

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION APPROVING THE LINCOLN LANDING MIXED USE DEVELOPMENT CONSISTING OF 476 MULTI-FAMILY RESIDENTIAL UNITS AND 80,500 SQUARE FEET OF COMMERCIAL DEVELOPMENT AND RELATED SITE IMPROVEMENTS AT 22301 FOOTHILL BOULEVARD AND 1155 HAZEL AVENUE IN DOWNTOWN HAYWARD; AND CERTIFYING THE RELATED ENVIRONMENTAL IMPACT REPORT, RELATED FINDINGS OF FACT, STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING AND REPORTING PROGRAM; DOLLINGER PROPERTIES/DP VENTURES (APPLICANT/OWNER)

WHEREAS, on March 10, 2015, Scott Athearn, on behalf of Dollinger Properties, submitted Site Plan Review and Parcel Map Application No. 201501148, to demolish the existing, former Mervyn's office building and construct a new large-scale mixed use development consisting of multi-family residential development above ground floor commercial uses and a combination of surface and structured parking on the approximately 11.5-acre site located at 22301 Foothill Boulevard and 1155 Hazel Avenue (Assessor Parcel Numbers (APNs) 428-0026-068-01 and 428-0026-067-03); and

WHEREAS, on December 2, 2014, prior to the application submittal, the City Council held a Preliminary Work Session, to consider the proposed development and provided feedback to the applicant which was subsequently addressed in the formal submittal; and

WHEREAS, on May 26, 2016, the Planning Commission held a duly noticed public work session to review the proposed project and to allow Commissioners and the public to review plans and provide early feedback on the design and development program; and

WHEREAS, following the application submittal on March 10, 2015, the City undertook initial environmental analysis that indicated that the project could result in significant impacts related to traffic. On July 8, 2016, a Notice of Preparation (NOP) stating that the City was preparing an Environmental Impact Report (EIR) for the proposed project was circulated to all property owners and residents within 300 feet of the project site; to local, state, and federal agencies; and other interested parties to solicit comments on the project. Following release of the NOP, a public scoping meeting was held on July 27, 2016,

to receive additional public comments. Concerns raised in response to the NOP were considered during preparation of the Draft EIR; and

WHEREAS, the Notice of Availability (NOA) and Draft EIR was published, noticed and circulated for a 45-day public review between September 23, 2016 and November 7, 2016. Written comments were accepted throughout the comment period; and

WHEREAS, on February 10, 2017, the Final EIR, composed of all written comments and responses to those comments was provided to all commenters and was posted to the City's website, a minimum of ten days before the scheduled public hearing on the matter; and

WHEREAS, on February 23, 2017, the Planning Commission held a duly noticed public hearing on the proposed project and voted 6:1 to approve Site Plan Review and Parcel Map Application No. 201501148 and to certify; and

WHEREAS, on February 27, 2017, the City's Planning Division received an appeal of the Planning Commission approval by M. R. Wolfe & Associates on behalf of Desirae Schmidt, on the grounds that the EIR did not adequately identify regional traffic impacts; discuss impacts related to urban decay; or adequately respond to comments received on the Draft EIR; and

WHEREAS, on April 14, 2017, notice of the City Council public hearing regarding the appeal was mailed to all property owners and residents within 300 feet of the project site as well as those who requested such notice; and was published in The Daily Review; and

WHEREAS, on April 25, 2017, the City Council held a public hearing and accepted public testimony on the subject appeal.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts the following findings:

**SITE PLAN REVIEW FINDINGS**

**1. The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City.**

The proposed development would include the demolition of two currently vacant buildings, and a surface parking lot to allow the construction of a large-scale, mixed use development consisting of 80,500 square feet of ground floor commercial and retail uses, 476 multi-family residential units, and associated site and landscaping improvements. The proposed site improvements would consist of installation of surface parking lots; rehabilitation of the existing structured parking lot; site

landscaping; and establishment of a publicly accessible pocket park and a Creek Walk that would activate the northwestern corner of the site and provide a bicycle and pedestrian path along the existing, underutilized maintenance path along the western edge of the project site, owned by Alameda County Flood Control District. The proposed development would provide an attractive addition to the City and would result in significant investment on a Key Retail Area and Catalyst Site located in close proximity to downtown Hayward, as identified in the City's Economic Development Strategic Plan (EDSP), which is incorporated herein by this reference. By doing so, the proposed development directly implements City policies and goals related to economic development. Such investment will result in development of a regional destination that will enhance Hayward's reputation in the Bay Area, as more fully discussed in Response 7 of the City's Response to Appeal included as Attachment VI of the City Council Staff Report, incorporated herein by this reference. The City has reviewed this latter document and independently concluded it is accurate and constitutes substantial evidence.

The proposed mixed-use project is surrounded by other commercial and residential land uses, and is compatible with those uses. In addition, the proposed conditions of approval related to minimum landscaping widths along project frontages and throughout the site, the installation of public art on long, flat building planes fronting public right-of-way and a requirement that commercial storefronts built to Foothill Boulevard be transparent and oriented toward the right-of-way would further ensure compatibility with surrounding development.

**2. The development takes into consideration physical and environmental constraints.**

The proposed development takes into consideration physical and environmental constraints in that it will result in upgraded infrastructure designed to serve the development and will include frontage improvements, such as installation of sidewalks along all frontages. In addition, the project will enhance the existing maintenance easement for San Lorenzo Creek by creating a pocket park at the northwestern corner of the site and a new Creek Walk recreational amenity to serve the residents and neighbors of the development. The project, as proposed, is well within the allowable FAR and density permitted under the *Central City – Retail Office and Commercial* General Plan land use designation and the CC-C zoning district development standards regarding parking, landscaping, common and private open space, as identified in the attached Staff Report; and the Response to Appeal included as Attachment VI of the City Council Staff Report as well as the Land Use and Planning Section of the Draft EIR (p. 3.0-35 et seq), which are incorporated

herein by this reference. As such, the project takes into consideration both the physical and environmental constraints of the property and adjacent sites.

The Draft and Final EIR prepared for the proposed development found that the project would result in *less than significant* impacts or impacts that could be mitigated to a *less than significant* level in all impact areas except for Transportation and Circulation. Specifically, the proposed project would result in significant and unavoidable traffic related impacts at three roadway intersections for both the Background Plus Project and Cumulative Conditions analysis. Mitigation measures designed to reduce impacts to vehicles were found to have undesirable impacts on pedestrians by eliminating on-street parking and widening roadways, which were determined to be unacceptable, infeasible and inconsistent with General Plan policies related to complete streets. For instance, the removal of the on-street parking and/or widening roadways to accommodate additional vehicular traffic at impacted intersections would result in the degradation of the pedestrian environment and the prioritization of cars over pedestrians. Elimination of on-street parking which serves as a buffer to pedestrians on the sidewalk is not supported by the General Plan Mobility Element Goal M-3, which prioritizes the importance complete streets, and includes a diagram of a complete street section with parking on both sides of the street. Despite these significant and unavoidable impacts, the City finds that benefits of the proposed development outweigh these environmental impacts, as discussed in more detail below.

See the related CEQA Findings below for a thorough description of impacts, mitigation measures, findings and a statement of overriding considerations related to traffic-related impacts, which are incorporated herein by this reference.

**3. The development complies with the intent of City development policies and regulations.**

The proposed project is consistent with the intent and purpose of the City Center-Retail and Office Commercial (CC-ROC) General Plan land use designation, which generally applies to properties in Downtown Hayward in that it consists of a large-scale mixed use development within the allowable floor area ratio and density set forth in the General Plan. The proposed development is also consistent with the uses and development standards set forth in the CC-C (Central City - Commercial) District, which is intended to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. The proposed development consists of ground floor commercial uses and off-street parking with multi-family residential units above. Off-street parking is permitted as an Accessory Use in the CC-C District.

Hayward is the sixth largest City in the Bay Area with a population over 145,000 and the capacity to serve different segments of the retail market. The proposed project site is identified as a Key Retail Area and a Catalyst Site in the City's EDSP due to its current underutilization, size, proximity to major corridors, potential positive impact on associated retail areas and high visibility. The EDSP concludes that a regional-serving, large-scale mixed use development on the subject site would likely provide immediate positive results to the City's business attraction and retention efforts. Further, the mix of large and small retail spaces would provide opportunities for a variety of underrepresented retailers thus reducing leakage, which results from customers leaving the City to make purchases from retailers located outside of the City. The beneficial economic impacts of the proposed development are discussed in more detail in Response 7 of City's Response to Appeal and included as the City's Response to Appeal, Attachment VI of the City Council Staff Report, EPS' *Fiscal and Economic Impact Analysis of Lincoln Landing*, EPS # 161130, dated September 12, 2016, and EPS' *Lincoln Landing Urban Decay Analysis*, dated April 12, 2017 all of which are incorporated herein by reference. The City has reviewed each of these latter documents and independently concluded they are accurate estimations of the proposed development's economic impacts, and constitute substantial evidence.

General Plan Goals and Policies support establishment of large-scale mixed use development on strategic sites located within Downtown Hayward and on the subject site, as well as establishment of small urban pocket parks and revitalization of Creekside pathways which are included as part of the proposed project. Specific Goals and Policies include, but are not limited to, the following:

- Land Use Goal LU-1, and Policies LU-1.3 and LU-1.5, directing population and employment growth to infill sites near transit and within identified Priority Development Areas;
- LU-1.4 calling for revitalization and redevelopment of abandoned and underutilized properties to accommodate growth;
- Goal LU-2, and Policies LU-2.1 through LU-2.6, supporting pedestrian activity and encouraging a variety of uses and urban housing opportunities to extend the hours of activity in and around Downtown Hayward; and,
- Goals LU-3, LU-4 and LU-5 as well as Policies LU-3.3, LU-4.1, LU-4.3 and LU-5.1, encouraging placement of large-scale neighborhood centers and mixed use development along corridors and arterials such as Foothill Boulevard.
- Mobility Goal M-8, Policy M-8.4, and all other relevant goals and policies in the Mobility Element, supporting multimodal transportation choices as well as transportation demand management programs to reduce single occupancy automobile trips by locating mixed use development and high density housing close to transit and jobs (see Response 5 of the City's Response to Appeal and

- included as Attachment VI of the City Council Staff Report, incorporated herein by this reference);
- Health and Quality of Life Policy HQL-10.4, to create small urban spaces and plazas that are appropriate in high density, high intensity urban areas; HQL-2, to support new developments and infrastructure improvements in existing neighborhoods to enable people to drive less and walk, bike or take public transit more; and HQL-11.3, to support creekside paths and trails; and
  - Natural Resources Policy NR-1.11, to identify and create opportunities for public access to and maintenance of creek corridors.

While the proposed development is generally consistent with General Plan elements related to land use, mobility and open space, the inclusion of photovoltaic solar panels to service the common residential areas would bring the proposed project into significant conformance with the City's long term commitment to Sustainability, as well as General Plan Natural Resources Policies to promote efficient use of energy in design, construction and operation; to maximize the use of renewable resources (General Plan Policies NR-4.1, NR-4.3 and NR-4.11).

**4. The development will be operated in a manner determined to be acceptable and compatible with surrounding development.**

Standard and project specific conditions of approval, which are incorporated herein by this reference, would ensure that the proposed development would be operated in a manner acceptable and compatible with surrounding development. During construction, the project would be subject to control measures for air quality, traffic, construction noise, grading and other construction-related activities to minimize impacts on surrounding businesses and neighbors. Post-construction, a property management firm would be required to submit a property management plan to the City for review and approval. Further, proposed conditions related to ongoing maintenance of the site and publicly accessible pocket park and Creek Walk would ensure that the development would operate in a manner acceptable and compatible with surrounding development.

With respect to visual impacts of the proposed development along its frontage along Hazel, as discussed in the attached Staff Report, the proposed development's Draft EIR, and as depicted in the Draft EIR's Appendix Plans, which are incorporated herein by this reference, architectural step-backs and features such as decorative screens and a combination of building materials among other pedestrian-scale design features would ensure that the proposed development is visually compatible with surrounding development.

With regard to traffic-related impacts, proposed Mitigation Measure 3.1.2, and related conditions of approval, would ensure implementation of Transportation Demand Management strategies, and participation in a shuttle system to and from the site to BART in order to reduce traffic generated by the proposed project. Additional Conditions of Approval Nos. 47, 48, and 67, related to minimizing spillover parking and cut-through traffic into adjacent residential neighborhoods would reduce the proposed project's impact on surrounding neighborhoods. The City hereby finds that traffic related to the proposed development is acceptable and compatible with surrounding development in light of the proposed developments benefits to the community and the technical constraints associated with area roadways and intersections. In fact, consistent with the visions contained in the EDSP, the proposed development would catalyze economic development in the Downtown area consistent with City goals and policies.

### **PARCEL MAP FINDINGS**

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

See further discussion about the proposed project's consistency with applicable General Plan Goals and Policies under Site Plan Review Finding 3, incorporated herein by this reference.

**B. The proposed subdivision meets the requirements of the City Zoning Ordinance.**

See further discussion about the proposed project's consistency with applicable General Plan Goals and Policies under Site Plan Review Finding 3, incorporated herein by this reference.

**C. No approval of variance or other exceptions are required for approval of the subdivision.**

As described in Site Plan Review Finding 3 above, and incorporated herein by this reference, the proposed development is consistent with the development standards set forth in the CC-C District and does not require approval of any variances or other exceptions.

**D. None of the findings set forth in Section 66474 of the Subdivision Map Act<sup>1</sup> have been made, and the approval of the tentative parcel map is granted subject to the recommended conditions of approval.**

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<sup>1</sup> The findings of Section 66474 set forth the grounds for denial of a tentative map which are as follows:

(a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.

See Site Plan Review Findings 1 through 4, CEQA Findings III through VIII below, and the Staff Report prepared for the project for additional support, which are incorporated herein by this reference.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

### **I. Introduction**

The City of Hayward (City) prepared a Final Environmental Impact Report (Final EIR) for the proposed Lincoln Landing (project).

The Final EIR, which is comprised of the Draft EIR; Responses to Public Comments; and appendices and supporting technical studies and reports, addresses the potential environmental effects associated with the development of the project site, including a large-scale mixed-use development consisting of 476 multi-family residential units above 80,500 square feet of commercial uses with a combination of surface and structured parking.

The Findings and Statement of Overriding Considerations (Findings) set forth below are presented for adoption by the City Council, as the City's findings under the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) relating to the project. The Findings provide the written analysis and conclusions of this City Council regarding the project's environmental impacts, mitigation measures, alternatives to the project, and the overriding considerations, which in this Council's view, justify approval of the proposed project, despite environmental effects.

### **II. General Findings and Overview**

#### **A. Relationship to the City of Hayward General Plan**

The project site is designated Central City-Retail and Office Commercial (CC-ROC) in the Hayward General Plan. The CC-ROC designation generally applies to downtown Hayward.

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- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
  - (c) That the site is not physically suitable for the type of development.
  - (d) That the site is not physically suitable for the proposed density of development.
  - (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
  - (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
  - (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property with the proposed subdivision.



The General Plan notes that typical building types include storefront commercial buildings and mixed-use buildings that contain commercial uses on the ground floor and residential units or office space on upper floors. The existing zoning for the site is Central City-Commercial (CC-C). The purpose of the CC-C district is to establish a mix of business and other activities to enhance the economic vitality of the downtown area. Permitted activities include retail, service, lodging, entertainment, education and multi-family residential. The project is consistent with the existing General Plan land use designation and zoning land use and development standards for the project site. Please see Site Plan Review Finding 3, above (and incorporated herein by this reference) for more detail concerning the Project's consistency with and implementation of the General Plan.,

## **B. Procedural Background**

The City started the environmental review process following submittal of the development application on March 10, 2015. Following review of draft traffic analysis that the proposed development would result in significant impacts, the City prepared a Notice of Preparation (NOP) on July 8, 2016, stating that an EIR for the project would be prepared. This notice was circulated to the public, local, state, and federal agencies, and other interested parties to solicit comments on the project. Concerns raised in response to the NOP were considered during preparation of the Draft Environmental Impact Report (Draft EIR). The Notice of Availability for the Draft EIR was published on September 23, 2016. The Draft EIR was published for public review and comment on September 23, 2016, and was filed with the California Office of Planning and Research under State Clearinghouse No. 2016072018. The review period for the Draft EIR ended on November 7, 2016.

The City prepared written responses to the comments received during the comment period and included these responses in a separate volume entitled Lincoln Landing Final Environmental Impact Report. The Final EIR includes a list of those who commented on the Draft EIR, copies of written comments (coded for reference), written responses to comments regarding the environmental review, and errata with minor text changes made to the Draft EIR as a result of comments. The Final EIR was made available for public review on February 10, 2017.

The City finds, accordingly, that the Final EIR was published, circulated and reviewed in accordance with the requirements of CEQA, the State CEQA Guidelines, and constitutes an accurate, objective, and complete Final EIR.

## **C. Consideration of the Environmental Impact Report**

In adopting these Findings, the City Council finds that the Final EIR was presented to the decision-making body of the lead agency, which reviewed and considered the information

in the Final EIR prior to approving the proposed Lincoln Landing. By these Findings, the Council ratifies, adopts, and incorporates the analysis, explanations, findings, responses to comments, and conclusions of the Final EIR. The City Council finds that the Final EIR was completed in compliance with the California Environmental Quality Act. The Final EIR represents the independent judgment and analysis of the City.

#### **D. Severability**

If any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court to be invalid, void, or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the proposed Lincoln Landing project, shall continue in full force and effect unless amended or modified by the City.

#### **E. Summary of Environmental Findings**

The City Council has determined that based on all of the evidence presented, including but not limited to the EIR, written and oral testimony given at meetings and hearings, and submission of comments from the public, organizations, and regulatory agencies, and the responses prepared to the public comments, the following environmental impacts associated with the project are:

##### **1. Potentially Significant Impacts That Cannot Be Avoided or Reduced to a Less Than Significant Level**

Project-Specific. According to Draft EIR Chapter 3.1, Transportation and Circulation, significant project-related impacts were found in the area of contribution to vehicle trip generation.

Cumulative. According to Draft EIR Chapter 3.1, Transportation and Circulation, significant cumulative impacts were found in the area of contribution to vehicle trip generation.

##### **2. Potentially Significant Impacts That Can Be Avoided or Reduced to a Less Than Significant Level Through Implementation of Mitigation Measures**

Project-Specific. According to Draft EIR Chapter 3.0, Impacts Found Not Significant, project-related impacts in the areas of Biological Resources, Cultural Resources, Hazards and Hazardous Materials and Transportation and Circulation could be mitigated to a level of less than significant with mitigation.

Cumulative. To the extent impacts in the foregoing environmental topical areas have the capability of cumulating, Chapters 3.0 and 5.0 of the Draft EIR, incorporated

herein by this reference, demonstrate that either the Project would not make a considerable contribution to an impact or would not, in combination with other existing and reasonably foreseeable projects, combine to have significant cumulative impacts.

### 3. **Less Than Significant and No Impacts That Do Not Require Mitigation**

Project-Specific. According to Draft EIR Chapter 3.0, Impacts Found Not Significant, project-related impacts that do not require mitigation were found in the areas of Aesthetics; Agricultural and Forest Resources; Air Quality; Biological Resources; Cultural Resources; Geology and Soils; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use Planning; Mineral Resources; Noise; Population and Housing; Public Services; Recreation and Utilities and Service Systems.

Cumulative. According to Draft EIR Chapter 3.0, Impacts Found Not Significant (incorporated herein by this reference), cumulative impacts in the areas of Air Quality and Greenhouse Gas Emissions were found less than significant.

## III. **Findings and Recommendations Regarding Significant and Unavoidable and Cumulatively Considerable Impacts**

### A. **Traffic and Circulation**

#### 1. **Project Phase 1 (consisting of development of the commercial portion and the southern residential tower) would generate vehicle trips that would impact traffic operation at intersections as compared to background conditions (EIR Impact 3.1.2)**

**a) Potential Impact.** Two intersections would operate at level of service (LOS) F during the PM peak hour, as discussed in Chapter 3.1 of the Draft EIR, which is incorporated herein by this reference. Modifications to the roadways to improve conditions at these intersections would require restriping existing roadways to add dedicated travel and turn lanes and the removal of existing on-street parking, which is not considered feasible or desirable for the reasons set forth on the incorporated Draft EIR pages 3.1-31 through -38. Further, the loss of on-street public parking for commercial uses along Foothill Boulevard was deemed unacceptable to the City. See Draft EIR pages 3.1-31 through -38.

**b) Mitigation Measures.** Project mitigation measure MM 3.1.2, as set forth on page 2.0-13 of the City's Responses to Comments on the Draft EIR, is hereby adopted and will be implemented as provided by the Mitigation Monitoring and

Reporting Program. After the implementation of MM 3.1.2, the impact will still be considered significant and unavoidable.

- c) **Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:

**(1) Mitigation is infeasible.** The transportation demand management (TDM) measures in MM 3.1.2 are determined to be the only feasible measures the City can impose to reduce the proposed development's transportation-related impacts. Other measures were considered but rejected because they were deemed infeasible or ineffective, including specific locations for taxi spaces, reduced parking spaces coupled with metered parking in surrounding commercial areas, improvement of the route between the Project site and the BART station, and provision of attractive food service businesses to create a pedestrian hub. For instance, whether an "attractive food service business" will establish itself on the Project site is wholly subject to market demands, and all the City can do is create the possibility for such business to locate there. Given the large amount of retail space included in the proposed development, this has been accomplished as part of the project's design. With respect to specific locations for taxi stands, providing car-share spaces under MM 3.1.2 is sufficient, especially given that a significant number of people without cars now utilize services such as Uber and Lyft to travel rather than taxi services. Accordingly, the provision of taxi spaces is deemed to be superfluous and ineffective; moreover, the provision of spaces for taxis would require the reduction of other project components, such as retail or parking space and, for reasons set forth in these findings, reducing various project components would be undesirable and infeasible. With respect to reducing the on-site parking and installing metered parking in adjacent commercial areas, the City hereby determines that policy reasons make this system infeasible without further analysis and outreach to nearby commercial businesses as part of a larger Downtown parking study and effort. Further, a reduction in on-site parking and installation of metered parking at this time would harm off-site, local businesses in the vicinity of important Key Retail and Catalyst Sites, as identified in the EDSP and other City documents in the administrative record of proceedings, including public comment submitted by local businesses. Specifically, metered parking could discourage visitation by nonlocal consumers. Finally, with respect to the issue of improving the route between the Project site and the BART station, there is no evidence that area sidewalks are degraded to the point being unsafe, or that their condition currently discourages or would discourage

pedestrians or bicyclists from using public transit. While portions of the pedestrian route between the proposed development and the nearest BART station could be improved through design features such as bulb-outs, increased landscaping and other urban design elements to improve the aesthetics and related experience of walking along the streets, the sidewalks are generally in good condition and permit safe passage. Even if the sidewalk condition is inadequate, the proposed development would improve bicycle and trail connections in the vicinity of the project site.

With respect to non-TDM measures—i.e., traditional traffic alleviation measures such as roadway widenings and the addition of turn pockets — such measures were found to have undesirable impacts on pedestrians by eliminating on-street parking and widening roadways, which were determined to be unacceptable, infeasible and inconsistent with General Plan policies related to complete streets. For instance, the removal of the on-street parking and/or widening roadways to accommodate additional vehicular traffic at impacted intersections would result in the degradation of the pedestrian environment and the prioritization of cars over pedestrians. Elimination of on-street parking which serves as a buffer to pedestrians on the sidewalk is not supported by the General Plan Mobility Element Goal M-3, incorporated herein by this reference, which prioritizes the importance of complete streets, and includes a diagram of a complete street section with parking on both sides of the street. Despite these significant and unavoidable impacts, the City finds that benefits of the proposed development outweigh these environmental impacts, as discussed in more detail below.

For the above reasons and all those reasons set forth in the City's Response to Comments on the Draft EIR, incorporated by reference, the City has imposed all feasible mitigation measures in accordance with the provisions of CEQA.

**(2) Remaining Impacts.** Development of the project site would permanently alter the existing level of service at two intersections in the project area. Because modifications to the roadways surrounding the intersections are not feasible and are undesirable, there are no feasible mitigation measures that would meet the objectives of the project while maintaining the existing level of service at the site. Therefore, this impact is considered significant and unavoidable.

**(3) Overriding Considerations.** The environmental, economic, social, and other benefits of the project override any remaining significant adverse impact of

the project resulting in the decrease in operations at two intersections, as more fully stated in the Statement of Overriding Considerations in Section VIII, below.

**2. Project Phases 1 and 2 (consisting of development of the remaining northern residential tower) would generate vehicle trips that would contribute to traffic operational impacts at intersections as compared to background conditions (EIR Impact 3.1.3)**

- a) Potential Impact.** Project traffic would be added at six study intersections and driveways under Background plus project Phases 1 and 2 conditions. Two intersections, projected to operate at LOS F under background conditions, would experience an increase in delays during the PM peak hour by more than 5.0 seconds. See Draft EIR pages 3.1-38 through -43.
- b) Mitigation Measures.** Project mitigation measure MM 3.1.2, as set forth on page 2.0-13 of the City's Responses to Comments on the Draft EIR, is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program. After the implementation of MM 3.1.2, the impact will still be considered significant and unavoidable.
- c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:
- (1) Mitigation is infeasible.** The Transportation Demand Management measures in MM 3.1.2 are determined to be the only feasible measures the City can impose to reduce the proposed development's transportation-related impacts. Other measures were considered but rejected because they were deemed infeasible or ineffective, as set forth in Finding III.A.1(c)(1) above, incorporated herein by this reference.
- (2) Remaining Impacts.** Development of the project site would permanently alter the existing level of service at two intersections in the project area. Because modifications to the roadways surrounding the intersections are unfeasible and undesirable, there are no feasible mitigation measures that would meet the objectives of the project while maintaining the existing level of service at the site. Therefore, this impact is considered significant and unavoidable.
- (3) Overriding Considerations.** The environmental, economic, social, and other benefits of the project override any remaining significant adverse impact of

the project resulting in the decrease in operations at two intersections, as more fully stated in the Statement of Overriding Considerations in Section VIII, below.

### 3. Cumulative traffic operational impacts to intersections (EIR Impact 3.1.8)

- a) Potential Impact.** The project would generate vehicle trips that could contribute to significant traffic operational impacts to intersections as compared to cumulative conditions. Three study intersections will experience an increase in delays by more than 5.0 seconds. See Draft EIR pages 3.1-50 through -56.
- b) Mitigation Measures.** Project mitigation measure MM 3.1.2, as set forth on page 2.0-13 of the City's Responses to Comments on the Draft EIR, is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program. After the implementation of MM 3.1.2, the impact will still be considered significant and unavoidable.
- c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:
- (1) Mitigation is infeasible.** The Transportation Demand Management measures in MM 3.1.2 are determined to be the only feasible measures the City can impose to reduce the proposed development's transportation-related impacts. Other measures were considered but rejected because they were deemed infeasible or ineffective, as set forth in Finding III.A.1(c)(1) above, incorporated herein by this reference.
- (2) Remaining Impacts.** Development of the project site would permanently alter the existing level of service at three intersections in the project area. Because modifications to the roadways surrounding the intersections are unfeasible and undesirable, there are no feasible mitigation measures that would meet the objectives of the project while maintaining the existing level of service at the site. Therefore, this impact is considered significant and unavoidable.
- (3) Overriding Considerations.** The environmental, economic, social, and other benefits of the project override any remaining significant adverse impact of the project resulting in a decrease in operations at three intersections in the project area, as more fully stated in the Statement of Overriding Considerations in Section VIII, below.

#### **IV. Findings and Recommendations Regarding Significant Impacts Which Are Avoided or Mitigated to a Less Than Significant Level**

##### **A. Biological Resources**

##### **1. Potential impacts to migratory birds, raptors, and bats as a result of tree removal (EIR Impact BIO-1)**

**a) Potential Impact.** The proposed project would remove trees and demolish structures, which may cause adverse impacts to birds, raptors, and bats. See Draft EIR pages 3.0-9 through -10, incorporated herein by this reference.

**b) Mitigation Measures.** Project mitigation measures MM BIO-1a and MM BIO-1b are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:

**(1) Effects of Mitigation.** The impacts related to nesting birds and roosting bats will be mitigated to a less than significant level by requiring surveys to be conducted by a qualified biologist prior to demolition activities and project construction in order to ensure that any disturbance is avoided.

**(2) Remaining Impacts.** Any remaining impacts related to migratory birds, raptors, and bats would not be significant.

##### **B. Cultural Resources**

##### **1. Potential disturbance of undiscovered archaeological resources (EIR Impact CUL-2)**

**a) Potential Impact.** Because of the high archaeological sensitivity in the project area, there is the possibility of accidentally uncovering archaeological resources during project construction. See Draft EIR pages 3.0-15 and -16, incorporated herein by this reference.

**b) Mitigation Measures.** Project mitigation measure MM CUL-2 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.



**c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:

**(1) Effects of Mitigation.** The impacts related to archaeological resources will be mitigated to a less than significant level by requiring that construction activities be halted in the event that an archaeological resource is encountered.

**(2) Remaining Impacts.** Any remaining impacts related to archaeological resources would not be significant.

**2. Potential disturbance of undiscovered paleontological resources (EIR Impact CUL-5)**

**a) Potential Impact.** There is a possibility that construction activities could uncover paleontological resources during excavation on the project site. See Draft EIR pages 3.0-17 and -18, incorporated herein by this reference.

**b) Mitigation Measures.** Project mitigation measure MM CUL-5 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:

**(1) Effects of Mitigation.** The impacts related to paleontological resources will be mitigated to a less than significant level by requiring that construction activities be halted in the event that a paleontological resource is encountered.

**(2) Remaining Impacts.** Any remaining impacts related to paleontological resources would not be significant.

**C. Hazards and Hazardous Materials**

**1. Impacts to construction workers as a result of unknown contamination at the project site during construction (EIR Impact HAZ-2)**

**a) Potential Impact.** The proposed project identified areas of soil contamination and the potential presence of hazardous building materials that require removal prior to site development. See Draft EIR pages 3.0-27 through -29, incorporated herein by this reference.

**b) Mitigation Measures.** Project mitigation measures MM HAZ-2a and MM HAZ-2b are hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:

**(1) Effects of Mitigation.** The impacts to construction workers and unknown contamination would be mitigated a less than significant level by removing impacted soils prior to development and requiring that a qualified environmental professional be present if additional impacted areas are encountered when the existing buildings and other improvements are removed. Additionally, a survey for asbestos-containing building materials, lead-based paint, polychlorinated biphenyl, or other potentially hazardous building materials will be conducted prior to the initiation of demolition. Should any materials be present, materials must be removed by qualified professionals in accordance with applicable laws and regulations prior to any activities that involve demolition.

**(2) Remaining Impacts.** Any remaining impacts related to unknown contamination would be less than significant.

## **2. Impacts to adopted emergency response plans or evacuation plans (EIR Impact HAZ-6)**

**a) Potential Impact.** The proposed project would generate traffic trips during construction that may impact service levels at intersections in the project area. See Draft EIR pages 3.0-30 and -31, incorporated herein by this reference.

**b) Mitigation Measures.** Project mitigation measure HAZ-6 is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:

**(1) Effects of Mitigation.** The impacts related to emergency response plans or evacuation plans would be mitigated to a less than significant level by submitting and obtaining approval of a Construction Traffic Control Plan (CTCP) by the City of Hayward Public Works–Engineering and Transportation Division, or other applicable regulatory agency. The CTCP

will ensure the safe flow of traffic and adequate emergency access, including maintaining an open lane for vehicle travel at all times.

**(2) Remaining Impacts.** Any remaining impacts related to emergency response plans or evacuation plans would be less than significant.

#### **D. Transportation and Circulation**

##### **1. Potential impact related to limited site distance at the City Center driveway (EIR Impact 3.1.4)**

**a) Potential Impact.** The proposed eastern driveway at City Center Drive does not provide adequate sight distance from Foothill Boulevard and the driveway. See Draft EIR pages 3.1-43 and 3.1-44, incorporated herein by this reference.

**b) Mitigation Measures.** Project mitigation measure MM 3.1.4 calling for the elimination of the eastern driveway access and redesign of the north curb line to recess the lane 10-12 feet to accommodate a westbound right turn deceleration lane for the full access driveway at City Center Drive is hereby adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

**c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:

**(1) Effects of Mitigation.** The impacts related to sight distance along City Center Drive will be mitigated to a level of less than significant with the elimination of the limited access driveway and improved access at the full-access driveway.

**(2) Remaining Impacts.** Any remaining impacts related to inadequate sight distance along City Center Drive would be less than significant.

##### **2. Potential impacts related to discontinuous sidewalks along project frontages (EIR Impact 3.1.5)**

**a) Potential Impact.** The proposed project would generate demand for sidewalks, crosswalks and pedestrian signals along project frontages to allow pedestrians to access nearby bus stops and adjacent land uses.

**b) Mitigation Measures.** Project mitigation measure MM 3.1.5 requiring installation of continuous sidewalks along all project frontages that are consistent with City of Hayward standards and ADA requirements is hereby

adopted and will be implemented as provided by the Mitigation Monitoring and Reporting Program.

- c) Findings.** Based on the Draft EIR and the entire record before this City Council, the Council finds that:

**(1) Effects of Mitigation.** The impacts related to inadequate and discontinuous sidewalks will be eliminated with the construction of continuous sidewalks along all project frontages.

**(2) Remaining Impacts.** Any remaining impacts related to inadequate and discontinuous sidewalks would be less than significant.

## V. Other Impacts and Considerations

### A. Growth-Inducing Impacts of the Proposed Project

CEQA Guidelines Section 15126.2(d) requires that an environmental impact report evaluate the growth-inducing impacts of a proposed action.

- a) Findings.** Based on the Draft EIR and the entire record before this City Council, the project would generate further population and employment growth and development in the City as anticipated in the City's (2014b) 2040 Hayward General Plan EIR. The proposed project would not result in growth inducement beyond that which was envisioned in the General Plan.
- b) Explanation.** As identified on Draft EIR page 5.0-2, incorporated herein by this reference, the project proposes to develop commercial space that may generate new jobs, which could indirectly result in population growth. However, the proposed development would be consistent with the General Plan and would be within the employment and population projections in the 2040 Hayward General Plan EIR.

### B. Significant Irreversible Environmental Changes Involved If the Project Is Implemented

CEQA Sections 21100(b)(2) and 21100.1(a) require that EIRs prepared for the adoption of a project include a discussion of significant irreversible environmental changes of project implementation.

- a) Findings.** Based on the Draft EIR and the entire record before the City Council, the project would result in consumption of renewable, nonrenewable, and limited resources including, but are not limited to, oil, gasoline, lumber, sand and gravel,

asphalt, water, steel, and similar materials, but would not result in any significant irreversible environmental changes greater than already addressed in the General Plan EIR which anticipated a large-scale, mixed use development on the subject site.

- b) Explanation.** As identified on Draft EIR pages 5.0-3 through 5.0-9, incorporated herein by this reference, the project would result in consumption of renewable, nonrenewable, and limited resources. The project is consistent with the existing General Plan land use designation and zoning for the project site and would include sustainable site and building elements including installation of a green roof on the central commercial building; installation of solar photovoltaic panels to generate electricity for the common residential areas; reuse and rehabilitation of the existing parking garage; installation of highly efficient appliances and fixtures; use of low emission and low VOC finishes and materials; electric vehicle charging stations for commercial and residential uses; and short and long term bicycle parking spaces; as well as implementation of MM 3.1.2 to implement TDM strategies resulting in reduced stationary and mobile source emissions related to the project.

### **C. Issues raised on appeal.**

On February 24, 2017, Desirae Schmidt, represented by M.R. Wolfe & Associates, appealed the Planning Commission's certification of the Final EIR and its approval of the Vesting Tentative Map and Site Plan for the proposed development. The basis of this appeal, per M.R. Wolfe and Associates, were those grounds stated in a letter to the Planning Commissioners from M.R. Wolfe & Associates dated February 22, 2017, and included challenges to the Final EIR's analysis of urban decay, traffic congestion on freeway segments, and the development proposal's consistency with the City's General Plan. On April 20, 2017, the City addressed these grounds in the Response to Appeal included as Attachment VI to the City Council Staff Report and incorporated herein by reference. The City Council hereby finds that Responses 1 through 7 of Attachment VI, and other documents in the administrative records of proceeding, all of which are incorporated herein by this reference, adequately address the appellant's claims, and demonstrate that the Planning Commission's approvals were lawfully undertaken, and that there is no legal or other basis to prepare a revised EIR.

## **VI. Project Alternatives**

### **A. Background – Legal Requirements**

CEQA requires that environmental impact reports assess feasible alternatives or mitigation measures that may substantially lessen the significant effects of a project prior to approval (Public Resources Code Section 21002). With the exception of the “no project” alternative,

the specific alternatives or types of alternatives that must be assessed are not specified. CEQA “establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its own facts, which in turn must be reviewed in light of the statutory purpose” (*Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d. 553, 556 [1990]). The legislative purpose of CEQA is to protect public health and welfare and the environment from significant impacts associated with all types of development by ensuring that agencies regulate activities so that major consideration is given to preventing environmental damage while providing a decent home and satisfying living environment for every Californian (Public Resources Code Section 21000).

In short, the objective of CEQA is to avoid or mitigate environmental damage associated with development. This objective has been largely accomplished in the project through the inclusion of project modifications and mitigation measures that reduce the potentially significant impacts to an acceptable level. The courts have held that a public agency “may approve a developer’s choice of a project once its significant adverse environment effects have been reduced to an acceptable level—that is, all avoidable significant damage to the environment has been eliminated and that which remains is otherwise acceptable” (*Laurel Hills Homeowners Assoc. v. City*, 83 Cal.App.3d 515, 521 [1978]).

## **B. Identification of Project Objectives**

The CEQA Guidelines state that the “range of potential alternatives to the project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one of more of the significant effects” of the project (CEQA Guidelines Section 15126.6(c)). Thus, consideration of the project objectives is important to determining which alternatives should be assessed in the EIR.

The Draft EIR identified the following objectives for the proposed Lincoln Landing:

1. Create a high-quality, regionally significant development that enhances the project site and aids in the revitalization of downtown Hayward by creating a project that is socially vibrant and economically viable.
2. Provide development of high-quality retail, commercial, and residential uses that are consistent with existing General Plan land use designations and densities envisioned on the project site.
3. Foster economic, employment, and residential opportunities in Hayward through the revitalization of a currently vacant, underutilized property.
4. Create a mixed-use development that provides a combination of retail and residential uses to serve a wide range of users in close proximity to BART, Amtrak, and downtown Hayward.

5. Create a development that is financially feasible and that will contribute to Hayward's economic base without negatively affecting existing City resources.
6. Create a regional destination that will enhance Hayward's reputation in the larger Bay Area and signal increased investment and opportunities in the city.
7. Create a development that is consistent with and promotes the City's Economic Development Strategic Plan, which identified this property as a key retail and catalyst site as appropriate for a large-scale mixed-use development.

## **VII. Alternatives Analysis in Draft EIR**

### **A. Alternatives Considered but Rejected**

Alternatives considered but rejected from further consideration include a reduction of residential parking alternative and an off-site alternative.

**a) Findings.** The reduction in residential parking alternative was rejected from further consideration because it would not eliminate any significant and unavoidable impacts identified for the project, as discussed on pages 4.0-2 and -3 of the Draft EIR. Separately and independently, it would not, with any certainty, reduce car ownership or traffic generated by the site. The City finds that reduced residential parking on the proposed development's site has a strong potential to displace, as opposed to eliminate, project-related parking to nearby city streets. As discussed more fully in Finding III.A.1(c)(1), incorporated herein by this reference, reduced parking couple with restrictions on off-site parking would not be feasible, including because this approach would harm local businesses and potentially result in spill-over parking and because this approach would frustrate City policies, including those set forth in the EDSP. An off-site alternative was rejected from further consideration because, among other reasons, the proposed project site was the only identified site that complied with City of Hayward General Plan Policy LU-1.3, Growth and Infill Development, and was located in the downtown area of the city, as discussed on page 4.0-3 of the Draft EIR (incorporated herein by this reference). Separately and independently, the off-site alternative does not meet the project objectives listed on pages 4.0-1 and -2 of the Draft EIR, nor does the project applicant have control or ownership interest in properties other than the project site.

**b) Explanation.** The reduction in residential parking alternative analyzes parking reductions in the several areas of the project. While the alternative would reduce the overall size and scale of the project by eliminating the need for structured parking along Hazel Avenue, it would not eliminate any of the significant impacts identified for the project which are related to trip generation rates related to the total commercial square footage and residential unit count. Further, there is no

certainty, based on the evidence in the record, that reducing on-site parking would result in a real reduction of car ownership or traffic generated by the proposed development since residential tenants could park their cars in the commercial parking lots and in surrounding residential and commercial neighborhoods, resulting in spillover parking. The reduction in size and scale would not reduce an identified significant impact of the project, and it could result in spillover parking affecting nearby residential neighborhoods and could negatively affect the viability of the project's retail and residential components. For these reasons, this alternative was not further analyzed.

The off-site alternative identifies several other sites that are identified in the City's Economic Development Strategy Plan (FY 2014–2018). While many of the sites are sized and zoned to accommodate the large-scale mixed use project, they are located outside of the downtown area and would not comply with the project objective to promote growth in the city's downtown.

## **B. Alternatives Analyzed in the Draft EIR**

The CEQA Guidelines state that the “range of potential alternatives to the project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects” of the project. The City evaluated the alternatives listed below.

**1. No Project/Building Reuse Alternative.** The Draft EIR considers the potential effects of this alternative on pages 4.0-4 and -5. The No Project/Building Reuse Alternative assumes that the proposed project consisting of a mixed-use development with housing and retail would not be developed on the site. The project site would not undergo site improvements including but not limited to landscaping, repaving the parking lot, construction of Creek Walk among others. Under this alternative, the project site would remain occupied by the two currently vacant buildings, and the buildings would remain vacant. Assuming no development, the project site's existing visual character would be maintained and there would be no change in the need for utilities, or water service, and no traffic would be generated at the site. The need for public services would be the same due to crime, trespassing and Code Enforcement issues at the site. However, because it is not reasonable to assume the site would remain vacant indefinitely, it is assumed for this alternative that the existing buildings would be reused for office use. This constitutes the No Project/Building Reuse Alternative.

**a) Findings.** The No Project/Building Reuse Alternative is rejected as a feasible alternative because it would not achieve many of the project objectives, as listed on pages 4.0-1 and -2 of the Draft EIR.



**b) Explanation.** The No Project/Building Reuse Alternative would still result in significant and unavoidable traffic impacts related to re-use of the site as an office, but would not provide any of the benefits of the proposed project, such as transit-oriented development in close proximity to downtown Hayward and transit. In addition, this alternative would not be consistent with the project objectives, which call for a mix of retail and residential uses consistent with General Plan densities envisioned for the site; the addition of new residents within walking distance of downtown Hayward; and the creation of a socially vibrant destination that is active in the daytime and evening, as well as promoting the City's Economic Development Strategic Plan policies.

**2. Reduced Development Alternative.** The Reduced Development Alternative would include 200 apartments and approximately 45,500 square feet of retail space, which represents a reduction from the proposed project of 276 residential units and 35,000 square feet of commercial space. This alternative would eliminate the entire 35,000-square-foot anchor retailer use assumed in the traffic analysis for the proposed project.

**a) Findings.** The Reduced Development Alternative is rejected as a feasible alternative because it would not meet the City's objectives to create a high-quality, regionally significant development that enhances the project site and aids in the revitalization of downtown Hayward; and, it would not result in a significant enough commercial development to qualify as a regional destination that will enhance Hayward's reputation in the larger Bay Area. A significantly smaller retail component and roughly half of the residential unit count would reduce the regional draw of the development; reduce tax sales from the on-site commercial uses; reduce the number of middle income households who would patronize Downtown businesses and who could lead to revitalization of the area; and, limit the development's potential to attract large-scale tenants potentially jeopardizing the financial feasibility of the proposed project. In addition, infill redevelopment sites like the one under consideration which are within approximately half-mile to downtown services and businesses and transit are unique opportunities to maximize sustainable development consistent with regional and local goals to place appropriately scaled development within priority development areas. Reducing the density on this site to approximately 17 units per acre, when the City's adopted General Plan would allow up to 65 units per acre, would continue a pattern of underdevelopment of housing on key infill sites which is contributing to the region's housing crisis. Similarly, this alternative would be inconsistent with the City's Economic Development Strategic Plan in that loss of the large-scale anchor tenant space would virtually eliminate the project's ability to capture retail leakage associated with residents leaving the community to shop at large retailers outside of the City. Overall, it would severely

curtail the financial, social and regional impact of this identified catalyst site. See additional analysis in Responses 6 and 7 of the City's Response to Appeal, included as Attachment VI the City Council Staff Report, which is incorporated herein by this reference.

**b) Explanation.** Text on pages 4.0-5 through -7 of the Draft EIR, incorporated herein by this reference, and Responses 6 and 7 of the City's Response to Appeal, Attachment VI to the City Council Staff Report analyze the Reduced Development Alternative as compared to the proposed project. This alternative's inability to fulfill the objectives is for the reasons stated in Finding 2a), above.

**3. Significantly Reduced Development Alternative.** The Significantly Reduced Development Alternative would include 100 apartments and approximately 45,500 square feet of retail space. The buildings for this alternative would be of smaller scale and size to accommodate the smaller development footprint.

**a) Findings.** The Significantly Reduced Development Alternative is rejected as a feasible alternative because, like Alternative 2, it would not meet the City's objectives to create a high-quality, regionally significant development that enhances the project site and aids in the revitalization of downtown Hayward; and, it would not result in a significant enough commercial development to qualify as a regional destination that will enhance Hayward's reputation in the larger Bay Area. This Alternative would result in a significantly smaller retail development and approximately one-fourth of the residential units proposed with the project which would reduce the regional draw of the development; reduce tax sales from the on-site commercial uses; severely reduce the number of middle income households who would patronize Downtown businesses; and, limit the potential to attract large-scale tenants which could jeopardize the financial feasibility of the proposed project. In addition, infill redevelopment sites like the one under consideration which are within approximately half-mile to downtown services and businesses and transit are unique opportunities to maximize sustainable development consistent with regional and local goals to place appropriately scaled development within priority development areas. Reducing the density on this site to approximately nine units per acre, when the City's adopted General Plan would allow up to 65 units per acre, would result in severe underdevelopment of housing on a key infill site exacerbating the region's housing crisis. Similarly, this alternative would be inconsistent with the City's Economic Development Strategic Plan in that loss of the large-scale anchor tenant space would virtually eliminate the project's ability to capture retail leakage associated with residents leaving the community to shop at large retailers outside of the City. Overall, it would severely curtail the financial,

social and regional impact of this identified catalyst site to an even greater extent than the Reduced Development Alternative. See additional analysis in Responses 6 and 7 of the City's Response to Appeal included as Attachment VI to the City Council Staff Report, the reasoning of which is applicable to both Alternatives 2 and 3, and which is incorporated herein by this reference.

**b) Explanation.** Text on pages 4.0-7 and -8 of the Draft EIR, incorporated herein by this reference, and Responses 6 and 7 of the City's Response to Appeal included as Attachment VI to the City Council Staff Report analyzes the Significantly Reduced Development Alternative as compared to the proposed project. This alternative's inability to fulfill the objectives is for the reasons stated in Finding 3a), above.

**4. Off-Site Alternative Within Downtown Hayward.** The Off-Site Alternative would entail the implementation of the project on an alternate site. The City Center site is analyzed on page 4.0-9 of the Draft EIR, which is incorporated herein by this reference.

**a) Findings.** The Off-Site Alternative is rejected as a feasible alternative because it would not present a superior alternative to the proposed project and would not reduce project impacts. This alternative would result in fewer residential units (386 units) than the proposed project which would result in a reduction of middle income households patronizing Downtown businesses. This alternative site is farther from the BART station than the proposed project site, portions of which are within one-half mile of the station. Further, while this alternative would reduce the significant and unavoidable intersection impacts identified for the project, the reduction would be largely attributable to the reduction in development intensity, rather than the location. The infeasibility of reduced-sized alternatives is set forth in Findings VII.B.2&3, incorporated herein by reference. Separately and independently, the project applicant cannot reasonably acquire, control, or otherwise have access to sufficient acreage to create a development proposal of a viable size that would satisfy the project objectives and the City's economic development policies. Overall, the Off-Site Alternative is infeasible for the reasons stated above, and would not result in the same financial, social and regional benefits as attributed to the project. See also Responses 6 and 7 of the City's Response to Appeal included as Attachment VI to the City Council Staff Report, incorporated herein by this reference

**b) Explanation.** Text on pages 4.0-9 and -10 of the Draft EIR, incorporated herein by this reference, analyzes the Off-Site Alternative as compared to the proposed project. This alternative's inability to fulfill the objectives is for the reasons stated in Finding 4a), above, and it would result in the same significant and unavoidable impacts as identified for the proposed project.

- 5. The Project Alternatives Cannot Feasibly and Substantially Reduce the Development Proposal's Significant and Unavoidable Impacts.** The infeasibility, undesirability, and impracticality of the project alternatives, as discussed in Findings VII(1)-(4), above, and incorporated herein by this reference, preclude the City from adopting these alternatives as a means to substantially lessen the development proposal's significant and unavoidable impacts, as identified in Finding III.A.1-3, above.

### **Environmentally Superior Alternative**

The environmentally superior alternative is discussed on pages 4.0-10 and -11 of the Draft EIR. Under CEQA Guidelines Section 15126.6(e)(2), if the environmentally superior alternative is the No Project Alternative, another environmentally superior alternative must be identified. For the Draft EIR analysis, the Significantly Reduced Development Alternative is the environmentally superior alternative.

However, as discussed on page 4.0-11 of the Draft EIR and in Finding VII.B.3, above, both of which are incorporated herein by this reference, while the Significantly Reduced Development Alternative would result in a small mixed-use development, it would not meet the City's objectives to create a high-quality, regionally significant development that enhances the project site and aids in the revitalization of downtown Hayward; and, it would not result in a significant enough commercial development to qualify as a regional destination and enhance Hayward's reputation in the larger Bay Area. (See also Findings VII.B.2&4, incorporated herein by this reference.) A significantly smaller retail component and one-fourth of the residential unit count proposed would reduce the regional draw of the development; result in reduced tax sales from the on-site commercial uses; and, severely reduce the number of middle income households who would patronize Downtown businesses and lead to revitalization of the area. In addition, infill redevelopment sites like the one under consideration which are within approximately half-mile to downtown services and businesses and transit are unique opportunities to maximize sustainable development consistent with regional and local goals to place appropriately scaled development within priority development areas. Reducing the density on this site to approximately nine units per acre, when the City's adopted General Plan would allow up to 65 units per acre, would continue a pattern of underdevelopment of housing on key infill sites exacerbating the region's housing crisis. Similarly, this alternative is inconsistent with the City's Economic Development Strategic Plan in that loss of the large-scale anchor tenant space would virtually eliminate the project's ability to capture retail leakage associated with residents leaving the community to shop at large retailers outside of the City. Overall, it would severely curtail the financial, social and regional impact of this identified catalyst site.

Other project sites that are smaller or located farther away from downtown businesses, services, and transit will not result in the benefits to the community and the region that would be accomplished with development at the scale, intensity, and density described for the proposed project. Further, the Significantly Reduced Development Alternative may result in a financial infeasibility where minimum densities are required to justify land acquisition and construction costs associated with high-density, mixed-use development.

### **VIII. Statement of Overriding Considerations Related to the Lincoln Landing Project Findings**

The City is the lead agency under CEQA, responsible for the preparation, review and certification of the Final EIR for the Lincoln Landing development project. As the lead agency, the City is also responsible for determining the potential environmental impacts of the proposed action and which of those impacts are significant. CEQA also requires the lead agency to balance the benefits of a proposed action against its significant unavoidable adverse environmental impacts in determining whether or not to approve the proposed action.

In making this determination the lead agency is guided by the CEQA Guidelines Section 15093 which provides as follows:

- a) "CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable,'"
- b) "When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record."
- c) "If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination ...."

In addition, Public Resources Code Section 21081(b) requires that where a public agency finds that economic, legal, social, technical, or other reasons make infeasible the mitigation measures or alternatives identified in the EIR and thereby leave significant unavoidable adverse project effects, the public agency must also find that overriding economic, legal, social, technical or other benefits of the project outweigh the significant unavoidable adverse effects of the project.

The Final EIR identified a number of alternatives to the proposed development, and the administrative record of proceedings, including without limitation the Final EIR and these findings, determined the extent to which these alternatives meet the basic Project objectives, while avoiding or substantially lessening any significant adverse impacts of the proposed development.

Analysis in the Final EIR for the Lincoln Landing project has concluded that the proposed development will result in traffic impacts that cannot be mitigated to a less than significant level. These impacts are set forth in Findings III.A, above, which is incorporated herein by this reference. All other potential significant adverse project impacts have been mitigated to a level less than significant based on mitigation measures identified in the Final EIR.

In accordance with CEQA Guidelines Section 15093 and other applicable law, the City has, in determining whether or not to approve the project, balanced the economic, social, technological, and other project benefits against its unavoidable environmental risks, and finds that each of the benefits of the project set forth below outweigh the significant adverse environmental effects that are not mitigated to less-than-significant levels. This statement of overriding considerations is based on the City's review of the Final EIR and other information in the administrative record. Each of the benefits identified below provides a separate and independent basis for overriding the significant environmental effects of the Project. The benefits of the Project are as follows:

**A. Implementation of Challenging Goals and Policies Set Forth in the City's General Plan and Economic Development Strategic Plan.**

The project implements the construction and development of Lincoln Landing, which will allow for residential and mixed-use commercial activities, consistent with General Plan Goals and Policies as detailed in Site Plan Review Finding C above and the staff report prepared for the project, as well as and the requirements of CEQA Guidelines Section 15126.6(e)(3)(A). Of particular relevance is that the proposed development would build out what is labeled a "Key Retail" and "Catalyst" site, as identified in the EDSP. See Site Plan Review Findings 1 and 3; CEQA Finding III.A.1(c)(1), and Response 3 of the City's Response to Appeal included as Attachment VI to the City Council Staff Report, incorporated herein by this reference. The project site has been vacant and underutilized since Mervyns vacated the site in 2008, and is a source of blight,

trespassing and safety issues. It has been challenging to develop the site with the mix of high density residential and retail uses envisioned in the General Plan and the EDSP due to the economic downturn and the fact that a developer must achieve minimum densities and commercial square footage to make the type of development proposed economically feasible.

Buildout of the project site under the various alternatives set forth in the Final EIR, as well as implementation of further traffic mitigation measures would, by contrast, frustrate City goals and policies. The proposed mitigation of removing on-street parking and widening roadways to mitigate identified traffic impacts in considered infeasible and undesirable because it would conflict with the City's General Plan. Specifically, the removal of the on-street parking and/or widening roadways to accommodate additional vehicular traffic would result in the degradation of the pedestrian environment and the prioritization of cars over pedestrians. Elimination of on-street parking which serves as a buffer to pedestrians on the sidewalk is not supported by the General Plan Mobility Element Goal M-3, which prioritizes the importance complete streets, and includes a diagram of a complete street section with parking on both sides of the street. See also the reasoning set forth in Finding III.A.1(c)(1), which is incorporated herein by this reference.

#### **B. Employment Opportunities**

The proposed project would directly provide over 600 temporary construction jobs, more than 500 indirect and induced construction jobs, more than 275 directly created permanent commercial employment opportunities, and more than 70 additional indirect and induced permanent jobs, according to the Fiscal and Economic Impact Analysis prepared by Economic & Planning Systems, Inc. (EPS), dated September 12, 2016 (Fiscal Impact Analysis), incorporated herein by this reference.

Further, the proposed development would be consistent with the General Plan and would be within the employment and population projections in the 2040 General Plan EIR.

#### **C. Support the City's Economic Development Goals**

The proposed project would increase economic activity through the short-term creation of jobs during construction. However, current residents of the city and other nearby areas who are employed in the construction industry would be sufficient to meet the demand for construction workers that would be generated by the project.

In addition, the proposed development would add over 450 middle income households whose expenditures would increase retail sales in the City by approximately \$12

million annually with the majority of those sales going to businesses located in and near downtown Hayward due to the project's proximity. In addition, the most recent analyses indicate that the on-site commercial uses could generate approximately \$36 million in retail sales (the majority of which would be from consumers not residing at the Project, including consumers from beyond the City of Hayward) and provide opportunities for new, high quality retail spaces to minimize sales leakage whereby residents of Hayward leave the city to make purchases from undersupplied retailers and service providers within the city. See analysis in Responses 6 and 7 of the City's Response to Appeal included as Attachment VI to the City Council Staff Report; the memorandum prepared by EPS, entitled *Lincoln Landing Urban Decay Analysis* and dated April 12, 2017 (Urban Decay Analysis); and the Fiscal Impact Analysis, all of which are incorporated herein by this reference. Separately and independently, the proposed development will benefit many local businesses not associated with the project. For instance, the addition of project residents to the City's population will create a demand for retail purchases of \$15.8 million dollars, \$11.7 million of which would be captured within the City's limits based on the City's recent "capture rate" of resident spending potential. Even aggressively assuming that more than 60 percent of the \$11.7 million in new Project residents' spending occurs in the retail on the Project site itself, at least \$4.4 million would be satisfied by businesses located outside the Project site but within the City's limits — i.e., the Project would benefit existing, off-site local businesses.

#### **D. Capture of Substantial Amounts of Sales Leakage**

The City is currently undersupplied with retailers who offer the following goods and services: furniture and home furnishing stores; food and beverage stores; gas stations; clothing stores; sporting goods and hobby stores; and food services and drinking outlets. The amount of "leakage" the City experiences collectively amounts to more than \$150 million in sales. (Urban Decay Analysis, page 8.) According to the City's Economic Development Division, the current vacant retail space availability within Hayward does not include space for a major anchor retailer. The Lincoln Landing project contemplates the addition of 50,000 square feet that could accommodate one or two major retailers, thereby expanding potential for interested retailers who have a large space need. Moreover, developments like the Lincoln Landing project likely would create incentive for retailers who may not have previously considered locating in Hayward to consider it because other retailers are locating there. The proposed development also would create incentives to redevelop other portions of the Downtown area with retail space. The proposed development also would create incentives to redevelop other portions of the Downtown area with retail space. The City thus finds that the proposed development, in the foreseeable future, has the



potential to capture millions of dollars, if not tens of millions of dollars, in sales leakage that is occurring under existing conditions. See the Urban Decay Analysis and Fiscal Impact Analysis, which is incorporated by reference into these findings.

**E. General Fund Revenues**

The Project is estimated to have a net positive impact of about \$345,000 per year on the City's General Fund. See Fiscal Impact Analysis, incorporated herein by this reference.

**F. Generation of \$14 Million in Development Processing and Impact Fee Revenues**

The proposed development will generate approximately \$10 million in City and other agencies' fee revenues (e.g., the local school district's revenues) for development services and infrastructure improvements. See Fiscal Impact Analysis, incorporated herein by this reference.

**G. Support Regional Housing Development Goals on Infill Sites Near Transit**

According to the California Department of Housing and Community Development's Draft Statewide Housing Assessment titled "California Housing Future: Challenges and Opportunities," and released in January 2017, over the past ten years, development of new housing stock has not kept pace with household growth. Over the past ten years, California has built an average of 80,000 new homes a year which is far below the 180,000 new homes needed to keep pace with housing growth projected from 2015-2025. This lack of supply greatly impacts housing affordability leading to escalating rents and increased displacement. In addition, much of the new housing growth is occurring at the edges of cities and takes the form of urban sprawl resulting in higher single occupancy vehicle trips and higher greenhouse gas production. The proposed project would result in redevelopment of a large-scale, high density mixed use project on an infill site located within an identified Priority Development Area where such development is appropriate and necessary to support regional and local goals to increase development near existing services and transit. (See the City's General Plan Housing Element, incorporated herein by this reference.) Reducing density on infill sites near transit that have the infrastructure to accommodate higher density development is a missed opportunity for the local jurisdiction as well as the region.

Based on the objectives identified for the project, review of the project, review of the EIR, and consideration of public and agency comments, the City Council has determined that the project should be approved and that any remaining unmitigated environmental impacts attributable to the project are outweighed by the specific social, environmental, land use, and other overriding considerations.

The City Council has determined that any environmental detriment caused by the proposed Lincoln Landing project has been minimized to the extent feasible through the mitigation measures identified herein and, where mitigation is not feasible, has been outweighed and counterbalanced by the significant social, environmental, and land use benefits to be generated to the city. Accordingly, the City hereby adopts this Statement of Overriding Considerations.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council of the City of Hayward hereby takes the following actions:

- A. Certifies the Draft and Final EIR and adopts the Related Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program prepared for the proposed project; and,
- B. Denies the appeal and adopts the Site Plan Review and Tentative Parcel Map Findings approving the Lincoln Landing project, subject to the Conditions of Approval identified in attached Exhibit A.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2017

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

## Exhibit A

### **SITE PLAN REVIEW AND VESTING TENTATIVE PARCEL MAP APPLICATION NO.**

**201501148 – Dollinger Properties (Applicant/Owner)** – Proposal to construct a new large-scale mixed use development composed of 80,500 square feet of commercial space, 476 multi-family residential units, rehabilitation of an existing four-level parking garage, and related site improvements on an approximately 11.5-acre site located at 22301 Foothill Boulevard and 1155 Hazel Avenue in the CC-C (Central City Commercial) District. (Assessor's Parcel Numbers 428-0026-068-01 and 428-0026-067-03).

### **GENERAL**

1. The developer shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
2. Site Plan Review and Vesting Tentative Parcel Map Application No. 201501148 is approved subject to the Architectural Plans date stamped November 29, 2016; the Hazel Avenue Detail dated March 8, 2017; and the Vesting Tentative Parcel Map date stamped January 24, 2017, except as modified by the conditions listed below. (DS)
3. In accordance with Hayward Municipal Code (HMC) Section 10-1.3055, approval of this Site Plan Review is void 36 months after the effective date of approval unless:
  - a. Prior to the expiration of the 36-month period, a building permit application has been submitted and accepted for processing by the Building Official or his/her designee. If a building permit is issued for construction of improvements authorized by this approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance on this approval; or
  - b. A time extension of the approval has been granted by the Development Services Director, which requires that a request for an extension of this approval must be submitted in writing to the Planning Division at least 15 days prior to the expiration date of this approval. (DS)
4. The Vesting Tentative Parcel map approval shall align with the timeframes set forth in the Subdivision Map Act, and all related automatic and applicant-initiated extensions. (DS)
5. Any proposal for alterations to the conditionally approved site plan and/or design that does not require a variance to any zoning ordinance standard shall be subject to

## Exhibit A

approval by the Development Services Director or his/her designee, prior to implementation. Alterations requiring a variance shall be subject to review and approval by the Planning Commission. (DS)

6. The applicant shall submit an application for a Master Sign Program in accordance with HMC Section 10-7.210, prior to the installation of any signage for the development. The Master Sign Program shall also include signage for the Creek Walk at City Center Drive and Hazel Avenue.
7. The permittee, property owner or designated representative shall allow City code enforcement staff access to the property for site inspection(s) to confirm all approved conditions have been completed and are being maintained in compliance with all adopted city, state and federal laws. (DS)
8. All permit charges accrued in the processing of Site Plan Review and Vesting Tentative Parcel Map Application No. 201501148 shall be paid in full prior to consideration of a request for approval extensions and/or submittal of building permits for the development. (DS)

### Removal of Existing Commercial Structures

9. The property owner shall demolish the existing commercial office building and accessory structure on the site within 60 days of this entitlement. (DS)
10. The property owner shall be responsible for securing and clearing the existing commercial structures(s), including the parking garage, of all people and animals prior to demolition and commencement of construction activities. (DS)
11. Prior to, during and following demolition of the existing commercial structure(s) on the site, the property owner shall be responsible for securing and maintaining the site in accordance with HMC Chapter 4, Article 1, Public Nuisances; HMC Chapter 5, Article 7, Community Preservation and Improvement Ordinance; and the California Building Code, among other applicable regulations. (DS)

### MITIGATION MEASURES

12. **Mitigation Measure BIO-1a: Preconstruction Surveys for Migratory Birds and Raptors.** If clearing and/or construction activities occur during the migratory bird and raptor nesting season (February 1–September 1), preconstruction surveys for active nest sites shall be conducted by a qualified biologist, within 14 days prior to initiation of construction activities. The qualified biologist shall survey the construction zone and a 200-foot radius surrounding the construction zone to determine whether the activities taking place have the potential to disturb or otherwise harm nesting birds.

## Exhibit A

If active nest(s) in trees or structures are identified during the preconstruction survey, a qualified biologist shall monitor the nest(s) to determine when the young have fledged. Monthly monitoring reports, documenting nest status, shall be submitted to the City Planning Division until the nest(s) is deemed inactive. The biological monitor shall have the authority to cease construction if there is any sign of distress to a raptor or migratory bird. Reference to this requirement and to the Migratory Bird Treaty Act shall be included in the construction specifications. (DS)

13. **Mitigation Measure BIO-1b: Surveys of Potential Bat Roosts.** Prior to demolition of structures on the project site, a qualified wildlife biologist shall conduct preconstruction surveys. If bats are identified as present on the site, bats shall be absent or flushed from roost locations prior to demolition of buildings. If flushing of bats from buildings is necessary, it shall be done by a qualified biologist during the non-breeding season from October 1 to March 31. When flushing bats, structures shall be moved carefully to avoid harming individuals, and torpid bats given time to completely arouse and fly away. During the maternity season from April 1 to September 30, prior to building demolition or construction, a qualified biologist shall determine if a bat nursery is present at any sites identified as potentially housing bats. If an active nursery is present, disturbance of bats shall be avoided until the biologist determines that breeding is complete and young are reared. (DS)
14. **Mitigation Measure CUL-2:** In the event an archaeological resource is encountered during project construction activities, the construction contractor shall halt construction within 25 feet of the find and immediately notify the City of Hayward. The City shall notify a qualified archaeologist meeting the Secretary of Interior's Professional Qualifications Standards in prehistoric or historical archaeology immediately to evaluate the resource(s) encountered and recommend the development of mitigation measures for potentially significant resources consistent with Public Resources Code Section 21083.2(i). Construction activities could continue in other areas. The archaeologist shall evaluate the find and recommend appropriate mitigation measures for the inadvertently discovered cultural resources. The City and the project applicant shall consider the recommendations of the qualified archaeologist and consult and agree upon implementation of a measure or measures that the City, the qualified archaeologist, and the project applicant deem feasible and appropriate. Such measures may include avoidance, preservation in place, excavation, documentation, curation, data recovery, or other appropriate measures. Further ground disturbance shall not resume within the area of the discovery until an agreement has been reached by the project applicant, the qualified project archaeologist, and the City, as well as the Native American tribal representative if relevant, as to the appropriate preservation or mitigation measures. (DS)
15. **Mitigation Measure CUL-5:** In the event any paleontological resources (i.e., fossils) are uncovered during project construction activities, all work in the immediate vicinity shall be halted or diverted to other areas on the site and the City of Hayward

## Exhibit A

shall be immediately notified. A qualified paleontologist shall be retained to evaluate the find and recommend appropriate mitigation measures for the inadvertently discovered paleontological resources. The City and the project applicant shall consider the qualified paleontologist's recommendations and consult and agree upon implementation of a measure or measures that the City, the qualified paleontologist, and the project applicant deem feasible and appropriate. Such measures may include avoidance, preservation in place, excavation, documentation, curation, data recovery, or other appropriate measures. Further ground disturbance shall not resume within the area of the discovery until an agreement has been reached by the project applicant, qualified paleontologist, and the City as to the appropriate preservation or mitigation measures. (DS)

16. **Mitigation Measure HAZ-2a:** Prior to development of the project site, all impacted soils shall be removed as described in the Phase I and II Environmental Site Assessment and Tank Removal Report prepared for the project site by Applied Water Resources Corporation dated April 2015. A qualified environmental professional shall be present to observe the building demolition and soil excavation and grading to oversee the removal of the impacted soil and in the event additional impacted areas are encountered when the buildings and other current improvements are removed. (DS/Fire)
17. **Mitigation Measure HAZ-2b:** A survey for asbestos-containing building materials, lead-based paint, polychlorinated biphenyl, or other potentially hazardous building materials shall be conducted prior to initiation of demolition of any existing structures on the project site. If hazardous building materials are present at levels that require special handling and/or disposal, removal of the materials shall be completed by qualified professionals in accordance with applicable laws and regulations (including Bay Area Air Quality Management District requirements) prior to any activity that would involve demolition. (DS/Fire)
18. **Mitigation Measure HAZ-6:** Prior to the issuance of a grading permit for the proposed project, a Construction Traffic Control Plan (CTCP) shall be submitted for review and approval by the City of Hayward Public Works–Engineering and Transportation Department. The CTCP shall include a schedule of construction and anticipated methods of handling traffic for each phase of construction to ensure the safe flow of traffic and adequate emergency access, including maintaining an open lane for vehicle travel at all times. The CTCP shall be circulated to emergency service providers prior to any street closure or construction. All traffic control measures shall conform to Caltrans standards, as applicable. (PW-ET)
19. **Mitigation Measure 3.1.2:** The applicant shall submit a detailed Transportation Demand Management Plan (TDM Plan) to the City's Public Works – Engineering and Transportation Division with planned measures such as shuttle service, transit passes, on-site car sharing programs, unbundled parking costs, bicycle racks and lockers, on-site bicycle and pedestrian amenities, shared parking, on-site bike share

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program and identification of an on-site Transportation Demand Management Coordinator.

The TDM Plan shall describe each measure in detail and identify how it pertains to the residential and/or commercial uses of the development; include operational details of the individual measure; identify a funding source; and specify the individual and/or entity responsible for implementation and ongoing operation of the measure. The TDM Plan shall be submitted to and approved by the City prior to issuance of a Certificate of Occupancy for the development.

The property managers shall submit a memorandum on the status of each measure included in the TDM Plan to the City's Public Works – Engineering and Transportation Division on an annual basis for the first five years of operation and then on a modified schedule, as determined by the Planning Director and City Engineer.

The TDM Plan may also include goals and/or limits to each measure, provided the overall Plan achieves a minimum nine percent reduction in projected vehicle trips as demonstrated in the annual memo on TDM Measure status. Prior to any modifications to the approved TDM Plan, the property manager(s) shall submit a revised Plan to the City's Public Works Engineering and Transportation Division for review and approval. (DS/PW-ET)

20. **Mitigation Measure 3.1.4:** The proposed site plan shall be modified to eliminate the limited-access driveway on City Center Drive and recess the north curb line by 10 to 12 feet to accommodate a westbound right turn deceleration lane for the full-access driveway on City Center Drive to accommodate additional project traffic. The modified full-access driveway shall be designed consistent with City of Hayward access standards. Construction of a roundabout should be considered. (DS/PW-ET)
21. **Mitigation Measure 3.1.5:** Continuous sidewalks consistent with City of Hayward standards and ADA requirements shall be provided along the project frontage. In addition, the proposed pedestrian crossings at parking lot drive aisles shall be enhanced with high-visibility treatments, corner bulb-outs, and signage. These improvements shall meet ADA requirements and include direct travel paths from the parking areas to retail and apartment buildings. (DS/PW-ET)

### **PRIOR TO ISSUANCE OF BUILDING PERMITS**

#### Site Plan, Floor Plan and Landscape Design



## Exhibit A

22. The developer shall install public art consisting of mural(s), wall mounted or free standing sculpture(s), along the western elevations (fronting San Lorenzo Creek) and along the south elevation of the existing parking garage (fronting City Center). The final design and placement of public art shall be included on the building permit plan set and shall be reviewed and approved in accordance with the processes set forth in the City's Mural Art Program, prior to the issuance of building permits. (DS)
23. The retail tenant spaces fronting Foothill Boulevard (Pads 2 and 3) shall have entrances that open onto Foothill Boulevard. The entrances fronting Foothill Boulevard shall be open during business hours and shall not be closed off or otherwise blocked to public access, and storefront windows shall be transparent and visible to the street to show activity within the shops and businesses. (DS)
24. The main vehicular entrance to the development from Foothill Boulevard shall be attractive and inviting to both pedestrians and motorists with generous landscaping on both sides of the driveway. The proposed median located in the middle of the main driveway shall be widened to a minimum of five feet. The revised parking lot layout shall be reviewed and approved by the Planning Division prior to the issuance of building permits (DS-L)
25. The pedestrian walkway that runs from Foothill Boulevard to the major commercial tenants shall be a minimum of eight feet wide and shall be enhanced with integral color enhanced pavement, benches and attractive landscape buffer including trees and understory planting. The final layout and dimensions of the pedestrian path from Foothill Boulevard shall be reviewed and approved by the Planning Division prior to the issuance of building permits (DS-L)
26. The minimum dimension for all planting areas shall be five feet as measured from back of curb/paving/structure to back of curb/paving/structure. If any portion of a parking stall will overhang into a landscaped area, then the landscaped area shall be increased in width proportionally to ensure that there is a five-foot clear area for landscaping and plantings. Final dimensions for landscaped areas shall be included on all construction plans and reviewed and approved by the Planning Division prior to the issuance of building permits. (DS-L)
27. Pursuant to HMC Section 10-2.650, Landscaping, a five-foot wide landscape endcap measured from back of curb to back of curb shall be provided at the end of each row of parking stalls with medium to large canopied shade trees. In addition to parking shade trees, shrubs and groundcover shall be provided in the endcap islands. A parking lot shade tree shall also be planted at every six spaces in each row in a finger island or a tree well. A minimum tree well dimension shall be five feet by five feet measured from back of curb/paving/structure to back of curb/paving/structure. The curb shall be Class B Portland Cement Concrete constructed to a height of six inches above the finished pavement. All endcap and tree locations shall be reviewed and approved by the Planning Division prior to the issuance of building permits (DS-L)

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28. The minimum front yard setback along Foothill Blvd. shall measure eight to ten feet in width. No parking is permitted within the front yard setback. The required setback areas shall be fully landscaped with water conserving plants consisted of minimum one twenty-four-inch box medium to large canopy tree species at every 20 to 40 on center and understory plants. If necessary, the site plan may be modified to lose a row of parking stalls that are oriented perpendicular to Foothill Blvd (a total of six parking stalls). The minimum dimensions shall be included and planting locations and types shall be reviewed and approved by the Planning Division prior to the issuance of building permits. (DS-L)
29. Parking areas shall be buffered from public or private streets with shrubs that will create a continuous thirty-inch high screen at maturity. The planting locations and types shall be reviewed and approved by the Planning Division prior to the issuance of building permits (DS-L)
30. Pavement around the retail and commercial buildings shall be enhanced with integral colors, texture, pattern and decorative banding with different material, color and texture. The final design, color and materials shall be reviewed and approved by the Planning Division prior to the issuance of building permits. (DS-L)
31. Paved areas that do not have a functional purpose (i.e. west of the parking lot for the Pad 1 commercial building and north and west of the Hazel Avenue residential lobby) and that are visible from public walkways, driveways or the public right-of-way shall be improved with planters or decorated with site furniture to provide visual interest. The final locations and design of landscaping or site furniture shall be reviewed and approved by the Planning Division prior to issuance of building permits. (DS-L)
32. All residential balconies shall meet the minimum 60 square foot area with a minimum dimension of six feet. (DS)

### Hazel Ave. Pocket Park and Public Pathway Improvements Along San Lorenzo Creek:

33. The developer shall establish a public access easement on the pocket park and landscaped areas located at the northwestern corner of the site. The easement shall be recorded and reflected on the Final Parcel Map recorded for the property. (DS)
34. The developer shall reconstruct the retaining wall along the western portion of the property and install terraced, landscaped, decorative retaining walls in conformance with the architectural and civil plans dated November 29, 2016 and January 24, 2017, respectively. At a minimum, improvements shall include:
  - a. Construction of new terraced, landscaped retaining walls;
  - b. Resurfacing of the public pathway;

## Exhibit A

- c. Installation of a new decorative security railing between the pathway drop off and San Lorenzo Creek;
- d. Installation of new pedestrian scale decorative lights every 75 to 80 feet. If possible, the lights shall be staggered on either side of the pedestrian pathway and oriented downward to ensure continuous light;
- e. Exploration of potential enhancement of the western facing canal wall, in consultation with the Planning Division and Alameda County Public Works Department staff; and
- f. Improvements to the remainder of the privately owned retaining wall with either wall mounted plantings, a mural or other improvement.

The final design and placement of all improvements shall be reviewed and approved by the Planning Division in consultation with HARD prior to issuance of building permits. The final design and placement of any public art shall be included on the improvement plans and building permit plan set and shall be reviewed and approved in accordance with the processes set forth in the City's Mural Art Program, prior to the issuance of building permits. (DS)

- 35. The developer shall obtain an encroachment permit from the Alameda County Department of Public Works and/or Alameda County Flood Control and Water Conservation District (ACFC&WCD), as applicable, prior to construction of any improvements on the public maintenance pathway. The developer is responsible for complying with all Alameda County permit application requirements, fees or other requirements related to improving the maintenance access easement for public use. (DS)
- 36. To the greatest extent possible, the ADA accessible ramp proposed from Hazel Avenue to the Creek Walk shall be designed to match the full width of the trail rather than having a separate ramp that meets the minimum width standard and a separate stairs and walkways. The ramping entrance shall be designed to accommodate a sloping ramp that complies with ADA requirements. (DS-L)
- 37. The Hazel Avenue pocket park will serve as an entrance feature to the development. The proposed play structure shall be carefully selected or designed to be imaginative as well as visually attractive to function as a focal element. The final design or selection of the play structure shall be reviewed and approved by the Planning Division, in consultation with Hayward Area Recreation and Parks District (HARD) staff, prior to the issuance of building permits. (DS-L)
- 38. The applicant shall enter in an agreement with the City to maintain the public owned pathway to minimum standards set forth by the City's Maintenance Services Department. The agreement shall be finalized and executed prior to the issuance of the first Certificate of Occupancy for the development. (DS)

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39. All public improvements related to the pocket park and Creek Walk shall be completed prior to the issuance of the first certificate of occupancy for the residential portion of the development. (DS)

### Sustainability/Green Features

40. The project shall comply with the California Energy Code standards for Solar Ready Homes that are in effect at the time of building permit application submittal, which shall require coordination between the project architect and energy consultant regarding the design and orientation of roof surfaces.
41. Solar photovoltaic panels shall be installed to service, at a minimum, all common residential areas including corridors, structured parking lots, courtyards, pools, and other common areas. Final placement of the solar panels shall be reviewed and approved by the Planning Division prior to issuance of building permits. (DS)
42. The residential component of the project shall be GreenPoint Rated with evidence of such certification/rating to be submitted prior to issuance of the first certificate of occupancy for the development. (DS)

### Affordable Housing

43. In accordance with the Affordable Housing Ordinance (AHO) set forth in HMC Chapter 10, Article 17, the Applicant is obligated to pay the applicable Affordable Housing Impact Fees (AHI Fees) as set by resolution in effect at the time of payment. The developer intends to comply with the AHO by paying the applicable impact fees. Payment of AHI Fees is due at the time of building permit submittal or prior to approval of a final inspection or issuance of an occupancy permit for a Dwelling Unit. No final inspection will be approved and no occupancy permit will be issued for any Dwelling Unit unless all applicable AHI Fees have been paid in full. (L-CS)

### Parkland Dedication Fees and Credits

44. Park Dedication In-Lieu Fees are required to be paid for all new market-rate dwelling units, in accordance with HMC Chapter 10, Article 16, Property Developers - Obligations for Parks and Recreation. Fees for multi-family dwelling units shall be those in effect at the time of issuance of building permits, which currently equate to \$9,653 per unit, or \$4,459,828.

Pursuant to HMC Section 10-16.47, Developer Provided Park and Recreation Improvements, a land dedication credit shall be provided for the publicly accessible park and terraced retaining wall area which will frame the bicycle and pedestrian path known as the Creek Walk (calculated at approximately 0.53 acres or equivalent to 38 residential units). The developer may also receive partial or full credit for

## Exhibit A

improvements to the Alameda County-owned maintenance path along San Lorenzo Creek, terraced retaining walls, landscaping and in the pocket park. However, the developer shall not receive a credit for costs related to required frontage improvements pursuant to HMC Section 10-16.25; access to the public trail pursuant to HMC Section 10-16.46 and any required drainage, soil or non-visible improvements pursuant to Provision C3 of the Alameda Cleanwater Program.

45. To determine the final amount of the fee credit for improvements, the developer shall submit an Engineer's Estimate for the improvements which shall be reviewed and approved by the City's Public Works – Engineering Division and the Planning Division in consultation with HARD. The ultimate determination of the amount of credit shall be based on the City's review and approval of the Engineer's Estimate to the satisfaction of the City Engineer. The City reserves the right to cap costs associated with the credit for materials, labor or equipment according to recently completed work, jobs or other known information if the City believes that the Engineer's Estimate is unreasonable or otherwise overstating project-related cost. The Engineer's Estimate shall be submitted and approved by the City prior to the issuance of building permits for the project. (DS)

### Transportation and Parking Demand Management

46. The project shall make a fair-share annual contribution toward the funding of the City's proposed shuttle service. In the event that the City's shuttle service does not come to fruition, or reduces or ceases operations, the project shall implement or participate in a private shuttle service with 20-30 minute headways on weekdays, and on weekends as demand dictates, which would provide shuttle service to and from the Hayward BART station, with the potential for expansion/integration of such service into a City shuttle system. (PW-ET)
47. Parking surveys, with methodology in accordance with Section 3.95 of the City's Traffic Regulations and as approved by the Public Works Director or designee, shall be conducted at six month intervals for the first five years of project occupancy, starting when the project is at least 75% occupied, in order to determine impacts of the project on on-street parking demand. Should the Public Works Director determine that other new developments in the vicinity are impacting parking in the neighborhood, the costs for such surveys shall be shared with proponents of such developments on a "number of units" basis or other methodology as determined by the Development Services Director that is proportionate to the spillover parking generated by the project. (DS/PW-ET)
48. Should survey results meet the criteria for establishing a permit parking program, in accordance with Section 3.95 of the City's Traffic Regulations, and to minimize the potential for impacts related to project tenants and their guests parking in the adjacent residential neighborhood, a parking permit program shall be developed

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and implemented, upon approval by the City Council. At a minimum, such program shall:

- a. Specify the area subject to such program, to constitute at least six blocks, as specified in the City's regulations, or as amended by the City Council;
- b. Entail permits available to owners, residents and guest within the program area, with the number of permits to be determined by the City Council as recommended by the Public Works Director;
- c. Specify the parking restriction days and hours; and
- d. Include street signage in the program area.

The project proponent shall pay for development of the parking permit program, the costs for signage and permits, and the cost for enforcement of the program in the area. Should the City Council, or the Public Works Director as designated by the City Council, determine other projects are impacting parking in the neighborhood, the costs for the program and enforcement of it shall be shared proportionately among such developments, based on the total number of units in each development, amount of on-site parking, or other methodology as determined by the Development Services Director that is proportionate to the spillover parking generated by the project. Alternatively, program may be funded by the City or other funding source as approved by the City Council. The City may require that the project proponent(s) deposit at the beginning of each fiscal year funds up to \$50,000 to ensure enforcement will be paid for by the proponent(s). (DS/PW-ET)

### Building Plans

49. Plans for building permit applications shall incorporate/comply with the following:
  - a. Compliance with applicable Building and Fire Codes.
  - b. A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
  - c. A lighting plan prepared by a qualified illumination engineer shall be included to show exterior lighting design. Exterior lighting shall be erected and maintained so that adequate lighting to ensure a safe environment is provided in all common areas, while minimizing impacts on surrounding properties. Exterior lighting shall be shielded and deflected away from neighboring properties, particularly atop the parking garage, and away from windows of the proposed building. The final design and location of lighting fixtures shall reflect the architectural style of the building and shall be reviewed and approved by the Planning Division prior to approval of building permits.

## Exhibit A

- d. Final colors and materials selection shall be presented to the Development Services Director or designee for review and approval. (DS)
- 50. Utilities, meters, and mechanical equipment when not enclosed in a cabinet, shall be screened by either plant materials or decorative screen so that they are not visible from the street. Sufficient access for meter-reading by utility staff must be provided to all meters. (DS/U-ES)
- 51. Any transformer shall be located underground or screened from view by landscaping and shall be located outside any front or side street yard. (DS/PW-ET)

### Public Improvements

#### General Conditions:

- 52. Unless otherwise stated, prior to or concurrent with parcel map recordation all necessary easements shall be dedicated, and all improvements shall be designed and installed, at no cost to the City of Hayward. The private streets/drives shall be designated as a Public Utility Easement (PUE), and Emergency Vehicle Access Easement (EVAE). (DS/PW-ET)
- 53. Unless indicated otherwise, the design for development shall comply with the following:
  - a. All improvements shall be designed and constructed in accordance with the City of Hayward Municipal Code – Chapter 10, Articles 1 and 3, and Standard Specifications and Details.
  - b. All construction shall meet the California Building Codes (CBC) and all applicable City of Hayward Building Codes and amendments, including Green Building standards.
  - c. Design and construction of all pertinent life safety and fire protection systems shall meet the California Fire Code and all applicable City of Hayward Fire Codes and amendments. (DS/PW-ET)
- 54. A Registered Civil Engineer shall prepare all Civil Engineering improvement plans; a Licensed Architect shall prepare all architectural plans; and a Licensed Landscape Architect shall prepare all landscape unless otherwise indicated herein. (DS)
- 55. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. (DS/PW-ET)

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56. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from the City. (DS)
57. Prior to any building permit issuance parcel map shall be processed and recorded. (DS/PW-ET)
58. Prior to or concurrent with parcel map recordation, developer shall record a reciprocal easement, ingress/egress easement and a maintenance agreement to address all common utilities, crossing utilities and all common access ways. (DS/PW-ET)
59. It is applicant's responsibility to get permit or approval from all affected agencies or private parties. Copies of applicable permits or approvals shall be provided to the City with building permit application submittal. (DS)

### Submittals:

60. The following document shall be submitted to the City Planning Division for review and approval prior to the issuance of building permits:
  - a. Copy of the Notice of Intent filed with State Water Resources Control Board;
  - b. Engineer's estimate of costs, including landscape improvements;
  - c. Easement document;
  - d. Signed Public Improvement Agreement; and
  - e. Public Improvement bonds. (DS/PW-ET)
61. To avoid or reduce the potential impact related to the site specific geotechnical hazards related to seismic hazards, the project developer shall implement the following measures:
  - a. The applicant shall submit a final grading plan subject to review by the City Engineer prior to issuance of grading permits.
  - b. New construction shall comply with the latest California Building Code and mitigation measures outlined in the Geotechnical Investigation report.
  - c. For each building constructed in the development plan area, the required site specific geotechnical investigation shall address expansive soils and provide



## Exhibit A

appropriate engineering and construction techniques to reduce potential damage to buildings.

- d. To reduce the potential impacts related to the presence of low to moderately expansive clays in the subsurface soils of the project site, mitigation measures to avoid the effects of expansive soils outlined in the Geotechnical Investigation shall be followed. (DS/PW-ET)
62. The developer shall submit an AutoCAD file format (release 2010 or later) in a CD of approved 'as-built' improvement plans showing all public improvements and utility layouts that can be used to update the City's Base Maps. (DS/PW-ET)
63. Plans for all public improvements shall be prepared on Mylar (24-inch by 36-inch sheets) and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Hayward standard detail and specs and built to the City Engineer's satisfaction, and accepted by the City prior to issuance of any first certificate of occupancy for the project. (DS/PW-ET)
64. Prior to the issuance of building permits, the developer shall submit a Signing & Striping Plan to the City of Hayward Department of Public Works – Engineering and Transportation Division that shall include all locations along Foothill Blvd. between Hazel Avenue and City Center Drive; Hazel Avenue between Foothill Blvd. and Main Street; City Center Drive from Foothill Blvd to McKeever Avenue, inclusive of the intersection of Maple/McKeever, all project access driveways; and all internal roadways on the project site. (PW-ET)
65. The Signing & Striping Plan shall show appropriate signage such as STOP signs, Bike Lane signs, Parking Restriction signs, Turn Restriction signs, directional arrows (striping), etc. where appropriate and necessary and in conformance with Federal and California Manual on Uniform Traffic Control Devices. (PW-ET)
66. The developer shall submit a Street Lighting/Photometric Plan including Foothill Blvd., City Center Drive, Hazel Avenue to Public Works – Engineering and Transportation Division. The City may require additional light-related improvements upon receipt and review of the Lighting/Photometric Plan. (PW-ET)

### Traffic, Roadway and Sidewalk Improvements

67. The following on-street improvements shall be included on the Signing & Striping Plan and shall be implemented and/or installed by the developer prior to issuance of the first certificate of occupancy for the development:

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- a. Crosswalk on the north leg of McKeever Avenue and Maple Court, including installation of ADA ramps as appropriate and in accordance with City Standard Details (2014) to accommodate pedestrian traffic to/from Creek Walk.
  - b. Pedestrian Barrier with R9-3 plus R9-2 (“Cross Only at Cross Walk”) plus two-way directional arrow signs on both sides of street at the City Center Drive access to the Creek Walk.
  - c. Speed Radar feedback sign to be installed along Hazel Avenue facing eastbound traffic adjacent to the Creek Walk access.
  - d. No Parking (R-26 (CA)) signs on Hazel Avenue bridge over creek.
  - e. At the project driveway on City Center Drive, the north curb line shall be recessed by 10 to 12 feet and a right-turn deceleration lane shall be striped for driveway access, as recommended by the Traffic Study. Alternative design solutions to ensure safety at the commercial/retail access roadway may be considered and approved prior to the issuance of building permits.
  - f. No Left Turn (R3-2) signs at project driveways along Hazel Avenue prohibiting left turn from driveways onto Hazel Avenue as recommended by the Traffic Study.
  - g. The City may require additional improvements upon receipt and review of the signing & striping plan. (PW-ET)
68. In addition to the proposed LED streetlights, as shown on project plans, the applicant shall provide to the City one spare streetlight pole and fixture. (PW-ET)
69. All on-street LED streetlights, poles and fixtures shall comply with City Standard Details (2014) and shall be approved by Public Works-Engineering & Transportation prior to purchase and installation. (PW-ET)
70. As identified in the traffic study, the project driveways along Hazel Avenue shall be revised to be directional driveways which direct all traffic exiting the project to Foothill Boulevard. As such, left turns from these driveways onto Hazel Avenue shall be prohibited by signage and included in the Signing & Striping plans. (PW-ET)
71. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along Foothill Boulevard, Hazel Avenue, and Civic Center Drive, including but not limited to the following:
- a. Removal and replacement of all damaged curb, gutter, and sidewalk along Foothill Boulevard frontage.

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- b. Remove and replace curb, gutter, sidewalk, driveway, and install new street lights along Hazel Avenue, on both side of Hazel Avenue street frontages.
  - c. Install new curb, gutter, and sidewalk along Civic Center Drive frontage.
  - d. Install street lights along project frontages in accordance with conditions included herein.
  - e. Reconstruct curb-to-curb width of Hazel Avenue pavement from Foothill Boulevard to San Lorenzo Creek Bridge.
  - f. Extend the SD system along Foothill Boulevard and Hazel Avenue to connect to the San Lorenzo Creek outfall on the back of the property.
  - g. Foothill Boulevard is newly constructed street and under paving moratorium. At the minimum project is required to grind and overlay the curb lane through the first lane of traffic, to the satisfaction of the City Engineer.
  - h. Remove, replace, and plant street trees along project frontages per City Landscape Architect direction. (DS/PW-ET)
72. All sidewalks along the project frontage shall be designed as per the City of Hayward Standard Details (2014). (PW-E)

### Storm Drain:

73. Extend the storm drain system on Foothill Boulevard to Hazel Avenue and connect from the back of the property to San Lorenzo Creek outfall. The plans shall include adequate easement area for this connection. (DS/PW-ET)
74. The on-site storm drain system shall be privately owned and maintained by the property management association. (DS/PW-ET)
75. The project plan measures shall also include erosion control measures to prevent soil, dirt, debris and contaminated materials from entering the storm drain system, in accordance with the regulations outlined in the ABAG Erosion and Sediment Control Handbook. (DS/PW-ET)
76. Improvements for storm drain systems shall incorporate the following:
- a. The locations and design of storm drains shall meet the City's standard design and be approved by the City Engineer and if necessary, the Alameda County Flood Control and Water Conservation District (ACFC&WCD). Any alternative design shall be approved by the City Engineer prior to installation.

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- b. Storm drain pipes in streets and alleys shall be a minimum of twelve inches in diameter with a minimum cover of three feet over the pipe.
  - c. The latest edition of the Alameda County Flood Control and Water Conservation District's Hydrology and Hydraulics Criteria Summary shall be used to determine storm drainage runoff. A detailed grading and drainage plan with supporting calculations and a completed Drainage Review Checklist shall be submitted, which shall meet the approval of the Alameda County Flood Control and Water Conservation District (ACFC&WCD) and the City. Development of this site shall not augment runoff to the ACFC&WCD's downstream flood control facilities. The hydrology calculations shall substantiate that there will be no net increases in the quantity of runoff from the site versus the flow rate derived from the original design of downstream facilities.
  - d. The project shall not block runoff from, or augment runoff to, adjacent properties. The drainage area map developed for the project hydrology design shall clearly indicate all areas tributary to the project area. The developer is required to mitigate unavoidable augmented runoffs with offsite and/or on-site improvements.
  - e. No surface runoff is allowed to flow over the sidewalks and/or driveways. Area drains shall be installed behind the sidewalks to collect all runoff from the project site.
  - f. All storm drain inlets must be labeled "No Dumping - Drains to Bay," using City-approved methods.
  - g. The starting water surface elevation(s) for the proposed project's hydraulic calculations and the corresponding determination of grate/rim elevations for all the on-site storm drainage structures shall be based on Federal Emergency Management Agency's Flood Insurance Study for the 100-year storm event.
  - h. Post-development flows should not exceed the existing flows. If the proposed development warrants a higher runoff coefficient or will generate greater flow, mitigation measures shall be implemented. (DS/PW-ET)
77. A detailed drainage plan, to be approved by the Alameda County Flood Control and Water Conservation District and the City Engineer, designing all on-site drainage facilities to accommodate the runoff associated with a ten (10) year storm and incorporating onsite storm water detention measures sufficient to reduce the peak runoff to a level that will not cause capacity of downstream channels to be exceeded. Existing offsite drainage patterns, i.e., tributary areas, drainage amount and velocity shall not be altered by the development. The detailed grading and drainage plan with supporting calculations and a completed Drainage Review Checklist shall be approved by the City Engineer and by the ACFC&WCD prior to issuance of any construction or grading permit. (DS/PW-ET)

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### Storm Water Quality Control:

78. Developer shall comply with the regional permits requirements for both construction and post-construction requirements. Storm water management shall be in compliance with Municipal Regional Permit. (DS/PW-ET)
79. The following materials related to storm water quality treatment facility requirements shall be submitted with improvement plans and/or grading permit application:
  - a. A Stormwater Treatment Measures Maintenance Agreement shall be submitted to Public Works - Engineering and Transportation Department staff for review and approval. Once approved, the Maintenance Agreement shall be recorded with the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity.
  - b. The project plans shall include the storm drain design in compliance with post-construction stormwater requirements to provide treatment of the stormwater according to the National Pollutant Discharge Elimination System (NPDES) permit's numeric criteria. The design shall comply with the C.3 established thresholds and shall incorporate measures to minimize pollutants to the maximum extent practicable (MEP).
  - c. The project plans shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prevent the entry of pollutants into storm water runoff. Roof leaders shall discharge into flow-through planters and direct runoff shall discharge into a landscaped area or a bioretention area prior to stormwater runoff entering an underground pipe system.
  - d. The proposed BMPs shall be designed to comply with the hydraulic sizing criteria listed in Provision C.3 of the Alameda County Clean Water Program (ACCWP) NPDES permit.
  - e. The bioretention treatment area shall be designed using a Bioretention Soil Mix (BSM) per Attachment L of the C.3 Stormwater Technical Guidance dated May 14, 2013, with a minimum infiltration rate of 5 inches per hour.
  - f. The following documents pursuant to the Cleanwater Program requirements:
    - a) Hydromodification Management Worksheet;
    - b) Infiltration/Rainwater Harvesting and Use Feasibility Screening Worksheet;
    - c) Development and Building Application Information Impervious Surface Form;

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- d) Project Applicant Checklist of Stormwater Requirements for Development Projects;
  - e) C.3 and C.6 Data Collection Form; and,
  - f) Numeric Sizing Criteria used for stormwater treatment (Calculations). (DS/PW-ET)
80. The Stormwater Treatment Measures Maintenance Agreement for the project, prepared by Public Works Engineering and Transportation Division staff, shall be signed and recorded in concurrence with the Final Parcel Map at the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity. (DS/PW-ET)
81. Construction activities which disturb one or more acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. Following are the specific requirements for regulated construction sites:
- a. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted with a design to reduce discharge of pollutants and sediments into the downstream storm drain system during the construction. The plan shall meet the approval of the City Engineer. The certification page of the SWPPP shall be signed by a Qualified SWPPP Developer (QSD) person who prepared the report.
  - b. Before commencing any grading or construction activities at the project site, the developer is required to obtain a National Pollutant Discharge Elimination System (NPDES) permit and provide evidence of filing of a Notice of Intent (NOI) with the State Water Resources Control Board. (DS/PW-ET)
82. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction BMPs will result in the issuance of correction notices, citations or a project stop order. (DS/PW-ET)

### East Bay Municipal Utility District (EBMUD)

83. Water service is provided from East Bay Municipal Utilities District. Submit plan for their review and approval. An approval letter from EBMUD shall be provided to the City of Hayward Public Works Department prior to issuance of building permits. (DS/PW-ET)
84. A main extension, at the project sponsor's expense, shall be installed from EBMUD's Bayview Pressure Zone to serve the proposed development. The nearest water main in the Bayview Pressure Zone is located in Foothill Blvd. at the northern boundary of the proposed development. Off-site pipeline improvements, including but not

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limited to replacement of existing pipelines to the project site, may be required to serve the proposed development and shall be installed at the project sponsor's expense. (EBMUD)

85. Developer shall be responsible for contacting the EBMUD's New Business Office to request a water service estimate to determine the costs and conditions of providing water service to the development. Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all applicable water efficiency measures described in the regulation are installed at the project sponsor's expense. (EBMUD)
86. No water meters are permitted to be located in driveways. (EBMUD)
87. The City of Hayward and EBMUD operate and maintain a water system intertie on Foothill Boulevard at this location. Any proposed construction activity within the area of the intertie shall be approved and coordinated with the City of Hayward, Department of Utilities & Environmental Services and EBMUD. Any required relocation of the intertie shall be at the applicant's expense. At no time shall buildings, structures, parking areas, landscaping, etc. be constructed on top of the intertie. (EBMUD/U-ES)
88. Water mains and services, including the meters must be located at least 10 feet horizontally from and one-foot vertically above any parallel pipeline conveying untreated sewage (including sanitary sewer laterals), and at least four feet from and one foot vertically above any parallel pipeline conveying storm drainage, per the current California Waterworks Standards, Title 22, Chapter 16, Section 64572. The minimum horizontal separation distances can be reduced by using higher grade piping materials with the City's approval. (DS/ U-ES)
89. Separate irrigation water meter shall be installed for common area landscaping purposes. The applicant/developer shall install a Reduced Pressure Backflow Prevention Assembly on each irrigation water meter, per City East Bay Municipal District standards. Backflow prevention assemblies shall be at least the size of the water meter or the water supply line on the property side of the meter, whichever is larger. (DS/U-ES)

### Oro Loma Sanitary District

90. Sewer service is provided from Oro Loma Sanitary District (OLSD). Submit plan for their review and approval. An approval letter from OLSD shall be provided to the City of Hayward Public Works Department prior to issuance of building permits. (DS/PW-ET)
91. The applicant shall submit a complete sanitary sewer plan for all on-site and off-site improvements prepared by a Registered Civil Engineer for the review and approval of the District Engineer. All sanitary sewer improvements shall be designed and

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constructed in accordance with the District's Design Standards, Specifications and Standard Plans, unless otherwise specifically approved by the District Engineer. Sanitary sewer improvements shall include, but not limited to, sanitary sewer laterals for each parcel or building/residential dwelling, off-site sanitary sewer systems and associated structures necessary for a complete and acceptable sanitary sewer improvement project. (OLSD)

92. Sanitary sewer is available within the project site. The Developer, at its cost, shall provide capacity analysis of the affected sanitary sewer system and provide alternative solutions if capacity deficiencies exist. If up sizing of the system is required, the Developer shall construct the required improvements as part of the project improvements. Any approved sewer system upgrades shall be completed prior to issuance of the first occupancy permit. (OLSD)
93. The applicant shall submit an estimate of the cost of all sanitary sewer work to be performed, both within the public rights-of-way and the project boundaries. (OLSD)
94. A separate OLSD Permit shall be obtained prior to installation and connection of all on-site and off-site sanitary sewer lines to the OLSD facility and compliance to the conditions set forth in the permit. (OLSD)
95. The applicant shall pay design review fees, permit fees, inspection fees, connection fees and any other fees charged by the OLSD or other agencies for the review, approval, permitting, inspection and construction of the above listed public and private. (OLSD)
96. If the design of any sanitary sewer systems requires encroachments onto neighboring properties, written agreements and Grant of Easements with that property owner, shall be submitted for the review and approval by the OLSD Engineer. (OLSD)
97. Any existing pipelines or structures, that are to remain after development, if damaged during construction, shall be replaced to the satisfaction of the OLSD Engineer. (OLSD)
98. All sanitary sewer lines that are to be maintained by the OLSD shall be located within easements granted to OLSD. The Developer shall install manhole(s) at the point(s) of connection to public sewers to clearly demarcate maintenance responsibilities. (OLSD)
99. All of the sanitary sewer facilities constructed within the boundaries of the project shall be privately owned and maintained, including any sewer lift stations, up to the point of connections of the systems to an existing public facility. Maintenance of the private sanitary sewer shall be included in the Homeowner Association Covenant, Conditions and Restrictions or other mechanism conveying responsibility, and shall be submitted for the review and approval of the OLSD Engineer. (OLSD)



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100. No street paving for any streets shall be constructed unless and until any required sanitary sewer system installation of the sewer facilities in the subject streets has been completed. (OLSD)
101. Prior to final acceptance of the sanitary sewer improvements, the Developer shall submit to the OLSD Engineer a computer disk with a file of the points and lines of the final map and complete improvement plans in an AutoCAD 2000 readable format compatible with the OLSD's Automated Mapping System. (OLSD)

### Solid Waste

102. Submit a Solid Waste Handling Plan as a sheet in the site plans as part of your building permit submittal. The Solid Waste Handling Plan shall be reviewed and approved by the Utilities & Environmental Services Department prior to issuance of building permits. The plan should include the following details:
  - a. How residential and commercial waste will be collected and conveyed from the individual units to the appropriate dedicated enclosure(s) for pickup; and
  - b. The waste collection vehicle access to each trash enclosure onsite; and
  - c. The weekly volumes of trash, recyclables, and organics generated for the residential and commercial portions of the project. (U-ES)
103. The building permit submittal shall provide details on any proposed commercial uses including but not limited to whether restaurants, retail, grocery stores, etc. are planned in the commercial spaces. If the proposed development does not have confirmed commercial tenants (i.e. a speculative development), City staff reserves the right to require modifications to the enclosures constructed by the applicant to include more enclosures and/or to revise the dimensions of the constructed enclosures as individual tenants submit their plans. (U-ES)
104. All trash enclosures must adhere to all the basic design guidelines provided in Section 3 of the City's Standard Design Requirements for Collection & Storage of Trash, Recyclables and Organics for Commercial (Business) and Multi-Family Projects. The building permit submittal shall include a detailed set of plans that show the design details of the enclosures, including the location of all bins and label each bin with the capacity (ex: three cubic yards, four cubic yards, etc.) as well as the type of waste (trash, recyclables, organics). (U-ES)
105. A Construction and Demolition Debris Recycling Statement shall be submitted with building permit applications. The minimum debris recycling requirements are 100% for asphalt, concrete, and similar materials, and 65% of remaining debris. (U-ES)

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### Other Utilities

106. All service to the development shall be an "underground service" designed and installed in accordance with the Pacific Gas and Electric Company, AT&T (phone) Company and local cable company regulations. Transformers and switch gear cabinets shall be placed underground unless otherwise approved by the Planning Director and the City Engineer. Underground utility plans must be submitted for City approval prior to installation. (DS/PW-ET)
107. All proposed surface-mounted hardware (fire hydrants, electroliers, etc.) along the proposed streets shall be located outside of the sidewalk within the proposed Public Utility Easement in accordance with the requirements of the City Engineer or, where applicable, the Fire Chief. (DS/PW-ET)
108. The developer shall provide and install the appropriate facilities, conduit, junction boxes, etc., to allow for installation of a fiber optic network within the development. (DS/PW-ET)
109. All utilities shall be designed in accordance with the requirements of the City of Hayward and applicable public agency standards. (DS/PW-ET)
110. The improvements associated with the Pacific Gas and Electric Company, AT&T (phone) company and local cable company shall be installed to the satisfaction of the respective companies. (DS/PW-ET)

### Landscaping and Irrigation

#### Plan Submittals:

111. Prior to the approval of civil improvement plans or issuance of the first building permit, detailed landscape improvement plans shall be reviewed and approved by the City. The plans shall be prepared by a licensed landscape architect on an accurately surveyed base plan that matches civil plans and shows all underground and above ground utilities to minimize conflict with tree planting. The plans shall comply with the City's Bay-Friendly Water Efficient Landscape Ordinance and other relevant Municipal Codes. (DS-L)
112. The landscape improvement plans shall show, in legible type, the surveyed dripline of the existing tree identification number 675 that will be saved with the proposed development. (DS-L)
113. The landscape improvement plans shall consist of layout, fine grading, planting and irrigation plans for on-grade and podium levels, and landscape construction and irrigation details including planters and paving on the podium level and specifications. (DS-L)

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114. Upon completion of the approved landscape and irrigation improvements, the developer shall submit As-built/Record Mylar to the Public Works – Engineering and Transportation Department. (DS-L)

### Arborist Report and Tree Mitigation Plan:

115. Arborist report: Tree species rating for *Pyrus calleryana* (30%); *Ginkgo biloba* (30%); *Pistacia chinensis* (60%); *Robinia pseudoacacia* (20%); and *Lagerstroemia indica* (50%) are marked lower than national standards for tree species ratings.

Average national standards and ratings for *Pyrus calleryana* (Bradford) which species is most likely the one existing is 40 – 60%; male species of *Ginkgo biloba* is 60 – 90% (fruit bearing female species aren't permitted for planting); *Pistacia* c. 80 – 100%, *Robinia pseudoacacia* is 40 – 60%; and *Lagerstroemia indica* is 60 – 80%.

Appraisal values for the species listed above shall be revised to come into line with national standards and the changes shall be reflected in the arborist report and the tree mitigation summary chart that are shown on the plan. The total mitigation amount shall be revised as well. (DS-L)

116. The tree mitigation plan shall show proposed trees being planted for mitigation purposes. All upsized and additional mitigation trees above and beyond those required shall be clearly identified on the plan. All surveyed, existing trees shall be included on a plan labeled as Existing Tree Inventory Plan. (DS-L)
117. Tree mitigation shall be provided in accordance with the revised values per Condition Nos. 113 and 114 above. Per HMC Section 10-15.20, replacement trees shall not be counted as part of the required trees to meet zoning standards for the original site, unless the trees are upsized from minimum standards. If on-site tree to tree mitigation would be difficult to achieve, other alternatives for mitigation, such as use of permeable pavers in place of impervious pavement, shall be reviewed and approved by the City Landscape Architect prior to issuance of building permits. (DS-L)
118. The areas beyond permitted building and paved areas including roadways, driveways and parking shall be fully landscaped with water conserving plants and irrigated with efficient system in compliance with the City's ordinances. Sole use of decorative rocks, pebbles, decomposed granites or mulch shall not be permitted as groundcover material in lieu of live plants. (DS-L)

### Bio-Treatment Area Design:

119. Bio-treatment areas in general: Minimum 24-inches (two feet) of leveled area shall be provided before side slope may begin. (DS-L)

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120. The bio-treatment area located in the Hazel Avenue pocket park shall be designed as a part of the playground area and shall serve as an attractive “green” backdrop. The layout of the dry creek shall be natural looking with varying width of cobble band, different sizes of river cobblestones and incorporation of larger river-stone boulders. Plant material shall be diverse in texture, form, height and color. The final design, layout and materials shall be submitted to and approved by the Planning Division prior to submittal of building permits. (DS-L)
121. A minimum twelve-inch wide band of large size Noiya Cobblestone shall be provided around overflow catch basins or bubble ups. (DS-L)
122. When wider than ten feet, bio-treatment areas shall be irrigated with matched precipitation rotator type, or as efficient overhead spray irrigation system that allows “cycle and soaking” program function. When the treatment area width is less than ten feet, efficient irrigation system that meets the current ordinance requirements shall be provided. The irrigation for bio-retention area shall be provided on a separate valve. Irrigation plans shall reflect the requirements for applicable areas. (DS-L)
123. Bio-retention areas shall not be lined at the bottom with impervious material unless the treatment area is too close to the building to undermine the structure integrity. (DS-L)
124. The enclosed flow-through planters within terraced areas along the creek specify eighteen-inch C.3 sandy loam soil depths which do not support large plants or trees. Further, the lower terraced planter may not have the width to accommodate low branching type tree such as *Carpinus betulus Fastigiata* and the species is also susceptible to scale infestation. Trees in a special condition like this one shall be irrigated on a separate valve. The final design, layout and materials shall be included on the landscape plan and submitted to and approved by the Planning Division prior to submittal of building permits. (DS-L)

### Landscape Design:

125. Large screening shrubs: Routine pruning, shearing and hedging are all prohibited landscape maintenance activities. Plant material legend shall at minimum provide the botanical name, common name, mature size, spacing, location, massing of different plant types, and water use requirements and its source book. Plant spacing shall not be closer the minimum spread provided in the reference books in the ordinance. The final design, layout and materials shall be included on the landscape plan and submitted to and approved by the Planning Division prior to issuance of building permits. (DS-L)
126. Groundcovers: *Acacia redolens* and *Arctostaphylos Emerald Carpet* shall only be specified where there is room for them to spread to their natural mature size. (DS-L)

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127. A separate tree removal permit will be required for all trees that are to be removed. This can be obtained from the City Landscape Architect prior to demolition. (DS-L)
128. The City Standard Detail requires fire hydrants to be located on a six-foot by six-foot concrete pad. The minimum clearance for tree planting is seven feet from the edge of fire hydrant, not from the edge of the concrete pad. The pad size is large enough to make an impact to tree planting. The actual size of the pad shall be shown on the planting plans. (DS-L)
129. Trees shall be placed twenty feet from the corner, a minimum of five feet away from any underground utilities, a minimum of fifteen feet from a light pole, and a minimum thirty feet from the face of a traffic signal, or as otherwise specified by the City. (DS-L)
130. A root barrier shall be provided for all trees that are located within seven feet of paved edges or structure. (DS-L)
131. All tree planting shall conform to the City Standard Detail and Specifications in SD-122. (DS-L)
132. Backflow prevention device shall conform to the City Standard Detail and Specifications in SD-202. (DS-L)
133. Utility boxes and vaults, light fixtures and fire hydrants shall have minimum five feet of clearance from the edge of C.3 Stormwater Treatment areas. (DS-L)

### Fire Department

#### Project Site Requirements:

134. All private streets/courts/drives shall be constructed to meet the requirements of fire apparatus road, being designed and maintained to support the imposed load of fire apparatus 75,000 pounds and shall be surfaced so as to provide all-weather driving capability. (Fire)
135. Fire apparatus roads shall have unobstructed width of 26-feet in the immediate vicinity of the building. At least one of the required access routes shall be located within a minimum of 15-feet and a maximum of 30-feet from the building and shall be positioned parallel to one entire side of the building. (Fire)
136. Fire apparatus access roads 20 to 26 feet wide shall be posted on both sides as a fire lane; 26 feet to 32 feet shall be posted on one side of the road as a fire lane. "No Parking" sign shall meet the City of Hayward Fire Department fire lane requirements. (Fire)
137. A minimum fire flow of 3,000 GPM shall be provided onsite based on Construction Type IIIA and building area of 520,958 square feet. A fire flow shall be determined

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in accordance with the 2013 California Fire Code Table B105.1 based on the construction type and building area. (Fire)

138. Hydraulic calculation shall be performed to determine pipe size of onsite underground fire service line/loop. (Fire)
139. Address and premise identification numbers shall be placed on all buildings in such a position as to be plainly visible and legible from the road or street fronting the property. Minimum building address shall be 12-inch high with 1.5-inch stroke. When building is located greater than 50 feet from street frontage, address shall be minimum 16-inch high with 1.5-inch stroke. Tenant space number shall be 6-inch high with 0.75-inch stroke on a contrasting background so as to be visible from the street. (Fire)
140. Fire Hydrants - New fire hydrants shall be double steamer type equipped with two four and one-half (4-1/2) inch outlets and one two and one-half (2-1/2) inch outlet. Double Steamer Hydrant (Clow Valve Co. Model 865). Blue reflective fire hydrant blue dot markers shall be installed on the roadways indicating the location of the fire hydrants. Vehicular protection may be required for the fire hydrants. (Fire)

### Fire Protection Requirements:

141. The applicant shall hire a qualified fire protection engineer to prepare an alternate means and methods proposal for the proposed development should it be determined that onsite fire access roads are not fully complying with code requirements. The qualified fire protection engineer shall be approved by Hayward Fire Department and the proposal shall be submitted to and approved by the Fire Department prior to the submittal of building permit application for the development. (Fire)
142. Buildings shall be constructed in accordance with 2016 California Building Code. Building exceeding 75 feet high shall meet related high-rise building requirements. Fire command centers shall be provided. (Fire)
143. Fire Sprinkler Protection Required - An automatic fire sprinkler system shall be designed and installed conforming to NFPA 13. A separate fire permit is required for the fire sprinkler system installation. Sprinkler system monitoring is required in accordance with the California Fire Code. A State Licensed C-16 Fire Sprinkler Contractor shall be responsible for the fire sprinkler system installation. (Fire)
144. Maximum 80 PSI water pressure is recommended to be used when water data indicates a higher static pressure and residual pressure be adjusted accordingly. (Fire)
145. Underground fire service line serving NFPA 13 sprinkler system shall be installed in accordance with NFPA 24 and the Hayward Public Work Department SD-204. (Fire)

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146. Fire Department Connection (FDC) – The Fire Department Connection shall be located on the street side of the building or in a location approved by the Fire Department. A sign shall be attached to the fire department connection with letters having a minimal one-inch height, and shall indicate the type of service for which the FDC is intended, (i.e., AUTOSPKR, STANDPIPE, etc.). (Fire)
147. Standpipe system – Class I Standpipe system(s) shall be provided in accordance with NFPA 14, California Fire Code and all applicable City of Hayward Fire Department Ordinances. (Fire)
148. Fire Alarm System Required – Fire alarm systems shall be installed in accordance with the California Fire Code. Buildings exceeding 75 feet high shall be provided with automatic smoke detection and emergency voice/alarm communication. System design and installation shall meet the California Fire Code (CFC) and NFPA 72 Standards and shall be installed to meet ADA requirements. (Fire)
149. Smoke control systems are required for the high-rise buildings. (Fire)
150. CO detectors should be placed near the sleeping area on a wall about five feet above the floor. The detector may be placed on the ceiling. Each floor of each unit needs a separate detector. (Fire)

### Hazardous Materials Requirements:

151. Prior to issuance of Building or Grading Permits, a final clearance shall be obtained from either California Regional Water Quality Control Board or Department of Toxic Substance Control and submitted to the Hayward Fire Department to ensure that the property meets residential development investigation and cleanup standards for health and environmental quality. (Fire)
152. Prior to grading, structures and their contents if present shall be removed or demolished under permit in an environmentally sensitive manner. Proper evaluation, analysis and disposal of materials shall be done by appropriate professional(s) to ensure that hazards posed to development construction workers, neighbors, the environment, future residents and other persons are mitigated. All hazardous materials and hazardous waste must be properly managed and disposed of in accordance with state, federal and local regulations. (Fire)
153. If found on the site, any wells, septic tank systems and other subsurface features shall be removed properly in order not to pose a threat to the development, construction workers, future residents or the environment. Notification shall be made to the Hayward Fire Department at least 24 hours prior to removal. Removal of these structures shall be documented and done under permit, as required by law. (Fire)

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154. When a site is being developed on a location where hazardous materials/waste were used, stored or generated then a Closure Plan will need to be filed with the Hayward Fire Department to ensure proper handling, disposal and documentation of materials. (Fire)
155. The Hayward Fire Department's Hazardous Materials Office shall be notified immediately at (510) 583-4900 if hazardous materials are discovered during demolition or during grading. These shall include, but shall not be limited to, actual/suspected hazardous materials, underground tanks, hydraulic lifts, vessels that contain or may have contained hazardous materials. (Fire)
156. During mass grading/grubbing or construction, hazardous materials used and hazardous waste generated shall be properly managed and disposed. (Fire)
157. Any emergency generators associated with this project shall be permitted by the Fire Department. (Fire)

### **DURING CONSTRUCTION**

158. The developer shall ensure that unpaved construction areas are sprinkled with water as necessary to reduce dust generation. Construction equipment shall be maintained and operated in such a way as to minimize exhaust emissions. If construction activity is postponed, graded or vacant land shall immediately be revegetated. (DS/PW-ET)
159. All diesel powered equipment ( $\geq 100$  horsepower) shall be California Air Resources Board (CARB) Tier 3 Certified or better. (DS/PW-ET)
160. The following control measures for construction noise, grading and construction activities shall be adhered to, unless otherwise approved by the Planning Director or City Engineer:
  - a. Grading and site construction activities shall be limited to the hours 8:00 AM to 5:00 PM Monday through Friday with no work on weekends and Holidays unless revised hours and days are authorized by the City Engineer. Building construction hours are subject to Building Official's approval;
  - b. Grading and construction equipment shall be properly muffled;
  - c. Unnecessary idling of grading and construction equipment is prohibited;
  - d. Stationary noise-generating construction equipment, such as compressors, shall be located as far as practical from occupied residential housing units;
  - e. Applicant/developer shall designate a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise.



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Letters shall be mailed to surrounding property owners and residents within 300 feet of the project boundary with this information.

- f. The developer shall post the property with signs that shall indicate the names and phone number of individuals who may be contacted, including those of staff at the Bay Area Air Quality Management District, when occupants of adjacent residences find that construction is creating excessive dust or odors, or is otherwise objectionable. Letters shall also be mailed to surrounding property owners and residents with this information prior to commencement of construction.
- g. Daily clean-up of trash and debris shall occur on project street frontages, and other neighborhood streets utilized by construction equipment or vehicles making deliveries.
- h. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to storm water pollution;
- i. Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work;
- j. The site shall be watered twice daily during site grading and earth removal work, or at other times as may be needed to control dust emissions;
- k. All grading and earth removal work shall follow remediation plan requirements, if soil contamination is found to exist on the site;
- l. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
- m. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
- n. Sweep public streets daily if visible soil material is carried onto adjacent public streets;
- o. Apply (non-toxic) soil stabilizers or hydroseed to inactive construction areas (previously graded areas inactive for 10-days or more);
- p. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).

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- q. Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping;
  - r. No site grading shall occur during the rainy season, between October 15 and April 15, unless approved erosion control measures are in place.
  - s. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to: 1) start of the rainy season; 2) site dewatering activities; or 3) street washing activities; and 4) saw cutting asphalt or concrete, or in order to retain any debris or dirt flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash;
  - t. Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides or any other materials used on the project site that have the potential for being discharged to the storm drain system through being windblown or in the event of a material spill;
  - u. Never clean machinery, tools, brushes, etc., or rinse containers into a street, gutter, storm drain or stream. See "Building Maintenance/Remodeling" flyer for more information;
  - v. Ensure that concrete/gunite supply trucks or concrete/plasters finishing operations do not discharge washwater into street gutters or drains; and
  - w. The developer shall immediately report any soil or water contamination noticed during construction to the City Fire Department Hazardous Materials Division, the Alameda County Department of Health and the Regional Water Quality Control Board. (DS/PW-ET)
161. The minimum soils sampling and testing frequency shall conform to Chapter 8 of the Caltrans Construction Manual. The subdivider shall require the soils engineer to daily submit all testing and sampling and reports to the City Engineer. (PW-ET)
162. All buildings shall be designed using the California Building Codes in effective at the time of submitting building permit applications. (DS)
163. All common area landscaping, irrigation and other required improvements shall be installed according to the approved plans. (DS-L)
164. All public improvements, including the complete installation of all improvements relative to streets, fencing, sanitary sewer, storm drainage, water system, underground utilities, etc., shall be completed and attested to by the City Engineer before approval of occupancy of any unit. Where facilities of other agencies are

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involved, such installation shall be verified as having been completed and accepted by those agencies. (DS/PW-ET)

### **PRIOR TO FINAL INSPECTION**

165. Prior to the issuance of Certificate of Occupancy, all landscape and irrigation shall be completed in accordance to the approved plan and accepted by the City Landscape Architect. Before requesting an inspection from the City Landscape Architect, the project landscape architect shall inspect and accept landscape improvements and shall complete Appendix C. Certificate of Completion in the City's Bay-Friendly Water Efficient Landscape Ordinance. The completed Certificate of Completion Part 1 through Part 7 or applicable parts shall be faxed/e-mailed/turn in prior to requesting an inspection from the City Landscape Architect. (DS-L)
166. Children's playground equipment certification: Health and Safety Code in Chapter 4 titled "Safe Recreational Land Use (115725 - 115800)" calls for compliance with standard of ASTM and federal Consumer Protection and Safety Commission. Playground equipment is required an inspection by a certified playground safety inspector by the National Playground Safety Institute, and the certification letter shall be submitted City Landscape Architect prior to the final inspection and issuance of Certificate of Occupancy. (DS-L)
167. Prior to final inspection and issuance of final certificates of occupancy, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Public Works Director and Development Services Director or his/her designees. (DS/PW-ET)
168. Prior to issuance of final certificates of occupancy or final building inspections, the developer shall submit "as built" plans indicating the following:
  - a. Approved landscape and irrigation improvements;
  - b. All underground facilities, sanitary sewer mains and laterals, water services (including meter locations), Pacific Gas and Electric, AT&T (phone) facilities, local cable company, etc.;
  - c. All the site improvements, except landscaping species, buildings and appurtenant structures; and
  - d. Final Geotechnical Report. (PW-ET)
169. The Stormwater Treatment Measures Maintenance Agreement for the project, prepared by Public Works Engineering and Transportation Division staff, shall be signed and recorded in concurrence with final inspection, to ensure that the maintenance is bound to the property in perpetuity. (PW-ET).

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170. As-built plans for all public improvements shall be prepared on Mylar (24-inch by 36-inch sheets) and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Hayward standard detail and specs and built to the City Engineer's satisfaction, and accepted by the City prior to issuance of any certificate of occupancy for the project. (PW-ET).
171. Prior to final inspections or issuance of final certificates of occupancy, the owner shall provide evidence that a suitable property management firm has been selected, and a Property Management Plan (PMP) that specifics maintenance details, schedules, responsibilities, and transportation demand management, shall be submitted and approved by the Development Services Director. (DS)
172. The PMP shall include/address the following provisions:
  - a. Description of how the stormwater best management practices associated with privately owned improvements and landscaping shall be maintained.
  - b. A reserve fund shall be maintained to cover the costs of improvements and landscaping to be maintained by the Property Management Company.
  - c. The Property Management Company shall maintain on-site storm drain systems.
  - d. The Property Management Company shall maintain the pocket park, terraced retaining walls and landscaped areas located on private property at the northwestern corner of the site and along the Creek Walk path.
  - e. If the Property Management Company fails to maintain the common facilities, landscaping and irrigation in all common areas for which it is responsible so that tenants, guests, customers or adjacent owners will be impacted regarding the enjoyment, use or property value of the/their project, the City shall have the right to enter upon the project and to commence and complete such work as is necessary to maintain the common areas and private streets, after reasonable notice, and lien the property for the costs.
  - f. A requirement that the building exteriors and fences shall be maintained free of graffiti. The Property Management Company shall inspect the premises on a weekly basis and any graffiti shall be removed within 72 hours of inspection or within 72 hours of notification by the City.
  - g. A tree removal permit is required prior to the removal of any protected tree, in accordance with the City's Tree Preservation Ordinance.
  - h. The premises shall be kept clean and free of debris at all times.

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- i. Color change selections shall be compatible with the existing setting.
  - j. Balconies may not be used for storage and personal items may not be draped over the railings.
  - k. Any future major modification to the approved site plan shall require review and approval by the Planning Commission.
  - l. Landscaping shall be maintained by the Property Management Company and shall be in a healthy, weed-free condition at all times and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% dieback) shall be replaced within ten days of the inspection. Three-inch deep mulch should be maintained in all planting areas. Mulch shall be organic recycled chipped wood in the shades of Dark Brown Color, and the depth shall be maintained at three inches deep.
  - m. All trees planted as a part of the development and as shown on the approved landscape plans shall be "Protected" and shall be subject to the City's Tree Preservation Ordinance. Tree removal and pruning shall require a tree pruning or removal permit prior to removal by City Landscape Architect. Any damaged or removed trees without a permit shall be replaced in accordance with the City's Tree Preservation Ordinance within the timeframe established by the City and pursuant to the Municipal Code. Irrigation systems shall be tested periodically to maintain uniform distribution of irrigation water; irrigation controller shall be programmed seasonally; irrigation system should be shut-off during winter season; and the whole irrigation system should be flushed and cleaned when the system gets turn on in the spring.
  - n. The residents shall not use parking spaces for the storage of recreational vehicles, camper shells, boats or trailers. These spaces shall be monitored by the property management firm, which shall remove vehicles parked contrary to this provision. The lease agreements of all tenants shall include language that gives the property management firm the authority to tow illegally-parked vehicles.  
(DS)
173. Prior to issuance of certificate of occupancy or final inspection, the developer shall pay the following additional fees/taxes, in accordance with existing regulations. The amounts of the fees/taxes shall be in accordance with the fee schedule or codes in effect at the time of building permit application submittal, unless otherwise indicated herein:
- a. Supplemental Building Construction and Improvement Tax;

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- b. School Impact Fee; and
- c. Park In-Lieu Fee. (DS)

### Conditions Generated by Following Department Staffs:

DS: Development Services Department

DS-L: Development Services Department - Landscaping

PW-ET: Public Works – Engineering and Transportation Dept.

U-ES: Utilities and Environmental Services Department

Fire: Fire Department

L-CS: Library and Community Services Department