



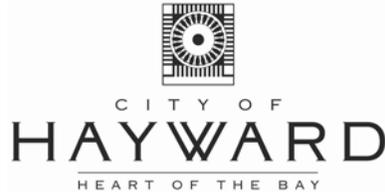
CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
JANUARY 17, 2012

MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE BARBARA HALLIDAY
COUNCIL MEMBER OLDEN HENSON
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER BILL QUIRK
COUNCIL MEMBER MARK SALINAS
COUNCIL MEMBER FRANCISCO ZERMEÑO

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CITY COUNCIL MEETING FOR JANUARY 17, 2012
777 B STREET, HAYWARD CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 4:00 PM

1. PUBLIC COMMENTS

2. Public Employment

Pursuant to Government Code 54957

- Performance Evaluation
City Manager

3. Conference with Labor Negotiators

Pursuant to Government Code 54957.6

- Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager Morariu, Human Resources Director Robustelli, Finance Director Vesely, and Assistant City Attorney Roufougar
Under Negotiation: All Bargaining Units

4. Conference with Real Property Negotiators

Pursuant to Government Code Section 54956.8

- Under Negotiation: Former California Air National Guard Site, Hayward Executive Airport
Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager Morariu, Project Consultant Bauman, Public Works Director Fakhrai, Airport Manager McNeeley

5. Conference with Real Property Negotiators

Pursuant to Government Code 54956.8

- Under Negotiation: South Hayward BART Land Purchase and Requisition
Lead Negotiators: City Manager David, Assistant City Manager Morariu, City Attorney Lawson, Assistant City Attorney Conneely, Project Consultant DeClercq, Development Services Director Rizk, and Finance Director Vesely

6. Adjourn to Special Joint City Council/Redevelopment Agency/Housing Authority Meeting

**SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT AGENCY/
HOUSING AUTHORITY MEETING
Council Chambers - 7:00 PM**

CALL TO ORDER Pledge of Allegiance Council Member Peixoto

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PRESENTATION Business Recognition Award – Columbus Foods, Inc.

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council 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 Council 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.)*

NON-ACTION ITEMS: *(Work Session and Informational Staff Presentation items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.)*

WORK SESSION (60-Minute Limit)

1. Discussion of Proposed FY 2013 Council's Priorities (*Report from City Manager David*)
Please note: Report will be available on Monday, January 16, 2012
-

ACTION ITEMS: *(The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk anytime before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

CONSENT

2. Approval of Minutes of the Special City Council/Redevelopment Agency/Housing Authority Meeting on January 10, 2012
[Draft Minutes](#)

JANUARY 17, 2012



3. Designation of the Mission Boulevard Corridor as a Priority Development Area

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment Ia Map of Mission Corridor Area](#)

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

- *Disclosures*
 - *Staff Presentation*
 - *City Council Questions*
 - *Public Input*
 - *Council Discussion and Action*
-

PUBLIC HEARING

4. Draft Hayward Airport Land Use Compatibility Plan

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II Hayward Airport Safety Compatibility Zones Map](#)

[Attachment III Hayward Airport Safety Compatibility Zones-Southland Mall Area Map](#)

[Attachment IV Overrule Procedures](#)

[Attachment V ALUC Staff Report](#)

[Attachment VI Public Utilities Code Section 21670](#)

[Attachment VII Letter from Mayor Sweeney](#)

LEGISLATIVE BUSINESS

5. Approval of Acquisition and Disposition of Caltrans Parcels Adjacent to the South Hayward BART Transit-Oriented Development

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

[Attachment III](#)

6. Transmittal of the Comprehensive Annual Financial Report for the Year Ended June 30, 2011; and of the Memorandum on Internal Control and Required Communications

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II](#)

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items

JANUARY 17, 2012



ADJOURNMENT

NEXT SPECIAL MEETING – 7:00 PM, TUESDAY, JANUARY 24, 2012

PUBLIC COMMENT RULES: *The Mayor 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 or organization. Speakers will be asked for their name and their address before speaking and are expected to honor the allotted time. A Speaker's Card must be completed by each speaker and is available from the City Clerk at the meeting.*

PLEASE TAKE NOTICE *that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that 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.*

****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. ****

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.

Please visit us on:





**MINUTES OF THE SPECIAL JOINT CITY
COUNCIL/REDEVELOPMENT AGENCY/HOUSING
AUTHORITY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 10, 2012, 7:00 p.m.**

The Special Joint City Council/Redevelopment Agency/Housing Authority Meeting was called to order by Mayor/Chair Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Mayor/Chair Sweeney.

ROLL CALL

Present: COUNCIL/RA/HA MEMBERS Zermeño, Quirk, Halliday, Peixoto,
Salinas, Henson
MAYOR/CHAIR Sweeney
Absent: COUNCIL/RA/HA MEMBER None

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney reported that the Council met concerning four items: Public Employment regarding City Manager; Public Employment regarding City Attorney; Conference with Legal Counsel regarding California Redevelopment Association, et al v. Matosantos, California Supreme Court Case No. S194861; and Conference with Real Property Negotiators concerning South Hayward BART Land Purchase and Requisition. There were no reportable items.

PUBLIC COMMENTS

Ms. Diane Fagalde, Tyrrell Avenue resident and Community Services Commissioner, mentioned that the Hayward Day Labor Center was burglarized over the New Year's weekend and she expressed the need for more security, surveillance cameras, and better lighting at this facility. Ms. Fagalde was concerned about transients sleeping on the premises and individuals going through the Center's trash bins.

Council Member Quirk announced that the Council was going to discuss the FY 2013 Council's priorities and urged residents to attend the meeting and share any concerns or ideas.

CONSENT

Consent Item No. 7 was removed for separate vote.

1. Approval of Minutes of the Special City Council/Redevelopment Agency/Housing Authority Meeting on December 20, 2011

It was moved by Council/RA/HA Member Henson, seconded by Council/RA/HA Member Zermeño, and carried unanimously, to approve the minutes of the Special Joint City Council/Redevelopment Agency/Housing Authority Meeting of December 20, 2011.

2. Adoption of an Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Property in Connection with Zone Change Application No. PL-2011-0283 Relating to the Toyota Dealership Expansion and Remodel

Staff report submitted by City Clerk Lens, dated January 10, 2012, was filed.

It was moved by Council Member Henson, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Ordinance 12-01, “An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Property in Connection with Zone Change Application No. PL-2011-0283 Relating to the Toyota Dealership Expansion and Remodel”

3. Adoption of an Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Repealing the Mission Corridor Special Design Overlay (SD-2) District from the Zoning Ordinance in Connection with Text Amendment Application No. PL-2011-0348 Relating to the Toyota Dealership Expansion and Remodel

Staff report submitted by City Clerk Lens, dated January 10, 2012, was filed.

It was moved by Council Member Henson, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Ordinance 12-02, “An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Repealing the Mission Corridor Special Design Overlay (SD-2) District from the Zoning Ordinance in Connection with Text Amendment Application No. PL-2011-0348 Relating to the Toyota Dealership Expansion and Remodel”

4. Water System Leak Detection Survey: Authorization for City Manager to Execute a Professional Services Agreement with Water Systems Optimization, Inc., for Implementation of a System-Wide Leak Detection Survey

Staff report submitted by Administrative Analyst III Mosher, dated January 10, 2012, was filed.

It was moved by Council Member Henson, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Resolution 12-001, “Resolution Authorizing the City Manager to Execute an Agreement between the City of Hayward and Water Systems Optimization, Inc., for Professional Services to Conduct a Water System Leak Detection Survey in an Amount not to Exceed \$90,000”



**MINUTES OF THE SPECIAL JOINT CITY
COUNCIL/REDEVELOPMENT AGENCY/HOUSING
AUTHORITY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 10, 2012, 7:00 p.m.**

5. Highland 250-Highland 500 16-inch Transmission Main Replacement and Highland 250 Pump Station Upgrade: Approval of Plans and Specifications, and Call for Bids

Staff report submitted by Associate Civil Engineer Lam, dated January 10, 2012, was filed.

It was moved by Council Member Henson, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Resolution 12-002, “Resolution Approving Plans and Specifications for the 250-500 16-inch Transmission Main Replacement and Highland 250 Pump Station Upgrade Project, Project Nos. 7045 & 7052, and Call for Bids”

6. Authorization for the City Manager to Execute a Professional Services Agreement for Design and Construction Administration Services for the Electrical and Mechanical Improvement to High School Reservoir Project

Staff report submitted by Associate Civil Engineer Lam, dated January 10, 2012, was filed.

It was moved by Council Member Henson, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Resolution 12-003, “Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Psomas for Design and Construction Administration Services for the Electrical and Mechanical Improvement to High School Reservoir Project, Project No. 7137”

7. Approval of the Freeway Agreement for I-880/SR 92 Interchange Project and Approval of the Freeway Maintenance Agreement with Caltrans

Staff report submitted by Transportation Manager Frascinella, dated January 10, 2012, was filed.

Mayor Sweeney mentioned that landscaping areas around the I-880/SR 92 Interchange Project needed to be completed. Public Works Director Fakhrai noted that Caltrans was working on the design plan for the landscaping and anticipated the construction would commence in spring of 2013. Mayor Sweeney asked about an update on the Eldridge Avenue pedestrian overpass. Mr. Fakhrai noted that the installation of security cameras had reduced the tagging in the area. In response to

Mayor Sweeney's inquiry about the possibility of closing the overcrossing from 6:00 p.m. to 6:00 a.m., Director Fakhrai noted that the proposed agreement would not preclude such a closure from being considered in the future.

Council Member Zermeño expressed disappointment with Caltrans' timeline for completion of the landscaping project. Public Works Director Fakhrai said he would attempt to have the landscaping work expedited by Caltrans.

Council Member Halliday noted she would be abstaining from voting on the item because she lives in close proximity to the project area.

It was moved by Council Member Zermeño, seconded by Council Member Henson, and carried with Council Member Halliday abstaining, to adopt the following:

Resolution 12-004, "Resolution Approving Freeway Agreement between the State of California and the City of Hayward Relating to that Portion of State Highway 92 from West City Limit to Santa Clara Street and State Highway 880 from South City Limit Near Whipple Road to West A Street"

Resolution 12-005, "Resolution Approving Freeway Maintenance Agreement between the State of California (State) and the City of Hayward (City) Relating to Maintenance of Reconfigured Local Streets and Roads Affected by Construction of the I-880/SR 92 Interchange Project Including the Eldridge Avenue Pedestrian Overcrossing"

LEGISLATIVE BUSINESS

8. Adoption of a Resolution Authorizing the City to Serve as Successor Agency to the Hayward Redevelopment Agency and a Resolution Authorizing the Hayward Housing Authority to Serve as the Successor Housing Agency Pursuant to Health & Safety Code Sections 34171, 34173 and 34176

Staff report submitted by Assistant City Manager/Interim Redevelopment Agency Director Morariu, dated January 10, 2012, was filed.

Assistant City Manager/Interim Redevelopment Agency Director Morariu provided a synopsis of the report.

There being no public comments, Mayor/Chair Sweeney opened and closed the public hearing at 7:15 p.m.

Council/RA/HA Member Halliday offered a motion per staff recommendation and Council/RA/HA Member Quirk seconded the motion.



**MINUTES OF THE SPECIAL JOINT CITY
COUNCIL/REDEVELOPMENT AGENCY/HOUSING
AUTHORITY MEETING OF
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777 B Street, Hayward, CA 94541
Tuesday, January 10, 2012, 7:00 p.m.**

Council/RA/HA Member Halliday said she was disappointed at the lack of public comment on an item that signified a loss to the City and its means of making improvements to the local community by utilizing property tax revenue. Ms. Halliday stated that it was terrible that redevelopment agencies were being dissolved and spoke proudly of the City's Redevelopment Agency and its accomplishments over the years. She shared that much of the improvements made to the City were made through the Redevelopment Agency and cited the anti-graffiti mural project as one example of a Redevelopment Agency sponsored project that has won much acclaim. Ms. Halliday said she hoped that citizens would become aware of this loss and would contact State legislators.

Council/RA/HA Member Henson concurred with the comments made by Council/RA/HA Member Halliday, thanked staff for working through this process, and commended the legal staff for providing Council with the necessary information to make a decision. Mr. Henson commented that it seemed apparent to him that municipalities and school districts were deliberately being pitted against one another.

In response to Mayor/Chair Sweeney's question of what agency would have been chosen to be the successor agency had the City decided not to assume responsibility, Interim Redevelopment Agency/Assistant City Manager Morariu responded that the legislation included a provision that stated any taxing entity in the County that adopts a resolution expressing wanting to become a successor agency had the ability to do so, and would reserve the power to decide how it wanted to dispose of the Agency's assets and how the Agency would pay for its enforceable obligations.

It was moved by Council/RA/HA Member Halliday, seconded by Council/RA/HA Member Quirk, and carried unanimously, to adopt the following:

Resolution 12-006, "Resolution of the City Council of the City of Hayward to Express its Intent to Serve as the Successor Agency of the Redevelopment Agency of the City of Hayward Pursuant to Health and Safety Code Section 34171(j) and Section 34173; and to Elect Not to Retain the Housing Assets and Functions Previously Performed by the Redevelopment Agency of the City of Hayward Pursuant to Health and Safety Code Section 34176 and to Select the Housing Authority of the City of Hayward to Retain the Housing Assets and Functions Previously Performed by the Redevelopment Agency of the City of Hayward Pursuant to Health and Safety Code Section 34176(b)(3)"

Housing Authority Resolution 12-01, "Resolution Electing to Retain the Housing Assets and Functions Previously Performed by the Redevelopment Agency of the City of Hayward Pursuant to Health and Safety Code Section 34176"

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño encouraged everyone to shop Hayward first and to seek further education by attending Chabot Community College in 2012.

Council Member Salinas praised the Puente students at Tennyson High School for helping the Kids' Breakfast Club deliver 1,000 breakfasts to children and families at the Burbank Elementary School. Mr. Salinas noted that the City Council will be reviewing the FY 2013 Council's priorities at the next meeting and encouraged everyone to get involved and participate. Mr. Salinas mentioned the Keep Hayward Clean and Green Glassbrook Neighborhood clean-up event on January 14, 2012, at the Glassbrook Elementary School, and noted that Hayward AmeriCorps volunteers would be providing breakfast for the volunteers. Lastly, he wished everyone a Happy New Year and welcomed the new Public Works directors, Morad Fakhrai and Alex Ameri.

Council Member Halliday wished everyone a Happy New Year and welcomed the two new directors. Ms. Halliday reported she attended the January 9, 2012, Council Economic Development Committee meeting, during which Southland General Manager Veronica Curley provided a favorable report about the Mall. The report reflected productive holiday sales, considerable reduction in crime, and the prospect of a grocery store and a restaurant.

Council Member Henson commented on the issue of properties in South Hayward, along Shepherd Avenue and Harris Street, not being connected to the Hayward water system and residents becoming sick because they drank well water that was treated with bleach. He asked staff to provide more information to Council. Mr. Henson reported he represented the Mayor at the Annual Top 100 Chinese Restaurants event at the Santa Clara Convention. Mr. Henson noted that one of the top restaurants in the country being recognized was the New West Lake Restaurant. Economic Development Manager Brooks mentioned that the New West Lake Restaurant, located at 320 Jackson Street, was presented with the Signature Dish Award.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 7:32 p.m.

APPROVED:

Michael Sweeney, Mayor, City of Hayward
Chair, Redevelopment Agency/Housing Authority

ATTEST:

Miriam Lens, City Clerk, City of Hayward
Secretary, Redevelopment Agency/Housing Authority

DATE: January 17, 2012

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Designation of the Mission Boulevard Corridor as a Priority Development Area

RECOMMENDATION

That Council reads and comments on this report and adopts the attached resolution supporting the designation of the Mission Boulevard Corridor as a Priority Development Area.

SUMMARY

The Association of Bay Area Governments is preparing a Sustainable Communities Strategy (SCS) to guide the region's housing and job growth over the next twenty-five years. The first draft of the SCS and the recently-released alternative scenarios identify the Mission Boulevard Corridor as a "Growth Opportunity Area." In order to be included in the final SCS and to be eligible for grant funding for streetscape improvements, including paving, bicycle and pedestrian facilities, the Mission Boulevard Corridor needs to be designated as a Priority Development Area (PDA).

BACKGROUND

The Mission Boulevard Corridor includes properties along the northern portion of Mission Boulevard, from Harder Road to the northern City limit, with the exception of the Downtown. The project area comprises approximately 600 parcels on 240 acres and has a total length of approximately two miles. On February 15, 2011, staff presented to Council information related to a draft Specific Plan and Form-Based Code for the Mission Boulevard Corridor. A draft Environmental Impact Report is currently being prepared for the project and is anticipated to be released in the summer of 2012. More information about this project is available on the City's website¹.

With cooperation from local governments, the FOCUS program was developed in 2002 by the four regional agencies: the Association of Bay Area Governments (ABAG), the Metropolitan Transportation Commission (MTC), the Bay Area Air Quality Management District (BAAQMD), and the Bay

¹ <http://www.hayward-ca.gov/forums/MBCSP/mbcspforum.shtm>

Conservation and Development Commission (BCDC). FOCUS is a regional development and conservation strategy that promotes a more compact land use pattern for the Bay Area by working to direct existing and future incentives to Priority Development Areas (PDAs) and Priority Conservation Areas (PCAs). Incentives for PDAs will include grants for planning and infrastructure, including streets, transit, bicycle facilities, and safe routes to schools. PDAs are locally-identified, infill development opportunity areas near transit. Priority Conservation Areas are regionally significant open spaces for which there exists a broad consensus for long-term protection. Hayward currently has three PDAs – Downtown, the Cannery, and the South Hayward BART area, all of which were approved by Council on June 19, 2007.

Hayward does not have any PCAs. According to the guidelines that were issued in 2007, PCAs should not be lands that are already protected and they should be areas that will benefit from targeted purchases and easements in the near-term. Hayward’s significant open spaces are already owned and protected by the East Bay Regional Park District and the Hayward Area Recreation and Park District.

On April 19, 2011, staff presented to Council² the first draft of the SCS, which was called the Initial Vision Scenario (IVS). The IVS anticipated Hayward would gain approximately 15,000 new households and 19,000 new jobs over the next twenty-five years. More than half of the housing and jobs growth was allocated to Hayward’s three existing PDAs as well as the Carlos Bee Quarry and the Mission Boulevard Corridor, which were recognized as potential growth areas, or Growth Opportunity Areas (GOAs). The following table shows how the IVS allocated housing growth to different areas in Hayward. The jobs projected for Hayward were provided as a lump sum and not distributed by PDA or GOA.

Hayward Areas	Number of Households		
	2010	2035	Growth
Downtown (PDA)	2,031	4,945	2,914
South Hayward BART (PDA)	2,236	5,040	2,804
The Cannery (PDA)	213	961	748
Carlos Bee Quarry (GOA)	23	575	552
Mission Corridor (GOA)	474	1,446	972
Total for PDAs and GOAs	4,977	12,967	7,990
un-targeted growth			6,992
Hayward Total	46,300	61,283	14,982

Growth Opportunity Areas were identified by staff in late 2010 to assist ABAG with distribution of projected housing growth. Staff is not submitting an application to have the Carlos Bee Quarry designated a PDA because it does not meet the minimum size of 100 acres. The Carlos Bee Quarry is approximately thirty acres. While the IVS projected 972 new housing units for the Mission Boulevard Corridor, staff estimates the proposed Form-Based Code may result in 1,884 new units.

² See item # 1 at <http://www.hayward-ca.gov/citygov/meetings/cca/2011/CCA11PDF/cca041911full.pdf>

In October 2011, ABAG released Alternative Scenarios with revised figures for three different scenarios. The Alternative Scenarios project between 15,887 and 16,925 new housing units and between 16,050 and 17,435 new jobs between 2010 and 2040. While the IVS included projections for a 25-year period, the Alternative Scenarios cover a 30-year period. An assessment of the three Alternative Scenarios, which provides the effectiveness of reducing greenhouse gas emissions and other indicators, was released in December 2011. Staff will present the Alternative Scenarios and the assessment results to Council on January 24, 2012.

DISCUSSION

As part of the development of the SCS, ABAG and MTC have proposed the *OneBayArea Grant* program, which is scheduled to be adopted by MTC in May 2012 along with the preferred SCS scenario. The proposed grant program aims to better integrate the region's Federal transportation program with land-use and housing policies by providing incentives for the production of housing with supportive transportation investments. More information about the *OneBayArea Grant* program is available on the MTC website at <http://www.mtc.ca.gov/funding/onebayarea/>. According to ABAG staff, to be incorporated into the SCS and to be eligible for future funding, Growth Opportunity Areas need to be formalized as Priority Development Areas. Only PDAs that are adopted by the ABAG Executive Board by March 15, 2012 will be eligible for the upcoming cycle of *OneBayArea Grant* funds.

In October 2011, ABAG staff announced that GOAs would need to be recognized as PDAs to be included in future drafts of the SCS. As such, staff is recommending this action to designate the Mission Boulevard Corridor as a PDA. According to the guidelines provided by ABAG, applicants must demonstrate that an area proposed for designation as a PDA meets all of the following criteria:

- The area is within an existing community.
- The area is near existing or planned fixed transit (or served by comparable bus service).
- The area is planned or is planning for more housing.

Portions of the Mission Boulevard Corridor are within a half mile of the Hayward BART station and the remainder of the area is served by AC Transit. As noted above, staff estimates the area could gain 1,884 new housing units over the next twenty-five years. In December, staff submitted to ABAG the required application for PDA designation. The application included information about the area, a map of the area, a narrative explaining the overall vision for the area, and a budget for needed infrastructure improvements. A resolution from the City Council showing support for the application is due by January 30, 2012.

ECONOMIC IMPACT

Adoption and implementation of the Specific Plan for the Mission Boulevard Corridor may result in significant numbers of new housing units and jobs. Designation of the area as a PDA will make the area eligible for grant funding that will help the City implement the Plan. The Form-Based Code will help simplify the development review and approval processes, making development within the Code area more enticing to developers.

FISCAL IMPACT

If approved by MTC, the *OneBayArea Grant* program will establish a new method for distributing \$211 million of Federal transportation funds for 2013 through 2015. Staff anticipates that a portion of these funds could be directed toward street improvements, new streets, and utility improvements that will be needed to fully implement the Mission Boulevard Corridor Specific Plan. Using information from a Fiscal Impact Analysis prepared for the Plan, and assuming no tax increment funding due to dissolution of the City's Redevelopment Agency, implementation of the project may contribute \$353,004 by 2020 and \$836,217 by 2030 annually to the General Fund. The Fiscal Impact Analysis also indicates that approximately 80 percent of the estimated revenue would come in the form of sales tax. Furthermore, if a Community Services District is established, the City could see an additional \$168,000 per year by 2020 and \$400,000 per year by 2030 that would be used for services and facilities.

SCHEDULE & NEXT STEPS

PDA applications are currently being reviewed by ABAG staff. If Council adopts the attached resolution, staff will forward it to ABAG prior to the January 30 deadline. On February 1, 2012, ABAG staff will present PDA recommendations to the ABAG Regional Planning Committee. On March 15, 2012, ABAG staff will present PDA recommendations to the ABAG Executive Board for final adoption.

Prepared by: Erik J. Pearson, AICP, Senior Planner

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution
- Attachment I-a Map of Mission Boulevard Corridor

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member

RESOLUTION OF SUPPORT FOR THE MISSION
BOULEVARD CORRIDOR TO BE DESIGNATED A
PRIORITY DEVELOPMENT AREA

WHEREAS, the Association of Bay Area Governments and the Metropolitan Transportation Commission, in coordination with the Bay Area Air Quality Management District and Bay Conservation and Development Commission (collectively, the “regional agencies”), are undertaking a regional planning initiative called FOCUS; and

WHEREAS, FOCUS program goals support a future regional development pattern that is compact and connected; and

WHEREAS, the regional agencies seek local government partners to create a specific and shared concept of where growth can be accommodated (Priority Development Areas) and what areas need protection (Priority Conservation Areas) in the region; and

WHEREAS, a Priority Development Area must meet all of the following criteria: (a) the area must be within an existing community; (b) the area must be near existing or planned fixed transit (or served by comparable bus service); and (c) the area must be planned, or is planning, for more housing; and

WHEREAS, local governments in the nine-county San Francisco Bay Area are eligible to apply for designation of an area within their community as a Priority Development Area; and

WHEREAS, the regional agencies are committed to securing incentives and providing technical assistance to designated Priority Development Areas, so that positive change can be achieved in communities working to advance focused growth; and

WHEREAS, as shown on Attachment “A,” the Mission Boulevard Corridor includes properties along the northern portion of Mission Boulevard, from Harder Road to the northern City limit, with the exception of the Downtown area, and is surrounded by the existing community of Hayward; and

WHEREAS, the Mission Boulevard Corridor is near the Hayward BART station and is served by AC Transit; and

WHEREAS, the City of Hayward is currently preparing a Specific Plan and

Form-Based Code for the Mission Boulevard Corridor, which will foster development of new housing and jobs in vibrant, walkable neighborhoods.

NOW, THEREFORE, BE IT RESOLVED, for all reasons stated above, that the City Council of the City of Hayward hereby supports the designation of the Mission Boulevard Corridor as a Priority Development Area.

IN COUNCIL, HAYWARD, CALIFORNIA_____, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

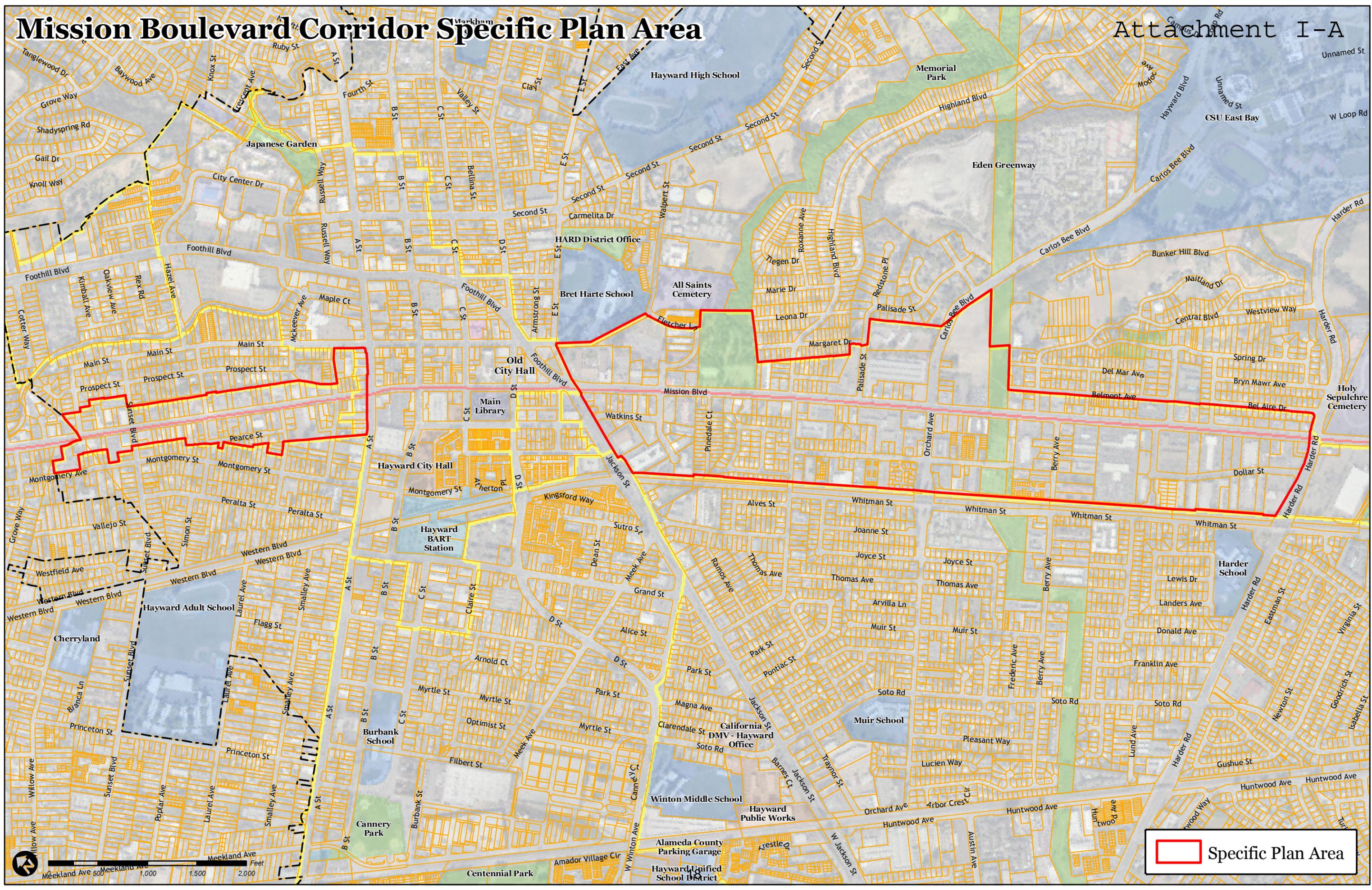
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Mission Boulevard Corridor Specific Plan Area

Attachment I-A



DATE: January 17, 2012
TO: Mayor and City Council
FROM: Development Services Director
SUBJECT: Draft Hayward Airport Land Use Compatibility Plan

RECOMMENDATION

That Council adopts the attached resolution (Attachment I) opposing portions of the Draft Hayward Airport Land Use Compatibility Plan (ALUCP), specifically portions of Chapter 2.

SUMMARY

Although appropriate revisions have been made to the draft ALUCP due to City staff's input to County staff, City staff still remains concerned with certain provisions in the ALUCP. Specifically, the main concerns are with the infill and nonconforming provisions in Chapter 2 of the ALUCP, since these provisions could impact redevelopment at Southland Mall, including redevelopment of the former Marie Callender's site and the Lucky Supermarket site. Although the City Council will retain ultimate land use authority regarding redevelopment at Southland Mall and other areas within the ALUCP's airport influence area, the current draft ALUCP as written would, without Council taking an override action, result in restrictions on new infill or redevelopment at Southland Mall or, at best, would add several weeks to the development review process for such projects.

Any comments regarding any issues of concern related to the Draft Airport Land Use Compatibility Plan will be transmitted to the County staff as part of the 60-day public review period that ends on February 6, 2012.

BACKGROUND

What is the Alameda County Airport Land Use Commission? - The Alameda County Airport Land Use Commission (ALUC) is comprised of: two commissioners representing the County appointed by board of supervisors; two commissioners representing cities in the County appointed by a committee of all mayors, except that at least one representative must be appointed from among "any cities contiguous or adjacent to the qualifying airport" (Council member Henson is an appointed commissioner); two commissioners with expertise in aviation appointed by a committee of the managers of all public airports within the County; and one commissioner representing the general public appointed by the other six members of the commission. It is an advisory body authorized under the provisions of the California Public Utilities Code, Sections

21670 et seq. (Attachment VI), to protect the public health, safety and welfare by promoting the orderly expansion of airports and adoption of land use measures by local public agencies to minimize exposure to excessive noise and safety hazards near airports. This is done by promoting compatibility between airports and surrounding land uses. Public Utilities Code Section 21674(b) gives the ALUC the authority: to coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare; to prepare and adopt airport land use plans; and to review and make recommendations concerning specific plans, regulations and other actions of local agencies and airport operators.

The law does not authorize the ALUC to zone property or apply other land use controls normally exercised by local public agencies. The jurisdiction of the ALUC is limited to new land uses; existing land uses, including those that are in conflict with or affected by existing or anticipated airport operations, are not subject to the policies established by the ALUC. State law does not provide the ALUC with jurisdiction over airport operations.

What is the Hayward Airport Land Use Compatibility Plan? - The Hayward Executive Airport Land Use Compatibility Plan (ALUCP), available at the County's website at www.acgov.org/cda/planning/generalplans/airportlandplans.htm, is an advisory document that influences future land use development in the vicinity of the Hayward Executive Airport (HWD). The ALUCP is the primary document used by the ALUC to help promote compatibility between Hayward Executive Airport (HWD) and its surrounding area. It sets forth regulations to guide specific kinds of development that might occur within the Airport Influence Area (AIA) or ALUC planning area boundary. As shown in Attachment II, the AIA for Hayward Airport extends out in the Bay to the west, to Lewelling Blvd. to the north, approximately to the BART tracks to the east, and to Tennyson Road to the south. It also specifies land uses permitted, allowed conditionally, or prohibited in seven Safety Zones in relationship to potential airport noise impacts, aircraft overflight, safety hazards, and airspace protection (see map of safety zones, Attachment II).

The AIA may significantly affect land uses or necessitate restrictions on land uses that could potentially have a negative effect on airport operations. The ALUCP's objective is not to discourage new development in the vicinity of the Hayward Airport, but rather to guide the compatibility of new land uses by limiting the density, intensity, and height of new uses so as to avoid potential conflicts with aircraft operations and to preserve the safety of those living and working around the Airport as well as to those in flight. Once adopted, the ALUCP serves as a framework for reviewing significant proposals for further airport development. ALUC jurisdiction and ALUCP scope are confined to land use-related primary impacts on the area surrounding the airport.

Contents of the Draft Hayward Airport Land Use Compatibility Plan –

The ALUC is concerned with airport activities that may adversely affect nearby land uses within the Airport Influence Area. The most significant airport-related concerns are:

- Exposure of persons on the ground to accident potential;
- Prevention of obstructions to air navigation (tall objects; objects in safety zones); and
- Prevention of hazards to flight such as wildlife hazards, smoke, flare, lighting, electrical interference and thermal plumes.

For each concern, the ALUC has adopted land use compatibility policies in Chapters 2 and 3 of the ALUCP; these policies address existing and future conditions at Hayward Executive Airport and its environs. The ALUCP is organized as follows:

- Chapter 2 of this ALUCP presents the airport compatibility and review policies that are applicable throughout Alameda County.
- Chapter 3 of this ALUCP Update presents compatibility and review policies and maps specific to Hayward Executive Airport.
- Chapter 4 of this ALUCP Update provides background data for Hayward Executive Airport and its environs.
- Chapter 5 provides references for the data presented in this ALUCP.
- Appendices A through J contain supplemental data and source documents that were used to develop the Hayward Executive Airport ALUCP.

Review and Consistency Issues and Process - Any proposed new development or redevelopment of a property within the ALUCP's Airport Influence Area for which the proposed use is consistent with the General Plan and/or any specific plan, but does not conform to the specific compatibility criteria set forth in the ALUCP, requires project review by the ALUC (assuming no override action by the legislative body has occurred – see later discussion). In addition, any proposed change or variance to the Zoning Ordinance or Building Code regulations must be submitted to the ALUC for review if issues of noise, safety, airspace protection, and overflight are involved.

State statutes require agencies to make their general plans consistent with the ALUCP within 180 days of ALUCP adoption (State Aeronautics Act Section 21676), unless the agency undertakes an override procedure, which requires a two-thirds majority vote of the legislative body and specific findings that must be supported. Until the ALUC finds that a local jurisdiction's General Plan or a specific plan is consistent with the ALUCP, or the local jurisdiction has overruled the ALUC's determination of inconsistency by a two-thirds vote of the City Council, the local jurisdiction shall refer all actions, regulations, and permits involving land within the AIA to the ALUC for review.

After a local jurisdiction has revised its General Plan or specific plan for consistency with the ALUCP or has overruled the ALUC by a two-thirds vote of City Council, the ALUC no longer has authority under State law to mandate that required actions, regulations, and permits be referred for review. However, the City of Hayward can agree that the ALUC should continue to review individual projects in an advisory capacity. In this case, Hayward would not be required to adhere to the overriding process if they elect to approve a project without incorporating design changes or conditions suggested by the ALUC.

1988 Hayward City Council Action - It should be noted that the Hayward City Council in 1988 approved an override of the ALUC's September 14, 1983 inconsistency determination related to the ALUCP for Hayward Executive Airport that was last adopted in 1983. This override decision found that the City of Hayward's 1986 General Plan was consistent with the ALUCP and State airport land use law, that the City declined to revise the General Plan, and that the General Plan provisions which applied to private developments in the area surrounding the

Hayward Executive Airport and within the safety zones were consistent with State law. It was also found by the City Council that the 1986 General Plan was consistent with the purposes of State airport land use law of protecting public health, safety, and welfare by ensuring orderly expansion of the airport and the adopted General Plan contained land use measures that minimized public exposure to excessive noise and safety hazards within the area around the airport.

DISCUSSION

Hayward staff has worked extensively with Alameda County Airport Land Use Commission staff during the last several months to revise previous draft versions of the ALUCP to better accommodate both urban development while meeting safety requirements of the ALUCP. On November 16, 2011, the ALUC took under advisement the proposed changes requested by the Cities of Hayward and Livermore (Attachment V). However, City staff still has concerns with Chapter 2 *Policies* Section 2.7.5.7: *Special Conditions* (a) Infill and (b) Nonconforming Uses. The concerns relate to not only the future redevelopment of Southland Mall, specifically the former Marie Callender's restaurant and Lucky Supermarket sites, but also future new infill development at the Mall (see safety zones map of Southland Mall area, Attachment III).

Infill - Infill development is defined in the ALUCP as "Development that takes place on vacant property largely surrounded by existing development, especially development that is similar in character." Chapter 2 of the ALUCP states, "Where development not in conformance with this ALUCP already exists, additional infill development of similar land uses may be allowed to occur even if such land uses are to be prohibited elsewhere in the AIA." Specifically, new infill development, like new restaurants at Southland Mall, could be considered consistent with the ALUCP if the following criteria are met:

- a. The parcel size is 20 acres or less;
- b. The site is at least 65% bound (disregarding roads) by existing uses that are similar to, or more intensive than, those proposed;
- c. The proposed project would not extend the perimeter of the area defined by the surrounding, already developed, incompatible uses;
- d. The area to be developed cannot previously have been set aside as open land in accordance with open land policies presented in Chapter 3 of this ALUCP unless replacement open land is provided within the same compatibility zone;
- e. If the size of the parcel proposed for development is 10 acres or less, the usage intensity (the number of people per acre) of the proposed use shall be no greater than the average intensity of all existing uses that lie fully or partially within a distance of 300 feet from the boundary of the proposed development; and
- f. If the size of the parcel proposed for development is greater than 10 acres (but no larger than 20 acres), the proposed use shall not have an intensity (the number of people per acre) more than 50% above the intensity permitted in accordance with the basic compatibility criteria listed in Table 2-3 [40 people per acre in Zone 2].

Depending on the future interpretation of the ALUC of these criteria, a new stand-alone restaurant at certain locations at Southland Mall could be considered compatible with the

ALUCP provisions; however, staff remains concerned with such provisions, given the ambiguity of application of such criteria and subsequent ALUC determinations regarding such projects.

Nonconforming Uses – The ALUCP defines a nonconforming use as “An existing land use that does not conform to an adopted or subsequently amended airport land use compatibility plan.” The ALUC has no authority over existing land uses, including those that are not compatible with the criteria established in ALUCP. However, proposed changes to an existing nonconforming use are subject to ALUC review and approval if the changes would result in an increase of nonconformity with the ALUCP.

As shown in Attachment II, the former Lucky’s Superstore site is located in Safety Zone 2, and the former Marie Callender’s restaurant site is located within Safety Zones 2 and 6. However, per ALUCP provisions, the intensity of future development of the former restaurant site would be subject to the more restrictive regulations of Zone 2. Zone 2 conditionally allows new commercial retail and office uses; however, it does not permit new, or the expansion of, eateries/drinking establishments. Such uses are indicated as not compatible in Zone 2, and would typically be subject to ALUC review, and likely a finding of incompatibility. Specifically, the ALUCP indicates that nonconforming nonresidential land uses may be maintained, altered, or reconstructed provided that there is no expansion, the intensity of land use does not increase as allowed by the safety zone, and the proposed expansion is associated with a public essential service, such as public infrastructure improved to maintain health and safety of the public. Such projects would be considered on a case-by-case basis. Staff remains concerned with this language that would consider as incompatible an expansion of the former restaurant building, or expansion of other noncompatible uses. Such concerns were stated in a November 15, 2011, letter from Mayor Sweeney to the ALUC (Attachment VII).

Draft Initial Study on the ALUCP – An Initial Study has been prepared for the ALUCP as required by the California Environmental Quality Act, and is available on the County’s website at: www.acgov.org/cda/planning/generalplans/airportlandplans.htm. The Land Use and Land Use Planning section discussion on pages 19-22 of the Initial Study indicates no significant conflicts of the existing General Plan with the draft ALUCP. The discussion addresses compatibility of the AIA and each safety zone with the General Plan. For Zone 2, the Initial Study states that, “...although the expansion of existing nonconforming land uses within this zone would be permitted by the City of Hayward’s General Plan, such uses would be subject to ALUC review. The purpose of this would be to provide the ALUC the ability to review a proposed expansion and recommend safety measures, or consider other unique circumstances.” Therefore, with this analysis, it appears that the expansion of the Marie Callender’s restaurant *could* be considered by the ALUC to be compatible with the ALUCP, provided appropriate safety measures are incorporated into the design.

City Council Action Prior to Adoption of the ALUCP – At this time, staff is recommending that the City Council adopts a resolution opposing portions of the draft ALUCP; specifically portions of Chapter 2. The attached resolution states that the City of Hayward has determined that such provisions may limit redevelopment and economic growth at Southland Mall. In addition, the draft ALUCP, absent an overrule action by the Hayward City Council after the ALUCP has been adopted on the ALUCP or portions of it, or related to a determination by the ALUC on a future project, has the potential to at least delay the development review process for certain projects in the Airport

Influence Area. The City Council resolution, if adopted, will be submitted to the ALUC staff during the document public review period that ends on February 6.

City Council Options Following the Adoption of the ALUCP - Once the draft ALUCP is adopted by the ALUC, the City Council would be required to take action to do one of the following:

1. *Amend the General Plan to be consistent with ALUCP* - Following the adoption of the ALUCP, the City of Hayward has 180 days to determine if the City of Hayward General Plan and any applicable specific plans are compatible with the ALUCP, and to amend the General Plan to be consistent. Such consistency can be achieved in one of the following ways:
 - *Incorporate Policies into Existing General Plan Elements.* This method requires the incorporation of all airport land use compatibility measures into appropriate general plan elements. For example, noise compatibility measures may be incorporated into the City's General Plan noise element. With this approach, direct conflicts between the ALUCP and General Plan are eliminated and compliance mechanisms are fully incorporated into the local jurisdiction's General Plan.
 - *Adopt a General Plan Airport Element.* This format may be appropriate when a City's General Plan also needs to address on-airport development or operational issues. Modification of other General Plan elements may still be necessary to eliminate conflicts and provide cross-referencing.
 - *Adopt the ALUCP as a Stand-Alone Document.* A City can adopt the ALUCP, and changes to the City's General Plan would be minimal. Policy reference to the separate ALUCP would need to be added to the General Plan, and any direct land use or other conflicts with compatibility planning criteria would have to be removed. The compatibility policies would substantially appear only in the stand-alone compatibility plan.
 - *Implement Compatibility Policies through Zoning.* Adoption of an airport combining district or overlay zoning ordinance by a local government is a way of codifying airport compatibility criteria described only conceptually in the ALUCP. A combining district can supplement local land use designations by adding specific noise and/or safety criteria applicable to future development in the airport influence area. Policy reference to airport compatibility in the General Plan could be as simple as stating support of the ALUCP and that policy implementation is by means of the combining zone.

2. *Overrule the ALUCP decision by a two-thirds vote* - The California Department of Transportation, Aeronautics Division's *California Airport Land Use Law Handbook Chapter 5* establishes a procedure by which affected local jurisdictions can overrule the compatibility policies set forth in the plan (see Attachment IV). The overruling process involves four mandatory steps:
 - a. At least 45 days prior to any decision to overrule the commission, the local agency must provide the local ALUC and the CalTrans State Division of Aeronautics a copy of the proposed decision and findings;
 - b. A public hearing is required to be held;
 - c. The City Council must make specific findings that the action proposed is consistent with the State Aeronautics Act; and
 - d. The City Council must approve such overrule action by a two-thirds vote of the City Council.

The findings that are required to be made to overrule the ALUC must show that the City Council action is consistent with the purpose of Public Utilities Code Section 21670 (Attachment VI), which provides for establishment of the ALUC. In addition, the findings are required to be consistent with these two provisions: “(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems; and (2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.”

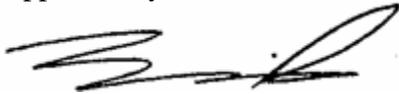
NEXT STEPS

Staff will attend a public meeting on the ALUCP at County offices on January 19, and will submit the attached resolution, if adopted, to the ALUC prior to the end of the public comment period on February 6. Staff will also forward via letter any comments from the Planning Commission, which is scheduled to discuss the ALUCP at a work session on January 26.

Prepared by: Arlyne J. Camire, AICP, Associate Planner

Recommended by: David Rizk, AICP Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Draft Resolution
Attachment II	Hayward Airport Safety Compatibility Zones Map
Attachment III	Hayward Airport Safety Compatibility Zones-Southland Mall Area Map
Attachment IV	California Airport Land Use Planning Handbook: Section 5.5-Overruling ALUC Decisions
Attachment V	ALUC Staff Report dated November 16, 2011 (without attachments)
Attachment VI	Public Utilities Code Section 21670
Attachment VII	Letter from Mayor Sweeney dated November 15, 2011

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION OPPOSING PORTIONS OF THE DRAFT
HAYWARD EXECUTIVE AIRPORT LAND USE
COMPATIBILITY PLAN

WHEREAS, the Alameda County Airport Land Use Commission (ALUC) staff prepared the public, draft Hayward Executive Airport Land Use Compatibility Plan, dated December 2011; and

WHEREAS, the public review period of the draft Hayward Executive Airport Land Use Compatibility Plan ends on February 6, 2012; and

WHEREAS, the City of Hayward has determined that Section 2.7.5.7 - Special Conditions, subsections (a) Infill, (b) Nonconforming Uses, and (e) Parcels Lying within Two or More Compatibility Zones, of the Hayward Executive Airport Land Use Compatibility Plan contain provisions that may limit redevelopment and economic growth at the Southland Mall; and

WHEREAS, the current draft Hayward Executive Airport Land Use Compatibility Plan, absent overrule by the Hayward City Council, has the potential to delay the development review process for certain projects in the Airport Influence Area; and

WHEREAS, policies and strategies of the Economic Development Chapter of the Hayward General Plan were established with the intent to support economic growth and to eliminate cumbersome and unnecessary regulations; however, many of the policies of the draft Hayward Executive Airport Land Use Compatibility Plan are inconsistent with such policies of the General Plan; and

WHEREAS, the Hayward General Plan's Conservation and Environmental Protection Chapter contains a Noise Mitigation Policy that provides "[t]he City will seek to protect the public health, safety and welfare against the adverse effects of excessive noise," and one related strategy states that the City will "[c]ontinue to review new development to assure compatibility with surrounding land uses and compliance with accepted noise standards;" and

WHEREAS, the Hayward City Council has adopted General Plan policies consistent with the purposes of State airport land use law to protect public health, safety, and welfare by ensuring orderly expansion of the airport. Furthermore, the General Plan contains land use measures that minimized public exposure to excessive noise and safety hazards within the Airport Influence Area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City of Hayward opposes those sections of the draft Hayward Executive Airport Land Use Compatibility Plan dated December, 2011, identified hereinabove, for all the aforementioned reasons.

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that this resolution be submitted as a public comment during the public review period of the draft Hayward Executive Airport Land Use Compatibility Plan.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

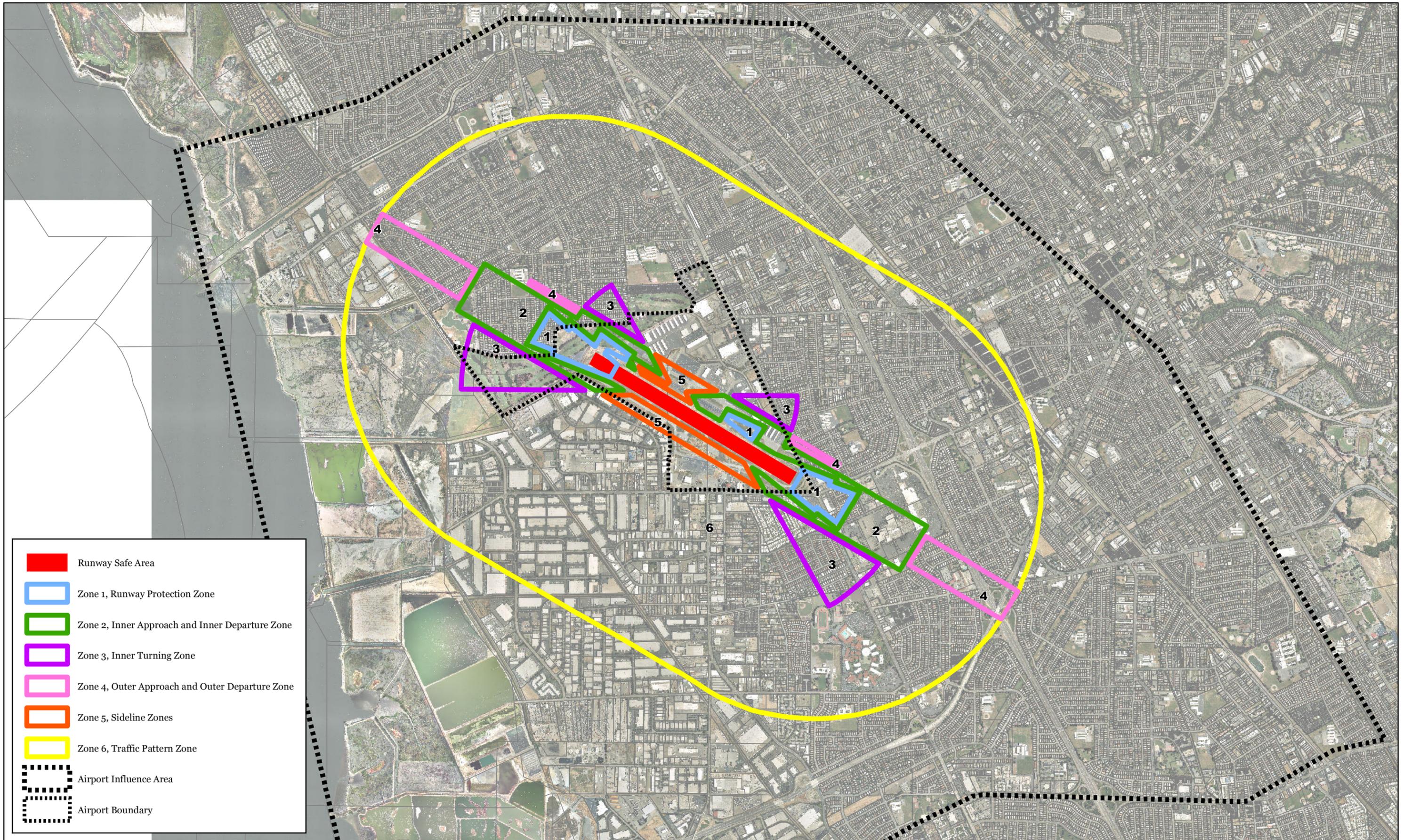
ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

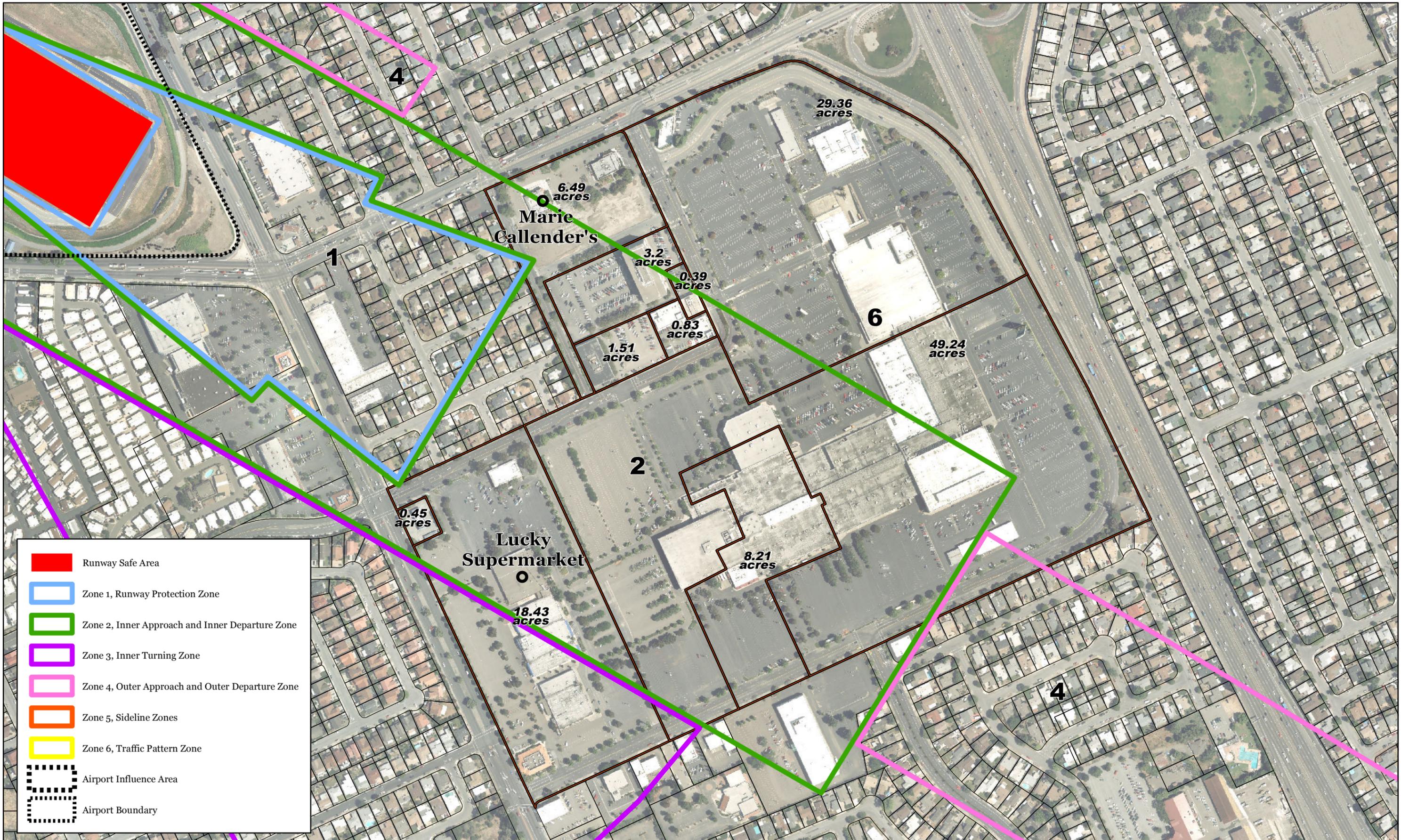
Hayward Airport Safety Compatibility Zones



- Runway Safe Area
- Zone 1, Runway Protection Zone
- Zone 2, Inner Approach and Inner Departure Zone
- Zone 3, Inner Turning Zone
- Zone 4, Outer Approach and Outer Departure Zone
- Zone 5, Sideline Zones
- Zone 6, Traffic Pattern Zone
- Airport Influence Area
- Airport Boundary



Hayward Airport Safety Compatibility Zones, Southland Mall Properties



- Runway Safe Area
- Zone 1, Runway Protection Zone
- Zone 2, Inner Approach and Inner Departure Zone
- Zone 3, Inner Turning Zone
- Zone 4, Outer Approach and Outer Departure Zone
- Zone 5, Sideline Zones
- Zone 6, Traffic Pattern Zone
- Airport Influence Area
- Airport Boundary

Note: Highlighted properties are Southland Mall properties, with acreage labeled.

5.5 OVERRULING ALUC DECISIONS

5.5.1 Procedure

Various sections of the airport land use commission statutes provide for local agencies to overrule ALUC decisions on land use matters and airport master plans. The overruling process involves four mandatory steps:

The State Aeronautics Act primarily refers to the term "overrule," although "override" is used in some sections. In common practice, the two terms are often used interchangeably. The critical point is that any local agency overruling of an ALUC must include the four steps listed here.

- ◆ At least 45 days prior to any decision to overrule the commission, the local agency must provide the local ALUC and the Division a copy of the proposed decision and findings;³
- ◆ The holding of a public hearing (except when an ALUC disapproves a local agency action prior to having adopted an ALUCP);
- ◆ The making of specific findings that the action proposed is consistent with the State Aeronautics Act;
- ◆ Approval of the proposed action by a two-thirds vote of the agency's governing body.

Note that a 1992 opinion of the State Attorney General concluded that a two-thirds vote of the entire membership of a city council or board of supervisors is not necessary for an overruling; a two-thirds vote of the members constituting a quorum is sufficient.

Two particular aspects of the overruling process warrant further examination. One is the issue of what constitutes valid findings under the provisions of the law. The other involves the subsequent implications of an overruling action.

5.5.2 Findings

A requirement for a local agency to make specific findings in conjunction with a decision to overrule an airport land use commission determination is included in several sections of the ALUC statutes. In each case, the law provides that the findings must show that the proposed local agency action "is consistent with the purposes of this article stated in Section 21670." A local agency cannot simply overrule an ALUC determination without first documenting the basis for the overruling action and relating that basis directly to the purposes for which the ALUC statutes were adopted. The purpose of findings is to assure compliance with state law.

³ The local ALUC and Division of Aeronautics may provide comments in response within 30 days of receiving the proposed decision and findings. Any comments, while advisory, shall be included by the local agency in the public record of any final decision. However, if the local ALUC or Division of Aeronautics' comments are not available within 30-days time, the local agency may act without them. (PUC Section 21676.)

Requirements for a government entity to make findings of fact when taking certain actions appear in many parts of state law. Also, numerous court cases have dealt with the issues of findings and their adoption. The most important case regarding the use of findings in local land use decisions was *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. In its ruling on this case, the court defined findings, explained their purposes, and outlined when findings are needed in making local land use decisions.

Findings were defined in the decision as legally relevant conclusions that explain the decision-making agency's method of analyzing facts, regulations, and policies and the rationale for making the decisions based on the facts involved. In other words, findings provide the connection between the evidence in the record, and the decision reached. The *Topanga* court also outlined five purposes for making findings. Findings should:

- ◆ Provide a framework for making principled decisions, enhancing the integrity of the administrative process;
- ◆ Help make analysis orderly and reduce the likelihood that the agency will randomly leap from evidence to the conclusions;
- ◆ Enable the parties to determine whether and on what basis they may seek judicial review and remedy;
- ◆ Apprise a reviewing court of the basis for the agency's action; and
- ◆ Serve a public relations function by helping to persuade the parties that administrative decision making is careful, reasoned, and equitable.

The necessity for adequate findings to accompany a local agency's overrule of an ALUC was affirmed in a 1992 court case, *California Aviation Council v. City of Ceres* (1992) 9 Cal.App.4th 1384. In this case the court found that the city council had merely referred to the ALUC statutes and then concluded that the proposed land uses minimized public exposure to excessive noise and safety hazards in the airport area. The findings did not document the critical links between the facts surrounding the proposal the relevant policies, and the decision.

In contrast, an unpublished decision⁴ of California's Third District Court of Appeal, in the case of *California Pilots Association v. County of Butte* (2003 WL 1871085), held that sufficient evidence supported the county's findings in support of its decision to overrule the ALUC. When affirming that the county's findings were adequate under Public Utilities Code section 21676 (b), the court stated:

“The Board's findings were sufficient to explicate that the proposal was consistent with the purposes stated in section 21670. The Board issued 10 pages of detailed findings, divided into four areas of concern related to land use near public airports: safety, overflight, noise, and airspace protection. The findings demonstrated that noise and safety hazards affecting the development were

⁴ While This decision is not published and, therefore, cannot be relied upon by a court or a party in any other action, the decision does provide useful insight on the factors that may be considered by courts in reviewing the adequacy of overrule findings. (See Cal. Rules of Court, rules 8.1105, 8.1110 and 8.1115.)

minimal or had been mitigated by a development agreement with the property owners.

The findings also were supported by substantial evidence. Each finding referred to relevant data, information, and guidelines, much of it taken from two sources prepared by professionals with expertise in airport land use planning: a state-published airport planning handbook and a federally-financed noise plan for the Chico Airport.”

The *California Pilots Association* decision confirms the rule of law established by past precedent (e.g., the *California Aviation Council* decision), namely, that to overrule the ALUC, findings should be based on substantial evidence in the public record that the proposed project is consistent with the overall goal of the State Aeronautics Act to minimize incompatible land uses within the vicinity of airports. In order to demonstrate such consistency, the local planning jurisdiction should explicitly delineate the basis for its determination that the proposed project does not impact the public health, welfare and safety or airport operations.

Perhaps most basic in preparing appropriate findings is that *findings must be substantive*, not just bare conclusions or recitations of the law: Generally, findings must explain the reasoning behind conclusions and provide a bridge between raw data and ultimate conclusion and decision.

Findings must demonstrate that the proposed action “is consistent with the purposes...” of the statutes as set forth in the State Aeronautics Act (Section 21670). Examination of Section 21670(a) indicates that five separate purposes for the legislation are state:

“...to provide for the orderly development of each public use airport in this state...”

“...to provide for the orderly development of...the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards...”

“...to provide for the orderly development of...the area surrounding these airports so as...to prevent the creation of new noise and safety problems.”

“...to protect the public health, safety, and welfare by ensuring the orderly expansion of airports...”

“...to protect the public health, safety, and welfare by...the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.”

5.5.3 Notifying an ALUC of an Action to Overrule

In 2003, Assembly Bill (AB) 332 was enacted amending those sections of the Public Utilities Code -- specifically Sections 21676, 21676.5 and 21677 -- dealing with the authority of local agencies to overrule ALUCs. The digest for the legislation provides, in part:

“The bill would require the local or public agency governing body to provide the [ALUC] and the division [i.e., the California Department of Transportation, Division of Aeronautics; Caltrans] with the proposed decision and findings at

least 45 days prior to the decision to overrule the [ALUC] and would authorize the [ALUC] or [Caltrans] to make advisory comments within 30 days of receiving the proposed decision and findings. The bill would require that the advisory comments from the [ALUC] or [Caltrans] be included in the final record of any final decision to overrule the [ALUC]."

As indicated above, AB 332 imposed new notification and recordkeeping requirements on local agencies. Specifically, local agencies are now required to:

- ◆ Provide the local ALUC and Division of Aeronautics with a copy of the proposed decision and findings at least 45 days in advance of any overrule decision; and
- ◆ Include any comments from the local ALUC and Division of Aeronautics in the final record of decision.

AB 332 also imposed new requirements on local ALUCs and Division of Aeronautics; specifically, these agencies may provide comments on any proposed overrule decision and findings within 30 days of receiving such documents from a local planning jurisdiction. If the local ALUC and Division of Aeronautics fail to act within that time frame, the local agency may proceed.

5.5.4 Implications of Local Agency Overruling an ALUC

The state law indicates several implications of a local agency's decision to overrule an ALUC determination:

- ◆ **Action Approved**—The most obvious outcome of a local agency's overruling is that the proposed action—approval of a plan, ordinance, project, or whatever—takes effect just as if the ALUC had approved it or found it consistent with the ALUCP.
- ◆ **Subsequent Reviews**—If a local agency adopts or amends a local plan for the airport area by overruling the ALUC, then subsequent ALUC review of individual development projects related to that overruling become voluntary (PUC Section 21676.5(b)).
- ◆ **Airport Proprietor's Immunity**—Two sections of the law establish that, if a local agency overrules an airport land use commission with respect to a publicly owned airport not operated by that local agency, the agency operating the airport "shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to override the commission's action or recommendation" (PUC Sections 21678 and, with slightly different wording, 21675.1(f)). The law does not indicate who will become liable under these circumstances.

5.6 ROLE OF AIRPORT PROPRIETORS

5.6.1 Introduction

Apart from their obligation to submit airport master plans, construction plans of new airports, and plans for airport expansion (when an amended airport permit is required) for airport land use commission review, airport proprietors also have a more basic role in airport land use compatibility matters. There are three facets to this role. One arises because of the relationship between the airport proprietor's actions and the substance of the ALUCP. A second is the

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STAFF RECOMMENDATION:

That the Airport Land Use Commission review this report, take public testimony, direct staff to incorporate policy recommendations as described herein, and prepare and release the Public Review drafts of the Hayward and Livermore ALUCPs and Initial Studies.

BACKGROUND AND UPDATE

At the July 20, 2011 ALUC meeting, the Commission held a Work Session to review work completed by county and agency staff on outstanding items from the March 2011 ALUC meeting. A number of issues and recommended 'fixes' regarding specific policies was presented and discussed at length by ALUC Commissioners, city and county staff, and members of the public. While a number of contentious items had been resolved during the months of collaboration with the cities, there remained others that were not. The Commission directed staff to continue to work with the cities to address remaining concerns on the unresolved policy issues.

This staff report briefly summarizes the outcome of this work between July and November, identifies key issues where agreement was not reached, and makes policy recommendations for your review and consideration. While every effort has been made to ensure that the most current land use information and data for each jurisdiction in the Airport Influence Areas (AIA) for the Hayward and Livermore Airports has been included in these final draft documents, staff understands there may be additional updated information discovered during the coming public review period.

Included with this report are the following attachments:

- Attachment 1: PDF of City of Hayward's recommended changes to Chapter 2
- Attachment 2: Three maps of location of a parcel in Safety Zone's 2 and 6 of Hayward Airport
- Attachment 3: Comments submitted by the City of Livermore staff and staff response.
- Attachment 4: Draft Hayward Airport ALUCP and Initial Study
- Attachment 5: Draft Livermore Airport ALUCP and Initial Study

-----**HAYWARD AIRPORT**-----

POLICY ISSUES AND RECOMMENDATIONS

1. Land Uses *Future expansion of Existing Non- Conforming*

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Safety Zones 1 and 2 prohibits mall eateries/drinking establishments (defined as approx. 60 s.f./person). The City of Hayward anticipates that a currently vacant restaurant site (the former Marie Callendar's) will be redeveloped on a parcel that has several other existing restaurants. This parcel is bisected by two Safety Zones, 2 and 6. Policy 2.7.5.7 e) -Parcels Lying within Two or More Compatibility Zones states that:

If a parcel is split by safety zone boundaries, the intensity of development allowed within the more restricted portion of the parcel should be transferred to the less restricted portion. However, the ALUC can consider less restrictive options on a case-by-case basis if special conditions or design criteria are applied to the proposed project. These special conditions may include:

1. *Maintaining adequate open space for emergency landings (0.5 acre of parcel);*
2. *Clustering of development; and*
3. *Any other criteria, as identified by the ALUC, and agreed upon by the applicant and/or jurisdiction as a condition of approval.*

Attachment 2 includes three maps that show the exact location of the parcel relative to the Safety Zones in the Draft HWD ALUCP.

Current Uses on Parcel in Question

The following table shows the current and anticipated development on this parcel, and includes calculations for maximum occupancy and density of each building, shown as square footage per person. As noted above, the density limit for Safety Zone 2 for these uses is approximately 60 s.f./person.

Density Calculations for the existing restaurants on parcel in HWD Safety Zone 2 & 6

Restaurant	Max. Occupancy	Square Feet	Square feet/person
Marie Calendars Site (currently vacant)	TBD	Proposed 6,000 - 9,000	100-150 s.f./person
Panera Bread	115 (15 patio)	4,500	<u>75 s.f./person</u>
Applebee's	200	6,995	117 s.f./person
Elephant Bar	269 (30 patio)	7,800	130 s.f./person
Mimi's Café	264	7,389	123 s.f./person
Vacant market	TBD	47,000	783 s.f./person

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The City is requesting that the designation for this land use in Safety Zone 2 be changed from 'Prohibited' to 'Conditional' to allow for expected future expansion of the Marie Calendar site.

Staff recommends that the designation remain Prohibited for the following reasons:

1. As was presented in the July 20 staff report, the data reveal that Safety Zones 1 and 2 encompass 30-50% of near-airport accidents. This information is the basis for the Caltrans Handbook recommendation for the density limits for Safety Zone 2 as shown in Table 3-2. (also see Table 2-3 in HWD DRAFT ALUCP).
2. Based on the parcel's current configuration and existing uses, there is insufficient land available to cluster development or preserve open space for emergency landings (see maps in Attachment 2).
3. As demonstrated in the table above, the entire parcel is currently occupied with similar non-conforming, non-residential land uses.
4. This parcel can retain its value and be used for the same purpose (in this case, a restaurant) as long as the following conditions are met:

Policy 2.7.5.7.(2) (b) Nonconforming Uses: Nonconforming nonresidential land uses may be maintained, altered, or reconstructed provided the following:

1. *No expansion of the portion of the site devoted to the nonconforming use occurs.*
2. *No increase in the usage intensity above allowable levels for the safety zone in which the use is located occurs.*

Policy 2.7.5.7. (2) (c) Reconstruction: An existing nonconforming development that has been fully or partially destroyed may be rebuilt only under the following conditions:

1. *Nonconforming residential uses may be rebuilt provided that the expansion does not result in more dwelling units than existed on the parcel at the time of the damage.*
2. *A nonconforming nonresidential development may be rebuilt, even if completely destroyed, provided that the reconstruction does not increase the floor area of the previous structure or result in an increased intensity of use (i.e., more people per acre).*

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4. Additionally, Policy 2.7.5.7.f) *Other Special Conditions* establishes the opportunity for a jurisdiction to ask the ALUC to consider the merits of a project that is known to be an expansion of an existing non-conforming use:

The compatibility criteria set forth in this plan are intended to be applicable to all locations within each AIA. However, it is recognized that there may be specific situations where a normally incompatible use can be considered compatible because of terrain, specific location, or other extraordinary factors or circumstances related to the site.

1. *After due consideration of all the factors involved in such situations, the ALUC may find a normally incompatible use to be acceptable.*
2. *In reaching such a decision, the ALUC shall make specific findings as to why the exception is being made and that the land use will not create a safety hazard to people on the ground or aircraft in flight nor result in excessive noise exposure for the proposed use. Findings also shall be made as to the nature of the extraordinary circumstances that warrant the policy exception.*
3. *The burden for demonstrating that special conditions apply to a particular development proposal rests with the project proponent and/or the referring agency, not with the ALUC.*
4. *The granting of a special conditions exception shall be considered site specific and shall not be generalized to include other sites.*
5. *Special conditions that warrant general application in all or part of the AIA of one airport, but not at other airports, are set forth in Chapter 3 of this ALUCP.*

2. Other proposed changes to the Draft HWD ALUCP

Attachment 1 contains comments submitted by the City, which resulted in a number of clarifying edits and reorganization of Section 2.7.5.7, as shown in the following section:

2.7.5.7 Special Conditions

- a) ***Infill.** Where development not in conformance with this ALUCP already exists, additional infill development of similar land uses may be allowed to occur even if such land uses are to be prohibited elsewhere in the AIA. The burden for demonstrating that*

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a proposed development qualifies as infill rests with the project proponent and/or local jurisdiction.

- 1) *A parcel can be considered for infill development if it meets all of the following criteria plus the applicable provisions of either Sections 2.7.5.7(a)(2) or 2.7.5.7(a)(3) below:*
 - i. *The parcel size is 20 acres or less.*
 - ii. *The site is at least 65% bound (disregarding roads) by existing uses that are similar to, or more intensive than, those proposed.*
 - iii. *The proposed project would not extend the perimeter of the area defined by the surrounding, already developed, incompatible uses.*
 - ~~iv. *Further increases in the density, intensity, and/or other incompatible design or usage characteristics (e.g., through use permits, density transfers, addition of second units on the same parcel, height variances, or other strategy) are not included.*~~
 - ~~iv.~~ *The area to be developed cannot previously have been set aside as open land in accordance with open land policies presented in Chapter 3 of this ALUCP unless replacement open land is provided within the same compatibility zone.*

- 2) *For residential development, the density of the parcel proposed for development shall not exceed the following:*
 - i. *For parcels of 10 acres or less, the density shall not exceed the median density represented by all existing lots that lie fully or partially within a distance of 300 feet from the defined infill area. If the size of the parcel is 10 acres or less, the development density shall not exceed the total density represented by all existing lots that lie fully or partially within a distance of 300 feet from the boundary of the parcel to be divided.*
 - ii. *If the size of the parcel is greater than 10 acres (but no larger than 20 acres), then the development density shall be no greater than double the density permitted in accordance with the basic compatibility criteria listed in Table 2-3.*

- 3) *For non-residential development:*
 - i. *If the size of the parcel proposed for development is 10 acres or less, the usage intensity (the number of people per acre) of the proposed use shall be no greater than the average intensity of all existing uses that lie fully or partially within a distance of 300 feet from the boundary of the proposed development.*
 - ii. *If the size of the parcel proposed for development is greater than 10 acres (but no larger than 20 acres), the proposed use shall not have an intensity (the number of people per acre) more than 50% above the intensity permitted in accordance with the basic compatibility criteria listed in Table 2-3.*

- 4) ~~*The ALUC should consider the eligibility of a parcel for infill development only once. In order for the ALUC to consider proposed development under these infill criteria, the local jurisdiction*~~

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having land use authority (Alameda County or affected cities) must first identify the qualifying locations in its general plan or other adopted planning document that has been found consistent with the ALUCP by the ALUC. This action may take place in conjunction with the process of amending a general plan for consistency with the ALUC plan or may be submitted by the local jurisdiction for consideration by the ALUC at the time of adoption of this ALUCP. In either case, ~~†~~The burden for demonstrating that a proposed development qualifies as infill rests with the project proponent and/or local jurisdiction.

- b) *Nonconforming Uses. The ALUC has no authority over existing land uses, including those that are not compatible with the criteria established in this ALUCP. Specifically, an ALUC cannot reduce or remove an incompatible land use from an airport's AIA. However, proposed changes to existing uses are subject to ALUC purview if those changes would result in an increase of nonconformity with ALUCP policies. Specified changes to nonconforming uses are limited as follows*~~Uses that are not in conformance with this ALUCP may only be expanded as follows:~~

1) Residential Uses.

i. Nonconforming residential uses may be maintained, remodeled, reconstructed, or expanded in building size provided that the expansion does not result in more dwelling units than currently exist on the parcel.

†ii. A single-family residential parcel may not be divided for the purpose of allowing additional dwelling units to be constructed.

- 2) Nonresidential Uses. A nonconforming nonresidential development may be continued, modified, transferred, or sold, provided that no such use shall be expanded in area or increased in intensity (the number of people per acre) above the levels existing at the time of adoption of this ALUCP.*

i. Nonconforming nonresidential land uses may be maintained, altered, or reconstructed provided the following:

1. No expansion of the portion of the site devoted to the nonconforming use occurs.

2. No increase in the usage intensity above allowable levels for the safety zone in which the use is located occurs.

†3. Proposed expansion for reconstruction or modernization of non-conforming, but essential public services (e.g., water treatment plants, recycled water storage, flood control or water conveyance channels, and other public infrastructure projects necessary to maintain the health and safety of the public will be considered on a case-by-case by the ALUC.

- †3) Any proposed expansion of a nonconforming use (in terms of the number of dwelling units or people on the site) shall be subject to ALUC review. Factors to be considered in such reviews include whether the development qualifies as infill or warrants approval because of other special conditions.*

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- c) *Reconstruction.* An existing nonconforming development that has been fully or partially destroyed ~~as the result of a calamity~~ may be rebuilt only under the following conditions:
- 1) *Nonconforming residential uses may be rebuilt provided that the expansion does not result in more dwelling units than existed on the parcel at the time of the damage.*
 - 2) *A nonconforming nonresidential development may be rebuilt, even if completely destroyed, provided that the reconstruction does not increase the floor area of the previous structure or result in an increased intensity of use (i.e., more people per acre).*
 - 3) *Nothing in Sections 2.7.5.7(c)(1) through 2.7.5.7(c)(2) is intended to preclude work required for normal maintenance and repair.*

3. Request for an extended public review period of 60 days versus 45

City staff has requested that the public review period be extended to 60 days, as opposed to the 45-days currently planned. The concern is that the review period will end during the holidays, which will not provide sufficient time for adequate public review.

Staff recommends against this extension based on the following:

- CEQA requires that the Draft ALUCP Plan and Initial Study be circulated for 30 days only. We made the decision to extend this a year ago when the last Draft HWD and OAK ALUCPs were in public circulation; it was recognized at that time that this had been a long project, and a longer opportunity for public review was warranted.
- Ending the public review period during the holidays is easily avoided as release dates are flexible. There will be two evening public meetings held during this time: one in East County in the Dublin County Facility, and one in Hayward.
- Based on our experience last fall of no members of the public attending the hearing held despite a several thousand-piece mailing, news releases and multiple news outlets contacted, staff anticipates that more time would likely not result in more public input.
- The sentiment that has been expressed over the last year by the Commission and some members of the public is that after nearly 10 years, the time has come to complete this process and adopt the long-overdue updated airport land use compatibility plans.

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POLICY ISSUES AND RECOMMENDATIONS

The City of Livermore submitted the following documents found in Attachment 3:

- A comment letter regarding a number of issues ranging from edits, to requests for significant policy changes.
- Suggested edits to Tables 3-1 *Noise Compatibility Criteria*, and Table 3-2, *Safety Compatibility Criteria*.

Staff responses to the City's comment letter are shown within the letter, following each section.

A number of changes are proposed to the Draft ALUCP based on the City's requests and comments, including the addition of a new policy for expansion of a public infrastructure non-conforming use which is added to both draft plans:

2.7.5.7 (b) (2) *Non-Residential Uses:*

(3) Proposed expansion for reconstruction or modernization of non-conforming, but essential public services (e.g., water treatment plants, recycled water storage, flood control or water conveyance channels, and other public infrastructure projects necessary to maintain the health and safety of the public will be considered on a case-by-case basis by the ALUC.

1. El Charro Specific Plan (ECSP)

When the City of Livermore developed the ECSP, the 1986 Airport Land Use Policy Plan was in effect. City staff evaluated the project based on the existing Policy Plan, and is concerned that the Draft ALUCP, if adopted as currently written, will require changes to the ECSP due to potential incompatibility. To that end, the City requests that the ECSP be identified as an existing land use in the Draft ALUCP due to Development Agreements in place that vest site specific land uses. (See discussion in the City's comment letter.)

- Based on the City's description of the land use agreements in place for the ECSP, it appears to meet the ALUCP definition of "Existing Use", which eliminates the need to call this out specifically, as requested.
- Additionally, ALUC staff and the project consultant reviewed the ECSP and do not believe there are potential incompatible land uses based on policies in the Draft ALUCP. To support this conclusion, the following discussion on the ECSP was added to the Land Use and Land Use Planning portion of the Initial Study:

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El Charro Specific Plan

The City of Livermore adopted the El Charro Specific Plan on July 9, 2007. The El Charro Specific Plan planning area is bound by I-580 to the north, El Charro road to the west, open space to the south, and the municipal golf course and LVK to the east. The Land Use Element of the El Charro Specific Plan includes the following policies related to land use compatibility:

Goal 2.2	City open space areas will be maintained to provide a variety of community supportive functions that are compatible with the Airport Protection Area (APA).	
Goal 2.4	Develop a land use program within the El Charro Specific Plan Area that is compatible with surrounding land uses and sensitive to the natural environment.	
	Policy 2.4.1	Locate land uses within the Plan Area to ensure compatibility with surrounding land uses, including quarry operations and the Livermore Municipal Airport.
	Objective 2.4.1a: All land uses proposed on properties in the Airport Protection Area (APA) will need prior City approval.	
	Objective 2.4.1e: Land uses will be generally consistent with density standards contained in the Safety Policies of the Alameda County Airport Land Use Policy Plan (ALUC, July 1986). Uses are defined as compatible when not exceeding a density of 25 persons per net acre over an 8-hour period, or a density not exceeding 50 persons per net acre for more than two hours per day.	
	Objective 2.4.1f: All properties within the Specific Plan area will be required to record aviation and noise easements prior to development, to ensure full disclosure and consistency with the objectives for land use compatibility with Livermore Municipal Airport and the Alameda County ALUC Plan. The easements shall specifically note that operations and flight numbers at the Livermore Municipal Airport could increase in the future.	
Source: City of Livermore El Charro Specific Plan, Land Use Element, July 9, 2007.		

The El Charro Specific Plan area is located within LVK's AIA and portions of safety zones 2, 3, and 6. Portions of the El Charro Specific Plan area located within Safety Zone 2 are designated for Open Space, which would allow for stormwater retention areas and small picnic areas. Land uses of these types would be conditionally compatible within Safety Zone 2, provided that airspace protection policies intended to avoid the attraction of wildlife hazardous to aircraft in flight were implemented. Therefore, the designation of Open Space associated with the El Charro Specific Plan is considered conditionally compatible with the LVK ALUCP, and no conflict would occur.

Land uses within LVK's Safety Zone 3 associated with the El Charro Specific Plan area include a mix of Regional and Sub-Regional Retail, Food, and Entertainment uses. According to the El Charro Specific Plan, Regional serving retail uses are planned for a majority of the area. Regional serving retail categories may include food and entertainment, mid-box retail, and lifestyle services such as general

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merchandise sales, outlet stores, home decorating, house wares, clothing and accessories, and mid-size retailers that sell goods such as electronics, sporting goods, or other consumer products (pg. 2-2, City of Livermore, 2007). As indicated in Table 3-2 of the LVK ALUCP, land uses of these types are either conditionally compatible or permitted within Safety Zone 3; provided they meet the ascribed intensity standards and other conditions indicated in the ALUCP or by the ALUC during project review. These land uses would also be required to meet the height restrictions established by the LVK ALUCP's airspace protection policies, which derive from FAA's FAR Part 77 standards. In summary, commercial uses associated with the El Charro Specific Plan located within Safety Zone 3 would be considered permitted or conditional, and no inconsistencies would occur.

Lastly, commercial uses located within Safety Zone 6 would be subject to limited safety policies, and would primarily be restricted by the airspace protection policies within the LVK ALUCP (e.g., height restrictions, hazardous wildlife attractants, and avoiding glare, smoke, or electrical interference that may affect an aircraft in flight). As such, commercial uses associated with the El Charro Specific Plan within Safety Zone 6 are considered permitted and are consistent with the LVK ALUCP.

2. City of Livermore requested changes to Table 3-1 Noise Compatibility Criteria and Table 3-2 Safety Compatibility Criteria

As seen in Attachment 3, there are a significant number of requested changes for these tables. For Table 3-1, the concern is that this table does not reflect the City's Noise Standards in the General Plan. For Table 3-2, the concern is that there will be significant inconsistencies with the city's adopted land use plans near the airport.

- ALUC staff reviewed both tables with consultant staff and the Commission Chair. As discussed in our response to the city's comments, the table is not based on the city's General Plan noise standards. Rather, the table reflects noise contours specific to each airport and its environs, and is as such is appropriately represented.
- Similarly, the Safety Compatibility Criteria in Table 3-2 is developed based on Caltrans accident data research and policy recommendations in the *2002 Handbook* for each land use type. Some of the requested changes were incorporated into the draft plan, but others were not. Please refer to Tables 3-1 and 3-2 in Attachment 3, and the same tables found in Chapter 3 of the Draft ALUCP in Attachment 5.
- As noted in staff's response, the city has the option to either make their General Plans and Specific Plans consistent within the 180-day review period after ALUCP adoption, or, override the whole plan or specific policies the city will not support.

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3. Request that Open Land Requirements be removed from selected portions of the Draft ALUCP

The City has requested that Section 3.3.2.12 – *Open Land*—and the corresponding open space standards on Table 3-2 be removed and instead rely on the draft clustering policies in Section 3.3.2.11, combined with the City’s development standards and limitations for development near the Livermore

Airport. City staff is also concerned that likely infill development will not meet the prescribed open space standards, including reserving 75x300 feet of unencumbered open space, and that such a large amount of open space required on a single lot will create a “takings” of development potential and open us the City and the ALUC to a lawsuit. Staff recommends leaving the Open Space requirements as is in the text and table due to the following:

- The Open Land policies show up in a number of places in chapters 1 and 2 of the Draft Plan, as do a number of other policies (i.e., project review requirements, Commission review options, meeting conditional use requirements, to name a few). This is done to reiterate key requirements as they apply to a number of situations, as well as to reinforce important concepts that may be easily overlooked in a policy document of this scope.
- As stated in ALUC staff’s response, the dimensions are recommended, and should be used as a guide when considering future land use compatibility with the airport. A previously discussed example of this is the square feet/person figure in the Hayward Airport issue section.

4. Request that the description of the accident source data set Caltrans uses in developing safety zone recommendations be modified

The City requests that we clarify that Risk Data that the Safety Zones are in part based on are derived from a *national* accident database and not from an accident database for the Livermore Airport. This comment came up earlier this year during an Administrative Draft Plan review. At that time the cities felt that setting safety zone land use requirements based on accident data that is not derived from the specific local airport in question is a flawed methodology, and overstates risk. Although this distinction is relatively straight-forward, ALUC staff is unclear why this is necessary. Staff does not make a specific recommendation on this request, but offers the following points for the Commission’s consideration:

- The Caltrans information is derived from a national database maintained by the FAA and the NTSB, which tracks all the factors that contributed to aviation accidents, *based on specific airport types*: commercial, general aviation, military, heliport, or private airstrip.

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- While airport-specific accident data is always important to consider, it cannot provide a statistically-based representation of accident risk potential for the Livermore Airport. The FAA, NTSB, and Caltrans have done the analysis for risk based on a large sample size with similar characteristics, which produces a more defensible rationale for developing safety zone policy for all airports of a similar type, in this case, general aviation. To rely on each airport's history of accidents would skew the true risk potential.

California Public Utilities Code Section 21670

(a) The Legislature hereby finds and declares that:

- (1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.
- (2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation.

For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

- (1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.
- (2) Two representing the county, appointed by the board of supervisors.
- (3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.
- (4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.

(f) It is the intent of the Legislature to clarify that, for the purposes of this article, that special districts, school districts, and community college districts are included among the local agencies that are subject to airport land use laws and other requirements of this article.



CITY OF
HAYWARD
 HEART OF THE BAY

November 15, 2011

Alameda County Airport Land Use Commission
 224 West Winton Avenue
 Hayward, CA 94544

Re: Draft Hayward Airport Land Use Compatibility Plan (ALUCP) and Related Draft Initial Study

Dear Commissioners:

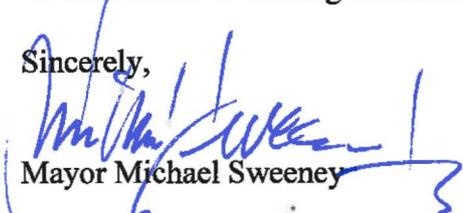
I understand that you are scheduled to approve at your November 16 meeting the final public review draft ALUCP document for the Hayward Airport and the associated Initial Study, to begin a 45-day public review period of those documents. Given that the current version of the draft ALUCP was only released less than a week ago late Thursday afternoon on November 10, I request that the public review period be extended to 60 days to allow the public and the Hayward City Council sufficient time to review and comment on the documents. Should a 45-day review period be established, that period would end on Saturday, December 31, 2011. Given the upcoming holidays and the fact that Hayward City Hall will be closed during the week between Christmas Day and New Year's Day, more time is needed to properly review these revised draft documents.

Additionally, representatives from Southland Mall, a major retail center in Hayward that will be impacted by the ALUCP, only recently received notification of your November 16 meeting and have expressed concerns with the draft ALUCP and the need for additional time to review it. Particular concerns have been relayed to City staff regarding potential impacts of the ALUCP on the vacant Marie Callender's restaurant building and the vacant former Lucky's Store building at the Mall.

Also, Hayward staff continues to have concerns with the provisions in Chapter 2 of the revised ALUCP document related to what modifications/alterations, etc. would be allowed to nonconforming uses, especially given the large parcels that comprise the Southland Mall property. As you know, the provisions in the draft ALUCP indicate parcels that contain more than one Airport Safety Zone are to have the more restrictive zone standards apply to the entire parcel.

It is hoped the City and the ALUC can continue to work together to develop an Airport Land Use Compatibility Plan for the Hayward Airport that meets the goals and policies of the Airport Land Use Commission while also recognizing the fiscal and economic importance in allowing flexibility in modifications to existing nonconforming establishments. Thank you for your consideration.

Sincerely,


 Mayor Michael Sweeney

Office of Mayor Michael Sweeney

777 B Street • Hayward • CA • 94541-5007
 Tel: 510/583-4340 • Fax: 510/583-3601 • TDD: 510/247-3340
 EMAIL: Michael.sweeney@hayward-ca.gov

DATE: January 17, 2012

TO: Mayor and City Council

FROM: Assistant City Manager
Development Services Director

SUBJECT: Approval of Acquisition and Disposition of Caltrans Parcels Adjacent to the South Hayward BART Transit-Oriented Development

RECOMMENDATION

That the Council adopts the attached resolution

1. Authorizing the City Manager to:
 - a. Execute a certificate of acceptance of the grant deed by which the excess land parcels are being acquired from Caltrans (Caltrans Property);
 - b. Negotiate and execute a land exchange agreement with the Developers of the Market Rate Development (Wittek & Montana) portion of the South Hayward BART station transit-oriented development (TOD Project);
 - c. Allow the Developers to draw up to \$2.2 million from the California Department of Housing and Community Development (HCD) Infill Infrastructure Grant (IIG) funds for predevelopment and land acquisition costs (collectively Attachment I); and
2. Authorizing the use of in-lieu park dedication fees to acquire the Caltrans Property;

SUMMARY

The City and Caltrans have reached an agreement for the sale and purchase of two (2) excess lands parcels to the City for a total purchase price of \$400,000. The Council is being asked to authorize the City Manager to execute a certificate of acceptance of the grant deed for the Caltrans Property.

To accommodate a preferred design for the market rate development and the park, it is necessary to reconfigure the two non-contiguous parcels currently owned by Caltrans into a logical shape and contiguous configuration. In order to do this, the City and Wittek & Montana desire to exchange like-sized parcels (approximately 0.07 ac each).

Additionally, the City has imposed a restriction that a maximum of \$2,000,000 may be drawn by the Developers from HCD IIG funds for predevelopment cost reimbursements. The Developer is

to contribute 50% of the acquisition cost of the Caltrans parcels (\$200,000) and the Developers had included this cost in the Project HCD budget. However, the Developers had scheduled such payment to occur later during the construction phase. As such, the Developers are requesting that the City allow an increase to the Project HCD predevelopment budget draw down from \$2,000,000 to \$2,200,000, in order to expedite the reimbursement to the City for its share of the acquisition cost (i.e. prior to construction).

BACKGROUND

In 2009, the South Hayward TOD Project was awarded \$47 million of Proposition 1-C Bond “Round II” Infill Infrastructure Grant and Transit Oriented Development Housing Program Funds (the “HCD Funds”). The \$47 million was intended to finance a BART Parking Garage, and certain other infrastructure and affordable housing costs of the TOD Project. As originally proposed to HCD, the TOD Project would commence with a BART parking garage and included a significant housing and retail component. It was originally contemplated that the Redevelopment Agency (hereinafter the “Agency”) would provide up to \$19.8 million to the TOD Project, including up to \$7.1 million in Low and Moderate Income Housing Funds for the affordable housing included in the TOD Project and up to \$12.7 million for infrastructure and site improvements.

In January 2011, the Developers re-phased the TOD Project and advised that the new “Phase 1” would include 151 affordable units (64 senior units and 87 family units) (the “Phase 1 Affordable Housing Development”) and 203 market-rate rental units (the “Phase 1 Market Rate Housing Development”). A work session with Council was held on March 8, 2011 to explain the reasons for the re-phasing. Thereafter, in response to the Developers’ submission of a request for approval of modifications to the Project, the Development Services Director approved on June 8, 2011, a minor modification to the approved Preliminary Development Plan and related modifications to certain Project Conditions of Approval.

Because of the re-phasing, HCD recalculated the amount of the HCD Funds award and has committed to funding \$31.3 million for the total Project, consisting of \$16.2 million in Infill Infrastructure Grant (IIG) Funds and \$15.1 million of Transit Oriented Development Housing Funds (“HCD TOD Funds”). As design of the development is not yet final, it is possible that the Developers may increase the number of units in the Project (subject to complying with zoning density limits and other City requirements, including Council approval), in which case, HCD may increase the amount of IIG Funds that are available for the TOD Project to \$33.1 million. The HCD IIG Funds are intended to pay for both predevelopment and construction costs, including but not limited to a portion of the impact fees, site work, the parking garages and a portion of the acquisition costs of the Caltrans Property (to be used to create a public park) to serve the Phase 1 Affordable Housing Development and the Phase 1 Market Rate Housing Development. The HCD TOD Funds are permanent financing to support the Phase 1 Affordable Housing Development.

During its July 26, 2011 meeting¹, Council reauthorized the execution of the HCD IIG documents, approved the terms of an Owner Participation Agreement (OPA) to be entered into by the City and the Developers, clarified certain conditions of approval related to the TOD Project (Project Conditions of Approval), and approved the formation of a Joint Powers Authority (JPA) with BART, which is integral to the completion of the TOD Project. City staff expects to have a fully negotiated and executed OPA in early 2012, with the first draw of HCD IIG Funds occurring soon after execution of the OPA. The Joint Powers Authority has held its first meeting and its proposed activity or work plan is intended to be finalized and brought to Council for further approval in April 2012.

To access the HCD IIG Funds, the City and the Developers are required to jointly execute a Standard Agreement and a Disbursement Agreement with HCD. The City Council and Agency Board approved execution of the HCD agreements at the time their application for the funds was made in 2009 and reaffirmed its approval on July 26, 2011. The Standard Agreement was executed as of September 1, 2011. Staff and the Developers are in the process of negotiating the final form of the Disbursement Agreement. The HCD agreements provide that HCD will disburse IIG Funds for eligible IIG Costs. To ensure that the City had sufficient protection during the predevelopment phase of the Project, the Developers and City contemplated a maximum cap of \$2.0 million in IIG Funds that could be disbursed for predevelopment costs prior to commencement of construction.

DISCUSSION

Acquisition of Park - On July 26, 2011, the Council modified the South Hayward BART station transit-oriented development Project Conditions of Approval #121 to provide that:

Prior to completion of tract improvements for the development proposed east of Dixon Street, ... the City and Developers shall acquire, improve, and offer for dedication for public use and provide for ongoing maintenance of the adjacent Caltrans parcels [for park purposes].

The OPA term sheet approved by Council provides that the Developers will participate in the acquisition of the land from CalTrans by contributing 50% of the purchase price. As the purchase of the two Caltrans parcels has been negotiated at \$400,000, the Developers' share is \$200,000.

City's Payment of Park Acquisition Costs and Increase in HCD draw - As of August 30, 2011, the City has approximately \$540,000 in its park dedication fee fund for Zone B, in which the Project is located. The Developers will be required to pay at time of final inspection approximately \$2,300,000 (203 units x \$11,395/unit (as the project will be mapped for condos)) in in-lieu park dedication fees. Staff recommends that \$400,000 of the park Zone B fees be used to pay for the City's share of acquiring the Caltrans Property now. Staff recommends that the Caltrans Property be acquired at this stage of the Project so that it is constructed as a part of Phase 1 of the Project. In order to avoid any potential delays that may arise in connection with a later acquisition, the City will acquire the parcels at this time even though construction of Phase

¹ Item 20 on the July 26, 2011 City Council meeting agenda, available at: <http://www.hayward-ca.gov/citygov/meetings/cca/2011/CCA11PDF/cca072611full.pdf>

1 of the Project is not currently imminent. When the Project HCD agreements have been fully executed, which is anticipated within the next thirty to sixty days, the Developers plan to draw funds from HCD to reimburse the Zone B park fund their 50% share of the acquisition costs (\$200,000), which will ultimately result in a net cost of \$200,000 to the park fund for the acquisition.

At its July 26th meeting, the City agreed to allow the Developers to draw up to \$2,000,000 of HCD IIG grant funds for predevelopment cost reimbursements. City staff and the Developers are requesting that the Developers be permitted to draw an additional \$200,000 for a total of \$2.2 million in predevelopment and acquisition funds. The Developers have always intended to pay for their share of the Caltrans parcel acquisition costs with HCD IIG funds, but did not know the total of their 50% share of the acquisition costs when they completed their predevelopment budget for the Project. Moreover, the City's timing of the Caltrans acquisition was not known when the Developers established their predevelopment budgets. The City intends to pay Caltrans in early February the purchase price of \$400,000, but the Developers' current HCD draft budget scheduled a draw by the Developers from HCD after construction had started (late 2012 at the soonest). In this current scenario, the City would need to wait ten months or more to receive the \$200,000 reimbursement from the Developers. If the Developers are allowed to draw the \$200,000 earlier from HCD, then they could remit the \$200,000 to the City sooner. Therefore, the Developers have requested that the previously negotiated maximum cap of \$2 million that can be drawn for predevelopment costs be increased to \$2.2 million.

The OPA term sheet approved by Council provides that, among other things, the Developers will execute a Deed of Trust, secured by the property that it owns, to assure performance of its obligations to HCD and the City with respect to these IIG funds being drawn from HCD.

As Council is aware, the City and Caltrans have also entered into a Settlement Agreement approved on December 11, 2009 regarding the disposition of various excess land parcels which were contemplated to be a part of Rte. 238 Bypass, but will now be sold as part of Local Alternative Transportation Program (LATIP). Among other provisions, Caltrans has agreed to reimburse the City Housing Authority's administrative costs for implementing the Settlement Agreement provisions, currently estimated to be in excess of \$2,000,000 with over \$1,400,000 already spent by the City. Per the Settlement Agreement, reimbursement is to come from the LATIP funds once properties that had been part of the Rte. 238 Bypass right of way are sold, including these two parcels being acquired for park purposes.

As a matter of efficiency, staff and Caltrans are working to create a cooperation agreement to provide for a "cashless" transaction to acquire the two parcels to be used for a park in this Project. Without the cooperation agreement, the City would need to pay \$400,000 to Caltrans for the Caltrans Property and Caltrans would pay the Housing Authority \$400,000 back for partial reimbursement of administrative costs under the Settlement Agreement. With the cooperation agreement and a cashless transaction, (a) the City would receive deeds for the Caltrans Property and be credited under LATIP for the \$400,000 toward reimbursement of administrative costs, (b) \$200,000 would be need to be transferred from the park dedication fund to the Housing Authority, and (c) the Developers' payment of \$200,000 will be deposited into the Housing Authority for their portion of the acquisition costs. Attachment II provides a visual

depiction of the two cash flow scenarios with and without a cooperation agreement. Scenario B on that attachment depicts the “cashless” transaction described above.

It is anticipated that such a cooperation agreement will be negotiated prior to the California Transportation Commission (CTC) meeting on January 25, at which time Caltrans will approve the Caltrans park parcel sale transaction. However, if the agreement is not complete, staff has recommended the appropriations actions in this report to ensure that closing on the transaction can occur in early February and the South Hayward TOD project can proceed apace.

Land Exchange - The two Caltrans parcels (Parcels A and B) that the City will acquire from Caltrans are not contiguous. The Developers has submitted a request with a plan (Attachment III) suggesting that if the City and Developers exchange approximately 0.07 ac of land each to the other, the merged parcels will result in a more developable park site and a more developable housing site. The 0.07 acre Parcel C is not currently owned by the Developers, but rather, is currently still a part of the BART East Lot. The Developers are currently negotiating a purchase and sale agreement with BART under which Wittek & Montana will have the right to purchase the BART East Lot. That purchase contract is scheduled to be completed and executed in early 2012 and Wittek & Montana expect to purchase the BART East Lot in the fall of 2012.

In order to further Phase 1 of the Project, and provided that the Developers are in compliance with the OPA which governs the development of Phase 1, staff recommends that, upon the acquisition of the BART East Lot (and following mapping and standard due diligence related to property acquisition), the City will exchange a portion of the Caltrans property (Parcel B shown on Attachment III) with Wittek & Montana for a portion of the BART East Lot (Parcel C on Attachment III).

FISCAL IMPACT

As the only expenditure of funds is park fees for the acquisition of land to be used for a park, there is no impact of this action to the General Fund.

ECONOMIC IMPACT

The successful development of the TOD Project will have an immense positive economic impact on south Hayward. The commencement of the housing construction in this area should spur the development of the area. Proposed nearby projects would likely re-commence their planning, leading to construction. The development of housing in the area should lead to stronger interest from retailers, and thereby, planning and construction of retail centers. Initial development under Phase 1 of the TOD Project would also have a positive economic impact by creating approximately 500 immediate high-quality construction, design and engineering services jobs through the three-year development cycle and new housing in the area. The TOD Project will increase BART ridership and decrease vehicle miles traveled and thus will help reduce greenhouse gas emissions associated with vehicles, which is in line with the goals in the City’s Climate Action Plan. Total Phase I Project costs are estimated to be more than \$100 million, exclusive of land costs.

NEXT STEPS

If approved by Council in this action, the City Manager will complete the acquisition of the Caltrans parcels and will use park dedication fees to accomplish the purchase (or, alternatively implement a “cashless” acquisition as described above and credit Caltrans’ liability to the Housing Authority for administrative costs). The OPA will be modified to provide that the Developers may draw up to \$2,200,000 for predevelopment and park acquisition costs. The City Manager will also negotiate and execute a land exchange transaction to provide for a more developable park site per the map in Attachment III.

Prepared by: Robert Bauman, Public Works Special Projects Consultant
John DeClercq, Project Manager
David Rizk, Development Services Director

Recommended by: Kelly McAdoo Morariu, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments

- Attachment I: Resolution
- Attachment II: Caltrans Parcel Acquisition Cashflow Scenarios
- Attachment III: Site Plan showing Caltrans parcels and land exchange parcels

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced By Council Member _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD AUTHORIZING THE CITY MANAGER TO EXECUTE A CERTIFICATE OF ACCEPTANCE OF GRANT DEED FOR THE CALTRANS PROPERTY; APPROVING THE ALLOCATION OF PARK FEES TO ACQUIRE THE CALTRANS PROPERTY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A LAND EXCHANGE AGREEMENT AND MODIFY RESTRICTIONS ON AMOUNT OF FUNDS AVAILABLE FOR PREDEVELOPMENT AND ACQUISITION COSTS ASSOCIATED WITH THE SOUTH HAYWARD BART TRANSIT ORIENTED DEVELOPMENT

WHEREAS, the City of Hayward (“City”) has been in negotiations with the California Department of Transportation (“Caltrans”) for the acquisition of two non-contiguous parcels of real property (the “Caltrans Property”) located adjacent to the South Hayward BART Transit Oriented Development Project (the “South Hayward BART TOD Project”) for purposes of providing a community park adjacent to the South Hayward BART TOD Project as contemplated under the Conditions of Approval associated therewith; and

WHEREAS, the City has reached an agreement under which Caltrans would transfer the Caltrans Property to the City for a purchase price not to exceed Four Hundred Thousand Dollars (\$400,000) (the “Purchase Price”);

WHEREAS, the South Hayward BART TOD Project is located in Zone B associated with the City’s Park and Recreational Facility Trust Fund and the City has approximately Five Hundred Forty Thousand Dollars (\$540,000) of park dedication fees on deposit for use on projects located in Zone B available to fund the Purchase Price; and

WHEREAS, under previous approvals for the South Hayward BART TOD Project, the Purchase Price for the Caltrans Parcels is required to be split evenly between the City and the private development group consisting of Wittek Development, LLC, and Montana Properties, Inc. (collectively “Wittek & Montana”, the developers of the market rate portions of the South Hayward BART TOD Project); and

WHEREAS, pursuant to the IIG Program established as Part 12 of Division 31 of the Health and Safety Code, the California Department of Housing and Community Development (“HCD”) has authorized the allocation of approximately Eighteen Million Dollars (\$18,000,000) in IIG Program funds (the “IIG Program Award”) for the City and its development partners, including Wittek & Montana, and Eden Housing, Inc. (“Eden”) to use for costs associated with the first phase of the South Hayward BART TOD Project; and

WHEREAS, Wittek & Montana intends to use IIG Program Award funds to pay its share of the Purchase Price for the Caltrans Property;

WHEREAS, the City and Wittek & Montana, have negotiated an Owner Participation Agreement (the “OPA”) which, consistent with previous approvals for the South Hayward BART TOD Project, allows Wittek & Montana to draw down up to Two Million Dollars

(\$2,000,000) of the IIG Program Award to pay predevelopment costs associated with the first phase of the South Hayward BART TOD Project; and

WHEREAS, in order to repay Zone B funds as quickly as possible and to ensure such funds are made available for other projects within Zone B, Wittek & Montana and the City desire to increase by up to Two Hundred Thousand Dollars (\$200,000) the amount of IIG Program Award funds that Wittek & Montana can draw down to pay for predevelopment and park acquisition costs, such that up to Two Million Two Hundred Thousand Dollars (\$2,200,000) of the IIG Program Award can be used by Wittek & Montana to pay predevelopment and park acquisition costs associated with the first phase of the South Hayward BART TOD Project; and

WHEREAS, Wittek & Montana desire to negotiate a property exchange agreement with the City, the purpose of which would result in the City transferring the approximately 0.07 acre portion of the non-contiguous Caltrans Parcel to Wittek & Montana in exchange for a 0.07 acre portion of real property owned by Wittek & Montana, of like value, that is adjacent to the larger portion of the Caltrans Property thereby allowing for the creation of the "Park Parcel" as currently contemplated in the OPA; and

WHEREAS, the City prepared and, by Resolution No. 09-025, approved the Mitigated Negative Declaration in March 2009, and prepared an Addendum to that Mitigated Negative Declaration in June 2011 (collectively, the "Mitigated Negative Declaration") studying the environmental effects under CEQA for the South Hayward BART TOD Project; and

WHEREAS, the City Council acting as the lead agency considered the environmental effects of the South Hayward BART TOD as shown in the Mitigated Negative Declaration.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT FURTHER RESOLVED, that the City Council has considered the Mitigated Negative Declaration prepared by the City.

BE IT FURTHER RESOLVED, that the City Council finds and determines that the applicable mitigation measures and monitoring program set forth in the Mitigated Negative Declaration will be incorporated into and with the City Council's consideration of the actions contemplated hereunder.

BE IT FURTHER RESOLVED, that the City Council authorizes the City Manager to file a CEQA Notice of Determination with the County Clerk of the County of Alameda pursuant to 14 California Code of Regulations Section 15075.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to execute a certificate of acceptance of a grant deed for the Caltrans Property and any and all other documents and to take all reasonable steps which may be necessary to ensure the City's acquisition of the Caltrans Property.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the use of up to Four Hundred Thousand Dollars (\$400,000) of Zone B park dedication fees to fund the Purchase Price.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the increase by up to Two Hundred Thousand Dollars (\$200,000) the amount of IIG Program Award funds that Wittek & Montana is authorized to draw down to pay for predevelopment and park acquisition costs, such that up to Two Million Two Hundred Thousand Dollars (\$2,200,000) of the IIG Program Award can be used by Wittek & Montana to pay predevelopment and park acquisition costs associated with the first phase of the South Hayward BART TOD Project, of which not less than \$200,000 shall be Wittek & Montana’s reimbursement to the City for their share of the Park acquisition cost.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to negotiate and execute a land exchange agreement with Wittek & Montana to facilitate the creation of the Park Parcel and to take all reasonable steps that may be necessary to ensure the creation of the Park Parcel, all in such forms as may be agreed to by the City Manager and approved by the City Attorney.

FURTHER RESOLVED, that this Resolution shall take immediate effect upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, January, 17 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

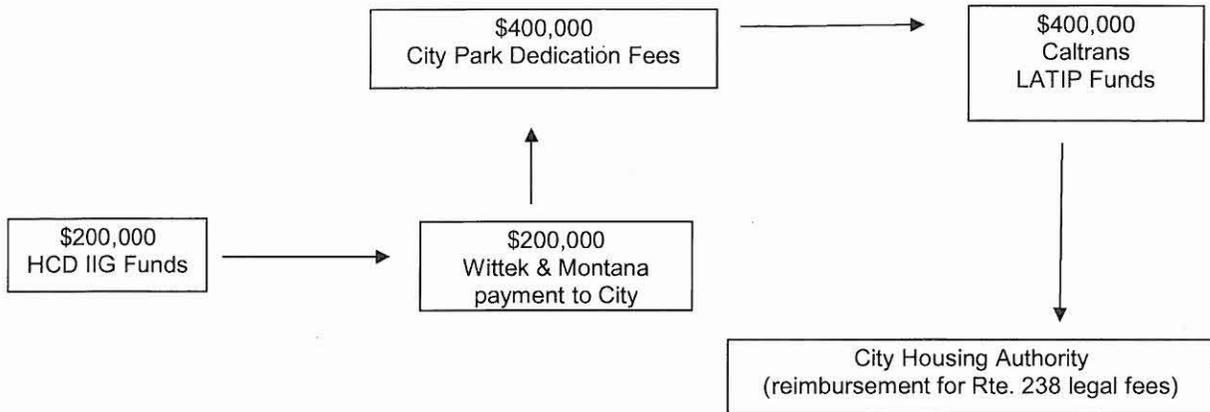
ATTEST: _____
Miriam Lens, City Clerk of the City of
Hayward

APPROVED AS TO FORM:

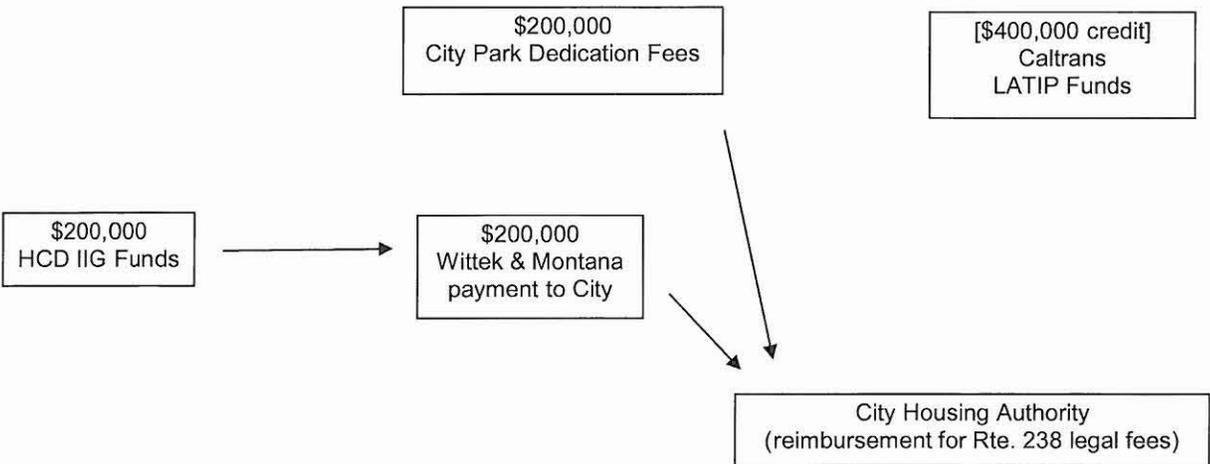
Michael S. Lawson, City Attorney for
the City of Hayward

ATTACHMENT II: CALTRANS PARCEL ACQUISITION CASHFLOW SCENARIOS
January 17, 2012

SCENARIO A - No Cooperation Agreement (current recommendation in Staff Report)



SCENARIO B - "Cashless" transaction (dependent on 1/25 CTC action)

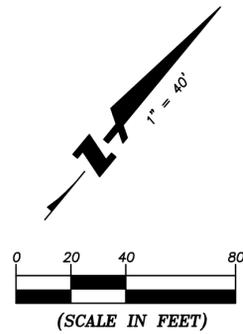


LAND EXCHANGE CONCEPTUAL EXHIBIT

SCALE: 1" = 40'

DATE: DECEMBER, 2011

Bkf ENGINEERS-SURVEYORS-PLANNERS
1650 TECHNOLOGY DRIVE, SUITE 650
SAN JOSE, CALIFORNIA 95110



TRACT 5493
162 M-13 14

PUBLIC UTILITY ESMT.
EXHIBIT "A"
O.R. 2011071425

DIXON STREET

MISSION BOULEVARD

PARCEL 2
1.329 ACRES±
BIG SKY HOLDINGS, LLC
MARKET RATE HOUSING SITE

PARCEL 1
1.442 ACRES±
BIG SKY HOLDINGS, LLC
EDEN HOUSING
BELOW MARKET RATE HOUSING SITE

**BART OVERFLOW
PARKING LOT**
1.508 ACRES±
SAN FRANCISCO
BAY AREA RAPID TRANSIT DISTRICT
MARKET RATE HOUSING SITE

10' SANITARY
SEWER EASEMENT
DOC. 73-62222

PUBLIC UTILITY ESMT.
EXHIBIT "C"
O.R. 2011071425

AJA KISHORE LIVING TRUST
O.R. 2007009849

PARCEL A
0.636 ACRES
STATE OF CALIFORNIA
FUTURE PARK

PARCEL B
0.071 ACRES±
STATE OF CALIFORNIA
TO BECOME PART OF
MARKET RATE HOUSING SITE

PARCEL C
0.071 ACRES±
TO BECOME PART OF
FUTURE PARK

LOT 1
TRACT 4860
162 M 40 - 43

LOT 1
TRACT 4860
162 M 40 - 43



CITY OF
HAYWARD
HEART OF THE BAY

DATE: January 17, 2012

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: Transmittal of the Comprehensive Annual Financial Report for the Year Ended June 30, 2011; and of the Memorandum on Internal Controls and Required Communications

RECOMMENDATION

That the Council adopts the attached Resolution to receive and file the City’s Comprehensive Annual Financial Report (CAFR) and the attached letter: “Memorandum on Internal Control and Required Communications.”

BACKGROUND

The City’s audit firm, Maze and Associates, has completed its audit of the City’s financial records for the fiscal year ended June 30, 2011 (FY 2011). After a thorough proposal review process, the City selected Maze and Associates as its new external audit firm in early 2011. The firm of Maze and Associates has over twenty-five years of municipal auditing experience in over 200 government agencies. In addition to the audited financial statements, the auditors have completed and provided the required letters entitled *Memorandum on Internal Control and Required Communications* (Attachment II). The City’s Comprehensive Annual Financial Report (CAFR) (Attachment III) includes all funds of the City including the General Fund, Redevelopment Agency, 238 Settlement Agreement, 238 Corridor Improvements, Water, Sewer, Airport, and all other funds.

Auditing standards require auditors to formally communicate with the governing body. The purpose being to establish direct and effective two-way communication with the Council and staff, to convey audit matters, the scope of work, difficulties, adjustments to financial statements, or disagreements with management.

DISCUSSION

Comprehensive Annual Financial Report

Staff is pleased to report that, as in previous years, the auditor’s opinion on the financial statements for FY 2011 is without exception and is unqualified. That is, the auditor’s report is not restricted (qualified) in some manner, nor does it take exception with any of the information contained in the City’s financial statements. While a qualification or exception is not necessarily detrimental, the ability to report that the City’s financial statements continue to earn a “clean opinion” is a positive statement about the City’s financial management and oversight.

Staff will submit the CAFR to the Government Finance Officers Association (GFOA) award program, which is a prestigious national award recognizing conformance with the highest standards for preparation of local government financial reports. The City of Hayward has received this award for the last twenty-five consecutive years.

Communication Letters from Auditors

The *Required Communications* letter is intended to identify any communication issues and present new accounting standards pronouncements that affect the audit. The auditor did not report any difficulties in performing the audit or any disagreements with management.

The second letter presented to management is the *Memorandum on Internal Control*. This letter has two major objectives: (1) to advise the governing body or City Council of any significant deficiencies or material weaknesses in the City's systems of internal financial controls; and (2) to communicate to the Council any opportunities for improved controls or efficiencies that the auditors may have noted during the course of their audit. This letter may also advise the Council of upcoming accounting regulations, which may affect the City's financial records. Staff's responses to the auditor's comments and recommendations are noted in the Letter within Attachment II.

Staff is pleased to report that the auditors did not identify any deficiencies that would be considered a material weakness in the City's system of internal controls. However, the auditors did identify several deficiencies in which the City could improve its operations and internal controls – largely considered a result of the significant turnover of key Finance Department staff. City staff addressed each of these issues and responses are included in Attachment II. Below is a brief summary of the identified deficiencies and the City's responses to each:

1. Turnover of Senior Finance Staff: The auditor identified that the turnover of key finance staff, such as the Finance Director, Budget Officer, and the Accounting Manager, has impacted the City's ability to effectively conduct the year-end closing and audit process in an efficient manner.
 - a. Staff concurs with this finding and feels that the selection of a permanent Finance Director in August 2011 and the recruitment of a permanent Accounting Manager by February 2012 will resolve this issue.
2. Timing and Prioritization of Year End Closing: The auditor identified that the City's closing process was delayed, causing the audit process to become impacted.
 - a. The Finance Department agrees with this and believes that a permanent staffing compliment will largely resolve the issue. In addition, the Finance Department will implement a more efficient year-end closing process for FY 2012.
3. Cash and Investment Reconciliations: The auditor identified during the interim audit that monthly reconciliations were not completed within thirty days of receipt of bank statements.
 - a. The Finance Department has corrected this deficiency and implemented a process by which bank reconciliations are completed in a timely manner. Effective August 2011, staff began completing reconciliations within thirty days of the month-end close.

4. Treasury Management and Diversification of Investments: The auditor identified that the City's pooled-cash portfolio is not diversified and recommended that the City employ a third party investment manager to assist with the City's portfolio management.
 - a. Staff concurs with this finding and the Finance Department is actively engaged in the process of hiring a third party portfolio management firm by February 2012.

5. Information System Software Changes: The auditor recommends that the City implement improvements to its management of the financial system related to control process, separation of duties, and automated monitoring.
 - a. Staff concurs that it could improve controls related to the financial system and Finance and Technology Services staff will further review ways to address this recommendation with limited resources. However, the implementation of a new Enterprise Resource Planning (ERP) system will result in full compliance with the auditor's recommendations.

6. Positive Pay: The auditor identified that the City does not use Positive Pay as an anti-fraud measure and that the City should implement this banking internal control. Positive Pay is a system that cross-references all City-issued checks to confirm legitimacy and is an excellent anti-fraud mechanism.
 - a. The Finance Department implemented Positive Pay effective September 2, 2011.

7. City Purchasing Cards: The auditor identified that the City needs to implement stronger internal controls regarding use of City credit cards, particularly related to changes in staffing status.
 - a. Staff concurs and the Finance Department has implemented an improved internal-control process to ensure greater control of City-issued credit cards. In addition, the Finance Department is in the process of implementing a new Cal Card credit card system in February 2012 that, by the nature of the program, implements even stronger internal control measures.

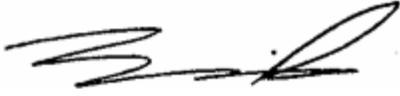
8. Documentation of Investment Internal Control: The auditor identified an inconsistency related to a reference contained in the City's Investment Policy and suggested a language change to address the issue. The reference stated that the City has documented internal controls. The City does not have fully documented internal controls, so this statement is incorrect and has been stricken from the policy statement.
 - a. The City Council adopted the FY 2012 Statement of Investment Policy on September 28, 2011, which included the corrected language.

PUBLIC CONTACT

Staff presented a summary of the FY 2011 General Fund audited balances to the Budget and Finance Committee on November 30, 2011, accompanied by a brief presentation by Maze and Associates regarding the audit process.

Prepared by: Tracy Vesely, Director of Finance

Approved by:



Fran David, City Manager

Attachments: I. Resolution
II. Memorandum on Internal Control and Required Communications
III. Comprehensive Annual Financial Report (CAFR) located on the city website

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member

RESOLUTION ACCEPTING THE COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE YEAR ENDED JUNE 30, 2011; AND THE "MEMORANDUM OF INTERNAL CONTROLS AND REQUIRED COMMUNICATIONS"

WHEREAS, the audit of the financial statements and internal controls of the City of Hayward has been completed for the year ended June 30, 2011 by the City's independent auditors, Maze and Associates.

BE IT RESOLVED by the City Council of the City of Hayward that the City Council accepts and files the Comprehensive Annual Financial Report for the Year Ended June 30, 2011; and the "Memorandum of Internal Controls and Required Communications" letters.

HAYWARD, CALIFORNIA _____, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

**CITY OF HAYWARD
MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS
FOR THE YEAR ENDED
JUNE 30, 2011**

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**MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS**

For the Year Ended June 30, 2011

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MEMORANDUM OF INTERNAL CONTROL

December 10, 2011

To the City Council of
The City of Hayward, California,

In planning and performing our audit of the financial statements of the City of Hayward as of and for the year ended June 30, 2011, in accordance with auditing standards generally accepted in the United States of America, we considered the City's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. Therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses, as defined above.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention to those charged with governance. We identified certain deficiencies in internal control that we considered to be considered significant deficiencies which are listed on the Schedule of Significant Deficiencies.

The City's written responses included in this report have not been subjected to the audit procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

This communication is intended solely for the information and use of management, City Council, others within the organization, and agencies and pass-through entities requiring compliance with generally accepted government auditing standards, and is not intended to be and should not be used by anyone other than these specified parties.



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CITY OF HAYWARD

MEMORANDUM OF INTERNAL CONTROL

SCHEDULE OF SIGNIFICANT DEFICIENCIES

2011 - 1: Turnover of Senior Finance Staff

Criteria: Senior finance staff provides oversight and supervision of staff and ensure data is accurate and complete. They also are essential to the year end closing and audit process.

Condition: During fiscal 2010-11, the Finance Director, the Budget Manager and the Accounting Manager positions turned over and were filled by interim contractors. The Finance Director and Budget Manager positions were filled during the final phase of the audit and the Interim Accounting Manager left the City prior to completion of the audit.

Effect: The year end closing and audit process was adversely affected by turn over.

Cause: Prior staff left the City's employment.

Recommendation: The City filled the Finance Director and Budget Manager positions subsequent to June 2011, but has not yet filled the Accounting Manager position. The City should fill the Accounting Manager position as soon as possible.

Management Response: The City concurs that there has been considerable staffing changes in the Finance Department's senior staff. The Accounting Manager position recruitment is active, and the City anticipates filling this position by early February 2012.

2011 - 2: Timing and Prioritization of Year End Closing

Criteria: The year end closing process is complex and time consuming requiring the active involvement of the entire finance staff. Timing is critical and inflexible. As part of the proposal process several senior management staff emphasized the need to complete the financial statements and audit reports in time to meet the December Council meeting. This attitude continued throughout the audit process as staff frequently inquired about whether the audit would be completed on time.

Condition: During the interim phase of the audit, completed in late June 2011, we met with the finance staff including the interim Finance Director and interim Accounting Manager and provided them with a checklist of data we needed and agreed to a schedule of due dates. The year end closing trial balance was to be provided by October 3 with the final phase of the audit to commence on October 17th. We commenced field work as scheduled, but there were a number of analyses that were not completed and ready for audit. They included: compensated absences, loans receivable, capital assets, interfund transactions, revenue confirmation reconciliations and redevelopment. Data management was also a problem as staff could not locate records of how data was uploaded into the financial statements during prior audits which required time consuming reverse engineering. We noted that the City hired a contract accountant to assist with the closing.

We assigned a full audit team to conduct the work and staff was quite occupied with responding to the team's questions that came up during the final phase of the audit. As staff was not able to catch-up and complete the analyses for the above areas, we took an unscheduled one week break to allow staff time to complete their analyses. When we returned, staff had made significant progress, but still had not completed their work.

CITY OF HAYWARD

MEMORANDUM OF INTERNAL CONTROL

SCHEDULE OF SIGNIFICANT DEFICIENCIES

During our last week of the final phase there were a number of other areas that were postponed as staff was not ready. They included analytical review, entity-wide revenue and internal service fund allocation details, the Measure B Annual Report and the schedule of federal awards.

Effect: The year end audit process was adversely affected and forced an extremely short wrap up period. This last minute environment forces staff and the auditors to compress final procedures and reviews into an unreasonably short period of time and increases the risk that errors will occur and go undetected.

Cause: There is no doubt the turn over in senior finance staff contributed to problem. (See Comment 2011-1.) However, staff resources were not sufficient to timely prepare the year end closing.

Recommendation: Procedures and priorities, if unchanged would continue to pose a timing problem for the year end close. Staffing resources will need to be increased and a higher priority should be placed on the year end closing.

Management Response: The City agrees that limited resources do indeed hinder the City's ability to consistently perform a timely year-end closing process – and that the significant staffing changes in 2011 greatly contributed the delay experienced in the year ending 6/30/11 audit process. In addition, this was a first year audit with the City's external auditor, which added to some of the delays and transfer of data. The City believes that the efforts expended during this year's audit will assist in improving the process for next year. The City will also review its year-end closing procedures and implement a more accelerated closing and interim audit schedule to facilitate a more timely year-end process.

2011 - 3: Cash and Investment Reconciliations

Criteria: All monthly reconciliations should be performed within 30 days of receipt of the statements. They should be prepared and reviewed by two different individuals and have an indication on the face of the reconciliation that each performed their assigned duties.

Condition: Per review of the City's bank and investment reconciliations during the interim phase of our work in June 2011, we noted the October 2010 bank and disbursement reconciliation did not contain signatures of the preparer or reviewer and the March 2011 investment reconciliation was not reviewed timely.

Effect: This weakens internal controls over cash and investments.

Cause: The City has encountered a high turnover rate in key senior level positions, including Finance Director and Accounting Manager, throughout fiscal year 2011.

Recommendation: The City should prepare and review reconciliations in a timely manner. The reconciliations must be prepared and reviewed by two individuals who should indicate on the face of the reconciliation that each performed his/her respective duty.

CITY OF HAYWARD

MEMORANDUM OF INTERNAL CONTROL

SCHEDULE OF SIGNIFICANT DEFICIENCIES

Management Response:

Beginning in June 2012, the City of Hayward implemented several controls to improve its bank reconciliation process. We expanded our staffing review of bank statements by providing additional online "view only" access for the accounts payable division, enabling them to view their entries and check-runs on a daily basis vs. waiting for the monthly statement. We also reallocated some staffing assignments to facilitate more timely reconciliations, and to provide an appropriate review of all reconciliations. These improvements enabled the accounting team to catch up and become current with all bank reconciliations. Effective August, 2011, staff is completing reconciliations within 30 days of the month-end close.

2011 - 4: Treasury Management and Diversification of Investments

Criteria: The City's Investment Policy, requires the City to maintain a well diversified portfolio to reduce concentration risk and earn the highest yield possible on its allowable investment types.

Condition: As of March 31 and June 30, 2011, the City had approximately \$100 million or sixty percent of its investment portfolio invested in the California Local Agency Investment Fund. In addition, as of June 30, 2011 the City held \$37 million in cash.

Effect: The City is not fully invested in a well diversified portfolio.

Cause: The City does not have a sufficient staffing resources or expertise to manage the portfolio.

Recommendation: The City should consider hiring a third party Investment Manager to diversify its investment portfolio.

Management Response:

Following a discussion with the City's Investment Advisory Committee on September 27, 2011, the City of Hayward Finance Director met with the Finance and Budget Committee on September 28th 2011 and recommended that the cash portfolio of the City be managed by an outside investment specialist. The Committee agreed and the matter was approved by the full City Council on October 18th 2011. A Request for Proposal for these services has been drafted and reviewed by the Investment Advisory Committee. It will be released by December 16, 2011. Following the appropriate bidding and review process, the City anticipates that it will contract with an outside investment portfolio management firm in early 2012 to assist the City in managing and balancing its investment portfolio.

CITY OF HAYWARD

MEMORANDUM OF INTERNAL CONTROL

SCHEDULE OF SIGNIFICANT DEFICIENCIES

2011 - 5: Information System Software Changes

Criteria: Software developers should not have access to software or data that are running in a live production environment. Limited access prevents potential fraudulent activities and ensures the availability and stability of the system. Any changes that are made to the live production system should be reviewed by personnel not involved with system changes to provide for good checks and balances against inappropriate or unintended changes. Once approved, patches or changes should be implemented by systems administrators and not the software developers. If conditions require software developers to have access to the live production environment, audit/event logging should be used to monitor their activities. Logging should be directed to a write-only logging system and administered by a group separate from the people responsible for systems administration and software development. These logs should be reviewed by this group to determine that only authorized changes have been made to the system and that no one has access confidential information.

Condition: The City's financial application is developed in house and the software developers have access to the financial application and data. In addition, the City does not have audit logging for the financial application such that software developer's activities on the live production system can be monitored.

Cause: According to staff the City does not have the funds or staff to properly implement separation of duties. In addition developing audit log capabilities is not a priority give the City intends to switch to an over-the-counter financial application shortly. Spending additional funds to secure a system that will be obsolete and fully decommissioned by 2013 is not a priority.

Effect: Although Finance staff are actively involved with processing, reviewing and approving financial data, there remains some potential that Software developers could intentionally or unintentionally, access confidential information, or make changes to calculating functions, reporting functions, or data such as vendor tables. These changes may not be detected during the normal course of business without some form of monitoring. The integrity of the financial data and the availability of the financial application are at risk.

Recommendation: We recommend the City implement a change control process, separation of duties and automated monitoring for the financial application.

1. The City should develop a formal change control process that includes formal request for changes, development and test of proposed code changes, security and functional review of the code by a change/configuration management committee and management approval prior to implementation of any changes to the financial application.
2. The City should enforce strict separation between the development and live production environments. Software developers should not have access to the live environment, system or data. Changes, once approved, should be given to the system administrators to implement in the live production system. If there is a compelling business need for software developers to access the live production system in an emergency situations, that access should be closely monitored and limited.

CITY OF HAYWARD

MEMORANDUM OF INTERNAL CONTROL

SCHEDULE OF SIGNIFICANT DEFICIENCIES

3. The City's financial application should have the ability to log any changes or activities performed software developers or system administrators. Logging should be directed to a write-only logging system and administered by a group separate from the people responsible for systems administration and software development. These logs should be reviewed by this group to determine that only authorized changes have been made to the system and that no one has access confidential information.

Management Response:

The City recognizes the shortcomings of the current financial system internal control structure. City staff will further review this recommendation and implement a logging system as appropriate. It is difficult to fully implement the recommendations due to limited resources. However, as mentioned, the City plans to implement a new Enterprise Resource Planning (ERP) system over the next year, which would result in full compliance with this finding.

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CITY OF HAYWARD
MEMORANDUM OF INTERNAL CONTROL
SCHEDULE OF OTHER MATTERS

2011 - 6: Positive Pay

Criteria: The City should ensure its bank accounts use positive pay to limit the risk of loss due to fraud.

Condition: The City does not use positive pay.

Effect: There is a higher risk of loss due to fraud.

Cause: The City has experienced turnover at many key managerial positions and has not implemented positive pay controls.

Recommendation: The City should implement positive pay over all of its bank accounts to reduce the risk of fraud.

Management Response:

The City fully agrees with the findings and implemented Positive Pay (a fraud detection program) for the City beginning September 2, 2011. Both the City's general accounts and Workers Compensation accounts are covered by the Positive Pay program. The program provides a daily report that identifies exceptions for any checks that fall outside either the current uploaded check-run or stale checks. This has been a very successful addition to our fraud reduction efforts.

2011 - 7: City Purchasing Cards

Criteria: The City issues Purchasing Cards to selected employees for purchasing items such as goods that do not exceed \$2,000.

Condition: A City employee, while on temporary suspension from their job, charged personal items to their purchasing card issued by the City.

Effect: Fraudulent and unallowable charges have been paid on behalf of the City.

Cause: The City does not have a policy to suspend credit cards from employees who are temporary suspended from their regular duties.

Recommendation: When an employee is placed on temporary suspension, the City should ensure the credit cards are taken away immediately to avoid personal charges.

Management Response:

The City concurs with this finding and has implemented internal control processes to ensure greater control of City-issued credit cards upon changes in staffing status. In addition, the City is in the process of implementing a Cal Card system. The structure of this program provides increased internal controls over city credit card use. Staff intends to implement the Cal Card system by February 2012.

CITY OF HAYWARD

MEMORANDUM OF INTERNAL CONTROL

SCHEDULE OF OTHER MATTERS

2011 - 8: Documentation of Investment Internal Control

Criteria: The City's investment policy states, "A system of internal control shall be established and documented in writing (§ X)."

Condition: The City does not have a documented system of internal controls.

Effect: The City is not in compliance with the investment policy.

Cause: This section in the investment policy has been overlooked.

Recommendation: We suggest the City to comply with this section of its policy or remove this requirement.

Management Response:

The City's Investment Policy was updated and approved by the City Council on September 28, 2011. This section of the policy has been modified to no longer require a documented system of internal controls. Therefore, the City is no longer out of compliance with its Investment Policy. However, the City will consider created a documented system of internal controls as referenced in the policy.

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REQUIRED COMMUNICATIONS

December 10, 2011

To the City Council of
the City of Hayward, California

We have audited the financial statements of the City of Hayward as of and for the year ended June 30, 2011 and have issued our report thereon dated December 10, 2011. Professional standards require that we advise you of the following matters relating to our audit.

Financial Statement Audit Assurance: Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit in accordance with generally accepted auditing standards does not provide absolute assurance about, or guarantee the accuracy of, the financial statements. Because of the concept of reasonable assurance and because we did not perform a detailed examination of all transactions, there is an inherent risk that material errors, fraud, or illegal acts may exist and not be detected by us.

Other Information Included with the Audited Financial Statements: Pursuant to professional standards, our responsibility as auditors for other information in documents containing the City's audited financial statements does not extend beyond the financial information identified in the audit report, and we are not required to perform any procedures to corroborate such other information. Our responsibility also includes communicating to you any information that we believe is a material misstatement of fact. Nothing came to our attention that caused us to believe that such information, or its manner of presentation, is materially inconsistent with the information, or manner of its presentation, appearing in the financial statements. This other information and the extent of our procedures is explained in our audit report.

Accounting Policies: Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the City is included in Note 1 to the financial statements. The following pronouncements became effective during 2011.

- **Statement No. 54 Fund Balance Reporting and Governmental Fund Type Definitions**

This Statement establishes fund balance classifications that comprise a hierarchy based primarily on the extent to which a government is bound to observe constraints imposed upon the use of the resources reported in governmental funds.

Disclosure of the policies in the notes to the financial statements is required.

The definitions of the general fund, special revenue fund type, capital projects fund type, debt service fund type, and permanent fund type are clarified by the provisions in this Statement. Interpretations of certain terms within the definition of the special revenue fund type have been provided and, for some governments, those interpretations may affect the activities they choose to report in those funds. The capital projects fund type definition also was clarified for better alignment with the needs of preparers and users. Definitions of other governmental fund types also have been modified for clarity and consistency.

- **Statement No. 59 Financial Instruments Omnibus**

The objective of this Statement is to update and improve existing standards regarding financial reporting and disclosure requirements of certain financial instruments and external investment pools for which significant issues have been identified in practice. This is a technical clean up pronouncement that had no material impact to the financial statements.

Unusual Transactions, Controversial or Emerging Areas: No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus. There have been no initial selections of accounting policies and no changes in significant accounting policies or their application during 2011.

As discussed in Note 19 to the financial statements, prior to June 30, 2011, in an effort to balance its budget, the State passed ABx1 26, which substantially changes California redevelopment law, suspends redevelopment activities and dissolves redevelopment agencies effective October 1, 2011. The State also passed ABx1 27 which provided a voluntary program under which agencies may opt out of the mandatory dissolution provided they pay substantial annual contributions to local schools and special districts. Concurrently with these two measures were the passage of various budget and trailer bills that are related and collectively constitute the Redevelopment Restructuring Acts.

On July 18, 2011, the California Redevelopment Association, the League of California Cities and other parties filed suit with the California Supreme Court challenging the validity and constitutionality of the measures and sought a stay of the provisions of the Acts until the Court renders a decision on the case.

On August 11, 2011, as modified on August 17, 2011, the Court granted a hearing and issued a partial stay regarding suspension of the effectiveness of AB1X 26-27 until it can rule on the validity and constitutionality of these two bills. A ruling is expected by January 15, 2012.

As of the date of our report, the court has not ruled on the case, nor has the Redevelopment Agency which is subject to the Acts, formally adopted an opt-in ordinance electing participation in the voluntary program.

These facts indicate that there is more than a remote possibility the Redevelopment Agency may not continue as a going concern beyond October 1, 2011. The continuation of the Redevelopment Agency beyond October 1, 2011 will initially depend on whether the courts rules in favor of the petitioners. Should the court uphold the provisions of the Acts, the Redevelopment Agency's continuation will then depend on whether it adopts an opt-in ordinance electing participation in the voluntary program, pays the 2011-12 annual contribution, as well as meeting any other provisions of the Acts which may be upheld by the court.

The provisions of ABx26-1, the Dissolution Act, are more severe. If upheld, it requires Redevelopment Agencies to preserve assets and revenues and minimize obligations and liabilities and expressly states that enforceable obligations to be paid by successor agencies created under the Acts to assume Redevelopment activities, do not include agreements, contracts or arrangements between Redevelopment Agency and the City and that there should be no asset transfers from a Redevelopment Agency to the City after January 1, 2011. Asset transfers may occur under certain conditions provided there is a third party commitment or outstanding encumbrances.

In addition, the Acts give the State the power to review transactions on or after January 1, 2011 between the Redevelopment Agency and City and to require the return of assets by the City to the Redevelopment Agency it finds violate the provisions of the Acts.

Estimates: Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments. The most sensitive accounting estimates affecting the financial statements are depreciation and compensated absences.

Management's estimate of the depreciation is based on useful lives determined by management. These lives have been determined by management based on the expected useful life of assets as disclosed in Note 7. We evaluated the key factors and assumptions used to develop the depreciation estimate and determined that it is reasonable in relation to the basic financial statements taken as a whole.

Accrued compensated absences is estimated using accumulated unpaid leave hours and hourly pay rates in effect at the end of the fiscal year. We evaluated the key factors and assumptions used to develop the accrued compensated absences and determined that it is reasonable in relation to the basic financial statements taken as a whole.

Disagreements with Management: For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter that could be significant to the City's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Retention Issues: We did not discuss any major issues with management regarding the application of accounting principles and auditing standards that resulted in a condition to our retention as the City's auditors.

Difficulties: We encountered no serious difficulties in dealing with management relating to the performance of the audit.

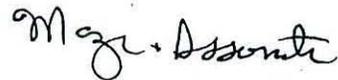
Audit Adjustments: For purposes of this communication, professional standards define an audit adjustment, whether or not recorded by the City, as a proposed correction of the financial statements that, in our judgment, may not have been detected except through the audit procedures performed. These adjustments may include those proposed by us but not recorded by the City that could potentially cause

future financial statements to be materially misstated, even though we have concluded that the adjustments are not material to the current financial statements.

We did not propose any audit adjustments that, in our judgment, could have a significant effect, either individually or in the aggregate, on the entity's financial reporting process.

Uncorrected Misstatements: Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. We have no such misstatements to report to the audit committee.

This report is intended solely for the information and use of the audit committee, City Council, and management and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink, appearing to read "Magi Assante". The signature is written in a cursive style with a large initial "M".