



SUBJECT

Vesting Tentative Tract Map (Tract 8461) Application No. 202004359 for a 40-unit Townhouse-Style Residential Condominium on a Vacant 1.66-acre Site located at 21339-21447 Oak Street for which a Corresponding Site Plan Review Application (201800932) was Previously Approved in 2019 (APN 415-0170-019-00, 415-0170-020-00, 415-0170-021-00, 415-0170-022-00, 415-0170-023-00, 415-0170-024-00, 415-0170-025-00 and 415-0170-029-02). Applicant: Steven Kodama, Kodama Diseño Architects; Owner: Robert Chen, Golden Oak Real Estate Development LLC.

RECOMMENDATION

That the Planning Commission approve the proposed Vesting Tentative Tract Map for Condominium Purposes for Tract 8461 as shown in Attachment IV based on the analysis set forth in this staff report and the findings contained in Attachment II, and subject to the conditions of approval contained in Attachment III.

SUMMARY

The applicant is requesting approval of a Vesting Tentative Tract Map for Condominium Purposes (Tract 8461) to create a 40-unit townhouse-style condominium subdivision with a private street on a vacant 1.66-acre site at 21339-21447 Oak Street. In 2019, the Planning Commission and Council, on appeal, approved a corresponding Site Plan Review application for the same 40-unit development. Prior to construction of the project, the owner is proposing to subdivide the project requiring approval of a Vesting Tentative Tract Map for Condominium Purposes in order to be able to sell each of the units individually. The proposed subdivision would feature a single parcel with each condominium owner owning the airspace within their individual unit and an equal share of the common areas and improvements within the development, which would be maintained by a Homeowners Association.

To comply with the requirements of the City's Affordable Housing Ordinance (AHO), the owner has committed to paying the applicable in-lieu fees for the project. The in-lieu fees will be required to be paid either prior to issuance of building permits or prior to issuance of a certificate of occupancy for each unit.

BACKGROUND

The project site consists of eight contiguous vacant parcels totaling 1.66 acres which were acquired by the State Department of Transportation (Caltrans) prior to the abandoned 238 Corridor Bypass Project. Several years ago, Caltrans auctioned individual parcels that it no

longer intended to use. The property owner purchased the eight subject parcels in 2016 and subsequently submitted an application for Site Plan Review and a Vesting Tentative Tract Map for a 40-unit townhouse-style project in February 2018. In 2019, the owner decided to withdraw the Tentative Tract Map application and move forward with only the Site Plan Review application, with the intent of resubmitting the subdivision proposal at a later date.

On April 19, 2019, the Site Plan Review application was approved administratively by the Planning Manager; however, the approval was subsequently appealed to the Planning Commission by Ann Maris on behalf of the Grove Way Neighborhood Association on May 6, 2019. The Commission considered the appeal on July 25, 2019¹. At the public hearing, the appellant asserted the following: 1) that a plan should be prepared for all of the former Caltrans-owned properties before any new development projects were approved; 2) that the project's open space should align with the adjacent coffee shop on Foothill Boulevard to enable residents to walk from the project to the Boulevard; 3) that 50 percent of the units in the project should be affordable to lower income households; and 4) that the project should provide a significant public benefit to the community. The Planning Commission ultimately voted 5-0 to uphold the Planning Manager's decision and denied the appeal.

The appellant subsequently appealed the Planning Commission's decision to the Council on August 5, 2019, arguing the following: 1) that the project did not provide significant benefits to the surrounding neighborhood; 2) that it would result in increased traffic in the area; 3) that it should include smaller, more affordable units as opposed to solely larger, more expensive market-rate units; and 4) that the Park Impact Fees from the project should go fully toward preserving open space in the neighboring former Caltrans-owned properties. The Council considered the appeal on October 29, 2019² and voted 4-3 to uphold the Commission's decision and deny the appeal. The applicant subsequently filed the subject application for a Vesting Tentative Tract Map on behalf of the property owner nearly one year later on October 26, 2020.

Per Hayward Municipal Code (HMC) Section 10-1.3055(a)³, Site Plan Review approval lapses 36 months after the approval date unless either a building permit application for the project has been submitted or a time extension has been granted by the Planning Director. Pursuant to HMC Section 10-1.3055(b), the Planning Director may grant an extension of up to two additional years for Site Plan Review approval. The Site Plan Review approval for the project was scheduled to expire on October 29, 2022; however, on May 25, 2022, the applicant submitted a request for a time extension for the approval. Staff intends to grant the extension and extend the life of the Site Plan Review to coincide with the Vesting Tentative Tract Map.

Public Outreach: On November 4, 2020, the Planning Division mailed out 511 Notice of Receipt of Application (NOR) for the proposed Vesting Tentative Tract Map to the owners and occupants of all property within 300 feet of the site, as well as to the North Hayward Neighborhood Task Force, the Friends of San Lorenzo Creek, the Prospect Hill Neighborhood Association, and the Grove Way Neighborhood Association (care of the appellant of the Site Plan Review application, Ann Maris). No comments were submitted in response to the NOR.

¹ [July 25, 2019 Planning Commission Meeting Minutes](#)

² [October 29, 2019 City Council Meeting Minutes](#)

³ [Hayward Municipal Code Section 10-1.3055 Lapse of Approval](#)

On August 26, 2022, a total of 518 public hearing notices were mailed to the owners and occupants of all properties within a 300-foot radius of the project site, as well as the same neighborhood groups who received the NOR. A public hearing notice was also published in *The Daily Review* newspaper on this same date. As of the date this staff report was published, Planning Division staff has not received any comments from any members of the public regarding the proposed project.

PROJECT DESCRIPTION

Existing Conditions. The project site is currently vacant and is located along the southwestern side of Oak Street between Grove Way and Apple Avenue. It is surrounded by a mix of single-family homes, multi-family apartments and vacant lots along Oak Street and commercial development below the site to the southwest along Foothill Boulevard. The land slopes gradually down in the southwest direction from Oak Street to the rear of the site and contains 10 existing trees. The Site Plan Review application that has already been approved for the development calls for the removal of nine of the trees and the preservation of the lone, large Canary Island Palm tree as a focal point at the center of the development.

Proposed Project: The proposed project consists of a Vesting Tentative Map for Condominium Purposes for a previously approved residential development (Site Plan Review Application No. 201800932). The approved plan features 40 three-story townhomes housed in six separate buildings laid out along an H-shaped private street having two driveway connections to Oak Street and two centrally located common outdoor open spaces (see Figure 1 depicting the approved site plan, below). All units feature three-bedroom, two and one half-bathroom floor plans with attached two-car garages that range in size from 1,327 to 1,441 square feet each. The private street will serve as a joint private access easement, public utility easement and emergency vehicle access easement and will have a sidewalk along one side of its length, along with nine vehicular parking spaces and eight motorcycle parking spaces. The proposed Vesting Tentative Map would overlay the previously approved Site Plan and enable the owner to subdivide the development and sell each of the units individually (see Figure 2 depicting the proposed subdivision). No changes to the previously approved plans are proposed.

Figure 1 – Previously Approved Site Plan (for reference only)

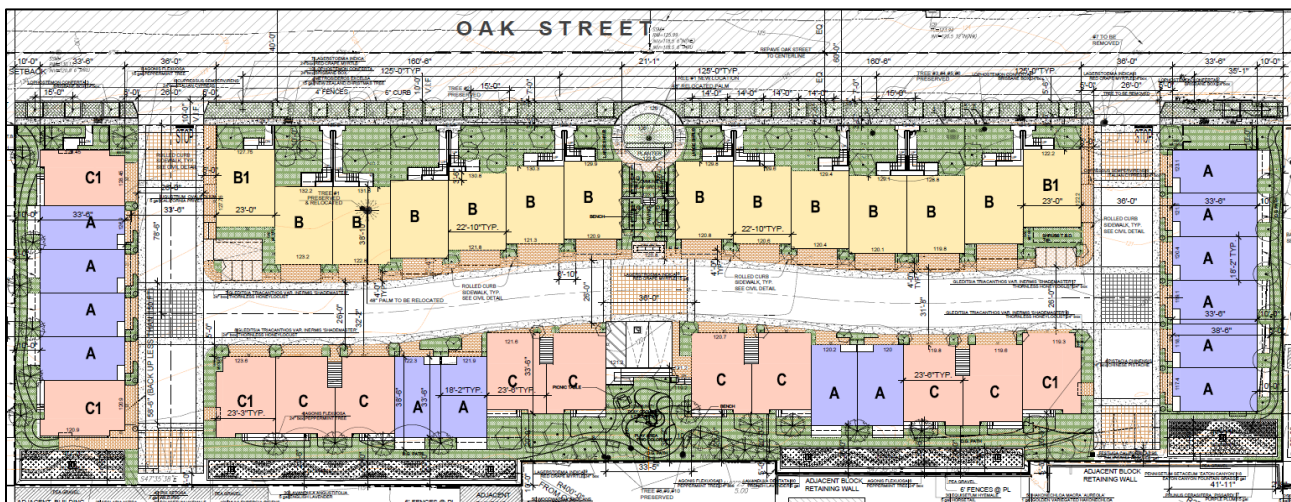
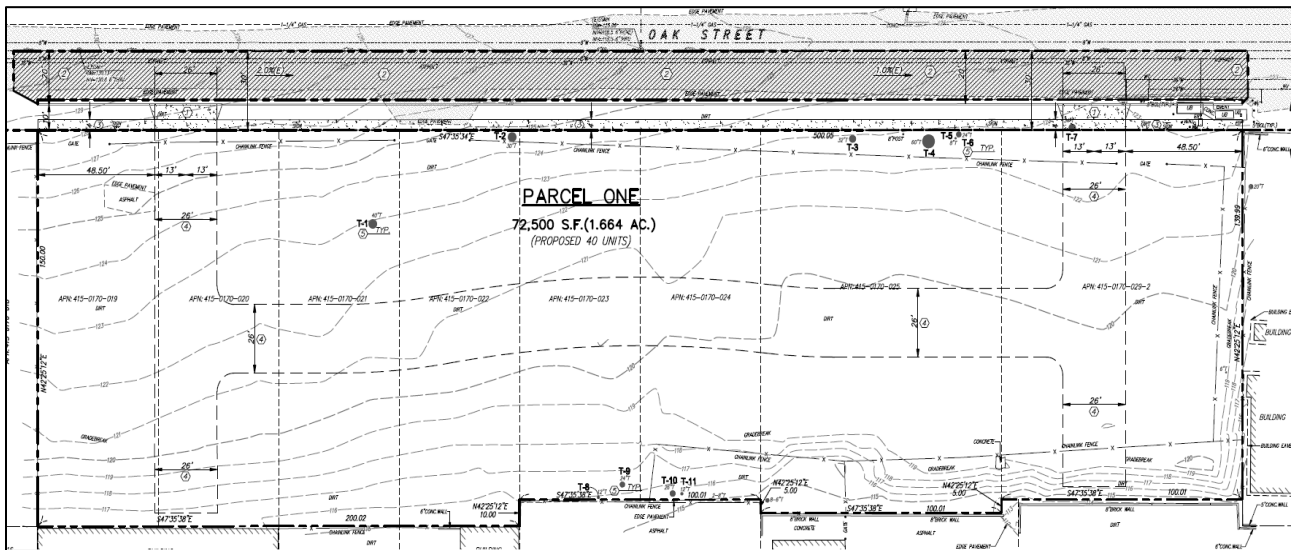


Figure 2 – Proposed Subdivision

In accordance with the approved Site Plan Review application, the development will connect to existing water, sewer and storm drain facilities in Oak Street. Street improvements to be constructed along the segment of Oak Street fronting the project site will include a new curb, gutter and sidewalk with accessible curb ramps at the private street driveway entrances, as well as streetlights. This segment of Oak Street is county right-of-way; therefore, all street improvements will be required to conform to Alameda County Public Works Agency standards, not City of Hayward standards. Stormwater runoff will be collected and treated in four separate bioretention areas located along the rear property line before being discharged into the storm drain line in Oak Street.

Sustainability Features: The project will be required to comply with the California Green Building Standards Code (CALGreen) and the City's Reach Code by featuring all-electric homes that contain no gas-powered appliances, garages that are electric vehicle-ready, and solar panels on each home. Additionally, all landscaping will be required to comply with the City's Bay-Friendly Water Efficient Landscape Ordinance.

POLICY CONTEXT AND CODE COMPLIANCE

Hayward 2040 General Plan: The project site is designated Commercial/High Density Residential in the *Hayward 2040 General Plan*⁴. This land use designation allows for multi-family residential development, including townhomes, apartments and condominiums, at a maximum density of 34.8 dwelling units per net acre (no minimum density is prescribed). The approved development plan features 40 townhomes with a density of 24.1 units per net acre; as such, the project is consistent with the site's General Plan land use designation. The project is also consistent with a number of General Plan Goal and Policies, including but not limited to the following:

⁴ [Hayward 2040 General Plan](#)

- The City shall encourage property owners to revitalize or redevelop abandoned, obsolete, or underutilized properties to accommodate growth (General Plan Land Use Policy LU-1.4).
- The City shall implement land use policies that allow for a range of residential densities and housing types, prices, ownership, and size, including low-density single family uses, moderate-density townhomes, and higher-density apartments, condominiums, transit-oriented developments, live-work units, and units in mixed-use developments (Housing Policy H-3.1).
- The City shall encourage development of residential uses close to employment, recreational facilities, schools, neighborhood commercial areas, and transportation routes (Housing Policy H-3.4).

Zoning Ordinance: The project site is zoned Commercial Office (CO) District⁵. This zoning classification allows for a wide variety of professional office and service commercial uses which are generally compatible with abutting residential uses. It also allows for multi-family residential development such as apartments, condominiums and townhomes. As a 40-unit townhouse-style condominium development, the proposed subdivision complies with the property's zoning classification. The project's density, site plan design and building design were all found to be in compliance with the applicable standards of the CO zoning district when the Site Plan Review application was approved by the Commission and Council in 2019, and no changes to the approved plans are proposed.

Subdivision Ordinance⁶: In accordance with the Subdivision Map Act, in order to approve an application for a Vesting Tentative Tract Map, the Planning Commission must make the following findings:

1. The proposed map is consistent with applicable general and specific plans as specified in Government Code Section 65451;
2. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans;
3. The site is physically suitable for the type of development being proposed;
4. The site is physically suitable for the proposed density of development;
5. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
6. The design of the subdivision or type of improvements is not likely to cause serious public health problems; and
7. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

⁵ [Hayward Municipal Code Section 10-1.1100 – Commercial Office District](#)

⁶ [Hayward Municipal Code Chapter 10, Article 3 – Subdivision Ordinance](#)

As stated above, the proposed subdivision conforms to the *Hayward 2040 General Plan* and complies with the applicable requirements of the Zoning Ordinance. A geotechnical investigation was completed for the project which concluded that the site was physically suitable for the type and density of development being proposed, and the project is not likely to have an adverse impact on public health and safety in that its construction will be required to comply with the California Building and Fire Codes and all improvements will be required to be constructed in accordance with applicable City and County standards. The subdivision will not cause substantial environmental damage or avoidably injure fish or wildlife or their habitat in that the site does not contain any environmentally sensitive features or habitats save for the existing trees, and the applicant will be required to conduct pre-construction surveys of the trees to ensure that no protected bird species are utilizing them for nesting or foraging purposes. Finally, the subdivision design will not conflict with any existing public easements in that no such easements currently encumber the property. More detail for each of the required findings is provided in the Draft Findings for Approval contained in Attachment II.

SB330 and Housing Crisis Act: In 2019, the State of California adopted new legislation (SB 330) that is intended to address the State's housing crisis. SB 330 strengthens the Housing Accountability Act (Government Code Section 65589.5), which states that a housing development project that complies with the objective standards of the General Plan and Zoning Ordinance cannot be disapproved or conditioned upon development at a lower density unless the City is able to make written findings based on the preponderance of the evidence in the record that : (1) the housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or developed at a lower density; and (2) there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than disapproval or development at a lower density.; "Objective" means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. As described above, the project was approved in 2019 after being found consistent with the General Plan and Zoning Ordinance and the proposed subdivision is also consistent with applicable objective criteria.

Regional Housing Needs Allocation & Affordable Housing Ordinance: Local jurisdictions report progress annually on meeting their Regional Housing Needs Allocation (RHNA) goals which are included in the City's Housing Element. The Table below demonstrates progress made toward meeting Hayward's RHNA goals for the period between 2015-2023 as of the last report year (2021), which is shown in the column titled "Reported 2021." The State allows local jurisdictions to report the units when building permits are issued to construct the units. The "Approved" and "Pending Approval" columns provide an estimate of potential compliance by counting both entitled projects and projects going through the entitlement process.

Table 1: 2023 RHNA Goal Progress in the City of Hayward

Income Category*	Unit Goal	Reported 2015-2021		Approved		Pending Approval		Estimated Compliance		Estimated Deficiency	
		Units	% of Goal	Units	% of Goal	Units	% of Goal	Units	% of Goal	Units	% of Goal
Very low	851	168	20%	293	34%	26	3%	487	57%	364	43%
Low	480	174	36%	226	47%	4	1%	404	84%	76	16%
Moderate	608	128	21%	60	10%	0	0%	188	31%	420	69%

*The City has achieved the Above Market Rate housing goals for the 2015-2023 RHNA cycle.

The proposed project is subject to the requirements of the City's Affordable Housing Ordinance set forth in HMC Chapter 10, Article 17 - Affordable Housing Ordinance⁷. An applicant may satisfy the requirements of the ordinance by paying an affordable housing in-lieu fee or including affordable units within the proposed development. In this case, the applicant has elected to pay the in-lieu fee for the project. Affordable housing in-lieu fees are required to be paid either prior to issuance of a building permit for each dwelling unit or prior to approval of a final inspection or issuance of an occupancy permit for the unit.

Parkland Dedication: HMC Chapter 10, Article 16 – Property Developers-Obligations for Parks and Recreation⁸ sets forth the parkland dedication requirements for private development based on residential unit count. Pursuant to the Ordinance, the applicant must pay fees in lieu of land dedication (also referred to as Park Impact Fees). Currently, Park Impact Fee rates are \$17,034 for a 3-bedroom unit. The proposed plans feature 40 total 3-bedroom units. As such, if and when the project is developed, the developer would be obligated to pay \$681,360 in Park Impact Fees under the current fee rates. A condition of approval is included requiring the applicant to pay the applicable Park Impact Fees in effect at the time of building permit issuance.

STAFF ANALYSIS

Staff believes the Planning Commission can make the findings required to approve the Vesting Tentative Map for Condominium Purposes. The findings to support the recommendation for approval and related conditions of approval are included in Attachments II and III to this staff report, respectively. The findings required for approval of Vesting Tentative Map mandate that the subdivision be consistent with the City's General Plan and adhere to all applicable standards of the Zoning Ordinance and Subdivision Ordinance, and this project was found to do both when the corresponding Site Plan Review application was approved by the City in 2019. The proposed subdivision would not result in any modifications to the previously approved plans and would simply enable the property owner to sell each of the units individually as condominiums. Furthermore, the proposed subdivision design does not require any variances from or exceptions to the applicable standards for a townhouse-style condominium development. For these reasons, staff believes that the Commission can make the findings to approve the project.

⁷ [Hayward Municipal Code Chapter 10, Article 17 – Affordable Housing Ordinance](#)

⁸ [Hayward Municipal Code Chapter 10, Article 16 – Property Developers-Obligations for Parks and Recreation](#)

ENVIRONMENTAL REVIEW

In 2019 the Site Plan Review application was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332, In-fill Development Projects. The application for a Vesting Tentative Tract Map for Condominium Purposes would not result in any physical changes to the project; it would only enable the subdivision of the development which would provide the owner with the option to either rent or sell each unit individually. As such, the Vesting Tentative Tract Map application is exempt from CEQA pursuant to Guidelines Section 15061(b)(3), which exempts projects from CEQA where it can be seen with certainty that there is no possibility that the proposed activity could have a significant effect on the environment.

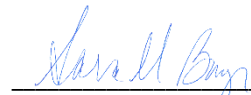
NEXT STEPS

Following the Planning Commission hearing, a ten-day appeal period will take place. If no appeal is received, then the Commission's decision will become final, and the applicant would then be able to proceed with the application for the Final Map and Subdivision Improvement Plans for the project. If an appeal is filed, then a hearing by the City Council will be scheduled for a date to be determined.

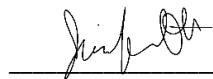
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