



DATE: April 25, 2017

TO: Mayor & City Council

FROM: Development Services Director

SUBJECT Appeal by M. R. Wolfe & Associates on behalf of Desirae Schmidt, of the Planning Commission's February 23, 2017 Approval of the Lincoln Landing Mixed-Use Project and Certification of the Related Environmental Impact Report, Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations for Traffic-Related Impacts. The Lincoln Landing Project is Comprised of 80,500 Square Feet of Ground Floor Retail Uses, 476 Multi-Family Rental Units and Related Site Improvements on an 11.5-Acre Site Located at 22301 Foothill Boulevard and 1155 Hazel Avenue; Vesting Tentative Parcel Map and Site Plan Review Application No. 2015001148; Scott Athearn on behalf of Dollinger Properties/DP Ventures LLC (Applicant/Owner).

RECOMMENDATION

That the City Council denies the appeal and approves the project, subject to the findings and recommended conditions of approval in the attached Resolution; and certifies the project Environmental Impact Report, Related Findings of Fact and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program (Attachments II through V).

SUMMARY

M. R. Wolfe & Associates, on behalf of Desirae Schmidt, filed an appeal of the Planning Commission's February 23, 2017 approval of the Lincoln Landing project and related environmental analysis claiming that the Environmental Impact Report (EIR) did not adequately identify regional traffic impacts or analyze impacts related to urban decay; and that the Final EIR did not adequately respond to comments received on the Draft EIR. Staff believes that the Draft and Final EIR and related documents are adequate and meet the intent of CEQA Guidelines, as described in the findings in the attached resolution and in Attachment VI, which provides a detailed, clarifying response to each point of the appeal.

Staff is supportive of this project because it involves development of a new, large-scale mixed use development on an infill site within the Downtown Hayward Priority Development Area (PDA), where such development is appropriate and necessary to support regional and local goals to increase density and intensity close to existing services and transit. The proposed development would result in significant investment on an identified catalyst site in the City's adopted Economic Development Strategic Plan,

resulting in redevelopment of a site currently containing a vacant, dilapidated building and the introduction of hundreds of new employees and households in and near Downtown Hayward. Further, the project is consistent with applicable General Plan policies and zoning development standards, as described in this report.

BACKGROUND

Existing Conditions - The approximately 11.5-acre subject site is composed of two properties located at 22301 Foothill Boulevard (Assessor's Parcel Number (APN 428-0026-068-01) and 1155 Hazel Avenue (APN 428-0026-067-03). The site is bound by Hazel Avenue on the north, City Center Drive on the south, Foothill Boulevard to the east and San Lorenzo Creek flood control facility to the west. The site is surrounded by residential uses to the west across the flood control channel and across Hazel Avenue to the north, and commercial uses to the north, south and east across Foothill Boulevard.

The project site currently contains an approximately 330,000-square foot, four-story vacant office building; a 5,300-square foot vacant retail building; a four-story parking structure containing 579 parking spaces; surface parking lots and site landscaping. The main office building and the smaller retail building on the site were constructed in 1958 and 1965, respectively, to house Capwell's department store and a related showroom. The main office building underwent extensive renovation in the early 1980s, to house the former Mervyns headquarters.

The site has been vacant since 2008 when Mervyns went out of business and vacated the site. Since that time, the vacant structures have fallen into disrepair, resulting in numerous safety and code enforcement issues on the site. Between January 2015 and November 2016, Hayward Police Department reported 274 visits/calls for service, and the Hayward Fire Department reported 22 incidents, related to security checks, trespassing and emergency medical services calls, among others. On December 6, 2016, the property owner received a Notice to Abate from the City's Code Enforcement Division. The Notice identified penalty fees and cited unsecured buildings, among other violations. The applicant has commenced interior demolition of the existing office building to accommodate the proposed development, and has hired on-site security personnel.

City Council Review – On December 2, 2014, the City Council held a work session to consider a Preliminary Concept Review of the proposed project (see Attachment XI for the City Council meeting minutes). The Council was generally supportive of the proposed large-scale mixed use development and recommended that the developer consider, among others, the following modifications to the proposal:

- Increase commercial square footage (from the 66,000 square feet proposed) and consider reducing the density (from the total 545 residential units proposed);
- Consider adding a hotel or office square footage on the site to increase day-time uses and downtown business patrons;

- Identify potential tenants and ensure that any potential retailers do not conflict with existing local retailers;
- Use and improve a San Lorenzo Creek channel trail and add publicly available open space with a tot lot;
- Incorporate generous pedestrian circulation throughout the site and pay special attention to design of site frontage; and
- Break up the massing and incorporate historic architectural references in the building design.

Planning Commission Work Session – On May 26, 2016, the Planning Commission held a [Work Session](#) to review the project and provide early feedback. The Commissioners indicated general support of the project, and requested the proponent consider:

- Increasing the sustainable features of the project to try to achieve as close as possible to zero net energy;
- Investigate daylighting the San Lorenzo Creek;
- Consider condominium for-sale units rather than rental units; and
- Increase pedestrian connectivity from the site to the surrounding City including consideration of a traffic signal and cross-walk to connect the development to the Safeway shopping center across Foothill Boulevard.

Six members of the public spoke on the project, indicating both support and opposition toward the project. Community opposition centered around traffic, parking, the height of the building, and increased pedestrian and bicycle connectivity to the roadway network (see Attachment XII for the Planning Commission Work Session meeting minutes).

Planning Commission Public Hearing – On February 23, 2017, the Planning Commission voted 6:1 to approve the project and certify the EIR, Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring Reporting Program (MMRP). Most Commissioners and public speakers supported the project; however, one Commissioner voted to deny the project because it does not include a mid-block traffic signal and cross-walk to connect the development to the Safeway shopping center across Foothill Boulevard. The minutes from that meeting are included as Attachment XIII and the Staff Analysis section below contains discussion related to a Mid-Block Crossing that was supported by the Commissioner.

Appeal – On February 27, 2017, M. R. Wolfe & Associates, on behalf of Desirae Schmidt, filed an appeal of the Planning Commission’s February 23, 2017 approval of the Lincoln Landing project and related environmental analysis, claiming that the EIR was flawed as described in the Project Summary above. The appeal and a response to each claim in the appeal is included as Attachment VI to this staff report.

Communication from the public – Upon learning about the appeal by M.R. Wolfe and Associates, the City received correspondence from Sherman Lewis on behalf of the Hayward Area Planning Association (HAPA) and six additional Hayward residents, urging the City Council to require that the project include more specific Transportation Demand Management

Measures; including unbundling parking from rents, identification of a location for an intermodal transit center, installation of a café along the Creek Walk, clarification of who would maintain and manage the Creek Walk, and a plan to naturalize the San Lorenzo Creek channel in the vicinity of the Creek Walk. HAPA comments are included as Attachment IX to this staff report, and the issues raised in the comment letter are discussed in detail later in the Staff Analysis section.

PROJECT DESCRIPTION

Project Overview - The proposed project consists of a large-scale mixed use development composed of 476 market-rate apartments and 80,500 square-feet of commercial development and a combination of surface and structured parking. The existing four-story, 579-stall garage structure at the southwestern corner of the site would be retained and rehabilitated for use with the new development.

The buildings on the site would be broken into two separate residential towers on the northern and southern portions of the site joined by a central commercial structure with no residential development above. The reduced height above the central commercial development is intended to provide a break in the massing of the residential development to provide light and view corridors eastward from the neighborhoods located west of the project site across the flood control channel.

Residential Development - The southern residential tower would be located along City Center Drive. The tower would be anchored by ground floor commercial uses intended to continue the commercial development pattern south of the development along both sides of Foothill Boulevard. The tower would be six stories (89 feet at the tallest point) consisting of five stories of residential uses (total of 267 residential units) above ground floor commercial uses and structured parking. Parking for the south tower residential units would be in the existing parking garage (total of 579 parking stalls) located west of the tower and would be accessed from a residential lobby that would be located between the existing and proposed structures.

The northern residential tower would be located along Hazel Avenue. The tower would reach six stories with two stories of ground floor parking (total of 284 parking stalls to serve the residents of the tower) and four stories of residential development above (total of 209 residential units). The northern tower would step back along the Hazel Avenue property line to break up the massing of the structure, which is across the street from smaller scale commercial and residential development. Specifically, the two ground floor stories of parking would be set back about 10 feet from the Hazel Avenue property line, two stories of residential above would be stepped back 18 feet from the property line, and the remaining residential development up to six stories in height would be stepped back 41 feet from the property line (see Attachment VII, Sheet A12 for a section drawing at Hazel Avenue). At the tallest point, the tower would reach 86 feet in height, which is under the 108-foot tall height limit specified in the Zoning Ordinance.

The residential towers would contain a mix of studios, one-, two- and three-bedroom units ranging from 590 square feet to 1,350 square feet; and rents would be on average \$2,500 per month. The residential structures would feature private residential lobby entrances at the corners of the buildings accented by towers and entrance features. Building pop-outs with a variety of materials (brick, plaster-in-sand finish, metal railings, and wooden trellises) and detailing including but not limited to decorative columns, arched and rectangular glazing, and trim elements at the various stories would help break up the building planes both vertically and horizontally. The visibility of ground floor structured parking from both Hazel Avenue and City Center Drive would be mitigated with varied openings covered by decorative metal screens to provide light and limited views into the garages.

Residential Common and Private Open Space - As shown on Attachment VII (Sheets A1, A3 and A4), the project includes six podium level courtyards totaling approximately 44,000 square feet. Each residential tower would have access to three courtyards which would range from 4,200 square feet to 11,200 square feet in size, and would feature a variety of amenities and design features, such as trellis shade structures; pools; bar-b-que areas with seating, fire pits, and outdoor televisions; pedestrian scaled lighting and generous landscaped planters. In addition to the common outdoor open spaces, the project would include internal amenities, such as a wi-fi enabled, community room with kitchen area; pet cleaning rooms; a maintenance shop; bike storage and repair rooms; and an approximately 1,500-2,000 square foot fitness center.

Regarding private open space, over 97% of the residential units would have balconies ranging from 55 square feet to 306 square feet. Pursuant to HMC Section 10-1.1555 (m)(4), balconies shall be a minimum of 60 square feet in area with a minimum dimension of six feet. Therefore, staff recommends proposed Condition of Approval No. 32, requiring that all non-conforming balcony depths be expanded to meet the minimum sixty square foot area/six-foot dimension requirement.

Commercial Development - The residential towers would be anchored by ground floor retail uses that would be split into Pads 1 through 3 (totaling approximately 20,500 square feet) fronting Foothill Boulevard; two major commercial tenants (total of 50,000 square feet) and a set of in-line tenant spaces (10,000 square feet) set further back on the site behind a surface parking lot (Attachment VII, Sheet A2). The total number of commercial tenants and the tenant mix is not determined at this time.

The Pad 1 commercial building would be a freestanding multi-tenant building located at the northeastern corner of the site adjacent to the existing gas station along Hazel Avenue. Commercial Pads 2 and 3 would be located at the southeastern corner of the site at the corner of Foothill Boulevard and City Center Drive beneath five stories of residential development. The Pad 2 and 3 commercial tenant spaces would be built to Foothill Boulevard; however, the main entrances for the tenant spaces would be oriented toward the underground parking garage. An approximately 20-foot wide pedestrian breezeway between commercial Pads 2 and 3 would provide pedestrian access to the tenant spaces and the ground floor parking garage.

Commercial tenant spaces would reach between 20 and 32 feet in height with the taller elements at storefront entrances. The ground floor commercial portions of the buildings would feature decorative brick siding and a variety of architectural features intended to break up building massing and create visual interest at the pedestrian scale. Features include metal and cloth awnings; recessed decorative panels and columns; glass-enclosed and frosted glass commercial storefronts; a combination of flat and hipped roofs with decorative brackets and roof tiles; and plaster with fine sand finish in earth-tone colors.

A total of 312 commercial parking spaces would be located in surface and structured parking in front of and behind the commercial buildings. The parking stalls would range from 17 to 19 feet deep and nine feet in width in accordance with City standard dimensions for standard and compact parking stalls.

Vehicular Site Access & Circulation - Main vehicular access to the site would be from a two-way driveway composed of two 12-foot wide drive aisles and a four-foot wide median planting strip from Foothill Boulevard. A secondary two-way, 26-foot wide driveway would be located south of the Pad 1 commercial structure. The two-way drive aisles throughout the surface and structured parking areas would be 26 feet in width.

A rear alleyway measuring between 24 to 26 feet in width would run along the western property line from City Center Drive to Hazel Avenue to provide two-way emergency access, commercial vehicle access and resident access to the existing and proposed residential tower parking garages. Access to the ground floor retail parking under the southern residential tower would be provided from City Center Drive and from two internal driveways. Access to the northern residential tower would be from two internal driveways.

Pedestrian Circulation and Design - The proposed project includes installation of frontage improvements (sidewalks, curb/gutter and ADA ramps) along Foothill Boulevard, both sides of Hazel Avenue and along City Center Drive. Three pedestrian pathways would extend west from Foothill Boulevard to the commercial and residential development within the site. Internal pedestrian pathways and sidewalks would range from four to ten feet in width and would be differentiated from driveway aisles by scored, colored concrete and generally lined with landscaping and shade trees.

An approximately 15-foot wide internal pedestrian pathway would run north-south along the central major and inline tenant spaces, parallel to Foothill Boulevard. The widened sidewalk in front of the major tenants and inline retail would provide room for sidewalk and street furniture such as decorative planters, bollards, lighting and benches.

Landscaping – According to the Arborist Report prepared for the project, there are over 230 existing trees on and adjacent to the site that are in varying states of health (Attachment III, [Appendix BIO](#)). Most of those trees would be removed and replaced with approximately 300 new trees in accordance with the Landscape Plan (Attachment VII, Sheet L1). Proposed Conditions of Approval Nos. 115 through 117, would require that the tree

values and resultant mitigation amounts be upgraded to come into alignment with national standards for applicable tree ratings and that the revised tree mitigation values be reflected in the finalized updated Landscape Plan.

Proposed site landscaping improvements include medium to large canopy street trees, screening shrubs, ornamental grasses and groundcover along Foothill Blvd, City Center Drive and Hazel Avenue; accent trees along the entry drive, pedestrian pathways and outdoor seating areas; parking lot canopy trees within the parking lot; and small accent trees around trash enclosures and within podium areas. Some of the site landscaping would also be utilized as planters and bio-retention areas for C3 Stormwater retention and treatment purposes (Attachment VIII, Sheet TM-7). Proposed Condition of Approval No. 120, the bio-treatment area incorporated into the Hazel Avenue pocket park, shall be designed to be natural looking and decorated with river cobblestones and large river-stone boulders to ensure that it is well-designed and incorporated into the park setting.

According to the Preliminary Site Plan included in the Civil Plans (Attachment VIII), some of the planters are not a minimum of five feet in width, which does not meet the City's minimum standard for landscaped areas. Proposed Conditions of Approval Nos. 25 through 29 would require the pedestrian walkway from Foothill Boulevard west into the development to be a minimum of eight feet in width; specify that all internal landscaped planters be a minimum of five feet in width; and that the minimum front yard setback along Foothill Boulevard measure a minimum of eight feet and be planted with a continuous low-level landscaping screen to buffer the parking lots from the adjacent sidewalk.

Parks and Public Open Space - The proposed project includes an approximately 7,000 square foot publicly accessible pocket park at the northwestern corner of the site along Hazel Avenue. The pocket park would be accessed from Hazel Avenue and would feature an approximately 1,300 square foot play area with structure; a landscaped bio-retention area that would be decorated with a meandering bed of river cobblestones; and walkways and terraced landscaped areas leading to a proposed Creek Walk (Attachment VII, Sheet L3).

The proposed Creek Walk would result in redevelopment and reuse of the existing approximately 1,200-foot long Alameda County Flood Control District (ACFCD)-owned maintenance path that runs along the western property edge from Hazel Avenue to City Center Drive. The maintenance path is currently gated and closed off to the public; however, ACFDC is willing to enter into an agreement with a local jurisdiction to allow public access to the path if it is improved and maintained.

Proposed Creek Walk improvements include replacement of approximately 755 lineal feet, or about two-thirds, of the existing, approximately 12-foot tall, privately-owned retaining wall with a series of three shorter terraced, landscaped retaining walls to provide light and access to the pathway. The terraced retaining wall replacement cannot be carried along the remainder of the way to City Center Drive because there is not adequate space to provide room for terracing near the existing parking structure where the 24-foot wide driveway width must be maintained for emergency vehicle access. Other Creek Walk improvements

would include new ground surfacing; pathway railing; decorative, pedestrian scale lights; and enhancement along the western (opposite side) wall of the canal.

Access to the Creek Walk would be provided by a series of ADA ramps and landings from the Hazel Avenue pocket park. However, the City Center Drive access point to the Creek Walk would not be ADA accessible because there is not adequate width to install a separate ramp with elevations and landings consistent with ADA requirements that is separate from the existing maintenance roadway. There is not adequate room due to the presence of the existing parking garage and the required emergency vehicle access behind the garage on the east of the access point and the bridge over the canal west of the access point.

Construction Phasing - The proposed development would be constructed in two phases over the course of approximately one to two years. Phase 1 would include construction of all commercial development and the southern residential tower, and Phase 2 would consist of construction of the northern residential tower. Proposed Condition of Approval No. 39 would require that pocket park and Creek Walk improvements to be completed prior to the issuance of the first residential certificate of occupancy for the first phase to ensure that public improvements are installed with the first phase of development.

Vesting Tentative Parcel Map - The proposed project includes a Vesting Tentative Parcel Map (Attachment VIII) to subdivide the site into four parcels that would generally follow the proposed structural building walls separating the pad commercial building at the northeastern corner of the site (Parcel 1), the northern residential tower (Parcel 2), the central commercial structure (Parcel 3) and the southern residential tower (Parcel 4). The Hazel Avenue pocket-park would be located on Parcel 2. The proposed tentative map is consistent with the City's regulations and the Subdivision Map Act as described in the findings in the attached resolution (Attachment II).

POLICY CONTEXT AND CODE COMPLIANCE

General Plan - The project sites are designated *City Center-Retail and Office Commercial* (CC-ROC) in the Hayward 2040 General Plan, which generally applies to properties in Downtown Hayward. Permitted uses include retail, dining, services, offices, entertainment and recreational uses and mixed use with multi-family homes or office on upper floors. The CC-ROC land use designation prioritizes mixed use developments with maximum floor area ratio (FAR) of 1.5 and residential densities between 40 and 110 dwelling units per acre (see Table 1 below for standards consistency matrix).

It is important to note that the General Plan Goals and Policies, which are set forth in the General Plan under various headings such as Land Use and Community Character, Mobility and others, are guiding principles and contain a host of strategies intended to implement a high-level vision for the future of the site, neighborhood, and City. A certain development may meet some but not all General Plan Goals and Policies and still be found to be consistent with the overall vision and intent of the General Plan land use designation. In this manner, the proposed development was evaluated against the General Plan land use

designation for the property, as well as applicable Goals and Policies, and found to be consistent. These include, but are not limited to the following:

- Land Use Goal LU-1, and Policies LU-1.3 and LU-1.5, which direct population and employment growth to infill sites in close proximity to transit and within identified Priority Development Areas;
- Land Use Policy LU-1.4 which calls for revitalization and redevelopment of abandoned and underutilized properties to accommodate growth;
- Land Use Goal LU-2, and Policies LU-2.1 through LU-2.6, which support pedestrian activities and encourage a variety of uses and urban housing opportunities to extend the hours of activity in and around Downtown Hayward; and,
- Land Use Goals LU-3, LU-4 and LU-5 as well as Land Use Policies LU-3.3, LU-4.1, LU-4.3 and LU-5.1, which encourage placement of large-scale neighborhood centers and mixed use development along corridors and arterials such as Foothill Boulevard.
- Mobility Goal M-8 and Policy M-8.4, which support multimodal transportation choices as well as transportation demand management (TDM) programs to reduce single occupancy automobile trips by locating mixed use development and high density housing close to transit and jobs;
- 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.

Zoning Ordinance and Development Standards - The project site is zoned CC-C (Central City - Commercial) District. Pursuant to HMC Section 10-1.1521, the purpose of the CC-C District is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include retail, service, lodging, entertainment, education and multi-family residential. The proposed development consists of ground floor commercial uses and off-street parking with multi-family residential units above, which are permitted Primary and Accessory Uses pursuant to HMC Section 10-1.1522.

As shown in Table 1 below, the proposed project is consistent with both the CC-ROC General Plan land use designation and the CC-C District development standards:

Development Standard	Code Requirement	Proposed	Consistent
Height	104 maximum	89 at tallest point	Yes
Density	65 dwelling units/acre maximum; no minimum	42 dwelling units/acre	Yes
Floor Area Ratio	1.5 maximum	1.22	Yes

Minimum Yards			
- Front (Foothill Boulevard)	0-8 feet minimum; no maximum	0 to 240 feet	Yes
- Sides (Hazel & City Center)	5 feet to 10% lot width up to a maximum of 10 feet	10 feet along both sides	Yes
- Rear (San Lorenzo Creek)	None	24 feet at closest point	Yes
Open Space – Common and Private	100 sq. ft. per unit (with minimum 30 sq. ft. utilized for group open space). Total of 47,600 sq. ft. required with minimum 14,280 sq. ft. identified as group open space.	53,600 square feet with 44,000 identified as group open space in courtyards	Yes
Parking			
Non-Residential	One parking space per 315 square foot of commercial space for total of 256 parking spaces; no maximum	312 parking spaces	Yes, exceeds
Residential	1.5 parking space per dwelling unit for total of 714 parking spaces; no maximum	848 parking spaces (1.78 spaces per unit)	Yes, exceeds

Economic Development Strategic Plan: The project site is an identified catalyst site within a key retail area in the City’s Economic Development Strategic Plan (FY 2014-2018). The subject site was identified as a “Key Retail Area” and a “Catalyst Site” due to its current underutilization, size, proximity to major corridors, potential positive impact on associated retail areas and high visibility. The EDSP concludes that large-scale mixed use development on identified catalyst sites, such as the subject site, would provide immediate positive results to the City’s business attraction and retention efforts.

Parkland Dedication Ordinance: [HMC Chapter 10, Article 16, Property Developers – Obligations for Parks and Recreation](#), sets forth the parkland dedication requirements for private development based on residential unit count. Pursuant to the ordinance, the land dedication requirement is 604 square feet per multi-family residential unit for a total of 6.6 acres (287,504 square feet), and the in lieu of dedication requirement is \$9,653 per residential unit for a total of approximately \$4.6 million in park fees.

Per the Ordinance, the applicant may provide publicly accessible park and recreation improvements for a credit. Pursuant to HMC Section 10-16.47, the value of the dedicated land and park and recreation improvements *shall* be credited against the fees or dedication required by the ordinance. However, a credit shall not be provided for public improvements on public street frontages which is a standard condition of development, nor shall the developer receive a credit for land necessary to provide easements to gain access to an amenity.

The applicant is proposing to receive a credit toward in-lieu fees for the proposed Hazel Avenue pocket park and the terraced landscaped retaining walls that will frame the proposed Creek Walk, as well as a credit for the improvements along the Alameda County

Flood Control District (ACFCD)-owned maintenance path. The proposed credit would consist of a combination of land and improvements in the following breakdown:

- Land Dedication Credit: 0.53 acres of land for pocket park and landscaped areas and terraced retaining walls that frame the public pathway, which translates to a credit of about \$357,161 (or about 38 residential units).
- A credit for the actual costs of installing all improvements along the publicly accessible Hazel Avenue pocket park and along the publicly owned maintenance path, including the play structure, terraced retaining walls, pathway resurfacing, electricity and pedestrian-scale lighting fixtures, safety railing, public art, and miscellaneous furniture.

At the request of the City, the developer provided a Preliminary Code Estimate, putting the total cost for all improvements at approximately \$4.4 million. The developer cautioned that the preliminary estimate was uncertain because the detailed scope of the project and the costs of materials and labor at the time of construction are currently unknown. City staff reviewed the detailed assumptions of the preliminary estimates and found that the improvements would cost closer to \$3.2 million based on City projects and estimates. HARD commissioned an estimate based on the same assumptions by Vanir Construction Management, Inc., which found that the improvements could cost \$3.4 million. It is important to note that these are all estimates based on previously completed projects within the Bay Area and that materials, labor and quantities for the specific project are currently unknown, but are likely to rise as material and labor costs tend to increase year over year.

Pursuant to HMC Section 10-16-31(a), the matter was referred to the Hayward Area Recreation and Park District (HARD) Board for review and recommendation. At that meeting, the HARD Board voted 4:0:0, with one member absent, to recommend approval of a credit for land and improvements related to the Hazel Avenue pocket park and Creek Walk. The Board's motion included recommendations that a gateway or other signage be added at the Creek Walk entrances at City Center Drive and Hazel Avenue; that HARD be involved with review and approval of the design for the pocket park and trail improvements; and that the total amount of credits for improvements be capped at \$3.4 million.

According to proposed Conditions of Approval Nos. 38 and 172(d), the private property owner would be required to maintain the publicly accessible Creek Walk and Hazel Avenue pocket park, in accordance with specific standards set forth by the City's Maintenance Services Department.

Please see additional discussion and staff recommendation on the proposed credit under San Lorenzo Creek Walk Parkland Dedication Fee Credits in the Staff Analysis section below.

Affordable Housing Ordinance - Pursuant to HMC Section 10-17.305, all rental residential developments consisting of 20 or more units shall pay affordable housing impact fees, unless the applicant elects to provide rental units that are affordable to low, or very low income households. The applicant is electing to pay impact fees rather than include affordable units within the development. Per City Council Resolution No. 16-189, the current fee is set at \$3.63 per square foot of habitable space at the time of building permit issuance, or 10% higher if paid at issuance of a certificate of occupancy. The estimated fees for the project are \$1.5 million if paid at the time of building permit issuance.

SUSTAINABILITY FEATURES

The proposed project has undergone an initial GreenPoint rating process to quantify sustainable building and site elements. GreenPoint Rated is a rating system administered by Build It Green, a non-profit that supports sustainability in development. Per a checklist prepared for the project, the proposed development would achieve Gold level certification with a total of 139 points where a minimum of 50 points is needed to achieve GreenPoint Rated status.

Generally, the proposed development is rated as highly sustainable because it is a large scale mixed use development on an infill site within walking distance to high volume transit providers. In addition, the proposed project would include sustainable site and building elements including installation of a green roof on the central commercial building; 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; 22 electric vehicle charging stations for commercial and residential uses; and 13 short term bicycle parking spaces for commercial uses as well as long-term bicycle storage for residents.

Despite its already high GreenPoint Rating, staff recommends Condition of Approval No. 41, to install solar panels for the common residential areas (hallways, common open spaces, parking lots) to reduce stationary source emissions; and Condition No. 46, to contribute to or establish a shuttle from the site to BART to reduce mobile source emissions generated by the site. The addition of these Conditions of Approval closely aligns the proposed development with City goals and priorities related to long term operational sustainability.

STAFF ANALYSIS

Staff believes that the City Council can make the findings to support approval of the proposed project because it is consistent with the applicable Central City – Commercial Zoning District standards and the *Central City – Retail Office and Commercial* General Plan land use designation, as well as General Plan Goals and Policies; it would result in significant new tax revenues related to new household expenditures and the retail uses proposed on the site; it is well designed and scaled appropriately for the site; it would serve as a regional destination for residents and visitors to the City; and it would include a publicly accessible pocket park and Creek Walk bicycle and pedestrian path along the existing, underutilized San Lorenzo Creek flood control facility maintenance path, resulting in a new recreational amenity for the neighborhood. The Planning Commission found that the proposed

development was consistent with City goals and policies and approved the proposed development, subject to conditions of approval which are included in Attachment II.

Appeal. M. R. Wolfe & Associates, on behalf of Desirae Schmidt, filed an appeal of the Planning Commission's February 23, 2017 approval of the Lincoln Landing project and related environmental analysis for various reasons. Staff believes that the EIR and related documents are adequate and meet the intent of CEQA Guidelines as described in Attachment VI, which provides a detailed response to each point of the appeal. Please also see the CEQA Findings set forth in Attachment II, for additional support for the proposed development.

HAPA Comments. As noted above, following filing of the appeal, City staff received comments from Sherman Lewis on behalf of HAPA and a number of Hayward residents, urging the City Council to consider adoption of additional Conditions of Approval to require that the project include more specific Transportation Demand Management Measures including unbundling parking from rents and identification of a location for an intermodal transit center; installation of a café along the Creek Walk; clarification of who would maintain and manage the Creek Walk; and, a plan to naturalize the San Lorenzo Creek in the vicinity of the Creek Walk. Each item is discussed in detail below.

Transportation Demand Management Measures. The commenter characterizes the measures listed in Mitigation Measure 3.1.2, as "voluntary," and urges the City Council to mandate specific TDM measures such as transit passes, unbundled parking, and parking spaces for public car share programs. As drafted, the proposed MM would allow the developer to submit a TDM Plan that could, include but not be limited to, the following measures: shuttle service, transit passes, on-site car sharing programs, unbundled parking, bicycle racks and lockers, and on-site bicycle and pedestrian amenities, if the measures would achieve a minimum nine percent reduction in projected vehicle trips, as reported in an annual memo to the City Engineer.

The projected move-in date of the project is likely two or more years away, and technology and strategies to reduce single occupancy trips changes constantly (for example, Uber and Lyft services barely existed a few years ago and self-driving cars are currently in pilot programs around the Bay Area). Staff did not think that it was necessary to confine the applicant to one or two or more specific strategies now. Rather, staff opted to require that the applicant prepare a detailed TDM Plan and implementation strategy from a menu of strategies that are known and widely accepted now (see pages 3.1-22 through -23 of the Draft EIR) with implementation measures, funding sources and responsible entities that shall be submitted prior to occupancy. These requirements are clearly set forth in Mitigation Measure 3.1.2 and Proposed Condition No. 19 and are not "voluntary," nor do they limit the potential TDM Measures to only those included in the list. Additional TDM Measures may be added if they are documented and result in a measurable decrease in single occupancy vehicle trips related to the site.

It is essential to note that while staff did not specifically call out measures, proposed Condition of Approval No. 46 would specifically require that the applicant either pay into or fund a

private shuttle from the site to and from the BART station. This measure was prescribed now because this private funding may allow the City to leverage grant monies to expand a public shuttle system that is currently being developed and is partially funded.

Unbundling Parking. While the proposed development is generally consistent with the General Plan, there is at least one instance now where it deviates from General Plan policy. General Plan Policy M-9.10 encourages multi-family development projects to unbundle or separate the cost of parking from the lease payments. It is important to note that the General Plan Policy *encourages* rather than *requires* unbundling parking and that the circumstances of the proposed project make unbundling the cost of parking from rents an unattractive option for the developer in that the commercial and residential parking on the Lincoln Landing site exceeds the parking requirement. It is also important to note that the Hayward Municipal Code does not impose a parking maximum in the CC-C District, as exists in the City's form-based code areas along Mission Boulevard.

The developer may choose to unbundle parking from housing costs at any time and implement it as a TDM Measure as described above. However, the developer does not want to be mandated to unbundle parking as a condition of approval due to the amount of parking offered on the site. Such parking could enable individuals to opt out of paying for parking and either park on-site in one of the commercial parking areas, which would be free and open for parking in the evenings after businesses close, or to park in the surrounding neighborhood, resulting in spill-over parking. Acknowledging that there is a potential for spillover parking in the neighborhood, staff recommends adoption of Conditions of Approval Nos. 47 and 48, to conduct bi-annual neighborhood surveys to measure if there is an impact on the adjacent neighborhoods and to establish a parking permit district, if warranted. The proposed conditions are similar to those imposed on the nearby Maple and Main development.

Intermodal Center on the Site. The commenter has identified a specific location along City Center Drive where he believes a transit stop should be located. However, staff is reluctant to identify and require the developer to design an intermodal transit stop given the fact that the transit path has not been finalized. The City Center Drive frontage is very short and has access to the retail parking lots, the Emergency Vehicle Access roadway that runs along the rear of the property, as well as access to the Creek Walk with a very short distance between the light at Foothill Boulevard and the curve turning south at Main Street. Rather than carve out a location for a transit stop now, staff recommends that City Engineering staff work with the developer to find the safest and most efficient shuttle stop on or adjacent to the site once they have determined ultimate route of the shuttle.

Café Along Creek Walk. The commenter recommends that the City Council require the developer to place a café or coffee shop at the rear of the property fronting the Creek Walk. Staff agrees that commercial uses along the Creek Walk would activate the area; however, it will only activate the area if the business is viable and continuously operating. The applicant, who is a commercial developer based in Redwood City, has repeatedly claimed that the space will not be viable due to lack of exposure and visibility. Per RetailWest, a large commercial broker, café and coffee shop operators rely on sales from a

large pool of customers to cover the rising costs of food and labor and the relatively small amount of community oriented foot traffic that would know about such a café would not be enough to justify the establishment or continued operation of such a business in this location (Attachment XVI). Considering the applicant's position, staff does not recommend that the City Council require the applicant to install a permanent commercial tenant space along the Creek Walk at the less visible rear of the property.

Maintenance of Creek Walk. As noted in Condition of Approval No. 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 and the agreement shall be finalized and executed prior to the issuance of the first Certificate of Occupancy for the development.

Naturalization of San Lorenzo Creek. As noted in the Planning Commission staff report, staff discussed the potential for daylighting the creek with ACFCD staff to create a more natural environment along the proposed Creek Walk; however, it was deemed infeasible by ACFCD engineers who ran calculations on the flows. They found that lowering or removing any of the concrete channel would result in unsafe velocities unless the channel was widened significantly which would require a large dedication of land from the Lincoln Landing site or acquisition of portions of the steeply sloped land from the various properties to the west of the project site.

Mid-Block Stop Light and Crosswalk Along Foothill Boulevard. At the February 23, 2017 Planning Commission meeting, there was discussion about the merits and drawbacks of requiring the developer to install a signalized mid-block crossing on Foothill Boulevard between Hazel Avenue and City Center Drive.

Currently, there are signalized pedestrian crossings at Foothill Blvd/Hazel Avenue and Foothill Blvd/City Center Drive intersections resulting in at most about a 550 foot walk from the middle of the block to one of these intersections (estimated to be about two to three minutes walking time). This distance and walking time are similar to the adjacent block along Foothill Boulevard between City Center Drive and A Street.

While installation of a signalized mid-block crosswalk at this location may facilitate pedestrian connectivity in the short term, it could also result in reduction of vehicular travel speeds and increased traffic congestion, with queues of vehicles spilling beyond B Street in Downtown Hayward to the south, and to the I-580 interchange to the north and neighborhood cut-through traffic. To ensure that all impacts are considered, disclosed and mitigated fully, staff recommends that significant modifications to the vehicular, pedestrian and bicycle circulation system, such as installation of this proposed signal/crossing, be considered and implemented as part of the Downtown Specific Plan process which is currently underway. The Downtown Specific Plan process will take a comprehensive view and plan for all modes of transportation throughout Downtown and adjacent areas.

Hazel Avenue Frontage. Another topic of concern at the Planning Commission meeting related to the Hazel Avenue frontage and the interaction of the northern tower

with the adjacent public right-of-way and the smaller scale commercial and residential uses across the street.

As noted in the Project Description above, the first two stories of the Northern Tower would be used for structured parking with residential uses located above. The Northern Tower elevations would be enhanced with decorative brick; arched windows; landscaped planters and decorative metal screens (see Attachment VII, Elevation D, and Attachment XVII for Hazel Avenue Detail). To reduce the massing of the tower, the applicant proposes to incrementally step back the building to break up the building massing and introduce human elements such as residential balconies along the upper floors. With the proposed step backs, the first two stories of the proposed project would be 75 feet away from existing residential uses across the street along Hazel Avenue; expanding to 93 feet away from those uses along the third and fourth floors; and further expanding to 116 feet away from residential uses across the street at the fifth and sixth stories (see and Attachment XVII).

Streetscape improvements would include installation of a meandering sidewalk, landscaping, pedestrian scale lighting and benches along the Hazel Avenue project frontage and the applicant would also be required to install curb, gutter and sidewalk along the northern side (non-project frontage) of Hazel Avenue (proposed Condition No. 71b). These improvements would significantly enhance the overall streetscape and support pedestrian movement along both sides of the roadway.

San Lorenzo Creek Walk Parkland Dedication Fee Credits. City staff is supportive of the applicant's proposal to receive a combination of land dedication and fee credits for the Hazel Avenue pocket park and Creek Walk improvements. The removal and replacement of the existing 12-foot tall private retaining wall along approximately 750 feet of the western property edge with terraced, landscaped retaining walls would beautify and frame the existing publicly owned maintenance path along San Lorenzo Creek and make the pathway a safe and pleasant place to walk and bike. Improving and connecting City streets to the Alameda County Flood Control maintenance path would activate an unused and neglected space and create a bicycle and pedestrian only recreational amenity for residents of the Prospect Hill neighborhood and the proposed development to Downtown Hayward in addition to the roadway network.

The proposed Hazel Avenue pocket park is small, but it is in line with small urban spaces and plazas that are appropriate in high density, high intensity urban areas (General Plan Policy HQL-10.4). The proposed pocket park and Creek Walk combination will result in development of a site and neighborhood amenity that fulfills the purpose of General Plan Policies 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; HQL-11.3 to support creekside paths and trails; and NR-1.11, to identify and create opportunities for public access to and maintenance of creek corridors. It is also consistent with the intent of the Hayward Municipal Code for developers to provide park and recreational facilities for the residents of the development as well as the surrounding area. The proposed Creek Walk proposed as part of the project is just one piece in what

could become a larger, continuous trail system along creekside maintenance paths and other underutilized areas.

Proposed Conditions of Approval Nos. 44 and 45 would allow for a full credit for those publicly accessible improvements; however, it is important to acknowledge the significant discrepancy in the Preliminary Cost Estimates prepared by the developer (approximately \$4.4 million), the City (approximately \$3.2 million), and HARD (approximately \$3.4 million), which makes it difficult to determine the full amount of the credit with this entitlement.

As noted above, HARD recommended that the improvements be capped at \$3.4 million, which would guarantee about one million dollars in park in-lieu fees; however, staff does not believe that capping the total credit without knowing the true costs of the improvements is consistent with HMC Section 10-16.47, which specifically states that public park and recreation improvements provided by the developer *shall be* credited against the fees or dedication required by the ordinance. Therefore, staff recommends that the credit be based on the actual Engineer's Estimate that is submitted with the construction documents. As written, the proposed condition of approval would allow the City, in consultation with HARD, to review and approve the Estimate and to cap any individual line items or costs submitted by the developer that are unreasonable based on the City's estimates.

ENVIRONMENTAL REVIEW

State Public Resources Code (PRC) section 21080(d) requires that a lead agency prepare an environmental impact report (EIR) for any project that it expects to have a significant effect on the environment. An EIR is an informational document intended to inform decision makers and the public generally of the significant environmental impacts of a project, identify possible ways to minimize significant impacts, and describe reasonable alternatives to the project. The City determined that there would be significant impacts related to traffic early in the review of the project proposal. Thus, pursuant to California Environmental Quality Act (CEQA) Guidelines 15060(d), the City skipped further initial review of the project and began preparing a project-level EIR focused primarily on the changes in the environment that would result from development of the proposed project.

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. 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.

The Notice of Availability (NOA) and the Draft EIR were published, noticed and circulated for a 45-day public review period starting on September 23, 2016 and ending on November 7, 2016 (Attachment III). Written comments were accepted throughout the comment period. Those comments and responses to those comments are included in the Final EIR prepared for

the project (Attachment IV). The City Council must consider and certify the Final EIR for the project before acting on the necessary entitlements for the project.

The Draft EIR includes:

- Project description;
- Evaluation of required environmental topic areas including the setting, potential impacts, and mitigation measures;
- Alternatives to the project that address or incorporate characteristics to lessen or eliminate potential impacts that meet most of the project objectives;
- Cumulative and other CEQA-required assessments.

The Final EIR includes:

- The Draft EIR, with potential amendments stemming from responses to comments;
- Comments and recommendations received on the DEIR;
- A list of persons, organizations, and public-agencies commenting on the DEIR;
- The City's responses to significant environmental points raised in the review and consultation process; and
- Additional information deemed necessary by the City.

The Draft EIR found less than significant impacts related to the project in the areas of Aesthetics, Agricultural Resources, Air Quality, Geology and Soils, Hydrology and Water Quality, Land Use Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation and Utilities and Service Systems. In the topic areas of Biological Resources, Cultural Resources and Hazards and Hazardous Materials, the Draft EIR identifies one or more mitigation measures that would reduce the impact's effects to a level of less than significant.

In the topic area of Transportation and Circulation (Section 3.1), the Draft EIR identified significant and unavoidable impacts at two intersections under Background Plus Project Conditions (year 2020), and at three intersections under Cumulative Conditions with the Project (year 2040), based on the Alameda County travel demand model. A significant delay was identified if an already deficient intersection (Level of Service (LOS) F) would be delayed by more than 5.0 seconds as a result of the project.

Based on the traffic analysis, significant and unavoidable traffic impacts were identified under Background Plus Project conditions at the following locations:

- Foothill Boulevard/Hazel Avenue – The addition of project traffic would increase the average delay at this intersection by 8.7 seconds during the PM peak hour after construction of Phase 1; and increase the average delay to 10.0 seconds during the PM peak hour after construction of Phase 2.
- Foothill Boulevard/City Center Drive – The addition of project traffic would increase the average delay at this intersection by 10.3 seconds during the PM peak hour after

construction of Phase 1; and increase the average delay to 13.2 during the PM peak hour after construction of Phase 2.

Additionally, Cumulative Impacts with the project were as follows:

- Foothill Boulevard/Hazel Avenue – The increase in average delay would be 12.7 seconds during the AM peak hour and 9.5 seconds during the PM peak hour.
- Foothill Boulevard/City Center Drive - The increase in average delay would be 15.2 seconds in the PM peak hour.
- Mission Boulevard/Sunset Boulevard – The increase in average delay would be 23.6 seconds during the AM peak hour and 44.9 seconds during the PM peak hour.

While these cumulative traffic impacts could be mitigated to a *less than significant* level with restriping or additional travel lanes along Foothill and Mission Boulevards, the expanded roadway would require the elimination of on-street parking, negatively impact existing pedestrian facilities, and require the acquisition of private property for additional right-of-way, which is not feasible and would not be supported by the City. Thus, traffic-related impacts were deemed significant and unavoidable requiring the City to adopt a Statement of Overriding Considerations for the project.

Required CEQA Findings and Statement of Overriding Considerations: To certify an EIR for a project, the City Council must find that mitigation measures have been required or incorporated into the project to substantially lessen the potentially significant environmental effects identified in the EIR. For those impacts that cannot be fully mitigated to a level of less than significant, the City Council must adopt a Statement of Overriding Considerations finding that the economic, legal, social, technological or other benefits of the project outweigh the project's significant and unavoidable environmental effects (CEQA Guidelines sections 15091 and 15093). Attachment II sets forth the requisite CEQA findings and a statement of overriding considerations related to significant and unavoidable impacts associated with the proposed project.

Concurrent with the certification of an EIR, the City Council must also adopt a Mitigation and Monitoring and Reporting Program (MMRP) (Attachment V) that identifies timing and responsibility for mitigation implementation.

ECONOMIC IMPACT

Economic Planning Systems, Inc, (EPS) prepared a Fiscal and Economic Impact Analysis of the proposed development (Attachment X). The analysis, dated September 12, 2016, analyzed the project's employment generation; anticipated resident retail demand and impact on retail sales in the City, and demand for future retail tenants. Among the main findings, the study concluded that the project would:

- Add approximately 452 middle income households whose expenditures would increase retail in the City by approximately \$16 million annually, with the majority of those retail sales occurring in Downtown Hayward due to location of the project.
- Generate approximately \$29 million in retail sales from the on-site commercial uses, after netting out on-site sales associated with project residents. The proposed development would be regional in nature due to the size of the commercial development and the individual tenant spaces resulting in significant expenditures by nonlocal consumers.
- Add 1,182 construction-related jobs and 349 permanent jobs.
- Provide opportunities for new anchor and retail tenant spaces to minimize sales “leakage,” where residents would otherwise leave the City to make purchases from undersupplied retailers and service providers within the City.

FISCAL IMPACT

The EPS study also analyzed the future municipal revenues and costs to the City; its net fiscal impact on the General Fund and an accounting of the one-time development and impact fees that would be generated by the proposed development.

General Fund Revenues (consisting of property tax, transfer tax, sales and emergency taxes and other General Fund Revenues) are estimated at approximately \$1.04 million annually and the General Fund Expenditures (consisting of fire, library and community services, police, public works and utilities) are estimated annually at \$703,000, for a net annual beneficial impact of about \$345,000 to the General Fund. In addition, the project is expected to generate approximately \$14 million in one-time processing and impact fees, which includes approximately \$4.6 in Park In-Lieu fees for which the applicant is seeking a partial credit as described previously.

PUBLIC OUTREACH

In March 2015, a Notice of Receipt for application was sent to all property owners and tenants located within a 300-foot radius of the proposed project site. Following that notification, staff has received numerous letters, emails and calls from individual neighbors, the Prospect Hill Neighborhood Association, the Friends of San Lorenzo Creek, and Sherman Lewis on behalf of the Hayward Area Planning Association. In general, the commenters were concerned about the height and massing of the building; the inclusion of high density residential as part of the development; potential traffic issues, consistency with the General Plan and Zoning; the lack of open space; an overreliance on vehicles; and the interaction between the development and adjacent rights-of-way and San Lorenzo Creek.

The project proponent met with the Prospect Hill Neighborhood Association and individual Prospect Hill neighbors, the Hayward Historical Society, and business owners near the project site numerous times in 2015 and 2016. In addition, as noted in the Background section above, there was a duly noticed Planning Commission Work Session to discuss the proposed project in May 2016.

As a result of comments related to the project, the applicant redesigned the building to break the structure into two separate towers to allow for view corridors from Prospect Hill east to the hills; expanded the Hazel Avenue pocket park; proposed improvements along the San Lorenzo Creek pathway; included a green roof on the commercial anchor tenant structure; is willing to install roadway improvements to minimize neighborhood cut-through traffic and spill over parking (proposed Conditions of Approval Nos. 47, 48 and 67); and will implement robust transportation and parking demand management strategies, which are included as EIR Mitigation Measures and conditions of approval for the project as described in detail previously in this report.

On April 14, 2017, notice of this public hearing was published in *The Daily Review* newspaper and mailed out to all residents, business and property owners within a 300-foot radius of the project site, as well as interested parties who requested to be notified about the project.

NEXT STEPS

The City Council's action will be the final decision on the project by the City of Hayward.

Staff recommends that the City Council deny the appeal, approve the project, and certify the project Environmental Impact Report, Related Findings of Fact and Statement of Overriding Considerations and Mitigation Monitoring Program for the reasons set forth in the attached Resolution and outlined in this staff report.

Alternatively, if the City Council opts to deny the project, the Council should direct staff to prepare findings for denial based on testimony and input from Council members, and return to the City Council for adoption of a Resolution of denial.

Prepared by: Leigha Schmidt, AICP, Senior Planner

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Kelly McAdoo, City Manager