wanted to know if proposed buildings would block his view of existing wetlands. Mr. Koonze explained to that caller that the area was going to be a wetland preservation area and that views would not be impacted.

Commissioner Lavelle commented that there were more residents in the area than she had been aware of and she asked if future City Council meeting notices could be sent to all residents, whether they were owners or tenants, living on Baumberg, Bridge and Arden. Associate Planner Koonze explained that all notices had gone to both owners and residents and he noted that all existing homes were considered legal and conforming until the year of 2015 at which point they would become legal, non-conforming. He explained that what this meant was that after 2015, owners could not make any major structural repairs to their homes, and/or if 50% of their home was destroyed by fire, they could not rebuild. Mr. Koonze explained that the City’s intent was to eventually move all residential structures out of the area and have an entirely industrial area.

Regarding the drainage plan that would allow storm water runoff to flow to the Eden Shores Pump Station, Commissioner Lavelle asked for confirmation that City staff would approve the plan. Associate Planner Koonze said the concept had been approved by the Alameda County Flood Control District, which runs the pump station and had indicated that the station had the capacity to take on the anticipated drainage from the new development. Mr. Koonze noted that the project engineer had conducted an extensive draining study and approved the proposed drainage plan. Commissioner Lavelle asked if plan took into consideration future



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, July 26, 2012, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

growth including both residential and industrial development and Mr. Koonze asked Development Review Engineer John Nguyen to respond. Mr. Nguyen said the preliminary plan prepared by the Project Civil Engineer and submitted to the Flood Control District, did take into consideration full development, but he noted that because the existing properties sat lower than the proposed Weber development, some onsite improvements would have to be made.

Commissioner Lavelle commented that Conditions of Approval 4 and 5 seemed to repeat each other and Associate Planner Koonze pointed out that one condition was regarding a drainage study and the other a drainage plan. Commissioner Lavelle commented that the corrections to the Conditions of Approval Mr. Koonze distributed at the beginning of the meeting seemed appropriate.

Commissioner Loché asked who would be responsible for correcting the drainage plan if it turned out to be insufficient. Associate Planner Koonze said the plan was based on the premise that 90% of the land would be developed with no percolation and only residential front landscaping. He noted that Alameda County Flood Control also based its figures on 50-year and 100-year flood levels. The drainage plan would accommodate an average rainstorm with no problem, Mr. Koonze said, and while a 100-year storm may have water lapping at the curbs, drainage would occur in short order; the drainage plan had “built in” protections. An extreme rain, like a 500-year storm couldn’t be designed for, he said, instead planners designed for what was most reasonable.

Commissioner Loché asked what was currently at the wetland mitigation site and Associate Planner Koonze said it was a vacant site with some vegetation, but no wetlands. Commissioner Loché asked if HASPA knew engineered fill was going to be used when they submitted their letter and Mr. Koonze said at the time the letter was written, he still needed to verify for and convey to HASPA that a registered soil engineer would be approving the fill content.

Commissioner Loché asked what kind of fencing would be used to separate the buffer zone from the industrial properties and Associated Planner Koonze said a cyclone fence to catch papers and he noted the property owners would be responsible for removing debris. Mr. Koonze noted that the buffer zone was an extra precaution to provide more separation between the proposed industrial uses and the open space.

Commissioner Loché said that the report stated the engineered fill would raise properties 8-9 feet above sea level and he asked if the rise in sea level anticipated in the next 50 years was considered. Associate Planner Koonze said yes, but he explained there were two different issues: 1) raising the properties above the 100-year flood zone so no flood insurance would be required by property owners, and 2) raising properties to be higher than the anticipated sea level rise by the year 2050 plus an additional 16 inches to account for the mean high tide level. Mr. Koonze noted the properties would still be a foot above that anticipated 2050 level.

Commissioner Lamnin asked if there was currently a resident living in the house at the proposed site and Associate Planner Koonze said he thought so, but deferred the question to the developer. Regarding the stated correction at the beginning of the meeting that there would be cultivation on the site, Commissioner Lamnin asked what that meant. Mr. Koonze explained that in the past hay had been grown and that would continue. Commissioner Lamnin asked if it was anticipated that native plant species would return and Mr. Koonze said not for the cultivated portion of the site. Commissioner Lamnin noted besides protected animal species, pickle weed was a protected plant species and she said she didn’t see any mention of it in the staff report. Mr. Koonze said the area was surveyed and only three pickle weed plants were found and they were either dead or dying. Mr. Koonze noted proper growing conditions didn’t exist for pickle weed and said the only species

of concern identified by the Department of Fish and Game was the burrowing owl. Commissioner Lamnin noted special accommodations had been made for the ground squirrel and she asked if the squirrels would overrun the owls. Mr. Koonze said the two were friends because the owls used the tunnels created by the squirrels for their nests and Commissioner Lamnin observed the two kept each other in balance.

Commissioner Lamnin asked if the formation of a POA was common for industrial areas and Associate Planner Koonze said it was common for industrial areas that had private streets that would need to be maintained.

Commissioner Lamnin asked if there was any risk of leaching from the engineered fill that could potential harm the protected species and Associate Planner Koonze said no, it was “clean” fill. Commissioner Lamnin asked about the stability of the fill in terms of earthquake safety and Mr. Koonze said it would be made as stable as possible and that a soil engineer would make a recommendation regarding foundation design under those conditions when the developer applied for a building permit.

Commissioner Lamnin asked if the streets surrounding the residential area would support industrial vehicle access and Mr. Koonze said the streets where industrial uses tie into residential had already been improved.

Regarding the sub conditions shown under Condition of Approval number 112, Commissioner Lamnin noted there would be a lot of water applied to the site, and she asked if the water would come in before the sewer improvements and if there would be any problems. Mr. Koonze explained that the water mentioned would be applied by trucks twice daily to keep dust from floating into the existing neighborhoods and open lands during construction. Mr. Koonze noted these were standard conditions for construction sites. Given that this area required a lot of sewer improvements, Commissioner Lamnin expressed concern that the added water might cause problems and Mr. Koonze assured her it would be a light dusting of water to keep the dirt down, not enough to create mud.

Commissioner Lamnin suggested using CC&Rs (Conditions, Covenants & Restrictions) to restrict heavy water usage by incoming industrial uses. Associate Planner Koonze clarified that she was concerned about water discharge not usage and he explained that any discharge would go down storm drains and that businesses would be restricted from discharging water onto paved areas including for washing vehicles; businesses would have to create a wash area where water would discharge into a drain. Commissioner Lamnin asked if the grassy swells used to filter storm water for pollutants, mentioned in Condition 34, would attract animals that could be potentially harmed by the pollutants. Mr. Koonze said no, the swells were only grassy strips (for example, at Costco or Target) that the water ran through on the way to the storm drain.

Commissioner Faria asked if the Property Owners Association would be strictly for the proposed development or would include existing properties as well and Associate Planner Koonze said strictly for the development being proposed. Commissioner Faria confirmed that the POA would be responsible for maintaining the buffer zone and Mr. Koonze said yes, as well as streets, landscape areas near the entrance of the development, and any on-site private utilities like lights. Mr. Koonze then double checked whether or not the buffer zone was included in the proposed POA language, found it was not included and said it would be a good idea to include it. Commissioner Faria agreed language requiring the POA to maintain the buffer zone should be included.

Regarding the amount of traffic generated from the development, Commissioner Faria asked if the proposed 2403 trips were typical for a development of this size. Mr. Koonze said yes and confirmed that the City’s Transportation Manager agreed this was typical and that existing streets would be able to handle the increased traffic. Commissioner Faria asked if there would be access to public transit or bike lanes and Mr. Koonze said not directly near the proposed area. Although there would be bus service on Industrial Boulevard, which wasn’t too far away from the proposed development, Mr. Koonze said there would be no bike lanes on-site and he wasn’t sure if there were bike lanes on Baumberg Avenue.



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, July 26, 2012, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Chair Márquez confirmed with staff that the Commission was strictly making a recommendation and she asked when the City Council would hear the item. Associate Planner Koonze said the item was tentatively scheduled for September 25<sup>th</sup>. Chair Márquez also confirmed that the Public Comment period ended on August 6<sup>th</sup>.

Regarding tree preservation on the proposed development site, Chair Márquez asked how many trees would be removed and/or replaced. Mr. Koonze said he was only aware of two trees of significant size, and he wasn't sure if they were located in an area that would require them being removed, but he noted that any tree mitigation would have to take place prior to development.

Chair Márquez confirmed there would be strict limits on construction times and Mr. Koonze said all construction would be regulated by City ordinance (Monday-Friday 7:30 a.m.-6:00 p.m., with no construction on weekends or holidays).

Commissioner Loché confirmed with staff that existing residential would become a non-conforming use in 2015 regardless of what was decided by the Commission that night and Associate Planner Koonze said yes, that evening's decision would not change what was already in place via City ordinance.

Chair Márquez opened the Public Hearing at 7:48 p.m.

Anthony Varni, representing the applicant with business address on A Street, said he and Mr. Weber were pleased with the staff report and had spent five or six years working on the project.

Commissioner Lamnin asked Mr. Varni if there was a resident living in the house and Mr. Varnie said yes, a tenant/caretaker for the cultivated area and he confirmed for Commissioner Lamnin that the tenant was aware of the proposal. Commissioner Lamnin asked if the tenant would continue to cultivate the land and Mr. Varni said he had been tending the land for the last 20 years and would probably continue for as long as he could.

Commissioner Lamnin asked if the applicant would be interested in reintroducing native species to the area both in the mitigated areas and in the cultivated area if the farming was to stop. Mr. Varni said he and Mr. Weber had been trying to get the remaining property approved as a mitigation bank so it could provide more habitat area for animals, but he noted the process was very difficult with many different agencies involved. At the moment, Mr. Varni said the owner was undecided about what would happen next because of the lack of demand for mitigated wetlands; due to the economy it was difficult to know if the investment to improve the land would make sense.

Commissioner Lamnin asked how the industrial warehouse spaces would be marketed and if there was demand. Mr. Varni said there were industrial properties available in Hayward, but the properties weren't located in approved industrial parks and therefore neither the City nor the owner had any architectural control and there was no building uniformity. Mr. Varni said the applicant believed there would be demand for the proposed industrial spaces because businesses wanted those controls and were going to Union City or Fremont to find them. Mr. Varni pointed out that the proposed development was designed in a way that the lots could be combined if a business needed more acreage; the development was designed to deal with the market and whatever the market demanded.

Commissioner Lavelle said there was a row of palm trees at the end of Arden Road and she asked if they would be maintained or moved. Mr. Varni said he wasn't sure if the palms were on Mr. Weber's property and said he didn't know the answer to her question.

Frank Delfino, Reamer Road resident in Castro Valley, said 25-30 years ago Mr. Weber purchased the property because a developer said he was going to put in a racetrack. Mr. Weber thought he was going to make a killing and paid the developer two to three times what the land was worth, Mr. Delfino said, but the guy went bankrupt and Mr. Weber was stuck. Mr. Delfino said typically in this situation, an idea gets started and years later is sprung on the public as the greatest idea that's come about, but it is really a disaster. Mr. Delfino said the Commission should vote down this idea and if they couldn't do that, then they should put some restrictions on it. He said the environmental impact report was incomplete because it looked at the development from the land side out. Instead of a little addition to the land, he said, it was really a subtraction from the shoreline and should be looked at as such. Regarding the fill that would raise the proposed properties seven feet higher than the existing properties, Mr. Delfino asked what that would do for residents on Baumberg looking up at the these new buildings. Mr. Delfino said vote the project down and if that couldn't be done, ask the developer to do more work and conduct more studies.

Evelyn Cormier, Carroll Avenue resident, said the most important thing about the proposal was that the property was located right next to the 834 acre Eden Landing Ecological Reserve. She noted that state and federal governments had spent a lot of money to protect habitats and species. She said Mr. Weber did a lot of plowing of pickle weed so there wasn't any left and that he also tried to drain the wetland, but so far, hadn't been successful. Ms. Cormier said it did not make sense to put something there that would impact a feature like the reserve. She also noted that with a residential development came feral cats that would eat the burrowing owls and other small animals and that was not the purpose of the reserve. Ms. Cormier said she learned about the public hearing the day before, got a copy of the staff report that day, and hadn't been able to read it in detail, but she noted she hadn't seen a final report from the Army Corp of Engineers, any letters from the Department of Fish and Game, or any documents from the Regional Water Quality Control Board. She commented that those documents should be in the report before the proposal was approved. Ms. Cormier said she would be submitting comments before the August 6<sup>th</sup> deadline.

Chair Márquez closed the Public Hearing at 8:00 p.m.

Commissioner Lamnin asked staff about the agencies mentioned by Ms. Cormier and Associate Planner Koonze said the agencies overseeing the project included the Army Corp of Engineers, the Regional Water Quality Control Board, and the Alameda County Flood Control District. The Department of Fish and Game, he explained, served only as an advisory agency and to monitor that Department requirements were being adhered to during construction. He said the three agencies overseeing the project had approved conceptual plans brought to them and would still need to approve detailed plans. Commissioner Lamnin asked the likelihood of the project proceeding and Mr. Koonze said it depended on how likeliness of Council approving it and if they did, if the developer still found it was viable to proceed.

Commissioner Lamnin said the report said that if an owl was found construction would stop and she asked if construction would stop completely. Associate Planner Koonze explained that if a nest was found (and he noted no nests had been found in the last few years), construction would stop until the young had left the nest and any remaining owls relocated, and would then resume. Commissioner Lamnin confirmed the existing wetland was not a quality habitat and Mr. Koonze said the land had previously been used by a duck club and they had created a pond for fishing. When the club closed, he said, the pond dried up leaving a hole in the ground that had no real value and was only a seasonal wetland when it rained.

Commissioner Lamnin said due diligence had been done by the applicant, noted she valued wetlands too, and said it appeared that a lot of the work had been done to not only protect the existing species but enhance their habitat and build on the progress of the Eden Landing Reserve. Commissioner Lamnin noted the community



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, July 26, 2012, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

needed jobs and light industrial would bring in workers to fill up the new houses and more students to local schools. Commissioner Lamnin made a motion to move the staff recommendation. The motion was seconded by Commissioner Loché.

Commissioner Loché asked Commissioner Faria to repeat her questions about the proposed Property Owners Association and Commissioner Faria said she had asked if current residents would be part of the proposed POA and that the answer was no. She also asked who would be responsible for maintaining the buffer zone and the answer wasn't currently defined so Commissioner Faria suggested, and Associate Planner Koonze concurred, that the Commission should include that the POA was responsible. Commissioner Loché echoed that concern and asked if Commissioner Lamnin was agreeable to adding language to the motion that the POA would be responsible for maintaining the buffer zone and she said yes.

Commissioner Loché then commented on his second saying the applicant had done his due diligence and put a lot of effort and thought into the project. He said the mitigation site would be superior to what was currently there with 55 acres for the burrowing owl. He said it looked like a good project, agreed Hayward needed the jobs, said it was a quality, win-win project and concluded that was why he was supporting the motion.

The motion to recommend that the City Council adopt 1) the Initial Study/Mitigated Negative Declaration, and a Mitigation Monitoring and Reporting Plan, and 2) approve the Zone Change from Light Manufacturing District to Planned Development District to allow warehousing, and 3) approve the Tentative Tract Map creating 14 industrial parcels, pursuant to the findings and conditions of approval, with an amendment to require the POA to maintain the buffer zone was approved 5:0:1 (McDermott absent, one vacancy).

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

Commissioner Lamnin asked staff if they had enough information to make sure that environmental protections would be carried forward, responsibility for maintenance assigned, and areas and wildlife inhabitants protected. Associate Planner Koonze asked for clarification and Commissioner Lamnin reiterated her concern that environmental protections were not only followed now as had been written, but that they get carried forward and that something states who would be responsible for carrying them forward; she suggested language be included in the CC&Rs. Mr. Koonze said the Deed Restriction would keep the development as-is and the area protected. He added that the wetland mitigation site would be protected by a Conservation Easement that included additional maintenance requirements.

3. PL-2012-0204 HIST – Designation of Historical Resources on the Local Register – 1436, 1442, 1465, and 1471 B Street; 1421, 1431, and 1444 C Street; and 22589 Chestnut Street – Caltrans (Owner/Applicant)

Planning Manager Richard Patenaude gave a synopsis of the report.

Commissioner Loché asked if any properties in Hayward had Mills Act contracts and Planning Manager Patenaude said no and explained that when the City Council approved the Historic Preservation Ordinance in 2010, that authorized the use of the Mills Act for the first time. Mr. Patenaude noted that while this was “new

territory” for Hayward, he had processed a Mills Act contract when he was the Preservation Officer for the City of Palm Springs and was familiar with the program. Commissioner Loché asked staff if the designation of the properties would improve the likelihood of this area becoming a historic district. Planning Manager Patenaude said he was hoping to start a wave of interest in the neighborhood because a lot of groundwork was needed and the area didn’t even have a neighborhood group yet. He noted the formation of a neighborhood committee for the sole purpose of creating a historic district may lead to other “bigger and better” things for neighborhood. Mr. Patenaude said the process to designate the Prospect Hill neighborhood as a historic district was started first because they already had an established neighborhood association and he was hoping that group would serve as a model for the Upper B Street area. Commissioner Loché asked if the potential buyers became interested in the properties as a result of the possible designation. Planning Manager Patenaude said potential owners had continued to rent the properties from CalTrans because of the character of the homes and confirmed that the designation would be seen as a positive.

Commissioner Faria said she was glad to be able to maintain Hayward’s history and she noted that well-maintained historic areas in other cities were really warm and inviting. She asked staff how people could be made aware of these properties and that they were available for purchase from CalTrans. Planning Manager Patenaude said CalTrans had been working with a team from the City to make determinations of which properties should be sold individually, which should be kept empty as a hold-unit to encourage a larger development, and which properties should be made available for purchase by existing tenants. Commissioner Faria asked about marketing to potential buyers who were not current tenants. Mr. Patenaude said the CalTrans representative could better answer that question. Commissioner Faria said she noticed a large lot on B Street had been cleared, where a medical building used to be, and she asked if the style of the future development would blend in with the neighborhood’s existing atmosphere. Planning Manager Patenaude said that would be one thing that the adoption of a historic district would encourage, but he noted the City had the ability to review site plans and even if a historic district wasn’t formed, the character of the neighborhood would be taken into consideration.

Commissioner Lavelle thanked Planning Manager Patenaude for including color pictures in the report and noted what a wonderful point the City had reached where homes over 100 years old were being considered for inclusion on a historical register. Commissioner Lavelle commented that one thing that was mentioned in the report but not discussed was that in 1986 these properties had already been evaluated by CalTrans and found not eligible for the registry. She said a new review made experts realized these were historic resources and fortunately, the buildings had not been destroyed and the bypass had not been constructed. Commissioner Lavelle noted that some of the properties needed major T.L.C, but she complimented the owners of the house on Chestnut Street because the work done by tenants had made the property a delight and she wished them luck in becoming owners.

Commissioner Lavelle said the City’s website was an excellent resource and she asked staff to update the site with the information about the historical registry program and if permissible, include the photographs. She also addressed Commissioner Faria and indicated that it was her understanding that when these houses go up for sale the historical designation would have to be disclosed.

Commissioner Faria reiterated that her concern was that the properties were occupied so potential non-tenant buyers might not be aware that they were now available for purchase; she wanted to know how others would be made aware the houses were available for purchase.

Chair Márquez asked for confirmation that property owners would have to apply for the Mills Act and that it was not automatically granted. Planning Manager Patenaude said that was correct and explained that like the Williamson Act (which was for agricultural properties), a property owner applying under the Mills Act would enter into a 10 year contract with the City. Once the contract was successfully completed, he said, the County Assessor would favorably adjust the tax rate for the owner. The contract would be set up to require the owner to look at the needs of the house and use the savings from property tax reduction as seed money to make



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, July 26, 2012, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

improvements to, for example, the foundation of the home. He continued, noting that savings over one year would not pay for that improvement, but it would help and the savings over the 10 years could be programmed toward needed improvements. Chair Márquez asked if it would be the owner's responsibility to set aside that money and Mr. Patenaude said that language would be part of the contract. She also asked what agency would be granting authorization and Mr. Patenaude said the City Council would approve the contract. Chair Márquez commented that some properties were beautiful but they had chain link fencing and she asked if that would need to be removed to improve the home's aesthetics. Mr. Patenaude said the contract would include standard maintenance of the home and the City could ask that an inappropriate feature including a chain link fence be removed. Finally, Chair Márquez asked what protections were in place for tenants not in the position to purchase the home and Planning Manager Patenaude said the CalTrans representatives would be able to respond to that question.

Chair Márquez opened the Public Hearing at 8:37 p.m.

Elizabeth Krase-Greene, Senior Environmental Planner with CalTrans in the Office of Cultural Resource Studies with business address in Oakland introduced herself. Chair Márquez asked what protections were being offered to current tenants of CalTrans properties that were not in the position to purchase the property. Ms. Krase-Greene explained that CalTrans' right-away person wasn't present and she wasn't able to answer that question. She offered to have the person relay a response through Planning Manager Patenaude.

Commissioner Faria asked how potential buyers would be made aware these properties were available for purchase and Ms. Krase-Greene said CalTrans would market the houses as they gradually go onto the market as historic by advertising in outlets that cater to people interested in preservation.

Amanda Symons, current CalTrans tenant on B Street, noted the Public Hearing was "personal" as her family was considering purchasing either 1436 or 1442 B Street and she thanked and complimented Planning Manager Patenaude for his time and patience in answering all her questions. She asked what the potential expense would be to homeowners for the new layer of the permit process. Chair Márquez told Ms. Symons that Mr. Patenaude might have to respond to her later and Planning Manager Patenaude suggested Ms. Symons ask all her questions and he would respond to those he could.

Ms. Symons asked the following questions: Was the integrity of the property negatively influenced by general physical deterioration; may non-historical modifications already made, like aluminum window awnings, be kept by future owners; were there any consequences of the home's integrity being labeled "high" versus "moderate" for the owner; could more limitations be forced on owners later; what were the limitations related to landscaping and why would plants or trees be considered historical and how could owners get around those limits to remove a troublesome tree; would the Hayward Area Parks and Recreation District (HARD), that performed the original survey, continue to be involved and how; what was CEQA; what was the potential cost to homeowner if required to retain a qualified historic consultant; what was the plan for the "huge" empty lot located behind the B Street properties (that could be divided into 27 parcels) and would the result be consistent with the beauty of the neighborhood and the historical integrity of the block; what was the typical cost to the homeowner for an updated Reconnaissance Survey Evaluation; what obligation, if any, would the new homeowner have to bring the house to up to code and would they immediately face penalties if they were unable to afford to do so.

Chair Márquez closed the Public Hearing at 8:45 p.m.

Planning Manager Patenaude noted that he would respond to questions particular to Ms. Symons' situation the next time they met. Mr. Patenaude then gave the following general responses: Any repairs would require permits and those permits would not be any different from any other house; "high" and "moderate" integrity were terms created by the consultant for staff reference with no consequence to the owner; the overall condition of the home did not impact integrity, which only referred to identifying remaining features for that particular architectural style; as long as existing modifications or features added later did not take away from the historic integrity of the home there would be no reason to require removal, others could be negotiated under the Mills Act contract; the City's tree ordinance was separate from the preservation ordinance and there were ways to allow tree pruning, removal and/or replacement; once the house was sold, there would be no future involvement by CalTrans or HARD; CEQA was the acronym for the California Environmental Quality Act which pertained to environmental laws adopted in 1971; while staff could make a recommendation for most requests, a qualified consultant may be needed if the owner was requesting demolition or relocation; plans for the lot on B Street were "far from determined," dependent on that property going into private ownership, and he reiterated that City staff would monitor how the new development would impact the character of the neighborhood; and it was the responsibility of a potential buyer to do their due diligence and make a determination of whether or not they could afford to make needed repairs, but he noted all issues should be disclosed and the proper inspections performed so the prospective buyer was fully informed.

Commissioner Lamnin asked if there was any requirement about the timing of repairs and Planning Manager Patenaude said not that he was aware of. Mr. Patenaude pointed out, and said should be part of any motion if the Commission acted favorably on the recommendation, that the action taken that night would not impact the interiors of the structures. He said the City wanted to make that clear to any future owners.

Commissioner Lavelle wondered about windows including stained glass windows and asked if windows were considered exterior or interior. Planning Manager Patenaude said anything visible from the exterior would be subject to an alteration permit if a change was purposed. Mr. Patenaude also mentioned that the Planning Director had authority to act on alteration permits and as long as the proposed alternation was in keeping with the character of the house.

Commissioner Loché said he really liked that this issue came to the Planning Commission and applauded Mr. Patenaude for being a driving force in protecting Hayward's historical assets. Commissioner Loché made a motion to move the staff recommendation with the addition that that evening's action did not impact the interior of the properties being discussed. Commissioner Faria seconded the motion.

Planning Manager Patenaude recognized the accolades from the Commissioners but commended his colleagues at CalTrans in the preservation field for helping him put the report together in a month. He said he couldn't have done it without the great help from CalTrans staff.

Chair Márquez reiterated the motion.

Commissioner Lamnin asked if the Commission's action would have an impact on the cost of the homes. Planning Manager Patenaude said not that he was aware of and added that he thought negotiations had already taken place. Commissioner Lamnin thanked Mr. Patenaude, the community and potential home owners for buying in Hayward and she suggested a tie-in with the historical society and any local architectural associations, Bay East Association of Realtors, the Chamber of Commerce, the Neighborhood Partnership Program, the Prospect Hill Neighborhood Association and HARD. She mentioned a mixer coupled with a historical walk might be a way to announce the good news and promote the sale of the properties. Commissioner Lamnin said she saw a lot of opportunity and was excited to support the motion.



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, July 26, 2012, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Commissioner Lavelle mentioned that Mr. Frank Goulart would be leading a historical tour that Saturday at 10 a.m. starting in downtown. She said other historic tours were scheduled for the summer and that they would be a great way to promote the first historic registered properties in Hayward.

Chair Márquez said she would also be supporting the motion and thanked Mr. Patenaude and CalTrans for working collaboratively and Ms. Symons for all her questions. She said she looked forward to seeing the program come into fruition.

The motion passed 5:0:1 (McDermott absent, one vacancy)

AYES: Commissioners Faria, Lamin, Lavelle, Loché,  
Chair Márquez  
NOES:  
ABSENT: Commissioner McDermott  
ABSTAINED:

## **COMMISSION REPORTS**

### **4. Oral Report on Planning and Zoning Matters**

Planning Manager Patenaude announced that the City Council had appointed a new Planning Commissioner to replace Commissioner Mendall and that Chair Márquez had been reappointed. He noted that the swearing in of the new commissioner would take place September 11<sup>th</sup>, mentioned the September 6<sup>th</sup> meeting would therefore be canceled, and stated the next regular meeting would be held September 20<sup>th</sup> with two items including that evening's Item 1 that was continued to that date.

### **5. Commissioners' Announcements, Referrals**

Commissioner Lamnin said Saturday was going to be a great day in Hayward because of the historical walk and the celebration of the first Measure I new school construction at 10 a.m. at East Avenue School. She invited everyone to come see their tax dollars at work.

Chair Márquez asked when the April meeting minutes would be approved and Senior Secretary Philis noted that all minutes to-date had been approved, but one set had not been fully executed because Commissioner Lamnin had been on vacation and unable to sign them. Ms. Philis offered to email Chair Márquez any fully executed meeting minutes she might have missed.

## **APPROVAL OF MINUTES**

6. June 28, 2012 minutes approved unanimously with Commissioner McDermott absent and one vacancy.

## **ADJOURNMENT**

Chair Márquez adjourned the meeting at 9:04 p.m.

**APPROVED:**

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Sara Lamnin, Secretary  
Planning Commissioner

**ATTEST:**

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Suzanne Philis, Senior Secretary  
Office of the City Clerk